

CITY OF PORTLAND, MAINE

PLANNING BOARD

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August 16, 2018

Thomas S Greer, Vannah White, LLC
28 Vannah Avenue
Portland ME 0103

Project Name: **New 8-unit building: 7 residential units and 1 commercial unit condominium**
Project ID: Subdivision and Site Plan: # PLO00030-2018
Address: 28 Vannah Avenue, Portland CBL: 129 FO11 001
Applicant: Vannah White LLC (Thomas Greer)
Planner: Jean Fraser

Dear Mr. Greer:

On August 14, 2018, the Planning Board considered the Level III subdivision and site plan application for a new 3-story eight-unit building at 28 Vannah Avenue in the B1 zone. The proposals comprise: one commercial unit in the front part of the ground level; an ADA accessible 2-BR residential unit in the rear part of the ground level; six residential units (two 1-BR, three 2 BR, and two 3-BR) in the upper stories; an associated 17-space parking area; and landscaping.

The Planning Board reviewed the proposal for conformance with the standards of the Site Plan and Subdivision ordinances, and unanimously voted 6-o (Smith absent) to approve the application with the following waiver and conditions as presented below:

A. WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board report for the public hearing on August 14, 2018 for application PLO00030-2018 (28 Vannah Avenue) relevant to Portland's technical and design standards and other regulations; and the testimony presented at the Planning Board hearing:

1. The Planning Board unanimously voted 6-o (Smith absent) to waive the *Technical Manual* standard (Technical Manual Section 1.14) to allow 11 compact spaces located in accordance with the approved site plan, as supported by the Traffic Engineering reviewer.

B. SUBDIVISION

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board report for the public hearing August 14, 2018 for application PLO00030-2018 (28 Vannah Avenue) relevant to the subdivision regulations; and the testimony presented at the Planning Board hearing:

The Planning Board unanimously voted 6-o (Smith absent) that the plan is in conformance with the subdivision standards of the land use code and approves the application, subject to the following

conditions of approval, which must be met prior to the signing of the plat:

- i. The applicant shall submit a final subdivision plat for review and approval by Corporation Counsel, the Department of Public Works, and the Planning Authority, that includes but is not limited to: clarification of the legal status, size and location of all units; and rights and responsibilities for use of the communal areas including the rear patio, roof decks, trash room and other areas outside the units.
- ii. Revisions to the subdivision plat should also include:
 - a. Correction to the notes to consistently refer to all site electrical service being underground; and
 - b. Addition to the Zone information chart to include the B1 limits on the hours of potential uses in the commercial space (restaurant and retail can open only between 6am and 11pm); zoning limits on servicing (retail limits servicing to between 7am and 10pm); and
 - c. Addition of a note stating that if the commercial space is used for a restaurant, the B1 zoning ordinance would require additional parking provision and documentation of its provision.
- iii. If some or all of the units are to be condominiums, the Condominium Association documents shall be submitted for review and approval by Associate Corporation Counsel and Planning Authority and clarify rights and responsibilities for access, use and maintenance including snow storage and snow clearance from the sidewalks.

C. SITE PLAN

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board report for the public hearing on August 14, 2018 for application PLO00030-2018 (28 Vannah Avenue) relevant to the Site Plan Ordinance and other regulations and the testimony presented at the Planning Board hearing:

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

Prior to the submission of the Building Permit application

- i. The applicant shall submit detail plans, for review and approval by the Planning Authority, that show that the access from the ROW to both the commercial and handicap units meets ADA and Fair Housing Act requirements as applicable.

Prior to the issuance of a Building Permit

- ii. That the lighting proposals and photometric plan shall be revised, for review and approval by the Planning Authority, to meet the light trespass standards set out in the City's Technical Manual for Site Lighting.
- iii. That the Wastewater Capacity letter shall be submitted.

Prior to the issuance of a Certificate of Occupancy

- iv. There are 12 existing trees around the perimeter of the site that are shown to be preserved on the final Landscape Plan. If any of these trees do not survive the impacts of the construction (as determined by the City Arborist one year after the issuance of a CO) then they shall be replaced by the applicant with a similar tree species of 2 inch caliper.
- v. That the applicant has demonstrated that site constraints prevent the planting of all of the 7 required street trees (one per unit for multi-family development) in or near the right-of-way, and therefore the applicant shall contribute \$400 for one street tree to Portland's Tree Fund.
- vi. That the design of the apron and associated sidewalk shall meet Technical Standards and conform to the design detail provided in the final submissions (2% maximum cross-slope).

The approval is based on the submitted plans and the findings related to site plan review standards as contained in the Planning Report for application #PLO00030-2018, which is attached.

STANDARD CONDITIONS OF APPROVAL

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

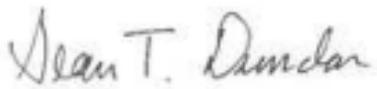
1. Subdivision Recording Plat A revised recording plat, listing all conditions of subdivision approval, must be submitted to the Planning and Urban Development Department for review. Once approved, the plat shall be signed by the Planning Board prior to the issuance of a performance guarantee. The performance guarantee must be issued, prior to the release of the recording plat, for recording at the Cumberland County Registry of Deeds.
2. Subdivision Waivers Pursuant to 30-A MRSA section 4406(B)(1), any waiver must be specified on the subdivision plan or outlined in a notice. The plan or notice must be recorded in the Cumberland County Registry of Deeds within two (2) years of the final subdivision approval.
3. Develop Site According to Plan The site shall be developed and maintained as depicted on the site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
4. Separate Building Permits Are Required This approval does not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Permitting and Inspections Department.
5. Site Plan Expiration The site plan approval will be deemed to have expired unless work has commenced within one (1) year of the approval or within a time period up to three (3) years from the approval date as agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the one (1) year expiration date.
6. Subdivision Expiration The subdivision approval is valid for up to three (3) years from the date of Planning Board approval.
7. 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 and Urban Development Department and Public Works Department prior to the release of a building permit, street opening permit or certificate of occupancy for site plans. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
8. Defect Guarantee A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
9. Preconstruction Meeting Prior to the release of a building permit or site construction, a pre-construction meeting shall be held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Works representative and owner to review the construction schedule and critical aspects of the site work. At that time, the Development Review Coordinator will confirm that the contractor is working from the approved site plan. The site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the pre-construction meeting.

10. Construction Management Plans The applicant, contractor and subcontractors are required to conform to the approved Construction Management Plan, and all conditions contained within the project's approval, for the entire duration of the project. Any amendments to the approved Construction Management Plan shall be reviewed and approved by the Department of Public Works prior to the execution. The Planning Authority and the Department of Public Works have the right to seek revisions to an approved Construction Management Plan. The applicant shall coordinate the project's construction schedule with the timing of nearby construction activities to avoid cumulative impacts on a neighborhood and prevent unsafe vehicle and pedestrian movements. Accordingly, nearby construction activities could involve a delay in the commencement of construction.
11. Department of Public Works Permits If work or obstructions will occur within the public right-of-way, such as utilities, curb, sidewalk, driveway construction, site deliveries and equipment siting, a Street Opening and/or Occupancy Permit (s) is required for your site. Please contact the Department of Public Works Permit Clerk at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)
12. As-Built Final Plans Final sets of as-built plans shall be submitted digitally to the Planning and Urban Development Department, on a CD or DVD, in AutoCAD format (*.dwg), release AutoCAD 2005 or greater.
13. Mylar Copies Mylar copies of the as-built drawings for the public streets and other public infrastructure in the subdivision must be submitted to Public Works prior to the issuance of a certificate of occupancy.

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

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

Sincerely,



Sean Dundon, Chair
Portland Planning Board

Attachments:

1. Planning Board Report
2. City Code, Chapter 32
3. Performance Guarantee Packet

Electronic Distribution:

cc: Jeff Levine, AICP, Director of Planning and Urban Development
Stuart G. O'Brien, City Planning Director, Planning and Urban Development
Barbara Barhydt, Development Review Services Manager, Planning and Urban Development
Jean Fraser, Planner, Planning and Urban Development
Deborah Andrews, Historic Preservation Program Manager, Planning and Urban Development
Caitlin Cameron, Urban Designer, Planning and Urban Development
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Jeff Tarling, City Arborist, Public Works
Jeremiah Bartlett, Transportation Systems Engineer, Public Works
William Scott, Chief Surveyor, Public Works
Mike Thompson, Fire
Danielle West-Chuhta, Corporation Counsel
Jennifer Thompson, Corporation Counsel
Victoria Volent, Housing Program Manager, Housing and Community Development
William Needelman, Waterfront Coordinator, Economic Development Department
John Peverada, Parking Manager
Thomas Errico, P.E., TY Lin Associates
Lauren Swett, P.E., Woodard and Curran
Christopher Huff, Assessor



PLANNING BOARD REPORT PORTLAND, MAINE

New 8-unit: 7 residential units and 1 commercial unit condominium

28 Vannah Avenue

Subdivision, Level III Subdivision and Site Plan

Project # PL000030-2018

CBL:

Vannah White, LLC, Applicant

Submitted to Portland Planning Board Public Hearing Date: August 14 th , 2018	Prepared by: Jean Fraser Date: August 10 th , 2018
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I. INTRODUCTION

Vannah White LLC (Thomas Greer) is requesting a final Planning Board review of their Level III Subdivision and Site Plan application for a new 3-story eight-unit building at 28 Vannah Avenue, near the Woodford's Corner intersection of Forest Avenue and Ocean Avenue. The project was considered at a Planning Board Workshop on June 12, 2018.

The proposed ground floor comprises one commercial unit in the front part and an ADA accessible 2-BR residential unit in the rear. Six residential units (one, two and three bedroom) are proposed for the two upper stories. The new building is 3 stories (approximately 33ft in height) with a footprint of 3150 sq ft and total floor area of 9100 sq ft.

The site is currently occupied by a residential style commercial building with a large parking area, and most of the site is within the B1 zone that provides a buffer between the B2 zone to the west and the surrounding R3 (see plan on page 4).



Applicant: Vannah White, LLC (Thomas Greer)
Consultants: Engineer: Thomas S Greer, PE
 Architects: Whipple Callender Architects

Required Reviews and Waivers:

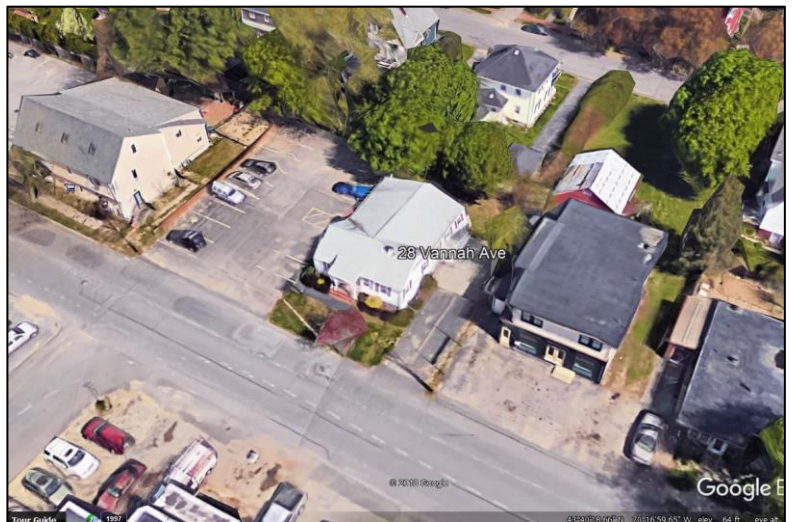
<i>Review</i>	<i>Applicable Standards</i>
Subdivision: Construction of new building with 7 residential dwelling units and 1 commercial unit	<i>Section 14-497</i> for the creation of 8 units.
Site Plan: Multifamily development	<i>Section 14-526</i> for the proposed multifamily residential development comprising 7 units.
<i>Waiver Requests to Planning Board</i>	<i>Applicable Standards</i>
Compact Parking Spaces: The applicant proposes 11 compact vehicle parking spaces as part of the 17 total spaces (64.4%) (see applicants waiver request in <u>Att S</u>)	Technical Standard 1.14 Parking Lot and Parking Space Design requires that any parking lot with more than 10 spaces may be comprised of up to 20% compact parking spaces. The City's Traffic Engineer Reviewer supports this waiver in view of the anticipated low turnover (<u>Att 4</u>).

II. PROJECT DATA

SUBJECT	DATA
Existing Zoning	Primarily B1; strip along back boundary is R3
Existing Use	Offices and parking
Proposed Use	Commercial/residential
Total Area of the Site	10,500 sq ft
Proposed Disturbed Area of the Site	10,500 sq ft
Impervious Surface Area - Existing	7,867 sq ft
Impervious Surface Area - Proposed	8,380 sq ft
Building Footprint - Existing	1,552 sq ft
Building Footprint - Proposed	3,150 sq ft
Building Floor Area - Existing	1,552 sq ft
Building Floor Area - Proposed	9,100 sq ft
Number of lots proposed	8 (1 commercial; 7 residential)
Residential Units- Existing	0
Residential Units- Proposed	7
Residential Bedroom Mix:	two 1-BR; three 2-BR; two 3-BR
Parking Spaces - Existing	17
Parking Spaces - Proposed	17 (incl 1 handicapped parking space)
Bicycle Parking Spaces - Existing	0
Bicycle Parking Spaces - Proposed	4 (2 bike racks shown on site plan, with 2 bikes each)
Estimated Cost of Project	\$1,200,000

III. EXISTING CONDITIONS

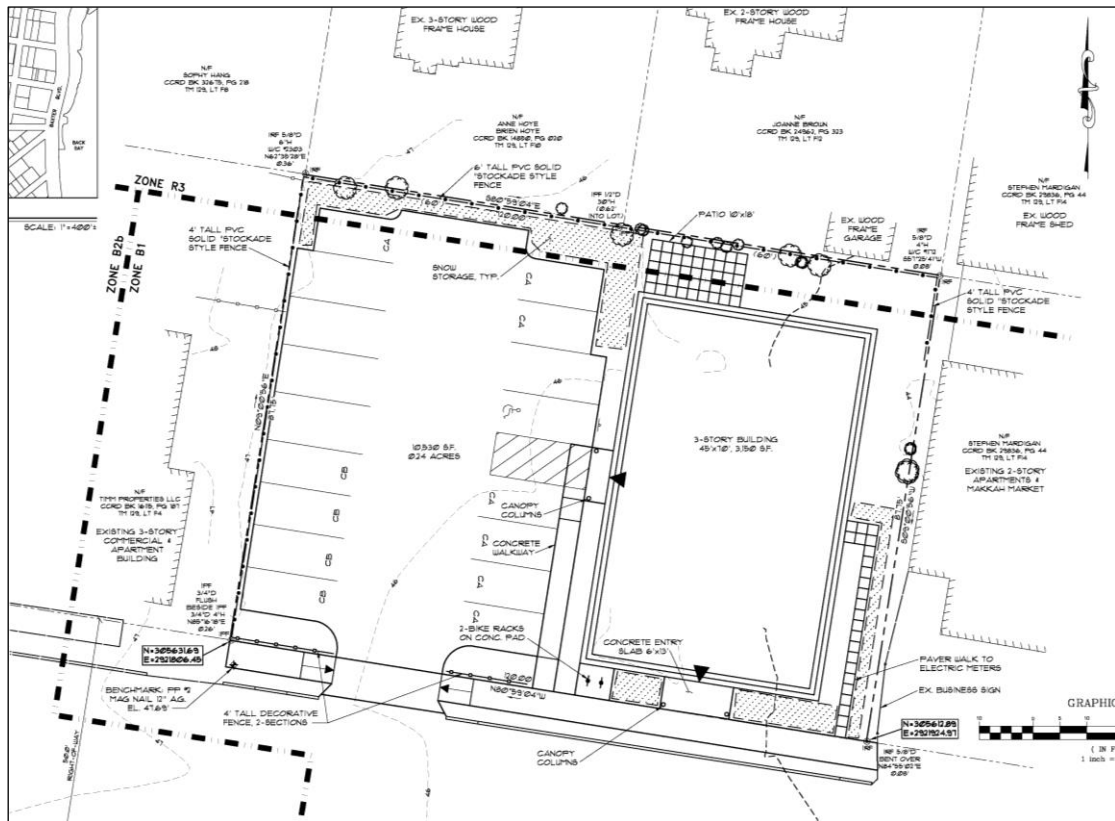
The applicant has submitted photographs of the existing site in [Attachment T](#) and a boundary survey in [Plan P1](#). The relatively flat site is bounded to the north by the R3 zone and residential properties. To the west is an existing building used for offices, day care and personal services. To the east is a mixed use building with retail on the ground floor and two residential units above (also in B1 zone).



IV. PROPOSED DEVELOPMENT

The final proposals are shown in the Plan Set which includes perspective renderings (P15 and P16), Floor Plans (P11 and P16) and elevations (P12) along with the civil plan set. The design of the building and parking/landscape details were revised in response to the PB Workshop comments, and the proposals now include the following (also see extract from the Subdivision plat below):

- New 3 story flat roofed building (with basement) on the site of the existing building, with roof deck and HVAC compressors;
- Proposed building to include one commercial unit on the ground floor; one residential ADA accessible unit on the ground floor, and six residential units on the upper floors;
- Associated parking lot, approximately as existing, with reduced curb cut;
- Landscape and planting that preserves the existing trees around the perimeter of the site and incorporates street trees, foundation planting and buffer planting;
- New sidewalk;
- Fencing around three sides of the project: the west and north sides (and small part of the east side at rear) are white PVC stockade style fencing; at the front along the back of the sidewalk (in front of the trees) is a black vertical metal decorative fence at 4 feet in height;
- Communal patio at the rear.



V. PLANNING BOARD WORKSHOP DISCUSSION

The main focus of the Planning Board comments was the design of the building, particularly the proposed gable roof form and entrance. Board members encouraged the applicant to reconsider the design in light of the Urban Designer Preliminary comments, and noted that this preliminary design resembled an “suburban office park” rather than urban residential.

Other recommendations from the Board were to increase the buffer planting along the rear boundary to reduce the prominence of the fencing, and to clarify the drainage and grading, as the parking lot drainage appeared to be directed towards the building.

In addition, staff identified that the following aspects needed further consideration:

- Compressor location;
- Parking lot/frontage area to address parking space size/utility guy wire/ landscape /fencing comments;
- Parking aisle width; construction management plan; grading and drainage; truck deliveries.

The final submissions have addressed all of these issues.

VI. PUBLIC COMMENT

A total of 237 notices were sent to property owners within 500 feet of the site and interested parties, and a legal ad was published in the *Portland Press Herald* on August 3rd and 6th, 2018. The required Neighborhood Meeting was held on May 23, 2018 and attended by 8 neighbors, excluding representatives of the applicant. The Meeting Certificate and notes are included in [Attachment U](#). Two written public comments were received ([Attachments PC1 and 2](#) from the same neighbor) and echo the Planning Board comments on the gable design. There were no public comments presented at the PB Workshop.

VII. RIGHT, TITLE & INTEREST AND FINANCIAL AND TECHNICAL CAPACITY

The applicant has submitted a copy of the applicant's ownership deed and a letter dated 2.6.18 from People's United Bank confirming financial capacity. The submissions were prepared by professional consultants.

VIII. STAFF REVIEW

A. ZONING ASSESSMENT

The site is primarily within the B1 zone, with an 8 foot wide strip along the back boundary within the R-3 zone as illustrated below and shown on the Site Plan in [Plan P4](#):

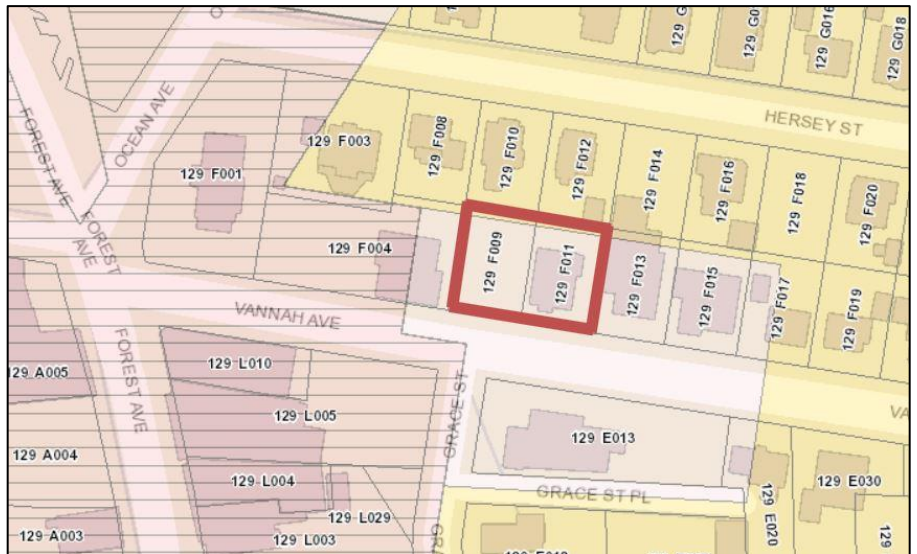
Uses: The proposed uses are permitted within the B1 zone, which allows multifamily dwellings above the first floor where a commercial use is on the first floor. Multifamily dwellings are also allowed on the first floor where a minimum depth of 25 feet along the principal street frontage is maintained for commercial uses; the proposed commercial space meets this requirement.

Under the Fair Housing Act the first floor unit must be accessible and the site plan ([Plan P.4](#)) and ground floor plan ([Plan P11](#)) address the

accessibility requirements but have not confirmed that the access from the parking lot to the unit meets ADA. A suggested condition of approval requires confirmation with supporting details. Under ADA the access to the commercial unit should also be level and ADA accessible.

The B1 zone requires that if the commercial space is used as a retail or restaurant, it may not operate between 11pm and 6am. The B1 ordinance also specifies that a retail use may not accept deliveries or services between 10pm and 7am. These limitations are included in a suggested condition of approval.

Dimensional Requirements: The submissions document ([Attachment G](#)) that the proposal meets all of the dimensional requirements of the B1 zone. The staff concur with the applicant's assessment, except that the new roof design results in a height of 32.8 feet based on the zoning definition, with the highest absolute height at 33.5 feet.



Parking Requirements: The applicant has proposed 17 parking spaces. There are 7 residential units and a commercial space of about 1500 sq ft in the proposed building.

The ordinance specifies the following parking requirements (summarized):

- Residential: 2 spaces per unit (14 required)
- Retail: 1 parking space /200 sq ft of first floor area in excess of 2000 sq ft (0 required)
- Restaurant: 1 space for each 150 sq ft not used for bulk storage or food preparation (up to 8 or 9 required)
- Offices; professional: 1 space for each 400 sq ft exclusive of cellar, not used for bulk storage (up to 3 or 4 required)

The applicant intends the ground floor commercial unit to be retail or offices, and in that case the parking provision would meet the zoning requirement. If at some stage the ground floor space was used or converted to a restaurant use, then the on-site parking provision appears to be inadequate. In order for this issue to be clear for any future owner or lessee/occupant, a suggested condition of approval notes that if the commercial space is to be used for a restaurant, further parking provision would need to be documented.

B. SUBDIVISION REVIEW (14-497(a). Review Criteria)

14-496. Subdivision Plat Requirements

The applicant has submitted a draft Subdivision Plat (Plan P2) which is generally acceptable but requires revisions to the notes (to clarify notes regarding the electrical service being underground and to include the location and floorspace and legal status of all of the units) along with the standard updates following any subdivision approval. The draft plats do not clarify whether all of the units will be condominium units, and refers to “owner” responsibilities regarding snow storage; draft condominium documents have not been submitted. Both the Plat and any condominium documents would need to clarify the rights of use and maintenance for the rear patio, roof decks, trash room and other areas outside the units. A suggested condition of subdivision approval addresses the possibility of some or all of the units being condominiums and the associated requirements.

14-497. General Requirements (a) Review Criteria

The proposals have generally addressed the subdivision standards, with the following items of relevance to this project:

Water, Air Pollution and Soil Erosion

The applicant has submitted the capacity letter from the Portland Water District (Attachment P.).

Traffic

The Traffic Engineering reviewer has confirmed that the project is not expected to generate a significant amount of new traffic and thus is not expected to impact safety and mobility in the study area (Attachment 4).

Sanitary Sewer/Soils/Stormwater

The proposal increases the impervious surface by 513 sq ft. The applicant revised the grading plan to address previous comments concerning the direction of stormwater flows. The Peer Engineering reviewer considers the proposals to be acceptable (Attachment 1), subject to a condition of approval requiring submission of the wastewater capacity letter.

Scenic Beauty

The applicant has retained all of the existing trees on the site and proposed new street trees. The proposed building replaces a smaller existing building, and its design was revised to address the Board Workshop and Urban Designer comments.

Comprehensive Plan

Staff find the proposed project compatible with the Comprehensive Plan, which includes the following applicable goals:

- “create economic prosperity by growing Portland’s tax and employment base”
- “encourage additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods”.

C. SITE PLAN REVIEW (14-526 Site Plan Standards)

The proposed development has been reviewed by staff for conformance with the relevant review standards of Portland’s site plan ordinance and applicable regulations. Staff comments are listed below.

1. TRANSPORTATION STANDARDS

Impact on Surrounding Street systems: Please note comments above under *Subdivision Review*.

Access and Circulation

The proposed commercial space on the ground floor is proposed as retail (though business shown on floor plan) and could become a restaurant or other business. The Traffic Engineer Tom Errico requested details of how truck deliveries would be accommodated. The applicant explained delivery vehicle access in Attachment W, and Mr Errico has determined that the arrangements are reasonable (Attachment 4).

Sidewalks and Pedestrian Connections

The applicant proposes to install a new concrete sidewalk with a concrete apron for the curb cut leading to the parking lot. The new sidewalk will connect to the short existing sidewalk abutting the site to the east, and to the west the “gap” in the existing sidewalk (and section of uneven sidewalk) will be completed as part of the City’s sidewalk contract for next year. The proposal include a direct concrete walkway between the ROW sidewalk and both entrances, so that access from the sidewalk to the residential units is separate from the parking area.

Public Transit Access - this standard does not apply to this proposal.

Parking

- **Vehicular:** The proposed parking provision of 17 spaces has been achieved by the inclusion of 11 compact spaces. The Traffic Engineer Reviewer was less concerned about the number of compact spaces than the location, and the revised plans address previous staff comments. The final layout of the parking lot, and associated compact spaces, is supported by the consultant Traffic Engineer Tom Errico (Attachment 4.)
- **Bicycle:** The ordinance requirement is 2 spaces per 5 dwelling units and 2 bicycle parking spaces for every 10 required vehicle parking spaces for non-residential. The applicant has shown two bike racks (4 bicycle spaces) on the revised site plan and staff consider that this provision meets the ordinance requirements.

Snow Storage: Snow Clearance Notes were added to the draft Subdivision Plat. The language may need to be reinforced by condominium documents for the relevant units, as noted in the suggested conditions of subdivision approval.

Transportation Demand Management: this standard does not apply to this project

Construction Management Plan

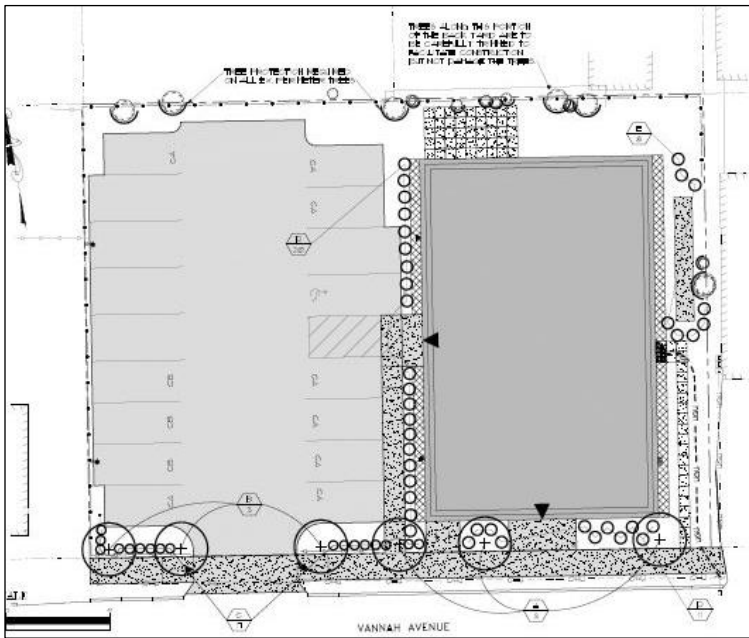
The applicant has submitted a final Construction Management Plan narrative and plan (Att L and Plan P8), which have been revised to address staff comments and are considered acceptable (Attachment 1).

2. ENVIRONMENTAL QUALITY STANDARDS

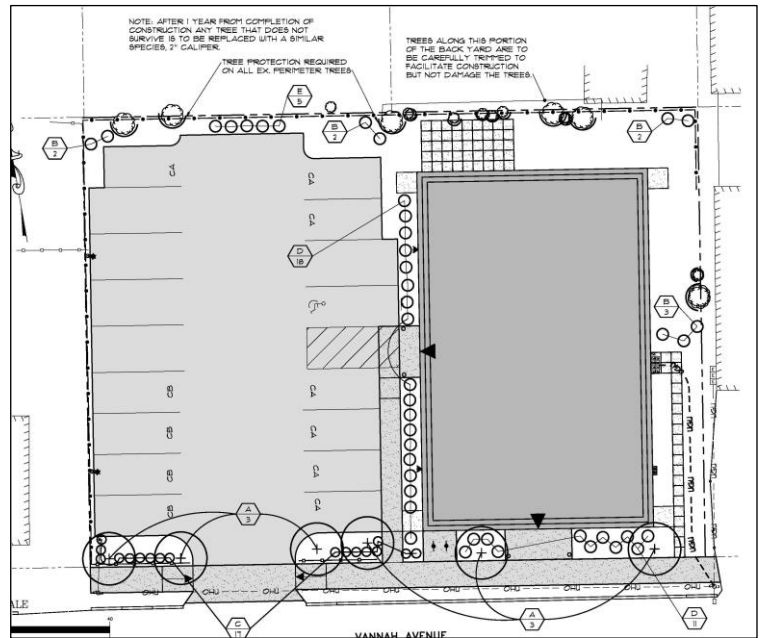
Landscaping and Landscape Preservation, Site and Parking Lot Landscaping

The proposal retains all of the existing trees on the site, adds 6 new trees along the frontage at the back of the ROW, adds other planting around the building, and has added additional buffer planting along the rear fence to address the Planning Board and staff comments (see Landscape plan in Plan P5, and below right). The City Arborist provided further detailed comments after the PB Workshop that included recommendations for enhancing the new planting and/or using species that would do well in this location (Attachment 5.) Below is a comparison of the previous and final proposals:

As presented to PB Workshop:



Final for PB Hearing:



The proposal includes “buffer” fencing around three sides of the project: the west and north sides (and small part of the east side at rear) are white PVC stockade style fencing; at the front along the back of the sidewalk (in front of the trees) is a black vertical metal decorative fence at 4 feet in height. The location of the fence was discussed at the PB Workshop in the context of public comment (PC1) and the applicant explained that the location was intentional to signal the area as private parking.

Jeff Tarling, the City’s Arborist, is generally supportive of the proposed tree preservation and landscaping; he has recommended that a condition be included to require tree replacement if any of the preserved existing trees do not survive the construction impacts (Attachment 5).

Street Trees

The applicant requested to contribute to the Street Tree fund for the one additional street tree required to meet the site plan ordinance (Attachment S), and this is reflected in a suggested condition for the Board to consider.

Water quality, Stormwater Management and Erosion Control - see discussion under *Subdivision Review* above.

3. PUBLIC INFRASTRUCTURE AND COMMUNITY SAFETY STANDARDS

Consistency with Related Master Plans

The proposal includes a new concrete sidewalk that accords with the City’s material policy and includes curbing. The applicant has agreed to extend the sidewalk a short distance beyond the applicant’s frontage (to the east) to connect with the existing sidewalk.

To the west there is a missing section of sidewalk and a section in poor condition, and the City will be upgrading these sections within about a year which will provide an improved sidewalk connection between the new development and Forest Avenue.

Public Safety and Fire Prevention

The Fire Department does not have any comments on the proposals in terms of public safety and fire prevention, and noted that access is adequate in relation to abutting buildings (Attachment 3).

Availability and Adequate Capacity of Public Utilities- see comments under *Subdivision Review* above.

4. Site Design Standards

Massing, Ventilation and wind Impact; Shadows; Snow and Ice Loading; View corridors; Historic Resources - these standard do not apply to this project.

Exterior Lighting and Street Lighting

The proposed site lighting, including the specifications in Attachment R, is generally acceptable, subject to a revised photometric plan that confirms that there the light trespass along the property lines is below the maximum of 0.1 footcandle as required in the Technical Standards. A suggested condition of approval requests that the lighting be revised and documented. The existing street lighting has been assessed by staff and is adequate.

Noise and Vibration

The applicant originally proposed that the HVAC compressors be located along the rear boundary and staff suggested that they be located away from the residential zone. The plans presented at the PB Workshop placed the compressor along the side but these were close to the property boundary. The final design shows the compressors relocated to the roof in conjunction with the redesign that incorporates a flat roof. Staff support the proposed location as shown in the recently submitted revised roof plan in Plan P16. The supporting revised elevations indicate that these would not be visible from any public street or adjacent sites as required under the site plan ordinance.

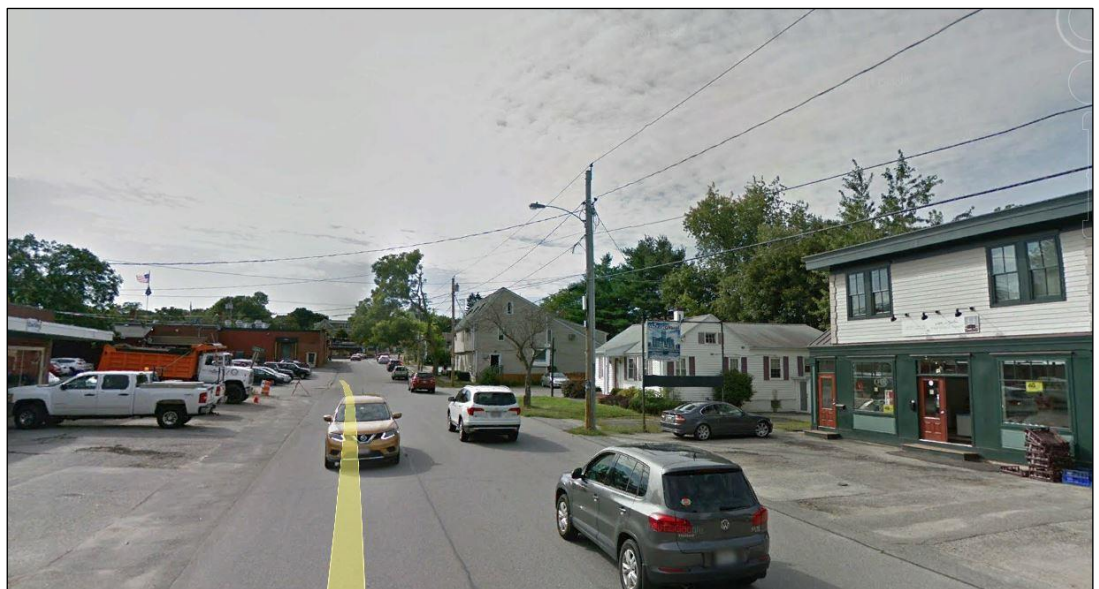
Signage and Wayfinding - the submissions include indicative signage, and it should be noted that all signage would be subject to separate sign permits from the Permitting and Inspections Department and are not included in this review.

Zoning-Related Design Standards (B1 zone)

1. **B1 Design Standards** The project is located mainly in the B1 zone. The Purpose Statement for B1, B1-b, B2, B2-b Zones states:

Development in the B1, B1-b, B2 and B2-b business zones shall provide an established street wall with entrances and public portions of the building oriented to and directly accessible from the public sidewalk and shall be designed and scaled to be compatible with surrounding residential and commercial development as demonstrated by compliance with all applicable design standards listed in the Design Manual.

The photograph at right below provides an impression of the context for the project:



The applicant was requested by both the staff and Planning Board to reconsider the original gable design shown below left. The final design now incorporates a flat roof, with a stair overrun, decks and HVAC on the roof that are not visible in the comparable view (right).

As presented to PB Workshop:



Final for PB Hearing:



The City's Urban Designer Caitlin Cameron has reviewed the revised design and provided a Design Review Memo (see [Attachment 2](#) and [extracts below](#)). The overall design is considered acceptable, subject to revisions to the elevations as noted below. A suggested condition of approval is included although it is understood that the revised elevations will be available for the Hearing.

The perspective renderings in [Plan P15](#) and [P16](#) show the building from different viewpoints and confirm that the roof elements are recessive. Staff had raised concerns that the location of the roof HVAC compressors would be visible from long views; the architect revised the location of the compressors to address this concern (as explained in [Att. Y](#) and illustrated in [Plan P16](#).)



Extracts from the Urban Design Final Memo ([Att. 2](#)):

Standard (1) f. Building Design – Building design conveys its commercial/mixed use nature. Use of office-front is consistent with commercial buildings on this street.

Building form was revised to have a flat roof appropriate for a three-story, mixed-use building type, as well as appropriate given the width and proportion of the building overall and does not preclude the use of articulation and detail to add visual interest. The office use is differentiated on the façade through the use of the office-front windows, the change of material, and the trim delineating the ground from the upper floors. These elements are adequate in conveying the different uses. **Trim/panel details vary from front to side of building at the ground floor – revise elevation to show panel below all commercial office windows.** **Office entry was revised to simplify, remove pediment roof.** The rooftop does now include some appurtenances such as a stair overrun, decks, and mechanical systems. The circulation and decks are set back from the street and do not negatively impact the perceived scale or form of the building. **The rooftop mechanicals are placed to the center of the roof to reduce the visibility from the ROW but are not screened – the renderings show these should not be visible and negatively impact the design or ROW.**

*Standard (1) g. Building Materials – The elevations refer to “synthetic” clapboard – the applicant confirmed the clapboard and trim are proposed to be Boral siding. Staff support that material choice and find it to meet the standards for compatibility and durability but **suggest the material be clarified on the elevations or in the approval letter.** The project appears to use clapboard of two different reveals with panel as an accent – these would be appropriate material choices. The surrounding context uses clapboard and brick primarily.*

2. **Multi-family and Other Housing Types Design Standards**

In addition, there are design standards that apply to all multifamily development including this proposal. These are more general standards that include design standards as well as several other standards as listed below with staff comments.

(i) TWO-FAMILY, SPECIAL NEEDS INDEPENDENT LIVING UNITS, MULTIPLE-FAMILY, LODGING HOUSES, BED AND BREAKFASTS, AND EMERGENCY SHELTERS:

(1) STANDARDS. Two-family, special needs independent living units, multiple-family, lodging houses, bed and breakfasts, and emergency shelters shall meet the following standards:

a. Proposed structures and related site improvements shall meet the following standards:

- 1. The exterior design of the proposed structures, including architectural style, facade materials, roof pitch, building form and height, window pattern and spacing, porches and entryways, cornerboard and trim details, and facade variation in projecting or recessed building elements, shall be designed to complement and enhance the nearest residential neighborhood. The design of exterior facades shall provide positive visual interest by incorporating appropriate architectural elements;*
- 2. The proposed development shall respect the existing relationship of buildings to public streets. New development shall be integrated with the existing city fabric and streetscape including building placement, landscaping, lawn areas, porch and entrance areas, fencing, and other streetscape elements;*

Staff comment: The proposals have been evaluated in the context of the B-1 Design Standards (above) which cover the design elements mentioned in standards 1 and 2 in greater detail. Please refer to the Design Review comments in Attachment 3.

- 3. Open space on the site for all two-family, special needs independent living unit, bed and breakfast and multiple-family development shall be integrated into the development site. Such open space in a special needs independent living unit or a multiple-family development shall be designed to complement and enhance the building form and development proposed on the site. Open space functions may include but are not limited to buffers and screening from streets and neighboring properties, yard space for residents, play areas, and planting strips along the perimeter of proposed buildings;*

Staff comment: A 10 foot by 18 foot common patio has been provided at the rear of the building, accessible from the handicap unit on the ground floor.

- 4. The design of proposed dwellings shall provide ample windows to enhance opportunities for sunlight and air in each dwelling in principal living areas and shall also provide sufficient storage areas;*

Staff comment: This standard appears to be met.

- 5. The scale and surface area of parking, driveways and paved areas are arranged and landscaped to properly screen vehicles from adjacent properties and streets;*

Staff comment: The parking area is screened along the ROW frontage with a decorative fence and tree planting, and by PVC stockade fences and small scale planting elsewhere except along the eastern boundary.

IX. STAFF RECOMMENDATION

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the Planning Board approve the proposed mixed use development at 28 Vannah Avenue.

X. PROPOSED MOTIONS

A. WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board report for the public hearing on August 14, 2018 for application PL000030-2018 (28 Vannah Avenue) relevant to Portland's technical and design standards and other regulations; and the testimony presented at the Planning Board hearing:

1. The Planning Board [**finds/does not find**], based upon the consulting traffic engineer's review (Attachment 4), that extraordinary conditions exist or undue hardship may result from strict compliance with the Technical Manual Section **1.14 Parking Lot and Parking Space Design**. The Planning Board [**waives/does not waive**] the *Technical Manual* standard (Technical Manual Section 1.14) to allow 11 compact spaces located in accordance with the approved site plan, as supported by the Traffic Engineering reviewer.

B. SUBDIVISION

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board report for the public hearing August 14, 2018 for application PL000030-2018 (28 Vannah Avenue) relevant to the subdivision regulations; and the testimony presented at the Planning Board hearing:

The Planning Board finds that the plan **is/is not** in conformance with the subdivision standards of the land use code and **approves/does not approve** the application, subject to the following conditions of approval, which must be met prior to the signing of the plat:

- i. The applicant shall submit a final subdivision plat for review and approval by Corporation Counsel, the Department of Public Works, and the Planning Authority, that includes but is not limited to: clarification of the legal status, size and location of all units; and rights and responsibilities for use of the communal areas including the rear patio, roof decks, trash room and other areas outside the units.
- ii. Revisions to the subdivision plat should also include:
 - a. Correction to the notes to consistently refer to all site electrical service being underground; and
 - b. Addition to the Zone information chart to include the B1 limits on the hours of potential uses in the commercial space (restaurant and retail can open only between 6am and 11pm); zoning limits on servicing (retail limits servicing to between 7am and 10pm); and
 - c. Addition of a note stating that if the commercial space is used for a restaurant, the B1 zoning ordinance would require additional parking provision and documentation of its provision.
- iii. If some or all of the units are to be condominiums, the Condominium Association documents shall be submitted for review and approval by Associate Corporation Counsel and Planning Authority and clarify rights and responsibilities for access, use and maintenance including snow storage and snow clearance from the sidewalks.

C. SITE PLAN

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board report for the public hearing on August 14, 2018 for application PL000030-2018 (28 Vannah Avenue) relevant to the Site Plan Ordinance and other regulations and the testimony presented at the Planning Board hearing:

The Planning Board finds that the plan **is / is not** in conformance with the site plan standards of the land use code, subject to the following conditions:

Prior to the submission of the Building Permit application

- i. That the applicant submit revised elevations to address the Urban Design Memorandum of 8.3.18 in respect of the ground floor panels and clarification of materials, for review and approval by the Urban Designer.
- ii. The applicant shall submit detail plans, for review and approval by the Planning Authority, that show that the access from the ROW to both the commercial and handicap units meets ADA and Fair Housing Act requirements as applicable.

Prior to the issuance of a Building Permit

- iii. That the lighting proposals and photometric plan shall be revised, for review and approval by the Planning Authority, to meet the light trespass standards set out in the City's Technical Manual for Site Lighting.
- iv. That the Wastewater Capacity letter shall be submitted.

Prior to the issuance of a Certificate of Occupancy

- v. There are 12 existing trees around the perimeter of the site that are shown to be preserved on the final Landscape Plan. If any of these trees do not survive the impacts of the construction (as determined by the City Arborist one year after the issuance of a CO) then they shall be replaced by the applicant with a similar tree species of 2 inch caliper.
- vi. That the applicant has demonstrated that site constraints prevent the planting of all of the 7 required street trees (one per unit for multi-family development) in or near the right-of-way, and therefore the applicant shall contribute \$400 for one street tree to Portland's Tree Fund.
- vii. That the design of the apron and associated sidewalk shall meet Technical Standards and conform to the design detail provided in the final submissions (2% maximum cross-slope).

ATTACHMENTS:

Attachments to the Report

1. Final Peer Engineer comments
2. Final Design Review Memorandum
3. Fire Department comment
4. Final Traffic Engineering comments
5. Final City Arborist comments

Public comments

- PC 1 Tamara Jones 6.4.18
PC 2 Tamara Jones 6.13.18

Applicant's Submittal

- A. Cover letter
- B. Table of Contents and List of Plans
- C. Application and checklist
- D. Right, Title and Interest and Easements
- E. Financial and Technical Capacity
- F. Description including location plan
- G. Zoning
- H. Easements
- I. Federal and State Requirements
- J. City Master Plans
- K. Fire Safety
- L. Construction Management Plan narrative
- M. Geotechnical Report
- N. Consistency with Master Plans (same as J)
- O. Solid Waste
- P. Utility capacity
- Q. Design Standards
- R. Lighting and HVAC
- S. Request for Waivers (updated)
- T. Architectural Street Views
- U. Neighborhood Meeting Certificate and Notes
- V. Response to staff prelim review comments 5.29.18
- W. Response to comments 7.9.18
- X. Response to comments 8.1.18
- Y. Arch response re materials & HVAC 8.10.18

Plans

- P1. Survey
- P2. Subdivision Plan (2 sheets)
- P3. Existing conditions
- P4. Site Plan
- P5. Landscape Plan
- P6. Grading and Utilities Plan
- P7. Erosion control Plan
- P8. Construction Management Plan
- P9. Details (2 sheets)
- P10. Architectural Cover Sheet & Notes (2 sheets)
- P11. Floor Plans (3 sheets)
- P12. Elevations (2 sheets)
- P13. Building Section
- P14. Photometric Plans (2 sheets)
- P15. Perspective Renderings (5 sheets)
- P16. Revised HVAC Roof Plan & revised renderings 8.10.18

CHAPTER 32 STORM WATER

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

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

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

ARTICLE I. IN GENERAL

Sec. 32-1. Definitions.

For the purposes of this article, the terms listed below are defined as follows:

Applicant. "Applicant" means a person with requisite right, title or interest or an agent for such person who has filed an application for a development project that requires a post-construction stormwater management plan under this article.

Best management practices ("BMP"). "Best management practices" or "BMPs" means schedules or activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Clean Water Act. "Clean Water Act" means the federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*, also known as the "Clean Water Act"), and any subsequent amendments thereto.

Discharge. "Discharge" means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of pollutants to "waters of the state." "Direct discharge" or "point source" means any discernable, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

Enforcement authority. "Enforcement authority" means the person(s) or department authorized under section 32-3 of this article to administer and enforce this article.

Exempt person or discharge. "Exempt person or discharge" means any person who is subject to a multi-sector general permit for industrial activities, a general permit for construction activity, a general permit for the discharge of storm water from the Maine department of transportation and the Maine turnpike authority

municipal separate storm sewer systems, or a general permit for the discharge of storm water from state or federally owned authority municipal separate storm sewer system facilities; and any non-storm water discharge permitted under a NPDES permit, waiver, or waste discharge license or order issued to the discharger and administered under the authority of the U.S. environmental protection agency ("EPA") or the Maine department of environmental protection ("DEP").City of Portland

Municipality. "Municipality" means the city of Portland.

Municipal separate storm sewer system, or MS4. "Municipal separate storm sewer system" or "MS4," means conveyances for storm water, including, but not limited to, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, human-made channels or storm drains (other than publicly owned treatment works and combined sewers) owned or operated by any municipality, sewer or sewage district, fire district, state agency or federal agency or other public entity that discharges directly to surface waters of the state.

National pollutant discharge elimination system (NPDES) storm water discharge permit. "National pollutant discharge elimination system (NPDES) storm water discharge permit" means a permit issued by the EPA or by the DEP that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-storm water discharge. "Non-storm water discharge" means any discharge to an MS4 that is not composed entirely of storm water.

Person. "Person" means any individual, firm, corporation, municipality, quasi-municipal corporation, state agency or federal agency or other legal entity which creates, initiates, originates or maintains a discharge of storm water or a non-storm water discharge.

Pollutant. "Pollutant" means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or by-products, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

Post-construction stormwater management plan. "Post-construction stormwater management plan" means BMPs employed by a development project to meet the stormwater standards of Section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

Premises. "Premises" means any building, lot, parcel of land, or portion of land, whether improved or unimproved, including adjacent sidewalks and parking strips, located within the municipality from which discharges into the storm drainage system are or may be created, initiated, originated or maintained.

Qualified post-construction stormwater inspector. "Qualified post-construction stormwater inspector" means a person who conducts post-construction stormwater best management practice inspections for compensation and who has received the appropriate training for the same from DEP or otherwise meets DEP requirements to perform said inspections.

Regulated small MS4. "Regulated small MS4" means any small MS4 regulated by the State of Maine "general permit for the discharge of storm water from small municipal separate storm sewer systems" dated July 1, 2008 ("general permit") or the general permits for the discharge of storm water from the Maine department of transportation and Maine turnpike authority small MS4s or state or federally owned or operated small MS4s, including all those located partially or entirely within an urbanized area (UA).

Small municipal separate storm sewer system, or small MS4. "Small municipal separate storm sewer system", or "small MS4," means any MS4 that is not already covered by the phase I MS4 storm water program including municipally owned or operated storm sewer systems, state or federally-owned systems, such as colleges, universities, prisons, Maine department of transportation and Maine turnpike authority road systems and facilities, and military bases and facilities.

Storm drainage system. "Storm drainage system" means the City of Portland's regulated small MS4 and other conveyances for storm water located in areas outside the UA that drain into the regulated small MS4.

Storm water. "Storm water" means any storm water runoff, snowmelt runoff, and surface runoff and drainage; "Stormwater" has the same meaning as "storm water".

Urbanized area ("UA"). "Urbanized area" or "UA" means the areas of the State of Maine so defined by the latest decennial (2000) census by the U.S. Bureau of Census.
(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-2. Reserved.

Sec. 32-3. Reserved.

Sec. 32-4. Reserved.

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

ARICLE II. PROHIBITED DISCHARGES

Sec. 32-16. Applicability.

This Article shall apply to all persons discharging storm water and/or non-storm water discharges from any premises into the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-17. Responsibility for administration.

The department of public services is the enforcement authority who shall administer, implement, and enforce the provisions of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10; 8-17-09)

Sec. 32-18. Prohibition of non-storm water discharges.

(a) *General prohibition.* Except as allowed or exempted herein, no person shall create, initiate, originate or maintain a non-storm water discharge to the storm drainage system. Such non-storm water discharges are prohibited notwithstanding the fact that the city may have approved the connections, drains or conveyances by which a person discharges un-allowed non-storm water discharges to the storm drainage system.

(b) *Allowed non-storm water discharges.* The creation, initiation, origination and maintenance of the following non-storm water discharges to the storm drainage system is allowed:

- (1) Landscape irrigation; diverted stream flows; rising ground waters; uncontaminated flows from foundation drains; air conditioning and compressor condensate; irrigation water; flows from uncontaminated springs; uncontaminated water from crawl space pumps; uncontaminated flows from footing drains; lawn watering runoff; flows from riparian habitats and wetlands; residual street wash water (where spills/leaks of toxic or hazardous materials have not

occurred, unless all spilled material has been removed and detergents are not used); hydrant flushing and fire fighting activity runoff; water line flushing and discharges from potable water sources; individual residential car washing; and de-chlorinated swimming pool discharges.

- (2) Discharges specified in writing by the enforcement authority as being necessary to protect public health and safety.
- (3) Dye testing, with verbal notification to the enforcement authority prior to the time of the test.

(c) *Exempt person or discharge.* This article shall not apply to an exempt person or discharge, except that the enforcement authority may request from exempt persons and persons with exempt discharges copies of permits, notices of intent, licenses and orders from the EPA or DEP that authorize the discharge(s).

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-19. Suspension of access to the city's small MS4.

The enforcement authority may, without prior notice, physically suspend discharge access to the storm drainage system to a person when such suspension is necessary to stop an actual or threatened non-storm water discharge to the storm drainage system which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the storm drainage system, or which may cause the city to violate the terms of its environmental permits. Such suspension may include, but is not limited to, blocking pipes, constructing dams or taking other measures, on public ways or public property, to physically block the discharge to prevent or minimize a non-storm water discharge to the storm drainage system. If a person fails to comply with a suspension order issued in an emergency, the enforcement authority may take such steps as deemed necessary to prevent or minimize damage to the storm drainage system, or to minimize danger to persons.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-20. Monitoring of discharges.

In order to determine compliance with this article, the enforcement authority may enter upon and inspect premises subject to this article at reasonable hours to inspect the premises and connections thereon to the storm drainage system; and to conduct monitoring, sampling and testing of the discharge to the storm drainage system.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

Sec. 32-21. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article. Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may enforce this article in accordance with 30-A M.R.S.A. § 4452.

- (a) *Notice of violation.* Whenever the enforcement authority believes that a person has violated this article, the enforcement authority may order compliance with this article by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The elimination of non-storm water discharges to the storm drainage system, including, but not limited to, disconnection of the premises from the MS4.
 - (2) The cessation of discharges, practices, or operations in violation of this article.
 - (3) At the Person's expense, the abatement or remediation (in accordance with best management practices in DEP rules and regulations) of non-storm water discharges to the storm drainage system and the restoration of any affected property; and/or
 - (4) The payment of fines, of the city's remediation costs and of the city's reasonable administrative costs and attorneys' fees and costs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to attorneys' fees and costs, incurred by the city for violation of federal and State environmental laws and

regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, with the approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the enforcement authority. A suspension under Section 32-5 of this article remains in place unless or until lifted by the city manager or by a reviewing court. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within 45 days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or, in the event of an appeal to the city manager, within 45 days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.
- (f) *Ultimate responsibility of discharger.* The standards set forth herein are minimum standards; therefore this article does not intend nor imply that compliance by any person will ensure that there will be no contamination, pollution, nor unauthorized discharge of pollutants into waters of the U.S. caused by said person. This article shall not create liability on the part of the city, or any officer agent or employee thereof for any damages that

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

Sec. 32-22. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

(Ord. No. 85-08/09, 10-20-08; Ord. No. 35-09/10, 8-17-09)

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

ARTICLE III. POST-CONSTRUCTION STORMWATER MANAGEMENT.

Sec. 32-36. Applicability.

This article applies to all development projects that require a stormwater management plan pursuant to section V of the department of planning and urban development's Technical and Design Standards and Guidelines.

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

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

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

(Ord. No. 35-09/10, 9-17-09)

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

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

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

Sec. 32-39. Enforcement.

It shall be unlawful for any person to violate any provision of or to fail to comply with any of the requirements of this article or of the post-construction stormwater management plan. Whenever the enforcement authority believes that a person has violated this article, DPS may enforce this article in accordance with 30-A M.R.S.A. § 4452. Each day on which a violation exists shall constitute a separate violation for purposes of this section.

- (a) *Notice of violation.* Whenever DPS believes that a person has violated this article or the post-construction stormwater management plan, DPS may order compliance by written notice of violation to that person indicating the nature of the violation and ordering the action necessary to correct it, including, without limitation:
- (1) The abatement of violations, and the cessation of practices or operations in violation of this article or of the post-construction stormwater management plan;
 - (2) At the person's expense, compliance with BMPs required as a condition of approval of the development project, the repair of BMPs and/or the restoration of any affected property; and/or
 - (3) The payment of fines, of the City's remediation costs and of the City's reasonable administrative costs and attorneys' fees and costs.
 - (4) If abatement of a violation, compliance with BMPs, repair of BMPs and/or restoration of affected property is required, the notice shall set forth a deadline within which such abatement, compliance, repair and/or restoration must be completed.
- (b) *Penalties/fines/injunctive relief.* In addition to the imposition of any other costs or penalties provided for herein, any person who violates this section shall be subject to fines, penalties and orders for injunctive relief and shall be responsible for the city's attorney's fees and costs, all in accordance with 30-A M.R.S.A. § 4452. Each day such violation continues shall constitute a separate violation. Moreover, any person who violates this section also shall be responsible for any and all fines, penalties, damages and costs, including, but not limited to

attorneys' fees and costs, incurred by the city for violation of federal and state environmental laws and regulations caused by or related to that person's violation of this article; this responsibility shall be in addition to any penalties, fines or injunctive relief imposed under this section.

- (c) *Consent agreement.* The enforcement authority may, without approval of the city manager, enter into a written consent agreement with the violator to address timely abatement of the violation(s) of this article for the purposes of eliminating violations of this article and of recovering fines, costs and fees without court action.
- (d) *Appeal of notice of violation.* Any person receiving a notice of violation or suspension notice may appeal the determination of the enforcement authority to the city manager or his or her designee. The notice of appeal must be received within 30 days from the date of receipt of the notice of violation. The city manager shall hold a hearing on the appeal within 30 days from the date of receipt of the notice of appeal, except that such hearing may be delayed by agreement of the city manager and the appellant. The city manager may affirm, reverse or modify the decision of the DPS. A party aggrieved by the decision of the city manager may appeal that decision to the Maine superior court within forty-five (45) days of the date of the city manager's decision pursuant to Rule 80B of the Maine Rules of Civil Procedure.
- (e) *Enforcement measures.* If the violation has not been corrected pursuant to the requirements set forth in the notice of violation, or , in the event of an appeal to the city manager, within forty-five (45) days of a decision of the city manager affirming the enforcement authority's decision, then the enforcement authority may recommend that the corporation counsel's office file an enforcement action in a Maine court of competent jurisdiction under Rule 80K of the Maine Rules of Civil Procedure.

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

Sec. 32-40. Severability.

The provisions of this article are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this article or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions, clauses, sentences, or paragraphs or application of this article.

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

Portland, Maine



Yes. Life's good here.

Jeff Levine, AICP

Director, Planning & Urban Development Department

Performance Guarantee, Inspection Fee, and Infrastructure Financial Contribution Packet

A. Site Plan/Subdivision Performance Guarantees Required

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

B. Cost Estimate Form and Inspection Fee

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

C. Acceptable Types of Performance Guarantees

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

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

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

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

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

D. Housing Replacement Performance Guarantees

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

E. Infrastructure Accounts

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

F. Administrative Process for Submitting Performance Guarantee

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

Contact: Please email the cost estimate form to jdealaman@portlandmaine.gov

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

Please call 207-874-8721 with any questions.

Attachments

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

6. SITE LIGHTING	_____	_____	_____	_____	_____	_____
7. EROSION CONTROL						
Silt Fence	_____	_____	_____	_____	_____	_____
Check Dams	_____	_____	_____	_____	_____	_____
Pipe Inlet/Outlet Protection	_____	_____	_____	_____	_____	_____
Level Lip Spreader	_____	_____	_____	_____	_____	_____
Slope Stabilization	_____	_____	_____	_____	_____	_____
Geotextile	_____	_____	_____	_____	_____	_____
Hay Bale Barriers	_____	_____	_____	_____	_____	_____
Catch Basin Inlet Protection	_____	_____	_____	_____	_____	_____
8. RECREATION AND OPEN SPACE AMENITIES	_____	_____	_____	_____	_____	_____
9. LANDSCAPING (Attach breakdown of the quantities of plant material and unit costs)	_____	_____	_____	_____	_____	_____
10. MISCELLANEOUS	_____	_____	_____	_____	_____	_____
TOTAL:	_____	_____	_____	_____	_____	_____
GRAND TOTAL:	_____	_____	_____	_____	_____	_____

INSPECTION FEE (to be filled out by the City)

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

TEMPLATE – PERFORMANCE GUARANTEE LETTER OF CREDIT

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

[Date]

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

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

[Insert: Name of Bank/Credit Union] (hereinafter referred to as “Bank”) hereby issues its Irrevocable Letter of Credit for the account of [Insert: Name of Applicant] (hereinafter referred to as “Applicant”), held for the exclusive benefit of the City of Portland, in the aggregate amount of [Insert: amount of original performance guarantee]. These funds represent the estimated cost of installing site improvements as depicted on the [Insert: subdivision and/ or site plan], approved on [Insert: Date] and as required under the City of Portland Code of Ordinances Chapter 14 §§ 501, 530 and Chapter 25 §§ 46-65.

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

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

In the event of the Bank’s dishonor of the City’s sight draft, the Bank shall inform the City in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the City, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City may authorize the Bank, by written certification, to reduce the available amount of the escrowed money by a specified amount.

The City of Portland Code of Ordinances Chapter 14 §§ 503 requires the duration of the performance guarantee term to be at least one year. This Letter of Credit will automatically expire on **[Insert date one year from the date of this Letter of Credit]** or on the date when the City determines that all improvements guaranteed herein are satisfactorily completed, whichever comes first (“Expiration Date”), provided that the expiration date does not fall between October 30th and April 15th. It is a condition of this Letter of Credit that the expiration date be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Brendan O’Connell, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this Letter of Credit renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw hereunder by presentation of a sight draft drawn on the Bank, accompanied by this Letter of Credit and all amendments thereto, and a statement purportedly signed by the Director of Planning and Urban Development, at Bank’s offices located at _____ stating that:

this drawing results from notification that the Bank has elected not to renew its Letter of Credit No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, this Performance Guarantee Letter of Credit shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Letter of Credit. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Letter of Credit shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 530 and shall automatically expire one (1) year from the date of its creation (“Termination Date”).

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

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

Date: _____

By: _____

[Name]
[Title]
Its Duly Authorized Agent

TEMPLATE –ESCROW ACCOUNT WITH FINANCIAL INSTITUTION

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

[Date]

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

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

[Insert: Name of Bank/Credit Union] (hereinafter referred to as “Bank”) hereby certifies to the City of Portland that [Bank] will hold the sum of [Insert: amount of original performance guarantee] in an interest-bearing account established with the Bank. These funds shall be held for the exclusive benefit of the City of Portland and shall represent the estimated cost of installing site improvements as depicted on the [Insert: subdivision and/or site plan], approved on [Insert: date] as required under the Portland Code of Ordinances Chapter 14 §§ 501, 530 and Chapter 25 §§ 46-65. All costs associated with establishing, maintaining and disbursing funds from the Escrow Account shall be borne by [Insert: Applicant].

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

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

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

In the event of the Bank’s dishonor of the City’s sight draft, the Bank shall inform the City in writing of the reason or reasons thereof within three (3) business days of the dishonor.

After all underground work has been completed and inspected to the satisfaction of the City, including but not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required improvements constructed chiefly below grade, the City may authorize the [Bank], by written certification, to reduce the available amount of the escrowed

money by a specified amount.

The City of Portland Code of Ordinances Chapter 14 §§ 503 requires the duration of the performance guarantee term to be at least one year. This Escrow Account will automatically expire on **[Insert date one year from the date of this Escrow Account]** or on the date when the City determines that all improvements guaranteed herein are satisfactorily completed, whichever comes first (“Expiration Date”), provided that the expiration date does not fall between October 30th and April 15th. It is a condition of this Escrow Account that the expiration date be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Brendan O’Connell, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this Escrow Account renewed for any such additional period.

In the event of such notice, the City, in its sole discretion, may draw against the Escrow Account by presentation of a sight draft drawn on the Bank and a statement purportedly signed by the Director of Planning and Urban Development, at Bank’s offices located at _____ stating that:

this drawing results from notification that the Bank has elected not to renew its Escrow Account No. _____.

On its Expiration Date or on the date the City determines that all improvements guaranteed by this Escrow Account are satisfactorily completed, this Performance Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction shall be forwarded by the City to the Bank. The Defect Guarantee shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 530 and shall automatically expire one (1) year from the date of its creation (“Termination Date”).

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

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

Date: _____

By: _____

[Name]

[Title]

Its Duly Authorized Agent

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

By: _____

**TEMPLATE - PERFORMANCE GUARANTEE ESCROW ACCOUNT
with the City of Portland**

Applicant’s Tax Identification Number: _____

Applicant’s Name and Mailing Address: _____

City Account Number: _____

Application ID #: _____

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

The City of Portland (hereinafter the “City”) will hold the sum of \$_____ [amount of performance
guarantee] on behalf of _____ [Applicant] in a noninterest bearing account
established with the City. This account shall represent the estimated cost of installing
_____ [insert: subdivision and/ or site improvements (as applicable)] as depicted
on the subdivision/site plan, approved on _____ [date] as required under the Portland Code of
Ordinances Chapter 14 §§ 501, 530and Chapter 25 §§46-65.

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

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

The Director of Planning and Urban Development may draw on this Guarantee, at his/her option, either
thirty days prior to the expiration date contained herein, or s/he may draw against this escrow for a period
not to exceed sixty (60) days after the expiration of this commitment; provided that the Applicant, or its
representative, will give the City written notice, by certified mail (restricted delivery to Brendan O’Connell,
Director of Finance, City of Portland, 389 Congress Street, Room 110, Portland, Maine) of the expiration of
this escrow within sixty (60) days prior thereto.

After all underground work has been completed and inspected to the satisfaction of the City, including but
not limited to sanitary sewers, storm drains, catch basins, manholes, electrical conduits, and other required
improvements constructed chiefly below grade, the City of Portland Director of Planning and Urban
Development or its Director of Finance as provided in Chapter 14 §§ 501, 530 of the Portland Code of
Ordinances, may authorize the City to reduce the available amount of the escrowed money by a specified
amount.

This Guarantee will automatically expire on [Insert date one years from the date of this performance
guarantee] (“Expiration Date”), or on the date when the City determines that all improvements guaranteed
by this Performance Guarantee are satisfactorily completed, whichever is later, provided that the expiration

date does not fall between October 30th and April 15th.

At such time, this Guarantee shall be reduced by the City to ten (10) percent of its original amount and shall automatically convert to an Irrevocable Defect Guarantee. Written notice of such reduction and conversion shall be forwarded by the City to **[the applicant]**. The Defect Guarantee shall expire one (1) year from the date of its creation and shall ensure the workmanship and durability of all materials used in the construction of the **[Insert: Subdivision and/ or site plan]** approval, dated **[Insert: Date]** as required by City Code §14-501, 525.

The City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on the Defect Guarantee should any one of the following occur:

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

Seen and Agreed to:

By: _____
[Applicant]

Date: _____

By: _____
****Planning Division Director

Date: _____

By: _____
Development Review Coordinator

Date: _____

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

Distribution

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

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

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

[Insert Date]

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

Re: [Insert Project Address] Demolition and Housing Replacement

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

In the event that Applicant fails to satisfy its housing replacement obligation, the City, through its Director of Planning and Urban Development and in his/her sole discretion, may draw on this Letter of Credit by presentation of a sight draft and the Letter of Credit and all amendments thereto, if any.

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

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

In the event of the Bank’s dishonor of the City of Portland’s sight draft, the Bank shall inform the City of Portland in writing of the reason or reasons thereof within three (3) business days of the dishonor.

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

Letter of Credit that the expiration date be automatically extended without amendment for period(s) of one year each from the current Expiration Date hereof, or any future Expiration Date, unless within thirty (30) days prior to any expiration, the Bank notifies the City by certified mail (restricted delivery to Brendan O'Connell, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider this Letter of Credit renewed for any such additional period.

In the event that the Bank provides notice of its election to discontinue this Letter of Credit and Applicant has not satisfied its housing replacement obligation, the City, in its sole discretion, may draw hereunder by presentation of a sight draft drawn on the Bank, accompanied by this Letter of Credit and all amendments thereto, and a statement signed by the Director of Planning and Urban Development, at Bank's offices located at Portland Maine stating that:

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

Date: _____ By: _____

[Name]

[Title]

Its Duly Authorized Agent

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

Application ID:		Planner:	
Project Name:		Date of Form:	
Project Address:			
Applicant's Name:			
Applicant's Address:			
Project Description:			

TYPE OF CONTRIBUTION	Account #	Project Code	Funds Intended for:	Retained by City	Funds not Expended	Expiration Date:	Amount
Infrastructure #1	710-0000-236-98-00						\$
Infrastructure #2	710-0000-236-98-00						\$
TYPE OF CONTRIBUTION	Account #	Project Code	Funds Intended for:				Amount
Transportation Fund	710-0000-238-01-00						\$
Infrastructure (Tree Fund)	242-3100-341-00-00	PR0045					\$
Watershed (Nason's Brook)	257-3100-327.10-00	CFUP03					\$
Watershed (Fallbrook)	257-3100-327.10-00	CFUP02					\$
Watershed (Capisc Brook)	257-3100-327.10-00	CFUP01					\$
						Total Amount:	\$

* Funds not expended or encumbered by the expiration date, shall be returned to contributor within 6 months of said date.

* Office Use Only

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

Cash Contribution
Escrow Account

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

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

Electronic Distribution:

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

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