

# CITY OF PORTLAND, MAINE

## PLANNING BOARD

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February 18<sup>th</sup>, 2015

Changiz Fard  
684 Baxter Blvd.  
Portland, ME 04103

Robert T. Greenlaw, PLS  
32 Old Orchard Street  
Old Orchard Beach, ME 04064

Project Name: **Auto Dealership selling pre-owned cars (Amendments)**  
Project ID: #2014-235 & #2014-236 CBL: 137-C-001  
Address: 783 Forest Avenue  
Applicant: Changiz Fard  
Planner: Jean Fraser

Dear Mr. Fard and Mr. Greenlaw:

On February 10<sup>th</sup>, 2015, the Planning Board considered the proposed amendments to the Conditional Use and Level I: Site Alteration site plans that were previously approved in June 2014 for an Auto Dealership selling pre-owned cars at 783 Forest Avenue. The Planning Board reviewed the amended proposals for conformance with the standards of the Conditional Use and Site Plan Ordinances.

The approval is based upon the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in in the Planning Board Report for the public hearing on February 10<sup>th</sup>, 2015 for applications #2014-035 and #2014-036 (attached), and the testimony presented at the Planning Board hearing. The Planning Board voted 6-0 (Morrissette absent) to approve the amended applications with the following waivers and conditions as presented below:

### **WAIVER**

#### 1. *Driveway Separation*

The Planning Board voted 6-0 (Morrissette absent) to waive the requirements of *Technical Manual Section 1.7.1.7*, which sets out standards for minimum driveway separation, to allow the existing curb cuts/driveways to remain as modified by the approved proposals in Plan P2. This waiver is based on the fact that the driveways are an existing condition with no history of safety issues, and the proposed use involves limited traffic volumes entering and exiting the site; and the applicant is reducing the width of and better defining the driveways and thus will improve upon existing conditions.

### **CONDITIONAL USE**

The Planning Board voted 6-0 (Morrissette absent) that the proposed conditional use for an Auto Dealership at 783 Forest Avenue in the B-2 zone does meet the standards of Section 14-474 and the standards of Section 14-183 for the B2 zone, subject to the following conditions:

- i. That the site access/egress conditions for vehicles are considered to be acceptable in view of the low traffic generation and minimal service requirements of the used car sales use. If changes in the business operations occur on the site that increase traffic levels, the Planning Authority will require the applicant to provide a review of traffic impacts associated with the change, for review and approval by the Planning Authority; and
- ii. The location of parked vehicles shall not encroach on parking circulation aisles, sidewalks nor block the proposed driveways. The number of vehicles allowed to park on the site shall conform to those illustrated on the site plan and not exceed 20 in total (including display, customer and employee parking); and
- iii. That no vehicles associated with this site and the dealership use shall be parked on any adjoining or nearby streets (including, but not limited to, any part of Hartley Street) nor overhang the the City's right-of-way, sidewalk or property outside of the site; if such parking is documented as taking place, enforcement action may be pursued by the City; and
- iv. That all car sales and other activities associated with the car dealership use shall take place only on the privately owned part of the site. No car sales or any other activities associated with the car dealership may take place in the City right of way, sidewalk, or on property outside of the site; and
- v. A Performance Guarantee shall be posted covering the cost of the improvements shown on the approved amended plans. No cars may be parked on the site and no car sales or other activities associated with the car dealership use may take place from the site until the Performance Guarantee described herein has been posted and a change of use permit has been obtained from the Inspections Division. All of the approved improvements shall be completed within 4 calendar months of the date the Performance Guarantee is posted.

Failure to comply with any of the above-stated conditions of approval, in whole or in part, shall render this approval void.

## **SITE PLAN**

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

- i. No work shall commence on any site improvements until such time as the applicant has:
  - 1) posted a Performance Guarantee in accordance with the standard conditions of approval;
  - 2) obtained all required City permits including a street opening permit (obtained by a licensed contractor) from the Department of Public Services; and
  - 3) attended a mandatory preconstruction meeting with City staff.
- ii. That the site plan and detail plans shall be revised to address the comments of David Margolis-Pineo dated 2.5.2015, for review and approval of the Planning Authority and Department of Public Services prior to any work starting on the site; and
- iii. That the improvements to the sidewalks, aprons and curbing be completed in accordance with the City of Portland Technical Standards (which include specifications requiring granite curbing); and

- iv. That the applicant shall obtain a license from the State of Maine Bureau of Motor Vehicles prior to the start of car sales from this site; and
- v. That erosion control measures, as outlined in the Peer Engineer comments dated 5.30.2014, be in place prior to the start of construction of the planter and relocation of curbs; and
- vi. That the storage of snow shall not impede sight distance for vehicles exiting the site, and on-site parking of vehicles should not block access and egress movements; and
- vii. That no car repairs shall take place on the site unless an amended site plan is approved by the Planning Authority, with the amendments showing where and how these would be accommodated, and all other necessary permits are obtained; and
- viii. That any new lighting shall be in compliance with the site lighting requirements as set out in the City's Technical Standard 12 "Site Lighting"; and
- ix. That separate permits are required for any signs on the site prior to their installation.

Failure to comply with any of the above-stated conditions of approval, in whole or in part, shall render this approval void.

#### STANDARD CONDITIONS OF APPROVAL

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

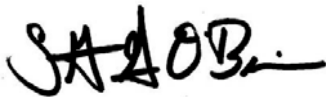
1. **Develop Site According to Plan** The site shall be developed and maintained as depicted on the approved site plan and in the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or Planning Authority pursuant to the terms of Chapter 14, Land Use, of the Portland City Code.
2. **Performance Guarantee and Inspection Fees** A performance guarantee covering the site improvements (as based on the approved plans) is required before the car sales use commences, before any work starts on the site (see condition v. under "Conditional Use" above) and before any permits are issued. In addition, an inspection fee payment of either \$300 or 2.0% of the guarantee amount (whichever is greater) is required prior to the release of a "Site Work Only" building permit or DPS street opening permit. If you need to make any modifications to the approved plans, you must submit a revised site plan application for staff review and approval.
3. **Separate Building Permits Are Required** A "Site Work Only" Building Permit is required prior to the commencement of any site work, and a Change of Use Permit is required before the car sales use commences (see condition v. under "Conditional Use" above). Please coordinate with the Inspections Division to arrange for these permits.
4. **Department of Public Services Permits** If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

5. **Preconstruction Meeting** No work shall commence on any site improvements until such time as a pre-construction meeting is held at the project site. This meeting will be held with the contractor, Development Review Coordinator, Public Service's representative, applicant/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.
6. **Defect Guarantee** A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
7. **Site Plan and Conditional Use Expiration** The site plan and conditional use 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.
8. **As-Built Final Plans** Final sets of as-built plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (\*.dwg), release AutoCAD 2005 or greater.

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

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

Sincerely,



Stuart O'Brien, Chair  
Portland Planning Board

**Attachments:**

1. City Technical Standards: *Site Lighting* (extract including 12.2.8 and "cut-off" type requirements)
2. DPS Deputy Engineer David Margolis-Pineo, comments dated 2.5.2015
3. Peer Engineer, Dave Senus of Woodard & Curran, comments dated 5.30.2014
4. Planning Board Report for the public hearing on February 10<sup>th</sup>, 2015,
5. Performance Guarantee Packet

**Electronic Distribution:**

cc:

Jeff Levine, AICP, Director of Planning and Urban Development  
Alexander Jaegerman, FAICP, Planning Division Director  
Barbara Barhydt, Development Review Services Manager  
Jean Fraser, Planner  
Philip DiPierro, Development Review Coordinator, Planning  
Ann Machado, Acting Zoning Administrator, Inspections Division  
Tammy Munson, Inspection Division Director  
Lannie Dobson, Administration, Inspections Division  
Michael Bobinsky, Public Services Director  
Katherine Earley, Engineering Services Manager, Public Services  
Bill Clark, Project Engineer, Public Services  
David Margolis-Pineo, Deputy City Engineer, Public Services  
Doug Roncarati, Stormwater Coordinator, Public Services

Greg Vining, Associate Engineer, Public Services  
Michelle Sweeney, Associate Engineer  
John Low, Associate Engineer, Public Services  
Rhonda Zazzara, Field Inspection Coordinator, Public Services  
Mike Farmer, Project Engineer, Public Services  
Jane Ward, Administration, Public Services  
Jeff Tarling, City Arborist, Public Services  
Jeremiah Bartlett, Public Services  
Captain Chris Pirone, Fire Department  
Danielle West-Chuhta, Corporation Counsel  
Thomas Errico, P.E., TY Lin Associates  
David Senus, P.E., Woodard and Curran  
Rick Blackburn, Assessor's Department



**Extract from City of Portland Technical Manual Section 12- Site Lighting as adopted 7.19.2010****12.2. STANDARDS**

12.2.1. Unless otherwise specified below, exterior lighting shall conform to the recommendations put forth in Lighting for Exterior Environments RP-33-99, or its successor, published by the Illuminating Engineering Society of North America (IESNA). Proposed uses that demonstrate a need to exceed the specific site lighting limits shown below for safe and reasonable exercise of the proposed use must provide a professionally produced lighting plan which adheres to the current Illuminating Engineering Society of North America (IESNA) recommendations for the proposed use.

12.2.2. Uniformity: As measured in foot candles at grade, maximum to minimum illumination levels shall not exceed a ratio of twenty (20) to one (1.)

12.2.3. Illumination Levels: Minimum, Maximum, and Average illumination levels for areas intended to be lighted, as measured at grade, shall be:

<b>Minimum</b>	0.2 foot candles (fc)
<b>Maximum</b>	5.0 foot candles (fc)
<b>Average</b>	1.25 foot candles (fc)

12.2.4. Wattage: No fixture shall exceed 250 watts, except in industrial areas.

12.2.5. Light Trespass: The maximum illumination level at a property line shall not exceed 0.1 foot candle, as measured at grade, except where abutting industrial, or other non-sensitive uses. All residential uses and natural resource protection areas are to be considered sensitive to light trespass. In certain instances where a proposed development is adjacent to a sensitive use, house-side shielding may be necessary to comply with this standard.

12.2.6. Luminaire Types: All fixtures, including pole mounted and wall mounted luminaires, shall be a "cut-off" type where lenses, refractors or lamp sources do not extend below the surface of the fixture housing and no direct light shall be directed at or above the horizontal plane. Sites which are part of an historic district or require specific decorative lighting fixtures as means to achieve compatibility within an existing architectural context may propose non-cutoff fixtures providing that they have built in reflectors to mitigate uplighting and that photometrics fall within IESNA guidelines. Low pressure sodium bulbs are prohibited.

12.2.7. Fixture Height: Fixtures shall be mounted at the lowest height necessary with no fixture height to exceed twenty (20) feet above grade, except in sites proposed for large industrial and/or commercial uses, where the fixture height shall not exceed thirty (30) feet above grade. For the purposes of this standard only, a large industrial and/or commercial use is defined to have greater than fifty thousand (50,000) gross square feet of building space.

12.2.8. Lighting Curfew: For non-residential uses, lighting in vehicle parking areas containing twenty (20) or more parking spaces shall be reduced to 50% of permitted levels from one hour after the business closing to one hour before business opening. If lighting levels are already below 50% of permitted levels, no curfew adjustment is required. Motion sensor activated lighting shall be permitted during closed hours to activate additional lighting above the 50% permitted, for the purposes of public safety.

From: David Margolis-Pineo  
To: Barbara Barhydt; Jean Fraser  
Date: 2/5/2015 1:43 PM  
Subject: Review comment for 783 Forest Ave – Proposed Auto Dealership

The following comments have also been entered into Urban Insight.

February 5, 2015

Memo To: Jean Fraser  
Barbara Barhydt  
Urban Insight  
From: David Margolis-Pineo  
Re: 783 Forest Ave – Proposed Auto Dealership

The Department of Public Services has the following comments for this proposed project.

1. The plan view and detail of the driveway apron area is shown incorrectly. Please correct by referring to the City of Portland Technical Manual, Figures I-9, I-13 and I-15.
2. The reinforced concrete sidewalk detail is incorrect. Please correct by referring to the City of Portland Technical Manual, Figures I-14.
3. Either asphalt or concrete is acceptable as a driveway apron material in this area.
4. Please indicate that the sidewalk cross slope will not exceed 2% required by City Code.
5. Add notes stating:
  - a. Obtain a Street Opening Permit by a licensed contractor before starting work.
  - b. A mandatory pre-construction meeting with City staff to include Rhonda Zazzara, Phil DiPierro and David Margolis-Pineo shall take place on site after issuance of the Street Opening Permit and prior to starting work.

**From:** David Senus <dsenus@woodardcurran.com>  
**To:** Jean Fraser <JF@portlandmaine.gov>  
**CC:** David Margolis-Pineo <DMP@portlandmaine.gov>, "Thomas.Errico@tylin.com" <Thomas.Errico@tylin.com>, "Barbara Barhydt (bab@portlandmaine.gov)" <bab@portlandmaine.gov>  
**Date:** 5/30/2014 10:16 AM  
**Subject:** RE: Site Plan & Cond Use 783 Forest Ave Car Dealership (2014-025)

Hi Jean:

The plans should show or note catch basin inlet protection (silt sacks) to be installed at the first down-gradient catch basin in Forest Ave during construction. The plans should state that the Forest Ave Right-of-Way shall be kept clean from dust and construction debris and swept daily or as requested by the City of Portland during construction to minimize dust and sediment originating from the site.

Thanks,  
Dave

David Senus, PE (Maine), Project Manager  
Woodard & Curran, Inc.  
41 Hutchins Drive  
Portland, ME 04102  
Phone: (800) 426-4262 x3241  
Cell: (207) 210-7035  
Fax: (207) 774-6635



# PLANNING BOARD REPORT PORTLAND, MAINE



Pre-owned Automobile Dealership  
Conditional Use and Site Plan Review Amendments

Changiz Fard, Applicant

**Project No:** 2015-035 & 2015-036

**CBL:** 130-C-001

Submitted to: Portland Planning Board Public Hearing Date: February 10 <sup>th</sup> , 2015	Prepared by: Jean Fraser, Planner Date: February 6 <sup>th</sup> , 2015
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## I. INTRODUCTION

Changiz Fard, applicant, has requested Planning Board approval for proposed amendments to the Conditional Use and Level I: Site Alteration site plans that were previously approved in June 2014 for a used car dealership on a leased site at 783 Forest Avenue.

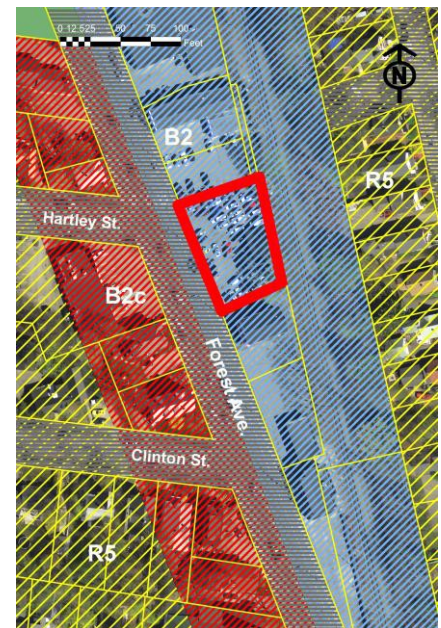
The site is located in a B-2 Community Business Zone, where automobile dealerships are listed as a conditional use and therefore are reviewed by the Planning Board.

### Required Reviews:

- Conditional Use in the B2 zone;
- Level I (Site Alteration) Site Plan.

The project was previously before the Board in June 2014 and the approval letter and associated site plan from that review are included in as Attachment 1.

The applicant discovered that the approved layout, with the northern curb cut closed, was unworkable and therefore did not implement the associated required improvements. The site was then in violation of the ordinance and the applicant was asked by City staff to remove all the cars until the amended plans were approved and the associated conditions met. The applicant removed all of the cars in December 2014; at the time of preparing this Report there are no display cars though a several cars are parked along the rear of the site near the small building.



The amendment applications include the following revisions:

- Retain both existing curb cuts but narrow both substantially (the approved plan closed the northern curb cut)
- Extend the areas of landscaped buffer that are required under the B2 conditional use provisions;
- Reduce display parking area by approximately 2 car spaces; and
- Modify the sidewalk and apron repairs accordingly.

A total of 148 notices of the Hearing were sent to property owners within 500 feet and to interested citizens and a notice was published in the February 2<sup>nd</sup> and 3<sup>rd</sup>, 2015 editions of the *Portland Press Herald*. The applicant is not required to hold a neighborhood meeting for this proposal. The Planning office has not received any public comments regarding the amendment application, although several were received during the June review.

Required Waivers: The previous review required a waiver for the width of the remaining curb cut, but the amended plan shows this reduced to the City's standard. However, the retention of the existing curb cut to the north now requires the following waiver even though the existing drive separation has been increased:

<i>Requested Waiver</i>	<i>Standard and any waiver provisions</i>
<b>Driveway Separation:</b> The existing curbcuts are not in compliance with the City standards; the proposals make them more in compliance reducing the width of driveways, better defining driveways and moving the centerlines farther from nearby driveways..	<i>Technical Manual Section 1.7.1.7</i> sets out standards for minimum driveway separation and the Traffic Engineer supports the waiver as they are an existing condition and the proposed use has limited traffic volumes entering and exiting the site and there is no history of safety issues ( <u>Att 5</u> ).

## II. PROJECT DATA:

<b>Zone:</b>	B-2 Business
<b>Proposed Use:</b>	Automobile Sales
<b>Previous (Legal) Use:</b>	Office and oil truck storage (use of former Gas Station)
<b>Required Minimum Lot Area:</b>	10,000 sq ft
<b>Proposed Lot Area:</b>	12,111 sq ft
<b>Existing impervious area:</b>	10,408 sq ft
<b>Proposed impervious area:</b>	10,258 sq ft
<b>Total floorspace of existing bldg:</b>	652 sq.ft. (included in above impervious area )
<b>Required parking:</b>	not specified in ordinance
<b>Proposed parking:</b>	6 spaces for employees and customers, up to 13 vehicle display spaces
<b>Required Bicycle Parking:</b>	2 spaces
<b>Proposed bicycle parking:</b>	2 spaces
<b>Existing Driveways:</b>	2
<b>Proposed Driveways:</b>	2 (narrowed from over 40 feet to 24 feet)

## III. EXISTING CONDITIONS

The site is located between a parking lot with drive access serving the adjacent restaurant and hairdressers to the north, and a driveway and commercial building to the south. Opposite the site (across Forest Avenue) is Hartley Street, a residential street with commercial uses nearest Forest Avenue where it is zoned B2c (see below under **VII A Zoning Assessment**). A pedestrian crosswalk is located across Forest Avenue just north of the site.

The parcel is largely a rectangle with 134 feet of frontage along Forest Avenue, but includes a sliver of land running along the back of the abutting lot along the railway (Plan P1.) The aerial at right is now out of date as the cars were removed in the last couple of months and currently there are a few cars parked at the rear facing the railway.

The 12,111 sq ft site was formerly a gas station; the gas tanks were removed and filled with sand in 2005 and the site is currently paved, with the former gas station building remaining on the rear part of the site. The site has a legal use as “office and oil truck storage” and the existing building was recently renovated by the applicant who leases the site from the owner Steve Mardigan (Attachment C).



The site backs onto the railway line and there are mature trees along the rear boundary (photo left ). The B2 zone extends over the railway and some 50 feet beyond before the R5 zone begins.



## IV. PROPOSED AMENDMENTS

In June 2014 the applicant received conditional use for the car sales use and site plan approval for improvements. These included curb stops, customer and employee parking and bicycle parking which remain a part of the proposed improvements along with the key elements listed below, as compared with the proposed amendments (see Plans P2, P3 and P4):

Approved June 2014	Proposed Amendments February 2015
Close northern curb cut/drive access	Keep open the northern curb cut / drive access, but narrow it from 38.9 feet to 24 feet in width
Keep open the southern curb cut / drive access, but narrow it from 40.6 feet to 28 feet in width	Keep open the southern curb cut/ drive access, but narrow it from 40.6 feet to 24 feet in width
Landscaped buffer approx. 240 sq ft in central section	Three sections of landscaped buffer totaling approx. 380 sq ft
No street trees	2 street trees
Display parking for 15/16 cars	Display parking for 13/14 cars
Create new sections of sidewalk totaling 56 feet	Create new sections of sidewalk totaling 32 feet
Repair 28 linear feet of apron	Repair of 48 linear feet of apron

The plans do not include any proposals for the existing building (former gas station) as the work has already been completed.

**V. PUBLIC COMMENT**

At the time of completing this report no public comments have been received. During the June 2014 review we received three letters of objection from neighbors in Hartley Street. In the fall of 2014 staff received some complaints about the use impacting areas outside of the site, but staff discussed this with the applicant and no further complaints have been received.

**VI. RIGHT, TITLE AND INTEREST AND FINANCIAL/TECHNICAL CAPABILITY**

The lease is included in Attachment C and staff have discussed the current proposals with the owner Mr Mardigan. It is understood that Mr Mardigan is supportive of the improvements as long as they are done correctly ie with granite curbing.

Staff have not seen an estimate of the costs of these improvements but anticipate these would be substantial given the 30+ feet of new concrete sidewalk, the need for considerable lengths of granite curbing, and the need to prepare the landscaped areas adequately for planting. The applicant has already done some work in the ROW using unlicensed contractors and staff are concerned that the applicant may not be able to fund the cost of implementing the improvements using licensed contractors and materials/details as required by the approved plans/conditions of approval and the City Standards.

**VII. STAFF REVIEW**

**A. ZONING ASSESSMENT**

The site is located in the B-2 Community Business zone where automobile dealerships are permitted as a Conditional Use. The site is within a long band of B2 on the east side of Forest Avenue and is at least 90 feet from the R5 zone on the other side of the railway tracks. Marge Schmuckal submitted comments for the previous review in June 2014 and these would still apply (Attachment 3). The proposals and suggested conditions address the zoning requirements.

**B. CONDITIONAL USE REVIEW (Section 14-183):**

Sec. 14-183. Conditional uses identifies auto dealership in the B-2 zone as a conditional business use if they meet the following requirements, and “*the Planning Board shall be substituted for the board of appeals as the reviewing authority over conditional business uses*”. The applicant has submitted a conditional use application (Attachment B) and an analysis of how the proposal complies with the conditional use standards in Attachment D.

Section 14-183 specifies (in relation to automobile dealerships):

*In addition to approval by the Planning Board with respect to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding, these uses shall comply with the following conditions and standards in addition to the provisions of section 14-474:*

The requirements taken from the Ordinance 14-183 (a) 5 (as in place at the time the applications were accepted) are in italics below, together with a staff comment in respect of the proposals.

- a. *Signs: Signs shall not adversely affect visibility at intersections or access drives. Such signs shall be constructed, installed and maintained so as to ensure the safety of the public. Such signs shall advertise only services of goods available on the premises.*

Staff comment: The applicant is not proposing any signs as part of the current applications. A potential condition requiring the separate sign review and approval is included in the proposed motion for the Board to consider.

- b. *Circulation: No ingress and egress driveways shall be located within thirty (30) feet from an intersection. No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public.*

Staff comment: This requirement is met both in the existing conditions and as proposed to be modified.

Clause 6 g.i. *A landscaped buffer, no less than five (5) feet wide, shall be located along street frontages (excluding driveways). The buffer shall consist of a variety of plantings in accordance with the City of Portland Technical Manual.*

Staff comment: The proposals include a 5 foot wide landscaped buffer along three sections of the Forest Avenue frontage, including a street tree in each of the two corner sections and low grass and shrubs in all three buffer areas (Plans P2, P3 and P4). The City Arborist, Jeff Tarling, has confirmed the proposals are acceptable (Attachment 4).

The following standards apply to all conditional uses:

Section 14-474(c)(2) *Standards. The Board shall, after review of required materials, authorize issuance of a conditional use permit, upon a showing that the proposed use, at the size and intensity contemplated at the proposed location, will not have substantially greater negative impacts than would normally occur from surrounding uses or other allowable uses in the same zoning district. The Board shall find that this standard is satisfied if it finds that:*

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

Staff comment: Tom Errico, the Traffic Engineer, did not have any concerns regarding these aspects of the proposal as shown on the submitted plans (Attachment 5).

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

Staff comment: The location of the proposed car dealership is within a large section of B2/B2c. The site abuts the railway to the east, where mature trees contribute to the buffering and screening of the site from the nearest residential zone. To the north and south are commercial premises and associated parking. During the June review the residents in Hartley Street, opposite the site, objected to the proposal based on the way the applicant has used the surrounding streets as part of the business. The conditions included in the June 2014 approval, requiring the use and associated activities stay on-site, have been included in the potential conditions for the amendments.

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

Staff comment: The impacts of this use, assuming it remains within the site, would not differ substantially from the impacts associated with the surrounding uses or other allowable uses in the zone.

### **C. DEVELOPMENT REVIEW**

The proposed development has been reviewed by staff for conformance with the relevant review standards of Section 14-526- Site Plan. As this is a Level I: Site Alteration Site Plan, not all of the standards are applicable and there are fewer submittal requirements. Staff comments are highlighted in this report.

1 **SITE PLAN SUBMISSION REQUIREMENTS** (Section 14-527)

The proposal is subject to a Level I: Site Alteration Site Plan and the submission requirements are listed in 14-527 (b). The Site Plan application (Attachment A), narratives and plans have addressed the ordinance requirements.

2 **SITE PLAN STANDARDS** (Section 14-526)

The proposed development has been reviewed by staff for conformance with the relevant review standards of Portland's site plan ordinance and applicable regulations. A Level I site Alteration is not subject to all of the Site Plan Standards. Staff comments are listed below.

**A. Transportation Standards (1,2 and 4)**

1. Impact on Surrounding Street system and 2. Access and circulation

The proposed used car dealership is located on Forest Avenue along a straight stretch of single lane traffic with good visibility; there are two existing curb cuts on the site, each about 40 feet in width. The proposed use does not have high trip generation, with limited loading and servicing. The Technical Standards allow two drives for a commercial site but the existing curb cuts do not meet City Standards in terms of width and distance from other driveways.

The previous "solution" to close the northern curb cut is not workable for the applicant and Tom Errico confirmed at a meeting with the applicant on 1.12.2015 that retention of the existing drives is acceptable for this particular use as long as they are improved to be more in compliance with City Standards.

The applicant has reduced existing curb cuts to meet the City standard of 24 feet and better define their location within the sidewalk; the proposals also move the centerline of both drives so that they are further away from nearby driveways.

Tom Errico, the Traffic Engineering reviewer, has commented (Attachment 5):

- *Given limited traffic volumes entering and exiting the site and no history of safety issues (the non-compliant driveway separation is a current issue), I support a waiver from the City's Technical Standards as it relates to driveway separation. I would note that the applicant is reducing the width of driveways and better defining driveways and thus will improve upon existing conditions.*
- *The approval of the proposed driveway design is based upon the assumption that the project will not generate a significant amount of traffic. If changes in the business operations occur that increase traffic levels, the applicant shall be required to provide a review of traffic impacts associated with the change for review and approval by the City.*
- *The location of parked vehicles shall not encroach on parking circulation aisles, sidewalks and block the proposed driveways. The number of vehicles allowed to park on the site shall conform to those illustrated on the site plan.*

Two suggested conditions of approval (for the conditional use application) require the applicant to address the Traffic Engineer's comments.

2. Access and circulation- Sidewalks

The proposal creates 32 feet of new sidewalk where the driveway aprons have been narrowed. The driveway aprons need some repair and the plans confirm that these will be repaired with materials approved by DPS.

David Margolis-Pineo of DPS has commented (Attachment 6):

1. *The plan view and detail of the driveway apron area is shown incorrectly. Please correct by referring to the City of Portland Technical Manual, Figures I-9, I-13 and I-15.*
2. *The reinforced concrete sidewalk detail is incorrect. Please correct by referring to the City of Portland Technical Manual, Figures I-14.*
3. *Either asphalt or concrete is acceptable as a driveway apron material in this area.*
4. *Please indicate that the sidewalk cross slope will not exceed 2% required by City Code.*
5. *Add notes stating:*
  - a. *Obtain a Street Opening Permit by a licensed contractor before starting work.*
  - b. *A mandatory pre-construction meeting with City staff to include Rhonda Zazzara, Phil DiPierro and David Margolis-Pineo shall take place on site after issuance of the Street Opening Permit and prior to starting work.*



A suggested condition of approval requires the applicant to address the DPS comments.

4. Parking Requirements

The ordinance does not specify minimum vehicle parking provision for this use. The Ordinance requires 2 bicycle parking spaces where the parking requirement is 0 to 10 vehicle parking spaces for this proposal, which have been included in the site improvements on Plan P2.

**B. *Environmental Quality Standards (1 and 3)***

1. Preservation of Significant natural Features

There are no significant natural features on this site, which is largely paved or built. There are several large trees along the rear boundary line that are not impacted by the proposal. Planting along the frontage at the back of the sidewalk is proposed (see conditional use review above). The plans indicate that these will be preserved.

3. Water quality; Stormwater Management; Erosion control:

The applicant has reduced the overall impervious surface through the addition of the planted area at the front and therefore does not trigger Chapter 500 requirements. Dave Senus, the Peer Engineering reviewer, has commented that during the construction of the planter (and any other construction eg laying of new curbing)that :

*The plans should show or note catch basin inlet protection (silt sacks) to be installed at the first down-gradient catch basin in Forest Ave during construction. The plans should state that the Forest Ave Right-of-Way shall be kept clean from dust and construction debris and swept daily or as requested by the City of Portland during construction to minimize dust and sediment originating from the site. (Att.2):*

**C. *Public Infrastructure and Community Safety Standards (1)***

1. Consistency with Master Plans:

The proposals do not impact city infrastructure except the repairs/sidewalk reinstatement to the drive apron areas which is discussed above.

**D. *Site Design Standards (5,6,8,9)***

5. Historic Resources:

The proposed site alterations do not affect any historic resource.

6. Exterior Lighting:

The proposals do not include any specific lighting proposals. It is noted that two existing light bases are on site and if these are re-fitted or new lighting is proposed, the proposals would need to be reviewed and approved to ensure that they meet the City's Technical Standards.

The existing building includes bright lighting under the canopy (open fluorescent with no shield) and residents have stated it is on all night. This does not meet City Technical standards which require cut-off lighting and that the light levels should be halved during night time hours. A potential condition of approval is included in the motion for the Board to consider to address both of these issues.

8. Signage and Wayfinding:

The proposals do not include any new signs, but a potential condition of approval is included to clarify that any new signs would require separate permits.

9. Zoning Related Design Standards

There are B2 standards that would apply if there was a new building. The existing gas station building is legally nonconforming regarding setbacks. The B2 design standards do require landscaping and buffers, which is largely addressed by the Conditional Use requirement for a frontage buffer. Staff recommend the preservation of the mature trees along the rear of the site to address this requirement regarding the residential properties on the other side of the railway line, and this has been noted on the Site Plan (Plan P2).

**VIII. STAFF RECOMMENDATION**

Staff recommends that the Planning Board approve the Pre-owned Automobile Dealership amended conditional use and site plan, with the proposed waiver and suggested conditions of approval.

## **IX. PROPOSED MOTIONS FOR THE PLANNING BOARD'S CONSIDERATION**

### **WAIVER**

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 February 10<sup>th</sup>, 2015 for amendment applications #2014-035 and #2014-036 (783 Forest Avenue) relevant to the Portland Technical and Design Standards and Guidelines and other regulations and the testimony presented at the Planning Board hearing:

#### 1. *Driveway Separation*

The Planning Board **waives / does not waive** the requirements of *Technical Manual Section 1.7.1.7*, which sets out standards for minimum driveway separation, to allow the existing curb cuts/driveways to remain as modified by the approved proposals in Plan P2. This waiver is based on the fact that the driveways are an existing condition with no history of safety issues, and the proposed use involves limited traffic volumes entering and exiting the site; and the applicant is reducing the width of and better defining the driveways and thus will improve upon existing conditions.

### **CONDITIONAL USE**

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for the public hearing on February 10<sup>th</sup>, 2015 for amendment applications #2014-035 and #2014-036 (783 Forest Avenue), relevant to Portland's Conditional Use Standards and other regulations, and the testimony presented at the Planning Board hearing:

The Planning Board finds that the proposed conditional use for Auto Dealership at 783 Forest Avenue in the B-2 zone **does / does not** meet the standards of Section 14-474 and the standards of Section 14-183 for the B2 zone, subject to the following conditions:

- i. That the site access/egress conditions for vehicles are considered to be acceptable in view of the low traffic generation and minimal service requirements of the used car sales use. If changes in the business operations occur on the site that increase traffic levels, the Planning Authority will require the applicant to provide a review of traffic impacts associated with the change, for review and approval by the Planning Authority; and
- ii. The location of parked vehicles shall not encroach on parking circulation aisles, sidewalks nor block the proposed driveways. The number of vehicles allowed to park on the site shall conform to those illustrated on the site plan and not exceed 20 in total (including display, customer and employee parking); and
- iii. That no vehicles associated with this site and the dealership use shall be parked on any adjoining or nearby streets (including, but not limited to, any part of Hartley Street) nor overhang the the City's right-of-way, sidewalk or property outside of the site; if such parking is documented as taking place, enforcement action may be pursued by the City; and
- iv. That all car sales and other activities associated with the car dealership use shall take place only on the privately owned part of the site. No car sales or any other activities associated with the car dealership may take place in the City right of way, sidewalk, or on property outside of the site; and
- v. A Performance Guarantee shall be posted covering the cost of the improvements shown on the approved amended plans. No cars may be parked on the site and no car sales or other activities associated with the car dealership use may take place from the site until the Performance Guarantee described herein has been posted and a change of use permit has been obtained from the Inspections Division. All of the approved improvements shall be completed within 4 calendar months of the date the Performance Guarantee is posted.

Failure to comply with any of the above-stated conditions of approval, in whole or in part, shall render this approval void.

### **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 February 10<sup>th</sup>, 2015 for amendment applications #2014-035 and #2014-036 (783 Forest 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:

- i. No work shall commence on any site improvements until such time as the applicant has:
  - 1) posted a Performance Guarantee in accordance with the standard conditions of approval;
  - 2) obtained all required City permits including a street opening permit (obtained by a licensed contractor) from the Department of Public Services; and
  - 3) attended a mandatory preconstruction meeting with City staff.
- ii. That the site plan and detail plans shall be revised to address the comments of David Margolis-Pineo dated 2.5.2015, for review and approval of the Planning Authority and Department of Public Services prior to any work starting on the site; and
- iii. That the improvements to the sidewalks, aprons and curbing be completed in accordance with the City of Portland Technical Standards (which include specifications requiring granite curbing); and
- iv. That the applicant shall obtain a license from the State of Maine Bureau of Motor Vehicles prior to the start of car sales from this site; and
- v. That erosion control measures, as outlined in the Peer Engineer comments dated 5.30.2014, be in place prior to the start of construction of the planter and relocation of curbs; and
- vi. That the storage of snow shall not impede sight distance for vehicles exiting the site, and on-site parking of vehicles should not block access and egress movements; and
- vii. That no car repairs shall take place on the site unless an amended site plan is approved by the Planning Authority, with the amendments showing where and how these would be accommodated, and all other necessary permits are obtained; and
- viii. That any new lighting shall be in compliance with the site lighting requirements as set out in the City's Technical Standard 12 "Site Lighting"; and
- ix. That separate permits are required for any signs on the site prior to their installation.

Failure to comply with any of the above-stated conditions of approval, in whole or in part, shall render this approval void.

### **ATTACHMENTS**

#### **Report attachments**

1. Approval letter and plan as from June 2014 PB review
2. Peer Engineering Reviewer, Dave Senus 5.30.2014
3. Zoning Administrator, Marge Schmuckal 6.5.2014
4. City Arborist, Jeff Tarling, 2.4.2015
5. Traffic Engineering Reviewer, Tom Errico, 2.6.2015
6. Department of Public Services, David Margolis-Pineo 2.5.2015

#### **Applicants submittal**

- A. Level I: Amended Site Alteration Site Plan Application
- B. Amendment Conditional Use Application
- C. Right, title and interest
- D. Conditional use analysis (letter) January 2015

#### **Plans**

- P1. Existing conditions/survey
- P2. Proposed improvements (Site Plan C2)
- P3. Details C5 Curb and Sidewalk
- P4. Details C3





# PORTLAND MAINE

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## **Planning & Urban Development Department**

Jeff Levine, AICP, Director

## **Planning Division**

Alexander Jaegerman, FAICP, Director

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

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

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

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

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

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

### Attachments

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

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

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

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

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

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

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

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

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

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

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

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 plant materials, quantities, and unit costs)	_____	_____	_____	_____	_____	_____
10. MISCELLANEOUS	_____	_____	_____	_____	_____	_____
TOTAL:	_____	_____	_____	_____	_____	_____
GRAND TOTAL:	_____	_____	_____	_____	_____	_____

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

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

**SAMPLE FORM**

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

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

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

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

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

3. the Developer has failed to notify the City for inspections.

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.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, 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 of the Portland Code of Ordinances, may authorize the **[Bank]**, by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this Letter of Credit that it is deemed to 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 Ellen Sanborn, 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, 525 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 Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the [**Insert: subdivision and/ or site improvements**].

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

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

[Name]

[Title]

Its Duly Authorized Agent

**SAMPLE FORM**

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

**[Date]**

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

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

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

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

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

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

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.

After all underground work has been completed and inspected to the satisfaction of the Department of Public Services and Planning Division, 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 of the Portland Code of Ordinances, may authorize the [Bank], by written certification, to reduce the available amount of the escrowed money by a specified amount.

This performance guarantee will automatically expire on **[Insert date between April 16 and October 30 of the following year]** ("Expiration Date") or on the date when the City determines that all improvements guaranteed by this Letter of Credit are satisfactorily completed, whichever is later. It is a condition of this agreement that it is deemed to 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 Ellen Sanborn, Director of Finance, City of Portland, 389 Congress Street, Portland, Maine 04101) that the Bank elects not to consider the 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 Letter of Credit 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, 525 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 Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the [**Insert: subdivision and/ or site improvements** ].

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

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

[Name]

[Title]

Its Duly Authorized Agent

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

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

**PERFORMANCE GUARANTEE  
with the City of Portland**

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

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

\_\_\_\_\_

\_\_\_\_\_

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

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

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

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

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

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

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 Ellen Sanborn, 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 Department of Public Works and Planning, 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 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 between April 16 and October 30 of the following year]** (“Expiration Date”) or on the date when the City determines that all improvements guaranteed by this Performance Guarantee are satisfactorily completed, whichever is later. 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 Developer has failed to complete any unfinished improvements; or
2. the Developer has failed to correct any defects in workmanship; or
3. the Developer has failed to use durable materials in the construction and installation of improvements contained within the **[Insert: subdivision and/ or site improvements ]**.

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 Developer.
4. The original signed Agreement will be scanned by the Planning Staff then forwarded to the Finance Office, together with a copy of the Cash Receipts Set.
5. \*\*\*Signature required if over \$50,000.00.

**Infrastructure Financial Contribution Form**  
**Planning and Urban Development Department - Planning Division**

**Amount \$**

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

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

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

**Project Name:**

**Application ID #:**

**Project Location:**

**Project Description:**

**Funds intended for:**

**Applicant's Name:**

**Applicant's Address:**

**Expiration:**

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

Funds shall be permanently retained by the City.

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

**Form of Contribution:**

Escrow Account

Cash Contribution

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

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

**Date of Form:**

**Planner:**

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

**Electronic Distribution to:**

Peggy Axelsen, Finance Department  
Catherine Baier, Public Services Department  
Barbara Barhydt, Planning Division  
Jeremiah Bartlett, Public Services Department  
Michael Bobinsky, Public Services Department  
Diane Butts, Finance Department  
Philip DiPierro, Planning Division  
Katherine Earley, Public Services Department  
Michael Farmer, Public Services Department  
Alex Jaegerman, Planning Division  
David Margolis Pineo, Public Services Department  
Matt Rancourt, Public Services Department  
Jeff Tarling, Public Services Department  
Planner for Project