

CITY OF PORTLAND, MAINE

PLANNING BOARD

David Silk, Chair
Shalom Odokara, Vice Chair
Bill Hall
Joe Lewis
Lee Lowry, III
Janice Tevanian
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January 27, 2009

David Latulippe
The Richmond Company
23 Concord Street
Wilmington, MA 01887

Maureen M. McGlone
Gorrill-Palmer Consulting Engineers
P.O. Box 1237
15 Shaker Road
Gray, ME 04039

**RE: Walgreens Pharmacy with Pharmacy Drive-Thru
340 Allen Avenue
Application # 2007-0189
CBL 344 E 8, 12, 36, 37, 42, 27, 50**

Dear Mr. Latulippe and Ms. McGlone:

On January 13, 2009, the Portland Planning Board considered the proposal for a 14,014 sq ft Walgreens Pharmacy with drive-thru service located at 340 Allen Avenue. The Planning Board reviewed the proposal for conformance with the B2 Conditional Use Standards and Site Plan Ordinance. The Planning Board voted 7-0 to approve the application with the following motions, waivers and conditions as presented below.

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 # 02-09, relevant to Portland's Conditional Use Standards and other regulations, and the testimony presented at the Planning Board hearing, the Planning Board voted 7-0 that the proposed conditional use for a drive-thru adjacent to a residential use or zone is in conformance with the standards of the Land Use Code, Section 14-183 for the B2 zone, subject to the following condition(s):

- i. That the applicant shall submit, for the City's Associate Corporation Counsel review and approval prior to the issuance of a building permit, final easement documentation/ agreements that allow for the access and boundary revisions and associated works on the properties owned by Allen Avenue Extension LLC (Espo's) and Ritco Properties, Inc (Laundromat) properties, and by which agreement such owners agree that no site changes other than shown on the approved plan shall be made to their properties without Planning Authority approval; and
- ii. That the applicant shall conduct a detailed Traffic Monitoring Study, as described in the January 7, 2009 comments from Tom Errico, 18 months following the opening of the pharmacy to the public, such date to be informed to the City Planning Authority. A report summarizing the outcomes of the Traffic Monitoring Study, including the identification of deficiencies and corrective measures (if any), shall be submitted to the City Planning Authority immediately upon completion and no later than one month after the Study is conducted; and

- iii. That if mitigation actions are identified, the City of Portland shall be responsible for all costs associated with implementation of improvements within the public right of way and the four foot easement area referenced below in item iv., provided the applicant shall be responsible for reasonable on-site signage or similar improvements as required by the Planning Authority. Such improvements shall not include the elimination of either the right-turn entry or the exit movements as approved, provided that the City can make whatever other improvements, the nature and scope at the City's sole discretion, within the public right of way and the four foot easement area referenced below in item iv.; and
- iv. That the applicant shall provide, prior to the issuance of a building permit, a four foot wide easement along the applicant's Washington Avenue property boundary for possible improvement requirements as identified in the Traffic Monitoring Study; and
- v. That the applicant shall implement, prior to the issuance of a Certificate of Occupancy, pavement reconstruction, pavement markings and signing improvements to create a central turning lane along Allen Avenue from west of their site to their easterly site drive (similar to that shown in an indicative plan titled "Off-site Improvements" dated 9.22.2008 and referenced as Attachment M21 to Report #02-09.) The applicant shall be responsible for preparing construction design plans and documents for such work, which shall be subject to review and approval by the Planning Authority prior to issuance of a building permit; and
- vi. That the existing "stamped" islands on Allen Avenue, that are to be modified as part of Walgreens Off -site Improvements plan referenced in condition v. above, shall not be painted black, but milled and replaced with new bituminous pavement; and.
- vii. That the applicant shall submit, prior to the issuance of a building permit, a more detailed design to clarify the layout and operation of the area adjacent to joint access with the Ritco; and
- viii. That deliveries to the site and trash removal shall be restricted to between the hours of 8am and 8pm everyday, and that the pharmacy drive-thru hours shall be limited to 7am to 11pm everyday; and

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 # 02-09 relevant to the Portland Technical and Design Standards and Guidelines and other regulations and the testimony presented at the Planning Board hearing:

- i. The Planning Board voted 7-0 to waive the requirements of Section III.2.A.(b) of the Technical and Design Standards and Guidelines which requires driveway widths to be no greater than 30 feet, to allow the Washington Avenue drive and easterly Allen Avenue drive to exceed this width as shown on the approved Plan C1.1 Rev B (Attachment M7 to Report #02-09).
- ii. The Planning Board voted 7-0 to waive the requirement of Section III.3.A of the Technical and Design Standards and Guidelines for parking spaces to be 9 feet by 19 feet, to allow 9 feet by 18 feet parking spaces as shown on the approved Plan C1.1 Rev B (Attachment M7 to Report #02-09).

SITE PLAN REVIEW

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in Planning Board Report # 02-09 relevant to the Site Plan Ordinance and other regulations and the testimony presented at the Planning Board hearing, the Planning Board voted 7-0 that the plan is in conformance with the site plan standards of the land use code, subject to the following conditions:

- i. That the applicant shall submit, for the City's Associate Corporation Counsel review and approval prior to the issuance of a building permit, final easement documentation/ agreements that allow for the access and boundary revisions and associated works on the properties owned by Allen Avenue Extension LLC (Espo's) and Ritco Properties, Inc (Laundromat) properties, and by which agreement such owners agree that no site changes other than shown on the approved plan shall be undertaken to their properties without Planning Authority approval; and
- ii. That the applicant shall conduct a detailed Traffic Monitoring Study, as described in the January 7, 2009 comments from Tom Errico, 18 months following the opening of the pharmacy to the public, such date to be informed to the City Planning Authority. A report summarizing the outcomes of the Traffic Monitoring Study, including the identification of deficiencies and corrective measures (if any), shall be submitted to the City Planning Authority immediately upon completion and no later than one month after the Study is conducted; and
- iii. That if mitigation actions are identified, the City of Portland shall be responsible for all costs associated with implementation of improvements within the public right of way and the four foot easement area referenced below in item iv., provided the applicant shall be responsible for reasonable on-site signage or similar improvements as required by the Planning Authority. Such improvements shall not include the elimination of either the right-turn entry or the exit movements as approved, provided that the City can make whatever other improvements, the nature and scope at the City's sole discretion, within the public right of way and the four foot easement area referenced below in item iv.; and
- iv. That the applicant shall provide, prior to the issuance of a building permit, a four foot wide easement along the applicant's Washington Avenue property boundary for possible improvement requirements as identified in the Traffic Monitoring Study; and
- v. That the applicant shall implement, prior to the issuance of a Certificate of Occupancy, pavement reconstruction, pavement markings and signing improvements to create a central turning lane along Allen Avenue from west of their site to their easterly site drive (similar to that shown in an indicative plan titled "Off-site Improvements" dated 9.22.2008 and referenced as Attachment M21 to Report #02-09.) The applicant shall be responsible for preparing construction design plans and documents for such work, which shall be subject to review and approval by the Planning Authority prior to issuance of a building permit for new construction; and
- vi. That the existing "stamped" islands on Allen Avenue, that are to be modified as part of Walgreens Off -site Improvements plan referenced in condition v. above, shall not be painted black, but milled and replaced with new bituminous pavement; and
- vii. That the easterly drive from Allen Avenue shall have the channelization island comprise of sloped granite curbing and the main body of the island be of a material that can carry the weight of a fire truck and not be obstructed by landscaping; and

- viii. That the applicant shall submit, prior to the issuance of a building permit, a more detailed design to clarify the layout and operation of the area adjacent to joint access with the Ritco Properties Inc; and
- ix. That the Landscape Plan be revised and submitted for review and approval; such revisions to 'crown' or slightly berm the landscape and turf area between the parking lot and Washington Avenue along with the 'bump-outs' or islands that project out into the parking area; and
- x. That the sprinkler connection shall be located on the Allen Avenue side of the pharmacy building to facilitate Fire Department operations; and
- xi. That the applicant shall submit, for review and approval prior to the issuance of a building permit, a construction mobilization plan that will include, but is not limited to, access, demolition, sequencing, site stabilization, hours of operation, and interim lighting; and
- xii. That deliveries to the site and trash removal shall be restricted to between the hours of 8am and 8pm everyday and that the pharmacy drive-thru hours shall be limited to 7am to 11pm everyday; and
- xiii. That the applicant shall revise the site plan as necessary to resolve any conflict between the landscape and snow storage areas, for Planning Authority review and approval; and
- xiv. That the applicant agrees that the employee's parking area lighting shall be turned off not later than one hour after the Walgreens store closes.

The approval is based on the submitted plans and the findings related to site plan and conditional use review standards as contained in Planning Report #02-09, which is attached.

Please note the following provisions and requirements for all site plan and subdivision approvals:

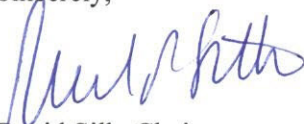
1. The site shall be developed and maintained as depicted in the site plan and the written submission of the applicant. Modification of any approved site plan or alteration of a parcel which was the subject of site plan approval after May 20, 1974, shall require the prior approval of a revised site plan by the Planning Board or the planning authority pursuant to the terms of this article. Any such parcel lawfully altered prior to the enactment date of these revisions shall not be further altered without approval as provided herein. Modification or alteration shall mean and include any deviations from the approved site plan including, but not limited to, topography, vegetation and impervious surfaces shown on the site plan. No action, other than an amendment approved by the planning authority or Planning Board, and field changes approved by the Public Services authority as provided herein, by any authority or department shall authorize any such modification or alteration.
2. The above approvals do not constitute approval of building plans, which must be reviewed and approved by the City of Portland's Inspection Division.
3. A performance guarantee covering the site improvements as well as an inspection fee payment of 2.0% of the guarantee amount and seven (7) final sets of plans must be submitted to and approved by the Planning Division and Public Services Dept. prior to the release of a building permit, street opening permit or certificate of occupancy for site plans.
4. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the expiration date.

5. Final sets of plans shall be submitted digitally to the Planning Division, on a CD or DVD, in AutoCAD format (*.dwg), release AutoCAD 2005 or greater.
6. A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
7. Prior to construction, a pre-construction meeting shall be held at the project site with the contractor, development review coordinator, Public Service's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the 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.
8. 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.)

Philip DiPierro, Development Review Coordinator, must be notified five (5) working days prior to date required for final site inspection. The Development Review Coordinator can be reached at 874-8632. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as 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,



David Silk, Chair
Portland Planning Board

Attachments:

1. Tom Errico (Traffic Engineering Reviewer) comments of January 7, 2009
2. Planning Board Report #02-09
3. Performance Guarantee Packet

Electronic Distribution:

Penny St. Louis Littell, Director of Planning and Urban Development
 Alexander Jaegerman, Planning Division Director
 Barbara Barhydt, Development Review Services Manager
 Jean Fraser, Planner
 Philip DiPierro, Development Review Coordinator
 Marge Schmuckal, Zoning Administrator
 Tammy Munson, Inspections Division Director
 Lisa Danforth, Administrative Assistant
 Michael Bobinsky, Public Services Director
 Kathi Earley, Public Services
 Bill Clark, Public Services
 David Margolis-Pineo, Deputy City Engineer
 Jane Ward, Public Services
 Captain Greg Cass, Fire Prevention
 Jeff Tarling, City Arborist
 Tom Errico, Wilbur Smith Consulting Engineers
 Dan Goyette, Woodard & Curran
 Assessor's Office
 Approval Letter File
Hard Copy: Project File

Attachment 1
to Walgreens
Allen Ave
1-13-09 App Letter

[5 pages: reformatted slightly by JF]

From: "Errico, Thomas A" <TERRICO@wilbursmith.com>
To: "Jean Fraser" <JF@portlandmaine.gov>
Date: 1/7/2009 4:19:41 PM
Subject: Walgreens - Allen's Corner

Jean -

The following represents my final comments and presents all previous comments following a review of information provided by Gorrill-Palmer Consulting Engineers, Inc. dated December 22, 2008.

1. August 21, 2008

The driveway located on Washington Avenue shall be restricted to right-turn entry movements only. It is our opinion that egress movements would compromise safety on Washington Avenue and therefore the City does not find the plan to be acceptable.

October 10, 2008 Comment

The City continues to maintain that safety will be compromised on Washington Avenue if right-turns are allowed from the project driveway. It is our opinion that project vehicles will attempt to travel across a very heavy volume right-turn lane from Washington Avenue to Allen Avenue, to get to either the through lanes with destinations towards downtown or the left-turn lane if their destination is towards the east. The subject driveway should be restricted to right-turn entry movements only.

November 20, 2008 Comment

Both Jim Carmody and I have spent significant time evaluating the information provided by the applicant and conducted an independent field survey of intersection operations (delay, queuing, signal operations, etc.) at the Washington Avenue/Allen Avenue intersection. From our analyses, we do not recommend that right-turn maneuvers be allowed from the proposed driveway. Our field review identified traffic conditions that could lead to increased crash rates, if right-turn maneuvers were permitted. Specifically, there were traffic flow conditions where the dedicated right-turn lane would invite an exiting vehicle to "block" the lane in their attempt to either access the through lane or the left-turn lane (this maneuver would be extremely dangerous, but under the given plan would be possible). This type of lane blockage would not only compromise safety conditions but would impact the capacity of the intersection approach. Additionally, we are concerned about traffic speeds, particularly from Washington Avenue near Lib's where traffic flows uncontrolled at times, and the impact these speeds will have on the right-turn exit movements. I would further note that the proposed driveway does not meet City Technical standards as it relates to corner clearance distance, driveway spacing (existing abutting driveway to the north), and width of driveway.

January 2, 2009

The applicant has incorporated revisions that minimize traffic concerns noted in previous correspondence. The driveway has been shifted such that there is greater corner clearance to Allen Avenue. Additionally, the curb cut from the adjacent property has been closed, thus eliminating the prior non-compliant driveway spacing condition. With the proposed changes, we approved this driveway with the following conditions:

* The applicant shall conduct a traffic monitoring study 18 months following the opening of the project. The monitoring study will comprise of the following:

o Collision diagrams will be prepared for Washington Avenue between Auburn Street and Allen Avenue. The City of Portland will provide the crash reports from the Police Department.

o A visual survey shall be conducted that documents the destination of right-turn maneuvers (Allen Avenue westbound, Washington Avenue inbound, Washington Avenue outbound, Allen Avenue eastbound) from the Washington Avenue driveway. The survey shall be conducted during the weekday PM peak period (4-6pm) and during the Saturday mid-day peak period (11-1pm). The applicant shall coordinate this survey with the City Transportation Engineer.

o The applicant shall conduct a survey of the blockage of the Washington Avenue inbound right-turn lane during the same period as noted in the prior comment.

o A report shall be prepared that summarizes the above analysis and if deficiencies are identified, outlines corrective measures that should be implemented. It should be noted that mitigation will not include the elimination of either the right-turn entry or exit movements.

* If mitigation actions are required, the City of Portland will be responsible for all costs associated with implementation of improvements.

* The applicant shall provide a 4-foot easement along their Washington Avenue property boundary for possible future improvement requirements as identified in the traffic monitoring study.

* The driveway exceeds the City standard for driveway width. I support a design waiver based upon delivery truck turning requirements for the site.

2. August 21, 2008

Some on-site parking aisle widths and parking stall dimensions do not meet City standards. The applicant should revise the plan to better meet standards. It is unlikely the Department of Public Services will support a design standard waiver for some areas of the parking lot.

October 10, 2008

I continue to review on-site circulation and will provide comments in the future. I would note that a design waiver will be required for parking spaces that are less than 9' x 19'.

January 2, 2009

Some parking spaces on-site do not meet City standards for stall length. The applicant is proposing 18 foot long spaces. I support a design waiver for the parking stall sizes.

3. August 21, 2008

The applicant shall provide an auto-turn for expected truck delivery vehicles for both the proposed pharmacy and the existing restaurant.

October 10, 2008

The applicant shall also provide documentation on how deliveries will occur at Esposito's Restaurant. I would also note that the driveway on Washington Avenue will need to change to prevent right-turn exit movements. Accordingly, I will continue to review this issue.

January 2, 2009

The applicant has provided vehicle turning template information and I have no further comment.

4. August 21, 2008

According to data provided, some movements at the intersection of Washington Avenue and Allen Avenue have substandard levels of service. The applicant shall provide commentary on the intersection and identify mitigation strategies for attaining acceptable level of service conditions.

October 10, 2008

We believe traffic operations at the subject intersection may negatively impact traffic conditions at the driveways. We would suggest that a simulation of the area be conducted.

January 2, 2009

The intersection was recently expanded by MaineDOT and capacity enhancements that would improve level of service do not appear possible. No further action is required.

5. August 21, 2008

The applicant shall provide a detailed summary of vehicle queuing at the Washington Avenue and Allen Avenue intersection. This evaluation shall consist of a SimTraffic analysis and include a visual inspection of existing vehicle queuing during both AM and PM peak periods.

October 10, 2008

A SimTraffic analysis is requested for estimating and evaluating queue lengths.

January 2, 2009

As noted by the applicant, queues will block driveways on both Allen Avenue and Washington Avenue during peak periods. The applicant will be monitoring conditions on Washington Avenue and will be implementing an improvement plan on Allen Avenue. I have no further comment.

6. August 21, 2008

The City is concerned about the safety and operation of the driveways to be located on Allen Avenue. This segment of Allen Avenue experiences high crash rates and introduction of additional turning vehicles in this area is a concern. City staff believes that any driveway plan requires implementation of mitigation measures along Allen Avenue. The City does not have any specific solutions identified, but it is envisioned to consist of auxiliary lanes on Allen Avenue. A conceptual improvement plan should be provided for review.

October 10, 2008 Comment

The City is very concerned about this section of Allen Avenue and continued or worsened safety conditions with the proposed project. It is our opinion that an improvement plan is required to accommodate turning vehicles entering and exiting the proposed site, as well as existing driveway movements, such as Dunkin Donuts.

November 20, 2008

There are several existing condition elements that concern both Jim and I regarding the improvement plan and provision of safe and efficient traffic conditions at the driveway nearest Washington Avenue. In our professional opinion the current design is problematic for several reasons. First, left-turn maneuvers into the proposed site will occur within the approach area of the dedicated double left-turn lane for eastbound Washington Avenue. During our field observations, the queue length from the intersection frequently blocked the area in which the proposed driveway would be located. Secondly, the traffic signal at the Washington Avenue/Allen Avenue intersection has a phasing scheme such that when traffic is turning left from Allen Avenue outbound, right-turn vehicles are provided a green arrow from Washington Avenue to Allen Avenue towards the west. This phasing scheme will result in time periods where project site traffic will block the left-turn lane to the intersection, because site traffic will have limited opportunities to turn because of the right-turning vehicles proceeding from Washington Avenue. This condition will further complicate an already congested intersection (documentation in the applicants study notes that some intersection movements will have long delays) and further compromise a location that is classified as unsafe by MaineDOT reporting methods. Lastly, I would note, and it was mentioned previously, that this section of Washington Avenue is a High Crash Location. Crashes are related to intersection functions and driveway problems particularly at Dunkin Donuts. In my professional opinion the proposed driveway and improvement plan do not address these existing issues and will add additional turning maneuvers that will only exacerbate current problems. Jim and I believe that the applicant may be able to develop an alternative access plan that restricts movements to right-turn entry and exit at the subject location and allow full movements at a driveway located a greater distance from the Washington Avenue/Allen Avenue intersection. We would be happy to work with the applicant in assisting them in locating this full movement driveway. I would note that during our field review of traffic conditions, Jim and I observed reasonable conditions on Allen Avenue for left-turn maneuvers from the Esposito's Restaurant Driveway opposite Abbott Street. While traffic volumes are high, we observed conditions that support the benefit of locating a driveway farther from intersection complications.

January 2, 2009

The applicant is required to implement improvements on Allen Avenue from west of their site to their easterly site drive. All work depicted on their improvement plan will be their responsibility. Designs plans shall be submitted for review and comment prior to construction.

7. August 21, 2008

An evaluation of pedestrian movements through the Washington Avenue/Allen Avenue intersection should be performed.

October 10, 2008

I continue to review this issue and will provide comments in the future.

January 2, 2009

As noted previously, the intersection was recently upgraded by MaineDOT and provides reasonable pedestrian accommodations. I have no further comment.

8. August 21, 2008

The applicant shall provide an evaluation of pedestrian movements entering and exiting the proposed site from all possible origin/destination points.

October 10, 2008

Pedestrians will generally take the shortest/easiest route when selecting a path. Accordingly, I do not expect pedestrians from the north via Washington Avenue /Auburn Avenue to enter the site via Allen Avenue. The same is likely to happen for pedestrians from the west along Allen Avenue. The applicant should provide accommodations that address likely pedestrian routes.

January 2, 2009

The plans have been revised and I have no further comment.

9. August 21, 2008

The applicant shall perform a parking analysis which shall consist of a justification analysis of the supply provided and include a feasibility analysis of "shared" parking between the pharmacy and the restaurant.

October 10, 2008

I continue to review this issue and will provide comments in the future.

January 2, 2009

Adequate parking provisions will be provided and I no further comment.

10. August 21, 2008

I would suggest that end islands on the restaurant parcel be raised and not painted.

October 10, 2008

I have no further comment.

Additional Comments

* The easterly driveway on Allen Avenue exceeds the city standard for driveway width. I support a design waiver for this driveway. I would note that the fire department would like to have the channelization island comprise of sloped granite curbing and the main body of the island to be of a material that can carry the weight of a fire truck and is not obstructed by landscaping.

Please contact me if you have any questions.

Best regards,

Thomas A. Errico, P.E.

Senior Transportation Engineer

Wilbur Smith Associates

59 Middle Street

Portland, Maine 04101

w: 207.871.1785 f: 207.871.5825

TErrico@WilburSmith.com

www.WilburSmith.com <<http://www.wilbursmith.com/>>

CC: "James Carmody" <JPC@portlandmaine.gov>, <KAS@portlandmaine.gov>

Attachment 2
to Walgreens Allen Ave
1-13-09 App Letter.

PLANNING BOARD REPORT #02-09

**WALGREENS PHARMACY WITH PHARMACY DRIVE -THRU
VICINITY OF 340 ALLEN AVENUE
CONDITIONAL USE AND SITE PLAN REVIEW
RICHMOND COMPANY INC., APPLICANT**

Submitted to:

Portland Planning Board
Portland, Maine

January 13th, 2009

Presented by:

Jean Fraser, Planner

January 9th, 2009

I. INTRODUCTION

On behalf of the Richmond Company, Gorrill-Palmer Consulting Engineers, Inc. has requested Major Site Plan and Conditional Use approval for a proposed single story pharmacy building of 14,014 sq ft with drive-thru service on an approximately 1.32 acre site on the northwest corner of the Allen Avenue/Washington Avenue intersection adjacent to the existing Espo's Restaurant building . The proposals include three access drives (all shared with abutting commercial properties), 49 parking spaces and associated landscaping.

The site is within the B2 Community Business zone and abuts an R-5 Residential zone to the rear and RP (Residential Professional) zone at the street frontages. Section 14-183 of the City Code lists drive-thrus in the B-2 zone as a conditional use when they are adjacent to a residential zone.

The site encompasses seven separate parcels and four existing buildings, all of which will be demolished. It is largely impervious with three of the existing buildings (nearest the intersection) vacant and the fourth existing building (long single story building near the rear boundary) currently in use as Lockard's "collision center" including paint spraying (at the left of the photo below and in the panorama photo in [Attachment 18](#)). Between Lockard's and Allen Avenue is located the Espo's restaurant (red roof) currently surrounded by 53 marked parking spaces.

The applicant has brought all of these parcels together, arranged a land swap with Espo's (with the final size of the Walgreens parcel being 1.32 acres), and integrated access with Espo's and the Laundromat just north of the site on Washington Avenue. It is understood that the some of the buildings are currently vacant because the applicant negotiated to keep them vacant while this project was progressed.



Walgreens Proposal Site

Prepared by Department of Planning and Development based on GIS Workgroup Data



Six homes directly abut the site to the north, generally 2 story homes set back about 30-35 feet from the boundary. To the north the site abuts a single story commercial building (including Laundromat – seen more clearly in [Attachment 17](#)) and to the west beyond Espo's is a 3 story residential/professional building. Dunkin Donuts is on the opposite side of Allen Avenue along with some mixed commercial uses and associated curb cuts.

There have been two Planning Board Workshops which focused on the traffic access to the site. Although the proposal halves the total number of curb cuts as compared with the existing conditions, the City's traffic engineering reviewers were concerned in previous versions of the project plans that the pattern of traffic generation, including the right turn exit onto Washington Avenue, would result in an unsafe condition. The Planning Board requested that the applicant and staff look for an acceptable compromise on traffic access and also asked for evidence that the proposal meets the B2 Ordinance requirements and associated design guidelines. This Report updates on both of these issues.

Public Comment

This Hearing was noticed to 199 area residents and interested citizens. A notice also appeared in the *Portland Press Herald*. The applicant has met with a number of abutters and held a Neighborhood Meeting on January 5th, 2008 which was attended by 21 people. The discussion covered a wide variety of issues and the minutes are included in Attachment L.1.

Three written comments were submitted for the Board's consideration at the previous Planning Board Workshops (Attachments 19, 20 and 21). Since then, a letter from the North Deering Neighborhood Association in support of the project was received in December, 2008 (Attachment 22), and a letter from Joe Malone of Malone Commercial Brokers Inc was received in January, 2008 (Attachment 23).

II. SUMMARY OF FINDINGS

Walgreens Pharmacy Site

Total area of Lot: Existing parcels: total of 1.42 acres; as revised: 1.32 acres
Zone: B2 Community Business
Existing Uses: Lockards Collision Center (12,576 sq ft - currently operating); Subway /Dragon Up (1,800 sq ft - vacant); Retail (2400 sq ft -vacant); Primerica Financial (1050 sq ft- vacant)
Proposed Use: One story pharmacy with associated drive-thru
Proposed bldg height: 23-30 feet
Proposed floorspace: 14014 sq. ft
Proposed parking: 49 parking spaces shown on site plan (incl 2 handicapped)
Proposed bicycle pkg.: 14
Impervious surface ratio: Pharmacy 77.2% (existing 83%; required max. 80%);

Espo's Restaurant Site

Existing site area: 26,834 sq ft
Proposed site area: 36,061 sq ft
Zone: B2 Community Business
Existing Use: Restaurant (proposed to remain with no change to building)
Existing floorspace: 3217 sq ft
Existing parking: 53
Proposed parking 56
Proposed bicycle pkg: none
Impervious surface ratio: Espo's 78.8 % (existing 96%; required max. 80%)

Combined site (Walgreens plus Espo's)

Proposed parking: 105
Existing egress points 7 (including the one in Ritco's that is proposed to be combined with Walgreens)
Proposed egress points: 3 (2 restricted)
Impervious surface ratio: 78%

III. FINANCIAL AND TECHNICAL CAPABILITY

The applicant submitted a letter of financial capability from the TD Banknorth (Haverhill, MA) dated 2.28.2008 (Attachment D).

IV. PROPOSAL

In summary the proposals include:

- Demolition of four buildings currently on the site and closure of four existing curb cuts (Attachment M5 shows this most clearly);
- Construction of a new Walgreens Pharmacy Building totaling 14,014 sq. ft with drive-thru window on the side (Attachments M6 and M7);
- Three access drives, 2 with limited movements and one full-movement access (Attachments M6 and M7);
- Off-Site improvements in Allen Avenue (Attachment M21);
- Integration of parking and lighting for both Walgreens and Espo's (Attachment M6 and M20);
- Provision of reorganized parking areas for Espo's, with staff parking and Espo's overflow parking to the rear;
- Landscaped buffers around almost all of the site; also fencing along boundaries with residents (Attachments M5, M6 and M17);
- New stormwater and sewer utilities that allow tie into the separated system nearby (Attachment M9); and
- Provision of a concrete 5 foot wide sidewalk along the frontage of the new building with associated ramps and three crosswalks that connect the doors to surrounding streets and to Espo's (Attachment M7).

V. STAFF REVIEW

The proposed development has been reviewed by staff for conformance with the relevant review standards of the Site Plan and Conditional Use Ordinance. Staff comments are highlighted in this report and organized under the following sections:

1. ZONING
2. INTEGRATION WITH ABUTTING PROPERTIES (ESPO'S & RITCO)
3. SITE PLAN REVIEW
4. CONDITIONAL USE REVIEW
5. STAFF RECOMMENDATION

VI. ZONING

The site, including Espo's, is located within the B2 zone sandwiched between RP and with R5 residential to the rear. The applicant has substantially revised the current boundaries between the Walgreens lot and Espo's lot, and recently modified the boundary between the site and the abutter on Washington Avenue (see Lots and parcels in Attachment M3).



The B2 requirement for bringing building lines near the street was interpreted by the Zoning Administrator as meaning that the new building should be set back no further than 38.5 feet from the front [Washington Avenue] property line (Attachment 1). At that time the proposed setback was 134 feet.

This determination was appealed by the applicant to the Zoning Board of appeals (ZBA) and the ZBA supported a different interpretation of the Zoning language (see Attachment 2) which allows the building to be located further from the street and no closer than the average setback of 38.5 feet. This decision means that the proposed building location meets zoning requirements as determined by the ZBA. The determination, when taken together with Section 14-186 (d)1 ("There shall be no off street parking in the

front yard between the street line and the *REQUIRED* minimum setback line”) means that the front yard of the building is 38.5 feet deep and the parking must be located outside that setback (see Zoning Administrator comments in Attachments 7 & 14). The proposal meets this requirement as it shows this front yard as landscaped and the proposed parking outside the front yard.

The Zoning issue of parking in the front yards for the pharmacy and for Espo’s is further elaborated in comments from Marge Schmuckal, Zoning Administrator (Attachment 7); final Zoning comments are included in Attachment 14.

The drive -thru element of the proposal triggers Section 14-183 of the City Code which includes specific conditions and standards concerning signage, circulation, locations of drive-thrus, noise, lighting, screening and enclosure, pedestrian access and hours of operation. The Planning Board is the reviewing authority for these conditions and standards and these are discussed below.

VII. INTEGRATION WITH ABUTTING PROPERTIES (ESPO’S AND RITCO)

The original submission includes a “Cross Easement and Land Swap Agreement” between the applicant and Espo’s (legal entity known as Allen Avenue Extension LLC) that relates to the reconfiguration of the Espo’s lot and improvements that Walgreen would carry out (Attachment B). The final layout shows site plan improvements (landscaping, lighting, upgrading of the dumpster enclosure, reorganized parking; buffering along the rear) to the areas of Espo’s that have been altered to facilitate the Walgreens development.

The final layout (Attachment M6 and M7) reduces the parking between Espo’s building and Allen Avenue from 12 spaces to 10 spaces (as the central Allen Avenue drive has moved south) which reduces the scale of non-compliance with Zoning requirements (see above). As part of this modification, two of the four existing tall lights are removed; one is replaced near the Allen Avenue access with a shorter pole and lamp to match the Walgreens lighting; the other is replaced/enhanced with wall lighting and new lighting within the relocated Espo’s parking to the rear of the Espo’s building. The southern part of the existing Espo’s site (including parking and two existing tall lights) is not altered, except that the dumpster enclosure has been upgraded.

As a result of discussions since the November Planning Board Workshop, the applicant has negotiated a joint access with the abutter on Washington Avenue (Ritco Properties LLC). This allows the exit onto Washington Avenue to be moved 15 feet further away from the intersection and removes the existing Ritco access drive, which was very close to the proposed Walgreens drive (see traffic engineering review below). The revised design of this drive (Attachment M23) does not fully clarify the integration of access to the Laundromat (see further discussion under *SitePlan Review, Traffic* below) and documentation regarding an easement or other agreement to allow the access drive over the abutting property has not been received by staff as of the time to writing this Report.

VIII. SITE PLAN REVIEW

1/2. Traffic

Traffic/Access/Pedestrian circulation

The proposals maintain three of the six existing curb cuts at the site and include the following provision for access:

- a right in-right out at Washington Avenue (as part of joint access with the abutter to the north);
- one restricted (no left turn out of the site) central access from Allen Avenue (shared with Espo’s);

- off-site improvements in Allen Avenue to provide an identified turning lane for the central access;
- one unlimited access at the southern end of the site which is currently an access for Espo's (joint access with Espo's); and
- access to the drive thru via a 25 foot wide travel lane from the Washington Avenue ingress drive (this wraps around the rear of the building and is immediately adjacent to the boundary with residential properties; it also serves as the service/loading location. The drive thru window faces south west towards a parking area and is located 103 feet from the rear (residential) boundary.)

City traffic engineers raised concerns during the review (Attachment 4) regarding both the Washington Avenue Driveway and the Allen Avenue access nearest to the intersection. The applicant provided information and further data to support the Washington Avenue driveway proposal and developed an off site improvement proposal for Allen Avenue (central left turn lane) to address those comments; this included relocation of this drive further away from the intersection and towards Espo's with associated further revisions to the boundaries between the two properties.

At the 11.25.2008 Planning Board Workshop traffic engineers for the applicant and the City remained in disagreement regarding the safety of the Washington Avenue driveway (right turn out) and the Board requested that they look again to see if a compromise solution was possible regarding this particular issues.

The traffic engineers (City and for the applicant) met on December 8, 2008 for a brainstorming meeting based on their earlier site observations. A number of measures were discussed, including barriers in Washington Avenue (to limit the turns to the first straight ahead lane); closing Washington Avenue extension to provide "gaps" for making the exit when the Auburn Avenue light (at Shaw's) was red; relocating the driveway further north to move it farther from the intersection; and various forms of a monitoring condition.

Following that meeting the applicant was able to reach agreement with the owner of the property just north of the Walgreens site on Washington Avenue (Ritco Properties LLC) which allowed for relocation and redesign of the driveway. The current submission (Attachment M6) includes a redesigned drive at Washington Avenue (detail in Attachment M23) which removes the existing curb cut immediately to the north and integrates it into the Walgreens access drive so that:

- The exit drive lane has been relocated over 15 feet further away from the intersection in response to review comments; and
- The separate drive for the Laundromat is removed to create a joint access.

The City's Traffic Engineering Reviewers commented on the proposed joint access on 12.19.2008 (Attachment 8) so that the design could be incorporated into the final submission on 12.22.2008. The design in terms of providing access to Walgreens and the removal of the curb cuts is acceptable, but it is not clear regarding the traffic movements between Walgreens and the Ritco property and within the Ritco property and staff suggest a condition in order to clarify the layout and operation of that area.

The final traffic review comments on the revised proposals are included in Attachment 12 with the following conditions being recommended in respect of the Washington Avenue egress drive:

"The applicant has incorporated revisions that minimize traffic concerns noted in previous correspondence. The driveway has been shifted such that there is greater corner clearance to Allen Avenue. Additionally, the curb cut from the adjacent property has been closed, thus eliminating the prior non-compliant driveway spacing condition. With the proposed changes, we approved this driveway with the following conditions:

- * The applicant shall conduct a traffic monitoring study 18 months following the opening of the project. The monitoring study will comprise of the following:
 - o Collision diagrams will be prepared for Washington Avenue between Auburn Street and Allen Avenue. The City of Portland will provide the crash reports from the Police Department.
 - o A visual survey shall be conducted that documents the destination of right-turn maneuvers (Allen Avenue westbound, Washington Avenue inbound, Washington Avenue outbound, Allen Avenue eastbound) from the Washington Avenue driveway. The survey shall be conducted during the weekday PM peak period (4-6pm) and during the Saturday mid-day peak period (11-1pm). The applicant shall coordinate this survey with the City Transportation Engineer.
 - o The applicant shall conduct a survey of the blockage of the Washington Avenue inbound right-turn lane during the same period as noted in the prior comment.
 - o A report shall be prepared that summarizes the above analysis and if deficiencies are identified, outlines corrective measures that should be implemented. It should be noted that mitigation will not include the elimination of either the right-turn entry or exit movements.
- * If mitigation actions are required, the City of Portland will be responsible for all costs associated with implementation of improvements.
- * The applicant shall provide a 4-foot easement along their Washington Avenue property boundary for possible future improvement requirements as identified in the traffic monitoring study.
- * The driveway exceeds the City standard for driveway width. I support a design waiver based upon delivery truck turning requirements for the site.

The Directors of Public Services and Planning and Urban Development have agreed that the City of Portland will be responsible for the costs associated with any necessary mitigation related to the operation of the Washington Avenue egress drive.

The other key area of concern was the easterly drive access on Allen Avenue and how the left turning movements into the site would interact with the dedicated left turn lanes for the intersection and with other movements in the area including those for Dunkin Donuts. At the traffic engineers meeting on 12.8.2008 it was confirmed that this drive had moved to the west (away from the intersection) and agreement in principle was reached on the proposed Off Site Improvements in Allen Avenue which comprised works to create a central turn lane (Attachment M21). Further detailed discussions have not taken place as the focus of discussions has been on achieving a solution regarding the Washington Avenue right turn exit. Therefore City Traffic Engineering Reviewers have requested two conditions regarding these Off - Site Improvements (Attachment 12):

- To clarify that the improvements are the responsibility of the applicant and that detailed construction design plans and documents would also be the responsibility of the applicant and need to be agreed with the City's traffic engineers prior to implementation; and
- To confirm that Public Services recommend that the existing "stamped" islands on Allen Avenue, that are to be modified as part of Walgreens improvement plan, not be painted black, but milled and replaced with new bituminous pavement.

Other aspects of the proposed external and internal traffic patterns, including pedestrian accommodations, have been revised during the course of the review and are generally acceptable. The Traffic Engineering

review supports the waiver request (submitted in Attachment I) for the driveway widths (Attachment 12). Loading has not been an issue as the number and size of truck deliveries/collections is low: one warehouse truck per week, two refuse pick-ups per week; 9 smaller trucks (vendors) per week; and 1 UPS delivery per day except Sunday (Attachment L.3).

Parking

The zoning requirement for the Walgreens development is 48 spaces and 49 spaces have been provided. The existing parking in the Espo's site is 53 spaces and 56 have been provided though two spaces near the front door of the restaurant have been relocated to the rear.

The applicant has requested a waiver for the proposed 18 foot length of parking spaces (Attachment I) and the Traffic Engineering Review supports this waiver (Attachment 12).

Bicycle Parking

The City's Ordinance requires parking provision for 10 bicycles and the proposals include parking for 14 bicycles.

3/4. Bulk, Location, Health, Safety Air, Height of Proposed Buildings

The footprint of the proposed building is now 46,014 sq ft compared with 46,045 sq ft in the original submission. The building ranges from about 30 feet high at the front entrance facing the corner of Washington/Allen Avenue to 23 feet high along the rear elevation facing neighbors (see Elevations in Attachment M22). The building is set back 107 feet from Washington Avenue and 56 feet from Allen Avenue.

Context

The applicant has indicated in meetings that he sought to avoid "diminution to the value or utility" of the neighboring Espo's property in accordance with this site plan requirement (quoted in full below).

- (4) *The bulk, location or height of proposed buildings and structure minimizes, to the extent feasible, any substantial diminution in the value or utility to neighboring structures under different ownership and not subject to a legal servitude in favor of the site being developed;*

The development of the Walgreens site affects the access, parking and visibility of the Espo's site and the 2007 agreement between the applicant and Espo's (Attachment B) reflects the parties understanding of the balance of benefit. Mr Esposito has indicated at the Planning Board Workshops that he does not want the proposed Walgreens building to "hide" Espo's restaurant building; if the proposed Walgreens building were located nearer to Allen's Avenue it may be considered a diminution in the value and utility of the Espo's restaurant.

The applicant has also explained that his objective (after meeting with many of the neighbors) was to keep "active" areas away from boundary with residents to minimize the noise and disturbance in accordance with this standard and the conditional zone requirements (see below). The layout has therefore located the "active" parking (by patrons of Walgreens) away from the residential boundary, which on this narrow site resulted in the parking being located to the front and sides of the proposed Walgreens building.

The building is low and set back 26 feet from the boundary with residential neighbors; the bulk of the building appears acceptable and the proposals include buffering/screening of the relatively "blank" brick rear wall and tote enclosure (see Landscaping below).

5. Sewers, Stormdrains, Water, Solid Waste and Utilities

The proposal introduces a new piped storm water drainage system that connects to the separated system within Washington Avenue. A Stormwater Management Plan was submitted in September 2008 and updated in the final December submission (Attachment K). The proposals are anticipated to improve the drainage for the areas nearest the residential properties. The City's Engineering reviewers have confirmed that the project is acceptable in Attachments 9 and 13, and a letter confirming sewer capacity is included at Attachment L.2. The water capacity letter was submitted in Attachment C.

Solid waste for the Pharmacy will be stored in totes within an enclosure at the rear of the building and removed by a private contractor (see agreement with Pine Tree Waste in Attachment C). The existing dumpster located to the west of Espo's will remain but upgraded with a new enclosure (Attachment 7).

6. Landscaping and Existing Vegetation

The applicant has introduced a 5 foot wide buffer strip along the rear boundary for about half its length, along the rear drive behind the pharmacy building in response to staff and Planning Board comments. The proposed landscape of this buffer is shown in Attachments M5 and M17 and includes a 6 foot high cedar fence and two oak trees. The southwest half of the rear boundary adjacent to residential abutters is buffered by an 8 foot landscaped strip between the parking and the boundary, with trees and shrubs.

Around the Washington Avenue frontage of the Walgreens site is a landscaped area with 3 cherry trees, 2 spruce trees, and 2 birch trees within a landscaped area through the center of the 38.5 foot setback, leaving space for snow storage near the paved areas. Along Allen Avenue (between the parking and the sidewalk) is a row of 5 elm trees (4 near the Walgreens building and one at the west end of the site). The parking spaces facing Allen Avenue are edged with concrete curbing. The new parking just to the rear of Espo's has landscaped islands with three trees.

The final plan (Attachment M17) reflects the addition of four trees and revised species to address the City Arborist 12.29.2008 comments seeking (along Washington avenue) "*larger shade, ornamental or conifer trees planted vs the small scale shrubbery... There is ample room for larger plantings and this should be able to be planned without impacting or hiding the building. From a quick view, this would be an additional 3-4 trees in this area.*"

The City Arborist also requested that the landscaped area be "bermed" along Washington Avenue; the revised Landscape Plan has not addressed this comment and the City Arborist has suggested a condition "*to 'crown' or slightly berm the landscape & turf area between the parking lot and Washington Avenue along with the 'bump-outs' or islands that project out into the parking area*".

6. Soils and Drainage

There are no concerns regarding soils and comments regarding drainage are covered above under para 5.

8. Exterior Lighting

The proposals include six wall mounted lights on the building and new 20 foot pole lights on the site to light the access, parking and pedestrian areas. The applicant has sought to minimize lighting along the rear boundary to avoid impacts on residential properties. The photometric plan is included at Attachment M20 and the lighting catalog cuts are included at Attachment F. The proposed lighting has been revised several times to ensure adequate lighting and meets the City technical standards.

9. Fire

The Fire Department comments are included at Attachment 11. They are concerned that fire trucks should be able to access the site via the easterly drive on Allen Avenue by driving over the island that separates the lanes. This comment is reflected in the Traffic Engineering comments (Attachment 12, last comment) and a suggested condition is included to address this requirement. The Fire Department has also requested a condition regarding the sprinkler connection on the building and this is included in the suggested conditions.

10. City Infrastructure

Public Services Department does not have any comments (Attachment 13).

27. Development located in the B-1, B-1b, B-2, and B-2b zones - additional design standards and guidelines.

The proposed new pharmacy building would be about 30 feet high at the main entrance which faces the intersection of Washington and Allen Avenues. The building is proposed to be faced with brick with artificial stone detailing and canopies along the elevations facing the streets. It is set back 107 feet from Washington Avenue and 56 feet from Allen Avenue; these setbacks allow for 31 parking spaces near the main entrance. A row of trees defines the back of the sidewalk along Allen Avenue, and an area of landscaping with trees and signage is located along the Washington Avenue frontage.

Development located in the B-1, B-1b, B-2, and B-2b zones shall meet the following additional standards and guidelines (14-526 section 27). The paragraphs in **bold** are requirements in the B2 zone). The proposed pharmacy building is subject to the more detailed B2 Design Standards and Guidelines, which encourage development of quality design, which is consistent with the surrounding business and residential community.

1. **Urban Street Wall. Standard: In the B-1, B-1b, and B-2b zone it shall be required that buildings shall be located to create and preserve an urban street wall.**

*Buildings located in the B-2 zone are **encouraged** to adhere to guidelines contained within Section XIV of the City's Technical and Design Standards and Guidelines.*

Staff comment: This paragraph does not apply (as a standard) to the B2 zone.

2. **Mixed Uses. Standard: In B-1b zone buildings shall be multi-storied with mixed uses.**

*In the B-1, B-2 and B-2b zones building uses are **encouraged** to adhere to the guidelines contained within Section XIV of the City's Technical and Design Standards and Guidelines.*

Staff comment: This paragraph does not apply (as a standard) to the B2 zone.

3. **Building Entrances. Standard: In the B-1 and B-2b zone building entrances shall be oriented toward, located adjacent to, and directly accessible from, a sidewalk in a public right-of-way.**

*In the B-1b and B-2 zones building entrances are **encouraged** to adhere to the guidelines contained within Section XIV of the City's Technical and Design Standards and Guidelines.*

Staff comment: This paragraph does not apply (as a standard) to the B2 zone.

4. **Windows. Standard: In the B-1, B-1b, B-2, and B-2b zones windows shall be required along the street frontage of a building. Windows shall be transparent and installed at a height to allow views into the building by passersby.**

Staff comment: The elevations are shown in Attachment M22 and while windows are provided along the street frontage of the building, they are above the height that would allow views into the building.

5. **Facade Character. Standard:** *In the B-1, B-1b, B-2, B-2b zones, active and public portions of buildings (e.g. doors, windows, entries, retail displays) shall be located adjacent to the public sidewalk to create an active presence along the sidewalk.*

Staff comment: The applicant has sought legal opinion regarding the interpretation of this standard (Attachment L.4). The opinion argues that this standard is met by the proposal and includes a determination that the term “adjacent” means “nearby” (page 2, Attachment L.4). The design of the frontages is articulated and includes doors and windows on the frontages to both Allen Avenue and Washington Avenue. A row of elm trees between the parking and the sidewalk along Allen Avenue provide definition of the street. Further, the recent Zoning Board interpretation of the setback provision does not allow the building to move closer than 38.5 feet from Washington Avenue (see further discussion below).

6. **Building Design. Standard:** *B-1, B-1b, B-2, and B-2b commercial buildings shall be designed to be compatible with their residential and commercial neighbors. In the B-1 and B-1b zones building scale, roof pitch, and fenestration shall be designed to complement surrounding residential structures.*

Staff comment: The proposed elevations (Attachment M22) feature brick and artificial stone treatment with awnings and windows that break up the elevations to Allen and Washington Avenues. The design and materials appear to be of a higher quality than those of surrounding buildings.

7. **Building Materials. Standard:** *Facade materials of buildings located in the B-1, B-1b, B-2, and B-2b zones shall be compatible with those materials of surrounding residential and commercial uses.*

Staff comment: As for Standard 6. Samples of the materials will be available at the Hearing.

8. **Building Scale. Standard:** *In the B-1 and B-1b zones building scale must relate and be compatible with surrounding residential structures.*

Staff comment: This paragraph does not apply (as a standard) to the B2 zone.

9. **Landscaping and buffers. Standard:** *In the B-1, B-1b, B-2 and B-2b zones buildings and associated parking areas must be screened to buffer abutting properties. A densely planted landscape buffer and/or fencing will be required to protect neighboring properties from the impacts associated with the development, including lighting, parking, traffic, noise, odor, smoke, or other incompatible uses. Where buildings are setback from the street, a landscaped area must be planted along the front yard street line.*

Staff comment: Fencing and landscape have been introduced to provide a buffer along the boundary with neighboring residential properties, and the layout has sought to locate parking, traffic, and potential noise associated with the proposal away from the residential boundary. Regarding commercial neighbors, the applicant has negotiated shared access and associated landscaping and lighting.

At the October Workshop the applicant was requested to show how the proposal met the B2 Design Standards and Guidelines and Staff were requested to provide background on how these Standards and Guidelines had been applied in other B2 proposals, particularly the Rite Aid development nearby on Allen Avenue.

Staff met with the applicant and his advisors in late October to explore options for locating the building to better meet the B2 Design Standards and Guidelines. The applicant identified several other factors in determining the location of the building ie the required front yard of 38.5 feet that must be maintained along Washington Avenue as a result of the ZBA Appeal decision; the need to address other site plan requirements (see above under 3/4); and Walgreens requirement for some parking near the front door, as a high proportion of the Walgreen’s clientele are expected to be elderly.

After considering a concept that moved the building nearer Washington Avenue and nearer the rear boundary (Concept Plan in Attachment M24), the meeting concluded that it was preferable to keep the access to the drive-thru and the loading area along the rear boundary while moving the building as close as possible to Washington Avenue. The discussion resulted in a revision to the Site Layout Plan (C1.1) (Attachment M7) which included a revised and reduced building footprint and an increase in buffer strips as follows:

The final layout compared with the earlier layout

Measure	October layout	Final layout
Building distance from Washington Ave.*	130 ft	107 ft
Shortest Building distance from Allen Ave.*	56 ft	56 ft
Longest Building distance from Allen Ave.*	89 ft	87 ft
Walgreens parking spaces between pharmacy building and streets	35	31
Buffer between rear drive and rear boundary with residents	0	5 ft

*Between edge of building footprint and back edge of sidewalk

Staff have researched other B2 developments (all approved prior to the July 2008 ZBA determination re the B2 front yard- see under *Zoning* above) and summarized the review outcomes in relation to setbacks in Attachment 15. While most projects were required to reduce setbacks and several are very near the street, none of the sites abutted major arterial streets on two sides and most were smaller developments and/or abutting commercial uses and parking. The Rite Aid project achieved the proximity to the street by locating parking to both sides of the building and the two drive-thru lanes to the rear of the building- which was possible due to the size of the site and because there was no residential use or zoning to the rear.

The applicant submitted the legal opinion regarding the B2 Design Standards above (Attachment L.4) that supports his view that the proposal meets the B2 design standards (Attachment K).

VIII. CONDITIONAL USE REVIEW (SECTION 14-183)

The proposal includes access to the drive thru from the ingress drive on Washington Avenue along the rear boundary of the site and then curving around the building to the side window. It is understood that there is limited communication at the window as it is mainly for pick up and the application has provided information regarding the expected number of drive thru trips in Attachment 1E. These translate into one customer for every 6 minutes at peak and one every 12-15 minutes at off peak.

As the access lane to the drive-thru is immediately adjacent to residential properties with homes about 30-35 feet from this travel lane, a key issue is how will the proposal mitigate adverse impacts on neighbors due to the proximity of the travel and servicing lane at the rear of the site.

Sec. 14-183 - Conditional Uses identifies drive-thrus in the B-2 zone that are adjacent to any residential use or zone as being a permitted conditional business use if they meet the following requirements in addition to the provisions of Section 14-474 (section 14-474 is addressed below):

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 or goods available on the premises.

The applicant has proposed one Walgreens sign on Washington Avenue (Attachment M16) which appears acceptable but will require a sign permit. Directional and traffic signs are also proposed on the site, as shown in Attachment M7.

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.

The proposals comply with this requirement.

Drive-thrus, where permitted, shall also specifically comply with the following conditions:

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

The proposed pharmacy drive-thru window is located 103 feet from the rear boundary with residential zone. In the original submission it was about 80 feet from the rear boundary, but has been moved away from the boundary as part of the relocation and redesign of the pharmacy building. The applicant has submitted information confirming that the maximum frequency of “drive ups” will be 10 per hour (1 every 6 minutes) and that the time a customer remains at the window is 2 minutes (Attachment F). This suggests that a queue length of more than one car is unlikely, and there is 60 feet available for queuing.

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

The audio system for this project is located about 100 feet away from the nearest property line. The applicant has submitted information from the audio system suppliers that show that at 30 feet the system could not be heard over the ambient noise level of 60dB (Attachment K). The proposal therefore meets this requirement.

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

See 8. *Exterior Lighting* under *Site Plan Review* (above).

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

The drive thru window has been located on the side of the pharmacy building towards Espo’s which minimizes its impacts on the residential properties to the rear of the site. Queuing cars will be facing away from the residential properties and the drive leading to the drive thru window is buffered by a 6 foot high cedar fence and planting including two trees.

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

The drive-thru is located to avoid crossing principal pedestrian access-ways.

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

The hours have been confirmed as 8AM to 11PM every day (Attachment K) and is suggested that these be incorporated into a condition of approval in relation to all of the Walgreens uses (Attachment 14). The applicant has provided information on truck deliveries in Attachment L.3 but the hours of delivery /collection are not specified. Again the Board could consider including in the condition a limit to these operational activities (eg 7am to 7pm) to minimize the impacts of associated noise along the rear boundary adjacent to residential uses.

Section 14-474: Paragraph (c) (2) of this section states:

- (2) *Standards.* Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the board determines that:
- a. There are unique or distinctive characteristics or effects associated with the proposed conditional use;
 - b. There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area; and
 - c. Such impact differs substantially from the impact which would normally occur from such a use in that zone.

The proposed pharmacy with a drive-thru window does not fall in any of these categories.

IX. STAFF RECOMMENDATION

Staff have been working with the applicant for over a year and acknowledge that the applicant has worked diligently to overcome the many constraints and problems associated with this site, including the challenge of “fronting” two major arterials while also taking account of numerous residential and commercial occupiers and neighbors interests. The provision (through complex negotiations) of a shared circulation infrastructure substantially improves this corner.

Many revisions and adjustments have been made to the project to address the concerns raised by neighbors, staff and the Planning Board and to maximize the traffic and design guideline compliance. The most recent solution to the Washington Avenue access substantially resolves the traffic safety concerns.

The project has been responsive to the B-2 standard for building orientation. The major entrance of the building is oriented to the corner of Washington and Allen, and though it is set back some distance, this is due to site and shared access conditions. Given these circumstances, we believe that the solution is the best possible layout for this use on this site.

Staff therefore recommends approval.

X. MOTIONS FOR THE BOARD TO CONSIDER

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 # 02-08, 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 a drive-through adjacent to a residential use or zone **does / does not** meet the standards of Section 14-183 for the B2 zone, subject to the following conditions:

Potential Conditions of Approval:

- i. That the applicant shall submit, for the City's Associate Corporation Counsel review and approval prior to the issuance of a building permit, final easement documentation/ agreements that allow for the access and boundary revisions and associated works on the properties owned by Allen Avenue Extension LLC (Espo's) and Ritco Properties, Inc (Laundromat) properties; and
- ii. That the applicant shall conduct a detailed Traffic Monitoring Study, as described in the January 7, 2009 comments from Tom Errico, 18 months following the opening of the pharmacy to the public, such date to be informed to the City Planning Authority. A report summarizing the outcomes of the Traffic Monitoring Study, including the identification of deficiencies and corrective measures (if any), shall be submitted to the City Planning Authority immediately upon completion and no later than one month after the Study is conducted; and
- iii. That if mitigation actions are identified, the City of Portland shall be responsible for all costs associated with implementation of improvements. Such improvements shall not include the elimination of either the right-turn entry or the exit movements as approved; and
- iv. That the applicant shall provide, prior to the issuance of a building permit, a four foot wide easement along the applicant's Washington Avenue property boundary for possible improvement requirements as identified in the Traffic Monitoring Study; and
- v. That the applicant shall implement, prior to the issuance of a Certificate of Occupancy, pavement reconstruction, pavement markings and signing improvements to create a central turning lane along Allen Avenue from west of their site to their easterly site drive (similar to that shown in an indicative plan titled "Off-site Improvements" dated 9.22.2008 and referenced as Attachment M21 to Report #02-09.) The applicant shall be responsible for preparing construction design plans and documents for such work, which shall be subject to review and approval by the Planning Authority prior to implementation; and
- vi. That the existing "stamped" islands on Allen Avenue, that are to be modified as part of Walgreens Off -site Improvements plan referenced in condition v. above, shall not be painted black, but milled and replaced with new bituminous pavement; and
- vii. That the applicant shall submit, prior to the issuance of a building permit, a more detailed design to clarify the layout and operation of the area adjacent to joint access with the Ritco; and
- viii. That the proposed retail, pharmacy and associated drive-thru shall be limited to hours of opening to the public of 8am to 11pm every day. Deliveries to the site shall be limited to the hours of 7am to 7pm every day.

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 # 02-08 relevant to the Portland Technical and Design Standards and Guidelines and other regulations and the testimony presented at the Planning Board hearing:

- i. The Planning Board **waives / does not waive** the requirements of Section III.2.A.(b) of the Technical and Design Standards and Guidelines which requires driveway widths to be no greater than 30 feet ,to allow the Washington Avenue drive and easterly Allen Avenue drive to exceed this width as shown on the approved Plan C1.1 Rev B (Attachment M7 to Report #02-09).
- ii. The Planning Board **waives / does not waive** the requirement of Section III.3.A of the Technical and Design Standards and Guidelines for parking spaces to be 9 feet by 19 feet, to allow 9 feet by 18 feet parking spaces as shown on the approved Plan C1.1 Rev B (Attachment M7 to Report #02-09).

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 # 02-08, 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:

Potential Conditions of Approval:

- i. That the applicant shall submit, for the City's Associate Corporation Counsel review and approval prior to the issuance of a building permit, final easement documentation/ agreements that allow for the access and boundary revisions and associated works on the properties owned by Allen Avenue Extension LLC (Espo's) and Ritco Properties, Inc (Laundromat) properties; and
- ii. That the applicant shall conduct a detailed Traffic Monitoring Study, as described in the January 7, 2009 comments from Tom Errico, 18 months following the opening of the pharmacy to the public, such date to be informed to the City Planning Authority. A report summarizing the outcomes of the Traffic Monitoring Study, including the identification of deficiencies and corrective measures (if any), shall be submitted to the City Planning Authority immediately upon completion and no later than one month after the Study is conducted; and
- iii. That if mitigation actions are identified, the City of Portland shall be responsible for all costs associated with implementation of improvements. Such improvements shall not include the elimination of either the right-turn entry or the exit movements as approved; and
- iv. That the applicant shall provide, prior to the issuance of a building permit, a four foot wide easement along the applicant's Washington Avenue property boundary for possible improvement requirements as identified in the Traffic Monitoring Study; and
- v. That the applicant shall implement, prior to the issuance of a Certificate of Occupancy, pavement reconstruction, pavement markings and signing improvements to create a central turning lane along Allen Avenue from west of their site to their easterly site drive (similar to that shown in an indicative plan titled "Off-site Improvements" dated 9.22.2008 and referenced as Attachment M21 to Report #02-09.) The applicant shall be responsible for preparing construction design plans and documents for such work, which shall be subject to review and approval by the Planning Authority prior to implementation; and

- vi. That the existing "stamped" islands on Allen Avenue, that are to be modified as part of Walgreens Off -site Improvements plan referenced in condition v. above, shall not be painted black, but milled and replaced with new bituminous pavement; and
- vii. That the easterly drive from Allen Avenue shall have the channelization island comprise of sloped granite curbing and the main body of the island be of a material that can carry the weight of a fire truck and not be obstructed by landscaping; and
- viii. That the applicant shall submit, prior to the issuance of a building permit, a more detailed design to clarify the layout and operation of the area adjacent to joint access with the Ritco Properties Inc; and
- ix. That the Landscape Plan be revised and submitted for review and approval; such revisions to 'crown' or slightly berm the landscape and turf area between the parking lot and Washington Avenue along with the 'bump-outs' or islands that project out into the parking area; and
- x. That the sprinkler connection shall be located on the Allen Avenue side of the pharmacy building to facilitate Fire Department operations; and
- xi. That the applicant shall submit, for review and approval prior to the issuance of a building permit, a construction mobilization plan that will include, but is not limited to, access, demolition, sequencing, site stabilization, hours of operation, and interim lighting.

Attachments:

Memorandum Attachments

STAFF COMMENTS - Presented at Workshops

1. Zoning Administrator determination of B2 Zone Front yard Setback requirements
2. ZBA decision July 2008
3. Engineering Review comments Dan Goyette 8.7.2008 and 10.2.2008
4. Traffic Engineering Review comments Tom Errico 8.21.08; 10.9.2008; 11.20.2009
5. Planning review letter 8.22.2008
6. Public Services comment David Margolis-Pineo 10.2.2008
7. Zoning comments 10.10.2008

STAFF COMMENTS - Since November 2008 Workshop

8. Traffic Engineering Review comments on relocated Washington Avenue Drive dated December 19, 2008
9. Final Engineering Dan Goyette, Woodard & Curran review comments dated December 29, 2008
10. City Arborist comments (Jeff Tarling) dated December 29, 2008, as updated January 5, 2009
11. Fire Department Greg Cass comments dated December 31, 2008
12. Final Traffic Engineering Review comments (Tom Errico) dated January 7, 2009
13. Public Services Department comments (David Margolis-Pineo) dated January 8, 2009
14. Zoning Administrator updated comments dated January 8, 2009

STAFF BACKGROUND INFORMATION

15. Staff Summary of B2 developments re design standards and guidelines Street Plan context (staff –as circulated at second Workshop)
16. Walgreens Context Plan showing street network (staff)
17. Aerial photograph (staff) (site boundaries not shown to avoid obscuring photo)
18. Panorama photo from Allen Avenue (staff)

PUBLIC COMMENTS - Presented at Workshops

19. Comments from Jane Orbeton, 7 Short Street, e-mail of November 19, 2008
20. Comments from Rebekah Pilling, 36 Cypress Street, e-mail of November 20, 2008
21. Comments from Councilor James Cohen in e-mail to Alex Jaegerman dated November 21, 2008

PUBLIC COMMENTS - Since November 2008 Workshop

22. Letter from North Deering Neighborhood Association (undated; received December 2008)
23. Letter from Joe Malone, Malone Commercial Brokers Inc dated January 7, 2009

APPLICATION SUBMITTAL [SEPARATE DOCUMENT WITH BLUE COVER SHEET]

Presented at Workshops

- A. Initial application letter of October 30, 2007 and attachments including: purchase options agreement; reciprocal easement with Espo's; and Richmond Company projects as of 2005 (all plans in Attachment M)
- B. Letter from The Richmond Company Inc re Cross Easement and Land Swap Agreement between Espo's site and Walgreens site dated October 2, 2007
- C. Updated submissions dated February 8, 2008 including: PWD Capacity letter; Solid Waste Removal agreement; request for sewer capacity letter (all plans in Attachment M)
- D. Evidence of financial capability dated February 28, 2008
- E. Traffic Impact Study dated March, 2008
- F. Updated submissions dated September 22, 2008 including: responses to City Engineering comments; Drive thru information; Stormwater Management Plan (except calculations, which will be available at the meeting); Lighting cuts (excluding details- available at the meeting); utility letters; request for waiver from parking lot and parking space standards (all plans in Attachment M)
- G. Response to City Traffic comments dated September 25, 2008
- H. MDEP Stormwater Permit application dated October 3, 2008
- I. Response to City Traffic comments dated November 3, 2008 (Off-Site Improvement Plan in Attachment M21)
- J. Letter regarding revisions to Site Layout dated November 12, 2008

Since November 2008 Workshop

- K. Letter addressing issues raised at November Planning Board Workshop and subsequent staff discussions dated December 22, 2008, including responses to PB queries; Drive thru equipment noise levels; final lighting cuts; final Stormwater Management Plan; MDEP Approval of Stormwater Management System
- L. Final documentation received January, 2009
 - L.1 Neighborhood Meeting Certification
 - L.2 Sewer Capacity Letter
 - L.3 Confirmation of truck delivery size/frequency
 - L.4 B2 Standard 5 Attorney's opinion
 - L.5 Access agreement with Ritco (abutter on Washington) [not available at time of printing]
- M. Final Plan Set (all dated December 22, 2008 unless indicated otherwise)
 - 1. Cover Sheet and General Notes (AO.1)
 - 2. Boundary and Existing Conditions
 - 3. Lot Subdivision (1)
 - 4. Internal Circulation Plan (2)
 - 5. Landscaped Areas (3)
 - 6. Overall site Plan (C1.0)
 - 7. Site Layout Plan (C1.1)
 - 8. Grading, Drainage and Erosion Control Plan (C2.1)
 - 9. Utility Plan (C3.1)
 - 10. Site Details - 1 (C4.1)
 - 11. Site Details - 2 (C4.2)
 - 12. Utility Details (C4.3)
 - 13. Erosion Control Notes and Details (C4.4)
 - 14. Trash Enclosure Details (C4.5)
 - 15. WB-50 Truck Turning Path (C4.6)
 - 16. Freestanding Signage (D5.1)
 - 17. Landscape and Irrigation Plan (L1 Rev 4) (01.05.2009)
 - 18. Pre Development Watershed Plan (WS-1)
 - 19. Post Development Watershed Plan (WS-1)
 - 20. Photometric Plan
 - 21. Off-Site Improvements (in Allen Avenue) (09.22.2008 with 11.3.2008 letter)
 - 22. ACP - 1 Elevations
 - 23. Detail of Washington Avenue joint access drive
 - 24. Concept Plan not pursued (November 2008)



PORTLAND MAINE

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Director of Planning and Urban Development
Penny St. Louis Littell

Planning Division, Director
Alexander Jaegerman

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 (Attachment 7) 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

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)

	PUBLIC	PRIVATE	TOTAL
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]

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

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

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

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

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

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

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]

Penny St. Louis Littell
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: _____

Treasurer's Report of Receipts Number: _____

Application ID #: _____

(from Site Plan Application form)

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

2008 Internal Performance Guarantee

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 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**].

2008 Internal Performance Guarantee

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 Paul Colpitts, 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 Report of Receipts form.
5. ****Signature required if over \$50,000.00.
Attach **Letter of Approval and Estimated Cost of Improvements** to this form.

Infrastructure Financial Contribution Form

Obtain an Account Number from Paul Colpitts, Chief Acct.,
(ext. 8665) prior to the distribution of this form.

Amount \$ _____

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

Project Name: _____

Application ID #:

(from Site Plan Application Form) _____

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: _____

Person Completing Form: _____

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

Electronic Distribution to:

Peggy Axelsen, Michael Bobinsky, Michael Farmer, Kathi Earley, Betsy Beety, Alex Jaegerman, Barbara Barhydt, Phil DiPierro, and Planner for project.