



PORTLAND MAINE

Strengthening a Remarkable City, Building a Community for Life • www.portlandmaine.gov

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

Planning Division
Alexander Jaegerman, Director

August 27, 2010

Barney Baker, PE
11 Stony Brook Lane
Yarmouth, ME 04096

Mike and Nina Miller
76 Watson Street
Portland Maine 04103

Re: **Slope Stabilization at 76 Watson Street**
License for encroachment in Watson Street ROW

Dear Mr. Baker and Mr. & Mrs. Miller:

I refer to the meeting on August 24, 2010 where proposals for stabilizing the seafront area, and associated proposals to extend the stabilization work onto City property within the Watson Street ROW, were discussed.

Since then the Planning Division has consulted with the Legal and Public Services Departments regarding a mechanism that allows for these proposals to go forward. The following is suggested:

- A revocable license to cover the construction, location, installation and maintenance of a seawall, concrete retaining wall, driveway, walk-way and deck in the vicinity of 76 Watson Street (draft language attached);
- The license to require that the owners indemnify the City by providing evidence that the insurance names the City as an additional insured;
- A one-time fee would be payable of \$5120 which is based on a unit cost (\$40/sq ft) comparable to other similar projects and related only to the area of the seawall encroachment (128 sq ft as shown on sheet C2 Proposed Site Plan). This would be payable by a check made out to the City and given to the Legal Department at the same time as the signed license and insurance documentation is brought in.

We suggest that you have an attorney review the language before signing. The insurance document would be reviewed by the Legal Department and then given to the City Manager Joe

Gray to sign on behalf of the City. If you agree to the proposed license, it would need to be signed and submitted to the City's Legal Department along with insurance documentation and the fee payment.

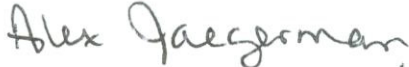
Once the license is signed by both parties, it would need to be recorded by the property owner with a copy to the City.

Please note that the public still has the right to enter on this land even though the seawall construction will take place.

Also please note that the submitted Minor Site Plan is under review by the Planning Division and Jean Fraser (874 8728) is the Planner handling that application. That review is entirely separate from the license issue but we are endeavoring to keep both aspects of this project moving forward in parallel. Please also note that you will need a Building Permit for this construction work once it has the Site Plan and MDEP approvals and the license is in place.

If you have any questions, please contact Barbara Barhydt at 874 8699.

Sincerely,


(BB)

Alex Jaegerman
Planning Division Director

Attachment: Draft License Language

Electronic Distribution:

Penny St. Louis Littell, Director of Planning and Urban Development
Gary Wood, Corporation Counsel
Alexander Jaegerman, Planning Division Director
Barbara Barhydt, Development Review Services Manager
Jean Fraser, Planner
Marge Schmuckal, Zoning Administrator
Tammy Munson, Inspections Division Director
David Margolis-Pineo, Deputy City Engineer

Hard Copy: Project File

**REVOCABLE LICENSE FOR THE CONSTRUCTION, LOCATION,
INSTALLATION and MAINTENANCE
OF A SEAWALL, CONCRETE RETAINING WALL, DRIVEWAY,
WALK-WAY AND DECK
IN THE VICINITY OF 76 WATSON STREET**

This revocable license is granted by the City of Portland "CITY" to Mike and Nina Miller hereinafter "OWNER" for the construction, location, installation and maintenance of the following seawall, concrete retaining wall(s), driveway, walk-way and deck on property owned by the City in the vicinity of 76 Watson Street, Portland, Maine, as more particularly shown on the attached proposed site plan (Exhibit A). The location, installation and maintenance of seawall, walk-way and deck shall be governed by the terms of this License Agreement.

1. The seawall, concrete retaining wall(s), driveway, walk-way and deck shall be installed in/on City property as shown on the site plan attached hereto as Exhibit A.
2. OWNER is hereby permitted to occupy the City land located adjacent to its property at 76 Watson Street (as shown on Exhibit A) for the construction, location, installation, maintenance and placement of the seawall, concrete retaining wall(s), driveway, walk-way and deck.
3. OWNER and its agents, successors and assigns shall be responsible for the proper location, installation and maintenance of the seawall, concrete retaining wall(s), driveway walk-way and/or deck on City property (as shown on Exhibit A). In the event of damage to the same, OWNER shall promptly repair/restore/replace the seawall, concrete retaining wall(s), driveway, walk-way and/or deck and notifies the City of the same.
4. Pursuant to this License, OWNER shall have the temporary ability, right for access, and right to enter in, on over and under the City's property located in the vicinity of 76 Watson Street (by people or machinery) for the purposes of constructing the seawall as depicted on Exhibit A.
5. OWNER shall procure and maintain liability insurance in an amount of not less than Four Hundred Thousand Dollars (\$400,000) combined single limit (or the amount stated in the Maine Tort Claims Act as the same may be amended from time to time), covering claims for bodily injury, death and property damage and shall name the CITY as an additional insured with respect to such coverage.
6. OWNER, by execution of this License Agreement, hereby agrees to assume responsibility for any and all claims and/or damage to persons or property arising out of or in any way related to its entry upon CITY property (as described in paragraphs 1-3 above) located in the vicinity of 76 Watson Street (as more particularly described and shown on Exhibit A), and does hereby forever waive, release, relinquish, remise and discharge the CITY, its agents, employees, successors and assigns from any and all losses, costs or expenses (including reasonable attorneys' fees), damages, demands, liabilities, claims, actions, causes of action, suits, or judgments

(collectively, "Claims") whatsoever of every name and nature, in law and in equity, including without limitation those related in any manner to any accident or injury to, or death of, any person, or any damage to property occurring on, in or in the vicinity of the area covered by this License Agreement, arising out of the presence in and use by the OWNER of the area covered by this License Agreement (as described in paragraphs 1-3 above).

7. This License may be revoked upon three (3) months written notice from the CITY to the OWNER and shall automatically terminate in the event that the building located at 76 Watson Street is destroyed, removed or otherwise ceases to exist on the site.

CITY OF PORTLAND

Dated: _____

Joseph E. Gray, Jr.,
City Manager

OWNERS

Print Names:

STATE OF MAINE
CUMBERLAND, ss.

Dated: _____

Personally appeared the above-named Joseph E. Gray, Jr. and gave oath that the foregoing statements made by him are true to the best of his knowledge, information and belief, and where based upon information and belief, he believes the same to be true.

Before me,

Notary Public/Attorney-at-Law

STATE OF MAINE
CUMBERLAND, ss.

Dated: _____

Personally appeared the above-named _____ and gave oath that the foregoing statements made by him/her are true to the best of his/her knowledge, information and belief, and where based upon information and belief, he/she believes the same to be true.

Before me,

Notary Public/Attorney-at-Law