

CITY OF PORTLAND, MAINE

PLANNING BOARD



Sean Dundon, Chair
Brandon Mazer, Vice Chair
Bob Dunfey
David Eaton
David Silk
Austin Smith
Maggie Stanley

AGENDA PORTLAND PLANNING BOARD MEETING

The Portland Planning Board will hold a meeting on Tuesday, January 21, 2020, Council Chambers, 2nd Floor of City Hall, 389 Congress Street. **Public comments will be taken for each item on the agenda during the estimated allotted time and written comments should be submitted to planningboard@portlandmaine.gov.**

WORKSHOP - 4:30 PM

- i. ReCode (estimated time 4:30 - 6:30 p.m.) The Planning Board will hold a workshop on Phase 1 of the Recode, the process of rewriting the City's Land Use Code. The workshop will include an introduction to draft use and dimensional requirement provisions of the ReCode as well as an overview of revisions to draft introductory and administrative provisions.

PUBLIC HEARING - 7:00 PM

1. **ROLL CALL AND DECLARATION OF QUORUM**
2. **COMMUNICATION AND REPORTS**
3. **REPORT OF ATTENDANCE AT THE MEETING HELD ON JANUARY 14, 2020**

Afternoon Workshop

58 Fore Street: Dundon, Eaton, Silk, Smith and Stanley present; Dunfey and Mazer absent.

Evening Public Hearing

1884 Forest Avenue: Dundon, Eaton, Silk, Smith and Stanley present; Dunfey and Mazer absent.

293 Presumpscot Street: Dundon, Eaton, Silk, Smith and Stanley present; Dunfey and Mazer absent.

754 Congress Street: Dundon, Eaton, Silk, Smith and Stanley present; Dunfey and Mazer absent.

4. **REPORTS OF DECISIONS AT THE MEETING HELD ON JANUARY 14, 2020**

- i. Level III Site Plan and Conditional Use; 1884 Forest Avenue, John Chau, Applicant. Stanley moved and Eaton seconded a motion to waive the Technical Manual standard requiring that no more than two driveways be permitted for ingress and egress in order to allow three driveways on the site. Vote 5-0 (Dunfey and Mazer absent). Stanley moved and Eaton seconded a motion to waive the Technical Manual standard requiring compliance with basic, general, and flooding standards of Chapter 500 to allow an increase of 0.01 c.f. of stormwater flow into the combined sanitary sewer line on Riverton Drive. Vote 5-0 (Dunfey and Mazer absent). Stanley moved and Eaton seconded a motion to find the plan in conformance with the conditional use standards of the Land Use Code. Vote 5-0 (Dunfey and Mazer absent). Stanley moved and Eaton seconded a motion to find the plan in conformance with the standards for a Traffic Movement Permit and grant a permit with one condition of approval. Vote 5-0 (Dunfey and Mazer absent). Stanley moved and Eaton seconded a motion to approve the site plan application with five conditions of approval. Vote 3-2 (Dundon, Eaton and Smith in favor; Silk and Stanley in opposition; Dunfey and Mazer absent; the motion fails.
- ii. Level III Site Plan; 275 Presumpscot Street; Waldon Realty, LLC., Applicant. Stanley moved and Eaton seconded a motion to waive the Technical Manual standard requiring one parking space for each 1,000 square feet of floor area or major fraction thereof for every business, manufacturing, and industrial building not catering to retail trade in order to allow a reduction in required parking from 57 to 19 parking spaces. Vote 5-0 (Dunfey and Mazer absent). Stanley moved and Eaton seconded a motion to approve the site plan application with three conditions of approval. Vote 5-0 (Dunfey and Mazer absent)
- iii. Level III Site Plan; 754 Congress Street; CenterWest, LLC., Applicant. Stanley moved and Eaton seconded a motion to waive the Technical Manual standard for parking space dimensions of 9 feet in width to allow parking spaces of 8.5 feet in width. Vote 5-0 (Dunfey and Mazer absent). Stanley moved and Eaton seconded a motion to waive the Technical Manual standard requiring a 24-foot wide drive aisle width for two-way access aisles with 90-degree parking in order to allow a drive aisle width of 22 feet. Vote 5-0 (Dunfey and Mazer absent). Stanley moved and Eaton seconded a motion to approve the site plan application with four conditions of approval. Vote 5-0 (Dunfey and Mazer absent).

5. NEW BUSINESS

- i. Level III Subdivision Amendment; 1190 Brighton Avenue; Dirigo Center Developers, LLC., Applicant. (estimated time 7:00 - 8:00 p.m.) The Planning Board will hold a public hearing on a subdivision amendment to facilitate the adjustment of lot lines for four tax lots located at 1190 Brighton Avenue. The subject properties are bisected by the Portland-Westbrook city line, total 16.48 acres in size for the portion within the City of Portland, and are zoned B-4 and I-L.

6. EVENING WORKSHOP - 8:00 P.M.

R-6 Design Standards (estimated time 8:00 p.m.) The Planning Board will hold an evening workshop to review proposed revisions to the City of Portland Design Manual related to the R-6 zone design standards.



MEMORANDUM

PLANNING AND URBAN DEVELOPMENT DEPARTMENT PLANNING DIVISION

To: Sean Dundon, Chair, and Members of the Portland Planning Board
From: Christine Grimando, Director of Planning and Urban Development
Nell Donaldson, Director of Special Projects
Matt Grooms, Senior Planner
Date: January 17, 2020
Re: Addendum to the 12/13/19 ReCode Update Memo to the Planning Board
Meeting Date: January 21, 2020

I. INTRODUCTION

Due to inclement weather, the ReCode workshop originally scheduled for December 17, 2019 was rescheduled to January 21, 2020. At the January 21 workshop, staff plans to cover the material which would have been presented to the Board on December 17. As originally noted in those materials, the purpose of this workshop is twofold: to review edits to the first four articles of the draft code resulting from Planning Board, public, and internal staff comment, and to introduce the next three articles of the draft code – Zones, Uses, and Dimensional Standards.

The December staff memo has been included in the backup materials for this January meeting as originally presented. In addition, staff has prepared this addendum to provide the Planning Board with a further update on the ReCode process moving forward and to summarize public comments that have been received since the December 17 workshop cancellation.

For more information on the process, or to review and comment on the draft document, please visit the [ReCode website](#). Public comments may also be submitted through email to planningboard@portlandmaine.gov.

II. TIMELINE MOVING FORWARD

From January through the spring of this year, the Planning Board will review sections of the draft land use code at a series of special Planning Board meetings, anticipated to occur once per month until all articles of the draft code have been reviewed. Staff anticipates that this review will occur sequentially, with typically between three and five articles being presented per meeting. At each meeting, edits to preceding articles, based upon prior feedback from the Planning Board, members of the public, and other city staff, will also be presented in redline. In this way, the review of the articles of the code will proceed in a progressive manner, until the entire draft ReCode, continuously revised through the review, is before the Planning Board. Currently, Planning Board meetings are planned for February 18, March 17, April 21, and May 19.

In parallel with the Planning Board's review, articles of the code will be posted to www.recodeportland.me. In order to facilitate public comment, staff will post a new version of the document, which contains (in addition to all preceding articles) those articles to be presented at that workshop, simultaneously with the posting of Planning Board workshop materials. At the same time, staff will also notify the public on upcoming workshop dates and identify new articles for review. As is now the case, following Planning Board workshops, that version of the document will remain posted for approximately three weeks, to allow time for public input. At the end of that period and prior to the subsequent workshop, staff will review all comments and will incorporate feedback where appropriate into the next iteration of the document.

III. PUBLIC COMMENT

As of the posting of this memo, a total of 84 public comments have been received through the city's online document review platform (*Attachment 2*). In addition, comments have been received via email (*Attachment 1*). Major themes raised in these comments include:

- A. Questions and concerns about process, including the intent of ReCode Phase I and extent of changes to the existing language of the code
- B. Concerns regarding specific changes proposed, and
- C. Concerns over existing policy as represented in the new Code.

The following is a summary of comments received as of January 16 and initial responses, grouped by major areas of concern and interest. Comments related to formatting, syntax, and document structure will be addressed in the next iteration of the document.

- A. **ReCode Phase I process:** One of the prevailing sentiments voiced in the public comments is a request for a detailed accounting of text edits to the existing code, or a side-by-side comparison, and the related concern that substantive policy changes have been incorporated into the draft without sufficient acknowledgment.

Since adoption of *Portland's Plan 2030* in 2017, Planning staff have focused on the reorganization and restructuring of the city's land use code to create a more streamlined, functional, and consistent document that is easier to interpret, administer, and amend, as well as introducing some early policy initiatives. Through changes to format, elimination of redundancies, and where prudent, consolidation of like standards or elimination of unnecessary, confusing, or outdated language, the land-use code has been reduced in length by more than 500 pages and has gained an organizational clarity lacking in the current Code.

While the intent and substance of much of the existing Land Use Code has been maintained in the draft, ReCode is not an effort to amend that document, but rather to create an entirely new product. By virtue of its significant reorganization of content, there have been both organizational and substantive changes made to the existing code, including consolidation, elimination, and addition of language. In the 12/17/19 memo, staff attempted to broadly categorize the types of edits that have been incorporated into the draft, highlight the major structural changes to the code, and focus in more detail on the substantive policy changes that are being proposed. Since every page of the current 960 page code has been altered to some extent, staff will continue to communicate the scope of changes, highlighting areas of particular substance and responding to particular areas of interest or concern from the Planning Board and stakeholders.

- B. **Concerns regarding specific changes in the ReCode:** A number of comments on the ReCode text focused on specific edits. For example, neighbors commented on proposed use regulations, such as regulations for sheltered care group homes, manufactured housing, and offices; certain purpose statements; ADU language and its relationship to short term rental regulations; and rules of measurement, including the proposed language for 'average grade.'

Generally speaking, and as noted above, Phase I of the ReCode reorganizes, streamlines, and clarifies the content of the existing code, and does not aspire to reproduce all of the text of the current code. This means that in the ReCode, with respect to use standards, for example, some have been consolidated where they overlap, others have been collapsed where only minor variations currently exist across zones, and some use-related language has been eliminated (for example, references to fire code requirements or federal or state law, as these regulations exist outside of the land use code).

With respect to specific concerns of this kind that arose repeatedly over the course of the public comment:

- R-6 purpose statement: The R-6 Residential zone was significantly amended in 2015, with the goal of allowing increased residential density and opening up previously unbuildable lots for development.

The latter of these changes negated the need for small-lot development provisions that previously existed. While these provisions were eliminated from the development standards, the R-6 purpose statement retained a paragraph specifically encouraging small lot development on vacant or underutilized lots, language which was drafted to align with the small lot standards. In keeping with the post-2015 development standards, staff has suggested eliminating this paragraph in the draft ReCode.

- R-6 building width regulations: Staff has proposed the addition of one new dimensional standard for the R-6, a maximum building width requirement.- The draft standard is based on several years of public and Planning Board feedback received during the course of development review, as well as technical analysis on the part of staff. Neighbors have raised concerns about the widths as proposed.
- B-6 purpose statement: Staff has made edits to the B-6 purpose statement, including editing out language that simply states that development criteria, including height overlays and design standards, may be created for the zone, and language that identifies where these regulations may be found. Purpose statement language of this sort was intentionally edited out, as it does not represent the zone's 'purpose,' but rather states a fact about the development of supplemental standards which applies much more broadly and is generally covered elsewhere in the ordinance.
- Short-term rentals: Several comments were submitted that pertain to newly proposed regulations for accessory dwelling units, with concerns that the new provisions would enable development of short-term rentals. The City has adopted a short-term rental ordinance and licensing scheme which establishes a cap on the number of short-term rentals permitted within the city, in Chapter 6 of the City Code; the proposed changes to ADU standards intentionally do not duplicate short term rental policy that is addressed elsewhere.
- Building height calculations: A concern articulated in the public comment is the method for calculating structure height using the post-development average grade of the site. This method, reflected in a new rule of measurement for 'average grade' in the ReCode, reflects existing practice and was developed with the assistance of both Zoning and Corporation Counsel. However, this process is different from development on Portland's islands, where the pre-development grade is used to calculate building height. At this time, staff does not propose a substantive policy discussion on the merits of various approaches to calculating building height; the 'average grade' language as drafted is simply meant to capture existing practice for purposes of clarity.

It is anticipated that there will be further discussion of these topics at the Planning Board workshop.

- C. **Concerns over existing policy as represented in the ReCode:** Last, a number of comments focused on existing policies which have been carried over into the draft code. For example, staff received public comments on existing definitions related to housing and affordability, existing R-6 dimensional standards, separation requirements, performance standards regarding relocation of displaced residents in the B-3 zones, and height exceptions for rooftop appurtenances. While these comments certainly merit further thought and discussion, they fall outside the scope of ReCode Phase I. Comments of this nature are being cached to help inform future discussions for Phase II of Recode.

IV. ATTACHMENTS

1. Public Comment

- a. Barbara Vestal (12.16.19)
- b. George Rheault (12.17.19)
- c. Cynthia Cochran (12.17.19)
- d. Christian MilNiel (12.17.19)
- e. Erna Koch (1.3.20)
- f. Michael Hutchins (1.10.20)

- g. Erna Koch (1.17.20)
 - h. Karen Snyder (1.17.20)
 - i. Michael Hoover (1.17.20)
- 2. Public Comment on Articles 1 – 7



Helen Donaldson <hcd@portlandmaine.gov>

Fwd: Draft Recode Provisions

6 messages

Christine Grimando <cdg@portlandmaine.gov>

Mon, Dec 16, 2019 at 11:43 AM

To: Helen Donaldson <hcd@portlandmaine.gov>, Matthew Grooms <mgrooms@portlandmaine.gov>

Christine Grimando, AICP
Acting Director
Planning & Urban Development Department
389 Congress Street
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----- Forwarded message -----

From: **Barbara Vestal** <vestal@chesterandvestal.com>

Date: Sun, Dec 15, 2019 at 9:53 PM

Subject: Draft Recode Provisions

To: <planningboard@portlandmaine.gov>Cc: Christine Grimando <CDG@portlandmaine.gov>, Belinda Ray <bsr@portlandmaine.gov>, <ksnyder@portlandmaine.gov>

Chair Dundon and Planning Board Members:

I have spent a few hours reviewing the ReCode provisions you have scheduled for workshop on 12/17. I must say I am very frustrated that the materials provided to you and to the public are not more transparent about the changes being proposed.

Since it is a complete changeover from current to new draft, it is not possible to prepare a redline version. But it is not too much to ask that where the draft varies from the current, that changes should be flagged by staff. And once it gets into draft form, every change from there on out should be captured in a redline.

MY MAJOR OBJECTION AT THIS TIME IS THAT THERE ARE SUBSTANTIVE POLICY CHANGES BEING MADE BY OMISSION, WITHOUT ANY FLAGGING OF THOSE CHANGES FOR THE BOARD OR THE PUBLIC.

Staff keeps repeating that Phase I is formatting and organizational, and that policy debate and changes will not be made until after Phase I is adopted. Then in Phase II policy changes to bring the zoning into line with the comprehensive plan will be pursued. However, in the draft before you there are substantive changes. I have not done an exhaustive review, nor should it be my job or the job of the public at large to identify all of the changes. The burden should be on staff to flag each of these changes in a memo to be presented to the Planning Board and the public for subsequent discussion.

I primarily only looked at the R-6 draft text. Among the changes I found from the existing R-6 language are the following:

1. For some reason Professional Offices is changed to "General Offices" in the chart, which then refers to notes. At the qualifying note 6.5.6.C, somebody, making a substantive change, has decided to omit the existing language which currently states that professional offices are allowed BUT that category excludes personal services, retail services and veterinarians. The new draft only expressly says that veterinarians are excluded. The list of illustrative examples of permitted professional offices contained in the existing text are omitted in the draft. 14-137(c)(2). I don't know whether somebody has made the judgment that personal services or retail services should be allowed. It has not been flagged as a decision point because there has been a representation that there are no substantive changes.

2. The current R-6 extensive provisions about manufactured housing do not appear in the draft sections. 14-136(a)(4). It is unclear what the intent is for individual manufactured housing units.
3. In the current R-6 zoning, there are requirements that documentation of special needs independent living units must be recorded in the Registry of Deeds. Those provisions are omitted in the current draft. Was there a decision to delete that requirement? 14-136 (b)(7)
4. Only some of the R-6 conditions for hostels are included. It is unclear whether staff intends to house them elsewhere or they have decided not to include them at all. 14-136 (b)(9).
5. The sheltered care group homes in the current R-6 zone are specifically limited to homes that are not serving parolees, persons involved in correctional prerelease programs or current illegal drug users. That restriction is omitted in the draft which is before you. Similarly our current zoning requires that the proposed use provide adequate on-site staffing AND supervision of residents. The draft omits the requirement for adequate supervision.
6. In the dimensional standards, there is an inconsistency between "grade, average" and "grade, predevelopment," with the latter stating it is at the corners of the foundation of the proposed structure. Even if we are putting off until Phase II the critical policy discussion on getting height measured correctly, there seems to be something missing if these "rules of measurement" are supposed to be documenting how it is actually done now.
7. The discussion in 7.5 D rooftop appurtenances fails to acknowledge that there are exceptions to the statement that rooftop appurtenances may exceed the height limitations. At a minimum it should say except as otherwise limited in the Munjoy Hill Conservation Overlay Zone or a similar overlay zone.

These are just some examples of what appear to be substantive changes that have not been flagged as being contained in the materials before you. Admittedly some of them are fairly subtle. But the point is that there are policy choices that are being made by staff, and they are not being held for discussion in Phase II, nor are they being flagged so that you and the public are aware of the shifts. Some of the changes (e.g. personal services vs. professional services, parolees and persons in correctional pre-release programs, adequate supervision, rooftop appurtenances exceeding height limitations, etc.) delete provisions that were there for a purpose and could have a significant impact on how well the proposed uses fit into a dense residential neighborhood.

In addition to these variations from existing language, there are areas that are so different that they cannot even be tracked to see what is being left out. For example, staff needs to explain what they are doing about preschool, day care facilities and home babysitting services. They seem to be lumping them together in some provisions, but the definition of preschool seems to assume a school that might be providing some day care services; it does not seem broad enough to include home babysitting services.

In addition there are obvious errors. It says uses not expressly listed in Tables 6-1 to 6-6 are prohibited. There are no tables 6-1 to 6.6. They are 6-A to 6-F. 6.2.2.

Why aren't waterfront zones included in Article 5? They are geographic zones just like the others.

What happened to the term limits for Planning Board members? They used to exist.

Why such a disproportionate emphasis on signs on the definition section?

While it might be a good idea to have a maximum building width, what is the rationale for the specific new maximum building width standards that are just being introduced in the R-6? How does it apply on a corner lot? Is there a comparable building depth maximum that would apply there? If a lot has frontage on two streets, how does one determine which is the width?

Why aren't the purpose statements imported intact? The purpose statement for the B-6 zone is paraphrased, leaving out language about encouraging a "distinctly urban form" and leaving out a qualifier "as recommended in the Eastern Waterfront master plan for redevelopment." These are in the current purpose statement and are important phrases.

How can this process be made more transparent? It should not be up to lay citizens or a volunteer board to do side-by-side comparisons of existing and proposed draft language. Similarly it is next to impossible to do a good job of making sure concepts do not slip through the cracks when chunks of proposed language are being rolled out in succession.

If this Phase I is being represented as just repackaging without making substantive changes, maybe staff needs to simultaneously be presenting the Planning Board, the public and other reviewers with a marked up copy of the current zoning ordinance indicating where all of the pieces have been moved to (or where they are to appear in future drafts).

Disappearing language may be inadvertent or it may be intentionally held for some future section. The point is we don't currently have this information, it is impossible to do a thorough review without it, and only staff has access to the information to recreate what they have done as they have produced the new draft. Similarly where there are specific policy changes (such as ADUs) staff should be calling them out very clearly as decision points.

Regards,

Barbara Vestal

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Public Comment: Portland ReCode is Slow as Molasses Disaster

George Rheault <george.rheault@gmail.com>

Dec 17, 2019 11:14 AM

Posted in group: **Planning Board**

I get that Portland's elected officials and city administration are too scared to reform its massively wasteful and climate-change-inducing land-use policies, but hey, it is not 1965 anymore and the planet cannot wait. The trouble with Portland's land use ordinances is not formatting, layout or graphical presentation but substance which the Planning Board refuses to address in any timely fashion.

Below are some links that show that Portland can continue its teeny-tiny baby step moves away from its NIMBY exclusionary suburban sprawl zoning legacy and have very little to show for it for years (like Seattle as outlined in the Sightline article attached) OR it can rev its engines and take the bull by the horns like Bastrop, Texas recently did (also attached).

While Bastrop is only 1/7th the size of Portland's population, its land area is about half Portland's land area (almost 70% of Portland's actual municipal territory is water), so the comparison is relevant.

Portland, like Bastrop, needs to get back to the grid, embrace urbanism, and ELIMINATE wasteful insidious suburban forms like PRUDs, cul-de-sacs and single-family zones.

Better hurry up - the lobsters are already moving to Canada.

<https://www.sightline.org/2019/11/15/it-shouldnt-take-a-decade-to-re-legalize-duplexes/>

<https://www.statesman.com/news/20191125/bastrop-council-adopts-new-development-code>

<https://www.curbed.com/2019/12/2/20991992/real-estate-grid-infrastructure-urban-planning-bastrop>

[NB: Bastrop has already made concessions but at least it is getting something valuable in exchange for its give-aways:
<https://www.statesman.com/news/20191024/bastrop-council-compromises-with-neighbors-over-lcra-property-zoning>]

https://en.wikipedia.org/wiki/Bastrop,_Texas

It Shouldn't Take a Decade to Re-legalize Duplexes

Loosening zoning to allow more homes is a daunting task for cities. States can help.



This mid-century triplex in Seattle's West Woodland neighborhood would be illegal to build today under current zoning rules. Photo by Dan Bertolet, used with permission.



This mid-century triplex in Seattle's West Woodland neighborhood would be illegal to build today under current zoning rules. Photo by Dan Bertolet, used with permission.

This month, Seattle city council will take a vote that illustrates how ludicrously difficult it is for cities to change their own rules to welcome more new neighbors.

The vote is one [tiny but important step](#) in the dragged-out bureaucratic grind Seattle will have to go through to loosen the stranglehold of zoning that locks up [three quarters](#) of the city's residential land for expensive stand-alone houses with big yards.

The council vote would ensure that Seattle's next [20-year plan for growth](#) includes the option—*just the option*—of opening up detached house neighborhoods to “middle housing” such as duplexes and rowhouses. It's a vote to agree to talk about something eventually.

Even if it passes, that growth plan won't be done until four years from now. Enacting the actual changes to zoning—assuming the final plan does end up calling for them—could swallow another two years. That means re-legalizing middle housing likely won't happen until a full decade after Seattle's 2015 affordability plan first [recommended it](#).

In a city with soaring rents, on a planet in a climate emergency, this is utterly insane.

How many families will be forced to the urban fringe by rising rents and prices because Seattle is maintaining its [invisible walls](#) of exclusion for an extra ten years? Thousands, if not tens of thousands.

Adding compact homes to job-rich, growing cities like Seattle is also a critical path to reining in climate pollution, by [reducing car dependence](#), and [cutting home energy use](#). And the science tells us that to avoid catastrophic warming, we have 11 years to [halve carbon emissions](#).

It's the same story for most North American cities. They can't get out of their own way and enact reforms that would allow what they badly need: more homes. This failure of local government demands state-level solutions.

So far, one state has stepped up in a big way. Last summer, Oregon [legalized fourplexes](#) in all large cities and duplexes almost everywhere in the state. In a move almost as bold, California just legalized [two accessory dwellings](#) on every house lot.

Most North American cities won't be lifting their bans on modest housing choices any time soon unless these two state wins become a national trend.

Exclusionary zoning is no ordinary law

Imagine there was this law [commonly on the books](#) that acutely worsens [housing affordability](#), [carbon emissions](#), [sprawl](#), and [economic opportunity](#). And let's say this law was originally conceived to [segregate neighborhoods](#) by class and race. And let's say [wonks](#) and [advocates](#) from across the [political spectrum](#) shared a strong consensus on getting rid of this law. And let's say the deep flaws of this law had been covered in lots of major media outlets like the [New York Times](#).

One might think city leaders would be rushing to repeal that law. But prohibitions on everything but detached houses on large lots are no ordinary laws. Few cities have touched them, and those that have acted have only scratched the surface. Why?

Part of the problem is self-imposed bureaucracy that turns each zoning change into an excruciating multi-year marathon. Another part is overreliance on public engagement [typically dominated](#) by a small minority of wealthier, older, whiter, homeowners. The voices heard most invariably oppose allowing more homes.

The core reason, though, is politicians know that most residents who vote in local elections don't want their neighborhoods to change—it's human nature and there's not much city officials can do about it. In most cities, the depth and pace of zoning reform needed won't happen without intervention from higher levels of government—that is, from states.

Seattle can't afford ten years to make room for new neighbors

Seattle, as I described above, is on track to squander a decade—or perhaps longer if obstructionists file legal appeals—before re-legalizing small-scale multifamily homes citywide. A groundbreaking city plan instigated by former mayor Ed Murray first proposed it in 2015, but the mayor quickly [distanced himself](#) from his own plan's recommendation after it [stirred the ire](#) of lawn-and-driveway zoning preservationists.

In 2019, Seattle, after a three-year process, adopted a [package of rezones](#) in that included [legalization of middle housing](#) in six percent of the city's land zone formerly reserved for single-detached houses. It was a minor change relative to the legislation's other rezones that affected every multifamily area in the city, yet still it was the most controversial piece because it dared to meddle with “single-family” zoning.

Meanwhile, the Seattle Planning Commission in 2018 published an [in-depth report](#) making the case for re-legalizing middle housing. But unlike [some cities](#), Seattle's Planning Commission has zero authority to shape policy. Electeds can use it for political cover or ignore it as they see fit.

Seattle's current mayor, Jenny Durkan, has shown little enthusiasm for opening up more neighborhoods to middle housing. To make sure the idea stays alive, Councilmember Teresa Moqueda proposed a [budget “proviso”](#) that would deny funding for an upcoming environmental study unless it analyzes rezones that would permit middle housing in single-detached house zones, along with related anti-displacement measures. The environmental study is a prerequisite for a state-mandated [update to the comprehensive plan](#)—the city's 20-year roadmap for growth.

In other words, the budget proviso would put the city in a legal bind if officials drag their feet even more on middle housing rezones. It's an insurance policy against can-kicking.

The fact is, failing to consider opening up detached house zones to middle housing in the plan for Seattle's next 20 years of growth would constitute urban planning malpractice.

Still, city council felt the need to wield a funding threat to keep that from happening. Bureaucratic hurdles not only suck up time, but they also make zoning reform all the more vulnerable to obstruction.

Last summer, [Seattle adopted](#) the most progressive rules for secondary cottages of any major US city. But it took [five years](#) from when Councilmember Mike O'Brien first proposed it! Five years just to enable the gentlest possible incremental neighborhood change in one of the fastest growing, most forward-thinking cities in the nation.

Other major cities have also been mired, with one exception

Minneapolis is so far the only big US city to [authorize middle housing citywide](#), and the process was exceptionally fast. The [alignment of many stars](#) enabled electeds to legalize triplexes after only two years of wrangling. In practice, though, triplex zoning isn't much different from Seattle's recent allowance for two accessory dwellings per house lot.

Portland launched its planning process to [re-legalize middle housing](#) in September 2015. A city council vote is expected in early 2020. It's a cutting-edge plan that would permit up to fourplexes on all lots, including crucial size bonuses for projects that create more or cheaper homes. But getting there has already devoured four and a half years.

Vancouver, BC, has long been the North American leader on accessory dwelling policy. In June 2018, the city launched a [new effort](#) to open up low density neighborhoods to middle housing. A few months later, it took a first step, [re-legalizing duplexes citywide](#) (though [only 72 permits](#) for duplexes have been filed). After that, however, officials decided to fold the middle housing effort into a [long-range plan](#) that isn't scheduled for implementation until spring of 2022.

In 2012, Austin launched [CodeNEXT](#), a major rewrite of the city's zoning rules. Early proposals for robust middle housing rezones got [watered down](#) over the years, and then in August 2018 the city council [scrapped the whole thing](#). Austin has since launched a [new code update](#) that proposes allowing duplexes citywide and higher unit-count middle housing near transit.

[Atlanta](#), [Washington DC](#), and [Charlotte](#) are contemplating middle housing zoning reform as part of broader planning efforts, but action—if any comes of it—is several years off. And at least one major city—Philadelphia—has been [going backwards](#).

Almost invariably, the process is ridiculously slow, at best. In the vast majority of cities, including exclusive, job-rich suburbs, the conversation is barely happening at all.

A few smaller US cities have dabbled

In perhaps the best US example of a smaller city taking action, in late 2018, [Tigard, Oregon](#), a Portland suburb, legalized courtyard apartments, cottage clusters and de-facto duplexes on almost every lot, plus fourplexes on almost every corner.

Around the same time Olympia, Washington, demonstrated how absurd things can get. City council adopted a modest set of [zoning changes](#) to permit middle housing in more neighborhoods. A local anti-housing group [filed an appeal](#) with the state's growth management hearings board, and in July 2019 the board [invalidated](#) the [new zoning](#) (see correction note, below). In a bizarre twist, a [state law](#) passed earlier this year enacted a new ban on such appeals, but since it's not retroactive, Olympia must now re-adopt the exact same zoning ordinance.

In 2008, [Grand Rapids](#), Michigan, passed new rules that permit some middle housing types in low-density areas, but only with [special approval](#). [Durham](#), North Carolina, recently legalized duplexes, but only in neighborhoods near downtown. [Kirkland](#), Washington, [Bloomington](#), Indiana, and [Charlottesville](#), Virginia, have middle housing plans in the works.

Local control isn't working, but states can step up

Seattle's city council will do right to proactively check the budget proviso box so that middle housing zoning reform doesn't get stalled by a technicality. But a decade to open up neighborhoods to much-needed middle housing options is way, way too long to wait in the face of our dual affordability and climate crises.

Likewise, across North America, city governments that stick their necks out to take on exclusionary zoning struggle mightily to overcome the gauntlet of their own bureaucracy, combined with the fear of neighborhood change that drives stiff political resistance. The challenge is so formidable that most cities don't even bother trying.

As the evidence for intractable local dysfunction piles up, the solution becomes more evident: [state legislation](#).

Oregon showed how it's done last summer by [legalizing duplexes and fourplexes](#). California got part way there this fall by requiring cities to allow two accessory dwellings on every house lot—effectively [triplexing the state](#). Last spring, Washington [tried](#) and [failed](#) to pass accessory dwelling reform. Just last week, a newly elected member of the Virginia House of Delegates, Ibraheem Samirah, [promised state action](#) against exclusionary zoning.

Next state for middle housing, please?

Seattle city council will vote on the middle housing budget proviso on [November 25](#). Sightline's letter of support is [here](#).

Correction 11/18/19: In the original version of this article I wrote that Olympia's missing middle rezone was invalidated because of a "minor technical flaw in the public process." This was incorrect, as commenters on the article pointed out. The growth management hearings board [found](#) inconsistencies with the city's comprehensive plan and flaws in the environmental analysis.

How a small Texas city rewrote the rules of development

Bastrop, Texas, found that updating the building code meant getting back on the grid



An intersection in downtown Bastrop, Texas. Last month, the city adopted a new building code, known as Bastrop Building Block, or B3, which radically alters how the city will approach development

Courtesy City of Bastrop, Texas.

A small town outside Austin, Texas, took a big step toward becoming a more sustainable and walkable community. In many ways, it was as simple as getting back on the grid.

Last month, Bastrop, Texas, adopted a new building code, known as Bastrop Building Block, or B3, which radically alters how the city will approach development. Instead of using the one-size-fits-all approach common to land-use policy, the new flexible system was designed to address three interrelated issues hitting municipalities across the county: population growth, aging infrastructure, and outdated development patterns.

While the details of local zoning code may seem technical, Bastrop's change is far from boring. The shift, according to proponents, may help reshape the city at little to no cost to local government, and even serve as a sustainable model for thoughtful development in a state known for a sprawl-centric development culture. It all starts with water.

How flooding washed away old planning rules

Located just 20 minutes east of the booming city of Austin, Bastrop leaders knew that “the growth was coming,” says city manager Lynda Humble. So Bastrop decided to change its policies in the middle of 2018. That May, Humble, who was in the midst of her first year as city manager, told the city council that, under the existing code, new development would exacerbate the city’s flooding problems—the town had faced four FEMA-declared floods from the Colorado River and then Hurricane Harvey in just the past few years—and she couldn’t do anything about it. Since the city is on the hook to maintain flood infrastructure, it could go broke without enforcing smarter, more sustainable development mandates.

The council decided to rewrite the rules. There had already been meetings and discussions around a forthcoming comprehensive plan for the city, and residents had made it clear they wanted managed growth and fiscal sustainability. The challenge to any change was accomplishing these goals while maintaining the feel of Bastrop, a city founded in the early part of the 19th century.



An example of how new development would fit into the B3 model.

Courtesy Bastrop, Texas

The new B3 code was built around the idea of getting rid of nuisances, not mandating specific types of buildings. That means, for instance, retail has fewer parking minimums (requirements for a certain number of spaces per store) to reflect the shift to online shopping, and each residential lot can add two accessory-dwelling units. The city was also divided up into a series of character districts, new designations that reflected existing buildings and neighborhoods, such as the museum district or university district, as opposed to more formulaic residential or commercial

zones. Within these character districts, new developments needed to be built on gridded streets within Bastrop Blocks, 385-foot-square sections that all have to deal with their own drainage issues, so as to not dump drainage problems onto the city.

Mayor Connie Schroeder had said she wanted to build neighborhoods, not “a sea of faceless subdivisions,” and the code allows more flexibility.

How returning to the grid can save a city

Part of the process included an analysis of the city by consultants from SimpleCity, based in nearby San Marcos, Texas. Matt Lewis, the company’s CEO, and his team conducted a detailed examination of downtown Bastrop, a traditional area filled with small, gridded blocks. In addition to discovering that downtown was the only fiscally sustainable area of Bastrop—based on an analysis of revenue per acre and productivity—the consultants found that zoning alone wouldn’t create the change the city wanted. Transportation reform also needed to be included, which meant altering parking rules and the layout of new streets in relation to existing roadways.

“Bastrop didn’t want to become anywhere America,” says Lewis. “Extracting the gridded street network as a key piece of the code was fundamental to going beyond typical zoning and ensuring this effort would be successful for generations to come.”

In 1837, when Bastrop was founded, the streets downtown were measured based on the turn of a wagon wheel. Today, at a time when planners are contemplating an era of [autonomous vehicles](#), these antiquated yet walkable streets still manage foster the kind of economic and social activity that makes street life and commerce thrive. B3 makes grids mandatory.

In keeping with the goal of fiscal sustainability, Mayor Schroeder said that simple math is all that’s needed to see that more sprawling developments patterns don’t add up. In November of 2017, the city council was analyzing the layout of streets in a new subdivision. Based on the length of the winding roads, the number of homes, and the property value, the city found that it would take 16 years for this development to generate the revenue needed to pay for 5 years of road maintenance. Denser, more closely connected streets mean lower construction and maintenance costs.

In postwar America, most cities left the grid and went with a system that allowed arterial roads, which form the curving and disconnected cul-de-sacs of modern suburbia. Bastrop may be one of the first to return to the right angle roadways.

“Another view of success is clarity and simplicity for the community,” says Mayor Schroeder, “to know what they can expect neighbors to build and what they can do on their own property.”

Humble says that the plan has proven the potential of planning and community engagement. When the full B3 proposal was adopted in November—a move that rezoned more than 4,700 pieces of property—there wasn’t a single protestor at the city council meeting. Residents have been able to

ask for variances, she says, and recent outreach to developers has helped spread the idea that creative projects that “push the envelope” are welcome.

“It’s already gratifying to know development is better based on the conversations we’re having today with developers,” she says.

Why aren’t more cities making similar shifts? Mayor Schroeder says that few are willing to admit they’re going broke, and fewer are willing to challenge existing paradigms of development.

“It’s unnerving to acknowledge that everything you’ve been trained on doesn’t work,” says Humble.

Cochran Comments re: 12/17/2019 ReCode and R-6 Design Standards Planning Board Workshops

Cochran, Cynthia <ccochran@eastbayside.org>

Dec 17, 2019 4:09 PM

Posted in group: **Planning Board**

My written comments are attached. Please include them in the public record for both of these PB workshops.

Thank you!

Cynthia Cochran
Vice-President/Treasurer
East Bayside Neighborhood Organization
Web Site: <http://eastbayside.org/>
Facebook: <https://www.facebook.com/eastbayside/>

To: Portland Planning Board
Re: ReCode and R-6 Design Standards Planning Board Workshops
Date: December 17, 2019
From: Cynthia Cochran, Hammond Street, East Bayside

My written comments today will only address the context and the process related to the proposed changes to the R-6 dimensional standards and the R-6 design standards.

Prior to the 2015 amendments to the R-6 zone, the minimum required lot size for housing development was 4,500 square feet. This was reduced to 2,000 square feet to incentivize “small lot infill development.” However, for the most part, that is not what has occurred. Instead, smaller lots have been combined, in order to construct larger, and larger, buildings, which are increasingly incompatible with the existing built environment, which is composed mostly of single-family, two-family, three-family, and a few 4-6-family dwellings.

There has been a substantial push-back from Munjoy Hill residents, leading to the creation and adoption of the Munjoy Hill Overlay Zone, and the proposed Munjoy Hill Historic District. This year, residents of East Bayside have joined this push-back chorus, after the biggest (to date), high-end, luxury, multi-family condo building was proposed, and approved by this planning board, for construction on Hammond Street on April 9th.

Given this context, it is truly unfortunate that the City planning staff did not reach out to the residents, and neighborhood organizations of these two, highly impacted, neighborhoods for discussion and dialogue, about changes to the R-6 dimensional standards, and to the R-6 design standards before scheduling these planning board workshops for this evening.

These two workshops do not offer an adequate, or respectful, opportunity for meaningful, public engagement on these two topics for the following reasons:

- Short notice (e-notice published Dec 11)
- Inadequate information provided in that notice (no mention of the R-6 dimensional changes in the ReCode notice)
- Relevant documents not published on web site till 4:15 pm Friday, Dec 13
- Extremely co-dependent changes to R-6 development are presented to two separate meetings
- The R-6 dimensional standards are “buried” in a “ReCode” discussion covering changes to seven articles of the City’s Land Use Code
- The highly regulated meeting format does not provide opportunity for discussion and dialogue, or for adequate follow up to questions.

In summary, these workshops will not help reduce the conflicts that have arisen between R-6 residents and the City's planning and development decision-makers. So much of this could have been avoided had City planners made different decisions about how to communicate with highly impacted residents.

I've just learned (3:31 pm) that these workshops have been canceled due to the current snowstorm. Hopefully, this will allow time for re-thinking the process, and planning a better approach. I was fortunate to be able to connect with Caitlin and Nell by phone for an initial chat about these proposals, but there is much more to discuss. I will wait for a more appropriate forum in which to do so.

Somerville gets rid of most parking requirements in new citywide zoning code

Christian MilNeil <c.neal.milneil@gmail.com>

Dec 17, 2019 3:27 PM

Posted in group: **Planning Board**

Wanted to make sure that everyone sees this:

<https://mass.streetsblog.org/2019/12/16/somerville-council-dramatically-curtails-off-street-parking-requirements/>

Somerville has roughly the same population as Portland does.

The kicker of this zoning revision is that it sets *maximum* parking ratios for new development in its densest neighborhoods, recognizing that parking garages in downtown neighborhoods a) waste valuable real estate that could otherwise be used for housing or offices; b) increase regional traffic; and c) undermine transit services by subsidizing drive-alone commuters instead.

Developers are working on proposals and projects that will add about 2,500 more parking garage spaces downtown, in Portland Square, the Portland Company site, and on Commercial Street.

For comparison purposes, the 4 lanes of Franklin Street can hold, at most, about 750 passenger cars parked in bumper-to-bumper traffic. There's no way local streets (or I-295, for that matter) can accommodate such a big increase in peak-hour traffic volumes, but the city thus far has no ordinance to regulate this.

ReCode is supposed to be taking a look at improving the city's toothless TDM standards and regulating parking more, but it needs to be done much more urgently before these garage projects completely swamp the city's ability to reduce traffic, and with it, all our chances of meeting regional greenhouse gas reduction goals.

Somerville's new zoning also strives to create more middle-class housing opportunities by doing things like legalizing up to 3 apartments in every residential lot across the city – something else we should be considering here in Portland.

Christian MilNeil

double u double u double u dot christianmilneil dot com

**Matthew Grooms** <mgrooms@portlandmaine.gov>

Recode information

EJ Koch <ejkoch@gmail.com>

Fri, Jan 3, 2020 at 4:31 PM

To: Christine Grimando <cdg@portlandmaine.gov>, recodeportland@portlandmaine.gov

Hello Christine –

I've been trying to make sense of the Recode information put up on the Webpage so far and it feels pretty dense. I am interested in getting copies of your internal informational memos to the Board discussing the provisions and what is intended/what is changed. Is there a strikeout draft? Memos that include charts or other assists to show changes the recode would make to current zoning? Responses to questions from Board members and others?

Anything that highlights the consistencies (or not) with the comprehensive plan?

I am always impressed with the materials staffpeople develop for their Boards/Commissions to facilitate better understanding and help with decision making.

If possible, I'd like to get these materials by the end of next week (January 10) so I'll have some time to digest them.

Many thanks –

Erna Koch
ejkoch@gmail.com
617-818-0882
Vesper St., Portland



Matthew Grooms <mgrooms@portlandmaine.gov>

Form Submission - Contact us Re:Code - ADUs

Squarespace <no-reply@squarespace.info>
Reply-To: mfhutchins@gmail.com
To: recodeportland@portlandmaine.gov

Fri, Jan 10, 2020 at 11:12 AM

Name: Michael Hutchins

Email Address: mfhutchins@gmail.com

Subject: ADUs

Message: As part of the work your committee is doing to make ADUs easier to build, are you revising the definition of a half-story?

A half story cannot contain an independent apartment or dwelling unit according to the current definition.

Thanks.

(Sent via *ReCode Portland*)



Matthew Grooms <mgrooms@portlandmaine.gov>

Fwd: Recode comments, EJ Koch

Helen Donaldson <hcd@portlandmaine.gov>
 To: Matthew Grooms <mgrooms@portlandmaine.gov>

Fri, Jan 17, 2020 at 1:56 PM

----- Forwarded message -----

From: jmy <jmy@portlandmaine.gov>
 Date: Fri, Jan 17, 2020 at 1:53 PM
 Subject: Fwd: Recode comments, EJ Koch
 To: Helen Donaldson <hcd@portlandmaine.gov>

On Friday, January 17, 2020 at 11:51:11 AM UTC-5, Ejkoch Gmail wrote:

I am writing to express my opposition to much of the proposed "recode," for a number of reasons, including a flawed public input policy, and the negative impact that the recode is likely to have on my neighborhood and others.

The Planning Department seems to be specifically targeting R-6 with proposed design changes. They say they worked with architects last year to make the proposed changes - however many residents were never made aware, nor were the neighborhood organizations which would be immediately affected by the proposed changes, and I'm not aware that there were any neighborhood meetings held.

What is the explanation for this? There was more than adequate opportunity to publicize and hold neighborhood meetings over the past year to explain the changes that would be made, and get feedback from those who would be affected.

This process, and the apparent results, completely contradict the Comprehensive Plan (Page 52) - "***Develop additional resources for neighborhood associations and citizen planners, such as neighborhood planning toolkits and processes to enhance communication between neighborhood groups and City staff, to enrich community input.***"

The Planning Dept appears to be minimizing residents' concerns by referring to "6 public comments" sent on 12/13/2019 when it was clear to some of us that the Planning Dept proposal made massive R-6 Design changes and then quickly put these changes on the Planning Board agenda for a 12/17/2019 Planning Board workshop. None of this appears to be working to the advantage of the residents of Portland.

Regarding the proposal itself, there are many questions. I and others have found the documentation on the web rather impenetrable, and unclear as to the impacts the planning department would expect from the recode provisions. Without an adequate public information and input policy, this proposal cannot be claimed as legitimate.

The Historic Resources Policy Guide: "Stabilize and enhance historic areas of the city by ensuring quality investment in existing structures and compatible infill development."

Question #1: How is removing all R-6 Design Standard language that support compatible infill regarding scale/massing and architectural compatibility by removing a 2 block radius requirement and instead using the ambiguous term of "neighborhood" accomplishing the goal of the Historic Resource Policy? The Planning Department proposes removal of ANY requirement of multi units to adhere to scale/massing and architectural compatibility.

The Housing Policy Guide supports a diverse and increased housing stock, recognizing this will necessarily involve new construction as well as investment in existing buildings: "Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents."

Question#2: How could encouraging even more predatory development entailing the removal/demolition of affordable and existing housing, to be replaced with high end luxury condos and high end single family homes be considered increasing “diverse housing stock?”

The Environment Policy Guide has much to say about building to high energy standards and encouraging alternative technologies for both new construction and rehabilitation of existing structures: “Encourage landowners and developers to incorporate sustainable design, materials, and practices in rehabilitation of historic resources and in new construction.”

Question#3: How is the Planning Department proposal that encourages demolition and speculation, or the proposed R-6 Design standard language changes going to help the environment? The Carbon footprint of demolishing a building is many times worse for the environment than renovating. Erecting high end “eco-friendly” million dollar condos does not adequately offset the environmental damage of demolition of existing buildings as shown:

-<https://amp.theguardian.com/cities/2020/jan/13/the-case-for-never-demolishing-another-building>

The Planning Department, instead of adequately enforcing the Current R-6 Design standards will, through the proposed changes, encourage even more predatory development than several neighborhoods already endure under the existing, unenforced design standards. I see no benefit to that.

The policy idea that any addition to the housing stock has the effect of depressing prices and will make the housing stock more affordable is **false**. The opposite is true. From the 2015 Greater Portland COG Workforce Housing Study (before speculative development started to overwhelm our neighborhoods):

- *“ At first glance, the construction of luxury housing in any downtown would be considered a boon, not a burden. In the long run, however, neighboring property owners will follow suit, running up sales prices and rents unsustained by real growth in wages, incomes, jobs, or property improvements.*
- *For workers, the consequence is longer commutes from suburbs and rural areas. Others will establish themselves in less expensive urban markets, such as Biddeford, Lewiston, Gardiner, and Bath. Absent a correction by regulation or the market, these forces could take shape, first as a collection of individual choices which then swell into an undeniable movement. And they did happen during the 2000’s.”*

This is just what is happening now. The proposed Design Standards and other changes will exacerbate this. Is this a good look for a city government that is constantly bleating about the need for workforce and affordable housing?

The Planning Board should require the Planning Department to actually reach out to and truly attempt to inform neighborhood stakeholders BEFORE going to any Planning Board workshop. The proposed R-6 Design changes are not acceptable, and may not be valid due to an inadequate public process.

Thank you.

Erna Koch
Vesper st.
Portland, ME

--
Nell Donaldson
City of Portland Planning Division
(207) 874-8723
hcd@portlandmaine.gov



Matthew Grooms <mgrooms@portlandmaine.gov>

Fwd: 1/21/2020- Planning Board Workshop on Recode Input Tool Process Needs Work

Helen Donaldson <hcd@portlandmaine.gov>
To: Matthew Grooms <mgrooms@portlandmaine.gov>

Fri, Jan 17, 2020 at 1:56 PM

----- Forwarded message -----

From: jmy <jmy@portlandmaine.gov>
Date: Fri, Jan 17, 2020 at 1:50 PM
Subject: Fwd: 1/21/2020- Planning Board Workshop on Recode Input Tool Process Needs Work
To: Helen Donaldson <hcd@portlandmaine.gov>

Saved to the project file.

On Friday, January 17, 2020 at 12:16:54 PM UTC-5, Karen Snyder wrote:

Dear Planning Board,

I am concerned as to the non-transparent process of this entire Recode input process that is being used for public comments for the following reasons. The link used is:

<https://www.recodeportland.me/public-input-1>

1) The Recode process started last February 2019 but the Recode Input Tool was just introduced by the City on 11/22/2019 right before the holidays for the public to comment into.

2) There is no red-lining of language changes made by the Planning Department when going from the old format to the new format. Note: No red-lining is needed when just moving language to a different format but red-lining the actual language content changes when moving to this standardized format is required.

3) ALL of the Recode comments made in the Recode Input Tool should REMAIN in the input tool and the Planning Department should only comment on these comments as to how they handled it. Did they use the comment, incorporate the comment or simply ignore it? But by the current process of removing the public comment and burying it in a staff memo does not provide continuity and transparency to how the public comments are being handled within this Recode process

Therefore, I recommend the following with the Recode Input tool link: <https://www.recodeportland.me/public-input-1>

Planning Department needs to please leave all public comments in this input tool and just indicate within each public comment how they handled that comment. This way it provides a fully transparent public comment change process.

Regards,
Karen Snyder
Waterville St.

--
Nell Donaldson
City of Portland Planning Division

1/17/2020

City of Portland Mail - Fwd: 1/21/2020- Planning Board Workshop on Recode Input Tool Process Needs Work

(207) 874-8723

hcd@portlandmaine.gov

Planning Board January 21 Recode Workshop Comments

Mike Hoover <chzstk@gmail.com>

Jan 17, 2020 11:48 AM

Posted in group: **Planning Board**

Chairman Dundon and Planning Board Members -

I currently live and own property on Munjoy Hill within the R-6 zoning district. I would like to address the Planning Staff development of the recode to date.

While I recognize that the staff have worked hard on this effort, and it is a difficult task, I have serious concerns about the current format and content of phase one of the recode. This document has been described as a reformatting of the code, without changing any of the intent of the code itself. However, there are very specific changes to important zoning criteria for the R-6 zoning district which are currently included in the document. This is not consistent with the stated purpose of this phase of the document development.

These changes have not been identified in the document as specific zoning code revisions. In addition, the document provides no ability for the reader to identify these important changes.

I request that prior to any further consideration of the recode update by the Planning Board, a document should be developed and submitted for review which identifies the specific changes made to zoning codes, and describes the intent for these changes.

Without this information, important changes will be made in a vacuum, without public input or consideration. It is important that this process be transparent and inclusive of public input. At this time, it is not.

Sincerely,

Michael Hoover
40 Melbourne
Portland, ME



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#001

Posted by **Foo** on **12/17/2019** at **11:26am**

Type: *Observation*

Agree: 1, Disagree: 0

Bar

Reply by **Foo** on **12/17/2019** at **11:26am**

Type: *Question*

Agree: 0, Disagree: -1

rep

#002

Posted by **Barbara Vestal** on **01/07/2020** at **3:13pm**

Type: *Question*

Agree: 0, Disagree: 0

How can this process be made more transparent? It should not be up to lay citizens or a volunteer board to do side-by-side comparisons of existing and proposed draft language. Similarly it is next to impossible to do a good job of making sure concepts do not slip through the cracks when chunks of proposed language are being rolled out in succession.

If this Phase I is being represented as just repackaging without making substantive changes, maybe staff needs to simultaneously be presenting the Planning Board, the public and other reviewers with a marked up copy of the current zoning ordinance indicating where all of the pieces have been moved to (or where they are to appear in future drafts).

Disappearing language may be inadvertent or it may be intentionally held for some future section. The point is we don't currently have this information, it is impossible to do a thorough review without it, and only staff has access to the information to recreate what they have done as they have produced the new draft.

Similarly the proposed draft clearly is not all just reorganizing without substantive changes. Where there are specific policy changes (such as ADUs) staff should be calling them out very clearly as decision points. Where there is any substantive change whatsoever (such as reconciling conflicting definitions), it should be flagged so that others have the opportunity to evaluate whether it is substantive or de minimus.

It is also not reasonable for the public to be presented with multiple versions of successive drafts UNLESS they are redlined to highlight what changes have been made from one version to the next. If multiple staff people are all making proposed changes, there has to be one central place where they are compiled.

There needs to be more public outreach and explanation. This platform seems like more of a gimmick than something that promotes meaningful dialogue. We need face

to face explanations of what is being proposed and why. It is also not workable to include these comments by reprinting each page with a "bubble" and reprinting a page for each comment.

Given all of the difficulties, is "Recode" really serving its purpose? How about a less ambitious effort to tackle the substantive issues that actually need attention to make them consistent with the new comp plan -- revisions to implement increased density along off peninsula corridors, a reworking of how heights are calculated to measure from predevelopment grade and capping the additional height that can be achieved from averaging on steep slopes, revisions to actually encourage affordable housing without height bonuses which are counterproductive in the R-6 zone. These are actual things that need attention. Maybe it would be more productive to table the mired down reorganization and get on with needed substantive revisions to the existing zoning.

#003

Posted by **Karen Snyder** on **01/12/2020** at **3:56pm**

Type: Question

Agree: 1, Disagree: 0

Like every other document or policy that is or has been revised, there needs to be red-line changes of the different language from the old and new document. In this document, there are massive changes to language from the Chapter 14 land use ordinance without being flagged. The Planning Dept should have red-lined all the changes on this proposed document so we can see what is being changed. It shouldn't be up to the residents to see what was sneakily changed by Planning Dept thinking we would not review this document.

#004

Posted by **Michael Hoover** on **01/10/2020** at **8:42am**

Type: Question

Agree: 1, Disagree: 0

Why is this review document not presented in redline form? This is the standard and widely accepted method for reviewing proposed changes to a document. The absence of redline format presents an unnecessary burden on the reviewer. I ask that the document be presented in redline format for "collaborative and accessible" dialog and review of this important document.

DRAFT

1 INTRODUCTORY PROVISIONS

1.1 TITLE

The title of this Chapter is the City of Portland Land Use Code and is referred to as the City of Portland Land Use Code or the Land Use Code.

1.2 ZONING MAP

The City of Portland Zoning Map is incorporated by reference.

1.3 PURPOSE

The intent of the Land Use Code is to protect the health, safety, and general welfare of the residents of Portland, consistent with the City's Comprehensive Plan, through standards that govern the orderly and compatible use of land, the form and mass of buildings, and the relationship of development to the public realm, Portland's open spaces, and the environment.

1.4 APPLICABILITY

No building or structure shall be erected, structurally altered, enlarged, repaired, moved, rebuilt, or used, and no land shall be sold, leased, conveyed, used, developed, or altered except in conformity with the provisions of this Land Use Code.

1.5 ENFORCEMENT

1.5.1 Enforcement

The Building Authority and/or a City of Portland Code Enforcement Officer is authorized to institute or cause to be instituted by the Corporation Counsel in the name of the City any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the Land Use Code.

1.5.2 Violations

Any person being the owner or occupant of, having control of, or having the use of any building or

premises or part thereof, who violates any of the provisions of this Land Use Code, shall be guilty of an offense and subject to the penalties and remedies provided in Section 1-15 of the City of Portland Code of Ordinances and 30-A M.R.S. § 4452.

1.6 RELATIONSHIP WITH OTHER LAWS

1.6.1 Federal and state law

Where conditions, standards, or requirements imposed by any provision of this Land Use Code are found to be inconsistent with a provision listed in the law or regulations of the State of Maine or federal government, the more restrictive provision shall control.

1.6.2 City of Portland Land Use Code

If any provision of this Land Use Code contains an actual, implied, or apparent conflict with another provision of this Code, the more restrictive provision shall control.

1.6.3 Fair Housing accommodation

The City of Portland may make reasonable modifications to the requirements of the Land Use Code to accommodate the needs of persons with disabilities as so defined in Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

1.6.4 Comprehensive Plan

The Comprehensive Plan serves as the basic policy guide for this Land Use Code. Amendments to this Land Use Code shall be generally consistent with the current Comprehensive Plan.

1.6.5 Current versions and citations

All references to other regulations or manuals in this Land Use Code refer to the most current version and citation for those regulations or manuals, unless expressly indicated otherwise. When the referenced regulations or documents have been repealed and not

replaced by other regulations or manuals, Land Use Code requirements for compliance are no longer in effect.

1.6.6 Private agreement

This Land Use Code does not nullify any private agreement or covenant. However, where this Code is more restrictive than a private agreement or covenant, this Code controls. The City does not enforce private agreements.

1.7 DELEGATION OF AUTHORITY

Whenever a provision requires the head of a department to perform an act or duty, that provision will be interpreted as authorizing the department head or officer to delegate that responsibility to others over whom he or she has authority.

1.8 RULES OF INTERPRETATION

1.8.1 Meaning of words and terms

All words and terms shall have the meanings shown in Article 3, unless otherwise expressly stated. For words or terms not specifically defined in this Land Use Code, they are interpreted by their common dictionary meaning or customary usage consistent with their context.

1.8.2 Graphics and illustrations

Graphics and illustrations are included to illustrate the intent of the text. In the case of a conflict between the text and any graphic or illustration, the text controls.

1.8.3 Lists and examples

Unless otherwise expressly indicated, lists of items or examples that use “including,” “such as,” or similar terms are intended to provide examples only, and shall not be construed as being limited to the items or examples listed.

1.8.4 Time

When a number of days is specified as a period from a certain day within which or after or before which an act is authorized or required to be completed, time is computed as the number of calendar days excluding the calendar day when the act is authorized or required to be complete. ⁰⁰⁵Business days shall be interpreted as days on which the City of Portland is open for business.

1.8.5 Fractions

Any fraction greater than or equal to 0.5 will be rounded up to the nearest whole number. Any fraction less than 0.5 will be rounded down to the nearest whole number.

1.8.6 Obligatory terms and conjunctions

The terms in the text of the Land Use Code shall be interpreted in accordance with the following rules of construction:

- A. The terms “must”, “shall”, or “will” are mandatory terms that express a requirement or impose an obligation.
- B. The terms “must not”, “shall not”, “will not”, and “may not” express a prohibition.
- C. The term “should” expresses a recommendation or suggestion and does not express a requirement or imposition.
- D. The term “may” is permissive and does not express a requirement or imposition.
- E. The conjunction “and” indicates that all connected words or provisions apply.
- F. The conjunction “or” indicates that the connected words or provisions may apply singly or in any combination.
- G. The conjunction “either [...] or” indicates that the connected words or provisions apply singly, but not in combination.

#005

Posted by **George Carhart** on **01/08/2020** at **6:56pm**

Type: Question

Agree: 0, Disagree: 0

so add two days to any time limit?

1.8.7 Gender

Words denoting one gender apply to all genders.

1.8.8 Abbreviations

Building Authority. Either the Director of the Department of Permitting and Inspections or his/her designee. 006

Council. The Portland City Council.

Planning Authority. Either the Director of the Department of Planning and Urban Development or his/her designee. 008

Public Works Authority. Either the Director of the Department of Public Works or his/her designee. 007

1.9 AMENDMENTS

1.9.1 Authority

The City Council may amend this Land Use Code and the Zoning Map incorporated herein.

1.9.2 Procedure

A. Application. An application for a text or Zoning Map amendment shall be filed with the Planning Authority. A payment of a nonrefundable application fee, as established by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. Once it is determined that the application is complete, the Planning Authority shall give a dated receipt to the applicant and, in the case of a map amendment, shall notify, by mail, all property owners within the limits of the proposed zoning map amendment and all property owners 500 feet beyond said area, except that for map amendments to a site located within industrial zone designations the notice range shall be 1,000 feet. The notice hereunder shall include a brief description of the application, the address or location of the property involved, and contact

information where additional information may be obtained. The cost of noticing shall be charged to the applicant.

- B. Required neighborhood meeting.** A private applicant for a map amendment that would permit a development subject to major site plan review, shall conduct neighborhood outreach according to the provisions for neighborhood outreach under Article 13.
- C.** The Planning Authority shall review the application against the standards of this article and make a recommendation to the Planning Board.
- D.** The Planning Board shall hold a public hearing in accordance with the provisions of Article 2 and make a recommendation to adopt, adopt with modifications, or not adopt the proposed map or text amendment, and forward the recommendation to the City Council.
- E.** The City Council shall review the proposed amendment and determine whether and how to amend the Land Use Code or Zoning Map.

1.9.3 Review standards

Except as otherwise required by law, amendments to the City's Land Use Code shall be pursuant to and consistent with the Comprehensive Plan.

1.10 TRANSITION RULES

1.10.1 Existing uses

- A.** A permitted use established prior to the effective date of the Land Use Code that is now classified as a conditional use shall be deemed a lawful conditional use. Any subsequent addition, enlargement, or expansion of that use shall conform to the procedural and substantive requirements for conditional uses in Article 6.
- B.** A permitted or conditional use established prior to the effective date of this Code that is now classified as a prohibited use shall be deemed a

#006

Posted by **Scott H** on **01/17/2020** at **12:22pm**

Type: Suggestion

Agree: 0, Disagree: 0

Change all instances of "his/her" to "their" to include people of all genders.

#007

Posted by **Scott H** on **01/17/2020** at **12:22pm**

Type: Suggestion

Agree: 0, Disagree: 0

Change all instances of "his/her" to "their" to include people of all genders.

#008

Posted by **Scott H** on **01/17/2020** at **12:22pm**

Type: Suggestion

Agree: 0, Disagree: 0

Change all instances of "his/her" to "their" to include people of all genders.

nonconforming use and is controlled by the provisions of Article 4.

1.10.2 Continuation

In the event that a use, lot, structure, sign, or site feature, deemed legally conforming prior to the effective date of the Land Use Code no longer meets all standards set forth in the Land Use Code, that use, lot, structure, sign, or site feature shall now be deemed non-conforming and shall be controlled by the provisions of Article 4.

DRAFT

2 ADMINISTRATION

2.1 PLANNING BOARD

009

2.1.1 Composition

There shall be a Planning Board of seven members. Members of the Planning Board shall be residents of the city and shall not be officers or employees of the city. Members shall serve without compensation.

2.1.2 Appointments

- A. Terms.** The members of the Planning Board shall be appointed by the City Council for terms of three years. Such members shall serve until their successors are duly appointed and qualified. Such terms shall be staggered so that the terms of not more than three members shall expire in any calendar year; providing, however, such service shall not extend to over 120 days after expiration of their term.
- B. Vacancies.** Permanent vacancies on the Planning Board shall be filled by the City Council, in the same manner as other appointments hereunder, for the unexpired term of the former member.

2.1.3 Removal of members

Any member of the Planning Board may be removed for cause by the City Council at any time, provided, however, that before any such removal, such member shall be given an opportunity to be heard in his or her own defense at a public hearing.

2.1.4 Officers

- A. Chair.** The members of the Planning Board shall annually elect one of their number as chair to preside at all meetings and hearings and to

fulfill the customary functions of that office. The chair may administer oaths.

- B. Vice chair.** The members of the Planning Board shall annually elect one of their number as vice chair. In the absence of the chair, the vice chair shall act as chair and shall have all the powers of the chair. The vice chair shall have such other powers and duties as may be provided by the rules of the Planning Board.

2.1.5 Committees

The chair of the Planning Board shall assign the members of the Board to such regular and special committees as may be established by the Board. Such committees shall have no final authority but shall assist the Board in the conduct of its business by making recommendations to it concerning such specific items as may be assigned to them for study and report. The Board shall adopt such rules as it shall deem appropriate to govern the organization and operation of its committees. Committee meetings deliberative in nature shall be open to the public in accordance with Title 1, M.R.S.A., Section 401 et seq.

2.1.6 Quorum and necessary vote

As to any matter requiring a hearing, no business shall be transacted by the Planning Board without a quorum, consisting of four members, being present. The vote of at least four members shall be necessary to authorize any action by the Board. If less than a quorum is present, the hearing may be adjourned for a period not exceeding three weeks at any one time. The Planning Authority staff shall notify in writing all members of the date of the adjourned hearing and shall notify such other

#009

Posted by **Barbara Vestal** on **01/07/2020** at **2:40pm**

Type: Question

Agree: 1, Disagree: 0

What happened to the term limits for Planning Board members? They used to exist.

#010

Posted by **Em Burnett** on **01/17/2020** at **9:51am**

Type: Suggestion

Agree: 0, Disagree: 0

The appointment and advertisement of new vacancies needs to be more robust.. disappointing to see openings advertised during the holidays and with only a few mentions on social media

#011

Posted by **Scott H** on **01/17/2020** at **12:27pm**

Type: Suggestion

Agree: 0, Disagree: 0

Change all instances of "his or her" to "their" to include people of all genders.

interested parties as may be directed in the vote of adjournment.

2.1.7 ⁰¹⁴ Conflicts

No member of the Planning Board shall participate in the hearing or disposition of any matter in which he or she has an interest. Any question of whether a member has a conflict of interest sufficient for a member to be recused shall be decided by a majority vote of the members present, except the member whose possible conflict is being examined; where such vote results in a tie, the subject member shall be recused from the matter.

2.1.8 Meetings and procedures

A. Meetings. Regular meetings of the Planning Board shall be held at the call of the chair or as provided by rule of the Board. Special meetings may be called by the chair or any four members of the Board or at the request of the City Council.

1. Workshops of the Planning Board or any of its committees may be held at the call of the Board or committee chair, as the case may be, for the presentation of information by the Director of the Department of Planning & Urban Development, his or her ⁰¹² staff, an applicant, or others. These meetings will be open for public comment ⁰¹³ according to the rules of the Planning Board. Such meetings, unless open to the public as provided in Title 1, M.R.S.A., Section 401 et seq. shall be informational only and shall not result in final decisions on any matter.

2. Public hearings shall be held as required by the various statutes, codes, and ordinances pursuant to which matters are brought before the Planning Board and shall be conducted in accordance with relevant state law, the Land Use Code, and the rules of the Board.

B. Notice. The Planning Authority shall give notice of the time and place of public workshops and hearings, including a brief description of the application(s) to be considered, as follows:

1. Site plan and subdivision. Notice shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two times, the date of the first publication to be at least 10 calendar days prior to the workshop or hearing. Notice shall also be sent by regular United States mail at least 10 calendar days in advance of the workshop or hearing date to the applicant, the owner(s) of the subject property, and all owners of property located within 500 feet of the subject property, except that for subdivisions within industrial zones the notice range shall be 1,000 feet.
2. Land Use Code or Zoning Map amendment. Notice of public hearing shall be publicly posted at least 13 days before the public hearing on such application. In addition, notice of said public hearing must be published at least two times in a newspaper of general circulation in the City of Portland. The date of the first publication must be at least 12

#012

Posted by **Scott H** on **01/17/2020** at **12:27pm**

Type: Suggestion

Agree: 0, Disagree: 0

Change all instances of "his or her" to "their" to include people of all genders.

#013

Posted by **Em Burnett** on **01/17/2020** at **9:53am**

Type: Question

Agree: 0, Disagree: 0

Does the public comment here serve a purpose? We have experts giving recommendations; public comment is often skewed against density or housing needs. NIMBY has outsized input because of this setup.

#014

Posted by **Karen Snyder** on **12/17/2019** at **1:39pm**

Type: Question

Agree: 1, Disagree: 0

There has been a problem with conflict of interest with certain Planning Board members that only do business in Portland in the development arena. These qualifications should be barred from applying for Planning Board since they represent a conflict of interest and is unethical because their decisions will be biased.

days prior to any public hearing and the date of the second publication must be at least seven days prior to the public hearing. For map amendments, notice shall be sent by regular United States mail to at least 10 calendar days in advance of the workshop or hearing date to all property owners within the area proposed for rezoning and all property owners 500 feet beyond said area, except that rezoning to industrial zone designations the notice range shall be 1,000 feet.

3. Contract or conditional zoning. Notice of public hearing shall be posted in the City Clerk's office at least 13 days prior to the public hearing and shall be published in a newspaper of general circulation within the city at least two times, the date of the first publication to be at least seven days prior to the hearing. Notice shall also be sent to the owners of all property abutting the property to be rezoned at their last known address. This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned.

The cost of noticing shall be charged to the applicant.

- B. **Procedures.** The Planning Board shall adopt its own rules for the conduct of its business not inconsistent with the statutes of the state and this article. Such rules shall be filed with the Planning Authority and with the City Clerk. Any and all rule changes shall be placed on a City Council public agenda as a communication requiring a public hearing. Any rule may be vetoed, in whole or in part, by order of the

Council within 45 days of the date of filing with the City Clerk. No rules change shall take effect until that time period has elapsed. If a part of a rule is vetoed, the remainder shall continue in effect. Any rule so adopted, which is not required by the statutes of the state or by this article, may be waived by the chair upon good cause being shown. Except as otherwise provided in subsection 2.1.8.A.1, all meetings, hearings, and deliberations of the Planning Board and its committees shall be open to the public in accordance with Title 1, M.R.S.A., Section 401 et seq. Testimony at any hearing may be required by the Planning Board to be given under oath.

- C. **Keeping of records.** The Director of the Department of Planning & Urban Development shall designate a member of his or her staff who shall attend all Planning Board proceedings. The staff shall provide for the keeping of minutes of the proceedings of the Board, showing the vote of each member on every question, or his or her absence or failure to vote, and shall maintain the permanent records and decisions of all Board meetings, hearings, and proceedings and all correspondence of the Board, as required by statute. Such records shall be public records open to inspection during working hours upon reasonable notice.

2.1.9 Record and decisions

- A. **Record.** The minutes of the staff, and the transcript if one is made, and all exhibits, papers, applications, and requests filed in any proceeding before the Planning Board and the

#015

Posted by **Scott H** on **01/17/2020** at **12:27pm**

Type: Suggestion

Agree: 0, Disagree: 0

Change all instances of "his or her" to "their" to include people of all genders.

#016

Posted by **Scott H** on **01/17/2020** at **12:27pm**

Type: Suggestion

Agree: 0, Disagree: 0

Change all instances of "his or her" to "their" to include people of all genders.

decision of the Board shall constitute the record.

- B. Decision.** Every final decision of the Planning Board and every recommendation of the Planning Board to the City Council shall include written findings of fact, and shall specify the reason or reasons for such decision or recommendation. The Planning Authority shall mail notice of any decision of the Planning Board to the applicant.

2.1.10 Jurisdiction and authority

In addition to the jurisdiction conferred on it by other provisions of state law and the ordinances of the city and in accordance therewith, the Planning Board shall have the following jurisdiction and authority:

- A.** To prepare and recommend a Comprehensive Plan to the City Council;
- B.** To prepare and recommend to the City Council changes in and amendments to the Comprehensive Plan;
- C.** To aid and assist the City Council and departments and agencies of the city in implementing general plans and in planning, developing, and completing specific projects;
- D.** To hear, review and approve, conditionally approve, or deny master development plans and major site plans;
- E.** To hear, review and approve, conditionally approve, or deny applications for subdivision approval;
- F.** To hear, review, and approve or deny applications for conditional uses listed in Article 6;
- G.** To hear, review, and offer its recommendations to the City Council on applications for amendments to, or revisions of, this Land Use Code;
- H.** To review and offer its recommendations to the City Council on certain public projects;
- I.** To review and approve, conditionally approve, or disapprove site plans for regulated projects in shoreland areas;
- J.** To prepare and offer its recommendations to the City Council with regard to the city's annual Capital Improvement Program;
- K.** Upon reasonable request, to make its special knowledge and expertise available to any official, department, Board, or agency of the city, county, state, or federal governments to aid them in the performance of their respective duties relating to the planning and development of the city and its region, including request from the City Council to review proposed developments in which the developer does not have the right, title, or interest in all the property necessary for the proposed development because some or all of that property is owned by the City;
- L.** To make such investigations, maps and reports, and recommendations in connection therewith, relating to the planning and development of the city as seem desirable;
- M.** To employ or contract with such experts and other assistants as may be necessary or convenient to carry out its duties hereunder and to pay for their services and for such other expenses as may be necessary and proper; provided, however, that such expenditures shall

not exceed such funds as may be appropriated for such purposes by the City Council;

- N. To hear, review, and offer its recommendations to the City Council on petitions for street vacations and discontinuances; and
- O. To hear, review, and decide appeals where it is alleged there is an error in any decision, requirement, or determination made by the Planning Authority.

2.1.11 Administrative appeal procedures

- A. **Notice of appeal.** An appeal may be taken to the Planning Board by any person affected by a decision of the Planning Authority. Such appeal shall be taken within 30 days of the action complained of by filing with the Planning Authority a notice of appeal specifying the grounds thereof. The notice shall be in such form as specified by the Planning Authority. A payment of a nonrefundable filing fee, as established by the City Council to cover administrative costs and costs of hearing, shall accompany notice of appeal. The Planning Authority shall forthwith transmit to the Planning Board all of the papers constituting the record upon which the action appealed from was taken.
- B. **Public hearing.** A public hearing shall be set, advertised and conducted by the Planning Board in accordance with the provisions of this article.
- C. **Action.** Within 30 days following the close of the public hearing, the Planning Board shall render a decision on the appeal in the manner and form specified in the provisions of this article and the statutes of the state. The failure of the Board to act within 30 days shall be deemed an approval of the appeal unless mutually extended in writing by the appellant and the Board. Within five days of

such decision or failure to act notice thereof shall be mailed to each party.

- D. **Conditions and limitations.** Any right granted by the reviewing Board on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

2.1.12 Appeals

An appeal from any final decision of the Planning Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the city to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure. No appeal shall lie concerning any matter as to which the power of the Board is limited to the making of a recommendation.

2.2 HISTORIC PRESERVATION BOARD

2.2.1 Composition

The Historic Preservation Board shall consist of seven voting members who shall serve without compensation. Members shall not be officers or employees of the city. Members shall have demonstrated interest, knowledge, ability, experience or expertise in restoration, rehabilitation, or neighborhood conservation or revitalization and shall be residents of the city.

2.2.2 Appointments

- A. **Terms.** Members shall be appointed by the Council for terms of three years. Appointments shall be staggered so that the terms of not more than three members expire in any calendar year. Members may serve for three consecutive three-year terms.
- B. **Vacancies.** Vacancies on the Historic Preservation Board shall be filled within 60

days. However, every member shall continue in office after expiration of the term until a successor has been appointed. Vacancies on the Historic Preservation Board shall be filled for the unexpired term of the former member.

2.2.3 Removal of members

Members may be removed for cause by the Council. Cause shall include, but is not limited to, the failure to attend meetings without good cause. Any member proposed to be removed shall be given written notice and an opportunity to be heard prior to final action.

2.2.4 Officers

- A. Election and terms.** Officers of the Historic Preservation Board shall consist of a chair and vice chair. Officers shall be elected by the Historic Preservation Board and shall serve a term of one year and shall be eligible for re-election.
- B. Chair.** The chair shall preside at all meetings and hearings and fulfill the customary functions of that office.
- C. Vice chair.** In the absence of the chair, the vice chair shall act as chair and shall have all the powers of the chair. The vice chair shall have such other powers and duties as may be provided by the rules of the Historic Preservation Board.

2.2.5 Conflicts

No member of the Historic Preservation Board shall participate in the hearing or disposition of any matter in which he or she has an interest.

2.2.6 Meetings and procedures

- A. Meetings.** Regular meetings of the Historic Preservation Board shall be held no less frequently than monthly. Special meetings may be called by the chair or any four members or at the request of the chair of the Planning Board.
- B. Notice.** The Planning Authority shall give notice of the time and place of Historic Preservation Board public workshops and hearings, including a brief description of the application(s) to be considered, as follows:
 1. Landmark or district nomination. Notice shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two times, the date of the first publication to be at least 10 calendar days prior to the workshop or hearing. Notice shall be sent by regular United States mail at least 10 calendar days in advance of the workshop or hearing date to the applicant and to the owner(s) of the subject property or properties.
 2. Certificate of appropriateness review. Notice shall be given to all property owners within 100 feet of the property at least seven days prior to the date of the workshop or public hearing.
 3. Major site plan review. For alteration or new construction that is classified as a major site plan under Article 13, notice shall be given to all property owners within 500 feet of the property at least seven days prior to the date of the workshop or hearing.

The cost of noticing shall be charged to the applicant.

- C. Procedures.** The Historic Preservation Board may adopt procedural rules for the conduct of its business not inconsistent with this article, including the creation of a subcommittee structure to enhance efficiency in consideration of Historic Preservation Board business. Such rules shall be filed with the Planning Authority and with the City Clerk. All such rules shall be subject to veto, in whole or in part, by the Council within 45 days of such filing. The initial rules shall take effect when filed, subject to veto as provided above. Amendments to the rules shall take effect upon expiration of said veto period. Any rule may be waived by the chair upon good cause being shown.

2.2.7 Record and decisions

- A.** The Director of the Department of Planning & Urban Development or his or her designated staff representative shall attend all its meetings. The staff shall provide for the keeping of tape recordings or minutes of the proceedings of the Historic Preservation Board, showing the vote of each member on every question or his or her absence or failure to vote, and shall maintain the records and decisions of all meetings, hearings, and proceedings and all correspondence of the Historic Preservation Board. Copies of permanent records shall be filed with the City Clerk. Staff shall publish and distribute copies of the records, reports, and decisions of the Historic Preservation Board to Historic Preservation Board members and to

others upon approval of the Historic Preservation Board.

- B.** No final action shall be taken by the Historic Preservation Board which could in any manner deprive or restrict the owner of a property in its use, alteration, maintenance, disposition or demolition, until such owner either has knowledge of the proceeding or is sent notice offering opportunity to be heard. This paragraph shall not affect the interim protection provisions of Section 16.5.
- C.** Every recommendation or recommended decision of the Historic Preservation Board shall include written findings of fact and shall specify the reason or reasons for such action.
- D.** Staff shall mail notice of any final determination or recommendation of the Historic Preservation Board to the applicant and property owner(s).

2.2.8 Responsibilities

The Historic Preservation Board shall have the following responsibilities:

- A.** To conduct or administer an ongoing survey to identify historically, culturally, architecturally and archaeologically significant areas, sites, structures and objects;
- B.** To review all areas, sites, structures, and objects listed in the National Register of Historic Places, including the boundaries of areas so listed, and make recommendations to the Planning Board and Council for the designation of those areas, sites, structures and objects as local landmarks or districts;
- C.** To investigate and recommend to the Planning Board and Council the designation of areas, sites, structures, and objects not listed in the

#017

Posted by **Scott H** on **01/17/2020** at **12:28pm**

Type: Suggestion

Agree: 0, Disagree: 0

Change all instances of "his or her" to "their" to include people of all genders.

#018

Posted by **Scott H** on **01/17/2020** at **12:28pm**

Type: Suggestion

Agree: 0, Disagree: 0

Change all instances of "his or her" to "their" to include people of all genders.

National Register of Historic Places as local landmarks and districts and to make recommendations to the Planning Board concerning sites, structures, and objects that have contributing significance or are intrusions within nominated or designated districts;

- D. To keep and make available to the public a register of all areas, sites, structures, and objects that have been designated as landmarks or districts, including all information required as part of each designation;
- E. Upon request, to advise and assist owners of landmarks and property, sites, structures or objects within districts on physical and financial aspects of preservation, renovation, rehabilitation and reuse and for procedures for inclusion on other registers of significant areas, sites, structures and objects, including the National Register of Historic Places;
- F. To recommend to the Planning Board the nomination of areas, sites, structures, and objects to the National Register of Historic Places or to any State of Maine Register of Historic Places that may be established;
- G. To participate in the Certified Local Government Program of the National Historic Preservation Act Amendments of 1980 and the Maine Historic Preservation Commission; and carry out any responsibilities delegated to it under that program, including review and comment on any National Register nominations submitted to the Historic Preservation Board.
- H. To seek funding for which the City of Portland is eligible through the Certified Local Government Program to assist in local preservation projects, including projects undertaken by local non-profit organizations;
- I. To, upon request by the Council, participate in any review of federal actions or undertakings pursuant to Section 106 of the National Historic Preservation Act; attend informational and educational programs sponsored by the Maine Historic Preservation Commission; and prepare an annual report of the activities of the Historic Preservation Board;
- J. To inform and educate the citizens of Portland concerning the cultural, historic, architectural and archeological heritage of the city by publishing appropriate maps, newsletters, brochures and pamphlets and by sponsoring programs and seminars;
- K. To hold meetings and public hearings to review applications for certificates of appropriateness affecting proposed or designated landmarks and districts; to recommend approval or disapproval of certificates of appropriateness;
- L. To provide testimony to the Board of Appeals in connection with any application for a certificate of economic hardship;
- M. To develop design guidelines affecting landmarks or districts for review and approval by the Planning Board;
- N. To advise the Planning Board as to recommendations on any preservation or conservation easements that the City of Portland may have or be offered as a gift or otherwise;
- O. To advise the Planning Board as to the administration of such gifts, grants and money as may be appropriated for the purposes of this

article upon authorization and approval by the Council;

- P. To provide comment, as appropriate, to the Planning Board and/or City Council on matters pertaining to historic preservation in Portland;
- Q. To confer recognition upon the owners of landmarks or properties, sites, structures or objects within districts by means of certificates, plaques or markers;
- R. To assist the Planning Board in the development of a preservation component in the Comprehensive Plan of the City of Portland; and
- S. To periodically review the Land Use Code and to make recommendations to the Planning Board concerning any amendments appropriate for the protection and continued use of landmarks or properties, sites, structures or objects within districts.

2.3 ZONING BOARD OF APPEALS

2.3.1 Composition

There shall be a Board of Appeals of seven members. Members of the Board shall be residents of the city and shall not be officers or employees of the city or any of its agencies or departments. Members shall serve without compensation.

2.3.2 Appointments

- A. **Terms.** The members of the Board of Appeals shall be appointed by the City Council for terms of three years. Terms shall be staggered so that the terms of no more than three members shall expire in any calendar year. Such members shall serve until their successors are duly elected and qualified provided, however, that such

service shall not extend to over one hundred 120 days after expiration of their term.

- B. **Vacancies.** Permanent vacancies on the Board of Appeals shall be filled by the City Council, in the same manner as other appointments under this article, for the unexpired term of a former member whose place has become vacant.

2.3.3 Removal of members

Any member of the Board of Appeals may be removed for cause by the City Council at any time; provided, however, that before any such removal, such member shall be given an opportunity to be heard in his/her own defense at a public hearing.

2.3.4 Officers

- A. **Chair.** The members of the Board of Appeals shall annually elect one of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office.
- B. **Secretary.** The members of the Board of Appeals shall annually elect one of their number as secretary. In the absence of the chair, the secretary shall act as chair and shall have all the powers of the chair. The secretary shall fulfill the duties provided by statute and this article and have such other duties as may be provided by the rules of the Board.
- C. **Pro tempore officers.** In the absence of both the chair and the secretary, the Board shall elect a chair pro tempore from among its number and the chair pro tempore shall have all the powers of the chair during the chair's and the secretary's absence. In the absence of the secretary, or when the secretary is serving as chair, the Board shall elect a secretary pro tempore from among its number and the

#019

Posted by **Scott H** on **01/17/2020** at **12:22pm**

Type: Suggestion

Agree: 0, Disagree: 0

Change all instances of "his/her" to "their" to include people of all genders.

secretary pro tempore shall have all the powers of the secretary during the secretary's absence or service as chair.

2.3.5 Quorum and necessary vote

No business shall be transacted by the Board of Appeals without a quorum, consisting of four members, being present. The concurring vote of at least four members of the Board shall be necessary to grant any request or application or to sustain any appeal. Any matter that receives fewer than four votes shall be deemed to have been denied.

2.3.6 Conflicts

No member of the Board of Appeals shall participate in the hearing or disposition of any matter in which he or she has an interest. Any question of whether a member has a conflict of interest sufficient to disqualify him shall be decided by a majority vote of the members, except the member who is being challenged; where such a vote results in a tie, the challenged member shall be deemed disqualified.

2.3.7 Meetings and procedures

- A. **Staff.** The Building Authority or his/her designee shall serve as staff to the Board of Appeals.
- B. **Meetings.** Regular meetings of the Board of Appeals shall be held at the call of the chair or as provided by the rules of the Board. Special meetings shall be called by the chair at the request of any two members of the Board or at the request of the City Council. All meetings and hearings of the Board shall be open to the

public. For all matters properly brought before the Board of Appeals, the Board shall select a reasonable time and place for a public hearing following the submission of the subject application.

- C. **Notice.** The Building Authority shall give notice of public hearings in the form and manner and to the persons herein specified. The notice shall include the time and place of such hearing, a description of the contents of the matter to be heard and the address or location of the property involved. Where notice by mail is required, it shall be mailed at least seven days in advance of the hearing date by regular United States mail. Notices shall be given to each of the following as specified:

1. In all cases, to the petitioner;
2. In all cases, to all residents of the city by publication in a newspaper of general circulation in the city at least once, not more than 30 nor less than five days before the date of the hearing, and by mail to the applicant;
3. In the case of hearings relating to zoning appeals, a variance, or a conditional use, to the Planning Board and City Council by reasonable means;
4. In the case of hearings relating to a variance request from the provisions of Article 11, the application and all supporting information supplied by the applicant shall be forwarded to the State of Maine Commission of the Department of Environmental Protection at least 20 days prior to action by the Board;

#020

Posted by **Scott H** on **01/17/2020** at **12:23pm**

Type: Suggestion

Agree: 0, Disagree: 0

Change all instances of "his/her" to "their" to include people of all genders.

5. In the case of hearings related to a variance or conditional use, by mail to the owners of all the property within 500 feet of such parcel or tract;
 6. In the case of hearings related to all other appeals, by mail to the owners of property directly abutting, and directly across a street or alley from the subject property;
 7. For purpose of this section, the owners of property shall be considered to be the parties listed by the Assessor's Department as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing and shall not invalidate any action of the Board. The cost of noticing shall be charged to the applicant.
- D. Procedures.** The Board of Appeals shall adopt its own rules of procedure for the conduct of its business not inconsistent with the statutes of the state and this article. Such rules shall be filed with the City Clerk. Any rule so adopted which relates solely to the conduct of hearings, and which is not required by the statutes of the state or by this article, may be waived by the Board upon good cause being shown.
1. Conduct of hearings:
 - a. Any person may appear and testify at a public hearing, either in person or by a duly authorized agent or attorney, and may submit documentary evidence, provided, however, that the Board shall exclude irrelevant, immaterial and unduly repetitious evidence.
 - b. The applicant and any abutter or similarly interested party shall in addition have the right to present witnesses on their own behalf and offer rebuttal evidence, to cross examine all witnesses testifying in opposition to their position through the chair, and to examine and introduce any documents produced at the hearing.
 2. All other matters pertaining to the conduct of hearings shall be governed by the provisions of the relevant state statutes, this article, and the rules promulgated by the Board of Appeals.
- 2.3.8 Records and decisions**
- A. Record.** The recording of testimony, if any, and all exhibits, papers, applications and requests filed in any proceeding before the Board of Appeals and the decision of the Board shall constitute the record.
 - B. Decision.** Every decision of the Board of Appeals shall include findings of the fact, shall refer to the evidence in the record and the exhibits, plans or specifications upon which such decision is based, shall specify the reason or reasons for such decision, and shall contain a conclusion or statement separate from the findings of fact setting forth the specific relief granted or denying relief. The Building Authority shall deliver or mail a copy of the decision to the applicant, the Planning Board, and City Council and shall file the decision with the City Clerk within five days of such decision.

2.3.9 Jurisdiction and authority

The Board of Appeals shall have the following jurisdiction and authority:

- A. To hear and decide appeals from, and review orders, decisions, or the failure to act by the Building Authority pursuant to this Land Use Code, except that decisions relating to enforcement of the shoreland zoning provisions of this Chapter are not appealable to the Board of Appeals and may only be appealed directly to Superior Court in accordance with M.R. Civ. P. 80B;
- B. To hear and grant or deny applications for variances from the terms of this Land Use Code, including but not limited to use variance; dwelling unit conversion; space and bulk such as lot size, density, and side yard; parking; loading; and signs; and
- C. To hear and grant or deny applications for conditional uses, as specified in Article 6.

2.3.10 Administrative appeal procedures

- A. **Application procedures.** Application for any appeal to the Board shall be submitted to the Building Authority. A payment of a nonrefundable application fee, as established by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the Building Authority.
- B. **Public hearing.** A public hearing shall be set, advertised and conducted by the Board of Appeals in accordance with Section 2.3.7.
- C. **Standard of review.** The standard of review for orders, decisions, or the failure to act by the

Building Authority pursuant to this Land Use Code shall be de novo. The appellant shall bear the burden of proof.

2.3.11 Variances

A. Application procedures

- 1. Application for a variance shall be submitted to the Building Authority. A payment of a nonrefundable application fee, as established from time to time by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the Building Authority.
- 2. A public hearing shall be set, advertised and conducted by the Board of Appeals in accordance with Section 2.3.7.
- 3. All decisions by the Board shall be rendered in a manner and form not inconsistent with the statutes of this state.

- B. **Undue hardship variance.** An undue hardship variance may be granted by the Board only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words “undue hardship” as used in this subsection mean:

- 1. That the land in question cannot yield a reasonable return unless a variance is granted;
- 2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

3. That the granting of a variance will not alter the essential character of the locality; and
4. That the hardship is not the result of action taken by the applicant or prior owner.

C. Disability variance

1. By the Board of Appeals. Notwithstanding the provisions of subsection (B) above, the Board may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. For the purpose of this subsection, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. Section 4553.
2. By the Building Authority. Notwithstanding the provisions of subsections (B) and (C.1) above, the Building Authority may issue a permit to the owner of a dwelling for the purpose of making a dwelling accessible to a person

with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to egress from the dwelling for the person with a disability.

D. Practical difficulty variance. Notwithstanding the provisions of subsections (B) and (C) above, the Board of Appeals may grant a variance from the dimensional standards of this Land Use Code that relate to lot area, lot coverage, frontage, and setback requirements when strict application of these standards would both preclude a permitted use of the property and result in significant economic injury to the applicant. Significant economic injury shall mean that the value of the property if the variance were denied would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land. In granting a practical difficulty variance, all of the following conditions must be found to exist:

1. The need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood;
2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties;

3. The practical difficulty is not the result of action taken by the applicant or a prior owner;
4. No other feasible alternative is available to the applicant, except a variance;
5. The granting of a variance will not have an unreasonably adverse effect on the natural environment; and
6. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. § 435, nor within a shoreland zone or flood hazard zone, as defined in this article.

E. Specified variances prohibited

1. No use permitted in medium- and high-density residential zones shall be permitted in low-density residential zones. No use permitted in mixed-use or office zones shall be permitted in any residential zone. No use permitted in industrial zones shall be permitted in any mixed-use, office, or residential zone. No use permitted in residential zones shall be permitted in any industrial zone. The general use categories are listed below:
 - a. Low-density residential: IR-1, IR-2, IR-3, R-1, R-2, R-3.
 - b. Medium- and high-density residential: R-4, R-5, R-6.
 - c. Mixed-use/Office: B-1, B-2/B-2b/B-2c, B-3/B-3b/B-3c, B-4, B-5/B-5b, B-6, B-7, I-B, R-P, O-P.
 - d. Industrial: I-L/I-Lb, I-M/I-Ma/I-Mb, I-H/I-Hb, A-B
2. No variance shall be granted which would permit the creation of a lot or parcel that cannot be developed in compliance with the zoning, subdivision, and other regulations applicable thereto.
3. No variance shall be granted which would result in a use or development of the lot or parcel in question which would not be in harmony with the general purpose and intent of this Land Use Code or the Comprehensive Plan; which would be materially detrimental to the public welfare or materially injurious to the enjoyment, use, or development of property or improvement permitted in the vicinity; or which would materially impair an adequate supply of light and air to properties and improvements in the vicinity, substantially increase congestion in the public streets, increase the danger of flood or fire, or endanger the public safety.
4. No variance shall be granted which would be greater than the minimum variance necessary to relieve the undue hardship or the hardship of the applicant.
5. No variance shall be granted from the minimum lot sizes set forth in Section 4.3.1 for lots in the IR-1 and IR-2 zones.
6. No variance shall be granted from the requirements in Section 6.4.11.

F. Conditions on variances; variances less than requested.

Reasonable conditions and safeguards relating to construction, character, location, landscaping, screening and other matters may be imposed upon the premises benefited by a variance as considered necessary to prevent injurious effects upon other property and improvements in the

vicinity or upon public facilities and services. Such conditions shall be expressly set forth in the resolution granting the variance and in the notice informing the applicant thereof. Violation of such conditions and safeguards shall be a violation of this article. A variance less than or different from that requested may be granted when the record supports the applicant's right to some relief but not to the relief requested.

- G. Limitations on variances.** No variance permitting the erection or alteration of a building shall be valid for a period longer than six months, or such other time as may be fixed at the time granted not to exceed two years, unless a building permit for such erection or alteration is issued and construction is actually begun within that period and is thereafter diligently pursued to completion. One or more extensions of said expiration dates may be granted if the facts constituting the basis of the decision have not materially changed and the two year period is not exceeded thereby. No variance relating to the establishment or maintenance of a use not involving a building or structure shall be valid for a period longer than six months, or such other time as may be fixed at the time granted not to exceed two years, unless an occupancy permit is issued and a use commenced within such period; provided, however, that one or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two year period is not exceeded thereby.
- H. Recording of variances.** No variance shall be valid unless, within 90 days of final approval of

the variance, a certificate describing the variance has been recorded by the applicant for the variance in the registry of deeds as required by 30 M.R.S.A. Section 4353(5).

2.3.12 Successive applications

Whenever any application, appeal, or other request filed pursuant to section 2.3 has been finally denied on its merits, a second application, appeal or other request seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought within one year of such denial unless, in the opinion of the officer or Board before which it is brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.

2.3.13 Violations

In addition to any other remedies available, the Board of Appeals after notice and hearing may revoke any variance or other relief granted under this section when the provisions of this section or the conditions under which the relief was granted have not been complied with.

2.3.14 Appeals

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

DRAFT

3 DEFINITIONS 022

Adult business establishment. Any business, including but not limited to any bookstore, newsstand, novelty store, nightclub, bar, cabaret, amusement arcade, or theater, which:

- A. Keeps for public patronage or permits or allows the operation of any adult amusement device as defined in Chapter 4 of the City of Portland Code of Ordinances; or
- B. Customarily, meaning more often than an average of one calendar week during any calendar month of operation, exhibits motion pictures or displays any other visual representation described or advertised as being “X rated” or “for adults only,” or which customarily excludes persons from any portion of the premises by reason of immaturity of age by the use of such, or similar, phrases; or
- C. Is adjudged to be in violation of 17 M.R.S.A. §§ 2911, 2912.

Affordable housing. Housing for which the percentage of income a household is charged in rent and other housing expenses or must pay in monthly mortgage payments (including condominium/HOA fees, mortgage insurance, other insurance and real estate taxes), does not exceed 30% of a household’s income, or other amount established in city regulations that does not vary significantly from this amount. 021

After-hours entertainment license. Any of the music, dancing, and special entertainment licenses required or authorized by Chapter 4, Article III of the City of Portland Code of Ordinances.

Agriculture. The practice of farming, including the cultivation of the soil for the growing of crops and rearing of animals to provide food and other products. Agriculture may include nurseries, greenhouses, and truck gardens, provided that there is no sale of products not produced on the premises.

Airport restricted access areas. Runways, taxiways and other areas of the Jetport accessible to aircraft, whether access is restricted by the Federal Aviation Administration or not.

Alley. Any way designed primarily for vehicular and pedestrian or utility access to the back or side of premises otherwise abutting on a street, except driveways unless officially designated otherwise.

Animal-related services. Establishments principally for the training or boarding of animals. Such uses shall not include veterinary services.

Approval. An affirmative decision on an application, including an approval with conditions.

Appurtenance. A device or structure not designed for human occupancy and attached to the exterior of a building.

Auto service station. A business selling gasoline, diesel, or propane fuel or providing motor vehicle repair services including, but not limited to, tune-ups, engine repair, brake work, muffler replacement, tire repair or similar activities. Such businesses may also include car-washes and/or vacuums.

#021

Posted by **Peter Murray** on **01/05/2020** at **9:47am**

Type: Suggestion

Agree: 1, Disagree: 0

This is a good start, but is not tied to any particular amount of income, so there is no way of knowing what kind of housing is affordable. At least there should be a clear citation to some particular public regulation or state standard so that people will know what is meant.

#022

Posted by **Barbara Vestal** on **01/07/2020** at **2:45pm**

Type: Question

Agree: 0, Disagree: 0

Why is there such a disproportionate emphasis on signs on the definition section? Might it be better handled as a separate document which is incorporated by reference into the zoning ordinance?



DEFINITIONS

Back office use. An office-related use with minimal public visitation and minimal direct service to the general public, primarily to provide support services to larger organizations such as educational institutions, social service agencies, or business headquarters.

Banner. A flexible, non-adhesive sign of lightweight fabric or similar material typically supported at two or more points and attached to a building, wall, or fence or otherwise suspended down or across its face for temporary advertising purposes. Does not include national, state, or municipal flags.

Bar. Any establishment required to be licensed to sell alcoholic beverages for on-premises consumption, which is not regularly used for the purpose of providing full-course meals, as defined in Title 28-A of the Maine Revised Statutes, on the premises.

Bed and breakfast. A building that contains between two and nine guest rooms; is used to provide or offer overnight accommodations for transient guests; has an owner, manager, or operator living in the building as a permanent resident; does not provide cooking facilities in any of the guest rooms; and does not provide meals other than breakfast, which shall be offered only to overnight guests.

Billboard. A permanent structure for the display of off-premises advertising.

Blasting operations. The use of explosives for purposes of breaking up and removing soil, rock and

ledge, related to construction and development of real estate within the City.

Blasting permit. A permit issued by the City Fire Department to allow blasting operations within the City.

Blasting plan. The plan for conduct of any blasting operation where over 300 cubic yards of material shall be removed.

Blasting submittal. The plan for conduct of any blasting operation where between 50 and three 300 cubic yards of material shall be removed.

Building. A roofed and walled structure built for permanent use.

Building, accessory. A detached roofed and walled structure that is incidental and subordinate in area and extent, and/or use to the principal building(s) on the property. A lot may have more than one accessory building.

Building addition. Any increase to footprint, floor area, or volume of an existing building.

Building alteration. A change or rearrangement in the structural supports, exterior appearance, or removing from or otherwise affecting the exterior appearance of a structure.

Buildings, attached. Two or more independent buildings that share at least one common party wall but have full building separation and independent principal entries; not free-standing. Attached buildings may or may not have common ownership.

Building, principal. The main roofed and walled structure on a lot having the predominant area, extent, and/or use. A lot may have more than one principal building. When a garage is attached to the principal building in a substantial manner as by an enclosed area with roof or common wall, it shall be considered as a part of the principal building.

Clinics. Any establishment where patients are examined and treated by one or more health care providers, such as, but not limited to, physicians, dentists, psychologists or social workers. Clinics may include laboratory services and facilities for ambulatory or outpatient surgical procedures.

Coastal wetland. All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and that occurs primarily in a salt water or estuarine habitat; and/or any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Commercial message. A message conveyed by any sign that is solely intended to interest, entice, or solicit any person to participate in commercial transactions with a business, including offers of goods, cash, discounts on products or services, or other items, including the offering of free goods or services made in exchange for or with the intent to induce the recipient's willingness to receive information relating to a possible commercial transaction.

Commercial vessel. Any watercraft used principally in a business or trade, including common carriers of passenger or freight, whether for governmental, nonprofit or emergency purposes; but not including pleasure craft used principally for recreational purposes.

Common areas. Portions of a lodging house which are available for use by all residents of the lodging house. Common areas shall include, but are not limited to, one or more of the following: kitchens, living rooms, recreation rooms, improved basements, and finished porches. Bathrooms, stairways, hallways, and storage areas shall not be counted as common areas.

Communication studio. A commercial or public communication facility, including radio and television broadcasting and receiving stations and studios.

Community hall. A building or portion of a building used for social, recreational, artistic, civic, or educational community functions. Such a facility would be open to the public for such functions, which, for example, could include but not be limited to performances, dance, exhibitions, cultural exchange, training programs and workshops, neighborhood meetings, or gatherings. As part of these functions and activities, it shall be permissible to serve food, subject to other applicable codes and ordinances.

Condominium. Any interest in real estate created pursuant to the Unit Ownership Act, 33 M.R.S.A. § 560 et seq., or its equivalent, as it may from time to time be amended.

Congregate care facility. A residential development which provides individual living or dwelling units with support services which provide assistance to residents. Services to be provided shall include:

- A. Transportation for essential support activities. This service shall be included in the base rent;
- B. Provision of at least one meal per day;
- C. Programmed social activities which are facilitated by staff. This service shall be included in the base rent;
- D. Provision of personal care services including, but not limited to, housekeeping, laundry, and minimal health monitoring; and
- E. Installation of emergency call buttons or systems in each congregate care living unit.

The population of a congregate care facility shall consist of persons 55 years of age or older and their spouses and/or disabled persons and their spouses.

Correctional pre-release facility. A facility housing up to 12 persons, plus staff, serving a primary clientele of parole or prerelease programs.

Development fees. Site plan review and inspection fees; subdivision review and inspection fees; administrative fees; impact fees, and construction and permit fees as described in Chapter 6 of the City of Portland Code of Ordinances. Development fees does not include any fees charged for reviews conducted by a party other than the city.

Direct Illumination. Illumination resulting from light emitted directly from a light bulb or light fixture, not light diffused through translucent signs or reflected from other surfaces such as the ground or building faces.

Drive-through. A facility which provides a service directly to a motor vehicle occupant and where the customer drives a motor vehicle onto the premises and to a window or mechanical device through or by which the customer is served with or without exiting the vehicle. Drive-throughs do not include major or minor auto service stations.

Drive-through features. Features associated with drive-throughs including but not limited to designated travel or stacking lanes, intercom systems, menu boards, service windows, kiosks, mechanical devices, etc.

Dwelling unit. One or more rooms forming a single unit for habitation by one family, including food preparation, living, sanitary, and sleeping facilities.

Dwelling, multi-family. A building or portion thereof containing three or more dwelling units.

Dwelling, single-family. A building containing one dwelling unit.

Dwelling, two-family. A single building containing two dwelling units.

Earth-moving activity. Any removal or placement, excavation, filling, stockpiling or grading of soil, earth, loam, sand, gravel, rock and other mineral deposits.

Easement. A right, privilege or liberty which one has in land owned by another for some special and definite purpose.

Emergency operations. Operations conducted for the public health, safety or general welfare, such as

#023

Posted by **VICTORIA MORALES** on **01/15/2020** at **4:50pm**

Type: Suggestion

Agree: 0, Disagree: 0

Maine does not currently have a parole system. Suggested changes could be: Reentry Housing Facility. A facility housing up to 12 persons under the supervision of the Maine Department of Corrections, plus staff. I recommend reaching out to Bruce Noddin, the director for Maine Prisoner Reentry Network for guidance.

protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

Emergency shelter. A facility providing temporary overnight shelter to homeless individuals in a dormitory-style or per-bed arrangement.

Entrance, principal. The main point of access for pedestrians into a building. A building may have more than one principal entrance.

Esplanade. That portion of a street which is located between the curbline and the edge of the sidewalk closest to the street.

Essential services. The construction, alteration, or maintenance of gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

Explosives. Any material or container containing a chemical compound or mixture that is commonly used or intended for the purpose of producing an explosion and that contains any oxidizing and combustible materials or other ingredients in such proportions, quantities, or packaging that an

ignition by fire, by friction, by compound or mixture may cause such a sudden generation of highly heated gasses that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, but shall not mean the components for handloading rifle, pistol and shotgun ammunition, or fireworks.

Family. One or more individuals related by blood, marriage, civil union, adoption, or guardianship and/or up to eight unrelated individuals living together in a dwelling unit as a single nonprofit housekeeping unit.

Fill. Soil, earth, loam, sand, gravel, rock and other mineral deposits.

Filling. The placement of soil, earth, loam, sand, gravel, rock and other mineral deposits. Filling shall include stockpiling.

Fixture, fully shielded. A light fixture or luminous tube constructed and mounted such that all light emitted by the fixture or tube, either directly from the lamp, tube, or a diffusing element, or indirectly by reflection or refraction from any part of the light fixture, is projected below the horizontal. If the lamp or tube, any reflective surface, or lens cover (clear or prismatic) is visible when viewed from above or directly from the side, from any angle around the fixture or tube, the fixture or tube is not fully shielded.

Flag. A fabric sheet of square, rectangular, or triangular shape having no enclosing or supporting framework that is typically mounted on a pole.

Foundation. The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frost walls, or other base consisting of concrete, block, brick, or similar material.

Freshwater wetland. Freshwater swamps, marshes, bogs and/or similar areas which are:

- A. Of ten or more contiguous acres or of less than ten contiguous acres and adjacent to a surface water body except for any river, stream or brook such that, in a natural state, the combined surface area is in excess of ten acres or of less than ten acres that is depicted on the Shoreland Zoning Map; and
- B. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

General office. An office for the conducting or managing of a business or the practice of a profession, including that of a licensed health care provider, so long as such office does not include laboratory services and facilities for ambulatory surgical procedures.

General services. Establishment primarily engaged in rendering services to persons or business on a fee basis, including but not limited to banks, health clubs, laundries, employment services, management services, personnel services, or maintenance services.

Handicapped family unit. A dwelling unit which provides living facilities for handicapped persons. A handicapped family unit may also provide counseling and support services. Staff members may also be included in the population.**Helistop.** An area used for the landing of helicopters at any location other than an airport. Such area shall include a landing area or pad, and may include parking required for access to the landing area or pad, a loading and unloading area for emergency vehicles, and other related facilities other than maintenance and repair facilities.

Historical plaque. A sign that memorializes a person, event, former use of a place, or something else of historical significance.

Hospital. An institution providing health services, primarily on an inpatient basis, and medical or surgical care of the sick or injured, including as an integral part of the institution such related facilities as laboratories, outpatient departments, training facilities, central service facilities, and staff offices.

Hostel. An overnight lodging facility for transient guests that provides sleeping rooms and common areas for cooking. A hostel shall not be used as an emergency shelter.

Hotel. A building used for more or less temporary occupancy of individuals who are lodged with or without meals.

Impervious surface. Area covered with low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and

unpaved parking areas that will be compacted through design or use to reduce their permeability.

Industrial, high-impact. Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished products from either raw materials or previously prepared material which are generally incompatible with residential, commercial and lower impact industrial uses and sensitive natural areas due to their high generation of traffic, noise levels, emissions, lighting, and odors.

Industrial, low-impact. Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished products from previously prepared material, including but not limited to the following: bakeries; breweries; distilleries; bottling; coffee roasters; commercial kitchens; pharmaceuticals; machine shops; watchmakers; makers of precision instruments, musical instruments, toys and sporting goods, pottery and ceramics using only previously pulverized clay, wood products, jewelry; assembly of electrical components; canteen services; tool and die shops; plant and tree nurseries; and the packaging of foods. Low impact industrial uses do not include the processing of raw materials or salvaging operations. Low impact industrial uses are generally compatible, due to their size and nature of impact, with residential, commercial and other low impact industrial uses.

Intermediate care facility. A facility which provides, on a regular basis, health-related care and services for more than 13 individuals who do not require the degree of care and treatment which a hospital or extended care facility is designed to provide but who, because of their mental or physical condition,

require such care and services above the level of room and board. Said facility must be licensed as a board care, residential care facility or equivalent pursuant to the regulations promulgated by the State of Maine Department of Health and Human Services.

Kitchen facilities. Facilities used for the preparation of meals, including refrigerators and devices used for the cooking and preparation of food.

Laser Light Display. A display that emits light through the use of a laser beam(s).

LED (Light Emitting Diode). A semiconductor diode that emits light when a voltage is applied to it.

Lodging house. A house, building or portion thereof containing two or more rooming units and providing such units, as well as common areas, to individuals on not less than a monthly basis for compensation.

Long-term or extended care facility. An institution or a distinct part of an institution that is licensed or approved to provide full-time convalescent or chronic care, or health care under medical supervision for 24 or more consecutive hours, to nine or more individuals who, by reason of advanced age, illness, or infirmity are unable to care for themselves, and who are not related to the governing authority by marriage, blood, or adoption.

Lot. A parcel or area of land that is designated as an individual unit for use, development or ownership that is either a) a lot of record, recorded in the Cumberland County Registry of Deeds which at the

time of record complied with applicable ordinances; or b) a contiguous combination of such lots of record under common ownership; or c) a newly established parcel meeting all the dimensional requirements of the zone in which it is located.

Low-income household. A household having an income not exceeding 80% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Low-income housing unit for rent. A dwelling unit for which:

- A. The rent is affordable to a household earning 80% or less of Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD);
- B. The unit is rented to a household earning 80% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance..

Low-income housing unit for sale. A dwelling unit for which:

- A. The sale price is affordable to a household earning 100% or less of AMI;
- B. The unit is sold to a household earning 100% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for future sales for the applicable length of time in this ordinance.

Luminance. The intensity of visible light emitted or reflected from a unit area of a surface, such as the face of a sign measured in nits.

Manufactured housing. A structural unit or units designed for residential occupancy and constructed in a manufacturing facility and then transported by the use of its own chassis or placement on an independent chassis to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is utilized for housing and may be purchased or sold by a dealer in the interim. For purposes of this article, two types of manufactured housing are included. They are:

- A. Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the standards required by the United States Government Department of Housing and Urban Development, as such standards are from time to time revised or amended, meaning structures, transportable in one or more sections, which in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. This term also includes any structure which meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies

#024

Posted by **Peter Murray** on **01/05/2020** at **9:53am**

Type: Suggestion

Agree: 0, Disagree: 0

This is a problem because it focuses only on "earnings", which is a defined term. It permits so called low income housing units to be sold to retired persons whose "earnings": may be low, but who have substantial assets and retirement income that is not earnings. There is no cap on the sales price of these units, which can be priced on resale out of the range of low earning persons. There should be some kind of "income" or "assets" test for this as well.

with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401 et seq.; and

- B. Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the state's Manufactured Housing Act and regulations, meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air conditioning or electrical systems contained therein.

Any unit which does not fall within the definitions of this section and which is legally sited within the city on December 18, 1989, may be relocated to any location in the city in which manufactured housing is allowed.

Manufactured housing park. A parcel of land under unified ownership approved by the Planning Board under 30-A M.R.S.A. Section 4358 for the placement of single-component manufactured housing.

Manufactured housing park unit space. The area of land on which an individual home is situated within a manufactured housing park and which is reserved for use by the occupants of that home.

Manufactured housing subdivision or development. A parcel of land approved by the Planning Board under 30-A M.R.S.A. Section 4358 for the placement of single-component manufactured housing on individual owned lots.

Marijuana cultivation facility. A cultivation facility required to be licensed pursuant to 22 M.R.S. § 201 or any other facility engaged primarily in the business of planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana, including mature marijuana plants, immature marijuana plants, seedlings and marijuana seeds, for use or sale.

Marijuana manufacturing facility. A manufacturing facility required to be licensed pursuant to 22 M.R.S. § 2423-F or 28-B M.R.S. § 201.

Marijuana product. As defined by 22 M.R.S.A. §2422 or 28-B M.R.S.A., §102.

Marijuana retail store. A retail establishment licensed to sell marijuana, marijuana products, immature marijuana plants and seedlings to adult use or medical marijuana customers. A marijuana retail store is only authorized as a principal use, and is not permitted as an accessory use. A marijuana retail store may not exceed a maximum gross floor area of 2,000 square feet. A marijuana retail store shall not include a registered dispensary.

Marijuana testing facility. A facility licensed to develop, research and test marijuana, marijuana products and other substances as defined by 22 M.R.S.A. §2422 or 28-B M.R.S.A., §102.

Marina. A commercial operation providing floats, slips and piers intended primarily for berthing of noncommercial vessels and the provision of related services such as supplies, fuel, equipment and repairs, which may be provided both to tenants and non-tenants.

Military personnel berthing. A building, or portion thereof, which is primarily used as, and intended for, temporary living quarters for military personnel.

Moderate-income household. A household having an income not exceeding 120% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Multiple-component manufactured housing. Manufactured housing which is constructed and transported in two or more sections of substantially similar size that must be mated to form a habitable dwelling. For purposes of planned residential unit development and multiplex development, multiple-component manufactured housing shall be considered a dwelling unit.

Multi-family development. The construction or creation of three or more dwelling units on any parcel of land or the addition of two or more dwelling units cumulatively within a three-year period.

Multiplex. A residential development consisting of three or more horizontally or vertically attached dwelling units, or a series of such attached dwelling units and the construction of at least one building.

Neighborhood center. A building or portion of a building used for recreational, artistic, social, educational, health, culture, or similar activities and services, usually owned and operated by a public or nonprofit group or agency.

Neon. An illumination source created when a glass tube filled with neon or other similar gas emits light when energized. The tube can be bent to form letters, symbols, or other shapes. See “Direct Illumination”.

Nit. The standard unit used to measure the luminance of a surface, such as the face of a sign. One nit is equivalent to one candela (i.e. the light output of a common wax candle) per square meter.

Non-commercial vessel berthing. The use of berthing space for berthing of watercraft other than commercial vessels. Berthing space used in the following manner shall not be included in the calculation of the number of linear feet under this use category:

- A. Space used principally for sale or repair of vessels.
- B. Commercial vessel tenant space used by a noncommercial vessel for a period not exceeding ten consecutive days while the primary commercial vessel tenant is conducting its business or trade.

Normal high-water line (non-tidal waters). That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river during the period of normal high-water are considered part of the river.

Normal high-water mark of coastal waters. That line on the shore of tidal waters reached by the shoreward limit of the rise of the medium tides between the spring and the neap.

Office park. Separate office buildings planned, constructed, or managed on an integrated coordinated basis.

Off-peninsula. All land located north of I-295.

On-peninsula. All land located south of I-295.

Open space. Any park and any other area outside of a building open to the public.

Owner. Any person that has any interest, legal or beneficial, in any parcel or lot.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland, temporary. Structures which remain in or over the water for less than seven months in any period of 12 consecutive months.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland, permanent. Structures which remain in or over the water for seven months or more in any period of 12 consecutive months.

Place of assembly. A building or portion of a building used as a community hall, neighborhood center, private club or fraternal organization, or place of religious assembly. This definition shall not include buildings or portions of buildings used as a

community hall, neighborhood center, private and fraternal organization or place of religious assembly where 15 or fewer people, not including the permanent residents of a single-family dwelling, assemble.

Place of religious assembly. A building or portion of a building used for religious worship or instruction including, but not limited to, churches, synagogues, masjids, mosques and other places of worship.

Planned residential unit development (PRUD). A residential subdivision consisting of attached or detached dwellings intended for separate ownership, with open spaces, recreational areas, access ways and buildings which are designed, built, and managed in accordance with a unified development plan.

Planned unit development (PUD). A development consisting of either detached or attached single-family dwelling units and commercial or other uses, on substantially-sized properties of greater than 20 acres and designed to be compatible with the surrounding built and natural environment.

Plant canopy. As defined by 28-B M.R.S., §102.

Preschool. School for children generally younger than those attending elementary school, which may also encompass daycare facilities providing care and protection for children.

Private club or non-profit social and recreational facility. A private club or nonprofit social and recreational facility is open exclusively to members and to their bona fide guests accompanying them, in order to promote fellowship, social living, proper

recreation, civic responsibility, neighborhood responsibility, community welfare, or other endeavors. It shall be permissible to serve food and meals on such premises provided adequate dining room space and kitchen facility are available and are provided within all regulations of this Land Use Code and other applicable codes and ordinances.

Raceway. A sign mounting structure used to enclose electrical components (such as transformers and wiring) for signs.

Recent flood plain soils. Recent flood plain soils include the following soil series as described and identified by the National Cooperative Soil Survey: Alluvial, Charles, Cornish, Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Podunk, Rumney, Saco, Suncook, Winooski

Recording plat. The completed subdivision plat in form for approval and recording.

Recreation and amusement centers. Facilities equipped for the conduct of sports or indoor leisure time recreation activities, including games of skill or games of chance licensed either by the City of Portland or by the State of Maine. Such facilities may limit admission either to members or to persons paying an entrance fee.

Registered dispensary. A registered medical marijuana dispensary as defined by 22 M.R.S. §2422.

Registered patient. As defined by 22 M.R.S. §2422.

Repair services. Establishments primarily engaged in rendering services related to the maintenance or

repair of goods. In industrial zones only, repair services shall include motor vehicle repair services.

Restaurant. Any food service establishment with indoor seating capacity for ten or more patrons.

Retail. Any shop or store offering goods or merchandise to the general public for direct consumption and not for resale, or food service with indoor seating capacity for nine or fewer patrons. Retail shall not include gasoline, diesel, or propane fuel sales.

Roadway. That portion of a street between the regularly established curblines, or that part of a street or alley devoted to vehicular traffic.

Rooming unit. One or more rooms forming a single unit used, or intended to be used, for living and sleeping purposes by an individual or a family, but not designed for food preparation. In a suite of rooms, each room that provides sleeping accommodations shall be counted as one rooming unit for the purpose of this Chapter.

Self-storage facility. A fully enclosed building with individual, secured units (accessed with or without supervision) used for the exclusive purpose of storage of non-hazardous business or personal materials.

Sexually explicit. The display or depiction of sex organs during actual or simulated sexual intercourse or sexual acts as defined in 17 A.M.R.S.A. § 251.

Sheltered care group home. A facility which, in addition to providing food and shelter to a defined population of up to 12 individuals, provides guidance

or counseling services as a primary function of the facility.

Shore frontage. The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Sidewalk. That portion of a street not included in the roadway, and devoted in whole or part to pedestrian traffic.

Single-component manufactured housing. Manufactured housing which is constructed and transported in one section. For purposes of planned residential unit development and multiplex development, single-component manufactured housing shall not be considered a dwelling unit, except in the FH Flexible Housing Zone.

Sign. A structure, device, figure, display, message placard or other contrivance, or any part thereof, situated outdoors or indoors, which is designed, constructed, intended or used to advertise, provide information in the nature of advertising, provide historical, cultural, archeological, ideological, political, religious, or social information, or direct or attract attention to an object, person, institution, business, product, service, message, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, or illumination.

Sign, animated. Flashing, blinking, reflecting, revolving, or other similar sign with visibly moving or rotating parts or visible mechanical movement of any kind.

Sign, awning. Any sign that is part of or attached to an awning, canopy, or other fabric, plastic or structural protective cover over a door, entrance, window, storefront, or outdoor service area.

Sign, A-Frame. A pedestrian oriented self-supporting sign that is not permanently affixed to a structure or the ground.

Sign, bandit. Any advertising sign that is placed on public property or on private property without the consent of the property owner or as authorized in Article 19.

Sign, blade. A permanent sign mounted either to the wall of building by means of a bracket or attached to the underside of a lintel, arch or other overhead structure above a porch or walkway and which is typically hung perpendicular to the wall of the building.

Sign, building identification. A sign consisting of letters or numbers applied to a building wall, engraved into the building material, or consisting of a sculptural relief which contains the name of the building or describes its function, but which does not advertise any individual tenant of the building or any products or services offered.

Sign, building-mounted. Sign attached to, connected to, erected against the wall, parapet, or fascia of a building or structure with the exposed face of the sign in a plane parallel to the vertical face of the building or structure.

Sign, cont.

Sign, bus shelter. As specified in 23 M.R.S.A. §1908-A, any outdoor sign visible to the traveling public from public right-of-way that is affixed to a publicly owned bus shelter operated by a transit agency.

Sign, cabinet. A permanent building-mounted or freestanding sign with its text and/or logo symbols and artwork on a translucent face panel that is mounted within a metal frame or cabinet either that contains the lighting fixtures which illuminate the sign face from behind.

Sign, canopy. A sign that is printed, painted, or affixed to a canopy, typically used to accent building entries.

Sign, center identification. A sign identifying the name of a building, office park, or shopping center only.

Sign, changeable copy. A sign that is designed so that characters, letters, numbers, or illustrations can be manually or mechanically changed or rearranged without altering the face or surface of the sign. For the purposes of this Article, a sign whose message changes more than eight times per day is considered an animated sign (see Sign, animated) and not a changeable copy sign.

Sign, directional. A sign erected to inform the viewer of the approximate route, direction, or location of a facility or use.

Sign, directory. A permanent sign which provides information in a list, roster, or directory format.

Sign, Electronic Message. A sign or portion of a sign that is capable of changing its characters, letters, numbers, illustrations, display, color, and/or light intensity, including animated graphics and video, by electronic or automatic means. An Electronic Message Sign is not a Single- or Two-Color LED Sign.

Sign, externally illuminated. A sign whose illumination is reflected from its source by the sign surface to the viewer's eye, the source of light not being visible to the viewer.

Sign, Feather Banner. A temporary sign that is taller than it is wide and made of a flexible material (typically cloth, nylon, or vinyl) and mounted to a pole to fly freely.

Sign, freestanding. A permanent sign that is erected or mounted on its own self-supporting permanent structure or base detached from any supporting elements of a building.

Sign, fuel pump topper. A temporary sign affixed to the top of an operable fuel dispensing pump used to advertise goods offered for sale on the same parcel on which the fuel pump is located.

Sign, incidental. A sign which provides incidental information, including security, credit card acceptance, business hours, open/closed, directions to services and facilities, or menus.

Sign, cont.

Sign, individual letter. A cut-out or etched letter or logo which is individually mounted on a building wall, or freestanding sign.

Sign, internally illuminated. Any sign in which the source of light is entirely enclosed within the sign and not directly visible.

Sign, landmark. A permanent sign indicating individual historic landmarks, local historic districts or otherwise determined by the City to have attained a high degree of community, cultural, aesthetic, or historic significance.

Sign, logo. A stylized group of letters, words, numbers, or symbols used to represent and distinguish a business, product, or organization.

Sign, marquee. A permanent sign structure placed over the entrance to a building and typically used for a theater or other entertainment use.

Sign, monument. A permanent freestanding sign, with a solid base that is at least 60% the width of the sign face.

Sign, off-premise. Any sign that directs attention to a business, commodity, service, entertainment, product, structure, use, or property different from a structure or use existing on the property where the sign is located, and/or any sign on which space is rented, donated, or sold by the owner of said sign or property for the purpose of conveying a message.

Sign, pennant. A temporary sign made of flexible materials longer than it is wide, often triangular in shape, and frequently displayed with other pennants on a string.

Sign, permanent. A sign constructed of durable materials and intended to exist for the duration of time that the use or occupant is located on the premises.

Sign, pole. An elevated permanent sign typically supported by one or two poles, posts, or columns that do not meet the base width requirements for a monument sign.

Sign, projecting. A permanent sign that is attached to and extends perpendicular from a building from the wall.

Sign, service island canopy. A permanent sign mounted on or under a service island canopy, including on a fascia.

Sign, single-color or two-color LED: A permanent or temporary sign composed of single-color or two-color LEDs, including signs with fixed and changeable copy.

Sign, temporary. A sign constructed of paper, cloth, or similar expendable material, which is intended for a definite and limited period of display and which is designed to be moved easily and is not permanently affixed to a structure, sign area, or window.

Sign, cont.

Sign, wall. A permanent sign affixed to or erected against the wall or fascia of a building or structure, with the exposed face of the sign parallel to the plane of wall or fascia to which it is affixed or erected.

Sign, wall banner. A temporary sign and constructed of cloth, bunting, plastic, paper, or similar non-rigid material, and securely attached to the wall or support structure for which it is advertising. Flags are not considered temporary wall banners.

Sign, window. A permanent or temporary sign posted, painted, placed, or affixed in or on a window, or otherwise exposed to public view through a window.

Sign, Yard, Type I. A small temporary sign typically constructed of corrugated plastic and supported on an H-shaped wire frame used for example, for advertising by local businesses or by election campaigns (Synonym: Lawn Sign).

Sign, Yard, Type II. A temporary sign mounted on a single post installed securely in the ground with a small sign hanging from a cross-bar mounted parallel to the ground.

Sign, Yard, Type III. A temporary large sign mounted on two posts installed securely in the ground.

Sign copy. Any graphic, word, numeral, symbol, insignia, text, sample, model, device, or combination thereof that is primarily intended to advertise, identify, or notify.

Sign face. The exterior surface of a sign, exclusive of structural supports, on which is placed the sign copy.

Sign substructure. The supports, uprights, bracing and/or framework of a sign.

Site. All contiguous land under the same ownership or control, whether proposed for development or not, except where development is limited to a lot or lots within a subdivision.

Small-scale marijuana caregiver. A registered caregiver who sells or dispenses marijuana to no more than five individual registered patients in any one calendar month; does not process or manufacture marijuana using chemicals or solvents; and cultivates no more than 1) 250 square feet of plant canopy where located in a single-family dwelling or commercial space; or 2) 125 square feet of plant canopy where located in a dwelling unit within a two-family or multi-family building.

Solar access. Space open to the sun and clear of overhangs or shade, including orientation of buildings and lots to the sun, so as to permit the use of active and/or passive solar energy systems on individual properties.

Solar energy system. A complete assembly consisting of one or more solar collectors and associated mounting hardware or equipment, intended to provide for the collection, storage, and distribution of solar energy for heating or cooling, electricity generation, or solar/thermal hot water systems. Solar energy systems shall include the following:

- A. Accessory solar energy system. A system as defined above where power generation is incidental to a principal use, which may take the form of either a building integrated or roof-mounted solar array of any size, or a ground-mounted array occupying less than 1,000 square feet of air-space over ground area.
- B. Minor solar energy system. A system as defined above where power generation is considered a principal use, which may take the form of either a building- or roof-mounted solar array of any size, or a ground-mounted system occupying between 1,000 and 9,999 square feet of ground area.
- C. Major solar energy system. A system as defined above where power generation is considered a principal use, which may take the form of either a building or roof-mounted solar array of any size, or a ground-mounted system occupying greater than 10,000 square feet of ground area.

Solar energy system, building-integrated. A solar energy system that is an integral part of a principal or accessory building and include, but are not limited to, photovoltaic or hot water systems that are contained within roofing materials, windows, walls, skylights and awnings.

Solar energy system, ground-mounted. Also known as free-standing solar energy systems, a solar energy system that is structurally mounted to the ground. The panels may be stationary or revolving and of any size.

Solar energy system, roof-mounted. A solar energy system in which solar panels are mounted on top of the structure of a roof either as a flush-

mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

Solar energy system, size. The physical size of the panels based on total airspace occupied over the ground, or the grid area for ground mounted arrays. Calculation of physical size may differ from calculation of impervious surface area.

Sounds, impulse. Sound events characterized by brief excursions of sound pressure, each with a duration of less than 1 second.

Sounds, tonal. Sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time.

Special needs independent dwelling unit. A dwelling unit developed and managed by a nonprofit organization for habitation by persons with special social, physical or mental needs beyond strictly economic needs. Such persons shall be provided required levels of supervision, care and/or counseling services appropriate to their special needs, and the services shall be provided by either the sponsoring nonprofit agency or through another entity with which the agency has entered into a contractual arrangement.

Sports complex. One or more facilities located on the same parcel of land where athletic events are held and with a combined seating capacity of at least 6,000 seats.

Stockpiling. Any placement or creation of piles or loads of soil, loam, sand, gravel, rock or other

mineral deposits upon a site for the purpose of storage, warehousing or reserving for future use.

Stormwater retention area. A pond or basin used for the permanent storage of stormwater runoff.

Stormwater detention area. A storage area for the temporary storage of stormwater runoff which does not contain water during non-storm conditions.

Stream. A free-flowing body of water from the outlet of the confluence of two perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5-minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within a shoreland area, or any stream designated within a Stream Protection Zone.

Street. A public way established by or maintained under public authority, or a way dedicated to the use of the public.

Street line. The line of demarcation between private property and a street.

Street, cul-de-sac or dead end. A street with only one outlet.

Structure. Anything constructed or erected of more than one member having a permanent or semi-permanent location on another structure or in or on the ground, including without limitation buildings, fences, gazebos, signs, antennas, satellite sending or receiving dishes, and swimming pools.

Stockpiles shall be considered structures for the purposes of dimensional requirements.

Studios for artists and craftspeople. A facility for the production of arts and crafts products such as paintings, sculpture or other arts, or the practice of arts such as music or dance, or the production of custom handcrafted, or limited production of products such as furniture, wood, clay and metal products, publications and similar low impact arts and crafts activities.

Subdivider. Any individual, firm, association, syndicate, partnership, corporation, trust, or any other legal entity commencing proceedings under these regulations to effect a subdivision of land hereunder for himself, herself, or for another.

Subdivision. The division of a lot, tract or parcel of land into three or more lots, including lots of forty acres or more, within any 5-year period whether accomplished by sale, lease, development, buildings or otherwise and as further defined in 30 A.M.R.S.A. Section 4401. The term subdivision shall also include the division of a new structure or structures on a tract or parcel of land into three or more dwelling units within a 5-year period and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this paragraph. A dwelling unit shall include any part of a structure which, through sale or lease, is intended for human habitation, including single family and multi-family housing condominiums, time share units and apartments.

Subdivision, non-residential. A subdivision which is not intended for human habitation, such as a commercial or industrial subdivision.

Subdivision plat. A plan of the proposed subdivision for presentation to the Planning Board and the public.

Tasting room. A facility for the sampling of beer, wine, spirits, other alcoholic or non-alcoholic beverages, or food.

Telecommunication tower. Radio masts or tower structures built primarily to hold telecommunication antennas.

Tenant. Any occupant in lawful possession of a rental unit, whether by lease, sublease, or otherwise.

Theater or performance hall. Any establishment devoted to showing motion pictures, or for dramatic, musical, or live performances.

Tract (or parcel) of land. All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

Transient guest. A person who occupies a facility offering accommodations on an overnight basis for compensation and whose actual occupancy is limited to no more than 15 days out of any 60-day period.

Tributary stream. A channel between defined banks created by the action of surface water, which is

characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. Tributary stream does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

Upland edge of a wetland. The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation, or where the soils support the growth of wetland vegetation but such vegetation is dominated by woody stems that are six meters or taller.

Use. The purpose for which land or structures thereon is designed, arranged, or intended to be occupied, or for which it is occupied, maintained, rented, or leased.

Utility substation. Any sewage or water pumping station, electric power substation, transformer station, telephone equipment enclosures, or other similar structures owned or operated by a utility.

Vegetation. All live trees, shrubs, ground cover, and other plants including, without limitation, trees both over and under four inches in diameter, measured at four and one-half feet above ground level.

Very low-income household. A household having an income not exceeding 50% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. section 1437 et seq.

Vicinity sketch. A sketch of the proposed location of a development project or subdivision, not necessarily drawn to scale, showing the proximity of the project to surrounding streets and highways.

Warehousing, storage, and distribution. The storage of goods, wares, and merchandise in a warehouse from which distribution occurs. May include wholesale use, but not retail or direct sales to consumers.

Water body. Any river or stream.

Water-dependent uses. Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and which cannot be located away from these waters.

Wetlands. Those areas which have two or more of the following:

- A. A water table at or near the surface during the growing season;
- B. Very poorly drained soils, including Sebago mucky peat; or
- C. Obligate wetland vegetation.

Very poorly drained soils and obligate wetland vegetation shall be as defined and illustrated in the United States Department of Interior, Fish and

Wildlife Service publication of Wetland Plants of the State of Maine (1986).

Wind energy system. A wind energy generator and all associated facilities. Wind energy systems shall include the following:

- A. Accessory wind energy system. Roof-mounted or freestanding wind energy system measuring no higher than 10 ft. above the highest point of the roof or 45 ft. for freestanding systems.
- B. Minor wind energy system. Freestanding system measuring between 45 ft. and 85 ft. in height.
- C. Major wind energy system. Free standing system measuring between 85 ft. and 160 ft. in height.

Wind energy system, useful life. The period for which the system has been designed by the manufacturer to operate in a safe manner, including the period during which new parts and refurbishment allow it to continue operating safely.

Wholesale. Sale for resale, not for direct consumption.

Workforce housing unit for rent. A dwelling unit which:

- A. The rent is affordable to a household earning 100% or less than of AMI
- B. The unit is rented to a household earning 100% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

#025

Posted by **Peter Murray** on **01/05/2020** at **9:57am**

Type: Suggestion

Agree: 1, Disagree: 0

This has the same weakness as does the definition of affordable housing - it can include well to do retirees whose current earnings are modest, but who have substantial income and assets. They are not the workforce that are intended to be covered by this provision. There should be an income or assets or both test.

Workforce housing unit for sale. A dwelling unit for which:

026

- A. The purchase price is affordable to a household earning 120% or less of AMI;
- B. The unit is sold to a household earning 120% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

DRAFT

#026

Posted by **Peter Murray** on **01/05/2020** at **9:58am**

Type: Suggestion

Agree: 1, Disagree: 0

See comment to preceding provision.

DRAFT

4 NONCONFORMING USES, STRUCTURES, & LOTS

4.1 CONTINUATION

Any building, structure, lots, or use, that was legally existing at the time of its creation and made nonconforming by the provisions of this ordinance or any amendment thereto may be continued although such building, structure, lot, or use does not conform with the provisions of this ordinance.

4.2 NONCONFORMING USES

4.2.1 Increase in nonconforming use

- A.** A structure whose use is wholly nonconforming shall not be altered so as to increase the cubical content or the extent of nonconformity, except as provided for in (C), below.
- B.** A nonconforming use on premises outside of a building shall not be extended or allowed to occupy additional land area.
- C.** No alterations, modifications, or additions shall be made so as to increase the cubical content or the degree of nonconforming use, nor shall a nonconforming use be extended to any other part of a structure, unless such extension of a nonconforming use is solely for the purpose of bringing the use into compliance with health or safety codes, or to correct a condition which is determined by the Board of Appeals to constitute a health or safety problem. In either case, the expansion shall be limited to the minimum necessary to accomplish that purpose.
- D.** Except as expressly provided herein, any alteration, modification, or addition permitted under this subsection shall be in

compliance with all other applicable sections of this Land Use Code. Nothing within this subsection shall be construed to permit an increase in the number of units in a building which is nonconforming as to the number of dwelling units or will become nonconforming as a result of such alteration, modification, or addition.

4.2.2 Change of nonconforming use

When a nonconforming use has been changed to a permitted use, it shall not thereafter be changed back to any non-permitted use. For purposes of this subsection, a use shall be deemed to have been so changed when an existing nonconforming use is terminated and a permitted use is commenced and continued for a period of seven days. Any change of use in violation of this article shall be deemed to be an abandonment of the lawfully existing nonconforming use. A lawful nonconforming use shall not be changed to any use other than a use permitted in the zone in which the use is located or to any use other than a nonconforming use of a more restricted zone, as set forth in the following schedule, provided that in no such case shall any structural alterations be made in any building except those required by law, ordinance or other regulations:

- A.** In a business zone, from any use permitted in an industrial zone to any use permitted in a business zone.
- B.** In a B-1 zone, from any use permitted in a B-3 zone to any use permitted in a B-2 zone.
- C.** In a residential zone, from any use permitted in a B-2 zone to any use permitted in a B-1 zone.
- D.** In a residential zone, from any use permitted in any other residential zone to any use permitted in a more restrictive residence zone. For the

purpose of this subsection, an R-6 zone shall be deemed the least restrictive and an R-2 zone shall be deemed the most restrictive, with the intervening zones restricted in order of zone number.

4.2.3 Discontinuance of use of land

A nonconforming use of land where no buildings or only incidental or accessory buildings are employed together with such use shall not be changed to any other nonconforming use, and if such use is discontinued for a period of 90 days, it shall not be reestablished.

4.2.4 Discontinuance of use of property

If a legally nonconforming non-residential use is discontinued for a period of 12 months or if a legally nonconforming residential use is discontinued for a period of 24 months, such discontinuance shall constitute an abandonment of the use and the property shall not thereafter be occupied or used except in conformity with the provisions of this Land Use Code. A nonconforming use of land which is incidental or accessory to such nonconforming use shall be considered as being discontinued at the same time as the nonconforming use of the structure. In cases of foreclosure or similar situations involving a legally nonconforming use, the Planning Authority shall be authorized to extend the aforementioned period up to an additional five years provided that the extension is for good cause and the minimum length considered necessary to resume the legally nonconforming use of the structure. If the Planning Authority extends the period for resuming the nonconforming use, any associated existing nonconformities of structures and land shall also be extended. For buildings in Shoreland zones, state regulations may also govern

and provide for a shorter period of time for nonconforming properties.

4.3 NONCONFORMING LOTS

4.3.1 Lots of record

A lot that is unbuildable because it does not meet the space and bulk requirements for the zone in which it is located shall be considered a buildable lot if it meets the minimum standards provided below:

- A.** The lot is a lot of record as of June 5, 1957, and
 - (i) is located in the R-1, R-2, R-3, R-4, R-5, R-5A, or R-6 zones; (ii) can meet the applicable setback dimensions; (iii) has minimum street frontage of 40 feet or has a means of access previously approved by the City Council as provided elsewhere in this Land Use Code; and (iv) has a minimum lot size of 5,000 square feet, or the applicable minimum lot size and frontage in that zone, whichever is less.
- B.** The lot is a lot of record that was described in a subdivision plat approved by the Planning Board after June 5, 1981, and (i) is located in the R-1, R-2, R-3, R-4, R-5, R-5A or R-6 zones; and (ii) can meet the applicable setback dimensions.
- C.** The lot is a lot of record that conformed to the applicable lot size, lot width, and street frontage requirements as of June 5, 1984, and can meet the applicable setback dimensions.
- D.** The lot is a lot of record as of July 15, 1985, and
 - (i) is in the IR-1 or IR-2 zones; (ii) is held under separate and distinct ownership from adjacent lots; (iii) meets the applicable street frontage requirements; (iv) meets the applicable setback dimensions; and (v) provided further that a lot in the IR-1 zone shall have a minimum area of 10,000 SF and a lot of the IR-2 zone shall have a minimum area of 6,500 SF unless it is served by both public sewer and public water, in which

case it shall have a minimum area of 5,000 SF. A lot in the IR-1, IR-2 and I-B zones that was described in a subdivision plat approved by the Planning Board after July 15, 1982, shall be considered a buildable lot, provided that the applicable setback dimensions can be met.

- E. Contiguous lots of record under common ownership shall be deemed to be separate lots, provided that they either meet the minimum lot area and minimum frontage of the zone in which they are located, or the minimum applicable standards of this subsection.
- F. Any nonconformities of structures and buildings, existing prior to June 5, 1957, on developed lots of record shall be considered lawfully existing nonconformities.

4.4 NONCONFORMING BUILDINGS/STRUCTURES

4.4.1 Restoration or reconstruction

- A. A lawful nonconforming non-residential structure may be maintained, repaired, or reconstructed in kind within a one-year period or within a two-year period for a lawful nonconforming residential structure, but no alterations, modifications or additions shall be made to it, except as provided in subsections 4.4.2 and 4.4.3.
- B. A nonconforming structure damaged by fire, explosion, flood, riot, act of the public enemy, accident of any kind, decay or otherwise may be maintained, repaired, reconstructed, restored or rebuilt only where:
 - 1. The restoration or reconstruction is of a building which is lawfully nonconforming only as to lot area, setbacks, or any other dimensional requirements; and

- 2. Where the restoration or reconstruction will occur entirely within the existing footprint and previous shell of the building and where no alterations, modifications, or additions will be made except as provided in this article and as permitted in subsections 4.4.2 and 4.4.3; and
- 3. Restoration or reconstruction is commenced within one year for a nonconforming non-residential structure, or two years for a nonconforming residential structure, of the initial damage where such damage is sudden and accidental and is diligently pursued to completion without expiration of permits. For buildings in Shoreland zones, state regulations may also govern and provide for a shorter period for restoration or reconstruction of non-conforming structures; and
- 4. Restoration or reconstruction necessitated by decay must be commenced within one year of the demolition of the building and diligently pursued to completion without expiration of permits; and
- 5. Any reconstruction, under this provision, in the R-6 zone on a lot with 10,000 square feet or less, other than the exact restoration of a previously existing building on the site, shall comply with the applicable standards contained within the *City of Portland Design Manual*.

4.4.2 Alteration or modification

Alteration or modification may be made to a building which is lawfully nonconforming as to any dimensional requirement where the proposed changes in existing exterior walls and/or roofs would

be within the space occupied by the existing shell of the building, and would not create any new nonconformity nor increase any existing nonconformity, except as provided elsewhere in this article, and as permitted under 4.4.3. This subsection shall not apply to buildings located within shoreland zones and existing on June 15, 1992, which are nonconforming only as to setbacks from wetlands, tributary streams or other water bodies, which shall be regulated in accordance with Subsection 4.4.4.

4.4.3 Building extensions

Existing principal buildings which are lawfully nonconforming as to dimensional requirements may be enlarged subject to the following provisions:

- A. No modification to an existing nonconforming building shall increase any existing nonconformity of a lot, use or structure, except as provided in (D) below.
- B. No modification to an existing nonconforming building shall create new noncompliance with any provision of this Land Use Code.
- C. Existing buildings that are lawfully nonconforming as to required minimum setbacks may be vertically or horizontally expanded provided that the area of expansion meets all current dimensional requirements, except as provided in (D) below.
- D. A vertical expansion above a portion of a building that is lawfully nonconforming as to minimum setbacks may be permitted a one-time increase of one additional story provided that:
 1. No portion of the expansion horizontally extends beyond the nonconforming portion of the first story of the structure.

2. Any portion of a vertical expansion above the permitted one additional story shall meet the required minimum setback.

4.4.4 Expansions in the Shoreland zone

A non-conforming structure may be added to or expanded if such addition or expansion does not increase the nonconformity of the structure and is in accordance with the following provisions:

- A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high water line of a water body or tributary stream or the upland edge of a wetland that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Subsection 4.2.1, and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.
- B. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by Building Authority, basing its decision the criteria specified in subsection (C) below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with subsection (A) above, and the foundation does not cause the structure to be elevated by more than three additional feet as measured from

#027

Posted by **Ben Walter** on **01/14/2020** at **5:00pm**

Type: Suggestion

Agree: 1, Disagree: 0

This section should have a provision that allows for horizontal extensions of a non-conforming side yard that is in keeping with the historic fabric of the neighborhood. If all of the houses in a neighborhood have non-conforming side yard setbacks that define the character of that neighborhood, what is the point of limiting that for rear additions?

the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

- C. A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located, provided that the site of the relocation conforms to all setback requirements to the greatest practical extent as determined by the Building Authority, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law, the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with state law, such rules, and all applicable sections of the City of Portland Code of Ordinances. In no event shall a structure be relocated in a manner that causes the structure to be more nonconforming. In determining whether the building relocation meets the setback requirements to the greatest practical extent, the Building Authority shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of septic system and other on site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback are in order to relocate a structure, the Building Authority shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with

vegetation. Replanting shall be required as follows:

1. Trees removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.
 2. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.
 3. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.
- D. Buildings in existence on January 1, 1989, and located in Shoreland zones may be expanded once during the lifetime of the structure up to 25 feet toward a freshwater wetland or tributary stream, provided that a minimum setback of 40 feet is maintained and that the existing floor area or volume is not increased by more than 30%, and shall not create any undue environmental impact or flood prone condition.

4.4.5 Nonconformity as to number of dwelling units

- A. Purpose.** The purpose of this provision is to establish a process whereby certain dwellings which contain more dwelling units than the number permitted by the applicable provisions of the Land Use Code may be recognized as legal, nonconforming uses.
- B. Application.** Application for validation of such nonconforming dwelling units shall be on a form provided by the Building Authority. The application fee will be \$300.00 for each dwelling unit which is the subject of the application, and will be accompanied by:
1. A plan, drawn to scale, which shows the location of the building(s) on the lot, parking, easements, dumpsters, fencing, public ways and any other significant feature, and
 2. A floor plan for each unit in the dwelling, whether or not it is the subject of the application.
- C. Eligibility.** In order for a nonconforming dwelling unit to be validated by administrative action of the Building Authority as authorized herein, the Building Authority must find, based on competent evidence, supported by public records, that:
1. The nonconforming dwelling units were either in existence April 1, 2005, or the structure in which they are located was originally designed to accommodate more than the number of such units presently in use;
 2. The applicant neither constructed nor established the non-conforming dwelling units;

3. The nonconforming dwelling units comply with or can be made to comply with current standards of Chapter 10 of the City of Portland Code of Ordinances, including the National Fire Protection Association Life Safety Code and the National Fire Protection Association 1: Fire Prevention Code, as amended;
4. Each of the nonconforming dwelling units complies with, or can be made to comply with, provisions of the Chapter 6 of the City of Portland Code of Ordinances, as amended, including, but not limited to, the minimum standards for space and occupancy, the minimum plumbing standards, and the minimum ventilation standards.
5. The structure containing the nonconforming dwelling units is located in the R-3, R-4, R-5/R-5A, R-6/R-6A, R-7, B-1, B-2/B-2b/B-2c, and IS-FBC zones.

In the absence of legally competent evidence, supported by records, (such as, but not limited to, Assessor's records, purchase and sale agreements, affidavits, deeds, mortgages, as well as reliable secondary sources)), that the conditions of subsections C(1), C(2), c(3), C(4), or C(5) can be met, the Building Authority may not approve the application, but shall advise the applicant that the matter may be appealed to the Board of Appeals.

- D. Notice to abutters.** Upon receipt of a completed application, the Building Authority will provide the owners of abutting properties and the owners of property situated within 300 feet of the structure notice of the application, along with a notice that they may object to the Building Authority's acting on the application

and require the applicant to appeal to the Board of Appeals. The notice shall advise the abutters and owners of property within 300 feet that any objection must be submitted in writing to the Building Authority within 10 days of the date of the notice sent to them. The failure of any property owner to receive the notice described above shall not invalidate any action by the Building Authority. The Building Authority shall promptly notify the applicant of receipt of the objection, that the Building Authority is without authority to proceed, and advise the applicant that, within 30 days from receipt of the letter, an application may be filed to have the matter reviewed by the Board of Appeals as a conditional use.

E. Approval of application. The Building Authority may approve the application, provided that the evidence presented satisfies all of the requirements of this section and provided that no abutter nor person entitled to notice has requested that the application be referred to the Board of Appeals, instead of the Building Authority. Upon approval of the application, final inspection by the Building Authority certifying the units as in compliance with all applicable codes, and receipt of an additional fee in the amount of \$100.00 for each nonconforming dwelling unit which has been recognized as a lawful, nonconforming use, the Building Authority will issue a certificate of occupancy.

F. Disapproval of application. In the event the application is not approved by the Building Authority or in the event of a timely objection filed by a person qualified herein to file such an objection, the applicant, within 30 days from the decision of the Building Authority or

objection, may appeal the matter to the Board of Appeals as a conditional use.

G. Action by Board of Appeals. The Board of Appeals shall treat applications filed under this subsection as an application for a conditional use, applying the standards applicable to conditional uses as well as the requirements of this subsection.

H. Dimensional and parking requirements. In making decisions under this subsection, neither the Building Authority nor the Board of Appeals shall apply the dimensional or parking requirements which would otherwise apply in the zones where the nonconforming dwelling units are situated.

I. Exclusions. The provisions of this subsection shall not apply to rooming units, but shall apply to efficiency apartments under Chapter 6 of the City of Portland Code of Ordinances. The Board of Appeals is without jurisdiction to grant any relief (including, but not limited to, variances) which would recognize the particular dwelling units which are the subject of this subsection as legal, nonconforming uses, except in strict compliance with each requirement of this subsection.

J. Prior judicial and administrative action. Decisions of any court or administrative body, including but not limited to, the Building Authority, the Planning Board, or the Board of Appeals, made prior to the effective date of this subsection and which addressed the number of nonconforming dwelling units in a particular structure, will not bar relief under this subsection.

4.4.6 Enclosure of porches in required setbacks

Any open porch existing with a roof over the same on June 5, 1957, and encroaching upon any setback required by this article may be enclosed if the major portion of the enclosure is of glass.

4.5 NONCONFORMITY AS TO OFF STREET LOADING

A building which is nonconforming as to the requirements for off-street loading shall not be enlarged or added to, unless off street loading is provided sufficient to satisfy the requirements of Article 18 for both the addition or enlargement and the original building or structure.

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5 ZONES

5.1 ESTABLISHMENT OF ZONES

In order to carry out the provisions of this Land Use Code, the city of Portland shall be divided into the zones in Table 5-A.

5.2 ZONING MAP

The zones in Table 5-A are shown upon a map filed in the Department of Planning and Urban Development, City of Portland, Maine. Such zoning map, with amendments, is hereby adopted as the official zoning map of the City of Portland and as part of this Land Use Code.

5.2.1 Zone boundaries when uncertain

Where uncertainty exists with respect to the boundaries of the various zones, as shown on the zoning maps, the following rules shall apply:

- A. Unless otherwise indicated, zone boundary lines are the center lines of streets, alleys, parkways, waterways, or rights-of-way of public utilities and railroads or such lines extended.
- B. Unless otherwise shown, lines within blocks less than 200 feet wide are median lines between their sides, and lines within blocks 200 feet or more wide are 100 feet distant from the less restricted side of the block.
- C. The depictions of the Shoreland zone and Stream Protection zone on the shoreland zoning maps are illustrative of the general location of such zones. The actual boundaries of these zones shall be determined by measurement of the distance indicated on the maps and in this Land Use Code from the normal high-water line of the water body or the upland edge of wetlands. Where such measurement is not the same as the location of

TABLE 5-A: ZONES

Residential	R-1, R-2, R-3, R-4, R-5, R-5a, R-6, R-6a
Island	IR-1, IR-2, IR-3 I-B Island Business
Mixed-Use	B-1 Neighborhood Business B-2, B-2b, and B-2c Community Business B-3, B-3b, and B-3c Downtown Business B-4 Commercial Corridor B-5 and B-5b Urban Commercial B-6 Eastern Waterfront B-7 Mixed Development
Office	O-P Office Park R-P Residence Professional
Industrial & Airport	I-L and I-Lb Low-Impact I-M, I-Ma, and I-Mb Moderate Impact I-H and I-Hb High Impact A-B Airport Business
Open Space	RPZ Resource Protection R-OS Recreation and Open Space
Waterfront	EWPZ Eastern Waterfront Port WCZ Waterfront Central WPDZ Waterfront Port Development
Overlay Zones	Compact Urban Residential (R-7) Downtown Entertainment Overlay Fort Sumner Park Height Overlay Helistop Overlay Institutional Overlay (IOZ) Maine Medical Center IOZ Munjoy Hill Neighborhood Conservation Island Transfer Station Overlay Pedestrian Activities District Overlay Stream Protection Overlay University of Southern Maine Overlay Waynflete School Overlay
Form-Based	IS-FBC India Street Form-Based Code
Other	Floodplain Management Shoreland

#028

Posted by **Barbara Vestal** on **01/07/2020** at **2:39pm**

Type: Observation

Agree: 0, Disagree: 0

Why aren't waterfront zones included in Article 5? They are geographic zones just like the others.

#029

Posted by **Karen Snyder** on **01/12/2020** at **4:11pm**

Type: Question

Agree: 0, Disagree: 0

Where are the Working Waterfront Zones? Shouldn't they be in the Zone section as they are referred to in the Comprehensive Plan?

the boundary on the zoning map, the measurement shall control, unless the zoning map indicates that the zone boundary shall follow an existing property line.

5.2.2 Extension of zone lines

Where a zone boundary line divides a lot in single or joint ownership of record at the time such line is established, the provisions of this Land Use Code for the less restricted portion of such lot shall extend not more than 30 feet into the more restricted portion, provided that the lot has at least 20 feet of street frontage in the less restrictive zone when taken together with adjacent premises which are under the same or equivalent ownership or control. If such boundary line divides a business or industrial zone from a residential zone, no frontage on a street other than the principal business street in the less restrictive zone may be taken into consideration in connection with the right herein granted. This section shall not apply to differing dimensional requirements, including height, within a zoning district.

5.3 CONDITIONAL OR CONTRACT ZONING

5.3.1 Authority and purpose

Pursuant to 30-A M.R.S.A. Section 4503(9), conditional or contract zoning is hereby authorized for rezoning of property where, for reasons such as the unusual nature or unique location of the development proposed, the City Council finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions in order to ensure that the rezoning is consistent with the city's comprehensive plan. Conditional or contract zoning shall be limited to where a rezoning is requested by the owner of the property to be rezoned. Nothing in

this section shall authorize either an agreement to change or retain a zone or a rezoning which is inconsistent with the city's comprehensive plan.

5.3.2 In the I-H zone

A conditional or contract rezoning shall only be approved in the I-H or I-Hb zones if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the following standards:

- A. The proposed development is consistent with the comprehensive plan.
- B. The proposed development is consistent with the purposes of the underlying zone.
- C. The proposed development is designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal.
- D. All plans must include complete information of processes, materials or methods of storage to be used by the development and shall specify how hazardous impacts to neighboring properties will be prevented.

5.3.3 Hearing

The Planning Board shall conduct a public hearing in accordance with Article 2 prior to any property being rezoned under this section.

5.3.4 Conditions and restrictions

Conditions and restrictions imposed under the authority of this section shall relate only to the



physical development and operation of the property and may include, by way of example:

- A. Limitations on the number and types of uses permitted;
- B. Restrictions on the scale and density of development;
- C. Specifications for the design and layout of buildings and other improvements;
- D. Schedules for commencement and completion of construction;
- E. Performance guarantees securing completion and maintenance of improvements, and guarantees against defects;
- F. Preservation of open space and buffers, and protection of natural areas and historic sites;
- G. Contributions toward the provision of municipal services required by the development; and
- H. Provisions for enforcement and remedies for breach of any condition or restriction.

available by law. No alleged violation of a contract or conditional rezoning may be prosecuted until the City has delivered written notice of the alleged violation(s) to the owner or operator of the property that is subject to the contract or conditional rezoning and given the owner or operator an opportunity to cure the violation(s) within 30 days of receipt of the notice. In addition, if such an enforcement action should result in a finding that the terms of the conditional or contract zone have been violated, then the City may act to modify or rescind the conditional or contract zone and to rezone the property.

5.4 BASE ZONE PURPOSE STATEMENTS

5.3.5 Amendments

Except as expressly modified in any contract or conditional rezoning agreement, the use and occupancy of any property within the City of Portland used or occupied pursuant to a contract or conditional rezoning agreement otherwise shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

5.3.6 Enforcement

Notwithstanding language in any contract or conditional zoning to the contrary, any violation of a conditional or contract zone shall be enforced pursuant to 30-A M.R.S.A. §4452, as may be amended from time to time, or in any other manner

TABLE 5-B: RESIDENTIAL ZONE PURPOSE STATEMENTS

R-1	To provide for lower density residential development characterized by single-family homes on individual lots in outlying areas of the city and along traffic corridors with limited additional traffic capacity.
R-2	To provide for low-density residential development characterized by single-family homes on individual lots in outlying areas of the city and along traffic corridors with limited additional traffic capacity.
R-3	To provide for medium-density residential development characterized by single-family homes on individual lots and also to provide for planned residential unit developments on substantially sized parcels.
R-4	To preserve the unique character of the Western Promenade area of the city by controlling residential conversions and by allowing the continued mix of single-family, two-family, and low-rise multi-family dwellings and other compatible development at medium densities.
R-5	To provide appropriate areas of the city for medium-density residential development characterized by single-family, two-family and low-intensity multifamily dwellings on individual lots; to ensure the stability of established medium-density neighborhoods by controlling residential conversions; and to provide for planned residential unit development on substantially-sized parcels.
R-5A	To provide for moderate-density residential development in off-peninsula locations that can provide a unique residential living experience with a high degree of natural site amenities; and to provide areas of the city in the general proximity of the peninsula that have the capability for adequate municipal services, including traffic corridors with adequate traffic capacity, that can appropriately accommodate a more intensive use of land than other lower-density zoned land and be compatible with surrounding neighborhoods; and to increase affordable housing opportunities in off-peninsula locations by providing a moderate-density zone.
R-6	To set aside areas on the peninsula for housing characterized primarily by multi-family dwellings at a high density providing a wide range of housing for differing types of households; and to preserve the existing housing stock and residential character of neighborhoods by controlling the scale and external impacts of professional offices and other nonresidential uses.
R-6A	To encourage neighborhood livability with higher density multi-family housing on large parcels located off the peninsula along major public transportation routes, near service areas, and in infill areas.

#030

Posted by **Rob Whitten** on **01/08/2020** at **4:55pm**

Type: Question

Agree: 1, Disagree: 0

What happened to the Purpose of R-6 definition that includes "...conserve the existing housing stock and residential characters of neighborhoods..." in the proposed ReCode?

#031

Posted by **Karen Snyder** on **01/08/2020** at **4:56pm**

Type: Question

Agree: 0, Disagree: 0

Why was the R-6 Zone definition changed? The old R-6 Zone definition should remain as is:

The purpose of the R-6 residential zone is:

(a) To set aside areas on the peninsula for housing characterized primarily by multifamily dwellings at a high density providing a wide range of housing for differing types of households; and to conserve the existing housing stock and residential character of neighborhoods by controlling the scale and external impacts of professional offices and other nonresidential uses.

#032

Posted by **Barbara Vestal** on **01/08/2020** at **6:54pm**

Type: Question

Agree: 0, Disagree: 0

I also question why the following was deleted from the existing R-6 Purpose statement if Phase I is supposed to be non-substantive, forming changes: "In cases of qualifying small, vacant, underutilized lots located in the urban residential and business zone, to encourage new housing development consistent with the compact lot development pattern typically found on the peninsula." True the 2015 amendments, unwisely, eliminated the "vacant, underutilized" restriction, but shouldn't this change be flagged and there be a discussion about retaining the goal that new housing development be consistent with the compact lot development pattern typically found on the peninsula?

#033

Posted by **Peter Murray** on **01/05/2020** at **10:04am**

Type: Suggestion

Agree: 2, Disagree: 0

This statement of the purpose of the R-67 zone is incomplete and appears to be misleading. First of all, a lot of the current R-6 is single and two family dwellings. The character of the neighborhood should be protected from incompatible residential development as well as from professional office development, which has not been a

problem in recent years

#034

Posted by **Ben Walter** on **01/14/2020** at **4:48pm**

Type: Suggestion

Agree: 0, Disagree: 0

There are many neighborhoods on the current zoning map that do not appear to conform with the stated purposes. It is my guess that they were erroneously zoned when the map was created and have not changed since. The existing map should carefully reviewed for conformance.



TABLE 5-C: ISLAND ZONE PURPOSE STATEMENTS

IR-1	To provide for low-intensity residential, recreational, and rural uses in the less developed areas of the islands in order to preserve the rustic character of the islands, to protect groundwater resources and natural and scenic areas, and to permit only appropriate low-intensity development in areas lacking adequate public facilities and services.
IR-2	To protect the character of existing developed residential neighborhoods on the islands and to allow infill where there are adequate public services. Expansion or extension of an existing IR-2 zone should be strictly limited, generally focused toward areas adjacent to existing village IR-2 areas, and restricted by such factors as adequacy of access, whether adequate water will be available for private use and for fire protection, and whether soils in the area are adequate for subsurface water disposal or whether public sewers are available. IR-2 rezoning on substantially sized parcels should not be considered for those sites that should be more appropriately zoned otherwise.
IR-3	To allow for a planned unit development in a manner compatible with both the natural and built environment, which provides for adequate circulation and waterfront access, adequate water supply for private use and fire protection, and safe and clean disposal of solid and septic wastes. The following guidelines shall be considered, among others, in establishing an IR-3 zone: A. An IR-3 zone should have a minimum land area of 20 acres; B. A site for an IR-3 zone should be able to accommodate higher density development by providing buffers from surrounding areas on a substantially-sized parcel for which natural amenities are capable of being conserved in a development plan for the site; C. IR-3 zones should not be established unless issues of municipal services, including infrastructure, education, and police and fire services and other municipal services can be appropriately and adequately addressed; D. The differences in scale and intensity of uses between existing development and the IR-3 zone, and the cumulative impact on the overall density of the island, should be mitigated by appropriate open space and buffer areas; and E. The development plan should have the capability of meeting the development review standards of the zone.
I-B	To provide limited areas on the islands for retail and service establishments that primarily serve the needs of the local island market area.

TABLE 5-D: MIXED-USE ZONE PURPOSE STATEMENTS

B-1	To provide limited areas for the location of small-scale commercial establishments intended to serve a local market. Uses that are complimentary, quiet, and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment are encouraged, and should be designed for the pedestrian scale and to provide convenient access for nearby residents and workers to walk in to purchase goods and services. Buildings and uses shall be designed with attractive storefronts or similar features, with windows and doors convenient to a public sidewalk. This zone encourages mixed-use buildings, such as commercial first floor with residential uses above or combined retail/office uses in a multi-story structure. The zone also provides the opportunity for high residential density. Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.
B-2	To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing, and services serving the adjoining neighborhoods and the larger community. The zone provides a broad range of goods and services with a mixture of large and small buildings, such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns. The zone should provide locations for moderate to high-density housing in urban neighborhoods along arterials.
B-2b	To provide neighborhood and community retail, business and service establishments that are oriented to and built close to the street. The B-2b zone is appropriate in areas where a more compact urban development pattern exists or where a neighborhood-compatible commercial district is established which exhibits a pedestrian scale and character. Such locations may include the peninsula and other arterials and intersections with an existing urban or neighborhood-oriented building pattern. The B-2b should provide locations for moderate to high-density housing in urban neighborhoods along arterials.
B-2c	To protect and enhance the quiet enjoyment of adjoining residential neighborhoods from the impacts of businesses that serve liquor and from other uses that are incompatible with adjoining neighborhoods due to noise.
B-3 & B-3b	To maintain and enhance the role of the downtown as the business and commercial center of the region; to enhance and promote the orderly expansion of retail and service businesses downtown, satisfying the related needs of the city's resident, working, and visitor populations; to encourage increased housing opportunity downtown for a diverse residential population; to enhance the pedestrian environment through the encouragement of intensive mixed-use activities, through the enhancement and maintenance of public and private open space, and through the enlivenment and increased attractiveness of the street environment; to encourage excellence in urban design; to preserve and capitalize on the unique character and historic fabric of the downtown through the encouragement of reuse of significant existing structures; to provide opportunity for an enhanced presence and integration of the arts and cultural activities; to reinforce the role of the downtown as a meeting place for community residents and visitors alike from all walks of life and all socio- economic groups; to provide adequate parking and transportation facilities which promote accessibility, enhance and encourage development opportunity, and enhance and protect the pedestrian environment; In the Pedestrian Activities District (PAD) Overlay Zone, to create continuity of pedestrian-oriented uses along streets where such uses predominate and along streets which, over time, will establish and maintain a strong retail and pedestrian-oriented use pattern; and to provide for the relocation of residents who are displaced by development.



TABLE 5-D (CONT.): MIXED-USE ZONE PURPOSE STATEMENTS

B-3c	In addition to the purpose of the B-3 and B-3b zone, to promote the safety, quiet enjoyment, and general welfare of citizens residing in a dense urban neighborhood by decreasing the conflicts between residential uses and loud late-night activities. The B-3c zone recognizes that the business uses appropriate in this zone are constrained by the proximity of multi-unit elderly housing.
B-4	To provide appropriate locations in the city for the development and operation of businesses catering primarily to highway-oriented trade along major arterials, as well as to provide appropriate locations for large-scale commercial uses that require larger land areas to accommodate their operations.
B-5 & B-5b	To provide areas of the peninsula near the downtown where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged. The B-5 and B-5b zones are characterized by larger underdeveloped lots with great potential for denser, clustered, urban mixed-use development and more efficient reuse of existing land and buildings. It is anticipated that the dense, mixed-uses of the B-5 and B-5b zones will rely on a shared infrastructure system, including service alleys, parking lots, public transportation facilities, stormwater management, and driveways.
B-6 036	To establish a zoning district for the upland portion of the Eastern Waterfront area. To allow development that emphasizes a quality pedestrian experience, promotes public transit, and demonstrates exemplary urban design. The zone promotes a range of uses to achieve twenty-four hour urban vitality and shared use of parking infrastructure.
B-7	To establish a zoning district for urban areas in which the City has adopted master plans for redevelopment. Certain areas, including but not limited to Bayside, lie at the perimeter of the established downtown and contain significant redevelopment opportunities. The B-7 zone encourages these districts to acquire a distinctly urban form through dense development featuring a mix of uses such as housing, retail, offices, research and development, and artisan studios and that emphasizes a quality pedestrian experience, promotes public transit, and demonstrates exemplary urban design. Use of multi-modal transportation is strongly encouraged and is advanced by the installation of bicycle amenities, such as bicycle racks and storage areas. The zone promotes a wide range of uses in high quality structures and public open spaces to achieve 24-hour urban vitality and shared parking infrastructure.

TABLE 5-E: OFFICE ZONE PURPOSE STATEMENTS

O-P	To provide substantial areas for integrated development of offices in a park- or campus-like setting which are of the highest quality, are well-designed and maintained, and are compatible with their natural surroundings.
R-P	To provide appropriate location for the development and operation of low-intensity business uses, including offices on or near major arterials, that are compatible in scale, density and use with surrounding and adjacent residential neighborhoods; or to serve as a transition or buffer zone between residential and more intensive nonresidential zones.

#035

Posted by **Karen Snyder** on **01/12/2020** at **3:43pm**

Type: Question

Agree: 0, Disagree: 0

Why have you substantially changed the B-6 zoning definition without flagging the major changes? This is not transparent to the public.

#036

Posted by **Barbara Vestal** on **01/07/2020** at **2:52pm**

Type: Question

Agree: 0, Disagree: 0

Why aren't the purpose statements imported intact? The purpose statement for the B-6 zone is paraphrased, leaving out language about encouraging a "distinctly urban form" and leaving out a qualifier "as recommended in the Eastern Waterfront master plan for redevelopment." These are in the current purpose statement and are important phrases. Has staff made some policy decision to omit them? If so, it should be flagged and explained for further discussion.

TABLE 5-F: INDUSTRIAL AND AIRPORT ZONE PURPOSE STATEMENTS

I-L & I-Lb	To provide areas in which low-impact industrial uses, and limited other uses serving employees and residents of the surrounding neighborhood, will be compatible with adjacent residential uses, will provide a buffer between residential neighborhoods and higher impact industrial zones, or will stand alone as a smaller scale industrial district. The I-L zone is located adjacent to residential neighborhoods, business uses and other industrial uses where the low-intensity nature of the uses, as well as their strict performance standards, will ensure the compatibility of the uses with other adjacent industrial and nonindustrial uses. Performance standards for uses in the I-L zone are designed to maintain compatibility between low impact industrial uses and neighboring nonindustrial and industrial uses.
I-M, I-Ma, & I-Mb	To provide zones in areas of the city in which low and moderate impact industries and transportation-related uses will coexist. I-M and I-Ma zones are located on arterials or collectors. The I-Mb zone is similarly located on the peninsula. These locations provide for direct access onto arterials, thereby protecting residential neighborhoods from drive-through traffic. The purpose of the I-M, I-Ma and I-Mb industrial zones is also to provide for larger industrial buildings and for the limited or controlled use of areas outside of structures for storage of materials and machinery. These facilities often require large volumes of imported materials and products which result in large volumes of shipping and receiving. Often uses may be highway-oriented and transportation-related, thus relying on citywide and regional transportation infrastructure. Industrial uses in these moderate impact industrial zones may require separation from higher-impact uses.
I-H & I-Hb	To provide areas suitable for higher impact industrial uses than are permitted in other industrial zones and other uses that are capable of demonstrating, through design, layout and topography, their compatibility with, or non-intrusion on, existing or future higher impact industrial uses on adjacent or neighboring I-H zoned properties. Due to the intensity of use, the I-H zones are intended for uses which may require extensive outdoor storage and usage and may utilize heavy equipment. Processes may require separation from residential or sensitive environmental areas. The I-H zones are separated from other nonindustrial uses as well as natural or constructed features. High impact industrial uses will be of a higher intensity, with a greater lot coverage, than the other zones.
A-B	To provide an area for the development of airport-related enterprises. Appropriate uses permitted in this zone are those customarily associated with the operation of the airport terminal and individual airlines and accessory uses to provide for the comfort and convenience of the airport's patrons and employees.

TABLE 5-G: NATURAL RESOURCE AND OPEN SPACE ZONE PURPOSE STATEMENTS

RPZ	To preserve and protect open space for its natural resource value and to allow limited use of these open spaces for non-intensive recreational purposes.
R-OS	To preserve and protect open space as a limited and valuable resource; to permit the reasonable use of open space, while simultaneously preserving and protecting its inherent open space characteristics to assure its continued availability for public use as scenic, recreation, and conservation or natural resource area, and for the containment and structuring of urban development; to provide a suitable location for large-scale regional sports and athletic facilities; and to develop an open space system throughout the City, which provides the highest quality parks, plazas, and pedestrian environment.

6 USE STANDARDS 038

6.1 APPLICABILITY

The use of buildings, structures, and land are governed by this article, except when superseded by other applicable laws or ordinances. It is the intent that, when in doubt, this article should be interpreted to accommodate the goals of the City's Comprehensive Plan and other plans.

6.2 DETERMINATION OF USE

6.2.1 Use tables

Tables 6-1 to 6-6 shall determine if a use is permitted (●), conditional (◐), or not permitted (◑), as a principal use within a zone. Unless otherwise noted, where a use is listed in terms of square footage, square footage figures shall correspond to the total floor area of the use.

6.2.2 Unlisted uses

- A. Uses not expressly listed as permitted or conditional in Tables 6-1 to 6-6 are prohibited as principal uses except that a use may be permitted subject to meeting the following performance-based standards: 037
1. The proposed use is consistent with the purposes of the zone;
 2. The proposed use is closely related to a permitted use in terms of character, scale, and external impacts; and
 3. The buildings and structures associated with the proposed use are designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise

levels, emissions, traffic, lighting, odor, and any other potential negative impacts.

- B. The Planning Authority shall determine whether the uses not listed as permitted or conditional uses meet the above standards. If it is determined that the use does not meet the above criteria, it shall not be permitted.
- C. The Planning Authority may impose reasonable conditions of approval on the proposed use to ensure that it is similar in character and impact to a permitted or conditional use.

6.2.3 Multiple uses

A site may contain more than one principal use, so long as each principal use is allowed within the zone.

6.3 CHANGE OF USE

A change of use from one use in these tables to another is governed by the requirements of the new use. The use of any part of any building, structure, or property shall not be changed to any other use, whether principal or accessory and whether alterations in the building, structure, or property are involved or not, until a permit and certificate of occupancy authorizing such change of use has first been secured from the Building Authority in accordance with Chapter 6 of the City of Portland Code of Ordinances.

#037

Posted by **Barbara Vestal** on **01/07/2020** at **2:36pm**

Type: *Observation*

Agree: 0, Disagree: 0

In addition there are obvious errors. It says uses not expressly listed in Tables 6-1 to 6-6 are prohibited. There are no tables 6-1 to 6.6. They are 6-A to 6-F. 6.2.2.

#038

Posted by **Barbara Vestal** on **01/07/2020** at **2:32pm**

Type: *Observation*

Agree: 2, Disagree: 0

These are extracted from comments I made to the Planning Board prior to its 12/17 workshop: MY MAJOR OBJECTION AT THIS TIME IS THAT THERE ARE SUBSTANTIVE POLICY CHANGES BEING MADE BY OMISSION, WITHOUT ANY FLAGGING OF THOSE CHANGES FOR THE BOARD OR THE PUBLIC.

Staff keeps repeating that Phase I is formatting and organizational, and that policy debate and changes will not be made until after Phase I is adopted. Then in Phase II policy changes to bring the zoning into line with the comprehensive plan will be pursued. However, in the draft before you there are substantive changes. I have not done an exhaustive review, nor should it be my job or the job of the public at large to identify all of the changes. The burden should be on staff to flag each of these changes in a memo to be presented to the Planning Board and the public for subsequent discussion.

I primarily only looked at the R-6 draft text. Among the changes I found from the existing R-6 language are the following:

1. For some reason Professional Offices is changed to "General Offices" in the chart, which then refers to notes. At the qualifying note 6.5.6.C, somebody, making a substantive change, has decided to omit the existing language which currently states that professional offices are allowed BUT that category excludes personal services, retail services and veterinarians. The new draft only expressly says that veterinarians are excluded. The list of illustrative examples of permitted professional offices contained in the existing text are omitted in the draft. 14-137(c)(2). I don't know whether somebody has made the judgment that personal services or retail services should be allowed. It has not been flagged as a decision point because there has been a representation that there are no substantive changes.
2. The current R-6 extensive provisions about manufactured housing do not appear in the draft sections. 14-136(a)(4). It is unclear what the intent is for individual manufactured housing units.
3. In the current R-6 zoning, there are requirements that documentation of special

needs independent living units must be recorded in the Registry of Deeds. Those provisions are omitted in the current draft. Was there a decision to delete that requirement? 14-136 (b)(7)

4. Only some of the R-6 conditions for hostels are included. It is unclear whether staff intends to house them elsewhere or they have decided not to include them at all. 14-136 (b)(9).

5. The sheltered care group homes in the current R-6 zone are specifically limited to homes that are not serving parolees, persons involved in correctional prerelease programs or current illegal drug users. That restriction is omitted in the draft which is before you. Similarly our current zoning requires that the proposed use provide adequate on-site staffing AND supervision of residents. The draft omits the requirement for adequate supervision.

6. In the dimensional standards, there is an inconsistency between "grade, average" and "grade, predevelopment," with the latter stating it is at the corners of the foundation of the proposed structure. Even if we are putting off until Phase II the critical policy discussion on getting height measured correctly, there seems to be something missing if these "rules of measurement" are supposed to be documenting how it is actually done now.

7. The discussion in 7.5 D rooftop appurtenances fails to acknowledge that there are exceptions to the statement that rooftop appurtenances may exceed the height limitations. At a minimum it should say except as otherwise limited in the Munjoy Hill Conservation Overlay Zone or a similar overlay zone.

These are just some examples of what appear to be substantive changes that have not been flagged as being contained in the materials before you. Admittedly some of them are fairly subtle. But the point is that there are policy choices that are being made by staff, and they are not being held for discussion in Phase II, nor are they being flagged so that you and the public are aware of the shifts. Some of the changes (e.g. personal services vs. professional services, parolees and persons in correctional pre-release programs, adequate supervision, rooftop appurtenances exceeding height limitations, etc.) delete provisions that were there for a purpose and could have a significant impact on how well the proposed uses fit into a dense residential neighborhood.

In addition to these variations from existing language, there are areas that are so different that they cannot even be tracked to see what is being left out. For example, staff needs to explain what they are doing about preschool, day care facilities and home babysitting services. They seem to be lumping them together in some provisions, but the definition of preschool seems to assume a school that might be providing some day care services; it does not seem broad enough to include home babysitting services.

TABLE 6-A: PERMITTED AND CONDITIONAL USES IN RESIDENTIAL ZONES

		R-1	R-2	R-3	R-4	R-5/R-5A	R-6/R-6A	Use Standards
Residential	Single-family dwellings	●	●	●	●	●	●	
	Two-family dwellings				●	●	●	
	Multi-family dwellings			○		○ ¹ /● ²	●	6.5.6.G
	Multiplex				○	● ¹		6.4.12
	Handicapped family units	●	●	●	●	●	●	
	Planned Residential Unit Developments			● ⁴		● ⁴		
	Special needs independent dwelling units				●	○ ³	●	
	Lodging houses					○ ^{1,3}	●	6.4.9
Institutional	Sheltered care group homes	○	○	○	○	○	○	6.5.6.K
	Congregate care facilities					● ²		6.5.6.F
	Elementary, middle, and secondary schools	○	○	○	○	○ ¹	○	
	Governmental uses	●	●	●	●	●	●	
	Hospitals			○		○ ¹	○	
	Intermediate care facilities	○	○	○		○ ¹ /● ²	○	
	Long-term and extended care facilities	○	○	○		○ ¹ /● ²	○	6.5.6.F
	Places of assembly (<10,000 SF)	○	○	○	○	○ ¹	○	
	Places of assembly (>10,001 SF)	○	○	○	○	○ ¹	○	
	Preschool facilities	○	○	○	○	○	○	6.5.6.I
Comm.	Post-secondary schools					○ ¹	○	6.5.6.F
	Bed and breakfasts						●/○ ⁵	6.4.4
	General offices (<5,000 SF)						○	6.5.6.C
	Hostels						●/○ ⁶	6.4.8
Other	Agriculture	●	●					
	Cemeteries	●	●		●		●	
	Off-street parking			○	○	○ ¹		6.5.6.H
	Parks and open spaces	●	●	●	●	●	●	
	Raising of domesticated animals	○						6.5.6.J
	Solar energy system (minor)	●	●	●	●	●	●	6.4.15
	Utility substations	○	○	○	○	○	○	6.5.6.L

1 In R-5 zone only.

2 In R-5A zone only.

3 Conversions of existing two-family or multiplex structures into lodging houses are permitted as a conditional use, provided that the lodging house shall not be located within 500 ft. of another as measured along street lines.

4 Must consist of horizontally attached dwelling units in the R-3 zone and horizontally or vertically attached dwelling units in the R-5 zone, or a series of such dwelling unit, with all land owned and used in common.

5 Permitted if a conversion of a structure existing as of 3/3/97 to up to four guest rooms and conditional if a conversion of the same to five to nine rooms.

6 Permitted if for no more than 10 overnight transient guests and conditional if for between 11 and 20 overnight transient guests. An owner, manager, or operator shall be a permanent resident of the building.

#039

Posted by **Julie Larry** on **01/08/2020** at **2:13pm**

Type: Observation

Agree: 0, Disagree: 0

This is currently a conditional use in R-5 14-117 b.5

TABLE 6-B: PERMITTED AND CONDITIONAL USES IN ISLAND ZONES

		IR-1	IR-2	IR-3 ¹	I-B	Use Standards
Residential	Single-family dwellings	●	●	● ²	●	6.5.6.G
	Two-family dwellings				○	
	Multi-family dwellings				○	
	Handicapped family unit	●	●	●	●	
	Planned Residential Unit Developments	●	●			
Institutional	Lodging houses		○ ³	● ³	● ³	6.5.6.F ⁶
	Elementary, middle, and secondary schools	○	○	●	○	
	Educational facilities (including seasonal camps)	○	○			
	Governmental uses	○	○	●	○	
	Places of assembly (<10,000 SF)	○	○	●	○	6.5.6.I
	Places of assembly (>10,001 SF)	○	○		○	
	Preschool facilities	○	○	●	○	
Commercial/Service	Auto service stations				○	6.5.6.A
	Bed and breakfasts				● ⁴	
	General services (<5,000 SF)				●	
	Hotels			● ⁵	○ ⁵	
	Restaurants			●	●	
	Retail (<10,000 SF)			●	●	
Other	Studios for artists and craftspeople				●	
	Agriculture	●				
	Boathouses and storehouses for fishing equipment	●	●	●	●	6.4.5
	Campgrounds	○		●		
	Cemeteries	○	○			
	Marinas and yacht clubs			●	●	
	Off-street parking				●	
	Parks and open spaces	●	●	●	●	
	Raising of domesticated animals	○				6.5.6.J
	Solar energy system (minor)	●	●	●	●	6.4.15
	Utility substations	○	○	●		6.5.6.L
	Wharves, piers, docks, and landing ramps	○	○	●	●	

¹ All uses within the IR-3 permitted only within a PUD.

² Single-family attached permitted provided that new construction shall be limited to no more than six attached dwellings per building.

³ With greater than two but no more than nine rooms.

⁴ Permitted on Peaks Island only.

⁵ Maximum 50 rooms.

⁶ The standards of 6.5.6.G shall not apply to institutional uses within the I-B zone. In the IR-1 and IR-2 ones, institutional uses are subject to the standards of 6.5.6.G only if the total land area of the use is two acres or more.

TABLE 6-C: PERMITTED AND CONDITIONAL USES IN MIXED-USE ZONES

		B-1	B-2/B-2b/B-2c	B-3/B-3-b/B-3c ¹	B-4	B-5/B-5b	B-6	B-7	Use Standards
Residential	Single-family dwellings	●	●	●		●	●	●	
	Two-family dwellings	●	●	●		●	●	●	
	Multi-family dwellings	●	●	●		●	●	●	
	Handicapped family units			●		●	●	●	
	Combined living/working spaces	●	●	●	●	●	●	●	
Institutional	Lodging houses	●	●	●	●	●		●	6.4.9
	Clinics	●	●	●		●		●	
	Cultural facilities			●	●	●	●	●	
	Elementary, middle, and secondary schools	●	●	●		●	●	●	
	Emergency shelters			○	○	○			6.5.6.B
	Governmental uses	●	●	●	●	●		●	
	Intermediate care facilities		●						
	Long-term and extended care facilities		●						
	Places of assembly (< 10,000 SF)	●	●	●	●	●	●	●	
	Places of assembly (> 10,000 SF)		●	●	●	●	●	●	
	Preschool facilities	●	●	●	●	●	●	●	
	Post-secondary schools		●	●	●	●	●	●	
	Adult business establishments		● ²	● ²					6.4.2
	Auto, boat, and related dealerships		○		●				6.5.6.A
	Auto service stations		○ ³		●	●			6.5.6.A
Commercial /Service	Bars		● ⁴	● ⁴	●	●	●	●	6.4.3
	Bed and breakfasts	●	●	●				●	6.4.4, 6.4.6
	Exhibition, meeting, and convention halls			●		●	○	●	
	Funeral homes		●		●				
	General services (<5,000 SF)	●	●	●	●	●	●	●	6.4.6
	General services (>5,000 SF)		●	●	●	●	●	●	
	General offices (<5,000 SF)	●	●	●	●	●	●	●	6.4.6
	General offices (>5,000 SF)		●	●	●	●	●	●	
	Hostels	●		●		●		●	6.4.6, 6.4.8
	Hotels		●	●	●	●	● ⁵	●	
	Marijuana retail store		●/○ ⁶	●	●			●	6.4.10
	Recreation and amusement centers				●	●		●	
	Registered marijuana dispensary		●/○ ⁶	●	●			●	6.4.10
	Repair services		●	●	●	●	●	●	
	Restaurants	●	●	●	●	●	●	●	6.4.3, 6.4.6
	Retail (< 5,000 SF)	●	●	●	●	●	●	●	6.4.6, 6.4.13
	Retail (5,001 – 25,000 SF)		●	●	●	●	●	●	6.4.13

TABLE 6-C (CONT.): PERMITTED AND CONDITIONAL USES IN MIXED USE ZONES

	B-1 ¹³	B-2/B-2b/B-2c	B-3/B-3b/B-3c ¹	B-4	B-5/B-5b	B-6	B-7	Use Standards
Retail (>25,001 SF)		●	●	●	●	●	●	6.4.14
Small-scale marijuana caregiver		●	●	●			●	6.4.10
Theaters and performance halls		●	●	●	●	●	●	
Veterinary services		●		●				
Communication studios		●	●	●	●	●	●	
Dairies		● ⁷		●				
High-tech manufacturing							●	6.5.6.D
Intermodal transportation facilities					●	●	●	
Laboratory and research facilities		●		●		●	●	6.5.6.E
Low impact industrial (<10,000 SF)		● ⁸	●	●	●	●	●	6.5.6.E
Low impact industrial (>10,000 SF)		● ⁸		●	●			
Marijuana testing facilities				●				
Marijuana manufacturing facilities				●				
Marijuana cultivation facilities (<2,000 SF plant canopy)				●				6.4.10
Marijuana cultivation facilities (2,001-7,000 SF plant canopy)				●				
Printing and publishing		● ⁹	●	●	●	●	●	
Studios for artists and craftspeople	●	●	●	●	●	●	●	
Tow lots				●				6.4.15
Warehousing, storage, and distribution		● ¹⁰		●	● ¹⁰	● ^{10, 11}	● ^{10, 11}	6.5.6.E
Marine uses					●	●		6.4.12
Correctional pre-release facilities				●				6.4.7
Off-street parking			●/● ¹²		●	●	●	6.5.6.H
Parks and open spaces	●	●	●	●	●	●	●	
Solar energy system (minor)	●	●	●	●	●	●	●	6.4.14
Solar energy system (major)				●				
Utility substations	●	●	●	●	●	●	●	6.5.6.L
Wind energy system (minor)		●	●	●	●	●	●	6.4.17

¹ See PAD Overlay for additional use regulations.² Permitted in the B-2 and B-3 only.³ Permitted in the B-2 only. Expansion of auto service stations in existence as of 11/15/99 permitted as a conditional use in B-2b and B-2c.⁴ Not permitted in the B-2c and B-3c zones.⁵ Hotels shall be limited to no more than 150 rooms.⁶ Permitted in the B-2 zone. Conditional in the B-2b and B-2c.⁷ Permitted only if an expansion of an existing dairy.⁸ Permitted with a retail component only. Low-impact industrial uses greater than 10,000 SF are permitted in the B-2 only.⁹ Printing and publishing of 10,000 SF or less, or expansion of printing and publishing establishments greater than 10,000 SF in existence as of 4/4/88, shall be treated as a conditional use.¹⁰ Self-storage permitted as a conditional use in the B-5 zone (on-peninsula locations only) in buildings existing as of 12/16/15. Self-storage not permitted in the B-2/B-2b/B-2c zones, B-6 zone, and B-7 zone.¹¹ Wholesale is allowed as conditional use, providing the wholesale operation is associated with an onsite retail establishment.¹² Structured parking shall be permitted. Surface parking shall be treated as a conditional use.

TABLE 6-D: PERMITTED AND CONDITIONAL USES IN OFFICE PARK & RESIDENCE PROFESSIONAL ZONES

	OP ¹	RP ²	Use Standards
Any residential use permitted in the nearest residential zone		●	
Preschool facilities	●	①	6.5.6.1
Funeral homes		●	
General offices	●	●	
High tech manufacturing	①		6.5.6.D
Laboratory and research facilities	●		
Printing and publishing	●		
Studios for artists and craftspeople		●	
Parks and open space	●	●	
Solar energy system (minor)	●	●	6.4.15
Utility substations		●	
Wind energy system (minor)	①		6.4.17

¹ All permitted and conditional uses in the O-P zone, with the exception of parks and open spaces, solar energy systems, and wind energy systems, shall be allowed only within an office park subject to the standards of 6.9.3.

² Any conditional use that is permitted as a conditional use in the nearest residential zone shall be permitted as a conditional use in the R-P zone. All conditional use standards of the residential zone shall apply.

TABLE 6-E: PERMITTED AND CONDITIONAL USES IN INDUSTRIAL & AIRPORT ZONES

		I-L/I-Lb	I-M/I-Mb	I-H/I-Hb	A-B ¹	Use Standards
Institutional	Airports				● ²	
	Preschool facilities	●	●			
	Emergency shelters	○	○	○		6.5.6.B
	Intermediate care facilities		● ³			
	Places of assembly (<10,000 SF)	●				
Commercial/Services	Bars				●	
	General services (<5,000 SF)				●	
	General services (>5,000 SF)				●	
	General offices (<5,000 SF)	● ⁴	●			
	General offices (>5,000 SF)	● ⁴	●			
	Hotels				●	
	Recreation and amusement centers	●	●			
	Repair services	●	●	●		
	Restaurants				●	
	Animal-related services	● ⁵				
	Construction & engineering services	●	●	●		
	Dairies	●	●	●		
	Fish waste processing			●		
	Food & seafood processing, packing, and distribution		●	●		
	High-impact industrial uses			●		
	Intermodal transportation facilities	●	●	●		
	Laboratory and research facilities	●	●	●		
	Low-impact industrial	●	●	●		
	Lumber yards	●	●	●		
	Marijuana testing facility	●	●	●		
	Marijuana manufacturing facility	●	●	●		
Industrial	Marijuana cultivation facility (<2,000 SF plant canopy)	●	●	●		6.4.10
	Marijuana cultivation facility (2,001-7,000 SF plant canopy)		●	●		
	Marijuana cultivation facility (>7,001 SF plant canopy)			●		
	Printing and publishing	●	●	●		
	Recycling and solid waste disposal facilities		● ⁶	● ⁶		
	Studios for artists and craftspeople	●	●			
	Telecommunication towers			●		
	Tow lots		●	●		6.4.16
	Warehousing, storage, and distribution facilities	● ⁷	●	●		

TABLE 6-E (CONT.): PERMITTED AND CONDITIONAL USES IN INDUSTRIAL & AIRPORT ZONES

	I-L/I-Lb	I-M/I-Mb	I-H/I-Hb	A-B ¹	Use Standards
Correctional pre-release facilities		● ⁸	● ⁸		6.4.7
Marinas	●				
Off-street parking				●	
Solar energy system (minor)	●	●	●	●	6.4.14
Solar energy system (major)		●	●	ⓘ	
Utility substations	●	●	●		
Wind energy system (minor)	ⓘ	●	●	●	6.4.17
Wind energy system (major)		●	●	ⓘ	

¹ Permitted uses on lots within airport restricted access areas shall be limited to those which do not require or encourage access or visits by the public and which provide technical administrative or other support to airport operations.

² Including airport administration, terminals, carrier operations, concessions, reservations and ticket sales, freight, repair and storage, fueling services, flying schools, car rental operations, and other associated uses.

³ Permitted in existing structures not designed for industrial, amusement, warehouse or manufacturing uses as of 9/15/14 or later. Such structures may be reused or expanded to establish a facility of no more than 30 persons plus staff.

⁴ Only back office uses permitted.

⁵ Not including outdoor kennel facilities.

⁶ Permitted within an enclosed structure only.

⁷ Must be less than 10,000 SF in floor area. No outdoor storage permitted. Self-storage not permitted in the I-L/I-Lb zone.

⁸ Not permitted in the I-Ma, I-Mb, or I-Hb zones.

TABLE 6-F: PERMITTED AND CONDITIONAL USES IN R-OS and RPZ

	R-OS	RPZ	Use Standards
Cemeteries	●		
Educational, scientific, or interpretive facilities		●	
Marinas	●		
Parks and open space	● ¹	● ²	
Solar energy system (minor)	ⓘ		6.4.15
Solar energy system (major)	ⓘ		
Utility substations	●/ⓘ ³		6.5.6.L, 6.5.7.A
Wharves, piers, docks, and landing ramps	●	●	
Wind energy system (minor)	ⓘ		6.4.17
Wind energy system (major)	ⓘ		

¹ Including active recreational uses, such as playgrounds, golf courses, fields, pools, courts, community gardens, marinas, and sports complexes and passive uses, such as arboretums and picnic areas. Accessory uses within structures of 2,500 SF or more shall be treated as a conditional use under Section 6.4.7.

² Including non-intensive recreational uses, such as trails, soil and water conservation activities, and wildlife management activities.

³ Including sewage pumping and treatment facilities only. Water pumping stations shall be treated as a conditional use.

6.4 SUPPLEMENTAL USE STANDARDS

The following standards shall apply to the following uses, whether permitted or conditional.

6.4.1 In general

- A. No building intended for use as a habitation shall be erected on a lot which has its only street frontage on a street less than 35 feet wide. No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this subsection. For purposes of this subsection, street shall be as defined in Article 3, except that a dedicated street which may no longer be accepted due to lapse of time and an accepted street which may have been discontinued by abandonment shall also be deemed to be streets, provided that an applicant for a building permit respecting any lot abutting such street shall, without compensation or claim for damages, and at his own cost and expense, first submit to the Building Authority:
 1. A deed from the owner of such lot conveying to the city all his or her right, title and interest in and to such street or any portion thereof; and
 2. An agreement by such owner forever releasing the city from any and all claims for damages for the laying out and taking of such street and indemnifying the city against any and all other such claims, both such instruments to be executed and in recordable form acceptable to the Corporation Counsel and to encumber and run with the land.
- B. For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavement, curbs and, if located on a designated school walking route, sidewalks, in accordance with the *City of Portland Technical Manual*. Where the nearest permanently paved street does not have granite curbing, the Public Works Authority may waive the requirement of curbing under this subsection, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur:
 1. A plan of the street improvements required by this subsection shall be submitted to the Public Works Authority; and
 2. Upon determination by the Public Works Authority that the plan meets the street improvement requirements established by this subsection, a performance guarantee and inspection fee for said improvements shall be submitted to the city as set forth under Articles 13 and 14. Also as set forth in Articles 13 and 14, a one-year defect bond shall be tendered to the city prior to release of the performance guarantee required hereby. The provisions of this subsection (2) shall not apply to the erection of any single-family dwelling on

- any lot where the owner of the lot establishes that he or she was the owner of that same lot on November 19, 1984, and at all times thereafter, and states his or her intention under oath to make the structure his or her personal residence.
- C. The requirements of this subsection shall not apply to the following city streets upon their construction by the Public Works Authority to such standards as are determined by the authority to be the most feasible:
1. Dingley Court and
 2. Morgan Court.

6.4.2 Adult business establishments

- A. Adult business establishments shall be located at least 1,000 feet from any other adult business establishment, and at least 500 feet from any residential zone, as measured in a straight line, without regard to intervening structures or objects; and
- B. No sexually explicit materials, entertainment, or activity shall be visible from the exterior of the premises.

6.4.3 Bars and restaurants in the B-6 zone

- A. No bars located east of Waterville Street shall be permitted within 50 feet of Fore Street; and
- B. Restaurants located east of Waterville Street within 50 feet of Fore Street shall be limited in hours of operation to between 5 am and 11 pm each day and food service and consumption shall be the primary function of the restaurant.

6.4.4 Bed and breakfasts

- A. In the R-6 and R-6A zones, the minimum gross floor area for bed and breakfasts shall be 2,000

SF for the first three guest rooms and 500 SF for each additional guest room;

- B. In all mixed-use zones except the B-1 zone, bed and breakfasts may include a meeting facility limited to use for private parties, business meetings, weddings, receptions, seminars, or business and educational conferences, provided that:
1. In the B-2/B-2b/B-2c zones, the meeting facility must be less than 4,000 SF; and
 2. In the B-3/B-3b/B-3c zones, the building in which the bed and breakfast and meeting facility will be located must have existed on March 3, 1997 and have been greater than 4,000 SF in floor area on that date.

6.4.5 Campgrounds

- A. Campgrounds shall not include recreational vehicles;
- B. Campgrounds shall be licensed by the State of Maine Department of Human Services;
- C. No tent shall be located within 75 feet of the perimeter of site; and
- D. The land area of the campground shall not be less than the equivalent of 5,000 SF of land area per tent site exclusive of the roadway network.

6.4.6 Commercial uses in the B-1 zone

- A. Commercial uses shall be permitted provided that such uses generate less than 100 peak hour vehicle trips per 2,000 SF of floor area and less than 100 peak hour vehicle trips in total.
- B. Retail and restaurant uses shall not operate between the hours of 11 p.m. and 6 a.m., and shall not accept deliveries or services between the hours of 10 p.m. and 7 a.m. For restaurants,

food service and consumption shall be the primary function.

- C. Beverage dealers shall be permitted as a retail use provided that the maximum total floor area for redemptions as an accessory use, including the storage of spent containers, shall be no greater than 500 SF or 10% of the total floor area of the facility, whichever is less.

6.4.7 Correctional pre-release facilities

- A. No correctional prerelease facility shall be located within 1,000 feet of another, as measured in a radius from the center of the lot.
- B. If a facility requires state or federal licensing, staffing of the facility shall be as required by such license. If a facility does not require state or federal licenses, there shall be a minimum of one staff person for every 10 residents or fraction thereof. The facility shall provide 24-hour supervision of program participants.

6.4.8 Hostels

- A. An operations plan must be submitted demonstrating that no unaccompanied minors under the age of 18 shall be permitted in the facility;
- B. The length of stay for transient guests shall not exceed 15 days within any 60-day period;
- C. In the R-6 zone, for hostels greater than 10 guests, a minimum of 250 SF of land area shall be required per hostel guest; and
- D. In the B-1 zone, no more than 20 overnight transient guests shall be permitted.

6.4.9 Lodging houses

- A. Lodging houses, except for lodging houses located in the IR-2, IR-3, and I-B zones, shall contain common areas for use by all residents,

including a kitchen. A kitchen need not be available as a part of the common areas where all meals are provided on a daily basis.

6.4.10 Marijuana-related uses

- A. The following standards apply to the following marijuana-related uses:
 1. Marijuana cultivation facilities,
 2. Marijuana manufacturing facilities,
 3. Marijuana products,
 4. Marijuana retail stores,
 5. Marijuana testing facilities,
 6. Small-scale marijuana caregivers, and
 7. Registered dispensaries.
- B. Location criteria
 1. No marijuana cultivation facility, marijuana manufacturing facility, marijuana testing facility, small-scale marijuana caregiver, marijuana store or registered dispensary may be located within 500 feet of a pre-existing public school, private school, or a public preschool program, as defined by 20-A M.R.S.A. §1. Distance shall be measured from nearest property line of the respective marijuana-related use and the property line of the lot containing the public school, private school, or public preschool program.
 2. No marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility may be located within 300 feet of the following residential zones: R-1, R-2, R-3, R-4, R-5/R-5A, R-6/R-6A, or R-7. Distance shall be measured from the nearest outer wall of the building housing the marijuana cultivation, manufacturing, or testing facility to the nearest applicable residential zone boundary. If the marijuana related

- facility leases a room or suite of rooms within a building, including, without limitation, individual units within a shopping plaza or shopping mall, the nearest outer wall of the room or suite of rooms within which the facility is located shall constitute the nearest outer wall of the building housing that facility.
- C. Supplemental standards
1. Marijuana-related uses may only be permitted within a fully enclosed building.
 2. No outside storage of marijuana, marijuana products, or related supplies is permitted.
 3. No drive-through service is permitted for marijuana-related uses.
 4. No marijuana or marijuana product shall be smoked, eaten or otherwise consumed or ingested on the premises where sold.
 5. An operating plan for marijuana cultivation facilities and marijuana manufacturing facilities shall be provided that at a minimum addresses the following:
 - a. wastewater;
 - b. disposal of waste; and
 - c. security at the premises.
 6. A ventilation plan shall be included for marijuana cultivation facilities, marijuana manufacturing facilities, and small-scale marijuana caregivers that provides for adequate ventilation so as to prevent pesticides, insecticides or other chemicals used in the cultivation or processing of marijuana or marijuana related products from being dispersed or released outside the premises. The plan shall further provide for resulting smoke, vapor, fumes, gases and particulate matter from marijuana or its processing or cultivation to be effectively confined to the premises.
 7. Marijuana-related uses shall provide odor control measures so that odor generated on site is mitigated at the property line of the lot containing the marijuana-related use. Applications must demonstrate appropriate measures, such as carbon filtration, ventilation and exhaust systems, facility plans or other additional practices adequate to mitigate odors for the scale of operations for the uses proposed.
- D. For purposes of this ordinance, any approval issued for a marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility operated pursuant to 22 M.R.S. § 2421 et seq. shall be deemed to constitute approval for the same corresponding marijuana cultivating, manufacturing, or testing facility use operating under 28 M.R.S. § 101 et seq. Notwithstanding the above, no marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility may operate without the applicable state and City license.
- 6.4.11 Marine uses**
- A. In the B-5/B-5b and B-6 zones, marine uses shall include marine products wholesaling and retailing; harbor and marine supplies and services;
 - B. In the B-5/B-5b zones, marine uses shall include marine repair services and machine shops; shipbuilding and facilities for the construction, maintenance, and repair of vessels; marine museums and aquariums; boat repair yards; boat storage; and seafood processing, packing, and distribution for human consumption; and

- C. In the B-6 zone, marine uses shall include underground marine fuel storage provided that such storage shall be used solely for the purpose of fueling vessels.

6.4.12 Multiplexes

- A. No open outside stairways or fire escapes above the ground floor shall be constructed; and
- B. No habitable space in a dwelling unit shall be below grade, except basements that are a part of and below aboveground units.

6.4.13 Planned unit development in the IR-3

In addition to other applicable reviews, no development shall occur nor shall any new use be established in the IR-3 zone unless the Planning Board finds that the final development plan for the site is in compliance with the following standards:

- A. The development shall demonstrate a reasonably unified response to the design possibilities of the site, by virtue of such elements as the design and layout of buildings and lots, circulation plan, open space, drainage, and orientation to achieve energy conservation or solar access, to form a functionally integrated whole.
- B. The design and layout of the development and buildings shall be reasonably compatible with the surrounding neighborhood by virtue of such features as architectural style, exterior finish, scale, circulation, open space, landscaping, and preservation of natural site amenities.
- C. All open spaces on the site shall be functionally integrated into the development plan by virtue of such features as accessibility to residents, recreation, conservation of existing public rights of access to shoreland areas and scenic natural areas, orientation to achieve energy conservation or solar access, preservation of natural site amenities, and use as a buffer between the development and the surrounding neighborhood.
- D. The development shall be designed primarily with a pedestrian orientation to minimize the use of and dependency on private motor vehicles. Appropriate areas on the site shall be designated, as necessary, for parking of common service vehicles, golf carts or bicycles to serve the transportation needs of residents and visitors. The internal circulation plan shall also be coordinated with the existing island street network to ensure adequate access for emergency and service vehicles.
- E. A project construction plan shall be developed indicating the anticipated number and types of vehicles such as construction equipment, supply delivery and service vehicles needed for undertaking the construction of the project. Documentation shall be provided as to the proposed transportation route such as roads, piers, beaches, sand bars and the impact of construction related activities on the routes.
- F. The development shall not have a substantial adverse impact on the capacity of existing island docking facilities. The developer shall demonstrate that an adequate water transportation system, including docking facilities, exists or will be provided.
- G. Adequate provision for off island solid waste disposal shall be demonstrated such that the impact on municipal solid waste disposal is minimized. A development shall incorporate methods such as the following to reduce the amount of solid waste generated by the

project: compaction and reduction in waste volume, recycling, incineration or baler system, and private collection and transfer to an off-island location. It shall be demonstrated that there will be no significant environmental impacts from the solid waste disposal system.

- H. All sanitary waste from the development shall be disposed of by a public sewer, private community sewer system providing at least secondary treatment, or subsurface sewerage system, in compliance with federal, state and local regulations. The developer shall demonstrate that the project will comply with all applicable federal, state and local water quality and groundwater standards.
- I. The proposed development shall have sufficient water for the reasonably foreseeable needs of the development and shall not cause an unreasonable burden on existing water supply nor adversely affect groundwater resources. Unless the development is to be served entirely by public water and secondary treatment sewer systems, the determination of compliance with this provision shall be based upon one (1) or more comprehensive groundwater analyses and reports prepared by qualified professionals and including assessment of current groundwater aquifer conditions, the impact of the proposed development on the groundwater aquifer, and recommendations for mitigation of potential impacts caused by the development.
- J. The development shall preserve the natural features of the shoreland area by minimizing the disturbance of existing vegetation and slopes, avoiding development in areas subject to erosion and sedimentation, and conserving scenic views and vistas to and from the site.

- K. The development plan shall preserve significant resources of the site by integrating open space into the development plan and by conserving such features as scenic vistas, historic man made or natural features, existing vegetation, wetland areas, shoreland areas, ground water, natural wildlife habitat, and recommended or registered State of Maine Critical Land Areas, as well as other environmentally sensitive areas.
- L. All open spaces on the site shall be functionally integrated into the development plan by virtue of such features as passive and active recreational opportunities, accessibility to residents, preservation of natural site amenities and resources, orientation to achieve energy conservation or solar access, use as a buffer between housing clusters and to screen the development from surrounding areas.
- M. The applicant shall demonstrate sufficient financial and technical capability for undertaking the proposed project. Financial capability shall include a cost estimate of the proposed improvements, proposed construction and permanent financing, and terms of sale or lease of dwellings and commercial space. Technical capacity shall include the experience and expertise of the developer in implementing projects of similar scope.
- N. The applicant shall develop an environmental impact analysis including an inventory of existing environmental conditions at the project site and in the surrounding area with an assessment of the development's probable impact upon the environment. The inventory shall include such resources as air, water quality, water supply, surface water and shoreline, geology, soils, topography, wildlife,

botanical and aquatic, including rare and endangered species, historic, archeological and aesthetic. The analysis shall include the direct and cumulative adverse impacts of the project on these resources. The analysis shall also include what steps the applicant proposes to take to identify and minimize adverse environmental impacts during construction, management and use of the property and whether there are alternatives for the project which would decrease the impact of the development.

- O. If the project is to be completed in phases, the applicant shall indicate the schedule for completing and implementing infrastructure improvements as well as other improvements, agreements or services required for compliance with the development standards of this section, planned unit development standards, and site plan and subdivision review requirements.
- P. The development shall not place an unreasonable burden on the ability of the city to provide police, fire and other emergency services.

6.4.14 Retail in the B-3/B-3b/B-3c and B-5/B-5b zones

Retail shall not include wholesale and bulk purchase lumber and construction supply sales.

6.4.15 Solar energy systems

- A. All solar energy systems shall meet the technical, safety, and maintenance standards in the *City of Portland Technical Manual*.
- B. Solar panel placement should minimize or negate any solar glare impacting nearby properties or roadways, without unduly impacting the functionality or efficiency of the solar energy system.
- C. All applicants are encouraged to ensure the maximum solar energy generation from their system by obtaining solar access easements. Solar access easements may be filed consistent with Maine State law.
- D. Solar energy systems shall be located away from and screened from public ways and nearby residential/institutional uses to the extent possible and shall be designed so as to minimize impacts on significant scenic views.
- E. Layout and fencing shall be integrated with the landscape to the extent possible and shall minimize the removal of existing vegetation to the extent possible.
- F. Major solar energy systems shall be prohibited within any designated historic landscape district.

6.4.16 Tow lots

Tow lots must be at least 300 ft. from any residential zone or conforming residential use.

6.4.17 Wind energy systems

- A. All wind energy generation equipment shall be approved under a certification program approved by the U.S. Department of Energy such as the Underwriters Laboratories, Germanishcer Lloyd Wind Energies, or other similar certifying organizations. Experimental, homebuilt, and prototype models shall not be permitted.
- B. Wind energy systems and associated facilities, including foundations and support structures, electrical connections and control equipment, associated site improvements, and construction techniques, shall be designed,

engineered, and installed to comply with all applicable local, state, and federal construction and electrical regulations and Federal Aviation Administration regulations. Applicable state and local approvals shall be obtained prior to installation of any wind energy system.

- C. The support structure (e.g. tower, pole) for freestanding wind generating systems shall not be climbable for a minimum height of 12 feet above the surrounding ground level or accessible surface. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- D. All moving components of a wind energy system shall be a minimum of 12 feet from ground level or accessible surface.
- E. All on-site electrical wiring associated with the proposed wind energy system shall be located within the tower/pole/supporting structure and underground. Above ground on-site connections near substations or to the electric grid shall be allowed.
- F. The use of guy wires is discouraged. If required, they shall be located away from pedestrian routes/access points and marked with visible, reflective, colored objects, such as flags, reflectors, or tape, which shall be placed on the anchor points of guy wires and along the guy wires up to a height of ten feet from the ground.
- G. No wind energy system shall be located within 250 feet of any significant wildlife habitat, as defined by Maine Department of Environmental Protection/Maine Department of Inland Fisheries and Wildlife under provisions of the Natural Resources Protection Act (Title 38, M.R.S.A. § 480, et seq.) including wildlife habitat

for species appearing on the official state and federal list of endangered or threatened animal species.

- H. For all wind energy systems over 45 feet in height above the ground or over 100kW, evidence shall be provided that the Environmental Coordinator of the Maine Department of Inland Fisheries and Wildlife, and the Maine Natural Area Program, have been notified of the location, height and design of the proposed wind energy system at least 3 weeks prior to any final determination under this provision. Any comments received therefrom shall be addressed to the satisfaction of these state authorities prior to any final determination under this provision.
- I. Wind energy systems shall be designed to avoid electromagnetic interference with the transmission or reception of radio, telephone, television, microwave, navigational or similar signals to neighboring areas.
- J. Wind energy systems and associated facilities shall use non-reflective materials and neutral colors and textures that blend in with the surrounding environment. Ground-mounted systems and associated facilities shall be landscaped to integrate the proposed wind energy system into the existing landscape/streetscape.
- K. No part of the system may be illuminated, except as required by the Federal Aviation Administration (FAA) or other authorities for safety and security purposes. Where lighting is required, it shall be at the lowest intensity allowable with fixtures shielded and directed to minimize glare and visibility from the ground.
- L. There shall be no signs, advertisements, flags, or decorative items on a wind energy system or

any associated facilities, except for the manufacturer's/installer's/owner's identification (not exceeding one SF in size), appropriate warning signs, or lights if required by the FAA.

- M. Wind energy systems shall be prohibited within any historic district, except the Congress Street Historic District where it coincides with the B-3 zone, or within 1,000 feet of any designated historic landmark.

6.5 CONDITIONAL USES

6.5.1 Conditional use review procedure

- A. **Review authority.** The Zoning Board of Appeals shall review all conditional use applications, with the exception that the Planning Board shall review:
1. All conditional use applications in the B-3/B-3b/B-3c, B-5/B-5b, B-6, and B-7 zones;
 2. All conditional use applications associated with projects that are otherwise before the Planning Board; and
 3. Conditional use applications for specific uses for which the Planning Board is identified as the review authority under Subsection 6.5.6.
- B. **Application.** Applications for conditional use review shall be submitted to the Building Authority for all Zoning Board of Appeals reviews and the Planning Authority for all Planning Board reviews. A nonrefundable application fee, as established from time to time by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form and shall contain such information and documentation as shall be prescribed from time to time by the review authority.

- C. **Public hearing.** A public hearing shall be set, advertised and conducted by the review authority in accordance with Article 2 of this chapter.
- D. **Action.** Within 30 days following the close of the public hearing, the review authority shall render its decision, in a manner and form specified by Article 2 of this chapter, approving the conditional use, approving the conditional use subject to conditions as specified in Subsection 6.5.3, or denying it. The failure of the review authority to act within 30 days shall be deemed an approval of the conditional use, unless such time period is mutually extended in writing by the applicant and the review authority. Within five days of such decision or the expiration of such period, the Building Authority or Planning Authority shall mail notice of such decision or failure to act to the applicant and, if a conditional use is authorized, list therein any and all conditions imposed by the review authority.

6.5.2 General conditional use standards

The review authority shall, after review of the application, approve a conditional use upon a finding that the proposed conditional use, at the size and intensity contemplated at the proposed location, will not have substantially greater negative impacts than would normally occur from surrounding uses or other allowable uses in the same zone. The review authority shall find that this standard is satisfied if it finds that:

- A. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than

- would normally occur at surrounding uses or other allowable uses in the same zone; and
- B. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and
 - C. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.
 - D. The proposed use will meet any additional zone or use-specific standards identified in this article.

6.5.3 Conditions on conditional use approvals

The review authority may impose such reasonable conditions upon the premises benefited by a conditional use as may be necessary to prevent or minimize adverse effects therefrom upon other property in the neighborhood. Such conditions shall be expressly set forth in the resolution authorizing the conditional use. Violation of such conditions shall be a violation of this article.

6.5.4 Effect of issuance of a conditional use approval

The approval of a conditional use shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals which may be required by the City of

Portland Code of Ordinances, including but not limited to a building permit, a certificate of occupancy, subdivision approval, and site plan approval.

6.5.5 Limitations on conditional use approvals

No conditional use approval shall be valid for a period longer than six months from the date of approval, or such other time, not to exceed two years, as may be fixed at the time granted, unless the conditional use has been commenced or a building permit is issued and construction has begun within that period and is thereafter diligently pursued to completion; provided, however, that one or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two year period is not exceeded thereby. A conditional use approval shall be deemed to authorize only the particular use for which it was issued and such approval shall automatically expire and cease to be of any force or effect if such use shall for any reason be discontinued for a period of 12 consecutive months or more.

6.5.6 Supplemental use-specific conditional use standards

In addition to the general conditional use standards, the following standards shall apply to specific conditional uses:

- A. **Automobile, boat, and related dealerships and auto service stations**
 - 1. The Planning Board shall be the reviewing authority;
 - 2. 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;

3. No ingress and egress driveways shall be located within 30 ft. 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; and
4. A landscaped buffer, no less than five feet wide, shall be located along street frontages (excluding driveways). The, buffer shall consist of a variety of plantings in accordance with the *City of Portland Technical Manual*; and
5. Car washes shall be designed to avoid the tracking of residual waters into the street.

B. Emergency shelters

1. The facility shall provide adequate space for conducting security searches and other assessments;
2. The facility shall be designed with a centralized shelter operations office on each level providing sight lines to sleeping areas;
3. A management plan adequately outlining the following areas shall be provided: management responsibilities; process for resolving neighborhood concerns; staffing; access restrictions; on-site surveillance; safety measures; controls for resident behavior and noise levels; and monitoring reports.
4. Adequate access to and from METRO service shall be provided. The facility shall be within a $\frac{1}{4}$ mile of a METRO line, or shall

be within $\frac{1}{2}$ mile of a METRO line and provide adequate indoor space to permit all shelter guests day shelter, as well as implement strategies to help residents utilize transit;

5. The facility shall provide on-site services to support residents, such as case management, life skills training, counseling, employment and educational services, housing assistance, or other programs;
6. Suitable laundry, kitchen, pantry, bicycle storage, and secure storage facilities for shelter stayers shall be provided on-site; and
7. An outdoor area for guest use shall be provided on-site with adequate screening to protect privacy of guests.

C. General office in the R-6 & R-6A zones

1. For the use of any building designed or constructed for residential use, which was in use as a residence on April 18, 1984, or thereafter:
 - a. Offices shall serve a member of a recognized profession and be maintained for the conduct of that profession. Professional office uses do not include veterinary offices.
 - b. A professional office shall not be located within 500 ft. of another as measured along the street line to the respective property lines.
 - c. A building with one or more professional offices shall have at least 50% of the total floor area of the building devoted to residential uses.
 - d. The total number of individuals working in a building of professional

offices shall not exceed the equivalent of four full time employees.

- e. Any additions or exterior alterations shall be compatible with the architecture of the building and maintain the residential appearance of the building. Construction of a new building shall be compatible with the architectural character of the surrounding area.
2. The scale and surface area of parking, driveways, and paved areas shall be arranged and landscaped to be compatible in size and scale with neighboring properties in the area and to properly screen vehicles from adjacent properties and streets.

D. High-tech manufacturing

1. A minimum of one-third of the total square footage devoted to manufacturing shall be conducted in a laboratory environment, in a controlled environment with specialized air handling systems that exceed levels for pressurization and filtration found in office environments and traditional manufacturing facilities;
2. Rooftop equipment shall be integrated into the overall building design and shall be screened as necessary;
3. In the B-7, accessory warehousing is permitted. Where warehousing cannot be located on the same lot because the land area is too small to accommodate the warehousing on the same lot, one remote warehouse may be located within 600 feet of the principal use referenced above;
4. In the O-P zone, truck traffic serving a single manufacturing business or

institution shall not exceed, on a regular basis, more than two tractor-trailer truck deliveries per week and provided that no deliveries are accepted between 7:00 p.m. and 7:00 a.m.

E. Industrial uses

1. In the B-2, B-2b and B-2c zones:
 - a. The Planning Board shall be the reviewing authority;
 - b. The site shall have an adequate traffic circulation pattern designed to avoid hazards to vehicular circulation on adjoining streets. All stacking of motor vehicles shall be on site, and loading facilities shall be located to the rear of the building and shall not be visible from the street; and
 - c. The exterior design of the structures, including architectural style, facade materials, roof pitch, building form, established setbacks and height, shall be of a commercial rather than industrial character. The site shall contain screening and landscaping which shall meet the requirements of the site plan ordinance for screening between land uses and the *City of Portland Technical Manual*.
2. In the B-3/B-3b/B-3c zones:
 - a. The floor area devoted to industrial use shall not exceed 10,000 square feet; for a building in existence on March 11, 1991, the floor area shall not exceed 10,000 square feet or 50 percent of the total floor area, whichever is greater;
 - b. The associated vehicular loading, unloading, parking, circulation and

- traffic volumes on the site and on adjacent public streets will not have a more intensive impact than any use on the site within the last 5 years;
- c. Any buildings located in a PAD overlay zone shall be subject to the requirements of that zone in addition to the requirements of this subsection; and
 - d. For buildings that either were not in existence on March 11, 1991, or were in existence on that date but were either in use for any permitted use in the B-3 zone or were designed or constructed for any such use:
 - i. No tractor trailer trucks or longer vehicles shall be associated with the proposal;
 - ii. The proposal shall exclude warehousing and storage as a principal use;
 - iii. The use shall not generate more than six delivery or service trips per day between 7:00 a.m. and 7:00 p.m.
3. In the B-5/B-5b zones:
- a. Truck loading and access and vehicle parking shall be located in the rear or side yard of the site where possible;
 - b. Street frontage shall be designed for pedestrian scale or interest; and
 - c. Shared infrastructure to the extent practicable, including, but not limited to, service alleys, parking areas, stormwater treatment, public transportation facilities and driveways, shall be utilized.

F. Institutional uses (excluding preschools)

- 1. The Planning Board shall be the reviewing authority;
- 2. In the case of expansion of existing institutional uses onto land other than the lot on which the principal use is located, it shall be demonstrated that the proposed use cannot reasonably be accommodated on the existing site through more efficient utilization of land or buildings, and will not cause significant physical encroachment into established residential area; and
- 3. The proposed use will not cause significant displacement or conversion of residential uses existing as of June 1, 1983, or July 15, 1985 in the IR-1 and IR-2 zones, or thereafter;
- 4. In the case of a use or use expansion which constitutes a combination of the conditional institutional uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative;
- 5. In the case of community halls:
 - a. The structure was in existence as of January 4, 2010.
 - b. The structure was built for institutional or other non-residential uses;
 - c. The structure is operated by, or operated subject to the control of, a not-for-profit entity in accordance with its not-for-profit purposes; and
 - d. A parking management plan shall be submitted for review and approval by the Planning Board; and
- 6. In the case of private club or fraternal organizations, any such establishment serving alcoholic beverages or in possession of a license for serving



- alcoholic beverages shall meet the minimum lot size requirement for places of assembly greater than 10,000 SF;
7. In the case of a post-secondary school within the R-5 zone and not including the USM Overlay Zone, such school may build principal structures to a height of 55 feet if the following standards can be met:
 - a. Minimum lot size: 10 acres which may include adjacent land owned by the institution on both sides of a public street.
 - b. Minimum setback between buildings on-site: 20 feet.
 - c. Minimum setback from external property boundary: 30 feet, except that parking garages over 35 feet in height must be located 50 feet from external property boundaries when adjacent to an adjoining residential use.
 - d. The area between the structure and adjoining residential uses must be adequately screened with appropriate landscaping or other features to buffer the building and effects thereof (i.e. noise, light, etc) from abutting properties.
 8. In the IR-1 and IR-2 zones, institutional uses shall be subject to the above conditional use standards if the total land area of the site is two acres or more.

G. Multi-family

1. In the I-B zone:
 - a. Multi-family buildings shall have a maximum of four units;
 - b. No open outside stairways or fire escapes above ground floor shall be

- constructed or have been constructed in the immediately preceding five years;
- c. A below grade dwelling unit shall be permitted only if access is provided directly to the outside of the building;
- d. Density shall be determined by the most restrictive abutting residential zone, except for those lots which are served by public water and sewer, where density shall be determined by the least restrictive abutting residential zone. If no residential zone is abutting, density shall be determined by the nearest residential zone. Residential uses shall meet the requirements of such abutting or nearest residential zone;
- e. Any additions or exterior alterations shall be compatible with the original architecture of the building. The exterior design of new construction, including the architectural style, facade materials, roof pitch, building form, and height shall be compatible with neighboring properties;
- f. No existing dwelling unit shall be decreased to less than 1,000 square feet of floor area;
- g. No additional dwelling unit shall have less than 600 square feet of floor area, exclusive of common hallways and storage in basement and attic;
- h. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with all applicable federal, state and local regulations; and

- i. The proposed conversion has sufficient water for the needs of the dwellings and will not cause an unreasonable burden on an existing water supply nor adversely affect groundwater resources.
2. In the R-3 and R-5 zones. Alteration of a structure existing and not in residential use as of January 1, 1984 to three or more dwelling units shall be permitted as a conditional use in the R-3 and R-5 zones, provided that:
 - a. No open outside stairways or fire escapes above the ground floor shall be constructed or have been constructed in the immediately preceding five years;
 - b. 3,000 SF of land area per dwelling unit shall be required;
 - c. A lower level dwelling unit shall have a minimum of one-half of its floor-to-ceiling height above the average adjoining ground level;
 - d. Any addition or exterior alteration, such as change in façade materials, building form, or roof pitch, shall be designed to be compatible with the architectural style of the structure;
 - e. In the R-3 zone, any addition or exterior alteration shall be limited to a gross floor area equal to or less than 25% of the total existing floor area as of June 13, 2018; and
 - f. Paved areas shall be designed to be compatible in size and scale with neighboring properties in the area and properly screened from adjacent streets.

H. Off-street parking

1. In the R-3, R-4, and R-5 zones:
 - a. Off-street parking must be designed to satisfy the parking requirement of a use located in and conforming with the provisions of a nearby business or industrial zone.
 - b. The lot on which the parking is proposed must be located wholly within 300 feet, measured along lines of public access, from the use which requires the off-street parking;
 - c. The lot where the off-street parking is proposed shall be under the control of the owner of the use which requires the off-street parking. Evidence of such control by deed or lease shall be required before the certificate of occupancy is issued. If such control should be abrogated, the parking use thus allowed shall automatically revert to a nonconforming use in violation of this article and shall be terminated forthwith.
 - d. Conditions may be imposed to insure development compatible with that of the immediate neighborhood notwithstanding the provisions of any other section of this article. Such conditions may include limits on the period of such use.
2. Structured parking the B-6 and B-7 zones:
 - a. Parking garages shall incorporate first floor retail space or other non-parking and active use along all street frontages.

- b. The requirement for first floor mixed use may be waived upon demonstration that the project meets one or more of the following criteria:
 - i. The applicant demonstrates that steepness of grade or the character of the adjacent street will not support retail or first-floor mixed use in the foreseeable future.
 - ii. The first floor of the garage is set back a minimum of 35 feet from the street right-of-way and its design does not provide an impediment for development of such space for mixed-use in the future. Such space (between the garage and the street) shall, in the interim, not be used for surface parking.
 - iii. The applicant can demonstrate to the satisfaction of the Planning Board that a market for first floor mixed uses currently does not exist, provided that the structure of the garage is designed to accommodate retail and or mixed uses in the future. In these cases, the Planning Board will need to find that, on the street-level deck of a proposed parking garage, a minimum of 20 feet horizontal distance of depth from the street and nine feet finished floor-to-finished ceiling clearance could house future retail and or mixed use. The applicant will further need to demonstrate that the garage design anticipates the future development of utilities and circulation necessary for non-parking uses. Where a parking garage fronts on more than one public street and where there is an existing change in grade elevation of over 5% across the footprint of the garage, the nine-foot floor-to-ceiling requirement of this section only applies to the street with higher traffic volumes.
 - c. Where the Board allows a waiver of first floor mixed use, garages shall display architecture that enhances the pedestrian experience and disguises the parking use to the extent possible. Use of traditional storefront design concepts and traditional building materials is encouraged.
3. Surface parking in the B-3, B-6, and B-7 zones:
- a. Surface lots shall be laid out in a manner conducive to development of future buildings, and/or structured parking.
 - b. Surface parking, including parking aisles, shall be located at least 35 feet from a street. The 35-foot setback need not apply in the case of a property in which 80% of the street frontage has a building within 10 feet of the street frontage and shall not apply to driveways perpendicular to the street providing access to the site.
- I. **Preschool facilities**
- 1. The facility shall be located in a structure in which there is one or more occupied

residential units or in an existing accessory structure, unless the facility is located in a principal structure that has not been used as a residence in whole or in part within the five years immediately preceding the application for a preschool use, or in a nonresidential structure accessory to the principal nonresidential use;

2. The maximum capacity shall be 12 children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection (5) below are met. There shall be no maximum limit on the number of children in a facility located in a principal structure that has not been used as a residence in whole or in part within the five years immediately preceding the application for a preschool use, or in a nonresidential structure accessory thereto;
3. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts;
4. Solid waste shall be stored in covered containers. Such containers shall be screened on all sides;
5. Preschool facilities located either in structures that have been in residential use within the past five years or in existing accessory structures and that serve between 13 and 24 children shall meet the following additional standards:
 - a. The facility shall provide a minimum of 75 square feet of outdoor play area per child;

- b. The play area shall be located in the side and rear yards only and shall not be located in front yards;
- c. Outside play areas shall be separated from abutting properties by a fence at least 48 inches in height;
- d. A 10-foot-wide landscaped buffer shall be required outside of the fenced play area, and shall be established in accordance with the landscaping standards of the City's Technical Standards and Guidelines;
- e. The minimum lot size for a preschool located in a residential or existing accessory structure and serving more than 12 children shall be 20,000 square feet;
- f. The maximum number of children in a preschool facility located in a residential or existing accessory structure shall be 24; and
- g. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the residential appearance of the building.

J. Raising of domesticated animals for non-commercial purposes

1. No animals may be kept on any lot less than three acres or closer than 100 feet to any street or lot line, except domesticated chickens as regulated in Chapter 5.
2. This use may not create any odor, noise, health or safety hazards, or other nuisance to neighboring properties.
3. Raising of pigs or reptiles is not permitted.

K. Sheltered care group homes

1. A sheltered care group home shall not be located within 500 ft. of another, as measured along street lines to the respective property lines;
2. The facility shall make provision for adequate on-site staffing in accordance with applicable state licensing requirements. If a facility is not licensed by the state, there shall be a minimum of 1 staff person for every 10 residents or fraction thereof.
3. The Board of Appeals or Planning Board may impose conditions upon a conditional use permit concerning the creation or operation of a sheltered care group home including but not limited to the following: site and building maintenance; lighting, fencing, and other appropriate security measures; screening and buffering of parking areas; compatibility of any additions or alterations with the existing residential structure; compatibility of new structures with the architectural character of the surrounding area; and limitation on the duration of a sheltered care group home permit.

L. Utility substations

1. Utility substations shall be as small in size as practicable.
2. Substations shall be suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood. The remainder of the lot not consumed by the utility substation and its related access; and shall be designed and designated for future development;

3. If greater than 100 SF in the B-7 zone, the structure shall be set back at least 35 feet from the street right-of-way except in the case of a lot having frontage on Marginal Way and I-295 provided the minimum 35-foot setback is met along Marginal Way; and
4. In the B-7 zone, the substation equipment shall be fully enclosed within a structure.

M. Wind energy systems

1. Wind energy systems within recreation open space zones (including the Island Transfer Station Overlay Zone) are allowed as a condition use only where they are co-located within public industrial or utility facilities.
2. Systems shall be screened with a vegetated buffer from public areas and residential buildings.

6.5.7 Supplemental zone-specific conditional use standards

In addition to the general conditional use standards and supplemental use-specific conditional use standards, the following standards shall apply to conditional uses within certain zones:

A. R-OS Zone

1. The use shall be in conformity with or satisfy a deficiency identified in a federal, state, regional, or city recreation and open space plan, including but not limited to the state comprehensive outdoor recreation plan, as such plans may from time to time be created or revised.
2. Buildings and structures shall not obstruct significant scenic views presently enjoyed

#040

Posted by **enoch wenstrom** on **01/02/2020** at **7:31pm**

Type: Question

Agree: 0, Disagree: 0

does the 500 foot limit relate to a single residential group home where up to two people can live in an apartement? I am hoping this restriction is meant for bigger facilities as there is a massive shortage of group homes for disabled. I have an interest in creating a group home in an apartement some day but know there is another residential home on o'brion street.

by nearby residents, passersby, or users of the site.

3. Indoor recreation or nonrecreational uses shall serve a significant public purpose that cannot reasonably be accommodated outside of the recreation and open space zone.

6.6 ACCESSORY USES

6.6.1 In general

- A. Accessory uses shall be permitted in conjunction with permitted or conditional principal uses. Accessory uses must be:
 1. Customarily found in association with the principal uses,
 2. Generally consistent with the impacts of the primary use,
 3. Secondary in nature, clearly incidental and subordinate to the principal uses in terms of area and function,
 4. Located on the same lot as the principal use unless otherwise permitted, and
 5. Consistent with the intent of the zone.
- B. No accessory use or uses within a building shall occupy more than a combined total of 25 per cent of the floor area of the principal building, with the exception of required off-street parking, unless otherwise provided in Subsection 6.6.2 below.
- C. No accessory use or uses not within a building shall occupy more than a combined total of 25 per cent of the unbuilt lot area, or of the required rear yard area, with the exception of off-street parking or as otherwise provided in Subsection 6.6.2.

6.6.2 Standards for specific accessory uses

A. Accessory Dwelling Units (ADUs)

1. Accessory Dwelling Units (ADUs) shall be permitted on all lawfully conforming and non-conforming lots with legal use identified as either single- or two-family dwellings. ADUs shall comply with all dimensional standards of the underlying zone unless otherwise provided below.
2. One ADU shall be permitted per qualifying property.
3. The owner(s) of the residence in which the accessory dwelling unit is created must occupy at least one of the dwelling units, with the exception of legally non-conforming lots on Peaks Island.
4. On Peaks Island, neither the accessory unit or principal unit shall be used for short-term rentals as defined under Section 6-150.1 of the City of Portland Code of Ordinances.
5. The appearance of the principal structure as either a single- or two-family structure shall not be significantly altered to reflect the addition of a new dwelling unit. When an ADU is significantly visible from public ways, the building design shall:
 - a. Be clearly subordinate to the principal structure(s) in scale and position in relationship with the street and principal structure(s).
 - b. Not include a separate entrance along the front façade of an existing single- or two-family structure; or outside stairways or fire escapes above the ground floor.
6. Under circumstances where an existing non-conforming structure is converted to an ADU, the design of the ADU shall take into consideration to the extent

#041

Posted by **Peter Murray** on **01/05/2020** at **10:13am**

Type: *Suggestion*

Agree: 0, Disagree: -1

This is a real policy problem. The temptation to convert garages, sheds, etc. into short term rental (AirBnB) units is very strong. While it may make sense to allow ADUs for members of the family of the dominant structure, allowing wider use will only exacerbate our short term rental problems and the creation of a substandard housing stock. Would recommend that this subject be rethought and debated separately,

#042

Posted by **enoch wenstrom** on **01/02/2020** at **7:36pm**

Type: *Question*

Agree: 0, Disagree: 0

I have a 3 unit on beckett street with a 1950's era garage in the driveway. Is this indicating that because i have a 3 unit I could not convert the garage to an additional dwelling unit? If so that does not make sense to me if the goal in r-6 is to increase density and considering what developers are building in the neighborhood after tearing down buildings.

#043

Posted by **Peter Murray** on **01/05/2020** at **5:47pm**

Type: *Suggestion*

Agree: 0, Disagree: 0

ADUs are useful options for housing family members (in-laws, grown up children, etc.) but should not be considered a substitute for fully qualifying housing units, and should NOT be used for Short Term Rentals.

#044

Posted by **Karen Snyder** on **01/12/2020** at **4:33pm**

Type: *Question*

Agree: 0, Disagree: 0

Why isn't it clear in this section if an ADU is restricted only for a long term residence or a vehicle to be used as short term rental.?

- practicable the privacy of adjacent properties.
7. The developer of an ADU shall record a deed restriction requiring that the ADU and at least one other unit on-site remain under common ownership.
 8. ADUs shall comply with all dimensional requirements of the underlying zone except:
 - a. Lot coverage and lot area per dwelling unit requirements.
 - b. Within the IR-1 Island Residential zone, the minimum lot area shall be 70,000 SF, except on Peaks Island where this standard shall not apply.
 - c. Within the IR-2 Island Residential zone, the minimum lot area shall be 30,000 SF, except on Peaks Island where this standard shall not apply.
 9. An ADU shall be limited to a gross floor area of 800 SF or $\frac{2}{3}$ of the gross floor area of the principal unit(s), whichever is the lesser amount.
 10. ADUs created on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015:
 - a. Shall be rented to households earning up to 100% AMI and are subject to income verification as further outlined in Subsection 17.2.3.
 - b. Shall be rented for no more than the rent permitted at 80% AMI under the Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing.
 - c. Shall be subject to an Affordable Housing Agreement as set forth in the City's Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing for a term of not less than 20 years.
 - d. Shall provide the occupant of the affordable unit a written description of the occupancy requirements for the unit.
- B. Amusement devices.** Except where the principal use consists of the sale of alcoholic beverages for consumption on premises or where the principal structure is an airline terminal, pinball machines or amusement devices shall not be considered to be accessory uses whenever there are more than a total of two such machines or devices on the premises.
- C. Antennas, discs, transmitting and receiving equipment.** Building-mounted antennas, discs, and other transmitting and receiving equipment shall be:
1. No taller than 15 feet above the highest structural steel of the building roof;
 - a. Setback no less than 15 feet from the building perimeter; and
 - b. Integrated into the architecture of the building in placement, form, color, and material so as to screen or camouflage such equipment from public view.
- D. Drive-throughs.** Drive-throughs shall be permitted as an accessory use in the B-4 zone. Drive-throughs shall be reviewed as conditional accessory uses in the B-2 and B-2c zones, B-3 zone, B-6 zone, and B-7 zone. In all other zones, drive-throughs shall be prohibited. Where a conditional use, drive-throughs shall be subject to the provisions of Subsection 6.5.2 and the following additional review standards:
1. In general:

#045

Posted by **Julie Larry** on **01/08/2020** at **1:07pm**

Type: Question

Agree: 0, Disagree: 0

Does this language reflect the recent Council approved text amendments in the B2 zones?

- a. The Planning Board shall be the reviewing authority.
 - b. Features such as windows, vacuum cleaners, menu/order boards, and 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 40 feet from any adjoining property located in a residential zone. This distance shall be measured from the outermost edge of the outside drive-through feature to such property line. In addition, drive-through features shall not extend nearer than 25 feet from the right-of-way;
 - c. 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;
 - d. Any speakers, intercom systems, or other audible means of communication shall not play pre-recorded 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;
 - e. 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 the *City of Portland Technical Manual*;
 - f. 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, and noise. 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;
 - g. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access; and
 - h. The Board, as part of its review, may take into consideration the impact hours of operation may have on adjoining uses.
2. In the B-3 zone, drive-throughs shall only be permitted when accessory to a bank. Drive-throughs shall be subject to the Downtown Urban Design Guidelines.
 3. In the B-6 zone, drive-throughs shall only be permitted when accessory to a bank and located in the interior of parking structures. Drive-up vehicle circulation

shall not create an impediment for retail or mixed-use development for the first floor of the subject garages along any adjacent public streets.

4. In the B-7 zone:

- a. The drive-through must be accessory to a banking service occupying a minimum floor area of 4,000 SF;
- b. The drive-through must be attached to or included within a building with a minimum floor area of 20,000 SF, except that for lots of less than 20,000 SF and in existence as of March 9, 2005, a drive-up may be included in a building of less than 20,000 SF; and
- c. The drive-up facility must be attached or included within a building and/or addition meeting the minimum height of four stories in the Bayside Height District A and three stories in the Bayside Height Districts B and C. For the purposes of this conditional use, the minimum height exceptions for the B-7 zone shall not apply;
- d. The first floor of the building must include banking or other retail storefront uses with storefront windows, entries, and interior public space oriented to and visible from the street, with front entry access facing the street and directly accessible from the public sidewalk;
- e. Drive-up vehicle circulation shall not be located between the building and any adjacent public streets;
- f. The drive-up shall be limited to two vehicle drive-through lanes; and

- g. The location of any drive-up shall be limited to the geographic area between Somerset/Kennebec Streets/I-295/Franklin Street/Forest Avenue.

E. Home occupations

1. The purpose of home occupations is to allow the secondary and incidental use of a residence for the conduct of appropriate occupations whose external activity levels and impacts are so limited as to be compatible with the residential character of the neighborhood.
2. Home occupations must be conducted entirely within the dwelling unit by one or more persons residing within the dwelling unit.
3. In connection with the operation of a home occupation, , the following requirements shall be met:
 - a. A home occupation shall not occupy more than 500 SF of floor area or more than 25 % of the total floor area of such a dwelling unit, whichever is less, or in the case of licensed family day care homes, or home babysitting services, to accommodate not more than six children plus two children after school and having no nonresidential employees;
 - b. There shall be no outside storage of goods and materials nor shall there be exterior displays, or display of goods visible from the outside;
 - c. Storage of materials related to the home occupation shall count as a part of the occupancy limitations above, but shall not constitute a dominant

- part of such occupancy provided, however, storage of such materials or products in garages or other accessory structures is prohibited;
- d. Exterior signs shall be limited to one non-illuminated sign not exceeding a total area of two SF, affixed to the building and not projecting more than one foot beyond the building;
- e. Any exterior alterations to the residence shall be compatible with the architecture of the building and maintain the residential appearance by virtue of exterior materials, lighting, and signs;
- f. The home occupation shall not produce offensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare or other objectionable effects;
- g. There shall be no more than one nonresident employed in the home occupation, provided, however, family day care or home babysitting services shall have no nonresident employees;
- h. No traffic shall be generated by the home occupation in greater volumes than would normally be expected in a residential neighborhood;
- i. No motor vehicle exceeding a gross vehicle weight of 6,000 pounds shall be stored on the property in connection with the home occupation.
- 4. No residence shall be occupied, altered or used for any home occupation except the following:
 - a. Accountants and auditors;
 - b. Answering services (telephone);
 - c. Architects;
 - d. Artists and sculptors;
 - e. Authors and composers;
 - f. Computer programming;
 - g. Custodial services;
 - h. Custom furniture repair and upholstery;
 - i. Dentists, doctors, therapists, and health care practitioners;
 - j. Direct mail services;
 - k. Dressmakers, seamstresses and tailors;
 - l. Engineers;
 - m. Family planning services;
 - n. Hairdressers (limited to no more than two hair dryers);
 - o. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, weaving, ceramics;
 - p. Interior decorators;
 - q. Lawyers, justices of the peace and notary publics;
 - r. Licensed family day care home or babysitting services;
 - s. Musicians or music teachers, including group instruction not to exceed six students at any time but not including performances or band rehearsals, which shall meet the following additional requirements:
 - i. Electronic amplification is prohibited;
 - ii. The applicant shall demonstrate that noise attenuation is provided which minimizes perception of sound at property lines at all

- times during the use. Noise attenuation measures may include, but are not limited to, insulation, double-pane windows, air conditioners or any combination of these or similar noise attenuation measures;
- iii. Hours of operation shall be limited to 8:30 a.m. to 9:30 p.m.
 - t. Office facility of a minister, rabbi, or priest;
 - u. Photographic studios;
 - v. Professional counseling and consulting services;
 - w. Professional research services;
 - x. Sales persons provided that no retail or wholesale transactions are made on the premises;
 - y. Small appliance repair;
 - z. Snow plowing provided that only one snow plow vehicle is stored on or generated from the site;
 - aa. Special tutoring or instruction (not to exceed three pupils at any given time);
 - bb. Stenographic and other clerical services.
 - cc. Small-scale marijuana caregiver, except that no more than one small-scale caregiver may operate out of any one dwelling unit.
5. A home occupation that is not listed in subsection 046 but is similar to and no more objectionable than those home occupations listed, shall be permitted as a conditional use subject to the requirements of Section 6.5 of this article. This provision shall not include veterinarians, kennels, animal raising, funeral homes, retail uses including antique shops, restaurants, dancing studios, towing services, repair and painting of automobiles as home occupations.
- F. **Makers' markets in the IL-b zone.** Makers' markets, including periodic or seasonal sale of handcrafted and limited production products for final consumption, which may include prepared or raw foods, shall be permitted as an accessory use in the IL-b zone, provided that:
 1. Such sales are located within a lawfully conforming principal permitted use;
 - a. Such sales occupy an area no larger than 45% of the floor area devoted to the principal use;
 - b. Such sales by any single vendor or group of vendors shall occur for no more than a total of 28 hours a week collectively;
 - c. Such products are produced or permitted to be produced in the IL zone; and
 - d. Such products are sold by the producer of the product or their designee.
 - G. **Tasting rooms in industrial zones.** Tasting rooms shall be permitted as accessory uses on the premises of facilities where beer, wine, spirits, other alcoholic or non-alcoholic beverages, or food are produced, provided that:
 1. Service of food in the facility is limited to that which does not constitute a full course meal.
 2. No more than 10% of the beverage menu in tasting rooms accessory to beverage production or 10% of the food menu in tasting rooms accessory to food

#046

Posted by **Julie Larry** on **01/08/2020** at **1:04pm**

Type: Observation

Agree: 0, Disagree: 0

Should it be subsection (4)?

production is produced or manufactured off-site.

H. Solar energy generation. Roof-mounted, building-integrated, or small-scale ground-mounted solar energy arrays shall be permitted as accessory uses within all zones except the stream protection zone, the recreation open space zone where co-located with public industrial or utility infrastructure and within identified historic landscapes, subject to the following conditions.

1. Accessory solar energy systems shall comply with all general use standards for solar energy systems as stated under Section 6.4.15 of this article and with the dimensional requirements as stated under article 7.5.6.A.
2. Small-scale ground-mounted solar arrays shall occupy less than 1,000 square feet of ground area.

I. Subletting. The letting of rooms within an existing dwelling unit in any residential zone, shall be permitted as an accessory use provided that:

1. There shall be no more than two persons occupying such room or rooms;
2. There shall be not more than two rooms per dwelling unit occupied for such use; and
3. There shall be no increase in the bathroom and/or kitchen facilities in the dwelling, and no such facility shall have been constructed in the immediately preceding two years.

J. Wind energy generation. Freestanding and roof-mounted wind energy systems shall be permitted as accessory uses within all zones except the Stream Protection zone, within

historic districts except where the Congress Street Historic District coincides with the B-3 zone, or within 1,000 feet of any designated historic landmark, subject to the following conditions:

1. Accessory wind energy systems shall comply with all general use standards for wind energy systems as stated under Subsection 6.4.17 of this article.
2. Freestanding wind energy systems shall measure no higher than 45' feet in height.
3. Roof-mounted wind energy systems shall measure no higher than 10' feet above the highest part of the roof.
4. Properties shall be limited to one free-standing wind energy system and/or three roof or building mounted wind energy systems.
5. Accessory wind energy systems shall either be located on the rear half of a building or structure, or within the rear yard and shall be sited to maximize existing vegetative or other screening from nearby residential buildings and public ways. The location shall minimize changes to existing topography and natural vegetation which would result from construction or maintenance of the system.

6.7 TEMPORARY USES

6.7.1 In general

Temporary uses may be permitted from time to time as determined by the Planning Authority. In addition to regulations pertaining to temporary uses contained elsewhere in the City of Portland Code of Ordinances, the following standards shall apply for specific temporary uses.

6.7.2 Standards for specific temporary uses

- A. **Temporary parking.** Parking of vehicles may be permitted by a temporary certificate of occupancy for a limited period of time not to exceed one year in anticipation of future development.
- B. **Temporary private tenting.** Temporary private tenting with one tent accessory to a principal residential use is permitted in the IR-1 and IR-2 zones provided that adequate water supplies and sanitation facilities are available in connection with the principal residential use.
- C. **Temporary sales.** No “garage sale,” “lawn sale,” “attic sale,” “rummage sale,” or other similar casual sale of tangible personal property which is advertised by any means whatsoever whereby the public at large is or can be made aware of such sale, shall be deemed to be accessory if such sale occurs after sales have been conducted on the same premises for six or more days previously during the calendar year.
- D. **Temporary stands**
 - 1. No premises shall be used for business purposes consisting of temporary stands, booths, platforms or vehicles intended for the sale of merchandise or other mercantile purposes, if any part of such stand, booth, platform or vehicle is proposed to be located nearer than 125 ft. to any residential zone, except that a single stand with no more than 200 SF of floor area for the sale of agricultural products produced on the premises shall be permitted as accessory to a permitted agricultural use.
 - 2. A single produce stand shall be permitted on the premises of a community garden

for the sale of flowers, vegetables, herbs, or fruit produced on the premises, provided that the stand is no more than 100 SF in floor area or open table area and is located a minimum of five feet from any property line; that sales are limited to two days per week between the hours of 9:00 a.m. and 6:30 p.m. during the growing season from May 25 through October 31; and that the stand has received all necessary permits. The use of produce stands shall be seasonal and temporary. Any properly permitted structure may remain on the premises year round. If the community garden is owned or operated by a non-profit organization, sales of flowers, vegetables, herbs or fruit produced in other gardens or farms in Maine owned or operated by said organization shall be permitted within the same limitations listed above. For purposes of this section, community garden means a parcel of open land used for the cultivation of flowers, vegetables, herbs, or fruit by a group of city residents either jointly as a single plot or through individual garden plots or beds.

- 3. A single produce stand shall be permitted on the premises of a non-profit organization incorporated pursuant to the laws of the State of Maine with the permission of the owner and on the premise of public schools with the permission of the school department; provided that the stand is for the sale of local fruit, vegetables, flowers, seedlings and plants produced by the seller; that the stand is no more than one hundred (100)

square feet in floor area or open table area and is located a minimum of five feet from any property line; that sales on the premises are limited to two days per week between the hours of 9:00 a.m. and 6:30 p.m. during the growing season from May 25 through October 31; and that the stand has received all necessary permits. The use of produce stands shall be seasonal and temporary. Any properly permitted structure may remain on the premises year-round.

4. In the IR-1 and IR-2 zones, a single stand with no more than 200 SF of floor area for the sale of agricultural products produced on the premises or the sale of fish or shellfish caught by the occupant of the premises shall be permitted as a temporary use.
- E. Truck load sales.** Truck load sales shall not extend beyond three consecutive days nor occur more frequently than three times a calendar year.

6.8 PERFORMANCE STANDARDS

6.8.1 Design

In the B-7 zone, all buildings shall have a minimum of one operable public pedestrian entrance facing the street frontage of the lot. Such building entrances shall comply with the B-7 Design Standards.

6.8.2 Development in the R-OS zone

All development in the Recreation and Open Space zone shall comply with the following development standards:

- A.** All ground areas not used for parking, loading, vehicular or pedestrian areas and not left in their natural state shall be suitably landscaped

and designed with quality materials that are consistent with adopted city policy or master plans, and which provide a comfortable, durable, accessible, readily maintainable, and aesthetically pleasing environment.

- B.** Natural features, such as mature trees and natural surface drainageways, shall be preserved to the greatest possible extent consistent with the uses of the property.
- C.** Loading areas shall be screened and parking areas shall be screened and landscaped so as to avoid a large continuous expanse of paved area.
- D.** Buildings and structures shall be sited to avoid obstructing significant scenic views presently enjoyed by nearby residents, passersby, and users of the site.
- E.** Storage of commodities and equipment shall be completely enclosed within buildings or provided with screening by a fence, wall, or landscaping.
- F.** The outer perimeter of playfields, play lots, and other active recreational areas shall be screened, or shall be located a reasonable distance from any residential use.

6.8.3 Discharges

No discharge shall be permitted at any point into any private sewage disposal system, or stream, or into the ground, of any materials in such a way or of such nature or temperature as to contaminate any water supply, or otherwise cause the emission of dangerous or objectionable elements, except in accordance with standards approved by the health authority or by the Public Works Authority. No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the

Department of Public Works in accordance with Chapter 24 of the City of Portland Code of Ordinances. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of Chapter 24.

6.8.4 Electromagnetic interference

In any industrial zone, there shall be no electromagnetic interference that adversely affects the operation of any equipment other than that belonging to the creator of such interference.

6.8.5 Exterior lighting

All exterior lighting shall be designed and installed with cut-off fixtures to direct illumination onto the site and to prevent illumination from such fixtures on neighboring properties.

6.8.6 Heat, glare, radiation

Heat, glare, or radiation shall be imperceptible without instruments at lot boundaries and shall not present a safety hazard.

6.8.7 Historic resources

The exterior design of proposed or renovated structures located within historic districts shall be subject to the historic preservation provisions of Article 16. The exterior design of proposed or renovated structures located adjacent to historic districts or historic resources shall be subject to historic preservation requirements of Article 13.

6.8.8 Landscaping and screening

- A. In all mixed-use zones, the O-P zone, and the R-P zone, sites shall be landscaped to screen parking and accessory site elements, including storage and solid waste receptacles, from the

right-of-way, public open space, or abutting residential zones.

- B. In the I-H and I-Hb zones, where a front yard abuts an arterial or a major collector street, it shall be landscaped. Rear yards, side yards and the perimeter of any parking area for greater than 15 vehicles shall be landscaped if visible from a right-of-way, public open space or residential zone.

6.8.9 Noise

- A. The maximum permissible sound level of any continuous, regular or frequent source of sound produced by an activity shall be as shown in Table 6-G, measured at or within the boundaries of any residential zone.
- B. In addition to the sound level standards established in Table 6-G, all uses shall employ best practicable sound abatement techniques to prevent tonal sounds, or sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time, and impulse sounds, or sound events characterized by brief excursions of sound pressure, each with a duration of less than one second. If such tonal and impulse sounds cannot be prevented, uses shall employ best practicable sound abatement techniques to minimize the impact of such sounds in residential zones.
- C. Sound levels shall be measured with a sound level meter with a frequency weighting network manufactured according to standards prescribed by the American National Standards Institute (ANSI) or its successor body. Measurements shall be made at all major lot lines of the site, at a height of at least 4 feet

above the ground surface. In measuring sound levels under this subsection, sounds with a continuous duration of less than 60 seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of 60 seconds or more shall be measured on the basis of the energy average sound level over a period of 60 seconds (LEQ1).

TABLE 6-G: NOISE STANDARDS

Zone	Daytime/Evening (7 am-9 pm)	Nighttime (9 pm-7 am)
I-B	60 dBA	55 dBA
R-P	048BA	047A
O-P	60 dBA	60 dBA
B-1	55 dBA	55 dBA
B-2/B-2b/B-2c	60 dBA	55 dBA
B-3/B-3b/B-3c	60 dBA	55 dBA
B-4	65 dBA	60 dBA
B-5, B-6, B-7 ¹	60 dBA	50 dBA
I-L/I-Lb ¹	60 dBA	50 dBA
I-M/I-Mb ¹	70 dBA	55 dBA
I-H/I-Hb ¹	75 dBA	55 dBA
A-B	60 db	60 dBA
IS-FBC	60 dBA	55 dBA

¹ Daytime/evening noise regulations shall extend until 10 pm, after which time nighttime noise regulations shall apply.

D. Exemptions:

- Noises created by construction and maintenance activities between 7:00 a.m. and 10:00 p.m. are exempt from the maximum permissible sound levels set forth above of this section. Construction activities on a site abutting any residential

use between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed 50 dBA.

- The following uses and activities shall also be exempt from the requirements of Table 6-G:
 - The noises of safety signals, warning devices, emergency pressure relief valves, and any other emergency devices.
 - Traffic noise on public roads or noise created by aircraft and railroads.
 - Noise created by refuse and solid waste collection, provided that the activity is conducted between 6:00 a.m. and 7:00 p.m.
 - Emergency construction or repair work by public utilities, at any hour.
 - Noise created by any recreational activities which are permitted by law and for which a license or permit has been granted by the city, including but not limited to concerts, parades, sporting events, and fireworks displays.

6.8.10 Odor

- It shall be a violation of this article to create an odor nuisance.
 - An odor nuisance shall be considered to exist when 10 confirmed complaints occur in an area within two separate 24-hour periods. The 10 confirmed complaints must originate from 10 different households in an area zoned residential or from 10 different individuals in a commercial or industrial facility. The Permitting & Inspections Director shall only respond to a complainant who

#047

Posted by **Karen Snyder** on **01/12/2020** at **4:37pm**

Type: Question

Agree: 0, Disagree: 0

Does this noise decimal limit include any concerts that are held in another part of town that reverberates to the neighborhoods?

#048

Posted by **enoch wenstrom** on **01/02/2020** at **7:39pm**

Type: Question

Agree: 0, Disagree: 0

does r-p include r-6?

confirms that the odor is detectable at the time of the actual complaint. In order to confirm a complaint, the Permitting & Inspections Director or its designee shall first determine that an odor is detectable in the area of the complaint. The Building Authority or its designee shall interview the complainant to verify that the detectable odor is in fact the odor that resulted in the complaint. If the complainant verifies the odor as the source of the complaint, then the Permitting & Inspections Director shall notify the owner or operator of the alleged odor source either in person or by telephone within 1 working day, with a written confirmation within 7 working days of the complaint. In the event that the Permitting & Inspections Director is unable to contact the owner or operator of the alleged odor source in person or by telephone within 1 working day, then the Permitting & Inspections Director shall send written notice to the operator within 7 working days of the complaint.

2. In the event that 10 complaints are confirmed as set forth in subsection 1. in two separate 24 hour periods within a 90-day period, the Permitting & Inspections Director shall cause a certified odor inspector to investigate any odor complaints received in the next 30 days following the receipt of the tenth confirmed complaint from the second 24 hour period. If the odors remain under the ambient intensity standard as established in this subsection for the next 30 days, then a new odor nuisance must be

established after that time in accordance with the requirements of this section. The certified odor inspector shall do the following in response to a complaint under this subsection:

- a. Verify that an odor is detectable in the area of the complaint and confirm that it is the odor that resulted in the complaint;
 - b. Quantify the intensity of the odor on the eight point in butanol intensity scale as defined in regulations promulgated by the Planning & Urban Development Director to establish training and technical standards to support this subsection; and
 - c. Track the odor to its source.
- B. When the certified odor inspector determines that a violation has occurred because an odor has exceeded the maximum ambient odor levels set forth in this section, the Permitting & Inspections Director shall notify the owner or operator either by telephone or in person of the violation within 1 working day of the violation. The Permitting & Inspections Director shall confirm this notification in writing within 7 working days of this initial notice. In the event that the Permitting & Inspections Director is unable to contact the owner or operator by telephone or in person within the required time period, then it will send written notification within 7 working days of the violation.
 - C. Upon receipt of the written notice of violation, the owner or operator of the odor source shall do the following:
 1. Implement odor reduction procedures immediately upon notification by the Permitting & Inspections Director that the

facility has violated this section wherever odor reduction can be achieved by operational or procedural changes at the facility;

2. Submit to the Permitting & Inspections Director, within 30 days of the written notice of violation, an odor reduction plan which is designed to reduce ambient odors attributable to emissions from that source to the maximum allowable intensity for that zone. The plan shall include a detailed summary of the measures that the owner or operator will take to mitigate the community annoyance and estimated dates for completion of those measures. In the event that it will take longer than 30 days to develop the odor reduction plan, the owner or operator of the facility shall submit within the thirty-day time period a schedule for the development of the odor reduction plan. The Permitting & Inspections Director shall review this plan to determine whether it will be adequate to resolve the odor nuisance in a reasonable time period; and
 3. Implement the plan in accordance with the schedule approved by the Permitting & Inspections Director.
- D. The maximum ambient intensity standard for odors generated by uses located in the industrial zones shall not exceed the following levels when the odor is measured in the zone indicated:
1. 4.0 in any industrial or mixed-use zone for odors resulting from uses in industrial or mixed-use zones.

2. 3.0 in any residential zone for odors resulting from uses in industrial or mixed-use zones.

6.8.11 Outdoor effects

- A. In all mixed-use, office, and industrial zones and the IS-FBC zone, uses shall be operated within a completely enclosed structure, except for those customarily operated in open air.
- B. In the mixed-use and IS-FBC zones, open air activities shall be those licensed by the city. There shall be no outdoor kennels.
- C. No building in any zone shall be erected, altered or used as a garage for the storage of more than three motor vehicles or for the business of repairing motor vehicles, if any part of either old or new building when completed would be closer than five feet to any part of any church, public or private hospital or school; or if any part of either old or new building when completed would be less than 15 feet from the boundary line of any lot upon which any part of any church, public or private hospital or school is located. No existing garage used for the storage of more than three motor vehicles or for the business of repairing motor vehicles shall be deemed to become a nonconforming use through the subsequent erection of such church, hospital or school closer than the aforesaid distance to such a garage.
- D. No open exterior stairways or fire escapes shall be constructed above the ground floor, except that the Building Authority may permit the installation of an exterior egress stair or an upgrade of an existing exterior fire escape for a conforming or lawfully nonconforming dwelling unit existing as of January 5, 1998, if such egress is required to meet current fire or other life



safety codes, provided that the owner demonstrates to the Building Authority that:

1. There is no practical and economically reasonable way to provide such egress within the interior of the building, as demonstrated by the submission of detailed floor plans showing the projected cost of and the impact on the existing dwelling from an interior stair;
2. The stairway and associated landings and other building fixtures are designed and will be constructed to have a minimal visual impact upon the building, especially as viewed from any public way or public open space, as demonstrated by photographs of the front and any other affected facades of the building and plans or drawings of the proposed egress stairs;

6.8.12 Outdoor storage

Outdoor storage shall comply with the requirements of Table 6-H.

TABLE 6-H: OUTDOOR STORAGE STANDARDS

B-1, B-2/B-2b/B-2c, B-3/B-3b/B-3c, B-7, O-P, R-P, A-B¹, and IS-FBC	There shall be no exterior storage with the exception of fully enclosed receptacles for solid waste disposal. In the B-3 zones, such receptacles shall be screened from public streets.
B-4, B-5/B-5b, B-6, and Industrial	Outdoor storage of materials shall be done in such a manner as to prevent the breeding and harboring of insects or vermin, to prevent the transfer of such materials from the site by natural causes or forces and to contain fumes, dust, or other materials which constitute a fire hazard. This storage shall be accomplished within enclosed containers or by

raising materials above ground, separating materials, preventing stagnant water, or by some other means. In the B-4, B-5/B-5b, and B-6 zones, no outdoor storage shall be permitted in the front setback, except for storage for plant and tree nurseries. In the B-5/B-5b and B-6 zones, any storage of new materials, finished products, or related equipment must be suitably screened from the public way and abutting properties by a landscaped buffer or solid fence at least five feet in height.

B-1 and B-2 Vehicles or truck trailers with or without wheels shall not be used for on-site storage. In the B-2 zone, there shall be an exception where such storage is located in a designated loading zone identified on an approved site plan; or such storage is not visible from the street or adjacent residences during winter months.

B-5 Outdoor storage of rental and moving equipment shall be located on the site and not within a public right-of-way or sidewalk. A curb, guard rail or other barrier shall be provided to contain such equipment and storage on the site as well as out of landscape buffer areas. A landscape buffer shall be provided. Outdoor storage of rental and moving equipment must be accessory to a building in existence as of the date of this ordinance. Exterior lighting shall not exceed that which is necessary for security purposes.

¹ Does not apply to airports.

6.8.1 Relocation of displaced residents

In the B-3, B-3b, and B-3c zones, any development which results in the displacement of residential dwelling units currently located on the development site shall meet the requirements of Article 17.5.

6.8.1 Smoke

Smoke shall not be emitted at a density in excess of the opacity level designated in Table 6-I, as classified in Method 9 (Visible Emissions) of the Opacity Evaluation System of the U.S. Environmental Protection Agency.

TABLE 6-I: SMOKE STANDARDS

Zone	Opacity level
R-P	20%
O-P	
B-1	
B-2/B-2b/B-2c	
B-3/B-3b/B-3c	
B-4	30%
B-5/B-5b	40%
B-6	
B-7	
Industrial zones	20%
IS-FBC	

6.8.2 Storage of vehicles

- A. In all residential zones, all island zones, the R-P zone, and the B-3 zone, only one unregistered motor vehicle may be stored outside for a period not exceeding 30 days.
- B. In other mixed-use zones, storage of unregistered motor vehicles for more than 10 days and outdoor storage of used automobile tires shall be prohibited.

6.8.3 Traffic

Development in the I-M, I-Ma and I-Mb zones shall utilize streets classified as arterials by the Maine Department of Transportation to the greatest extent possible.

6.8.4 Waste disposal

- A. All solid waste disposal, including materials which might cause fumes or dust, or constitute a fire hazard if stored out-of-doors, shall be only in fully enclosed, covered containers or receptacles. In all non-residential zones with the exception of the industrial zones, such containers or receptacles shall be within designated, screened areas. Containers or receptacles shall not leak or otherwise permit liquids or solids to escape from the container or be transferred beyond lot boundaries by natural causes or forces. Areas attracting large numbers of insects or vermin are prohibited.
- B. Where food processing is permitted, all food processing waste shall be stored within a completely enclosed structure and if not refrigerated shall be removed from the site in an enclosed container within 48 hours of its generation. All enclosed and exterior food processing waste storage areas shall be cleaned and sanitized on a regular basis.

6.8.5 Vibration

- A. In any mixed-use zone, the O-P, and the R-P zones, vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile-supported pier.

#049

Posted by **enoch wenstrom** on **01/02/2020** at **7:42pm**

Type: Question

Agree: 0, Disagree: 0

why aren;t displaced residents addressed for r-6? Diplaced in the r-6 zone relates to forced out because of demos and not being able to afford to come back.

#050

Posted by **Karen Snyder** on **01/12/2020** at **4:42pm**

Type: Question

Agree: 0, Disagree: 0

Why are displaced residents only addressed in B-2,B3b, and B-3c? There have been many displaced residents in R-6.

- B. In all industrial zones, any use creating earthshaking vibrations, with the exception of airports, shall be controlled in such a manner as
- C. vibrograph or similar instrument at the property boundaries.

to prevent transmission beyond lot lines of vibrations causing a displacement of .003 or greater on one inch, as measured by a

7 DIMENSIONAL STANDARDS

7.1 APPLICABILITY

Construction, alterations, and additions to structures and buildings are governed by this article, except when superseded by other applicable laws or ordinances. It is the intent that, when in doubt, this article should be interpreted to accommodate the goals of the City's Comprehensive Plan and other plans.

7.2 RULES OF MEASUREMENT

Building footprint. The lot area contained within the outermost perimeter of the building envelope including cantilevered portions of the building, projections, and porches, decks, and similar attached structures integral to the building and contributing to its mass, but excluding roof overhangs.

Building width. The width of a building at its widest point as measured parallel to the street.

Floor area. The total floor space enclosed by exterior or standard fire walls of a building, exclusive of vent shafts and courts.

Grade, average. The average finished grades measured at the ground level adjoining corners of a structure.

Grade, pre-development. Average grade, existing on October 1, 2019, at the corners of the foundation of the proposed structure.

Height. The vertical measurement from average grade, or the pre-development grade on the islands, to the highest point of a structure. For buildings,

height shall be measured to the roof beams in flat roofs; to the highest point of the roof beams or the highest point on the deck of mansard roofs; to a level midway between the level of the eaves and highest point of pitched roofs or hip roofs; or to a level two-thirds of the distance from the level of the eaves to the highest point of gambrel roofs. For this purpose the level of the eaves shall be taken to mean the highest level where the plane of the roof intersects the plane of the outside wall on a side containing the eaves.

Impervious surface ratio. The proportion of a site covered by impervious surfaces, calculated by dividing the total impervious surface area by the lot area. For the purposes of this measurement, impervious surface shall be as defined by the Maine Department of Environmental Protection.

Landscaped open space ratio. The proportion of lot area covered by landscaped open space, calculated by dividing the total landscaped open space area by the lot area. For the purposes of this measurement, landscaped open space shall not include rooftop gardens.

Lot area. The area of a lot enclosed within the boundary lines of a lot.

Lot coverage. The proportion of lot area covered by building footprint and the footprint of accessory detached structures.

Lot width. The distance measured between side lot lines through that part of the principal building where the lot is narrowest.

#051

Posted by **Karen Snyder** on **01/12/2020** at **4:56pm**

Type: Question

Agree: 0, Disagree: 0

Why is average grade even in here? This is a loophole language for the developers. The average grade should be NEVER used for measuring building height because this means the developer only has to build up the grade of the pre-development. This is unfair and misleading language to abutters and contributes to the scale and massing issue that currently exists.

#052

Posted by **Maggy Wolf** on **12/30/2019** at **2:50pm**

Type: Suggestion

Agree: 1, Disagree: 0

The measurement of height should be applied to pre-development grade on the mainland, as it is done on the islands. Recently, we have seen an increasing abuse of using the finished grade, where projects are raising the grade beyond just a foot or two, allowing a builder to add 4-12 feet to the height of the building. This is extremely unfair to existing neighbors. The best way to stop this abuse is to use pre-development grade.

#053

Posted by **Ben Walter** on **01/14/2020** at **4:39pm**

Type: Suggestion

Agree: 0, Disagree: 0

Portland Zoning setbacks and other bulk and mass regulations are often in conflict with and much more restrictive than the built historical fabric of the neighborhoods. This creates re-development and additions that are out of character from the historic fabric of the neighborhood. The ordinance should include language that allows existing historic structures that were built to conform with the original neighborhood's character intent to be able to be expanded within the historic fabric. For example, an existing non-conforming side yard setback should be allowed to be expanded back to the rear setback line so as to stay in conformance with the neighborhood's character, not the zoning setbacks that don't conform with the built environment.

#054

Posted by **Michael Hoover** on **01/10/2020** at **8:56am**

Type: Suggestion

Agree: 0, Disagree: 0

The planning board has already run into difficulties establishing the average grade for proposed development. The current language is unclear and subject to interpretations which are intended to increase the overall height of the building by as much as 6-8 feet

higher than existing standards. This uncertainty is easily resolved by revising the language to define

predevelopment grades by utilizing predevelopment (existing) grade (not proposed building foundations) conditions for all of the city, not just the islands within the city limits.

#055

Posted by **Karen Snyder** on **01/08/2020** at **5:08pm**

Type: Suggestion

Agree: 0, Disagree: 0

Pre-development Grade is measured and takes precedence on the islands. This should also take precedence on main land as well..

#056

Posted by **Rob Whitten** on **01/08/2020** at **5:07pm**

Type: Suggestion

Agree: 0, Disagree: 0

Pre development grade should take precedence on non-island development (main land) as well.

#057

Posted by **Peter Murray** on **01/05/2020** at **5:55pm**

Type: Suggestion

Agree: 0, Disagree: 0

This is a real problem. Tying average grade for the purposes of applying height limitations to the "finished grade" at the four corners of a proposed building is subject to abuse by developers who will create artificial finished grades by heaping earth around the foundations of their projects, held back by retaining walls in some cases and constituting essentially planters. This can increase the average grade by as much as 6 feet or more on a sloping lot, and thus can increase structure height above the dimensional limits by 6 feet or more. What is wrong with tying average grade to either the grade of the site existing pre-construction, or referring it to grades surrounding the site such as along the borders or on public sidewalks or streets abutting the site? Another alternative is to use the pre-development grade, which we understand is done on the Portland islands.

#058

Posted by **Karen Snyder** on **01/12/2020** at **4:52pm**

Type: Question

Agree: 0, Disagree: 0

Why does the mainland use grade average rather than grade, pre-development as to measure for height? This is very misleading and unfair for a developer to build up the earth of the pre grade to reach higher building heights. The mainland should be using

the pre-development grade to measure height of building.

Net land area. The land area arrived at by subtracting from lot area the square footage of the following:

- A. Existing water bodies measured by the area between the top of the banks at the normal high-water mark;
- B. Wetlands; and
- C. Slopes of 25% or greater. Where a slope of 25% or greater was altered to less than 25% within the two years immediately preceding a development proposal, such slope shall also be subtracted from the lot area.

Setback. A space on a lot which is required by this article to be maintained open, unoccupied, and unobstructed between lot lines and any structure, except as otherwise permitted in this code of ordinances. A setback shall be measured from a line parallel to the lot line drawn through the point of a structure nearest to such lot line. This measurement shall be taken at right angles from such parallel line. When measuring setbacks, setbacks shall be interpreted to include setbacks of structures from property lines and setbacks of principal structures from one another. No principal structure shall occupy the minimum setback of another principal structure. Setbacks shall not apply to fences, flagpoles, raised garden beds, and other similar structures. When setbacks are established in relationship to height, the height in stories or feet of that part of the principal structure adjoining a yard shall be used in determining the required setback.

Setback, front. A setback along the front lot line, extending between side lot lines, the depth of which shall be the shortest horizontal distance between

the front lot line and any structure. In the case of lots with frontages on two or more streets, the orientation of the principal entry to the principal building shall prevail. In the case of lots without frontage on a street, the property line that parallels the nearest developed street shall be considered the front.

Setback, rear. A setback along the rear lot line, extending between side lot lines, the depth of which shall be the shortest horizontal distance between the rear lot line and any structure.

Setback, side. A setback along a side lot line extending from the front lot line to the rear lot line, the width of which shall be the shortest horizontal distance between the side lot line and any structure.

Stepback. A space on a lot which is required by this article to be maintained open, unoccupied, and unobstructed between lot lines and any structure that occurs at a prescribed height above the ground. Stepbacks shall apply to all attached accessory structures, including the minimum necessary housing of elevators, stairways, tanks fans, or other building operating equipment not intended for human occupancy.

Story. That portion of a building included between the surface of any floor and the surface of the floor, or the roof, next above. A half story is a story situated under a sloping roof, the area which at a height four feet above the floor does not exceed two-thirds of the floor area of the story immediately below it. A story which exceeds 18 feet in height shall be counted as two stories. A basement shall be counted as a story for the purpose of height measurement where more than

one-half of its height is above the average level of the adjoining ground.

Street frontage. The distance for which a lot line adjoins a public street, from one lot line intersecting

said street to the furthest distant lot line intersecting the same street.

7.3 DIMENSIONAL STANDARDS

Tables 7-A to 7-H shall establish the dimensional standards for each zone.

DIMENSIONAL STANDARDS

TABLE 7-A: RESIDENTIAL ZONE DIMENSIONAL STANDARDS

	R-1	R-2	R-3 ²	R-4	R-5 ²	R-5A ⁵	R-6 ³	R-6A ¹
Governmental	15,000 SF	10,000 SF	6,500 SF	6,000 SF	6,000 SF			
Hospital			10 ac.		5 ac.			
Intermediate or long-term, extended care facility	3 ac.	3 ac.	2 ac.		2 ac.	1.5 ac.	1 ac. ⁸	
Lodging house					9,000 SF			
Multiplex				9,000 SF	9,000 SF			
Place of assembly	<10,000 SF	1 ac.	1 ac.	1 ac.	15,000 SF	.5 ac.	10,000 SF	
	>10,000 SF	2 ac.	2 ac.	2 ac.	30,000 SF	1 ac.	15,000 SF	
Post-secondary school		2 ac.			2 ac.			
Elementary, Middle, and Secondary school	2 ac.	2 ac.	2 ac.	30,000 SF	30,000 SF		30,000 SF ^c	
Raising of animals	3 ac.							
Residential	15,000 SF	10,000 SF	6,500 SF ⁵	6,000 SF	6,000 SF ³	6,000 SF / 2 ac. max ⁶	2,000 SF	4 ac.
All other uses	15,000 SF	10,000 SF	6,500 SF	6,000 SF	6,000 SF		2,000 SF	
Lot Area per Dwelling Unit (min.)	15,000 SF	10,000 SF	6,500 SF	3,000 SF	3,000 SF	1,600 SF	725 SF	
Lot Area per Rooming Unit (min.)					1,000 SF		250 SF	
Lot Area per Multiplex Unit (min.)				3,000 SF for first 3, 6,000 SF thereafter	4,500 SF			
Lot Area per SNILU (min.)				2,400 SF	3,600 SF			
Street Frontage (min.)	75 ft.	50 ft.	50 ft.	50 ft.	50 ft.	50 ft.	20 ft.	
Lot Width (min.)	100 ft.	80 ft.	65 ft.	60 ft.	60 ft.	60 ft. for multiplex		
Front Setback (min.)	25 ft.	25 ft.	25 ft.	25 ft.	20 ft.	25 ft.	5 ft.	
	Or average depth of adjacent front yards							
Rear Setback (min.)	25 ft.	25 ft.	25 ft.	25 ft.	20 ft.	25 ft.	10 ft..	
Detached Accessory <250 SF	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	
Side Setback (min.)	<1.5 stories to 1.5 stories	12 ft.	12 ft.	8 ft.	10 ft.	8 ft.	10 ft.	<45 ft.: 10 ft.
	2 stories	14 ft.	14 ft.	14 ft.	14 ft.	12 ft.	14 ft.	
	2.5 stories	16 ft.	16 ft.	16 ft.	16 ft.	14 ft.	16 ft.	>45 ft.: 15 ft.
	Detached Accessory <250 SF	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	
On Side Street (min.)	20 ft.	20 ft.	20 ft.	20 ft.	15 ft.	20 ft.	None	
	Or depth of front yard directly abutting the lot.							

#059

Posted by **Michael Hoover** on **01/10/2020** at **9:21am**

Type: *Suggestion*

Agree: 0, Disagree: 0

I agree with the comment by Peter Murray. The decreased building setbacks have not achieved the intended result with regard to overall housing densities. In addition, they pose safety concerns, and are too distinct from other residential dimensional standards throughout the city. Residential dimensions should reflect different objectives in different zoning districts, however the extremely stark differences for the R6 zone dimensional requirements show no relation to any sort of cohesiveness that a comprehensive plan should exhibit.

#060

Posted by **Michael Hoover** on **01/10/2020** at **9:13am**

Type: *Suggestion*

Agree: 0, Disagree: 0

A 5 foot side setback also creates serious safety issues. How will effective access for emergency or fire occur within a five foot width? Any public safety representative will tell you that this will pose significant issues for fire and health related emergencies.

#061

Posted by **Rob Whitten** on **01/08/2020** at **5:22pm**

Type: *Suggestion*

Agree: 0, Disagree: 0

5 foot side yard set back does not provide sun light, ventilation or sufficient area for green space.

#062

Posted by **Karen Snyder** on **01/12/2020** at **5:17pm**

Type: *Question*

Agree: 0, Disagree: 0

How is a 5 foot setback even allowed when the fire chief said to get to a 2 story side window, they must have at least 10 feet between buildings? This seems to be unsafe and illegal language .

#063

Posted by **Peter Murray** on **01/05/2020** at **5:59pm**

Type: *Observation*

Agree: 0, Disagree: 0

Displaying the various dimensional requirements in a tabular form makes clear the extreme treatment of the R6 in the 2015 amendments. Compared with any other zone, even those permitting multi-family development, the setbacks, height limits, and all

dimensional requirements for the R6 have been placed in a class by themselves. The Munjoy Hill Overlay did not make any real change in these dimensional requirements, which are now permitting destructive and incongruous development in the R6 zone.

#064

Posted by **Rob Whitten** on **01/08/2020** at **5:14pm**

Type: Question

Agree: 0, Disagree: 0

Does this mean you can build a 10 foot wide house?

#065

Posted by **Rob Whitten** on **01/08/2020** at **5:17pm**

Type: Observation

Agree: 0, Disagree: 0

5 foot side yard does not allow for off street parking

#066

Posted by **enoch wenstrom** on **01/02/2020** at **7:46pm**

Type: Question

Agree: 1, Disagree: 0

this is confusing. Is this meant to mean no lot in an r-6 zone exceeds 2000 sf? Please explain. What about the trend of combining lots. This destrpys the neighbor character by permitting massive buildings to be built.

#067

Posted by **Karen Snyder** on **01/12/2020** at **5:05pm**

Type: Question

Agree: 0, Disagree: 0

Why does R-6 Zoning continued to be targeted by Planning Dept for changing? Why aren't the other residential zones changed as well? Having the residential standards side by side shows the extreme disparity of R-6 zoning to the other residential zones where R-6 continues to be target for constant zoning changes but the other residential zones don't have any changes.

#068

Posted by **Ben Walter** on **01/14/2020** at **4:31pm**

Type: Suggestion

Agree: 0, Disagree: 0

It appears that you are proposing to double the current 8' side yard setbacks to 16' in the R-3 (and other zones). So lets do some math. Many of these existing properties are 5,000 SF, or 50'x100'. Due to the narrowness of the lots, the existing historical fabric of these properties wast to build the houses (up to 3 stories) adjacent to one

property line (just enough so that the eaves didn't overhang) and to put the driveway on the other side, which typically takes up about 16-18'). If you take the proposed 16' setback on one side and an 18' driveway on the other side of a 50' wide lot, that leave you with a 16' wide house. What this all comes down to is that the zoning setbacks for previously developed lots SHOULD conform with the existing historical fabric of the neighborhood or risk creating infill development that is grossly out of character and/or not developable. This also leads to the observation that the existing zoning map has no rhyme or reason as to why some adjacent neighborhoods that appear the same are zoned differently.

#069

Posted by **Karen Snyder** on **01/12/2020** at **5:48pm**

Type: Question

Agree: 0, Disagree: 0

Where on Table 7-A does the R-6 Zone standards refer and include the R-6 Design Standards and Munjoy Hill Overlay Zone? It should be very clear that R-6 Design Standards are to be included in considering a proposed development.

#070

Posted by **Ben Walter** on **01/14/2020** at **4:17pm**

Type: Observation

Agree: 0, Disagree: 0

Many, many historical existing lots in Portland are 5,000 SF, or 50' x 100'. This is the historical fabric of Portland and creates nice medium density neighborhoods. I'm guessing there is grandfathered non-conformity. Now, go down to my comment on side yard setbacks to see why this is a problem.

#071

Posted by **Karen Snyder** on **01/12/2020** at **5:08pm**

Type: Question

Agree: 0, Disagree: 0

This is confusing.. Are these maximum or minimum lot square footage? This section should have 2 rows.. Maximum square footage and Minimum square footage and then each zone should have 2 figures. This is where combining lots can be addressed to stop the combining of lots.

TABLE 7-A (CONT.): RESIDENTIAL ZONE DIMENSIONAL STANDARDS

	R-1	R-2	R-3 ²	R-4	R-5 ²	R-5A ⁵	R-6	R-6A
Stepbacks (when property line abuts a residential zone)(min.)							10 ft. from side property line and 15 ft. from rear property line ¹¹	
Structure Height (max.)	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.	076 075 65 ft.	
Detached Accessory	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	
Building width (max.)	079		078				1- and 2-family: 30 ft. ¹³ 3+-family, 3 stories: 60 ft. ¹³ 077 3+-family, 4 stories: 45 ft. ¹³	
Lot Coverage (max.)	20%	20%	35%	30%	40%	30%	60% 074	072
Landscaped Open Space Ratio (min.)							20	
Width of garage opening on front façade (max.)							9 ft. or 40% of building width, whichever is greater, and in no case more than 20 ft. 073	

¹ All R-6 dimensional standards apply in the R-6A unless otherwise indicated.

² See separate table for PRUD standards.

³ Single family homes may be built on small lots in the R-5 under small residential lot dimensional requirements under certain conditions. See separate table for R-5 Small Residential Lot dimensional requirements.

⁵ For R-5A, PRUD standards shall apply to PRUDs, multi-family development of 4 or more units, congregate care, and intermediate, extended, or long-term care facilities, unless noted otherwise in the table above. See PRUD table for PRUD standards.

⁶ Applies to 1-, 2-, and 3-family dwellings only.

⁷ Alterations to single-family, two-family, and multi-family dwellings in existence as of 6/15/15 shall not result in the creation of any additional dwelling unit of less than 600 square feet of floor area, exclusive of common hallways and storage in basement and attic; and shall not result in any existing dwelling unit being reduced in size to less than 1,000 square feet of floor area, exclusive of common areas and storage in basement and attic.

⁸ Except for long-term and extended care facilities: 10,000 SF for the first 9 residents plus 750 SF for each additional resident, up to a total of 2 ac.

⁹ Except that a side setback in the R-6 zone may be reduced to zero, provided that the cumulative side yards are not less than 10 ft. A permanent maintenance easement a minimum of 5 ft. in width shall be provided on the parcel adjacent to the lot line with the reduced side setback.

¹⁰ Subdivisions consisting of horizontally attached dwellings on individual lots are not required to have side yards between such dwellings where a party wall condition will exist. Horizontally attached dwellings located within a single lot shall be required to meet the applicable side setback requirements at the external lot boundaries of the subdivision and internal lot boundaries between such dwellings that are not attached to each other. No minimum lot size width shall be required for individual lots underlying townhouse (horizontally attached) dwelling types. The applicable minimum lot area per dwelling shall apply to each lot.

¹¹ Does not apply to side streets.

¹² Except as provided under the Fort Sumner Park Height Overlay and Munjoy Hill Conservation Overlay.

¹³ Or average of building widths of principal facades within the same block (both sides of the street), except in the case of attached buildings or townhouses, where these building widths apply but for an unlimited run.

#072

Posted by **Karen Snyder** on **01/12/2020** at **5:30pm**

Type: Question

Agree: 0, Disagree: 0

Why is R-6 Lot coverage so much larger than other residential zones? By doing this, these new buildings are not allowing any open green space, gardens, or trees. This is ruining Munjoy Hill since a lot of mature heritage trees are being removed by developers and NOT being replaced. This is bad for the environment.

#073

Posted by **Karen Snyder** on **01/12/2020** at **5:33pm**

Type: Observation

Agree: 0, Disagree: 0

This is a confusing statement. This is almost encouraging developers to build garages when the Planning Dept stated they prefer "eyes on street". How are garages eyes on street? This also causes more curb cuts which removes more parking on streets.

#074

Posted by **Michael Hoover** on **01/10/2020** at **9:39am**

Type: Observation

Agree: 0, Disagree: 0

The allowance of a 20% higher lot coverage ratio for the R6 zone compared to all the other zones within Portland is s a very significant increase. Please reconsider this difference, as it is not reflective of or consistent with residential development throughout the rest of the city. Residential and use in the R6 is not that significantly different from other zones, especially on the peninsula, and I struggle to understand the justification for such a large difference.

#075

Posted by **Karen Snyder** on **01/12/2020** at **5:26pm**

Type: Question

Agree: 0, Disagree: 0

Why isn't it clear where building height is measured? All mainland building height should be measured from the pre-grade development just like the Islands are. By the Planning department being vague or not following the island height measurement which is from the pre-grade development and not the grade average has caused a massive scale and massing issue that would have NOT existed if it was just on islands and mainland, the building height simply measured from the pre-grade development and NOT the grade average. Please change this.

#076

Posted by **erna koch** on **01/03/2020** at **3:33pm**

Type: Suggestion

Agree: 0, Disagree: 0

This should be no more than 35' 45' is too tall to fit in the neighborhoods

#077

Posted by **Michael Hoover** on **01/10/2020** at **9:26am**

Type: Observation

Agree: 0, Disagree: 0

This dimensional standard is not in any way reflective of the existing housing stock within the R6 district. The vast majority of houses are typically between 18-30 feet wide.

#078

Posted by **Rob Whitten** on **01/08/2020** at **5:33pm**

Type: Suggestion

Agree: 0, Disagree: 0

The mass and scale of 45 feet wide x 45 high housing is not consistent with the mass and scale of R-6 neighborhoods. The mass and scale of 60 foot wide x 35 foot high is not consistent with the mass and scale of R-6 neighborhoods.

#079

Posted by **Barbara Vestal** on **01/07/2020** at **2:49pm**

Type: Question

Agree: 0, Disagree: 0

This appears to be brand new. While it might be a good idea to have a maximum building width, what is the rationale for the specific new maximum building width standards that are just being introduced in the R-6? How does it apply on a corner lot? Is there a comparable building depth maximum that would apply there? If a lot has frontage on two streets, how does one determine which is the width?

#080

Posted by **Peter Murray** on **01/05/2020** at **6:00pm**

Type: Suggestion

Agree: 0, Disagree: 0

Agreed - 35 feet should be the maximum permitted in the R-6 - period.

DIMENSIONAL STANDARDS

TABLE 7-B: PRUD DIMENSIONAL STANDARDS

	R-3	R-5	R-5A ³
Gross Lot Area (min.)	3 ac.	2 ac.	2 ac.
Net Land Area per Dwelling Unit (min.)	6,500 SF	3,000 SF	1,600 SF ^{4,5}
Units/Building (max.)	PRUD < 5 ac.: 2 PRUD > 5 ac.: 6	12	
Average Number of Units/Building (max.)	PRUD > 5 ac.: 5		
Structure Height (max.)	35 ft.	35 ft.	55 ft.
Building Length (max.)	Without garages: 100 ft. With integral garages: 140 ft.	140 ft.	
Length of Accessory Garage Structure (max.)		60 ft.	
Building Setback from External Subdivision Property Lines (min.)	3 or fewer D.U. in building: 25 ft.	Bldg. Length 100 ft. or less: 25 ft.	Bldg. Length 100 ft. or less: 25 ft.
	4 or more D.U. in building: 35 ft.	Bldg. Length >100 ft.: 35 ft.	Bldg. Length >100 ft.: 35 ft.
Distance between detached PRUD Dwelling Units (min.)	16 ft.		
Recreation Open Space Area (min.) ²	300 SF/D.U.	300 SF/D.U.	200 SF/D.U. ⁴
Habitable Space Elevation	No habitable space in a PRUD shall be below grade, except basements that are a part of and below above-ground units.		

² Recreation open space area shall be designated on the site for recreation purposes. Such recreation areas shall be usable, level graded, dry, accessible and properly drained. At minimum, a contiguous area of 6,000 SF with a minimum dimension of 50 ft. shall be provided. Such recreation areas shall be located at least 25 ft. from dwelling units.

³ In the R-5A zone, PRUD standards shall apply to PRUDs, multi-family development of 4 or more units, congregate care, and intermediate, extended, or long-term care facilities unless otherwise noted.

⁴ Does not apply to intermediate, extended, or long-term care facilities but does apply to PRUDs, congregate care, and 3+-family buildings.

⁵ Minimum land area per intermediate care facility resident: 8,000 SF gross land area for first 35 residents, plus 350 SF for each additional resident. For PRUD standards in island zones, see Table 7-D.

TABLE 7-C: R-5 SMALL RESIDENTIAL LOT DEVELOPMENT DIMENSIONAL STANDARDS¹

	Lot Area (min.)	5,000 SF
		7 ft. ²
Side Setback (min.)	Detached Accessory Ground Coverage < 250 SF	5 ft.
	Side Yard on Side Street	10 ft.
	Lot Width (min.)	40 ft.
	Street Frontage (min.)	40 ft.
	Lot Coverage (max.)	50%

¹ Single family homes may be built on small lots in the R-5 under small residential lot development dimensional requirements if the lot is: vacant, or used exclusively for parking; contains structure(s) not used for residential purposes; or is created from a single lot division of a developed lot and results in a lot meeting the small residential lot dimensional requirements with the remaining developed portion meeting the standard dimensional requirements of the R-5 zone.

² The width of one side setback may be reduced 1 ft. for every foot that the other side yard is correspondingly increased, but no side yard shall be less than 4 ft. in width.

TABLE 7-D: ISLAND ZONE DIMENSIONAL STANDARDS

						I-B	
						Served by Public Water & Sewer	Not Served by Public Water & Sewer
Lot Area (min.) ¹¹	Bed and Breakfast		IR-1	IR-2	IR-3	5,000 SF for 3 guest rooms plus 5,000 SF/additional room	10,000 SF/guest room
	Campgrounds	10 ac.			5,000 SF/campsite, but not less than 10 ac.		
	Hotels				10,000 SF/guest room	5,000 SF for 3 guest rooms plus 5,000 SF/additional room	10,000 SF/guest room
	Lodging House			10,000 SF/lodging room	10,000 SF/lodging room	5,000 SF for 3 lodging rooms, plus 5,000 SF/additional room	10,000 SF/lodging room
	Place of Assembly	>10,000 SF	30,000 SF	30,000 SF	35,000 SF ⁷	20,000 SF ⁷	
		<10,000 SF	15,000 SF	15,000 SF			
	PRUD/PUD (gross lot area)		5 ac. ³	5 ac. ³	20 ac.		
	Raising of Animals		3 ac.				
	Residential		40,000 SF ^{1,2}	20,000 SF ²	42,500 SF ⁶	20,000 SF	20,000 SF
	Restaurant				35,000 SF	10,000 SF	20,000 SF
	Retail					None	20,000 SF
	Seasonal Camps		10 ac.		35,000 SF		
	Schools/Educational Facilities		40,000 SF	20,000 SF		20,000 SF	
	All other uses				35,000 SF	20,000 SF	
	Lot Area per Dwelling Unit (min.)		None ⁴	None ⁴	42,500 SF ⁸		
	Street Frontage (min.)		100 ft. ⁵	70 ft. ⁵	70 ft. ⁹	40 ft.	
	Lot Width (min.)		100 ft. ⁵	80 ft. ⁵	80 ft.	40 ft.	
	Front Setback (min.)		30 ft. ⁵	25 ft. or the average of adjacent front yards ⁵	25 ft. ¹⁰	20 ft. or avg. depth of adjacent front yards	
	Rear Setback (min.)		30 ft. ⁵	25 ft. ⁵	25 ft. ¹⁰		
		Detached Accessory Ground Coverage < 250 SF	10 ft. ⁵	10 ft. ⁵	10 ft. ¹⁰	10 ft.	

TABLE 7-D (CONT.): ISLAND ZONE DIMENSIONAL STANDARDS

					I-B
					<i>Served by Public Water & Sewer</i>
					<i>Not Served by Public Water & Sewer</i>
	IR-1	IR-2	IR-3		
Side Setback (min.)	20 ft. ⁵	20 ft. ⁵	20 ft. ¹⁰		10 ft.
Detached Accessory Ground Coverage < 250 SF	15 ft. ⁵	15 ft. ⁵	15 ft. ¹⁰		10 ft.
On Side Street	20 ft. ⁵	20 ft. ⁵	20 ft. ¹⁰		10 ft.
Structure Height (max.)	35 ft.	35 ft.; For Little Diamond Island: 27 ft.	35 ft.		35 ft.
Accessory Detached	18 ft.	18 ft.	18 ft.		18 ft.
Lot Coverage (max.)	20%	20%	20%		50%

¹ 60,000 SF if not served by public water.

² For PRUDs, minimum lot area shall be reduced up to 50% provided there is an equivalent corresponding increase in common or public open space that is usable for passive or active recreational opportunities or that serves as a buffer between buildings or between the development and the surrounding neighborhood.

³ PRUDs shall consist of detached dwellings.

⁴ Except 1 dwelling unit per 40,000 SF of net land area for PRUDs in IR-1 and 20,000 SF of net land area in for PRUDs IR-2.

⁵ For PRUDs, standard shall be reduced up to 50%.

⁶ Except that the minimum lot size per dwelling unit shall be reduced by the amounts specified below, to a minimum lot size of 35,000 SF per dwelling unit, provided that the Planning Board finds that the development meets the following criteria: a. The minimum lot size per dwelling unit shall be reduced by 5,000 SF if a public off-island water source provides 75% of the water needs of the development. b. The minimum lot size per dwelling unit shall be reduced by 2,500 SF if the development provides appropriate permanent restrictions or other agreements precluding the use, maintenance and parking of all private motor vehicles exclusive of construction and common service vehicles.

⁷ For private clubs and fraternal organizations only.

⁸ The maximum density for a PUD shall be based on the applicable minimum lot size for each use as measured in terms of net area. For purposes of calculating density, if separately described lots exceed the applicable minimum lot size, the excess area shall not be credited toward the minimum lot size for any other use.

⁹ Except where the Planning Board finds that the development has an adequate street network to permit access for pedestrians and emergency service vehicles.

¹⁰ When adjoining any external property boundary.

¹¹ In the IR-3, the minimum lot area for buildings containing both residential and nonresidential uses shall be cumulative. Where there are two or more residential uses contained in a building, the minimum lot area shall be the larger of the applicable minimum lot sizes.

TABLE 7-E: MIXED-USE ZONE DIMENSIONAL STANDARDS

		B-1	B-2/B-2b/B-2c	B-3/B-3b/B-3c	B-4	B-5/B-5b	B-6	B-7
Lot Area (min.)	School	20,000 SF						
	Place of Assembly	10,000 SF			10,000 SF			
Lot Area per Dwelling Unit (min.)	On-Peninsula	435 SF	435 SF					
	Off-Peninsula	1,000 SF	1,000 SF, except 435 SF if active street frontage ³					
Street Frontage (min.)		20 ft.	20 ft.	15 ft.	60 ft.			
Front Setback (from all street frontages) (max.)		10 ft., or the average front yard depth of the nearest developed lots if < 10 ft.	10 ft.	5 ft.	20 ft.	None, except 10 ft. in B-5b	10 ft. ⁷	10 ft.
Rear Setback (min.)	Principal	None, except 10 ft. if abutting a residential zone	10 ft.		20 ft.			
	Accessory	None, except 5 ft. if abutting a residential zone	5 ft.		7 ft.			
Side Setback (min.)	Principal	None, except 5 ft. if abutting residential zone	None		10 ft.			
	Accessory		5 ft.					
Stepbacks (above 35 ft. when property line abuts a residential zone) (min.)		Side: 10 ft.	Side: 5 ft.					
		Rear: 15 ft.	Rear: 15 ft.					
Length of Building Wall at Maximum Setback (min.)						70% of street frontage or 25% of building perimeter ⁸	75% of street frontage or 25% of building perimeter	
Structure Height (max.)	On-Peninsula: 45 ft., except 50 ft. along Congress Street if commercial first floor and residential above ¹	45 ft., except: 50 ft. if first floor is occupied by a commercial use.	See Downtown Height Overlay Map	65 ft.	65 ft.	65 ft., except in B-5b along W. Commercial St. south of Danforth St. ⁵ and 120 ft. on Thompson's Point ⁶	65 ft. or See B6 Building Height Overlay Map	See Bayside Height Overlay Map
	Off-Peninsula: 35 ft.	65 ft. in B-2 and B-2c zones on lots >5 ac. if required side and rear setbacks are increased by 1 foot for each foot of height over 45 ft.						

DIMENSIONAL STANDARDS

TABLE 7-E (CONT.): MIXED-USE ZONE DIMENSIONAL STANDARDS

	B-1	B-2/B-2b/B-2c	B-3/B-3b/B-3c	B-4	B-5/B-5b	B-6	B-7
Floor Area (max.)	Non-residential uses on first floor: 10,000 SF total ² Restaurants (public area): 2,000 SF Clinics: 3,000 SF	Laboratory and research facilities, warehousing, and printing & publishing: 10,000 SF	None, except 15,000 SF for each floor above 125 ft.			Laboratory and research facilities and warehousing: 15,000 SF	Exhibition halls: 20,000 SF
Lot coverage (max.)			25% for portions of structures exceeding 125 ft. in height ⁴				
Impervious Surface Ratio (max.)	90%	Residential: None Other uses in B-2 and B-2c: 80% Other uses in B-2b: 90%		80%			

¹ The commercial first floor uses shall utilize at least 75 % of the first-floor frontage along Congress Street and shall have an average depth of at least 20 ft.

² Uses in structures which existed prior to the date of enactment of the B-1 zone are exempt.

³ A building will be determined to have an active street frontage upon meeting the following guidelines to the greatest extent practicable: the primary building façade shall be within 10 ft. feet of the front lot line; there shall be no parking on the lot within 35 ft. of the front lot line; no more than 25% of the first floor primary façade shall consist of access to garages, unutilized space, service entrances, storage or mechanicals and the remaining minimum 75% shall have an average depth of a minimum of 20 ft. for residential or commercial uses; and all primary ground floor entries to multi-family buildings must orient to street, not to interior blocks or parking lots.

⁴ Except that no floor area shall be required to be less than 10,000 SF.

⁵ For parcels of land in the B-5b zone located along W. Commercial St. south of Danforth St.: West of the projection of the centerline of the Fletcher St. right-of-way, the maximum building height shall be 45 ft.; and, east of the projection of the centerline of the Fletcher St. right-of-way and west of the projection of the centerline of the Emery St. right-of-way, the maximum building height shall be 55 ft. A projection of the centerline of a street is defined by extending the centerline of the referenced street right-of-way along its most southerly block to the centerline of W. Commercial St. Furthermore, notwithstanding other sections of this ordinance, no rooftop structure located between the projections of the centerlines of Emery St. and Fletcher St. shall exceed a height of 62 ft as measured from average grade of the building.

⁶ Thompson's Point is defined as the contiguous parcels of upland occupying the peninsula bounded on the east by Route 295, on the north by the Mountain Division Rail right-of-way, and on the south and west by the Fore River and its associated wetlands. Nearby lands accessed from Hobart and Osgood Streets are not included.

⁷ Does not apply to parking garages and public transportation facilities... Notwithstanding required setbacks, new structures located in the blocks located south of Fore Street and north of Commercial Street and its extension shall build to the key building envelopes shown on the B6 Building Height Overlay & Building Envelopes map. Buildings located in the easternmost key building envelope shall not have a maximum front setback and shall not be required to build to the key building envelope perimeter. Parking structures and the buildings for public transportation facilities may, however, be set back beyond the key building envelopes (toward the interior of blocks), but may not occupy the land between the key building envelope and the street right-of-way.

⁸ For buildings fronting on two or more streets, the minimum building wall on one street may be decreased so long as the frontage is proportionally increased on other streets in so far that the building wall on the secondary street is not reduced to less than 25 ft.

TABLE 7-F: OFFICE PARK & RESIDENCE PROFESSIONAL ZONE DIMENSIONAL STANDARDS

		O-P	R-P ¹
Lot Area (min.)		1.5 ac.	6,000 SF
Street Frontage (min.)		100 ft.	60 ft.
Lot Width (min.)		100 ft.	60 ft.
Front Setback (min.)		50 ft.	20 ft., or avg. depth of adjacent front yards ²
Rear Setback (min.)	Principal	50 ft.	20 ft.
	Accessory		7 ft.
Side Setback (min.)	Principal	25 ft., except 40 ft. where side yard abuts residential zone or use	1 story: 10 ft.
			2 stories: 12 ft.
			3+ stories: 14 ft.
	Accessory		7 ft.
On Side Street			1-2 stories: 15 ft.
			3+ stories: 18 ft.
Structure Height (max.)		55 ft., except 75 ft., including rooftop appurtenances, on lots within office park subdivisions which are > 50 ac. if each minimum setback is increased by 1 ft. for each 1 ft. of height above 55 ft.	45 ft.
Floor Area (max.)		High-tech manufacturing: 20,000 SF	
Impervious Surface Ratio (max.)		60%	70%
Pavement Setback (min.)		15 ft.	

¹ Residential uses shall meet the requirements of the nearest residential zone.

² The front yard of a lot existing as of April 4, 1988, which lot is less than 100 ft. deep, need not be deeper than 10% of the depth of the lot.



DIMENSIONAL STANDARDS

TABLE 7-G: INDUSTRIAL & AIRPORT ZONE DIMENSIONAL STANDARDS

I-L/I-Lb			I-M/I-Ma/I-Mb		I-H/I-Hb		A-B
Lot Size (min.)							20,000 SF
Street Frontage (min.)			60 ft.	60 ft.	60 ft.		50 ft. ¹
Lot Width (min.)							50 ft.
Front Setback (min.)	I-L:	25 ft.	I-M/I-Ma:	1 ft. for each ft. of building height	I-H:	25 ft.	None, except 20 ft. if property has frontage on Westbrook St.
	I-Lb:	None	I-Mb:	None	I-Hb:	None	
Rear Setback (min.)	I-L:	25 ft., except 40 ft. when abutting residential zone	I-M/I-Ma:	1 ft. for each ft. of building height up to 25 ft., except 35 ft. when abutting residential zone	I-H:	35 ft.	None., except 50 ft. if abutting residential zone or use ²
	I-Lb:	None, except 25 ft. when abutting residential zone	I-Mb:	None, except 25 ft. when abutting residential zone	I-Hb:		
Side Setback (min.)	I-L:	25 ft., except 40 ft. when abutting residential zone	I-M/I-Ma:	1 ft. for each ft. of building height up to 25 ft., except 35 ft. when abutting residential zone	I-H:	35 ft.	None, except 25 ft. if abutting residential zone or use ²
	I-Lb:	None, except 25 ft. when abutting residential zone	I-Mb:	None, except 25 ft. when abutting residential zone	I-Hb:		
Structure Height (max.)	45 ft.		I-M/I-Mb:	75 ft.	75 ft.		75 ft., except 45 ft. within 100 ft. of a residential zone
			I-Ma:	45 ft.			
Impervious Surface Ratio (max.)	I-L:	65%	I-M/I-Ma:	75%	I-H:	85%	70% ¹
	I-Lb:	100%	I-Mb:	100%	I-Hb:	100%	
Pavement Setback(min.)	15 ft.		10 ft.		10 ft.		

¹ Except for lots in airport restricted access areas, which shall not be subject to this provision.

² No structure may extend beyond the building line established for any runway or taxiway. If provided, rear and side yards must not be less than 5 ft. in width.

³ Shall not apply to entrance drives.

TABLE 7-H: OPEN SPACE ZONE DIMENSIONAL STANDARDS

	R-OS ¹	RPZ
Lot Area (min.)		20,000 SF
Lot Frontage on Street or Shoreline (min.)		100 ft.
Lot Width (min.)		100 ft.
Shoreline Setback (min.)		75 ft. ³
Front Setback (min.)	25 ft.	25 ft.
Rear Setback (min.)	25 ft.	75 ft. ⁴
Side Setback (min.)	Principal	15 ft.
	Accessory	5 ft.
	On Side Street	20 ft.
Structure Height (max.)	Principal	35 ft., except 45 ft. if more than 1,000 ft. from a shoreland zone.
	Accessory	15 ft.
Floor Area (max.)		10% of lot area ⁵
Impervious Surface Ratio (max.)	25% ²	

¹ Public open spaces less than 2 ac. and on the peninsula are not required to meet the R-OS dimensional standards.

² Except 75% for sports complexes and 100% for sewage treatment facilities.

³ Does not apply to permitted piers, docks, wharves, breakwaters, causeways, bridges, boathouses and storehouses for fishing gear.

⁴ Does not apply to a boathouse or storehouse for fishing gear.

⁵ For principal building or group of buildings. Individual buildings shall be no greater than 10,000 SF in size.

7.4.1 Additional dimensional standards

- A. **Corner clearance.** No shrub, wall, fence, sign, or pile of material higher than 3 1/2 feet above the lowest elevation at the curblines shall be permitted on a corner lot within the area of a triangle formed by a line connecting the curblines of the intersecting streets at points 25 feet from the corner, unless said obstruction is reviewed by the Public Works Authority and found not to be a traffic or public safety hazard.
- B. **Fences.** In residential zones, no wall or fence within 15 feet of the street shall be more than four feet in height.
- C. **Swimming pools.** Outdoor swimming pools as accessory uses shall be subject to the following dimensional standards:
 1. No swimming pool shall be sited in the front yard.

2. No part of any swimming pool shall be located closer than ten feet from the principal structure, nor closer than ten feet from side or rear lot lines.

7.5 SPACE AND BULK EXCEPTIONS

7.5.1 Height

- A. **Buildings in the Bayside Gateway Urban Height District A.** Buildings in the Bayside Gateway Urban Height District A as depicted on the Bayside Height Overlay Map may be greater than 125 feet but no more than 165 feet in height provided that:
 1. Such buildings shall be reviewed by the Planning Board as conditional uses under Section 6.5 of this Land Use Code.
 2. Such buildings shall be sited to minimize encroachment into designated view

corridors and visual landmarks to and from the downtown or that do not substantially further obstruct such corridors blocked by existing development as referenced in the Bayside Height Study Map and the B-7 design standards; and

3. Portions of such buildings higher than 125 feet shall be stepped back at upper levels to provide light and air to adjacent streets, trails, and open spaces, with a ratio of no less than a ratio of building height to width of adjacent streets, trails and open spaces equivalent to 1.5 to 1, except that the Planning Board may modify this requirement for master development plans or major site plans provided that the following conditions are met:
 - a. Each building exceeding 125 feet shall contain at least 20 dwelling units per building.
 - b. Building wall stepback requirement along public street frontage for buildings with frontage on one street: Minimum 10 foot stepback between third and fifth stories and a minimum 10 foot stepback between the 125 and 145 foot level.
 - c. Building wall stepback requirement along public street frontage for buildings with frontage on multiple streets: Above paragraph (b) requirement along longest building façade street wall, and of the remaining street walls the same requirement as paragraph (b) or a 15 foot wide streetscape improvements

area containing a public sidewalk, landscaping and other streetscape improvements within the abutting street right-of-way and/or private property along the remaining street frontage. A building with frontage on four streets shall meet the above requirement except that two of the streets shall have the stepback requirement.

- d. The Planning Board shall have the authority to waive one or more of the required stepbacks provided the following is met:
 - i. The depth of the building lot precludes a building having an average minimum lot depth dimension of 170 feet; or
 - ii. The proposed building has an architecturally significant design that is articulated to avoid a monolithic appearance and emphasizes slender, vertically-oriented proportions while employing a variety of scales, materials, fenestration, and massing to assure a rich visually interesting experience as viewed within the context of the downtown skyline and provide visual interest and human scale at the pedestrian level;
- e. In the event such a waiver is granted the Planning Board may require the applicant to mitigate the impacts of the waiver by requiring the following:

- i. Along all public street frontages and public open spaces, all buildings (regardless of height) shall maintain a pedestrian scale through the use of building elements at the street level as listed in this standard along no less than 60% of the building's horizontal length.
 - ii. Along all public street frontages and public open space for the building(s) over 125 feet, a canopy, awning or similar permanent architectural feature to provide pedestrian protection and wind mitigation shall be provided within the first 35 feet of height.
 - iii. In order to preserve view corridors and to maintain a varied skyline, all buildings above 125 feet within a single development site should be separated to avoid the appearance of a tall, solid block massing. In accordance with this policy, development sites of 500 feet or greater as measured parallel to Marginal Way, the aggregate building façade widths above 85 feet shall not exceed 50% of the total development site distance parallel to Marginal Way. Buildings over 125 feet in height that are being reviewed as separate phases of a Master Development Plan shall be entitled to meet the 50% building requirement in aggregate for all such buildings over 125 feet in height in the Master Development Plan, provided that view corridors are retained as each phase is built.
 - iv. The applicant shall demonstrate building design elements and location will reasonably mitigate downdraft effects of the proposed building or buildings.
 - 4. Such buildings provide publicly accessible and usable open space, meeting the B-7 urban design standards, of at least 10% of the building lot area; and
 - 5. If located on lots including or adjacent to planned or proposed street or pedestrian way connections, land dedication to such street or connection shall be credited toward the 10% open space requirement. Buildings over 125 feet in height that are being reviewed as separate phases of a Master Development plan shall be entitled to meet the 10% percent open space requirement of in aggregate for all such buildings over 125 feet in height, provided that the open space shall not fall below 10% percent at any built phase or combination of built phases; and
 - 6. Such development shall comply with all other requirements and design standards as required by this article.
- B. Ground-mounted solar energy systems.**
- Where the total height of the support structure plus the solar energy system is equal to or below the zone-based height maximum, the absolute height of the solar energy system shall

be 20 feet above the ground as measured from the base of the support.

- C. **Public art.** Except in residential zones, public art that has been individually accepted by the City Council for inclusion within the public art collection, pursuant to Article 20, shall not be subject to the height limitations within the underlying zone.
- D. **Rooftop appurtenances.** Rooftop appurtenances for the housing of elevators, stairways, tanks, fans, or other building operating equipment not intended for human occupancy, deck railings, skylights, steeples, roof signs, flag poles, chimneys, smokestacks, radio or television masts, telecommunications equipment, water tanks, or silos may be erected above the height limitations herein prescribed.
- E. **Roof-mounted solar energy systems.** Photovoltaic panels and thermal water heating panels, whether parallel or angled to a pitched or gable roof, may be erected above the height limitation for principal or accessory buildings as follows:
 1. In all residential zones: Up to three feet above the maximum height allowed in the underlying zone. In the case of flat roofs, the solar energy system may be up to five feet above the maximum height allowed in the underlying zone. All roof-mounted solar energy systems shall be set back from the edge of the roof by one foot for every one foot of solar energy system height.
 2. In B-4 and Industrial zones: Up to four feet above the maximum height allowed in the underlying zone. In the case of flat roofs, there are no height limits.

3. In all other zones: Up to three feet above the maximum height allowed in the underlying zone. In the case of flat roofs, the solar energy system may be up to eight feet above the maximum height allowed in the underlying zone. All roof-mounted solar energy systems shall be set back from the edge of the roof by one foot for every one foot of solar energy system height.

- F. **Telecommunication towers.** Ground-mounted telecommunication towers may be erected above the height limitations within the underlying zone.
- G. **Wind energy systems.** Wind energy systems may be erected above the height limitation for principal buildings within the underlying zone.

7.5.2 Length of building wall at maximum setback

- A. **In the B-6 zone.** Buildings located in the easternmost key building envelope shall not be subject to the building wall requirement.
- B. **In the B-7 zone.** Additions to and relocations of designated historic structures or structures determined to be eligible under Article 16 shall be exempt from the building wall requirement.

7.5.3 Lot area

- A. **Institutional uses in residential zones.** No minimum lot area shall be required for institutional uses in residential uses in the following cases:
 1. Uses existing as of June 1, 1983;
 2. Expansion on to land abutting the lot on which the principal use is located;
 3. Expansion onto land other than the lot on which the principal use is located to the

#081

Posted by **Karen Snyder** on **01/12/2020** at **5:45pm**

Type: Question

Agree: 0, Disagree: 0

What does "underlying zone" mean? Does this mean someone can install a telecommunication tower in their backyard and it goes 50 feet high even though the building height allowance in R-6 is 45 feet?

#082

Posted by **enoch wenstrom** on **01/02/2020** at **7:54pm**

Type: Question

Agree: 0, Disagree: 0

why is there no max limit in height? Over time the definition of appurtenance might get altered to include something not listed. Also what about deck railings? What is to stop someone from building a ten foot railing that is opaque in nature and completely blocks views?

#083

Posted by **Michael Hoover** on **01/10/2020** at **9:47am**

Type: Suggestion

Agree: 0, Disagree: 0

I do not understand why there are no dimensional limitations for any rooftop appurtenance. The absence of standards allows for the potential abuse of any sort of rooftop appurtenance. Size as well as visual impacts can be significant if they are not restricted in any manner. I strongly suggest the inclusion of specific limits with relation to height, volume, and visual impacts for any rooftop appurtenance.

#084

Posted by **Karen Snyder** on **01/12/2020** at **5:41pm**

Type: Suggestion

Agree: 0, Disagree: 0

There are many things wrong with this section. 1) This is very vague and must have more clear definition of how much higher from the actual rooftop an appurtenance can protrude. 2) It also needs to provide how large this appurtenance can be by providing length and width maximums. 3) There also needs to be screening language to cover these mechanicals so they are not seen from street scape. 4) There should also be a side note to see Munjoy Hill Overlay district for additional restrictions.

- extent that such expansion consists of the reuse of surface parking area or nonresidential structures existing and in nonresidential use as of June 1, 1983, provided that such reuse is contained within the lot of record of such structure or parking area as of June 1, 1983; or
4. Expansion onto land other than the lot on which the principal use is located of no more than 15% of the total contiguous land area of the existing use, or one acre, whichever is less, within any five-year period.

B. Residential lots not served by public sewers.

A lot in an unsewered residential district shall meet the provisions of the state Minimum Lot Size Law, 12 M.R.S.A. Section 4807 et seq., or the applicable minimum lot area, whichever is larger, except that the minimum lot size may be reduced on the islands in Casco Bay as provided in subsection (C).

C. In island zones. In issuing any permit for new development in island zones:

1. The Building or Planning Authority shall require that any lot located in the IR-1 zone shall be at least 40,000 SF in area and in the IR-2, IR-3, and I-B zones be at least 20,000 SF in area when the lot is to be serviced by a subsurface wastewater disposal system, except those lots which are located in a subdivision approved by the Planning Board after June 8, 1968 and excluding Peaks Island.
2. Excluding Peaks Island from this subsection (2), any property owner whose lot does not meet the minimum lot size requirements outlined in (1) above may,

for purposes of this subsection only, merge two or more separate lots on the same island in order to meet these requirements. Where the lots so merged are not contiguous, the property owner shall grant to the city as holder a conservation easement upon the lot or lots which will not contain the principal structure. The conservation easement shall contain both an existing legal description and a city assessor's chart, block and lot description. The Planning Authority shall be authorized to accept such conservation easements on behalf of the city. Said easement shall be recorded by the applicant in the registry of deeds. A copy of the recorded easement and copies of the deeds for both lots shall be submitted to the Planning Authority prior to issuance of a building permit. The property over which the conservation easement has been granted shall be used for passive recreational and conservation purposes only, and shall be subject to the following restrictions:

- a. No structure shall be permitted on this property;
- b. No parking or storage of vehicles or machinery shall be permitted on this property at any time;
- c. No area of this property shall be paved.
- d. No exterior storage for commercial use shall be permitted on this property; and
- e. The easement deed shall reference the lot which is benefited by this

- conservation easement. No conservation easement shall be used to benefit more than one lot.
3. Conservation easements shall only be granted over lots which conform either to the provisions of Section 4.3.1 or to the minimum lot sizes set forth in Table 7-D. Conservation easements shall not be granted over any lot which is encumbered by any other easement which prohibits all construction on that lot. A conservation easement may also name as a holder or grant a third-party right of enforcement to a nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open space use; protecting natural resources; or maintaining or enhancing air or water quality of real property. Nothing in this subsection shall be construed to allow an owner of a currently existing and developed lot to convey or permit a portion of that lot to be used to fulfill the requirements of this subsection if such conveyance would render the existing lot nonconforming under the terms of this Land Use Code. The lot upon which a building is to be constructed shall meet the minimum lot size requirements of Section 4.3.1.
 4. Where an existing subsurface wastewater disposal system serving an existing structure requires replacement, the

replacement system shall meet the applicable state requirements. The land area requirements in subsection (1) of this section shall not apply to such a replacement system.

3. For purposes of this subsection, the mean high tide mark shall be considered to be the shoreline lot line.

7.5.4 Lot coverage

- A. **Lot surrounded by streets or alleys.** Where a lot containing ten thousand 10,000 square feet or less is completely surrounded by rights-of-way, the lot coverage may be increased 20%.

7.5.5 Setbacks

- A. **Setbacks in residential and R-P zones.** In any residential zone and the R-P zone, the width of one side setback may be reduced one foot for every foot that the other side setback is correspondingly increased, but no side setback shall be less than the minimum required for a one-story building.
- B. **Setbacks in the O-P zone.** The Planning Board may reduce by up to 50 % the minimum setback if another yard within the lot is correspondingly increased so that the combined minimum yards on all four sides equal 150 ft. If two or more buildings are located on one lot, only the requirements of the front, rear or side setbacks that adjoin any external property boundary must be met, provided a sufficient fire line is provided.
- C. **Projections in required setback areas.** Any setback may be occupied by a one-story entrance porch not enclosed, with or without a

roof, if the area of the porch does not exceed 50 SF nor the projection from the building exceed six feet. A basement bulkhead of similar size, but not more than 24 inches in height, is also permitted. A cornice eave, sill, canopy, chimney, bay window, balcony, or other similar architectural feature may project into any required setback a distance of not more than two feet.

D. Pavement setbacks. Pavement setbacks shall not apply to entrance drives.

E. Corner lot setbacks. In case a principal residential structure has its front yard upon the long side of a corner lot, the rear setback may be reduced to a depth not less than the required side setback on the lot, provided that the aggregate of the widths of both sides and depths of front and rear yards is not less than the similar aggregate of required dimensions of all setbacks if the front yard were faced on the short side of the lot.

F. Maximum front setback exceptions.

1. Maximum front setbacks shall not apply to utility substations and secondary building components.
2. In the B-2/B-2b/B-2c zones:
 - a. Building additions do not have to meet maximum front setback requirements.
 - b. The Planning Board or Planning Authority may approve a different front setback for irregularly shaped lots or lots with frontage greater than 40 ft. in width provided the front setback is met to the maximum extent practicable.

- c. If a lot has less than 40 ft. of frontage and is more than 100 ft. deep, then no maximum setback is required.
- d. If existing structures are within 20 ft. of the street or meet the front setback maximum and the remainder of the lot has less than 40 ft. of frontage, then no maximum setback is required.
- e. The Planning Board or Planning Authority may waive the maximum front setback for utility substations and alternative energy installations.

Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by the City arborist, and a combination of landscaping no less than four ft. deep, ornamental brick or stone walls, or ornamental fencing.

3. In the B-3/B-3b/B-3c zones: The Planning Board may require or approve an additional setback to comply with the design standards of Article 13 and the *City of Portland Design Manual*.
4. In the B-6 zone: For lots fronting on more than one street in the B-6 zone, the front setback can be increased more than 10 feet if all of the following conditions are met:
 - a. The increased setback occurs at the intersection of the streets;
 - b. The increased setback area is the primary pedestrian entrance to the building;

- c. 75 % of the total building wall length facing the abutting streets shall be setback no greater than 10 feet. All building wall segments which make up the increased setback shall be included in the calculation of the total building wall length; and
 - d. For new construction on a lot abutting three or more streets, the maximum setback shall apply only to the two streets with the highest traffic volume.
- 5. In the B-7 zone.
 - a. Parking structures, public transportation facilities, utility substations, secondary building components such as truck loading docks, mechanical equipment enclosures, and refrigeration units are not subject to the maximum front setbacks.
 - b. The maximum front setback may be increased to more than 10 feet if all of the following conditions met:
 - i. 75% of the total building wall length of an individual building facing the abutting streets is setback no greater than 10 feet; and
 - ii. The increased setback area shall include a functional and accessible public pedestrian entrance into the building that faces the street, unless a public pedestrian entrance already exists along the same street; and
 - iii. The increased setback shall not be used for surface parking.
 - c. For a corner lot having frontage on two streets, the maximum setback shall apply to both streets. In the case of a lot having frontage on two or more street corners, newly constructed buildings shall be sited at street corners and meet the maximum setback requirement prior to other freestanding buildings being constructed on the lot which shall also meet the maximum street setback. In the case of a corner lot having frontage on a third street (but not a corner) the maximum setback need not apply to the third street.
 - d. In the case of a lot having frontage on two streets but not on a corner, the maximum setback shall apply to all streets but in the case of a lot having frontage on three streets but not on a corner, the maximum setback shall apply to only two streets. For purposes of this subsection only, the first building on a lot shall meet the maximum setback on at least one street with future buildings required to meet the maximum setback on the remaining street(s).
 - e. In the case of a lot in which a minimum 75% of the total lot frontage has a building within ten feet of the street, other buildings may be located on the lot more than 10 feet from the street. In the case of a lot having

frontage on Marginal Way and I-295, the property edge along I-295 shall not be considered street frontage.

- f. The maximum building setback shall not apply to vertical building expansions in the following cases:
 - i. The upper floors of a building in which the lower floors meet the maximum setback and the minimum height requirement.
 - ii. The building existed as of March 9, 2005 and meets the minimum height requirement.
 - iii. A building not meeting the maximum street setback and the minimum height requirement may vertically expand a total of one floor from March 9, 2005.
 - iv. In the case of a building in which at least 50% of the building wall(s) abutting street(s) is within 20 ft. of the street.
 - v. Additions to parking garages existing as of March 9, 2005.
- g. Additions to buildings existing as of March 9, 2005 that are nonconforming as to the maximum setback need not conform to the maximum street setback provided the cumulative building footprint since March 9, 2005 does not exceed 50% of the existing building footprint. Such restriction shall not apply to those portions of the building addition that are constructed closer to the street line than the building footprint existing as of March 9, 2005 and to

vertical expansions as provided for in subsection (f).

- h. Lots having frontage on streets in which the curve of the street frontage precludes a rectangular-shaped building along the street line, for purposes of calculating the setback, the average setback of the building from the street line may be used, but in no event shall the average setback along the length of the building edge exceed an average setback of 15 ft. nor shall the maximum setback exceed 20 ft. The increased setback shall not be used for surface parking, vehicular loading or vehicular circulation.
- i. Additions to and relocations of designated historic structures or structures determined to be eligible by the historic preservation committee shall be exempt from the maximum setback requirement.

G. Minimum setback exceptions for lots of record.

1. In the case of a lot of record existing as of June 5, 1957 in the R-1, R-2, R-3, R-4, R-5, R-5A, and R-6 zones and less than 100 ft. deep, the front setback need not be deeper than 20% of the depth of the lot.
2. In the case of a lot of record existing as of June 5, 1957 in a residential zone, the required side setback for principal structures may be reduced in order to provide a buildable width of up to 24 feet, but in no case shall the resulting side yards

be less than the following:

R-1, R-2 12 ft.

R-3, R-5 8 ft.

R-4, R-5A 10 ft.

H. Setbacks for wind energy systems.

1. Wind energy systems and associated facilities shall meet all setbacks for principal structures for the zone in which the system is located. Where setbacks vary, the largest setback shall apply. All parts of the wind energy system, including associated facilities and guy wires, shall be at least 10 feet from the property line (except where connecting to the grid), any utility line (in any direction) or other easement/right-of-way. The setback from utility lines, easements and right-of-way lines may be reduced where the owner/benefitted party provides written permission.
2. Roof-mounted wind energy systems shall be set back from property boundaries and street right-of-way lines by a distance equal to or greater than four times the height of the system as measured from the roof surface at the point of attachment. For systems in and adjacent to waterfront zones, business zones (except B-1 and I-B), office park zone, industrial zones, island transfer station zone, and ROS zone, the setback from property boundaries and street right-of-way lines may be reduced to a minimum distance of 1.0 times the height of the system, where the system is incorporated into the architecture of the building and a certified engineer confirms

that it would not present and public safety risk. The setback shall be measured to the center of the wind generator base.

3. Freestanding wind energy systems with a total height of less than 85 feet shall be set back from property boundaries and street right-of-way lines by a distance equal to or greater than 1.1 times the total height of the system, and from residential buildings and hospitals on other properties by a distance equal to or greater than twice the total height of the system. The setback distance shall be measured to the center of wind generator base.
 4. Freestanding wind energy systems with a total height of greater than 85 feet shall be set back away from property boundaries and street right-of-way lines by a distance equal to or greater than twice the total height of the system, and from residential buildings and hospitals on other properties by a distance equal to or greater than four times the total height of the system.
 5. For freestanding wind energy systems in and adjacent to waterfront zones, business zones (except B-1 and I-B), office park zone, industrial zones, island transfer station zone, and ROS zone, the setback from property boundaries and street right-of-way lines may be reduced to a minimum distance of 1.0 times the total height of the system where determined that the minimum required setback would be contrary to the public interest.
- I. Setback exceptions for purposes of exterior egress.** Notwithstanding any other provision of

this Code of Ordinances, the Building Authority may permit the installation of an exterior egress stair or an upgrade of an existing exterior fire escape for a dwelling unit existing as of January 5, 1998, if such egress is required to meet current fire or other life safety codes, provided that the owner demonstrates to the building authority that:

1. There is no practical and economically reasonable way to provide such egress within the interior of the building, as demonstrated by the submission of detailed floor plans showing the projected cost of and the impact on the existing dwelling from an interior stair;
2. The stairway and associated landings and other building fixtures are designed and will be constructed to have a minimal visual impact upon the building, especially as viewed from any public way or public open space, as demonstrated by photographs of the front and any other affected facades of the building and plans or drawings of the proposed egress stairs; and
3. The stairway and associated landings are designed to occupy the least amount of area required to meet life safety requirement.

7.5.6 Stepbacks

A cornice eave, sill, canopy, chimney, bay window, balcony, or other similar architectural feature may project into any required stepback a distance of not more than two feet.

7.5.7 Street frontage

In the IR-1 and IR-2 zones, a lot of record as described in Subsection 4.3.1 and lots created after July 15, 1985, which are not part of a subdivision need not provide street frontage if access is available by means of a permanent easement or right-of-way which existed as of July 15, 1985. Such easement or right-of-way shall have a minimum width of 16 feet and a minimum travel width of eight feet except that an easement or right-of-way providing access for three or more lots or providing the only means of access to a parcel or parcels of three acres or more, shall meet the construction requirements of Chapter 25, Article III of the City of Portland Code of Ordinances. In the IR-1 zone, such easement or right-of-way shall conform to the requirements contained within the City of Portland Technical Manual. In the IR-2 zone, such easement or right-of-way shall be a minimum of 32 feet wide. Such easement or right-of-way shall be sufficient to permit municipal service delivery.



MEMORANDUM

PLANNING AND URBAN DEVELOPMENT DEPARTMENT

PLANNING DIVISION

To: Sean Dundon, Chair, and Members of the Portland Planning Board
From: Christine Grimando, Acting Director
Nell Donaldson, Director of Special Projects
Matt Grooms, Senior Planner
Date: December 13, 2019
Re: ReCode Update
Meeting Date: December 17, 2019

I. INTRODUCTION

Following adoption of *Portland's Plan 2030*, staff in the Department of Planning & Urban Development initiated [ReCode Portland](#), an effort to rethink, restructure, and redraft the city's 961-page land use code to better align with the goals and objectives of the city's comprehensive plan. Phase I of the ReCode effort is focused on reformatting, streamlining, and reorganizing the existing code into a more legible and user-friendly document. Phase II, which is anticipated to formally begin after a revised code is adopted by the City Council under Phase I, will involve the process of carefully examining the code in light of policy goals expressed through *Portland's Plan*, and rewriting the policy in the code to better align with that vision.

In early November, the Planning Board began its formal review of the product of Phase I of the ReCode, the first public draft of the restructured land use code. This followed a series of meetings with the Council's Ad Hoc ReCode Committee, which was formed to offer broad policy guidance to the Planning Board on the ReCode. The Board's November workshop focused on the first four articles of the draft code: Introductory Provisions, Administration, Definitions, and Nonconforming Uses, Structures, and Lots. In the wake of the November workshop, staff released the first four articles of the draft code for public comment on the ReCode website (www.recodeportland.me). Simultaneously, staff continued its internal review of the draft code across city departments, including Permitting & Inspections, Parking, and Corporation Counsel. It is important to note that this internal review is ongoing, and is expected to continue as the public review proceeds through the Planning Board process.

As noted in the November Planning Board meeting, staff has planned a series of workshops with the Board to guide the public review of the draft ReCode, each targeting a set of articles of the new code in sequence. The idea is to give the Board and the public digestible pieces of the new code before making a recommendation on the entire code. At each workshop, edits to the articles reviewed in the prior workshop will be presented, such that the document is drafted and redrafted in an iterative manner as the review progresses. In this vein, the purpose of the December 17 workshop is twofold: to review edits to the first four articles of the draft code resulting from Planning Board, public, and internal staff comment, and to introduce the next three articles of the draft code – Zones, Uses, and Dimensional Standards.

II. RECODE: REVISIONS TO ARTICLES 1 to 4

At the November 7 Planning Board workshop, staff heard comments from the Board and the public on not only the content of the draft revised code, but also the formatting and organization. Following the meeting, staff also received comments from members of the public through the [ReCode website](#) (*Attachment 1*). Much like the feedback from the workshop, these public comments focused on both formatting and content. Simultaneously, staff in the Zoning

Administrator's office and Corporation Counsel continued to review Articles 1-4 and offered their own feedback on the drafts.

A number of the comments from all sources, for instance those regarding typos, capitalization, formatting, or lesser notes regarding word choice, were relatively minor in nature and have been integrated into the revised versions of Articles 1-4 presented here (*Attachment 2*). Other comments, however, were more substantive. A number of these, including potential changes to provisions related to non-conforming structures or uses and noticing requirements, for example, relate to the type of broader policy conversations that are anticipated under Phase II. Others directly affect the logic and legibility of this revised code or advise on elements of the code that may have been missing, and merited further work on the part of staff. These include:

- A. **Definitions.** In the wake of the Planning Board workshop, staff reviewed the relationship between existing definitions in the code, new draft definitions, the International Building Code, and related state law. Several sets of definitions, including wetland-related definitions, lot-related definitions, and subdivision definitions, are still being reviewed by Corporation Counsel and Zoning and have not been comprehensively updated in the draft here, pending further review, but will appear in a future iteration of the draft. Dwelling-related definitions, however, have been revised in coordination with Corporation Counsel and Zoning to provide more clarity and better match the use regulations of Article 6. Similarly, street-related definitions have been reviewed in detail to ensure that they are compatible with policy elsewhere in the draft code. Where resolution has been reached, edits to these terms can be seen in the revised drafts.
- B. ***Non-conforming Uses, Structures, & Lots.*** Staff has added language relating to the reconstruction of non-conforming structures, which exists in the current code but was edited by the Zoning Administrator's office.

III. RECODE: REORGANIZATION OF ARTICLES 5 to 7

As noted previously, articles within the new code are not intended to function in isolation, and have been drafted so that each individual element works in concert with other sections of the code. This structure eliminates the need for redundant sections that are repeated throughout the existing code. For example, a large portion of the current code is organized by zoning district, which means that lengthy lists of uses, dimensional standards, and performance standards are repeated over the course of the code. The draft ReCode instead organizes these elements of the ordinance thematically, separating purpose statements, uses, and dimensional standards into separate articles:

- A. **Zones:** Establishes the individual zoning districts and zoning map by reference, and provides an overview of the purpose of each zone.
- B. **Use Standards:** Lists all uses organized by zone, designating individual uses as either permitted by-right or conditional. This article also includes standards for specific uses, conditional uses, and accessory uses, and concludes with a consolidated list of performance standards.
- C. **Dimensional Requirements:** This article provides an overview of the rules of measurement within the City, such as, for example, how to calculate average grade, a building's footprint and lot coverage and includes all dimensional requirements arranged by zone. The article concludes with space and bulk exceptions.

This reorganization represents a significant change from the current code. Currently, most regulations related to a particular zone can be found in one location, with some substantive exceptions (signs, parking, for instance). This represents one logical way to structure a code; however, the new structure, in addition to being more space efficient, lends itself to a more consistent and uniform code and makes the code not only easier to read and digest, but easier to administer. The reorganization of zone-specific standards, and the conversion of text to greater reliance on tables, represents one of the most significant structural changes to the Code, and the consolidation of an enormous quantity of redundant standards.

This workshop includes an introduction to Articles 5 to 7 of the ReCode: Zones, Use Standards, and Dimensional Standards (*Attachment 3*). These articles represent the heart of the traditional 'zoning' elements of the existing code. As with previous articles that the Board has reviewed, most of the language that has been integrated into these three articles currently exists in various places in the code, and has simply been lifted and reorganized into the current

format. However, by virtue of the significant reorganization of much of the current zone-based content into unified use and dimensional tables, use standards, conditional use standards, and performance standards, there have also been cases where language has been simplified for purposes of consistency. In some instances, new language has also been added to address gaps.

A. Zones

The Zones article of the ReCode consolidates existing rules about the establishment of the zoning map, rules of interpretation, and contract and conditional zoning language with the purpose statements for each of the city's base zoning districts. The vast majority of this article reflects the existing code. However, some modifications include the following:

1. *Zones:* The existing B-1 and B-1b zoning attempts to regulate use and form in complex and at times conflicting ways, where the application of use and dimensional standards is contingent upon adjacent zoning, a property's location on- or off-peninsula, and the floor (ground-level or upper floor) in which a use is being considered, with the aim of encouraging a specific form of mixed-use development B-1b zone, consisting of an activated ground level commercial space with residential uses occupying upper floors. In the course of reorganizing the use and dimensional standards, this language presented significant problems. Recognizing the limited scope of the B-1b zone and its inherent similarities with the B-1 in terms of purpose, the ReCode attempts to greatly simplify the B-1/B-1b standards by consolidating the two zones into one B-1 zone. The purpose statements of the zones have been collapsed but maintains central themes of both original zones: focusing on small, neighborhood scale development, housing density, and mixed-use.
2. *Purpose Statements:* Generally speaking, the purpose statements have been lightly edited for language that is either irrelevant given the current application of the zone or not pertinent to the zone's purpose. For instance, small residential lot language has been removed from the R-6 zone, off-peninsula/on-peninsula distinctions have been removed where outdated, B-6 provisions which speak to the establishment of dimensional requirements have been struck, and references to outdated uses have been eliminated. Of note, a new RPZ purpose statement has been drafted, as none exists in the current code.

B. Use Standards

The Use Standards article of the ReCode is designed to incorporate all existing use-related language, and to clarify distinctions between principal uses (both permitted and conditional), accessory uses, and temporary uses, which are sometimes conflated in parts of the current code. The draft Use Standards article covers the following topics:

1. *Applicability, Determination of Use, Change of Use:* The Use Standards article introduces new blanket language intended to introduce the article, establish the authority of the use tables, allow mixed uses, and regulate changes of use. Recognizing that uses evolve over time, the introduction to this article also adds language loosely based on the existing B-2 and I-M zoning to permit uses not listed in the use tables on the basis of performance standards.
2. *Principal Use Tables:* The most significant change in the Use Standards article is the introduction of tables to regulate permitted and conditional uses across the city's zones. These tables generally reflect existing policy with some minor variations:
 - a. In the process of creating the use tables, closely aligned use categories were collapsed in the interest of simplification and consistency. For instance, professional, business, and general office uses were consolidated with 'offices of building tradesmen' into one 'general office' category; personal and business services were combined into 'general services;' hotels, motels, and inns were combined as 'hotels;' and major and minor auto service stations were collapsed into one category. Where use regulations varied across zones with respect to these uses, they were generalized so as to be consistent city-wide.

- b. The current code uses floor area limitations to manage the intensity of some uses, such as places of assembly and retail in the B-1, by zone. The draft Use Standards extend this concept to general office uses, general service uses, industrial uses, and retail more broadly, introducing floor area thresholds into the use table. Generally, existing floor area limits have been replicated in the use tables as presented, although in the case of the city's island zones, square footage caps have been added for retail establishments, where previously there were none.
- 3. *Supplemental Use Standards:* The current code often permits uses so long as such uses conform to given standards, with many of the standards repeated across zones, sometimes with minor variations. These standards have generally been consolidated in the supplemental use standards section of the Use article. Where significant deviations between two sets of like standards currently exist, such deviations are largely maintained in the draft code. Supplemental standards that don't fit in a use or dimensional table are here for such uses as bed & breakfasts, marijuana-related uses, and campground. An effort to adopt additional lodging house standards is underway, and some if this effort will eventually live in this section of the Code, as well.
- 4. *Conditional Use Standards:* Likewise, the current code often allows conditional uses subject to additional, use-specific conditional use standards, which are repeated across zones with minor variations. For instance, off-street parking is permitted as a conditional use in several mixed-use zones, with conditional use standards that vary in wording, but not necessarily intent, across each zone. In cases such as these, the standards have been consolidated where possible for ease of administration. Similarly, auto-related conditional use standards that appear in some zones regulating auto service stations and auto dealerships, for instance, have been generalized across zones.
- 5. *Accessory Uses:*
 - a. In order to clarify the distinction between principal and accessory uses, which are often conflated in the existing code, new language related to accessory uses has been drafted in Article 6. This language describes standards qualifying accessory uses, which were generally adapted based on existing principles in the ordinance. Of note, the new language limits the footprint of accessory uses.
 - b. In addition, the draft Article 6 introduces some new accessory-use specific standards, such as revised, consolidated standards for Accessory Dwelling Units (ADUs). The ADU language was developed with significant input of the City Council's ReCode Committee, and was drafted with the aim of standardizing ADU provisions and reducing barriers to ADU production city-wide. Similarly, the accessory use provisions introduce standardized language regulating drive-throughs, with specific provisions related to drive-throughs in particular zones. Lastly, new tasting room language has been drafted in the accessory use provisions, based on the recent work of the Zoning Administrator's office and Business Licensing.
- 6. *Temporary Uses:* The existing code includes language in various sections that addresses temporary uses. In the interest of consolidating these uses, a section has been drafted in Article 6.
- 7. *Performance Standards:* Last, the draft Article 6 consolidates and standardizes existing performance standard-related language, which is repeated with minor variations across all zones in the existing code. As with the use tables, by virtue of simplification, some minor variations between approaches in differing zones have been eliminated. For instance, noise-related performance standard language varies by zone, with what appear to be more comprehensive and recent standards appearing in some zones and much simpler standards appearing in others. The critical element of these standards, the noise limits, has been retained in the draft ReCode; the language surrounding measurement has been standardized for ease of administration.

C. Dimensional Standards

As with Use Standards, the Dimensional Standards article of the ReCode represents a major change from the existing code. Currently, all dimensional standards are listed within each zoning section, resulting in redundant language over the course of the code. Dimensional exceptions are located in another section of the code entirely. The draft Dimensional Standards article includes the following elements:

1. *Applicability:* As with Use Standards, the article begins with new language introducing the dimensional standards with a general statement regarding applicability.
2. *Rules of Measurement:* The current code includes some definitions which relate to dimensional standards, which are currently dispersed within Section 14-47, general definitions. The draft Article 7 relocates all of these dimensional rules, or ‘Rules of Measurement,’ to the Dimensional Standards article, adds several rules, and clarifies these rules where necessary, marking another important organizational leap for the new code. For instance, the draft Dimensional Standards article includes new rules, based on current practice, for measuring ‘average grade,’ ‘building footprint,’ ‘building width,’ ‘landscaped open space ratio,’ and ‘lot coverage.’ Simultaneously, it adds clarifying language around measuring setbacks, stepbacks, and street frontage. It should be noted that these Rules of Measurement have been developed with the assistance of Zoning and Corporation Counsel; their review of the rules is ongoing, and there may be some text changes in future iterations.
3. *Dimensional Tables:* As with Use Standards, Dimensional Standards attempts to take all existing dimensional regulation and consolidate it into several tables, grouped by zone type. These tables also reflect existing dimensional language that exists within use standards in the current code, and purposefully do not reflect some dimensional language which is more appropriately consolidated within other regulatory mechanisms, such as the Downtown and the B-7 Height Overlay maps. The dimensional tables include some changes. For instance, new building width requirements for the R-6 zone, which are the outgrowth of on-going efforts, over multiple years, to track development patterns in the R-6 zone and respond where necessary. If the ReCode initiative was not underway, R-6 analysis would be ongoing and would come to the Board independently, but the timing of the proposed changes offers an opportunity to bundle the review of them into the larger ReCode effort. The December 17 workshop on modifications to the Design Manual for the R-6 zone is a parallel effort to the dimensional changes offered here. Of note, the B-1 dimensional standards have also been modified slightly to reflect consolidation and offer one base density requirement, rather than a bifurcated density standard based on location and use. The B-2 density requirements have also been updated to allow for the same base residential density as the B-1. Setbacks have been modified in the B-4 zone, where they are currently written to approximate the residential zones. Lastly, Floor-Area-Ratio (FAR)-based dimensional standards, which are currently sporadically applied and are often established based on adjacent zoning, have been eliminated. These changes are not just organizational, but represent substantive changes, and warrant dedicated workshop discussion.
4. *Space and Bulk Exceptions:* Last, the Dimensional Standards article groups dimensional exceptions with dimensional standards. As with other standards, some of these, including setback exceptions and height exceptions have been simplified and/or modified to more accurately reflect current practice.

V. PUBLIC COMMENT

As noted above, public comment on the drafts of Articles 1-4 is included in *Attachment 1*. A total of 15 public comments were submitted using the web-based document review platform, which provide feedback on the new structure and format, and raise a number of more significant policy questions, such as the role of the land-use code in addressing the climate crisis, regulation of development on Munjoy Hill, qualifications for Planning Board members and appellate jurisdiction of the Planning Board. In addition, two written public comments were received by staff following the 11/7 Planning Board workshop (*Attachments 4 and 5*). These raise questions about changes to dimensional standards and the process for ReCode review.

VI. NEXT STEPS

In addition to incorporating feedback from this workshop, staff will continue to gather public comment on the revised drafts of Articles 1-4 and the draft Articles 5-7 as presented here via the ReCode website. Staff anticipates returning to the Planning Board with revisions to Articles 1-7 and drafts of the next slate of articles in early 2020.

VII. ATTACHMENTS

1. Public Comment on Articles 1, 2, 3, & 4
2. Revised Draft ReCode, Articles 1, 2, 3, & 4
3. Draft ReCode, Articles 5, 6, & 7
4. PC-1. Ben Walter 11-8-19
5. PC-2. Karen Snyder 12-13-19

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#001

Posted by **Karen Snyder** on **12/12/2019** at **12:02pm**

Type: Question

Agree: 0, Disagree: 0

Now that Recode Phase 1 is on it's way, below are questions and concerns collected from various Munjoy Hill property owners regarding the Recode efforts. When and how will the below concerns be addressed during the Recode/Zoning overhaul that is occurring at City Hall?

1. Will this Recode Portland language replace the Munjoy Hill Overlay District language implemented in June 2018? If yes, how? Many Munjoy Hill residents want the Conservation language of the Munjoy Hill Overlay District to remain (if proven effective) after we went to so much work to get it enacted.

However, there are specific problems with the Munjoy Hill Overlay District language and should be addressed with very clear language to stop the problems occurring below.

- 1) The combining of lots for teardown should be prohibited.
 - 2) The developers have to do no more than say "no" to preferably preserved. They need to provide credible evidence that it would cost too much to preserve a building, environmental impact of demolition, or provide credible effort to find a buyer who would preserve it. The developers should not be able to just wait for 1 year and be able to demolition especially if it is a contributing building.
 - 3) There should be a clear definition of preferably preserved.
 - 4) There should be required "designation report" defining the characteristics of the immediate neighborhood, which a replacement building must meet.
 - 5) The HP Board and Planning Board should be able to interpret the ordinance as keeping them from using size (scale and mass) as a reason to turn down a project.
 - 6) The mid grade calculation must be removed. The "mid grade calculation" to achieve a greater height than what zoning allows is a loop hole and MUST be closed. Peaks Island's ordinance on grade calculation does NOT use mid grade to loophole in order to achieve higher heights. Portland's grade calculation should be changed to Peak's Island's grade calculation.
 - 7) Language is needed to ensure that Design standards are equally enforceable as zoning standards. No "grey" areas.
- NEW: Clarification of Maximum height is 45 feet if affordable housing is put in. Does this mean they can go to 44.10" if they do NOT have affordable housing???

2. Will the different Zoning be rewritten or just streamlined for consistency. For example, will R-6 zone definition remain or be rewritten?

3. There is an overall general feeling by local residents that the current R-6 Infill Design standards are acceptable if it can address the issues below and if enforced consistently. Below are some of the areas need further clarification in order to reduce the current conflict between developers and local residents. Therefore, please address

each sub-issue below.

- 1) Language is needed in prohibiting the combination of combining lots to build these oversized cubes that do NOT fit the neighborhood overall context.
- 2) There should be more specific language in the Alternate Design Standard on what majority of principles met means. For example, it is recommended that it should be clear what a majority in percentage form. Such as state 75% of the principles should be met and Principle A and B have to be always met.
- 3) Language is needed to ensure that Design standards are equally enforceable as zoning standards. No "grey" areas.
- 4) The mid grade calculation must be removed. The "mid grade calculation" to achieve a greater height than what zoning allows is a loop hole and MUST be closed. Peaks Island's ordinance on grade calculation does NOT use mid grade to loophole in order to achieve higher heights. Portland's grade calculation should be changed to Peak's Island's grade calculation.
- 5) The HP Board and Planning Board should be able to interpret the ordinance as keeping them from using size (scale and mass) as a reason to turn down a project.

4. Concern over the influence PSA has in Planning Dept with PSA's proposed design standard re-write efforts when their agenda which is profit motivated rather than neighborhood preservation focused which is in direct conflict to local residents efforts to preserve and stabilize neighborhoods.

5. Per Comprehensive plan, neighborhoods are supposed to be preserved. How can neighborhoods be preserved with zoning ordinances for height, street tree removal, etc are constantly being waived at the protest of local residents?

- We would like the new zoning to cease/stop the ability for current zoning ordinances such as height, street tree removal to stop being waived by Planning Board or by Historic Preservation Board.
- What is the use of zoning ordinances if the developer can just get it changed? Local residents are getting frustrated with all the zoning ordinances being waived

6. There should be clear language to address that a building permit is required before a demo permit and that construction starts after demolition is made after a specific time period or the builder is fined. This is because 25 Monument was demolition in mid 2018 and it is still an empty lot for more than 6 months. When asked Jeff Levine what as the status of this property, he was evasive and said they were still going through the building permit application.

In conclusion, It doesn't mean the zoning ordinance language is wrong or outdated. It means the City is being heavily influenced by developers and grabbing for more than what they should and the city is allowing these waivers even at the protest of abutting property owners and local residents while ruining Portland's livability and desirability besides dismantling the neighborhood.

I would appreciate responses to the above issues and how will they be addressed.

#002

Posted by **Karen Snyder** on **12/12/2019** at **12:10pm**

Type: Question

Agree: 0, Disagree: 0

How will the Munjoy Hill Conservation Overlay District be affected by the redesign?

#003

Posted by **Karen Snyder** on **12/12/2019** at **12:09pm**

Type: Observation

Agree: 0, Disagree: 0

The reason by the City for the R-6 zoning change in 2015 was to:

- 1) Provide greater housing opportunities.
- 2) Enable Infill of small parcels
- 3) Have standards in place that make it possible for new construction to be consistent with the historic pattern of development.

What has happened is the EXACT opposite to what the original reason for the 2015 R6 Zone change.

- 1) More than 40 affordable housing units have been removed to be replace with 100 primarily luxury seasonal condos costing from 500K to 1.5 million
- 2) The some of the new construction does NOT fit the historic pattern of development and is a blight in the neighborhood.

City needs to focus housing policies on assiting the working class and middle class rather than provide loopholes for developers to continue building luxury seasonal condos. Portland's population is decreasing even though there were 2,300 Level Site 3 housing units built since 2015. This 2015 R6 zone changed FAILED the citizens of Portland.

#004

Posted by **Patrick Boothe** on **11/20/2019** at **2:57pm**

Type: Observation

Agree: 1, Disagree: 0

I love how you can click on the Chapters and jump to the chapter! Sooooo much better!

1 INTRODUCTORY PROVISIONS

1.1 TITLE

The title of this Chapter is the City of Portland Land Use Code and is referred to as the City of Portland Land Use Code or the Land Use Code.

1.2 ZONING MAP

The City of Portland Zoning Map is incorporated by reference.

1.3 PURPOSE

The intent of the Land Use Code is to protect the health, safety, and general welfare of the residents of Portland, consistent with the City's Comprehensive Plan, through standards that govern the orderly and compatible use of land, the form and mass of buildings, the relationship of private development to the public realm and Portland's open spaces, and the environment.

1.4 APPLICABILITY

No building or structure shall be erected, structurally altered, enlarged, repaired, moved, rebuilt, or used, and no land shall be sold, leased, conveyed, used, developed, or altered except in conformity with the provisions of this Land Use Code.

1.5 ENFORCEMENT

1.5.1 Enforcement

The Building Authority and/or a City of Portland Code Enforcement Officer is authorized to institute or cause to be instituted by the Corporation Counsel in the name of the City any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the Land Use Code.

1.5.2 Violations

Any person being the owner or occupant of, having control of, or having the use of any building or

premises or part thereof, who violates any of the provisions of this Land Use Code, shall be guilty of an offense and subject to the penalties and remedies provided in Section 1-15 of the City of Portland Code of Ordinances and 30-A M.R.S. § 4452.

1.6 RELATIONSHIP WITH OTHER LAWS

1.6.1 Federal and state law

Where conditions, standards, or requirements imposed by any provision of this Land Use Code are found to be inconsistent with a provision listed in the law or regulations of the State of Maine or federal government, the more restrictive provision shall control.

1.6.2 City of Portland Land Use Code

If any provision of this Land Use Code contains an actual, implied, or apparent conflict with another provision of this Code, the more restrictive provision shall control.

1.6.3 Fair Housing accommodation

The City of Portland may make reasonable modifications to the requirements of the Land Use Code to accommodate the needs of persons with disabilities as so defined in Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

1.6.4 Comprehensive Plan

The Comprehensive Plan serves as the basic policy guide for this Land Use Code. Amendments to this Land Use Code shall be generally consistent with the current Comprehensive Plan.

1.6.5 Current versions and citations

All references to other regulations or manuals in this Land Use Code refer to the most current version and citation for those regulations or manuals, unless expressly indicated otherwise. When the referenced regulations or documents have been repealed and not

#005

Posted by **Elizabeth Parsons** on **11/28/2019** at **8:52am**

Type: Question

Agree: 3, Disagree: 0

To what extent will the City Council's recent declaration of a climate emergency inform the new Land Use Code?

replaced by other regulations or manuals, Land Use Code requirements for compliance are no longer in effect.

1.6.6 Private agreement

This Land Use Code does not nullify any private agreement or covenant. However, where this Code is more restrictive than a private agreement or covenant, this Code controls. The Code does not enforce private agreements.

1.7 DELEGATION OF AUTHORITY

Whenever a provision requires the head of a department to perform an act or duty, that provision will be interpreted as authorizing the department head or officer to delegate that responsibility to others over whom he or she has authority.

1.8 RULES OF INTERPRETATION

1.8.1 Meaning of words and terms

All words and terms shall have the meanings shown in Article 3, unless otherwise expressly stated. For words or terms not specifically defined in this Land Use Code, they are interpreted by their common dictionary meaning or customary usage consistent with their context.

1.8.2 Graphics and illustrations

Graphics and illustrations are included to illustrate the intent of the text. In the case of a conflict between the text and any graphic or illustration, the text controls.

1.8.3 Lists and examples

Unless otherwise expressly indicated, lists of items or examples that use “including,” “such as,” or similar terms are intended to provide examples only, and shall not be construed as being limited to the items or examples listed.

1.8.4 Time

When a number of days is specified as a period from a certain day within which or after or before which an act is authorized or required to be completed, time is computed as the number of calendar days excluding the calendar day when the act is authorized or required to be completed. Business days shall be interpreted as days on which the City of Portland is open for business.

1.8.5 Fractions

Any fraction greater than or equal to 0.5 will be rounded up to the nearest whole number. Any fraction less than 0.5 will be rounded down to the nearest whole number.

1.8.6 Obligatory terms and conjunctions

The terms in the text of the Land Use Code shall be interpreted in accordance with the following rules of construction:

- A. The terms “must”, “shall”, or “will” are mandatory terms that express a requirement or impose an obligation.
- B. The terms “must not”, “shall not”, “will not”, and “may not” express a prohibition.
- C. The term “should” expresses a recommendation or suggestion and does not express a requirement or imposition.
- D. The term “may” is permissive and does not express a requirement or imposition.
- E. The conjunction “and” indicates that all connected words or provisions apply.
- F. The conjunction “or” indicates that the connected words or provisions may apply singly or in any combination.
- G. The conjunction “either [...] or” indicates that the connected words or provisions apply singly, but not in combination.

#006

Posted by **Benjamin McCall** on **11/15/2019** at **1:48pm**

Type: Suggestion

Agree: 1, Disagree: 0

It would be helpful to expound on the term "private agreement" and add examples, e.g., private restrictive covenants, condominium rules and regulations, etc.

1.8.7 Gender

Words denoting one gender apply to all genders.

1.8.8 Abbreviations

Building Authority. Either the Director of the Department of Permitting and Inspections or his/her designee.

Council. The Portland City Council.

Planning Authority. Either the Director of the Department of Planning and Urban Development or his/her designee.

Public Works Authority. Either the Director of the Department of Public Works or his/her designee.

1.9 AMENDMENTS

1.9.1 Authority

The City Council may amend this Land Use Code and the Zoning Map incorporated herein.

1.9.2 Procedure

007

A. Application. An application for a text or Zoning Map amendment shall be filed with the Planning Authority. A payment of a nonrefundable application fee, as established by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. Once it is determined that the application is complete, the Planning Authority shall give a dated receipt to the applicant and, in the case of a map amendment, shall notify, by mail, all property owners within the limits of the proposed zoning map amendment and all property owners 500 feet beyond said area, except that for map amendments to a site located within industrial zone designations the notice range shall be 1,000 feet. The notice hereunder shall include a brief description of the application, the address or location of the property involved, and contact

information where additional information may be obtained. The cost of noticing shall be charged to the applicant.

- B. Required neighborhood meeting.** A private applicant for a map amendment that would permit a development subject to major site plan review, shall conduct neighborhood outreach according to the provisions for neighborhood outreach under Article 13.
- C.** The Planning Authority shall review the application against the standards of this article and make a recommendation to the Planning Board.
- D.** The Planning Board shall hold a public hearing in accordance with the provisions of Article 2 and make a recommendation to adopt, adopt with modifications, or not adopt the proposed map or text amendment, and forward the recommendation to the City Council.
- E.** The City Council shall review the proposed amendment and determine whether and how to amend the Land Use Code or Zoning Map.

1.9.3 Review standards

Except as otherwise required by law, amendments to the City's Land Use Code shall be pursuant to and consistent with the Comprehensive Plan.

1.10 TRANSITION RULES

1.10.1 Existing uses

- A.** A permitted use established prior to the effective date of the Land Use Code that is now classified as a conditional use shall be deemed a lawful conditional use. Any subsequent addition, enlargement, or expansion of that use shall conform to the procedural and substantive requirements for conditional uses in Article 6.
- B.** A permitted or conditional use established prior to the effective date of this Code that is now classified as a prohibited use shall be deemed a

#007

Posted by **Patrick Boothe** on **11/20/2019** at **3:35pm**

Type: Suggestion

Agree: 0, Disagree: 0

Minor syntax comment: The font size of subsection "A" is physically larger than "1.9.2" above. In terms of readability, a lower case "a" or a lower case "i" would be more intuitive, in my opinion, to make clear that this subsection is subordinate, and only applicable to the section above (1.9.2). I also appreciate how there is no more than three numbers and one letter elements in the syntax for all chapters. The way NFPA 101 does it with up to five numbers in a row (i.e. "16.1.1.8.3") is too difficult to follow easily.

This comment is obviously typical throughout but this is the first instance. Minor comment but might as well include since you've made it so easy to add comments! Thank You!



INTRODUCTORY PROVISIONS

nonconforming use and is controlled by the provisions of Article 4.

1.10.2 Continuation

In the event that a use, lot, structure, sign, or site feature, deemed legally conforming prior to the effective date of the Land Use Code no longer meets all standards set forth in the Land Use Code, that use, lot, structure, sign, or site feature shall now be deemed non-conforming and shall be controlled by the provisions of Article 4.

2 ADMINISTRATION

2.1 PLANNING BOARD

2.1.1 Composition

There shall be a Planning Board of seven members. Members of the Planning Board shall be residents of the city and shall not be officers or employees of the city. Members shall serve without compensation.

2.1.2 Appointments

- A. Terms.** The members of the Planning Board shall be appointed by the City Council for terms of three years. Such members shall serve until their successors are duly elected and qualified. Such terms shall be staggered so that the terms of not more than three members shall expire in any calendar year; providing, however, such service shall not extend to over 120 days after expiration of their term.
- B. Vacancies.** Permanent vacancies on the Planning Board shall be filled by the City Council, in the same manner as other appointments hereunder, for the unexpired term of the former member.

2.1.3 Removal of members

Any member of the Planning Board may be removed for cause by the City Council at any time, provided, however, that before any such removal, such member shall be given an opportunity to be heard in his or her own defense at a public hearing.

2.1.4 Officers

- A. Chair.** The members of the Planning Board shall annually elect one of their number as chair to preside at all meetings and hearings and to

fulfill the customary functions of that office.

The chair may administer oaths. The chair shall have the right, upon request, to designate any person or organization as a specially interested party for purposes of offering evidence and conducting cross examination at hearings.

- B. Vice chair.** The members of the Planning Board shall annually elect one of their number as vice chair. In the absence of the chair, the vice chair shall act as chair and shall have all the powers of the chair. The vice chair shall have such other powers and duties as may be provided by the rules of the Planning Board.

2.1.5 Committees

The chair of the Planning Board shall assign the members of the Board to such regular and special committees as may be established by the Board. Such committees shall have no final authority but shall assist the Board in the conduct of its business by making recommendations to it concerning such specific items as may be assigned to them for study and report. The Board shall adopt such rules as it shall deem appropriate to govern the organization and operation of its committees. Committee meetings deliberative in nature shall be open to the public in accordance with Title 1, M.R.S.A., Section 401 et seq.

2.1.6 Quorum and necessary vote

As to any matter requiring a hearing, no business shall be transacted by the Planning Board without a quorum, consisting of four members, being present. The concurring vote of at least four members shall be necessary to authorize any action by the Board. If less than a quorum is present, the hearing may be adjourned for a period not exceeding three weeks

#008

Posted by **Elizabeth Parsons** on **11/28/2019** at **8:49am**

Type: Question

Agree: 0, Disagree: 0

What sorts of experience, perspective, and expertise are expected of Planning Board members? There is a statement about this in the Historic Preservation Board section but not here in the Planning Board section.

at any one time. The Planning Authority staff shall notify in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of adjournment.

2.1.7 Conflicts

No member of the Planning Board shall participate in the hearing or disposition of any matter in which he or she has an interest. Any question of whether a member has a conflict of interest sufficient for member a member to be recused shall be decided by a majority vote of the members present, except the member whose possible conflict is being examined; where such vote results in a tie, the subject member shall be recused from the matter.

2.1.8 Meetings and procedures

A. Meetings. Regular meetings of the Planning Board shall be held at the call of the chair or as provided by rule of the Board. Special meetings may be called by the chair or any four members of the Board or at the request of the City Council.

1. Workshops of the Planning Board or any of its committees may be held at the call of the Board or committee chair, as the case may be, for the presentation of information by the Director of the Department of Planning & Urban Development, his or her staff, an applicant, or others. These meetings will be open for public comment according to the rules of the Planning Board. Such meetings, unless open to the public as provided in Title 1, M.R.S.A., Section 401 et seq. shall be

informational only and shall not be deliberative in nature, shall not be used by the Board or committee for the weighing of positions or reasons for or against a proposition, and shall not be used by the Board or committee for the formulation of tentative or final decisions on any matter.

2. Public hearings shall be held as required by the various statutes, codes, and ordinances pursuant to which matters are brought before the Planning Board and shall be conducted in accordance with relevant state law, the Land Use Code and the rules of the Board.

B. Notice. The Planning Authority shall give notice of the time and place of public workshops and hearings, including a brief description of the application(s) to be considered, as follows:

1. Site plan and subdivision. Notice shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two times, the date of the first publication to be at least 10 calendar days prior to the workshop or hearing. Notice shall also be sent by regular United States mail at least 10 calendar days in advance of the workshop or hearing date to the applicant, the owner(s) of the subject property, and all owners of property located within 500 feet of the subject property, except that for subdivisions within industrial zones the notice range shall be 1,000 feet.
2. Land Use Code or Zoning Map amendment. Notice of public hearing

shall be publicly posted at least 13 days before the public hearing on such application. In addition, notice of said public hearing must be published at least two times in a newspaper of general circulation in the City of Portland. The date of the first publication must be at least 12 days prior to any public hearing and the date of the second publication must be at least seven days prior to the public hearing. For map amendments, notice shall be sent by regular United States mail to at least 10 calendar days in advance of the workshop or hearing date to all property owners within the area proposed for rezoning and all property owners 500 feet beyond said area, except that rezoning to industrial zone designations the notice range shall be 1,000 feet.

3. Contract or conditional zoning. Notice of public hearing shall be posted in the city clerk's office at least 13 days prior to the public hearing and shall be published in a newspaper of general circulation within the city at least two times, the date of the first publication to be at least seven days prior to the hearing. Notice shall also be sent to the owners of all property abutting the property to be rezoned at their last known address. This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned.

The cost of noticing shall be charged to the applicant.

- B. **Procedures.** The Planning Board shall adopt its own rules for the conduct of its business not

inconsistent with the statutes of the state and this article. Such rules shall be filed with the Planning Authority and with the City Clerk. Any and all rule changes shall be placed on a City Council public agenda as a communication requiring a public hearing. Any rule may be vetoed, in whole or in part, by order of the Council within 45 days of the date of filing with the city clerk. No rules change shall take effect until that time period has elapsed. If a part of a rule is vetoed, the remainder shall continue in effect. Any rule so adopted, which is not required by the statutes of the state or by this article, may be waived by the chair upon good cause being shown. Except as otherwise provided in section 2.1.8.A.1, all meetings, hearings, and deliberations of the Planning Board and its committees shall be open to the public in accordance with Title 1, M.R.S.A., Section 401 et seq. Testimony at any hearing may be required by the Planning Board to be given under oath.

- C. **Keeping of records.** The Director of the Department of Planning & Urban Development shall designate a member of his or her staff who shall attend all Planning Board proceedings. The staff shall provide for the keeping of minutes of the proceedings of the Board, showing the vote of each member on every question, or his or her absence or failure to vote, and shall maintain the permanent records and decisions of all Board meetings, hearings, and proceedings and all correspondence of the Board, as required by statute. Such records shall be public records open to inspection during working hours upon reasonable notice.

2.1.9 Record and decisions

- A. **Record.** The minutes of the staff, and the transcript if one is made, and all exhibits, papers, applications, and requests filed in any proceeding before the Planning Board and the decision of the Board shall constitute the record.
- B. **Decision.** Every final decision of the Planning Board and every recommendation of the Planning Board to the City Council shall include written findings of fact, and shall specify the reason or reasons for such decision or recommendation. The Planning Authority shall mail notice of any decision of the Planning Board to the applicant.

2.1.10 Jurisdiction and authority

In addition to the jurisdiction conferred on it by other provisions of state law and the ordinances of the city and in accordance therewith, the Planning Board shall have the following jurisdiction and authority:

- A. To prepare and recommend a Comprehensive Plan to the City Council;
- B. To prepare and recommend to the City Council changes in and amendments to the Comprehensive Plan;
- C. To aid and assist the City Council and departments and agencies of the city in implementing general plans and in planning, developing and completing specific projects;
- D. To hear, review and approve, conditionally approve, or deny major site plans;
- E. To hear, review and approve, conditionally approve, or deny applications for subdivision approval;
- F. To hear, review, and approve or deny applications for conditional uses listed in Article 6;
- G. To hear, review, and offer its recommendations to the City Council on applications for amendments to, or revisions of, this Land Use Code;
- H. To review and offer its recommendations to the City Council on certain public projects;
- I. To review and approve, conditionally approve, or disapprove site plans for regulated projects in shoreland areas;
- J. To prepare and offer its recommendations to the City Council with regard to the city's annual Capital Improvement Program;
- K. Upon reasonable request, to make its special knowledge and expertise available to any official, department, Board, or agency of the city, county, state, or federal governments to aid them in the performance of their respective duties relating to the planning and development of the city and its region, including request from the City Council to review proposed developments in which the developer does not have the right, title or interest in all the property necessary for the proposed development because some or all of that property is owned by the City;
- L. To make such investigations, maps and reports, and recommendations in connection therewith, relating to the planning and development of the city as seem desirable;
- M. To employ or contract with such experts and other assistants as may be necessary or convenient to carry out its duties hereunder and to pay for their services and for such other



expenses as may be necessary and proper; provided, however, that such expenditures shall not exceed such funds as may be appropriated for such purposes by the City Council;

- N. To hear, review, and offer its recommendations to the City Council on petitions for street vacations and discontinuances; and
- O. To hear, review, and decide appeals where it is alleged there is an error in any decision, requirement, or determination made by the Planning Authority or Historic Preservation Board.

2.1.11 Administrative appeal procedures

- A. **Notice of appeal.** An appeal may be taken to the Planning Board by any person affected by a decision of the Planning Authority. Such appeal shall be taken within 30 days of the action complained of by filing with the Planning Authority a notice of appeal specifying the grounds thereof. The notice shall be in such form as specified by the Planning Authority. A payment of a nonrefundable filing fee, as established by the City Council to cover administrative costs and costs of hearing, shall accompany notice of appeal. The Planning Authority shall forthwith transmit to the reviewing Board all of the papers constituting the record upon which the action appealed from was taken.
- B. **Public hearing.** A public hearing shall be set, advertised and conducted by the reviewing Boards in accordance with the provisions of this article.
- C. **Action.** Within 30 days following the close of the public hearing, the reviewing Board shall render a decision on the appeal in the manner and form specified in the provisions of this article and the

statutes of the state. The failure of the Board to act within 30 days shall be deemed an approval of the appeal unless mutually extended in writing by the appellant and the Board. Within five days of such decision or failure to act notice thereof shall be mailed to each party.

- D. **Conditions and limitations.** Any right granted by the reviewing Board on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

2.1.12 Appeals

An appeal from any final decision of the Planning Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the city to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure. No appeal shall lie concerning any matter as to which the power of the Board is limited to the making of a recommendation.

2.2 HISTORIC PRESERVATION BOARD

2.2.1 Composition

The Historic Preservation Board shall consist of seven voting members who shall serve without compensation. Members shall have demonstrated interest, knowledge, ability, experience or expertise in restoration, rehabilitation, or neighborhood conservation or revitalization and shall be residents of the city.

2.2.2 Appointments

- A. **Terms.** Members shall be appointed by the Council for terms of three years. Appointments shall be staggered so that the terms of not

#009

Posted by **Benjamin McCall** on **11/15/2019** at **4:42pm**

Type: Suggestion

Agree: 0, Disagree: 0

I would suggest that the Planning Board shouldn't have appellate jurisdiction, but that appeals from these decisions should either be directly to Superior Court, or to the Zoning Board of Appeals.

more than three members expire in any calendar year. Members may serve for three consecutive three-year terms.

- B. Vacancies.** Vacancies on the Historic Preservation Board shall be filled within 60 days. However, every member shall continue in office after expiration of the term until a successor has been appointed. Vacancies on the Historic Preservation Board shall be filled for the unexpired term of the former member.

2.2.3 Removal of members

Members may be removed for cause by the Council. Cause shall include, but is not limited to, the failure to attend meetings without good cause. Any member proposed to be removed shall be given written notice and an opportunity to be heard prior to final action.

2.2.4 Officers

- A. Election and terms.** Officers of the Historic Preservation Board shall consist of a chair and vice chair. Officers shall be elected by the Historic Preservation Board and shall serve a term of one year and shall be eligible for re-election.
- B. Chair.** The chair shall preside at all meetings and hearings and fulfill the customary functions of that office.
- C. Vice chair.** In the absence of the chair, the vice chair shall act as chair and shall have all the powers of the chair. The vice chair shall have such other powers and duties as may be provided by the rules of the Historic Preservation Board.

2.2.5 Conflicts

No member of the Historic Preservation Board shall participate in the hearing or disposition of any matter in which he or she has an interest.

2.2.6 Meetings and procedures

- A. Meetings.** Regular meetings of the Historic Preservation Board shall be held no less frequently than monthly. Special meetings may be called by the chair or any four members or at the request of the chair of the Planning Board.
- B. Notice.** The Planning Authority shall give notice of the time and place of Historic Preservation Board public workshops and hearings, including a brief description of the application(s) to be considered, as follows:
 1. Landmark or district nomination. Notice shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two times, the date of the first publication to be at least 10 calendar days prior to the workshop or hearing. Notice shall be sent by regular United States mail at least 10 calendar days in advance of the workshop or hearing date to the applicant and to the owner(s) of the subject property or properties.
 2. Certificate of appropriateness review. Notice shall be given to all property owners within 100 feet of the property at least seven days prior to the date of the workshop or public hearing.
 3. Major site plan review. For alteration or new construction that is classified as a



major site plan under Article 13, notice shall be given to all property owners within 500 feet of the property at least seven days prior to the date of the workshop or hearing.

The cost of noticing shall be charged to the applicant.

- C. Procedures.** The Historic Preservation Board may adopt procedural rules for the conduct of its business not inconsistent with this article, including the creation of a subcommittee structure to enhance efficiency in consideration of Historic Preservation Board business. Such rules shall be filed with the Planning Authority and with the city clerk. All such rules shall be subject to veto, in whole or in part, by the Council within 45 days of such filing. The initial rules shall take effect when filed, subject to veto as provided above. Amendments to the rules shall take effect upon expiration of said veto period. Any rule may be waived by the chair upon good cause being shown.

2.2.7 Record and decisions

- A.** The Director of the Department of Planning & Urban Development or his or her designated staff representative shall attend all its meetings. The staff shall provide for the keeping of tape recordings or minutes of the proceedings of the Historic Preservation Board, showing the vote of each member on every question or his or her absence or failure to vote, and shall maintain the records and decisions of all meetings, hearings, and proceedings and all correspondence of the Historic Preservation Board. Copies of permanent records shall be

filed with the City Clerk. Staff shall publish and distribute copies of the records, reports, and decisions of the Historic Preservation Board to Historic Preservation Board members and to others upon approval of the Historic Preservation Board.

- B.** No final action shall be taken by the Historic Preservation Board which could in any manner deprive or restrict the owner of a property in its use, alteration, maintenance, disposition or demolition, until such owner either has knowledge of the proceeding or is sent notice offering opportunity to be heard. This paragraph shall not affect the interim protection provisions of Section 16.4.
- C.** Every recommendation or recommended decision of the Historic Preservation Board shall include written findings of fact and shall specify the reason or reasons for such action.
- D.** Staff shall mail notice of any final action of the Historic Preservation Board to the applicant.

2.2.8 Responsibilities

The Historic Preservation Board shall have the following responsibilities:

- A.** To conduct or administer an ongoing survey to identify historically, culturally, architecturally and archaeologically significant areas, sites, structures and objects;
- B.** To review all areas, sites, structures, and objects listed in the National Register of Historic Places, including the boundaries of areas so listed, and make recommendations to the Planning Board and Council for the designation of those areas, sites, structures and objects as local landmarks or districts;

- C. To investigate and recommend to the Planning Board and Council the designation of areas, sites, structures, and objects not listed in the National Register of Historic Places as local landmarks and districts and to make recommendations to the Planning Board concerning sites, structures, and objects that have contributing significance or are intrusions within nominated or designated districts;
- D. To keep and make available to the public a register of all areas, sites, structures, and objects that have been designated as landmarks or districts, including all information required as part of each designation;
- E. Upon request, to advise and assist owners of landmarks and property, sites, structures or objects within districts on physical and financial aspects of preservation, renovation, rehabilitation and reuse and for procedures for inclusion on other registers of significant areas, sites, structures and objects, including the National Register of Historic Places;
- F. To recommend to the Planning Board the nomination of areas, sites, structures, and objects to the National Register of Historic Places or to any State of Maine Register of Historic Places that may be established;
- G. To participate in the Certified Local Government Program of the National Historic Preservation Act Amendments of 1980 and the Maine Historic Preservation Commission; and carry out any responsibilities delegated to it under that program, including review and comment on any National Register nominations submitted to the Historic Preservation Board.
- H. To seek funding for which the City of Portland is eligible through the Certified Local Government Program to assist in local preservation projects, including projects undertaken by local non-profit organizations;
- I. To, upon request by the Council, participate in any review of federal actions or undertakings pursuant to Section 106 of the National Historic Preservation Act; attend informational and educational programs sponsored by the Maine Historic Preservation Commission; and prepare an annual report of the activities of the Historic Preservation Board;
- J. To inform and educate the citizens of Portland concerning the cultural, historic, architectural and archeological heritage of the city by publishing appropriate maps, newsletters, brochures and pamphlets and by sponsoring programs and seminars;
- K. To hold meetings and public hearings to review applications for certificates of appropriateness affecting proposed or designated landmarks and districts; to recommend approval or disapproval of certificates of appropriateness;
- L. To provide testimony to the Board of Appeals in connection with any application for a certificate of economic hardship;
- M. To develop design guidelines affecting landmarks or districts for review and approval by the Planning Board;
- N. To advise the Planning Board as to recommendations on any preservation or conservation easements that the City of Portland may have or be offered as a gift or otherwise;

- O. To advise the Planning Board as to the administration of such gifts, grants and money as may be appropriated for the purposes of this article upon authorization and approval by the Council;
- P. To provide comment, as appropriate, to the Planning Board and/or City Council on matters pertaining to historic preservation in Portland;
- Q. To confer recognition upon the owners of landmarks or properties, sites, structures or objects within districts by means of certificates, plaques or markers;
- R. To assist the Planning Board in the development of a preservation component in the Comprehensive Plan of the City of Portland; and
- S. To periodically review the Land Use Code and to make recommendations to the Planning Board concerning any amendments appropriate for the protection and continued use of landmarks or properties, sites, structures or objects within districts.

2.3 ZONING BOARD OF APPEALS

2.3.1 Composition

There shall be a Board of Appeals of seven members. Members of the Board shall be residents of the city and shall not be officers or employees of the city or any of its agencies or departments. Members shall serve without compensation.

2.3.2 Appointments

- A. **Terms.** The members of the Board of Appeals shall be appointed by the City Council for terms of three years. Terms shall be staggered so that the terms of no more than three members shall expire in any calendar year. Such members shall

serve until their successors are duly elected and qualified provided, however, that such service shall not extend to over one hundred 120 days after expiration of their term.

- B. **Vacancies.** Permanent vacancies on the Board of Appeals shall be filled by the City Council, in the same manner as other appointments under this article, for the unexpired term of a former member whose place has become vacant.

2.3.3 Removal of members

Any member of the Board of Appeals may be removed for cause by the City Council at any time; provided, however, that before any such removal, such member shall be given an opportunity to be heard in his/her own defense at a public hearing.

2.3.4 Officers

- A. **Chair.** The members of the Board of Appeals shall annually elect one of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office.
- B. **Secretary.** The members of the Board of Appeals shall annually elect one of their number as secretary. In the absence of the chair, the secretary shall act as chair and shall have all the powers of the chair. The secretary shall fulfill the duties provided by statute and this article and have such other duties as may be provided by the rules of the Board.
- C. **Pro tempore officers.** In the absence of both the chair and the secretary, the Board shall elect a chair pro tempore from among its number and the chair pro tempore shall have all the powers of the chair during the chair's and the secretary's absence. In the absence of the secretary, or when the secretary is serving

as chair, the Board shall elect a secretary pro tempore from among its number and the secretary pro tempore shall have all the powers of the secretary during the secretary's absence or service as chair.

2.3.5 Quorum and necessary vote

No business shall be transacted by the Board of Appeals without a quorum, consisting of four members, being present. The concurring vote of at least four members of the Board shall be necessary to grant any request or application or to sustain any appeal. Any matter that receives fewer than four votes shall be deemed to have been denied.

2.3.6 Conflicts

No member of the Board of Appeals shall participate in the hearing or disposition of any matter in which he or she has an interest. Any question of whether a member has a conflict of interest sufficient to disqualify him shall be decided by a majority vote of the members, except the member who is being challenged; where such a vote results in a tie, the challenged member shall be deemed disqualified.

2.3.7 Meetings and procedures

- A. **Staff.** The Building Authority or his/her designee shall serve as staff to the Board of Appeals.
- B. **Meetings.** Regular meetings of the Board of Appeals shall be held at the call of the chair or as provided by the rules of the Board. Special meetings shall be called by the chair at the request of any two members of the Board or at the request of the City Council. All meetings

and hearings of the Board shall be open to the public. For all matters properly brought before the Board of Appeals, the Board shall select a reasonable time and place for a public hearing following the submission of the subject application.

- C. **Notice.** The Building Authority shall give notice of such public hearings in the form and manner and to the persons herein specified. The notice shall include the time and place of such hearing, a description of the contents of the matter to be heard and the address or location of the property involved. Where notice by mail is required, it shall be mailed at least seven days in advance of the hearing date by regular United States mail. Notices shall be given to each of the following as specified:

1. In all cases, to the petitioner;
2. In all cases, to all residents of the city by publication in a newspaper of general circulation in the city at least once, not more than 30 nor less than five days before the date of the hearing, and by mail to the applicant;
3. In the case of hearings relating to zoning appeals, a variance, or a conditional use, to the Planning board and City Council by reasonable means;
4. In the case of hearings relating to a variance request from the provisions of Article 11, the application and all supporting information supplied by the applicant shall be forwarded to the State of Maine Commission of the Department of Environmental Protection at least 20 days prior to action by the Board;

5. In the case of hearings related to a variance or conditional use, by mail to the owners of all the property within 500 feet of such parcel or tract;
 6. In the case of hearings related to all other appeals, by mail to the owners of property directly abutting, and directly across a street or alley from the subject property;
 7. For purpose of this section, the owners of property shall be considered to be the parties listed by the Assessor's Department as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing and shall not invalidate any action of the Board. The cost of noticing shall be charged to the applicant.
- D. Procedures.** The Board of Appeals shall adopt its own rules of procedure for the conduct of its business not inconsistent with the statutes of the state and this article. Such rules shall be filed with the City Clerk. Any rule so adopted which relates solely to the conduct of hearings, and which is not required by the statutes of the state or by this article, may be waived by the Board upon good cause being shown.
1. Conduct of hearings:
 - a. Any person may appear and testify at a public hearing, either in person or by a duly authorized agent or attorney, and may submit documentary evidence, provided, however, that the Board shall exclude irrelevant, immaterial and unduly repetitious evidence.
 - b. The applicant and any abutter or similarly interested party shall in addition have the right to present witnesses on their own behalf and offer rebuttal evidence, to cross examine all witnesses testifying in opposition to their position through the chair, and to examine and introduce any documents produced at the hearing.
 2. All other matters pertaining to the conduct of hearings shall be governed by the provisions of the relevant state statutes, this article, and the rules promulgated by the Board of Appeals.
- 2.3.8 Records and decisions**
- A. Record.** The recording of testimony, if any, and all exhibits, papers, applications and requests filed in any proceeding before the Board of Appeals and the decision of the Board shall constitute the record.
 - B. Decision.** Every decision of the Board of Appeals shall include findings of the fact, shall refer to the evidence in the record and the exhibits, plans or specifications upon which such decision is based, shall specify the reason or reasons for such decision, and shall contain a conclusion or statement separate from the findings of fact setting forth the specific relief granted or denying relief. The Building Authority shall deliver or mail a copy of the decision to the applicant, the Planning Board, and City Council and shall file the decision with the City Clerk within five days of such decision.

2.3.9 Jurisdiction and authority

The Board of Appeals shall have the following jurisdiction and authority:

- A. To hear and decide appeals from, and review orders, decisions, , or the failure to act by the Building Authority pursuant to this Land Use Code, except that decisions relating to enforcement of the shoreland zoning provisions of this Chapter are not appealable to the Board of Appeals and may only be appealed directly to Superior Court in accordance with M.R. Civ. P. 8oB;
- B. To hear and grant or deny applications for variances from the terms of this Land Use Code, including but not limited to use variance; dwelling unit conversion; space and bulk such as lot size, density, and side yard; parking; loading; and signs; and
- C. To hear and grant or deny applications for conditional uses, as specified in Article 6.

2.3.10 Administrative appeal procedures

- A. **Application procedures.** Application for any appeal to the Board shall be submitted to the Building Authority. A payment of a nonrefundable application fee, as established by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the Building Authority.
- B. **Public hearing.** A public hearing shall be set, advertised and conducted by the Board of Appeals in accordance with Section 2.3.7.
- C. **Standard of review.** The standard of review for orders, decisions, or the failure to act by the

Building Authority pursuant to this Land Use Code shall be de novo. The appellant shall bear the burden of proof.

2.3.11 Variances

A. Application procedures

- 1. Application for a variance shall be submitted to the Building Authority. A payment of a nonrefundable application fee, as established from time to time by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the Building Authority
- 2. A public hearing shall be set, advertised and conducted by the Board of Appeals in accordance with Section 2.3.7.
- 3. All decisions by the Board shall be rendered in a manner and form not inconsistent with the statutes of this state.

B. Undue hardship variance.

An undue hardship variance may be granted by the Board only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words “undue hardship” as used in this subsection mean:

- 1. That the land in question cannot yield a reasonable return unless a variance is granted;
- 2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;

3. That the granting of a variance will not alter the essential character of the locality; and
4. That the hardship is not the result of action taken by the applicant or prior owner.

C. Disability variance

1. By the Board of Appeals. Notwithstanding the provisions of subsection (B) above, the Board may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. For the purpose of this subsection, a disability has the same meaning as a physical or mental handicap under 5 M.R.S.A. Section 4553.
2. By the Building Authority. Notwithstanding the provisions of subsections (B) and (C.1) above, the Building Authority may issue a permit to the owner of a dwelling for the purpose of making a dwelling accessible to a person

with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to egress from the dwelling for the person with a disability.

D. Practical difficulty variance. Notwithstanding the provisions of subsections (B) and (C) above, the Board of Appeals may grant a variance from the dimensional standards of this Land Use Code that relate to lot area, lot coverage, frontage, and setback requirements when strict application of these standards would both preclude a permitted use of the property and result in significant economic injury to the applicant. Significant economic injury shall mean that the value of the property if the variance were denied would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land. In granting a practical difficulty variance, all of the following conditions must be found to exist:

1. The need for a variance is due to the unique circumstances of the property, and not to the general conditions in the neighborhood;
2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties;

#010

Posted by **Patrick Boothe** on **11/20/2019** at **3:41pm**

Type: Suggestion

Agree: 1, Disagree: 0

To piggyback on Benjamin's comment. Would it be reasonable to hyperlink defined terms in the body of sections to their location in the land use code (particularly as some are in different Chapters). It would be similar to the hyperlinks you have for the table of contents. Wikipedia does this well as an example. Another option is a "hover-over-the-link" where you could simply hover over a word and either define it directly or at least say "go to Chapter 3 (or Chapter x) for definition"

Reply by **Patrick Boothe** on **11/20/2019** at **3:43pm**

Agree: 0, Disagree: 0

*Articles...not Chapters

#011

Posted by **Benjamin McCall** on **11/15/2019** at **5:16pm**

Type: Observation

Agree: 0, Disagree: 0

"Lot area" and "lot coverage" are undefined in draft Article 3. It would be helpful if they could be defined, or alternatively, if this section could be amended to specify whether these terms include standards like landscaped area, or other similar categories.

3. The practical difficulty is not the result of action taken by the applicant or a prior owner;
4. No other feasible alternative is available to the applicant, except a variance;
5. The granting of a variance will not have an unreasonably adverse effect on the natural environment; and
6. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. § 435, nor within a shoreland zone or flood hazard zone, as defined in this article.

E. Specified variances prohibited

1. No use permitted in medium- and high-density residential zones shall be permitted in low-density residential zones. No use permitted in mixed-use or office zones shall be permitted in any residential zone. No use permitted in industrial zones shall be permitted in any mixed-use, office, or residential zone. No use permitted in residential zones shall be permitted in any industrial zone. The general use categories are listed below:
 - a. Low-density residential: IR-1, IR-2, IR-3, R-1, R-2, R-3.
 - b. Medium- and high-density residential: R-4, R-5, R-6.
 - c. Mixed-use/Office: B-1, B-2/B-2b/B-2c, B-3/B-3b/B-3c, B-4, B-5/B-5b, B-6, B-7, I-B, R-P, O-P.
 - d. Industrial: I-L/I-Lb, I-M/I-Ma/I-Mb, I-H/I-Hb, A-B
2. No variance shall be granted which would permit the creation of a lot or parcel that

cannot be developed in compliance with the zoning, subdivision, and other regulations applicable thereto.

3. No variance shall be granted which would result in a use or development of the lot or parcel in question which would not be in harmony with the general purpose and intent of this Land Use Code or the Comprehensive Plan; which would be materially detrimental to the public welfare or materially injurious to the enjoyment, use, or development of property or improvement permitted in the vicinity; or which would materially impair an adequate supply of light and air to properties and improvements in the vicinity, substantially increase congestion in the public streets, increase the danger of flood or fire, or endanger the public safety.
4. No variance shall be granted which would be greater than the minimum variance necessary to relieve the undue hardship or the hardship of the applicant.
5. No variance shall be granted from the minimum lot sizes set forth in Section 4.3.1 for lots in the IR-1 and IR-2 zones.
6. No variance shall be granted from the requirements in Section 6.4.11.

F. Conditions on variances; variances less than requested.

Reasonable conditions and safeguards relating to construction, character, location, landscaping, screening and other matters may be imposed upon the premises benefited by a variance as considered necessary to prevent injurious effects upon other property and improvements in the

vicinity or upon public facilities and services. Such conditions shall be expressly set forth in the resolution granting the variance and in the notice informing the applicant thereof. Violation of such conditions and safeguards shall be a violation of this article. A variance less than or different from that requested may be granted when the record supports the applicant's right to some relief but not to the relief requested.

- G. Limitations on variances.** No variance permitting the erection or alteration of a building shall be valid for a period longer than six months, or such other time as may be fixed at the time granted not to exceed two years, unless a building permit for such erection or alteration is issued and construction is actually begun within that period and is thereafter diligently pursued to completion. One or more extensions of said expiration dates may be granted if the facts constituting the basis of the decision have not materially changed and the two year period is not exceeded thereby. No variance relating to the establishment or maintenance of a use not involving a building or structure shall be valid for a period longer than six months, or such other time as may be fixed at the time granted not to exceed two years, unless an occupancy permit is issued and a use commenced within such period; provided, however, that one or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two year period is not exceeded thereby.
- H. Recording of variances.** No variance shall be valid unless, within 90 days of final approval of

the variance, a certificate describing the variance has been recorded by the applicant for the variance in the registry of deeds as required by 30 M.R.S.A. Section 4353(5).

2.3.12 Successive applications

Whenever any application, appeal, or other request filed pursuant to this section has been finally denied on its merits, a second application, appeal or other request seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought within one year of such denial unless, in the opinion of the officer or Board before which it is brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.

2.3.13 Violations

In addition to any other remedies available, the Board of Appeals after notice and hearing may revoke any variance or other relief granted under this section when the provisions of this section or the conditions under which the relief was granted have not been complied with.

2.3.14 Appeals

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

3 DEFINITIONS

Adult business establishment. Any business, including but not limited to any bookstore, newsstand, novelty store, nightclub, bar, cabaret, amusement arcade, or theater, which:

- A. Keeps for public patronage or permits or allows the operation of any adult amusement device as defined in Chapter 4 of the City of Portland Code of Ordinances; or
- B. Customarily, meaning more often than an average of one calendar week during any calendar month of operation, exhibits motion pictures or displays any other visual representation described or advertised as being “X rated” or “for adults only,” or which customarily excludes persons from any portion of the premises by reason of immaturity of age by the use of such, or similar, phrases; or
- C. Is adjudged to be in violation of 17 M.R.S.A. §§ 2911, 2912.

Affordable housing. The percentage of income a household is charged in rent and other housing expenses or must pay in monthly mortgage payments (including condominium/HOA fees, mortgage insurance, other insurance and real estate taxes), does not exceed 30% of a household’s income, or other amount established in city regulations that does not vary significantly from this amount.

After-hours entertainment license. Any of the music, dancing and special entertainment licenses required or authorized by Article III, Chapter 4 of the City of Portland Code of Ordinances.

Agriculture. The practice of farming, including the cultivation of the soil for the growing of crops and rearing of animals to provide food and other products. Agriculture may include nurseries, greenhouses, and truck gardens, provided that there is no sale of products not produced on the premises.;

Airport restricted access areas. Runways, taxiways and other areas of the jetport accessible to aircraft, whether access is restricted by the Federal Aviation Administration or not.

Alley. Any way designed primarily for vehicular or utility access to the back or side of premises otherwise abutting on a street, except driveways unless officially designated otherwise.

Animal-related services. Establishments principally for the training or boarding of animals. Such uses shall not include veterinary services.

Approval. An affirmative decision on an application, including an approval with conditions.

Appurtenance. A device or structure not designed for human occupancy and attached to the exterior of a building roof.

Auto service station. A business selling gasoline, diesel, or propane fuel or providing motor vehicle repair services including, but not limited to, tune-ups, engine repair, brake work, muffler replacement, tire repair or similar activities. Such businesses may also include car-washes and/or vacuums.

#012

Posted by **Patrick Boothe** on **11/20/2019** at **2:51pm**

Type: Suggestion

Agree: 1, Disagree: 0

Recommend adding a list of all definitions found specific in this Chapter 3 or other cross reference mechanism. This is particularly useful when some definitions appear in other Chapters. As an example, refer to section 802 of the 2015 IBC or section 1002 where pertinent definitions specific to a chapter are either listed or at least noted where to find elsewhere

Reply by **Patrick Boothe** on **11/20/2019** at **3:43pm**

Agree: 0, Disagree: 0

*Articles...not Chapters

Back office use. An office-related use with minimal public visitation and minimal direct service to the general public, primarily to provide support services to educational institutions, social service agencies, or business headquarters.

Balloon. A brightly colored bag made of flexible material, inflated with air or other gas and sealed, often to make it rise in the air.

Banner. A flexible, non-adhesive sign of lightweight fabric or similar material typically supported at two or more points and attached to a building, wall, or fence or otherwise suspended down or across its face for temporary advertising purposes. Does not include national, state, or municipal flags.

Bar. Any establishment required to be licensed to sell alcoholic beverages for on-premises consumption, which is not regularly used for the purpose of providing full-course meals, as defined in Title 28-A of the Maine Revised Statutes, on the premises.

Bed and breakfast. A building in which more than two but not more than nine guest rooms are used to provide or offer overnight accommodations for transient guests. An owner, manager, or operator shall live in the building as a permanent resident. No cooking facilities shall be permitted in any of the guest rooms. The only meal which may be offered is breakfast, which shall be offered only to overnight guests.

Billboard. A permanent structure for the display of off-premises advertising.

Blasting operations. The use of explosives for purposes of breaking up and removing soil, rock and ledge, related to construction and development of real estate within the City.

Blasting permit. A permit issued by the City Fire Department to allow blasting operations within the City.

Blasting plan. The plan for conduct of any blasting operation where over 300 cubic yards of material shall be removed.

Blasting submittal. The plan for conduct of any blasting operation where between 50 and three 300 cubic yards of material shall be removed.

Buildable Area. The area enclosed by the front, side, and rear yard setbacks and limited by lot coverage.

Building. A roofed and walled structure built for permanent use.

Building, Accessory. A detached roofed and walled structure that is incidental and subordinate in area and extent, and/or use to the principal building(s) on the property. A lot may have more than one accessory building.

Building addition. Any increase to footprint or volume of an existing building.

Building alteration. A change or rearrangement in the structural supports, exterior appearance, or removing from or otherwise affecting the exterior appearance of a structure.

Buildings, attached. Two or more independent buildings that share at least one common party wall but have full building separation and independent principal entries; not free-standing. Attached buildings may or may not have common ownership.

Building, principal. The main roofed and walled structure on a lot having the predominant area, extent, and/or use. A lot may have more than one principal building. When a garage is attached to the principal building in a substantial manner as by an enclosed area with roof or common wall, it shall be considered as a part of the principal building.

Clinics. Any establishment where patients are examined and treated by one or more health care providers, such as, but not limited to, physicians, dentists, psychologists or social workers. Clinics may include laboratory services and facilities for ambulatory or outpatient surgical procedures.

Coastal wetland. All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and that occurs primarily in a salt water or estuarine habitat; and/or any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Commercial message. A message conveyed by any sign that is solely intended to interest, entice, or solicit any person to participate in commercial transactions with a business, including offers of goods, cash, discounts on products or services, or other items, including the offering of free goods or

services made in exchange for or with the intent to induce the recipient's willingness to receive information relating to a possible commercial transaction.

Commercial vessel. Any watercraft used principally in a business or trade, including common carriers of passenger or freight, whether for governmental, nonprofit or emergency purposes; but not including pleasure craft used principally for recreational purposes.

Common areas. Portions of a lodging house which are available for use by all residents of the lodging house. Common areas shall include, but are not limited to, one or more of the following: kitchens, living rooms, recreation rooms, improved basements, and finished porches. Bathrooms, stairways, hallways, and storage areas shall not be counted as common areas.

Communication studio. A commercial or public communication facility, including radio and television broadcasting and receiving stations and studios.

Community hall. A building or portion of a building used for social, recreational, artistic, civic, or educational community functions. Such a facility would be open to the public for such functions, which, for example, could include but not be limited to performances, dance, exhibitions, cultural exchange, training programs and workshops, neighborhood meetings, or gatherings. As part of these functions and activities, it shall be permissible to serve food, subject to other applicable codes and ordinances.

Condominium. Any interest in real estate created pursuant to the Unit Ownership Act, 33 M.R.S.A. § 560 et seq., or its equivalent, as it may from time to time be amended.

Congregate care facility. A residential development which provides individual living or dwelling units with support services which provide assistance to residents. Services to be provided shall include:

- A. Transportation for essential support activities. This service shall be included in the base rent;
- B. Provision of at least one meal per day;
- C. Programmed social activities which are facilitated by staff. This service shall be included in the base rent;
- D. Provision of personal care services including, but not limited to, housekeeping, laundry, and minimal health monitoring; and
- E. Installation of emergency call buttons or systems in each congregate care living unit.

The population of a congregate care facility shall consist of persons 55 years of age or older and their spouses and/or disabled persons and their spouses.

Correctional pre-release facility. A facility housing up to 12 persons, plus staff, serving a primary clientele of parolees or persons in correctional prerelease programs.

Developer. Any person or other legal entity, but not including an established lending institution unless it is an active participant in a common promotional scheme, who, whether acting as principal or agent, records a declaration of condominium that includes real estate, any portion of which was previously a rental unit.

Development fees. Site plan review and inspection fees; subdivision review and inspection fees; administrative fees; impact fees, and construction and permit fees as described in Chapter 6 of the City of Portland Code of Ordinances. Development fees does not include any fees charged for reviews conducted by a party other than the city.

Direct Illumination. Illumination resulting from light emitted directly from a light bulb or light fixture, not light diffused through translucent signs or reflected from other surfaces such as the ground or building faces.



Drive-through. A commercial facility which provides a service directly to a motor vehicle occupant and where the customer drives a motor vehicle onto the premises and to a window or mechanical device through or by which the customer is served with or without exiting the vehicle. Drive-throughs do not include major or minor auto service stations.

Drive-through features. Features associated with drive-throughs including but not limited to designated travel or stacking lanes, intercom



systems, menu boards, service windows, kiosks, mechanical devices, etc.

Dwelling. A building or portion thereof used exclusively for residential occupancy, including single-family, two-family and multi-family dwellings, but not including hotels, lodging houses, or sheltered care group homes..

Dwelling unit. One or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling. The term includes dwellings in single family, two-family, and multi-family buildings. When the term is used in Article 17, it also includes rooms that people rent or sleep in within lodging houses, dormitories, shelters and sheltered care group homes.

Dwelling, multi-family. A building or portion thereof containing three or more dwelling units.

Dwelling, single-family. A building used exclusively for occupancy by one family.

Dwelling, two-family. A single building containing two dwelling units.

Earth-moving activity. Any removal or placement, excavation, filling, stockpiling or grading of soil, earth, loam, sand, gravel, rock and other mineral deposits.

Easement. A right, privilege or liberty which one has in land owned by another for some special and definite purpose.

Emergency operations. Operations conducted for the public health, safety or general welfare, such as

protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

Emergency shelter. A facility providing temporary overnight shelter to homeless individuals in a dormitory-style or per-bed arrangement.

Entrance, principal. The main point of access for pedestrians into a building. A building may have more than one principal entrance.

Esplanade. That portion of a street right-of-way which is located between the curbline and the edge of the sidewalk closest to the street.

Essential services. The construction, alteration, or maintenance of gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

Explosives. Any material or container containing a chemical compound or mixture that is commonly used or intended for the purpose of producing an explosion and that contains any oxidizing and combustible materials or other ingredients in such proportions, quantities, or packaging that an

ignition by fire, by friction, by compound or mixture may cause such a sudden generation of highly heated gasses that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, but shall not mean the components for handloading rifle, pistol and shotgun ammunition, or fireworks.

Family. One or more individuals related by blood, marriage, civil union, adoption, or guardianship and/or up to eight unrelated individuals living together in a dwelling unit as a single nonprofit housekeeping unit.

Fill. Soil, earth, loam, sand, gravel, rock and other mineral deposits.

Filling. The placement of soil, earth, loam, sand, gravel, rock and other mineral deposits. Filling shall include stockpiling.

Fixture, fully shielded. A light fixture or luminous tube constructed and mounted such that all light emitted by the fixture or tube, either directly from the lamp, tube, or a diffusing element, or indirectly by reflection or refraction from any part of the light fixture, is projected below the horizontal. If the lamp or tube, any reflective surface, or lens cover (clear or prismatic) is visible when viewed from above or directly from the side, from any angle around the fixture or tube, the fixture or tube is not fully shielded.

Flag. A fabric sheet of square, rectangular, or triangular shape having no enclosing or supporting framework that is typically mounted on a pole.

Foundation. The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frost walls, or other base consisting of concrete, block, brick, or similar material.

Freshwater wetland. Freshwater swamps, marshes, bogs and/or similar areas which are:

- A. Of ten or more contiguous acres or of less than ten contiguous acres and adjacent to a surface water body except for any river, stream or brook such that, in a natural state, the combined surface area is in excess of ten acres or of less than ten acres that is depicted on the Shoreland Zoning Map; and
- B. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

General office. An office for the conducting or managing of a business or the practice of a profession, including that of a licensed health care provider, so long as such office does not include laboratory services and facilities for ambulatory surgical procedures.

General services. Establishment primarily engaged in rendering services to persons or business on a fee basis, including but not limited to banks, health clubs, laundries, employment services, management services, personnel services, or maintenance services.



Handicapped family unit. A dwelling which provides living facilities for handicapped persons. A handicapped family unit may also provide counseling and support services. Staff members may also be included in the population.

Helistop. An area used for the landing of helicopters at any location other than an airport. Such area shall include a landing area or pad, and may include parking required for access to the landing area or pad, a loading and unloading area for emergency vehicles, and other related facilities other than maintenance and repair facilities.

Historical plaque. A sign that memorializes a person, event, former use of a place, or something else of historical significance.

Hospital. An institution providing health services, primarily on an inpatient basis, and medical or surgical care of the sick or injured, including as an integral part of the institution such related facilities as laboratories, outpatient departments, training facilities, central service facilities, and staff offices.

Hostel. An overnight lodging facility for transient guests that provides sleeping rooms and common areas for cooking. A hostel shall not be used as an emergency shelter.

Hotel. A building used for more or less temporary occupancy of individuals who are lodged with or without meals.

Impervious surface. Any surface which does not absorb rain and includes all buildings, roads, sidewalks, parking areas, and any area paved with bricks, concrete, or asphalt.

Industrial, high-impact. Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished products from either raw materials or previously prepared material which are generally incompatible with residential, commercial and lower impact industrial uses and sensitive natural areas due to their high generation of traffic, noise levels, emissions, lighting, and odors.

Industrial, low-impact. Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished products from previously prepared material, including but not limited to the following: bakeries, breweries, bottling, coffee roasters, commercial kitchens, pharmaceuticals, machine shops, precision instruments, watchmakers, musical instruments, toys and sporting goods, pottery and ceramics using only previously pulverized clay, wood products, jewelry, assembly of electrical components, canteen services, tool and die shops, plant and tree nurseries, and the packaging of foods. Low impact industrial uses do not include the processing of raw materials or salvaging operations. Low impact industrial uses are generally compatible, due to their size and nature of impact, with residential, commercial and other low impact industrial uses.

Intermediate care facility. A facility which provides, on a regular basis, health-related care and services for more than 13 individuals who do not require the degree of care and treatment which a hospital or extended care facility is designed to provide but who, because of their mental or physical condition, require such care and services above the level of room and board. Said facility must be licensed as a board care, residential care facility or equivalent pursuant to the regulations promulgated by the

State of Maine Department of Health and Human Services.

Kitchen facilities. Facilities used for the preparation of meals, including refrigerators and devices used for the cooking and preparation of food.

Laser Light Display. A display that emits light through the use of a laser beam(s).

LED (Light Emitting Diode). A semiconductor diode that emits light when a voltage is applied to it.

Living Unit. An independent self-contained dwelling unit that does not include kitchen facilities.

Lodging house. A house, building or portion thereof containing two or more rooming units and providing such units, with or without meals, to individuals on not less than a weekly or monthly basis for compensation. A lodging house, except for lodging houses located in the IR-2, IR-3 and I-B zones, shall contain common areas for use by all residents, including a kitchen. A kitchen need not be available as part of the common areas where all meals are provided on a daily basis.

Long-term or extended care facility. An institution or a distinct part of an institution that is licensed or approved to provide full-time convalescent or chronic care, or health care under medical supervision for 24 or more consecutive hours, to nine or more individuals who, by reason of advanced age, illness, or infirmity are unable to care for themselves, and who are not related to the governing authority by marriage, blood, or adoption.

Low-income household. A household having an income not exceeding 80% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Low-income housing unit for rent. A dwelling unit for which:

- A. The rent is affordable to a household earning 80% or less of Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD);
- B. The unit is rented to a household earning 80% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance..

Low-income housing unit for sale. A dwelling unit for which:

- A. The sale price is affordable to a household earning 100% or less of AMI;
- B. The unit is sold to a household earning 100% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for future sales for the applicable length of time in this ordinance.

Lot. A parcel or area of land that is designated as an individual unit for use, development or ownership that is either a) a lot of record, recorded in the Cumberland County Registry of Deeds which at the time of record complied with applicable ordinances; or b) a contiguous combination of such lots of record under common ownership; or c) a newly



established parcel meeting all the dimensional requirements of the zone in which it is located.

Luminance. The intensity of visible light emitted or reflected from a unit area of a surface, such as the face of a sign measured in nits.

Manufactured housing. A structural unit or units designed for residential occupancy and constructed in a manufacturing facility and then transported by the use of its own chassis or placement on an independent chassis to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is utilized for housing and may be purchased or sold by a dealer in the interim. For purposes of this article, two types of manufactured housing are included. They are:

- A. Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the standards required by the United States Government Department of Housing and Urban Development, as such standards are from time to time revised or amended, meaning structures, transportable in one or more sections, which in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. This term also includes any structure which meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer

voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401 et seq.; and

- B. Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the state's Manufactured Housing Act and regulations, meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air conditioning or electrical systems contained therein.

Any unit which does not fall within the definitions of this section and which is legally sited within the city on December 18, 1989, may be relocated to any location in the city in which manufactured housing is allowed.

Manufactured housing park. A parcel of land under unified ownership approved by the Planning Board under 30-A M.R.S.A. Section 4358 for the placement of single-component manufactured housing.

Manufactured housing park unit space. The area of land on which an individual home is situated within a manufactured housing park and which is reserved for use by the occupants of that home.

Manufactured housing subdivision or development. A parcel of land approved by the Planning Board under 30-A M.R.S.A. Section 4358 for

the placement of single-component manufactured housing on individual owned lots.

Marijuana cultivation facility. A cultivation facility required to be licensed pursuant to 22 M.R.S. § 201 or any other facility engaged primarily in the business of planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana, including mature marijuana plants, immature marijuana plants, seedlings and marijuana seeds, for use or sale.

Marijuana manufacturing facility. A manufacturing facility required to be licensed pursuant to 22 M.R.S. § 2423-F or 28-B M.R.S. § 201.

Marijuana product. As defined by 22 M.R.S.A. §2422 or 28-B M.R.S.A., §102.

Marijuana retail store. A retail establishment licensed to sell marijuana, marijuana products, immature marijuana plants and seedlings to adult use or medical marijuana customers. A marijuana retail store is only authorized as a principal use, and is not permitted as an accessory use. A marijuana retail store may not exceed a maximum gross floor area of 2,000 square feet. A marijuana retail store shall not include a registered dispensary.

Marijuana testing facility. A facility licensed to develop, research and test marijuana, marijuana products and other substances as defined by 22 M.R.S.A. §2422 or 28-B M.R.S.A., §102.

Marina. A commercial operation providing floats, slips and piers intended primarily for berthing of noncommercial vessels and the provision of related services such as supplies, fuel, equipment and

repairs, which may be provided both to tenants and non-tenants.

Military personnel berthing. A building, or portion thereof, which is primarily used as, and intended for, temporary living quarters for military personnel.

Moderate-income household. A household having an income not exceeding 120% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Multiple-component manufactured housing. Manufactured housing which is constructed and transported in two or more sections of substantially similar size that must be mated to form a habitable dwelling. For purposes of planned residential unit development and multiplex development, multiple-component manufactured housing shall be considered a dwelling unit.

Multi-family development. The construction or creation of three or more dwelling units on any parcel of land or the addition of two or more dwelling units cumulatively within a three year period.

Multiplex. A residential development consisting of three or more horizontally or vertically attached, or a series of such attached dwelling units and the construction of at least one building.

Neighborhood center. A building or portion of a building used for recreational, artistic, social, educational, health, culture, or similar activities and



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services, usually owned and operated by a public or nonprofit group or agency.

Neon. An illumination source created when a glass tube filled with neon or other similar gas emits light when energized. The tube can be bent to form letters, symbols, or other shapes. See “Direct Illumination”.

Nit. The standard unit used to measure the luminance of a surface, such as the face of a sign. One nit is equivalent to one candela (i.e. the light output of a common wax candle) per square meter.

Non-commercial vessel berthing. The use of berthing space for berthing of watercraft other than commercial vessels. Berthing space used in the following manner shall not be included in the calculation of the number of linear feet under this use category:

- A. Space used principally for sale or repair of vessels.
- B. Commercial vessel tenant space used by a noncommercial vessel for a period not exceeding ten consecutive days while the primary commercial vessel tenant is conducting its business or trade.

Normal high-water line (non-tidal waters). That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers that support non-forested wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the

river during the period of normal high-water are considered part of the river.

Normal high-water mark of coastal waters. That line on the shore of tidal waters reached by the shoreward limit of the rise of the medium tides between the spring and the neap.

Office park. Separate office buildings planned, constructed or managed on an integrated coordinated basis.

Off-peninsula. All land located north of I-295.

On-peninsula. All land located south of I-295.

Open space. Any park and any other area outside of a building open to the public.

Owner. Any person that has any interest, legal or beneficial, in any parcel or lot.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland, temporary. Structures which remain in or over the water for less than seven months in any period of 12 consecutive months.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland, permanent. Structures which remain in or over the water for seven months or more in any period of 12 consecutive months.

Place of assembly. A building or portion of a building used as a community hall, neighborhood

center, private club or fraternal organization, or place of religious assembly. This definition shall not include buildings or portions of buildings used as a community hall, neighborhood center, private and fraternal organization or place of religious assembly where 15 or fewer people, not including the permanent residents of a single-family dwelling, assemble.

Place of religious assembly. A building or portion of a building used for religious worship or instruction including, but not limited to, churches, synagogues, masjids, mosques and other places of worship.

Planned residential unit development (PRUD). A residential subdivision consisting of attached or detached dwellings intended for separate ownership, with open spaces, recreational areas, access ways and buildings which are designed, built, and managed in accordance with a unified development plan.

Planned unit development (PUD). A development consisting of either detached or attached single-family dwelling units and commercial or other uses, on substantially-sized properties of greater than 20 acres and designed to be compatible with the surrounding built and natural environment.

Plant canopy. As defined by 28-B M.R.S., §102.

Preschool. School for children generally younger than those attending elementary school, which may also encompass daycare facilities providing care and protection for children.

Private club or non-profit social and recreational facility. A private club or nonprofit social and recreational facility, is open exclusively to members and to their bona fide guests accompanying them, in order to promote fellowship, social living, proper recreation, civic responsibility, neighborhood responsibility, community welfare or other endeavors. It shall be permissible to serve food and meals on such premises provided adequate dining room space and kitchen facility are available and are provided within all regulations of this article and other applicable codes and ordinances.

Raceway. A sign mounting structure used to enclose electrical components (such as transformers and wiring) for signs.

Recent flood plain soils. Recent flood plain soils include the following soil series as described and identified by the National Cooperative Soil Survey: Alluvial, Charles, Cornish, Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Podunk, Rumney, Saco, Suncook, Winooski

Recording plat. The completed subdivision plat in form for approval and recording.

Recreation and amusement centers. Facilities equipped for the conduct of sports or indoor leisure time recreation activities, including games of skill or games of chance licensed either by the City of Portland or by the State of Maine. Such facilities may limit admission either to members or to persons paying an entrance fee.

Registered dispensary. A registered medical marijuana dispensary as defined by 22 M.R.S. §2422.



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Registered patient. As defined by 22 M.R.S. §2422.

Repair services. Establishments primarily engaged in rendering services related to the maintenance or repair of goods, not including motor vehicle repair services.

Restaurant. Any food service establishment with indoor seating capacity for ten or more patrons.

Retail. Any shop or store offering goods or merchandise to the general public for direct consumption and not for resale, or food service with indoor seating capacity for nine or fewer patrons. Retail shall not include gasoline, diesel, or propane fuel sales.

Right-of-way. A legal right, established by usage or grant, to pass along a specific route.

Roadway. That portion of a right-of-way between the regularly established curblines, or that part of a street or alley devoted to vehicular traffic.

Rooming unit. A room or suite of rooms in a house, building or portion thereof rented as living and sleeping quarters, but without full kitchens or bathrooms. In a suite of rooms, each room which provides sleeping accommodations shall be counted as one rooming unit for the purpose of this article. Each rooming unit in a lodging house shall have kitchen privileges unless all meals are provided on a daily basis. There shall be no more than two persons residing in each rooming unit.

Self-storage facility. Fully enclosed buildings with individual, secured units (accessed with or without supervision) used for the exclusive purpose of

storage of non-hazardous business or personal materials.

Sexually explicit. The display or depiction of sex organs during actual or simulated sexual intercourse or sexual acts as defined in 17 A M.R.S.A. § 251.

Sheltered care group home. A facility which, in addition to providing food and shelter to a defined population of up to 12 individuals, provides guidance or counseling services as a primary function of the facility.

Shore frontage. The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Sidewalk. That portion of a street not included in the roadway, and devoted in whole or part to pedestrian traffic.

Single-component manufactured housing. Manufactured housing which is constructed and transported in one section. For purposes of planned residential unit development and multiplex development, single-component manufactured housing shall not be considered a dwelling unit, except in the FH Flexible Housing Zone.

Sign. A structure, device, figure, display, message placard or other contrivance, or any part thereof, situated outdoors or indoors, which is designed, constructed, intended or used to advertise, provide information in the nature of advertising, provide historical, cultural, archeological, ideological, political, religious, or social information, or direct or attract attention to an object, person, institution,

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business, product, service, message, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, or illumination.

Sign, animated. Flashing, blinking, reflecting, revolving, or other similar sign with visibly moving or rotating parts or visible mechanical movement of any kind.

Sign, awning. Any sign that is part of or attached to an awning, canopy, or other fabric, plastic or structural protective cover over a door, entrance, window, storefront, or outdoor service area.

Sign, A-Frame. A pedestrian oriented self-supporting sign that is not permanently affixed to a structure or the ground.

Sign, bandit. Any advertising sign that is placed on public property or on private property without the consent of the property owner or as authorized in Article 19.

Sign, blade. A permanent sign mounted either to the wall of building by means of a bracket or attached to the underside of a lintel, arch or other overhead structure above a porch or walkway and which is typically hung perpendicular to the wall of the building.



Sign, building identification. A sign consisting of letters or numbers applied to a building wall, engraved into the building material, or consisting of a sculptural relief which contains the name of the building or describes its function, but which does not advertise any individual tenant of the building or any products or services offered.

Sign, building-mounted. Sign attached to, connected to, erected against the wall, parapet, or fascia of a building or structure with the exposed face of the sign in a plane parallel to the vertical face of the building or structure.



Sign, bus shelter. As specified in 23 M.R.S.A. §1908-A, any outdoor sign visible to the traveling public from public right-of-way that is affixed to a publicly owned bus shelter operated by a transit agency.

Sign, cabinet. A permanent building-mounted or freestanding sign with its text and/or logo symbols and artwork on a translucent face panel that is mounted within a metal frame or cabinet either that contains the lighting fixtures which illuminate the sign face from behind.



Sign, canopy. A sign that is printed, painted, or affixed to a canopy, typically used to accent building entries.



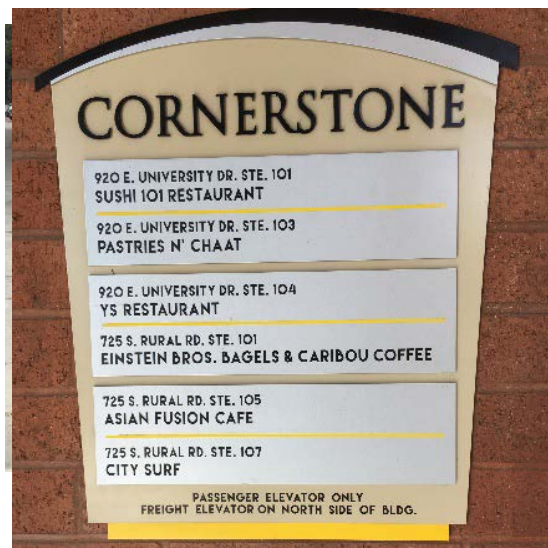
Sign, center identification. A sign identifying the name of a building, office park, or shopping center only.

Sign, changeable copy. A sign that is designed so that characters, letters, numbers, or illustrations can be manually or mechanically changed or rearranged without altering the face or surface of the sign. For the purposes of this Article, a sign whose message changes more than eight times per day is considered an animated sign (see Sign, animated) and not a changeable copy sign.



Sign, directional. A sign erected to inform the viewer of the approximate route, direction, or location of a facility or use.

Sign, directory. A permanent sign which provides information in a list, roster, or directory format.



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Sign, Electronic Message. A sign or portion of a sign that is capable of changing its characters, letters, numbers, illustrations, display, color, and/or light intensity, including animated graphics and video, by electronic or automatic means. An Electronic Message Sign is not a Single- or Two-Color LED Sign.



Sign, externally illuminated. A sign whose illumination is reflected from its source by the sign surface to the viewer's eye, the source of light not being visible to the viewer.



Sign, Feather Banner. A temporary sign that is taller than it is wide and made of a flexible material

(typically cloth, nylon, or vinyl) and mounted to a pole to fly freely.

Sign, freestanding. A permanent sign that is erected or mounted on its own self-supporting permanent structure or base detached from any supporting elements of a building.

Sign, fuel pump topper. A temporary sign affixed to the top of an operable fuel dispensing pump used to advertise goods offered for sale on the same parcel on which the fuel pump is located.

Sign, incidental. A sign which provides incidental information, including security, credit card acceptance, business hours, open/closed, directions to services and facilities, or menus.

Sign, individual letter. A cut-out or etched letter or logo which is individually mounted on a building wall, or freestanding sign.



Sign, internally illuminated. Any sign in which the source of light is entirely enclosed within the sign and not directly visible.

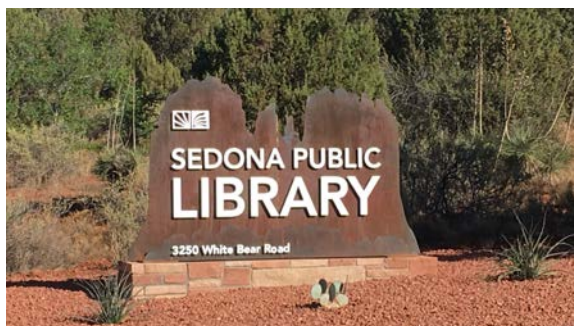
Sign, landmark. A permanent sign indicating individual historic landmarks, local historic districts or otherwise determined by the City to have attained a high degree of community, cultural, aesthetic, or historic significance.

Sign, logo. A stylized group of letters, words, numbers, or symbols used to represent and distinguish a business, product, or organization.

Sign, marquee. A permanent sign structure placed over the entrance to a building and typically used for a theater or other entertainment use.



Sign, monument. A permanent freestanding sign, with a solid base that is at least 60% the width of the sign face.



Sign, off-premise. Any sign that directs attention to a business, commodity, service, entertainment, product, structure, use or property different from a structure or use existing on the property where the sign is located, and/or any sign on which space is rented, donated, or sold by the owner of said sign or property for the purpose of conveying a message.

Sign, pennant. A temporary sign made of flexible materials longer than it is wide, often triangular in shape, and frequently displayed with other pennants on a string.

Sign, permanent. A sign constructed of durable materials and intended to exist for the duration of time that the use or occupant is located on the premises.

Sign, pole. An elevated permanent sign typically supported by one or two poles, posts, or columns that do not meet the base width requirements for a monument sign.

Sign, projecting. A permanent sign that is attached to and extends perpendicular from a building from the wall.

Sign, service island canopy. A permanent sign mounted on or under a service island canopy, including on a fascia.

Sign, single-color or two-color LED: A permanent or temporary sign composed of single-color or two-color LEDs, including signs with fixed and changeable copy.



Sign, temporary. A sign constructed of paper, cloth, or similar expendable material, which is intended for a definite and limited period of display and which is designed to be moved easily and is not permanently affixed to a structure, sign area, or window.

Sign, wall. A permanent sign affixed to or erected against the wall or fascia of a building or structure, with the exposed face of the sign parallel to the plane of wall or fascia to which it is affixed or erected.

Sign, wall banner. A temporary sign and constructed of cloth, bunting, plastic, paper, or similar non-rigid material, and securely attached to the wall or support structure for which it is advertising. Flags are not considered temporary wall banners.

Sign, window. A permanent or temporary sign posted, painted, placed, or affixed in or on a

window, or otherwise exposed to public view through a window.

Sign, Yard, Type I. A small temporary sign typically constructed of corrugated plastic and supported on an H-shaped wire frame used for example, for advertising by local businesses or by election campaigns (Synonym: Lawn Sign).

Sign, Yard, Type II. A temporary sign mounted on a single post installed securely in the ground with a small sign hanging from a cross-bar mounted parallel to the ground.

Sign, Yard, Type III. A temporary large sign mounted on two posts installed securely in the ground.

Sign copy. Any graphic, word, numeral, symbol, insignia, text, sample, model, device, or combination thereof that is primarily intended to advertise, identify, or notify.

Sign face. The exterior surface of a sign, exclusive of structural supports, on which is placed the sign copy.

Sign structure. The supports, uprights, bracing and/or framework of a sign.

Site. All contiguous land under the same ownership or control, whether proposed for development or not, except where development is limited to a lot or lots within a subdivision.

Small-scale marijuana caregiver. A registered caregiver who sells or dispenses marijuana to no more than five individual registered patients in any



one calendar month; does not process or manufacture marijuana using chemicals or solvents; and cultivates no more than 1) 250 square feet of plant canopy where located in a single-family dwelling or commercial space; or 2) 125 square feet of plant canopy where located in a dwelling unit within a two-family or multi-family building.

Solar access. Space open to the sun and clear of overhangs or shade, including orientation of buildings and lots to the sun, so as to permit the use of active and/or passive solar energy systems on individual properties.

Solar energy system. A complete assembly consisting of one or more solar collectors and associated mounting hardware or equipment, intended to provide for the collection, storage and distribution of solar energy for heating or cooling, electricity generation, or solar/thermal hot water systems.

- A. Accessory solar energy system. A system as defined above where power generation is incidental to a principal use, which may take the form of either a building integrated or roof-mounted solar array of any size, or a ground-mounted array occupying less than 1,000 square feet of air-space over ground area.
- B. Minor solar energy system. A system as defined above where power generation is considered a principal use, which may take the form of either a building or roof-mounted solar array of any size, or a ground-mounted system occupying between 1,000 and 9,999 square feet of ground area.
- C. Major solar energy system. A system as defined above where power generation is considered a principal use, which may take the form of either

a building or roof-mounted solar array of any size, or a ground-mounted system occupying greater than 10,000 square feet of ground area.

Solar energy system, building-integrated. A solar energy system that is an integral part of a principal or accessory building and include, but are not limited to, photovoltaic or hot water systems that are contained within roofing materials, windows, walls, skylights and awnings.

Solar energy system, ground-mounted. Also known as free-standing solar energy systems, a solar energy system that is structurally mounted to the ground. The panels may be stationary or revolving and of any size.

Solar energy system, roof-mounted. A solar energy system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

Solar energy system, height. The total vertical distance as measured from the average elevation of the finished grade adjacent to the fixed base of the support structure, to the highest part of the system.

Solar energy system, size. The physical size of the panels based on total airspace occupied over the ground, or the grid area for ground mounted arrays. Calculation of physical size may differ from calculation of impervious surface area.

Sounds, impulse. Sound events characterized by brief excursions of sound pressure, each with a duration of less than 1 second.

Sounds, tonal. Sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time.

Special needs independent living unit. A dwelling unit developed and managed by a nonprofit organization for habitation by persons with special social, physical or mental needs beyond strictly economic needs. Such persons shall be provided required levels of supervision, care and/or counseling services appropriate to their special needs, and the services shall be provided by either the sponsoring nonprofit agency or through another entity with which the agency has entered into a contractual arrangement.

Sports complex. One or more facilities located on the same parcel of land where athletic events are held and with a combined seating capacity of at least 6,000 seats.

Stockpiling. Any placement or creation of piles or loads of soil, loam, sand, gravel, rock or other mineral deposits upon a site for the purpose of storage, warehousing or reserving for future use.

Stormwater retention area. A pond or basin used for the permanent storage of stormwater runoff.

Stormwater detention area. A storage area for the temporary storage of stormwater runoff which does not contain water during non-storm conditions.

Stream. A free-flowing body of water from the outlet of the confluence of two perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5-minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within a shoreland area, or any stream designated within a Stream Protection Zone.

Street. A public right-of-way established by or maintained under public authority, or a way dedicated to the use of the public and appearing on the official map of the city.

Street line. The line of demarcation between private property and a public right-of-way.

Street, cul-de-sac or dead end. A street with only one outlet.

Structure. Anything constructed or erected of more than one member having a permanent or semi-permanent location on another structure or in or on the ground, including without limitation buildings, fences, gazebos, signs, antennas, satellite sending or receiving dishes, and swimming pools. Stockpiles shall be considered structures for the purposes of dimensional requirements.

Studios for artists and craftspeople. A facility for the production of arts and crafts products such as paintings, sculpture or other arts, or the practice of arts such as music or dance, or the production of custom handcrafted, or limited production of products such as furniture, wood, clay and metal



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products, publications and similar low impact arts and crafts activities.

Subdivider. Any individual, firm, association, syndicate, partnership, corporation, trust, or any other legal entity commencing proceedings under these regulations to effect a subdivision of land hereunder for himself, herself, or for another.

Subdivision. The division of a lot, tract or parcel of land into 3 or more lots, including lots of forty acres or more, within any 5-year period whether accomplished by sale, lease, development, buildings or otherwise and as further defined in 30 A.M.R.S.A. Section 4401. The term subdivision shall also include the division of a new structure or structures on a tract or parcel of land into 3 or more dwelling units within a 5-year period and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this paragraph. A dwelling unit shall include any part of a structure which, through sale or lease, is intended for human habitation, including single family and multi-family housing condominiums, time share units and apartments.

Subdivision, non-residential. A subdivision which is not intended for human habitation, such as a commercial or industrial subdivision.

Subdivision plat. A plan of the proposed subdivision for presentation to the Planning Board and the public.

Tasting room. A facility for the sampling of beer, wine, spirits, other alcoholic or non-alcoholic beverages, or food.

Telecommunication tower. Radio masts or tower structures built primarily to hold telecommunication antennas.

Temporary wind anemometer tower. A temporary structure which may be installed for no more than two years for data collection purposes and which supports devices for measuring wind speed, direction and other characteristics to assess wind energy potential and design issues for any permanent wind energy installation; often termed “meteorological towers” or “met towers”.

Tenant Any occupant in lawful possession of a rental unit, whether by lease, sublease, or otherwise.

Theater or performance hall. Any establishment devoted to showing motion pictures, or for dramatic, musical, or live performances.

Tract (or parcel) of land. All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

Transient guest. A person who occupies a facility offering accommodations on an overnight basis for compensation and whose actual occupancy is limited to no more than 15 days out of any 60-day period.

Tributary stream. A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. Tributary stream does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

Upland edge of a wetland. The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tied level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation, or where the soils support the growth of wetland vegetation but such vegetation is dominated by woody stems that are six meters or taller.

Use. The purpose for which land or structures thereon is designed, arranged, or intended to be occupied, or for which it is occupied, maintained, rented, or leased.

Utility substation. Any sewage or water pumping station, electric power substation, transformer station, telephone equipment enclosures, or other similar structures owned or operated by a utility.

Vegetation. All live trees, shrubs, ground cover, and other plants including, without limitation, trees both

over and under four inches in diameter, measured at four and one-half feet above ground level.

Very low-income household. A household having an income not exceeding 50% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. section 1437 et seq.

Vicinity sketch. A sketch of the proposed location of a development project or subdivision, not necessarily drawn to scale, showing the proximity of the project to surrounding streets and highways.

Warehousing, storage, and distribution. The storage of goods, wares, and merchandise in a warehouse from which distribution occurs. May include wholesale use, but not retail or direct sales to consumers.

Water body. Any river or stream.

Watercourse. Any natural or artificial stream, river, creek, ditch, channel, swale, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, or which has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or floodwater.

Water-dependent uses. Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and which cannot be located away from these waters.



Wetlands. Those areas which have two or more of the following:

- A. A water table at or near the surface during the growing season;
- B. Very poorly drained soils, including Sebago mucky peat; or
- C. Obligate wetland vegetation.

Very poorly drained soils and obligate wetland vegetation shall be as defined and illustrated in the United States Department of Interior, Fish and Wildlife Service publication of Wetland Plants of the State of Maine (1986).

Wetlands associated with shoreland zones. A freshwater or coastal wetland.

Wind energy system. A wind energy generator and all associated facilities.

- A. Accessory wind energy system. Roof-mounted or freestanding wind energy system measuring no higher than 10' feet above the highest point of the roof or 45' feet for freestanding systems.
- B. Minor wind energy system. Freestanding system measuring between 45' feet and 85' feet in height.
- C. Major wind energy system. Free standing system measuring between 85' feet and 160' feet in height.

Wind energy system, total height. The vertical distance as measured from the average elevation of the finished grade adjacent to the fixed base of the support structure, to the tip of the wind generator blade or any other part of the system at its highest point. Where located on roof tops, the height shall

be the total of the building and the wind energy system taken together.

Wind energy system, useful life. The period for which the system has been designed by the manufacturer to operate in a safe manner, including the period during which new parts and refurbishment allow it to continue operating safely.

Wholesale. Sale for resale, not for direct consumption.

Workforce housing unit for rent. A dwelling unit which:

- A. The rent is affordable to a household earning 100% or less than of AMI
- B. The unit is rented to a household earning 100% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

Workforce housing unit for sale. A dwelling unit for which:

- A. The purchase price is affordable to a household earning 120% or less of AMI;
- B. The unit is sold to a household earning 120% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

4 NONCONFORMING USES, STRUCTURES, & LOTS

4.1 CONTINUATION

Any building, structure, lots, or use, that was legally existing at the time of its creation and made nonconforming by the provisions of this ordinance or any amendment thereto may be continued although such building, structure, lot, or use does not conform with the provisions of this ordinance.

4.2 NONCONFORMING USES

4.2.1 Increase in nonconforming use

- A. A structure whose use is wholly nonconforming shall not be altered so as to increase the cubical content or the extent of nonconformity, except as provided for in (B), below.
- B. A nonconforming use on premises outside of a building shall not be extended or allowed to occupy additional land area.
- C. No alterations, modifications, or additions shall be made so as to increase the cubical content or the degree of nonconforming use, nor shall a nonconforming use be extended to any other part of a structure, unless such extension of a nonconforming use is solely for the purpose of bringing the use into compliance with health or safety codes, or to correct a condition which is determined by the Board of Appeals to constitute a health or safety problem. In either case, the expansion shall be limited to the minimum necessary to accomplish that purpose.
- D. Except as expressly provided herein, any alteration, modification, or addition permitted under this subsection shall be in

compliance with all other applicable sections of this Land Use Code. Nothing within this subsection shall be construed to permit an increase in the number of units in a building which is nonconforming as to the number of dwelling units or will become nonconforming as a result of such alteration, modification, or addition.

4.2.2 Change of nonconforming use

When a nonconforming use has been changed to a permitted use, it shall not thereafter be changed back to any non-permitted use. For purposes of this subsection, a use shall be deemed to have been so changed when an existing nonconforming use is terminated and a permitted use is commenced and continued for a period of seven days. Any change of use in violation of this article shall be deemed to be an abandonment of the lawfully existing nonconforming use. A lawful nonconforming use shall not be changed to any use other than a use permitted in the zone in which the use is located or to any use other than a nonconforming use of a more restricted zone, as set forth in the following schedule, provided that in no such case shall any structural alterations be made in any building except those required by law, ordinance or other regulations:

- A. In a business zone, from any use permitted in an industrial zone to any use permitted in a business zone.
- B. In a B-1 zone, from any use permitted in a B-3 zone to any use permitted in a B-2 zone.
- C. In a residential zone, from any use permitted in a B-2 zone to any use permitted in a B-1 zone.
- D. In a residential zone, from any use permitted in any other residential zone to any use permitted in a more restrictive residence zone. For the

purpose of this subsection, an R-6 zone shall be deemed the least restrictive and an R-2 zone shall be deemed the most restrictive, with the intervening zones restricted in order of zone number.

4.2.3 Discontinuance of use of land for ninety days

A nonconforming use of land where no buildings or only incidental or accessory buildings are employed together with such use shall not be changed to any other nonconforming use, and if such use is discontinued for a period of 90 days, it shall not be reestablished.

4.2.4 Discontinuance of use of property

If a legally nonconforming non-residential use is discontinued for a period of 12 months or if a legally nonconforming residential use is discontinued for a period of 24 months, such discontinuance shall constitute an abandonment of the use and the property shall not thereafter be occupied or used except in conformity with the provisions of this Land Use Code. A nonconforming use of land which is incidental or accessory to such nonconforming use shall be considered as being discontinued at the same time as the nonconforming use of the structure. In cases of foreclosure or similar situations involving a legally nonconforming use, the Planning Authority shall be authorized to extend the aforementioned period up to an additional five years provided that the extension is for good cause and the minimum length considered necessary to resume the legally nonconforming use of the structure. If the Planning Authority extends the period for resuming the nonconforming use, any associated existing nonconformities of structures and land shall also be extended. For buildings in

Shoreland zones, state regulations may also govern and provide for a shorter period of time for nonconforming properties.

4.3 NONCONFORMING LOTS

4.3.1 Undeveloped lots of record

A lot that is unbuildable because it does not meet the space and bulk requirements for the zone in which it is located, shall be considered a buildable lot if it meets the minimum standards provided below:

- A.** The lot is a lot of record as of June 5, 1957, and 013
 - (i) is located in the R-1, R-2, R-3, R-4, R-5, R-5A, or R-6 zones; (ii) can meet the applicable yard dimensions; (iii) has minimum street frontage of 40 feet or has a means of access previously approved by the city council as provided elsewhere in this article; and (iv) has a minimum lot size of 5,000 square feet, or the applicable minimum lot size and frontage in that zone, whichever is less.
- B.** The lot is a lot of record that was described in a subdivision plat approved by the Planning Board after June 5, 1981, and (i) is located in the R-1, R-2, R-3, R-4, R-5, R-5A or R-6 zones; and (ii) can meet the applicable yard dimensions..
- C.** The lot is a lot of record that conformed to the applicable lot size and width requirements and street frontage as of June 5, 1984, and can meet the applicable yard dimensions.
- D.** The lot is a lot of record as of July 15, 1985, and
 - (i) is in the IR-1 or IR-2 zones; (ii) is held under separate and distinct ownership from adjacent lots; (iii) meets the applicable street frontage requirements; (iv) meets the applicable yard dimensions; and (v) can be met and provided further that a lot in the IR-1 zone shall have a minimum area of 10,000 SF and a lot of the IR-

#013

Posted by **john phelan** on **11/22/2019** at **4:57pm**

Type: Observation

Agree: 0, Disagree: 0

That minimum lot size it to small! Cramming houses together destroys the rural character that we need. I very much enjoy seeing the new modern buildings going up on the peninsula but find it abhorrent when the last cow pasture in Portland turns into suburbia.

This is a pretty big lurch from the 2030 plan. I think I need to move

2 zone shall have a minimum area of 6,500 SF unless it is served by both public sewer and public water, in which case it shall have a minimum area of 5,000 SF. A lot in the IR-1, IR-2 and I-B zones that was described in a subdivision plat approved by the Planning Board after July 15, 1982, shall be considered a buildable lot, provided that the applicable yard dimensions can be met.

- E. Contiguous lots of record under common ownership shall be deemed to be separate lots, provided that they either meet the minimum lot area and minimum frontage of the zone in which they are located, or the minimum applicable standards of this subsection. Any nonconformities of structures and buildings, existing prior to June 5, 1957, on developed lots of record shall be considered lawfully existing nonconformities.

4.4 NONCONFORMING BUILDINGS/STRUCTURES

4.4.1 Restoration or reconstruction

A nonconforming structure damaged by fire, explosion, flood, riot, act of the public enemy, accident of any kind, decay or otherwise may be maintained, repaired, reconstructed, restored or rebuilt only where:

- A. The restoration or reconstruction is of a building which is lawfully nonconforming only as to lot area, setbacks, or any other dimensional requirements; and
- B. Where the restoration or reconstruction will occur entirely within the existing footprint and previous shell of the building and where no alterations, modifications, or additions will be made except as provided in this article and as permitted in subsection 4.4.3; and

- C. Restoration or reconstruction is commenced within one year for a nonconforming non-residential structure, or two years for a nonconforming residential structure, of the initial damage where such damage is sudden and accidental and is diligently pursued to completion without expiration of permits. For buildings in Shoreland zones, state regulations may also govern and provide for a shorter period for restoration or reconstruction of non-conforming structures; and
- D. Restoration or reconstruction necessitated by decay must be commenced within one year of the demolition of the building and diligently pursued to completion without expiration of permits; and
- E. Any reconstruction, under this provision, in the R-6 zone on a lot with 10,000 square feet or less, other than the exact restoration of a previously existing building on the site, shall comply with the applicable standards contained within the City of Portland Design Manual; and

4.4.2 Alteration or modification

Alteration or modification may be made to a building which is lawfully nonconforming as to space and bulk or any dimensional requirement where the proposed changes in existing exterior walls and/or roofs would be within the space occupied by the existing shell of the building, and would not create any new nonconformity nor increase any existing nonconformity, except as provided elsewhere in this article, and as permitted under 4.4.3. This subsection shall not apply to buildings located within shoreland zones and existing on June 15, 1992, which are nonconforming only as to setbacks from wetlands, tributary streams

or other water bodies, which shall be regulated in accordance with Subsection 4.4.4.

4.4.3 Building extensions

Existing principal buildings which are lawfully nonconforming as to dimensional requirements may be enlarged subject to the following provisions:

- A.** No modification to an existing nonconforming building shall increase any existing nonconformity of a lot, use or structure, except as provided in (D) below.
- B.** No modification to an existing nonconforming building shall create new noncompliance with any provision of this Land Use Code.
- C.** Existing buildings that are lawfully nonconforming as to required minimum setbacks may be vertically or horizontally expanded provided the area of expansion meets all current dimensional requirements, except as provided in (D) below.
- D.** A vertical expansion above a portion of a building that is lawfully nonconforming as to minimum setbacks may be permitted a one-time increase of one additional story provided:
 - 1. No portion of the expansion horizontally extends beyond the nonconforming portion of the first story of the structure.
 - 2. Any portion of a vertical expansion above the permitted one additional story shall meet the required minimum setback.

4.4.4 Expansions in the Shoreland zone

A non-conforming structure may be added to or expanded if such addition or expansion does not increase the nonconformity of the structure and is in accordance with the following provisions:

- A.** After January 1, 1989, if any portion of a structure is less than the required setback from

the normal high water line of a water body or tributary stream or the upland edge of a wetland that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Subsection 4.2.1, and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.

- B.** Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by Building Authority, basing its decision the criteria specified in subsection (C) below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with subsection (A) above, and the foundation does not cause the structure to be elevated by more than three additional feet as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.
- C.** A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located, provided that the site of the relocation conforms to all setback requirements to the greatest practical extent as determined by the Building Authority, and provided that the applicant demonstrates that

the present subsurface sewage disposal system meets the requirements of state law, the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with state law, such rules, and all applicable sections of the City of Portland Code of Ordinances. In no event shall a structure be relocated in a manner that causes the structure to be more nonconforming. In determining whether the building relocation meets the setback requirements to the greatest practical extent, the Building Authority shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of septic system and other on site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback are in order to relocate a structure, the Building Authority shall require replanting of native vegetation to compensate for the destroyed vegetation. In addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

1. Trees removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.
 2. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.
 3. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.
- D.** Buildings in existence on January 1, 1989, and located in Shoreland zones may be expanded once during the lifetime of the structure up to 25 feet toward a freshwater wetland or tributary stream, provided that a minimum setback of 40 feet is maintained and that the existing floor area or volume is not increased by more than 30%, and shall not create any undue environmental impact or flood prone condition.

4.4.5 Nonconformity as to number of dwelling units

- A. Purpose.** The purpose of this provision is to establish a process whereby certain dwellings which contain more dwelling units than the number permitted by the applicable provisions of the Land Use Code may be recognized as legal, nonconforming uses.
- B. Application.** Application for validation of such nonconforming dwelling units shall be on a form provided by the Building Authority. The application fee will be \$300.00 for each dwelling unit which is the subject of the application, and will be accompanied by:

1. A plan, drawn to scale, which shows the location of the building(s) on the lot, parking, easements, dumpsters, fencing, public ways and any other significant feature, and
2. A floor plan for each unit in the dwelling, whether or not it is the subject of the application.

C. Eligibility. In order for a nonconforming dwelling unit to be validated by administrative action of the Building Authority as authorized herein, the Building Authority must find, based on competent evidence, supported by public records, that:

1. The nonconforming dwelling units were either in existence April 1, 2005, or the structure in which they are located was originally designed to accommodate more than the number of such units presently in use;
2. The applicant neither constructed nor established the non-conforming dwelling units;
3. The nonconforming dwelling units comply with or can be made to comply with current standards of Chapter 10 of the City of Portland Code of Ordinances, including the National Fire Protection Association Life Safety Code and the National Fire Protection Association 1: Fire Prevention Code, as amended;
4. Each of the nonconforming dwelling units complies with, or can be made to comply with, provisions of the Chapter 6 of the City of Portland Code of Ordinances, as amended, including, but not limited to, the minimum standards for space and occupancy, the minimum plumbing

standards, and the minimum ventilation standards.

5. The structure containing the nonconforming dwelling units is located in the R-3, R-4, R-5/R-5A, R-6/R-6A, R-7, B-1, B-2/B-2b/B-2c, and IS-FBC zones.

In the absence of legally competent evidence, supported by records, (such as, but not limited to, Assessor's records, purchase and sale agreements, affidavits, deeds, mortgages, as well as reliable secondary sources)), that the conditions of subsections C(1), C(2), c(3), C(4), or C(5) can be met, the Building Authority may not approve the application, but shall advise the applicant that the matter may be appealed to the Board of Appeals.

Notice to abutters. Upon receipt of a completed application, the Building Authority will provide the owners of abutting properties and the owners of property situated within 300 feet of the structure notice of the application, along with a notice that they may object to the Building Authority's acting on the application and require the applicant to appeal to the Board of Appeals. The notice shall advise the abutters and owners of property within 300 feet that any objection must be submitted in writing to the Building Authority within 10 days of the date of the notice sent to them. The failure of any property owner to receive the notice described above shall not invalidate any action by the Building Authority. The Building Authority shall promptly notify the applicant of receipt of the objection, that the Building Authority is without authority to proceed, and advise the applicant that, within 30 days from receipt of the letter, an application may be filed

to have the matter reviewed by the Board of Appeals as a conditional use.

- D. Approval of application.** The Building Authority may approve the application, provided that the evidence presented satisfies all of the requirements of this section and provided that no abutter nor person entitled to notice has requested that the application be referred to the Board of Appeals, instead of the Building Authority. Upon approval of the application, final inspection by the Building Authority certifying the units as in compliance with all applicable codes, and receipt of an additional fee in the amount of \$100.00 for each nonconforming dwelling unit which has been recognized as a lawful, nonconforming use, the Building Authority will issue a certificate of occupancy.
- E. Disapproval of application.** In the event the application is not approved by the Building Authority or in the event of a timely objection filed by a person qualified herein to file such an objection, the applicant, within 30 days from the decision of the Building Authority or objection, may appeal the matter to the Board of Appeals as a conditional use.
- F. Action by Board of Appeals.** The Board of Appeals shall treat applications filed under this subsection as an application for a conditional use, applying the standards applicable to conditional uses as well as the requirements of this subsection.
- G. Dimensional and parking requirements.** In making decisions under this subsection, neither the Building Authority nor the Board of Appeals shall apply the dimensional or parking requirements which would otherwise apply in

the zones where the nonconforming dwelling units are situated.

- H. Exclusions.** The provisions of this subsection shall not apply to rooming units, but shall apply to efficiency apartments under Chapter 6 of the City of Portland Code of Ordinances. The Board of Appeals is without jurisdiction to grant any relief (including, but not limited to, variances) which would recognize the particular dwelling units which are the subject of this subsection as legal, nonconforming uses, except in strict compliance with each requirement of this subsection.
- I. Prior judicial and administrative action.** Decisions of any court or administrative body, including but not limited to, the Building Authority, the Planning Board, or the Board of Appeals, made prior to the effective date of this subsection and which addressed the number of nonconforming dwelling units in a particular structure, will not bar relief under this subsection.

4.4.6 Enclosure of porches in required setbacks

Any open porch existing with a roof over the same on June 5, 1957, and encroaching upon any setback required by this article may be enclosed if the major portion of the enclosure is of glass.

4.5 NONCONFORMITY AS TO OFF STREET LOADING

A building which is nonconforming as to the requirements for off-street loading shall not be enlarged or added to, unless off street loading is provided sufficient to satisfy the requirements of Article 18 for both the addition or enlargement and the original building or structure.



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1 INTRODUCTORY PROVISIONS

1.1 TITLE

The title of this Chapter is the City of Portland Land Use Code and is referred to as the City of Portland Land Use Code or the Land Use Code.

1.2 ZONING MAP

The City of Portland Zoning Map is incorporated by reference.

1.3 PURPOSE

The intent of the Land Use Code is to protect the health, safety, and general welfare of the residents of Portland, consistent with the City's Comprehensive Plan, through standards that govern the orderly and compatible use of land, the form and mass of buildings, ~~and~~ the relationship of ~~private~~ development to the public realm, ~~and~~ Portland's open spaces, and the environment.

1.4 APPLICABILITY

No building or structure shall be erected, structurally altered, enlarged, repaired, moved, rebuilt, or used, and no land shall be sold, leased, conveyed, used, developed, or altered except in conformity with the provisions of this Land Use Code.

1.5 ENFORCEMENT

1.5.1 Enforcement

The Building Authority and/or a City of Portland Code Enforcement Officer is authorized to institute or cause to be instituted by the Corporation Counsel in the name of the City any and all actions, legal or equitable, that may be appropriate or necessary for the enforcement of the Land Use Code.

1.5.2 Violations

Any person being the owner or occupant of, having control of, or having the use of any building or

premises or part thereof, who violates any of the provisions of this Land Use Code, shall be guilty of an offense and subject to the penalties and remedies provided in Section 1-15 of the City of Portland Code of Ordinances and 30-A M.R.S. § 4452.

1.6 RELATIONSHIP WITH OTHER LAWS

1.6.1 Federal and state law

Where conditions, standards, or requirements imposed by any provision of this Land Use Code are found to be inconsistent with a provision listed in the law or regulations of the State of Maine or federal government, the more restrictive provision shall control.

1.6.2 City of Portland Land Use Code

If any provision of this Land Use Code contains an actual, implied, or apparent conflict with another provision of this Code, the more restrictive provision shall control.

1.6.3 Fair Housing accommodation

The City of Portland may make reasonable modifications to the requirements of the Land Use Code to accommodate the needs of persons with disabilities as so defined in Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

1.6.4 Comprehensive Plan

The Comprehensive Plan serves as the basic policy guide for this Land Use Code. Amendments to this Land Use Code shall be generally consistent with the current Comprehensive Plan.

1.6.5 Current versions and citations

All references to other regulations or manuals in this Land Use Code refer to the most current version and citation for those regulations or manuals, unless expressly indicated otherwise. When the referenced regulations or documents have been repealed and not

replaced by other regulations or manuals, Land Use Code requirements for compliance are no longer in effect.

1.6.6 Private agreement

This Land Use Code does not nullify any private agreement or covenant. However, where this Code is more restrictive than a private agreement or covenant, this Code controls. The City does not enforce private agreements.

1.7 DELEGATION OF AUTHORITY

Whenever a provision requires the head of a department to perform an act or duty, that provision will be interpreted as authorizing the department head or officer to delegate that responsibility to others over whom he or she has authority.

1.8 RULES OF INTERPRETATION

1.8.1 Meaning of words and terms

All words and terms shall have the meanings shown in Article 3, unless otherwise expressly stated. For words or terms not specifically defined in this Land Use Code, they are interpreted by their common dictionary meaning or customary usage consistent with their context.

1.8.2 Graphics and illustrations

Graphics and illustrations are included to illustrate the intent of the text. In the case of a conflict between the text and any graphic or illustration, the text controls.

1.8.3 Lists and examples

Unless otherwise expressly indicated, lists of items or examples that use “including,” “such as,” or similar terms are intended to provide examples only, and shall not be construed as being limited to the items or examples listed.

1.8.4 Time

When a number of days is specified as a period from a certain day within which or after or before which an act is authorized or required to be completed, time is computed as the number of calendar days excluding the calendar day when the act is authorized or required to be completed. Business days shall be interpreted as days on which the City of Portland is open for business.

1.8.5 Fractions

Any fraction greater than or equal to 0.5 will be rounded up to the nearest whole number. Any fraction less than 0.5 will be rounded down to the nearest whole number.

1.8.6 Obligatory terms and conjunctions

The terms in the text of the Land Use Code shall be interpreted in accordance with the following rules of construction:

- A. The terms “must”, “shall”, or “will” are mandatory terms that express a requirement or impose an obligation.
- B. The terms “must not”, “shall not”, “will not”, and “may not” express a prohibition.
- C. The term “should” expresses a recommendation or suggestion and does not express a requirement or imposition.
- D. The term “may” is permissive and does not express a requirement or imposition.
- E. The conjunction “and” indicates that all connected words or provisions apply.
- F. The conjunction “or” indicates that the connected words or provisions may apply singly or in any combination.
- G. The conjunction “either [...] or” indicates that the connected words or provisions apply singly, but not in combination.

1.8.7 Gender

Words denoting one gender apply to all genders.

1.8.8 Abbreviations

Building Authority. Either the Director of the Department of Permitting and Inspections or his/her designee.

Council. The Portland City Council.

Planning Authority. Either the Director of the Department of Planning and Urban Development or his/her designee.

Public Works Authority. Either the Director of the Department of Public Works or his/her designee.

1.9 AMENDMENTS

1.9.1 Authority

The City Council may amend this Land Use Code and the Zoning Map incorporated herein.

1.9.2 Procedure

A. Application. An application for a text or Zoning Map amendment shall be filed with the Planning Authority. A payment of a nonrefundable application fee, as established by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. Once it is determined that the application is complete, the Planning Authority shall give a dated receipt to the applicant and, in the case of a map amendment, shall notify, by mail, all property owners within the limits of the proposed zoning map amendment and all property owners 500 feet beyond said area, except that for map amendments to a site located within industrial zone designations the notice range shall be 1,000 feet. The notice hereunder shall include a brief description of the application, the address or location of the property involved, and contact

information where additional information may be obtained. The cost of noticing shall be charged to the applicant.

- B. Required neighborhood meeting.** A private applicant for a map amendment that would permit a development subject to major site plan review, shall conduct neighborhood outreach according to the provisions for neighborhood outreach under Article 13.
- C.** The Planning Authority shall review the application against the standards of this article and make a recommendation to the Planning Board.
- D.** The Planning Board shall hold a public hearing in accordance with the provisions of Article 2 and make a recommendation to adopt, adopt with modifications, or not adopt the proposed map or text amendment, and forward the recommendation to the City Council.
- E.** The City Council shall review the proposed amendment and determine whether and how to amend the Land Use Code or Zoning Map.

1.9.3 Review standards

Except as otherwise required by law, amendments to the City's Land Use Code shall be pursuant to and consistent with the Comprehensive Plan.

1.10 TRANSITION RULES

1.10.1 Existing uses

- A.** A permitted use established prior to the effective date of the Land Use Code that is now classified as a conditional use shall be deemed a lawful conditional use. Any subsequent addition, enlargement, or expansion of that use shall conform to the procedural and substantive requirements for conditional uses in Article 6.
- B.** A permitted or conditional use established prior to the effective date of this Code that is now classified as a prohibited use shall be deemed a



INTRODUCTORY PROVISIONS

nonconforming use and is controlled by the provisions of Article 4.

1.10.2 Continuation

In the event that a use, lot, structure, sign, or site feature, deemed legally conforming prior to the effective date of the Land Use Code no longer meets all standards set forth in the Land Use Code, that use, lot, structure, sign, or site feature shall now be deemed non-conforming and shall be controlled by the provisions of Article 4.

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2 ADMINISTRATION

2.1 PLANNING BOARD

2.1.1 Composition

There shall be a Planning Board of seven members. Members of the Planning Board shall be residents of the city and shall not be officers or employees of the city. Members shall serve without compensation.

2.1.2 Appointments

- A. **Terms.** The members of the Planning Board shall be appointed by the City Council for terms of three years. Such members shall serve until their successors are duly ~~appointed~~ and qualified. Such terms shall be staggered so that the terms of not more than three members shall expire in any calendar year; providing, however, such service shall not extend to over 120 days after expiration of their term.
- B. **Vacancies.** Permanent vacancies on the Planning Board shall be filled by the City Council, in the same manner as other appointments hereunder, for the unexpired term of the former member.

2.1.3 Removal of members

Any member of the Planning Board may be removed for cause by the City Council at any time, provided, however, that before any such removal, such member shall be given an opportunity to be heard in his or her own defense at a public hearing.

2.1.4 Officers

- A. **Chair.** The members of the Planning Board shall annually elect one of their number as chair to preside at all meetings and hearings and to

fulfill the customary functions of that office.

The chair may administer oaths. ~~The chair shall have the right, upon request, to designate any person or organization as a specially interested party for purposes of offering evidence and conducting cross-examination at hearings.~~

- B. **Vice chair.** The members of the Planning Board shall annually elect one of their number as vice chair. In the absence of the chair, the vice chair shall act as chair and shall have all the powers of the chair. The vice chair shall have such other powers and duties as may be provided by the rules of the Planning Board.

2.1.5 Committees

The chair of the Planning Board shall assign the members of the Board to such regular and special committees as may be established by the Board. Such committees shall have no final authority but shall assist the Board in the conduct of its business by making recommendations to it concerning such specific items as may be assigned to them for study and report. The Board shall adopt such rules as it shall deem appropriate to govern the organization and operation of its committees. Committee meetings deliberative in nature shall be open to the public in accordance with Title 1, M.R.S.A., Section 401 et seq.

2.1.6 Quorum and necessary vote

As to any matter requiring a hearing, no business shall be transacted by the Planning Board without a quorum, consisting of four members, being present. The ~~concurring~~ vote of at least four members shall be necessary to authorize any action by the Board. If less than a quorum is present, the hearing may be adjourned for a period not exceeding three weeks

at any one time. The Planning Authority staff shall notify in writing all members of the date of the adjourned hearing and shall notify such other interested parties as may be directed in the vote of adjournment.

2.1.7 Conflicts

No member of the Planning Board shall participate in the hearing or disposition of any matter in which he or she has an interest. Any question of whether a member has a conflict of interest sufficient for ~~member~~ a member to be recused shall be decided by a majority vote of the members present, except the member whose possible conflict is being examined; where such vote results in a tie, the subject member shall be recused from the matter.

2.1.8 Meetings and procedures

A. Meetings. Regular meetings of the Planning Board shall be held at the call of the chair or as provided by rule of the Board. Special meetings may be called by the chair or any four members of the Board or at the request of the City Council.

1. Workshops of the Planning Board or any of its committees may be held at the call of the Board or committee chair, as the case may be, for the presentation of information by the Director of the Department of Planning & Urban Development, his or her staff, an applicant, or others. These meetings will be open for public comment according to the rules of the Planning Board. Such meetings, unless open to the public as provided in Title 1, M.R.S.A., Section 401 et seq. shall be

informational only and shall not ~~be deliberative in nature, shall not be used by the Board or committee for the weighing of positions or reasons for or against a proposition, and shall not be used by the Board or committee for the formulation of tentative or result in~~ final decisions on any matter.

2. Public hearings shall be held as required by the various statutes, codes, and ordinances pursuant to which matters are brought before the Planning Board and shall be conducted in accordance with relevant state law, the Land Use Code, and the rules of the Board.

B. Notice. The Planning Authority shall give notice of the time and place of public workshops and hearings, including a brief description of the application(s) to be considered, as follows:

1. Site plan and subdivision. Notice shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two times, the date of the first publication to be at least 10 calendar days prior to the workshop or hearing. Notice shall also be sent by regular United States mail at least 10 calendar days in advance of the workshop or hearing date to the applicant, the owner(s) of the subject property, and all owners of property located within 500 feet of the subject property, except that for subdivisions within industrial zones the notice range shall be 1,000 feet.

2. **Land Use Code or Zoning Map amendment.** Notice of public hearing shall be publicly posted at least 13 days before the public hearing on such application. In addition, notice of said public hearing must be published at least two times in a newspaper of general circulation in the City of Portland. The date of the first publication must be at least 12 days prior to any public hearing and the date of the second publication must be at least seven days prior to the public hearing. For map amendments, notice shall be sent by regular United States mail to at least 10 calendar days in advance of the workshop or hearing date to all property owners within the area proposed for rezoning and all property owners 500 feet beyond said area, except that rezoning to industrial zone designations the notice range shall be 1,000 feet.
3. **Contract or conditional zoning.** Notice of public hearing shall be posted in the City Clerk's office at least 13 days prior to the public hearing and shall be published in a newspaper of general circulation within the city at least two times, the date of the first publication to be at least seven days prior to the hearing. Notice shall also be sent to the owners of all property abutting the property to be rezoned at their last known address. This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned.

The cost of noticing shall be charged to the applicant.

- B. **Procedures.** The Planning Board shall adopt its own rules for the conduct of its business not inconsistent with the statutes of the state and this article. Such rules shall be filed with the Planning Authority and with the City Clerk. Any and all rule changes shall be placed on a City Council public agenda as a communication requiring a public hearing. Any rule may be vetoed, in whole or in part, by order of the Council within 45 days of the date of filing with the City Clerk. No rules change shall take effect until that time period has elapsed. If a part of a rule is vetoed, the remainder shall continue in effect. Any rule so adopted, which is not required by the statutes of the state or by this article, may be waived by the chair upon good cause being shown. Except as otherwise provided in [subsection 2.1.8.A.1](#), all meetings, hearings, and deliberations of the Planning Board and its committees shall be open to the public in accordance with Title 1, M.R.S.A., Section 401 et seq. Testimony at any hearing may be required by the Planning Board to be given under oath.

- C. **Keeping of records.** The Director of the Department of Planning & Urban Development shall designate a member of his or her staff who shall attend all Planning Board proceedings. The staff shall provide for the keeping of minutes of the proceedings of the Board, showing the vote of each member on every question, or his or her absence or failure to vote, and shall maintain the permanent records and decisions of all Board meetings, hearings, and proceedings and all correspondence of the Board, as required by statute. Such records shall be public records

open to inspection during working hours upon reasonable notice.

2.1.9 Record and decisions

- A. **Record.** The minutes of the staff, and the transcript if one is made, and all exhibits, papers, applications, and requests filed in any proceeding before the Planning Board and the decision of the Board shall constitute the record.
- B. **Decision.** Every final decision of the Planning Board and every recommendation of the Planning Board to the City Council shall include written findings of fact, and shall specify the reason or reasons for such decision or recommendation. The Planning Authority shall mail notice of any decision of the Planning Board to the applicant.

2.1.10 Jurisdiction and authority

In addition to the jurisdiction conferred on it by other provisions of state law and the ordinances of the city and in accordance therewith, the Planning Board shall have the following jurisdiction and authority:

- A. To prepare and recommend a Comprehensive Plan to the City Council;
- B. To prepare and recommend to the City Council changes in and amendments to the Comprehensive Plan;
- C. To aid and assist the City Council and departments and agencies of the city in implementing general plans and in planning, developing, and completing specific projects;
- D. To hear, review and approve, conditionally approve, or deny master development plans and major site plans;
- E. To hear, review and approve, conditionally approve, or deny applications for subdivision approval;
- F. To hear, review, and approve or deny applications for conditional uses listed in Article 6;
- G. To hear, review, and offer its recommendations to the City Council on applications for amendments to, or revisions of, this Land Use Code;
- H. To review and offer its recommendations to the City Council on certain public projects;
- I. To review and approve, conditionally approve, or disapprove site plans for regulated projects in shoreland areas;
- J. To prepare and offer its recommendations to the City Council with regard to the city's annual Capital Improvement Program;
- K. Upon reasonable request, to make its special knowledge and expertise available to any official, department, Board, or agency of the city, county, state, or federal governments to aid them in the performance of their respective duties relating to the planning and development of the city and its region, including request from the City Council to review proposed developments in which the developer does not have the right, title, or interest in all the property necessary for the proposed development because some or all of that property is owned by the City;
- L. To make such investigations, maps and reports, and recommendations in connection therewith,

relating to the planning and development of the city as seem desirable;

- M. To employ or contract with such experts and other assistants as may be necessary or convenient to carry out its duties hereunder and to pay for their services and for such other expenses as may be necessary and proper; provided, however, that such expenditures shall not exceed such funds as may be appropriated for such purposes by the City Council;
- N. To hear, review, and offer its recommendations to the City Council on petitions for street vacations and discontinuances; and
- O. To hear, review, and decide appeals where it is alleged there is an error in any decision, requirement, or determination made by the Planning Authority ~~or Historic Preservation Board.~~

2.1.11 Administrative appeal procedures

- A. **Notice of appeal.** An appeal may be taken to the Planning Board by any person affected by a decision of the Planning Authority. Such appeal shall be taken within 30 days of the action complained of by filing with the Planning Authority a notice of appeal specifying the grounds thereof. The notice shall be in such form as specified by the Planning Authority. A payment of a nonrefundable filing fee, as established by the City Council to cover administrative costs and costs of hearing, shall accompany notice of appeal. The Planning Authority shall forthwith transmit to the ~~reviewing-Planning~~ Board all of the papers constituting the record upon which the action appealed from was taken.
- B. **Public hearing.** A public hearing shall be set, advertised and conducted by the ~~reviewing~~

~~Planning~~ Boards in accordance with the provisions of this article.

- C. **Action.** Within 30 days following the close of the public hearing, the ~~reviewing-Planning~~ Board shall render a decision on the appeal in the manner and form specified in the provisions of this article and the statutes of the state. The failure of the Board to act within 30 days shall be deemed an approval of the appeal unless mutually extended in writing by the appellant and the Board. Within five days of such decision or failure to act notice thereof shall be mailed to each party.
- D. **Conditions and limitations.** Any right granted by the reviewing Board on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

2.1.12 Appeals

An appeal from any final decision of the Planning Board as to any matter over which it has final authority may be taken by any party or by any authorized officer or agent of the city to the superior court in accordance with Rule 80B of the Maine Rules of Civil Procedure. No appeal shall lie concerning any matter as to which the power of the Board is limited to the making of a recommendation.

2.2 HISTORIC PRESERVATION BOARD

2.2.1 Composition

The Historic Preservation Board shall consist of seven voting members who shall serve without compensation. ~~Members shall not be officers or employees of the city.~~ Members shall have demonstrated interest, knowledge, ability, experience or expertise in restoration,

rehabilitation, or neighborhood conservation or revitalization and shall be residents of the city.

2.2.2 Appointments

- A. **Terms.** Members shall be appointed by the Council for terms of three years. Appointments shall be staggered so that the terms of not more than three members expire in any calendar year. Members may serve for three consecutive three-year terms.
- B. **Vacancies.** Vacancies on the Historic Preservation Board shall be filled within 60 days. However, every member shall continue in office after expiration of the term until a successor has been appointed. Vacancies on the Historic Preservation Board shall be filled for the unexpired term of the former member.

2.2.3 Removal of members

Members may be removed for cause by the Council. Cause shall include, but is not limited to, the failure to attend meetings without good cause. Any member proposed to be removed shall be given written notice and an opportunity to be heard prior to final action.

2.2.4 Officers

- A. **Election and terms.** Officers of the Historic Preservation Board shall consist of a chair and vice chair. Officers shall be elected by the Historic Preservation Board and shall serve a term of one year and shall be eligible for re-election.
- B. **Chair.** The chair shall preside at all meetings and hearings and fulfill the customary functions of that office.

- C. **Vice chair.** In the absence of the chair, the vice chair shall act as chair and shall have all the powers of the chair. The vice chair shall have such other powers and duties as may be provided by the rules of the Historic Preservation Board.

2.2.5 Conflicts

No member of the Historic Preservation Board shall participate in the hearing or disposition of any matter in which he or she has an interest.

2.2.6 Meetings and procedures

- A. **Meetings.** Regular meetings of the Historic Preservation Board shall be held no less frequently than monthly. Special meetings may be called by the chair or any four members or at the request of the chair of the Planning Board.
- B. **Notice.** The Planning Authority shall give notice of the time and place of Historic Preservation Board public workshops and hearings, including a brief description of the application(s) to be considered, as follows:
 1. Landmark or district nomination. Notice shall be given to the general public by publication in a newspaper of general circulation in the City of Portland at least two times, the date of the first publication to be at least 10 calendar days prior to the workshop or hearing. Notice shall be sent by regular United States mail at least 10 calendar days in advance of the workshop or hearing date to the applicant and to the owner(s) of the subject property or properties.

2. Certificate of appropriateness review. Notice shall be given to all property owners within 100 feet of the property at least seven days prior to the date of the workshop or public hearing.
3. Major site plan review. For alteration or new construction that is classified as a major site plan under Article 13, notice shall be given to all property owners within 500 feet of the property at least seven days prior to the date of the workshop or hearing.

The cost of noticing shall be charged to the applicant.

- C. Procedures.** The Historic Preservation Board may adopt procedural rules for the conduct of its business not inconsistent with this article, including the creation of a subcommittee structure to enhance efficiency in consideration of Historic Preservation Board business. Such rules shall be filed with the Planning Authority and with the City Clerk. All such rules shall be subject to veto, in whole or in part, by the Council within 45 days of such filing. The initial rules shall take effect when filed, subject to veto as provided above. Amendments to the rules shall take effect upon expiration of said veto period. Any rule may be waived by the chair upon good cause being shown.

2.2.7 Record and decisions

- A.** The Director of the Department of Planning & Urban Development or his or her designated staff representative shall attend all its meetings. The staff shall provide for the keeping of tape recordings or minutes of the proceedings of

the Historic Preservation Board, showing the vote of each member on every question or his or her absence or failure to vote, and shall maintain the records and decisions of all meetings, hearings, and proceedings and all correspondence of the Historic Preservation Board. Copies of permanent records shall be filed with the City Clerk. Staff shall publish and distribute copies of the records, reports, and decisions of the Historic Preservation Board to Historic Preservation Board members and to others upon approval of the Historic Preservation Board.

- B.** No final action shall be taken by the Historic Preservation Board which could in any manner deprive or restrict the owner of a property in its use, alteration, maintenance, disposition or demolition, until such owner either has knowledge of the proceeding or is sent notice offering opportunity to be heard. This paragraph shall not affect the interim protection provisions of Section 16.5.
- C.** Every recommendation or recommended decision of the Historic Preservation Board shall include written findings of fact and shall specify the reason or reasons for such action.
- D.** Staff shall mail notice of any final ~~action~~ determination or recommendation of the Historic Preservation Board to the applicant and property owner(s).

2.2.8 Responsibilities

The Historic Preservation Board shall have the following responsibilities:

- A.** To conduct or administer an ongoing survey to identify historically, culturally, architecturally

- and archaeologically significant areas, sites, structures and objects;
- B. To review all areas, sites, structures, and objects listed in the National Register of Historic Places, including the boundaries of areas so listed, and make recommendations to the Planning Board and Council for the designation of those areas, sites, structures and objects as local landmarks or districts;
- C. To investigate and recommend to the Planning Board and Council the designation of areas, sites, structures, and objects not listed in the National Register of Historic Places as local landmarks and districts and to make recommendations to the Planning Board concerning sites, structures, and objects that have contributing significance or are intrusions within nominated or designated districts;
- D. To keep and make available to the public a register of all areas, sites, structures, and objects that have been designated as landmarks or districts, including all information required as part of each designation;
- E. Upon request, to advise and assist owners of landmarks and property, sites, structures or objects within districts on physical and financial aspects of preservation, renovation, rehabilitation and reuse and for procedures for inclusion on other registers of significant areas, sites, structures and objects, including the National Register of Historic Places;
- F. To recommend to the Planning Board the nomination of areas, sites, structures, and objects to the National Register of Historic Places or to any State of Maine Register of Historic Places that may be established;
- G. To participate in the Certified Local Government Program of the National Historic Preservation Act Amendments of 1980 and the Maine Historic Preservation Commission; and carry out any responsibilities delegated to it under that program, including review and comment on any National Register nominations submitted to the Historic Preservation Board.
- H. To seek funding for which the City of Portland is eligible through the Certified Local Government Program to assist in local preservation projects, including projects undertaken by local non-profit organizations;
- I. To, upon request by the Council, participate in any review of federal actions or undertakings pursuant to Section 106 of the National Historic Preservation Act; attend informational and educational programs sponsored by the Maine Historic Preservation Commission; and prepare an annual report of the activities of the Historic Preservation Board;
- J. To inform and educate the citizens of Portland concerning the cultural, historic, architectural and archeological heritage of the city by publishing appropriate maps, newsletters, brochures and pamphlets and by sponsoring programs and seminars;
- K. To hold meetings and public hearings to review applications for certificates of appropriateness affecting proposed or designated landmarks and districts; to recommend approval or disapproval of certificates of appropriateness;
- L. To provide testimony to the Board of Appeals in connection with any application for a certificate of economic hardship;

- M. To develop design guidelines affecting landmarks or districts for review and approval by the Planning Board;
- N. To advise the Planning Board as to recommendations on any preservation or conservation easements that the City of Portland may have or be offered as a gift or otherwise;
- O. To advise the Planning Board as to the administration of such gifts, grants and money as may be appropriated for the purposes of this article upon authorization and approval by the Council;
- P. To provide comment, as appropriate, to the Planning Board and/or City Council on matters pertaining to historic preservation in Portland;
- Q. To confer recognition upon the owners of landmarks or properties, sites, structures or objects within districts by means of certificates, plaques or markers;
- R. To assist the Planning Board in the development of a preservation component in the Comprehensive Plan of the City of Portland; and
- S. To periodically review the Land Use Code and to make recommendations to the Planning Board concerning any amendments appropriate for the protection and continued use of landmarks or properties, sites, structures or objects within districts.

2.3 ZONING BOARD OF APPEALS

2.3.1 Composition

There shall be a Board of Appeals of seven members. Members of the Board shall be residents of the city and shall not be officers or employees of

the city or any of its agencies or departments. Members shall serve without compensation.

2.3.2 Appointments

- A. **Terms.** The members of the Board of Appeals shall be appointed by the City Council for terms of three years. Terms shall be staggered so that the terms of no more than three members shall expire in any calendar year. Such members shall serve until their successors are duly elected and qualified provided, however, that such service shall not extend to over one hundred 120 days after expiration of their term.
- B. **Vacancies.** Permanent vacancies on the Board of Appeals shall be filled by the City Council, in the same manner as other appointments under this article, for the unexpired term of a former member whose place has become vacant.

2.3.3 Removal of members

Any member of the Board of Appeals may be removed for cause by the City Council at any time; provided, however, that before any such removal, such member shall be given an opportunity to be heard in his/her own defense at a public hearing.

2.3.4 Officers

- A. **Chair.** The members of the Board of Appeals shall annually elect one of their number as chair to preside at all meetings and hearings and to fulfill the customary functions of that office.
- B. **Secretary.** The members of the Board of Appeals shall annually elect one of their number as secretary. In the absence of the chair, the secretary shall act as chair and shall have all the powers of the chair. The secretary shall fulfill the duties provided by statute and

this article and have such other duties as may be provided by the rules of the Board.

- C. **Pro tempore officers.** In the absence of both the chair and the secretary, the Board shall elect a chair pro tempore from among its number and the chair pro tempore shall have all the powers of the chair during the chair's and the secretary's absence. In the absence of the secretary, or when the secretary is serving as chair, the Board shall elect a secretary pro tempore from among its number and the secretary pro tempore shall have all the powers of the secretary during the secretary's absence or service as chair.

2.3.5 Quorum and necessary vote

No business shall be transacted by the Board of Appeals without a quorum, consisting of four members, being present. The concurring vote of at least four members of the Board shall be necessary to grant any request or application or to sustain any appeal. Any matter that receives fewer than four votes shall be deemed to have been denied.

2.3.6 Conflicts

No member of the Board of Appeals shall participate in the hearing or disposition of any matter in which he or she has an interest. Any question of whether a member has a conflict of interest sufficient to disqualify him shall be decided by a majority vote of the members, except the member who is being challenged; where such a vote results in a tie, the challenged member shall be deemed disqualified.

2.3.7 Meetings and procedures

- A. **Staff.** The Building Authority or his/her designee shall serve as staff to the Board of Appeals.
- B. **Meetings.** Regular meetings of the Board of Appeals shall be held at the call of the chair or as provided by the rules of the Board. Special meetings shall be called by the chair at the request of any two members of the Board or at the request of the City Council. All meetings and hearings of the Board shall be open to the public. For all matters properly brought before the Board of Appeals, the Board shall select a reasonable time and place for a public hearing following the submission of the subject application.
- C. **Notice.** The Building Authority shall give notice of ~~such~~ public hearings in the form and manner and to the persons herein specified. The notice shall include the time and place of such hearing, a description of the contents of the matter to be heard and the address or location of the property involved. Where notice by mail is required, it shall be mailed at least seven days in advance of the hearing date by regular United States mail. Notices shall be given to each of the following as specified:
1. In all cases, to the petitioner;
 2. In all cases, to all residents of the city by publication in a newspaper of general circulation in the city at least once, not more than 30 nor less than five days before the date of the hearing, and by mail to the applicant;
 3. In the case of hearings relating to zoning appeals, a variance, or a conditional use, to

- the Planning Board and City Council by reasonable means;
4. In the case of hearings relating to a variance request from the provisions of Article 11, the application and all supporting information supplied by the applicant shall be forwarded to the State of Maine Commission of the Department of Environmental Protection at least 20 days prior to action by the Board;
 5. In the case of hearings related to a variance or conditional use, by mail to the owners of all the property within 500 feet of such parcel or tract;
 6. In the case of hearings related to all other appeals, by mail to the owners of property directly abutting, and directly across a street or alley from the subject property;
 7. For purpose of this section, the owners of property shall be considered to be the parties listed by the Assessor's Department as those against whom taxes are assessed. Failure of any property owner to receive a notice of public hearing shall not necessitate another hearing and shall not invalidate any action of the Board. The cost of noticing shall be charged to the applicant.
- D. Procedures.** The Board of Appeals shall adopt its own rules of procedure for the conduct of its business not inconsistent with the statutes of the state and this article. Such rules shall be filed with the City Clerk. Any rule so adopted which relates solely to the conduct of hearings, and which is not required by the statutes of the state or by this article, may be waived by the Board upon good cause being shown.
1. Conduct of hearings:
 - a. Any person may appear and testify at a public hearing, either in person or by a duly authorized agent or attorney, and may submit documentary evidence, provided, however, that the Board shall exclude irrelevant, immaterial and unduly repetitious evidence.
 - b. The applicant and any abutter or similarly interested party shall in addition have the right to present witnesses on their own behalf and offer rebuttal evidence, to cross examine all witnesses testifying in opposition to their position through the chair, and to examine and introduce any documents produced at the hearing.
 2. All other matters pertaining to the conduct of hearings shall be governed by the provisions of the relevant state statutes, this article, and the rules promulgated by the Board of Appeals.
- 2.3.8 Records and decisions**
- A. Record.** The recording of testimony, if any, and all exhibits, papers, applications and requests filed in any proceeding before the Board of Appeals and the decision of the Board shall constitute the record.
 - B. Decision.** Every decision of the Board of Appeals shall include findings of the fact, shall refer to the evidence in the record and the exhibits, plans or specifications upon which such decision is based, shall specify the reason or reasons for such decision, and shall contain a

conclusion or statement separate from the findings of fact setting forth the specific relief granted or denying relief. The Building Authority shall deliver or mail a copy of the decision to the applicant, the Planning Board, and City Council and shall file the decision with the City Clerk within five days of such decision.

2.3.9 Jurisdiction and authority

The Board of Appeals shall have the following jurisdiction and authority:

- A. To hear and decide appeals from, and review orders, decisions, or the failure to act by the Building Authority pursuant to this Land Use Code, except that decisions relating to enforcement of the shoreland zoning provisions of this Chapter are not appealable to the Board of Appeals and may only be appealed directly to Superior Court in accordance with M.R. Civ. P. 80B;
- B. To hear and grant or deny applications for variances from the terms of this Land Use Code, including but not limited to use variance; dwelling unit conversion; space and bulk such as lot size, density, and side yard; parking; loading; and signs; and
- C. To hear and grant or deny applications for conditional uses, as specified in Article 6.

2.3.10 Administrative appeal procedures

- A. **Application procedures.** Application for any appeal to the Board shall be submitted to the Building Authority. A payment of a nonrefundable application fee, as established by the City Council to cover administrative costs and costs of a hearing, shall accompany

each application. The application shall be in such form as prescribed by the Building Authority.

- B. **Public hearing.** A public hearing shall be set, advertised and conducted by the Board of Appeals in accordance with Section 2.3.7.
- C. **Standard of review.** The standard of review for orders, decisions, or the failure to act by the Building Authority pursuant to this Land Use Code shall be de novo. The appellant shall bear the burden of proof.

2.3.11 Variances

A. Application procedures

- 1. Application for a variance shall be submitted to the Building Authority. A payment of a nonrefundable application fee, as established from time to time by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the Building Authority.
- 2. A public hearing shall be set, advertised and conducted by the Board of Appeals in accordance with Section 2.3.7.
- 3. All decisions by the Board shall be rendered in a manner and form not inconsistent with the statutes of this state.

- B. **Undue hardship variance.** An undue hardship variance may be granted by the Board only where strict application of the ordinance, or a provision thereof, to the petitioner and his property would cause undue hardship. The words “undue hardship” as used in this subsection mean:

1. That the land in question cannot yield a reasonable return unless a variance is granted;
2. That the need for a variance is due to the unique circumstances of the property and not to the general conditions in the neighborhood;
3. That the granting of a variance will not alter the essential character of the locality; and
4. That the hardship is not the result of action taken by the applicant or prior owner.

C. Disability variance

1. By the Board of Appeals. Notwithstanding the provisions of subsection (B) above, the Board may grant a variance to an owner of a residential dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The Board shall restrict any variance granted under this subsection solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability. The Board may impose conditions on the variance, including limiting the variance to the duration of the disability or to the time that the person with the disability lives in the dwelling. The term “structures necessary for access to or egress from the dwelling” shall include railing, wall or roof systems necessary for the safety or effectiveness of the structure. For the purpose of this subsection, a disability has

the same meaning as a physical or mental handicap under 5 M.R.S.A. Section 4553.

2. By the Building Authority. Notwithstanding the provisions of subsections (B) and (C.1) above, the Building Authority may issue a permit to the owner of a dwelling for the purpose of making a dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. If the permit requires a variance, the permit is deemed to include that variance solely for the installation of equipment or the construction of structures necessary for access to egress from the dwelling for the person with a disability.

D. Practical difficulty variance. Notwithstanding the provisions of subsections (B) and (C) above, the Board of Appeals may grant a variance from the dimensional standards of this Land Use Code that relate to lot area, lot coverage, frontage, and setback requirements when strict application of these standards would both preclude a permitted use of the property and result in significant economic injury to the applicant. Significant economic injury shall mean that the value of the property if the variance were denied would be substantially lower than its value if the variance were granted. To satisfy this standard, the applicant need not prove that denial of the variance would mean the practical loss of all beneficial use of the land. In granting a practical difficulty variance, all of the following conditions must be found to exist:

1. The need for a variance is due to the unique circumstances of the property, and

not to the general conditions in the neighborhood;

2. The granting of the variance will not produce an undesirable change in the character of the neighborhood and will not have an unreasonably detrimental effect on either the use or fair market value of abutting properties;
3. The practical difficulty is not the result of action taken by the applicant or a prior owner;
4. No other feasible alternative is available to the applicant, except a variance;
5. The granting of a variance will not have an unreasonably adverse effect on the natural environment; and
6. The property is not located, in whole or in part, within a shoreland area, as defined in 38 M.R.S.A. § 435, nor within a shoreland zone or flood hazard zone, as defined in this article.

E. Specified variances prohibited

1. No use permitted in medium- and high-density residential zones shall be permitted in low-density residential zones. No use permitted in mixed-use or office zones shall be permitted in any residential zone. No use permitted in industrial zones shall be permitted in any mixed-use, office, or residential zone. No use permitted in residential zones shall be permitted in any industrial zone. The general use categories are listed below:
 - a. Low-density residential: IR-1, IR-2, IR-3, R-1, R-2, R-3.

- b. Medium- and high-density residential: R-4, R-5, R-6.
- c. Mixed-use/Office: B-1, B-2/B-2b/B-2c, B-3/B-3b/B-3c, B-4, B-5/B-5b, B-6, B-7, I-B, R-P, O-P.
- d. Industrial: I-L/I-Lb, I-M/I-Ma/I-Mb, I-H/I-Hb, A-B

2. No variance shall be granted which would permit the creation of a lot or parcel that cannot be developed in compliance with the zoning, subdivision, and other regulations applicable thereto.
3. No variance shall be granted which would result in a use or development of the lot or parcel in question which would not be in harmony with the general purpose and intent of this Land Use Code or the Comprehensive Plan; which would be materially detrimental to the public welfare or materially injurious to the enjoyment, use, or development of property or improvement permitted in the vicinity; or which would materially impair an adequate supply of light and air to properties and improvements in the vicinity, substantially increase congestion in the public streets, increase the danger of flood or fire, or endanger the public safety.
4. No variance shall be granted which would be greater than the minimum variance necessary to relieve the undue hardship or the hardship of the applicant.
5. No variance shall be granted from the minimum lot sizes set forth in Section 4.3.1 for lots in the IR-1 and IR-2 zones.

6. No variance shall be granted from the requirements in Section 6.4.11.

F. Conditions on variances; variances less than requested. Reasonable conditions and safeguards relating to construction, character, location, landscaping, screening and other matters may be imposed upon the premises benefited by a variance as considered necessary to prevent injurious effects upon other property and improvements in the vicinity or upon public facilities and services. Such conditions shall be expressly set forth in the resolution granting the variance and in the notice informing the applicant thereof. Violation of such conditions and safeguards shall be a violation of this article. A variance less than or different from that requested may be granted when the record supports the applicant's right to some relief but not to the relief requested.

G. Limitations on variances. No variance permitting the erection or alteration of a building shall be valid for a period longer than six months, or such other time as may be fixed at the time granted not to exceed two years, unless a building permit for such erection or alteration is issued and construction is actually begun within that period and is thereafter diligently pursued to completion. One or more extensions of said expiration dates may be granted if the facts constituting the basis of the decision have not materially changed and the two year period is not exceeded thereby. No variance relating to the establishment or maintenance of a use not involving a building or structure shall be valid for a period longer than six months, or such other time as may be fixed

at the time granted not to exceed two years, unless an occupancy permit is issued and a use commenced within such period; provided, however, that one or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two year period is not exceeded thereby.

H. Recording of variances. No variance shall be valid unless, within 90 days of final approval of the variance, a certificate describing the variance has been recorded by the applicant for the variance in the registry of deeds as required by 30 M.R.S.A. Section 4353(5).

2.3.12 Successive applications

Whenever any application, appeal, or other request filed pursuant to ~~this~~ section 2.3 has been finally denied on its merits, a second application, appeal or other request seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought within one year of such denial unless, in the opinion of the officer or Board before which it is brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.

2.3.13 Violations

In addition to any other remedies available, the Board of Appeals after notice and hearing may revoke any variance or other relief granted under this section when the provisions of this section or the conditions under which the relief was granted have not been complied with.

2.3.14 Appeals

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

DRAFT

3 DEFINITIONS

Adult business establishment. Any business, including but not limited to any bookstore, newsstand, novelty store, nightclub, bar, cabaret, amusement arcade, or theater, which:

- A. Keeps for public patronage or permits or allows the operation of any adult amusement device as defined in Chapter 4 of the City of Portland Code of Ordinances; or
- B. Customarily, meaning more often than an average of one calendar week during any calendar month of operation, exhibits motion pictures or displays any other visual representation described or advertised as being “X rated” or “for adults only,” or which customarily excludes persons from any portion of the premises by reason of immaturity of age by the use of such, or similar, phrases; or
- C. Is adjudged to be in violation of 17 M.R.S.A. §§ 2911, 2912.

Affordable housing. Housing for which ~~the~~ percentage of income a household is charged in rent and other housing expenses or must pay in monthly mortgage payments (including condominium/HOA fees, mortgage insurance, other insurance and real estate taxes), does not exceed 30% of a household’s income, or other amount established in city regulations that does not vary significantly from this amount.

After-hours entertainment license. Any of the music, dancing, and special entertainment licenses required or authorized by ~~Article III~~, Chapter 4, Article III of the City of Portland Code of Ordinances.

Agriculture. The practice of farming, including the cultivation of the soil for the growing of crops and rearing of animals to provide food and other products. Agriculture may include nurseries, greenhouses, and truck gardens, provided that there is no sale of products not produced on the premises.

Airport restricted access areas. Runways, taxiways and other areas of the Jetport accessible to aircraft, whether access is restricted by the Federal Aviation Administration or not.

Alley. Any way designed primarily for vehicular and pedestrian or utility access to the back or side of premises otherwise abutting on a street, except driveways unless officially designated otherwise.

Animal-related services. Establishments principally for the training or boarding of animals. Such uses shall not include veterinary services.

Approval. An affirmative decision on an application, including an approval with conditions.

Appurtenance. A device or structure not designed for human occupancy and attached to the exterior of a building ~~roof~~.

Auto service station. A business selling gasoline, diesel, or propane fuel or providing motor vehicle repair services including, but not limited to, tune-ups, engine repair, brake work, muffler replacement, tire repair or similar activities. Such businesses may also include car-washes and/or vacuums.



DEFINITIONS

Back office use. An office-related use with minimal public visitation and minimal direct service to the general public, primarily to provide support services to ~~larger organizations such as~~ educational institutions, social service agencies, or business headquarters.

~~**Balloon.** A brightly colored bag made of flexible material, inflated with air or other gas and sealed, often to make it rise in the air.~~

Banner. A flexible, non-adhesive sign of lightweight fabric or similar material typically supported at two or more points and attached to a building, wall, or fence or otherwise suspended down or across its face for temporary advertising purposes. Does not include national, state, or municipal flags.

Bar. Any establishment required to be licensed to sell alcoholic beverages for on-premises consumption, which is not regularly used for the purpose of providing full-course meals, as defined in Title 28-A of the Maine Revised Statutes, on the premises.

Bed and breakfast. A building ~~that contains between in which more than two but not more than and~~ nine guest rooms; ~~is are~~ used to provide or offer overnight accommodations for transient guests; ~~has -A~~an owner, manager, or operator ~~shall live~~ing in the building as a permanent resident; ~~does not provide. No~~ cooking facilities ~~shall be permitted~~ in any of the guest rooms; ~~and does not provide meals other than. The only meal which may be offered is~~ breakfast, which shall be offered only to overnight guests.

Billboard. A permanent structure for the display of off-premises advertising.

Blasting operations. The use of explosives for purposes of breaking up and removing soil, rock and ledge, related to construction and development of real estate within the City.

Blasting permit. A permit issued by the City Fire Department to allow blasting operations within the City.

Blasting plan. The plan for conduct of any blasting operation where over 300 cubic yards of material shall be removed.

Blasting submittal. The plan for conduct of any blasting operation where between 50 and three 300 cubic yards of material shall be removed.

~~**Buildable Area.**— The area enclosed by the front, side, and rear yard setbacks and limited by lot coverage.~~

Building. A roofed and walled structure built for permanent use.

Building, accessory. A detached roofed and walled structure that is incidental and subordinate in area and extent, and/or use to the principal building(s) on the property. A lot may have more than one accessory building.

Building addition. Any increase to footprint, floor area, or volume of an existing building.

Building alteration. A change or rearrangement in the structural supports, exterior appearance, or

removing from or otherwise affecting the exterior appearance of a structure.

Buildings, attached. Two or more independent buildings that share at least one common party wall but have full building separation and independent principal entries; not free-standing. Attached buildings may or may not have common ownership.

Building, principal. The main roofed and walled structure on a lot having the predominant area, extent, and/or use. A lot may have more than one principal building. When a garage is attached to the principal building in a substantial manner as by an enclosed area with roof or common wall, it shall be considered as a part of the principal building.

Clinics. Any establishment where patients are examined and treated by one or more health care providers, such as, but not limited to, physicians, dentists, psychologists or social workers. Clinics may include laboratory services and facilities for ambulatory or outpatient surgical procedures.

Coastal wetland. All tidal and subtidal lands; all lands with vegetation present that is tolerant of salt water and that occurs primarily in a salt water or estuarine habitat; and/or any swamp, marsh, bog, beach, flat or other contiguous low land that is subject to tidal action during the highest tide level for the year in which an activity is proposed as identified in tide tables published by the National Ocean Service. Coastal wetlands may include portions of coastal sand dunes.

Commercial message. A message conveyed by any sign that is solely intended to interest, entice, or solicit any person to participate in commercial

transactions with a business, including offers of goods, cash, discounts on products or services, or other items, including the offering of free goods or services made in exchange for or with the intent to induce the recipient's willingness to receive information relating to a possible commercial transaction.

Commercial vessel. Any watercraft used principally in a business or trade, including common carriers of passenger or freight, whether for governmental, nonprofit or emergency purposes; but not including pleasure craft used principally for recreational purposes.

Common areas. Portions of a lodging house which are available for use by all residents of the lodging house. Common areas shall include, but are not limited to, one or more of the following: kitchens, living rooms, recreation rooms, improved basements, and finished porches. Bathrooms, stairways, hallways, and storage areas shall not be counted as common areas.

Communication studio. A commercial or public communication facility, including radio and television broadcasting and receiving stations and studios.

Community hall. A building or portion of a building used for social, recreational, artistic, civic, or educational community functions. Such a facility would be open to the public for such functions, which, for example, could include but not be limited to performances, dance, exhibitions, cultural exchange, training programs and workshops, neighborhood meetings, or gatherings. As part of these functions and activities, it shall be permissible



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to serve food, subject to other applicable codes and ordinances.

Condominium. Any interest in real estate created pursuant to the Unit Ownership Act, 33 M.R.S.A. § 560 et seq., or its equivalent, as it may from time to time be amended.

Congregate care facility. A residential development which provides individual living or dwelling units with support services which provide assistance to residents. Services to be provided shall include:

- A. Transportation for essential support activities. This service shall be included in the base rent;
- B. Provision of at least one meal per day;
- C. Programmed social activities which are facilitated by staff. This service shall be included in the base rent;
- D. Provision of personal care services including, but not limited to, housekeeping, laundry, and minimal health monitoring; and
- E. Installation of emergency call buttons or systems in each congregate care living unit.

The population of a congregate care facility shall consist of persons 55 years of age or older and their spouses and/or disabled persons and their spouses.

Correctional pre-release facility. A facility housing up to 12 persons, plus staff, serving a primary clientele of parolees or persons in correctional prerelease programs.

~~**Developer.** Any person or other legal entity, but not including an established lending institution unless it is an active participant in a common promotional scheme, who, whether acting as principal or agent, records a declaration of condominium that includes~~

~~real estate, any portion of which was previously a rental unit.~~

Development fees. Site plan review and inspection fees; subdivision review and inspection fees; administrative fees; impact fees, and construction and permit fees as described in Chapter 6 of the City of Portland Code of Ordinances. Development fees does not include any fees charged for reviews conducted by a party other than the city.

Direct Illumination. Illumination resulting from light emitted directly from a light bulb or light fixture, not light diffused through translucent signs or reflected from other surfaces such as the ground or building faces.

Drive-through. A ~~commercial~~ facility which provides a service directly to a motor vehicle occupant and where the customer drives a motor vehicle onto the premises and to a window or mechanical device through or by which the customer is served with or without exiting the vehicle. Drive-throughs do not include major or minor auto service stations.

Drive-through features. Features associated with drive-throughs including but not limited to designated travel or stacking lanes, intercom systems, menu boards, service windows, kiosks, mechanical devices, etc.

~~**Dwelling.** A building or portion thereof used exclusively for residential occupancy, including single-family, two-family and multi-family dwellings, but not including hotels, lodging houses, or sheltered care group homes.~~

Dwelling unit. One or more rooms ~~with private bath and kitchen facilities comprising an independent self-contained dwelling unit, forming a single unit for habitation by one family, including food preparation, living, sanitary, and sleeping facilities. The term includes dwellings in single family, two-family, and multi-family buildings. When the term is used in Article 17, it also includes rooms that people rent or sleep in within lodging houses, dormitories, shelters and sheltered care group homes.~~

Dwelling, multi-family. A building or portion thereof containing three or more dwelling units.

Dwelling, single-family. A building ~~used exclusively for occupancy by one family containing one dwelling unit.~~

Dwelling, two-family. A single building containing two dwelling units.

Earth-moving activity. Any removal or placement, excavation, filling, stockpiling or grading of soil, earth, loam, sand, gravel, rock and other mineral deposits.

Easement. A right, privilege or liberty which one has in land owned by another for some special and definite purpose.

Emergency operations. Operations conducted for the public health, safety or general welfare, such as protection of resources from immediate destruction or loss, law enforcement, and operations to rescue human beings and livestock from the threat of destruction or injury.

Emergency shelter. A facility providing temporary overnight shelter to homeless individuals in a dormitory-style or per-bed arrangement.

Entrance, principal. The main point of access for pedestrians into a building. A building may have more than one principal entrance.

Esplanade. That portion of a street ~~right-of-way~~ which is located between the curblin and the edge of the sidewalk closest to the street.

Essential services. The construction, alteration, or maintenance of gas, electrical or communication facilities; steam, fuel, electric power or water transmission or distribution lines, towers and related equipment; telephone cables or lines, poles and related equipment; gas, oil, water, slurry or other similar pipelines; municipal sewage lines, collection or supply systems; and associated storage tanks. Such systems may include towers, poles, wires, mains, drains, pipes, conduits, cables, fire alarms and police call boxes, traffic signals, hydrants and similar accessories, but shall not include service drops or buildings which are necessary for the furnishing of such services.

Explosives. Any material or container containing a chemical compound or mixture that is commonly used or intended for the purpose of producing an explosion and that contains any oxidizing and combustible materials or other ingredients in such proportions, quantities, or packaging that an ignition by fire, by friction, by compound or mixture may cause such a sudden generation of highly heated gasses that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects, but shall not mean the

components for handloading rifle, pistol and shotgun ammunition, or fireworks.

Family. One or more individuals related by blood, marriage, civil union, adoption, or guardianship and/or up to eight unrelated individuals living together in a dwelling unit as a single nonprofit housekeeping unit.

Fill. Soil, earth, loam, sand, gravel, rock and other mineral deposits.

Filling. The placement of soil, earth, loam, sand, gravel, rock and other mineral deposits. Filling shall include stockpiling.

Fixture, fully shielded. A light fixture or luminous tube constructed and mounted such that all light emitted by the fixture or tube, either directly from the lamp, tube, or a diffusing element, or indirectly by reflection or refraction from any part of the light fixture, is projected below the horizontal. If the lamp or tube, any reflective surface, or lens cover (clear or prismatic) is visible when viewed from above or directly from the side, from any angle around the fixture or tube, the fixture or tube is not fully shielded.

Flag. A fabric sheet of square, rectangular, or triangular shape having no enclosing or supporting framework that is typically mounted on a pole.

Foundation. The supporting substructure of a building or other structure, excluding wooden sills and post supports, but including basements, slabs, frost walls, or other base consisting of concrete, block, brick, or similar material.

Freshwater wetland. Freshwater swamps, marshes, bogs and/or similar areas which are:

- A. Of ten or more contiguous acres or of less than ten contiguous acres and adjacent to a surface water body except for any river, stream or brook such that, in a natural state, the combined surface area is in excess of ten acres or of less than ten acres that is depicted on the Shoreland Zoning Map; and
- B. Inundated or saturated by surface or ground water at a frequency and for a duration sufficient to support, and which under normal circumstances do support, a prevalence of wetland vegetation typically adapted for life in saturated soils.

Freshwater wetlands may contain small stream channels or inclusions of land that do not conform to the criteria of this definition.

General office. An office for the conducting or managing of a business or the practice of a profession, including that of a licensed health care provider, so long as such office does not include laboratory services and facilities for ambulatory surgical procedures.

General services. Establishment primarily engaged in rendering services to persons or business on a fee basis, including but not limited to banks, health clubs, laundries, employment services, management services, personnel services, or maintenance services.

Handicapped family unit. A dwelling unit which provides living facilities for handicapped persons. A handicapped family unit may also provide counseling and support services. Staff members may also be included in the population.

Helistop. An area used for the landing of helicopters at any location other than an airport. Such area shall include a landing area or pad, and may include parking required for access to the landing area or pad, a loading and unloading area for emergency vehicles, and other related facilities other than maintenance and repair facilities.

Historical plaque. A sign that memorializes a person, event, former use of a place, or something else of historical significance.

Hospital. An institution providing health services, primarily on an inpatient basis, and medical or surgical care of the sick or injured, including as an integral part of the institution such related facilities as laboratories, outpatient departments, training facilities, central service facilities, and staff offices.

Hostel. An overnight lodging facility for transient guests that provides sleeping rooms and common areas for cooking. A hostel shall not be used as an emergency shelter.

Hotel. A building used for more or less temporary occupancy of individuals who are lodged with or without meals.

Impervious surface. ~~Any surface which does not absorb rain and includes all buildings, roads, sidewalks, parking areas, and any area paved with bricks, concrete, or asphalt~~ Area covered with low-permeability material that is highly resistant to infiltration by water, such as asphalt, concrete, or rooftop, and areas such as gravel roads and unpaved parking areas that will be compacted through design or use to reduce their permeability.

Industrial, high-impact. Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished products from either raw materials or previously prepared material which are generally incompatible with residential, commercial and lower impact industrial uses and sensitive natural areas due to their high generation of traffic, noise levels, emissions, lighting, and odors.

Industrial, low-impact. Industrial activity involving the manufacturing, packaging, assembly, or distribution of finished products from previously prepared material, including but not limited to the following: bakeries; breweries; distilleries; bottling; coffee roasters; commercial kitchens; pharmaceuticals; machine shops; watchmakers; makers of precision instruments, musical instruments, toys and sporting goods, pottery and ceramics using only previously pulverized clay, wood products, jewelry; assembly of electrical components; canteen services; tool and die shops; plant and tree nurseries; and the packaging of foods. Low impact industrial uses do not include the processing of raw materials or salvaging operations. Low impact industrial uses are generally compatible, due to their size and nature of impact, with residential, commercial and other low impact industrial uses.

Intermediate care facility. A facility which provides, on a regular basis, health-related care and services for more than 13 individuals who do not require the degree of care and treatment which a hospital or extended care facility is designed to provide but who, because of their mental or physical condition, require such care and services above the level of room and board. Said facility must be licensed as a board care, residential care facility or equivalent

pursuant to the regulations promulgated by the State of Maine Department of Health and Human Services.

Kitchen facilities. Facilities used for the preparation of meals, including refrigerators and devices used for the cooking and preparation of food.

Laser Light Display. A display that emits light through the use of a laser beam(s).

LED (Light Emitting Diode). A semiconductor diode that emits light when a voltage is applied to it.

Living Unit. ~~An independent self-contained dwelling unit that does not include kitchen facilities.~~

Lodging house. A house, building or portion thereof containing two or more rooming units and providing such units, ~~as well as common areas, with or without meals,~~ to individuals on not less than a ~~weekly or~~ monthly basis for compensation. ~~A lodging house, except for lodging houses located in the IR-2, IR-3 and I-B zones, shall contain common areas for use by all residents, including a kitchen. A kitchen need not be available as part of the common areas where all meals are provided on a daily basis.~~

Long-term or extended care facility. An institution or a distinct part of an institution that is licensed or approved to provide full-time convalescent or chronic care, or health care under medical supervision for 24 or more consecutive hours, to nine or more individuals who, by reason of advanced age, illness, or infirmity are unable to care for themselves, and who are not related to the governing authority by marriage, blood, or adoption.

Lot. A parcel or area of land that is designated as an individual unit for use, development or ownership that is either a) a lot of record, recorded in the Cumberland County Registry of Deeds which at the time of record complied with applicable ordinances; or b) a contiguous combination of such lots of record under common ownership; or c) a newly established parcel meeting all the dimensional requirements of the zone in which it is located.

Low-income household. A household having an income not exceeding 80% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Low-income housing unit for rent. A dwelling unit for which:

- A. The rent is affordable to a household earning 80% or less of Area Median Income (AMI) as defined by the United States Department of Housing and Urban Development (HUD);
- B. The unit is rented to a household earning 80% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance..

Low-income housing unit for sale. A dwelling unit for which:

- A. The sale price is affordable to a household earning 100% or less of AMI;
- B. The unit is sold to a household earning 100% or less of AMI; and

- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for future sales for the applicable length of time in this ordinance.

Luminance. The intensity of visible light emitted or reflected from a unit area of a surface, such as the face of a sign measured in nits.

Manufactured housing. A structural unit or units designed for residential occupancy and constructed in a manufacturing facility and then transported by the use of its own chassis or placement on an independent chassis to a building site. The term includes any type of building which is constructed at a manufacturing facility and then transported to a building site where it is utilized for housing and may be purchased or sold by a dealer in the interim. For purposes of this article, two types of manufactured housing are included. They are:

- A. Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the standards required by the United States Government Department of Housing and Urban Development, as such standards are from time to time revised or amended, meaning structures, transportable in one or more sections, which in the traveling mode are 14 body feet or more in width and are 750 or more square feet, and which are built on a permanent chassis and designed to be used as dwellings, with or without permanent foundations, when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein. This term also includes any structure

which meets all the requirements of this subparagraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, United States Code, Title 42, Section 5401 et seq.; and

- B. Those units constructed after June 15, 1976, which the manufacturer certifies are constructed in compliance with the state's Manufactured Housing Act and regulations, meaning structures, transportable in one or more sections, which are not constructed on a permanent chassis and are designed to be used as dwellings on foundations when connected to required utilities, including the plumbing, heating, air conditioning or electrical systems contained therein.

Any unit which does not fall within the definitions of this section and which is legally sited within the city on December 18, 1989, may be relocated to any location in the city in which manufactured housing is allowed.

Manufactured housing park. A parcel of land under unified ownership approved by the Planning Board under 30-A M.R.S.A. Section 4358 for the placement of single-component manufactured housing.

Manufactured housing park unit space. The area of land on which an individual home is situated within a manufactured housing park and which is reserved for use by the occupants of that home.

Manufactured housing subdivision or development. A parcel of land approved by the Planning Board under 30-A M.R.S.A. Section 4358 for the placement of single-component manufactured housing on individual owned lots.

Marijuana cultivation facility. A cultivation facility required to be licensed pursuant to 22 M.R.S. § 201 or any other facility engaged primarily in the business of planting, propagation, growing, harvesting, drying, curing, grading, trimming or other processing of marijuana, including mature marijuana plants, immature marijuana plants, seedlings and marijuana seeds, for use or sale.

Marijuana manufacturing facility. A manufacturing facility required to be licensed pursuant to 22 M.R.S. § 2423-F or 28-B M.R.S. § 201.

Marijuana product. As defined by 22 M.R.S.A. §2422 or 28-B M.R.S.A., §102.

Marijuana retail store. A retail establishment licensed to sell marijuana, marijuana products, immature marijuana plants and seedlings to adult use or medical marijuana customers. A marijuana retail store is only authorized as a principal use, and is not permitted as an accessory use. A marijuana retail store may not exceed a maximum gross floor area of 2,000 square feet. A marijuana retail store shall not include a registered dispensary.

Marijuana testing facility. A facility licensed to develop, research and test marijuana, marijuana products and other substances as defined by 22 M.R.S.A. §2422 or 28-B M.R.S.A., §102.

Marina. A commercial operation providing floats, slips and piers intended primarily for berthing of noncommercial vessels and the provision of related services such as supplies, fuel, equipment and repairs, which may be provided both to tenants and non-tenants.

Military personnel berthing. A building, or portion thereof, which is primarily used as, and intended for, temporary living quarters for military personnel.

Moderate-income household. A household having an income not exceeding 120% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. sections 1437 et seq.

Multiple-component manufactured housing. Manufactured housing which is constructed and transported in two or more sections of substantially similar size that must be mated to form a habitable dwelling. For purposes of planned residential unit development and multiplex development, multiple-component manufactured housing shall be considered a dwelling unit.

Multi-family development. The construction or creation of three or more dwelling units on any parcel of land or the addition of two or more dwelling units cumulatively within a three-year period.

Multiplex. A residential development consisting of three or more horizontally or vertically attached dwelling units, or a series of such attached dwelling units and the construction of at least one building.

Neighborhood center. A building or portion of a building used for recreational, artistic, social, educational, health, culture, or similar activities and services, usually owned and operated by a public or nonprofit group or agency.

Neon. An illumination source created when a glass tube filled with neon or other similar gas emits light when energized. The tube can be bent to form letters, symbols, or other shapes. See “Direct Illumination”.

Nit. The standard unit used to measure the luminance of a surface, such as the face of a sign. One nit is equivalent to one candela (i.e. the light output of a common wax candle) per square meter.

Non-commercial vessel berthing. The use of berthing space for berthing of watercraft other than commercial vessels. Berthing space used in the following manner shall not be included in the calculation of the number of linear feet under this use category:

- A. Space used principally for sale or repair of vessels.
- B. Commercial vessel tenant space used by a noncommercial vessel for a period not exceeding ten consecutive days while the primary commercial vessel tenant is conducting its business or trade.

Normal high-water line (non-tidal waters). That line which is apparent from visible markings, changes in the character of soils due to prolonged action of the water or changes in vegetation, and which distinguishes between predominantly aquatic and predominantly terrestrial land. Areas contiguous with rivers that support non-forested

wetland vegetation and hydric soils and that are at the same or lower elevation as the water level of the river during the period of normal high-water are considered part of the river.

Normal high-water mark of coastal waters. That line on the shore of tidal waters reached by the shoreward limit of the rise of the medium tides between the spring and the neap.

Office park. Separate office buildings planned, constructed, or managed on an integrated coordinated basis.

Off-peninsula. All land located north of I-295.

On-peninsula. All land located south of I-295.

Open space. Any park and any other area outside of a building open to the public.

Owner. Any person that has any interest, legal or beneficial, in any parcel or lot.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland, temporary. Structures which remain in or over the water for less than seven months in any period of 12 consecutive months.

Piers, docks, wharves, bridges and other structures and uses extending over or beyond the normal high-water line or within a wetland, permanent. Structures which remain in or over the water for seven months or more in any period of 12 consecutive months.

Place of assembly. A building or portion of a building used as a community hall, neighborhood center, private club or fraternal organization, or place of religious assembly. This definition shall not include buildings or portions of buildings used as a community hall, neighborhood center, private and fraternal organization or place of religious assembly where 15 or fewer people, not including the permanent residents of a single-family dwelling, assemble.

Place of religious assembly. A building or portion of a building used for religious worship or instruction including, but not limited to, churches, synagogues, masjids, mosques and other places of worship.

Planned residential unit development (PRUD). A residential subdivision consisting of attached or detached dwellings intended for separate ownership, with open spaces, recreational areas, access ways and buildings which are designed, built, and managed in accordance with a unified development plan.

Planned unit development (PUD). A development consisting of either detached or attached single-family dwelling units and commercial or other uses, on substantially-sized properties of greater than 20 acres and designed to be compatible with the surrounding built and natural environment.

Plant canopy. As defined by 28-B M.R.S., §102.

Preschool. School for children generally younger than those attending elementary school, which may also encompass daycare facilities providing care and protection for children.

Private club or non-profit social and recreational facility. A private club or nonprofit social and recreational facility is open exclusively to members and to their bona fide guests accompanying them, in order to promote fellowship, social living, proper recreation, civic responsibility, neighborhood responsibility, community welfare, or other endeavors. It shall be permissible to serve food and meals on such premises provided adequate dining room space and kitchen facility are available and are provided within all regulations of this ~~article~~ [Land Use Code](#) and other applicable codes and ordinances.

Raceway. A sign mounting structure used to enclose electrical components (such as transformers and wiring) for signs.

Recent flood plain soils. Recent flood plain soils include the following soil series as described and identified by the National Cooperative Soil Survey: Alluvial, Charles, Cornish, Fryeburg, Hadley, Limerick, Lovewell, Medomak, Ondawa, Podunk, Rumney, Saco, Suncook, Winooski

Recording plat. The completed subdivision plat in form for approval and recording.

Recreation and amusement centers. Facilities equipped for the conduct of sports or indoor leisure time recreation activities, including games of skill or games of chance licensed either by the City of Portland or by the State of Maine. Such facilities may limit admission either to members or to persons paying an entrance fee.

Registered dispensary. A registered medical marijuana dispensary as defined by 22 M.R.S. §2422.

Registered patient. As defined by 22 M.R.S. §2422.

Repair services. Establishments primarily engaged in rendering services related to the maintenance or repair of goods. ~~In industrial zones only, repair services shall include, not including~~ motor vehicle repair services.

Restaurant. Any food service establishment with indoor seating capacity for ten or more patrons.

Retail. Any shop or store offering goods or merchandise to the general public for direct consumption and not for resale, or food service with indoor seating capacity for nine or fewer patrons. Retail shall not include gasoline, diesel, or propane fuel sales.

~~**Right of way.** A legal right, established by usage or grant, to pass along a specific route.~~

Roadway. That portion of a ~~right-of-way street~~ between the regularly established curblines, or that part of a street or alley devoted to vehicular traffic.

Rooming unit. ~~One or more rooms forming a single unit used, or intended to be used, for living and sleeping purposes by an individual or a family, but not designed for food preparation. A room or suite of rooms in a house, building or portion thereof rented as living and sleeping quarters, but without full kitchens or bathrooms.~~ In a suite of rooms, each room ~~which that~~ provides sleeping accommodations shall be counted as one rooming unit for the purpose of this ~~article~~Chapter. ~~Each rooming unit in a lodging house shall have kitchen privileges unless all meals are provided on a daily~~

~~basis. There shall be no more than two persons residing in each rooming unit.~~

Self-storage facility. ~~Fully A fully~~ enclosed buildings with individual, secured units (accessed with or without supervision) used for the exclusive purpose of storage of non-hazardous business or personal materials.

Sexually explicit. The display or depiction of sex organs during actual or simulated sexual intercourse or sexual acts as defined in 17 A M.R.S.A. § 251.

Sheltered care group home. A facility which, in addition to providing food and shelter to a defined population of up to 12 individuals, provides guidance or counseling services as a primary function of the facility.

Shore frontage. The length of a lot bordering on a water body or wetland measured in a straight line between the intersections of the lot lines with the shoreline.

Sidewalk. That portion of a street not included in the roadway, and devoted in whole or part to pedestrian traffic.

Single-component manufactured housing. Manufactured housing which is constructed and transported in one section. For purposes of planned residential unit development and multiplex development, single-component manufactured housing shall not be considered a dwelling unit, except in the FH Flexible Housing Zone.

Sign. A structure, device, figure, display, message placard or other contrivance, or any part thereof,

situated outdoors or indoors, which is designed, constructed, intended or used to advertise, provide information in the nature of advertising, provide historical, cultural, archeological, ideological, political, religious, or social information, or direct or attract attention to an object, person, institution, business, product, service, message, event or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, or illumination.

Sign, animated. Flashing, blinking, reflecting, revolving, or other similar sign with visibly moving or rotating parts or visible mechanical movement of any kind.

Sign, awning. Any sign that is part of or attached to an awning, canopy, or other fabric, plastic or structural protective cover over a door, entrance, window, storefront, or outdoor service area.

Sign, A-Frame. A pedestrian oriented self-supporting sign that is not permanently affixed to a structure or the ground.

Sign, bandit. Any advertising sign that is placed on public property or on private property without the consent of the property owner or as authorized in Article 19.

Sign, blade. A permanent sign mounted either to the wall of building by means of a bracket or attached to the underside of a lintel, arch or other overhead structure above a porch or walkway and which is typically hung perpendicular to the wall of the building.

Sign, building identification. A sign consisting of letters or numbers applied to a building wall, engraved into the building material, or consisting of a sculptural relief which contains the name of the building or describes its function, but which does not advertise any individual tenant of the building or any products or services offered.

Sign, building-mounted. Sign attached to, connected to, erected against the wall, parapet, or fascia of a building or structure with the exposed face of the sign in a plane parallel to the vertical face of the building or structure.

Sign, bus shelter. As specified in 23 M.R.S.A. §1908-A, any outdoor sign visible to the traveling public from public right-of-way that is affixed to a publicly owned bus shelter operated by a transit agency.

Sign, cabinet. A permanent building-mounted or freestanding sign with its text and/or logo symbols and artwork on a translucent face panel that is mounted within a metal frame or cabinet either that contains the lighting fixtures which illuminate the sign face from behind.

Sign, canopy. A sign that is printed, painted, or affixed to a canopy, typically used to accent building entries.

Sign, center identification. A sign identifying the name of a building, office park, or shopping center only.

Sign, cont.

Sign, changeable copy. A sign that is designed so that characters, letters, numbers, or illustrations can be manually or mechanically changed or rearranged without altering the face or surface of the sign. For the purposes of this Article, a sign whose message changes more than eight times per day is considered an animated sign (see Sign, animated) and not a changeable copy sign.

Sign, directional. A sign erected to inform the viewer of the approximate route, direction, or location of a facility or use.

Sign, directory. A permanent sign which provides information in a list, roster, or directory format.

Sign, Electronic Message. A sign or portion of a sign that is capable of changing its characters, letters, numbers, illustrations, display, color, and/or light intensity, including animated graphics and video, by electronic or automatic means. An Electronic Message Sign is not a Single- or Two-Color LED Sign.

Sign, externally illuminated. A sign whose illumination is reflected from its source by the sign surface to the viewer's eye, the source of light not being visible to the viewer.

Sign, Feather Banner. A temporary sign that is taller than it is wide and made of a flexible material (typically cloth, nylon, or vinyl) and mounted to a pole to fly freely.

Sign, freestanding. A permanent sign that is erected or mounted on its own self-supporting permanent structure or base detached from any supporting elements of a building.

Sign, fuel pump topper. A temporary sign affixed to the top of an operable fuel dispensing pump used to advertise goods offered for sale on the same parcel on which the fuel pump is located.

Sign, incidental. A sign which provides incidental information, including security, credit card acceptance, business hours, open/closed, directions to services and facilities, or menus.

Sign, individual letter. A cut-out or etched letter or logo which is individually mounted on a building wall, or freestanding sign.

Sign, internally illuminated. Any sign in which the source of light is entirely enclosed within the sign and not directly visible.

Sign, landmark. A permanent sign indicating individual historic landmarks, local historic districts or otherwise determined by the City to have attained a high degree of community, cultural, aesthetic, or historic significance.

Sign, logo. A stylized group of letters, words, numbers, or symbols used to represent and distinguish a business, product, or organization.

Sign, marquee. A permanent sign structure placed over the entrance to a building and typically used for a theater or other entertainment use.

Sign, cont.

Sign, monument. A permanent freestanding sign, with a solid base that is at least 60% the width of the sign face.

Sign, off-premise. Any sign that directs attention to a business, commodity, service, entertainment, product, structure, use, or property different from a structure or use existing on the property where the sign is located, and/or any sign on which space is rented, donated, or sold by the owner of said sign or property for the purpose of conveying a message.

Sign, pennant. A temporary sign made of flexible materials longer than it is wide, often triangular in shape, and frequently displayed with other pennants on a string.

Sign, permanent. A sign constructed of durable materials and intended to exist for the duration of time that the use or occupant is located on the premises.

Sign, pole. An elevated permanent sign typically supported by one or two poles, posts, or columns that do not meet the base width requirements for a monument sign.

Sign, projecting. A permanent sign that is attached to and extends perpendicular from a building from the wall.

Sign, service island canopy. A permanent sign mounted on or under a service island canopy, including on a fascia.

Sign, single-color or two-color LED: A permanent or temporary sign composed of single-color or two-color LEDs, including signs with fixed and changeable copy.

Sign, temporary. A sign constructed of paper, cloth, or similar expendable material, which is intended for a definite and limited period of display and which is designed to be moved easily and is not permanently affixed to a structure, sign area, or window.

Sign, wall. A permanent sign affixed to or erected against the wall or fascia of a building or structure, with the exposed face of the sign parallel to the plane of wall or fascia to which it is affixed or erected.

Sign, wall banner. A temporary sign and constructed of cloth, bunting, plastic, paper, or similar non-rigid material, and securely attached to the wall or support structure for which it is advertising. Flags are not considered temporary wall banners.

Sign, window. A permanent or temporary sign posted, painted, placed, or affixed in or on a window, or otherwise exposed to public view through a window.

Sign, Yard, Type I. A small temporary sign typically constructed of corrugated plastic and supported on an H-shaped wire frame used for example, for advertising by local businesses or by election campaigns (Synonym: Lawn Sign).

Sign, cont.

Sign, Yard, Type II. A temporary sign mounted on a single post installed securely in the ground with a small sign hanging from a cross-bar mounted parallel to the ground.

Sign, Yard, Type III. A temporary large sign mounted on two posts installed securely in the ground.

Sign copy. Any graphic, word, numeral, symbol, insignia, text, sample, model, device, or combination thereof that is primarily intended to advertise, identify, or notify.

Sign face. The exterior surface of a sign, exclusive of structural supports, on which is placed the sign copy.

Sign substructure. The supports, uprights, bracing and/or framework of a sign.

Site. All contiguous land under the same ownership or control, whether proposed for development or not, except where development is limited to a lot or lots within a subdivision.

Small-scale marijuana caregiver. A registered caregiver who sells or dispenses marijuana to no more than five individual registered patients in any one calendar month; does not process or manufacture marijuana using chemicals or solvents; and cultivates no more than 1) 250 square feet of plant canopy where located in a single-family dwelling or commercial space; or 2) 125 square feet of plant canopy where located in a dwelling unit within a two-family or multi-family building.

Solar access. Space open to the sun and clear of overhangs or shade, including orientation of buildings and lots to the sun, so as to permit the use of active and/or passive solar energy systems on individual properties.

Solar energy system. A complete assembly consisting of one or more solar collectors and associated mounting hardware or equipment, intended to provide for the collection, storage, and distribution of solar energy for heating or cooling, electricity generation, or solar/thermal hot water systems. Solar energy systems shall include the following:

- A. Accessory solar energy system. A system as defined above where power generation is incidental to a principal use, which may take the form of either a building integrated or roof-mounted solar array of any size, or a ground-mounted array occupying less than 1,000 square feet of air-space over ground area.
- B. Minor solar energy system. A system as defined above where power generation is considered a principal use, which may take the form of either a building- or roof-mounted solar array of any size, or a ground-mounted system occupying between 1,000 and 9,999 square feet of ground area.
- C. Major solar energy system. A system as defined above where power generation is considered a principal use, which may take the form of either a building or roof-mounted solar array of any size, or a ground-mounted system occupying greater than 10,000 square feet of ground area.

Solar energy system, building-integrated. A solar energy system that is an integral part of a principal

or accessory building and include, but are not limited to, photovoltaic or hot water systems that are contained within roofing materials, windows, walls, skylights and awnings.

Solar energy system, ground-mounted. Also known as free-standing solar energy systems, a solar energy system that is structurally mounted to the ground. The panels may be stationary or revolving and of any size.

Solar energy system, roof-mounted. A solar energy system in which solar panels are mounted on top of the structure of a roof either as a flush-mounted system or as modules fixed to frames which can be tilted toward the south at an optimal angle.

Solar energy system, height. The total vertical distance as measured from the average elevation of the finished grade adjacent to the fixed base of the support structure, to the highest part of the system.

Solar energy system, size. The physical size of the panels based on total airspace occupied over the ground, or the grid area for ground mounted arrays. Calculation of physical size may differ from calculation of impervious surface area.

Sounds, impulse. Sound events characterized by brief excursions of sound pressure, each with a duration of less than 1 second.

Sounds, tonal. Sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time.

Special needs independent ~~living-dwelling~~ unit. A dwelling unit developed and managed by a nonprofit organization for habitation by persons with special social, physical or mental needs beyond strictly economic needs. Such persons shall be provided required levels of supervision, care and/or counseling services appropriate to their special needs, and the services shall be provided by either the sponsoring nonprofit agency or through another entity with which the agency has entered into a contractual arrangement.

Sports complex. One or more facilities located on the same parcel of land where athletic events are held and with a combined seating capacity of at least 6,000 seats.

Stockpiling. Any placement or creation of piles or loads of soil, loam, sand, gravel, rock or other mineral deposits upon a site for the purpose of storage, warehousing or reserving for future use.

Stormwater retention area. A pond or basin used for the permanent storage of stormwater runoff.

Stormwater detention area. A storage area for the temporary storage of stormwater runoff which does not contain water during non-storm conditions.

Stream. A free-flowing body of water from the outlet of the confluence of two perennial streams as depicted on the most recent edition of a United States Geological Survey 7.5-minute series topographic map, or if not available, a 15-minute series topographic map, to the point where the body of water becomes a river or flows to another water body or wetland within a shoreland area, or

any stream designated within a Stream Protection Zone.

Street. A public ~~right of~~ way established by or maintained under public authority, or a way dedicated to the use of the public ~~and appearing on the official map of the city.~~

Street line. The line of demarcation between private property and a ~~public right of way~~ street.

Street, cul-de-sac or dead end. A street with only one outlet.

Structure. Anything constructed or erected of more than one member having a permanent or semi-permanent location on another structure or in or on the ground, including without limitation buildings, fences, gazebos, signs, antennas, satellite sending or receiving dishes, and swimming pools. Stockpiles shall be considered structures for the purposes of dimensional requirements.

Studios for artists and craftspeople. A facility for the production of arts and crafts products such as paintings, sculpture or other arts, or the practice of arts such as music or dance, or the production of custom handcrafted, or limited production of products such as furniture, wood, clay and metal products, publications and similar low impact arts and crafts activities.

Subdivider. Any individual, firm, association, syndicate, partnership, corporation, trust, or any other legal entity commencing proceedings under these regulations to effect a subdivision of land hereunder for himself, herself, or for another.

Subdivision. The division of a lot, tract or parcel of land into three or more lots, including lots of forty acres or more, within any 5-year period whether accomplished by sale, lease, development, buildings or otherwise and as further defined in 30 A.M.R.S.A. Section 4401. The term subdivision shall also include the division of a new structure or structures on a tract or parcel of land into three or more dwelling units within a 5-year period and the division of an existing structure or structures previously used for commercial or industrial use into 3 or more dwelling units within a 5-year period. The area included in the expansion of an existing structure is deemed to be a new structure for the purposes of this paragraph. A dwelling unit shall include any part of a structure which, through sale or lease, is intended for human habitation, including single family and multi-family housing condominiums, time share units and apartments.

Subdivision, non-residential. A subdivision which is not intended for human habitation, such as a commercial or industrial subdivision.

Subdivision plat. A plan of the proposed subdivision for presentation to the Planning Board and the public.

Tasting room. A facility for the sampling of beer, wine, spirits, other alcoholic or non-alcoholic beverages, or food.

Telecommunication tower. Radio masts or tower structures built primarily to hold telecommunication antennas.

~~Temporary wind anemometer tower. A temporary structure which may be installed for no more than~~

~~two years for data collection purposes and which supports devices for measuring wind speed, direction and other characteristics to assess wind energy potential and design issues for any permanent wind energy installation; often termed “meteorological towers” or “met towers”.~~

Tenant. Any occupant in lawful possession of a rental unit, whether by lease, sublease, or otherwise.

Theater or performance hall. Any establishment devoted to showing motion pictures, or for dramatic, musical, or live performances.

Tract (or parcel) of land. All contiguous land in the same ownership, provided that lands located on opposite sides of a public or private road shall be considered each a separate tract or parcel of land unless such road was established by the owner of land on both sides thereof.

Transient guest. A person who occupies a facility offering accommodations on an overnight basis for compensation and whose actual occupancy is limited to no more than 15 days out of any 60-day period.

Tributary stream. A channel between defined banks created by the action of surface water, which is characterized by the lack of terrestrial vegetation or by the presence of a bed, devoid of topsoil, containing waterborne deposits or exposed soil, parent material or bedrock; and which is connected hydrologically with other water bodies. Tributary stream does not include rills or gullies forming because of accelerated erosion in disturbed soils where the natural vegetation cover has been removed by human activity.

Upland edge of a wetland. The boundary between upland and wetland. For purposes of a coastal wetland, this boundary is the line formed by the landward limits of the salt tolerant vegetation and/or the highest annual tide level, including all areas affected by tidal action. For purposes of a freshwater wetland, the upland edge is formed where the soils are not saturated for a duration sufficient to support wetland vegetation, or where the soils support the growth of wetland vegetation but such vegetation is dominated by woody stems that are six meters or taller.

Use. The purpose for which land or structures thereon is designed, arranged, or intended to be occupied, or for which it is occupied, maintained, rented, or leased.

Utility substation. Any sewage or water pumping station, electric power substation, transformer station, telephone equipment enclosures, or other similar structures owned or operated by a utility.

Vegetation. All live trees, shrubs, ground cover, and other plants including, without limitation, trees both over and under four inches in diameter, measured at four and one-half feet above ground level.

Very low-income household. A household having an income not exceeding 50% of median income for area of residence as set forth in regulations promulgated from time to time by the United States Department of Housing and Urban Development pursuant to 42 U.S.C. section 1437 et seq.

Vicinity sketch. A sketch of the proposed location of a development project or subdivision, not

necessarily drawn to scale, showing the proximity of the project to surrounding streets and highways.

Warehousing, storage, and distribution. The storage of goods, wares, and merchandise in a warehouse from which distribution occurs. May include wholesale use, but not retail or direct sales to consumers.

Water body. Any river or stream.

~~**Watercourse.** Any natural or artificial stream, river, creek, ditch, channel, swale, canal, conduit, culvert, drain, waterway, gully, ravine or wash in which water flows in a definite direction or course, either continuously or intermittently, or which has a definite channel, bed and banks, and includes any area adjacent thereto subject to inundation by reason of overflow or floodwater.~~

Water-dependent uses. Those uses that require, for their primary purpose, location on submerged lands or that require direct access to, or location in, coastal or inland waters and which cannot be located away from these waters.

Wetlands. Those areas which have two or more of the following:

- A. A water table at or near the surface during the growing season;
- B. Very poorly drained soils, including Sebago mucky peat; or
- C. Obligate wetland vegetation.

Very poorly drained soils and obligate wetland vegetation shall be as defined and illustrated in the United States Department of Interior, Fish and

Wildlife Service publication of Wetland Plants of the State of Maine (1986).

~~**Wetlands associated with shoreland zones.** A freshwater or coastal wetland.~~

Wind energy system. A wind energy generator and all associated facilities. Wind energy systems shall include the following:

- A. Accessory wind energy system. Roof-mounted or freestanding wind energy system measuring no higher than 10 ft. above the highest point of the roof or 45 ft. for freestanding systems.
- B. Minor wind energy system. Freestanding system measuring between 45 ft. and 85 ft. in height.
- C. Major wind energy system. Free standing system measuring between 85 ft. and 160 ft. in height.

~~**Wind energy system, total height.** The vertical distance as measured from the average elevation of the finished grade adjacent to the fixed base of the support structure, to the tip of the wind generator blade or any other part of the system at its highest point. Where located on roof tops, the height shall be the total of the building and the wind energy system taken together.~~

Wind energy system, useful life. The period for which the system has been designed by the manufacturer to operate in a safe manner, including the period during which new parts and refurbishment allow it to continue operating safely.

Wholesale. Sale for resale, not for direct consumption.



DEFINITIONS

Workforce housing unit for rent. A dwelling unit which:

- A. The rent is affordable to a household earning 100% or less than of AMI
- B. The unit is rented to a household earning 100% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

Workforce housing unit for sale. A dwelling unit for which:

- A. The purchase price is affordable to a household earning 120% or less of AMI;
- B. The unit is sold to a household earning 120% or less of AMI; and
- C. The requirements of (a) and (b) above are limited by deed restriction or other legally binding agreement for the applicable length of time in this ordinance.

4 NONCONFORMING USES, STRUCTURES, & LOTS

4.1 CONTINUATION

Any building, structure, lots, or use, that was legally existing at the time of its creation and made nonconforming by the provisions of this ordinance or any amendment thereto may be continued although such building, structure, lot, or use does not conform with the provisions of this ordinance.

4.2 NONCONFORMING USES

4.2.1 Increase in nonconforming use

- A.** A structure whose use is wholly nonconforming shall not be altered so as to increase the cubical content or the extent of nonconformity, except as provided for in (BC), below.
- B.** A nonconforming use on premises outside of a building shall not be extended or allowed to occupy additional land area.
- C.** No alterations, modifications, or additions shall be made so as to increase the cubical content or the degree of nonconforming use, nor shall a nonconforming use be extended to any other part of a structure, unless such extension of a nonconforming use is solely for the purpose of bringing the use into compliance with health or safety codes, or to correct a condition which is determined by the Board of Appeals to constitute a health or safety problem. In either case, the expansion shall be limited to the minimum necessary to accomplish that purpose.
- D.** Except as expressly provided herein, any alteration, modification, or addition permitted under this subsection shall be in

compliance with all other applicable sections of this Land Use Code. Nothing within this subsection shall be construed to permit an increase in the number of units in a building which is nonconforming as to the number of dwelling units or will become nonconforming as a result of such alteration, modification, or addition.

4.2.2 Change of nonconforming use

When a nonconforming use has been changed to a permitted use, it shall not thereafter be changed back to any non-permitted use. For purposes of this subsection, a use shall be deemed to have been so changed when an existing nonconforming use is terminated and a permitted use is commenced and continued for a period of seven days. Any change of use in violation of this article shall be deemed to be an abandonment of the lawfully existing nonconforming use. A lawful nonconforming use shall not be changed to any use other than a use permitted in the zone in which the use is located or to any use other than a nonconforming use of a more restricted zone, as set forth in the following schedule, provided that in no such case shall any structural alterations be made in any building except those required by law, ordinance or other regulations:

- A.** In a business zone, from any use permitted in an industrial zone to any use permitted in a business zone.
- B.** In a B-1 zone, from any use permitted in a B-3 zone to any use permitted in a B-2 zone.
- C.** In a residential zone, from any use permitted in a B-2 zone to any use permitted in a B-1 zone.
- D.** In a residential zone, from any use permitted in any other residential zone to any use permitted in a more restrictive residence zone. For the

purpose of this subsection, an R-6 zone shall be deemed the least restrictive and an R-2 zone shall be deemed the most restrictive, with the intervening zones restricted in order of zone number.

4.2.3 Discontinuance of use of land

A nonconforming use of land where no buildings or only incidental or accessory buildings are employed together with such use shall not be changed to any other nonconforming use, and if such use is discontinued for a period of 90 days, it shall not be reestablished.

4.2.4 Discontinuance of use of property

If a legally nonconforming non-residential use is discontinued for a period of 12 months or if a legally nonconforming residential use is discontinued for a period of 24 months, such discontinuance shall constitute an abandonment of the use and the property shall not thereafter be occupied or used except in conformity with the provisions of this Land Use Code. A nonconforming use of land which is incidental or accessory to such nonconforming use shall be considered as being discontinued at the same time as the nonconforming use of the structure. In cases of foreclosure or similar situations involving a legally nonconforming use, the Planning Authority shall be authorized to extend the aforementioned period up to an additional five years provided that the extension is for good cause and the minimum length considered necessary to resume the legally nonconforming use of the structure. If the Planning Authority extends the period for resuming the nonconforming use, any associated existing nonconformities of structures and land shall also be extended. For buildings in Shoreland zones, state regulations may also govern

and provide for a shorter period of time for nonconforming properties.

4.3 NONCONFORMING LOTS

4.3.1 Lots of record

A lot that is unbuildable because it does not meet the space and bulk requirements for the zone in which it is located shall be considered a buildable lot if it meets the minimum standards provided below:

- A. The lot is a lot of record as of June 5, 1957, and
 - (i) is located in the R-1, R-2, R-3, R-4, R-5, R-5A, or R-6 zones; (ii) can meet the applicable yard setback dimensions; (iii) has minimum street frontage of 40 feet or has a means of access previously approved by the city-City Council as provided elsewhere in this articleLand Use Code; and (iv) has a minimum lot size of 5,000 square feet, or the applicable minimum lot size and frontage in that zone, whichever is less.
- B. The lot is a lot of record that was described in a subdivision plat approved by the Planning Board after June 5, 1981, and (i) is located in the R-1, R-2, R-3, R-4, R-5, R-5A or R-6 zones; and (ii) can meet the applicable yard-setback dimensions.
- C. The lot is a lot of record that conformed to the applicable lot size and, lot width, requirements and street frontage requirements as of June 5, 1984, and can meet the applicable yard setback dimensions.
- D. The lot is a lot of record as of July 15, 1985, and
 - (i) is in the IR-1 or IR-2 zones; (ii) is held under separate and distinct ownership from adjacent lots; (iii) meets the applicable street frontage requirements; (iv) meets the applicable yard setback dimensions; and (v) can be met and provided further that a lot in the IR-1 zone shall have a minimum area of 10,000 SF and a lot of

the IR-2 zone shall have a minimum area of 6,500 SF unless it is served by both public sewer and public water, in which case it shall have a minimum area of 5,000 SF. A lot in the IR-1, IR-2 and I-B zones that was described in a subdivision plat approved by the Planning Board after July 15, 1982, shall be considered a buildable lot, provided that the applicable ~~yard~~ setback dimensions can be met.

E. Contiguous lots of record under common ownership shall be deemed to be separate lots, provided that they either meet the minimum lot area and minimum frontage of the zone in which they are located, or the minimum applicable standards of this subsection.

E.F. Any nonconformities of structures and buildings, existing prior to June 5, 1957, on developed lots of record shall be considered lawfully existing nonconformities.

4.4 NONCONFORMING BUILDINGS/STRUCTURES

4.4.1 Restoration or reconstruction

A. A lawful nonconforming non-residential structure may be maintained, repaired, or reconstructed in kind within a one-year period or within a two-year period for a lawful non-conforming residential structure, but no alterations, modifications or additions shall be made to it, except as provided in subsections 4.4.2 and 4.4.3.

F.B. A nonconforming structure damaged by fire, explosion, flood, riot, act of the public enemy, accident of any kind, decay or otherwise may be maintained, repaired, reconstructed, restored or rebuilt only where:

1. The restoration or reconstruction is of a building which is lawfully nonconforming

only as to lot area, setbacks, or any other dimensional requirements; and

2. Where the restoration or reconstruction will occur entirely within the existing footprint and previous shell of the building and where no alterations, modifications, or additions will be made except as provided in this article and as permitted in subsections 4.4.2 and 4.4.3; and
3. Restoration or reconstruction is commenced within one year for a nonconforming non-residential structure, or two years for a nonconforming residential structure, of the initial damage where such damage is sudden and accidental and is diligently pursued to completion without expiration of permits. For buildings in Shoreland zones, state regulations may also govern and provide for a shorter period for restoration or reconstruction of non-conforming structures; and
4. Restoration or reconstruction necessitated by decay must be commenced- within one year of the demolition of the building and diligently pursued to completion without expiration of permits; and
5. Any reconstruction, under this provision, in the R-6 zone on a lot with 10,000 square feet or less, other than the exact restoration of a previously existing building on the site, shall comply with the applicable standards contained within the *City of Portland Design Manual*.

4.4.2 Alteration or modification

Alteration or modification may be made to a building which is lawfully nonconforming as to

~~space and bulk or~~ any dimensional requirement where the proposed changes in existing exterior walls and/or roofs would be within the space occupied by the existing shell of the building, and would not create any new nonconformity nor increase any existing nonconformity, except as provided elsewhere in this article, and as permitted under 4.4.3. This subsection shall not apply to buildings located within shoreland zones and existing on June 15, 1992, which are nonconforming only as to setbacks from wetlands, tributary streams or other water bodies, which shall be regulated in accordance with Subsection 4.4.4.

4.4.3 Building extensions

Existing principal buildings which are lawfully nonconforming as to dimensional requirements may be enlarged subject to the following provisions:

- A. No modification to an existing nonconforming building shall increase any existing nonconformity of a lot, use or structure, except as provided in (D) below.
- B. No modification to an existing nonconforming building shall create new noncompliance with any provision of this Land Use Code.
- C. Existing buildings that are lawfully nonconforming as to required minimum setbacks may be vertically or horizontally expanded provided ~~that~~ the area of expansion meets all current dimensional requirements, except as provided in- (D) below.
- D. A vertical expansion above a portion of a building that is lawfully nonconforming as to minimum setbacks may be permitted a one-time increase of one additional story provided ~~that~~:

1. No portion of the expansion horizontally extends beyond the nonconforming portion of the first story of the structure.
2. Any portion of a vertical expansion above the permitted one additional story shall meet the required minimum setback.

4.4.4 Expansions in the Shoreland zone

A non-conforming structure may be added to or expanded if such addition or expansion does not increase the nonconformity of the structure and is in accordance with the following provisions:

- A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high water line of a water body or tributary stream or the upland edge of a wetland that portion of the structure shall not be expanded, as measured in floor area or volume, by 30% or more, during the lifetime of the structure. If a replacement structure conforms with the requirements of Subsection 4.2.1, and is less than the required setback from a water body, tributary stream or wetland, the replacement structure may not be expanded if the original structure existing on January 1, 1989 had been expanded by 30% in floor area and volume since that date.
- B. Whenever a new, enlarged, or replacement foundation is constructed under a non-conforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by Building Authority, basing its decision the criteria specified in subsection (C) below. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with

subsection (A) above, and the foundation does not cause the structure to be elevated by more than three additional feet as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it shall not be considered to be an expansion of the structure.

- C. A nonconforming structure may be relocated within the boundaries of the parcel on which the structure is located, provided that the site of the relocation conforms to all setback requirements to the greatest practical extent as determined by the Building Authority, and provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of state law, the State of Maine Subsurface Wastewater Disposal Rules, or that a new system can be installed in compliance with state law, such rules, and all applicable sections of the City of Portland Code of Ordinances. In no event shall a structure be relocated in a manner that causes the structure to be more nonconforming. In determining whether the building relocation meets the setback requirements to the greatest practical extent, the Building Authority shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other structures on the property and on adjacent properties, the location of septic system and other on site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When it is necessary to remove vegetation within the water or wetland setback are in order to relocate a structure, the Building Authority shall require replanting of native vegetation to compensate for the destroyed vegetation. In

addition, the area from which the relocated structure was removed must be replanted with vegetation. Replanting shall be required as follows:

1. Trees removed in order to relocate a structure must be replanted with at least one native tree, three feet in height, for every tree removed. If more than five trees are planted, no one species of tree shall make up more than 50% of the number of trees planted. Replaced trees must be planted no further from the water or wetland than the trees that were removed.
 2. Other woody and herbaceous vegetation, and ground cover, that are removed or destroyed in order to relocate a structure must be re-established within the setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover that was disturbed, destroyed or removed.
 3. Where feasible, when a structure is relocated on a parcel the original location of the structure shall be replanted with vegetation which may consist of grasses, shrubs, trees, or a combination thereof.
- D. Buildings in existence on January 1, 1989, and located in Shoreland zones may be expanded once during the lifetime of the structure up to 25 feet toward a freshwater wetland or tributary stream, provided that a minimum setback of 40 feet is maintained and that the existing floor area or volume is not increased by more than 30%, and shall not create any undue environmental impact or flood prone condition.

4.4.5 Nonconformity as to number of dwelling units

- A. Purpose.** The purpose of this provision is to establish a process whereby certain dwellings which contain more dwelling units than the number permitted by the applicable provisions of the Land Use Code may be recognized as legal, nonconforming uses.
- B. Application.** Application for validation of such nonconforming dwelling units shall be on a form provided by the Building Authority. The application fee will be \$300.00 for each dwelling unit which is the subject of the application, and will be accompanied by:
1. A plan, drawn to scale, which shows the location of the building(s) on the lot, parking, easements, dumpsters, fencing, public ways and any other significant feature, and
 2. A floor plan for each unit in the dwelling, whether or not it is the subject of the application.
- C. Eligibility.** In order for a nonconforming dwelling unit to be validated by administrative action of the Building Authority as authorized herein, the Building Authority must find, based on competent evidence, supported by public records, that:
1. The nonconforming dwelling units were either in existence April 1, 2005, or the structure in which they are located was originally designed to accommodate more than the number of such units presently in use;
 2. The applicant neither constructed nor established the non-conforming dwelling units;

3. The nonconforming dwelling units comply with or can be made to comply with current standards of Chapter 10 of the City of Portland Code of Ordinances, including the National Fire Protection Association Life Safety Code and the National Fire Protection Association 1: Fire Prevention Code, as amended;
4. Each of the nonconforming dwelling units complies with, or can be made to comply with, provisions of the Chapter 6 of the City of Portland Code of Ordinances, as amended, including, but not limited to, the minimum standards for space and occupancy, the minimum plumbing standards, and the minimum ventilation standards.
5. The structure containing the nonconforming dwelling units is located in the R-3, R-4, R-5/R-5A, R-6/R-6A, R-7, B-1, B-2/B-2b/B-2c, and IS-FBC zones.

In the absence of legally competent evidence, supported by records, (such as, but not limited to, Assessor's records, purchase and sale agreements, affidavits, deeds, mortgages, as well as reliable secondary sources)), that the conditions of subsections C(1), C(2), c(3), C(4), or C(5) can be met, the Building Authority may not approve the application, but shall advise the applicant that the matter may be appealed to the Board of Appeals.

- D. Notice to abutters.** Upon receipt of a completed application, the Building Authority will provide the owners of abutting properties and the owners of property situated within 300 feet of the structure notice of the application, along with a notice that they may object to the Building Authority's acting on the application

and require the applicant to appeal to the Board of Appeals. The notice shall advise the abutters and owners of property within 300 feet that any objection must be submitted in writing to the Building Authority within 10 days of the date of the notice sent to them. The failure of any property owner to receive the notice described above shall not invalidate any action by the Building Authority. The Building Authority shall promptly notify the applicant of receipt of the objection, that the Building Authority is without authority to proceed, and advise the applicant that, within 30 days from receipt of the letter, an application may be filed to have the matter reviewed by the Board of Appeals as a conditional use.

- E. Approval of application.** The Building Authority may approve the application, provided that the evidence presented satisfies all of the requirements of this section and provided that no abutter nor person entitled to notice has requested that the application be referred to the Board of Appeals, instead of the Building Authority. Upon approval of the application, final inspection by the Building Authority certifying the units as in compliance with all applicable codes, and receipt of an additional fee in the amount of \$100.00 for each nonconforming dwelling unit which has been recognized as a lawful, nonconforming use, the Building Authority will issue a certificate of occupancy.
- F. Disapproval of application.** In the event the application is not approved by the Building Authority or in the event of a timely objection filed by a person qualified herein to file such an objection, the applicant, within 30 days from the decision of the Building Authority or

objection, may appeal the matter to the Board of Appeals as a conditional use.

- G. Action by Board of Appeals.** The Board of Appeals shall treat applications filed under this subsection as an application for a conditional use, applying the standards applicable to conditional uses as well as the requirements of this subsection.
- H. Dimensional and parking requirements.** In making decisions under this subsection, neither the Building Authority nor the Board of Appeals shall apply the dimensional or parking requirements which would otherwise apply in the zones where the nonconforming dwelling units are situated.
- I. Exclusions.** The provisions of this subsection shall not apply to rooming units, but shall apply to efficiency apartments under Chapter 6 of the City of Portland Code of Ordinances. The Board of Appeals is without jurisdiction to grant any relief (including, but not limited to, variances) which would recognize the particular dwelling units which are the subject of this subsection as legal, nonconforming uses, except in strict compliance with each requirement of this subsection.
- J. Prior judicial and administrative action.** Decisions of any court or administrative body, including but not limited to, the Building Authority, the Planning Board, or the Board of Appeals, made prior to the effective date of this subsection and which addressed the number of nonconforming dwelling units in a particular structure, will not bar relief under this subsection.

4.4.6 Enclosure of porches in required setbacks

Any open porch existing with a roof over the same on June 5, 1957, and encroaching upon any setback required by this article may be enclosed if the major portion of the enclosure is of glass.

4.5 NONCONFORMITY AS TO OFF STREET LOADING

A building which is nonconforming as to the requirements for off-street loading shall not be enlarged or added to, unless off street loading is provided sufficient to satisfy the requirements of Article 18 for both the addition or enlargement and the original building or structure.

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ZONES

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5 ZONES

5.1 ESTABLISHMENT OF ZONES

In order to carry out the provisions of this Land Use Code, the city of Portland shall be divided into the zones in Table 5-A.

5.2 ZONING MAP

The zones in Table 5-A are shown upon a map filed in the Department of Planning and Urban Development, City of Portland, Maine. Such zoning map, with amendments, is hereby adopted as the official zoning map of the City of Portland and as part of this Land Use Code.

5.2.1 Zone boundaries when uncertain

Where uncertainty exists with respect to the boundaries of the various zones, as shown on the zoning maps, the following rules shall apply:

- A. Unless otherwise indicated, zone boundary lines are the center lines of streets, alleys, parkways, waterways, or rights-of-way of public utilities and railroads or such lines extended.
- B. Unless otherwise shown, lines within blocks less than 200 feet wide are median lines between their sides, and lines within blocks 200 feet or more wide are 100 feet distant from the less restricted side of the block.
- C. The depictions of the Shoreland zone and Stream Protection zone on the shoreland zoning maps are illustrative of the general location of such zones. The actual boundaries of these zones shall be determined by measurement of the distance indicated on the maps and in this Land Use Code from the normal high-water line of the water body or the upland edge of wetlands. Where such measurement is not the same as the location of

TABLE 5-A: ZONES

Residential	R-1, R-2, R-3, R-4, R-5, R-5a, R-6, R-6a
Island	IR-1, IR-2, IR-3 I-B Island Business
Mixed-Use	B-1 Neighborhood Business B-2, B-2b, and B-2c Community Business B-3, B-3b, and B-3c Downtown Business B-4 Commercial Corridor B-5 and B-5b Urban Commercial B-6 Eastern Waterfront B-7 Mixed Development
Office	O-P Office Park R-P Residence Professional
Industrial & Airport	I-L and I-Lb Low-Impact I-M, I-Ma, and I-Mb Moderate Impact I-H and I-Hb High Impact A-B Airport Business
Open Space	RPZ Resource Protection R-OS Recreation and Open Space
Waterfront	EWPZ Eastern Waterfront Port WCZ Waterfront Central WPDZ Waterfront Port Development
Overlay Zones	Compact Urban Residential (R-7) Downtown Entertainment Overlay Fort Sumner Park Height Overlay Helistop Overlay Institutional Overlay (IOZ) Maine Medical Center IOZ Munjoy Hill Neighborhood Conservation Island Transfer Station Overlay Pedestrian Activities District Overlay Stream Protection Overlay University of Southern Maine Overlay Waynflete School Overlay
Form-Based	IS-FBC India Street Form-Based Code
Other	Floodplain Management Shoreland

the boundary on the zoning map, the measurement shall control, unless the zoning map indicates that the zone boundary shall follow an existing property line.

5.2.2 Extension of zone lines

Where a zone boundary line divides a lot in single or joint ownership of record at the time such line is established, the provisions of this Land Use Code for the less restricted portion of such lot shall extend not more than 30 feet into the more restricted portion, provided that the lot has at least 20 feet of street frontage in the less restrictive zone when taken together with adjacent premises which are under the same or equivalent ownership or control. If such boundary line divides a business or industrial zone from a residential zone, no frontage on a street other than the principal business street in the less restrictive zone may be taken into consideration in connection with the right herein granted. This section shall not apply to differing dimensional requirements, including height, within a zoning district.

5.3 CONDITIONAL OR CONTRACT ZONING

5.3.1 Authority and purpose

Pursuant to 30-A M.R.S.A. Section 4503(9), conditional or contract zoning is hereby authorized for rezoning of property where, for reasons such as the unusual nature or unique location of the development proposed, the City Council finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions in order to ensure that the rezoning is consistent with the city's comprehensive plan. Conditional or contract zoning shall be limited to where a rezoning is requested by the owner of the property to be rezoned. Nothing in

this section shall authorize either an agreement to change or retain a zone or a rezoning which is inconsistent with the city's comprehensive plan.

5.3.2 In the I-H zone

A conditional or contract rezoning shall only be approved in the I-H or I-Hb zones if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the following standards:

- A. The proposed development is consistent with the comprehensive plan.
- B. The proposed development is consistent with the purposes of the underlying zone.
- C. The proposed development is designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal.
- D. All plans must include complete information of processes, materials or methods of storage to be used by the development and shall specify how hazardous impacts to neighboring properties will be prevented.

5.3.3 Hearing

The Planning Board shall conduct a public hearing in accordance with Article 2 prior to any property being rezoned under this section.

5.3.4 Conditions and restrictions

Conditions and restrictions imposed under the authority of this section shall relate only to the



physical development and operation of the property and may include, by way of example:

- A. Limitations on the number and types of uses permitted;
- B. Restrictions on the scale and density of development;
- C. Specifications for the design and layout of buildings and other improvements;
- D. Schedules for commencement and completion of construction;
- E. Performance guarantees securing completion and maintenance of improvements, and guarantees against defects;
- F. Preservation of open space and buffers, and protection of natural areas and historic sites;
- G. Contributions toward the provision of municipal services required by the development; and
- H. Provisions for enforcement and remedies for breach of any condition or restriction.

available by law. No alleged violation of a contract or conditional rezoning may be prosecuted until the City has delivered written notice of the alleged violation(s) to the owner or operator of the property that is subject to the contract or conditional rezoning and given the owner or operator an opportunity to cure the violation(s) within 30 days of receipt of the notice. In addition, if such an enforcement action should result in a finding that the terms of the conditional or contract zone have been violated, then the City may act to modify or rescind the conditional or contract zone and to rezone the property.

5.4 BASE ZONE PURPOSE STATEMENTS

5.3.5 Amendments

Except as expressly modified in any contract or conditional rezoning agreement, the use and occupancy of any property within the City of Portland used or occupied pursuant to a contract or conditional rezoning agreement otherwise shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

5.3.6 Enforcement

Notwithstanding language in any contract or conditional zoning to the contrary, any violation of a conditional or contract zone shall be enforced pursuant to 30-A M.R.S.A. §4452, as may be amended from time to time, or in any other manner

TABLE 5-B: RESIDENTIAL ZONE PURPOSE STATEMENTS

R-1	To provide for lower density residential development characterized by single-family homes on individual lots in outlying areas of the city and along traffic corridors with limited additional traffic capacity.
R-2	To provide for low-density residential development characterized by single-family homes on individual lots in outlying areas of the city and along traffic corridors with limited additional traffic capacity.
R-3	To provide for medium-density residential development characterized by single-family homes on individual lots and also to provide for planned residential unit developments on substantially sized parcels.
R-4	To preserve the unique character of the Western Promenade area of the city by controlling residential conversions and by allowing the continued mix of single-family, two-family, and low-rise multi-family dwellings and other compatible development at medium densities.
R-5	To provide appropriate areas of the city for medium-density residential development characterized by single-family, two-family and low-intensity multifamily dwellings on individual lots; to ensure the stability of established medium-density neighborhoods by controlling residential conversions; and to provide for planned residential unit development on substantially-sized parcels.
R-5A	To provide for moderate-density residential development in off-peninsula locations that can provide a unique residential living experience with a high degree of natural site amenities; and to provide areas of the city in the general proximity of the peninsula that have the capability for adequate municipal services, including traffic corridors with adequate traffic capacity, that can appropriately accommodate a more intensive use of land than other lower-density zoned land and be compatible with surrounding neighborhoods; and to increase affordable housing opportunities in off-peninsula locations by providing a moderate-density zone.
R-6	To set aside areas on the peninsula for housing characterized primarily by multi-family dwellings at a high density providing a wide range of housing for differing types of households; and to conserve the existing housing stock and residential character of neighborhoods by controlling the scale and external impacts of professional offices and other nonresidential uses.
R-6A	To encourage neighborhood livability with higher density multi-family housing on large parcels located off the peninsula along major public transportation routes, near service areas, and in infill areas.



TABLE 5-C: ISLAND ZONE PURPOSE STATEMENTS

IR-1	To provide for low-intensity residential, recreational, and rural uses in the less developed areas of the islands in order to preserve the rustic character of the islands, to protect groundwater resources and natural and scenic areas, and to permit only appropriate low-intensity development in areas lacking adequate public facilities and services.
IR-2	To protect the character of existing developed residential neighborhoods on the islands and to allow infill where there are adequate public services. Expansion or extension of an existing IR-2 zone should be strictly limited, generally focused toward areas adjacent to existing village IR-2 areas, and restricted by such factors as adequacy of access, whether adequate water will be available for private use and for fire protection, and whether soils in the area are adequate for subsurface water disposal or whether public sewers are available. IR-2 rezoning on substantially sized parcels should not be considered for those sites that should be more appropriately zoned otherwise.
IR-3	To allow for a planned unit development in a manner compatible with both the natural and built environment, which provides for adequate circulation and waterfront access, adequate water supply for private use and fire protection, and safe and clean disposal of solid and septic wastes. The following guidelines shall be considered, among others, in establishing an IR-3 zone: A. An IR-3 zone should have a minimum land area of 20 acres; B. A site for an IR-3 zone should be able to accommodate higher density development by providing buffers from surrounding areas on a substantially-sized parcel for which natural amenities are capable of being conserved in a development plan for the site; C. IR-3 zones should not be established unless issues of municipal services, including infrastructure, education, and police and fire services and other municipal services can be appropriately and adequately addressed; D. The differences in scale and intensity of uses between existing development and the IR-3 zone, and the cumulative impact on the overall density of the island, should be mitigated by appropriate open space and buffer areas; and E. The development plan should have the capability of meeting the development review standards of the zone.
I-B	To provide limited areas on the islands for retail and service establishments that primarily serve the needs of the local island market area.

TABLE 5-D: MIXED-USE ZONE PURPOSE STATEMENTS

B-1	To provide limited areas for the location of small-scale commercial establishments intended to serve a local market. Uses that are complimentary, quiet, and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment are encouraged, and should be designed for the pedestrian scale and to provide convenient access for nearby residents and workers to walk in to purchase goods and services. Buildings and uses shall be designed with attractive storefronts or similar features, with windows and doors convenient to a public sidewalk. This zone encourages mixed-use buildings, such as commercial first floor with residential uses above or combined retail/office uses in a multi-story structure. The zone also provides the opportunity for high residential density. Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.
B-2	To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing, and services serving the adjoining neighborhoods and the larger community. The zone provides a broad range of goods and services with a mixture of large and small buildings, such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns. The zone should provide locations for moderate to high-density housing in urban neighborhoods along arterials.
B-2b	To provide neighborhood and community retail, business and service establishments that are oriented to and built close to the street. The B-2b zone is appropriate in areas where a more compact urban development pattern exists or where a neighborhood-compatible commercial district is established which exhibits a pedestrian scale and character. Such locations may include the peninsula and other arterials and intersections with an existing urban or neighborhood-oriented building pattern. The B-2b should provide locations for moderate to high-density housing in urban neighborhoods along arterials.
B-2c	To protect and enhance the quiet enjoyment of adjoining residential neighborhoods from the impacts of businesses that serve liquor and from other uses that are incompatible with adjoining neighborhoods due to noise.
B-3 & B-3b	To maintain and enhance the role of the downtown as the business and commercial center of the region; to enhance and promote the orderly expansion of retail and service businesses downtown, satisfying the related needs of the city's resident, working, and visitor populations; to encourage increased housing opportunity downtown for a diverse residential population; to enhance the pedestrian environment through the encouragement of intensive mixed-use activities, through the enhancement and maintenance of public and private open space, and through the enlivenment and increased attractiveness of the street environment; to encourage excellence in urban design; to preserve and capitalize on the unique character and historic fabric of the downtown through the encouragement of reuse of significant existing structures; to provide opportunity for an enhanced presence and integration of the arts and cultural activities; to reinforce the role of the downtown as a meeting place for community residents and visitors alike from all walks of life and all socio-economic groups; to provide adequate parking and transportation facilities which promote accessibility, enhance and encourage development opportunity, and enhance and protect the pedestrian environment; In the Pedestrian Activities District (PAD) Overlay Zone, to create continuity of pedestrian-oriented uses along streets where such uses predominate and along streets which, over time, will establish and maintain a strong retail and pedestrian-oriented use pattern; and to provide for the relocation of residents who are displaced by development.



TABLE 5-D (CONT.): MIXED-USE ZONE PURPOSE STATEMENTS

B-3c	In addition to the purpose of the B-3 and B-3b zone, to promote the safety, quiet enjoyment, and general welfare of citizens residing in a dense urban neighborhood by decreasing the conflicts between residential uses and loud late-night activities. The B-3c zone recognizes that the business uses appropriate in this zone are constrained by the proximity of multi-unit elderly housing.
B-4	To provide appropriate locations in the city for the development and operation of businesses catering primarily to highway-oriented trade along major arterials, as well as to provide appropriate locations for large-scale commercial uses that require larger land areas to accommodate their operations.
B-5 & B-5b	To provide areas of the peninsula near the downtown where a mixture of uses, including marine, industrial, commercial, and residential, is encouraged. The B-5 and B-5b zones are characterized by larger underdeveloped lots with great potential for denser, clustered, urban mixed-use development and more efficient reuse of existing land and buildings. It is anticipated that the dense, mixed-uses of the B-5 and B-5b zones will rely on a shared infrastructure system, including service alleys, parking lots, public transportation facilities, stormwater management, and driveways.
B-6	To establish a zoning district for the upland portion of the Eastern Waterfront area. To allow development that emphasizes a quality pedestrian experience, promotes public transit, and demonstrates exemplary urban design. The zone promotes a range of uses to achieve twenty-four hour urban vitality and shared use of parking infrastructure.
B-7	To establish a zoning district for urban areas in which the City has adopted master plans for redevelopment. Certain areas, including but not limited to Bayside, lie at the perimeter of the established downtown and contain significant redevelopment opportunities. The B-7 zone encourages these districts to acquire a distinctly urban form through dense development featuring a mix of uses such as housing, retail, offices, research and development, and artisan studios and that emphasizes a quality pedestrian experience, promotes public transit, and demonstrates exemplary urban design. Use of multi-modal transportation is strongly encouraged and is advanced by the installation of bicycle amenities, such as bicycle racks and storage areas. The zone promotes a wide range of uses in high quality structures and public open spaces to achieve 24-hour urban vitality and shared parking infrastructure.

TABLE 5-E: OFFICE ZONE PURPOSE STATEMENTS

O-P	To provide substantial areas for integrated development of offices in a park- or campus-like setting which are of the highest quality, are well-designed and maintained, and are compatible with their natural surroundings.
R-P	To provide appropriate location for the development and operation of low-intensity business uses, including offices on or near major arterials, that are compatible in scale, density and use with surrounding and adjacent residential neighborhoods; or to serve as a transition or buffer zone between residential and more intensive nonresidential zones.

TABLE 5-F: INDUSTRIAL AND AIRPORT ZONE PURPOSE STATEMENTS

I-L & I-Lb	To provide areas in which low-impact industrial uses, and limited other uses serving employees and residents of the surrounding neighborhood, will be compatible with adjacent residential uses, will provide a buffer between residential neighborhoods and higher impact industrial zones, or will stand alone as a smaller scale industrial district. The I-L zone is located adjacent to residential neighborhoods, business uses and other industrial uses where the low-intensity nature of the uses, as well as their strict performance standards, will ensure the compatibility of the uses with other adjacent industrial and nonindustrial uses. Performance standards for uses in the I-L zone are designed to maintain compatibility between low impact industrial uses and neighboring nonindustrial and industrial uses.
I-M, I-Ma, & I-Mb	To provide zones in areas of the city in which low and moderate impact industries and transportation-related uses will coexist. I-M and I-Ma zones are located on arterials or collectors. The I-Mb zone is similarly located on the peninsula. These locations provide for direct access onto arterials, thereby protecting residential neighborhoods from drive-through traffic. The purpose of the I-M, I-Ma and I-Mb industrial zones is also to provide for larger industrial buildings and for the limited or controlled use of areas outside of structures for storage of materials and machinery. These facilities often require large volumes of imported materials and products which result in large volumes of shipping and receiving. Often uses may be highway-oriented and transportation-related, thus relying on citywide and regional transportation infrastructure. Industrial uses in these moderate impact industrial zones may require separation from higher-impact uses.
I-H & I-Hb	To provide areas suitable for higher impact industrial uses than are permitted in other industrial zones and other uses that are capable of demonstrating, through design, layout and topography, their compatibility with, or non-intrusion on, existing or future higher impact industrial uses on adjacent or neighboring I-H zoned properties. Due to the intensity of use, the I-H zones are intended for uses which may require extensive outdoor storage and usage and may utilize heavy equipment. Processes may require separation from residential or sensitive environmental areas. The I-H zones are separated from other nonindustrial uses as well as natural or constructed features. High impact industrial uses will be of a higher intensity, with a greater lot coverage, than the other zones.
A-B	To provide an area for the development of airport-related enterprises. Appropriate uses permitted in this zone are those customarily associated with the operation of the airport terminal and individual airlines and accessory uses to provide for the comfort and convenience of the airport's patrons and employees.

TABLE 5-G: NATURAL RESOURCE AND OPEN SPACE ZONE PURPOSE STATEMENTS

RPZ	To preserve and protect open space for its natural resource value and to allow limited use of these open spaces for non-intensive recreational purposes.
R-OS	To preserve and protect open space as a limited and valuable resource; to permit the reasonable use of open space, while simultaneously preserving and protecting its inherent open space characteristics to assure its continued availability for public use as scenic, recreation, and conservation or natural resource area, and for the containment and structuring of urban development; to provide a suitable location for large-scale regional sports and athletic facilities; and to develop an open space system throughout the City, which provides the highest quality parks, plazas, and pedestrian environment.

6 USE STANDARDS

6.1 APPLICABILITY

The use of buildings, structures, and land are governed by this article, except when superseded by other applicable laws or ordinances. It is the intent that, when in doubt, this article should be interpreted to accommodate the goals of the City's Comprehensive Plan and other plans.

6.2 DETERMINATION OF USE

6.2.1 Use tables

Tables 6-1 to 6-6 shall determine if a use is permitted (●), conditional (◐), or not permitted (), as a principal use within a zone. Unless otherwise noted, where a use is listed in terms of square footage, square footage figures shall correspond to the total floor area of the use.

6.2.2 Unlisted uses

- A. Uses not expressly listed as permitted or conditional in Tables 6-1 to 6-6 are prohibited as principal uses except that a use may be permitted subject to meeting the following performance-based standards:
 1. The proposed use is consistent with the purposes of the zone;
 2. The proposed use is closely related to a permitted use in terms of character, scale, and external impacts; and
 3. The buildings and structures associated with the proposed use are designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise

levels, emissions, traffic, lighting, odor, and any other potential negative impacts.

- B. The Planning Authority shall determine whether the uses not listed as permitted or conditional uses meet the above standards. If it is determined that the use does not meet the above criteria, it shall not be permitted.
- C. The Planning Authority may impose reasonable conditions of approval on the proposed use to ensure that it is similar in character and impact to a permitted or conditional use.

6.2.3 Multiple uses

A site may contain more than one principal use, so long as each principal use is allowed within the zone.

6.3 CHANGE OF USE

A change of use from one use in these tables to another is governed by the requirements of the new use. The use of any part of any building, structure, or property shall not be changed to any other use, whether principal or accessory and whether alterations in the building, structure, or property are involved or not, until a permit and certificate of occupancy authorizing such change of use has first been secured from the Building Authority in accordance with Chapter 6 of the City of Portland Code of Ordinances.

TABLE 6-A: PERMITTED AND CONDITIONAL USES IN RESIDENTIAL ZONES

		R-1	R-2	R-3	R-4	R-5/R-5A	R-6/R-6A	Use Standards
Residential	Single-family dwellings	●	●	●	●	●	●	
	Two-family dwellings				●	●	●	
	Multi-family dwellings			○		○ ¹ /● ²	●	6.5.6.G
	Multiplex				○	● ¹		6.4.12
	Handicapped family units	●	●	●	●	●	●	
	Planned Residential Unit Developments			● ⁴		● ⁴		
	Special needs independent dwelling units				●	● ¹	●	
Institutional	Lodging houses					○ ^{1,3}	●	6.4.9
	Sheltered care group homes	○	○	○	○	○	○	6.5.6.K
	Congregate care facilities					● ²		6.5.6.F
	Elementary, middle, and secondary schools	○	○	○	○	○ ¹	○	
	Governmental uses	●	●	●	●	●	●	
	Hospitals			○		○ ¹	○	
	Intermediate care facilities	○	○	○		○ ¹ /● ²	○	
	Long-term and extended care facilities	○	○	○		○ ¹ /● ²	○	6.5.6.F
	Places of assembly (<10,000 SF)	○	○	○	○	○ ¹	○	
	Places of assembly (>10,001 SF)	○	○	○	○	○ ¹	○	
	Preschool facilities	○	○	○	○	○	○	6.5.6.I
	Post-secondary schools					○ ¹	○	6.5.6.F
Comm.	Bed and breakfasts						●/○ ⁵	6.4.4
	General offices (<5,000 SF)						○	6.5.6.C
	Hostels						●/○ ⁶	6.4.8
Other	Agriculture	●	●					
	Cemeteries	●	●		●		●	
	Off-street parking			○	○	○ ¹		6.5.6.H
	Parks and open spaces	●	●	●	●	●	●	
	Raising of domesticated animals	○						6.5.6.J
	Solar energy system (minor)	●	●	●	●	●	●	6.4.15
	Utility substations	○	○	○	○	○	○	6.5.6.L

1 In R-5 zone only.

2 In R-5A zone only.

3 Conversions of existing two-family or multiplex structures into lodging houses are permitted as a conditional use, provided that the lodging house shall not be located within 500 ft. of another as measured along street lines.

4 Must consist of horizontally attached dwelling units in the R-3 zone and horizontally or vertically attached dwelling units in the R-5 zone, or a series of such dwelling unit, with all land owned and used in common.

5 Permitted if a conversion of a structure existing as of 3/3/97 to up to four guest rooms and conditional if a conversion of the same to five to nine rooms.

6 Permitted if for no more than 10 overnight transient guests and conditional if for between 11 and 20 overnight transient guests. An owner, manager, or operator shall be a permanent resident of the building.

TABLE 6-B: PERMITTED AND CONDITIONAL USES IN ISLAND ZONES

		IR-1	IR-2	IR-3 ¹	I-B	Use Standards
Residential	Single-family dwellings	●	●	● ²	●	
	Two-family dwellings				○	6.5.6.G
	Multi-family dwellings				○	
	Handicapped family unit	●	●	●	●	
	Planned Residential Unit Developments	●	●			
	Lodging houses		○ ³	● ³	● ³	
Institutional	Elementary, middle, and secondary schools	○	○	●	○	
	Educational facilities (including seasonal camps)	○	○			
	Governmental uses	○	○	●	○	6.5.6.F ⁶
	Places of assembly (<10,000 SF)	○	○	●	○	
	Places of assembly (>10,001 SF)	○	○		○	
	Preschool facilities	○	○	●	○	6.5.6.I
Commercial/Service	Auto service stations				○	6.5.6.A
	Bed and breakfasts				● ⁴	
	General services (<5,000 SF)				●	
	Hotels			● ⁵	○ ⁵	
	Restaurants			●	●	
	Retail (<10,000 SF)			●	●	
Other	Studios for artists and craftspeople				●	
	Agriculture	●				
	Boathouses and storehouses for fishing equipment	●	●	●	●	
	Campgrounds	○		●		6.4.5
	Cemeteries	○	○			
	Marinas and yacht clubs			●	●	
	Off-street parking				●	
	Parks and open spaces	●	●	●	●	
	Raising of domesticated animals	○				6.5.6.J
	Solar energy system (minor)	●	●	●	●	6.4.15
	Utility substations	○	○	●		6.5.6.L
	Wharves, piers, docks, and landing ramps	○	○	●	●	

¹ All uses within the IR-3 permitted only within a PUD.

² Single-family attached permitted provided that new construction shall be limited to no more than six attached dwellings per building.

³ With greater than two but no more than nine rooms.

⁴ Permitted on Peaks Island only.

⁵ Maximum 50 rooms.

⁶ The standards of 6.5.6.G shall not apply to institutional uses within the I-B zone. In the IR-1 and IR-2 ones, institutional uses are subject to the standards of 6.5.6.G only if the total land area of the use is two acres or more.

TABLE 6-C: PERMITTED AND CONDITIONAL USES IN MIXED-USE ZONES

		B-1	B-2/B-2b/B-2c	B-3/B-3b/B-3c ¹	B-4	B-5/B-5b	B-6	B-7	Use Standards
Residential	Single-family dwellings	●	●	●		●	●	●	
	Two-family dwellings	●	●	●		●	●	●	
	Multi-family dwellings	●	●	●		●	●	●	
	Handicapped family units			●		●	●	●	
	Combined living/working spaces	●	●	●	●	●	●	●	
Institutional	Lodging houses	●	●	●	●	●		●	6.4.9
	Clinics	●	●	●		●		●	
	Cultural facilities			●	●	●	●	●	
	Elementary, middle, and secondary schools	●	●	●		●	●	●	
	Emergency shelters			○ ¹	○ ¹	○ ¹			6.5.6.B
	Governmental uses	●	●	●	●	●		●	
	Intermediate care facilities		●						
	Long-term and extended care facilities		●						
	Places of assembly (< 10,000 SF)	●	●	●	●	●	●	●	
	Places of assembly (> 10,000 SF)		●	●	●	●	●	●	
	Preschool facilities	●	●	●	●	●	●	●	
	Post-secondary schools		●	●	●	●	●	●	
	Adult business establishments		● ²	● ²					6.4.2
	Auto, boat, and related dealerships		○ ³		●				6.5.6.A
	Auto service stations		○ ³		●	●			6.5.6.A
Commercial /Service	Bars		● ⁴	● ⁴	●	●	●	●	6.4.3
	Bed and breakfasts	●	●	●				●	6.4.4, 6.4.6
	Exhibition, meeting, and convention halls			●		●	○ ¹	●	
	Funeral homes		●		●				
	General services (<5,000 SF)	●	●	●	●	●	●	●	6.4.6
	General services (>5,000 SF)		●	●	●	●	●	●	
	General offices (<5,000 SF)	●	●	●	●	●	●	●	6.4.6
	General offices (>5,000 SF)		●	●	●	●	●	●	
	Hostels	●		●		●		●	6.4.6, 6.4.8
	Hotels		●	●	●	●	● ⁵	●	
	Marijuana retail store		●/○ ⁶	●	●			●	6.4.10
	Recreation and amusement centers				●	●		●	
	Registered marijuana dispensary		●/○ ⁶	●	●			●	6.4.10
	Repair services		●	●	●	●	●	●	
	Restaurants	●	●	●	●	●	●	●	6.4.3, 6.4.6
	Retail (< 5,000 SF)	●	●	●	●	●	●	●	6.4.6, 6.4.13
	Retail (5,001 – 25,000 SF)		●	●	●	●	●	●	6.4.13

TABLE 6-C (CONT.): PERMITTED AND CONDITIONAL USES IN MIXED USE ZONES

	B-1 ¹³	B-2/B-2b/B-2c	B-3/B-3b/B-3c ¹	B-4	B-5/B-5b	B-6	B-7	Use Standards
Retail (>25,001 SF)		●	●	●	●	●	●	6.4.14
Small-scale marijuana caregiver		●	●	●			●	6.4.10
Theaters and performance halls		●	●	●	●	●	●	
Veterinary services		●		●				
Communication studios		●	●	●	●	●	●	
Dairies		● ⁷		●				
High-tech manufacturing							●	6.5.6.D
Intermodal transportation facilities					●	●	●	
Laboratory and research facilities		●		●		●	●	6.5.6.E
Low impact industrial (<10,000 SF)		● ⁸	●	●	●	●	●	6.5.6.E
Low impact industrial (>10,000 SF)		● ⁸		●	●			
Marijuana testing facilities				●				
Marijuana manufacturing facilities				●				
Marijuana cultivation facilities (<2,000 SF plant canopy)				●				6.4.10
Marijuana cultivation facilities (2,001-7,000 SF plant canopy)				●				
Printing and publishing		● ⁹	●	●	●	●	●	
Studios for artists and craftspeople	●	●	●	●	●	●	●	
Tow lots				●				6.4.15
Warehousing, storage, and distribution		● ¹⁰		●	● ¹⁰	● ^{10, 11}	● ^{10, 11}	6.5.6.E
Marine uses					●	●		6.4.12
Correctional pre-release facilities				●				6.4.7
Off-street parking			●/● ¹²		●	●	●	6.5.6.H
Parks and open spaces	●	●	●	●	●	●	●	
Solar energy system (minor)	●	●	●	●	●	●	●	6.4.14
Solar energy system (major)				●				
Utility substations	●	●	●	●	●	●	●	6.5.6.L
Wind energy system (minor)		●	●	●	●	●	●	6.4.17

¹ See PAD Overlay for additional use regulations.

² Permitted in the B-2 and B-3 only.

³ Permitted in the B-2 only. Expansion of auto service stations in existence as of 11/15/99 permitted as a conditional use in B-2b and B-2c.

⁴ Not permitted in the B-2c and B-3c zones.

⁵ Hotels shall be limited to no more than 150 rooms.

⁶ Permitted in the B-2 zone. Conditional in the B-2b and B-2c.

⁷ Permitted only if an expansion of an existing dairy.

⁸ Permitted with a retail component only. Low-impact industrial uses greater than 10,000 SF are permitted in the B-2 only.

⁹ Printing and publishing of 10,000 SF or less, or expansion of printing and publishing establishments greater than 10,000 SF in existence as of 4/4/88, shall be treated as a conditional use.

¹⁰ Self-storage permitted as a conditional use in the B-5 zone (on-peninsula locations only) in buildings existing as of 12/16/15. Self-storage not permitted in the B-2/B-2b/B-2c zones, B-6 zone, and B-7 zone.

¹¹ Wholesale is allowed as conditional use, providing the wholesale operation is associated with an onsite retail establishment.

¹² Structured parking shall be permitted. Surface parking shall be treated as a conditional use.

TABLE 6-D: PERMITTED AND CONDITIONAL USES IN OFFICE PARK & RESIDENCE PROFESSIONAL ZONES

	OP ¹	RP ²	Use Standards
Any residential use permitted in the nearest residential zone		●	
Preschool facilities	●	ⓘ	6.5.6.I
Funeral homes		●	
General offices	●	●	
High tech manufacturing	ⓘ		6.5.6.D
Laboratory and research facilities	●		
Printing and publishing	●		
Studios for artists and craftspeople		●	
Parks and open space	●	●	
Solar energy system (minor)	●	●	6.4.15
Utility substations		●	
Wind energy system (minor)	ⓘ		6.4.17

¹ All permitted and conditional uses in the O-P zone, with the exception of parks and open spaces, solar energy systems, and wind energy systems, shall be allowed only within an office park subject to the standards of 6.9.3.

² Any conditional use that is permitted as a conditional use in the nearest residential zone shall be permitted as a conditional use in the R-P zone. All conditional use standards of the residential zone shall apply.

TABLE 6-E: PERMITTED AND CONDITIONAL USES IN INDUSTRIAL & AIRPORT ZONES

		I-L/I-Lb	I-M/I-Mb	I-H/I-Hb	A-B ¹	Use Standards
Institutional	Airports				● ²	
	Preschool facilities	●	●			
	Emergency shelters	○	○	○		6.5.6.B
	Intermediate care facilities		● ³			
	Places of assembly (<10,000 SF)	●				
Commercial/Services	Bars				●	
	General services (<5,000 SF)				●	
	General services (>5,000 SF)				●	
	General offices (<5,000 SF)	● ⁴	●			
	General offices (>5,000 SF)	● ⁴	●			
	Hotels				●	
	Recreation and amusement centers	●	●			
	Repair services	●	●	●		
	Restaurants				●	
	Animal-related services	● ⁵				
	Construction & engineering services	●	●	●		
	Dairies	●	●	●		
	Fish waste processing			●		
	Food & seafood processing, packing, and distribution		●	●		
	High-impact industrial uses			●		
	Intermodal transportation facilities	●	●	●		
	Laboratory and research facilities	●	●	●		
	Low-impact industrial	●	●	●		
	Lumber yards	●	●	●		
	Marijuana testing facility	●	●	●		
	Marijuana manufacturing facility	●	●	●		
Industrial	Marijuana cultivation facility (<2,000 SF plant canopy)	●	●	●		6.4.10
	Marijuana cultivation facility (2,001-7,000 SF plant canopy)		●	●		
	Marijuana cultivation facility (>7,001 SF plant canopy)			●		
	Printing and publishing	●	●	●		
	Recycling and solid waste disposal facilities		● ⁶	● ⁶		
	Studios for artists and craftspeople	●	●			
	Telecommunication towers			●		
	Tow lots		●	●		6.4.16
	Warehousing, storage, and distribution facilities	● ⁷	●	●		

TABLE 6-E (CONT.): PERMITTED AND CONDITIONAL USES IN INDUSTRIAL & AIRPORT ZONES

	I-L/I-Lb	I-M/I-Mb	I-H/I-Hb	A-B ¹	Use Standards
Correctional pre-release facilities		● ⁸	● ⁸		6.4.7
Marinas	●				
Off-street parking				●	
Solar energy system (minor)	●	●	●	●	6.4.14
Solar energy system (major)		●	●	①	
Utility substations	●	●	●		
Wind energy system (minor)	①	●	●	●	6.4.17
Wind energy system (major)		●	●	①	

¹ Permitted uses on lots within airport restricted access areas shall be limited to those which do not require or encourage access or visits by the public and which provide technical administrative or other support to airport operations.

² Including airport administration, terminals, carrier operations, concessions, reservations and ticket sales, freight, repair and storage, fueling services, flying schools, car rental operations, and other associated uses.

³ Permitted in existing structures not designed for industrial, amusement, warehouse or manufacturing uses as of 9/15/14 or later. Such structures may be reused or expanded to establish a facility of no more than 30 persons plus staff.

⁴ Only back office uses permitted.

⁵ Not including outdoor kennel facilities.

⁶ Permitted within an enclosed structure only.

⁷ Must be less than 10,000 SF in floor area. No outdoor storage permitted. Self-storage not permitted in the I-L/I-Lb zone.

⁸ Not permitted in the I-Ma, I-Mb, or I-Hb zones.

TABLE 6-F: PERMITTED AND CONDITIONAL USES IN R-OS and RPZ

	R-OS	RPZ	Use Standards
Cemeteries	●		
Educational, scientific, or interpretive facilities		●	
Marinas	●		
Parks and open space	● ¹	● ²	
Solar energy system (minor)	ⓘ		6.4.15
Solar energy system (major)	ⓘ		
Utility substations	●/ⓘ ³		6.5.6.L, 6.5.7.A
Wharves, piers, docks, and landing ramps	●	●	
Wind energy system (minor)	ⓘ		6.4.17
Wind energy system (major)	ⓘ		

¹ Including active recreational uses, such as playgrounds, golf courses, fields, pools, courts, community gardens, marinas, and sports complexes and passive uses, such as arboretums and picnic areas. Accessory uses within structures of 2,500 SF or more shall be treated as a conditional use under Section 6.4.7.

² Including non-intensive recreational uses, such as trails, soil and water conservation activities, and wildlife management activities.

³ Including sewage pumping and treatment facilities only. Water pumping stations shall be treated as a conditional use.

6.4 SUPPLEMENTAL USE STANDARDS

The following standards shall apply to the following uses, whether permitted or conditional.

6.4.1 In general

- A. No building intended for use as a habitation shall be erected on a lot which has its only street frontage on a street less than 35 feet wide. No building shall be erected on a lot, except on the islands in Casco Bay, which does not abut a street meeting the minimum requirements for street improvements set forth in this subsection. For purposes of this subsection, street shall be as defined in Article 3, except that a dedicated street which may no longer be accepted due to lapse of time and an accepted street which may have been discontinued by abandonment shall also be deemed to be streets, provided that an applicant for a building permit respecting any lot abutting such street shall, without compensation or claim for damages, and at his own cost and expense, first submit to the Building Authority:
 1. A deed from the owner of such lot conveying to the city all his or her right, title and interest in and to such street or any portion thereof; and
 2. An agreement by such owner forever releasing the city from any and all claims for damages for the laying out and taking of such street and indemnifying the city against any and all other such claims, both such instruments to be executed and in recordable form acceptable to the Corporation Counsel and to encumber and run with the land.
- B. For a lot abutting any portion of a street which is unimproved or improved but not permanently paved, that portion which abuts the lot, and any like portion between such portion and the nearest permanently paved street or portion which is the principal access to such lot, shall be improved, including sewers, storm drains, pavement, curbs and, if located on a designated school walking route, sidewalks, in accordance with the *City of Portland Technical Manual*. Where the nearest permanently paved street does not have granite curbing, the Public Works Authority may waive the requirement of curbing under this subsection, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur:
 1. A plan of the street improvements required by this subsection shall be submitted to the Public Works Authority; and
 2. Upon determination by the Public Works Authority that the plan meets the street improvement requirements established by this subsection, a performance guarantee and inspection fee for said improvements shall be submitted to the city as set forth under Articles 13 and 14. Also as set forth in Articles 13 and 14, a one-year defect bond shall be tendered to the city prior to release of the performance guarantee required hereby. The provisions of this subsection (2) shall not apply to the erection of any single-family dwelling on

- any lot where the owner of the lot establishes that he or she was the owner of that same lot on November 19, 1984, and at all times thereafter, and states his or her intention under oath to make the structure his or her personal residence.
- C. The requirements of this subsection shall not apply to the following city streets upon their construction by the Public Works Authority to such standards as are determined by the authority to be the most feasible:
1. Dingley Court and
 2. Morgan Court.

6.4.2 Adult business establishments

- A. Adult business establishments shall be located at least 1,000 feet from any other adult business establishment, and at least 500 feet from any residential zone, as measured in a straight line, without regard to intervening structures or objects; and
- B. No sexually explicit materials, entertainment, or activity shall be visible from the exterior of the premises.

6.4.3 Bars and restaurants in the B-6 zone

- A. No bars located east of Waterville Street shall be permitted within 50 feet of Fore Street; and
- B. Restaurants located east of Waterville Street within 50 feet of Fore Street shall be limited in hours of operation to between 5 am and 11 pm each day and food service and consumption shall be the primary function of the restaurant.

6.4.4 Bed and breakfasts

- A. In the R-6 and R-6A zones, the minimum gross floor area for bed and breakfasts shall be 2,000

SF for the first three guest rooms and 500 SF for each additional guest room;

- B. In all mixed-use zones except the B-1 zone, bed and breakfasts may include a meeting facility limited to use for private parties, business meetings, weddings, receptions, seminars, or business and educational conferences, provided that:
 1. In the B-2/B-2b/B-2c zones, the meeting facility must be less than 4,000 SF; and
 2. In the B-3/B-3b/B-3c zones, the building in which the bed and breakfast and meeting facility will be located must have existed on March 3, 1997 and have been greater than 4,000 SF in floor area on that date.

6.4.5 Campgrounds

- A. Campgrounds shall not include recreational vehicles;
- B. Campgrounds shall be licensed by the State of Maine Department of Human Services;
- C. No tent shall be located within 75 feet of the perimeter of site; and
- D. The land area of the campground shall not be less than the equivalent of 5,000 SF of land area per tent site exclusive of the roadway network.

6.4.6 Commercial uses in the B-1 zone

- A. Commercial uses shall be permitted provided that such uses generate less than 100 peak hour vehicle trips per 2,000 SF of floor area and less than 100 peak hour vehicle trips in total.
- B. Retail and restaurant uses shall not operate between the hours of 11 p.m. and 6 a.m., and shall not accept deliveries or services between the hours of 10 p.m. and 7 a.m. For restaurants,

food service and consumption shall be the primary function.

- C. Beverage dealers shall be permitted as a retail use provided that the maximum total floor area for redemptions as an accessory use, including the storage of spent containers, shall be no greater than 500 SF or 10% of the total floor area of the facility, whichever is less.

6.4.7 Correctional pre-release facilities

- A. No correctional prerelease facility shall be located within 1,000 feet of another, as measured in a radius from the center of the lot.
- B. If a facility requires state or federal licensing, staffing of the facility shall be as required by such license. If a facility does not require state or federal licenses, there shall be a minimum of one staff person for every 10 residents or fraction thereof. The facility shall provide 24-hour supervision of program participants.

6.4.8 Hostels

- A. An operations plan must be submitted demonstrating that no unaccompanied minors under the age of 18 shall be permitted in the facility;
- B. The length of stay for transient guests shall not exceed 15 days within any 60-day period;
- C. In the R-6 zone, for hostels greater than 10 guests, a minimum of 250 SF of land area shall be required per hostel guest; and
- D. In the B-1 zone, no more than 20 overnight transient guests shall be permitted.

6.4.9 Lodging houses

- A. Lodging houses, except for lodging houses located in the IR-2, IR-3, and I-B zones, shall contain common areas for use by all residents,

including a kitchen. A kitchen need not be available as a part of the common areas where all meals are provided on a daily basis.

6.4.10 Marijuana-related uses

- A. The following standards apply to the following marijuana-related uses:
 1. Marijuana cultivation facilities,
 2. Marijuana manufacturing facilities,
 3. Marijuana products,
 4. Marijuana retail stores,
 5. Marijuana testing facilities,
 6. Small-scale marijuana caregivers, and
 7. Registered dispensaries.
- B. Location criteria
 1. No marijuana cultivation facility, marijuana manufacturing facility, marijuana testing facility, small-scale marijuana caregiver, marijuana store or registered dispensary may be located within 500 feet of a pre-existing public school, private school, or a public preschool program, as defined by 20-A M.R.S.A. §1. Distance shall be measured from nearest property line of the respective marijuana-related use and the property line of the lot containing the public school, private school, or public preschool program.
 2. No marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility may be located within 300 feet of the following residential zones: R-1, R-2, R-3, R-4, R-5/R-5A, R-6/R-6A, or R-7. Distance shall be measured from the nearest outer wall of the building housing the marijuana cultivation, manufacturing, or testing facility to the nearest applicable residential zone boundary. If the marijuana related

facility leases a room or suite of rooms within a building, including, without limitation, individual units within a shopping plaza or shopping mall, the nearest outer wall of the room or suite of rooms within which the facility is located shall constitute the nearest outer wall of the building housing that facility.

C. Supplemental standards

1. Marijuana-related uses may only be permitted within a fully enclosed building.
2. No outside storage of marijuana, marijuana products, or related supplies is permitted.
3. No drive-through service is permitted for marijuana-related uses.
4. No marijuana or marijuana product shall be smoked, eaten or otherwise consumed or ingested on the premises where sold.
5. An operating plan for marijuana cultivation facilities and marijuana manufacturing facilities shall be provided that at a minimum addresses the following:
 - a. wastewater;
 - b. disposal of waste; and
 - c. security at the premises.
6. A ventilation plan shall be included for marijuana cultivation facilities, marijuana manufacturing facilities, and small-scale marijuana caregivers that provides for adequate ventilation so as to prevent pesticides, insecticides or other chemicals used in the cultivation or processing of marijuana or marijuana related products from being dispersed or released outside the premises. The plan shall further provide for resulting smoke, vapor, fumes, gases and particulate matter from

marijuana or its processing or cultivation to be effectively confined to the premises.

7. Marijuana-related uses shall provide odor control measures so that odor generated on site is mitigated at the property line of the lot containing the marijuana-related use. Applications must demonstrate appropriate measures, such as carbon filtration, ventilation and exhaust systems, facility plans or other additional practices adequate to mitigate odors for the scale of operations for the uses proposed.

- D.** For purposes of this ordinance, any approval issued for a marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility operated pursuant to 22 M.R.S. § 2421 et seq. shall be deemed to constitute approval for the same corresponding marijuana cultivating, manufacturing, or testing facility use operating under 28 M.R.S. § 101 et seq. Notwithstanding the above, no marijuana cultivation facility, marijuana manufacturing facility, or marijuana testing facility may operate without the applicable state and City license.

6.4.11 Marine uses

- A. In the B-5/B-5b and B-6 zones, marine uses shall include marine products wholesaling and retailing; harbor and marine supplies and services;
- B. In the B-5/B-5b zones, marine uses shall include marine repair services and machine shops; shipbuilding and facilities for the construction, maintenance, and repair of vessels; marine museums and aquariums; boat repair yards; boat storage; and seafood processing, packing, and distribution for human consumption; and

- C. In the B-6 zone, marine uses shall include underground marine fuel storage provided that such storage shall be used solely for the purpose of fueling vessels.

6.4.12 Multiplexes

- A. No open outside stairways or fire escapes above the ground floor shall be constructed; and
- B. No habitable space in a dwelling unit shall be below grade, except basements that are a part of and below aboveground units.

6.4.13 Planned unit development in the IR-3

In addition to other applicable reviews, no development shall occur nor shall any new use be established in the IR-3 zone unless the Planning Board finds that the final development plan for the site is in compliance with the following standards:

- A. The development shall demonstrate a reasonably unified response to the design possibilities of the site, by virtue of such elements as the design and layout of buildings and lots, circulation plan, open space, drainage, and orientation to achieve energy conservation or solar access, to form a functionally integrated whole.
- B. The design and layout of the development and buildings shall be reasonably compatible with the surrounding neighborhood by virtue of such features as architectural style, exterior finish, scale, circulation, open space, landscaping, and preservation of natural site amenities.
- C. All open spaces on the site shall be functionally integrated into the development plan by virtue of such features as accessibility to residents, recreation, conservation of existing public

rights of access to shoreland areas and scenic natural areas, orientation to achieve energy conservation or solar access, preservation of natural site amenities, and use as a buffer between the development and the surrounding neighborhood.

- D. The development shall be designed primarily with a pedestrian orientation to minimize the use of and dependency on private motor vehicles. Appropriate areas on the site shall be designated, as necessary, for parking of common service vehicles, golf carts or bicycles to serve the transportation needs of residents and visitors. The internal circulation plan shall also be coordinated with the existing island street network to ensure adequate access for emergency and service vehicles.
- E. A project construction plan shall be developed indicating the anticipated number and types of vehicles such as construction equipment, supply delivery and service vehicles needed for undertaking the construction of the project. Documentation shall be provided as to the proposed transportation route such as roads, piers, beaches, sand bars and the impact of construction related activities on the routes.
- F. The development shall not have a substantial adverse impact on the capacity of existing island docking facilities. The developer shall demonstrate that an adequate water transportation system, including docking facilities, exists or will be provided.
- G. Adequate provision for off island solid waste disposal shall be demonstrated such that the impact on municipal solid waste disposal is minimized. A development shall incorporate methods such as the following to reduce the amount of solid waste generated by the

project: compaction and reduction in waste volume, recycling, incineration or baler system, and private collection and transfer to an off-island location. It shall be demonstrated that there will be no significant environmental impacts from the solid waste disposal system.

- H. All sanitary waste from the development shall be disposed of by a public sewer, private community sewer system providing at least secondary treatment, or subsurface sewerage system, in compliance with federal, state and local regulations. The developer shall demonstrate that the project will comply with all applicable federal, state and local water quality and groundwater standards.
- I. The proposed development shall have sufficient water for the reasonably foreseeable needs of the development and shall not cause an unreasonable burden on existing water supply nor adversely affect groundwater resources. Unless the development is to be served entirely by public water and secondary treatment sewer systems, the determination of compliance with this provision shall be based upon one (1) or more comprehensive groundwater analyses and reports prepared by qualified professionals and including assessment of current groundwater aquifer conditions, the impact of the proposed development on the groundwater aquifer, and recommendations for mitigation of potential impacts caused by the development.
- J. The development shall preserve the natural features of the shoreland area by minimizing the disturbance of existing vegetation and slopes, avoiding development in areas subject to erosion and sedimentation, and conserving scenic views and vistas to and from the site.

- K. The development plan shall preserve significant resources of the site by integrating open space into the development plan and by conserving such features as scenic vistas, historic man made or natural features, existing vegetation, wetland areas, shoreland areas, ground water, natural wildlife habitat, and recommended or registered State of Maine Critical Land Areas, as well as other environmentally sensitive areas.
- L. All open spaces on the site shall be functionally integrated into the development plan by virtue of such features as passive and active recreational opportunities, accessibility to residents, preservation of natural site amenities and resources, orientation to achieve energy conservation or solar access, use as a buffer between housing clusters and to screen the development from surrounding areas.
- M. The applicant shall demonstrate sufficient financial and technical capability for undertaking the proposed project. Financial capability shall include a cost estimate of the proposed improvements, proposed construction and permanent financing, and terms of sale or lease of dwellings and commercial space. Technical capacity shall include the experience and expertise of the developer in implementing projects of similar scope.
- N. The applicant shall develop an environmental impact analysis including an inventory of existing environmental conditions at the project site and in the surrounding area with an assessment of the development's probable impact upon the environment. The inventory shall include such resources as air, water quality, water supply, surface water and shoreline, geology, soils, topography, wildlife,

botanical and aquatic, including rare and endangered species, historic, archeological and aesthetic. The analysis shall include the direct and cumulative adverse impacts of the project on these resources. The analysis shall also include what steps the applicant proposes to take to identify and minimize adverse environmental impacts during construction, management and use of the property and whether there are alternatives for the project which would decrease the impact of the development.

- O. If the project is to be completed in phases, the applicant shall indicate the schedule for completing and implementing infrastructure improvements as well as other improvements, agreements or services required for compliance with the development standards of this section, planned unit development standards, and site plan and subdivision review requirements.
- P. The development shall not place an unreasonable burden on the ability of the city to provide police, fire and other emergency services.

6.4.14 Retail in the B-3/B-3b/B-3c and B-5/B-5b zones

Retail shall not include wholesale and bulk purchase lumber and construction supply sales.

6.4.15 Solar energy systems

- A. All solar energy systems shall meet the technical, safety, and maintenance standards in the *City of Portland Technical Manual*.
- B. Solar panel placement should minimize or negate any solar glare impacting nearby properties or roadways, without unduly impacting the functionality or efficiency of the solar energy system.
- C. All applicants are encouraged to ensure the maximum solar energy generation from their system by obtaining solar access easements. Solar access easements may be filed consistent with Maine State law.
- D. Solar energy systems shall be located away from and screened from public ways and nearby residential/institutional uses to the extent possible and shall be designed so as to minimize impacts on significant scenic views.
- E. Layout and fencing shall be integrated with the landscape to the extent possible and shall minimize the removal of existing vegetation to the extent possible.
- F. Major solar energy systems shall be prohibited within any designated historic landscape district.

6.4.16 Tow lots

Tow lots must be at least 300 ft. from any residential zone or conforming residential use.

6.4.17 Wind energy systems

- A. All wind energy generation equipment shall be approved under a certification program approved by the U.S. Department of Energy such as the Underwriters Laboratories, Germanischer Lloyd Wind Energies, or other similar certifying organizations. Experimental, homebuilt, and prototype models shall not be permitted.
- B. Wind energy systems and associated facilities, including foundations and support structures, electrical connections and control equipment, associated site improvements, and construction techniques, shall be designed,

engineered, and installed to comply with all applicable local, state, and federal construction and electrical regulations and Federal Aviation Administration regulations. Applicable state and local approvals shall be obtained prior to installation of any wind energy system.

- C. The support structure (e.g. tower, pole) for freestanding wind generating systems shall not be climbable for a minimum height of 12 feet above the surrounding ground level or accessible surface. All ground-mounted electrical and control equipment shall be labeled and secured to prevent unauthorized access.
- D. All moving components of a wind energy system shall be a minimum of 12 feet from ground level or accessible surface.
- E. All on-site electrical wiring associated with the proposed wind energy system shall be located within the tower/pole/supporting structure and underground. Above ground on-site connections near substations or to the electric grid shall be allowed.
- F. The use of guy wires is discouraged. If required, they shall be located away from pedestrian routes/access points and marked with visible, reflective, colored objects, such as flags, reflectors, or tape, which shall be placed on the anchor points of guy wires and along the guy wires up to a height of ten feet from the ground.
- G. No wind energy system shall be located within 250 feet of any significant wildlife habitat, as defined by Maine Department of Environmental Protection/Maine Department of Inland Fisheries and Wildlife under provisions of the Natural Resources Protection Act (Title 38, M.R.S.A. § 480, et seq.) including wildlife habitat

for species appearing on the official state and federal list of endangered or threatened animal species.

- H. For all wind energy systems over 45 feet in height above the ground or over 100kW, evidence shall be provided that the Environmental Coordinator of the Maine Department of Inland Fisheries and Wildlife, and the Maine Natural Area Program, have been notified of the location, height and design of the proposed wind energy system at least 3 weeks prior to any final determination under this provision. Any comments received therefrom shall be addressed to the satisfaction of these state authorities prior to any final determination under this provision.
 - I. Wind energy systems shall be designed to avoid electromagnetic interference with the transmission or reception of radio, telephone, television, microwave, navigational or similar signals to neighboring areas.
 - J. Wind energy systems and associated facilities shall use non-reflective materials and neutral colors and textures that blend in with the surrounding environment. Ground-mounted systems and associated facilities shall be landscaped to integrate the proposed wind energy system into the existing landscape/streetscape.
 - K. No part of the system may be illuminated, except as required by the Federal Aviation Administration (FAA) or other authorities for safety and security purposes. Where lighting is required, it shall be at the lowest intensity allowable with fixtures shielded and directed to minimize glare and visibility from the ground.
 - L. There shall be no signs, advertisements, flags, or decorative items on a wind energy system or

any associated facilities, except for the manufacturer's/installer's/owner's identification (not exceeding one SF in size), appropriate warning signs, or lights if required by the FAA.

- M. Wind energy systems shall be prohibited within any historic district, except the Congress Street Historic District where it coincides with the B-3 zone, or within 1,000 feet of any designated historic landmark.

6.5 CONDITIONAL USES

6.5.1 Conditional use review procedure

- A. **Review authority.** The Zoning Board of Appeals shall review all conditional use applications, with the exception that the Planning Board shall review:
 1. All conditional use applications in the B-3/B-3b/B-3c, B-5/B-5b, B-6, and B-7 zones;
 2. All conditional use applications associated with projects that are otherwise before the Planning Board; and
 3. Conditional use applications for specific uses for which the Planning Board is identified as the review authority under Subsection 6.5.6.
- B. **Application.** Applications for conditional use review shall be submitted to the Building Authority for all Zoning Board of Appeals reviews and the Planning Authority for all Planning Board reviews. A nonrefundable application fee, as established from time to time by the City Council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form and shall contain such information and documentation as shall be prescribed from time to time by the review authority.

- C. **Public hearing.** A public hearing shall be set, advertised and conducted by the review authority in accordance with Article 2 of this chapter.
- D. **Action.** Within 30 days following the close of the public hearing, the review authority shall render its decision, in a manner and form specified by Article 2 of this chapter, approving the conditional use, approving the conditional use subject to conditions as specified in Subsection 6.5.3, or denying it. The failure of the review authority to act within 30 days shall be deemed an approval of the conditional use, unless such time period is mutually extended in writing by the applicant and the review authority. Within five days of such decision or the expiration of such period, the Building Authority or Planning Authority shall mail notice of such decision or failure to act to the applicant and, if a conditional use is authorized, list therein any and all conditions imposed by the review authority.

6.5.2 General conditional use standards

The review authority shall, after review of the application, approve a conditional use upon a finding that the proposed conditional use, at the size and intensity contemplated at the proposed location, will not have substantially greater negative impacts than would normally occur from surrounding uses or other allowable uses in the same zone. The review authority shall find that this standard is satisfied if it finds that:

- A. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than

would normally occur at surrounding uses or other allowable uses in the same zone; and

- B. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter; and
- C. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.
- D. The proposed use will meet any additional zone or use-specific standards identified in this article.

6.5.3 Conditions on conditional use approvals

The review authority may impose such reasonable conditions upon the premises benefited by a conditional use as may be necessary to prevent or minimize adverse effects therefrom upon other property in the neighborhood. Such conditions shall be expressly set forth in the resolution authorizing the conditional use. Violation of such conditions shall be a violation of this article.

6.5.4 Effect of issuance of a conditional use approval

The approval of a conditional use shall not authorize the establishment or extension of any use nor the development, construction, reconstruction, alteration, or moving of any building or structure, but shall merely authorize the preparation, filing and processing of applications for any permits or approvals which may be required by the City of

Portland Code of Ordinances, including but not limited to a building permit, a certificate of occupancy, subdivision approval, and site plan approval.

6.5.5 Limitations on conditional use approvals

No conditional use approval shall be valid for a period longer than six months from the date of approval, or such other time, not to exceed two years, as may be fixed at the time granted, unless the conditional use has been commenced or a building permit is issued and construction has begun within that period and is thereafter diligently pursued to completion; provided, however, that one or more extensions of said time may be granted if the facts constituting the basis of the decision have not materially changed, and the two year period is not exceeded thereby. A conditional use approval shall be deemed to authorize only the particular use for which it was issued and such approval shall automatically expire and cease to be of any force or effect if such use shall for any reason be discontinued for a period of 12 consecutive months or more.

6.5.6 Supplemental use-specific conditional use standards

In addition to the general conditional use standards, the following standards shall apply to specific conditional uses:

- A. **Automobile, boat, and related dealerships and auto service stations**
 - 1. The Planning Board shall be the reviewing authority;
 - 2. 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;

3. No ingress and egress driveways shall be located within 30 ft. 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; and
4. A landscaped buffer, no less than five feet wide, shall be located along street frontages (excluding driveways). The buffer shall consist of a variety of plantings in accordance with the *City of Portland Technical Manual*; and
5. Car washes shall be designed to avoid the tracking of residual waters into the street.

B. Emergency shelters

1. The facility shall provide adequate space for conducting security searches and other assessments;
2. The facility shall be designed with a centralized shelter operations office on each level providing sight lines to sleeping areas;
3. A management plan adequately outlining the following areas shall be provided: management responsibilities; process for resolving neighborhood concerns; staffing; access restrictions; on-site surveillance; safety measures; controls for resident behavior and noise levels; and monitoring reports.
4. Adequate access to and from METRO service shall be provided. The facility shall be within a ¼ mile of a METRO line, or shall

be within ½ mile of a METRO line and provide adequate indoor space to permit all shelter guests day shelter, as well as implement strategies to help residents utilize transit;

5. The facility shall provide on-site services to support residents, such as case management, life skills training, counseling, employment and educational services, housing assistance, or other programs;
6. Suitable laundry, kitchen, pantry, bicycle storage, and secure storage facilities for shelter stayers shall be provided on-site; and
7. An outdoor area for guest use shall be provided on-site with adequate screening to protect privacy of guests.

C. General office in the R-6 & R-6A zones

1. For the use of any building designed or constructed for residential use, which was in use as a residence on April 18, 1984, or thereafter:
 - a. Offices shall serve a member of a recognized profession and be maintained for the conduct of that profession. Professional office uses do not include veterinary offices.
 - b. A professional office shall not be located within 500 ft. of another as measured along the street line to the respective property lines.
 - c. A building with one or more professional offices shall have at least 50% of the total floor area of the building devoted to residential uses.
 - d. The total number of individuals working in a building of professional

offices shall not exceed the equivalent of four full time employees.

- e. Any additions or exterior alterations shall be compatible with the architecture of the building and maintain the residential appearance of the building. Construction of a new building shall be compatible with the architectural character of the surrounding area.
 2. The scale and surface area of parking, driveways, and paved areas shall be arranged and landscaped to be compatible in size and scale with neighboring properties in the area and to properly screen vehicles from adjacent properties and streets.
- D. High-tech manufacturing**
1. A minimum of one-third of the total square footage devoted to manufacturing shall be conducted in a laboratory environment, in a controlled environment with specialized air handling systems that exceed levels for pressurization and filtration found in office environments and traditional manufacturing facilities;
 2. Rooftop equipment shall be integrated into the overall building design and shall be screened as necessary;
 3. In the B-7, accessory warehousing is permitted. Where warehousing cannot be located on the same lot because the land area is too small to accommodate the warehousing on the same lot, one remote warehouse may be located within 600 feet of the principal use referenced above;
 4. In the O-P zone, truck traffic serving a single manufacturing business or

institution shall not exceed, on a regular basis, more than two tractor-trailer truck deliveries per week and provided that no deliveries are accepted between 7:00 p.m. and 7:00 a.m.

E. Industrial uses

1. In the B-2, B-2b and B-2c zones:
 - a. The Planning Board shall be the reviewing authority;
 - b. The site shall have an adequate traffic circulation pattern designed to avoid hazards to vehicular circulation on adjoining streets. All stacking of motor vehicles shall be on site, and loading facilities shall be located to the rear of the building and shall not be visible from the street; and
 - c. The exterior design of the structures, including architectural style, facade materials, roof pitch, building form, established setbacks and height, shall be of a commercial rather than industrial character. The site shall contain screening and landscaping which shall meet the requirements of the site plan ordinance for screening between land uses and the *City of Portland Technical Manual*.
2. In the B-3/B-3b/B-3c zones:
 - a. The floor area devoted to industrial use shall not exceed 10,000 square feet; for a building in existence on March 11, 1991, the floor area shall not exceed 10,000 square feet or 50 percent of the total floor area, whichever is greater;
 - b. The associated vehicular loading, unloading, parking, circulation and

- traffic volumes on the site and on adjacent public streets will not have a more intensive impact than any use on the site within the last 5 years;
- c. Any buildings located in a PAD overlay zone shall be subject to the requirements of that zone in addition to the requirements of this subsection; and
 - d. For buildings that either were not in existence on March 11, 1991, or were in existence on that date but were either in use for any permitted use in the B-3 zone or were designed or constructed for any such use:
 - i. No tractor trailer trucks or longer vehicles shall be associated with the proposal;
 - ii. The proposal shall exclude warehousing and storage as a principal use;
 - iii. The use shall not generate more than six delivery or service trips per day between 7:00 a.m. and 7:00 p.m.
3. In the B-5/B-5b zones:
- a. Truck loading and access and vehicle parking shall be located in the rear or side yard of the site where possible;
 - b. Street frontage shall be designed for pedestrian scale or interest; and
 - c. Shared infrastructure to the extent practicable, including, but not limited to, service alleys, parking areas, stormwater treatment, public transportation facilities and driveways, shall be utilized.
- F. Institutional uses (excluding preschools)**
- 1. The Planning Board shall be the reviewing authority;
 - 2. In the case of expansion of existing institutional uses onto land other than the lot on which the principal use is located, it shall be demonstrated that the proposed use cannot reasonably be accommodated on the existing site through more efficient utilization of land or buildings, and will not cause significant physical encroachment into established residential area; and
 - 3. The proposed use will not cause significant displacement or conversion of residential uses existing as of June 1, 1983, or July 15, 1985 in the IR-1 and IR-2 zones, or thereafter;
 - 4. In the case of a use or use expansion which constitutes a combination of the conditional institutional uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative;
 - 5. In the case of community halls:
 - a. The structure was in existence as of January 4, 2010.
 - b. The structure was built for institutional or other non-residential uses;
 - c. The structure is operated by, or operated subject to the control of, a not-for-profit entity in accordance with its not-for-profit purposes; and
 - d. A parking management plan shall be submitted for review and approval by the Planning Board; and
 - 6. In the case of private club or fraternal organizations, any such establishment serving alcoholic beverages or in possession of a license for serving

- alcoholic beverages shall meet the minimum lot size requirement for places of assembly greater than 10,000 SF;
7. In the case of a post-secondary school within the R-5 zone and not including the USM Overlay Zone, such school may build principal structures to a height of 55 feet if the following standards can be met:
 - a. Minimum lot size: 10 acres which may include adjacent land owned by the institution on both sides of a public street.
 - b. Minimum setback between buildings on-site: 20 feet.
 - c. Minimum setback from external property boundary: 30 feet, except that parking garages over 35 feet in height must be located 50 feet from external property boundaries when adjacent to an adjoining residential use.
 - d. The area between the structure and adjoining residential uses must be adequately screened with appropriate landscaping or other features to buffer the building and effects thereof (i.e. noise, light, etc) from abutting properties.
 8. In the IR-1 and IR-2 zones, institutional uses shall be subject to the above conditional use standards if the total land area of the site is two acres or more.
- G. Multi-family**
1. In the I-B zone:
 - a. Multi-family buildings shall have a maximum of four units;
 - b. No open outside stairways or fire escapes above ground floor shall be constructed or have been constructed in the immediately preceding five years;
 - c. A below grade dwelling unit shall be permitted only if access is provided directly to the outside of the building;
 - d. Density shall be determined by the most restrictive abutting residential zone, except for those lots which are served by public water and sewer, where density shall be determined by the least restrictive abutting residential zone. If no residential zone is abutting, density shall be determined by the nearest residential zone. Residential uses shall meet the requirements of such abutting or nearest residential zone;
 - e. Any additions or exterior alterations shall be compatible with the original architecture of the building. The exterior design of new construction, including the architectural style, facade materials, roof pitch, building form, and height shall be compatible with neighboring properties;
 - f. No existing dwelling unit shall be decreased to less than 1,000 square feet of floor area;
 - g. No additional dwelling unit shall have less than 600 square feet of floor area, exclusive of common hallways and storage in basement and attic;
 - h. All sanitary waste shall be disposed of by a public sewer, subsurface sewerage system or other method in compliance with all applicable federal, state and local regulations; and

- i. The proposed conversion has sufficient water for the needs of the dwellings and will not cause an unreasonable burden on an existing water supply nor adversely affect groundwater resources.
2. In the R-3 and R-5 zones. Alteration of a structure existing and not in residential use as of January 1, 1984 to three or more dwelling units shall be permitted as a conditional use in the R-3 and R-5 zones, provided that:
 - a. No open outside stairways or fire escapes above the ground floor shall be constructed or have been constructed in the immediately preceding five years;
 - b. 3,000 SF of land area per dwelling unit shall be required;
 - c. A lower level dwelling unit shall have a minimum of one-half of its floor-to-ceiling height above the average adjoining ground level;
 - d. Any addition or exterior alteration, such as change in façade materials, building form, or roof pitch, shall be designed to be compatible with the architectural style of the structure;
 - e. In the R-3 zone, any addition or exterior alteration shall be limited to a gross floor area equal to or less than 25% of the total existing floor area as of June 13, 2018; and
 - f. Paved areas shall be designed to be compatible in size and scale with neighboring properties in the area and properly screened from adjacent streets.

H. Off-street parking

1. In the R-3, R-4, and R-5 zones:
 - a. Off-street parking must be designed to satisfy the parking requirement of a use located in and conforming with the provisions of a nearby business or industrial zone.
 - b. The lot on which the parking is proposed must be located wholly within 300 feet, measured along lines of public access, from the use which requires the off-street parking;
 - c. The lot where the off-street parking is proposed shall be under the control of the owner of the use which requires the off-street parking. Evidence of such control by deed or lease shall be required before the certificate of occupancy is issued. If such control should be abrogated, the parking use thus allowed shall automatically revert to a nonconforming use in violation of this article and shall be terminated forthwith.
 - d. Conditions may be imposed to insure development compatible with that of the immediate neighborhood notwithstanding the provisions of any other section of this article. Such conditions may include limits on the period of such use.
2. Structured parking the B-6 and B-7 zones:
 - a. Parking garages shall incorporate first floor retail space or other non-parking and active use along all street frontages.

- b. The requirement for first floor mixed use may be waived upon demonstration that the project meets one or more of the following criteria:
 - i. The applicant demonstrates that steepness of grade or the character of the adjacent street will not support retail or first-floor mixed use in the foreseeable future.
 - ii. The first floor of the garage is set back a minimum of 35 feet from the street right-of-way and its design does not provide an impediment for development of such space for mixed-use in the future. Such space (between the garage and the street) shall, in the interim, not be used for surface parking.
 - iii. The applicant can demonstrate to the satisfaction of the Planning Board that a market for first floor mixed uses currently does not exist, provided that the structure of the garage is designed to accommodate retail and or mixed uses in the future. In these cases, the Planning Board will need to find that, on the street-level deck of a proposed parking garage, a minimum of 20 feet horizontal distance of depth from the street and nine feet finished floor-to-finished ceiling clearance could house future retail and or mixed use. The applicant will further need to demonstrate that the garage design anticipates the future development of utilities and circulation necessary for non-parking uses. Where a parking garage fronts on more than one public street and where there is an existing change in grade elevation of over 5% across the footprint of the garage, the nine-foot floor-to-ceiling requirement of this section only applies to the street with higher traffic volumes.
 - c. Where the Board allows a waiver of first floor mixed use, garages shall display architecture that enhances the pedestrian experience and disguises the parking use to the extent possible. Use of traditional storefront design concepts and traditional building materials is encouraged.
3. Surface parking in the B-3, B-6, and B-7 zones:
- a. Surface lots shall be laid out in a manner conducive to development of future buildings, and/or structured parking.
 - b. Surface parking, including parking aisles, shall be located at least 35 feet from a street. The 35-foot setback need not apply in the case of a property in which 80% of the street frontage has a building within 10 feet of the street frontage and shall not apply to driveways perpendicular to the street providing access to the site.
- I. **Preschool facilities**
- 1. The facility shall be located in a structure in which there is one or more occupied

residential units or in an existing accessory structure, unless the facility is located in a principal structure that has not been used as a residence in whole or in part within the five years immediately preceding the application for a preschool use, or in a nonresidential structure accessory to the principal nonresidential use;

2. The maximum capacity shall be 12 children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection (5) below are met. There shall be no maximum limit on the number of children in a facility located in a principal structure that has not been used as a residence in whole or in part within the five years immediately preceding the application for a preschool use, or in a nonresidential structure accessory thereto;
3. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts;
4. Solid waste shall be stored in covered containers. Such containers shall be screened on all sides;
5. Preschool facilities located either in structures that have been in residential use within the past five years or in existing accessory structures and that serve between 13 and 24 children shall meet the following additional standards:
 - a. The facility shall provide a minimum of 75 square feet of outdoor play area per child;

- b. The play area shall be located in the side and rear yards only and shall not be located in front yards;
- c. Outside play areas shall be separated from abutting properties by a fence at least 48 inches in height;
- d. A 10-foot-wide landscaped buffer shall be required outside of the fenced play area, and shall be established in accordance with the landscaping standards of the City's Technical Standards and Guidelines;
- e. The minimum lot size for a preschool located in a residential or existing accessory structure and serving more than 12 children shall be 20,000 square feet;
- f. The maximum number of children in a preschool facility located in a residential or existing accessory structure shall be 24; and
- g. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the residential appearance of the building.

J. Raising of domesticated animals for non-commercial purposes

1. No animals may be kept on any lot less than three acres or closer than 100 feet to any street or lot line, except domesticated chickens as regulated in Chapter 5.
2. This use may not create any odor, noise, health or safety hazards, or other nuisance to neighboring properties.
3. Raising of pigs or reptiles is not permitted.

K. Sheltered care group homes

1. A sheltered care group home shall not be located within 500 ft. of another, as measured along street lines to the respective property lines;
2. The facility shall make provision for adequate on-site staffing in accordance with applicable state licensing requirements. If a facility is not licensed by the state, there shall be a minimum of 1 staff person for every 10 residents or fraction thereof.
3. The Board of Appeals or Planning Board may impose conditions upon a conditional use permit concerning the creation or operation of a sheltered care group home including but not limited to the following: site and building maintenance; lighting, fencing, and other appropriate security measures; screening and buffering of parking areas; compatibility of any additions or alterations with the existing residential structure; compatibility of new structures with the architectural character of the surrounding area; and limitation on the duration of a sheltered care group home permit.

L. Utility substations

1. Utility substations shall be as small in size as practicable.
2. Substations shall be suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood. The remainder of the lot not consumed by the utility substation and its related access; and shall be designed and designated for future development;

3. If greater than 100 SF in the B-7 zone, the structure shall be set back at least 35 feet from the street right-of-way except in the case of a lot having frontage on Marginal Way and I-295 provided the minimum 35-foot setback is met along Marginal Way; and
4. In the B-7 zone, the substation equipment shall be fully enclosed within a structure.

M. Wind energy systems

1. Wind energy systems within recreation open space zones (including the Island Transfer Station Overlay Zone) are allowed as a condition use only where they are co-located within public industrial or utility facilities.
2. Systems shall be screened with a vegetated buffer from public areas and residential buildings.

6.5.7 Supplemental zone-specific conditional use standards

In addition to the general conditional use standards and supplemental use-specific conditional use standards, the following standards shall apply to conditional uses within certain zones:

A. R-OS Zone

1. The use shall be in conformity with or satisfy a deficiency identified in a federal, state, regional, or city recreation and open space plan, including but not limited to the state comprehensive outdoor recreation plan, as such plans may from time to time be created or revised.
2. Buildings and structures shall not obstruct significant scenic views presently enjoyed

by nearby residents, passersby, or users of the site.

3. Indoor recreation or nonrecreational uses shall serve a significant public purpose that cannot reasonably be accommodated outside of the recreation and open space zone.

6.6 ACCESSORY USES

6.6.1 In general

- A. Accessory uses shall be permitted in conjunction with permitted or conditional principal uses. Accessory uses must be:
 1. Customarily found in association with the principal uses,
 2. Generally consistent with the impacts of the primary use,
 3. Secondary in nature, clearly incidental and subordinate to the principal uses in terms of area and function,
 4. Located on the same lot as the principal use unless otherwise permitted, and
 5. Consistent with the intent of the zone.
- B. No accessory use or uses within a building shall occupy more than a combined total of 25 per cent of the floor area of the principal building, with the exception of required off-street parking, unless otherwise provided in Subsection 6.6.2 below.
- C. No accessory use or uses not within a building shall occupy more than a combined total of 25 per cent of the unbuilt lot area, or of the required rear yard area, with the exception of off-street parking or as otherwise provided in Subsection 6.6.2.

6.6.2 Standards for specific accessory uses

A. Accessory Dwelling Units (ADUs)

1. Accessory Dwelling Units (ADUs) shall be permitted on all lawfully conforming and non-conforming lots with legal use identified as either single- or two-family dwellings. ADUs shall comply with all dimensional standards of the underlying zone unless otherwise provided below.
2. One ADU shall be permitted per qualifying property.
3. The owner(s) of the residence in which the accessory dwelling unit is created must occupy at least one of the dwelling units, with the exception of legally non-conforming lots on Peaks Island.
4. On Peaks Island, neither the accessory unit or principal unit shall be used for short-term rentals as defined under Section 6-150.1 of the City of Portland Code of Ordinances.
5. The appearance of the principal structure as either a single- or two-family structure shall not be significantly altered to reflect the addition of a new dwelling unit. When an ADU is significantly visible from public ways, the building design shall:
 - a. Be clearly subordinate to the principal structure(s) in scale and position in relationship with the street and principal structure(s).
 - b. Not include a separate entrance along the front façade of an existing single- or two-family structure; or outside stairways or fire escapes above the ground floor.
6. Under circumstances where an existing non-conforming structure is converted to an ADU, the design of the ADU shall take into consideration to the extent

- practicable the privacy of adjacent properties.
7. The developer of an ADU shall record a deed restriction requiring that the ADU and at least one other unit on-site remain under common ownership.
 8. ADUs shall comply with all dimensional requirements of the underlying zone except:
 - a. Lot coverage and lot area per dwelling unit requirements.
 - b. Within the IR-1 Island Residential zone, the minimum lot area shall be 70,000 SF, except on Peaks Island where this standard shall not apply.
 - c. Within the IR-2 Island Residential zone, the minimum lot area shall be 30,000 SF, except on Peaks Island where this standard shall not apply.
 9. An ADU shall be limited to a gross floor area of 800 SF or $\frac{2}{3}$ of the gross floor area of the principal unit(s), whichever is the lesser amount.
 10. ADUs created on Peaks Island on existing lawfully non-conforming lots as of May 1, 2015:
 - a. Shall be rented to households earning up to 100% AMI and are subject to income verification as further outlined in Subsection 17.2.3.
 - b. Shall be rented for no more than the rent permitted at 80% AMI under the Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing.
 - c. Shall be subject to an Affordable Housing Agreement as set forth in the City's Inclusionary Zoning Implementation Guidelines for Developers of Rental Housing for a term of not less than 20 years.
 - d. Shall provide the occupant of the affordable unit a written description of the occupancy requirements for the unit.
- B. Amusement devices.** Except where the principal use consists of the sale of alcoholic beverages for consumption on premises or where the principal structure is an airline terminal, pinball machines or amusement devices shall not be considered to be accessory uses whenever there are more than a total of two such machines or devices on the premises.
- C. Antennas, discs, transmitting and receiving equipment.** Building-mounted antennas, discs, and other transmitting and receiving equipment shall be:
1. No taller than 15 feet above the highest structural steel of the building roof;
 - a. Setback no less than 15 feet from the building perimeter; and
 - b. Integrated into the architecture of the building in placement, form, color, and material so as to screen or camouflage such equipment from public view.
- D. Drive-throughs.** Drive-throughs shall be permitted as an accessory use in the B-4 zone. Drive-throughs shall be reviewed as conditional accessory uses in the B-2 and B-2c zones, B-3 zone, B-6 zone, and B-7 zone. In all other zones, drive-throughs shall be prohibited. Where a conditional use, drive-throughs shall be subject to the provisions of Subsection 6.5.2 and the following additional review standards:
1. In general:

- a. The Planning Board shall be the reviewing authority.
 - b. Features such as windows, vacuum cleaners, menu/order boards, and 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 40 feet from any adjoining property located in a residential zone. This distance shall be measured from the outermost edge of the outside drive-through feature to such property line. In addition, drive-through features shall not extend nearer than 25 feet from the right-of-way;
 - c. 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;
 - d. Any speakers, intercom systems, or other audible means of communication shall not play pre-recorded 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;
 - e. 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 the *City of Portland Technical Manual*;
 - f. 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, and noise. 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;
 - g. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access; and
 - h. The Board, as part of its review, may take into consideration the impact hours of operation may have on adjoining uses.
2. In the B-3 zone, drive-throughs shall only be permitted when accessory to a bank. Drive-throughs shall be subject to the Downtown Urban Design Guidelines.
 3. In the B-6 zone, drive-throughs shall only be permitted when accessory to a bank and located in the interior of parking structures. Drive-up vehicle circulation

shall not create an impediment for retail or mixed-use development for the first floor of the subject garages along any adjacent public streets.

4. In the B-7 zone:

- a. The drive-through must be accessory to a banking service occupying a minimum floor area of 4,000 SF;
- b. The drive-through must be attached to or included within a building with a minimum floor area of 20,000 SF, except that for lots of less than 20,000 SF and in existence as of March 9, 2005, a drive-up may be included in a building of less than 20,000 SF; and
- c. The drive-up facility must be attached or included within a building and/or addition meeting the minimum height of four stories in the Bayside Height District A and three stories in the Bayside Height Districts B and C. For the purposes of this conditional use, the minimum height exceptions for the B-7 zone shall not apply;
- d. The first floor of the building must include banking or other retail storefront uses with storefront windows, entries, and interior public space oriented to and visible from the street, with front entry access facing the street and directly accessible from the public sidewalk;
- e. Drive-up vehicle circulation shall not be located between the building and any adjacent public streets;
- f. The drive-up shall be limited to two vehicle drive-through lanes; and

- g. The location of any drive-up shall be limited to the geographic area between Somerset/Kennebec Streets/I-295/Franklin Street/Forest Avenue.

E. Home occupations

1. The purpose of home occupations is to allow the secondary and incidental use of a residence for the conduct of appropriate occupations whose external activity levels and impacts are so limited as to be compatible with the residential character of the neighborhood.
2. Home occupations must be conducted entirely within the dwelling unit by one or more persons residing within the dwelling unit.
3. In connection with the operation of a home occupation, , the following requirements shall be met:
 - a. A home occupation shall not occupy more than 500 SF of floor area or more than 25 % of the total floor area of such a dwelling unit, whichever is less, or in the case of licensed family day care homes, or home babysitting services, to accommodate not more than six children plus two children after school and having no nonresidential employees;
 - b. There shall be no outside storage of goods and materials nor shall there be exterior displays, or display of goods visible from the outside;
 - c. Storage of materials related to the home occupation shall count as a part of the occupancy limitations above, but shall not constitute a dominant

- part of such occupancy provided, however, storage of such materials or products in garages or other accessory structures is prohibited;
- d. Exterior signs shall be limited to one non-illuminated sign not exceeding a total area of two SF, affixed to the building and not projecting more than one foot beyond the building;
 - e. Any exterior alterations to the residence shall be compatible with the architecture of the building and maintain the residential appearance by virtue of exterior materials, lighting, and signs;
 - f. The home occupation shall not produce offensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare or other objectionable effects;
 - g. There shall be no more than one nonresident employed in the home occupation, provided, however, family day care or home babysitting services shall have no nonresident employees;
 - h. No traffic shall be generated by the home occupation in greater volumes than would normally be expected in a residential neighborhood;
 - i. No motor vehicle exceeding a gross vehicle weight of 6,000 pounds shall be stored on the property in connection with the home occupation.
4. No residence shall be occupied, altered or used for any home occupation except the following:
 - a. Accountants and auditors;
 - b. Answering services (telephone);
 - c. Architects;
 - d. Artists and sculptors;
 - e. Authors and composers;
 - f. Computer programming;
 - g. Custodial services;
 - h. Custom furniture repair and upholstery;
 - i. Dentists, doctors, therapists, and health care practitioners;
 - j. Direct mail services;
 - k. Dressmakers, seamstresses and tailors;
 - l. Engineers;
 - m. Family planning services;
 - n. Hairdressers (limited to no more than two hair dryers);
 - o. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, weaving, ceramics;
 - p. Interior decorators;
 - q. Lawyers, justices of the peace and notary publics;
 - r. Licensed family day care home or babysitting services;
 - s. Musicians or music teachers, including group instruction not to exceed six students at any time but not including performances or band rehearsals, which shall meet the following additional requirements:
 - i. Electronic amplification is prohibited;
 - ii. The applicant shall demonstrate that noise attenuation is provided which minimizes perception of sound at property lines at all

- times during the use. Noise attenuation measures may include, but are not limited to, insulation, double-pane windows, air conditioners or any combination of these or similar noise attenuation measures;
- iii. Hours of operation shall be limited to 8:30 a.m. to 9:30 p.m.
 - t. Office facility of a minister, rabbi, or priest;
 - u. Photographic studios;
 - v. Professional counseling and consulting services;
 - w. Professional research services;
 - x. Sales persons provided that no retail or wholesale transactions are made on the premises;
 - y. Small appliance repair;
 - z. Snow plowing provided that only one snow plow vehicle is stored on or generated from the site;
 - aa. Special tutoring or instruction (not to exceed three pupils at any given time);
 - bb. Stenographic and other clerical services.
 - cc. Small-scale marijuana caregiver, except that no more than one small-scale caregiver may operate out of any one dwelling unit.
5. A home occupation that is not listed in subsection (3) but is similar to and no more objectionable than those home occupations listed, shall be permitted as a conditional use subject to the requirements of Section 6.5 of this article. This provision shall not include veterinarians, kennels, animal raising, funeral homes, retail uses including antique shops, restaurants, dancing studios, towing services, repair and painting of automobiles as home occupations.
- F. Makers' markets in the IL-b zone.** Makers' markets, including periodic or seasonal sale of handcrafted and limited production products for final consumption, which may include prepared or raw foods, shall be permitted as an accessory use in the IL-b zone, provided that:
1. Such sales are located within a lawfully conforming principal permitted use;
 - a. Such sales occupy an area no larger than 45% of the floor area devoted to the principal use;
 - b. Such sales by any single vendor or group of vendors shall occur for no more than a total of 28 hours a week collectively;
 - c. Such products are produced or permitted to be produced in the IL zone; and
 - d. Such products are sold by the producer of the product or their designee.
- G. Tasting rooms in industrial zones.** Tasting rooms shall be permitted as accessory uses on the premises of facilities where beer, wine, spirits, other alcoholic or non-alcoholic beverages, or food are produced, provided that:
1. Service of food in the facility is limited to that which does not constitute a full course meal.
 2. No more than 10% of the beverage menu in tasting rooms accessory to beverage production or 10% of the food menu in tasting rooms accessory to food

production is produced or manufactured off-site.

- H. Solar energy generation.** Roof-mounted, building-integrated, or small-scale ground-mounted solar energy arrays shall be permitted as accessory uses within all zones except the stream protection zone, the recreation open space zone where co-located with public industrial or utility infrastructure and within identified historic landscapes, subject to the following conditions.

1. Accessory solar energy systems shall comply with all general use standards for solar energy systems as stated under Section 6.4.15 of this article and with the dimensional requirements as stated under article 7.5.6.A.
2. Small-scale ground-mounted solar arrays shall occupy less than 1,000 square feet of ground area.

- I. Subletting.** The letting of rooms within an existing dwelling unit in any residential zone, shall be permitted as an accessory use provided that:

1. There shall be no more than two persons occupying such room or rooms;
2. There shall be not more than two rooms per dwelling unit occupied for such use; and
3. There shall be no increase in the bathroom and/or kitchen facilities in the dwelling, and no such facility shall have been constructed in the immediately preceding two years.

- J. Wind energy generation.** Freestanding and roof-mounted wind energy systems shall be permitted as accessory uses within all zones except the Stream Protection zone, within

historic districts except where the Congress Street Historic District coincides with the B-3 zone, or within 1,000 feet of any designated historic landmark, subject to the following conditions:

1. Accessory wind energy systems shall comply with all general use standards for wind energy systems as stated under Subsection 6.4.17 of this article.
2. Freestanding wind energy systems shall measure no higher than 45' feet in height.
3. Roof-mounted wind energy systems shall measure no higher than 10' feet above the highest part of the roof.
4. Properties shall be limited to one free-standing wind energy system and/or three roof or building mounted wind energy systems.
5. Accessory wind energy systems shall either be located on the rear half of a building or structure, or within the rear yard and shall be sited to maximize existing vegetative or other screening from nearby residential buildings and public ways. The location shall minimize changes to existing topography and natural vegetation which would result from construction or maintenance of the system.

6.7 TEMPORARY USES

6.7.1 In general

Temporary uses may be permitted from time to time as determined by the Planning Authority. In addition to regulations pertaining to temporary uses contained elsewhere in the City of Portland Code of Ordinances, the following standards shall apply for specific temporary uses.

6.7.2 Standards for specific temporary uses

- A. **Temporary parking.** Parking of vehicles may be permitted by a temporary certificate of occupancy for a limited period of time not to exceed one year in anticipation of future development.
- B. **Temporary private tenting.** Temporary private tenting with one tent accessory to a principal residential use is permitted in the IR-1 and IR-2 zones provided that adequate water supplies and sanitation facilities are available in connection with the principal residential use.
- C. **Temporary sales.** No “garage sale,” “lawn sale,” “attic sale,” “rummage sale,” or other similar casual sale of tangible personal property which is advertised by any means whatsoever whereby the public at large is or can be made aware of such sale, shall be deemed to be accessory if such sale occurs after sales have been conducted on the same premises for six or more days previously during the calendar year.
- D. **Temporary stands**
 - 1. No premises shall be used for business purposes consisting of temporary stands, booths, platforms or vehicles intended for the sale of merchandise or other mercantile purposes, if any part of such stand, booth, platform or vehicle is proposed to be located nearer than 125 ft. to any residential zone, except that a single stand with no more than 200 SF of floor area for the sale of agricultural products produced on the premises shall be permitted as accessory to a permitted agricultural use.
 - 2. A single produce stand shall be permitted on the premises of a community garden

for the sale of flowers, vegetables, herbs, or fruit produced on the premises, provided that the stand is no more than 100 SF in floor area or open table area and is located a minimum of five feet from any property line; that sales are limited to two days per week between the hours of 9:00 a.m. and 6:30 p.m. during the growing season from May 25 through October 31; and that the stand has received all necessary permits. The use of produce stands shall be seasonal and temporary. Any properly permitted structure may remain on the premises year round. If the community garden is owned or operated by a non-profit organization, sales of flowers, vegetables, herbs or fruit produced in other gardens or farms in Maine owned or operated by said organization shall be permitted within the same limitations listed above. For purposes of this section, community garden means a parcel of open land used for the cultivation of flowers, vegetables, herbs, or fruit by a group of city residents either jointly as a single plot or through individual garden plots or beds.

- 3. A single produce stand shall be permitted on the premises of a non-profit organization incorporated pursuant to the laws of the State of Maine with the permission of the owner and on the premise of public schools with the permission of the school department; provided that the stand is for the sale of local fruit, vegetables, flowers, seedlings and plants produced by the seller; that the stand is no more than one hundred (100)

square feet in floor area or open table area and is located a minimum of five feet from any property line; that sales on the premises are limited to two days per week between the hours of 9:00 a.m. and 6:30 p.m. during the growing season from May 25 through October 31; and that the stand has received all necessary permits. The use of produce stands shall be seasonal and temporary. Any properly permitted structure may remain on the premises year-round.

4. In the IR-1 and IR-2 zones, a single stand with no more than 200 SF of floor area for the sale of agricultural products produced on the premises or the sale of fish or shellfish caught by the occupant of the premises shall be permitted as a temporary use.
- E. **Truck load sales.** Truck load sales shall not extend beyond three consecutive days nor occur more frequently than three times a calendar year.

6.8 PERFORMANCE STANDARDS

6.8.1 Design

In the B-7 zone, all buildings shall have a minimum of one operable public pedestrian entrance facing the street frontage of the lot. Such building entrances shall comply with the B-7 Design Standards.

6.8.2 Development in the R-OS zone

All development in the Recreation and Open Space zone shall comply with the following development standards:

- A. All ground areas not used for parking, loading, vehicular or pedestrian areas and not left in their natural state shall be suitably landscaped

and designed with quality materials that are consistent with adopted city policy or master plans, and which provide a comfortable, durable, accessible, readily maintainable, and aesthetically pleasing environment.

- B. Natural features, such as mature trees and natural surface drainageways, shall be preserved to the greatest possible extent consistent with the uses of the property.
- C. Loading areas shall be screened and parking areas shall be screened and landscaped so as to avoid a large continuous expanse of paved area.
- D. Buildings and structures shall be sited to avoid obstructing significant scenic views presently enjoyed by nearby residents, passersby, and users of the site.
- E. Storage of commodities and equipment shall be completely enclosed within buildings or provided with screening by a fence, wall, or landscaping.
- F. The outer perimeter of playfields, play lots, and other active recreational areas shall be screened, or shall be located a reasonable distance from any residential use.

6.8.3 Discharges

No discharge shall be permitted at any point into any private sewage disposal system, or stream, or into the ground, of any materials in such a way or of such nature or temperature as to contaminate any water supply, or otherwise cause the emission of dangerous or objectionable elements, except in accordance with standards approved by the health authority or by the Public Works Authority. No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the

Department of Public Works in accordance with Chapter 24 of the City of Portland Code of Ordinances. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of Chapter 24.

6.8.4 Electromagnetic interference

In any industrial zone, there shall be no electromagnetic interference that adversely affects the operation of any equipment other than that belonging to the creator of such interference.

6.8.5 Exterior lighting

All exterior lighting shall be designed and installed with cut-off fixtures to direct illumination onto the site and to prevent illumination from such fixtures on neighboring properties.

6.8.6 Heat, glare, radiation

Heat, glare, or radiation shall be imperceptible without instruments at lot boundaries and shall not present a safety hazard.

6.8.7 Historic resources

The exterior design of proposed or renovated structures located within historic districts shall be subject to the historic preservation provisions of Article 16. The exterior design of proposed or renovated structures located adjacent to historic districts or historic resources shall be subject to historic preservation requirements of Article 13.

6.8.8 Landscaping and screening

- A. In all mixed-use zones, the O-P zone, and the R-P zone, sites shall be landscaped to screen parking and accessory site elements, including storage and solid waste receptacles, from the

right-of-way, public open space, or abutting residential zones.

- B. In the I-H and I-Hb zones, where a front yard abuts an arterial or a major collector street, it shall be landscaped. Rear yards, side yards and the perimeter of any parking area for greater than 15 vehicles shall be landscaped if visible from a right-of-way, public open space or residential zone.

6.8.9 Noise

- A. The maximum permissible sound level of any continuous, regular or frequent source of sound produced by an activity shall be as shown in Table 6-G, measured at or within the boundaries of any residential zone.
- B. In addition to the sound level standards established in Table 6-G, all uses shall employ best practicable sound abatement techniques to prevent tonal sounds, or sound waves usually perceived as a hum or whine because their instantaneous sound pressure varies essentially as a simple sinusoidal function of time, and impulse sounds, or sound events characterized by brief excursions of sound pressure, each with a duration of less than one second. If such tonal and impulse sounds cannot be prevented, uses shall employ best practicable sound abatement techniques to minimize the impact of such sounds in residential zones.
- C. Sound levels shall be measured with a sound level meter with a frequency weighting network manufactured according to standards prescribed by the American National Standards Institute (ANSI) or its successor body. Measurements shall be made at all major lot lines of the site, at a height of at least 4 feet

above the ground surface. In measuring sound levels under this subsection, sounds with a continuous duration of less than 60 seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of 60 seconds or more shall be measured on the basis of the energy average sound level over a period of 60 seconds (LEQ1).

TABLE 6-G: NOISE STANDARDS

Zone	Daytime/Evening (7 am-9 pm)	Nighttime (9 pm-7 am)
I-B	60 dBA	55 dBA
R-P	55 dBA	55 dBA
O-P	60 dBA	60 dBA
B-1	55 dBA	55 dBA
B-2/B-2b/B-2c	60 dBA	55 dBA
B-3/B-3b/B-3c	60 dBA	55 dBA
B-4	65 dBA	60 dBA
B-5, B-6, B-7 ¹	60 dBA	50 dBA
I-L/I-Lb ¹	60 dBA	50 dBA
I-M/I-Mb ¹	70 dBA	55 dBA
I-H/I-Hb ¹	75 dBA	55 dBA
A-B	60 db	60 dBA
IS-FBC	60 dBA	55 dBA

¹ Daytime/evening noise regulations shall extend until 10 pm, after which time nighttime noise regulations shall apply.

D. Exemptions:

- Noises created by construction and maintenance activities between 7:00 a.m. and 10:00 p.m. are exempt from the maximum permissible sound levels set forth above of this section. Construction activities on a site abutting any residential

use between the hours of 10:00 p.m. and 7:00 a.m. shall not exceed 50 dBA.

2. The following uses and activities shall also be exempt from the requirements of Table 6-G:

- The noises of safety signals, warning devices, emergency pressure relief valves, and any other emergency devices.
- Traffic noise on public roads or noise created by aircraft and railroads.
- Noise created by refuse and solid waste collection, provided that the activity is conducted between 6:00 a.m. and 7:00 p.m.
- Emergency construction or repair work by public utilities, at any hour.
- Noise created by any recreational activities which are permitted by law and for which a license or permit has been granted by the city, including but not limited to concerts, parades, sporting events, and fireworks displays.

6.8.10 Odor

A. It shall be a violation of this article to create an odor nuisance.

- An odor nuisance shall be considered to exist when 10 confirmed complaints occur in an area within two separate 24-hour periods. The 10 confirmed complaints must originate from 10 different households in an area zoned residential or from 10 different individuals in a commercial or industrial facility. The Permitting & Inspections Director shall only respond to a complainant who

- confirms that the odor is detectable at the time of the actual complaint. In order to confirm a complaint, the Permitting & Inspections Director or its designee shall first determine that an odor is detectable in the area of the complaint. The Building Authority or its designee shall interview the complainant to verify that the detectable odor is in fact the odor that resulted in the complaint. If the complainant verifies the odor as the source of the complaint, then the Permitting & Inspections Director shall notify the owner or operator of the alleged odor source either in person or by telephone within 1 working day, with a written confirmation within 7 working days of the complaint. In the event that the Permitting & Inspections Director is unable to contact the owner or operator of the alleged odor source in person or by telephone within 1 working day, then the Permitting & Inspections Director shall send written notice to the operator within 7 working days of the complaint.
2. In the event that 10 complaints are confirmed as set forth in subsection 1. in two separate 24 hour periods within a 90-day period, the Permitting & Inspections Director shall cause a certified odor inspector to investigate any odor complaints received in the next 30 days following the receipt of the tenth confirmed complaint from the second 24 hour period. If the odors remain under the ambient intensity standard as established in this subsection for the next 30 days, then a new odor nuisance must be established after that time in accordance with the requirements of this section. The certified odor inspector shall do the following in response to a complaint under this subsection:
 - a. Verify that an odor is detectable in the area of the complaint and confirm that it is the odor that resulted in the complaint;
 - b. Quantify the intensity of the odor on the eight point in butanol intensity scale as defined in regulations promulgated by the Planning & Urban Development Director to establish training and technical standards to support this subsection; and
 - c. Track the odor to its source.
 - B. When the certified odor inspector determines that a violation has occurred because an odor has exceeded the maximum ambient odor levels set forth in this section, the Permitting & Inspections Director shall notify the owner or operator either by telephone or in person of the violation within 1 working day of the violation. The Permitting & Inspections Director shall confirm this notification in writing within 7 working days of this initial notice. In the event that the Permitting & Inspections Director is unable to contact the owner or operator by telephone or in person within the required time period, then it will send written notification within 7 working days of the violation.
 - C. Upon receipt of the written notice of violation, the owner or operator of the odor source shall do the following:
 1. Implement odor reduction procedures immediately upon notification by the Permitting & Inspections Director that the

facility has violated this section wherever odor reduction can be achieved by operational or procedural changes at the facility;

2. Submit to the Permitting & Inspections Director, within 30 days of the written notice of violation, an odor reduction plan which is designed to reduce ambient odors attributable to emissions from that source to the maximum allowable intensity for that zone. The plan shall include a detailed summary of the measures that the owner or operator will take to mitigate the community annoyance and estimated dates for completion of those measures. In the event that it will take longer than 30 days to develop the odor reduction plan, the owner or operator of the facility shall submit within the thirty-day time period a schedule for the development of the odor reduction plan. The Permitting & Inspections Director shall review this plan to determine whether it will be adequate to resolve the odor nuisance in a reasonable time period; and
 3. Implement the plan in accordance with the schedule approved by the Permitting & Inspections Director.
- D. The maximum ambient intensity standard for odors generated by uses located in the industrial zones shall not exceed the following levels when the odor is measured in the zone indicated:
1. 4.0 in any industrial or mixed-use zone for odors resulting from uses in industrial or mixed-use zones.

2. 3.0 in any residential zone for odors resulting from uses in industrial or mixed-use zones.

6.8.11 Outdoor effects

- A. In all mixed-use, office, and industrial zones and the IS-FBC zone, uses shall be operated within a completely enclosed structure, except for those customarily operated in open air.
- B. In the mixed-use and IS-FBC zones, open air activities shall be those licensed by the city. There shall be no outdoor kennels.
- C. No building in any zone shall be erected, altered or used as a garage for the storage of more than three motor vehicles or for the business of repairing motor vehicles, if any part of either old or new building when completed would be closer than five feet to any part of any church, public or private hospital or school; or if any part of either old or new building when completed would be less than 15 feet from the boundary line of any lot upon which any part of any church, public or private hospital or school is located. No existing garage used for the storage of more than three motor vehicles or for the business of repairing motor vehicles shall be deemed to become a nonconforming use through the subsequent erection of such church, hospital or school closer than the aforesaid distance to such a garage.
- D. No open exterior stairways or fire escapes shall be constructed above the ground floor, except that the Building Authority may permit the installation of an exterior egress stair or an upgrade of an existing exterior fire escape for a conforming or lawfully nonconforming dwelling unit existing as of January 5, 1998, if such egress is required to meet current fire or other life

safety codes, provided that the owner demonstrates to the Building Authority that:

1. There is no practical and economically reasonable way to provide such egress within the interior of the building, as demonstrated by the submission of detailed floor plans showing the projected cost of and the impact on the existing dwelling from an interior stair;
2. The stairway and associated landings and other building fixtures are designed and will be constructed to have a minimal visual impact upon the building, especially as viewed from any public way or public open space, as demonstrated by photographs of the front and any other affected facades of the building and plans or drawings of the proposed egress stairs;

6.8.12 Outdoor storage

Outdoor storage shall comply with the requirements of Table 6-H.

TABLE 6-H: OUTDOOR STORAGE STANDARDS

B-1, B-2/B-2b/B-2c, B-3/B-3b/B-3c, B-7, O-P, R-P, A-B¹, and IS-FBC	There shall be no exterior storage with the exception of fully enclosed receptacles for solid waste disposal. In the B-3 zones, such receptacles shall be screened from public streets.
B-4, B-5/B-5b, B-6, and Industrial	Outdoor storage of materials shall be done in such a manner as to prevent the breeding and harboring of insects or vermin, to prevent the transfer of such materials from the site by natural causes or forces and to contain fumes, dust, or other materials which constitute a fire hazard. This storage shall be accomplished within enclosed containers or by

raising materials above ground, separating materials, preventing stagnant water, or by some other means. In the B-4, B-5/B-5b, and B-6 zones, no outdoor storage shall be permitted in the front setback, except for storage for plant and tree nurseries. In the B-5/B-5b and B-6 zones, any storage of new materials, finished products, or related equipment must be suitably screened from the public way and abutting properties by a landscaped buffer or solid fence at least five feet in height.

B-1 and B-2 Vehicles or truck trailers with or without wheels shall not be used for on-site storage. In the B-2 zone, there shall be an exception where such storage is located in a designated loading zone identified on an approved site plan; or such storage is not visible from the street or adjacent residences during winter months.

B-5 Outdoor storage of rental and moving equipment shall be located on the site and not within a public right-of-way or sidewalk. A curb, guard rail or other barrier shall be provided to contain such equipment and storage on the site as well as out of landscape buffer areas. A landscape buffer shall be provided. Outdoor storage of rental and moving equipment must be accessory to a building in existence as of the date of this ordinance. Exterior lighting shall not exceed that which is necessary for security purposes.

¹ Does not apply to airports.

6.8.1 Relocation of displaced residents

In the B-3, B-3b, and B-3c zones, any development which results in the displacement of residents of dwelling units currently located on the development site shall meet the requirements of Article 17.5.

6.8.1 Smoke

Smoke shall not be emitted at a density in excess of the opacity level designated in Table 6-I, as classified in Method 9 (Visible Emissions) of the Opacity Evaluation System of the U.S. Environmental Protection Agency.

TABLE 6-I: SMOKE STANDARDS

Zone	Opacity level
R-P	20%
O-P	
B-1	
B-2/B-2b/B-2c	
B-3/B-3b/B-3c	
B-4	30%
B-5/B-5b	40%
B-6	
B-7	
Industrial zones	20%
IS-FBC	

6.8.2 Storage of vehicles

- A. In all residential zones, all island zones, the R-P zone, and the B-3 zone, only one unregistered motor vehicle may be stored outside for a period not exceeding 30 days.
- B. In other mixed-use zones, storage of unregistered motor vehicles for more than 10 days and outdoor storage of used automobile tires shall be prohibited.

6.8.3 Traffic

Development in the I-M, I-Ma and I-Mb zones shall utilize streets classified as arterials by the Maine Department of Transportation to the greatest extent possible.

6.8.4 Waste disposal

- A. All solid waste disposal, including materials which might cause fumes or dust, or constitute a fire hazard if stored out-of-doors, shall be only in fully enclosed, covered containers or receptacles. In all non-residential zones with the exception of the industrial zones, such containers or receptacles shall be within designated, screened areas. Containers or receptacles shall not leak or otherwise permit liquids or solids to escape from the container or be transferred beyond lot boundaries by natural causes or forces. Areas attracting large numbers of insects or vermin are prohibited.
- B. Where food processing is permitted, all food processing waste shall be stored within a completely enclosed structure and if not refrigerated shall be removed from the site in an enclosed container within 48 hours of its generation. All enclosed and exterior food processing waste storage areas shall be cleaned and sanitized on a regular basis.

6.8.5 Vibration

- A. In any mixed-use zone, the O-P, and the R-P zones, vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile-supported pier.

- B. In all industrial zones, any use creating earthshaking vibrations, with the exception of airports, shall be controlled in such a manner as
 - C. vibrograph or similar instrument at the property boundaries.
- to prevent transmission beyond lot lines of vibrations causing a displacement of .003 or greater on one inch, as measured by a

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7 DIMENSIONAL STANDARDS

7.1 APPLICABILITY

Construction, alterations, and additions to structures and buildings are governed by this article, except when superseded by other applicable laws or ordinances. It is the intent that, when in doubt, this article should be interpreted to accommodate the goals of the City's Comprehensive Plan and other plans.

7.2 RULES OF MEASUREMENT

Building footprint. The lot area contained within the outermost perimeter of the building envelope including cantilevered portions of the building, projections, and porches, decks, and similar attached structures integral to the building and contributing to its mass, but excluding roof overhangs.

Building width. The width of a building at its widest point as measured parallel to the street.

Floor area. The total floor space enclosed by exterior or standard fire walls of a building, exclusive of vent shafts and courts.

Grade, average. The average of finished grades measured at the ground level adjoining all corners of a structure.

Grade, pre-development. Average grade, existing on October 1, 2000, at the corners of the foundation of the proposed structure.

Height. The vertical measurement from average grade, or the pre-development grade on the islands, to the highest point of a structure. For buildings,

height shall be measured to the roof beams in flat roofs; to the highest point of the roof beams or the highest point on the deck of mansard roofs; to a level midway between the level of the eaves and highest point of pitched roofs or hip roofs; or to a level two-thirds of the distance from the level of the eaves to the highest point of gambrel roofs. For this purpose the level of the eaves shall be taken to mean the highest level where the plane of the roof intersects the plane of the outside wall on a side containing the eaves.

Impervious surface ratio. The proportion of a site covered by impervious surfaces, calculated by dividing the total impervious surface area by the lot area. For the purposes of this measurement, impervious surface shall be as defined by the Maine Department of Environmental Protection.

Landscaped open space ratio. The proportion of lot area covered by landscaped open space, calculated by dividing the total landscaped open space area by the lot area. For the purposes of this measurement, landscaped open space shall not include rooftop gardens.

Lot area. The area of a lot enclosed within the boundary lines of a lot.

Lot coverage. The proportion of lot area covered by building footprint and the footprint of accessory detached structures.

Lot width. The distance measured between side lot lines through that part of the principal building where the lot is narrowest.

Net land area. The land area arrived at by subtracting from lot area the square footage of the following:

- A. Existing water bodies measured by the area between the top of the banks at the normal high-water mark;
- B. Wetlands; and
- C. Slopes of 25% or greater. Where a slope of 25% or greater was altered to less than 25% within the two years immediately preceding a development proposal, such slope shall also be subtracted from the lot area.

Setback. A space on a lot which is required by this article to be maintained open, unoccupied, and unobstructed between lot lines and any structure, except as otherwise permitted in this code of ordinances. A setback shall be measured from a line parallel to the lot line drawn through the point of a structure nearest to such lot line. This measurement shall be taken at right angles from such parallel line. When measuring setbacks, setbacks shall be interpreted to include setbacks of structures from property lines and setbacks of principal structures from one another. No principal structure shall occupy the minimum setback of another principal structure. Setbacks shall not apply to fences, flagpoles, raised garden beds, and other similar structures. When setbacks are established in relationship to height, the height in stories or feet of that part of the principal structure adjoining a yard shall be used in determining the required setback.

Setback, front. A setback along the front lot line, extending between side lot lines, the depth of which shall be the shortest horizontal distance between

the front lot line and any structure. In the case of lots with frontages on two or more streets, the orientation of the principal entry to the principal building shall prevail. In the case of lots without frontage on a street, the property line that parallels the nearest developed street shall be considered the front.

Setback, rear. A setback along the rear lot line, extending between side lot lines, the depth of which shall be the shortest horizontal distance between the rear lot line and any structure.

Setback, side. A setback along a side lot line extending from the front lot line to the rear lot line, the width of which shall be the shortest horizontal distance between the side lot line and any structure.

Stepback. A space on a lot which is required by this article to be maintained open, unoccupied, and unobstructed between lot lines and any structure that occurs at a prescribed height above the ground. Stepbacks shall apply to all attached accessory structures, including the minimum necessary housing of elevators, stairways, tanks fans, or other building operating equipment not intended for human occupancy.

Story. That portion of a building included between the surface of any floor and the surface of the floor, or the roof, next above. A half story is a story situated under a sloping roof, the area which at a height four feet above the floor does not exceed two-thirds of the floor area of the story immediately below it. A story which exceeds 18 feet in height shall be counted as two stories. A basement shall be counted as a story for the purpose of height measurement where more than

one-half of its height is above the average level of the adjoining ground.

Street frontage. The distance for which a lot line adjoins a public street, from one lot line intersecting

said street to the furthest distant lot line intersecting the same street.

7.3 DIMENSIONAL STANDARDS

Tables 7-A to 7-H shall establish the dimensional standards for each zone.

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DIMENSIONAL STANDARDS

TABLE 7-A: RESIDENTIAL ZONE DIMENSIONAL STANDARDS

		R-1	R-2	R-3 ²	R-4	R-5 ²	R-5A ⁵	R-6 ⁷	R-6A ¹
Lot area (min.)	Governmental	15,000 SF	10,000 SF	6,500 SF	6,000 SF	6,000 SF			
	Hospital			10 ac.		5 ac.		2 ac.	
	Intermediate or long-term, extended care facility	3 ac.	3 ac.	2 ac.		2 ac.	1.5 ac.	1 ac. ⁸	
	Lodging house					9,000 SF			
	Multiplex				9,000 SF	9,000 SF			
	Place of assembly	<10,000 SF	1 ac.	1 ac.	1 ac.	15,000 SF	.5 ac.	10,000 SF	
		>10,000 SF	2 ac.	2 ac.	2 ac.	30,000 SF	1 ac.	15,000 SF	
	Post-secondary school		2 ac.			2 ac.			
	Elementary, Middle, and Secondary school	2 ac.	2 ac.	2 ac.	30,000 SF	30,000 SF		30,000 SF ^c	
	Raising of animals	3 ac.							
	Residential	15,000 SF	10,000 SF	6,500 SF ⁵	6,000 SF	6,000 SF ³	6,000 SF / 2 ac. max ⁶	2,000 SF	4 ac.
	All other uses	15,000 SF	10,000 SF	6,500 SF	6,000 SF	6,000 SF		2,000 SF	
	Lot Area per Dwelling Unit (min.)	15,000 SF	10,000 SF	6,500 SF	3,000 SF	3,000 SF	1,600 SF	725 SF	
	Lot Area per Rooming Unit (min.)					1,000 SF		250 SF	
	Lot Area per Multiplex Unit (min.)				3,000 SF for first 3, 6,000 SF thereafter	4,500 SF			
Lot Area per SNILU (min.)					2,400 SF	3,600 SF			
Street Frontage (min.)		75 ft.	50 ft.	50 ft.	50 ft.	50 ft.	50 ft.	20 ft.	
Lot Width (min.)		100 ft.	80 ft.	65 ft.	60 ft.	60 ft. 90 ft. for multiplex	60 ft.	20 ft.	
Front Setback (min.)		25 ft.	25 ft.	25 ft.	25 ft.	20 ft.	25 ft.	5 ft.	
		Or average depth of adjacent front yards							
Rear Setback (min.)		25 ft.	25 ft.	25 ft.	25 ft.	20 ft.	25 ft.	10 ft..	
	Detached Accessory <250 SF	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	
Side Setback (min.)	<1.5 stories to 1.5 stories	12 ft.	12 ft.	8 ft.	10 ft.	8 ft.	10 ft.		<45 ft.: 10 ft.
	2 stories	14 ft.	14 ft.	14 ft.	14 ft.	12 ft.	14 ft.		
	2.5 stories	16 ft.	16 ft.	16 ft.	16 ft.	14 ft.	16 ft.	5 ft. ^{9,10}	
	Detached Accessory <250 SF	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.	5 ft.		>45 ft.: 15 ft.
	On Side Street (min.)	20 ft.	20 ft.	20 ft.	20 ft.	15 ft.	20 ft.	None	
Or depth of front yard directly abutting the lot.									

TABLE 7-A (CONT.): RESIDENTIAL ZONE DIMENSIONAL STANDARDS

	R-1	R-2	R-3 ²	R-4	R-5 ²	R-5A ⁵	R-6	R-6A
Stepbacks (when property line abuts a residential zone)(min.)							10 ft. from side property line and 15 ft. from rear property line ¹¹	
Structure Height (max.)	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.	35 ft.	45 ft. ¹²	65 ft.
Detached Accessory	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	18 ft.	
Building width (max.)							1- and 2-family: 30 ft. ¹³ 3+-family, 3 stories: 60 ft. ¹³ 3+-family, 4 stories: 45 ft. ¹³	
Lot Coverage (max.)	20%	20%	35%	30%	40%	30%	60%	
Landscaped Open Space Ratio (min.)							20	
Width of garage opening on front façade (max.)							9 ft. or 40% of building width, whichever is greater, and in no case more than 20 ft.	

¹ All R-6 dimensional standards apply in the R-6A unless otherwise indicated.

² See separate table for PRUD standards.

³ Single family homes may be built on small lots in the R-5 under small residential lot dimensional requirements under certain conditions. See separate table for R-5 Small Residential Lot dimensional requirements.

⁵ For R-5A, PRUD standards shall apply to PRUDs, multi-family development of 4 or more units, congregate care, and intermediate, extended, or long-term care facilities, unless noted otherwise in the table above. See PRUD table for PRUD standards.

⁶ Applies to 1-, 2-, and 3-family dwellings only.

⁷ Alterations to single-family, two-family, and multi-family dwellings in existence as of 6/15/15 shall not result in the creation of any additional dwelling unit of less than 600 square feet of floor area, exclusive of common hallways and storage in basement and attic; and shall not result in any existing dwelling unit being reduced in size to less than 1,000 square feet of floor area, exclusive of common areas and storage in basement and attic.

⁸ Except for long-term and extended care facilities: 10,000 SF for the first 9 residents plus 750 SF for each additional resident, up to a total of 2 ac.

⁹ Except that a side setback in the R-6 zone may be reduced to zero, provided that the cumulative side yards are not less than 10 ft. A permanent maintenance easement a minimum of 5 ft. in width shall be provided on the parcel adjacent to the lot line with the reduced side setback.

¹⁰ Subdivisions consisting of horizontally attached dwellings on individual lots are not required to have side yards between such dwellings where a party wall condition will exist. Horizontally attached dwellings located within a single lot shall be required to meet the applicable side setback requirements at the external lot boundaries of the subdivision and internal lot boundaries between such dwellings that are not attached to each other. No minimum lot size width shall be required for individual lots underlying townhouse (horizontally attached) dwelling types. The applicable minimum lot area per dwelling shall apply to each lot.

¹¹ Does not apply on side streets.

¹² Except as provided under the Fort Sumner Park Height Overlay and Munjoy Hill Conservation Overlay.

¹³ Or average of building widths of principal facades within the same block (both sides of the street), except in the case of attached buildings or townhouses, where these building widths apply but for an unlimited run.

DIMENSIONAL STANDARDS

TABLE 7-B: PRUD DIMENSIONAL STANDARDS

	R-3	R-5	R-5A ³
Gross Lot Area (min.)	3 ac.	2 ac.	2 ac.
Net Land Area per Dwelling Unit (min.)	6,500 SF	3,000 SF	1,600 SF ^{4,5}
Units/Building (max.)	PRUD < 5 ac.: 2 PRUD > 5 ac.: 6	12	
Average Number of Units/Building (max.)	PRUD > 5 ac.: 5		
Structure Height (max.)	35 ft.	35 ft.	55 ft.
Building Length (max.)	Without garages: 100 ft. With integral garages: 140 ft.	140 ft.	
Length of Accessory Garage Structure (max.)		60 ft.	
Building Setback from External Subdivision Property Lines (min.)	3 or fewer D.U. in building: 25 ft. 4 or more D.U. in building: 35 ft.	Bldg. Length 100 ft. or less: 25 ft. Bldg. Length >100 ft.: 35 ft.	Bldg. Length 100 ft. or less: 25 ft. Bldg. Length >100 ft.: 35 ft.
Distance between detached PRUD Dwelling Units (min.)	16 ft.		
Recreation Open Space Area (min.) ²	300 SF/D.U.	300 SF/D.U.	200 SF/D.U. ⁴
Habitable Space Elevation	No habitable space in a PRUD shall be below grade, except basements that are a part of and below above-ground units.		

² Recreation open space area shall be designated on the site for recreation purposes. Such recreation areas shall be usable, level graded, dry, accessible and properly drained. At minimum, a contiguous area of 6,000 SF with a minimum dimension of 50 ft. shall be provided. Such recreation areas shall be located at least 25 ft. from dwelling units.

³ In the R-5A zone, PRUD standards shall apply to PRUDs, multi-family development of 4 or more units, congregate care, and intermediate, extended, or long-term care facilities unless otherwise noted.

⁴ Does not apply to intermediate, extended, or long-term care facilities but does apply to PRUDs, congregate care, and 3+-family buildings.

⁵ Minimum land area per intermediate care facility resident: 8,000 SF gross land area for first 35 residents, plus 350 SF for each additional resident. For PRUD standards in island zones, see Table 7-D.

TABLE 7-C: R-5 SMALL RESIDENTIAL LOT DEVELOPMENT DIMENSIONAL STANDARDS¹

	Lot Area (min.)	5,000 SF
		7 ft. ²
Side Setback (min.)	Detached Accessory Ground Coverage < 250 SF	5 ft.
	Side Yard on Side Street	10 ft.
	Lot Width (min.)	40 ft.
	Street Frontage (min.)	40 ft.
	Lot Coverage (max.)	50%

¹ Single family homes may be built on small lots in the R-5 under small residential lot development dimensional requirements if the lot is: vacant, or used exclusively for parking; contains structure(s) not used for residential purposes; or is created from a single lot division of a developed lot and results in a lot meeting the small residential lot dimensional requirements with the remaining developed portion meeting the standard dimensional requirements of the R-5 zone.

² The width of one side setback may be reduced 1 ft. for every foot that the other side yard is correspondingly increased, but no side yard shall be less than 4 ft. in width.

TABLE 7-D: ISLAND ZONE DIMENSIONAL STANDARDS

						I-B	
						Served by Public Water & Sewer	Not Served by Public Water & Sewer
Lot Area (min.) ¹¹	Bed and Breakfast		IR-1	IR-2	IR-3	5,000 SF for 3 guest rooms plus 5,000 SF/additional room	10,000 SF/guest room
	Campgrounds		10 ac.		5,000 SF/campsite, but not less than 10 ac.		
	Hotels				10,000 SF/guest room	5,000 SF for 3 guest rooms plus 5,000 SF/additional room	10,000 SF/guest room
	Lodging House			10,000 SF/lodging room	10,000 SF/lodging room	5,000 SF for 3 lodging rooms, plus 5,000 SF/additional room	10,000 SF/lodging room
	Place of Assembly	>10,000 SF	30,000 SF	30,000 SF	35,000 SF ⁷	20,000 SF ⁷	
		<10,000 SF	15,000 SF	15,000 SF			
	PRUD/PUD (gross lot area)		5 ac. ³	5 ac. ³	20 ac.		
	Raising of Animals		3 ac.				
	Residential		40,000 SF ^{1, 2}	20,000 SF ²	42,500 SF ⁶	20,000 SF	20,000 SF
	Restaurant				35,000 SF	10,000 SF	20,000 SF
	Retail					None	20,000 SF
	Seasonal Camps		10 ac.		35,000 SF		
	Schools/Educational Facilities		40,000 SF	20,000 SF		20,000 SF	
	All other uses				35,000 SF	20,000 SF	
	Lot Area per Dwelling Unit (min.)		None ⁴	None ⁴	42,500 SF ⁸		
	Street Frontage (min.)		100 ft. ⁵	70 ft. ⁵	70 ft. ⁹	40 ft.	
	Lot Width (min.)		100 ft. ⁵	80 ft. ⁵	80 ft.	40 ft.	
	Front Setback (min.)		30 ft. ⁵	25 ft. or the average of adjacent front yards ⁵	25 ft. ¹⁰	20 ft. or avg. depth of adjacent front yards	
Rear Setback (min.)		30 ft. ⁵	25 ft. ⁵	25 ft. ¹⁰			
	Detached Accessory Ground Coverage < 250 SF	10 ft. ⁵	10 ft. ⁵	10 ft. ¹⁰	10 ft.		

DIMENSIONAL STANDARDS

TABLE 7-D (CONT.): ISLAND ZONE DIMENSIONAL STANDARDS

					I-B	
					<i>Served by Public Water & Sewer</i>	<i>Not Served by Public Water & Sewer</i>
		IR-1	IR-2	IR-3		
Side Setback (min.)		20 ft. ⁵	20 ft. ⁵	20 ft. ¹⁰	10 ft.	
	Detached Accessory Ground Coverage < 250 SF	15 ft. ⁵	15 ft. ⁵	15 ft. ¹⁰	10 ft.	
	On Side Street	20 ft. ⁵	20 ft. ⁵	20 ft. ¹⁰	10 ft.	
Structur e Height (max.)		35 ft.	35 ft.; For Little Diamond Island: 27 ft.	35 ft.	35 ft.	
	Accessory Detached	18 ft.	18 ft.	18 ft.	18 ft.	
	Lot Coverage (max.)	20%	20%	20%	50%	

¹ 60,000 SF if not served by public water.

² For PRUDs, minimum lot area shall be reduced up to 50% provided there is an equivalent corresponding increase in common or public open space that is usable for passive or active recreational opportunities or that serves as a buffer between buildings or between the development and the surrounding neighborhood.

³ PRUDs shall consist of detached dwellings.

⁴ Except 1 dwelling unit per 40,000 SF of net land area for PRUDs in IR-1 and 20,000 SF of net land area in for PRUDs IR-2.

⁵ For PRUDs, standard shall be reduced up to 50%.

⁶ Except that the minimum lot size per dwelling unit shall be reduced by the amounts specified below, to a minimum lot size of 35,000 SF per dwelling unit, provided that the Planning Board finds that the development meets the following criteria: a. The minimum lot size per dwelling unit shall be reduced by 5,000 SF if a public off-island water source provides 75% of the water needs of the development. b. The minimum lot size per dwelling unit shall be reduced by 2,500 SF if the development provides appropriate permanent restrictions or other agreements precluding the use, maintenance and parking of all private motor vehicles exclusive of construction and common service vehicles.

⁷ For private clubs and fraternal organizations only.

⁸ The maximum density for a PUD shall be based on the applicable minimum lot size for each use as measured in terms of net area. For purposes of calculating density, if separately described lots exceed the applicable minimum lot size, the excess area shall not be credited toward the minimum lot size for any other use.

⁹ Except where the Planning Board finds that the development has an adequate street network to permit access for pedestrians and emergency service vehicles.

¹⁰ When adjoining any external property boundary.

¹¹ In the IR-3, the minimum lot area for buildings containing both residential and nonresidential uses shall be cumulative. Where there are two or more residential uses contained in a building, the minimum lot area shall be the larger of the applicable minimum lot sizes.

TABLE 7-E: MIXED-USE ZONE DIMENSIONAL STANDARDS

		B-1	B-2/B-2b/B-2c	B-3/B-3b/B-3c	B-4	B-5/B-5b	B-6	B-7
Lot Area (min.)	School	20,000 SF						
	Place of Assembly	10,000 SF			10,000 SF			
Lot Area per Dwelling Unit (min.)	On-Peninsula	435 SF	435 SF					
	Off-Peninsula	1,000 SF	1,000 SF, except 435 SF if active street frontage ³					
Street Frontage (min.)		20 ft.	20 ft.	15 ft.	60 ft.			
Front Setback (from all street frontages) (max.)		10 ft., or the average front yard depth of the nearest developed lots if < 10 ft.	10 ft.	5 ft.	20 ft.	None, except 10 ft. in B-5b	10 ft. ⁷	10 ft.
Rear Setback (min.)	Principal	None, except 10 ft. if abutting a residential zone	10 ft.		20 ft.			
	Accessory	None, except 5 ft. if abutting a residential zone	5 ft.		7 ft.			
Side Setback (min.)	Principal	None, except 5 ft. if abutting residential zone	None		10 ft.			
	Accessory		5 ft.					
Stepbacks (above 35 ft. when property line abuts a residential zone) (min.)		Side: 10 ft.	Side: 5 ft.					
		Rear: 15 ft.	Rear: 15 ft.					
Length of Building Wall at Maximum Setback (min.)						70% of street frontage or 25% of building perimeter ⁸	75% of street frontage or 25% of building perimeter	
Structure Height (max.)		On-Peninsula: 45 ft., except 50 ft. along Congress Street if commercial first floor and residential above ¹	45 ft., except: 50 ft. if first floor is occupied by a commercial use.	See Downtown Height Overlay Map	65 ft.	65 ft., except in B-5b along W. Commercial St. south of Danforth St. ⁵ and 120 ft. on Thompson's Point ⁶	65 ft. or See B6 Building Height Overlay Map	See Bayside Height Overlay Map
		Off-Peninsula: 35 ft.	65 ft. in B-2 and B-2c zones on lots >5 ac. if required side and rear setbacks are increased by 1 foot for each foot of height over 45 ft.					

DIMENSIONAL STANDARDS

TABLE 7-E (CONT.): MIXED-USE ZONE DIMENSIONAL STANDARDS

	B-1	B-2/B-2b/B-2c	B-3/B-3b/B-3c	B-4	B-5/B-5b	B-6	B-7
Floor Area (max.)	Non-residential uses on first floor: 10,000 SF total ² Restaurants (public area): 2,000 SF Clinics: 3,000 SF	Laboratory and research facilities, warehousing, and printing & publishing: 10,000 SF	None, except 15,000 SF for each floor above 125 ft.			Laboratory and research facilities and warehousing: 15,000 SF	Exhibition halls: 20,000 SF
Lot coverage (max.)			25% for portions of structures exceeding 125 ft. in height ⁴				
Impervious Surface Ratio (max.)	90%	Residential: None Other uses in B-2 and B-2c: 80% Other uses in B-2b: 90%		80%			

¹ The commercial first floor uses shall utilize at least 75 % of the first-floor frontage along Congress Street and shall have an average depth of at least 20 ft.

² Uses in structures which existed prior to the date of enactment of the B-1 zone are exempt.

³ A building will be determined to have an active street frontage upon meeting the following guidelines to the greatest extent practicable: the primary building façade shall be within 10 ft. feet of the front lot line; there shall be no parking on the lot within 35 ft. of the front lot line; no more than 25% of the first floor primary façade shall consist of access to garages, unutilized space, service entrances, storage or mechanicals and the remaining minimum 75% shall have an average depth of a minimum of 20 ft. for residential or commercial uses; and all primary ground floor entries to multi-family buildings must orient to street, not to interior blocks or parking lots.

⁴ Except that no floor area shall be required to be less than 10,000 SF.

⁵ For parcels of land in the B-5b zone located along W. Commercial St. south of Danforth St.: West of the projection of the centerline of the Fletcher St. right-of-way, the maximum building height shall be 45 ft.; and, east of the projection of the centerline of the Fletcher St. right-of-way and west of the projection of the centerline of the Emery St. right-of-way, the maximum building height shall be 55 ft. A projection of the centerline of a street is defined by extending the centerline of the referenced street right-of-way along its most southerly block to the centerline of W. Commercial St. Furthermore, notwithstanding other sections of this ordinance, no rooftop structure located between the projections of the centerlines of Emery St. and Fletcher St. shall exceed a height of 62 ft as measured from average grade of the building.

⁶ Thompson's Point is defined as the contiguous parcels of upland occupying the peninsula bounded on the east by Route 295, on the north by the Mountain Division Rail right-of-way, and on the south and west by the Fore River and its associated wetlands. Nearby lands accessed from Hobart and Osgood Streets are not included.

⁷ Does not apply to parking garages and public transportation facilities... Notwithstanding required setbacks, new structures located in the blocks located south of Fore Street and north of Commercial Street and its extension shall build to the key building envelopes shown on the B6 Building Height Overlay & Building Envelopes map. Buildings located in the easternmost key building envelope shall not have a maximum front setback and shall not be required to build to the key building envelope perimeter. Parking structures and the buildings for public transportation facilities may, however, be set back beyond the key building envelopes (toward the interior of blocks), but may not occupy the land between the key building envelope and the street right-of-way.

⁸ For buildings fronting on two or more streets, the minimum building wall on one street may be decreased so long as the frontage is proportionally increased on other streets in so far that the building wall on the secondary street is not reduced to less than 25 ft.

TABLE 7-F: OFFICE PARK & RESIDENCE PROFESSIONAL ZONE DIMENSIONAL STANDARDS

		O-P	R-P ¹	
	Lot Area (min.)	1.5 ac.	6,000 SF	
	Street Frontage (min.)	100 ft.	60 ft.	
	Lot Width (min.)	100 ft.	60 ft.	
	Front Setback (min.)	50 ft.	20 ft., or avg. depth of adjacent front yards ²	
Rear Setback (min.)	Principal	50 ft.	20 ft.	
	Accessory		7 ft.	
Side Setback (min.)	Principal	25 ft., except 40 ft. where side yard abuts residential zone or use	1 story: 10 ft.	
			2 stories: 12 ft.	
	Accessory		3+ stories: 14 ft.	
			7 ft.	
	On Side Street		1-2 stories: 15 ft.	
			3+ stories: 18 ft.	
	Structure Height (max.)	55 ft., except 75 ft., including rooftop appurtenances, on lots within office park subdivisions which are > 50 ac. if each minimum setback is increased by 1 ft. for each 1 ft. of height above 55 ft.	45 ft.	
	Floor Area (max)	High-tech manufacturing: 20,000 SF		
	Impervious Surface Ratio (max.)	60%	70%	
	Pavement Setback (min.)	15 ft.		

¹ Residential uses shall meet the requirements of the nearest residential zone.

² The front yard of a lot existing as of April 4, 1988, which lot is less than 100 ft. deep, need not be deeper than 10% of the depth of the lot.

DIMENSIONAL STANDARDS

TABLE 7-G: INDUSTRIAL & AIRPORT ZONE DIMENSIONAL STANDARDS

	I-L/I-Lb	I-M/I-Ma/I-Mb	I-H/I-Hb	A-B
Lot Size (min.)				20,000 SF
Street Frontage (min.)	60 ft.	60 ft.	60 ft.	50 ft. ¹
Lot Width (min.)				50 ft.
Front Setback (min.)	I-L: 25 ft.	I-M/I-Ma: 1 ft. for each ft. of building height	I-H: 25 ft.	None, except 20 ft. if property has frontage on Westbrook St.
	I-Lb: None	I-Mb: None	I-Hb: None	
Rear Setback (min.)	I-L: 25 ft., except 40 ft. when abutting residential zone	I-M/I-Ma: 1 ft. for each ft. of building height up to 25 ft., except 35 ft. when abutting residential zone	I-H: 35 ft.	None., except 50 ft. if abutting residential zone or use ²
	I-Lb: None, except 25 ft. when abutting residential zone	I-Mb: None, except 25 ft. when abutting residential zone	I-Hb:	
Side Setback (min.)	I-L: 25 ft., except 40 ft. when abutting residential zone	I-M/I-Ma: 1 ft. for each ft. of building height up to 25 ft., except 35 ft. when abutting residential zone	I-H: 35 ft.	None, except 25 ft. if abutting residential zone or use ²
	I-Lb: None, except 25 ft. when abutting residential zone	I-Mb: None, except 25 ft. when abutting residential zone	I-Hb:	
Structure Height (max.)	45 ft.	I-M/I-Mb: 75 ft.	75 ft.	75 ft., except 45 ft. within 100 ft. of a residential zone
		I-Ma: 45 ft.		
Impervious Surface Ratio (max.)	I-L: 65%	I-M/I-Ma: 75%	I-H: 85%	70% ¹
	I-Lb: 100%	I-Mb: 100%	I-Hb: 100%	
Pavement Setback(min.)	15 ft.	10 ft.	10 ft.	

¹ Except for lots in airport restricted access areas, which shall not be subject to this provision.

² No structure may extend beyond the building line established for any runway or taxiway. If provided, rear and side yards must not be less than 5 ft. in width.

³ Shall not apply to entrance drives.

TABLE 7-H: OPEN SPACE ZONE DIMENSIONAL STANDARDS

	R-OS ¹	RPZ
Lot Area (min.)		20,000 SF
Lot Frontage on Street or Shoreline (min.)		100 ft.
Lot Width (min.)		100 ft.
Shoreline Setback (min.)		75 ft. ³
Front Setback (min.)	25 ft.	25 ft.
Rear Setback (min.)	25 ft.	75 ft. ⁴
Side Setback (min.)	Principal	15 ft.
	Accessory	5 ft.
	On Side Street	20 ft.
Structure Height (max.)	Principal	35 ft., except 45 ft. if more than 1,000 ft. from a shoreland zone.
	Accessory	15 ft.
Floor Area (max.)		10% of lot area ⁵
Impervious Surface Ratio (max.)	25% ²	

¹ Public open spaces less than 2 ac. and on the peninsula are not required to meet the R-OS dimensional standards.

² Except 75% for sports complexes and 100% for sewage treatment facilities.

³ Does not apply to permitted piers, docks, wharves, breakwaters, causeways, bridges, boathouses and storehouses for fishing gear.

⁴ Does not apply to a boathouse or storehouse for fishing gear.

⁵ For principal building or group of buildings. Individual buildings shall be no greater than 10,000 SF in size.

7.4.1 Additional dimensional standards

- A. **Corner clearance.** No shrub, wall, fence, sign, or pile of material higher than 3 1/2 feet above the lowest elevation at the curbline shall be permitted on a corner lot within the area of a triangle formed by a line connecting the curblines of the intersecting streets at points 25 feet from the corner, unless said obstruction is reviewed by the Public Works Authority and found not to be a traffic or public safety hazard.
- B. **Fences.** In residential zones, no wall or fence within 15 feet of the street shall be more than four feet in height.
- C. **Swimming pools.** Outdoor swimming pools as accessory uses shall be subject to the following dimensional standards:
 1. No swimming pool shall be sited in the front yard.

2. No part of any swimming pool shall be located closer than ten feet from the principal structure, nor closer than ten feet from side or rear lot lines.

7.5 SPACE AND BULK EXCEPTIONS

7.5.1 Height

- A. **Buildings in the Bayside Gateway Urban Height District A.** Buildings in the Bayside Gateway Urban Height District A as depicted on the Bayside Height Overlay Map may be greater than 125 feet but no more than 165 feet in height provided that:
 1. Such buildings shall be reviewed by the Planning Board as conditional uses under Section 6.5 of this Land Use Code.
 2. Such buildings shall be sited to minimize encroachment into designated view

corridors and visual landmarks to and from the downtown or that do not substantially further obstruct such corridors blocked by existing development as referenced in the Bayside Height Study Map and the B-7 design standards; and

3. Portions of such buildings higher than 125 feet shall be stepped back at upper levels to provide light and air to adjacent streets, trails, and open spaces, with a ratio of no less than a ratio of building height to width of adjacent streets, trails and open spaces equivalent to 1.5 to 1, except that the Planning Board may modify this requirement for master development plans or major site plans provided that the following conditions are met:
 - a. Each building exceeding 125 feet shall contain at least 20 dwelling units per building.
 - b. Building wall stepback requirement along public street frontage for buildings with frontage on one street: Minimum 10 foot stepback between third and fifth stories and a minimum 10 foot stepback between the 125 and 145 foot level.
 - c. Building wall stepback requirement along public street frontage for buildings with frontage on multiple streets: Above paragraph (b) requirement along longest building façade street wall, and of the remaining street walls the same requirement as paragraph (b) or a 15 foot wide streetscape improvements

area containing a public sidewalk, landscaping and other streetscape improvements within the abutting street right-of-way and/or private property along the remaining street frontage. A building with frontage on four streets shall meet the above requirement except that two of the streets shall have the stepback requirement.

- d. The Planning Board shall have the authority to waive one or more of the required stepbacks provided the following is met:
 - i. The depth of the building lot precludes a building having an average minimum lot depth dimension of 170 feet; or
 - ii. The proposed building has an architecturally significant design that is articulated to avoid a monolithic appearance and emphasizes slender, vertically-oriented proportions while employing a variety of scales, materials, fenestration, and massing to assure a rich visually interesting experience as viewed within the context of the downtown skyline and provide visual interest and human scale at the pedestrian level;
- e. In the event such a waiver is granted the Planning Board may require the applicant to mitigate the impacts of the waiver by requiring the following:

- i. Along all public street frontages and public open spaces, all buildings (regardless of height) shall maintain a pedestrian scale through the use of building elements at the street level as listed in this standard along no less than 60% of the building's horizontal length.
 - ii. Along all public street frontages and public open space for the building(s) over 125 feet, a canopy, awning or similar permanent architectural feature to provide pedestrian protection and wind mitigation shall be provided within the first 35 feet of height.
 - iii. In order to preserve view corridors and to maintain a varied skyline, all buildings above 125 feet within a single development site should be separated to avoid the appearance of a tall, solid block massing. In accordance with this policy, development sites of 500 feet or greater as measured parallel to Marginal Way, the aggregate building façade widths above 85 feet shall not exceed 50% of the total development site distance parallel to Marginal Way. Buildings over 125 feet in height that are being reviewed as separate phases of a Master Development Plan shall be entitled to meet the 50% building requirement in aggregate for all such buildings over 125 feet in height in the Master Development Plan, provided that view corridors are retained as each phase is built.
 - iv. The applicant shall demonstrate building design elements and location will reasonably mitigate downdraft effects of the proposed building or buildings.
 4. Such buildings provide publicly accessible and usable open space, meeting the B-7 urban design standards, of at least 10% of the building lot area; and
 5. If located on lots including or adjacent to planned or proposed street or pedestrian way connections, land dedication to such street or connection shall be credited toward the 10% open space requirement. Buildings over 125 feet in height that are being reviewed as separate phases of a Master Development plan shall be entitled to meet the 10% percent open space requirement of in aggregate for all such buildings over 125 feet in height, provided that the open space shall not fall below 10% percent at any built phase or combination of built phases; and
 6. Such development shall comply with all other requirements and design standards as required by this article.
- B. Ground-mounted solar energy systems.**
- Where the total height of the support structure plus the solar energy system is equal to or below the zone-based height maximum, the absolute height of the solar energy system shall

be 20 feet above the ground as measured from the base of the support.

- C. **Public art.** Except in residential zones, public art that has been individually accepted by the City Council for inclusion within the public art collection, pursuant to Article 20, shall not be subject to the height limitations within the underlying zone.
- D. **Rooftop appurtenances.** Rooftop appurtenances for the housing of elevators, stairways, tanks, fans, or other building operating equipment not intended for human occupancy, deck railings, skylights, steeples, roof signs, flag poles, chimneys, smokestacks, radio or television masts, telecommunications equipment, water tanks, or silos may be erected above the height limitations herein prescribed.
- E. **Roof-mounted solar energy systems.** Photovoltaic panels and thermal water heating panels, whether parallel or angled to a pitched or gable roof, may be erected above the height limitation for principal or accessory buildings as follows:
 - 1. In all residential zones: Up to three feet above the maximum height allowed in the underlying zone. In the case of flat roofs, the solar energy system may be up to five feet above the maximum height allowed in the underlying zone. All roof-mounted solar energy systems shall be set back from the edge of the roof by one foot for every one foot of solar energy system height.
 - 2. In B-4 and Industrial zones: Up to four feet above the maximum height allowed in the underlying zone. In the case of flat roofs, there are no height limits.

- 3. In all other zones: Up to three feet above the maximum height allowed in the underlying zone. In the case of flat roofs, the solar energy system may be up to eight feet above the maximum height allowed in the underlying zone. All roof-mounted solar energy systems shall be set back from the edge of the roof by one foot for every one foot of solar energy system height.

F. **Telecommunication towers.** Ground-mounted telecommunication towers may be erected above the height limitations within the underlying zone.

G. **Wind energy systems.** Wind energy systems may be erected above the height limitation for principal buildings within the underlying zone.

7.5.2 Length of building wall at maximum setback

- A. **In the B-6 zone.** Buildings located in the easternmost key building envelope shall not be subject to the building wall requirement.
- B. **In the B-7 zone.** Additions to and relocations of designated historic structures or structures determined to be eligible under Article 16 shall be exempt from the building wall requirement.

7.5.3 Lot area

- A. **Institutional uses in residential zones.** No minimum lot area shall be required for institutional uses in residential uses in the following cases:
 - 1. Uses existing as of June 1, 1983;
 - 2. Expansion on to land abutting the lot on which the principal use is located;
 - 3. Expansion onto land other than the lot on which the principal use is located to the

extent that such expansion consists of the reuse of surface parking area or nonresidential structures existing and in nonresidential use as of June 1, 1983, provided that such reuse is contained within the lot of record of such structure or parking area as of June 1, 1983; or

4. Expansion onto land other than the lot on which the principal use is located of no more than 15% of the total contiguous land area of the existing use, or one acre, whichever is less, within any five-year period.

B. Residential lots not served by public sewers.

A lot in an unsewered residential district shall meet the provisions of the state Minimum Lot Size Law, 12 M.R.S.A. Section 4807 et seq., or the applicable minimum lot area, whichever is larger, except that the minimum lot size may be reduced on the islands in Casco Bay as provided in subsection (C).

C. In island zones. In issuing any permit for new development in island zones:

1. The Building or Planning Authority shall require that any lot located in the IR-1 zone shall be at least 40,000 SF in area and in the IR-2, IR-3, and I-B zones be at least 20,000 SF in area when the lot is to be serviced by a subsurface wastewater disposal system, except those lots which are located in a subdivision approved by the Planning Board after June 8, 1968 and excluding Peaks Island.
2. Excluding Peaks Island from this subsection (2), any property owner whose lot does not meet the minimum lot size requirements outlined in (1) above may,

for purposes of this subsection only, merge two or more separate lots on the same island in order to meet these requirements. Where the lots so merged are not contiguous, the property owner shall grant to the city as holder a conservation easement upon the lot or lots which will not contain the principal structure. The conservation easement shall contain both an existing legal description and a city assessor's chart, block and lot description. The Planning Authority shall be authorized to accept such conservation easements on behalf of the city. Said easement shall be recorded by the applicant in the registry of deeds. A copy of the recorded easement and copies of the deeds for both lots shall be submitted to the Planning Authority prior to issuance of a building permit. The property over which the conservation easement has been granted shall be used for passive recreational and conservation purposes only, and shall be subject to the following restrictions:

- a. No structure shall be permitted on this property;
- b. No parking or storage of vehicles or machinery shall be permitted on this property at any time;
- c. No area of this property shall be paved.
- d. No exterior storage for commercial use shall be permitted on this property; and
- e. The easement deed shall reference the lot which is benefited by this

conservation easement. No conservation easement shall be used to benefit more than one lot.

3. Conservation easements shall only be granted over lots which conform either to the provisions of Section 4.3.1 or to the minimum lot sizes set forth in Table 7-D. Conservation easements shall not be granted over any lot which is encumbered by any other easement which prohibits all construction on that lot. A conservation easement may also name as a holder or grant a third-party right of enforcement to a nonprofit corporation or charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property; assuring the availability of real property for agricultural, forest, recreational, or open space use; protecting natural resources; or maintaining or enhancing air or water quality of real property. Nothing in this subsection shall be construed to allow an owner of a currently existing and developed lot to convey or permit a portion of that lot to be used to fulfill the requirements of this subsection if such conveyance would render the existing lot nonconforming under the terms of this Land Use Code. The lot upon which a building is to be constructed shall meet the minimum lot size requirements of Section 4.3.1.
4. Where an existing subsurface wastewater disposal system serving an existing structure requires replacement, the

replacement system shall meet the applicable state requirements. The land area requirements in subsection (1) of this section shall not apply to such a replacement system.

3. For purposes of this subsection, the mean high tide mark shall be considered to be the shoreline lot line.

7.5.4 Lot coverage

- A. **Lot surrounded by streets or alleys.** Where a lot containing ten thousand 10,000 square feet or less is completely surrounded by rights-of-way, the lot coverage may be increased 20%.

7.5.5 Setbacks

- A. **Setbacks in residential and R-P zones.** In any residential zone and the R-P zone, the width of one side setback may be reduced one foot for every foot that the other side setback is correspondingly increased, but no side setback shall be less than the minimum required for a one-story building.
- B. **Setbacks in the O-P zone.** The Planning Board may reduce by up to 50 % the minimum setback if another yard within the lot is correspondingly increased so that the combined minimum yards on all four sides equal 150 ft. If two or more buildings are located on one lot, only the requirements of the front, rear or side setbacks that adjoin any external property boundary must be met, provided a sufficient fire line is provided.
- C. **Projections in required setback areas.** Any setback may be occupied by a one-story entrance porch not enclosed, with or without a

roof, if the area of the porch does not exceed 50 SF nor the projection from the building exceed six feet. A basement bulkhead of similar size, but not more than 24 inches in height, is also permitted. A cornice eave, sill, canopy, chimney, bay window, balcony, or other similar architectural feature may project into any required setback a distance of not more than two feet.

D. Pavement setbacks. Pavement setbacks shall not apply to entrance drives.

E. Corner lot setbacks. In case a principal residential structure has its front yard upon the long side of a corner lot, the rear setback may be reduced to a depth not less than the required side setback on the lot, provided that the aggregate of the widths of both sides and depths of front and rear yards is not less than the similar aggregate of required dimensions of all setbacks if the front yard were faced on the short side of the lot.

F. Maximum front setback exceptions.

1. Maximum front setbacks shall not apply to utility substations and secondary building components.
2. In the B-2/B-2b/B-2c zones:
 - a. Building additions do not have to meet maximum front setback requirements.
 - b. The Planning Board or Planning Authority may approve a different front setback for irregularly shaped lots or lots with frontage greater than 40 ft. in width provided the front setback is met to the maximum extent practicable.

- c. If a lot has less than 40 ft. of frontage and is more than 100 ft. deep, then no maximum setback is required.
- d. If existing structures are within 20 ft. of the street or meet the front setback maximum and the remainder of the lot has less than 40 ft. of frontage, then no maximum setback is required.
- e. The Planning Board or Planning Authority may waive the maximum front setback for utility substations and alternative energy installations.

Where setbacks exceed 10 feet, a continuous, attractive, and pedestrian-scaled edge treatment shall be constructed along the street, consisting of street trees spaced at no more than 15 feet on center, approved by the City arborist, and a combination of landscaping no less than four ft. deep, ornamental brick or stone walls, or ornamental fencing.

3. In the B-3/B-3b/B-3c zones: The Planning Board may require or approve an additional setback to comply with the design standards of Article 13 and the *City of Portland Design Manual*.
4. In the B-6 zone: For lots fronting on more than one street in the B-6 zone, the front setback can be increased more than 10 feet if all of the following conditions are met:
 - a. The increased setback occurs at the intersection of the streets;
 - b. The increased setback area is the primary pedestrian entrance to the building;

- c. 75 % of the total building wall length facing the abutting streets shall be setback no greater than 10 feet. All building wall segments which make up the increased setback shall be included in the calculation of the total building wall length; and
 - d. For new construction on a lot abutting three or more streets, the maximum setback shall apply only to the two streets with the highest traffic volume.
5. In the B-7 zone.
- a. Parking structures, public transportation facilities, utility substations, secondary building components such as truck loading docks, mechanical equipment enclosures, and refrigeration units are not subject to the maximum front setbacks.
 - b. The maximum front setback may be increased to more than 10 feet if all of the following conditions met:
 - i. 75% of the total building wall length of an individual building facing the abutting streets is setback no greater than 10 feet; and
 - ii. The increased setback area shall include a functional and accessible public pedestrian entrance into the building that faces the street, unless a public pedestrian entrance already exists along the same street; and
 - iii. The increased setback shall not be used for surface parking.
 - c. For a corner lot having frontage on two streets, the maximum setback shall apply to both streets. In the case of a lot having frontage on two or more street corners, newly constructed buildings shall be sited at street corners and meet the maximum setback requirement prior to other freestanding buildings being constructed on the lot which shall also meet the maximum street setback. In the case of a corner lot having frontage on a third street (but not a corner) the maximum setback need not apply to the third street.
 - d. In the case of a lot having frontage on two streets but not on a corner, the maximum setback shall apply to all streets but in the case of a lot having frontage on three streets but not on a corner, the maximum setback shall apply to only two streets. For purposes of this subsection only, the first building on a lot shall meet the maximum setback on at least one street with future buildings required to meet the maximum setback on the remaining street(s).
 - e. In the case of a lot in which a minimum 75% of the total lot frontage has a building within ten feet of the street, other buildings may be located on the lot more than 10 feet from the street. In the case of a lot having

frontage on Marginal Way and I-295, the property edge along I-295 shall not be considered street frontage.

- f. The maximum building setback shall not apply to vertical building expansions in the following cases:
 - i. The upper floors of a building in which the lower floors meet the maximum setback and the minimum height requirement.
 - ii. The building existed as of March 9, 2005 and meets the minimum height requirement.
 - iii. A building not meeting the maximum street setback and the minimum height requirement may vertically expand a total of one floor from March 9, 2005.
 - iv. In the case of a building in which at least 50% of the building wall(s) abutting street(s) is within 20 ft. of the street.
 - v. Additions to parking garages existing as of March 9, 2005.
- g. Additions to buildings existing as of March 9, 2005 that are nonconforming as to the maximum setback need not conform to the maximum street setback provided the cumulative building footprint since March 9, 2005 does not exceed 50% of the existing building footprint. Such restriction shall not apply to those portions of the building addition that are constructed closer to the street line than the building footprint existing as of March 9, 2005 and to

vertical expansions as provided for in subsection (f).

- h. Lots having frontage on streets in which the curve of the street frontage precludes a rectangular-shaped building along the street line, for purposes of calculating the setback, the average setback of the building from the street line may be used, but in no event shall the average setback along the length of the building edge exceed an average setback of 15 ft. nor shall the maximum setback exceed 20 ft. The increased setback shall not be used for surface parking, vehicular loading or vehicular circulation.
- i. Additions to and relocations of designated historic structures or structures determined to be eligible by the historic preservation committee shall be exempt from the maximum setback requirement.

G. Minimum setback exceptions for lots of record.

1. In the case of a lot of record existing as of June 5, 1957 in the R-1, R-2, R-3, R-4, R-5, R-5A, and R-6 zones and less than 100 ft. deep, the front setback need not be deeper than 20% of the depth of the lot.
2. In the case of a lot of record existing as of June 5, 1957 in a residential zone, the required side setback for principal structures may be reduced in order to provide a buildable width of up to 24 feet, but in no case shall the resulting side yards

be less than the following:

R-1, R-2 12 ft.

R-3, R-5 8 ft.

R-4, R-5A 10 ft.

H. Setbacks for wind energy systems.

1. Wind energy systems and associated facilities shall meet all setbacks for principal structures for the zone in which the system is located. Where setbacks vary, the largest setback shall apply. All parts of the wind energy system, including associated facilities and guy wires, shall be at least 10 feet from the property line (except where connecting to the grid), any utility line (in any direction) or other easement/right-of-way. The setback from utility lines, easements and right-of-way lines may be reduced where the owner/benefitted party provides written permission.
2. Roof-mounted wind energy systems shall be set back from property boundaries and street right-of-way lines by a distance equal to or greater than four times the height of the system as measured from the roof surface at the point of attachment. For systems in and adjacent to waterfront zones, business zones (except B-1 and I-B), office park zone, industrial zones, island transfer station zone, and ROS zone, the setback from property boundaries and street right-of-way lines may be reduced to a minimum distance of 1.0 times the height of the system, where the system is incorporated into the architecture of the building and a certified engineer confirms

that it would not present and public safety risk. The setback shall be measured to the center of the wind generator base.

3. Freestanding wind energy systems with a total height of less than 85 feet shall be set back from property boundaries and street right-of-way lines by a distance equal to or greater than 1.1 times the total height of the system, and from residential buildings and hospitals on other properties by a distance equal to or greater than twice the total height of the system. The setback distance shall be measured to the center of wind generator base.
 4. Freestanding wind energy systems with a total height of greater than 85 feet shall be set back away from property boundaries and street right-of-way lines by a distance equal to or greater than twice the total height of the system, and from residential buildings and hospitals on other properties by a distance equal to or greater than four times the total height of the system.
 5. For freestanding wind energy systems in and adjacent to waterfront zones, business zones (except B-1 and I-B), office park zone, industrial zones, island transfer station zone, and ROS zone, the setback from property boundaries and street right-of-way lines may be reduced to a minimum distance of 1.0 times the total height of the system where determined that the minimum required setback would be contrary to the public interest.
- I. Setback exceptions for purposes of exterior egress.** Notwithstanding any other provision of

this Code of Ordinances, the Building Authority may permit the installation of an exterior egress stair or an upgrade of an existing exterior fire escape for a dwelling unit existing as of January 5, 1998, if such egress is required to meet current fire or other life safety codes, provided that the owner demonstrates to the building authority that:

1. There is no practical and economically reasonable way to provide such egress within the interior of the building, as demonstrated by the submission of detailed floor plans showing the projected cost of and the impact on the existing dwelling from an interior stair;
2. The stairway and associated landings and other building fixtures are designed and will be constructed to have a minimal visual impact upon the building, especially as viewed from any public way or public open space, as demonstrated by photographs of the front and any other affected facades of the building and plans or drawings of the proposed egress stairs; and
3. The stairway and associated landings are designed to occupy the least amount of area required to meet life safety requirement.

7.5.6 Stepbacks

A cornice eave, sill, canopy, chimney, bay window, balcony, or other similar architectural feature may project into any required stepback a distance of not more than two feet.

7.5.7 Street frontage

In the IR-1 and IR-2 zones, a lot of record as described in Subsection 4.3.1 and lots created after July 15, 1985, which are not part of a subdivision need not provide street frontage if access is available by means of a permanent easement or right-of-way which existed as of July 15, 1985. Such easement or right-of-way shall have a minimum width of 16 feet and a minimum travel width of eight feet except that an easement or right-of-way providing access for three or more lots or providing the only means of access to a parcel or parcels of three acres or more, shall meet the construction requirements of Chapter 25, Article III of the City of Portland Code of Ordinances. In the IR-1 zone, such easement or right-of-way shall conform to the requirements contained within the City of Portland Technical Manual. In the IR-2 zone, such easement or right-of-way shall be a minimum of 32 feet wide. Such easement or right-of-way shall be sufficient to permit municipal service delivery.



Helen Donaldson <hcd@portlandmaine.gov>

Follow up on ReCODE Planning Board Workshop

Ben Walter <bwalter@cwsarch.com>

Fri, Nov 8, 2019 at 4:10 PM

To: "Christine Grimando (cdg@portlandmaine.gov)" <cdg@portlandmaine.gov>, "Helen (Nell) Donaldson (hcd@portlandmaine.gov)" <hcd@portlandmaine.gov>, Grooms Matthew <mgrooms@portlandmaine.gov>

Hi Christine, Nell and Matt,

First, I want to thank you for your great work moving Portland's ReCode process forward – I REALLY love the direction you are taking and can envision the long term benefits that await the city. I know it's a huge effort and your thoughtful and conscientious approach will prove to be a great benefit for decades to come.

I remember, when I was about half my age in the early 90s, having a conversation with Joe Grey about how challenging the zoning ordinance was but also how complicated the fixes would be. He said don't hold your breath.

I believe that we have all learned over the past 60 years that uniformity isn't always a benefit to supporting natural, prosperous and organic communities. On the other hand, I grew up in a very large city (of now 6M residents now) that had NO zoning and can clearly understand the disaster that resulted in.

Successful zoning can be analogized to being a good parent where you do your best to steer you kids down a healthy path to posture them for success but only so far as to afford them the opportunity to make good decisions and freedom to evolve into who they really are. This is where the rigidity of old school zoning (Portland's included) has, in many areas, failed. Fortunately that will soon be behind us.

Like most New England cities and towns, Portland has many unique historical development patterns that don't fit into any one mold, and that should be recognized and supported.

I wanted to reiterate a few of the current ordinance's zoning challenges I mentioned last nights; specifically the many case where the zoning language doesn't support the best qualities of the historical built environment.

A few (of many) specific issues include:

1. It's hard to understand how Portland zone lines were determined. I'm guessing it was a little haphazard, or politically motivated. For example, There are areas zoned R-3 (single family) that have a large number of low density multifamily structures (not permitted in the zone) and should have been zoned R-5 (single family and multi-unit). This condition is rampant as far as I can tell.
2. Most apparent, there are substantial portions of the R-3 and R5 where the large majority of properties were made non-conforming with respect to setbacks (others requirements) when the zoning ordinance was adopted. In the majority cases, and as an example, small 50' wide x 100' deep lots, more or less, that were developed around the turn of the 19th century don't conform with the more suburban nature of the R-3 and R-5 dimensional requirements. On these lots the predominant pattern was to build a house up to essentially a zero side lot-line on one side of the lot (maybe 2' +/- to accommodate for eave overhangs) and put the drive way on the other side of the lot. This pattern allowed for a ~32' wide by ~40' long (or more) house. If these were built today the 32' wide house would be required to be 24' wide to meet the

required 8' side yard setbacks and considerably out of form character with the neighborhood. Many houses were developed most of the way or close to the rear property line, without a back yard, but many were not. The adopted zoning makes horizontal extensions provisions on these property both out of character with the neighborhood and mostly non-functional. Updated zoning should support reinforcing the historic fabric of the neighborhood.

3. There are many other issues like this that need to be reviewed. I'm sure the list of considerations will be exhausting, but it will be beneficial.

You have your work cut out for you. I'd be happy to talk through any of these issues with you if that would be helpful.

Secondly, separately and selfishly, as I mentioned at last night's meeting, and in full disclosure because I'm stuck in one of these binds, a quick start would be to simply allow the horizontal extension of existing non-conforming side yard setbacks up to the rear-setback line provided a) the neighborhood fabric supports the extension (it's very prevalent in my neighborhood and all of my adjacent neighbors' houses extend close to or beyond what I'm proposing); and b) that the extension continues to retain the existing fire and maintenance access. In my case I would already have about 4 ½ feet to my property line plus the neighbor's driveway. These seem to be the only two factors to consider.

Also, I am leery about filing for an Interpretation, Hardship or Practical Difficulty appeal if the odds seem favorable that this change might be coming in either by either a near-term separate zoning language change or a few years down the road as part of the overall re-zoning document. If it seems it will be part of your re-zoning proposal, or at least that the Planning Department supports this type of change, I may be willing to not file the appeals, take my chances and build the future addition's platform as a temporary 'deck' (capable of supporting the future addition) for now and wait it out. Either way it's more complicated than I had hoped for, but I will need to make that decision soon. I would like to hear your thoughts.

Thanks for your help.

Ben

Benedict B. Walter, AIA

President | Licensed Architect ME NH GA

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Helen Donaldson <hcd@portlandmaine.gov>

Fwd: 12/17/2019-Recode - Dimensional/R6 Design Manual All ready Going to Planning Board When NOT addressed in RECODE subcommittee?

1 message

jmy <jmy@portlandmaine.gov>

Fri, Dec 13, 2019 at 9:40 AM

To: Christine Grimando <cdg@portlandmaine.gov>, Caitlin Cameron <ccameron@portlandmaine.gov>, Helen Donaldson <hcd@portlandmaine.gov>

I will save this to the R-6 folder/public comment

On Thursday, December 12, 2019 at 3:32:55 PM UTC-5, Karen Snyder wrote:

Dear Planning Board Members,

It has been brought to my attention that next week Recode recommendations for dimensional standards and R-6 Design Manual will be brought to the Planning Board next week on 12/17/2019 when it has not even been addressed in any Recode subcommittee meetings.

From what I can understand, the last Recode subcommittee meeting held was 10/28/019 and it addressed ADUs, reducing parking requirements for future developments, and definitions. In addition, there was also a presentation by a developer from Atlanta, Eric Kronberg, who proposed to eliminate single family zoning and to eliminate parking for cheaper housing in which he did not provide any substantiated facts on this. The next day, Eric Kronberg, then presented at the 1st YIMBY session on 10/29/2019.

The last Recode Subcommittee agenda of 10/28/2019 is below:

<https://portlandme.civicclerk.com/web/UserControls/DocPreview.aspx?aid=624>

Therefore, I am quite surprised that there was a City notice yesterday 12/11/2019 to say that Recode dimensional standard recommendations and R6 Design Standards will be presented at a Planning Board Workshop next week on Tuesday, 12/17/2019.

I am especially surprised since the following has NOT occurred.

- 1) There was no Recode subcommittee that even addressed the proposed dimensional standards or R-6 Design Standards. However, there is no Planning Board workshop agenda yet of the proposed Recode changes being presented next week but we only have tomorrow to make public comment for next week workshop to put on record. This means we have less than 1/2 day to see these proposed recommendations and comment on them .
- 2) The City Planning Department did not contact any neighborhood organization to address this very important issues which affect long term residents every day.
- 3) I sent my concerns to Recode subcommittee on the R-6 Design standards 3 times and each time I was rebuffed, or ignored, or was told that it will be addressed in the future... but it never has been addressed.
- 4) The City feedback link shown below implies that the first 4 articles are being addressed OR input is available to be entered for the first 4 articles which makes since these articles have been addressed in a Recode subcommittee meeting.

https://www.recodeportland.me/public-input-1

Considerative and accessible, this platform facilitates dialogue on the City's Draft Land Use Code



Page 1 of 52

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Type to search 

 Comment



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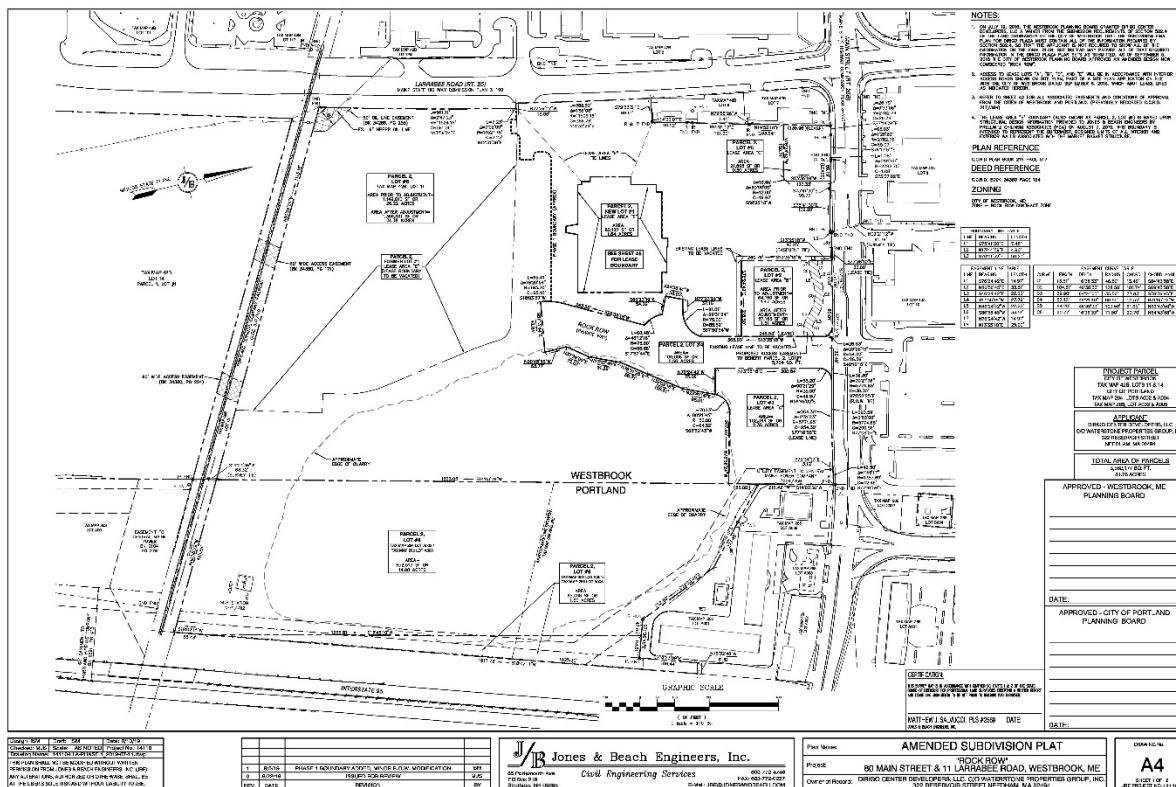
Consequently, why haven't the dimensional standards and R-6 Design Manual issues follow proper due process like the other Recode issues and have been addressed in Recode Subcommittee meeting rather than going directly to Planning Board workshop?

It would be advised to have a Recode subcommittee meet to address the proposed dimensional standards and R-6 Design manual changes rather than be rushed to Planning Board without proper democratic due process in which the proposed changes in a Recode subcommittee.

Regards,
Karen Snyder
Munjoy Hill Property Owner

CBL: 264 A002

Prepared by: Andrew Tufts, Planner
Date: January 17, 2020



I. INTRODUCTION

1

Applicant: Dirigo Center Developers, LLC

Consultants: Jones & Beach Engineers, Inc (Applicant/Preparer), Perkins Thompson (Agent/Representative)

II. REQUIRED REVIEWS

<i>Waiver Requests</i>	<i>Applicable Standards</i>
Applicant is requesting a waiver of the requirement to hold joint meetings and hearings to review this application. <u>Staff Comments:</u> City staff supports a waiver from the State subdivision statute for this project.	Under the State of Maine's subdivision statute, 30-A M.R.S. § 4403(1-A), if any portion of a subdivision crosses municipal boundaries, all meetings and hearings to review the application must be held jointly by the reviewing authorities from each municipality. The reviewing authorities in each municipality may waive this requirement upon written agreement.
<i>Review</i>	<i>Applicable Standards</i>
Subdivision	<i>Section 14-496</i>

III. PROJECT DATA

Existing Zoning	B4 Commercial Business – I-L Industrial
Existing Use	<i>Industrial</i>
Proposed Use	<i>Mixed-use development</i>
Parcel Size	3,562,177 SF

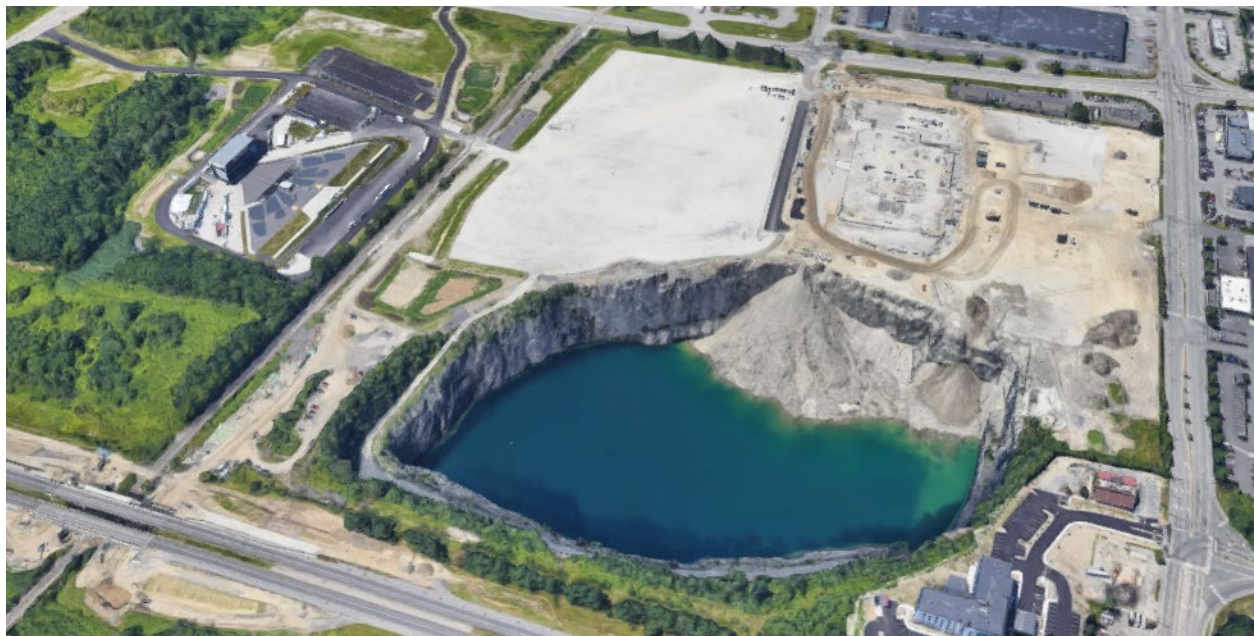


Figure 2: Existing Axon Perspective - Source: CONNECTExplorer

IV. EXISTING CONDITIONS

The Rock Row development received initial subdivision approval from the City of Portland Planning Board on October 18, 2016. Portland's Planning & Urban Development Director approved minor changes to the subdivision plan on October 25, 2018 in accordance with Section 14-496(c) of the Portland City Code of Ordinances, which permits the Planning Authority to approve a subdivision amendment that: only affects lot lines and does not increase the number of lots; does not affect any street, alley, utility easement or drainage easement; meets codes; and is approved by the Public Works Authority and the fire department. Copies of prior approvals from the City of Portland are included with this submittal.

The Portland portion of the project is identified as the following lots on City tax maps: Tax Map 264, Lots A002 & A004, and Tax Map 265, Lots A003 & A005. A total of 12.66 acres of this land is located in the Commercial Business (B4) zoning district, and the remaining 3.82 acres is zoned as Industrial.

To date, much excavation has occurred within Rock Row. An outdoor concert venue opened in the spring of 2019, and a Market Basket supermarket is currently under construction.

V. PROPOSED SUBDIVISION AMENDMENT

The proposed amendment is limited to the area located north of the Portland Terminal Company railroad line and parcel that bisects the development and separates the North Campus from the South Campus. No new structures or development are proposed on the Portland side of the development, and no new divisions of the land are being proposed on the Portland side of the development. The purpose of the amendment is to rearrange existing lot lines and further subdivide the property on the Westbrook side of the development to accommodate the following: a ground lease to Market Basket (shown as Parcel 2, Lot #1 on the enclosed plans); three other lots for commercial tenants (shown as Lots #2, #3 and #5); a lot to create a portion of an internal road to be designated Rock Row (Lot #4); and a lot for the remaining land comprising the North Campus of Rock Row (Lot #6). In total, the proposed subdivision would increase the number of lots from 3 to 6. A similar subdivision amendment application has been submitted to the City of Westbrook for concurrent review before its Planning Board.

A waiver is being sought by the applicant to waive the requirement to hold joint meetings and hearings with Westbrook and Portland to review this application. In October of 2019, the City of Westbrook's Planning Board voted to waive joint review in advance of a vote by the City of Portland's Planning Board.

VI. PUBLIC COMMENT AND NEIGHBORHOOD MEETING

The neighborhood meeting was held on Monday, December 23, 2019, at 6:00 PM. It was held at the Hampton Inn & Suites, 1210 Brighton Avenue, Portland, ME. Jim Katsiaficas, Esq., of Perkins Thompson, applicant representative, presented an overview of the application. There were approximately 7 members of the public in attendance. Comments were made in regard to water quality, trail connections, and timing of development.

No public comments have been received to date.

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

The owner of the property is Dirigo Center Developers, LLC. The applicant provided a copy of the warranty deed, recorded at the Cumberland County Registry of Deeds in book 34380, Page 164, which demonstrates their right, title and interest in the property.

Phase I of the development is expected to cost \$34.9 million. Enclosed as evidence of the Applicant's financial capability are Consolidated Interim Financial Statements as of June 30, 2018. The same evidence was previously submitted to and approved by the Maine DEP and the City of Westbrook as acceptable evidence of financial capability.

VIII. ZONING ANALYSIS

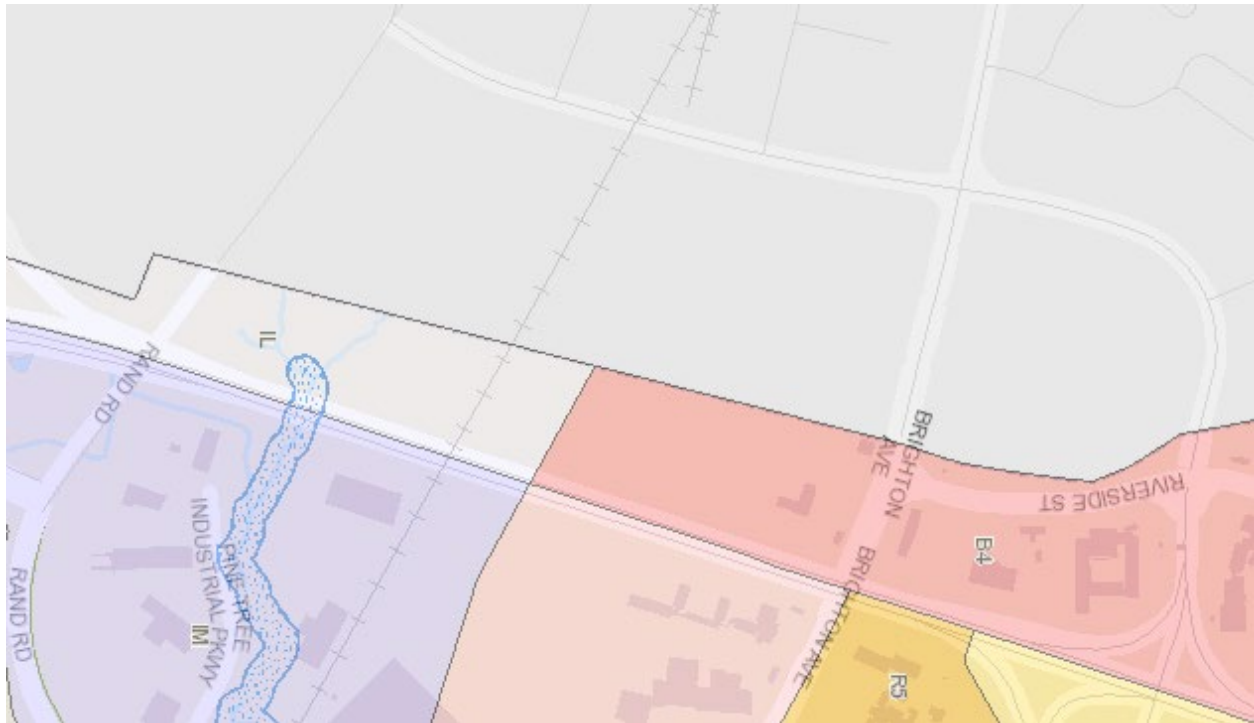


Figure 3: City of Portland Zoning Map

Dimensional requirements for this project are dictated by the B4 Commercial Business and IL industrial zones.

IX. DEVELOPMENT REVIEW

A. SUBDIVISION PLAT AND RECORDING PLAT REQUIREMENTS (Section 14-496)

The applicant has submitted a recording plat. The final plat will need to be revised to reflect any waivers and conditions of approval that relate to the subdivision plan. Any waivers granted must be recorded at the Registry of Deeds within two years of a Planning Board decision.

B. SUBDIVISION (Section 14-496)

The proposed subdivision amendment has been reviewed by staff for conformance with the relevant review standards of Portland's Subdivision Ordinance and applicable regulations. Staff comments are listed below.

1. Will Not Result in Undue Water and Air Pollution (Section 14-497 (a) 1), and Will Not Result in Undue Soil Erosion (Section 14-497 (a) 4)

There are no changes to the lot lines on the Portland side of the development, nor are there any new lots or development planned in Portland through this subdivision amendment. Because the buildings, improvements, and infrastructure will not change through this subdivision amendment, this application will have no impact on the air and water pollution impacts and findings previously made by the Planning Board.

2. Sufficient Water Available (Section 14-497 (a) 2 and 3)
3. No development is planned on the Portland portion of the Project. The Westbrook portion of the Project will be supplied by the Portland Water District (PWD). The PWD has previously supplied an ability to serve letter with respect to the development in Westbrook.
4. Will Provide for Adequate Sanitary Sewer and Stormwater Disposal (Section 14-497 (a) 6), and Will Not Cause an Unreasonable Burden on Municipal Solid Waste and Sewage (Section 14-497 (a) 7)
There are no proposed changes to the sanitary waste and storm water disposal systems previously reviewed and approved by the Portland Planning Board under this standard.
5. Comprehensive Plan (Section 14-497 (a) 9)
The proposed subdivision amendment is generally consistent with the City's Comprehensive Plan, adopted in June of 2017.

X. STAFF RECOMMENDATION

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the Planning Board find that the 1190 Brighton Avenue subdivision amendment meets the applicable standards of Portland's Land Use Code.

XI. PROPOSED MOTIONS FOR THE BOARD TO CONSIDER

A. WAIVERS

1. Joint Review Requirement

Pursuant to 30-A M.R.S. § 4403(1-A), the Planning Board of the City of Portland agrees to waive the requirement in § 4403 (1-A) for joint meetings and hearings on further amendments to the Dirigo Plaza/Rock Row Subdivision, which crosses the Portland/Westbrook municipal boundary and was approved by the Planning Boards of Westbrook and Portland on October 18, 2016 and subsequently amended by both Cities (the "Subdivision"). This Agreement to Waive Joint Planning Board Meetings shall remain in effect until such time as either City's Planning Board requests joint meetings and/or hearings on amendments to this Subdivision.

B. SUBDIVISION REVIEW

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for the public hearing on January 21, 2020, for application # PL-000910-2019 1190 Brighton Avenue relevant to the subdivision regulations, and the testimony presented at the Planning Board hearing, the Planning Board

[finds/does not find] that the plan is in conformance with the subdivision standards of the Land Use Code subject to the following conditions of approval:

PRIOR TO THE SUBMISSION OF THE PLAT FOR PLANNING BOARD SIGNATURE

1. The subdivision plat shall be finalized to the satisfaction of the Planning Authority, Corporation Counsel and Department of Public Works and include clear descriptions of the number, location, type and size of all subdivided units, along with relevant notes and conditions.

XII. ATTACHMENTS
PLANNING BOARD REPORT ATTACHMENTS

APPLICANT'S SUBMITTALS

- A - PORTLAND SUBDIVISION APP – NARRATIVE
- B - PORTLAND SUBDIVISION AMENDMENT APPLICATION
- C - NEIGHBORHOOD MEETING INFO

PLANS

- P1. ROCK ROW PHASE 1 SITE PLAN
- P2. ROCK ROW-AMENDED SUB PLAT SHEET A4 (Rev 1)(2019-09-06)
- P3. ROCK ROW-AMENDED SUB PLAT SHEET A5 (Rev 1)(2019-09-06)

JONES & BEACH ENGINEERS INC.

85 Portsmouth Avenue, PO Box 219, Stratham, NH 03885
603.772.4746 - JonesandBeach.com

Christine Grimando, Acting Planning and Urban Development Director
James Rather, Development Review Services Manager
City of Portland
389 Congress Street
Portland, ME 04101

**Re: Subdivision Amendment Application – “Rock Row” (AKA Dirigo Plaza)
Mixed Use Development, 58 & 80 Main Street, Westbrook, ME 04092**

Dear Ms. Grimando & Mr. Rather:

Our client, Dirigo Center Developers, LLC, is seeking to amend a previous subdivision approval regarding the project referenced above. The “Rock Row” project spans the Portland-Westbrook municipal boundary, and includes 16.48 acres of undeveloped land in the City of Portland. The Portland portion of the project is identified as the following lots on City tax maps: Tax Map 264, Lots A002 & A004, and Tax Map 265, Lots A003 & A005. A total of 12.66 acres of this land is located in the Commercial Business (B4) zoning district, and the remaining 3.82 acres is zoned as Industrial.

The current amendment relates solely to the so-called “North Campus” of Rock Row, which is limited to the area located north of the Portland Terminal Company railroad line and parcel that bisects the development and separates the North Campus from the South Campus. **Notably, no new structures or development are being proposed on the Portland side of the development, and no new divisions of the land are being proposed on the Portland side of the development.** The purpose of the amendment is to rearrange existing lot lines and further subdivide the property on the Westbrook side of the development to accommodate the following: a ground lease to Market Basket (shown as Parcel 2, Lot #1 on the enclosed plans); three other lots for commercial tenants (shown as Lots #2, #3 and #5); a lot to create a portion of an internal road to be designated Rock Row (Lot #4); and a lot for the remaining land comprising the North Campus of Rock Row (Lot #6). A similar subdivision amendment application has been submitted to the City of Westbrook for concurrent review before its Planning Board.

The project has received several other approvals to-date, including a Maine DEP Site Location of Development Application (SLODA) and Natural Resources Protection Act (NRPA) Permit, a Maine DOT Traffic Movement Permit (TMP), coverage under the Maine General Permit issued by the Army Corps of Engineers, as well as Site Plan, Subdivision and Conditional Use approvals from the City of Westbrook. The Rock Row project received initial subdivision approval from the City of Portland Planning Board on October 18, 2016. Portland’s Planning & Urban Development Director approved minor changes to the subdivision plan on October 25, 2018 in accordance with Section 14-496(c) of the Portland City Code of Ordinances, which

permits the Planning Authority (the Director of Planning and Urban Development) to approve a subdivision amendment that: only affects lot lines and does not increase the number of lots; does not affect any street, alley, utility easement or drainage easement; meets codes; and is approved by the public works authority and the fire department. Copies of prior approvals from the City of Portland are included with this submittal.

In accordance with Section 14-495 of the City of Portland Code of Ordinances (the "Code"), enclosed please find a completed application checklist and five copies of the subdivision plat, a vicinity sketch, and a recording plat. The plat is prepared in conformity with Sec. 14-496 of the Code.

Please let us know if the Planning Division requires any additional information in support of this application. If you have any questions regarding this submittal, please feel free to contact me.

Very truly yours,
Jones & Beach Engineers, Inc.



Wayne Morrill
Vice President

cc: Jon Jennings, City Manager
Josh Levy, Dirigo Center Developers, LLC
Doug Richardson, Dirigo Center Developers, LLC
Brian Kaplan, Dirigo Center Developers, LLC
James N. Katsiaficas, Esq.

JONES & BEACH
ENGINEERS INC.

**Subdivision Amendment Application
City of Portland, ME**

Project:

**“Rock Row”
58 & 80 Main Street
Westbrook, ME 04092**

Applicant:

**Dirigo Center Developers, LLC
322 Reservoir Street
Needham, MA 02494**

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Section 1 - Project Description & Subdivision Review Standards Summary

Section 14-497 Subdivision Review Standards Summary

The amended subdivision plan continues to meet all applicable review criteria set forth on Section 14-497 of the City of Portland Code of Ordinances. Each of the Section 14-497 standards are set forth below, followed by a summary as to how the amended subdivision continues to meet each and every applicable standard.

1. *Will not result in undue water or air pollution. In making this determination it shall at least consider the elevation of land above sea level and its relation to the flood plains, the nature of soils and subsoils and their ability to adequately support waste disposal; the slope of the land and its effect on effluents; the availability of streams for disposal of effluents; the conformity to the applicable state and local health and water resources regulations.*

JBE Response: The Subdivision Amendment Application seeks to redefine previously approved lots and to add three lots within the already approved subdivision of the Rock Row North Campus Phase 1 area in Westbrook. There are no changes to the lot lines on the Portland side of the development, nor are any new lots or development planned in Portland. The Portland Planning Board granted initial subdivision approval for the project in October 2016, and staff approved minor changes to the project in October 2018. The entire Rock Row project, both South and North Campus parcels (the “Project”), also has been approved by the Maine Department of Environmental Protection (DEP) under a Site Location of Development Act (SLODA) permit process that reviewed, among other criteria, the overall development’s pollution impact. The State approved the Project, confirming that the design, at a minimum, meets the State’s water and air pollution requirements which are as strict or stricter than the City of Portland’s regulations. This Application proposes the creation of additional lots for the already approved buildings – in particular, the relocation of Lot #1 (formerly proposed as a Wal-Mart location) to a different area for construction and use by a Market Basket, the adjustment of the existing Lot #2 boundaries and the creation of three new lots, all to accommodate uses, buildings and roadways contemplated in the initial subdivision and site plan approvals for the Project. Because the buildings, improvements, and infrastructure will not change, the proposed Application will have no impact on the air and water pollution impacts and findings previously made by the Planning Board.

2. *Has sufficient water available for the reasonably foreseeable needs of the subdivision.*

JBE Response: No development is planned on the Portland portion of the Project. The Westbrook portion of the Project will be supplied by the Portland Water District (PWD). The PWD has previously supplied an ability to serve letter with respect to the development in Westbrook.

3. *Will not cause unreasonable burden on an existing water supply.*

JBE Response: No development is proposed on the Portland portion of the Project. With respect to Westbrook, PWD has approved a water design that services the entire Rock Row Phase 1 area and buildings. PWD and the developer have executed a Main Extension Agreement and construction has already begun on the Phase 1 water system. The Subdivision Amendment

Application will have no impact on the current water supply design, as it was designed to serve all of the buildings contemplated in the amended subdivision parcel.

4. *Will not cause unreasonable soil erosion or reduction in the capacity of the land to hold water so that a dangerous or unhealthy condition may result.*

JBE Response: The present application covers the same Rock Row North Campus Phase 1 area previously reviewed and approved by the Portland Planning Board under this standard, and the Applicant provided extensive erosion and sedimentation plans during those review processes. The Rock Row North Campus Phase 1 area also was approved by Maine DEP under a SLODA permit that reviews the overall Project's erosion impact. The State has approved the proposed sediment and erosion control plans. As the present Application is intended only to create lot line divisions to accommodate the buildings, improvements and infrastructure already reviewed and approved by the Planning Board, it will have no impact to the current erosion & sediment control plans. Please refer to the Drainage Analysis and Erosion and Sediment Control Plan included as Section 12 of this application for more information.

5. *Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to use of the highway or public roads existing or proposed.*

JBE Response: The entire Project – North and South Campuses -- has been approved by the Maine Department of Transportation (MDOT) under a Traffic Movement Permit (TMP). The TMP was developed and managed, on behalf of the Applicant, by Sebago Technics. The present Application will have no impact to the existing TMP, as it only seeks approval of revised and new lot lines to accommodate the buildings, improvements, and infrastructure already reviewed and approved by the Portland Planning Board and recognized by MDOT in the TMP process. A copy of the TMP is included in Section 4 of this application.

6. *Will provide for adequate sanitary waste and storm water disposal and will not cause an unreasonable burden on municipal services if they are utilized.*

JBE Response: There are no proposed changes to the sanitary waste and storm water disposal systems previously reviewed and approved by the Portland Planning Board under this standard. Please refer to the Drainage Analysis and Erosion and Sediment Control Plan included as Section 12 of this application for more information.

7. *Will not cause an unreasonable burden on the ability of the city to dispose of solid waste and sewage if municipal services are to be utilized.*

JBE Response: The Rock Row Phase 1 area development will utilize private solid waste companies to remove all recyclable and non-recyclable solid waste.

8. *Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the department of inland fisheries and wildlife or by the city, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline. For subdivisions within historic districts*

designated pursuant to article IX of this chapter, the Planning Board shall apply the standards of section 14-651(c) of article IX. The Planning Board may request that the historic preservation committee prepare an evaluation of the proposed subdivision based upon the standards of section 14-651(c).

JBE Response: The Subdivision Amendment Application only creates additional lots in furtherance of the subdivision approval previously granted by the Portland Planning Board. No further development is proposed under this application beyond what the City of Westbrook has already reviewed and approved under its Site Plan review criteria. The Project also was required to obtain a full Natural Resources Protection Act (NRPA) permit for impacts to several natural areas and received approval from the State as part of the SLODA permit process. No undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or by the City of Westbrook, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline, was determined to exist in these reviews.

9. Is in conformance with the land development plan or its successor.

JBE Response: The Project was previously determined by the Planning Board to be in conformance with the land development plan. As no changes are proposed on the Portland side of the development, this standard continues to be met.

10. The subdivider has adequate financial and technical capacity to meet the standards of this section.

JBE Response: The Applicant has adequate financial and technical capacity to meet the standards of the Code. Please refer to Section 8 (Financial Capability) and Section 9 (Technical Capability) for additional information.

11. Whenever situated, in whole or in part, within the watershed of any pond or lake or within two hundred fifty (250) feet of any wetland, great pond or river as defined in Title 38, chapter 3, subchapter I, article 2-B, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water.

JBE Response: The proposed subdivision amendment will not adversely affect the water quality of, nor will it unreasonably affect the shoreline of, any pond, lake, wetland, great pond or river. Please see the Drainage Analysis and Erosion and Sediment Control Plan included in Section 12 of this application for more detailed information. Please note the Drainage Analysis and Erosion and Sediment Control Plan applies to the entire Project (North and South Campuses). The present amendment application applies only to the North Campus.

12. Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of groundwater.

JBE Response: The proposed stormwater design seeks to treat all stormwater runoff in accordance with the Maine DEP SLODA/NRPA permit, so as not to adversely affect the quality of the groundwater.

13. Is or is not in a flood-prone area, based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant. If the subdivision, or any part of it, is in such an area, the subdivider shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision plan must include a condition of plan approval requiring that principal structures in the subdivision will be constructed with their lowest floor, including the basement, at least one (1) foot above the 100-year flood elevation.

JBE Response: Not applicable. The North Campus of the project is not in a flood-prone area.

14. All potential wetlands within the proposed subdivision shall be identified on any maps submitted as part of the application, regardless of the size of those wetlands. Any mapping of wetlands may be done with the help of the local soil and water conservation district.

JBE Response: Not applicable; there are no mapped freshwater wetlands on the Portland side of the North Campus of Rock Row.

15. Any river, stream or brook within or abutting the proposed subdivision shall be identified on any maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in Title 38 M.R.S.A. Section 480-B, subsection.

JBE Response: Not applicable; there are no rivers, streams, or brooks located on the Portland side of the North Campus of Rock Row.

Section 2 - Completed Checklist

CITY OF PORTLAND
Planning & Urban Development Department

LEVEL II and LEVEL III SITE PLAN
GENERAL DOCUMENT AND DRAWINGS CHECKLIST

Please submit each document as a separate PDF file
Please confirm by electronically checking the boxes to the left

**** PLEASE FILL OUT AND UPLOAD SEPARATELY THE ZONING TABLE
AND WAIVER TABLE AS NOTED BELOW ****

GENERAL APPLICATION DOCUMENTS

Yes ☒	NA ☐	Project Description Cover Letter with detailed project description
Yes ☒	NA ☐	Completed Checklist – Level II and Level III Site Plan (this document)
Yes ☒	NA ☐	Right, Title and Interest Deeds, leases, or purchase and sales agreements
Yes ☒	NA ☐	Evidence of State or Federal Approvals Permits or letters of non-jurisdiction, if applicable
Yes ☐	NA ☒	Zoning Assessment Table listing required and proposed uses and dimensional standards Zoning Assessment Table
Yes ☒	NA ☐	Existing and/or Proposed Easements or Covenants, applicable. Evidence of existing easements and any proposed easements
Yes ☒	NA ☐	Waiver Requests Written request for waiver describing request and reason Waiver Table
Yes ☒	NA ☐	Financial Capability Letter or evidence from a financial institution or third party verifying financial capacity to undertake project
Yes ☒	NA ☐	Technical Capability Evidence of technical capability of applicant and consultants – resumes and/or examples of past projects

**LEVEL II AND LEVEL III SITE PLAN
STANDARDS AND SUBMISSION CHECKLIST**
Provide assessment of compliance with standards and include
supplemental documentation, as applicable
Please Submit each document as a separate PDF file

TRANSPORTATION

Yes ☐	NA ☒	Transportation Analysis- Traffic Impact (14-526 (a) 1) - Provisions for pedestrian, bicycle, vehicle, and loading circulation and incremental volume of traffic impacts - Traffic Impact Study (Technical Manual, Section 1) if applicable
Yes ☐	NA ☒	Access and Circulation (14-526 (a) 2 a) - Access and internal circulation, addressing ADA access - Access and egress impacts on traffic flows - Description and use of drive-up features, if applicable
Yes ☐	NA ☒	Loading and Servicing (14-526 (a) 2 b) - Loading and servicing needs, route and travel way geometrics for deliveries - Turning templates for delivery vehicles, if applicable
Yes ☐	NA ☒	Sidewalks (14-526 (a) 2 c) - Sidewalks and condition along street frontages and internal walkways - Engineered details for ADA ramps and public sidewalk details meeting sidewalk materials policy and ADA ramp construction details as applicable (Technical Manual, Section 1)
Yes ☐	NA ☒	Public Transit (14-526 (a) 3), if applicable - Existing available transit services - Proposed site plan design details, such as easement, pad base, and shelter
Yes ☐	NA ☒	Off-Street Parking: Vehicle & Motorcycle/Scooter) (14-526 (a) 4 a and c) - Expected parking demand, proposed parking supply, ADA parking, and applicable Zoning Requirements - Address Technical Manual standards (Section 1) for curb cut separation and parking lot layout and locate on site plan
Yes ☐	NA ☒	Bicycle Parking (14-526 (a) 4 b) - Address bicycle parking requirements and identify locations on-site - Construction details for bike racks (Technical Manual, Section 1)
Yes ☐	NA ☒	Snow Storage (14-526 (a) 4 d) Management plan for snow removal and locate snow storage areas on plan
Yes ☐	NA ☒	Traffic Demand Management (TDM) (14-526 (a) 5), if applicable Develop TDM with Trip Reduction Targets and Strategies

ENVIRONMENTAL AND LANDSCAPE FEATURES		
Yes ☐	NA ☒	Preservation of Significant Natural Features (14-526 (b) 1), if applicable • Trees, plants, habitats listed on State or Federal list of endangered or threatened • High and moderate value waterfowl and wading habitat • Aquifers on Casco Bay Islands • Waterbodies (including wetlands, watercourses, significant vernal pools and floodplains) • Proposed preservation areas and protection measures • Documentation from environmental consultants, determinations from applicable state agencies
Yes ☐	NA ☒	Landscaping and Landscape Preservation (14-526 (b) 2 a) • Preservation of trees and preservation within required zoning setbacks (Technical Manual, Section 4) • Protection measures of existing vegetation during construction • Protection measures within Shoreland Zone, if applicable
Yes ☐	NA ☒	Site Landscaping (14-526 (b) 2 b) • Screening and buffering of service areas and between non-residential and residential uses • Planting plans with plant schedule and sizes (Technical Manual, Section 4)
Yes ☐	NA ☒	Parking Lot Landscaping (14-526 (b) 2 b ii), if applicable • Landscaped islands within parking areas (Technical Manual, Section 4)
Yes ☐	NA ☒	Street Trees (14-526 (b) 2 b iii) • Existing Heritage or Feature Trees on site and measures to preserve • Identify street trees on the plan meeting the site plan and Technical Manual standards (Section 4) or identify alternative measures, if applicable
ENVIRONMENTAL AND STORMWATER		
Yes ☐	NA ☒	Water Quality, Stormwater Management and Erosion Control (14-526 (b)3 a) • Stormwater report in compliance with Section 5 of Technical Manual and DEP Chapter 500 stormwater for basic, general and flooding standards, as applicable • Erosion control plan and measures • Evidence of compliance with Urban Impaired Stream Standards pursuant to DEP Chapter 500 stormwater, as applicable • Subsurface sanitary sewage disposal and groundwater protection

PUBLIC INFRASTRUCTURE AND SAFETY		
Yes ☐	NA ☒	Consistency with City Master Plans (14-526 (c) 1) - Identify consistency with master plans - Proposed easements, rights and improvements to connect or continue off-premises public infrastructure, as applicable
Yes ☐	NA ☒	Public Safety and Fire Prevention (14-526 (c)) - Address Crime Prevention through Environmental Design (CPTED) (Technical Manual, Section 3) - Emergency vehicle access - Address consistency with public safety standards (Technical Manual, Section 3) - Submit a code summary referring NFPA 1 and all Fire Department standards (Technical Manual, Section 3) – Fire Checklist
Yes ☐	NA ☒	Availability and Adequacy of Public Utilities (14-526 (c) 3) (Technical Manual, Sections 2 & 9) - Electrical services, including providing underground services - Identify existing and proposed connections for public utilities and required public utility upgrades - Sewer line connections are required, if there is a main within 200 feet - Proposed solid waste management facilities on-site and management for the site - Written evidence of the ability to serve from utility companies, as applicable
SITE DESIGN		
Yes ☐	NA ☒	Massing, Ventilations and Wind Impact (14-526 (d) 1) - Wind and ventilation impacts on adjoining structures and/or adjacent public spaces. Wind study, if applicable - Bulk, location or height impacts on adjoining structures - Identify and locate HVAC equipment and venting away from public spaces and residential properties - Identify screening and manufacturing specifications for noise, if applicable
Yes ☐	NA ☒	Shadows (14-526 (d) 2), if applicable Shadow analysis of impacts on publicly accessible open space (Technical Manual, Section 11)
Yes ☐	NA ☒	Snow and Ice Loading (14-526 (d) 3) Building design to prevent snow and ice from loading or falling onto adjacent properties or public ways
Yes ☐	NA ☒	View Corridors (14-526 (d) 4), if applicable Protection of designated view corridors (Portland Design Manual, Appen. 1)

Yes ☐	NA ☒	Historic Resources (14-526 (d) 5), if applicable • Identify developments within Historic Districts or affecting Designated Landmarks • Certificate of Appropriateness or other evidence • Identify Developments within 100 feet of Historic Districts or affecting Designated Landmarks. Advisory HP review may be required • Address preservation and documentation of Archaeological Resources
Yes ☐	NA ☒	Exterior Lighting (14-526 (d) 6) • Cut sheets of on-site light fixtures and any architectural or specialty lights (Technical Manual, Section 12) • Engineered details for any lights proposed in street right-of-way (Technical Manual, Section 10)
Yes ☐	NA ☒	Noise and Vibration (14-526 (d) 7) • Evidence of noise levels for equipment, such as equipment specifications, to demonstrate consistency with zoning requirements
Yes ☐	NA ☒	Signage and Wayfinding (14-526 (d) 8), if applicable • Signage plan showing the location, dimensions, height and setback of all existing and proposed signs. Signs in Historic Districts are reviewed by Historic Preservation staff • Proposed commercial and directional signage on site
Yes ☐	NA ☒	Zone Related Design Standards (14-526 (d) 5) • Address Historic Preservation Design Review, if applicable • Address any applicable design review standards by zone • Address submission requirements from Design Manual, page 1, addressing neighborhood context • Description of exterior materials, color, finish, and samples
Construction Management Plan		
Yes ☐	NA ☒	Construction Management Plan • Construction Management Document and Plan

**LEVEL II AND LEVEL III SITE PLAN
DRAWINGS CHECKLIST**

Please upload the following DRAWINGS with the listed details into e-Plan as separate pdfs

RECENT BOUNDARY SURVEY (stamped by Maine Licensed Surveyor)

- ☐ Must be in compliance with Technical Manual, Section 13

SITE PLAN(s) (stamped by Maine Licensed Engineer) including:

Existing Conditions

- ☐ Approximate location of structures on abutting property
- ☐ Topography
- ☐ Locate water courses
- ☐ Delineate wetlands
- ☐ Zone lines

Proposed Site Plan

- ☐ Ground floor area, and grade elevations for all buildings

Access, Circulation, and Parking

- ☐ Streets and intersections adjacent to site, any proposed geometric modifications
- ☐ Location, dimensions and materials of all existing and proposed driveways, vehicle, bicycle, & pedestrian access ways with corresponding curb lines
- ☐ Engineered specifications/ cross-sections for proposed driveways, sidewalks & paved areas
- ☐ Location and dimensions of proposed loading areas
- ☐ Existing and proposed transit infrastructure with dimensions/ engineering specifications
- ☐ Location of vehicle and bicycle parking with dimensions and engineering specifications

Site Considerations

- ☐ Identify snow storage areas
- ☐ Location of fire hydrants
- ☐ Location of solid waste management facilities

UTILITY PLAN including:

- ☐ Existing utilities on site and within public streets
- ☐ Location, sizing and directional flows of all existing and proposed utilities
- ☐ Location and dimensions of off-premises public or publicly accessible infrastructure adjacent to site
- ☐ Electric utility infrastructure

GRADING AND DRAINAGE PLAN including:

- ☐ Existing grades and drainage
- ☐ Proposed grades
- ☐ Proposed stormwater management meeting Technical Manual (Section 5), standards
- ☐ Location and proposed alteration of a water course
- ☐ Preservation or alteration of wetlands

EROSION CONTROL

- ☐ Must be in compliance with Technical Manual, Section 5

LANDSCAPE PLAN including:

- ☐ Existing vegetation to be preserved and preservation measures
- ☐ Proposed landscaping and buffers
- ☐ Planting schedule

RECORDING PLAT, if applicable
☒ If Subdivision, must be in compliance with requirements of Section 14-496 (b)
ARCHITECTURAL PLANS AND RENDERINGS including:
☐ Exterior building elevations, color renderings, illustrations of all sides
☐ Location and dimensions of all existing and proposed HVAC and mechanical equipment, all proposed screening
☐ Provide context drawings, if applicable (Design Manual, page 1)
☐ Floor plans



If Subdivision, must be in compliance with requirements of Section 14-496 (b)

ARCHITECTURAL PLANS AND RENDERINGS including:
☐ Exterior building elevations, color renderings, illustrations of all sides
☐ Location and dimensions of all existing and proposed HVAC and mechanical equipment, all proposed screening
☐ Provide context drawings, if applicable (Design Manual, page 1)
☐ Floor plans



Exterior building elevations, color renderings, illustrations of all sides



Location and dimensions of all existing and proposed HVAC and mechanical equipment, all proposed screening



Provide context drawings, if applicable (Design Manual, page 1)



Floor plans

Section 3 - Right, Title, and Interest

Enclosed are the following deeds evidencing Dirigo Center Developers, LLC's right, title and interest in the subject property:

- Book 34380, Page 164:
 - Westbrook Tax Map 42B, Lots 10 & 11 (described as Parcel 1 in the deed)
 - Westbrook Tax Map 42B, Lot 14 (Parcel 2)
 - **Portland Tax Map 264, Lots A002 & A004 and Tax Map 265, Lots A003 & A005 (Parcel 3)**
- Book 34161, Page 294
 - Westbrook Tax Map 42B, Lot 9

LIMITED WARRANTY DEED

Know all persons by these presents, that **PIKE INDUSTRIES, INC.**, a Delaware corporation, also known as Pike Industries (the "Grantor"), whose address is 3 Eastgate Park Road, Belmont, New Hampshire 03220, in consideration of the sum of Ten Dollars (\$10.00), cash in hand and other good and valuable consideration paid by **DIRIGO CENTER DEVELOPERS, LLC**, a Maine limited liability company ("Grantee"), whose mailing address is One Canal Plaza, Portland, Maine 04101, the receipt of which is hereby acknowledged by Grantor, do hereby give, grant, bargain, sell and convey unto the said Grantee, its heirs and assigns forever, the following described real estate, to wit:

SEE SCHEDULE A ATTACHED HERETO AND MADE A PART HEREOF, (the "Premises").

To have and to hold the aforegranted and bargained Premises, with all the privileges and appurtenances thereof, unto the said Grantee, its heirs and assigns, to their use and behoof forever.

And the said Grantor does covenant with the said Grantee, its heirs and assigns, that Grantor is lawfully seized in fee of the Premises, that Premises are free of all encumbrances, that Grantor has good right to sell and convey the same to the said Grantee to hold as aforesaid; and that Grantor and its heirs shall and will warrant and defend the same unto the said Grantee, its heirs and assigns forever, against the lawful claims and demands of all persons by through and under Grantee, but no other. Grantor hereby quitclaims to Grantee all right, title and interest in and to the approximately 9 foot by 103 foot strip of land shown on the ALTA/NSPS Land Survey of 80 Main Street, Westbrook, ME, dated April 6, 2016 by Jones & Beach Engineers, Inc.

[Signature appears on following page]

IN WITNESS WHEREOF, this 22nd day of September, 2017.

Signed, sealed and delivered
in the presence of:

George Castillo
Witness

Kathryn Davis
Witness

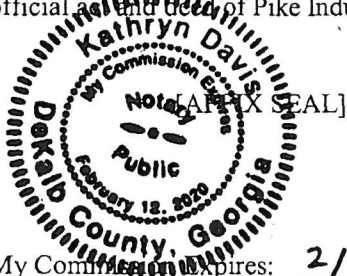
GRANTOR:

PIKE INDUSTRIES, INC.

By: DMT
Name: David M. Toolan
Title: Assistant Secretary

State of Georgia
County of DeKalb ss:

Personally appeared before me, this 22nd day of September, 2017, David M. Toolan, as the Assistant Secretary of Pike Industries, Inc., a Delaware corporation, and acknowledged the foregoing instrument as the official and true act of Pike Industries, Inc.



Kathryn Davis
Notary Public
Printed Name: Kathryn Davis

My Commission Expires: 2/12/20

**SCHEDULE A
LEGAL DESCRIPTION**

PARCEL 1: WESTBROOK TAX MAP 42B, LOTS 10 & 11

A CERTAIN LOT OR PARCEL OF LAND LOCATED ON THE EASTERLY SIDE OF LARRABEE ROAD AND THE SOUTHERLY SIDE OF MAIN STREET IN THE CITY OF WESTBROOK BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT AN IRON ROD, ON THE SOUTHERLY SIDELINE OF MAIN STREET, SO-CALLED, ON THE TOWN LINE OF WESTBROOK AND PORTLAND, SAID POINT BEING S 14° 03' 36" W 5.39 FEET FROM A STONE BOUND ON SAID TOWN LINE, AND BEING THE MOST SOUTHEASTERLY CORNER OF THE WITHIN DESCRIBED PARCEL;

THENCE, S 14° 03' 36" W A DISTANCE OF 1779.47 FEET TO A POINT ON THE NORTHERLY SIDE OF LAND NOW OR FORMERLY OF THE PORTLAND TERMINAL COMPANY RAILROAD;

THENCE, TURNING AND RUNNING N 60°58'29" W ALONG THE NORTHERLY SIDELINE OF THE PORTLAND TERMINAL COMPANY RAILROAD A DISTANCE OF 1113.15 FEET TO A POINT ON THE EASTERLY SIDE OF LARRABEE ROAD, SAID POINT BEING N 15°02'03" E 1.67 FEET FROM A CONCRETE HIGHWAY BOUND;

THENCE: ALONG A CURVE TO THE LEFT WITH A RADIUS OF 11524.16 FEET, A DISTANCE OF 561.11 FEET, MAKING AN INCLUDED ANGLE OF 2° 47' 23", SAID CURVE HAVING A CHORD WITH A BEARING OF N 13° 56' 24" E AND A LENGTH OF 561.06 FEET, TO A POINT;

THENCE: ALONG A CURVE TO THE LEFT WITH A RADIUS OF 11524.16 FEET, A DISTANCE OF 7.23 FEET, MAKING AN INCLUDED ANGLE OF 0° 02' 09", SAID CURVE HAVING A CHORD WITH A BEARING OF N 12° 31' 38" E AND A LENGTH OF 7.23 FEET, TO A POINT;

THENCE: N 77° 29' 27" W A DISTANCE OF 15.00 FEET TO A POINT ON THE EASTERLY SIDE OF LARRABEE ROAD;

THENCE: ALONG A CURVE TO THE LEFT WITH A RADIUS OF 11509.16 FEET, A DISTANCE OF 388.80 FEET, MAKING AN INCLUDED ANGLE OF 1° 56' 08", SAID CURVE HAVING A CHORD WITH A BEARING OF N 11° 32' 29" E AND A LENGTH OF 388.78 FEET, TO A POINT;

THENCE: S 79° 53' 31" E A DISTANCE OF 68.91 FEET TO A POINT;

THENCE: N 14° 33' 07" E A DISTANCE OF 99.92 FEET TO AN IRON ROD;

THENCE: N 15° 01' 17" E A DISTANCE OF 181.30 FEET TO AN IRON ROD;

THENCE: N 79° 58' 26" W A DISTANCE OF 1.45 FEET TO A POINT;

THENCE: N 14° 55' 10" E A DISTANCE OF 233.84 FEET TO A POINT, SAID POINT BEING N 14° 55' 10" E 1.21 FEET FROM A IRON PIPE;

THENCE: ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 2782.76 FEET, A DISTANCE OF 26.79 FEET, MAKING AN INCLUDED ANGLE OF $0^{\circ} 33' 06''$, SAID CURVE HAVING A CHORD WITH A BEARING OF

S $77^{\circ} 14' 34''$ E AND A LENGTH OF 26.79 FEET, TO A POINT, SAID POINT BEING N $15^{\circ} 15' 17''$ E 0.19 FEET FROM AN IRON ROD;

THENCE: S $15^{\circ} 15' 17''$ W A DISTANCE OF 413.14 FEET TO AN IRON ROD;

THENCE: S $79^{\circ} 40' 48''$ E A DISTANCE OF 74.64 FEET TO AN IRON PIPE;

THENCE: N $15^{\circ} 08' 31''$ E A DISTANCE OF 408.62 FEET TO A POINT, SAID POINT BEING N $15^{\circ} 08' 31''$ E 0.13' FROM AN IRON PIPE;

THENCE: S $75^{\circ} 41' 30''$ E A DISTANCE OF 204.97 FEET TO A CONCRETE BOUND;

THENCE: N $13^{\circ} 44' 59''$ E A DISTANCE OF 4.90 FEET TO A CONCRETE BOUND;

THENCE: S $76^{\circ} 01' 52''$ E A DISTANCE OF 50.23 FEET TO A CONCRETE BOUND;

THENCE: S $77^{\circ} 36' 10''$ E A DISTANCE OF 150.08 FEET TO A POINT;

THENCE: S $75^{\circ} 41' 37''$ E A DISTANCE OF 192.49 FEET TO A POINT;

THENCE: ALONG A CURVE TO THE LEFT WITH A RADIUS OF 5774.65 FEET, A DISTANCE OF 290.59 FEET, MAKING AN INCLUDED ANGLE OF $2^{\circ} 53' 00''$, SAID CURVE HAVING A CHORD WITH A BEARING OF S $77^{\circ} 08' 07''$ E AND A LENGTH OF 290.56 FEET, TO A POINT;

THENCE: S $78^{\circ} 34' 17''$ E A DISTANCE OF 3.12 FEET TO A POINT;

THENCE: ALONG A TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 1387.69 FEET, A DISTANCE OF 42.50 FEET, MAKING AN INCLUDED ANGLE OF $1^{\circ} 45' 17''$, SAID CURVE HAVING A CHORD WITH A BEARING OF S $77^{\circ} 41' 59''$ E AND A LENGTH OF 42.49 FEET, TO THE POINT OF BEGINNING.

CONTAINING 39.19 ACRES

PARCEL 2: WESTBROOK TAX MAP 42B, LOT 14

A CERTAIN LOT OR PARCEL OF LAND LOCATED ON THE EASTERLY SIDE OF LARRABEE ROAD AND THE NORTHERLY SIDE OF WESTBROOK ARTERIAL IN THE CITY OF WESTBROOK BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT, AT THE MOST NORTHWESTERLY CORNER OF THE WITHIN DESCRIBED PARCEL, BEING THE INTERSECTION OF THE EASTERLY SIDELINE OF LARRABEE ROAD, SO-CALLED, AND THE SOUTHERLY SIDELINE OF THE PORTLAND TERMINAL COMPANY RAILROAD;

THENCE, RUNNING S $60^{\circ} 58' 29''$ E ALONG THE SAID SOUTHERLY SIDELINE OF THE PORTLAND TERMINAL COMPANY RAILROAD A DISTANCE OF 1078.76 FEET TO A POINT ON THE TOWN LINE BETWEEN WESTBROOK AND PORTLAND, SAID POINT BEING N $60^{\circ} 58' 29''$ W 0.89 FEET FROM AN IRON PIPE;

THENCE, TURNING AND RUNNING S 14°03'36" W BY THE SAID TOWN LINE BETWEEN WESTBROOK AND PORTLAND A DISTANCE OF 864.32 FEET TO AN IRON ROD ON THE NORTHERLY SIDELINE OF THE WESTBROOK ARTERIAL, SO-CALLED;

THENCE, TURNING AND RUNNING S 57°12'11" W ALONG THE NORTHERLY SIDELINE OF THE WESTBROOK ARTERIAL, SO-CALLED A DISTANCE OF 147.65 FEET TO A CONCRETE BOUND;

THENCE, RUNNING WESTERLY, ALONG A NON-TANGENT CURVE TO THE RIGHT, CONTINUING ALONG THE NORTHERLY SIDELINE OF THE WESTBROOK ARTERIAL, SO-CALLED, HAVING A RADIUS OF 305.00 FEET, AN INCLUDED ANGLE OF 43°29'50", A DISTANCE OF 231.55 FEET, A CHORD OF S 78°58'25" W 226.03 FEET TO A CONCRETE BOUND;

THENCE, RUNNING WESTERLY, ALONG A NON-TANGENT CURVE TO THE RIGHT, CONTINUING ALONG THE NORTHERLY SIDELINE OF THE WESTBROOK ARTERIAL, SO-CALLED, HAVING A RADIUS OF 595.00 FEET, AN INCLUDED ANGLE OF 22°50'02", A DISTANCE OF 237.12 FEET, A CHORD OF N 68°00'01" W 235.56 FEET TO A POINT;

THENCE, RUNNING N 67°33'48" W, CONTINUING ALONG THE NORTHERLY SIDELINE OF THE WESTBROOK ARTERIAL, SO-CALLED, A DISTANCE OF 104.20 FEET TO A CONCRETE BOUND;

THENCE, RUNNING N 55°21'41" W, CONTINUING ALONG THE NORTHERLY SIDELINE OF THE WESTBROOK ARTERIAL, SO-CALLED, A DISTANCE OF 187.24 FEET TO A POINT, SAID POINT BEING S 18°12'52" W 0.48 FEET FROM AN IRON ROD AT THE CORNER OF LAND NOW OR FORMERLY OF THE DEVISEES OF LLEWELLYN A. RANDALL SR;

THENCE, TURNING AND RUNNING N 18°12'52" E A DISTANCE OF 123.29 FEET TO A POINT;

THENCE, RUNNING N 14°44'46" E A DISTANCE OF 84.56 FEET TO A POINT;

THENCE, RUNNING N 13°21'04" E A DISTANCE OF 189.80 FEET TO AN IRON PIPE;

THENCE, TURNING AND RUNNING N 78°40'14" W A DISTANCE OF 139.26 FEET TO A POINT;

THENCE, RUNNING N 67°42'19" W A DISTANCE OF 88.28 FEET TO A CONCRETE BOUND;

THENCE, RUNNING N 68°25'34" W A DISTANCE OF 25.35 FEET TO A CONCRETE BOUND ON THE EASTERLY SIDELINE OF LARRABEE ROAD, SO-CALLED;

THENCE, TURNING AND RUNNING N 15°23'23" E ALONG THE EASTERLY SIDELINE OF SAID LARRABEE ROAD, SO-CALLED, A DISTANCE OF 826.52 FEET TO THE POINT OF BEGINNING.

CONTAINING 25.41 ACRES

PARCEL 3: PORTLAND TAX MAP 264, LOTS A002 & A004. AND PORTLAND TAX MAP 265, LOTS A003 & A005

A CERTAIN LOT OR PARCEL OF LAND LOCATED ON THE SOUTHERLY SIDE OF MAIN STREET IN THE CITY OF PORTLAND BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT, AT THE MOST NORTHERLY CORNER OF THE WITHIN DESCRIBED PARCEL AND BEING ON THE TOWN LINE OF WESTBROOK AND PORTLAND, SAID POINT BEING S 14° 03' 36" W 216.42 FEET FROM AN IRON ROD ON SAID TOWN LINE AND ON THE SOUTHERLY SIDELINE OF MAIN STREET, SO-CALLED;

THENCE, RUNNING S 48°15'15" E A DISTANCE OF 273.48 FEET TO A POINT;

THENCE, RUNNING S 22°23'45" E A DISTANCE OF 252.50 FEET TO AN IRON ROD FOUND;

THENCE, TURNING AND RUNNING S 71°36'48" E A DISTANCE OF 111.65 FEET TO AN IRON ROD FOUND;

THENCE, TURNING AND RUNNING N 18°23'09" E A DISTANCE OF 168.44 FEET TO A POINT;

THENCE, TURNING AND RUNNING S 75°32'48" E A DISTANCE OF 31.32 FEET TO A POINT ON THE WESTERLY SIDE OF THE MAINE TURNPIKE;

THENCE, TURNING AND RUNNING S 18°07'11" W ALONG THE WESTERLY SIDE OF THE SAID MAINE TURNPIKE A DISTANCE OF 1513.73 FEET TO A POINT ON THE NORTHERLY SIDE OF LAND NOW OR FORMERLY OF THE PORTLAND TERMINAL COMPANY RAILROAD;

THENCE, TURNING AND RUNNING N 60°58'29" W ALONG THE NORTHERLY SIDELINE OF THE PORTLAND TERMINAL COMPANY RAILROAD A DISTANCE OF 455.86 FEET TO A POINT ON THE TOWN LINE BETWEEN PORTLAND AND WESTBROOK;

THENCE, TURNING AND RUNNING N 14°03'36" E ALONG SAID TOWN LINE A DISTANCE OF 1563.05 FEET TO THE POINT OF BEGINNING.

CONTAINING 16.48 ACRES

ALSO INCLUDING

A CERTAIN LOT OR PARCEL OF LAND, SITUATED ON THE SOUTHERLY SIDE OF MAIN STREET IN THE CITY OF WESTBROOK CUMBERLAND COUNTY, MAINE, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A IRON PIPE ON SAID SOUTHERLY SIDE OF SAID STREET, SAID IRON PIPE BEING THE NORTHEASTERLY CORNER OF THE WITHIN DESCRIBED PARCEL;

THENCE: N 75°41'30" W ON THE SOUTHERLY SIDE OF SAID STREET A DISTANCE OF 7.48 FEET TO A BOUND;

THENCE: WESTERLY ON THE SOUTHERLY SIDE OF SAID STREET, ALONG A NON-TANGENT CURVE TO THE LEFT WITH A RADIUS OF 2782.76 FEET, HAVING A CENTRAL ANGLE OF 00°01'20", AN ARC LENGTH OF 1.08 FEET, A CHORD OF N 75°37'02" W 1.08 FEET TO A POINT;

THENCE: S 15°15'17" W A DISTANCE OF 103.26 FEET TO A POINT;

THENCE: S 75°40'56" E A DISTANCE OF 8.76 FEET TO A POINT;

THENCE: N 15°08'31" E A DISTANCE OF 103.25 FEET TO THE POINT OF BEGINNING.

CONTAINING 0.02 ACRES

Received
Recorded Register of Deeds
Oct 11, 2017 03:06:56P
Cumberland County
Nancy A. Lane

WARRANTY DEED

KNOW ALL PERSONS BY THESE PRESENTS, that **L.L. LATHROP, INC.**, a Maine corporation whose mailing address is 10 Moulton Street, 4th Floor, Portland, ME 04101, for and in consideration of one dollar and other valuable consideration paid by **DIRIGO CENTERS DEVELOPERS, LLC** ("Grantee") whose mailing address is c/o Waterstone Retail Development, Inc., 322 Reservoir Street, Needham, MA 02494, does hereby grant to the said Grantee, its successors and assigns with **WARRANTY COVENANTS**, a certain lot and parcel of land, with the buildings thereon more particularly described as follows:

A certain lot or parcel of land, with the buildings thereon, situated on the southerly side of Main Street in the City of Westbrook, Cumberland County, Maine, bounded and described as follows, to wit:

BEGINNING at a point on said southerly side of said street, said point being 26 feet easterly from land of one Lufkin; thence southerly along a line parallel with said Lufkin, 125 feet to a point; thence easterly on a line parallel with said street 65 feet to a point; thence northerly on a line parallel with the first named bounds 125 feet to said Main Street; thence westerly along the line of said street 65 feet to the point of beginning.

Also another certain lot or parcel of land adjoining the southerly boundary line of the above-described parcel, said lot being 74 feet wide, and being all that land contained between the easterly and westerly boundary line of the above described parcel extended southerly to a point which is 435 feet distant southerly from said southerly side line of Main Street and the land now or formerly of Franz M. Hansen.

This conveyance is made subject to the following:

1. Rights and easements set forth in conveyance from Hans Nyholm Hansen to Franz M. Hansen and Eva Hansen by deed dated May 14, 1947 and recorded in Book 1868, Page 483.
2. Rights and easements granted from Hans Nyholm Hansen to Socony-Vacuum Oil Company, Incorporated, by deed dated August 20, 1947 and recorded in Book 1891, Page 16.
3. Rights and easement of Central Maine Power excepted in conveyance from the City of Portland to Blue Rock Quarry by deed dated July 13, 1948 and recorded in Book 1921, Page 59.

MAINE REAL ESTATE TAX PAID

4. Rights and easements granted from Blue Rock Quarry to Central Maine Power Company by deed dated October 28, 1950 and recorded in Book 2024, Page 115.
5. Rights and easements of Central Maine Power Company, Portland Pipe Line Corporation, Portland Water District, and New England Telephone and Telegraph Company excepted in conveyance from the City of Portland to the Maine Turnpike Authority by deed dated April 8, 1955 and recorded in Book 2244, Page 15.
6. Rights and easements granted from Blue Rock Quarry to Central Maine Power Company by deed dated September 20, 1963 and recorded in Book 2783, Page 216; as affected Indenture between Blue Rock Industries and Central Maine Power Company dated December 10, 1971 and recorded in Book 3204, Page 758.
7. Rights and easements granted from Blue Rock Quarry to the State of Maine by deed dated April 13, 1964 and recorded in Book 2817, Page 85; and as depicted on Right of Way Map State Highway "12", Westbrook dated August 1963 and recorded in Plan Book 74, Page 4.
8. Rights and easements granted from Blue Rock Quarry to Portland Pipe Line Corporation by deed dated February 8, 1965 and recorded in Book 2881, Page 459.
9. State of facts shown on a plan of survey entitled "Engineering Laboratory Service Westbrook, Maine Property of Blue Rock Quarry, Westbrook Maine" by Charles F. Pander Chief Engineer, dated February 24, 1965 and recorded in Plan Book 68, Page 40.
10. Notice of Layout and Taking by the State of Maine Highway Commission dated February 19, 1969 and recorded in Book 3079, Page 107; and as depicted on Right of Way Maps State Highway "127", Westbrook dated May 1968 and recorded in Plan Book 103, Pages 25, 26, 27 and 28, including, without limitation, noted controlled access limitations.
11. Rights and easements granted from Blue Rock Quarry to Central Maine Power Company by deed dated March 8, 1969 and recorded in Book 3079, Page 702.
12. State of facts as shown on Right of Way Maps, State Highway "12" dated October 1972 and recorded in Plan Book 127, Pages 24, 25, 26, 27 and 28, including, without limitation, noted controlled access limitations.

13. State of facts shown on a plan of survey entitled "Subdivision-Lot Consolidation Plat, Dirigo Plaza, 80 Main St. & 11 Larrabee Rd, Westbrook, ME" dated February 23, 2015, revised through October 17, 2016 by Jones & Beach Engineers, Inc., including: i) 40' Access crossing land of Portland Terminal Company, to be recorded; ii) Utility lines & substation; iii) Wetlands; iv) Petroleum easement; v) Portland Pipe Line easement (2881/759); vi) CMP Utility easement (3204/758); vii) Proposed 50' easement; and, viii) Notes thereon.

Also quitclaiming and releasing unto the Grantee, without warranty covenants or title representations of any type or description, such rights, if any, as Grantor may have in and to an approximately 9 foot by 103 foot strip of land on the easterly boundary of the property above described as may be shown on an "ALTA/NSPS Land Title Survey, 80 Main Street, Westbrook, Maine" dated April 6, 2016 by Jones & Beach Engineers, Inc.

Reference is made to a Warranty Deed to L.L. Lathrop, Inc. dated August 2, 2004 recorded in the Cumberland County Registry of Deeds in Book 21632, Page 224.

IN WITNESS WHEREOF, the said Grantor has caused this instrument to be signed this 11 day of July, 2017.

Blenda Lewis
Witness

L. L. Lathrop, Inc.

By: L. L. Lathrop
Lloyd L. Lathrop, Jr.
Its: President

State of Maine
Cumberland, ss.

July 11, 2017

Personally appeared the above-named Lloyd L. Lathrop and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of L.L. Lathrop, Inc.. Before me,

Melissa Hansen
Notary Public/Attorney-at-Law

Melissa Hansen
Printed Name

SEAL

MELISSA HANSEN
NOTARY PUBLIC
State of Maine
My Commission Expires
April 1, 2024

Received
Recorded Register of Deeds
Jul 17, 2017 11:54:34A
Cumberland County
Nancy A. Lane

Section 4 – Evidence of State and Federal Approvals

The Project has received the following State and Federal Approvals to-date:

Maine DEP Natural Resources Protection Act (“NRPA”) and Site Location of Development Act (“SLODA”) Permit.

The development first received combined NRPA/SLODA approval on October 7, 2016, which approval authorized the construction of a commercial and retail center creating approximately 52.6 acres of new development, of which approximately 43.3 acres was impervious.

The approval was most recently amended by DEP Order L-02734-26-G-A dated March 28, 2019, a copy of which is included with this application. The 2019 Amendment approved a revised development of so-called “Phase I” on the North Campus of Rock Row, consisting of mixed-use retail and restaurant space that includes eight buildings with a total building footprint of 153,889 square feet. Phase I will create 18 acres of developed area, of which 16.2 acres will be impervious area.

Note: The 2019 Amendment also approved a second project, known as the Amphitheater, on the South Campus of Rock Row in Westbrook. The South Campus is considered a separate tract or parcel for subdivision law purposes and is therefore not a part of this application.

Maine DOT Traffic Movement Permit

The overall Project – North and South Campuses – received an amended Traffic Movement Permit (TMP) from the Maine DOT on September 20, 2018. A copy of the amended TMP is included with this application. Notably, the TMP approves a 500,000-square-foot mixed use retail development, including 155,224 square feet of mixed use retail development as part of Phase I of the Project. Phase I has since been revised since the issuance of the TMP, but the scale of the development remains consistent with what was previously reviewed and approved by Maine DOT.

Army Corps of Engineers Maine General Permit

On June 15, 2016, the development received approval from the Army Corps to place temporary fill in 1,319 square feet of wetlands and permanent fill in 64,218 square feet of wetlands in conjunction with the development of a retail shopping center and associated infrastructure. A copy of Maine General Permit Authorization Letter is enclosed.



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

DIRIGO CENTER DEVELOPERS, LLC	) SITE LOCATION OF DEVELOPMENT ACT
Westbrook, Cumberland County	)
ROCK ROW REDEVELOPMENT	)
L-02734-26-G-A (approval)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 481–489-E and Chapters 372, 375, 500, 501, and 502 of Department rules, the Department of Environmental Protection has considered the application of DIRIGO CENTER DEVELOPERS, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: In Department Order #L-02734-14-A-X, dated October 10, 1971, the Department approved the development of a quartzite stone quarry. In Department Order #L-02734-80-B-T dated May 25, 2006, the Department approved the transfer of the quarry from Blue Rock Industries to Pike Industries, Inc. The development covers an area of approximately 82 acres. Activities that were conducted on site include open pit mining, rock crushing, asphalt recycling, and concrete mixing. The quarry pit lies along the municipal boundaries of the Cities of Westbrook and Portland. Development on the parcel is located in the City of Westbrook and bounded by the Westbrook Arterial, Larrabee Road, Main Street (Westbrook) and Interstate I-95.

In Department Order #L-02734-23-C-N/L-02734-TG-D-N, dated October 7, 2016, the Department approved the development of Dirigo Plaza, a commercial and retail center located on the former quarry site. The project, comprised of a North and South Campus development, was authorized to create approximately 52.6 acres of new development, of which approximately 43.3 acres will be impervious area overall. The project was started following a November 7, 2017 pre-construction meeting with the demolition of existing buildings and other site clean-up operations.

B. Summary: The applicant proposes to revise development of the approximately 82-acre parcel with two individual projects. The first project, known as Phase 1, is a revision of a portion of the North Campus layout that consists of mixed-use retail and restaurant space that includes eight buildings with a total building footprint of 153,889 square feet. Four abutting buildings (buildings 1d-g) will be constructed on a single slab foundation. The remainder of the development on Phase 1 will include parking, stormwater treatment units, and access drives onto Main Street and Larrabee Drive. Phase 1 will cover an area of approximately 18 acres and will create 18 acres of developed area, of which 16.2 acres will be impervious area.

The second project, known as the Amphitheater, consists of an outdoor music venue that includes the main stage and a secondary stage, seating areas, concessions and other appurtenances, parking areas, and access drives onto Larrabee Drive and the Westbrook Arterial. The music venue will be located in the center of the South Campus, between the Maine Central Railroad line and Nasons Brook. Parking for concert goers will be provided in the area of the North Campus that is bounded by the southern end of Phase 1, Larrabee Drive, the railroad tracks and the quarry pit. This parking area, covering approximately 10.5 acres will be constructed of compact gravel. Together, the music venue and parking area will cover an area of 67.3 acres and will create approximately 36 acres of developed area, of which 20.9 acres will be impervious area.

The proposed project is shown on two sets of plans, titled "Commercial Development - Phase 1, Rock Row (aka Dirigo Plaza)" and dated May 31, 2018, with a last revision date of March 6, 2019, and "Commercial Development, Rock Row - Amphitheater," prepared by Jones & Beach Engineers, Inc., and dated July 3, 2018, with a last revision date of March 21, 2019.

C. Current Use of Site: The site of the proposed project is currently developed with an open pit quarry, the remains of asphalt recycling and concrete mixing operations, staging areas for construction material, parking lots. Some demolition of structures has occurred since the issuance of Department Order #L-02734-23-C-N/L-02734-TG-D-N. Approximately seven acres of undeveloped woodland and freshwater wetlands are located at the southeastern corner of the parcel.

2. FINANCIAL CAPACITY:

The total cost for the Phase 1 development is estimated to be \$34,921,400. The applicant submitted a Consolidated Interim Financial Statement, as of June 30, 2018, for Waterstone Properties, Ltd., the applicant's principal member. The Statement indicates that funding is readily available to finance the proposed development.

The total cost for the music venue development, including the parking area is estimated to be \$5,576,500. The applicant submitted a letter from First National Bank, dated March 20, 2019, indicating that it intends to provide financing for this portion of the project.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards.

3. TECHNICAL ABILITY:

The applicant provided resume information for key persons involved with the project and a list of projects successfully constructed by the applicant. The applicant also retained the services of Jones & Beach Engineering, Inc., a professional engineering firm, to assist in the design and engineering of the project.

The Department finds that the applicant has demonstrated adequate technical ability to comply with Department standards.

4. NOISE:

The project site is located adjacent to Interstate 95 and within a heavily travelled, commercially developed section of Westbrook. Phase 1 of the proposed project will generate minor noise sources associated with traffic moving through the project site. The applicant proposes to comply with the City of Westbrook's Noise Ordinance, including during construction of the project. The City's noise ordinance is quantifiable and contains limits that are not higher than the noise limits contained within Chapter 375 of the Department's Rules by more than 5 dBA. Therefore, the local standard applies to the proposed project.

The applicant provided a copy of the City's Amended Final Site Plan and Conditional Use Approval for the music venue (Phase 2 of the proposed project). The City's approval established limitations on the frequency and duration of events, as well as, requiring an ambient noise study be performed by the applicant to ensure compliance with the City's noise ordinance. The project site is located in the portion of the City zoned gateway-commercial which is designed for retail centers that take advantage of major transportation linkages.

The applicant requested the Department's determination that the music venue would be eligible for the noise exemption for public events, as stipulated in Chapter 375(10)(C)(5)(g). In correspondence, dated March 1, 2019, noting that the applicant and City were working to ensure sound from the music venue will be adequately controlled, the Department concurred with the applicant's assertion that the music venue qualifies for this noise exemption. The closest protected location is greater than 1,500 feet from the property boundary and greater than 2,000 feet from the proposed location of the sound stage.

Based on the information contained in the application, the Department anticipates that the project will have a minor sound impact and will be in compliance with the Department's Noise Rules, Chapter 375(10).

5. SCENIC CHARACTER:

The lighting and overall layout of the redesign for Phase 1 development will be similar to the Phase development authorized in Department Order #L-02734-23-C-N/L-02734-TG-D-N. The music venue will be constructed near Nasons Brook and set back from the roads that bound the parcel. Lighting will be provided for both the music venue and parking areas. A photometric survey provided by the applicant indicates that light intensities of 0.5 foot-candles will not intrude beyond the project site, except for the road entrances. Development of the entire parcel will remain consistent with the commercial development that surrounds the proposed project.

Based on the project's location and design, the Department finds that the proposed project will not have an unreasonable adverse effect on the scenic character of the surrounding area.

6. BUFFERS:

Department Order #L-02734-23-C-N/L-02734-TG-D-N required that stream buffers around Nasons Brook be protected by deed restrictions. The applicant executed the required deed restrictions at the Cumberland County Registry of Deeds on November 13, 2017. The proposed project will not encroach on the deed restricted buffers.

The Department finds that the applicant has made adequate provision for buffer strips.

7. SOILS:

The applicant submitted two geotechnical reports, prepared by S. W. Cole Engineering, Inc., and dated February 26, 2016 and September 21, 2018, based on the soils found at the project site. These reports were prepared by registered professional engineers and reviewed by staff from the Division of Environmental Assessment (DEA) of the Bureau of Water Quality and the Bureau of Land Resources (BLR). DEA and BLR concurred with the reports' conclusions that construction on the project site appears feasible from a geotechnical standpoint, given certain conditions and recommendations.

The reports indicate that the approximately 117,500-square foot foundation for Buildings 1d-g that are part of Phase 1 will be constructed on rigid inclusions (a pier system) to limit post-construction settlement. The application included a design submittal for the construction of a Geopier® system to support the building foundation that is in keeping with the recommendations of geotechnical reports. DEA and BLR reviewed the proposed pier system without comment.

DEA noted that the reports did not include soil data within the footprint of the stage. DEA recommended that a detailed geotechnical report for the stage that describes the site-specific (soils data) and use-specific (foundation design) geotechnical information, be submitted to the BLR for review prior to the start of construction of the stage.

The Department finds that, based on these reports and DEA's and BLR's reviews, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices provided that the applicant submits to the BLR for review prior to the start of construction, specific designs and supporting information that demonstrates that the construction and use of the stage, are feasible and appropriate for the site conditions.

8. STORMWATER MANAGEMENT:

Phase 1 will cover an area of 18 acres and will create 18 acres of developed area, of which 16.2 will be impervious area. The music venue and parking areas will cover an

area of 67.3 acres and will create approximately 36 acres of developed area, of which 20.9 will be impervious area. The entire project lies within the watershed of Nasons Brook, an urban impaired stream. The applicant submitted a stormwater management plan based on the Basic, General, Urban Impaired Stream, and Flooding Standards contained in Chapter 500 Stormwater Management rules (06-096 C.M.R. ch. 500, effective August 12, 2015).

The proposed stormwater management system for Phase 1 development consists of catch basins, subsurface drainage systems, two vegetated underdrained soil filters, two subsurface corrugated metal pipe chamber systems with Jellyfish® storm filters, five Filterra® biofiltration systems, and level spreaders. The proposed stormwater management system for the music venue and related parking areas consists of catch basins, subsurface drainage systems, grassed swales, two vegetated underdrained soil filters, four Filterra® biofiltration systems, two detention ponds, and three engineered gravel wetlands.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of, the BLR.

Erosion control details will be included on the final construction plans and the erosion control narrative will be included in the project specifications to be provided to the construction contractor.

The applicant has retained a third-party inspector in accordance with Department Order #L-02734-23-C-N/L-02734-TG-D-N. The third-party inspection requirement from that Order will continue for the construction of the proposed Phase 1 and music venue projects.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan, titled “Stormwater Management, Operation and Maintenance Manual, prepared by Jones & Beach Engineers, Inc., and dated November 7, 2018, with a last revision date of December 11, 2018 that addresses both short (construction) and long-term (post-construction) maintenance requirements. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. This plan was reviewed by, and revised in response to the comments of, BLR. The applicant will be responsible for the maintenance of all common facilities including the stormwater management system.

The application included copies of executed long-term maintenance contracts (minimum of 5 years and renewable) for the on-going maintenance of each of the proprietary stormwater control structures to be constructed.

Storm sewer grit and sediment materials removed from stormwater control structures during maintenance activities must be disposed of in compliance with the Maine Solid Waste Management Rules.

(3) Housekeeping: The proposed project will comply with the performance standards outlined in Appendix C of Chapter 500.

Based on BLR's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project meets the Basic Standards contained in Chapter 500(4)(B).

B. General Standards:

The applicant's stormwater management plan includes general treatment measures that will mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential thermal impacts. This mitigation is being achieved by using Best Management Practices (BMPs) that will control runoff from no less than 95% of the impervious area and no less than 80% of the overall developed area. Mitigation for the proposed project (Phase 1 and the music venue) is being achieved by using Best Management Practices (BMPs) that will control runoff from no less than 96% of the impervious area and no less than 91% of the overall developed area. Due to the amount of off-site development that drains onto the parcel, the stormwater management system is designed to capture and treat off-site stormwater that runs onto the property.

For Phase 1 of the proposed project, the stormwater BMP's are sized to provide the required water quality volume. Untreated roof runoff from two of the buildings, and treated stormwater runoff from the BMPs, as well as all untreated stormwater runoff in excess of the water quality volume are designed to discharge through the stormwater management system into the quarry pit. For the music venue portion of the proposed project, the stormwater BMP's are sized to provide the required water quality volume. Treated stormwater runoff and all untreated stormwater runoff in excess of the water quality volume are designed to discharge through the stormwater management system into Nasons Brook. Stormwater outfalls to Nasons Brook are proposed in the same locations that were previously approved in Department Order #L-02734-23-C-N/L-02734-TG-D-N.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, BLR. After a final review, BLR commented that the proposed stormwater management system is designed in accordance with the General Standards contained in Chapter 500(4)(C) and recommended the applicant retain its design engineer or other qualified professional engineer to oversee the construction of each of the stormwater BMP's according to the details and notes specified on the approved plans. Within 30 days from completion of the entire system or at least once per year, the applicant must submit a log of inspection reports detailing the items inspected,

photographs taken, and the dates of each inspection to the BLR for review. BLR requested that within six months of completion of the entire stormwater management system, the applicant must as-built (record) drawings for each of the stormwater control structures, including the stormwater BMP's to the BLR for review.

Based on the stormwater system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the General Standards contained in Chapter 500(4)(C) provided that a professional engineer is retained to oversee the construction of each of the stormwater BMP's and as-built drawings are submitted to the BLR as described above.

C. Urban Impaired Stream Standard:

The proposed project is in the watershed of Nasons Brook, an urban impaired stream. Department Order #L-02734-23-C-N/L-02734-TG-D-N required the payment of a compensation fee for the original development. The applicant made this payment to the City of Portland on November 2, 2017. The proposed project will not result in additional development in the Nasons Brook watershed beyond that authorized in Department Order #L-02734-23-C-N/L-02734-TG-D-N.

Based on the earlier payment of a compensation fee, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Chapter 500 Urban Impaired Stream Standard.

D. Flooding Standard:

The applicant is proposing to utilize a stormwater management system based on estimates of pre- and post-development stormwater runoff flows obtained by using Hydrocad, a stormwater modeling software that utilizes the methodologies outlined in Technical Releases #55 and #20, U.S.D.A., Soil Conservation Service and detains stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. The post-development peak flow from the site will not exceed the pre-development peak flow from the site and the peak flow of the receiving water will not be increased as a result of stormwater runoff from the development site.

BLR commented that the proposed system is designed in accordance with the Flooding Standard contained in Chapter 500(4)(F).

Based on the system's design and BLR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project will meet the Flooding Standard contained in Chapter 500(4)(F) for peak flow from the project site, and channel limits and runoff areas.

The Department further finds that the proposed project will meet the Chapter 500 standards for: (1) easements and covenants; (2) management of stormwater discharges; and (3) discharge to freshwater wetlands.

9. WATER SUPPLY AND WASTEWATER DISPOSAL:

The revised Phase 1 development is not expected to result in changes in the amount of water use or wastewater discharged from that which was authorized in Department Order #L-02734-23-C-N/L-02734-TG-D-N. Municipal water and sewer connections are not proposed for the music venue. Water will be provided by concessionaires. Bathroom facilities will be limited to porta-potties and bathroom trailers. These facilities will be pumped out by a contractor, as a responsibility of the operator of the music venue.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply. Based on DWQM's comments, the Department finds that the applicant has made adequate provision for wastewater disposal at a facility that has the capacity to ensure satisfactory treatment.

10. SOLID WASTE:

The revised Phase 1 development is not expected to result in changes in the amount of solid waste that will be generated from that which was authorized in Department Order #L-02734-23-C-N/L-02734-TG-D-N.

When completed, the music venue is anticipated to generate 14.4 tons of recyclable material and 10.5 tons of municipal solid waste per month. All general solid wastes from the proposed project will be disposed of at Waste Management's Crossroads Landfill in Norridgewock, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

The music venue will generate indeterminate amount of stumps and grubblings. All stumps and grubblings generated will be ground on site and the resulting material utilized for erosion control, in compliance with the Maine Solid Waste Management Rules.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

11. ALL OTHER:

All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order #L-02734-23-C-N/L-02734-TG-D-N, and subsequent Orders.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. §§ 481–489-E:

- A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards.

- B. The applicant has made adequate provision for fitting the development harmoniously into the existing natural environment and the development will not adversely affect existing uses, scenic character, air quality, water quality or other natural resources in the municipality or in neighboring municipalities.
- C. The proposed development will be built on soil types which are suitable to the nature of the undertaking and will not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil provided that the applicant submits to the BLR for review prior to the start of construction, specific designs and supporting information that demonstrates that the construction and use of the stage, are feasible and appropriate for the site conditions as described in Finding 7.
- D. The proposed development meets the standards for storm water management in 38 M.R.S. § 420-D and the standard for erosion and sedimentation control in 38 M.R.S. § 420-C provided that sewer grit and sediment are disposed of properly; that the installation of stormwater BMP's is overseen and documented; and that as-built drawings are submitted to the BLR, as described in Finding 8.
- E. The proposed development will not pose an unreasonable risk that a discharge to a significant groundwater aquifer will occur.
- F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development will not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.
- G. The activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

THEREFORE, the Department APPROVES the application of DIRIGO CENTER DEVELOPERS, LLC to construct Phase 1 of the Rock Row commercial and retail center and to construct a music venue, with associated appurtenances and parking areas, as described in Finding 1, SUBJECT TO THE FOLLOWING CONDITIONS and all applicable standards and regulations:

1. The Standard Conditions of Approval, a copy attached.
2. In addition to any specific erosion control measures described in this or previous orders, the applicant shall take all necessary actions to ensure that its activities or those of its agents do not result in noticeable erosion of soils or fugitive dust emissions on the site during the construction and operation of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This

License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.

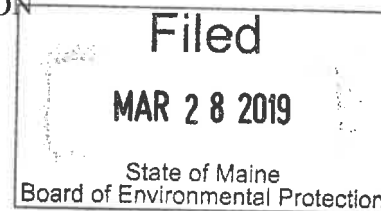
4. Prior to the start of construction, the applicant shall submit to the BLR for review, specific designs and supporting information that demonstrates that the construction and use of the stage, are feasible and appropriate for the site conditions.
5. Storm sewer grit and sediment materials removed from stormwater structures during maintenance activities shall be disposed of in compliance with the Maine Solid Waste Management Rules.
6. The applicant shall retain its design engineer or another qualified engineer to oversee the construction of each of the stormwater BMP's according to the details and notes specified on the approved plans. Within 30 days of completion of the entire system or at least once per year, the applicant shall submit a log of inspection reports detailing the items inspected, photographs taken, and dates of each inspection to the BLR for review.
7. The applicant shall submit to the BLR for review copies of as-built drawings for each of the stormwater control structures, including the stormwater BMP's within six months of completion of the of the entire stormwater management system.
8. All other Findings of Fact, Conclusions and Conditions remain as approved in Department Order # L-02734-23-C-N/L-02734-TG-D-N, and subsequent Orders, and are incorporated herein.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 28 DAY OF March, 2019.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY: Marc Allen Robert Cane for
For: Gerald D. Reid, Commissioner



PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

RLG/L02734GA/ATS#83595

Department of Environmental Protection
SITE LOCATION OF DEVELOPMENT (SITE)
STANDARD CONDITIONS

- A. Approval of Variations from Plans.** The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation. Further subdivision of proposed lots by the applicant or future owners is specifically prohibited without prior approval of the Board, and the applicant shall include deed restrictions to that effect.
- B. Compliance with All Applicable Laws.** The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Compliance with All Terms and Conditions of Approval.** The applicant shall submit all reports and information requested by the Board or the Department demonstrating that the applicant has complied or will comply with all preconstruction terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- D. Advertising.** Advertising relating to matters included in this application shall refer to this approval only if it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- E. Transfer of Development.** Unless otherwise provided in this approval, the applicant shall not sell, lease, assign or otherwise transfer the development or any portion thereof without prior written approval of the Board where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval shall be granted only if the applicant or transferee demonstrates to the Board that the transferee has the technical capacity and financial ability to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant.
- F. Time frame for approvals.** If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the Board for a new approval. The applicant may not begin construction or operation of the development until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- G. Approval Included in Contract Bids.** A copy of this approval must be included in or attached to all contract bid specifications for the development.
- H. Approval Shown to Contractors.** Work done by a contractor pursuant to this approval shall not begin before the contractor has been shown by the developer a copy of this approval.

(2/81)/Revised December 27, 2011

STORMWATER STANDARD CONDITIONS

STRICT CONFORMANCE WITH THE STANDARD AND SPECIAL CONDITIONS OF THIS APPROVAL IS NECESSARY FOR THE PROJECT TO MEET THE STATUTORY CRITERIA FOR APPROVAL

Standard conditions of approval. Unless otherwise specifically stated in the approval, a department approval is subject to the following standard conditions pursuant to Chapter 500 Stormwater Management Law.

- (1) Approval of variations from plans. The granting of this approval is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the permittee. Any variation from these plans, proposals, and supporting documents must be reviewed and approved by the department prior to implementation. Any variation undertaken without approval of the department is in violation of 38 M.R.S. §420-D(8) and is subject to penalties under 38 M.R.S. §349.
- (2) Compliance with all terms and conditions of approval. The applicant shall submit all reports and information requested by the department demonstrating that the applicant has complied or will comply with all terms and conditions of this approval. All preconstruction terms and conditions must be met before construction begins.
- (3) Advertising. Advertising relating to matters included in this application may not refer to this approval unless it notes that the approval has been granted WITH CONDITIONS, and indicates where copies of those conditions may be obtained.
- (4) Transfer of project. Unless otherwise provided in this approval, the applicant may not sell, lease, assign, or otherwise transfer the project or any portion thereof without written approval by the department where the purpose or consequence of the transfer is to transfer any of the obligations of the developer as incorporated in this approval. Such approval may only be granted if the applicant or transferee demonstrates to the department that the transferee agrees to comply with conditions of this approval and the proposals and plans contained in the application and supporting documents submitted by the applicant. Approval of a transfer of the permit must be applied for no later than two weeks after any transfer of property subject to the license.
- (5) Time frame for approvals. If the construction or operation of the activity is not begun within four years, this approval shall lapse and the applicant shall reapply to the department for a new approval. The applicant may not begin construction or operation of the project until a new approval is granted. A reapplication for approval may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- (6) Certification. Contracts must specify that "all work is to comply with the conditions of the Stormwater Permit." Work done by a contractor or subcontractor pursuant to this approval may not begin before the contractor and any subcontractors have been shown a copy of this approval with the conditions by the permittee, and the permittee and each contractor and subcontractor has certified, on a form provided by the department, that the approval and conditions have been received and read, and that the work will be carried out in accordance with the approval and conditions. Completed certification forms must be forwarded to the department.

- (7) Maintenance. The components of the stormwater management system must be adequately maintained to ensure that the system operates as designed, and as approved by the Department. If maintenance responsibility is to be transferred from the permittee to another entity, a transfer request must be filed with the Department which includes the name and contact information for the person or entity responsible for this maintenance. The form must be signed by the responsible person or agent of the responsible entity.
- (8) Recertification requirement. Within three months of the expiration of each five-year interval from the date of issuance of the permit, the permittee shall certify the following to the department.
- (a) All areas of the project site have been inspected for areas of erosion, and appropriate steps have been taken to permanently stabilize these areas.
 - (b) All aspects of the stormwater control system are operating as approved, have been inspected for damage, wear, and malfunction, and appropriate steps have been taken to repair or replace the system, or portions of the system, as necessary.
 - (c) The stormwater maintenance plan for the site is being implemented as approved by the Department, and the maintenance log is being maintained.
 - (d) All proprietary systems have been maintained according to the manufacturer's recommendations. Where required by the Department, the permittee shall execute a 5-year maintenance contract with a qualified professional for the coming 5-year interval. The maintenance contract must include provisions for routine inspections, cleaning and general maintenance.
 - (e) The Department may waive some or all of these recertification requirements on a case-by-case basis for permittees subject to the Department's Multi-Sector General Permit ("MSGP") and/or Maine Pollutant Discharge Elimination System ("MEPDES") programs where it is demonstrated that these programs are providing stormwater control that is at least as effective as required pursuant to this Chapter.
- (9) Transfer of property subject to the license. If any portion of the property subject to the license containing areas of flow or areas that are flooded are transferred to a new property owner, restrictive covenants protecting these areas must be included in any deeds or leases, and recorded at the appropriate county registry of deeds. Also, in all transfers of such areas and areas containing parts of the stormwater management system, deed restrictions must be included making the property transfer subject to all applicable terms and conditions of the permit. These terms and conditions must be incorporated by specific and prominent reference to the permit in the deed. All transfers must include in the restrictions the requirement that any subsequent transfer must specifically include the same restrictions unless their removal or modification is approved by the Department. These restrictions must be written to be enforceable by the Department, and must reference the permit number.
- (10) Severability. The invalidity or unenforceability of any provision, or part thereof, of this permit shall not affect the remainder of the provision or any other provisions. This permit shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.



DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: November 2018

Contact: (207) 287-2452

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S. §§ 341-D(4) & 346; the *Maine Administrative Procedure Act*, 5 M.R.S. § 11001; and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 C.M.R. ch. 2.

DEADLINE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed more than 30 calendar days after the date on which the Commissioner's decision was filed with the Board will be dismissed unless notice of the Commissioner's license decision was required to be given to the person filing an appeal (appellant) and the notice was not given as required.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017. An appeal may be submitted by fax or e-mail if it contains a scanned original signature. It is recommended that a faxed or e-mailed appeal be followed by the submittal of mailed original paper documents. The complete appeal, including any attachments, must be received at DEP's offices in Augusta on or before 5:00 PM on the due date; materials received after 5:00 pm are not considered received until the following day. The risk of material not being received in a timely manner is on the sender, regardless of the method used. The appellant must also send a copy of the appeal documents to the Commissioner of the DEP; the applicant (if the appellant is not the applicant in the license proceeding at issue); and if a hearing was held on the application, any intervenor in that hearing process. All of the information listed in the next section of this information sheet must be submitted at the time the appeal is filed.

INFORMATION APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time the appeal is submitted:

1. *Aggrieved Status.* The appeal must explain how the appellant has standing to maintain an appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions regarding compliance with the law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing requirements that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for public hearing must be filed as part of the notice of appeal, and must include an offer of proof in accordance with Chapter 2. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed evidence must be submitted with the appeal. The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered in an appeal only under very limited circumstances. The proposed evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Specific requirements for supplemental evidence are found in Chapter 2 § 24.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made easily accessible by the DEP. Upon request, the DEP will make application materials available during normal working hours, provide space to review the file, and provide an opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a license holder may proceed with a project pending the outcome of an appeal, but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, and will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, any materials submitted in response to the appeal, and relevant excerpts from the DEP's application review file will be sent to Board members with a recommended decision from DEP staff. The appellant, the license holder if different from the appellant, and any interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. The appellant and the license holder will have an opportunity to address the Board at the Board meeting. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see 38 M.R.S. § 346(1); 06-096 C.M.R. ch. 2; 5 M.R.S. § 11001; and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452, or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.



STATE OF MAINE
DEPARTMENT OF TRANSPORTATION
16 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0016

Paul R. LePage
GOVERNOR

David Bernhardt
COMMISSIONER

Applicant: Dirigo Center Developments, LLC
322 Reservoir Street
Needham, MA 02494

Project Location: Main Street / Larrabee Road / Westbrook Arterial, Westbrook, ME
Westbrook Tax Map #32 Lot(s) #46-47

Project: Commercial Shopping Center

Identification #: Reg. 01-00185-A-M

Permit Category: 200 Plus PCE

Traffic Engineer: Vanasse & Associates, Inc.
Attn: Jeffrey S. Dirk, PE
35 New England Business Center Drive, Suite 140
Andover, MA 01810-1071

Sebago Technics, Inc.
Attn: Derek H. Caldwell, P.E., PTOE
75 John Roberts Road, Suite 4A
South Portland, ME 04106

Pursuant to the provision of 23 M.R.S.A. § 704-A and Chapter 305 of the MaineDOT's Regulations, the Maine Department of Transportation has considered the application of Dirigo Center Developments, LLC with supportive data, agency review and other related materials on file.

PROJECT DESCRIPTION

The project consists of 500,000 SF of mixed-use retail development. Access to the site is via four full movement entrances, one signalized entrance on Main Street, two stop-controlled entrances on Larrabee Road and one signalized entrance on the Westbrook Arterial. The project is estimated to generate 1,853 trip ends during a typical Saturday peak hour and 1,217 trips during a typical weekday PM peak hour.

The project is to be built in phases, with Phase 1 consisting of 155,224 SF of mixed-use retail development. Phase 1 of the project is estimated to generate 860 trip ends during a typical Saturday peak hour and 530 trip ends during a typical weekday PM peak hour. Phase 2 is to consist of the remainder of the full build development.

Findings

Based on a review of the files and related information, MaineDOT approves the Traffic Movement Permit Application of Dirigo Center Developments, LLC subject to the following conditions:



PRINTED ON RECYCLED PAPER

MITIGATION

The mitigation is intended to describe that conceptually shown on the following plans provided by Vanasse & Associates, Inc. and Jones & Beach Engineers, Inc.:

1. "Conceptual Improvement Plan Riverside Street Corridor" Last Rev 9-15-16
2. "Conceptual Improvement Plan Riverside Street At Larrabee Road and I-95 Exit 48 Ramps" Last Rev 9-22-16
3. "Rand Road At I-95 Exit 47 Ramps Conceptual Improvement Plan" Last Rev 9-13-16
4. "Figure 14 Conceptual Improvement Plan" Sheets 1 thru 5, Last Rev 9-22-16
5. "Stroudwater Street At Forest Street Conceptual Improvement Plan" Last Rev 9-13-16
6. "Site Plan Rock Row 80 Main St & 11 Larrabee Rd., Westbrook, ME 04092" Last Rev 7-12-18

If the descriptions contained herein conflict with the plans, these descriptions shall take precedence over the plans. Not all of the mitigation discussed herein maybe shown on those or any plan. The following mitigation shall be constructed or implemented to MaineDOT's satisfaction prior to the opening of the facility, unless otherwise approved by MaineDOT.

All proposed traffic signals and traffic signal upgrades shall be designed and specified to be in compliance with the PACTS, City of Westbrook, City of Portland and MaineDOT traffic signal specifications. All traffic signals will be fully-functional, integrated and have full communications with the PACTS existing Streetwise ATMS.

On-Site Mitigation

Site Entrance / Main Street (Signalized)

The site entrance shall consist of one ingress lane and two egress lanes. The entrance shall have all appropriate lane, center line, and directional pavement markings. All markings shall be supplied, installed/painted and maintained yearly.

Modify raised median to accommodate dedicated left-turn pocket on Main Street to the site entrance with appropriate storage lengths and tapers.

Reconstruct sidewalks to meet ADA requirements.

Install new fully actuated traffic signal and design and implement an optimal traffic signal timing, phasing and coordination plan. Install a hardwire (fiber optic) interconnect to the signal at Main and Larrabee Rd. and the signal at Main St. and Riverside St.

Site Entrance / Larrabee @ Terminal Street (Unsignalized)

The site entrance shall consist of one ingress lane and one egress lane. The entrance shall have all appropriate lane, center line, and directional pavement markings and shall be supplied, installed/painted and maintained yearly.

Construct a dedicated left-turn pocket into site entrance and Terminal Street with appropriate storage lengths and tapers.

Widen Larrabee Road to provide five-foot shoulders to accommodate bicycle travel for both directions of travel.

Provide six-foot sidewalks along both sides of Larrabee Road.

A MUTCD traffic signal warrant analysis shall be conducted for this intersection after occupancy of Phase 2. If a signal is warranted, design and implement an optimal traffic signal timing, phasing and coordination plan, and install the hardwire interconnect to the signal at Main Street and Larrabee Road, and the signal at Larrabee Road and Westbrook Arterial.

Site Entrance / Larrabee @ Saunders Way (Unsignalized)

The site entrance shall consist of one ingress lane and two egress lanes. The entrance shall have a STOP bar and all appropriate lane, center line, and directional pavement markings and shall be supplied, installed/painted and maintained yearly.

Construct a dedicated left-turn pocket into site entrance and Saunders Way with appropriate storage lengths and tapers.

This entrance is to be constructed prior to occupancy of Phase 2 of the development.

Site Entrance / Westbrook Arterial (Signalized)

The site entrance shall consist of one ingress lane and two egress lanes. The entrance shall have all appropriate lane, center line, and directional pavement markings and shall be supplied, installed/painted and maintained yearly.

Construct a dedicated left-turn pocket into site entrance with appropriate storage lengths and tapers. Construct a dedicated right-turn pocket into the site entrance with appropriate storage lengths and tapers.

Install new traffic signal and design and implement an optimal traffic signal timing, phasing and coordination plan. Install a hardwire interconnect to the signal at Westbrook Arterial and Larrabee Rd.

This entrance as well as the interconnect to the signal at Westbrook Arterial and Larrabee Road is to be constructed prior to occupancy of Phase 2 of the development.

General Requirements For All Entrances

A. The entrances shall provide overhead illumination, if not existing, to illuminate the intersections per MaineDOT standards at a minimum. Overhead lighting shall have an average of 0.6 to 1.0 foot candles, with the maximum to minimum lighting ratio of not more than 10:1 and an average to minimum light level of not more than 4:1.

Off-Site Mitigation

Optimize traffic signal timings in the coordinated system on Riverside St / Main St / Brighton Ave. New signal timings to be implemented within six months of occupancy of Phase 1.

Riverside Street

Intersection of Riverside St / Larrabee Rd (Exit 48)

Construct a second dedicated left-turn lane on the Riverside southbound approach to Exit 48. Restripe the southbound approach to include two dedicated left-turn lanes, a dedicated thru lane and a share thru-right lane. Lane widths shall be a minimum of 11 feet.

Install appropriate overhead lane-usage signs for the Riverside southbound approach both in advance of the intersection and at the intersection. Install appropriate lane-use signs at the intersection for the other intersection approaches.

Construct a second left-turn lane on Larrabee Road with appropriate storage length and taper.

Remove channelizing island for the right-turn movements from the Riverside Street northbound approach and the I-95 exit ramp. Construct a right turn lane with appropriate length and Taper

Reconstruct the traffic signal system to accommodate the new geometry and installation of conduit to the toll plaza to facilitate ramp pre-emption. Provide overlap phasing when possible.

Design and implement an optimal traffic signal timing, phasing and coordination plan. Install a hardwire (fiber optic) interconnect to the signal at Main and Larrabee Rd, as well as the adjacent intersections on Riverside Street. Provide signal heads with reflective back plates and install thermal detection in accordance with City standards.

Note: Work on Maine Turnpike Authority (MTA) property requires an MTA work permit and MTA review and approval.

Intersection of Riverside St / Forest Ave

Design and implement an optimal traffic signal timing, phasing and coordination plan. New signal timings to be implemented within six months of occupancy of Phase 1.

Intersection of Riverside St / Warren Ave

Design and implement an optimal traffic signal timing, phasing and coordination plan. Ensure there is a hardwire (fibre optic) interconnect between adjacent intersections. New signal timings to be implemented within six months of occupancy of Phase 1.

Provide design plans to the City of Portland for minor geometric and traffic signal improvements.

Intersection of Riverside St / Home Depot

Design and implement an optimal traffic signal timing, phasing and coordination plan. Ensure there is a hardwire (fiber optic) interconnect between adjacent intersections. New signal timings to be implemented within six months of occupancy of Phase 1.

Provide design plans to the City of Portland for minor geometric and traffic signal improvements.

Intersection of Riverside St / Brighton Ave / Main St

Design and implement an optimal traffic signal timing, phasing and coordination plan. Ensure there is a hardwire (fiber optic) interconnect between adjacent intersections. Install thermal detection in accordance with City of Portland standards.

Segment between Riverside Court (Berlin City) and Exit 48

Restripe to provide a two-way left-turn lane.

Construct sidewalk along the west side of Riverside, eliminating existing sidewalk gaps.

Segment between Exit 48 / Brighton Ave

Construct sidewalk along the east side of Riverside, eliminating existing sidewalk gaps.

Main Street

Intersection of Main St / Larrabee Rd

Remove existing raised triangular islands from Larrabee approaches to Main Street. Construct a dedicated right-turn pocket on the Larrabee Road southbound approach to Main Street with appropriate storage length and taper.

Provide ADA improvements to the sidewalks and signal equipment. Provide a hardwire (fiber optic) interconnect between adjacent intersections.

Upgrade traffic signal equipment, design and implement an optimal traffic signal timing, phasing and coordination plan.

Westbrook Arterial

Intersection of Rand Rd / Westbrook Arterial (Exit 47)

Widen I-95 ramp to provide a second left-turn lane to the Westbrook Arterial. Widen Rand Road to accept the dual-left turn lanes.

Install a raised median along the Rand Road eastbound approach to the intersection.

Upgrade traffic signal equipment, design and implement an optimal traffic signal timing, phasing and coordination plan.

The applicant shall contribute to the Maine Turnpike Authority (MTA) for improvements at Exit 47 as outlined in the agreement titled “Agreement Relating to the Construction of Transportation Improvements in the Vicinity of Maine Turnpike Exit 47” dated March 2018. This contribution shall constitute completion of the above listed mitigation for the intersection of Rand Road and Westbrook Arterial (Exit 47).

William Clarke Drive

The applicant should design and implement an optimal traffic signal timing, phasing and coordination plan for the weekday and weekend. New signal timings to be implemented within six months of occupancy of Phase I.

Stroudwater Street

Construct a dedicated left-turn lane on Stroudwater Street to Forest Street and reconstruct the sidewalk and crosswalk for crossing Stroudwater Street at Forest Street as necessary to provide an ADA compliant crossing at the intersection.

Overall Requirements

- A. Provide all necessary auxiliary signs, striping and pavement markings to implement the improvements described herein according to MaineDOT and/or National standards.
- B. All plantings and signs (existing and/or proposed; permanent and/or temporary) shall be placed and maintained such that they do not block available sight distances and do not violate the State’s “Installations and Obstructions” law. No signage, plantings or structures shall be allowed within the “clear zone” if they constitute a deadly fixed object as determined by MaineDOT. All signs shall meet MRSA Title 23, Chapter 21, Section 1914: “On-Premise Signs”.
- C. If any of the supporting data or representations for which this permit is based changes in any way or is found to be incorrect / inaccurate, the applicant shall request in writing from MaineDOT a decision of what impacts those changes will have on the permit. The applicant will then be required to submit those changes for review and approval and additional mitigation as a result of those changes may be required at the expense of the applicant.

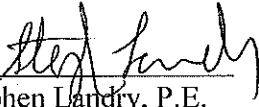
Westbrook – Dirigo Plaza

Reg. 01-00185-A-M

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D. Because the proposed project affects the State Highway and drainage systems and requires improvement to that system, the applicant must obtain approval of the design plans and coordinate work through MaineDOT's State Traffic Engineer or Assistant State Traffic Engineer, who can be reached at (207) 624-3620 in Augusta.

By:



Stephen Landry, P.E.

State Traffic Engineer

Date: 9/20/18



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

MAINE GENERAL PERMIT (GP)
AUTHORIZATION LETTER AND SCREENING SUMMARY

J&J Gove Development, LLC
7 Swan Drive
Hampton Falls, NH 03844

CORPS PERMIT # NAE-2015-01814
CORPS GP ID# 16-141
STATE ID# L-02734-TG-D-N

DESCRIPTION OF WORK:

place temporary fill in 1,319 SF (.03 acres) and permanent fill in 64,218 SF (1.47 acres) of wetland in conjunction with the development of a retail shopping center and associated infrastructure on a 39 acre parcel off Main Street and Larrabee Road Westbrook and Portland, Maine as shown on the attached plans entitled "Dirigo Plaza 58 & 80 Main Street Westbrook, Maine" in 9 sheets by Jones & Beach Engineers, Inc.

LAT/LONG COORDINATES : 43.67505° N -70.33336° W USGS QUAD: Portland West, ME

I. CORPS DETERMINATION:

Based on our review of the information you provided, we have determined that your project will have only minimal individual and cumulative impacts on waters and wetlands of the United States. Your work is therefore authorized by the U.S. Army Corps of Engineers under the enclosed Federal Permit, the Maine General Permit (GP). Accordingly, we do not plan to take any further action on this project.

You must perform the activity authorized herein in compliance with all the terms and conditions of the GP [including any attached Additional Conditions and any conditions placed on the State 401 Water Quality Certification including any required mitigation]. Please review the enclosed GP carefully, including the GP conditions beginning on page 5, to familiarize yourself with its contents. You are responsible for complying with all of the GP requirements; therefore you should be certain that whoever does the work fully understands all of the conditions. You may wish to discuss the conditions of this authorization with your contractor to ensure the contractor can accomplish the work in a manner that conforms to all requirements.

If you change the plans or construction methods for work within our jurisdiction, please contact us immediately to discuss modification of this authorization. This office must approve any changes before you undertake them.

Condition 38 of the GP (page 16) provides one year for completion of work that has commenced or is under contract to commence prior to the expiration of the GP on October 13, 2020. You will need to apply for reauthorization for any work within Corps jurisdiction that is not completed by October 13, 2021.

This authorization presumes the work shown on your plans noted above is in waters of the U.S. Should you desire to appeal our jurisdiction, please submit a request for an approved jurisdictional determination in writing to the undersigned.

No work may be started unless and until all other required local, State and Federal licenses and permits have been obtained. This includes but is not limited to a Flood Hazard Development Permit issued by the town if necessary.

II. STATE ACTIONS: PENDING [X], ISSUED [], DENIED [] DATE _____

APPLICATION TYPE: PBR: _____, TIER 1: _____, TIER 2: _____, TIER 3: X, LURC: _____, DMR LEASE: _____, NA: _____

III. FEDERAL ACTIONS:

JOINT PROCESSING MEETING: 3/17/16 LEVEL OF REVIEW: CATEGORY 1: _____ CATEGORY 2: X

AUTHORITY (Based on a review of plans and/or State/Federal applications): SEC 10 _____, 404 X, 10/404 _____, 103 _____

EXCLUSIONS: The exclusionary criteria identified in the general permit do not apply to this project.

FEDERAL RESOURCE AGENCY OBJECTIONS: EPA NO, USF&WS NO, NMFS NO

If you have any questions on this matter, please contact my staff at 207-623-8367 at our Manchester, Maine Project Office. In order for us to better serve you, we would appreciate your completing our Customer Service Survey located at http://corpsmapu.usace.army.mil/cm_apex/f?p=136:4:0

RODNEY A. HOWE
SENIOR PROJECT MANAGER
MAINE PROJECT OFFICE

FRANK J. DEL GIUDICE
CHIEF, PERMITS & ENFORCEMENT BRANCH
REGULATORY DIVISION
DATE



**US Army Corps
of Engineers**
New England District

**PLEASE NOTE THE FOLLOWING CONDITIONS FOR
DEPARTMENT OF THE ARMY
GENERAL PERMIT
NO. NAE-2015-01814**

1. This authorization requires you to 1) notify us before beginning work so we may inspect the project, and 2) submit a Compliance Certification Form. You must complete and return the enclosed Work Start Notification Form(s) to this office at least two weeks before the anticipated starting date. You must complete and return the enclosed Compliance Certification Form within one month following the completion of the authorized work and any required mitigation (but not mitigation monitoring, which requires separate submittals).
2. The permittee shall assure that a copy of this permit is at the work site whenever work is being performed and that all personnel performing work at the site of the work authorized by this permit are fully aware of the terms and conditions of the permit. This permit, including its drawings and any appendices and other attachments, shall be made a part of any and all contracts and sub-contracts for work which affects areas of Corps of Engineers' jurisdiction at the site of the work authorized by this permit. This shall be done by including the entire permit in the specifications for the work. If the permit is issued after construction specifications but before receipt of bids or quotes, the entire permit shall be included as an addendum to the specifications. The term "entire permit" includes permit amendments. Although the permittee may assign various aspects of the work to different contractors or sub-contractors, all contractors and sub-contractors shall be obligated by contract to comply with all environmental protection provisions of the entire permit, and no contract or sub-contract shall require or allow unauthorized work in areas of Corps of Engineers jurisdiction.
3. Adequate sedimentation and erosion control devices, such as geotextile silt fences or other devices capable of filtering the fines involved, shall be installed and properly maintained to minimize impacts during construction. These devices must be removed upon completion of work and stabilization of disturbed areas. The sediment collected by these devices must also be removed and placed upland, in a manner that will prevent its later erosion and transport to a waterway or wetland.
4. All exposed soils resulting from the construction will be promptly seeded and mulched in order to achieve vegetative stabilization.
5. All areas of temporary fill shall be restored to their original contour and character upon completion of the project.
6. Instream work shall be conducted between July 15 through September 30 to minimize potential impacts to fisheries and local water quality.
7. No tree clearing activities shall occur from June 1- July 31 of any given year to minimize the potential effect to the Northern Long eared bat.
8. Mitigation shall consist of payment of \$276,137.40 to the Natural Resource Mitigation Fund. The Corps will provide a completed ILF Project Data Worksheet which must be mailed with a cashier's check or bank draft, made out to "Treasurer, State of Maine", with the permit number noted on the check. The check and worksheet should be mailed to: MEDEP, Attn: ILF PROGRAM ADMINISTRATOR, State House Station 17, Augusta, ME 04333. This authorization (permit) is not valid until the permittee provides the Corps with a copy of the check, with the permit number noted on the check. The ILF amount is only valid for a period of one year from the date on the authorization letter. After that time, the project would need to be reevaluated and a new amount determined.

MAR 15 2016

APPLICATION FOR A NATURAL RESOURCES PROTECTION ACT PERMIT

→ PLEASE TYPE OR PRINT IN BLACK INK ONLY

1. Name of Applicant:		J&J Gove Development, LLC		5 Name of Agent: (if applicable)		Gove Environmental Services, Inc. C/O Brendan Quigley							
2. Applicant's Mailing Address:		7 Swain Drive Hampton Falls, NH 03844		6 Agent's Mailing Address:		8 Continental Drive Bldg 2 Unit H Exeter, NH 03833							
3. Applicant's Daytime Phone #:		(603) 926-7662		7 Agent's Daytime Phone #:		(603) 778-0644							
4 Applicant's Email Address Required from either applicant or agent:				8. Agent's Email Address: bquigley@gesinc.biz									
9. Location of Activity: (Nearest Road, Street, Rt.#)		58 Main Street		10. Town:		Westbrook							
				11. County:		Cumberland							
12A. Significant Groundwater well?				☐ Yes OR ☒ No									
12. Type of Resource: (Check all that apply)		☒ River, stream or brook ☐ Great Pond ☐ Coastal Wetland ☒ Freshwater Wetland ☐ Wetland Special Significance ☐ Significant Wildlife Habitat ☐ Fragile Mountain		13. Name of Resource:		Nasons Brook and unnamed freshwater wetland							
				14. Amount of Impact: (Sq.Ft.)		Fill: 1,319 Temp/64,218 Perm Dredging/Veg Removal/Other: see attached sheet							
15. Type of Wetland: (Check all that apply)		☒ Forested ☒ Scrub Shrub ☒ Emergent ☐ Wet Meadow ☐ Peatland ☐ Open Water ☐ Other _____		FOR FRESHWATER WETLANDS <table border="0"> <tr> <td style="text-align: center;"><i>Tier 1</i></td> <td style="text-align: center;"><i>Tier 2</i></td> <td style="text-align: center;"><i>Tier 3</i></td> </tr> <tr> <td> ☐ 0 - 4,999 sq ft. ☐ 5,000-9,999 sq ft. ☐ 10,000-14,999 sq ft. </td> <td> ☐ 15,000 - 43,560 sq. ft. </td> <td> ☒ > 43,560 sq. ft. or ☐ smaller than 43,560 sq ft., not eligible for Tier 1 </td> </tr> </table>				<i>Tier 1</i>	<i>Tier 2</i>	<i>Tier 3</i>	☐ 0 - 4,999 sq ft. ☐ 5,000-9,999 sq ft. ☐ 10,000-14,999 sq ft.	☐ 15,000 - 43,560 sq. ft.	☒ > 43,560 sq. ft. or ☐ smaller than 43,560 sq ft., not eligible for Tier 1
<i>Tier 1</i>	<i>Tier 2</i>	<i>Tier 3</i>											
☐ 0 - 4,999 sq ft. ☐ 5,000-9,999 sq ft. ☐ 10,000-14,999 sq ft.	☐ 15,000 - 43,560 sq. ft.	☒ > 43,560 sq. ft. or ☐ smaller than 43,560 sq ft., not eligible for Tier 1											
16. Brief Activity Description		Please see attached sheet											
17. Size of Lot or Parcel:		☐ square feet, or ☒ 81.08 acres		UTM Northing: 392607		UTM Easting: 4836509							
18. Title, Right or Interest:		☐ own ☐ lease ☒ purchase option ☐ written agreement											
19. Deed Reference Numbers:		Book#: _____ Page: _____ see attached sheet		20. Map and Lot Numbers:		Map #: _____ Lot #: _____ see attached sheet							
21. DEP Staff Previously Contacted:		Robert Green Mark Stebbins		22. Part of a larger project:		☐ Yes ☒ No							
23. Resubmission of Application?		☐ Yes → ☒ No If yes, previous application # _____		Previous project manager:									
24. Written Notice of Violation?		☐ Yes → ☒ No If yes, name of DEP enforcement staff involved: _____		25. Previous Wetland Alteration:		☐ Yes ☒ No							
26. Detailed Directions to the Project Site:		The main access to the site is located at 58 Main Street in Westbrook. From Exit 48 on I-95 follow Larabee Road to the intersection of Main Street and Turn left, PIKE Industries is on the right immediately after the intersection											
27. TIER 1		TIER 2/3 AND INDIVIDUAL PERMITS											
☐ Title, right or interest documentation ☐ Topographic Map ☐ Narrative Project Description ☐ Plan or Drawing (8 1/2" x 11") ☐ Photos of Area ☐ Statement of Avoidance & Minimization ☐ Statement/Copy of cover letter to MHPC		☒ Title, right or interest documentation ☒ Topographic Map ☒ Copy of Public Notice/Public Information Meeting Documentation ☒ Wetlands Delineation Report (Attachment 1) that contains the information listed under Site Conditions ☒ Alternatives Analysis (Attachment 2) including description of how wetland impacts were Avoided/Minimized		☒ Erosion Control/Construction Plan ☒ Functional Assessment (Attachment 3), if required ☒ Compensation Plan (Attachment 4), if required ☒ Appendix A and others, if required ☒ Statement/Copy of cover letter to MHPC ☐ Description of Previously Mined Peatland, if required									
28. FEES, Amount Enclosed:		\$ 1,990.76											
CERTIFICATIONS AND SIGNATURES LOCATED ON PAGE 2													

IMPORTANT: IF THE SIGNATURE BELOW IS NOT THE APPLICANT'S SIGNATURE, ATTACH LETTER OF AGENT AUTHORIZATION SIGNED BY THE APPLICANT.

By signing below the applicant (or authorized agent), certifies that he or she has read and understood the following :

DEP SIGNATORY REQUIREMENT

PRIVACY ACT STATEMENT

Authority: 33 USC 401, Section 10; 1413, Section 404. Principal Purpose: These laws require permits authorizing activities in or affecting navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Disclosure: Disclosure of requested information is voluntary. If information is not provided, however, the permit application cannot be processed nor a permit be issued.

CORPS SIGNATORY REQUIREMENT

USC Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry shall be fined not more than \$10,000 or imprisoned not more than five years or both. I authorize the Corps to enter the property that is subject to this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein.

DEP SIGNATORY REQUIREMENT

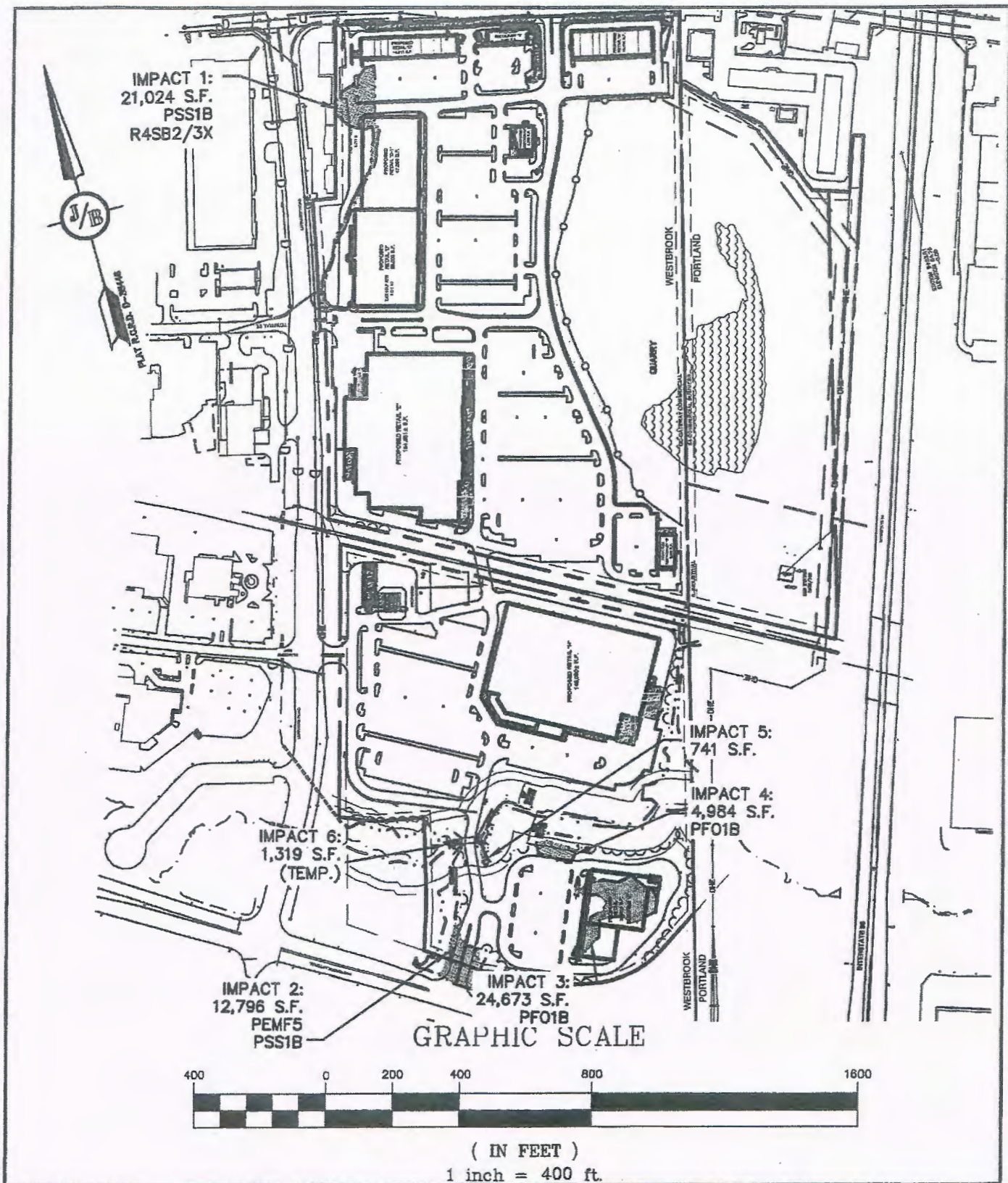
"I certify under penalty of law that I have personally examined the information submitted in this document and all attachments thereto and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the information is true, accurate, and complete. I authorize the Department to enter the property that is the subject of this application, at reasonable hours, including buildings, structures or conveyances on the property, to determine the accuracy of any information provided herein. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

Further, I hereby authorize the DEP to send me an electronically signed decision on the license I am applying for with this application by emailing the decision to the address located on the front page of this application (see #4 for the applicant and #8 for the agent)."


SIGNATURE OF AGENT/APPLICANT

Date: 3-3-2016

NOTE: Any changes in activity plans must be submitted to the DEP and the Corps in writing and must be approved by both agencies prior to implementation. Failure to do so may result in enforcement action and/or the removal of the unapproved changes to the activity.



J/B Designed and Produced in NH
Jones & Beach Engineers, Inc.

Civil Engineering Services

85 Portsmouth Ave.
PO Box 219
Stratham, NH 03885

603-772-4746

FAX: 603-772-0227

E-Mail: JBE@jonesandbeach.com

Drawing Name: **OVERALL
WETLAND IMPACT PLAN**

Project: **"DIRIGO PLAZA"**
58 & 80 MAIN STREET, WESTBROOK, ME 04092

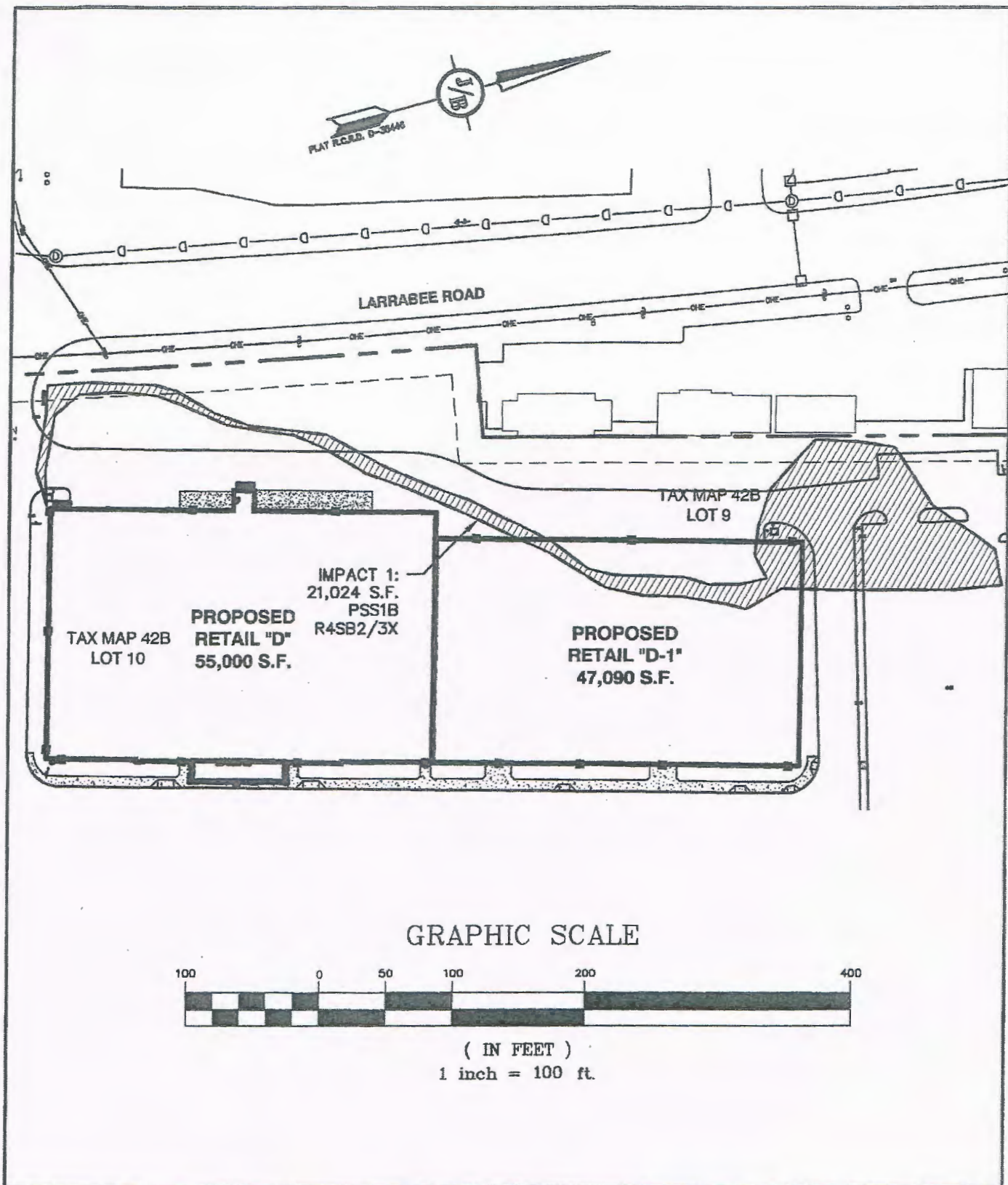
Owner of Record: **PIKE INDUSTRIES, INC.**
3 EASTGATE PARK ROAD, BELMONT, NH 03220

DRAWING No.

WIP-O

SHEET 1 OF 9

JBE PROJECT
No. 14110



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85 Portsmouth Ave.
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 Stratham, NH 03885

603-772-4746

FAX: 603-772-0227

E-Mail: JBE@jonesandbeach.com

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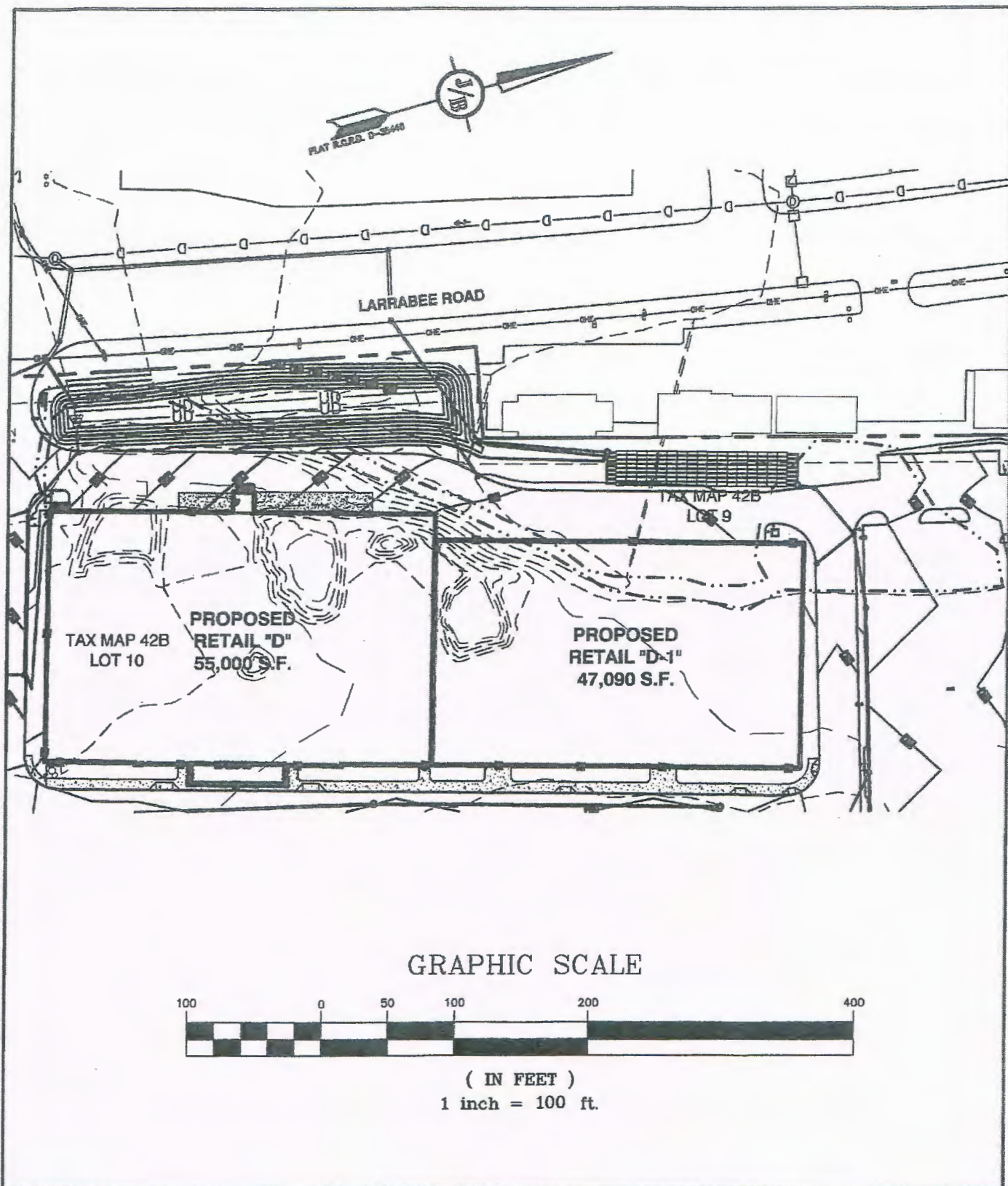
Owner of Record: **PIKE INDUSTRIES, INC.**
 3 EASTGATE PARK ROAD, BELMONT, NH 03220

DRAWING No.

WIP1

SHEET 2 OF 9

JBE PROJECT
 No. 14110



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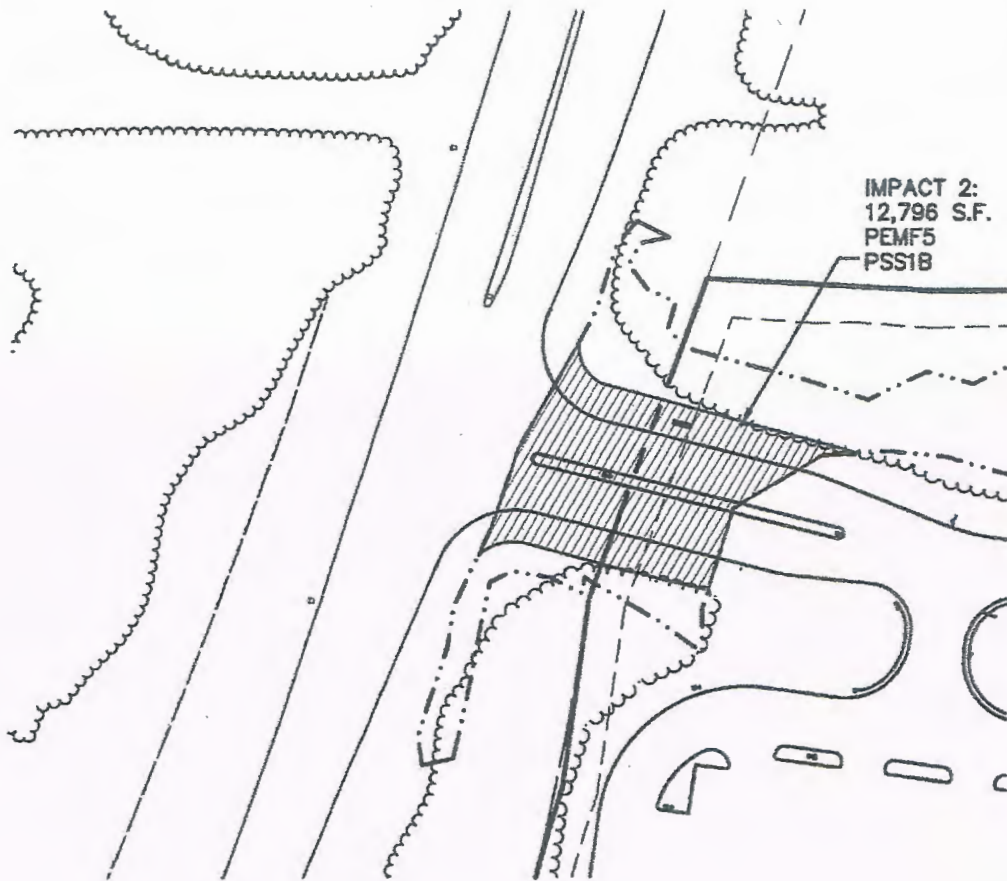
Owner of Record: **PIKE INDUSTRIES, INC.**
3 EASTGATE PARK ROAD, BELMONT, NH 03220

DRAWING No.

WIP2

SHEET 3 OF 9

JBE PROJECT
No. 14110



GRAPHIC SCALE



(IN FEET)

1 inch = 100 ft.



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58 & 80 MAIN STREET, WESTBROOK, ME 04092

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3 EASTGATE PARK ROAD, BELMONT, NH 03220

DRAWING No.

WIP3

SHEET 4 OF 9

JBE PROJECT
No. 14110



GRAPHIC SCALE



(IN FEET)

1 inch = 100 ft.

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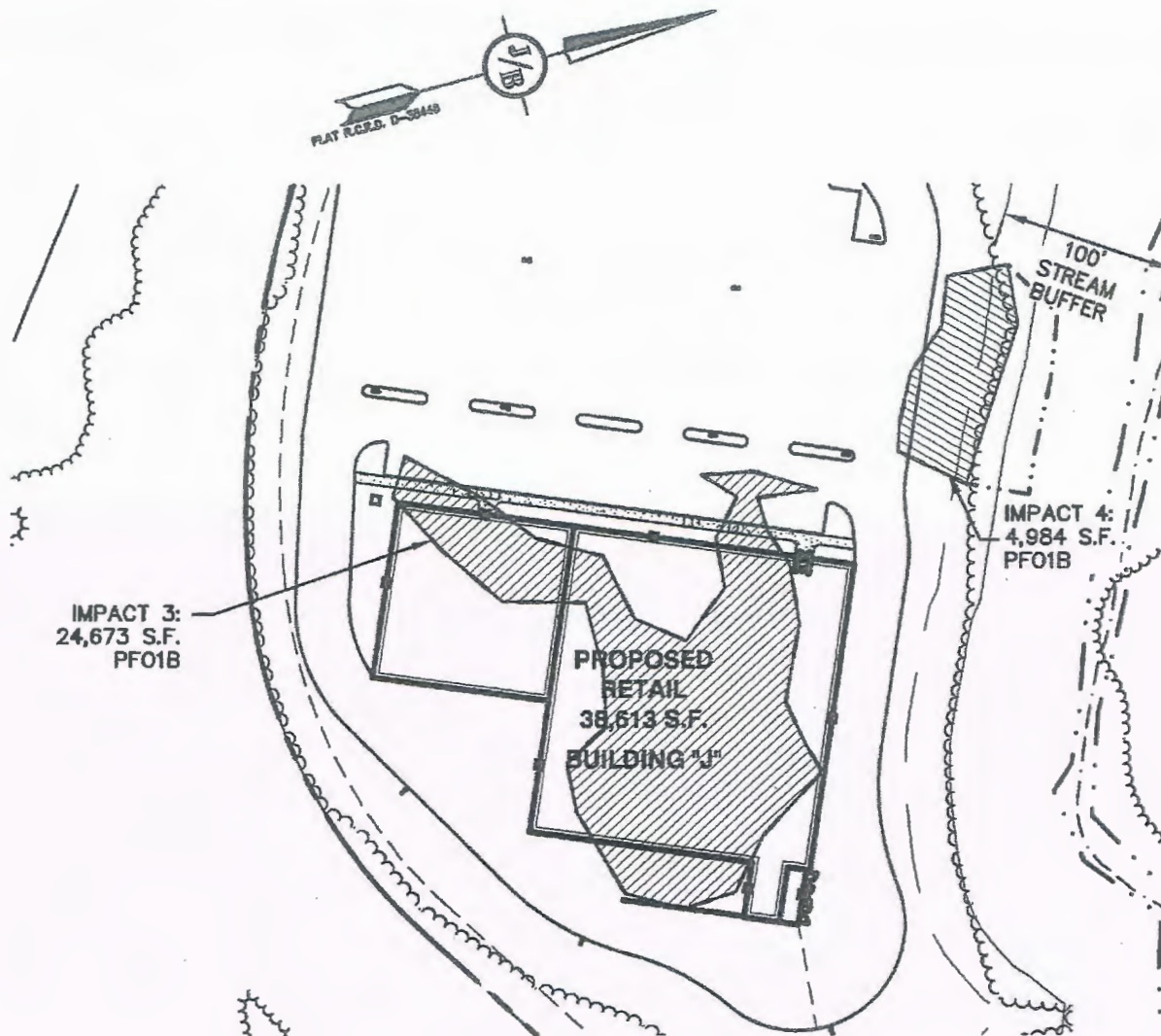
Owner of Record: **PIKE INDUSTRIES, INC.**
 3 EASTGATE PARK ROAD, BELMONT, NH 03220

DRAWING No.

WIP4

SHEET 5 OF 9

JBE PROJECT
 No. 14110



GRAPHIC SCALE



(IN FEET)

1 inch = 100 ft.



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E-Mail: JBE@jonesandbeach.com

Drawing Name: **WETLAND IMPACT PLAN**

Project: **"DIRIGO PLAZA"**
 58 & 80 MAIN STREET, WESTBROOK, ME 04092

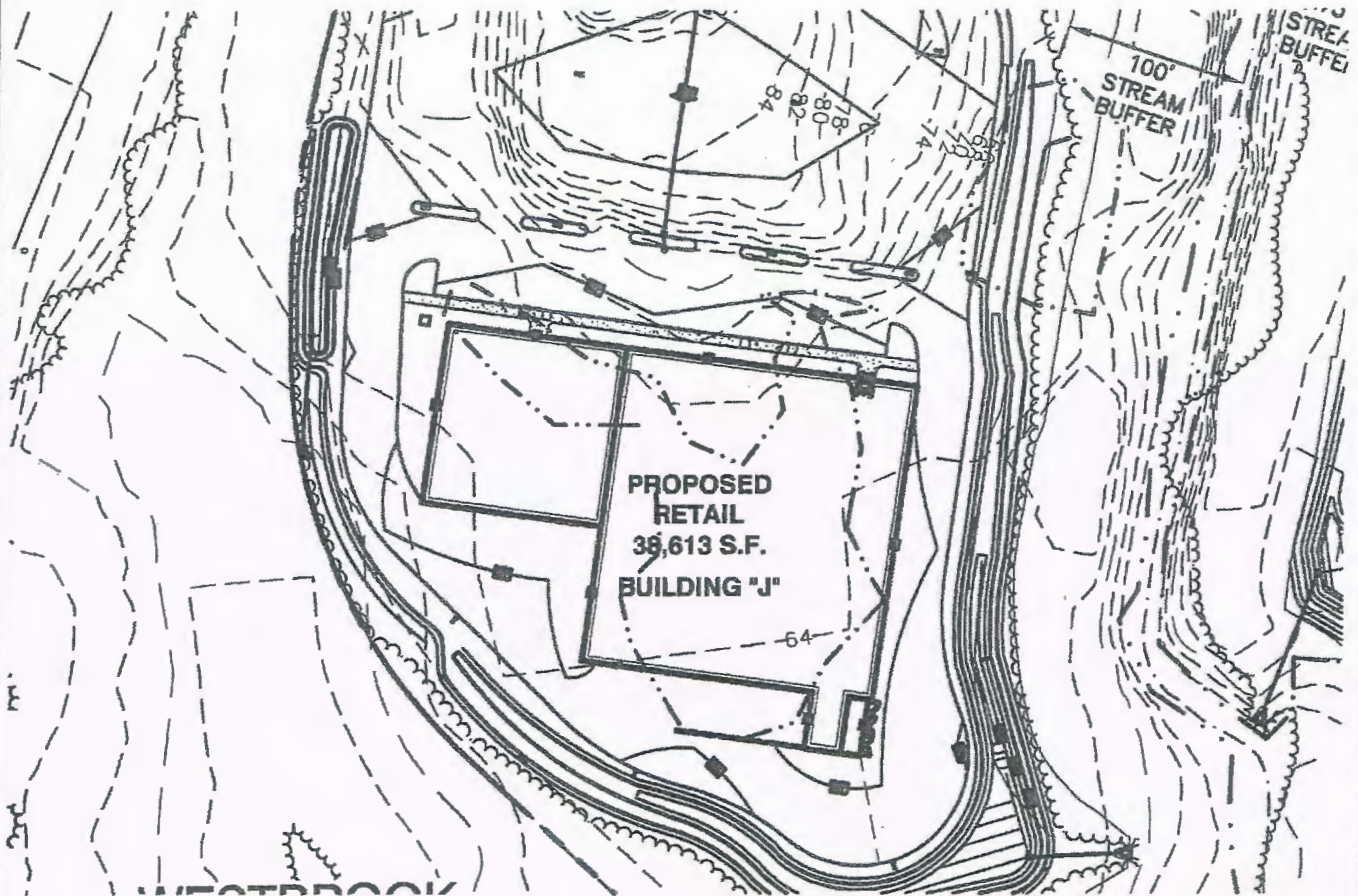
Owner of Record: **PIKE INDUSTRIES, INC.**
 3 EASTGATE PARK ROAD, BELMONT, NH 03220

DRAWING No.

WIP5

SHEET 6 OF 9

JBE PROJECT
 No. 14110



GRAPHIC SCALE



(IN FEET)

1 inch = 100 ft.



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FAX: 603-772-0227

E-Mail: JBE@jonesandbeach.com

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Project: **"DIRIGO PLAZA"**
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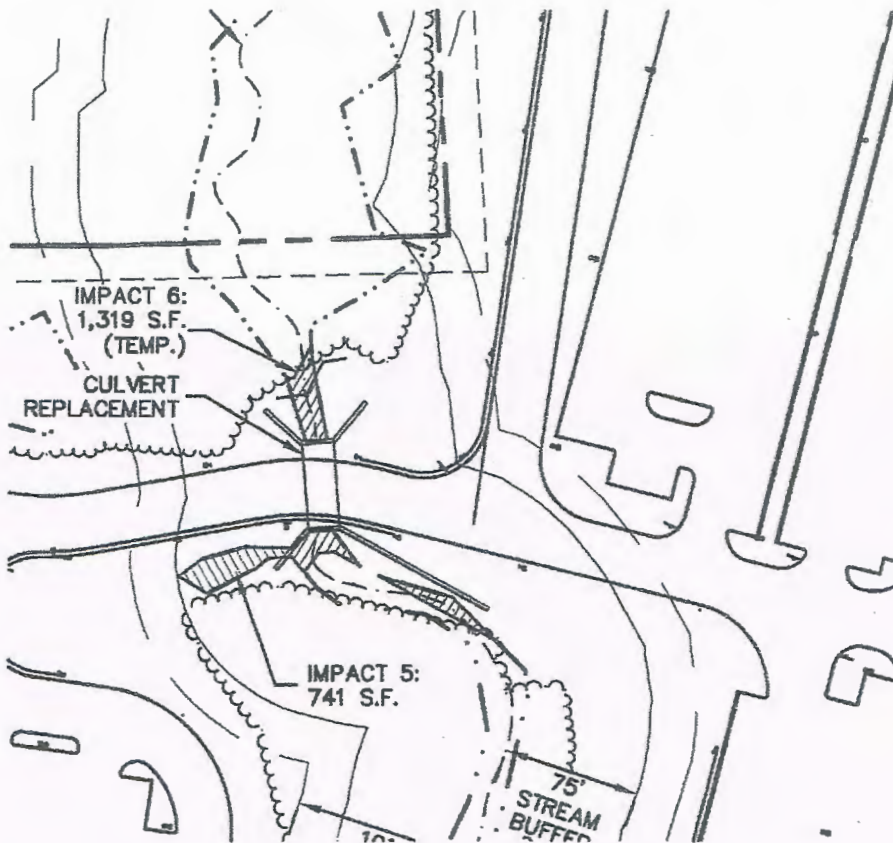
Owner of Record: **PIKE INDUSTRIES, INC.**
3 EASTGATE PARK ROAD, BELMONT, NH 03220

DRAWING No.

WIP6

SHEET 7 OF 9

JBE PROJECT
No. 14110



GRAPHIC SCALE



(IN FEET)
1 inch = 100 ft.



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Drawing Name: **WETLAND IMPACT PLAN**

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58 & 80 MAIN STREET, WESTBROOK, ME 04092

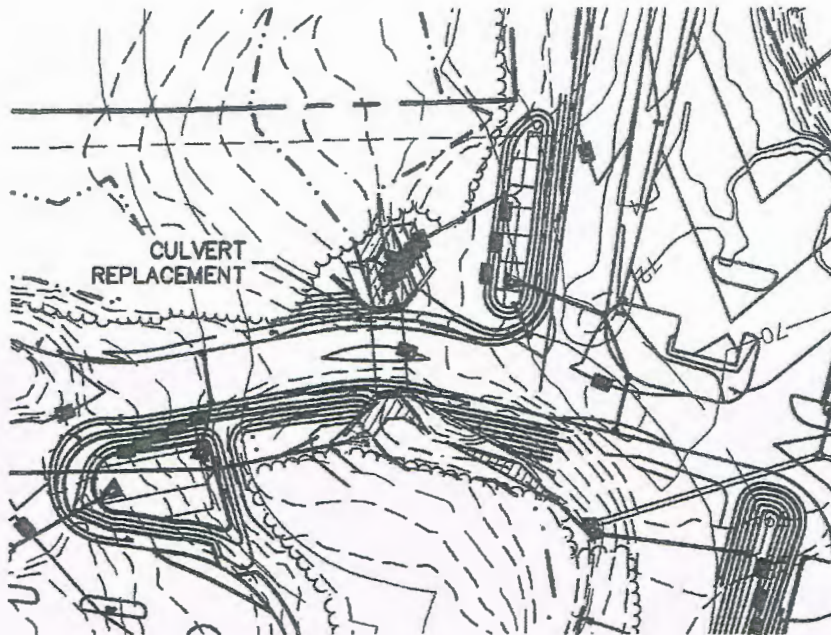
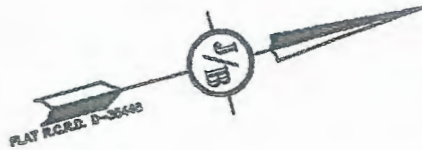
Owner of Record: **PIKE INDUSTRIES, INC.**
3 EASTGATE PARK ROAD, BELMONT, NH 03220

DRAWING No.

WIP7

SHEET 8 OF 9

JBE PROJECT
No. 14110



GRAPHIC SCALE



(IN FEET)

1 inch = 100 ft.

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3 EASTGATE PARK ROAD, BELMONT, NH 03220

DRAWING No.

WIP8

SHEET 9 OF 9

JBE PROJECT
No. 14110



**US Army Corps
of Engineers®**
New England District

WORK-START NOTIFICATION FORM
(Minimum Notice: Two weeks before work begins)

* MAIL TO: U.S. Army Corps of Engineers, New England District *
* Policy Analysis/Technical Support Branch *
* Regulatory Division *
* 696 Virginia Road *
* Concord, Massachusetts 01742-2751 *

Corps of Engineers Permit No. NAE-2015-01814 was issued to J&J Gove Development, LLC.
The permit authorized the permittee to place temporary fill in 1,319 SF (.03 acres) and permanent fill in 64,218 SF (1.47 acres) of wetland in conjunction with the development of a retail shopping center and associated infrastructure on a 39 acre parcel off Main Street and Larrabee Road Westbrook and Portland, Maine. The people (e.g., contractor) listed below will do the work, and they understand the permit's conditions and limitations.

PLEASE PRINT OR TYPE

Name of Person/Firm: _____

Business Address: _____

Telephone Numbers: () _____ () _____

Proposed Work Dates: Start _____ Finish _____

Permittee's Signature: _____ **Date:** _____

Printed Name: _____ **Title:** _____

FOR USE BY THE CORPS OF ENGINEERS

PM: Howe **Submittals Required:** _____

Inspection Recommendation: _____



**US Army Corps
of Engineers®**
New England District

(Minimum Notice: Permittee must sign and return notification
within one month of the completion of work.)

COMPLIANCE CERTIFICATION FORM

USACE Project Number: NAE-2015-01814p

Name of Permittee: _____

Permit Issuance Date: _____

Please sign this certification and return it to the following address upon completion of the activity and any mitigation required by the permit. You must submit this after the mitigation is complete, but not the mitigation monitoring, which requires separate submittals.

* MAIL TO: U.S. Army Corps of Engineers, New England District *
* Policy Analysis/Technical Support Branch *
* Regulatory Division *
* 696 Virginia Road *
* Concord, Massachusetts 01742-2751 *

Please note that your permitted activity is subject to a compliance inspection by an U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit was completed in accordance with the terms and conditions of the above referenced permit, and any required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date

Printed Name

Date of Work Completion

() _____

() _____

Telephone Number

Telephone Number

Section 5 – Zoning Assessment

Not applicable. The land comprising the Portland portion of the project is currently undeveloped and no development is presently planned on the Portland side of the project. Improvements on the Westbrook portion of the development have already been reviewed and approved by the City of Westbrook.

Section 6 – Existing and/or Proposed Easements or Covenants

The property within Portland is subject to the utility easements listed below, all of which are shown on the plans submitted with this application. A railroad line owned in fee by the Portland Terminal Company bisects the site and separates the North and South Campuses of the development. Thus, the North and South Campuses are each considered separate tracts for subdivision purposes. The present application is limited to the North Campus.

Easements:

Utility Easement to Portland Pipe Line Corporation (Book 2881, Page 459)

Utility Easement to Central Maine Power Company (Book 3204, Page 758)

Petroleum Easement to Buckeye Partners (Book 1891, Page 16)

Section 7 – Waiver Requests

Consistent with Applicant's initial subdivision application approved by the Portland Planning Board on October 18, 2016 and the minor amendment approved by City Staff on October 25, 2018, Applicant is requesting a waiver of the requirement to hold joint meetings and hearings to review this application. Under Maine's subdivision law, if any portion of a subdivision crosses municipal boundaries, all meetings and hearings to review the application must be held jointly by the reviewing authorities from each municipality. 30-A M.R.S. § 4403(1-A). The reviewing authorities in each municipality may waive this requirement upon written agreement. Enclosed is a copy of the waiver approved by the Westbrook Planning Board on October 1, 2019, which waives the requirement for any joint meetings or hearings until such time as either City's Planning Board requests joint meetings and/or hearings on amendments to this Subdivision.

AGREEMENT TO WAIVE
JOINT PLANNING BOARD MEETINGS

Pursuant to 30-A M.R.S. § 4403(1-A), the Planning Boards of the City of Portland and the City of Westbrook do agree to waive the requirement in § 4403 (1-A) for joint meetings and hearings on further amendments to the Dirigo Plaza/Rock Row Subdivision, which crosses the Portland/Westbrook municipal boundary and was approved by both Planning Boards on October 18, 2016 and subsequently amended by both Cities (the “Subdivision”). This Agreement to Waive Joint Planning Board Meetings shall remain in effect until such time as either City’s Planning Board requests joint meetings and/or hearings on amendments to this Subdivision.

City of Portland Planning Board
By its Members:

Sean Dundon, Chair

Brandon Mazer, Vice Chair

Bob Dunfey

David Eaton

David Silk

Austin Smith

Maggie Stanley

Dated _____, 2019

City of Westbrook Planning Board
By its Members:

Ed Reidman, Chair

Rene Daniel, Vice Chair

Rebecca Dillon

Jason Frazier

Joseph J. Marden

Robin Tannenbaum

John A. Turcotte

Dated _____, 2019

Section 8 – Financial Capability

Phase I of the development is expected to cost \$34.9 million. Enclosed as evidence of the Applicant's financial capability are Consolidated Interim Financial Statements as of June 30, 2018. The same evidence was previously submitted to and approved by the Maine DEP and the City of Westbrook as acceptable evidence of financial capability.



ROCK ROW - PHASE I (Prorated)

September, 2018

DESCRIPTION	SPENT TO DATE	PROJECTED REMAINING	PROJECTED TOTAL
Land & Acquisition	\$ 2,880,067	\$ 130,000	\$ 3,010,067
TOTAL PURCHASE COSTS	\$ 2,880,067	\$ 130,000	\$ 3,010,067
Sitework	\$ 1,804,822	\$ 9,992,319	\$ 11,797,141
Construction	\$ -	\$ 11,700,379	\$ 11,700,379
TOTAL HARD COSTS	\$ 1,804,822	\$ 21,692,698	\$ 23,497,520
SOFT COSTS	\$ 1,692,139	\$ 6,721,645	\$ 8,413,785
TOTAL PROJECT COSTS	\$ 6,377,028	\$ 28,544,343	\$ 34,921,371

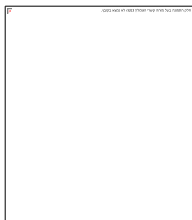
Waterstone Properties, Ltd.

Consolidated Interim Financial Statements as of June 30, 2018 (Unaudited)

USD in Thousands

Table of Contents

	<u>Page</u>
Review of the Consolidated Interim Financial Statements	2
Consolidated Interim Statements of Financial Position	3
Consolidated Interim Statements of Comprehensive Income	4
Consolidated Interim Statements of Changes in Equity	5-6
Consolidated Interim Statements of Cash Flows	7-8
Notes to the Consolidated Interim Financial Statements	9-15



Kost Forer Gabbay and Kasierer Tel.: +972-3-6232525
144A Menachem Begin Rd. Fax: +972-3-5622555
Tel Aviv 6492102 ey.com

Auditor's Review Report to the Shareholders of Waterstone Properties, Ltd.

Introduction

We have reviewed the attached financial information of Waterstone Properties, Ltd. (hereinafter: the "Company"), including the condensed consolidated statements of financial position as of June 30, 2018, and the condensed consolidated statements of comprehensive income, changes in equity and cash flows for the six month period then ended. The Board of Directors and management are responsible for the preparation and presentation of the financial information for these interim periods, in accordance with International Accounting Standard (IAS) 34, Interim Financial Reporting. They are also responsible for preparing the interim financial information in accordance with Section D of the Securities Regulations (Periodic and Immediate Statements), 5730-1970. Our responsibility is to express a conclusion regarding the interim financial information, based on our review.

Scope of the Review

We have conducted our review in accordance with Review Standard 1 of the Institute of Certified Public Accountants in Israel, "Review of Financial Information for Interim Periods Prepared by the Entity's Auditor." A review of interim financial information consists of making inquiries, mainly with the people responsible for financial and accounting matters, and applying analytical and other review procedures. A review is significantly limited in scope compared to an audit, which is conducted in accordance with generally accepted accounting principles in Israel, and therefore, does not allow us to obtain assurance that we have become aware of all significant matters which could have been identified in an audit. Accordingly, we do not express an audit opinion.

Conclusion

Based on our review, we have not become aware of any information which would lead us to believe that the above financial information has not been prepared, in all material respects, in accordance with IAS 34.

In addition to that stated in the preceding paragraph, based on our review, we have not become aware of any information which would lead us to believe that the above financial information does not fulfill, in all material respects, the disclosure requirements set forth in Section D of the Securities Regulations (Periodic and Immediate Statements), 5730-1970.

Tel Aviv,
August 23, 2018

Kost Forer Gabbay & Kasierer
Certified Public Accountants

Consolidated Interim Statements of Financial Position

USD in thousands, except as specified otherwise

	As of June 30		As of
	2018	2017	December 31
	Unaudited		Audited
<u>Non-current assets</u>			
Investment property	701,477	641,277	676,439
Loan to related party	8,848	-	12,001
Investment in joint ventures	15,451	6,931	15,370
Financial derivatives	-	6	6
Other receivables and debit balances	5,522	-	3,389
Restricted cash	5,593	8,592	5,507
	<u>736,891</u>	<u>656,806</u>	<u>712,712</u>
<u>Current assets</u>			
Lessees, other receivables and debit balances	4,033	4,544	2,747
Financial derivatives	23	-	-
Related parties	-	-	6,937
Restricted cash	4,929	113,496	4,532
Cash and cash equivalents	20,942	4,040	39,712
	<u>29,927</u>	<u>122,080</u>	<u>53,928</u>
Total assets	<u>766,818</u>	<u>778,886</u>	<u>766,640</u>
<u>Capital</u>			
Capital attributable to the Company's shareholders	240,088	224,727	232,886
Non-controlling interests	210	13,566	(152)
Total capital	<u>240,298</u>	<u>238,293</u>	<u>232,734</u>
<u>Non-current liabilities</u>			
Loans from financial institutions and others	328,117	393,730	329,176
Bonds	107,522	111,648	112,902
Liabilities with respect to lease	11,890	12,342	11,545
Deposits from lessees	964	931	923
	<u>448,493</u>	<u>518,651</u>	<u>454,546</u>
<u>Current liabilities</u>			
Current maturities of loans from financial institutions and others	72,237	5,287	72,142
Current maturities with respect to finance lease	593	-	567
Controlling shareholders	-	9,275	2,574
Related parties	630	672	-
Trade payables, other payables and credit balances	4,426	6,597	3,941
Deposits from lessees	141	111	136
	<u>78,027</u>	<u>21,942</u>	<u>79,360</u>
Total liabilities	<u>526,520</u>	<u>540,593</u>	<u>533,906</u>
Total capital and liabilities	<u>766,818</u>	<u>778,886</u>	<u>766,640</u>

The attached notes constitute an inseparable part of the consolidated interim financial statements.

Approval date of the financial statements: August 23, 2018.

Neal Shalom
Chairman of the Board

Josh Levy
CEO

Anton Melchionda
CFO

Consolidated Interim Statements of Comprehensive Income

USD in thousands, except as specified otherwise

	For the six months ended June 30		For the three months ended June 30		For the year ended December 31
	2018	2017	2018	2017	2017
	Unaudited				Audited
Rental revenues	24,683	19,978	12,453	10,786	43,143
Property operating expenses	6,814	5,501	3,200	3,172	11,667
Gross profit	17,869	14,477	9,253	7,614	31,476
Adjustment to fair value of investment property, net	4,454	43		(334)	4,851
Company's share in the income of joint ventures	530	(7)	341	(7)	24
General, administrative and other expenses	1,247	662	581	238	2,396
Other expenses	-	-	-	-	818
Operating profit	21,606	13,851	9,338	7,035	33,137
Financing expenses	15,772	11,623	7,992	6,028	27,130
Financing income	490	-	242	-	1,986
Foreign currency difference expenses (income)	(5,904)	-	(4,316)	-	2,071
Financing expenses, net	9,378	11,623	3,434	6,028	27,215
Net income	12,228	2,228	5,904	1,007	5,922
Comprehensive income	12,228	2,228	5,904	1,007	5,922
Net and comprehensive income attributable to:					
Company shareholders	12,200	1,517	5,879	549	5,396
Non-controlling interests	28	711	25	458	526
	12,228	2,228	5,904	1,007	5,922

*) Amount lower than USD 1 thousand.

The attached notes constitute an inseparable part of the consolidated interim financial statements.

Consolidated Interim Statements of Changes in Equity

USD in thousands, except as specified otherwise

	Shareholders' investments (distributions to shareholders)	Capital reserve for transactions with non-controlling interests	Retained earnings	Total capital attributable to Company shareholders	Non-controlling interests	Total
			Unaudited			
<u>Balance as of January 1, 2018 (Audited)</u>	4,247	6,372	222,267	232,886	(152)	232,734
Total comprehensive income	-	-	12,200	12,200	28	12,228
Acquisition of non-controlling interests	-	(2,335)	-	(2,335)	135	(2,200)
Announced dividend	-	-	(830)	(830)	-	(830)
Equity adjustment ¹⁾	(1,833)	-	-	(1,833)	-	(1,833)
Investments (distributions), net	-	-	-	-	199	199
<u>Balance as of June 30, 2018 (Unaudited)</u>	<u>2,414</u>	<u>4,037</u>	<u>233,637</u>	<u>240,088</u>	<u>210</u>	<u>240,298</u>

1) See Note 2(B).

	Shareholders' investments (distributions to shareholders)	Retained earnings	Total capital attributable to Company shareholders	Non-controlling interests	Total
			Unaudited		
<u>Balance as of January 1, 2017 (Audited)</u>	4,813	216,871	221,684	16,397	238,081
Total comprehensive income		1,517	1,517	711	2,228
Transfer of non-controlling interests to the Company	3,288	-	3,288	(3,288)	-
Distributions, net	(1,762)	-	(1,762)	(254)	(2,016)
<u>Balance as of June 30, 2017 (Unaudited)</u>	<u>6,339</u>	<u>218,388</u>	<u>224,727</u>	<u>13,566</u>	<u>238,293</u>

	Shareholders' investments (distributions to shareholders)	Capital reserve for transactions with non-controlling interests	Retained earnings	Total capital attributable to Company shareholders	Non-controlling interests	Total
			Unaudited			
<u>Balance as of April 1, 2018 (Unaudited)</u>	2,414	6,372	228,311	237,097	82	237,179
Total comprehensive income	-	-	5,879	5,879	25	5,904
Acquisition of non-controlling interests	-	(2,335)	-	(2,335)	135	(2,200)
Announced dividend	-	-	(553)	(553)	-	(553)
Investments (distributions), net	-	-	-	-	(32)	(32)
<u>Balance as of June 30, 2018 (Unaudited)</u>	<u>2,414</u>	<u>4,037</u>	<u>233,637</u>	<u>240,088</u>	<u>210</u>	<u>240,298</u>

The attached notes constitute an inseparable part of the consolidated interim financial statements.

Consolidated Interim Statements of Changes in Equity

USD in thousands, except as specified otherwise

	Shareholders' investments (distributions to shareholders)	Retained earnings	Total capital attributable to Company shareholders	Non-controlling interests	Total
	Unaudited				
<u>Balance as of April 1, 2017 (Unaudited)</u>	2,925	217,839	220,764	16,641	237,405
Total comprehensive income	-	549	549	458	1,007
Transfer of non-controlling interests to the Company	3,288	-	3,288	(3,288)	-
Distributions, net	126	-	126	(245)	(119)
<u>Balance as of June 30, 2017 (Unaudited)</u>	<u>6,339</u>	<u>218,388</u>	<u>224,727</u>	<u>13,566</u>	<u>238,293</u>

	Shareholders' investments (distributions to shareholders)	Capital reserve for transactions with non-controlling interests	Retained earnings	Total capital attributable to Company shareholders	Non-controlling interests	Total
	Audited					
<u>Balance as of January 1, 2017</u>	<u>4,813</u>	-	<u>216,871</u>	<u>221,684</u>	<u>16,397</u>	<u>238,081</u>
Total comprehensive income	-	-	5,396	5,396	526	5,922
Investments (distributions), net	(566)	-	-	(566)	717	151
Acquisition of non-controlling interests	-	3,084	-	3,084	(14,504)	(11,420)
Transfer of non-controlling interests to the Company	-	3,288	-	3,288	(3,288)	-
<u>Balance as of December 31, 2017</u>	<u>4,247</u>	<u>6,372</u>	<u>222,267</u>	<u>232,886</u>	<u>(152)</u>	<u>232,734</u>

The attached notes constitute an inseparable part of the consolidated interim financial statements.

Consolidated Interim Statements of Cash Flows

USD in thousands, except as specified otherwise

	For the 6 months ended June 30		For the 3 months ended June 30		For the year ended December 31
	2018	2017	2018	2017	2017
	Unaudited				Audited
<u>Cash flows from operating activities</u>					
Net income	12,228	2,228	5,904	1,007	5,922
Adjustments required to present cash flows from operating activities:					
Adjustment to fair value of investment property, net	(4,454)	(43)	(325)	334	(4,851)
Financing expenses	9,335	11,561	3,416	5,984	27,047
Company's share in the profits of the joint venture	(530)	7	(341)	7	(24)
Loss (profit) from financial derivatives	(17)	35	(4)	16	35
Changes to assets and liabilities items:					
Decrease (increase) in lessees, other receivables and debit balances	(2,386)	642	(437)	(925)	1,560
Increase in related parties	-	-	-	-	-
Increase (decrease) in trade payables, other payables and credit balances	545	(3,970)	(2,225)	(809)	(6,191)
Increase in deposits from lessees	46	14	21	1	30
Net cash from operating activities	14,767	10,474	6,016	5,615	23,528
<u>Cash flows from investing activities</u>					
Additions to investment property, net	(20,676)	(12,080)	(1,840)	(4,662)	(43,439)
Decrease (increase) in restricted cash	(483)	(110,656)	640	(110,915)	(179)
Increase in long term other receivables and debit balances	(1,356)	-	(327)	-	(3,389)
Decrease (increase) in debit balances of related parties	3,633	-	3,618	-	(17,938)
Investments in joint ventures, net	450	(350)	450	(350)	(8,477)
Loans to joint ventures, net	(1)	(28)	-	-	(309)
Net cash used in investing activities	(18,433)	(123,114)	2,541	(115,927)	(73,731)
<u>Cash flows from financing activities</u>					
Receipt of loans from financial institutions and others	2,733	19,551	2,389	10,012	30,047
Repayment of loans from financial institutions and others	(4,304)	(2,004)	(3,297)	(1,124)	(11,183)
Related parties, net	5,734	(2,474)	(3,886)	(3,219)	(4,143)
Issuance of bonds (less issuance costs)	-	109,971	-	109,971	109,971
Interest paid	(14,243)	(11,227)	(8,860)	(6,020)	(21,972)
Repayments with respect to finance lease	-	-	-	-	(593)
Change in balances with shareholders	(2,573)	1,306	-	1,034	(5,395)
Acquisition of non-controlling interests	(2,200)	-	(2,200)	-	(11,420)
Investments (distributions) to non-controlling interests, net	199	(254)	(32)	(245)	717
Distributions to shareholders, net	-	(2,641)	-	126	(566)
Dividend paid	(450)	-	(450)	-	-
Net cash from financing activities	(15,104)	112,228	(16,336)	110,535	85,463
<u>Increase (decrease) in cash and cash equivalents</u>	(18,770)	(412)	(7,780)	223	35,260
<u>Balance of cash and cash equivalents at start of period</u>	39,712	4,452	28,722	3,817	4,452
<u>Balance of cash and cash equivalents at end of period</u>	20,942	4,040	20,942	4,040	39,712

Waterstone Properties, Ltd.

The attached notes constitute an inseparable part of the consolidated interim financial statements.

Waterstone Properties, Ltd.**Notes to the Consolidated Financial Statements**

USD in thousands, except as specified otherwise

Consolidated Interim Statements of Cash Flows

USD in thousands, except as specified otherwise

<u>Annex A - Non-Cash Activity</u>	For the 6 months ended		For the 3 months ended		For the year
	June 30		June 30		ended
	2018	2017	2018	2017	December 31
	Unaudited				2017
					Audited
Changes in trade payables with respect to construction of investment property	(416)	1,812	1,076	(522)	(807)
Shareholder's investments	-	879	-	(879)	-
Announced dividend	380	-	103	-	-
Equity adjustment	(1,833)	-	-	-	-

Note 1: General

Waterstone Properties, Ltd. was incorporated on March 7, 2017, in accordance with the provisions of the BVI Business Companies Act, 2004, in the British Virgin Islands, as a private company limited by shares. The Company was founded, inter alia, for the purpose of raising bonds (non-convertible to shares) and listing the bonds for trading on the Tel Aviv Stock Exchange Ltd. (hereinafter: the “Stock Exchange”).

The Company and its subsidiaries (hereinafter: the “Group”) operate in the United States, and are primarily engaged in the rental and betterment of commercial centers and logistical centers. The Company is held, directly and indirectly, by three founding partners: Neal Shalom, Anton Melchionda and Josh Levy (hereinafter: the “Controlling Shareholders”).

As of June 30, 2018, the Company has a working capital deficit in the amount of approximately USD 48 million, which is primarily due to the classification of loan whose balance is approximately USD 20 million, as current due to breach in debt service ratio as of June 30, 2018 (for additional details see Note 8(a)(4) in the consolidated financial statements as of December 31, 2017), and to current repayments of loans which were taken out to finance long term investments which will come due in the coming year. The Company expects to generate cash flows from operating activities and/or to refinance, which will allow in order to cover the balance of the working capital deficit, and to finance other activities.

The Company has successfully negotiated a Lower Debt Service Ratio prior to the date of the Financial Statements. If the Debt Service Ratio was updated prior to June 30, 2018 the Company would of met compliance.

Definitions

In these financial statements -

The Company	- Waterstone Properties, Ltd.
The Group	- The Company and its investees.
Consolidated Companies	- Companies over which the Company has control (as defined in IFRS 10) and whose reports are consolidated with the Company’s reports.
Joint Ventures	- Companies over which the Company has significant influence and/or joint control, and which are reported in the Company’s consolidated financial statements according to the equity method.
Related Parties	- As defined in IAS 24.
Interested Parties and Controlling Shareholder	- As defined in the Securities Regulations (Annual Financial Statements)
USD	- United States Dollars.

Note 2: Significant Accounting Policies

A. Framework for preparation of the consolidated interim financial statements

These financial statements have been prepared in a condensed format as of June 30, 2018, and for the six month period then ended (hereinafter: the “**Consolidated Interim Financial Statements**”). These financial statements should be read in the context of the Company’s annual consolidated financial statements as of December 31, 2017, and for the year then ended, and of the accompanying notes (hereinafter: the “Annual Consolidated Financial Statements”).

The consolidated interim financial statements have been prepared in accordance with International Accounting Standard 34, “Interim Financial Reporting”, and in accordance with the disclosure provisions in accordance with Chapter D of the Securities Regulations (Periodic and Immediate Reports).

The accounting policy and the calculation methods which were applied in the preparation of the consolidated interim financial statements are consistent with those which were applied in the preparation of the consolidated annual financial statements, Except for the following:

Revenue from contracts with customers

In accordance with IFRS 15 Revenue recognition from customer contracts, revenue from contracts with customers is recognized in profit or loss when control of the asset or service is transferred to the customer. Revenue is measured and recognized at fair value of the consideration expected to be received in accordance with the terms of the contract, net of the amounts collected in favor of third parties (such as taxes). Revenue is recognized in profit or loss to the extent that the economic benefits are expected to flow to the Company, and the income and costs, if relevant, can be measured reliably.

In determining the amount of revenue from contracts with customers, the Company examines whether it acts as a major supplier or as a contract agent. The Company is a major supplier when it controls the goods or service promised prior to its transfer to the customer. In such cases, the Company recognizes revenue in the gross amount of the consideration. In cases where the Company acts as an agent, the Company recognizes income in a net amount, net of the amounts due to the major supplier.

- B. The equity adjustment is due to recording twice the amount of approx.. USD 1.8 million, paid in 2017 as part of Westbrook property acquisition. In addition to recording the amount as part of the cost of the property, it was also recorded as due from related party. Since the amount is not material, the revision was recorded in the current period.

Note 3: Fair Value

The fair value of the current loans approximates their book value, due to the fact that the impact of the discounting is immaterial. The fair value of non-current loans at variable interest is very close to their book value. The fair value relative to the book value of non-current loans at fixed interest amounted to a total of approximately USD 261 million and approximately USD 262 million as of June 30, 2018, respectively, and to a total of approximately USD 214 million and

NOTE 3: FAIR VALUE (CONT.)

approximately USD 271 million as of June 30, 2017, respectively, and to a total of approximately USD 269 million and approximately USD 264 million as of December 31, 2017, respectively. The fair value measurement is classified at Level 3 in the fair value hierarchy.

The fair value of the debentures as of June 30, 2018 and as of December 31, 2017 amounted to a total of approximately USD 101 million and approximately USD 124 million, respectively. The fair value measurement is classified at Level 1 in the fair value hierarchy.

Note 4: Information Regarding Operating Segments

The operating segments are reported consistently relative to the internal reporting framework which is reported to the Company's senior management. The Company's senior management, which is responsible for the allocation of resources and the assessment of performance of the operating segments, are the Company's Chairman of the Board, CEO, President and CFO, who are collectively responsible for reaching strategic decisions.

Management has determined that the operating segments are based on the reports which are reviewed by senior management in the implementation of strategic decisions. For this purpose, the Company evaluates the business results of each investment property separately, including the properties which are held through joint ventures. Management has determined that the following types of real estate properties have similar economic characteristics, provide similar services to similar types of customers, and are managed similarly: commercial centers and logistical centers, and therefore, they were presented as operating segments. Other segments were also presented (primarily lands and the construction of a rental residential complex within the framework of a joint venture).

	For the six month period ended June 30, 2018				
	Commercial centers	Logistical centers	Others	Adjustments to financial reports	Total
Rental revenues	19,177	5,846	2,237	(2,577)	24,683
Property operating expenses	5,804	1,294	217	(501)	6,814
Gross profit	13,373	4,552	2,020	(2,076)	17,869
Adjustment to fair value of investment property, net	315	(2,011)	6,150	-	4,454
Company's share in the profits of joint ventures					530
General, administrative and other expenses					1,247
Operating profit					21,606
Financing expenses, net					9,378
Net income					12,228

Waterstone Properties, Ltd.**Notes to the Consolidated Financial Statements**

USD in thousands, except as specified otherwise

Note 4: Information Regarding Operating Segments (CONT.)

	For the six month period ended June 30, 2017				
	Commercial centers	Logistical centers	Others	Adjustments to financial reports	Total
Rental revenues	16,372	3,606	-	-	19,978
Property operating expenses	5,313	188	-	-	5,501
Gross profit	11,059	3,418	-	-	14,477
Adjustment to fair value of investment property, net	(751)	1,700	(259)	(647)	43
Company's share in the profits of joint ventures					(7)
General, administrative and other expenses					662
Operating profit					13,851
Financing expenses, net					11,623
Net income					2,228

	For the three month period ended June 30, 2018				
	Commercial centers	Logistical centers	Others	Adjustments to financial reports	Total
Rental revenues	9,685	2,924	1,305	(1,461)	12,453
Property operating expenses	2,663	656	(79)	(40)	3,200
Gross profit	7,022	2,268	1,384	(1,421)	9,253
Adjustment to fair value of investment property, net	446	(97)	(24)	-	325
Company's share in the profits of joint ventures					341
General, administrative and other expenses					581
Operating profit					9,434
Financing expenses, net					3,434
Net income					5,904

Waterstone Properties, Ltd.**Notes to the Consolidated Financial Statements**

USD in thousands, except as specified otherwise

Note 4: Information Regarding Operating Segments (CONT.)

	For the three month period ended June 30, 2017				
	Commercial centers	Logistical centers	Others	Adjustments to financial reports	Total
Rental revenues	8,226	2,559	-	-	10,786
Property operating expenses	3,060	112	-	-	3,172
Gross profit	5,166	2,447	-	-	7,614
Adjustment to fair value of investment property, net	(69)	201	(38)	(428)	(334)
Company's share in the profits of joint ventures					(7)
General, administrative and other expenses					238
Operating profit					7,035
Financing expenses, net					6,028
Net income					1,007

	For the year ended December 31, 2017				
	Commercial centers	Logistical centers	Others	Adjustments to financial reports	Total
Rental revenues	33,486	9,051	824	(218)	43,143
Property operating expenses	10,427	1,010	299	(69)	11,667
Gross profit	23,059	8,041	525	(149)	31,476
Adjustment to fair value of investment property, net	(894)	4,713	964	68	4,851
Company's share in the profits of joint ventures					24
General, administrative and other expenses					2,396
Other expenses					818
Operating profit					33,137
Financing expenses, net					27,215
Net income					5,922

Waterstone Properties, Ltd.**Notes to the Consolidated Financial Statements**

USD in thousands, except as specified otherwise

Material lessee

The Lessee	Specification of the area and use of rented properties	Income in the six months ended June 30 2018	Percent of the Company's total income in six months ended June 30 2018	Income in the six months ended June 30 2017	Percent of the Company's total income in six months ended June 30 2017	Income in 2017	Percent of the Company's total income in 2017
Bob's Discount Furniture	Stores in shopping centers owned by the Company, logistical warehouse and office building	USD 6.3 million	25.7%	USD 2.7 million	13.7%	USD 6.2 million	21.9%

Note 5: Significant Events During the Reporting Period

A. Acquisition of assets

In January 2018, the Company acquired two real estate properties, as specified below:

New London - The property is located in New London, Connecticut. There is a building on the purchased land, which the Company intends to demolish and in its place to build a commercial building, which will be leased to a material lessee of the Company (Bob's Discount Furniture). The purchase consideration amounted to a total of approximately USD 3.4 million.

Ontario - The property is located in Ontario, California. The purchased property is a commercial property which the Company intends to lease to a material lessee of the Company (Bob's Discount Furniture). The purchase consideration amounted to a total of approximately USD 7.5 million.

B. Announcement of dividend distribution - In January 2018, the Company's Board of Directors approved a dividend distribution in the amount of approximately USD 277 thousand. In addition, in May 2018, the Company's Board of Directors approved an additional dividend distribution in the amount of approximately USD 533 thousand.

C. During the first quarter of 2018 an amount of approximately USD 4.6 million was transferred from a related party to several subsidiaries (mostly for the acquisition a new property, New London). After the end of the reporting period the entire amount was repaid to the related party.

D. Realization of properties

On April 9, 2018, the Company entered into an agreement for the sale of all of its rights to the properties listed below to a third party, as specified below :

- A property known as Manchester CT, which is wholly owned by the Company, in consideration of a total of USD 29 million.
- A property known as 1300 West Bartlett, which is wholly owned by the Company, in consideration of a total of USD 35,324 thousand.
- A property known as 2645 Federal Signal Drive, which is wholly owned by the Company, in consideration of a total of USD 24,341 thousand.

Following the sale of the aforementioned properties, the Company is expected to recognize profit of approximately USD 5 million, and the net cash balance which will arise for the Company due to the aforementioned sale (after neutralization of transaction costs) is expected to be approximately USD 37 million.

The completion of the transaction is conditional upon the fulfillment of standard suspensory conditions, including the performance of due diligence by the buyer.

Note 5: Significant Events During the Reporting Period (CONT.)

E. Adjustment of the rating

On April 29, 2018, S&P Global Ratings Maalot Ltd. (hereinafter: "Maalot") announced a reduction of the Company's issuer rating to 'ilA-', from a rating of 'ilA', and a reduction of the rating of the Company's unsecured bonds (Series A) from a rating of 'ilA-' to a rating of 'ilA', due to erosion of the financial risk profile. Maalot announced that the rating outlook is stable.

Following the aforementioned reduction in rating, the annual interest rate increased by 0.25%, to a rate of 5.95%, beginning on the date of the rating reduction (i.e., as of April 29, 2018).

G. Plan to repurchase of bonds

On May 27, 2018 the Company's Board of Directors approved plan to repurchase series A bonds with an estimated volume of USD 7 million, The period set for implementation of the plan is from 05/28/2018 to 05/31/2019. For details regarding repurchases made after the reporting period, see Note 6 (A) below.

H. Repayment of loan

On June 20, 2018 the company made a full early repayment of a loan in the amount of USD 2.6 million in respect of the property Seabrook that was classified, as of March 31, 2018, as a current liability due to breach the financial covenant with respect to the debt service ratio.

I. Acquisition of non-controlling interests

On June 28, 2018, the Company entered into an agreement with a third party, which holds rights to the following properties: Applewood Plaza ,Brick Kiln Plaza and Portsmouth For the purchase of all of its holdings (15%) in each of the above properties, for a consideration of approximately USD 2.2 million.

Following the acquisition, the Company holds 91.5% of the rights in the properties of Applewood Plaza and Brick Kiln Plaza and all the rights in the Portsmouth property.

As a result of the acquisition, the Company recognized in the capital reserve for transactions with non-controlling interests in the amount of approximately USD 2.3 million.

J. Partial repayment of a loan to related party

On June 29, 2018, partial repayment was made in the amount of approximately USD 3.5 million in respect of a loan to a company controlled by the Company's controlling shareholder in regards with the development of a commercial income-producing property in Newburgh, NY ("the commercial property") in the amount of approximately USD 12 million. The Company was paid an early repayment penalty at the rate of 1% of the amount paid.

Note 6: Significant Events after the Reporting Period

A. Plan to repurchase of bonds

During July 2018, the Company made repurchases of Series A debentures, which amounted to a total of approximately NIS 6.06 million par value, for a consideration of NIS 5.4 million. Which generated a gain from early repayment of approximately USD 112 thousand.

- B. Announcement of dividend distribution - In August 2018, the Company's Board of Directors approved a dividend distribution in the amount of approximately USD 406 thousand.

Section 9 – Technical Capability

Dirigo Center Developers, LLC – Developer

Dirigo Center Developers, LLC is owned and controlled by Waterstone Properties Group, a real estate development company headquartered in Needham, Massachusetts. As the second largest retail developer in New England, Waterstone's portfolio includes office, residential, medical and warehousing/logistics facilities with a strong focus on mixed use and retail developments. With a portfolio of more than 300 national and local businesses across 14 states, Waterstone prides itself on maintaining longstanding, collaborative relationships with our tenants and community partners.

Waterstone's portfolio totals more than seven million square feet of existing space and an additional 3+ million square feet under development. In addition to Rock Row, Waterstone's Maine properties include the Kittery Outlet Center, 340 U.S. Route 1 Kittery, ME and the Scarborough Gallery, 700 Gallery Boulevard Scarborough, ME.

Waterstone has engaged a skilled team of professionals to assist in the permitting and development of Rock Row, including:

Jones & Beach Engineers, Inc. – Civil Engineer and Surveyor

S.W. Cole Engineering, Inc. – Geotechnical/Environmental Engineer

Michael Cuomo – Soil Scientist

Perkins Thompson, PA – Legal/Permitting Counsel

Wakefield Beasley & Associates – Architects

SMMA – Architects/Engineers

A summary of relevant professional experience and professional resumes is enclosed.

Request for Qualifications

Site Plan Design
Westbrook, Maine

Jones & Beach Engineers, Inc.
Civil Engineers & Land Surveyors

Statement of Qualifications

December 30, 2015



JONES & BEACH ENGINEERS, INC.
85 PORTSMOUTH AVENUE
PO BOX 219
STRATHAM, NH 03885

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ALTON, NH 03809

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- Jonathan S. Ring, PE, President
- Bradford A. Jones, Vice President, Senior Construction Services Manager
- Wayne G. Morrill, Jr., Vice President, Senior Project Manager
- Barry W. Gier, PE, Vice President, Senior Project Manager
- David M. Collier, LLS, Survey Manager
- Christopher S. Albert, Certified Wetland Scientist (CWS), Certified Professional in Erosion and Sediment Control (CPESC), Certified Professional in Stormwater Quality (CPSWQ), Licensed Septic System Designer (LSSD), Senior Project Manager

I. COMPANY INTRODUCTION

Since 1977, Jones & Beach Engineers, Inc. (JBE) has provided a wide variety of Engineering and Surveying services to industrial, municipal, commercial, and residential clients throughout New England. The company is a full-service civil engineering design firm with in-house survey. We have valuable experience with residential, commercial, and industrial projects throughout New England. The owners of JBE are working design engineers and will be participating in the project.

With four employee owners, the firm has been able to expand not only its ability to serve clients, but its range of services as well. We have years of extensive experience with Municipal Zoning Ordinances, Site Plan and Subdivision Regulations, Stormwater design and management, surface water quality, wetland resource protection, innovative design (such as bioretention features and porous pavement), constructability, and inspecting contractor work. In the design realm, the company has continued to cultivate its design capabilities through in-house seminars and off-site training.

We have served since 1994 as Town Engineer for Hampton Falls, NH, and we provided consulting and peer review services for the Town of Derry, NH, from June 2008-2011. We also serve as Engineer for the Epping Water and Sewer Commission.

We look forward to consulting with you to assess your professional needs and to explore the ways in which we might be of service. Specific project experience and resumés for key personnel are included for reference.

II. SITE/CIVIL ENGINEERING EXPERIENCE

- **SITE PLANS**

Epping, NH – Brickyard Square

Located at the intersection of Route 101 and Route 125, this 48.67-acre parcel was developed with 277,000 S.F. of retail space and a 5,200 S.F. restaurant. The proposed retail development impacted 7.31-acres of forested wetlands within 29-acres of on-site disturbance; mitigation included a 12.87-acre conservation easement on-site and off-site mitigation of 109-acres. Two detention ponds totaling 90,000 S.F. in size were designed for stormwater management which incorporated the use of Multi-Stage Discharge Structures (MSDS). Jones & Beach Engineers, Inc. (JBE) handled the Federal 401 Water Quality Certificate (WQC), Town Planning Board and Zoning Board of Adjustment Approvals, NHDES Dam Permit, NHDES Site Specific Permit, Existing Conditions Survey, Construction Survey and Construction Supervision.

Reference: Waterstone Retail Development, Inc.
Douglas Richardson
145 Rosemary Street, Suite B
Needham, MA 02494
(781) 559-3301 Ext. 112

Seabrook, NH – Lowe's Home Improvement Warehouse

Located on Lafayette Road (Route 1), this 17.45-acre parcel was developed for a 130,000 S.F. Lowe's Home Improvement Warehouse and a 5,000 S.F. restaurant pad. The parcel was adjacent to Mary's Brook, which is a tributary river to the Cains Mill watershed. Mitigation for the project included preservation of a one acre lot on Cains Mill Pond and river sampling/monitoring before, during and after construction. Jones & Beach Engineers, Inc. (JBE) was responsible for Town Planning Board and Zoning Board of Adjustment approvals, NHDES Dam Permit, NHDES Site Specific Permit, Existing Conditions Survey, Construction Survey and Construction Supervision.

Seabrook, NH – The Home Depot

This 135,000 S.F. Home Depot was designed on a 21-acre parcel on the southerly end of Lafayette Road (Route 1). The project was adjacent to Mill Pond and Boston and Maine Railroad, mitigation for the project included an on-site constructed wetland, wet pond, design of a town park for access to Mill Pond and Route 1 box culvert design with a fish ladder. Jones & Beach Engineers, Inc. (JBE) responsibilities included town Planning Board and Zoning Board of Adjustment Approvals, NHDOT Roadway Design, NHDES Dam Permit, NHDES Site Specific Permit, Existing Conditions Survey and Construction Survey and Construction Supervision.

Epping, NH – New England Dragway

New England Dragway is located on a 300+ acre site on the north side of Route 27. Jones & Beach Engineers, Inc. (JBE) has been the site engineer for the track since 1977. Past approvals have included NHDES Site Specific Permits and Subsurface Disposal Designs. In 2008, the track constructed a parking area on a nine-acre section of land and filled approximately two-acres of

wetlands without permits. Working in conjunction with West Environmental, Inc. JBE permitted the fill of the wetland with mitigation of a 24-acre conservation easement and 13-acre wetland mitigation area. The design of a gravel wetland and conversion of a section of the pit area to porous pavement were key components of the design that obtained a Federal 401 Water Quality Certification (WQC), Army Corps of Engineers, and NHDES Alteration of Terrain Permits.

Stratham, NH – Shaw's Supermarket

Shaw's at Stratham Crossing is an 80,000 S.F. Shaw's Supermarket that anchors this commercial development, which includes pad sites for a restaurant and bank. The stormwater detention facilities double for on-site fire protection requirements. The adjacent brook and nearby tidal river were permanently protected with conservation easements totaling 70-acres.

Epping, NH – Eppicenter

Located between Main Street and NH Route 125, the Eppicenter is situated at the hub of one of the fastest growing commercial markets in the state. Comprised of a 12,124 S.F. strip center and a detached 1,766 S.F. Starbucks coffee shop, the project required the complete redevelopment of the highly visible 1.11-acre site. Once a local restaurant and an abandoned gas station, the location is now characterized by upscale architecture and verdant landscaping. With extensive client involvement, Jones & Beach Engineers, Inc. (JBE) worked diligently to maximize the site's yield while maintaining its functionality and appeal. The result is a valuable addition to Epping's emerging retail district and a welcome enhancement to the vitality of the local economy.

Epping, NH – Epping Crossing

Jones & Beach Engineers, Inc. (JBE) served as surveyor for the 200-acre property and site design engineer for the 220,000 S.F. four building industrial portion of the development. Working with other consultants for the retail phase, complete site and utility plans were prepared to provide municipal services from off-site. An extensive wetland mitigation package was developed by the team of consultants to impact more than 9-acres of man-created wetlands.

Developer: Realty Acquisitions
Ms. Susan J. Conway and Mr. Mark Stevens
PO Box 432
Stratham, NH 03885
(603) 778-7521

North Windham, ME – Lowe's, Home Improvement Store

North Windham Properties, LLC, proposes to construct a large-scale commercial development on a 23.75-acre parcel of land located to the west of Manchester Drive in North Windham, ME. A drainage analysis of 60.77-acres of the site and its offsite contributing watershed areas was conducted for the purpose of estimating the peak rates of stormwater run-off and to subsequently design adequate drainage structures. Two models were compiled, one for the area in its existing (pre-construction) condition, and a second for its proposed (post-construction) condition. The analysis was conducted using data for the 2 Yr. - 24 Hr. (3.0"), 10 Yr. - 24 Hr. (4.7"), and 25 Yr. - 24 Hr. (5.5") storm events using the USDA SCS TR-20 method within the HydroCAD Stormwater Modeling System environment.

The proposed site development consists of a 138,134 S.F. building with a 31,659 S.F. garden center, accessways, parking lots, and associated drainage structures. These improvements will, together with other proposed site conditions, divide the area into forty-two subcatchments. One additional subcatchment (#73) was included in the model in order to simulate the development of three-acres of impervious surfaces in the area to the north of Landing Road. This was done so as to design the drainage infrastructure to accommodate the potential future development of the site's remaining land. The run-off from these subcatchments, increased from that of the existing conditions due to the addition of 12.61-acres of impervious surfaces, will be directed by way of curbing and grading to a drainage system consisting of culverts, catch basins with sumps and grease hoods tributary to drain manholes and a trunk line, two detention ponds (one of which is designed as a constructed wetland), and vegetated swales so as to reduce peak rates of run-off and provide proper treatment so as to minimize any potential for site-generated storm water to impact off-site areas.

Ellsworth, ME – Lowe's, Home Improvement Store

Jones & Beach Engineers, Inc. (JBE) designed the Site Plan used by Topsfield Real Estate Corporation to construct a Lowe's Home Improvement Warehouse on a 17.81-acre parcel of land located in the previously permitted "King Property Commercial Subdivision" on Kingsland Crossing off of U.S. Route 3 in Ellsworth, ME. A drainage analysis of 58.15-acres of the site and its off-site contributing watershed areas was conducted for the purpose of estimating the peak rates of stormwater run-off and to subsequently design adequate drainage structures. Two models were compiled, one for the area in its existing (pre-construction) condition prior to the aforementioned Commercial Subdivision, and a second for its proposed (post-construction) condition. The analysis was conducted using data for the 2 Yr. - 24 Hr. (2.7"), 10 Yr. - 24 Hr. (4.2"), 25 Yr. - 24 Hr. (4.9"), and 50 Yr. - 24 Hr. (5.4") storm events using the USDA SCS TR-20 method within the HydroCAD Stormwater Modeling System environment. A summary of the existing and proposed conditions peak rates of run-off is as follows:

Prior to the commencement of the Commercial Subdivision, the project site was comprised of woodland, portions of field, wetlands, and a cell tower and was bordered by U.S. Route 3, Beechland Road, forest, and a number of offsite developments that included accessways, and paved and gravel parking lots. Impervious surfaces in and around the site totaled 8.54-acres, and slopes ranged from flat to nearly 20%. Soil classifications were taken from the previous plans done by WBRC of Bangor, Maine, who obtained them from a Class B High Intensity Soils Survey performed by S.W. Cole Engineering and a Class D Hancock County Medium Intensity Soil Survey. These studies defined the majority of the site's soils as Hydrologic Soil Group (HSG) C with a few small sections of HSG D. Existing topography divided the site into eleven subcatchments, all of which drained off-site by way of overland routes or existing stormwater infrastructure. For the purposes of this analysis, it was analyzed

at four points: at Beechland Road (Reach #100), at the western property line in a forested wetland (Reach #200), at the northern property line (Reach #300), and at a culvert that crosses U.S. 3 to the east (Reach #400).

As a part of the previous plan set, WBRC prepared a drainage analysis of both the existing and proposed conditions of the subdivision, the later being a “full build-out” scenario that provided for future development (of which this proposal is a part). However, given the scale of the Lowe’s proposed conditions and the complexity of its drainage system, the required modeling assumptions were vastly different than WBRC’s, especially where storm sewers and associated tailwater was concerned. As such, although limited amounts of the data found in the previous document were utilized in this publication (particularly the “future” impervious surfaces credited to the site’s stormwater infrastructure), the majority was discarded in favor of a new analysis for both the existing and proposed conditions.

The proposed Lowe’s site development consisted of a 138,672 S.F. home improvement store with an attached 31,689 S.F. fenced-in Garden Center, and associated accessways, parking, and infrastructure. These improvements, together with other site conditions being constructed as part of the surrounding subdivision, divided the area into forty-five subcatchments. The run-off from these subcatchments, increased from that of the existing conditions due to the addition of 19.86-acres of impervious surfaces (17.08-acres of which were contemplated in the WBRC analysis), will be directed to both the subdivision’s drainage system and a new system exclusively for Lowe’s. The subdivision’s system (currently under construction), included a drainage system comprised of swales, culverts, catch basins, and drain manholes tributary to a detention pond that was designed to handle 23.16-acres of impervious area and 12.86-acres of non-impervious area. The Lowe’s system will consist of offline catch basins with sumps and grease hoods tributary to drain manholes and trunk lines, and a retention pond intended to detain and treat 219.51% of the areas that are in excess of that which was previously permitted (6.11-acres of impervious and 0.73-acres of non-impervious where only 2.78-acres of impervious and 0.50-acres of non-impervious are required to match the previous plan). Taken together, these improvements served to reduce peak rates of run-off so as to minimize any potential for site-generated storm water to impact off-site areas.

As the above table demonstrates, the proposed peak rates of run-off were decreased from those found in the existing conditions at the analysis points in all analyzed cases, thereby minimizing any potential for a negative impact on abutting properties by allowing for better control of stormwater run-off.

In addition, the potential for increased erosion and sedimentation was handled by way of erosion control blankets, swales, sedimentation sumps, grease hoods, a retention pond, riprap stabilized swales, riprap inlet and outlet protection aprons, and a number of temporary measures such as silt fence (or organic filter berms), mulching, dust control, catch basin inlet protection measures, and stabilized construction entrances. The use of Best Management Practices per the MEDEP *Maine Erosion and Sedimentation Control BMP’s* handbook have been applied to the design of these structures and were observed during all stages of construction. All land disturbed during Lowe’s construction was temporarily or permanently stabilized within forty-five days of groundbreaking, and existing wetlands and abutting property owners suffered minimal adversity resultant of this development.

III. COMPANY SERVICES

Jones & Beach Engineers, Inc. (JBE) is a full-service Civil Engineering and Land Surveying Company providing a wide range of services, including the following:

- Site Plan and Subdivision Approvals from Municipalities.
- Wetland Delineations and Assessments.
- State and Federal Permit Applications and Approvals for Wetland Impacts, Stormwater Design, Sanitary Sewer Discharges, State Highway Permits and USEPA Phase I and II Permits.
- Roadway and Stormwater Drainage Analysis and Design.
- Property Condition Assessment and Reports for Mobile Home Communities.
- Local and State Highway Erosion Control Inspections.
- Stormwater Management and Hydraulic Studies.
- Wastewater and Water System Design and Modeling.
- Porous Pavement and Water Quality Design.
- Town Engineer Services (Hampton Falls, NH).
- Municipal Building and School Site Design and Review Services.
- Residential and Commercial On-Site Effluent Disposal Systems.
- Grant Writing and Application Submissions.
- Phase I and II Hydrogeologic Studies, Landfill Closure Design, and Permitting.
- Boundary Surveys.
- Existing Conditions Surveys.
- GPS Control for Aerial Photography Mapping.
- ALTA/ACSM Land Title Surveys.
- As-Built Surveys.
- Utility Route Surveys.
- Robotic and Global Positioning System (GPS) Instrumentation to Sub-Centimeter Accuracy.
- Plot Plans, Flood Elevation and Foundation Certificates.

- Construction Services, Survey Layout, Inspections and Cost Estimating.
- Solicitation and Preparation of Construction Documents and Specifications.

IV. PERSONNEL QUALIFICATIONS

- **Jonathan S. Ring, PE, President**
- **Bradford A. Jones, Vice President, Senior Construction Services Manager**
- **Wayne G. Morrill, Jr., Vice President, Senior Project Manager**
- **Barry W. Gier, PE, Vice President, Senior Project Manager**
- **David M. Collier, LLS, Survey Manager**
- **Christopher S. Albert, Certified Wetland Scientist (CWS), Certified Professional in Erosion and Sediment Control (CPESC), Certified Professional in Stormwater Quality (CPSWQ), Licensed Septic System Designer (LSSD), Senior Project Manager**

JONATHAN S. RING, P.E.
PRESIDENT

Mr. Ring became a Licensed Professional Civil Engineer in 1989 and practices in the states of New Hampshire, Maine, and Massachusetts. He obtained an MS Degree in Civil Engineering from the University of New Hampshire in 1985 and a BA in German from UNH in 1976. He is a NH Licensed Septic System Designer.

Mr. Ring was first employed with the Kimball Chase Company in Portsmouth, NH, beginning as Site Design Engineer and quickly becoming a Project Manager of Subdivisions and Site Plans. He specialized in drainage, roadway and site design, with projects ranging from two-lot residential subdivisions to a 350-lot mobile home park with municipal water and sewer. Site Plans included the 200-unit River Woods at Exeter elderly residential community, 100,000 S.F. Rockingham County Court House, and a 371,000 S.F. retail center.

In April of 1996, Mr. Ring joined Jones & Beach Engineers, Inc. (JBE) as Senior Project Engineer, where he performed quality control plan reviews and continued his work as designer and Project Manager of various developments. Communities in which he has worked range from Kennebunkport and Wells, Maine, to Belmont, Concord, Exeter, Peterborough, Manchester, and Salem, NH, and Hyannis, Massachusetts. In 2001, he became an owner of the firm and President.

He is known for attention to detail, communication, teamwork on projects, and public presentation skills. As a six-year member and former chairman of the Exeter Planning Board, he has experienced both sides of the table. He has prepared and served as a professional witness on behalf of the Town of Hampton Falls and several private companies.

He is Chairman of the Exeter Area Chamber of Commerce Board of Directors and a member of ASCE, GSDI, NSPE, NAACP, SAACC, the NH and Rockingham County 4-H Foundations, and the Bahá'í Faith.

Project Highlights:

- Londonderry, NH: Lorden Commons – Phase 1 Conservation Subdivision with 50 single-family lots and 3,600 L.F. of roadway (total project 133-lots) ~ Project Manager
- Hampton Falls and Derry, NH: More than 30 Engineering and Plan Reviews of residential subdivisions and commercial site plans for Planning Boards.
- Stratham, NH: 150,000 S.F. Cooperative Middle School ~ Project Manager and Site Designer
- Exeter, NH: Exeter Hospital campus including the 60,000 S.F. Synergy Fitness Center, 600 vehicle Parking Garage, and 120,000 S.F. Center for Ambulatory Care and Medical Office Building ~ Project Manager
- Epping, NH: "Epping Crossing", a 4 lot, 220,000 S.F. of buildings and Industrial Park site with subdivision development off Route 125 ~ Principal-In-Charge

- Exeter, NH: Forest Ridge Open-Space Conservation Subdivision with 59 single-family lots and 36 multi-family units, including 20-units of Workforce Housing, and 10,000 L.F. of road ~ Project Manager
- Exeter, NH: St. Michael Parish Campus with a 15,500 S.F. Church and 9,300 S.F. Parish Center, and accessory structures with porous pavement and Low Impact Design (LID) ~ Principal-In-Charge
- Alton, NH: Woodlands Subdivision with 49-units on 21 residential lots and 6,200 L.F. of road ~ Project Manager

BRADFORD A. JONES
VICE PRESIDENT / SENIOR CONSTRUCTION SERVICES MANAGER

Mr. Jones attended the University of New Hampshire Thompson School for two years of Civil Engineering Technology. He holds a NH Installer's License for Septic Systems.

Mr. Jones began working in the engineering field at the age of 18 as a survey rod man, moved rapidly to crew chief, designer, and construction inspection. He spent five years at Midway Excavators gaining valuable experience in the field. In 1987, Mr. Jones began full-time employment at the family business bringing expertise in design review for constructability, cost estimation, site inspection, and field survey. In 2000, he became an owner of the firm and was named a Vice President.

Mr. Jones is extremely competent in the areas of road and site construction management and inspection, land development including roadway, drainage, fire cisterns, water and sewer systems, and subsurface disposal septic systems. Construction and contract maintenance provide invaluable tools for clients.

Project Highlights:

- Maplevale 36-lot Subdivision in East Kingston, NH, Mitchell Road Residential Subdivision in Nottingham, NH, Home Depot in Seabrook, NH, Chisholm Farms Subdivision in Stratham, NH, and Windsor Meadows Condominiums ~ Construction Manager and Inspector
- Epping, Seabrook, Hampton, Concord, NH, and Salisbury, Amesbury, Lynn, MA: CVS Pharmacy ~ Inspector for sites with parking, access drives, utilities, and drainage
- North Windham, ME: LOWE's Home Improvement Warehouse development site ~ Construction Inspector and Manager for the Developer
- Barrington, NH: 93,000 S.F. Turbo Cam International light industrial manufacturing facility with on-site and off-site improvements including access roadways, porous pavement parking, drainage, utilities and on-site sanitary sewer ~ Construction Inspector
- Epping, NH: 30,092 S.F. Exeter Hospital Medical Office Building ~ Inspector for all site work construction including porous pavement
- Seabrook, NH: Sewer Main Contracts 3, 8 and 10, and PSNH Seabrook Power Station sewer connection. This work included 6 sewage pumping stations ~ Resident Construction Inspector
- Merrimack, NH: 150,000 GPD sewage pumping station and a 200+ unit residential development located in Bedford, NH ~ Construction Inspector
- Hampton Falls, NH: Spring Hill Subdivision, Field Stone Estates, The River at Heron Landing, Starvish Lane, and Linden Road Subdivision ~ Construction Inspector

WAYNE G. MORRILL, JR.
VICE PRESIDENT / SENIOR PROJECT MANAGER

Mr. Morrill attended the New Hampshire Technical Institute in Stratham and received his Associates Degree in Electro-Mechanical Drafting in 1988. He is proficient in the use of computer programs such as AutoCAD and Land Desktop Development. He is a NH Licensed Septic System Designer, Evaluator and Installer.

In 1988, Mr. Morrill joined Jones & Beach Engineers, Inc. (JBE) as a CAD Technician. As a Project Supervisor his responsibilities include, but are not limited to, project management, cost analysis, site inspection, design of subdivisions and commercial development plans, and municipal and state presentations. In 2001, he became an owner of the firm and was named a Vice President.

Mr. Morrill is extremely competent in all areas of project management and development. He is innovative, bright, dependable and thorough, paying close attention to detail. He has excellent rapport with clients, working closely with them, and quickly gaining their trust. He acts as a representative for clients at Planning Board Meetings, Zoning Board Hearings and during project negotiations.

Project Highlights:

- Seabrook, NH: 135,318 S.F. Home Depot Retail Development on Route 1 ~ Project Manager and Site Designer
- North Windham, Ellsworth and Thomaston, ME: 165,000 S.F. Lowe's Home Improvement Stores ~ Principal-In-Charge
- Seabrook, NH: 150,000 S.F. Lowe's Home Improvement Warehouse Development on Route 1 ~ Project Manager and Site Designer
- Seabrook, NH: 12-lot Industrial Park with 1,025 L.F. of roadway on Ledge Road ~ Project Manager and Site Designer
- Seabrook, NH: 90,000 S.F. Kohl's Department Store, an attached 12,500 S.F. Retail Space, a 5,495 S.F. Restaurant, and associated access-ways and parking ~ Principal-In-Charge
- Lynn, MA: 13,013 S.F. CVS Pharmacy with associated parking, drainage and utilities ~ Principal-In-Charge
- Epping, NH: Brickyard Square of Epping was completed in three phases. Phase 1 was a 77,232 S.F. Retail Building with associated parking, drainage and utilities. Phase 2 was a total of 89,040 S.F. comprised of 20-Retail Building Units with associated parking, drainage and utilities. Phase 3 was a total of 110,676 S.F. comprised of 3 Retail Buildings and a Cinema with associated parking, drainage and utilities ~ Principal-In-Charge
- Concord, NH: 13,225 S.F. CVS Pharmacy and a 2,598 S.F. Burger King Restaurant with associated driveway, drive-thrus, parking, drainage and utilities ~ Principal-In-Charge
- Amesbury, MA: 13,225 S.F. CVS Pharmacy with associated parking, prescription drive-thru, drainage and utilities and 2,500 S.F. Mansard Mixed Use Building ~ Principal-In-Charge
- Brentwood, NH: 19,097 S.F. Tractor Supply Building and 15,000 S.F. Outdoor Fenced Merchandise Display Area, with associated parking, utilities and drainage ~ Principal-In-Charge

- Barrington, NH: 93,000 S.F. Turbo Cam International light industrial manufacturing facility with access roads, porous pavement parking lots, on-site sanitary sewer, LID features ~ Principal-In-Charge

BARRY W. GIER, P.E.
VICE PRESIDENT / SENIOR PROJECT MANAGER

Mr. Gier graduated from the University of Kansas in 1997 with a BS Degree in Civil Engineering. He is a Licensed Professional Civil Engineer in the State of New Hampshire.

Mr. Gier joined Jones & Beach Engineers, Inc. (JBE) in 2011 bringing more than fifteen years of experience with him. Given his level of expertise, accuracy and attention to detail, he is an extremely valuable resource. He began his career working with Civil Engineering firms developing site plans and subdivisions. He also worked on numerous Regional Airport projects involving Runway Designs and Construction, Safety Area Construction, and Wildlife Area Mitigation. He has extensive knowledge and experience with Roadway Design, Stormwater Design, Sanitary Sewer Design, Water Distribution System Design, Airport Design, Waste Water Treatment Plant Design, Construction Specifications and Construction Monitoring, and Stormwater Field Inspections. He has also handled Federal, State, and Local permitting for various public and private projects in addition to coordination with Regulatory Agencies, Municipal Officials, Commissions and Boards. His duties include the planning, designing and tracking of cost-estimates for building structures and facilities, including parking areas, water and sewer systems, and drainage facilities, as well as handling environmental permitting.

Project Highlights:

- Stratham, NH: MBRAUN Site Design, Engineering and Permitting of 14,000 S.F. building addition with access, parking, and drainage revisions ~ Project Engineer and Site Designer
- Barrington, NH: 93,000 S.F. Turbo Cam International Corporate Headquarters and manufacturing facility with associated parking, utilities and drainage ~ Project Manager and Engineer
- Barrington, NH: Convenience Store/Gas Station Site Design, Engineering and Permitting ~ Project Engineer and Site Designer
- Hampton, NH: 8-Lot Subdivision including a 500 L.F. roadway, municipal sewer and water, and gravel wetland stormwater system ~ Project Engineer and Site Designer
- Hampton, NH: Multi-Family Residential Development including two 9,000 S.F. buildings and parking ~ Project Engineer and Site Designer
- Exeter, NH: Exeter Hospital Site Plan Engineering of a 13,000 S.F. building addition with access, parking and drainage revisions ~ Project Engineer and Site Designer
- Seabrook, NH: Route 1 Commercial Development ~ Project Engineer and Site Designer
- Dover, NH: Exit 9 Professional Office Project including an 80,000 S.F. building, parking, and underground detention system ~ Project Manager and Site Designer
- Dover, NH: Thornwood Commons / Thornwood Village, 100-Acre Mixed-Use Development including 3,000 L.F. of roadway with Round-About, 20-acres of single-family residences, 25-acres of commercial/office use, existing dam redesign, and automotive dealership design ~ Project Manager and Site Designer

- Portsmouth, NH: Pease 153, 155 and 157 International Drive, Multi-Building Office Park including LEED Site Design ~ Project Manager and Site Designer
- Somersworth, NH: High Street Retail Center, Commercial Complex ~ Project Manager and Site Designer
- Dover, NH: 9-Lot Subdivision ~ Project Manager and Site Designer

DAVID M. COLLIER, L.L.S.
SURVEY MANAGER

Mr. Collier attended Old Dominion University-College of Engineering and Technology where he studied Land Surveying and he continued his studies at the University of New Hampshire. He became a Licensed Land Surveyor in the State of New Hampshire in 2001. His professional affiliations include the New Hampshire Land Surveyor's Association, where he has served as President, as a member of the Executive Committee, and as Liaison to New Hampshire Register of Deeds Association and the New Hampshire Planners Association. He is a member of the New Hampshire GPS Consortium, where he served as Director from 2004-2005, and of the Alton Planning Board, where he currently serves as Chairman. He also received the New Hampshire Land Surveyor's Association Survey Excellence Award in 2009.

Mr. Collier joined Jones & Beach Engineers, Inc. (JBE) in 2011 bringing with him more than twenty years of surveying experience while working at Richard D. Bartlett & Associates. While there he served as Project Manager and Vice President overseeing many different projects involving all types of surveying including Boundary Surveys, Topographic Surveys, Subdivisions, Lot Line Adjustments, Construction Layouts, and Elevation Certifications. The City of Concord exclusively used the firm as the surveyor for the City and Mr. Collier oversaw several of these projects and worked directly with City Officials to provide existing conditions plans for on-staff City Engineers to prepare designs.

Mr. Collier has first-hand experience and understanding of the Land Survey process from the initial research and field survey work, to the drafting and preparation of final documents for recording. He also has experience managing day to day field and office operations.

Project Highlights:

- Seabrook, NH: Kohl's Department Store, ALTA Land Title Survey of 13-acres ~ Project Manager, Land Surveyor
- Epping, NH: Brickyard Square at Epping, Construction Layout, Coordination of Horizontal and Vertical Control ~ Project Manager, Land Surveyor
- Hooksett, NH: Wal-Mart ACSM/ALTA Land Title Survey of 21-acres and corridor survey of 2,000 L.F. of roadway ~ Project Manager, Land Surveyor
- Concord, NH: Topographic and Right-of-Way Survey for 4-mile Roadway Improvement Project ~ Project Manager, Land Surveyor
- Isles of Shoals, White Island, NH: As-Built Survey of Piling Locations for Catwalk Restoration ~ Project Manager, Land Surveyor
- Hampton, NH: Boundary Survey of 8.56-Acre parcels on Juniper Lane ~ Land Surveyor
- Gilford, NH: Boundary and Topographic Survey of 21.56-Acre parcel and 1,700 L.F. Right-of-Way Survey ~ Land Surveyor
- Seabrook, NH: Boundary, Topographic, and ACSM/ALTA Land Title Survey of 1.08-Acre parcel along Route 1 ~ Land Surveyor

- Allenstown, NH: Boundary and Topographic Survey of 5.03-Acre NHDOT surplus parcel ~ Land Surveyor

CHRISTOPHER S. ALBERT, CWS, LSSD, CPESC, CPSWQ SENIOR PROJECT MANAGER

Mr. Albert joined Jones & Beach Engineers, Inc., in 2007 bringing more than 20 years of experience in municipal design, permitting, and construction management. He is a graduate from the University of New Hampshire with a BS in Forestry Science and a minor in Soils. He is a Certified Wetland Scientist, Certified Professional in Erosion & Sediment Control and Stormwater Quality, Certified Water System Operator Grade 1A, and a NH Licensed Septic System Designer and Granite State Septic System Certified Evaluator. He is certified by OSHA for the 40 Hour Hazardous Site/Safety Trainer, confined space and is a 40-hour supervisor trainer. Mr. Albert is the former President of the New Hampshire Association of Natural Resource Scientists (NHANRS). Mr. Albert is also the Representative for the Town of Epping's Southeast Watershed Alliance (SWA) and the Chairman to the Non-point Source Advisory Committee for the Granite State Designers and Installers (GSDI). He has recently been appointed by the Governor to the NH Joint Board of Natural Resource Scientists.

Project Highlights:

- Allenstown, NH: Olde Towne Homeowners Cooperative – Design Engineer and Project Manager for the installation of a second well source, new 20,000 gallon atmospheric tank, uranium and radon treatment system, and new variable speed pumps in a new mechanical room. Project funded under the 2009 ARRA DWSRF loan program.
- Candia, NH: Hillcrest Apartments Water System Upgrade – Design Engineer and Project Manager for the Pump House Upgrade. Project included a new 6,000 gallon atmospheric storage tank with a new electrical and mechanical system. Project funded by the DWSRF loan program and listed in the 2012 Report.
- Pelham, NH: Old Lawrence Road – Design Engineer and Project Manager for the Water System Upgrade. Project entailed the construction of a new well house building with a 5,000 gallon atmospheric tank, Kinetico Treatment System, new mechanical and electrical systems.
- Cambridge, MA: MIT Westgate Apartments – Water System Upgrade – Design Engineer for the design and construction of a new water system loop around Westgate Apartments.
- Exeter, NH: Exeter River Landing – Water System Upgrade – Design Engineer and Project Manager for the Well House Upgrade. Project in the early design phase for the upgrade of the existing well house with a new 20,000 gallon atmospheric tank, Green Sand Filter system with variable speed pumps, electrical MCC panel and mechanical piping.
- Evans Mobile Home Park, Epping, NH – Prepared NHDES Drinking Water Record Drawing Plans. Currently working on an Engineer's Opinion of Cost to tie into Municipal Water and Sewer abandoning the existing Public water System and on-site leachfields.
- State of NH, Mountain Top Projects – Design Engineer and Manager on four sites in New Hampshire for the design of new generators, building enclosures, telecommunication building, State and Federal FCC and FAA permitting. Generators fueled by propane. Coordinated with Mechanical and Electrical Engineers on design. Current knowledge of NFPA 37 and 58.

- Newfields, NH: Village Water and Sewer Commission and Board of Selectmen – Design Engineer for the Bald Hill Road culvert replacement. Design Engineer for the sidewalk design along NH Route 87 for the Town. Construction management on the NH Route 85 bridge waterline design and installation, coordinated work with NHDOT. Preliminary Design and well-siting report for the Goldsmith Well.
- Epping, NH: Water and Sewer Commission and Board of Selectmen: Design Engineer and construction manager for the Prescott Road culvert replacement. Construction Manager for a 500,000 gpd Wastewater Treatment System Upgrade; the WWTF entailed a Zenon bio-membrane filtration system. Formation of the Operations and Management manual for treatment plant and coordination with plant operators; Project Engineer for the Mill Street Pump Station; Project Manager and QC and QA review on-site and structural construction for the 300,000 gallon elevated steel water storage tank, managed sub-contractors and negotiated contracts for the Commission; Hoar Pond Well #2 final DES report, installation and commissioning; Project Engineer for the NH Route 125 water and sewer infrastructure improvements and construction of the NH Route 125 sanitary sewer pump station upgrade; Town engineering review for sewer and water site plan review and inspections for developmental projects in Town ~ Project Engineer, Site Designer & Construction Manager.
- Dorchester, NH, North Dorchester Road: Recently completed the topographic survey and wetland delineation. Project Manager for the replacement design of (2) 6-foot diameter CMP culverts on Rocky Brook.
- Bow, NH, Bow Bog Road: Design Engineer and Project Manager. Contract administrator and inspector for the construction phase.
- Warren, NH, Baker River Restoration: Design Engineer and Project Manager for multiple projects along the Barker River. Assisted in disaster relief and repairs to two bridges after Tropical Storm Irene. Pavement and Culvert inventory plan.
- Barrington, NH: Project Manager for the pavement and culvert inventory for the Town Roads.

IAN S. MACKINNON, E.I.T., CPESC-IT

PROJECT ENGINEER

Mr. MacKinnon graduated from the University of New Hampshire (UNH) in 2015 with a BS in Civil Engineering with a minor in Architectural Studies. He is currently certified as an Engineer-In-Training and a Certified Professional in Erosion & Sediment Control (In-Training).

Mr. MacKinnon joined Jones & Beach Engineers, Inc. (JBE) in December 2015 as an intern engineer. Upon graduation from UNH in May 2015 he joined the company full-time. Since joining the company he has worked on numerous large-scale commercial projects that involved all aspects of site, utility & drainage design. Given his attention detail, Mr. MacKinnon has completed designs for many small to medium-scale commercial and residential projects working with clients, municipalities, and the state to develop the projects in an efficient manner. In his short time with the company he's had the opportunity to manage projects in the planning, design, and permitting phases. Some of Mr. MacKinnon's project duties include the design of parking areas, water & sewer systems, drainage facilities and permitting that includes local, state, and environmental permits.

Project Highlights:

- Westbrook, ME: Dirigo Plaza Retail Development, 400,000 S.F. of multi-building retail development including re-utilization of existing quarry as detention. ~ Project Engineer
- Hillsborough, NH: Weatherstone Crossing Retail Development – Wal-Mart Retail Development. Design included new pump station design, water booster pump station, flood plain mitigation, wetland mitigation with 600,000 cu. of earthwork. ~ Project Engineer
- Hudson, NH: Morgan Rd Commercial Development – CVS Pharmacy development with design for a future convenience store & fueling station and future restaurant. Design included water & sewer design, stormwater design, and state permitting ~ Lead Project Engineer
- Somersworth, NH: NH Liquor Store – Design of a new state liquor store location involving the renovation and expansion of an existing historic carriage house. Project involved state & local permitting to mitigate impact to adjacent municipal water source through innovative stormwater management. ~ Lead Project Engineer
- Seabrook, NH: Restaurant Development – Design & permitting of Burger King restaurant located on the corner of a town owned road and state highway. Compact site design required innovative grading solutions to manage stormwater treatment. ~ Lead Project Engineer
- Wrentham, MA: Commercial Development – Design of a re-development project to construct a CVS Pharmacy and Cumberland Farms on land previously occupied by an existing gas station & vehicle repair shop. Coordinated with environmental consultant to mitigate the spread & disturbance of contaminated soils. ~ Lead Project Engineer
- Epping, NH: Industrial Subdivision & Site Plan Design – Design & permitting of a 5-lot industrial/commercial subdivision on 27-acres with site plan approval for multiple lots. Design components consisted of water & sewer design, stormwater treatment design, and phased construction planning. ~ Lead Project Engineer

Michael Cuomo, Soil Scientist

6 York Pond Road, York, Maine 03909

(207) 363-4532

mcuomosoil@gmail.com

Education

Bachelor of Science in Soil Science, Univ. of New Hampshire, Magna Cum Laude, 1985. Minors: Resource Economics and Geography.

Master of Science in Soil Science, Univ. of New Hampshire, 1992.
Thesis: *Analysis of Subjectivity in a Multiple Parameter Wetland Evaluation Method.*

Publication:

Keys to the Taxonomic Classification of New England Soils;
Sidney A.L. Pilgrim and Michael Cuomo, editors; Dec. 2000.

Professional Licenses

Maine Cert. Soil Scientist #211;

Maine Lic. Site Evaluator #211;

New Hampshire Cert. Soil Scientist #006;

New Hampshire Cert. Wetland Scientist #004; and

New Hampshire Lic. Designer of Subsurface Wastewater
Disposal Systems #788.

Professional Organizations

Society of Soil Scientists of Northern New England; Current
President, past Vice Pres., Secretary, and Treasurer.

Maine Assoc. of Wetland Scientists; founding member and past
Secretary/Treasurer.

Maine Association of Professional Soil Scientists.

Maine Association of Site Evaluators.

New Hampshire Association of Natural Resource Scientists;
founding member, past Secretary/Treasurer; currently serving
on Professional Ethics and Standards Committee.

Work Experience

1985 - 1989 Soil Scientist, The Barwick Companies, South
Berwick, ME. Primary responsibility: high intensity
soil survey.

1989 - 1990 Wetland/Soil Scientist, Eco-Analysts, Bath, ME.
Primary responsibility: wetland delineation.

1990 - present Self-employed. Primary focus: wetland delineation
and high intensity soil survey for private
landowners, developers, and industry. Site
evaluation. Secondary focus: providing technical
assistance to towns.

Current scope of services: identifying and delineating regulated
wetlands; assessment of wetland functions and values; high
intensity soil survey; environmental feasibility of development
studies; on-site wastewater disposal feasibility studies; and
project management.



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Subsurface Investigations for Foundations, Slopes, Ground Improvement, Subsurface Infiltration, Pavement

- Geotechnical Feasibility Studies
- Subsurface Investigations
- Post-Construction Settlement Evaluations
- Spread Footing Design Parameters
- Deep Foundation Engineering and Design
- Ground Improvement Engineering
- Excavation and Dewatering Consulting
- Retaining Wall and Slope Stability Analyses
- MSE Retaining Wall Design
- Pavement Engineering and Design
- Geotechnical Laboratory Testing

CONSTRUCTION MATERIALS TESTING

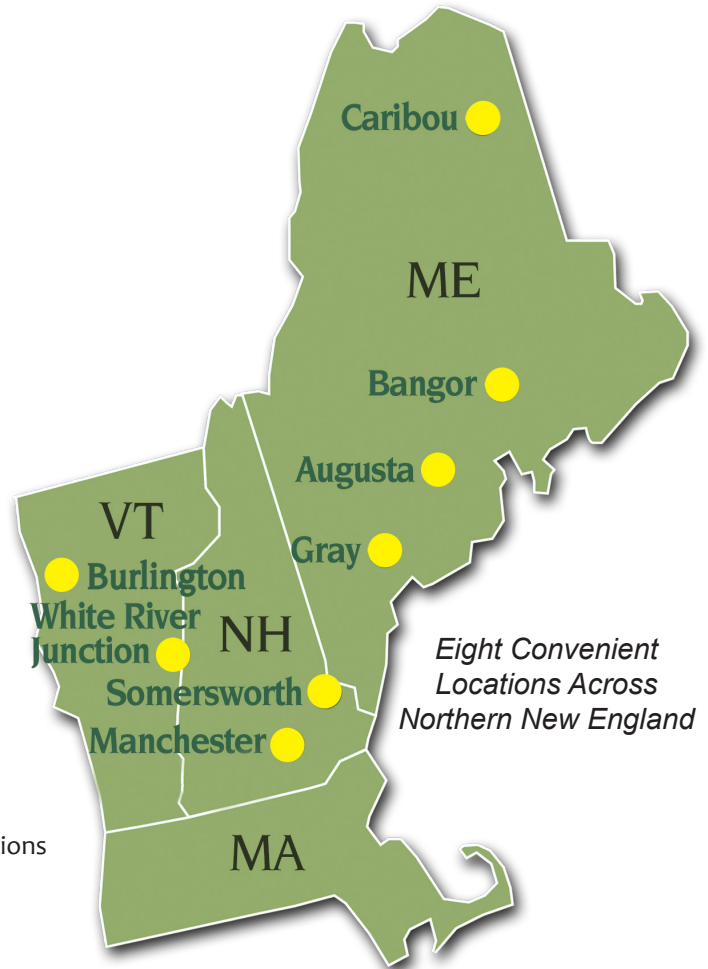
Soil, Concrete, Grout, Blasting

- Construction QA / QC Programs and Monitoring
- Earthwork Observations and Compaction Testing
- Soil / Aggregate Sampling and Testing
- Reinforced Concrete Testing and Special Inspections
- Structural Masonry Testing and Special Inspections
- Structural Steel Testing and Special Inspections
- Spray-Applied Fireproofing Testing and Special Inspections
- Pavement Evaluation and Testing
- IBC Special Inspection Coordination
- Slab Flatness and Moisture Testing
- Certified Welding Inspector Testing

GEO-ENVIRONMENTAL SERVICES

Geology, Hydrogeology, Water Resources, Blasting

- Phase I and II Environmental Site Assessments
- Geothermal Ground Source Investigations
- Groundwater Monitoring and Soil Sampling
- Hydrogeology and Engineering Geology
- Underground Storage Tank Assessments
- Water Resource Evaluations
- Construction Blasting Assessments
- Subsurface Stormwater Soil Assessments
- Third-Party Inspection Services
- Environmental Compliance Monitoring
- Resistivity and Conductivity Investigations



Augusta, ME • Bangor, ME • Caribou, ME • Gray, ME
Manchester, NH • Somersworth, NH • Burlington, VT • White River Junction, VT



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Timothy J. Boyce, P.E.

Vice President,
Engineering Services
Senior Geotechnical Engineer

Education:

B.S., Civil Engineering, University
of Washington

Graduate Courses, University of
Washington

Registrations:

Professional Engineer,
New Hampshire and Maine

Certifications:

40-Hour OSHA Hazardous
Waste Site Worker

ICC Special Inspector, Reinforced
Concrete, Prestressed Concrete
and Structural Masonry

Troxler Nuclear Densometer
Certification

Military Experience:

Commander, Civil Engineer Corps,
U. S. Navy Reserve (Retired)
Construction Management,
Contingency Construction
and Facilities Management,
1995-2015

P-3 Orion Flight Crew,
U.S. Navy and U.S. Navy
Reserve, 1983-1995

GRAY OFFICE

Born and raised in Indianapolis, Indiana, Tim Boyce enlisted in the United States Navy in 1983 where he completed four years of active military service, before enrolling in the civil engineering program at the University of Washington. Tim continued his military service in the U.S. Navy Reserve while attending college, eventually accepting a commission as a U.S. Naval Officer in 1995. Clients appreciate Tim's service-oriented, solution-focused, win-win approach and ability to take on projects large and small.

Tim has over 21 years of geotechnical engineering experience in Maine, New Hampshire, Massachusetts, Oregon and Washington. He joined S. W. Cole Engineering, Inc. in April 1999, was promoted to Senior Geotechnical Engineer in 2007 and Vice President of Engineering Services in 2014. His responsibilities include business development, client cultivation, engineering management, contracting, project management, site characterization, geotechnical engineering, recruiting and development of engineers, technicians and scientists.

Tim's experience includes developing and conducting geotechnical investigations, design analyses for foundations, ground improvement, soft ground, pavement design, stability of earth slopes and retaining walls, evaluation of shoring systems for excavation support, dewatering, underground utilities, geotechnical instrumentation and geotechnical monitoring of construction activities. He has worked on numerous commercial and public infrastructure projects throughout New England and the Pacific Northwest.

Tim's service as a Civil Engineer Corps Officer with the U.S. Navy includes assignments in the Naval Construction Force and the Naval Facilities Engineering Command from 1995 to 2014. Tim was recalled to active service in support of the 2007 troop surge in Iraq and 2010 troop surge in Afghanistan serving 15 months in the Southwest Asia Combat Zone.

Tim serves on the S.W.COLE's Board of Directors and is State Director for ACEC of Maine.

Section 10 - Abutters

Attachment: Abutters List

**PORTLAND ABUTTERS WITHIN 1000 FEET
ROCK ROW, NORTH CAMPUS
58 & 80 MAIN STREET, WESTBROOK, ME and
1176 & 1190 BRIGHTON AVENUE, PORTLAND, ME**

- TAX MAP 243 LOT B001001 (1819 WESTBROOK STREET)
TAX MAP 253 LOT A001 (1819 WESTBROOK STREET)
TAX MAP 254 LOT X001 (0 PINE TREE INDUSTRIAL PARKWAY) (1000 FT)
TAX MAP 269 LOT B001001 (1125 BRIGHTON AVENUE)
CITY OF PORTLAND
389 CONGRESS STREET
PORTLAND, ME 04101
- TAX MAP 253 LOT A002001
ALCO PARTNERS
75 PINE TREE INDUSTRIAL PKWY
PORTLAND ME 04102
- TAX MAP 253 LOT A004 (111 PINE TREE INDUSTRIAL PARKWAY)
MEGCO REALTY II LLC
75 PINE TREE INDUSTRIAL PARKWAY
PORTLAND, ME 04102
- TAX MAP 264 LOT A001 (1150 BRIGHTON AVENUE)
TAX MAP 265 LOT B002
SAI PRASAD LLC
1150 BRIGHTON AVENUE
PORTLAND, ME 04102
- TAX MAP 264 LOT A005 (0 BRIGHTON AVENUE)
RAND ROAD HOLDINGS LLC
7 RAND ROAD
PORTLAND, ME 04104
- TAX MAP 265 LOT A008 (1200 BRIGHTON AVENUE)
PORTLAND HOTELS REALTY INC.
1200 BRIGHTON AVENUE
PORTLAND, ME 04102
- TAX MAP 265 LOT A001 (1210 BRIGHTON AVENUE)
TAX MAP 265 LOT A009 (1220 BRIGHTON AVENUE)
PORTLAND HOTELS INC.
1200 BRIGHTON AVENUE
PORTLAND, ME 04102

- TAX MAP 265 LOT A007 (1188 BRIGHTON AVENUE)
ANTHONY P. DEPALMER ET. AL.
103 GORE ROAD
RAYMOND, ME 04071
- TAX MAP 265 LOT B004 (1140 BRIGHTON AVENUE)
1140 BRIGHTON AVENUE ASSOCIATES INC.
1140 BRIGHTON AVENUE
PORTLAND, ME 04102
- TAX MAP 265 LOT B005
PORTLAND INN INC.
1150 BRIGHTON AVENUE
PORTLAND, ME 04102
- TAX MAP 266 LOT A001 (1 RIVERSIDE STREET)
G6 HOSPITALITY PROPERTY LLC
PO BOX 117508
CARROLLTON, TX 75011
- TAX MAP 266 LOT C002 (6 RIVERSIDE STREET)
TAX MAP 266 LOT C004 (18 RIVERSIDE STREET)
TAX MAP 266 LOT C010 (24 RIVERSIDE STREET)
CENTRAL MAINE POWER CO.
ONE CITY CENTER 5TH FLOOR
PORTLAND ME 04101
- SPINNAKER TRUST
ATTN: CHRIS O'NEIL
PO BOX 7160
PORTLAND, ME 04112
- MAINE DEPT. OF TRANSPORTATION
REGION 1
51 PLEASANT HILL ROAD
SCARBOROUGH, ME 04070-0358
- MAINE DEPT. OF TRANSPORTATION
REGION 3
PO BOX 817
ROUTE 2
DIXFIELD, ME 04224
- TAX MAP 253 LOT A002 (0 PINE TREE INDUSTRIAL PARKWAY)
TAX MAP 254 LOT A006 (0 PINE TREE INDUSTRIAL PARKWAY)

ALCO PARTNERS
75 PINE TREE INDUSTRIAL PARKWAY
PORTLAND, ME 04102
BK 11925 PG 316

- TAX MAP 253 LOT A005 (131 PINE TREE INDUSTRIAL PARKWAY)
TAX MAP 254 LOT A004 (131 PINE TREE INDUSTRIAL PARKWAY)
RYDER TRUCK RENTAL INC.
#0680
PO BOX 025719
MIAMI, FL 33102
BK 9233 PG 310
- TAX MAP 254 LOT A003 (106 PINE TREE INDUSTRIAL PARKWAY)
JLTS VIII LLC
73 INDUSTRIAL PARK ROAD
SACO, ME 04072
BK 26448 PG 071
- TAX MAP 254 LOT A009
LMD PROPERTIES LLC
295 NEW PORTLAND ROAD
GORHAM, ME 04038

Section 11 - Plans

Attachment: JBE 14110-Plan Set

Section 12 – Drainage Analysis and Erosion and Sediment Control Plan



DRAINAGE ANALYSIS

EROSION AND SEDIMENT CONTROL PLAN

“Rock Row”

(Phase 1 & Amphitheatre)

Tax Map 42B Lots 11 & 14

**Tax Map 264, Lots A002/A004
(also Map 265, Lots A003/A005)**

50 & 80 Main Street

Westbrook, ME

Prepared for:

**Dirigo Center Developers, LLC
c/o Waterstone Properties Group, Inc.
322 Reservoir Street
Needham, MA 02494**

Prepared by:

**Jones & Beach Engineers, Inc.
85 Portsmouth Avenue
P.O. Box 219
Stratham, NH 03885
(603) 772-4746
December 4, 2018
Revision #1: January 21, 2019
JBE Project No. 14110.3**

1. EXECUTIVE SUMMARY

The purpose of this project is to construct a mixed-use development with associated parking, drainage, and utilities located on the existing Pike Industries parcel bounded by Main Street, Larrabee Road, the Westbrook Arterial, and U.S. Interstate 95 in Westbrook, ME & Portland, ME.

The formerly approved "Dirigo Plaza" project is now referred to as "Rock Row" for future permitting. This report is intended for re-submission to local & state authorities for the proposed Phase 1 commercial development and design of a proposed outdoor amphitheatre, both with associated parking, utilities, and stormwater features. The City of Westbrook is reviewing & approving the Phase 1 project and the Amphitheatre project separately. This report seeks to combine the two designs for efficient review and approval by DEP under a major amendment application. The amphitheatre use, as shown on the design plans, will be permitted by the City of Westbrook for a period of 5 years before re-approval by the Planning Board is required. All stormwater treatment systems for Phase 1 will be located within the Phase 1 area. After the 5-year operation of this amphitheatre the property owner will be required to submit a new application with project plans & drainage report to DEP for future uses.

The intent of this report is to describe the overall effectiveness of the complete Rock Row drainage system to handle stormwater developed on the complete project. Treatment calculations are provided for both the Phase 1 project and Amphitheatre project.

A drainage analysis of the development site and its offsite contributing watershed areas was conducted for the purpose of estimating the peak rate of stormwater runoff and to subsequently design adequate drainage structures. Two models were compiled, one for the area in its existing (pre-development) condition, and a second for its proposed (post-development) condition. The analysis was conducted using the USDA SCS TR-20 method within the HydroCAD Stormwater Modeling System environment. A summary of the existing and proposed conditions peak rates of runoff is as follows:

EXECUTIVE SUMMARY TABLE										
Analysis Point	1-Year		2-Year		10-Year		25-Year		100-Year	
	Pre	Post	Pre	Post	Pre	Post	Pre	Post	Pre	Post
Analysis Point #1	98.63	80.19	129.53	107.20	230.88	197.00	258.16	244.23	309.67	304.14
Total	98.63	80.19	129.53	107.20	230.88	197.00	258.16	244.23	309.67	304.14

The drainage design intent for this site is to maintain the post-development peak flow to the pre-development peak flow conditions to the extent practicable and to effectively treat stormwater from the development of this site. This has been accomplished through the use of Grassed Underdrained Soil Filters, Chamber Systems with Jellyfish stormwater filters, Filterra filtration units, and Gravel Wetlands to maintain the peak discharge and effectively treat stormwater exiting the site.

As required under Maine Stormwater Law – Chapter 500, Section 4(B)(2) the project is required to control and treat 95% of impervious area and no less than 80% of developed area that is impervious or landscaped within the project's parcel boundary. A table summarizing the impervious, landscaped, and developed areas is located on Sheet W2-7. Table columns have been provided depicting both impervious and developed areas that are required to be treated versus what is treated. Impervious and developed areas required to be treated are considered areas that are within the project's parcel boundary and either direct stormwater to off-site watersheds or the proposed quarry pond. Calculations have been completed for the Phase 1 development and the proposed Amphitheatre project. Below are the treatment rates based on the combined design:

Impervious Area Treated = 96.1%

Developed Area treated = 92.1%

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 - 2.4. General Topography
 - 2.5. Flooding
 - 2.6. Alterations to Natural Drainage Ways
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 - 2.9. Water Quantity Control
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 - 6.6.2. 2 Year – 24 Hour Summary Analysis
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 - 6.6.4. 25 Year – 24 Hour Complete Analysis
 - 6.6.5. 100 Year - 24 Hour Summary Analysis
 - 6.7. Drainage Appendix II – Proposed Conditions Analysis
 - 6.7.1. 1 Year – 24 Hour Summary Analysis
 - 6.7.2. 2 Year – 24 Hour Summary Analysis
 - 6.7.3. 10 Year - 24 Hour Summary Analysis
 - 6.7.4. 25 Year - 24 Hour Complete Analysis
 - 6.7.5. 100 Year – 24 Hour Summary Analysis
7. Rip-Rap Calculations
8. Best Management Practices Calculation Sheets
9. Urban Impaired Stream Standard Letter
10. Soils Report
11. Operation and Maintenance Manual
12. Plans
 - 12.1. Design Plans
 - 12.2. Soil Plans
 - 12.2.1. Pre-Development Soil Plan
 - 12.2.2. Post-Development Soil Plan

- 12.3. Drainage Plan
 - 12.3.1. Pre-Development Drainage Plan
 - 12.3.2. Post-Development Drainage Plan

2. NARRATIVE

2.1 Development Location

The proposed development is located on the west side of U.S. Interstate 95 in Westbrook, ME and is bounded by Main Street to the north, Larrabee Road to the West, and the Westbrook Arterial to the south.

The site is located near the center of the regional watershed, with Deer Hill to the West being the top of the regional watershed and the Fore River being the bottom of the watershed.

The overall project is divided into two campuses and multiple phases. The existing railroad tracks divide the site into North Campus and South Campus. For the purpose of this report & application the phases are defined as follows:

- Phase 1: Defined as the commercial mixed-use development covering the northern half of the North Campus.
- Phase 2: Defined as the Amphitheatre development. The proposed use utilizes the majority of the developable land on the South Campus and the southern half of the North Campus for parking.

2.2 Surface Water on or Abutting the Site

Nasons Brook bisects north and south the southern portion of the project. The site contains wetlands associated with Nasons Brook.

2.3 Downstream Ponds and Lakes

There are no downstream ponds or lakes associated with the subject watershed.

2.4 General Topography

The existing site has been previously developed for use as a quarry. As such, the site has been primarily leveled for the use as material storage areas. The existing site also includes manmade berms along the western property line, drainage ditches throughout, and existing material stockpiles.

2.5 Flooding

We are unaware of flooding issues on-site or in the near vicinity.

2.6 Alteration to natural drainage ways.

As previously indicated, Nasons Brook traverses a portion of the site flowing west to east through the southern portion of the project site. A corrugated metal pipe was previously installed in Nasons Brook to allow vehicle travel over Nasons Brook. Erosion at the discharge of this culvert has caused discontinuity issues at low flow in Nasons Brook.

In a future phase the proposed project will replace the existing corrugated metal pipe with an open bottom arched culvert in the existing culvert location. The proposed arched culvert will not modify the existing stream alignment.

2.7 Alteration to Land Cover

Existing site is currently a combination of pavement and buildings, as well as gravel drives and material storage. Areas of the site not previously developed are currently lightly forested.

In general, the overall proposed land cover changes include the replacement of existing impervious (pavement, buildings, and gravel areas) with new impervious (pavement and buildings) with the addition of areas not previously impervious of 6.17 acres of new impervious (pavement and buildings). The net result of which is the removal of 6.29 acres of existing vegetation converted to impervious.

2.8 Modeling Assumptions

The existing and proposed watersheds were modeled utilizing HydroCad stormwater software, version 9.10. The watersheds were analyzed utilizing the SCS TR-20 methodology for hydrograph development and the TR-55 methodology for Time of Concentration (Tc) determination. The Dynamic-Storage-Indicating method for reach and pond routing was utilized. Type III, 24-hour hydrographs were developed for the 1-year, 2-year, 10-year, 25-year, and 100-year storm events corresponding to rainfall events of 2.60", 3.10", 4.60", 5.80" & 8.10" respectively.

2.9 Water Quantity Control

Post-development stormwater runoff rates have been maintained to below the Pre-development stormwater runoff rates for all rainfall events analyzed, see Executive Summary. This was accomplished via the repurposing of the existing quarry into a detention basin and the construction of Grassed Underdrained Soil Filters, Chamber Systems with Jellyfish stormwater filters, Filtterra filtration units, and Gravel Wetlands throughout the Phase 1 & Amphitheatre development areas to treat and detain stormwater.

2.10 Water Quality Treatment

The proposed design utilizes a combination of Grassed Underdrained Soil Filters, Chamber Systems with Jellyfish stormwater filters, Filtterra filtration units, and Gravel Wetlands to reduce the impacts of site runoff on downstream water quality.

As depicted on sheet W2-7 of the Watershed Plans (included), the design treats 96.1% of the impervious area within the project parcel's boundary and 92.1% of the developed area. See also the BMP calculation sheets in Appendix 8.

2.11 Offset Credits

No offset credits are proposed.

2.12 Compensation Fees

Under the previous approval, the Applicant was required to pay a compensation fee of \$208,875 to meet the Urban Impaired Stream Standard, See Urban Impaired Stream Letter, Appendix 9.

2.13 Development Impacts

No adverse impacts are anticipated due to the construction of the proposed project. Stormwater quantity is controlled and indicated in item 2.09 therefore reducing the potential for adverse impacts. Stormwater quality is anticipated to be improved due to the construction of stormwater treatment features throughout the proposed site where the existing site has no stormwater treatment.

6.1 INTRODUCTION

The proposed project consists of the Phase 1 commercial development and outdoor amphitheatre, both with associated parking, utilities, and stormwater features. Stormwater treatment for the amphitheatre project will be achieved with systems located within each phases's limits-of-work.

6.2 METHODOLOGY

The existing and proposed watersheds were modeled utilizing HydroCad stormwater software, version 9.10. The watersheds were analyzed utilizing the SCS TR-20 methodology for hydrograph development and the TR-55 methodology for Time of Concentration (Tc) determination. The Dynamic-Storage-Indicating method for reach and pond routing was utilized. Type III, 24-hour hydrographs were developed for the 1-year, 2-year, 10-year, 25-year, and 100-year storm events corresponding to rainfall events of 2.60", 3.10", 4.60", 5.80" & 8.10" respectively.

Existing topography and site features were obtained through on-ground topography and existing conditions survey completed by Jones & Beach Engineers and Aerial Photography completed by Sewall Consulting. Existing soil conditions were derived from a combination of borings performed by Jones and Beach Engineers, a Site Specific Soil Survey conducted by Michael Cuomo, CWS, PWS, CSS, CPESC, and soils information obtained from the NRCS Web Soil Survey.

6.3 EXISTING CONDITIONS ANALYSIS

The study area consists of the subject property and upstream contributing area. The study area contains 212.79 acres including offsite contributing areas. The existing site was previously disturbed and was operated as a gravel quarry with concrete plant. The majority of the site is disturbed with multiple stockpiles located throughout.

Existing soil conditions were obtained from Site Specific Soils Mapping, on-site test pits, and NRCS Web Soil Survey. The existing soils are classified by the NRCS as a combination of Buxton, Elmwood, Hinckley, Hollis, Scantic, and Swanton soils. Areas of prior disturbance or prior fill were classified based upon the underlying soils.

One (1) Analysis Point (AP) is defined for this project.

Analysis Point #1 is defined as the culvert located under Interstate 95 located in the south-east portion of the site.

The existing site is divided into multiple watersheds. Drainage direction is generally from north to south with roadway drainage being directed to a closed drainage system along Maine Street and Larrabee Road and discharging to the existing stream located in the southern portion of the site.

Drainage collected in the existing quarry is pumped to an existing catch basin located in the eastern portion of the site and is discharged to the wetlands located in the southern portion of the site.

6.4 PROPOSED CONDITIONS ANALYSIS

The proposed project consists of the Phase 1 commercial development and outdoor amphitheatre, both with associated parking, utilities, and stormwater features. Runoff from the Phase 1 area is collected in a series of closed drainage systems for water quality treatment prior to discharge to the quarry pond and then Nason's Brook. Runoff from the proposed Phase 2/Amphitheatre project is collected in closed drainage systems & open swales. The amphitheatre parking area on the North Campus treats the runoff to the water quality standards then discharges to the quarry pond before outleting to Nason's Brook. Runoff from the amphitheatre venue & surrounding development is treated to the water quality standards before treated stormwater is discharged to Nason's Brook.

One (1) Analysis Point (AP) is defined for this project.

Analysis Point #1 is defined as the culvert located under Interstate 95 located in the south-east portion of the site.

The proposed amphitheatre drainage systems has been designed to treat 96.1% of the impervious and 92.1% of the developed areas within the subject property as depicted on the Proposed Watershed Plan (W2-7).

As the table in the Executive Summary demonstrates, the proposed peak rates of runoff have been reduced from the existing peak rates of runoff for the analyzed storms, to the extent practicable.

Infiltration was deemed impractical for this site due to the underlying marine clay soils throughout the site.

6.5 CONCLUSION

This proposed site development will have minimal adverse effect on abutting infrastructures or properties by way of stormwater runoff or siltation. Peak runoff rate from the proposed site has been maintained to the existing conditions peak rate to the extent practicable. Stormwater has been treated through the use of Grassed Underdrained Soil Filters and Gravel Wetlands.

Respectfully Submitted,
JONES & BEACH ENGINEERS, INC.

Jonathan Ring, P.E.
President

PERKINS THOMPSON
ATTORNEYS & COUNSELORS AT LAW

ESTABLISHED 1871

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December 24, 2019

Andrew Tufts, Planner
Portland Planning Department
389 Congress Street
Portland, ME 04101

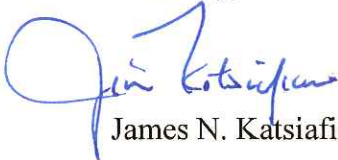
Re: Rock Row: Application for Subdivision Amendment/Neighborhood Meeting Minutes,
Attendance Sheet, and Notice
Plan # PL-000910-2019

Dear Andrew:

Please find enclosed Meeting Minutes and a completed Attendance Sheet from last evening's Neighborhood Meeting regarding the above application, as required by Portland City Code §14-524.3.d. Also enclosed, please find a copy of the Notice of Neighborhood Meeting sent to abutters and others on the City-provided mailing list (also enclosed).

Thank you for your assistance in this matter.

Sincerely,



James N. Katsiaficas

JNK/ems

Enclosure

cc: James Rather, Development Review Services Manager
Brian Kaplan, Waterstone Properties
Wayne Morrill, P.E., Jones & Beach

Dirigo Center Developers, LLC

Notice of Neighborhood Meeting

Dear Neighbor:

Please join us for a neighborhood meeting to discuss an amended subdivision application being submitted to the Portland Planning Board by Dirigo Center Developers, LLC regarding property located at 1176 & 1190 Brighton Avenue, Portland, Maine. The application seeks an amendment to the approved subdivision on the North Campus of the "Rock Row" development. The approved three-lot subdivision of the North Campus of Rock Row will be converted to a six-lot subdivision (the "Subdivision Amendment"). Please refer to the enclosed plan for a depiction of the proposed Subdivision Amendment. The meeting will be held as follows:

Meeting Location: Hampton Inn & Suites, 1210 Brighton Avenue, Portland, ME
Meeting Date: Monday, December 23, 2019
Meeting Time: 6:00 PM.

Several members of our team will be present to present an overview of the Subdivision Amendment and answer any questions you might have regarding the Subdivision Amendment. If you have any questions, please call our Project Engineer, Wayne Morrill, at Jones & Beach, Inc. (603) 772-4746. We look forward to seeing you.

Sincerely,

Josh Levy, Principal
Rock Row
Dirigo Center Developers, LLC
c/o Waterstone Properties Group, Inc.
322 Reservoir Street
Needham, MA 02494

Note: Under Section 14-32(C) and 14-524(a)d of the City Code of Ordinances, an applicant for a Level III development, subdivision of over five lots/units, or zone change is required to hold a neighborhood meeting within 30 days of submitting a preliminary application or 21 days of submitting a final site plan application, if a preliminary plan was not submitted. The neighborhood meeting must be held at least seven days prior to the Planning Board public hearing on the proposal. Should you wish to offer additional comments on this proposed development, you may contact the Planning Division at 874-8721 or send written correspondence to the Planning and Urban Development Department, Planning Division, 4th Floor, 389 Congress Street Portland, ME 04101 or by email: to bab@portlandmaine.gov

Neighborhood Meeting Minutes
Dirigo Center Developers, LLC
Application for Subdivision Amendment, "Rock Row" North Campus

Representatives of Dirigo Center Developers, LLC ("Dirigo") conducted a neighborhood meeting to present and discuss the subdivision amendment application Dirigo has submitted to the Portland Planning Board regarding property located at 1176 & 1190 Brighton Avenue, Portland, Maine. The neighborhood meeting was held at Hampton Inn & Suites, 1210 Brighton Avenue, Portland, ME on Monday, December 23, 2019. The Neighborhood Meeting began at 6:05pm.

Jim Katsiaficas, Esq., of Perkins Thompson, attorney for Applicant Dirigo, presented an overview of the application, which seeks an amendment to the approved subdivision on the North Campus of the "Rock Row" development to increase the number of lots from three to six. (the "Subdivision Amendment"). Wayne Morrill, P.E., of Jones & Beach Engineers, engineer for Dirigo, reviewed the features of the plan of the Subdivision Amendment for the audience. Brian Kaplan and Lynda Adams of Waterstone Properties Group, a member of Dirigo, provided additional information about the development of these subdivision lots.

Neighbors in attendance asked questions about the impacts of the subdivision upon potential trails around the quarry and on water quality in the quarry. Mr. Morrill explained that Dirigo is meeting with CMP to discuss location of the trail around the quarry and trail access, and that the major CMP concern is that any quarry safety fencing be non-metallic. He also noted that water quality in the quarry is very good. Neighbors asked about the status of leasing/tenants/businesses on subdivision lots other than the Market Basket lot; these other properties will remain owned by Waterstone, subject to long-term lease (the METRO roads), ground lease (for three of the lots) and interior space leases. Neighbors also asked about the timing of the development and the likely locations for mixed use and residential development, which Dirigo explained will be in Phases 2 and 3, behind Market Basket and on the South Campus tract, respectively. In response to a question about the status of land purchases, it was noted that Dirigo recently had closed on the purchase of property that adjoins the South Campus tract from the City of Portland and the Maine Department of Transportation.

The Neighborhood Meeting concluded at 6:40pm.

Attendance Sheet

Neighborhood Meeting: Dirigo Center Developers, LLC, Application for Subdivision Amendment, Rock Row, 1176 & 1190 Brighton Avenue, Portland, Maine.

Meeting Location: Hampton Inn & Suites, 1210 Brighton Avenue, Portland, ME

Meeting Date: Monday, December 23, 2019

Meeting Time: 6:00 PM.

Name (Please Print)

Address

Email Address

[illegible]

MAILING LIST 12/12/19
W/ IN 500 FT OF PORTLAND PARCELS COMPRISING ROCK ROW

1140 BRIGHTON AVENUE ASSOCIATES INC
1140 BRIGHTON AVE
PORTLAND ME 04102

ALCO PARTNERS
75 PINE TREE INDUSTRIAL PKWY
PORTLAND ME 04102

APPLEBEES NORTHEAST INC
PO BOX 4900-DEPT 124
SCOTTSDALE AZ 85261

CENTRAL MAINE POWER CO
ONE CITY CENTER, 5TH FLR
PORTLAND ME 04101

CENTRO HERITAGE SPE 4 LLC
PO BOX 4900- DEPT 124
SCOTTSDALE AZ 85261

DEPALMER ANTHONY P ET AL
103 GORE RD
RAYMOND ME 04071

DIRIGO CENTER DEVELOPERS LLC
322 RESERVOIR ST
NEEDHAM MA 02494

G6 HOSPITALITY INC
PO BOX 117508
CARROLLTON TX 75011

JLTS VIII LLC
73 INDUSTRIAL PARK RD
SACO ME 04072

LMD PROPERTIES LLC
295 NEW PORTLAND RD
GORHAM ME 04038

MEGCO REALTY II LLC
75 PINE TREE INDUSTRIAL PKWY
PORTLAND ME 04102

PORTLAND HOTELS INC
1200 BRIGHTON AVE
PORTLAND ME 04102

PORTLAND HOTELS REALTY INC
1200 BRIGHTON AVE
PORTLAND ME 04102

PORTLAND INN INC
1150 BRIGHTON AVE
PORTLAND ME 04102

RAND ROAD HOLDINGS LLC
7 RAND ROAD
PORTLAND ME 04104

RYDER TRUCK RENTAL INC
#0680
PO BOX 025719
MIAMI FL 33102

SAI PRASAD LLC
1150 BRIGHTON AVE
PORTLAND ME 04102

SPINNAKER TRUST
ATTN: CHRIS O'NEIL
PO BOX 7160
PORTLAND ME 04112

MAINE DEPT OF TRANSPORTATION
REGION 1
51 PLEASANT HILL RD
SCARBOROUGH ME 04070

MAINE DEPT OF TRANSPORTATION
REGION 3
ROUTE 2, PO BOX 817
DIXFIELD ME 04224

ANTHONY DONOVAN
27 RIVERVIEW ST
PORTLAND ME 04102

BARBARA WOOD
125 EMERY ST
PORTLAND ME 04102

CHRIS CASTELSKY
FAIRPOINT COMMUNICATIONS
521 EAST MOREHEAD ST
CHARLOTTE NC 28202

DAVID NOWLIN
215 OXFORD ST
PORTLAND ME 04102

DEB KEENAN
28 DOROTHY ST
PORTLAND ME 04103

DEVON PLATTE
26 NORTH ST #3
PORTLAND ME 04101

EDWARD SUSLOVIC
DISTRICT 3
46 KENWOOD ST
PORTLAND ME 04103

GREATER PORTLAND COUNCIL OF GOVTS
970 BAXTER BLVD, 2ND FLR
PORTLAND ME 04103

JANICE CARPENTER
9 W COMMONWEALTH DR
PORTLAND ME 04103

JENNIFER MUNSON
CITY OF PORTLAND
389 CONGRESS ST
PORTLAND ME 04103

JESSE THOMPSON
KAPLAN THOMPSON ARCHITECTS
100 EXCHANGE ST
PORTLAND ME 04101

LEN ANDERSON
543 ALLEN AVE
PORTLAND ME 04103

MARY GRIFFITY
6 EASTERN PROMENADE #2
PORTLAND ME 04103

VAHAN TUFANKIJAN
SEASIDE HEALTHCARE
850 BAXTER BLVD
PORTLAND ME 04103

NANCY BARTLETT
PO BOX 7965
PORTLAND ME 04112

PAM BURNSIDE
64 LESTER DR
PORTLAND ME 04103

PAUL DUBOIS
1915 CONGRESS ST
PORTLAND ME 04102

PEGGY MORIN
66 FARNHAM ST
PORTLAND ME 04101

PHILIP HAUGHEY
1660 SOLDIERS FIELD RD
BOSTON MA 02135

JAMES STERLING
PORTLAND SOCIETY OF ARCHITECTS
PO BOX 7305
PORTLAND ME 04112

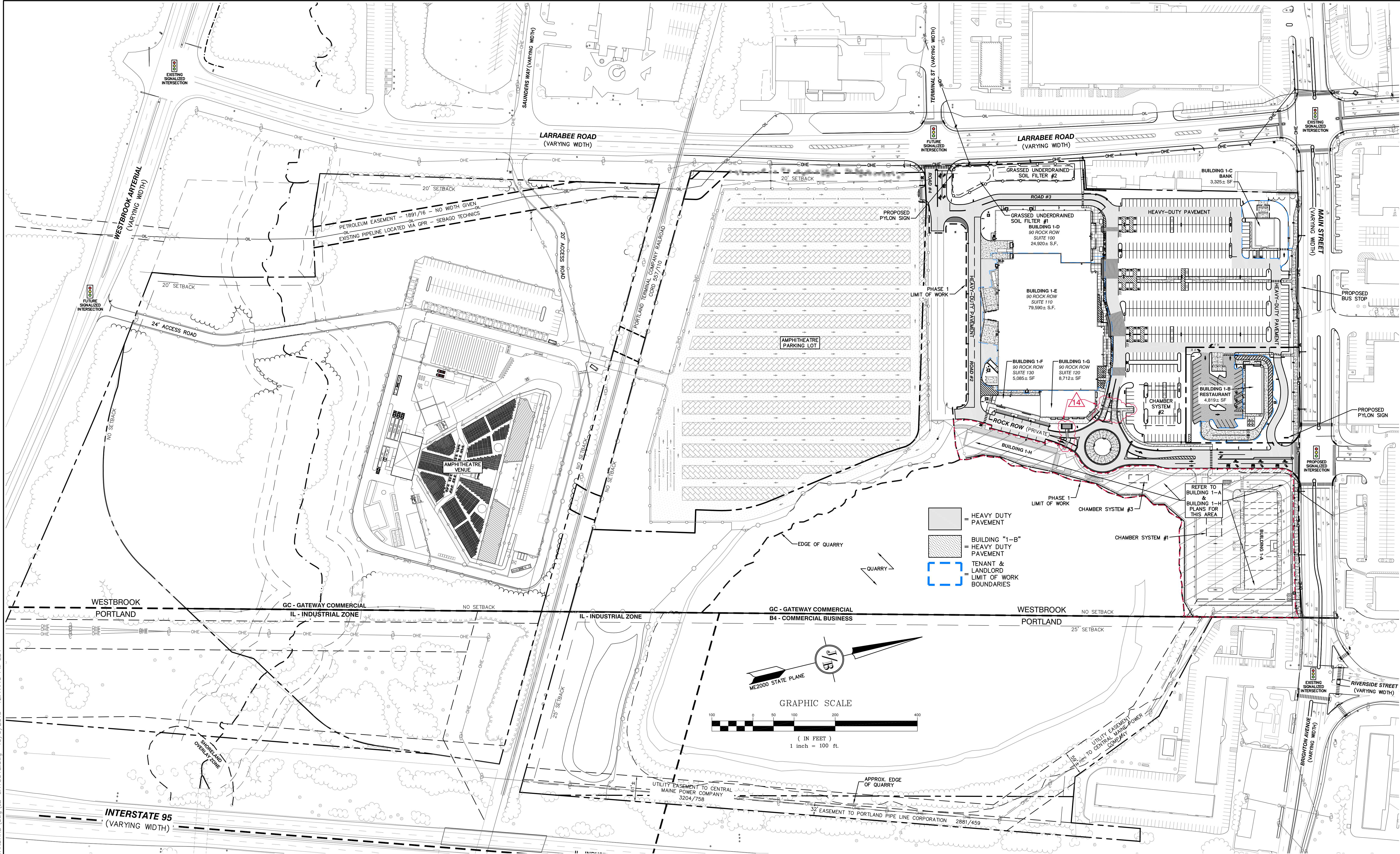
PRISCILLA LAVALLEE
190 US ROUTE 1 #2
FALMOUTH ME 04105

REBECCA HALLA
WASTE MANAGEMENT OF MAINE
2000 FOREST AVE
PORTLAND ME 04103

REP BENJAMIN DUDLEY III
DISTRICT 30
9 PONCE ST
PORTLAND ME 04101

REP GLENN CUMMINGS
DISTRICT 37
24 NEVENS ST
PORTLAND ME 04103

ROBERT HAINS
250 HOLM AVE
PORTLAND ME 04102



Design: ISM	Draft: ISM	Date: 5/31/18
Checked: WGM	Scale: AS SHOWN	Project No.: 14110
Drawing Name: 14110-PLAN.dwg		
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REV.	DATE	REVISION	BY
14	8/30/19	TELECOMM & UGE EDITS, CROSSWALK & SIDEWALK REVISIONS	ISM
13	8/9/19	DEP MINOR REVISION - ISSUED FOR CONSTRUCTION COORDINATION	ISM
12	6/20/19	DEP MINOR REV. #1, DRAINAGE EDITS, OFFSITE COORD - DRAFT SET	ISM
11	5/15/19	WATER EDITS PER PWD COMMENTS	ISM
10	4/16/19	RETAINING WALL ELEVATION REVISIONS	ISM

J/B

Jones & Beach Engineers, Inc.

Designed and Produced in NH

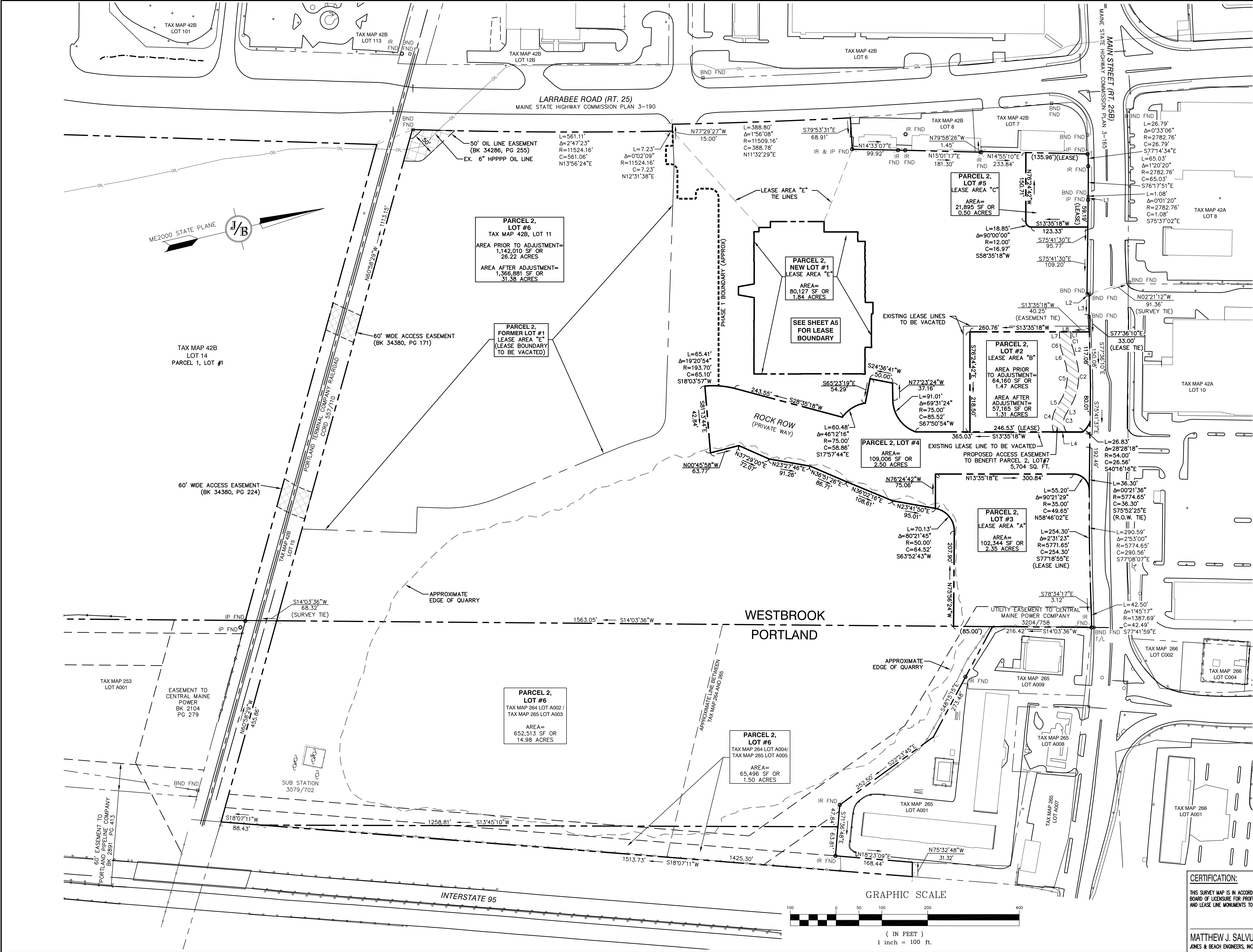
85 Portsmouth Ave.
PO Box 219
Stratham, NH 03888

Civil Engineering Services

603-772-4746
FAX: 603-772-0227
E-Mail: JBE@JONESANDBEACH.COM

Plan Name:	OVERALL SITE PLAN
Project:	"ROCK ROW" 80 MAIN ST. & 11 LARRABEE RD., WESTBROOK, ME 04092
Owner of Record:	DIRIGO CENTER DEVELOPERS, LLC c/o WATERSTONE PROPERTIES GROUP, INC. - 322 RESERVOIR STREET NEEDHAM, MA 02494

DRAWING No.	C2
SHEET 6 OF 45	JBE PROJECT NO. 14110



NOTES:

- ON JULY 19, 2016, THE WESTBROOK PLANNING BOARD GRANTED DIRIGO CENTER DEVELOPERS, LLC A WAIVER FROM THE SUBMISSION REQUIREMENTS OF SECTION 502.4 OF THE LAND ORDINANCES OF THE CITY OF WESTBROOK THAT THE SUBDIVISION FINAL PLAN FOR DIRIGO PLAZA MUST CONTAIN ALL OF THE INFORMATION REQUIRED BY SECTION 502.4, SO THAT THE APPLICANT IS NOT REQUIRED TO SHOW ALL OF THE INFORMATION ON THE FINAL PLAN, BUT INSTEAD MAY PROVIDE ALL OF THAT REQUIRED INFORMATION IN THE DIRIGO PLAZA PLAN SETS AS SUBMITTED. AS OF SEPTEMBER 5, 2018 THE CITY OF WESTBROOK PLANNING BOARD APPROVED AN AMENDED DESIGN NOW CONSIDERED "ROCK ROW".
- ACCESS TO LEASE LOTS "A", "B", "C", AND "E" WILL BE IN ACCORDANCE WITH INTERIOR ACCESS ROADS SHOWN ON SITE PLAN, PART OF A SITE PLAN APPLICATION ON FILE WITH THE CITY OF WESTBROOK DATED SEPTEMBER 6, 2016, WHICH ABUT LEASE LINES AS INDICATED HEREON.
- REFER TO SHEET A2 FOR ALL ASSOCIATED EASEMENTS AND CONDITIONS OF APPROVAL FROM THE CITIES OF WESTBROOK AND PORTLAND. (PREVIOUSLY RECORDED C.C.R.D. 217/384)
- THE LEASE AREA "E" BOUNDARY (ALSO KNOWN AS PARCEL 2, LOT #1) IS BASED UPON STRUCTURAL DESIGN INFORMATION PROVIDED TO JONES & BEACH ENGINEERS BY PRELLWITZ CHILINSKI ASSOCIATES (PCA) ON AUGUST 7, 2019. THIS BOUNDARY IS INTENDED TO REPRESENT THE OUTERMOST, DESIGNED LIMITS OF ALL INTERIOR AND EXTERIOR WALLS ASSOCIATED WITH THE MARKET BASKET STRUCTURE.

PLAN REFERENCE
C.C.R.D. PLAN BOOK 218 PAGE 517

DEED REFERENCE
C.C.R.D. BOOK 34380 PAGE 164

ZONING
CITY OF WESTBROOK, ME:
ZONE ~ ROCK ROW CONTRACT ZONE

BOUNDARY LINE TABLE		
LINE	BEARING	LENGTH
L1	S75°41'30"E	7.48'
L2	N13°44'59"E	4.90'
L3	S76°01'52"E	50.23'

EASEMENT CURVE TABLE				
CURVE	LENGTH	DELTA	RADIUS	CHORD
C1	13.51'	16°38'33"	46.50'	13.46'
C2	104.61'	46°38'33"	128.50'	101.74'
C3	39.90'	64°24'05"	35.50'	37.83'
C4	52.12'	49°21'40"	60.50'	50.52'
C5	84.26'	46°38'33"	103.50'	81.95'
C6	20.77'	16°38'33"	71.50'	20.70'

EASEMENT CURVE TABLE				
CURVE	LENGTH	DELTA	RADIUS	CHORD
C1	13.51'	16°38'33"	46.50'	13.46'
C2	104.61'	46°38'33"	128.50'	101.74'
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C4	52.12'	49°21'40"	60.50'	50.52'
C5	84.26'	46°38'33"	103.50'	81.95'
C6	20.77'	16°38'33"	71.50'	20.70'

PROJECT PARCEL
CITY OF WESTBROOK
TAX MAP 42B, LOTS 11 & 14
CITY OF PORTLAND
TAX MAP 264, LOTS A002 & A004
TAX MAP 265, LOT A003 & A005

APPLICANT
DIRIGO CENTER DEVELOPERS, LLC
C/O WATERSTONE PROPERTIES GROUP, INC.
322 RESERVOIR STREET
NEEDHAM, MA 02494

TOTAL AREA OF PARCELS
3,562,177 SQ. FT.
81.78 ACRES

APPROVED - WESTBROOK, ME
PLANNING BOARD

DATE: _____

APPROVED - CITY OF PORTLAND
PLANNING BOARD

DATE: _____

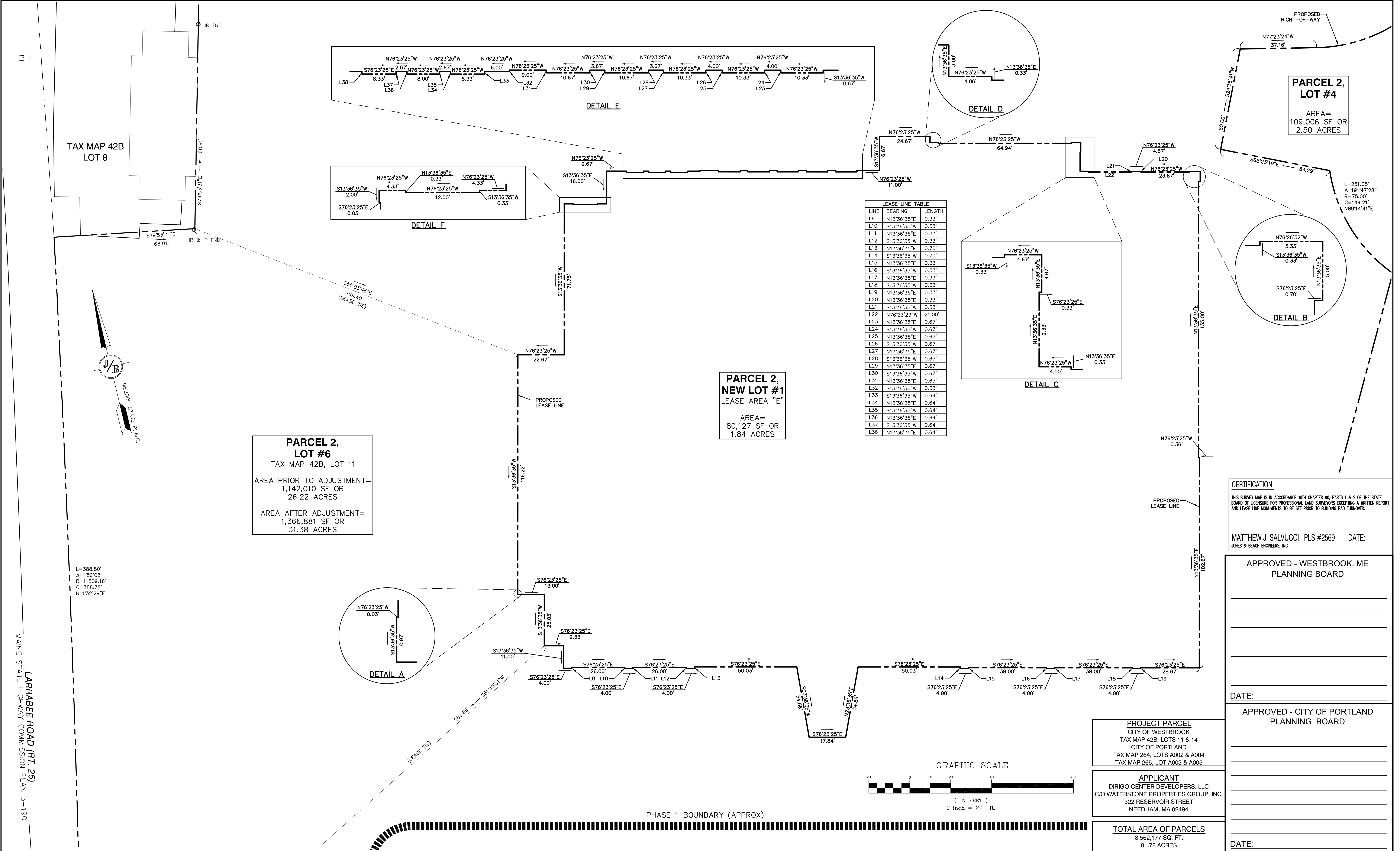
Design: ISM	Draft: ISM	Date: 8/13/19
Checked: MJS	Scale: AS NOTED	Project No.: 14110
Drawing Name: 14110-LLA-PHASE 1		2019-07-11.dwg
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM JONES & BEACH ENGINEERS, INC. (JBE). ANY ALTERATIONS, AUTHORIZED OR OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO JBE.		

REV.	DATE	REVISION	BY
1	9/5/19	PHASE 1 BOUNDARY ADDED, MINOR R.O.W. MODIFICATION	ISM
0	8/22/19	ISSUED FOR REVIEW	MJS

J/B Jones & Beach Engineers, Inc.
Civil Engineering Services
85 Portsmouth Ave.
PO Box 219
Stratham, NH 03885
603-772-4746
FAX: 603-772-0227
E-Mail: JBE@JONESANDBEACH.COM

Plan Name: **AMENDED SUBDIVISION PLAT**
Project: **"ROCK ROW"**
Owner of Record: **80 MAIN STREET & 11 LARRABEE ROAD, WESTBROOK, ME**
DIRIGO CENTER DEVELOPERS, LLC. C/O WATERSTONE PROPERTIES GROUP, INC.
322 RESERVOIR STREET NEEDHAM, MA 02494

DRAWING No.
A4
SHEET 1 OF 2
JBE PROJECT NO. 14110



Design: ISM	Draft: ISM	Date: 8/13/19
Checked: MJS	Scale: AS NOTED	Project No.: 141110
Drawing Name: 14110-LLA-PHASE 1_2019-07-11.dwg		
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1	9/5/19	PHASE 1 BOUNDARY ADDED, MINOR R.O.W. MODIFICATION	ISM
0	8/22/19	ISSUED FOR REVIEW	MJS
REV.	DATE	REVISION	BY

J/B

Jones & Beach Engineers, Inc.

85 Portsmouth Ave.
PO Box 219
Stratham, NH 03885

Civil Engineering Services

603-772-4746
FAX: 603-772-0227
E-Mail: JBE@JONESANDBEACH.COM

Plan Name:	PARCEL 2, LOT #1 LEASE AREA
Project:	"ROCK ROW" 80 MAIN STREET & 11 LARRABEE ROAD, WESTBROOK, ME
Owner of Record:	DIRIGO CENTER DEVELOPERS, LLC. C/O WATERSTONE PROPERTIES GROUP, INC. 322 RESERVOIR STREET NEEDHAM, MA 02494

DRAWING No.

A5

SHEET 2 OF 2
JBE PROJECT NO. 141110

CERTIFICATION:
THIS SURVEY MAP IS IN ACCORDANCE WITH CHAPTER 90, PARTS 1 & 2 OF THE STATE BOARD OF LICENSURE FOR PROFESSIONAL LAND SURVEYORS EXCEPTING A WRITTEN REPORT AND LEASE LINE MONUMENTS TO BE SET PRIOR TO BUILDING PAD TURNOVER.

MATTHEW J. SALVUCCI, PLS #2569 DATE:
JONES & BEACH ENGINEERS, INC.

APPROVED - WESTBROOK, ME
PLANNING BOARD

DATE:

APPROVED - CITY OF PORTLAND
PLANNING BOARD

DATE:

PROJECT PARCEL
CITY OF WESTBROOK
TAX MAP 42B, LOTS 11 & 14
CITY OF PORTLAND
TAX MAP 264, LOTS A002 & A004
TAX MAP 265, LOT A003 & A005

APPLICANT
DIRIGO CENTER DEVELOPERS, LLC
C/O WATERSTONE PROPERTIES GROUP, INC.
322 RESERVOIR STREET
NEEDHAM, MA 02494

TOTAL AREA OF PARCELS
3,562,177 SQ. FT.
81.78 ACRES



Memorandum

Planning and Urban Development Department

Planning Division

To: Sean Dundon, Chair and Members of the Planning Board
From: Caitlin Cameron, Urban Designer
Date: December 13, 2019
Re: City of Portland Design Manual: R-6 Design Principles & Standards
Meeting Date: December 17, 2019

I. INTRODUCTION

This first Planning Board workshop regarding revisions to the *R-6 Design Principles & Standards* is focused on the compatibility of new construction with the existing fabric of the R-6 neighborhoods. In addition to Staff evaluating design outcomes, as well as receiving robust feedback from residents and developers about the standards currently in place, the Planning Board indicated to staff earlier this year that they'd appreciate evaluation of potential changes to the R-6 portions of the City's Design Manual. This, in combination with the Munjoy Hill Neighborhood Conservation Overlay and the pending Munjoy Hill Historic District, represent years of combined effort to guide contemporary new development in these neighborhoods to be compatible with the context of existing residential neighborhoods of Munjoy Hill and others in the R-6 zone. The proposed revisions to the design standards seek to maintain that policy direction and improve the built outcomes towards community goals.

The Planning staff have several goals with these revisions to be responsive to the types of projects we are seeing and the challenges we have had in interpreting the standards:

- broaden the standards to better apply to all types of projects in the R-6 (single-family, two-family, multi-family, major additions/alterations) where previously, the standards were written to apply to small building types
- revise standards that are prescriptive in a way that are overly specific, restrictive, or redundant
- revise the standards to be more flexible and therefore remove the need, in most cases, for the Alternative Design Review

These revisions are being presented in tandem with ReCode policy documents, including some proposals around Site Plan application definitions and R-6 dimensional requirements.

II. BACKGROUND

The design standards for the R-6 zone were created in 2004 to cover small infill projects – at the time, the R-6 zone had a special provision for small infill on lots of 10,000 sf or less. From the beginning, these design standards were intended to encourage designs compatible with the traditional, vernacular context of buildings. It is clear from content of the R-6 design standards and the level of detail and prescription in them that there was a desire for new construction to maintain the existing character (built character includes scale, form, relationship to the street, material, façade composition).

Subsequently, the standards were revised in 2007 to create the “Alternative Design Review” as it became apparent that many new, contemporary projects struggled to meet each and every prescriptive design standard. The Alternative Design Review process was added in response to feedback from the Planning Board, the Housing Committee, and input from stakeholders such as the Portland Society of Architects (now Portland Society for Architecture) which formed a committee to draft design standards. Almost every project that is reviewed under the current *R-6 Infill Development Design Principles & Standards* falls into the category of Alternative Design Review, which reveals that the current standards are not aligned with or representative of the contemporary architecture and development landscape. If Alternative Design Review forms nearly the entirety of all reviews, it is no longer functioning as an alternative, but the default.

It is also important to note that the standards were originally written with the intention of being applied to small-scale residential projects – one and two-family, possibly triple-decker buildings. It is difficult to apply these standards to mid-scale multi-family buildings because the character they try to emulate is not always applicable to that building scale and type.

The recent increase in development activity in R-6 neighborhoods creates the need to reexamine the design review process and standards and their interpretation. During discussion and adoption of the Munjoy Hill Neighborhood Conservation Overlay in 2017, Planning Board members requested staff consider changes to the *R-6 Design Principles & Standards*, especially with the goal of removing the Alternative Design Review process. At that time, there was also, and continues to be, substantial community discussion around the characteristics and scale of new development compared with the existing built fabric – the general consensus has been a desire to maintain the existing neighborhood character and look at how planning tools such as zoning, historic districts, and design review can impact that goal.

In the context of revisions to the R-6 zone, the increase in development activity in the R-6 zones, and desire to create more housing in Portland, the *R-6 Design Principles & Standards* need to consider all types of projects being built within this zone. In addition to the several years of community discussions, staff have 6+ years experience applying the R-6 design standards and find there are ways to improve the clarity and interpretation of these standards.

The decision to revise the design standards comes from all of these contributing factors:

- the goal of improving the clarity and ability to interpret the standards
- to create standards that can be applied to all building types found in this zone
- to remove the need, through improvements to the standards, for an Alternative Design Review which had become default rather than alternative
- and to strengthen the ability to use the standards to create contextual built outcomes that better reflect the characteristics of the R-6 neighborhoods

III. PROCESS

The proposed design revisions are the product of internal staff conversations based on 6+ years of applying the existing standards, incorporating several years of public and stakeholder comments and discussion during past R-6 and Munjoy Hill public meetings, and with discussion and input from a working group of design professionals who have experience applying the standards either to applications or as regulators:

- Maggie Stanley, architect, member of the Portland Planning Board
- Lauren Reiter, architect
- Julia Tate, architect, member of the Portland Historic Preservation Board

Planning staff so far received five public comments or inquiries regarding these amendments from stakeholders from East Bayside and Munjoy Hill. The comments expressed concern about public involvement in the revision process and allowing adequate time to review and contribute to the revisions. Some comments suggested the revisions are minimal or do not reflect the recent concerns of the Munjoy Hill community with regards to building scale and character. The Planning Board workshop process is a public opportunity to make available, present, and hear feedback on these revisions. Staff would like to hear whether the Board feels more workshops or alternative public process is necessary to vet these changes.

Staff intended to advance these revisions in advance of the overhaul of the *City of Portland Design Manual* in order to be responsive to the community's concerns over new development in the R-6 zones – this was viewed as a discreet but urgent section.

IV. PROPOSED AMENDMENTS TO THE DESIGN MANUAL

The revisions are proposed to meet the goals and objectives as outlined above. This sections will summarize those amendments.

The principle statements found in the R-6 design standards are time-honored design principles that are universally applicable, especially in the case of design review for a context of established, traditional neighborhoods. The original standards were written based on observation of the predominant characteristics in the R-6 zones with the intention of having new buildings emulate that traditional architecture.

Staff found that the organization and categories within the design principles and standards to still be relevant and well-organized. Therefore, the categories and many of the principle statements remain the same. The majority of revisions are to the standards. Revisions fall into a couple categories:

- Remove overly prescriptive based on traditional building patterns, some of which are no longer relevant to contemporary living patterns and building techniques, introduction of building systems and car parking, and innovation in materials, technology, techniques. – where some standards had quantifiable standards, these are now references and suggested parameters rather than a strict requirement.
- Clarification of intent
- Make more explicit predominant characteristics to be observed and emulated
- Incorporate and distinguish between multi-family standards and those for smaller buildings
- Removing or consolidating standards where there was some redundancy or replication

Summary of revisions:

- I. Purpose – reiteration of the impact of new development within existing context and the desire to create compatible infill
- II. Applicability
 - clarify what projects are subject to these standards
 - Add reference to “multi-family” projects and how the standards apply
 - Add reference to “major additions/alterations” and how the standards apply
- III. Context
 - Created this section to strengthen the explanation of “neighborhood” and what is meant by context
 - language compiled from other sections of the document
 - mostly unchanged in content and is expanded to provide clarity on how context and building typology is defined and considered
- IV. Submittal Requirements
 - added some submittal items to this section to make clear what is expected of applicant and in order for staff to receive the appropriate materials in order to conduct review
- V. Design Principles and Standards
 - a. Overall Context
 - Mostly unchanged
 - Addition of “multi-family” explanation

- b. Massing
 - Strengthening and clarification how massing is defined
 - Additional standard for multi-family buildings where massing and scale are especially relevant to compatibility with smaller scale context; Historically, the review and planning authority has determined that larger scale buildings can be compatible with massing variation.
 - Clarification of what roof forms to reference, distinction between primary and subsidiary roofs
 - Removal of specific pitch requirements
 - New standard regarding rooftop appurtenances
- c. Orientation to the Street
 - Added description of predominant patterns
 - Removed quantitative requirements to allow flexibility
- d. Proportion and Scale
 - Clarify the intent for this section
 - Remove the strict quantitative standards to provide flexibility
 - Expand the “porches” section to apply to similar building elements
- e. Balance – no changes
- f. Articulation
 - Some revised language that provides examples rather than strict requirements
 - Remove the redundant language regarding Main Entries, articulation which appear elsewhere in the standards
- g. Materials
 - Re-titled standards to differentiate the goals of these standards
 - Addition of standards related to building type and use of contemporary materials as secondary/tertiary materials

V. **ALTERNATIVE DESIGN REVIEW AND HISTORIC PRESERVATION**

Currently, almost every Site Plan application subject to design review in the R-6 zone must go through “Alternative Design Review” because the existing design standards are prescriptive and make it difficult for contemporary buildings to meet each and every standard. The intention with the proposed revisions is to remove the need for the “Alternative Design Review” while keeping the goals and objectives of the R-6 principles. Staff propose to remove the “Alternative Design Review” process for all projects except those eligible as described in the *Munjoy Hill Neighborhood Conservation Overlay*.

Currently review and approval of Alternative Design Review is determined by the review authority (as outlined in Sec. 14-523. Required Approvals and Applicability); generally, single- and two- family projects are reviewed and approved by Planning staff, and multi-family projects are reviewed and approved by the Planning Board with review comments and recommendations provided by Planning staff. The “Alternative Design Review” for projects within the *Munjoy Hill Neighborhood Conservation Overlay* are reviewed in a public meeting format with the Historic Preservation Board as the

review authority and the R-6 Development Principles & Standards as the applicable criteria. That process will continue to function as described in the MHNCO ordinance, until there's been adequate opportunity to discuss the MHNCO as a whole. There may be no need for this provision for the MHNCO going forward, but staff are proposing to leave this section intact in the Design Manual for the time being so as not to preempt a broader discussion of MHNCO.

Without the Alternative Design Review, projects must meet all principle and standards to be considered compliant with the R-6 Design Principles & Standards – that is a principal reason for creating some flexibility with the proposed revisions.

R-6 proposals within historic districts are subject to the Historic Preservation Design Manual and would be reviewed by Historic Preservation staff or board.

R-6 proposals within 100' of historic districts or landmarks are subject to the R-6 Development Principles & Standards with an advisory review from Historic Preservation. This may include staff or board review depending on the proposal.

VI. COMPREHENSIVE PLAN

There are several goals and strategies in [*Portland's Plan 2030*](#) with implications for design policy and residential buildings:

- The Historic Resources Policy Guide supports investment in existing buildings, as well as compatible infill construction: *Stabilize and enhance historic areas of the city by ensuring quality investment in existing structures and compatible infill development.*
- The Housing Policy Guide supports a diverse and increased housing stock, recognizing this will necessarily involve new construction as well as investment in existing buildings: *Increase, preserve, and modify the overall supply of housing city-wide to meet the needs, preferences and financial capabilities of all Portland residents.*
- The Housing Policy Guide also encourages quality, sustainable design: *Encourage quality, sustainable design in new housing development.*
- The Environment Policy Guide has much to say about building to high energy standards and encouraging alternative technologies for both new construction and rehabilitation of existing structures: *Encourage landowners and developers to incorporate sustainable design, materials, and practices in rehabilitation of historic resources and in new construction.*
- The plan also recognizes the environmental, health, economic, and civic importance of dense, walkable neighborhoods like those on Munjoy Hill in multiple sections, including Future Land Use, Environment, Housing (including the *Density by Design* callout, pg 49) and Vision. For instance, the Environment Policy Chapter states: *Encourage additional contextually appropriate housing density in and proximate to neighborhood centers, concentrations of services, and transit nodes and corridors as a means of supporting complete neighborhoods.*

Portland's Plan recognizes that a healthy, authentic city includes walkable, complete neighborhoods, and that these will include some combination of new construction, renovation of existing buildings, and where fitting, preservation. The R-6 Design Principles & Standards seek to guide new residential construction in a way that responds to the goals of neighborhood compatibility while accommodating housing growth. The objective of these amendments is to provide standards that are clearer and easier to interpret towards design of buildings that help the R-6 neighborhoods retain their key characteristics while they grows and change.

VII. NEXT STEPS

Planning Board and public feedback and direction is welcome to further refine and enhance the amendments going forward. \Comments and direction from the December 17 Planning Board workshop will be incorporated into the Design Manual amendments potentially with input from the working group.

Staff would like direction on whether subsequent workshops or other public meetings should be held or whether a public hearing is appropriate to move forward.

VIII. ATTACHMENTS

1. City of Portland Design Manual Amendments – (k) Residential Development Located in the R-6 Zone
2. City of Portland Design Manual Amendments – Appendix 7: R-6 Design Principles & Standards
3. Public Comment received through 12/13/19

(k) ~~SMALL RESIDENTIAL LOT~~ DEVELOPMENT LOCATED IN THE R-6 ZONE

(1) **STANDARDS.** ~~Small~~ New residential ~~lot~~ development, major additions and alterations (as defined in Appendix 7) located in the R-6 zone ~~on lots of ten thousand (10,000) square feet or less~~ shall provide a high degree of architectural quality and compatibility with the surrounding neighborhood as demonstrated by compliance with the principles and standards of the R-6 Infill Development Principles and Standards, promulgated by the Planning Board and contained in Appendix 7 of this manual. ~~Any proposal required to obtain a certificate of appropriateness under Portland's historic preservation ordinance is exempt from the R-6 design review standard.~~

Enacted 04-13-04
Revisions Approved 02-23-07
Revisions Approved 05-08-18
Revisions Approved ??-??-20

~~Design Certification Program~~
R-6 Infill Development
Design Principles & Standards

I. PURPOSE

All developers, no matter how small their project, have a responsibility beyond simply meeting the needs of their end users. They have a public responsibility to add to and enhance the neighborhoods in which their projects are built. The impact of a new project is amplified within dense, compact, urban neighborhoods.

New residential construction within Portland's compact R-6 zones should relate to the predominant character defining features of the neighborhood. ~~The design of new development is critical, particularly elements such as the orientation and placement of a building on a site; relationship to the street; and mass, form and materials.~~ The intent of the R-6 design principles and standards is ~~Design Certification Program~~ aims to ensure that infill housing development ~~makes a positive contribution to the City's neighborhoods.~~ The intent is to ensure that infill housing is compatible with the existing neighborhood character, and meets a high standard of building design, while allowing for diversity of design.

II. APPLICABILITY

New residential construction and major addition and alteration p~~Projects~~ subject to site plan review will be reviewed for consistency with R-6 ~~Infill Development~~ Design Principles and Standards. Although the R-6 zoning regulation governs dimensional standards for development, building envelopes that meet the zoning requirements may not automatically meet the design standards – both standards must be met. These principles and standards are interdependent and should be considered holistically. The applicant must demonstrate that a proposal is consistent with the Design Principles. The standards are time-honored ways of achieving the Principles. ~~The City's Design Manual contains examples of buildings that are consistent with the aims of the Design Certification Program.~~

Unless otherwise indicated, the R-6 Design Principles and Standards shall apply to the front façade and those portions of the building that are readily visible from the public way. On corner properties or where the architecture has a visual impact upon multiple adjacent public spaces, both public facades will be evaluated with equal care.

*MULTI-FAMILY refers to buildings of three or more residential units. Multi-family standards within the R-6 Design Principles and Standards shall be applied to buildings of three or more residential units in the R-6 zone and are in addition to the R-6 standards. Where there is conflict between the standards, Multi-family standards prevail as applied to multi-family buildings.

III. CONTEXT

Unless otherwise indicated, the R-6 Design Principles and Standards shall define “Neighborhood” as the context of buildings within a two-block radius of the site. Special attention shall be given to the existing buildings on both sides of the street within the block of the proposed site. If the building is proposed on a corner lot, then buildings on the adjoining block shall also be considered. The Planning Authority may determine other considerations that shall be made of the proposed building in relation to the neighborhood, due to unique characteristics of a given site. The Planning Authority may determine the neighborhood to be greater than a two-block radius, due to unique characteristics of a given site. In such case, the Planning Authority shall determine the scope of the neighborhood.

Each infill project will have a unique context of surrounding structures and sites with some strong, unifying characteristics, and some that are subtle and less obvious. The more definite and easily discernable traits within an established neighborhood should serve as a basis for a design solution, which can reinforce the predominant characteristics of the surrounding development patterns. Special attention shall be given to the existing streetscape and buildings on both side of the street within the block of the proposed site that contribute to and are compatible with the predominant character-defining architectural features of the neighborhood. Where there is less discernable predominant characteristics, design review will look to buildings of similar use, scale, and type within the context as reference for traditional characteristics to reference and relate to.

Building typology and use are also important factors – different standards apply depending on building type (Single or Two-family, Multi-family, Addition). The design review shall refer to buildings in the neighborhood of comparable size, scale, and use to that which is being proposed when determining the predominant characteristics to relate to. The Planning Authority may determine other considerations that shall be made of the proposed building in relation to the neighborhood, due to unique characteristics of a given site.

IV. SUBMITTAL REQUIREMENTS

In order to illustrate the building design, the applicant shall submit in accordance with final application requirements of the Site Plan Ordinance (Sec. 14-525):

- A site plan and
- Building elevations with materials labeled
- Floor plans in accordance with final application requirements of the Site Plan Ordinance (Sec. 14-525).
- Representation of the materials – samples, renderings, illustrations, etc.

In order to illustrate the proposal in relationship to the neighborhood context ~~for a proposal~~, the applicant shall submit:

- A plan showing the proposed building footprint in relation to the neighborhood buildings
- Renderings, street elevations, photomontages, photographs or other visual tools to depict the proposal buildings within its context ~~a two block radius of the site in order to~~

~~determine the building elements that contribute to and are compatible with the predominant character defining architectural features of the neighborhood.~~

To describe the project and how it meets the design standards, the applicant shall submit:

- A brief written narrative
- Diagrams, illustrations, or similar if applicable

~~Special attention shall be given to the existing buildings on both sides of the street within the block of the proposed site. If the building is proposed on a corner lot, then depictions of buildings on the adjoining block shall also be required.~~

~~The Planning Authority may request that consideration be made of buildings in the neighborhood that are comparable in size, scale and use to that which is being proposed, or that consideration be made of the characteristics of buildings which were originally designed for a similar use to that which is proposed. The Planning Authority may determine other considerations that shall be made of the proposed building in relation to the neighborhood, due to unique characteristics of a given site. The Planning Authority may determine the neighborhood to be greater than a two block radius, due to unique characteristics of a given site. In such case, the Planning Authority shall determine the scope of the neighborhood.~~

~~Samples of the proposed exterior materials may be requested by the Planning Authority.~~

V. DESIGN PRINCIPLES AND STANDARDS

PRINCIPLE A Overall Context

A building design shall contribute to and be compatible with the predominant character-defining architectural features of the neighborhood.

Explanatory Note: The central idea behind good design in an established neighborhood is to reinforce positive features of the surrounding area, which provide its unique identity. To a large degree, the scale, mass, orientation, and articulation of an infill building should be compatible with that of the buildings that surround it.

Compatibility refers to the recognition of patterns and characteristics which exist in a given setting and the responsiveness of a new design with respect to these established patterns and characteristics. While there is no one specific solution for a given setting, there are a number of building characteristics which can be used to gauge visual compatibility of new residential construction in an existing neighborhood. These characteristics include design elements such as:

1. **Scale and Form:** height, massing, proportion of principal facades, roof shapes and scale of the architectural features of the structure.
2. **Composition of Principal Facades:** proportion of facades; orientation of openings; ratio of solids to openings; rhythm of fenestration; entrance porches and other projections; and relations of materials, texture and color.

3. Relationship to the Street: walls of continuity; rhythm of spacing and structures on streets; and orientation of principal elevations and entrances to the street.

~~Each infill project will have a unique context of surrounding structures and sites with some strong, unifying characteristics, and some that are subtle and less obvious. The more definite and easily discernable traits within an established neighborhood should serve as a basis for a design solution, which can reinforce the positive characteristics of the surrounding development patterns. On corner properties, where the architecture has a greater visual impact upon adjacent public spaces, both public facades will be evaluated with equal care.~~

STANDARD A-1 Scale and Form Relate the scale and form of the new building or addition to those found in residential buildings within the neighborhood in a way that is complimentary and respectful to the established patterns. ~~a two-block radius of the site~~, that contribute to and are compatible with the predominant character-defining architectural features of the neighborhood. ~~Special attention shall be given to the existing building forms on both sides of the street within the block of the proposed site.~~

*MULTI-FAMILY: Multi-family buildings are not expected to replicate the scale and form of single or two-family buildings; the scale and form shall relate to buildings of a similar type within the neighborhood. However, the building design shall respect the scale and form of its surrounding context and mitigate scale impacts on smaller, neighboring buildings through scale, massing, and form decisions.

STANDARD A-2 Composition of Principal Facades Relate the composition of the new building façade, including rhythm, size, orientation and proportion of window and door openings, to the facades of residential buildings within the neighborhood ~~a two-block radius of the site~~ that contribute to and are compatible with the predominant character-defining architectural features of the neighborhood. ~~Special attention shall be given to the existing facades on both side of the street within the block of the proposed site.~~

*MULTI-FAMILY: Reference the façade composition of multi-family buildings of a similar type and scale within the neighborhood for this standard.

STANDARD A-3 Relationship to the Street Respect the rhythm, spacing, and orientation of residential structures along the ~~a~~ street ~~within a two-block radius of the site~~ that contribute to and are compatible with the predominant character-defining architectural features of the neighborhood. ~~Special attention shall be given to the existing streetscape on both side of the street within the block of the proposed site.~~

*MULTI-FAMILY: Although a proposed multi-family building may be larger in scale than the existing fabric, it must still respect the rhythm, spacing, and orientation of the residential structures along the street where there is an established pattern – this especially relates to the location of driveways and structured parking. Where there is no clear or consistent pattern, the proposed building should maintain a similar relationship to the street as the neighboring buildings.

PRINCIPLE B Massing

The massing of the building reflects and reinforces the traditional building character of the neighborhood through a well-composed form, shape, and volume.

Explanatory Note: Massing is a significant factor that contributes to the character of a building. The building's massing (as defined by its bulk, size, physical volume, scale, footprint, shape and form) should be harmonious with the massing of existing buildings in a two-block radius. The massing of a building can be defined as the overall geometry (length, width, and height) of its perceived form. The overall height of the form (actual and perceived) as well as the geometry of its roof is of particular importance in defining the massing of a building.

STANDARD B-1 Massing The building's massing ~~(as defined by its bulk, size, physical volume, scale, shape and form)~~ should be harmonious with the massing of existing buildings of the same type in the neighborhooda two-block radius. Special attention shall be given to the existing building massing on both sides of the street within the block of the proposed site. R-6 neighborhoods are typically defined by simple massing and forms.

*MULTI-FAMILY: Multi-family buildings are often larger in scale than traditional, existing buildings. In order to relate the new building design to the neighborhood buildings, the massing shall reference the scale, proportion, and form of existing buildings of a similar type. This may mean that the overall massing is varied to create massing components of a scale and proportion that relates to the existing buildings in context. Review shall include how the building footprint relates to the surrounding neighborhood.

STANDARD B -2 Roof Forms Roof forms shall refer to the architectural forms found ~~within buildings of the same type/scale within the neighborhood a two-block radius of the site~~ that contribute to and are compatible with the predominant character-defining architectural features of the neighborhood. Special attention shall be given to the existing roof forms on both side of the street within the block of the proposed site. R-6 neighborhoods are typically defined by simple roof forms. Additions and alterations are typically introduced as subsidiary to the main roof form by placing away from the public right-of-way and by being of a height and scale clearly subsidiary to the main roof.

*MULTI-FAMILY: Multi-family buildings are not expected to use the roof forms found in single and two-family buildings. However, roof forms and proportions shall refer to those found within the neighborhood in buildings of the same type. Roof forms shall also consider and mitigate scale impacts on the streetscape and neighboring buildings.

STANDARD B -3 Main Roofs and Subsidiary Roofs

The building shall have a clear main roof form. Subsidiary roof forms and dormers shall be clearly subordinate to the main form in size, space and number. ~~Where a building has multiple rooflines (e.g., main roof, dormer roof, porch roof, etc.) there shall not be more that two roof pitches or outlines overall.~~

STANDARD B-4 Rooftop Appurtenances Rooftop appurtenances should be recessive and limited in number and shall be incorporated into or deferential to the main roof form. These elements shall compatible with the neighborhood in number, placement, height, and treatment.

STANDARD B-54 Roof Pitch Gable roofs shall be symmetrical with a pitch similar to what is found in context (typically between 7:12 and 12:12). Hip roofs with a shallow pitch and flat roofs shall have a pronounced cornice line~~cornice of at least 12 inches in width~~. The slope of the roof may be either parallel or perpendicular to the street. Monopitch (shed) roofs are allowed when designed to use simple forms that are contextually appropriate~~only if they are attached to the wall of the main building~~. ~~No mono pitch roofs shall be less than 7:12, except for porch roofs.~~ There is no minimum pitch for porch roofs.

STANDARD B-65 Massing Variation~~Facade Articulation~~ Provide variety in the massing by incorporating at least two ~~or more~~ of the following architectural elements. Such features shall be applied to the front façade and those portions of the building that are readily visible from the public way.

1. Gables or dormers.
2. Balconies.
3. Recessed entries.
4. Covered porches, covered entries or stoops.
5. Bay windows. In the case of horizontally attached dwelling units, at least one-half of the ground floor units shall have a bay window to receive credit as a design feature.

*MULTI-FAMILY: Multi-family buildings with building footprints larger than those found in the context are further required to vary the overall massing to create massing components that relate to the scale, forms, and proportions of the existing neighborhood buildings.

STANDARD B-67 Garages Garages and structured parking should be visually and physically subordinate and recessive to the principal façade and main building form. Attached and detached garages are allowed provided that the street-facing façade of the garage is recessed behind the façade of the main structure so as to be clearly subordinate~~by a minimum of four feet~~. However, if the garage is integrated into the building form, the garage door may be included into the front façade of the dwelling providing that there are at least one story of living space over the garage. ~~In this instance, the garage door width may be no more than 40% of the width of the building's overall façade width, except that no garage door need be reduced to less than 9 feet in width. Standard C 2 is not required if there is no living space on the ground level.~~

PRINCIPLE C Orientation to the Street

The building's façade shall reinforce a sense of the public realm of the sidewalk while providing a sense of transition into the private realm of the home.

Explanatory Note: An important component of the neighborhood's character is the relation of dwellings to the sidewalk and the street. Design of dwellings can enhance the pedestrian friendliness and sociability of the streetscape while protecting the privacy of the residents' internal home life. Vernacular buildings in the R-6 context typically include the characteristic of approachability.

STANDARD C-1 Entrances Emphasize and orient the main entrance to the street. The main entrance of the structure shall either face the street or be located on the side and be clearly visible from and directly accessible to the principal street frontage. ~~articulated through the use of architectural detailing and massing features such as a porch, stoop, portico, arcade, recessed entry, covered entry, trim or be located on the side and be accessed by a covered porch that extends to the front of the building, at the primary street frontage.~~

STANDARD C-2 Visual Privacy Ensure the visual privacy of occupants of dwellings through design strategies relevant to the neighborhood. These design strategies could include such means as vertical separation (such as placing the window sill height at least 48" above the adjoining sidewalk grade; providing the finished floor elevation of a residence a minimum of 24" above sidewalk elevation; placing living space on upper floors), through front yard setback and landscape buffers, or through incorporating transition spaces like porches along the front side of the building façade design; or other measures.

STANDARD C-3 Transition Spaces Create a transition space between the street and the ~~front door~~ main entrance with the use of elements relevant to the neighborhood (such ~~features~~ as porches, stoops, ~~porticos, arcades,~~ recessed entries, covered entries, ~~trim,~~ sidewalk gardens ~~or similar elements~~).

PRINCIPLE D Proportion and Scale within Façade Composition

Building proportions must be harmonious and individual building elements shall be human scaled.

Explanatory Note: Throughout the history of architecture certain proportions have become known as classical proportions which have endured as aesthetically pleasing regardless of the style of architecture or the culture of origin (such as simple or rational proportions of 1:1, 2:1, 3:2, 4:3, etc. or irrational proportions of square root of 2 and the golden ratio). Scale has to do with the size of the architectural components in relation to the overall building size, ~~and also in relation to the predominant character defining architectural features of the neighborhood.~~

STANDARD D-1 Windows The majority of windows shall be ~~rectangular and vertically proportioned~~ to relate to those proportions found within the neighborhood. ~~(The use of classical proportions is encouraged).~~ Windows in the R6 neighborhood context are traditionally rectangular and vertically proportioned. Special accent windows may be ~~circular, square or regular polygons~~ introduced with limited use where justified by building program or façade composition. ~~Doorways, windows and other openings in the façade (fenestrations) shall have a proportional relationship to the overall massing of the building.~~

STANDARD D-2 Fenestration Doorways, windows and other openings (fenestration) shall be scaled appropriately to the overall massing of the building. The area of fenestration of the front façade (and for corner lots, both street-facing facades), the solid-to-void ratio and relationship shall be comparable to that found at least 12% of the total facade area on facades of buildings of the same type in the context. ~~Appropriately scaled windows or other building openings shall be included on all sides of a building.~~

STANDARD D-3 **Building Elements**~~Porches~~ When ~~porches are attached to the front facade, [or for porches that are required as an open space amenity under Section 14-139(f)] the porches shall extend along a horizontal line at least 20% of the front facade. Porches and balconies must have a minimum depth of 6 feet and a minimum square footage of 48 square feet. The depth may be reduced to 5 feet provided that the square footage is increased to 60 square feet. Individual building elements (such as porches, balconies, stoops, circulation towers, or similar) shall be scaled appropriately for the overall facade while also creating functional space. Such elements should not dominate the facade and should reflect proportions, scales, and relationships and placement found in the neighborhood.~~

~~1. For porches and balconies that are required as open space amenities under Section 14-139(f), a porch or deck may have entries to two or more units provided that the required dimensions and square footage allocations are met.~~

PRINCIPLE E Balance

The building's facade elements must create a sense of balance by employing local or overall symmetry and by appropriate alignment of building forms, features and elements.

Explanatory Note: Balance refers to the composition of facade elements. Symmetry refers to the balanced distribution of equivalent forms and spaces about a common line (axis) or point (center). Overall symmetry refers to arrangements around an axis line that bisects the building facade equally. Local symmetry refers to arrangements around an axis line that focuses on a particular building element (e.g., a porch or bay window). A balanced facade composition generally employs overall or local symmetry. Alignment refers to the position of building elements with each other and with the building form as determined by scale, mass, roofline, slopes, etc.

STANDARD E-1 Window and Door Height The majority of window²s and door²s head heights shall align along a common horizontal datum line.

STANDARD E-2: Window and Door Alignment The majority of windows shall stack so that centerlines of windows are in vertical alignment.

STANDARD E-3: Symmetry Primary window compositions (the relationship of two or more windows) shall be arranged symmetrically around the building facade's centerline (overall symmetry) or around another discernable vertical axis line.

PRINCIPLE F Articulation

The design of the building is articulated to create a visually interesting and well-composed residential facade.

Explanatory Note: Articulation refers to the manner in which the shapes, volumes, architectural elements and materials of a building's surface are differentiated yet work together.

A well-composed building articulation adds visual interest and individual identity to a home while maintaining an overall composition.

STANDARD F-1 Articulation Buildings shall provide surface articulation by employing ~~such~~ features found in the neighborhood (such as eaves/rakes/overhanging rooflines, pronounced cornice lines, offsets to the façade planes, balconies and railings, dimensional trim, window reveals, or similar elements) appropriate to the style, scale, and type of ~~the~~ building. Trim and details shall be designed and detailed consistently on the facades visible from the public right of way.

STANDARD F-2 Window Types Window patterns shall be composed of no more than two window types and sizes except where there is a design justification for alternate window forms. R-6 neighborhoods are typically defined by a limited number of window types and sizes, typically two types and sizes.

STANDARD F-3 Visual Cohesion Excessive variations in ~~siding material~~ façade design (including window type, pattern, material type, material placement) shall not be allowed if such changes disrupt the visual cohesion of the façade or differs significantly from the predominant character of the neighborhood. ~~Materials shall be arranged so that the visually heavier material, such as masonry or material resembling masonry, is installed below lighter material, such as wood cladding.~~

STANDARD F-4 Delineation between Floors Buildings shall delineate to some degree the boundary between ~~each~~ floors of the structure through such features as belt courses, cornice lines, porch roofs, material variation, window alignment~~head trim,~~ or similar architectural features.

STANDARD F-5: Porches, Balconies, etc. Porches, decks, balconies, stoops and entryways shall be architecturally integrated into the overall design of the building in a manner that compliments its massing, material, and details while providing articulation and visual interest to the façade. Multilevel porches and balconies on front facades shall not obscure the architectural features of the façade. ~~Use of rail/baluster systems with appropriate openings between rails, stepping back balconies from the front plane of the building face, or other appropriate design features shall be employed to achieve this standard.~~

STANDARD F-6: Main Entries Main entries shall be emphasized and shall be integrated architecturally into the design of the building, through the use of detailing relevant to the context (such as special materials, side lights, trim, canopy, and/or lighting) and massing features relevant to the context (such as a porch, stoop, recessed entry, or covered entry) ~~using such features as porch or stoop forms, porticos, recessed entries, trim or a combination of such features,~~ so that the entry is oriented to clearly discernable from the street.

STANDARD F-8: ~~Articulation~~ ~~Provide articulation to the building by incorporating the following architectural elements. Such features shall be on all façades facing and adjacent to the street.~~

1. ~~Eaves and rakes shall have a minimum projection of 6 inches.~~
2. ~~All exterior façade trim such as that used for windows, doors, corner boards and other trim, shall have a minimum width of 4 inches except for buildings with masonry exteriors.~~
3. ~~If there are off sets in building faces or roof forms, the off sets shall be a minimum of 12 inches.~~
4. ~~Pronounced and decorative cornices.~~

PRINCIPLE G Materials

Building facades shall utilize appropriate building materials that are harmonious with the character defining materials and architectural features of the neighborhood.

STANDARD G-1 Materials Selection Use materials and treatments for the exterior walls (including foundation walls) and roofing that are harmonious with the neighborhood in scale, texture, character or finish. R-6 neighborhoods are typically defined by simple material palettes using fine-grain materials such as clapboard, brick, and occasionally shingle or other masonry types. those in buildings within a two-block radius of the site that contribute to and are compatible with the predominant character-defining architectural features of the neighborhood. Special attention shall be given to the existing buildings forms on both sides of the street within the block of the proposed site.

STANDARD G-2 Material Placement and Façade Design The selectionplacement of façade materials shall be consistent with the façade design and appropriate to their nature. For example, brick facing should not appear to be thin layers on the façade, or to overhang without apparent support. Materials shall be arranged so that the visually heavier material, such as masonry or material resembling masonry, is installed below lighter material, such as wood cladding. In addition, material placement shall reflect the predominant characteristics of the neighborhood, typically a single material used consistently throughout with occasional accents or details highlighting architectural features. Buildings shall not rely solely on material placement to mitigate the scale of the building, create visual interest, or otherwise relate the building with its context.

STANDARD G-3 Materials and Building Type Material selection and placement should be appropriate to the building scale and type but also reflect the material character on buildings of a similar scale and type within the neighborhood.

STANDARD G-4 Accent Materials Secondary, detail, or accent materials that differ from neighborhood context in scale, texture, character or finish may be used to create architecture that is reflective of its own time. These materials must be clearly subordinate in placement and extent of use to the primary materials.

STANDARD G-3 Chimneys ~~Chimneys shall be of brick, finished metal, stone or boxed-in and clad with materials to match the building.~~

~~STANDARD G-4 — Window Types — A variety of window treatments and skylights are acceptable. However, within a single building the types of windows shall be limited to two types, and window detailing shall be consistent throughout.~~

~~STANDARD G-5 — Patios and Plazas — Patios and plazas shall be constructed of permanent materials such as concrete, brick or stone.~~

MAJOR ADDITIONS AND ALTERATIONS STANDARDS

The R-6 Design Principles & Standards shall apply to additions and alterations when the proposed changes to the building impact the scale, massing, roof form, orientation to the street, or significantly alters (more than 50%) the overall façade composition as viewed from the public way.

IV. ALTERNATIVE DESIGN REVIEW (revised 5.8.18)

Alternative Design Review process shall only be applied to projects within and as described in the Munjoy Hill Neighborhood Conservation Overlay district. Projects not within that overlay are not eligible for Alternative Design Review.

The Standards listed above are time-honored ways of achieving the Design Principles. With exceptional care, though, it is possible to apply a design approach that meets the Principles through alternatives that vary from the Standards, while maintaining and relating to the predominant character-defining architectural elements of the neighborhood, such as the building location on the site, its relationship to the street, and its mass, form, and materials. New construction under the Alternative Design Review should result in exemplary design and be compatible with the surrounding buildings in a two-block radius, in size, scale, materials and siting, but with consideration to building type, as well as the general character of the established neighborhood. The review authority may determine the neighborhood to differ from a two-block radius, due to unique characteristics of a given site or proposal. In such case, the review authority shall determine the scope of the neighborhood.

In review, special attention shall be given to the existing buildings on both sides of the street within the block of the proposed site. If the building is proposed on a corner lot, then depictions of buildings on the adjoining block shall also be required. The review authority should consider buildings in the neighborhood that are comparable in size, scale, type, and use to that which is being proposed, or that consideration be made of the characteristics of buildings which were originally designed for a similar use to that which is proposed. The review authority may determine other considerations that shall be made of the proposed building in relation to the neighborhood, due to unique characteristics of a given site. In addition, when evaluating a proposed project, the review authority may grant design flexibility when social and environmental public benefits are proposed as part of the project. Examples include designs that accommodate sustainable design best practices, alternative energy sources, green roofs, or affordable housing units that may require a design character that varies from the predominant built patterns. The applicant shall provide documentation of the contextual characteristics as guidance for review.

An applicant may propose an alternative design approach and request an Alternative Design Review Design Certificate. The Planning Authority under an Alternative Design Review may grant a Design Certificate to approve a design not meeting one or more of the individual standards provided that all of the conditions listed below are met. In the case of an Alternative Design Review within the Munjoy Hill Neighborhood Conservation Overlay District, the Historic Preservation Board shall be the review authority and may grant a Design Certificate provided all of the conditions listed below are met. The final decision whether to issue an Alternative Design Review Design Certificate is at the discretion of the review authority and may only be appealed to the Historic Preservation Board.

- A. The proposed design is consistent with all of the Principle Statements.
- B. The majority of the Standards within each Principle are met.
- C. The guiding principle for new construction under the alternative design review is to be compatible with the surrounding buildings in a two block radius in terms of size, scale, materials and siting, as well as the general character of the established neighborhood, thus Standards A-1 through A-3 shall be met.
- D. The design plan is prepared by an architect registered in the State of Maine.

12/17/2019-Recode - Dimensional/R6 Design Manual All ready Going to Planning Board When NOT addressed in RECODE subcommittee?

Karen Snyder <karsny@yahoo.com>

Dec 12, 2019 3:32 PM

Posted in group: **Planning Board**

Dear Planning Board Members,

It has been brought to my attention that next week Recode recommendations for dimensional standards and R-6 Design Manual will be brought to the Planning Board next week on 12/17/2019 when it has not even been addressed in any Recode subcommittee meetings.

From what I can understand, the last Recode subcommittee meeting held was 10/28/019 and it addressed ADUs, reducing parking requirements for future developments, and definitions. In addition, there was also a presentation by a developer from Atlanta, Eric Kronberg, who proposed to eliminate single family zoning and to eliminate parking for cheaper housing in which he did not provide any substantiated facts on this. The next day, Eric Kronberg, then presented at the 1st YIMBY session on 10/29/2019.

The last Recode Subcommittee agenda of 10/28/2019 is below:

<https://portlandme.civicclerk.com/web/UserControls/DocPreview.aspx?aid=624>

Therefore, I am quite surprised that there was a City notice yesterday 12/11/2019 to say that Recode dimensional standard recommendations and R6 Design Standards will be presented at a Planning Board Workshop next week on Tuesday, 12/17/2019.

I am especially surprised since the following has NOT occurred.

- 1) There was no Recode subcommittee that even addressed the proposed dimensional standards or R-6 Design Standards. However, there is no Planning Board workshop agenda yet of the proposed Recode changes being presented next week but we only have tomorrow to make public comment for next week workshop to put on record. This means we have less than 1/2 day to see these proposed recommendations and comment on them .
- 2) The City Planning Department did not contact any neighborhood organization to address this very important issues which affect long term residents every day.
- 3) I sent my concerns to Recode subcommittee on the R-6 Design standards 3 times and each time I was rebuffed, or ignored, or was told that it will be addressed in the future... but it never has been addressed.
- 4) The City feedback link shown below implies that the first 4 articles are being addressed OR input is available to be entered for the first 4 articles which makes since these articles have been addressed in a Recode subcommittee meeting.

Considerative and accessible, this platform facilitates dialogue on the City's Draft Land Use Code



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Consequently, why haven't the dimensional standards and R-6 Design Manual issues follow proper due process like the other Recode issues and have been addressed in Recode Subcommittee meeting rather than going directly to Planning Board workshop?

It would be advised to have a Recode subcommittee meet to address the proposed dimensional standards and R-6 Design manual changes rather than be rushed to Planning Board without proper democratic due process in which the proposed changes in a Recode subcommittee.

Regards,
Karen Snyder
Munjoy Hill Property Owner

R-6 Design Standards

Barbara Vestal <vestal@chesterandvestal.com>

Dec 12, 2019 11:29 PM

Posted in group: **Planning Board**

Chair Dundon and Planning Board Members,

I am writing to express my strong concern about the current draft of the R-6 design standards. It is my understanding that Ms. Cameron worked on this set of revisions during the summer. That should have given plenty of time for the planning department to engage in some discussion with stakeholders. To the best of my knowledge none of the neighborhood organizations that include R-6 land area were even alerted to the fact that these were forthcoming. The first notice was a postcard received on Wednesday Dec. 11th notifying us that they would be on the Planning Board agenda the following Tuesday Dec 17th and that the proposed materials would be posted late on Friday Dec 13th. I would like to know precisely who has been involved in the revisions to these design standards to date. I would also like to know whether it is the City's intent to make any additional effort to reach out to the neighborhoods that are critically affected by these standards?

Through the rapid efforts of East Bayside Neighborhood Organization, which kindly coordinated with others, I was able to get a look at the set of proposed revisions late today. Based on an initial examination, I am disappointed that the changes do not appear to reflect any step back to examine what these design guidelines should be and do; this is just another layer of wordsmithing without taking a broad view.

There are two positive aspects: 1) they eliminate the distinction between under and over 10,000 square feet, taking away the incentive for developers to consolidate smaller lots; and 2) they reiterate the standard that has applied since at least June 2018: that projects have to meet both zoning and design standards. Maybe if it is repeated as clearly as it is in the draft, the City will start enforcing its legal ability to require a developer to reduce overall scale if that is what is required to meet the design standards.

Unfortunately, I believe these two positive aspects are greatly outweighed by the negatives. I think neighborhood stakeholders are entitled to an explanation, and a reexamination of the following provisions:

1. This draft states that projects requiring Historic Preservation review are no longer exempt from these design standards. What is the rationale? Do projects have to meet both sets of standards? Who is the judge of that?
2. There is a new slippery definition of the "neighborhood" to which a proposed project is to relate, deleting the 2 block radius and leaving it to the "Planning Authority" to decide upon the area to be considered. What is the rationale for this? What was wrong with the 2 block radius? Is there a way to fix the perceived problem without giving unfettered discretion to the planning authority?
3. There are now many exceptions for 3 or more unit developments, which will probably comprise most of the controversial developments. In a new provision, they are no longer expected to replicate the scale and form of the surrounding buildings if they are 1 and 2 family buildings. Where did that come from? They are now supposed to be compared to similar sized buildings elsewhere in an elastic neighborhood. Why is the concept of requiring them to fit into the immediate context of the area in which they propose to build being eliminated? What relevance does a 16 unit building many blocks away have to how a particular proposed 16 unit building will fit into the immediate area? Is compatibility with its surroundings no longer the goal? Based upon what?
4. The A-3 standard now says that where there is no clear or consistent pattern, the development can vary from the immediate context. Why not instead require something more positive -- e.g. by requiring it to relate to the more positive character-defining features which are represented in the immediate context, or if those are lacking to the more positive character-defining features in the broader neighborhood?
5. The provision on garages proposes to eliminate the 40% maximum width of the front facade which would be taken up by a garage door. This was considered an important provision to avoid having garage door dead space on the entire ground floor. Why is this proposed to be eliminated?
6. In C-2 it seems to be saying that all of the living space can be on upper stories as a means of achieving privacy. This is directly contrary to the provision in the prior set of standards trying to achieve active ground floor uses. What is the rationale for this?

These minimally revised design standards seem to offer some additional clarity, but on the whole they seem to be moving against good design which would weave new development into the architectural and social fabric of the neighborhood by allowing a consideration of scale, mass, and other immediate context-specific considerations. It is a real missed opportunity not to spend more time with these standards to identify what is not working now, and to figure out how they can be revised to reverse the highly-defended, dead space and isolation that characterizes the new developments. Similarly it is a mistake to require large multifamily development to only be compared against other large multifamily structures, particularly when the immediate context does not consist of other large multifamily structures.

I feel like my critique is merely scratching the surface. Much more process should be allowed for the City to engage with stakeholders to examine and work with these design standards. If the City gets them right they could be an important positive tool to manage new development in a thoughtful way. If the City compounds the problem by not engaging with a full range of stakeholders and rushing to adopt revisions which seem to favor multifamily development without regard to the immediate context, it will squander what could have been an important opportunity to reduce neighborhood tensions.

Regards,
Barbara Vestal

--

Barbara A. Vestal, Esq.
Chester & Vestal, PA
107 Congress Street
Portland, Maine 04101
(207) 772-7426 - phone
(207) 761-5822 - facsimile

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Re: R-6 Design Standards

Rob Whitten <rob@whittenarchitects.com>

Dec 13, 2019 7:51 AM

Posted in group: **Planning Board**

Good morning Barbara,

Thank you for your response to the proposed R-6 zoning. As drafted, they do not address the neighborhood design concerns which have been raised since the 2015 revisions.

A public process with sufficient notice will allow all parties to evaluate and propose a successful long term solution.
Rob.

Sent from my iPhone

On Dec 12, 2019, at 11:29 PM, Barbara Vestal <vestal@chesterandvestal.com> wrote:

Chair Dundon and Planning Board Members,

I am writing to express my strong concern about the current draft of the R-6 design standards. It is my understanding that Ms. Cameron worked on this set of revisions during the summer. That should have given plenty of time for the planning department to engage in some discussion with stakeholders. To the best of my knowledge none of the neighborhood organizations that include R-6 land area were even alerted to the fact that these were forthcoming. The first notice was a postcard received on Wednesday Dec. 11th notifying us that they would be on the Planning Board agenda the following Tuesday Dec 17th and that the proposed materials would be posted late on Friday Dec 13th. I would like to know precisely who has been involved in the revisions to these design standards to date. I would also like to know whether it is the City's intent to make any additional effort to reach out to the neighborhoods that are critically affected by these standards?

Through the rapid efforts of East Bayside Neighborhood Organization, which kindly coordinated with others, I was able to get a look at the set of proposed revisions late today. Based on an initial examination, I am disappointed that the changes do not appear to reflect any step back to examine what these design guidelines should be and do; this is just another layer of wordsmithing without taking a broad view.

There are two positive aspects: 1) they eliminate the distinction between under and over 10,000 square feet, taking away the incentive for developers to consolidate smaller lots; and 2) they reiterate the standard that has applied since at least June 2018: that projects have to meet both zoning and design standards. Maybe if it is repeated as clearly as it is in the draft, the City will start enforcing its legal ability to require a developer to reduce overall scale if that is what is required to meet the design standards.

Unfortunately, I believe these two positive aspects are greatly outweighed by the negatives. I think neighborhood stakeholders are entitled to an explanation, and a reexamination of the following provisions:

1. This draft states that projects requiring Historic Preservation review are no longer exempt from these design standards. What is the rationale? Do projects have to meet both sets of standards? Who is the judge of that?
2. There is a new slippery definition of the "neighborhood" to which a proposed project is to relate, deleting the 2 block radius and leaving it to the "Planning Authority" to decide upon the area to be considered. What is the rationale for this? What was wrong with the 2 block radius? Is there a way to fix the perceived problem without giving unfettered discretion to the planning authority?
3. There are now many exceptions for 3 or more unit developments, which will probably comprise most of the controversial developments. In a new provision, they are no longer expected to replicate the scale and form of the surrounding buildings if they are 1 and 2 family buildings. Where did that come from? They are now supposed to be compared to similar sized buildings elsewhere in an elastic neighborhood. Why is the concept of requiring them to fit into the immediate context of the area in which they propose to build being eliminated? What relevance does a 16 unit building many blocks away have to how a particular proposed 16 unit building will fit into the immediate area? Is compatibility with its surroundings no longer the goal? Based upon what?
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These minimally revised design standards seem to offer some additional clarity, but on the whole they seem to be moving against good design which would weave new development into the architectural and social fabric of the neighborhood by allowing a consideration of scale, mass, and other immediate context-specific considerations. It is a real missed opportunity not to spend more time with these standards to identify what is not working now, and to figure out how they can be revised to reverse the highly-defended, dead space and isolation that characterizes the new developments. Similarly it is a mistake to require large multifamily development to only be compared against other large multifamily structures, particularly when the immediate context does not consist of other large multifamily structures.

I feel like my critique is merely scratching the surface. Much more process should be allowed for the City to engage with stakeholders to examine and work with these design standards. If the City gets them right they could be an important positive tool to manage new development in a thoughtful way. If the City compounds the problem by not engaging with a full range of stakeholders and rushing to adopt revisions which seem to favor multifamily development without regard to the immediate context, it will squander what could have been an important opportunity to reduce neighborhood tensions.

Regards,
Barbara Vestal

--

Barbara A. Vestal, Esq.
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(207) 772-7426 - phone
(207) 761-5822 - facsimile

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Google Groups

r-6 Design Standards

Wayne@waynevalzania.com <Wayne@waynevalzania.com>

Dec 13, 2019 8:25 AM

Posted in group: **Planning Board**

Chair Dundon and Planning Board Members,

I am writing to register my extreme dismay with the rewrite of the R-6 Design Standards that has come to my desk. Not only are the proposed R-6 Standards counter to the many discussions, workshops, and neighborhood presentations, in our case typically held at the East End School, all of which I have attended, but the timing seems nefarious. With no prior notice, this massively important and long discussed change is under the radar and on the fast track while everyone is distracted by the holidays.

Quite simply, I think this is bad public policy, and is not what we expect from you as elected representatives of your constituents.

Disappointed and Furious,

Wayne Valzania

27 Merrill Street

Portland, ME 04101

207-274-4918

Need for Neighborhood and City Council Involvement in Proposed Changes to R-6 Design Standards

Barbara Vestal <vestal@chesterandvestal.com>

Dec 13, 2019 11:04 AM

Posted in group: **Planning Board**

Hello Mayor Synder and Councilor Ray,

I am writing because I am extremely concerned about the truncated process that is being employed to make changes to the R-6 Design Standards. I am also concerned about possible changes to the R-6 zoning ordinance through the ReCode process. On December 11th, an e-notification was sent about two Planning Board workshops to be held on Tuesday, December 17th on these topics. Other than saying the materials would be available some time on Friday, Dec. 13th, no additional information was presented.

The City has not engaged in any outreach to neighborhood stakeholders. Comments were not solicited from the relevant neighborhood organizations on revisions to the R-6 Design Standards, nor were we given any advance notice of the proposed changes. City staff may have worked with a limited group of developer-oriented advocates in developing this rewrite; to the best of my knowledge, they did not work with any neighborhood residents or representative groups. This lack of any effort to work with neighborhood residents to understand the issues from our perspective is disheartening, particularly when the application (or lack thereof) of the existing design standards has been a major source of contention in recent project reviews.

The City needs to be transparent and collaborative in making changes to the R-6 design review standards. They are so consequential to the shape of future development on Munjoy Hill, and in other peninsula neighborhoods. This rewrite could and should be an opportunity to try to resolve some of the development controversy by reaching agreement on the underlying principles that should manage the new development. The City will be squandering this opportunity to improve the standards and reach a consensus if it pushes these currently proposed changes through without engaging in a robust process.

At this point, it is unclear whether the Planning Board intends to just hold a workshop on December 17th and then a public hearing in January, and vote to enact the amendments to the design standards as proposed. It would seem that this is so consequential and the changes so substantive that the entire City Council should be involved in the decision-making process. (There are several existing design standards. Some design standards are adopted by the Council; in the past some have been adopted by the Planning Board.) These policy decisions on the appropriate design standards for the R-6 portion of the City should not just be left to the Planning Board. Again, I don't know whether that is the intent. There is a lack of information and communication.

I am hereby requesting that there be a much more robust process to identify what changes should be made in the R-6 Design Standards, one which engages a full range of stakeholders, and eventually concludes with a vote of the City Council. It is improper for the Planning Board to be making these major policy decisions by itself. The Planning Board should just be implementing policy decisions made by the Council, not making these policy decisions themselves.

(I suffer from a similar lack of publicly available information about what ReCode changes may be in the works for the R-6 zone. However since it involves zoning, the ReCode amendments will have to involve the City Council.)

Thank you for your attention to this request. Any information you can provide about the process the City intends to follow would be useful.

Regards,

Barbara Vestal

--

Barbara A. Vestal, Esq.
Chester & Vestal, PA
107 Congress Street
Portland, Maine 04101
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Google Groups

Tuesday, December 17 Workshops

Peter Murray <pmurray@gwi.net>

Dec 13, 2019 1:47 PM

Posted in group: **Planning Board**

Dear Chair Dundon and Members of the Portland Planning Board:

This coming Tuesday you are scheduled to workshop proposed changes in the Infill Design Standards governing new construction in the R-6 zone and the Munjoy Hill Overlay.

These proposed changes, which were made available to the public for the first time last night, would make significant substantive changes in the design requirements that have governed for the last several years. Some of them appear to ease the neighborhood compatibility requirements for multi-family structures (read condominium blocks) and facilitate the construction of the kind of oversized and incongruous structures that have started to spring up on the Hill since 2015.

First of all, any proposed change of this kind should be developed only with a thorough process of public and neighborhood input. That has not taken place in this case. There have been no public meetings or solicitations of input from any members of the public. The first that we learned of what is being proposed by staff was last night. This is simply not due process.

Second, the proposed changes are very ill advised and will do nothing but accelerate the process of degradation and destruction that has been taking place on the Hill in recent years. We need time to submit and propose to you alternative proposals that might bring helpful clarification to the design standards without gutting their effectiveness to preserve neighborhood building-scapes and -scales.

My recommendation and request is that you table workshopping or consideration of the design standards at the upcoming Tuesday meeting, and instruct the Planning Staff to obtain feedback and recommendations on the subject matter of the standards from community members and all stakeholders before developing any proposal to submit to you. This feedback can be obtained both in written submittals and in various kinds of meetings and gatherings.

This matter is too important to be presented prematurely to you. Some more vetting by the community advance may well reduce actual controversy and acrimony when the resulting changes in standards are ultimately presented to you.

The Planning Board has plenty to do these days. You do not need to expend your precious time in prematurely considering proposed changes that find serious and fundamental opposition within the community.

Thank you for your consideration of this request,

PLM

Peter L. Murray
Murray, Plumb & Murray
75 Pearl Street
Portland, ME 04101

pmurray@gwi.net

Google Groups

R-6 Design Standards/ Planning Board 12/17/19

Carol Connor <balsamique@live.com>

Dec 15, 2019 1:40 PM

Posted in group: **Planning Board**

12/14/19

To: Chair and Members of the Portland Planning Board,

Due to the very short public notice regarding the proposed changes in the R-6 zone design standards, I was unable to make the deadline for my letter to be included in the PB packet for the 12/17/19 meeting. I respectfully request that my written comments do be noted as part of the public record.

It is deeply concerning to me that there was a public notice on 12/11/2019 announcing that changes to both Recode dimensional standards and R6 Design Standards are being presented at a Planning Board meeting on Tuesday, 12/17/2019. The notice with supporting materials was not sent out until late Friday afternoon 12/13/19 with the PB Workshop just a few days away. With such short notice this does not allow for thoughtful public study and comment.

Where was the opportunity for interested parties to have a detailed explanation of the changes, and be permitted the chance to ask questions about the reasoning and ramifications of those changes? How can such substantive alterations to the design standards be presented without relevant input from the community members who will be most impacted?

Before moving forward with the proposed changes, I hope that the Planning Board will put the brakes on until there have been informational meetings to inform the public and provide a forum to engage input from the people and neighborhood organizations who actually populate this community.

Questions, concerns, comments on the proposed revisions:

(k) (1) Standards

Incorporating the small new residential development lot size to include those over 10,000 square feet is a positive change. What is the rationale around deleting the exemption for proposals required to obtain a certificate of appropriateness under Portland's historic preservation ordinance?

III. Context

The immediate surrounding architecture of a neighborhood should have the most impact on new construction design choices. The new proposed language would authorize the the planning board to have full power to change the 2 block impact zone which opens a new loophole....thus more inappropriate profit driven projects in the neighborhood. "The planning authority may determine the neighborhood to be greater than a two block radius, due to unique characteristics of a given site. In such case, the planning authority shall determine the scope of the neighborhood."

There is some confusion for me in the newly proposed language relative to typology and use. "Different standards apply depending on building type (single or two family, multi-family, addition)"

What exactly are those different standards and what is the rationale for them?

The suggested revisions to the R-6 Development Design Principles and Standards need more that just a workshop for public input. The community must have an active role in developing its content. This is not something to be rushed through in the busy holiday season, but instead requires a thorough examination by the planning board with stakeholders having more authorship in the document. In addition, such substantive alterations should go before the City Council before enactment.

Respectfully,

Carol M. Connor
12 Montreal Street
Portland, ME 04101
balsamique@live.com 207 232 2265

Sent from my iPad

R-6 Design Principles & Standards

Bailey, Ellen <ebailey@eastbayside.org>

Dec 15, 2019 6:51 PM

Posted in group: **Planning Board**

To Chair Dundon and the Planning Board Members,

I am writing today to express my deep concern about the way these substantive changes to the R-6 Design Principles and Standards have been "rolled out" to the stakeholders. As president of the East Bayside Neighborhood Organization, I am the contact for communications from the city concerning informational sessions, neighborhood outreach, etc. that come to our organization. I wondered if I missed a previous communication where the city planning staff reached out to set up a neighborhood meeting regarding these changes that will affect future developments in East Bayside. I looked back through my emails and alas, there was none. It is not acceptable that our introduction to these changes is in the format of a Planning Board workshop. At these workshops, citizens are given only three minutes to speak, cannot engage in any sort of discussion with planning staff or board members, and if subsequent questions come up for said citizen, they are not permitted to speak because they have already used up their three minutes. This is no way to introduce the public to these sweeping changes to the R-6 Design Principles and Standards. I note that the India Street neighborhood is being asked to give feedback on the form-based code via a survey. Was a survey extended to all of the stakeholders in the R-6 zone concerning changes to the Design Principles and Standards? If so, I didn't receive one.

Furthermore, the timing of this is atrocious for a couple of reasons. First, I did not receive the notification of this meeting until Wednesday, December 11th and none of the documents were posted until Friday afternoon (fairly late I might add), December 13th (a mere four days before the meeting). Let's add to this that there is another, rather important workshop, being held at 4:30 pm on the ReCode and I did not receive those documents either until Friday afternoon. That left a lot of reading for me to do this weekend. As many do, I work full-time so have limited time to devote to this type of work. I have barely had time to read the documents, let alone discuss them with interested parties in my neighborhood since I was only given four days.

The second reason the timing of this is atrocious is that it is one week before the holiday season. This is the busiest time of year for most people, and thus is a terrible time to schedule a meeting on such an important topic that will impact a huge portion of the peninsula. If the city wanted robust engagement of the stakeholders in this situation, they should have done a lot better.

It is my sincere hope that the city will consider a meeting with the stakeholders where discussion is allowed, where the citizens are treated with more dignity and respect than a three minute period in which to speak and where citizens concerns are truly addressed.

In my review of the material, there are things that I think will like, although I don't know as I have yet to hear an explanation of the changes. There are also things that I think will continue to concern me. I wish the city had considered a more appropriate forum where we could engage in an informative discussion. Of course, I have been told that I can call the planning staff and talk with them, but that is a little difficult for those of us with full-time jobs.

I am clearly disappointed.

I am hoping there will be other ways to engage the public in a more substantive manner.

Regards,
Ellen Bailey
President, East Bayside Neighborhood Organization

Web Site: <http://eastbayside.org>
Facebook: <https://www.facebook.com/eastbayside/>

Google Groups

R-6

Steven Oldford <steven.oldford1@gmail.com>

Dec 16, 2019 10:31 AM

Posted in group: **Planning Board**

Thank you for realizing and addressing the loophole that is the current R-6 design standard. Hopefully, its correction will result in the cancelation of the 'Hammond House' project as is described & force design changes that properly reflect the East Bayside neighborhood. I have to admit I was stunned when the vote to approve HH was recorded and realizing the only dissenting vote was made by the only person to physically visit the site. Future votes should take place only after all planning board members have visited the site in question so that mistakes like the vote to approve Hammond House as it is presently designed do not happen again.

I look forward to tomorrow's workshop.

Steven Oldford
37 Fox Street

12/17/2019 Portland Planning Board 7:00 pm agenda Item

Oliver Murray <olivermurray@yahoo.com>

Dec 16, 2019 5:25 PM

Posted in group: **Planning Board**

I happened upon the above agenda item and wanted to know where I could find additional details about the proposed revisions to the City of Portland Design Manual referenced therein.

Also, what are the criteria for contacting affected local residents/taxpayers about such discussions? I assume that you would want to hear the opinions of the people who live in the areas affected. An agenda item with little notice and less information seems rather undemocratic.

Finally, as a general question, is there a requirement that Planning Board members publicly disclose whether they have a business or client relationship with companies, individuals, or other entities that may be affected by the Board's decisions? And what are the formal criteria for recusal when voting on an issue about which a Board member is personally involved or may appear to be involved?

Kind regards,

Oliver Murray
Montreal Street resident

Google Groups

Fwd: Romasco Lane and the R-6 Design Standards

Beth Snyder <snyderbes@gmail.com>

Dec 16, 2019 4:37 PM

Posted in group: **Planning Board**

Subject: Romasco Lane and the R-6 Design Standards



Dear Planning Board,

How could this happen considering the R-6 design standards? The mass, scale and height are extreme in comparison to that of the other buildings on this street.

I'd like to know how this is possible and invite an explanation from anyone on the Planning Board.

It's projects like this that make the R-6 guidelines inadequate for the planning and stewardship of development on Munjoy Hill.

Thank you for any time you spend responding to my concern.

Beth Snyder
81 North Street
Portland, Maine 04101

Google Groups

Hammond St condo

edie <e_luddite@hotmail.com>

Dec 16, 2019 8:44 PM

Posted in group: **Planning Board**

I was unable to attend the District 1 meeting, but had written this to focus my remarks. I would like to share them in lieu of the R6 discussion. Thank you for you time and attention. Edie Woodward, 28 Hammond St.

Sent from Mail for Windows 10

COMMENT ABOUT THE HAMMOND ST #10 & 14 CONDO PROJECT

The purpose of the R-6 residential zone is:

(a) To set aside areas on the peninsula for housing characterized primarily by multifamily dwellings at a high density providing a wide range of housing for differing types of households; **and to conserve the existing housing stock and residential character of neighborhoods** by controlling the scale and external impacts of professional offices and other nonresidential uses

William Blake wrote “ The tree, which moves some to tears of joy, in the eyes of others, only a green thing which stands in the way.”

This is the cross road I find myself. If one looks at the property boundary of 10 & 14 Hammond St., and foot print of the proposed building you'd understand. If you had come to the site and turned 360 degrees, and ask “which thing is not like the other? “ Though this is a simple kindergarten question, in this case it is very clear that a 16 unit condo is not in keeping with the other smaller family homes, and duplexes around, and the unique green space is gone. We are a neighborhood of homes- single family, some duplexes, and a few triplexes- with yards, gardens, picnic tables, pet runs, and lawns where children play and adults socialize.

The mass size of this proposed building is unsettling. There are other buildings in Bayside that are large, and 3-4 stories tall, similar to this proposal, which fit in well. Paris Towers is one I've seen. What the difference is the sidewalks are wider, the streets are wider, and there is more open area around the building. This part of town is not in the R6 zone.

So how do you build outside of the R6 zoning- yet still be in the R6 neighborhood? Usually if you seek a rezoning request, you file a map amendment. But not here. How do you account for having a zoning law, but then somebody can, and has, with enough money, bought themselves outside of the zoning law. I refer to the K1 “loophole”. The corner lot was for sale, and the home owner sold and has a nice retirement. The developer had enough money to also get the neighbor to sell to him. And bingo- no longer under the R6- bought himself a rezoning with out a map amendment. This has also happened further down the street where 2 adjacent lots went up for sale. When will it end- or will we be bought out of R6 zone? We need “to conserve the existing housing stock” not by controlling the scale and external impacts of professional offices, but of large condominiums, and apartment buildings!

He's a developer and our area is growing, and rising in interest. He wants in on this. Oddly he wants to build high end condos. I acknowledge the street is changing, the neighborhood is growing. How we got here I don't know. I wish the developer had conscience, and creative imagination, but it seems he went straight for the money maker. I don't blame him though- he's doing what he's allowed to do. I blame the city council and planning board for allowing this drastic change in character, this jump out of R6 zoning to a “do what ever you want design”. I do not have the financial ability to buy up land and so I must rely on you to help the community, the individual home owner. I blame the city managers- be you counselors, or planning board members, for allowing this surge of chaotic growth randomly all over the city, and most felt on our street today.

As anyone knows, on a fixed state of land- once the land is all covered, all you can do is go up. Unless you want the peninsula choked with buildings, you have to have a hard stop. There must be vision and the strength to say NO. A person I met traveling said he had recently been to Portland,. He described it as a nice town. And that's the charm- a city that comes off as a nice New England town. We will lose that charm and the economic engine of this city if we grow too big and without vision.

Comments on the proposed R-6 design standards changes

JEAN MC MANAMY <ninimaine@aol.com>

Jan 17, 2020 1:36 PM

Posted in group: **Planning Board**

Chair Dundon and members of the planning board:

I am writing to you about the proposed revisions of the R-6 design standards. At this time, Friday noon, the attachments for the Jan. 21 agenda have not been published and my comments are on the version published for the Dec. 17 meeting.

I support the efforts by the board to reduce the use of alternative design review, and had hoped it would be eliminated entirely. The workload generated by ADR is unnecessary and overwhelming. While I love contemporary design and find some of the infill buildings on Munjoy Hill to be interesting, compatible, and appropriately matched to the streetscape, most are not. I believe that the reason developers seek ADR is not that contemporary design is impossible, but that they wish to push the envelope by building more units than the existing design standards allow. It is about profit, not about trim details. The current zoning requirements have created a "moral hazard" for developers. So long as the zoning and design standards plus the approval process allow the ADR workaround, the investor side of the development team will—must—push for maximum profit.

As you are aware, the current zoning requirements have enabled a runup in land values and development costs (again, driven by investor goals) which has reduced the housing supply on the Hill for middle class families and those dependent on housing subsidy. There is growing talk of a real estate bubble, which in light of the coming real estate revaluation, could collapse and lead to massive displacement of families on limited incomes on the Hill and further stress on service sector employers downtown. We are heading toward a situation where expensive peninsula schools will have empty seats due to population displacement.

All proposed improvements in the design standards and zoning must further the comprehensive plan's goals of ensuring housing for all types of households and preserving existing housing units where feasible.

The proposed changes, many of which are laudable, extend substantially beyond support for excellent design. Instead, they establish increased freedom from consistency with neighborhood context for multifamily buildings. There is no evidence that this will lead to improvement in the housing scarcity which is causing disruption for middle class households and local businesses. Instead, evidence predicts it will exacerbate the existing real estate bubble and its social and financial consequences.

Sadly, the proposed revisions would exempt the Munjoy Hill Overlay District from the new standards, leaving in place a much relaxed ADR process whose implementation may occur at staff discretion, on a case by case basis, within the walls of city hall, with no public review. Many of the relaxed requirements have to do with compatibility with contextual scale, size and use as well as streetscape. This is too lax a standard and approval process for any zoning which deals with property rights. And given the seemingly insatiable appetite for redevelopment of Munjoy Hill, doesn't do much for staff workloads or conservation of the larger neighborhood.

I will save specific language commentary for the workshop, when the public will have access to the newest proposed text. But I am asking the Planning Board to answer the following before proceeding with this work:

1. How does the thrust of the proposal to accelerate the development of large multifamily buildings in each of the affected R-6 neighborhoods support the comprehensive plan's goal of housing for all types of households?
2. How does the exemption of Munjoy Hill from ADR, as well as the pullback from contextual compatibility for multifamily housing, meet the conservation goals of the Overlay District?
2. How does the pullback from contextual compatibility for new development—especially with respect to scale, mass, and impact on immediate neighbors—which is designed to encourage replacement housing, meet the comprehensive plan's goals for preservation of existing structures for social and environmental reasons?

Many Munjoy Hill residents have requested at public meetings in recent years to have further changes in the R-6 zone, only to be repeatedly told by staff that such proposals were premature. We were surprised to see the planning office propose changes almost immediately after we were told at a Planning Board workshop our requests were premature. There has been no neighborhood discussion of these proposals, as we have seen during the excellent dialogues occurring around proposals for a Munjoy Hill Historic District and for the Conservation Overlay District.

In order to restore public confidence in the planning process, I urge you to take these proposed changes out to public review, in compliance with the comprehensive plan, through a series of neighborhood meetings in each affected neighborhood.

Thank you for your consideration. I will be providing specific language suggestions when the new draft is made available to

the public.

Jean (Nini) McManamy
10 Willis St. 04101

Nini McManamy
Sent from my iPad

Proposed R6 design standard changes

George Carhart <gscarhart@gmail.com>

Jan 17, 2020 12:31 PM

Posted in group: **Planning Board**

Dear Planning Board,

I am a 24 year resident of the city.

I am apposed to the proposed changes to the R6 design standards. As with the 2015 changes that were made under the radar with little to no input from the residents of the R6 zones, these proposed changes are being delivered in a similar fashion. I do not understand why further changes to the R6 ordinances are being made. The Planning Board and Zoning need to stop being fixated on jamming more housing in to the R6 zones. You need to move on to changing the R1 through R5 zones to allow an increase in the density in these areas. I understand that you have a plan/mandate to make the city a more walkable city. This should not be seen as just the peninsula, increased public transportation to and from the off peninsula areas of the city can also meet the goals of a walkable city. I have lived for many years in Europe and there walkable means that one can walk out the door from a suburban resident/apartment building and get on a regular public mode of transportation into the city and walk around the city.

Please stop these ill-considered further changes to the R6 zone

With Regards
Dr. George Carhart
7 lafayette St

Google Groups

Oppose the R-6 design changes

Ann Casady <ann@casadydesign.com>

Jan 17, 2020 12:03 PM

Posted in group: **Planning Board**

Dear Chair Dundon and Planning Board Members,

I oppose the proposed R-6 Design changes being presented to the Planning Board next week because there was no input from the affected neighborhood organizations or any neighborhood meetings held on such substantial changes.

If the Planning Department does not enforce the current R-6 Design standards, it only encourages developer predator speculation with no regard to the importance of design and human scale neighborhoods. There is no regard for neighbors, it is creating a very selfish and greedy environment of bigger and more massive development. This is the time now to get a hold on this rapid development.

Therefore, the Planning Board needs to request the Planning Department to actually reach out to the neighborhood stakeholders BEFORE even going to the Planning Board workshop. These proposed R-6 Design changes are NOT acceptable or even valid because the neighborhood stake holders were NEVER included.

Thank you,

Ann Casady
Sheridan Street

R-6 standards need neighborhood input

carolyn swartz <carolynswartz@gmail.com>

Jan 17, 2020 12:00 PM

Posted in group: **Planning Board**

Dear Sean Dundon and members of the Planning Board,

I just had the opportunity to read through the December around R-6 Design Principles & Standards. I can see that some of the standards have been made (understandably) less prescriptive, and some of the language clearer and easier to understand.

I'm concerned, however, about no effort on your part to give members of our architecturally besieged Munjoy Hill community to weigh in.

In the past few years, the Hill has seen a number of wildly incompatible building developments approved by the City. The impact of a number of these structures - completed and in process - is jarring to residents and visitors alike.

It's therefore of concern to read about defining "neighborhood" in terms of the context of buildings within a two-block radius - because some of these buildings should never have gone up in the first place, and using them as reference for "context" could only make things worse.

On my street alone, I would shudder to think that two (literally) white elephants - 30 Merrill and the particularly egregious 5 Merrill - could be referred to as "context," paving the way for more like them.

Consider also the language around garages "If the garage is integrated into the building form, the garage door may be included into the front façade of the dwelling provided that there are (*sic*) at least one story of living space over the garage.". If this language allows for anything like the facade of 5 Merrill, below - then the language requires revision.

We, the residents, need the opportunity to weigh in on the changes - and hopefully reach consensus together.

Thanks,

Carolyn

Carolyn Swartz | Writer/Director | 917.714.5743 | [view my films here](#)

5 Merrill. A top-to-bottom faceless, flat-footed, flat-sided and apparently unlivable abomination with a strange metal bunker on top (described in the city permit as homage to the mansard, or something absurd like that). How was this allowed?



30 Merrill: In a neighborhood of older homes with solid doors and warm exterior lights, the glass front entrance of 30 Merrill glows like an emergency room at night. The monochromatic white exterior bears no resemblance to the earth tones in the city-approved architectural rendering. What was described as a “Juliette balcony” resembles bars on a jail cell.



Concern for current R-6 rewrite process

Berry Manter <berrymanter@yahoo.com>

Jan 17, 2020 11:55 AM

Posted in group: **Planning Board**

Dear Portland Planners-

I have lived here in my home on the Eastern Promenade for over 3 decades and have come to truly love this city and support its recognition as a cultural center, its renewed "importance" and desirability as a world destination. I am NOT adverse to growth and development that ensures the continuation and enhancement of this unique city's character going forward.

I AM concerned about the current trends in development and the failure of city planning guidelines to ensure this chapter of growth ensues with longterm best interests in mind as we go forward.

I am also VERY concerned with the failure of city planning to truly work in tandem with its current residents regarding the "rewrite of the R-6". I have learned from members of your staff that it is simply "a rewording with no intent to make changes". Yet, I have also learned that the nuances of wordage and omissions have indeed created confusion, and loopholes that threaten the design, massing, setbacks, lot combining, grade measuring, etc. As a writer and wordsmith the specific power of word choice holds huge power in regard to interpretation.

I strongly URGE that this process of R-6 be stopped and that city staff create public information workshops/meetings, as were conducted for MHHD this past year, to both inform the citizens in the R-6 district and seek feedback regarding best choices to ensure the integrity of this neighborhood, the best choices for environmental practices, and quality of life for CURRENT residences.

I well remember, and those of you who do not have witnessed the results of the devastating "Urban Renewal" efforts of the 60's/70's, and I fear the current trend in development guidelines in Portland portends a repeat of this historical mistake.

Sincerely,

Berry Manter
46 Eastern Promenade
Portland

Google Groups

R-6 Design Standard changes

Peter Macomber <peter@macomber.com>

Jan 17, 2020 11:54 AM

Posted in group: **Planning Board**

Dear Chair Dundon and Board members,

We are writing to express our concern about the approval process and content of the R-6 design standard changes. We have been unable to attend any recent Planning Board meetings and will be unable to attend next week as well. The review process of these changes seems to be accelerated and has been done without much public input on the actual proposed changes. As we have noticed in the past, the Board is usually reluctant to make any major changes to staff's proposals, just minor tweaks. That's why it's important that the undertaking of public input and neighborhood organizations input should have been done at the staff level before the proposal comes before the Board and not at the public workshops and hearings.

In addition, we think that the proposed changes will not allay any concerns of the public that future development in R-6 zones will be more compatible with the existing neighborhoods, but in fact less because the changes appear to weaken the already weak standards in place.

We urge the Board to ask the Planning staff to seek more input from a wider segment of stakeholders before they present major changes to the R-6 Design Standards.

Respectfully,
Peter & Pam Macomber

Sent from my iPad

Google Groups

01/21/2020 PB Workshop - Opposition to Proposed R-6 Design Standards Changes

Mary Casale <dirtgirl1@aol.com>

Jan 17, 2020 11:53 AM

Posted in group: **Planning Board**

Dear Chairman Dundon and Planning Board Members,

I am in opposition to the changes being presented.

These changes are coming from the Planning Department under the umbrella of the City of Portland Recode .

This is not due process and has not engaged nor notified the residents of R-6 zone of this dismantlement and Re-Write of the design standards.

The wink and nod to Public engagement is alarming .

I attended the September 11, 2017 Munjoy Hill Neighborhood Organization Board of Directors meeting at which Christine Grimando and Nell Doanaldson presented the idea of Re-code (which is a misleading identifier) . I identified my concerns as to the lack of standards for demolishing not only single buildings but blocks of buildings, (among multiple other concerns) and was politely listened to . There were no other community, neighborhood meetings to engage as many stakeholders as possible.

I have spoken to many of my neighbors and they are totally unaware of what is being proposed. Re-Code ? " isn't that some computer programming thing.?"

I request that the Planning Board reach out to the residents of the R-6 so that education on the impacts of such changes are identified and questions are posed , solutions sought , prior to any presentation.

Thank you for the time you devote to our city

Regards

Mary Westort Casale

39 Waterville St

Sent from my iPad

Proposed R-6 changes

e w <eenebw@hotmail.com>

Jan 17, 2020 11:47 AM

Posted in group: **Planning Board**

Chairman Dundon and Planning Board:

I oppose the proposed R-6 Design changes being presented to the Planning Board next week. Since these are substantial changes that will impact Munjoy Hill there should have been an effort to reach out for neighborhood input from the affected neighborhood and neighborhood organizations. I believe any effort to enact these proposed R-6 Designed Changes should be immediately stopped, pending further neighborhood feedback.

To expand, I am a long term owner of two 3 unit buildings on Munjoy Hill. I have read information about the design changes and am extremely concerned on what would happen to the neighborhood if enacted.

While it is understood the city wants to expand by 10k people, I do not think that tearing down Munjoy Hill and rebuilding with dense multi-lot complexes is the way to accomplish this. I realize this is the trend in other cities across the country but just because it works for some cities does not mean we should do this. Munjoy Hill is a very special area in terms of look and feel. I can not tell you how many people take pictures of the old buildings during prime tourist seasons. Why on earth would we want to destroy this character in our neighborhood by enacting 'developer/razing' friendly incentives in R-6 Design Standards.

My main concern is with the lack of restrictions of combining lots. The whole character of Munjoy Hill is based on the current size of lots. We have a diverse set of dwellings now that fit cohesively together, with the exception of the Big Box Condos that are mixed in. Combining lots will turn this residential neighborhood into an urban nightmare that is prevalent in so many cities across the US. In fact we have so many people moving to our area to escape that kind of Rat Race, yet we seem to want to create that here too. Since many people on Munjoy Hill want a historic district, isn't it a contradiction to enact R-6 Design Standard changes that seem to promote tear downs and combining lots to build large multi-unit buildings? All it takes is one of those to use as a future example for justifying another, and another, etc... The end effect is not the look of a Historic District.

Also in a state and city that claims to want to counter the carbon footprint, tearing down buildings adds a massive carbon footprint. Considering the resources needed to create the material to build with, the demolition process and fuel used for that I really see a big contradiction. The increased neighborhood traffic, less trees and more congestion will offset any gains, in my opinion, in what is being referred to as ECO housing.

Enoch Wenstrom

88 Beckett Street

1/21/20 Planning Board Design Manual Update Workshop for Zone R-6

Mike Hoover <chzstk@gmail.com>

Jan 17, 2020 11:25 AM

Posted in group: **Planning Board**

Chairman Dundon and Planning Board Members -

I currently live and own property on Munjoy Hill within the R-6 zoning district. I am concerned about the Planning Board's consideration of the Design Manual at this time due to the lack of public outreach and consideration prior to proposing any revisions for consideration by the Planning Board.

The current City of Portland Comprehensive Plan is very clear with regards to the process of updating and implementing new tools, ie revised design standards. The exact language of the Comprehensive Plan states that the City should "*Develop additional resources for neighborhood associations and citizen planners, such as neighborhood planning toolkits and processes to enhance communication between neighborhood groups and City staff, to enrich community input.*"

To date, there has been no resources developed or implemented, as called for by the Comprehensive Plan, to enrich community input for the development of new planning tools for the City. To the best of my knowledge, there has been zero public outreach effort to date by the Planning Staff, no public meetings, nor have any toolkits been developed to provide enhanced community input. The description of public input provided by the Planning Staff memo confirms that there has been no coordinated effort to target and discuss R-6 zone design standard updates with the affected residents living and owning property in the R-6 zone.

I strongly recommend that the Planning Board table this workshop discussion, and instead direct the Planning Staff to first create, implement and complete a robust public input process that is consistent with the intent of the Comprehensive Plan.

Sincerely,

Michael Hoover
40 Melbourne Street
Portland, ME 04101

Google Groups

Re: Proposed Revision/R-6 Infill Development Design Principles & Standards

Lucy Burnell <lburnell@woodedlaw.com>

Jan 17, 2020 10:58 AM

Posted in group: **Planning Board**

Good morning Mr. Dundon,

Attached please find a letter from Sandra Guay regarding the proposed revisions to the R-6 Infill Development Design Principles & Standards that are to be discussed at the January 21st planning board workshop.

Thank you,

Lucy Burnell

Legal Assistant to Sandra L. Guay

Woodman Edmands Danylik Austin Smith & Jacques, P.A.

234 Main Street

P.O. Box 468

Biddeford, ME 04005

Telephone: 207-284-4581

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PETER L. EDMANDS
(Retired)

January 17, 2020

Sean Dundon, Chair
Portland Planning Board
City of Portland
389 Congress Street
Portland, ME 04101

Re: Proposed Revision/R-6 Infill Development Design Principles & Standards

Dear Mr. Dundon and Planning Board Members:

This letter is submitted on behalf of residents who own property in the City's R-6 District and provides comments to the proposed amendments of the R-6 Infill Development Design Principles & Standards. To that end, this letter presents several questions and issues applicable to these R-6 District residents and I would therefore ask the Planning Board to respond to these questions and issues at the January 21, 2020 workshop session.

1. It appears that the design revision review process has been ongoing for some time however the only persons involved other than staff are three architects. As there is a socio-economic, and real world resident component to any redevelopment in the R-6 District and as the designs standards control more than just the façade of any new development, why were economic/community development experts (other than internal staff) and local residents not included in that ongoing review process? Providing for three-minute public comments and written submissions after the amendments have already been drafted does not provide for a robust discussion of the underlying issues by all stakeholders or address the potential need for more comprehensive amendments.

WOODMAN EDMANDS DANYLIK AUSTIN SMITH & JACQUES, P.A.

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2. Standards appear to be going from more specific guidance toward vagueness (i.e., in the Purpose Section – omitting all of the character defining *elements* and replacing them with the undefined term “character”). What does the term “character” as it is used in that section now mean? Why do the proposed revisions remove the specific guidance and create vagueness? The Maine Law Court has addressed this issue and has determined that the lack and/or elimination of specific, quantifiable legislative standards for terms such as “character” of a neighborhood results in an unconstitutional delegation of legislatively authority and is therefore void.¹
3. The proposed amendments continue to allow the Planning Authority, without having any apparent jurisdiction or authority under the City’s Ordinance to do so and without any sufficiently detailed standards to apply, to in effect provide a variance from the requirement that the contextual relationship must be within a two-block radius based on some arbitrary determination of “unique characteristics”.

In addition to the “unconstitutional delegation of legislatively authority” discussion in question 2, above, the Law Court has *repeatedly* ruled that in the context of zoning ordinances (and the Design Manual is incorporated into the site plan review section of the ordinance) only the Board of Appeals can provide variances from otherwise required zoning standards – and even then there must be sufficient legislative guidance:

“The legislative body may specify conditions under which certain uses may exist and may delegate to the Board discretion in determining whether or not the conditions have been met. The legislative body cannot, however, delegate to the Board a discretion which is not limited by legislative standards. It cannot give the Board discretionary authority to approve or disapprove applications for permits as the Board thinks best serves the public

¹ See *Kosalka v. Town of Georgetown*, 2000 ME 106, ¶ 11, 752 A.2d 183, 186 (“conserve natural beauty” requirement is an unconstitutional delegation of legislative authority because it fails to “furnish a guide which will enable those to whom the law is to be applied to reasonably determine their rights.”); *Wakelin v. Town of Yarmouth*, 523 A.2d 575, 576 (Me.1987) (zoning ordinance that gave the board discretion to deny applications if the board found that a proposed use was not “‘compatible with the existing uses in the neighborhood, with respect to ... intensity of use ... and density of development’ ... fails to articulate the quantitative standards necessary to transform the unmeasured qualities ‘intensity of use’ and ‘density of development’ into specific criteria objectively useable by both the Board and the applicant.” *Id.* at 577. Without such specific objective criteria, the ZBA was “free to express a legislative-type opinion about what is appropriate for the community.”) *Id.*

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Portland Planning Board
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interest without establishing standards to limit and guide the Board. *Cope v. Inhabitants of Town of Brunswick*, 464 A.2d 223, 226 (Me. 1983)

“Such broad delegation of power breeds selectivity in the enforcement of the law. When no standards are provided to guide the discretion of the enforcement authority, the fact that the law might be applied in a discriminatory manner settles its constitutionality.” *Id* at 226.

In other words, while some provisions for waivers may be permissible, there *must* be specific standards for the Board and/or Planning Authority to apply. Absent specific standards, every decision to extend the neighborhood becomes arbitrary - based on whoever happens to be on the Planning Board or whoever constitutes the Planning Authority at that time.

For example: Is there a three-block limitation in determining a contextual relationship? Can it be five blocks; six blocks? Can it include structures that are located outside of the R-6 zone? What constitutes the “unique characteristics of the site”? As the *site* must be the proposed project site, what “site characteristics” could possibly necessitate looking beyond the two-block radius? Does the fact that there are no similarly sized/massed structures within the two blocks make the actual *development site* unique? It is frankly difficult to imagine anything that would apply here; if however there are site specific examples that would guide the Planning Authority and the Planning Board in determining geographical parameters beyond the two-block limitation provided for, these specific examples should be identified in the ordinance.

4. Why do the proposed amendments still fail to place any limitations on the amassing of smaller, single-family lots in established residential R-6 neighborhoods of largely single, two-family and modest multi-family homes or failing that, include a maximum lot size? If other zoning ordinance changes are required in order to accomplish this, why are they not being addressed in the contemporaneously proposed zoning ordinance amendments?

The City’s 2017 Comprehensive Plan (“Portland’s Plan 2030”) describes future planning for “complete neighborhoods” as “improving livability *while retaining*

Sean Dundon, Chair
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*the key characteristics that make neighborhoods unique.”*² Likewise, in its Vision Statement, the Plan states that “[t]he uniqueness and integrity of our neighborhoods will be maintained and enhanced” and that the City will “maintain our character through preservation, innovation, and excellence in design for the built environment.”³ Lastly, the Plan calls for policies that “enable people who work in Portland to have the option to live in Portland.”⁴

By not placing any limitation on the possible number of individual lots of record that can be merged to create one single new lot, the design standards *not only invite*, but *incentivize* developers to buy up multiple parcels, tear down the existing homes, and replace them with new super-structures. This not only destroys the very fabric of the existing neighborhood, it results in the exact opposite of what is described as the Plan’s vision and purpose.

5. There are several references to the “multi-family standards” in the proposed amendments. Is this reference to multi-family standards something that can be found in the Design Manual; in the site plan section; in the R-6 section of the Ordinance; or, is this information found somewhere else in the ordinance? It is impossible to comment on or to understand what the impact of this may be, let alone comply with it as a developer, without a reference in the text to the specific ordinance section being cited to.
6. In Section III, once again what does the term “context” mean in the sentence “the R-6 Design Principles and Standards shall define the “Neighborhood” as the *context* of building within a 2 block radius.....?” The term “context” makes no sense in this sentence and if there is a meaning that is intended to be understood by a lay person reading the Design Standards, it should be defined.

I respectfully suggest however that there is a broader policy discussion that needs to happen at the Council level and that these amendments, while an important part of that discussion, are premature. The policy issue is - what is the ultimate goal here?

On the one hand, the City says that it wants to maintain the integrity of its established urban neighborhoods. In the R-6 design manual the City provides a definition for massing for compatibility purposes (bulk, size, physical volume, scale, shape and form),

² Portland’s Plan 2030 at 3 (emphasis added) (hereafter “Plan”).

³ *Id.* at 6 (emphasis added).

⁴ *Id.* at 50.

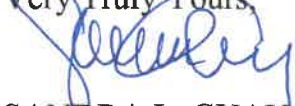
WOODMAN EDMANDS DANYLIK AUSTIN SMITH & JACQUES, P.A.

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yet it is allowing (and even incentivizing) supersized structures that cannot possibly have similar massing comparisons in these neighborhoods. One of the future land use principles outlined in the Plan seeks diverse neighborhoods where “all residents, regardless of age, ability or income” have access to basic necessities such as housing.⁵ If the goal is to protect the diversity found in existing neighborhoods, the City will need to find a way to maintain *various* levels of housing affordability *within these established neighborhoods*. Yet, with the ability to remove, block by block, existing housing and replace them with high end condominiums where the developer can simply pay a fee rather than provide actual low and moderate income housing, these mixed-income housing opportunities are being replaced with housing that most Portlanders can ill afford. To aggravate the issue further, these resulting condominiums are often occupied by part-time non-residents, or used as short-term rentals, further destroying the very diversity that has been the glue of these strong urban neighborhoods over time.

It is laudable that the City is looking to strengthen and improve its ordinances. The amendment process should create a unique opportunity to take a step back, in order to allow for substantive changes that will protect Portland’s existing traditional neighborhoods. It should be an opportunity for the City to make certain that it is protecting the diversity, integrity, culture and affordability of its established urban neighborhoods – or, perhaps it is time to stop the pretense of saying that is the goal. This is a discussion for the Council, but it has bearing on your review of the proposed amendments to the ordinance and R-6 Design Standards as the Planning Board has the jurisdiction and the ability to present these issues to the Council.

Thank you for your consideration and for your anticipated responses to the questions and issues raised in this letter.

Very Truly Yours,

SANDRA L. GUAY

SLG/lb
Copy to:
Karen Snyder
Cynthia Cochran

⁵ Plan at 79.