



PLANNING BOARD REPORT PORTLAND, MAINE

DPW Campus Subdivision, 44 Hanover Street
Level III Subdivision Review
2018-001
City of Portland

Submitted to: Portland Planning Board Date: March 9, 2018 Public Hearing Date: March 13, 2018	Prepared by: Nell Donaldson, Planner CBLs: 34-G-001,002,003,004,005 and 33-B-008 Project #: 2018-001
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I. INTRODUCTION

The City of Portland appears before the Planning Board for a final review of a proposed subdivision on the block bounded by Portland Street, Hanover Street, Kennebec Street, and Parris Street in the city's West Bayside neighborhood. The site is the current location of the city's Department of Public Works, including its offices, garage, maintenance facility, and plow shed. The proposal involves the reconfiguration of six city-owned lots on the site into three parcels.

This development is being referred to the Planning Board for compliance with the subdivision standards of the land use code. The Planning Division sent a total of 165 notices to property owners within 500 feet of the site and a legal ad ran on March 6 and 7, 2018.

Applicant: City of Portland

Consultants: Rex Croteau, Titcomb Associates, surveyor

II. REQUIRED REVIEWS

<i>Waiver Requests</i>	<i>Applicable Standards</i>
To allow overhead utilities	<i>Section 14-499(h).</i> All utility lines shall be placed underground unless otherwise approved by the Planning Board.
<i>Review</i>	<i>Applicable Standards</i>
Subdivision	<i>Sections 14-496, 14-497, 14-498, and Section 14-499</i>

III. PROJECT DATA

Existing Zoning	B-2b and B-7
Existing Use	DPW offices and operations
Proposed Use	None at this time
Parcel Size	3.17 acres total Subdivided Parcel A (82 Hanover St.): 57,956 SF Subdivided Parcel B (52 Hanover St.): 59,625 SF Subdivided Parcel C (55 Portland St.): 21,440 SF



Figures 1 and 2: Proposed DPW campus subdivision layout over existing lot lines (left); proposed subdivision layout over aerial and zoning (right).

IV. BACKGROUND

The City of Portland is proposing to subdivide a 3.17 acre site comprising the major portion of the block bounded by Portland Street, Hanover Street, Kennebec Street, and Parris Street in West Bayside (Figure 1). The site has long served as the base of operations for the city’s Department of Public Works. At the present time, the southern end of the site at 55 Portland Street is occupied by a two-story building which houses DPW’s administrative offices; the center portion of the site houses DPW’s maintenance building, underground fuel tanks, and pump infrastructure; and the northern end of the site is occupied by a 1940s brick industrial building which serves as the city’s plow shed and garage. The former Lancaster Street right-of-way transects the site at the rear of the garage. A zone line runs down the center of this right-of-way; the northernmost third of the site lies in the B-7 zone, and the southern two-thirds lie within the B-2b zone (Figure 2). A mix of residential, commercial, and light industrial uses surround the site.

All of the site’s adjoining streets, including Portland Street, Hanover Street, Kennebec Street, and Parris Street, are fully constructed, accepted city streets with typical associated infrastructure, including overhead electrical utilities and underground water service, stormwater, and sewer systems. Sidewalks and curbing, street trees, and street lights, however, are not uniformly present.

V. PROPOSED SUBDIVISION

The proposed subdivision involves the reconstitution of six existing parcels owned by the City of Portland into three distinct lots: 82 Hanover Street (Parcel A), 52 Hanover Street (Parcel B), and 55 Portland Street (Parcel C) (Figure 1). Each of these parcels has been configured around an existing building, and each has the potential for either adaptive reuse or complete redevelopment. Conceptual plans exist for each of the three lots, generated in response to an RFP process conducted by the city in mid-2017, and all three are currently under contract for sale. This subdivision will allow the city to transfer the parcels to the purchasers selected through the RFP process. Redevelopment of each of the sites will ultimately be subject to site plan review.

VI. PUBLIC COMMENT

The Planning Division has received no public comment on the subdivision application. A neighborhood meeting was not required.

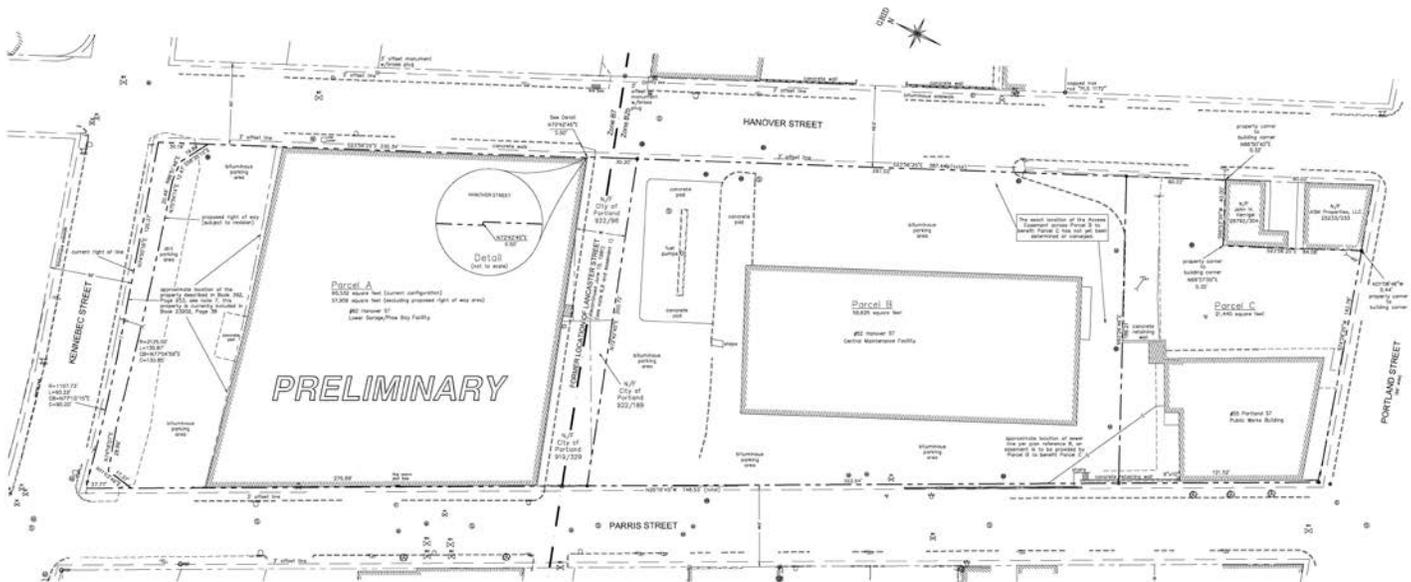


Figure 3: Proposed DPW campus subdivision plat

VII. RIGHT, TITLE, & INTEREST

The applicant has provided a deed record on the subdivision plat as evidence of right, title, and interest (*Plan 1*). Deeds have also been compiled (*Attachment C*).

It should be noted that right, title, and interest questions arose during the review with respect to the 82 Hanover parcel (Parcel A), as a portion of the site was historically subject to use restrictions as a product of its late 19th century sale to the Portland and Rochester Railroad Company. Corporation Counsel has advised that the city has sufficient right, title, and interest to pursue the subdivision approval by virtue of an adverse possession claim. Jennifer Thompson, Associate Corporation Counsel writes,

Note 7 [on the subdivision plat] notes that a portion of land adjacent to Kennebec Street was conveyed to the City by quit claim deed and conveys a right of way for the purposes of a railroad. To the extent this note raises questions about the City’s right, title and interest to that portion of the land and its ability to use that portion of land for uses other than those associated with a railroad, the City claims ownership in fee in that strip of land under a claim of adverse possession. The support for that claim is outlined in an Affidavit by William Scott, attached [in Attachment 1]. As you and the Board are aware, the Law Court has previously held that a claim of adverse possession is sufficient to evidence of right, title, and interest to constitute standing to apply for a land use approval. (Southridge Corp. v. DEP 655 A.2d 345 (Me. 1994), attached [in Attachment 1]). Therefore, the City has sufficient RTI to subdivide the property as proposed.

There are three plat items related to right, title, and interest which staff is suggesting be resolved as conditions of approval:

1. The northern property line of Parcel A (82 Hanover Street) fronts on Kennebec Street, which is proposed for realignment in association with the long-term plans for the reconfiguration of Somerset Street. Staff from the Department of Public Works has communicated with the applicant regarding the area of the 82 Hanover lot which is shown as new right-of-way on the subdivision plat. Final review of the right-of-way line by DPW will occur under their general review of the final, stamped recording plat, which has been suggested as a condition of approval.
2. The site is divided by the Lancaster Street right-of-way, a discontinued street in which the city maintains a sewer easement. This sewer easement is documented in the subdivision plat notes. As a product of the timing of the discontinuance, the city also maintains a public easement over the right-of-way, including rights of public access. Ms. Thompson writes,

Note 6 [on the subdivision plat] suggests a “title opinion” should be obtained regarding the

*existence of a public easement in the discontinued street.
Having reviewed the City's records with respect to the discontinuance of the portion of Lancaster Street implicated by Note 6 (attached [in Attachment 1]) and by operation of 23 MRSA 3026-A(2), I can confirm that the City did retain a public easement in the portion of Hanover Street discontinued in 1981.*

Finally, as noted in Note 8 and as expressly noted in the 1981 discontinuance, the City also retained a sewer easement in the portion of Lancaster Street depicted on the subdivision plan and still exists to this day.

Staff has suggested a condition of approval that clarifies the existence of this public easement in the easement notes on the plat.

3. Last, the subdivision plat includes a proposed access and utility easement over Parcel B (52 Hanover Street) for the benefit of Parcel C (55 Portland Street) in order to allow access to the parking at the rear of the 55 Portland Street property as well as utility connections from 55 Portland Street to Parris Street. This easement has not been finalized or recorded, but has been suggested as a condition of approval.

VIII. FINANCIAL & TECHNICAL CAPACITY

The applicant has attested to the city's financial and technical capacity to complete the subdivision (*Attachment B*).

IX. ZONING ANALYSIS

The applicant has proposed to reconfigure six existing parcels to create three new lots. Each of these lots conforms to the minimum lot size and street frontage requirements of their respective zones. The lot split does not render any side, rear, or front yards less than the minimum required by code.

X. SUBDIVISION PLAT AND RECORDING PLAT REQUIREMENTS (Section 14-496)

In accordance with the city's land use ordinance, the applicant provided a draft plat in the final plan submittal (*Plan 1*). As the plat relates to the reconfiguration of existing parcels on previously platted, constructed, and accepted city streets, complete with existing utility service, the plat does not address plat requirements regarding the laying out of new streets or utilities. The plat does address requirements relating to lot boundaries, zoning district boundaries, and lot data, as well as survey standards. Corporation Counsel, the Department of Public Services, and Planning staff have reviewed the draft plat. As with all subdivision plats, a final, stamped recording plat, reviewed and approved by Corporation Counsel, DPW, and Planning, will be required as a condition of approval.

XI. SUBDIVISION REVIEW (Section 14-497(a). Review Criteria)

The proposed development has been reviewed by staff for conformance with the relevant review standards of the City of Portland's subdivision ordinance. Staff comments are below.

1. Water, Air Pollution

The subdivision to create three new lots is not anticipated to cause undue water or air pollution.

2 & 3. Adequacy of Water Supply

The site is currently served with water. It is anticipated that water supply will be sufficient to serve the reconfigured lots.

4. Soil Erosion

No unreasonable soil erosion or reduction in the capacity of the land to hold water is anticipated.

5. Impacts on Existing or Proposed Highways and Public Roads

As noted previously, the subdivision relates to a developed site which lies on an existing city block surrounded by accepted city streets. At time of site plan review, future redevelopment plans for the proposed lots will be assessed for impacts to the surrounding street network.

6. Sanitary Sewer/Stormwater Disposal

The existing development on the site is connected to the municipal waste water system, with separated sewer and stormwater connections to combined systems in Hanover and Parris Streets. Capacity to serve potential redevelopment will be assessed at time of site plan review.

7. Solid Waste

The site is currently served by municipal trash and recycling, and no unreasonable future burden on these systems is anticipated.

8. Scenic Beauty, Historic Sites, or Natural Resources

The subdivision proposal is not deemed to have an adverse impact on the scenic beauty of the area. There are no historic or natural resources on the site.

9. Comprehensive Plan

The proposed subdivision is consistent with *Portland's Plan*. It is directly related to facility goals around capitalizing on existing assets and pursuing disposition of properties as a means of subsidizing programs and facilities with broad public support. In addition, the disposition of DPW properties through this subdivision will allow for development on these parcels in a manner consistent with West Bayside's designation as a "priority node" in *Portland's Plan*.

10. Financial and Technical Capacity

As noted above, the applicant has attested to the city's technical and financial capacity.

11. Wetland/Water Body Impacts

There are no anticipated impacts to wetlands or water bodies.

12. Groundwater Impacts

There are no anticipated impacts to groundwater supplies.

13. Flood-Prone Area

Although preliminary mapping shows portions of Parcel A within a 500-year flood zone, per the city's current flood maps, none of the proposed parcels technically lie within a 100-year flood zone.

XI. TECHNICAL AND DESIGN STANDARDS (Section 14-498) & REQUIRED IMPROVEMENTS (Section 14-499)

As noted previously, this subdivision is served by previously platted and engineered streets and utilities, including sewer, stormwater, water, and electricity. These streets provide for many of the subdivision "improvements" required by *Section 14-499* of the ordinance. For example, water, sanitary sewer mains, and storm drains have been constructed and "suitable hard surfaced permanent pavement" has been installed in accordance with *14-499*. However, in some areas, these streets do not provide required improvements; as noted previously, these streets are not uniformly served by sidewalks, curbing, street trees, or street lighting as required by *Section 14-499*. In order to address these required improvements, staff has recommended a condition of approval stating that, at such time as future development on the new parcels occurs, sidewalks, curbing, street trees, and street lights conforming to *Section 14-498* and the city's *Technical Manual* shall be installed. It should be noted that, in his review of the plat, Jeff Tarling, the city's arborist, has stated that street trees in this area should be located in raised tree planters at a spacing of 45 feet on center (*Attachment 2*).

In their submittal, the applicant has requested a waiver from the requirement in *Section 14-499* that "all utility lines shall be placed underground unless otherwise approved by the Planning Board" (*Section 14-499(h)*). Given the cost of such an investment as well as recent precedent, staff supports such a waiver.

XIII. STAFF RECOMMENDATION

Subject to the proposed motions and conditions of approval listed below, Planning Division staff recommends that the Planning Board approve the proposed DPW campus subdivision on the site bounded by Portland, Hanover, Kennebec, and

Parris Streets.

XIV. PROPOSED MOTIONS

A. WAIVERS

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board report for the public hearing on March 13, 2018 for application 2018-001 relevant to Portland’s technical and design standards and other regulations; and the testimony presented at the Planning Board hearing:

1. The Planning Board **finds/does not find** that extraordinary conditions exist or undue hardship may result from strict compliance with the subdivision standard *Section 14-498(h)* which requires that all utilities be placed underground, that substantial justice and the public interest are secured with the proposed variation in this standard, and that the variation is consistent with the intent of the ordinance. The Planning Board **waives/does not waive** the subdivision standard *Section 14-498(h)* to allow the utilities surrounding the proposed subdivision to remain above ground.

B. SUBDIVISION

On the basis of the application, plans, reports and other information submitted by the applicant; findings and recommendations contained in the Planning Board report for the public hearing on March 13, 2018 for application 201-001 relevant to the subdivision regulations; and the testimony presented at the Planning Board hearing, the Planning Board finds that the plan **is/is not** in conformance with the subdivision standards of the land use code, subject to the following conditions of approval, which must be met prior to the signing of the plat:

1. The applicant shall finalize the subdivision plat for review and approval by Corporation Counsel, the Department of Public Works, and the Planning Authority;
2. The applicant shall add a note regarding the retained public easement in the Lancaster Street right-of-way in the “Easements” notes on the plat for review and approval by Corporation Counsel and the Planning Authority;
3. The applicant shall provide evidence of an access and utility easement over Lot B for the benefit of Lot C and document such easement on the plat for review and approval by Corporation Counsel and the Planning Authority; and
4. The applicant shall add notes to the plat stating that sidewalks, curbing, street trees, and street lights in conformance with *Section 14-498* and the city’s *Technical Manual* will be required at such time as Parcel A, Parcel B, and Parcel C are subject to future site plan review or change of use permit for review and approval by Corporation Counsel and the Planning Authority.

XV. ATTACHMENTS

PLANNING BOARD REPORT ATTACHMENTS

1. Corporation Counsel memo (memo from Jennifer Thompson, 3/9/18)
2. City Arborist review (memo from Jeff Tarling, 2/7/18)

APPLICANT’S SUBMITTALS

- A. Level III Site Plan Application
- B. Subdivision Application Narrative
- C. Evidence of Right, Title, and Interest

PLANS

- Plan 1. Draft Subdivision Plat