

Regular City Council Meeting
November 2, 2015

1. Agenda Only

Documents: [AGENDA ONLY 2015-11-02.PDF](#)

2. Agenda And Packet

Documents: [AGENDA AND PACKET 2015-11-02.PDF](#)

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

DAVID BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

AGENDA
REGULAR CITY COUNCIL MEETING
NOVEMBER 2, 2015

The Portland City Council will hold a regular City Council Meeting at 7:00 p.m. in City Council Chambers, City Hall. The Honorable Michael F. Brennan, Mayor, will preside.

PLEDGE OF ALLEGIANCE:

ROLL CALL:

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

(Tab 1) October 19, 2015 Regular City Council Meeting Minutes

PROCLAMATIONS:

APPOINTMENTS:

**Order 93-15/16 Order Appointing Various Boards and Committees - Sponsored
(Tab 2) by the Nominating Committee – David Brenerman, Chair.**

The Nominating Committee is making the following recommendations to the Various Boards and Committees.

Name	Board and Committee	Expiration
Maxwell Chikuta	Community Development Block Grant Annual Allocation Committee	9/30/2018
Dennis Martin	Portland Development Corporation	09/30/2018
Jess Knox	Portland Development Corporation	09/30/2018
Robert Odlin	Fish Exchange	10/31/2017
Matt Tarasevich	Fish Exchange	10/31/2017
Eric Larsson	Board of Appeals	12/31/2018
Bert Jongerden	Harbor Commission	12/31/2018

Five affirmative votes are required for passage after comment.

CONSENT ITEMS:

**Order 94-15/16
(Tab 3)**

Order Declaring Portland's Downtown District's Light Up Your Holidays Festival – Sponsored by Jon P. Jennings, City Manager.

This order declares Portland's Downtown District's, Light Up Your Holidays Festival, to be held Fridays, November 27, December 4, 11, 12, 2015; Saturdays, November 28, December 5, 12, 19, 2015; and Sundays (November 29, December 6, 13, 20, 2015, and Thursday, December 10, 2015. Friday, November 27, is the "Tree Lighting Ceremony". Thursday, December 10, is "Merry Madness".

Traffic plan for METRO Buses during the Tree Lighting Ceremony (Fri., Nov. 27), will be similar to last year: Public Services and the Police Dept. plan to provide a special bus travel lane on Congress Street during the Tree Lighting setup and removal, to allow bus access on that closed portion of Congress Street (between Elm Street and Preble Street).

Further details of these events are described below.

Tree Lighting Ceremony: On Friday, November 27, 2015, from 5:30 to 6:45pm, the annual tree lighting ceremony will be held in Monument Square and on Congress Street (with stage, entertainment and vendors). Organizers have asked to place a 20x24' stage on Congress Street (between Preble and Elm Street) facing Monument Square. This would necessitate the closure of that section of Congress Street to vehicular traffic from Noon to 9pm, Friday, Nov. 27. A special METRO bus travel lane through the closure is planned (street available for buses from 12:30 – 3pm, and then again from 7:30 – 9pm). Organizers will work on that with METRO. For security, the tree lighting ceremony will also necessitate closing Federal Street Extension to vehicular traffic (from 4:45 – 7pm) and posted "No Parking" 2 - 7pm.

Vendors will set up on the sidewalks, in Monument Square and on the closed section of Congress Street. The festival area includes Congress Street (Preble to Elm Street) and all of Monument Square, Federal Street Ext., and the nearby sidewalks (One City Center sidewalk area and Monument Way), from Center Street to Temple Street and both sides of Congress Street in that area.

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Five affirmative votes are required for passage of the Consent Calendar.

LICENSES:

**Order 95-15/16
(Tab 4)**

Order Granting Municipal Officers’ Approval of Maine & Loire LLC d/b/a Drifters Wife. Application for a Class III & IV (Wine & Beer) License at 63 Washington Avenue.– Sponsored by Katherine L. Jones, City Clerk.

Application filed 10/1/15. New City and State Applications. Applicant holds a current FSE without Prep license for Maine & Loire at 63 Washington Avenue.

Five affirmative votes are required for passage after public comment.

**Order 96-15/16
(Tab 5)**

Order Granting Municipal Officers’ Approval of Taco Trio LLC d/b/a Taco Trio. Application for Class I FSE License at 1706 Forest Avenue – Sponsored by Katherine L. Jones, City Clerk.

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Order Granting Municipal Officers' Approval of Munjoy Hill Tavern LLC d/b/a Munjoy Hill Tavern. Application for Class A Lounge License with Entertainment without Dance and Outdoor Dining on Private Property at 189 Congress Street – Sponsored by Katherine L. Jones, City Clerk.

Application filed 10/6/15. New City and State Applications. Former location of Mama's Crow Bar.

Five affirmative votes are required for passage after public comment.

BUDGET ITEMS:

COMMUNICATIONS:

**Com 4–15/16 Communication Re: Appointment of an East Bayside Area Wide
(Tab 7) Planning Grant Advisory Committee – Sponsored by Mayor Michael F. Brennan.**

The City and GPCOG received a \$200,000 grant from the EPA to conduct Brownfields planning work in East Bayside. As part of that two year process, there will be an advisory committee of stakeholders to advise the project team as it completes this work.

The following members have been appointed to this group:

- Kate Anker, Running with Scissors
- Heather Sanborn, Rising Tide Brewing
- Laura Mailander, Cultivating Community
- Jay Waterman, Portland Housing Authority
- Zoe Miller, Opportunity Alliance
- Kara Wooldrik, Portland Trails
- A representative from a traditional light industrial business (eg. transportation)
- District 1 Councilor
- Appointee from Greater Portland Landmarks
- Appointee from Portland Adult Education
- Appointee from Muslim Community Center
- 3 appointees from the East Bayside Neighborhood Organization
- 3 appointees from Kennedy Park (residents)

There may be additional members from local businesses or the neighborhood added to this group as it moves forward. The grant is for two years so there is time to make adjustments if needed.

As a Communication this item requires no public comment or formal Council action.

RESOLUTIONS:

UNFINISHED BUSINESS:

**Order 77-15/16
(Tab 8)**

Order Adopting India Street Sustainable Neighborhood Plan and Amending the Comprehensive Plan – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

This order approves the adoption of the India Street Sustainable Neighborhood Plan and accompanying implementation tools – the India Street Form-based Code Zone and the India Street Historic District – along with associated map and ordinance text amendments in order to provide policy guidance for the India Street neighborhood.

On January 20, 2015, the Planning Board voted unanimously (5-0) to recommend the proposed India Street Sustainable Neighborhood Plan to the City Council to be adopted into the Comprehensive Plan.

On September 15, 2015, the Planning Board voted unanimously (7-0) to recommend the proposed India Street Form-based Code zone and related text and map amendments be approved by the City Council with an additional recommendation for a Council Order requiring a review of the India Street Form-based Code in at least three years and no later than five years from implementation.

On September 15, 2015, upon the unanimous recommendation of the Historic Preservation Board, the Planning Board voted 5-2 (Soley and Dundon opposed) to recommend that the City Council designate the proposed India Street Historic District and amend the site plan and historic preservation ordinances to clarify the relationship between historic preservation and Form-based Code regulations in the India Street Historic District. These include 1) an added provision under the historic preservation ordinance standards for new construction (Sec. 14-651) which addresses allowable building heights in the India Street Historic District; and 2) an amendment to Sec. 14-526 (18) of the site plan ordinance which applies to the review of new construction within 100 feet of a historic district boundary or landmark. The amendment would clarify that this provision applies only to new construction within 100 feet of individual landmarks in the India Street Historic District.

This order and Orders 78-15/16 and 79-15/16 which follow are companion orders to Order 83-15/16 listed under Amendments. At the October 5, 2015, City Council meeting this item was postponed to this meeting to coincide with consideration of Order 83-15/16. Staff is requesting that this order be postponed to the November 2, 2015, City Council meeting.

Five affirmative votes are required for passage after public comment.

**Order 78-15/16
(Tab 9)**

Order Designating the Abraham S. Levey Building at 78-88 Middle Street as a Landmark – Sponsored by the Historic Preservation Board, Scott Benson, Chair.

At the October 5, 2015, City Council Meeting this item was postponed to this meeting.

Five affirmative votes are required for passage after public comment.

**Order 79-15/16
(Tab 10)**

Order Designating India Street as a Historic District and Amending the Map of Historic Districts – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

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Five affirmative votes are required for passage after public comment.

**Order 83-15/16
(Tab 11)**

Amendment to Portland City Code Chapter 14. Land Use, Article III. Zoning, Article V. Site Plan and Article IX. Historic Preservation Re: India Street Historic District and Form-Based Code Zone – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

This item must be read on two separate days. It was given a first reading on October 5, 2015.

Five affirmative votes are required for passage after public comment.

**Order 84-15/16
(Tab 12)**

Amendment to Zoning Map Re: 1945 Congress Street – Sponsored by the Planning Board, Elizabeth Boepple, Chair.

On September 8, 2015, the Planning Board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) to recommend a map amendment to change the zoning for the property at 1945 Congress Street from Residential R-2 to Office Park (O-P), with a 40-foot buffer of R-2 retained at the easterly side of the site.

The amendment would make Office Park a permitted use on the site, and thus allow Northland Enterprises, LLC, the applicant, to redevelop the property with medical and general office buildings under the development standards and design criteria of the Office Park zone.

This item must be read on two separate days. It was given a first reading on October 5, 2015. At the October 19th Council Meeting, after the close of public comment, this item was postponed to this meeting.

Five affirmative votes are required for passage of this order.

**Order 92-15/16
(Tab 13)**

**Amendment to Zoning Map Re: India Street Form-Based Code Zone
- Sponsored by the Planning Board, Elizabeth Boepple, Chair.**

This is a companion order to Order 83-15/16. This item must be read on two separate days. It was given a first reading on October 19, 2015.

Five affirmative votes are required for passage after public comment.

ORDERS:

AMENDMENTS:

**Order 98-15/16
(Tab 14)**

**Amendment to City Code Chapter 2 (Administration) Article VIII.
Re: Director of the Bureau of Emergency Preparedness – Sponsored
by Jon Jennings, City Manager.**

The Bureau of Emergency Preparedness was established by Portland City Code Section 2-401 in 1990 and amended in 2005, to “ensure the complete and efficient utilization of the city’s facilities and resources to prevent, prepare and respond to all hazards, natural or manmade.” In the past, the Manager has appointed the City’s fire chief as director of the bureau. By this amendment, the director would be the City Manager or his or her designee. This amendment allows the Manager, as the Director of Bureau of Emergency Preparedness, to be focused on the needs of that position and the City, which have become more complex with every passing year.

This item must be read on two separate dates. This is its first reading.

**Order 99- 15/16
(Tab 15)**

Amendment to Portland City Code Chapter 10 (Fire Prevention and Protection Article VIII – Signaling Systems for the Protection of Life and Property Sections 10-101 to 10-102 Re: Wireless Alarm System – Sponsored by Councilor Edward Suslovic, Chair, Public Safety, Health & Human Services Committee.

The City’s present Municipal Fire Alarm System, which has been in place since the 1970s, uses mechanical transmitters with overhead and underground wiring to send a signal to the dispatch center. The proposed new system utilizes wireless technology and is much more efficient. Several buildings are required by Code to be attached to the system via Master Boxes. The Fire Department is requesting that 1) any new buildings required to have a master box have a City-approved wireless master box; and 2) those buildings that presently have a mechanical master box replace the mechanical master box with a City-approved wireless master box. The only Council action required is amendment of Chapter 10 to clarify that new buildings required to have a master box must have a wireless master box and to require those buildings that have a mechanical master box migrate to a wireless master box by January 1, 2017.

This item must be read on two separate dates. This is its first reading.

**Order 100-15/16
(Tab 16)**

Amendment to Portland City Code Chapter 14. Land Use. Article III. Zoning. Sections 14-182 and 14-295 to Re: Commercial Kitchens and Small Gravel Lots - Sponsored by the Planning Board, Elizabeth Boepple, Chair.

The Planning Board is forwarding a positive recommendation on a series of zoning text amendments to the B-7 zone regarding small surface parking areas and amendments to allow commercial kitchens in the B-7, B-2 and B-2b.

Amendments to the B-7 zoning text are proposed to provide flexibility in the regulation of small gravel parking lots for underutilized properties pursuing redevelopment. The amendments use a carrot approach allowing a reduced parking setback for small gravel areas that are converted to surface parking in exchange for a minimum level of redevelopment activity. This incentive measure supports the Bayside policy of creating a denser urban neighborhood but not at the expense of allowing excessive surface parking without some linkage to building development.

The existing zoning text should be updated to allow commercial kitchens as a permitted use in the B-7, B-2 and B-2b zones. Commercial kitchens provide space for food entrepreneurs to initiate and grow their businesses including the ability to have retail related space which also supports retail activity in business zones. A commercial kitchen is expected to be developed in Bayside shortly.

This item must be read on two separate dates. This is its first reading.

**Order 101-15/16
(Tab 17)**

Amendment to Portland City Code Chapter 14. Land Use. Article III. Zoning. Section 14-230.2 Re: Self-Storage Units and Equipment Storage - Sponsored by the Planning Board, Elizabeth Boepple, Chair.

The Planning Board is forwarding a positive recommendation on proposed B-5 zoning text amendments regarding self-storage facilities and outdoor storage of moving and rental equipment. The amendments address a request initiated by U-Haul for their property at 411 and 425 Marginal Way. The amendments balance U-Haul's request to accommodate their facility needs, while restricting self-storage uses to conditional uses in existing buildings in on-peninsula B-5 locations and incorporating design standards to address building façade and landscape buffer concerns.

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LICENSE RENEWALS:

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

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(Tab 16)**

Amendment to Portland City Code Chapter 14. Land Use. Article III. Zoning. Sections 14-182 and 14-295 to Re: Commercial Kitchens and Small Gravel Lots - Sponsored by the Planning Board, Elizabeth Boepple, Chair.

The Planning Board is forwarding a positive recommendation on a series of zoning text amendments to the B-7 zone regarding small surface parking areas and amendments to allow commercial kitchens in the B-7, B-2 and B-2b.

Amendments to the B-7 zoning text are proposed to provide flexibility in the regulation of small gravel parking lots for underutilized properties pursuing redevelopment. The amendments use a carrot approach allowing a reduced parking setback for small gravel areas that are converted to surface parking in exchange for a minimum level of redevelopment activity. This incentive measure supports the Bayside policy of creating a denser urban neighborhood but not at the expense of allowing excessive surface parking without some linkage to building development.

The existing zoning text should be updated to allow commercial kitchens as a permitted use in the B-7, B-2 and B-2b zones. Commercial kitchens provide space for food entrepreneurs to initiate and grow their businesses including the ability to have retail related space which also supports retail activity in business zones. A commercial kitchen is expected to be developed in Bayside shortly.

This item must be read on two separate dates. This is its first reading.

**Order 101-15/16
(Tab 17)**

Amendment to Portland City Code Chapter 14. Land Use. Article III. Zoning. Section 14-230.2 Re: Self-Storage Units and Equipment Storage - Sponsored by the Planning Board, Elizabeth Boepple, Chair.

The Planning Board is forwarding a positive recommendation on proposed B-5 zoning text amendments regarding self-storage facilities and outdoor storage of moving and rental equipment. The amendments address a request initiated by U-Haul for their property at 411 and 425 Marginal Way. The amendments balance U-Haul's request to accommodate their facility needs, while restricting self-storage uses to conditional uses in existing buildings in on-peninsula B-5 locations and incorporating design standards to address building façade and landscape buffer concerns.

This item must be read on two separate dates. This is its first reading.

LICENSE RENEWALS:

IN COUNCIL REGULAR MEETING OCTOBER 19, 2015 VOL. 131 PAGE 33

ROLL CALL: Mayor Brennan called the meeting to order at 7:10 P.M. (All Councilors Present).

ANNOUNCEMENTS:

RECOGNITIONS:

APPROVAL OF MINUTES OF PREVIOUS MEETING:

Motion was made by Councilor Marshall and seconded by Councilor Suslovic to approve the minutes of October 5, 2015. Passage 9-0.

PROCLAMATIONS:

Proc 8-15/16 Proclamation Honoring Officer Brent Abbot and Officer David Schertz as Officers of the Month for October 2015 – Sponsored by Mayor Michael Brennan.

Proc 9-15/16 Proclamation Honoring Thomas Williams, Health & Human Services Department, Public Health, as Employee of the Month for October 2015 – Sponsored by Mayor Michael F. Brennan.

APPOINTMENTS:

Order 86-15/16 Order Appointing and Setting Salary of Sally Deluca as Director of Recreation and Facilities Management – Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Costa and seconded by Councilor Duson for passage. Passage 9-0 .

Order 87-15/16 Order Appointing Directors of the Portland Widows' Wood Society for the 2014-2015 Term – Sponsored by Mayor Michael F. Brennan.

The Portland Widows' Wood Society provides assistance to needy Portland residents who are referred to the Society by various charitable organizations and the City of Portland. This order appoints the following persons as Directors to the Portland Widows' Wood Society for the 2015-2016 term:

Henry L. Donovan	15 Clifford Street
Nancy English	40 Park Avenue
Michael Francouer	33 Autumn Lane
Cyrus Hagge	45 Turner Street
Cheryl Hallett, Treasurer	22 Pride Farm Road, Falmouth
Everett Ingalls	125 Neal Street
John C. Knox, President	44 Bramblewood Drive
Thomas M. Pierce	52 Foreside Common Drive, Falmouth

Motion was made by Councilor Donoghue and seconded by Councilor Suslovic for passage. Passage 9-0.

CONSENT ITEMS:

Order 88-15/16 Order Declaring 2015 Veterans Day Parade and Ceremony as a Festival – Sponsored by Jon P. Jennings, City Manager.

Motion was made by Councilor Costa and seconded by Councilor Suslovic for passage. Passage 9-0.

LICENSES:

Order 89-15/16 Order Granting Municipal Officers' Approval of City of Portland d/b/a Merrill Auditorium. Application to Expand Alcohol Consumption Area of Civic Auditorium License at 20 Myrtle Street - Sponsored by Katherine L. Jones, City Clerk.

Motion was made by Councilor Suslovic and seconded by Councilor Costa for passage. Passage 8-1, (Duson).

Order 90-15/16 Order Granting Municipal Officers' Approval of Vinbar d/b/a Vinbar. Application for a Class III & IV (Wine & Beer) License with Entertainment without Dance and Outdoor Dining on Public Property at 3 Deering Ave. – Sponsored by Katherine L. Jones, City Clerk.

Motion was made by Councilor Duson and seconded by Councilor Suslovic for passage. Passage 9-0.

BUDGET ITEMS:

COMMUNICATIONS:

RESOLUTIONS:

Resolve 4-15/16 Resolution Requesting Federal Action for the Prevention of Chemical Disasters – Sponsored by Councilor Jon Hinck.

Motion was made by Councilor Hinck and seconded by Councilor Duson for passage. Passage 9-0.

UNFINISHED BUSINESS:

Order 172-14/15 Order Approving Two-Party Agreement between the City of Portland

and the Maine Department of Transportation Re: Improvements to Forest Avenue – Sponsored by Jon P. Jennings, City Manager. This item was given first reading on March 2, 2015. At the September 21, 2015 meeting this item was postponed this meeting.

Motion was made by Councilor Marshall and seconded by Councilor Costa to postpone order 172 to the January 20, 2016, City Council meeting. Passage 9-0.

Order 233B-14/15 Order Approving Annual Adjustments to the Community Development Block Grant (CDBG) Allocation Process – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.

Motion was made by Councilor Donoghue and seconded by Councilor Suslovic to postpone Order 233 B indefinitely. Passage 7-1 (Duson opposed, Marshall out).

Order 76-15/16 Order Designating City Parks and Public Grounds Subject to the No Smoking Requirements of Section 17-96 of the Portland City Code - Sponsored by the Public Safety, Health & Human Services Committee, Councilor Edward J. Suslovic, Chair. This item was postponed on October 5, 2015.

Motion was made by Councilor Donoghue and seconded by Councilor Suslovic for passage. Passage 8-0 (Marshall out).

Councilor Costa recused himself from Orders 77,78,79,83 he stated that the company that he works for has interest in the property

Order 77-15/16 Order Adopting India Street Sustainable Neighborhood Plan and Amending the Comprehensive Plan – Sponsored by the Planning Board, Beth Boepple, Chair. This item was postponed on October 5, 2015.

Motion was made by Councilor Donoghue and seconded by Councilor Suslovic to postpone Order 77 to the November 2, 2015 City Council meeting. Passage 8-0 (Costa recused).

Order 78-15/16 Order Designating the Abraham S. Levey Building at 78-88 Middle Street as a Landmark – Sponsored by the Historic Preservation Board, Scott Benson, Chair. This item was postponed on October 5, 2015.

Motion was made by Councilor Donoghue and seconded by Councilor Suslovic to postpone Order 78 to the November 2, 2015 City Council meeting. Passage 8-0 (Costa recused).

Order 79-15/16 Order Designating India Street as a Historic District and Amending the Map of Historic Districts -- Sponsored by the Planning Board, Beth Boepple, Chair. This item was postponed on October 5, 2015.

Motion was made by Councilor Donoghue and seconded by Councilor Marshall to postpone Order 79 to the November 2, 2015 City Council meeting. Passage 8-0, (Costa recused).

Order 80-15/16 Amendment to Portland City Code Chapter 17 (Offenses, Miscellaneous Provisions) Article V (Regulation of Tobacco) -- Sponsored by the Public Safety, Health and Human Services Committee, Councilor Edward J. Suslovic Chair. This item was given first reading on October 5, 2015.

Motion was made by Councilor Suslovic and seconded by Councilor Brenerman for passage. Passage 9-0.

Order 81-15/16 Amendment to Downtown Height Overlay Map -- Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair. This item was given first reading on October 5, 2015.

Motion was made by Councilor Donoghue and seconded by Councilor Duson for passage. Passage 9-0.

Order 82-15/16 Amendment to Portland City Code Chapter 14. Land Use, Article III. Zoning Re: Inclusionary Zoning -- Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair. This item was given first reading on October 5, 2015.

Motion was made by Councilor Suslovic and seconded by Councilor Duson to bifurcate Order 82, Accessory Units and Affordability. Passage 9-0.

Motion was made by Councilor Donoghue and seconded by Councilor Duson to amend Order 82 with a prepared amendment for Councilor Donoghue to clarify accessory dwelling unit affordability and remove requirement for city water and sewer. Passage 9-0.

Motion was made by Councilor Donoghue and seconded by Councilor Marshall for passage. Passage 9-0.

Motion was made by Councilor Donoghue and seconded by Councilor Duson to pass the second part of Order 82 affordable housing. Passage 7-2 (Brenerman, Suslovic).

Order 83-15/16 Amendment to Portland City Code Chapter 14. Land Use, Article III. Zoning, Article V. Site Plan and Article IX. Historic Preservation Re: India Street Historic District and Form-Based Code Zone – Sponsored by the Planning Board, Beth Boepple, Chair. This item was given first reading on October 5, 2015.

Motion was made by Councilor Donoghue and seconded by Councilor Hinck to postpone Order 83 to the November 2, 2015 City Council meeting. Passage 8-0 (Costa recused).

Order 84-15/16 Amendment to Zoning Map Re: 1945 Congress Street – Sponsored by the Planning Board, Beth Boepple, Chair. This item was given first reading on October 5, 2015.

Motion was made by Councilor Suslovic and seconded by Councilor Mavodones to postpone Order 84 to the November 2, 2015 City Council meeting. Passage 6-2 (Marshall, Donoghue opposed, Duson gone) .

Order 85-15/16 Amendment to Portland City Code Chapter 13 (General Assistance) Re: Eligibility – Sponsored by Jon P. Jennings, City Manager. This item was given first reading on October 5, 2015.

Motion was made by Councilor Hinck and seconded by Councilor Marshall to amend Order 85 with an amendment prepared by Corporation Counsel. Passage 6-2 (Mavodones, Suslovic opposed, Duson gone).

Motion was made by Hinck and seconded by Councilor Marshall for passage as amended. Passage 6-2 (Mavodones, Suslovic opposed, Duson gone,)

ORDERS:

Order 91-15/16 Order Approving Community Development Policy Goals for the Housing and Urban Development Five-Year Consolidated Plan and Revisions in the Community Development Block Grant Allocation Process – Sponsored by the Housing and Community Development Committee, Councilor Kevin J. Donoghue, Chair.

Councilor Marshall recused himself, his wife works for one of the organizations that receives funding from the CDBG.

Motion was made by Councilor Suslovic and seconded by Councilor Hinck to delete paragraph (4) Child care voucher set-aside of \$90,000. Motion failed 3-4 (Mavodones, Brenerman, Donoghue, Brennan opposed, Duson gone).

Motion was made by Councilor Donoghue and seconded by Councilor Brenerman for passage. Passage 7-0 (Marshall out, Duson gone,).

AMENDMENTS:

IN COUNCIL REGULAR MEETING OCTOBER 19, 2015 VOL. 131 PAGE 38

**Order 92-15/16 Amendment to Zoning Map Re: India Street Form-Based Code Zone
- Sponsored by the Planning Board, Beth Boepple, Chair.**

This is its first reading.

Motion was made by Councilor Costa and seconded by Councilor Brenerman to adjourn. Passage 6-0, (Duson, Marshall, Donoghue gone),
11:45. P.M.

A TRUE COPY.

Katherine L. Jones, City Clerk

Order 93-15/16
Tab 2 11-2-15

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPOINTING MEMBERS TO VARIOUS BOARDS AND
COMMITTEES**

ORDERED, that the following are hereby appointed to the Boards and Committees indicated for the stated term:

Name	Committee	Term Expires
Maxwell Chikuta	Community Development Block Grant Annual Allocation Committee	09/30/2018
Dennis Martin	Portland Development Corporation	09/30/2018
Jess Knox	Portland Development Corporation	09/30/2018
Robert Odlin	Fish Exchange	10/31/2017
Matt Tarasevich	Fish Exchange	10/31/2017
Eric Larsson	Board of Appeals	12/31/2018
Bert Jongerden	Harbor Commission	12/31/2018



Office of the City Clerk
Katherine L. Jones, CMC

MEMORANDUM

TO: Mayor Michael Brennan, and Members of City Council
FROM: Katherine L. Jones
DATE: October 21, 2015
RE: Appointments

The Nominating Committee is making the following recommendations to the Various Boards and Committees.

Name	Board and Committee	Expiration
Maxwell Chikuta	CDBG	09/30/2018
Dennis Martin	Portland Development Corporation	09/30/2018
Jess Knox	Portland Development Corporation	09/30/2018
Robert Odlin	Fish Exchange	10/31/2017
Matt Tarasevich	Fish Exchange	10/31/2017
Eric Larsson	Board of Appeals	12/31/2018
Bert Jongerden	Harbor Commission	12/31/2018

Order 94-15/16
Tab 3 11-2-15

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**DECLARING PORTLAND'S DOWNTOWN DISTRICT
LIGHT UP YOUR HOLIDAYS FESTIVAL**

ORDERED, the following dates are hereby declared the Portland's Downtown District Light Up Your Holidays Festival, to be organized by Portland's Downtown District:

November 27, 28, 29 and December 4, 5, 6, 10, 11, 12, 13, 18, 19 and 20; and

BE IT FURTHER ORDERED, that the following activities shall be held in the Monument Square, One City Center sidewalk area and Monument Way:

November 27, 2015: Tree Lighting Ceremony in Monument Square and on Congress Street - 5:30 to 6:30 PM (rain, snow or shine); and

Horse-drawn Wagon rides Fridays, November 28 (4:00 PM to 8:00 PM) and December 4 (4:00 PM to 8:00), Saturdays, November 28 and December 5, 12, and 19, 2015 (2:00 PM-6:00 PM) and Sundays, November 29 and December 6, 13, 20, 2015 (1:00 PM-5:00 PM), as well as on Thursday, December 10 (5:00 PM to 9:00 PM); and

BE IT FURTHER ORDERED, that the Federal Street Extension shall be closed to vehicular traffic from 4:45 PM to 7:00 PM and posted "no parking" from 2:00-7:00 PM on Friday, November 27, 2015, and Congress Street shall be closed to vehicular traffic between Preble and Elm streets from noon to 9:00 PM to allow the construction and use of a stage set up on Congress Street for the Monument Square Tree Lighting; and

BE IT FURTHER ORDERED, on December 10, 2015, the Organizers will host Merry Madness and will be allowed to place a large tent on Federal Street between Temple Street and Exchange Street where music will be played and refreshments including alcohol may be consumed, after being purchased inside Portland House of Music, only in an area admitting persons 21-years-old and older, with security on site to check identification. Merry Madness will be held from 4:00 PM to 6:00 PM in the Downtown and in Old Port areas with the participation of many stores; and

BE IT FURTHER ORDERED, that the City Manager is authorized to issue a revocable permit under Section 25-27 of the Portland City Code to Portland's Downtown District for the use of the above-described area for said events and the Tree Lighting Ceremony, subject to the following conditions:

- Portland's Downtown District shall indemnify the City and hold it harmless from and against all claims arising out of activities during said parade and ceremony, and shall take out and maintain public liability insurance coverage in the amount of at least \$400,000 per occurrence for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured for the Light Up Your Holidays events, including liquor liability insurance for the Merry Madness event; and
- Portland's Downtown District shall have sole authority over participating vendors at the event and may charge a fee to vendors for the opportunity to vend at Light Up Your Holiday events; and
- Conditions for use of grounds and requirements for food service, vending sales, stages, tents, and other items specified in a permit issued from Public Services Event Office, shall be adhered to; and
- Major expenses incurred by City Departments for the Tree Lighting Ceremony and Closure of Congress Street for that event on Friday, Nov. 27: (Permit Fees for use of grounds, staff assistance – including Police, Public Services for barricades and signage, and Fire Department), shall be in-kind, except that additional staff costs to maintain bus service within the closed section of Congress Street shall be paid for by the Organizer. City Clerk's License fees and Permit fees at the Inspections Office would also be paid by the organizer, Portland's Downtown District; and
- Merry Madness event associated costs from City Departments will be paid by the organizer, Portland's Downtown District. Some of those costs include: Police services (if needed on Federal Street), Inspection Services for Tent Permit, and City Clerk's License fees; and
- Food Vendors participating in the Light Up Your Holidays Festival shall be licensed by the City Clerk's Office. Under no circumstances may alcoholic beverages be sold on the streets of public property of said area during said events and festival other than what is approved by the City Clerk's Office (and by the City Council at the Merry Madness event on Federal Street); and

BE IT FURTHER ORDERED, that the City Manager is also authorized to waive any fees and to issue such other temporary licenses and temporary permits, including licenses for food service establishments, and permits for sales of non-food related items, as may be required by the Portland City Code, provided that all applicable requirements of said code have been met regarding the operation of said event.

MEMORANDUM
City Council Agenda Item

TO: City Council

FROM: Robert Leeman, Acting Director of Public Services

DATE: October 21, 2015

DISTRIBUTION: City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

SUBJECT: Portland Downtown's "Light Up Your Holidays" Festival

SPONSOR: City Manager

COUNCIL MEETING DATE ACTION IS REQUESTED:

1st reading _____ November 2, 2015 _____ Final Action _____

Can action be taken at a later date: ☒ Yes ☐ No (Next Mtg: Nov. 16)

PRESENTATION: None that is known of.

I. SUMMARY OF ISSUE

Please see attached memo and Letter from Organizer.

Declare Fridays (November 27, December 4, 11, 18, 2015), Saturdays (November 28, December 5, 12, 19, 2015), and Sundays (November 29, December 6, 13, 20, 2015), and Thursday (December 10, 2015), as a Festival. Friday, November 27 is the "Tree Lighting Ceremony;" Thursday, Dec. 10 is "Merry Madness."

II. REASON FOR SUBMISSION

Festival Declaration and Use of City Property

Allows for control of vendors.

Approves alcohol service on City Property.

Allows for posting of streets "no parking."

Closing of Streets in Festival area.

III. INTENDED RESULT

Please see above.

IV. COUNCIL GOAL ADDRESSED

V. FINANCIAL IMPACT

Some costs incurred by City Departments (Police, Fire, Public Services: Barricades, "No Parking" Signs, Trash Disposal); would be in-kind. Other costs (Police detail for bus lane / Police detail at Merry Madness: Federal Street closure) would be required to be paid. Organizer also covers cost of City Clerk's licenses and Tent/Stage permit from Inspections Services.

VI. STAFF ANALYSIS

VII. RECOMMENDATION

The Department of Public Services recommends approval of this order.

VIII. LIST ATTACHMENTS

- Letter of Request from Organizer
- Detailed Memo from Staff

Prepared by:

Ted Musgrave
Public Services Event Office

Mr. Jon Jennings
City Manager
City of Portland
389 Congress Street
Portland, ME 04101



October 20, 2015

Dear Jon,

Portland Downtown requests permits and Festival Declarations for the following 2015 holiday events:

Annual Christmas Tree Lighting Ceremony in Monument Square Friday, November 27th, 5:30 – 6:30PM (Rain, snow or shine)

- Use of Congress Street (both lanes) between Preble St. and Elm St. to erect and take down a 24' x 20' stage from 12:00 pm to 9:00PM.
- We request Police Assistance to let buses in as needed between 12:30 pm and 3:30 pm and 7:30 pm and 9 pm.
- Police assistance is requested to help staff the barricaded sections between the hours of 5PM and 7PM (no vehicles allowed at this time).
- We request to close Federal Street Ext. from 5PM to 7PM and to put up No parking signs on the meters from 2PM to 7PM.

Merry Madness – December 10, 4-6 PM (Rain, snow or shine)

- In conjunction with the Portland House of Music, we request permission for liquor licensing to have alcohol in a tent outside of Portland House of Music. All alcohol will be served inside of Portland House of Music by their staff. Guests may then walk outside to partake in the music and fun outside under the tent (21+ only permitted in tent area). Each guest will receive one pour per ticket. Only one pour allowed per guest. We will have security on-site for ID check.
- We request to close Federal St. (both lanes) between Temple St and Exchange St. from 12 pm – 8 pm. The sidewalk at PHoMusic will also need to be closed to pedestrians. We will work with area businesses to get their input and impact from the event.



Horse-drawn Wagon Rides- Pick up and drop off in Monument Square.

- Friday: November 27 4PM – 8PM
- Saturdays: November 28 -Dec 19 2PM – 6PM
- Sundays: November 29 - December 20 1PM – 5PM
- Friday, December 4, First Friday Art Walk, 5-9 PM
- Thursday, December 10: Merry Madness, 5 PM – 9 PM

In keeping with the Portland Downtown mission, we manage a variety of events throughout downtown all year long. These events would not be possible without the partnership between the City and Portland Downtown. The in-kind services that the City provides demonstrate that partnerships like ours help make cities more vibrant and successful.

Thank you for considering this request. If you have any questions, please call me at (207) 772-6828.

Sincerely,

Casey Gilbert
Executive Director

cc Ted Musgrave, City of Portland



TO: Jon Jennings, City Manager
FROM: Robert Leeman, Acting Director of Public Services
DATE: October 21, 2015
RE: Council Agenda Item – Portland Downtown - "Light Up Your Holidays" Festival

I am requesting that the following order be placed on the next City Council agenda:

Order declaring Portland Downtown's, "Light Up Your Holidays" Festival, to be held Fridays (November 27, December 4, 11, 18, 2015), Saturdays (November 28, December 5, 12, 19, 2015), and Sundays (November 29, December 6, 13, 20, 2015), and Thursday (December 10, 2015). Friday, November 27 is the "Tree Lighting Ceremony;" Thursday, Dec. 10 is "Merry Madness."

The Department of Public Services is working with Portland Downtown on several upcoming Holiday Festival events where street closures and use of downtown parks/squares/streets are needed. A Festival Declaration is needed. Included in this request are:

- Light Up Your Holidays Tree Lighting Ceremony, November 27
- Horse Drawn Wagon Rides, various dates (These rides are free to the public)
- Merry Madness, December 10

Traffic plan for METRO Buses during the Tree Lighting Ceremony (Fri., Nov. 27), will be similar to last year: Public Services and the Police Dept. plan to provide a special bus travel lane on Congress Street during the Tree Lighting setup and removal, to allow bus access on that closed portion of Congress Street (between Elm Street and Preble Street).

Further details of these events are described below.

Tree Lighting Ceremony: On Friday, November 27, 2015, from 5:30 to 6:45pm, the annual tree lighting ceremony will be held in Monument Square and on Congress Street (with stage, entertainment and vendors). Organizers have asked to place a 20x24' stage on Congress Street (between Preble and Elm Street) facing Monument Square. This would necessitate the closure of that section of Congress Street to vehicular traffic from Noon to 9pm, Friday, Nov. 27. A special METRO bus travel lane through the closure is planned (street available for buses from 12:30 – 3pm, and then again from 7:30 – 9pm). Organizers will work on that with METRO. For security, the tree lighting ceremony will also necessitate closing Federal Street Extension to vehicular traffic (from 4:45 – 7pm) and posted "No Parking" 2 - 7pm.



Vendors will set up on the sidewalks, in Monument Square and on the closed section of Congress Street. The festival area includes Congress Street (Preble to Elm Street) and all of Monument Square, Federal Street Ext., and the nearby sidewalks (One City Center sidewalk area and Monument Way), from Center Street to Temple Street and both sides of Congress Street in that area.

Horse Drawn Wagon Rides: Beginning Friday, November 27, PD will sponsor horse-drawn wagon rides in the downtown and Old Port area. Rides will begin and end in Monument Square. They will occur Fridays (4-8pm), Saturdays (2-6pm) and Sundays (1-5pm) between November 27 and December 20. Rides will also be offered on Thursday, December 10. Rides are free to the public. The festival area for these events includes Monument Square, Federal Street Ext. sidewalks, One City Center sidewalk areas, and Monument Way (and any adjacent sidewalks).

Merry Madness: Portland Downtown plans to hold its annual "Merry Madness" on Thursday, December 10 (4 – 6pm). This event is paired with businesses who keep their stores open late for holiday shoppers. Organizers have requested permission to host the event this year on Federal Street (between Temple & Exchange). Refreshments (including wine) as well as music would be on hand. A large free-standing tent would be erected on Federal Street. PD has requested permission for the Portland House of Music (there on Federal Street) to expand its alcohol service to the street (21+ Tent Area), where wine would be consumed by adults (21+) in a confined, secured area (the large tent). Participants would purchase and receive their wine inside PHoMusic but would be permitted to walk with it outside to the enclosed Tent area. The PHoMusic currently holds an Auditorium License (alcohol and outdoor entertainment/dining). Festival Grounds for the December 10 Merry Madness event include the Federal Street area – Temple to Exchange (where the Tent is located), as well as the sidewalk area beside Portland House of Music, and the adjacent Federal Street sidewalks. Portland Downtown will talk with area Federal Street businesses to accommodate any deliveries, etc. to that closed section of street. PD will also work with city staff to provide a safe and monitored alcohol service area, and will acquire any necessary licenses for refreshments and outdoor music. Time frame for the event itself: 4 – 6pm. Time for street closure: Noon – 8pm. Street posted "No Parking."

Costs incurred by City Departments, (Police, Fire, and Public Services) for the Tree Lighting Ceremony will be in-kind, except for additional Police support needed for the bus travel lane, which will be charged to the organizer, Portland Downtown. PD will also pay license fees for the various events to the City Clerk's office and associated permit costs at the Inspections Office.

The City Manager is authorized to issue a revocable permit under Section 25-27 of the Municipal Code to Portland Downtown for the use of the above-described area for said events and the "Tree Lighting Ceremony" and "Merry Madness" subject to the following conditions:

- Portland Downtown shall indemnify the city and hold it harmless from and against all claims arising out of activities during said events, and shall take out



and maintain public liability insurance coverage in the amount of at least \$400,000 combined single limit for personal or bodily injury, death or property damage for said purpose. This insurance certificate will also list the City of Portland as an additional insured in regards to the Light Up Your Holidays events (and include Liquor Liability coverage for "Merry Madness"),

- Portland Downtown shall have sole authority over participating vendors at the events and may charge a fee to vendors for the opportunity to vend at the Light Up Your Holidays events,
- Conditions for use of grounds and requirements for food service, vending sales, stages, tents, and other items specified in a permit issued from Public Services Event Office, shall be adhered to,
- Major expenses incurred by City Departments for the Tree Lighting Ceremony and Closure of Congress Street for that event on Friday, Nov. 27: (Permit Fees for use of grounds, staff assistance – including Police, Public Services for barricades and signage, and Fire Dept.), shall be in-kind, however, additional staff costs to maintain bus service within the closed section of Congress Street, shall be paid for by the organizer. City Clerk's License fees and Permit fees at the Inspections Office would also be paid by the organizer, Portland Downtown,
- Merry Madness event (Thurs. Dec. 10): associated costs from City Departments will be paid by the organizer, Portland Downtown. Some of those costs include: Police services (needed at Federal Street), Inspection Services for Tent Permit, and City Clerk's License fees, and
- Food Vendors participating in the Light Up Your Holidays Festival shall be licensed by the City Clerk's Office. Under no circumstances may alcoholic beverages be sold or permitted on City of Portland right-of-ways or public property during said events, other than what is approved by City Council (i.e. Merry Madness event / Area of Federal Street).

The City Manager is also authorized to waive any fees, and issue such other temporary licenses and temporary permits, including licenses for food service establishments and permits for sales of non-food related items, as may be required by the Portland City Code, provided that all applicable requirements of said code have been met regarding the operation of said event.

Document prepared by Ted Musgrave, PS Event Coordinator

Order 95-15/16
Tab 4 11-2-15

MICHAEL F. BRENNAN (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
JUSTIN COSTA (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

DAVID BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR. (A/L)

ORDER
GRANTING MUNICIPAL OFFICERS'
APPROVAL OF:

**Maine & Loire LLC d/b/a Drifters Wife. Application for a Class III & IV (Wine & Beer)
License at 63 Washington Ave.**

October 1, 2015

Dear Mayor Brennan and the Honorable Members of Portland City Council,

It is with great excitement that we, Orenda and Peter Hale, announce our intent to open a wine bar in the front half of our existing wine shop, Maine & Loire.

The wine bar will serve the neighborhood and the Portland area a curated selection of natural wine alongside a simple menu of classic, Continental bar snacks.

Our background in the service industry for fifteen years has inspired us to share what we know and love: quality wine and beer, excellent food in a convivial, intimate room.

The space will include an intimate 8-seat bar with approximately 12 additional seats. The hours will be 12pm-9pm, Thursday through Monday.

Sincerely,

Orenda and Peter Hale

Orenda Hale
Owners

Maine & Loire (Wine Shop)



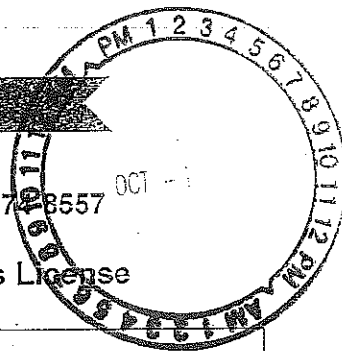
Portland, Maine



Yes. Life's good here

Office of the City Clerk • 389 Congress St. • Portland, ME 04101 • (207) 878-8557

Application for Food Service Establishment with Alcoholic Beverages License



Business Information	
Business Name (d/b/a):	Drifters Wife Phone: 207-805-1336
Location Address:	63 Washington Ave. Zip: 04101
If new, what was formerly at this location:	
Mailing Address:	63 Washington Ave. Zip: 04101
Contact Person:	Peter & Orenda Hale Phone: 207-805-1336
Contact Person Email:	maine and loire@gmail.com
Manager of Establishment:	Peter & Orenda Hale Phone: 207-805-1336
Owner of Premises (Landlord):	Jed Harris, Cotton Street Holdings
Address of Premises Owner:	75 Washington Ave. Suite 2H Zip: 04101

Sole Proprietor/Partnership Information (If Corporation, leave blank)

Name of Owner(s)	Date of Birth	Residence Address

Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)

Corporate Name		Corporate Mailing Address	
Maine & Loire LLC		63 Washington Ave. Zip: 04101	
Contact Person:	Peter & Orenda Hale	Phone:	646-298-8228
Principal Officers	Title	Date of Birth	Residence Address
Peter Hale	Member	05/13/79	32 Pleasant Ave. Portland
Orenda Hale	Member	12/26/82	32 Pleasant Ave. Portland

About Your Establishment

Class of Liquor License:	Class III & IV		
Type of food served:	Elevated Continental bar fare		
Please circle all that will be served:	☒ Beer	☒ Wine	☐ Liquor
Projected percentage of sales:	Generated from Food: 20	Generated from Alcohol: 80	
Hours & days of operation:	Thursday-Monday, 12pm - 9pm		

QUESTIONS	Y/N
Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open?	☒ Y ☐ N
If No, please explain:	
Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?	☒ Y ☐ N
If yes, give the distance:	
Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)	☒ Y ☐ N
Will you permit dancing on the premises?	☒ Y ☐ N
Will you permit dancing after 1:00 a.m.?	☒ Y ☐ N
Will you have outside dining? (If yes, an Outdoor Dining Application is required)	☒ Y ☐ N
If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).	
Will you have any amusement devices (pinball, video games, juke box)?	☒ Y ☐ N
If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____	
What is your targeted opening date?	
Does the issuance of this license directly or indirectly benefit any City employee(s)?	☒ Y ☐ N
If Yes, list name(s) of employee(s) and department(s):	
Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?	☒ Y ☐ N
If Yes, please list business name(s) and location(s):	
Maine & Loure, 63 Washington Ave., Portland, ME 04101	
Is any principal officer under the age of 21?	☒ Y ☐ N
Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?	☒ Y ☐ N
If Yes, please explain:	

I, Peter Hale do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature [Signature] Title Member Owner Date 9/30/15

**Department of Public Safety
Division**

Liquor Licensing & Inspection



Promise by any person that he or she can expedite a liquor license through influence should be completely disregarded. To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

BUREAU USE ONLY

License No. Assigned:

Class:

Deposit Date:

Amt. Deposited:

PRESENT LICENSE EXPIRES _____

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☐ SPIRITUOUS ☒ VINOUS

INDICATE TYPE OF LICENSE:

- ☒ RESTAURANT (Class I,II,III,IV)
☐ HOTEL-OPTINONAL FOOD (Class I-A)
☐ CLASS A LOUNGE (Class X)
☐ CLUB (Class V)
☐ TAVERN (Class IV)

- ☐ RESTAURANT/LOUNGE (Class XI)
☐ HOTEL (Class I,II,III,IV)
☐ CLUB-ON PREMISE CATERING (Class I)
☐ GOLF CLUB (Class I,II,III,IV)
☐ OTHER: _____

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

1. APPLICANT(S) -(Sole Proprietor, Corporation, Limited Liability Co., etc.) <u>Maine & Love LLC</u> DOB: _____			2. Business Name (D/B/A) <u>Drifters Wife</u>		
DOB: _____			DOB: _____		
DOB: _____			Location (Street Address) <u>63 Washington Ave.</u>		
Address <u>63 Washington Ave.</u>			City/Town <u>Portland</u>	State <u>ME</u>	Zip Code <u>04101</u>
Mailing Address <u>63 Washington Ave.</u>					
City/Town <u>Portland</u>	State <u>ME</u>	Zip Code <u>04101</u>	City/Town <u>Portland</u>	State <u>ME</u>	Zip Code <u>04101</u>
Telephone Number <u>207-805-1336</u>		Fax Number	Business Telephone Number <u>207-805-1336</u>		Fax Number
Federal I.D. # <u>47-2341621</u>			Seller Certificate # <u>1171321</u>		

3. If premises are a hotel, indicate number of rooms available for transient guests: _____
4. State amount of gross income from period of last license: ROOMS \$ _____ FOOD \$ _____ LIQUOR \$ _____
5. Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐

complete Supplementary Questionnaire ,If YES

6. Do you permit dancing or entertainment on the licensed premises? YES ☐ NO ☒
7. If manager is to be employed, give name: _____
8. If business is NEW or under new ownership, indicate starting date: _____
 Requested inspection date: _____ Business hours: Thursday - Monday 12pm-9pm
9. Business records are located at: 63 Washington Ave. Portland ME 04101
10. Is/are applicants(s) citizens of the United States? YES ☒ NO ☐

11. Is/are applicant(s) residents of the State of Maine?

YES ☒ NO ☐

12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:
Use a separate sheet of paper if necessary.

Name in Full (Print Clearly)	DOB	Place of Birth
Peter Hale	05/13/79	Dallas, TX
Orenda Hale	12/26/82	Danby, NY

Residence address on all of the above for previous 5 years (Limit answer to city & state)

13. Has/have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, of any State of the United States? YES ☐ NO ☒

Name: _____ Date of Conviction: _____

Offense: _____ Location: _____

Disposition: _____

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?
Yes ☐ No ☒ If Yes, give name: _____

15. Has/have applicant(s) formerly held a Maine liquor license? YES ☒ NO ☐

16. Does/do applicant(s) own the premises? Yes ☐ No ☒ If No give name and address of owner: Jed Harris,
Cotton Street Holdings, 75 Washington Ave, Suite 2H, Portland, ME 04101

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) A sectioned off
area for on-premise consumption (bar and kitchen)

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?
YES ☐ NO ☒ Applied for: October 1, 2015

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 0.5 miles Which of the above is nearest? Church

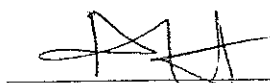
20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☐ NO ☒

If YES, give details: _____

The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

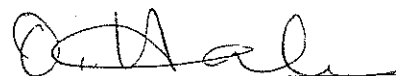
NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: Portland, ME on 9/30, 20 15
Town/City, State Date



Signature of Applicant or Corporate Officer(s)

Please sign in blue ink



Signature of Applicant or Corporate Officer(s)



State of Maine
Bureau of Alcoholic Beverages
Division of Liquor Licensing and Enforcement

**Supplemental Information Required for
Business Entities Who Are Licensees**

For Office Use Only:

License #: _____

Date Filed: _____

For information required for Questions 1 to 4, this information is on file with the Maine Secretary of State's office and must match their record information. Please clearly complete this form in its entirety.

1. Exact legal name:

Maine & Loire LLC

2. Other business name for your entity (DBA), if any:

Drifters Wife

3. Date of filing with the Secretary of State: NOV. 14, 2014

4. State in which you are formed: Maine

5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: _____

6. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

Name	Address for Previous 5 years	Date of Birth	Ownership %
Peter Hale	32 Pleasant Ave, Portland ME, 04103	05/13/79	50
Orenda Hale (Pliss)	32 Pleasant Ave, Portland ME, 04103	12/26/82	50

7. Is any principal person involved with the entity a law enforcement official?

Yes

☐

No

☒

8. If Yes to Question 7, please provide the name and law enforcement agency:

Name: _____ Agency: _____

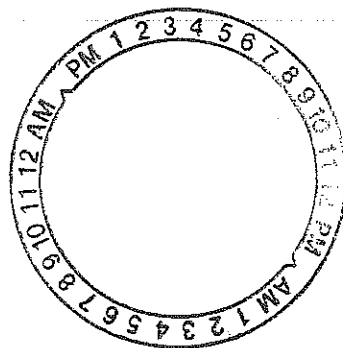
Address for Previous 5 years, Continued:

Peter Hale

77 N. 5th St. #3, Hudson, NY 12534
52 Newel St. #1R, Brooklyn, NY 11222
45-44 42nd St. #2B, Sunny Side NY 11104

Wrenda Hale

77 N. 5th St. #3, Hudson, NY 12534
142 S. 9th St. #D6, Brooklyn NY 11211
75 Roebling St, #1R, Brooklyn NY 11211



9. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?

Yes

☐

No

☒

10. If Yes to Question 9, please complete the following: (attached additional sheets as needed)

Name: _____

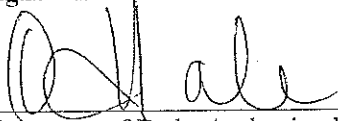
Date of Conviction: _____

Offense: _____

Location of Conviction: _____

Disposition: _____

Signature: _____



Signature of Duly Authorized Person

9/30/15
Date

Brenda Hale

Print Name of Duly Authorized Person

If you have questions regarding the legal name or assumed (DBA) name on file with the Secretary of State's office, please call (207) 624-7752. The SOS can only speak to the information on file with their office, not the filing of this supplemental information – please direct any questions about this form to our office at the number below.

Submit Completed Forms To:

Bureau of Alcoholic Beverages and Lottery Operations
Division of Liquor Licensing and Enforcement
164 State House Station
Augusta, Me 04333-0101
Telephone Inquiries: (207) 624-7220
Fax: (207) 287-3424
Email Inquiries: MaineLiquor@Maine.gov

Drifters Wife sample menu

Warm Olives

Shaved Fennel
meyer lemon, aged gouda

Beef Tartare
sichuan pepper, mushroom

Citrus Salad
pistachio, herbs

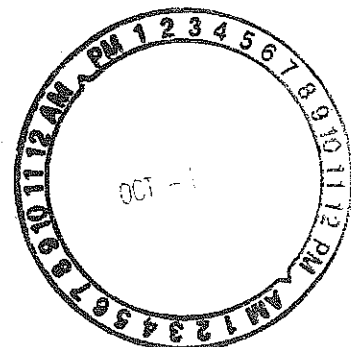
Mushroom Toast
egg, herbs

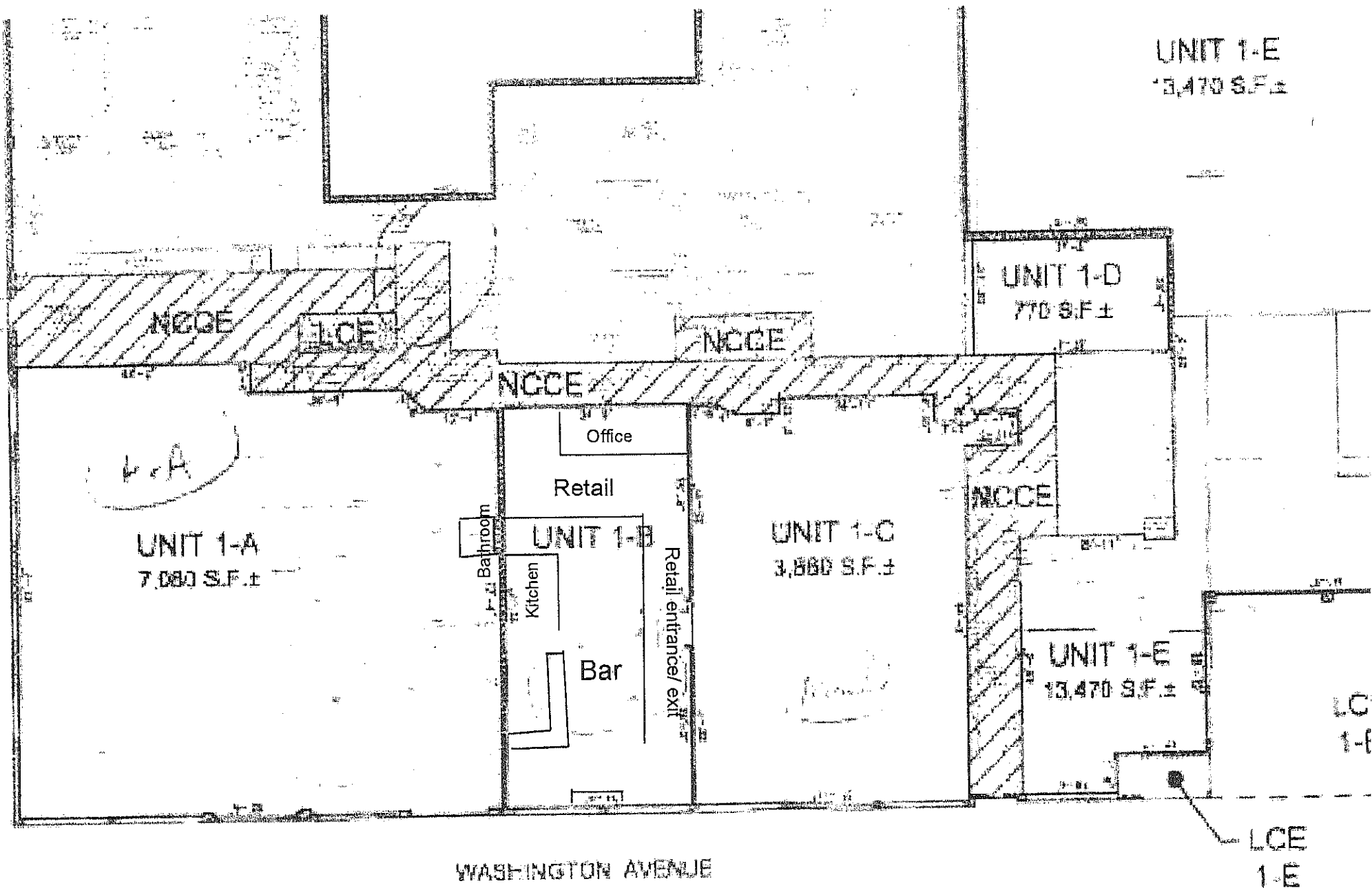
Potato Tortilla
aioli

Charcuterie Plate

~~~~~

Chocolate Mousse





# NISSEN BUILDING CONDOMINIUM

# Drifters Wife

53 Washington Ave.





MAINE STATE BUREAU OF IDENTIFICATION  
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42  
AUGUSTA, ME 04333  
(207) 624-7240 (VOICE)

JANICE GARDNER  
389 CONGRESS STREET  
ROOM 203  
PORTLAND, ME 04101

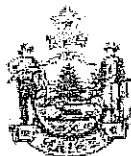
Transaction Response #: MIQ99C646297

## Criminal History Record

### Introduction

This criminal history record was produced in response to the following request ( Produced on 2015-10-05 ) :  
Inquiries Name(s) ORENDA HALE (1982-12-26)

NO MATCH WAS FOUND FOR YOUR REQUEST.



MAINE STATE BUREAU OF IDENTIFICATION  
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42  
AUGUSTA, ME 04333  
(207) 624-7240 (VOICE)

JANICE GARDNER  
389 CONGRESS STREET  
ROOM 203  
PORTLAND, ME 04101

Transaction Response #: MIQ99C646310

## Criminal History Record

### Introduction

This criminal history record was produced in response to the following request ( Produced on 2015-10-05 ) :  
Inquiries Name(s) ORENDA PLISS (1982-12-26)

NO MATCH WAS FOUND FOR YOUR REQUEST.



MAINE STATE BUREAU OF IDENTIFICATION  
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42  
AUGUSTA, ME 04333  
(207) 624-7240 (VOICE)

JANICE GARDNER  
389 CONGRESS STREET  
ROOM 203  
PORTLAND, ME 04101

Transaction Response #: MIQ99C646291

## Criminal History Record

### Introduction

This criminal history record was produced in response to the following request ( Produced on 2015-10-05 ) :  
Inquiries Name(s) PETER HALE (1979-05-13)

NO MATCH WAS FOUND FOR YOUR REQUEST.

**Business Licensing - DRIFTERS WIFE - PENDING Business License Approval**

---

**From:** Gary Hutcheson  
**To:** Business Licensing  
**Date:** 10/20/2015 2:30 PM  
**Subject:** DRIFTERS WIFE - PENDING Business License Approval

---

DRIFTERS WIFE - PENDING is Approved for their Business License Inspection by the Police Dept.

Date: 10/20/2015

Zone:  
Comments:

Lt. Gary L Hutcheson  
Portland Police Department  
109 Middle St  
Portland, Maine 04101  
(207) 756-8295

Portland, Maine



Yes. Life's good here.

**Office of the City Clerk**

Katherine L. Jones, CCM, City Clerk

October 20, 2015

Peter & Orenda Hale  
63 Washington Ave.  
Portland, ME 04101

Re: Maine & Loire LLC d/b/a Drifters Wife. Application for a Class III & IV (Wine & Beer) License at 63 Washington Ave.

Dear Peter & Orenda,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, November 2<sup>nd</sup>, at 7:00 p.m.** for the review of your application for a Class III & IV (Wine & Beer) License at 63 Washington Ave. The meeting will take place in Council Chambers on the 2<sup>nd</sup> floor of City Hall, 389 Congress Street, Portland, ME 04101.

You or a representative of the business must be present at this meeting in the event that the City Council has questions regarding the license application. If there is no representation and questions arise, the issue could be postponed.

Should you have any questions or concerns, please do not hesitate to contact our office directly at (207) 874-8557 or by email, [BL@portlandmaine.gov](mailto:BL@portlandmaine.gov)

Sincerely,

Janice Gardner  
Business License Administrator  
207-874-8557  
[bl@portlandmaine.gov](mailto:bl@portlandmaine.gov)

**Portland Press Herald**  
**Maine Sunday Telegram**  
pressherald.com

**Classified Advertising Proof**

**Legal Advertisement**

**Notice of Public Hearing  
City of Portland**

A Public Hearing will be held on November 2nd at 7:00 P.M., in City Council Chambers, 389 Congress St., on Maine & Loire LLC d/b/a Drifters Wife. Application for a Class III & IV (Wine & Beer) License at 63 Washington Ave. Sponsored by Katherine L. Jones, City Clerk.

Order 96-15/16  
Tab 5 11/2/15

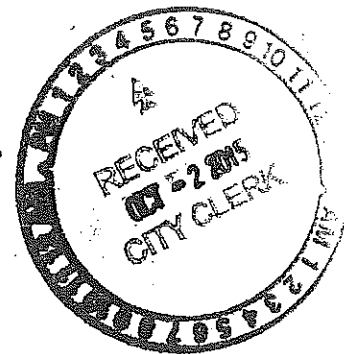
MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

DAVID BRENERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR. (A/L)

ORDER  
GRANTING MUNICIPAL OFFICERS'  
APPROVAL OF:

**Taco Trio LLC d/b/a Taco Trio. Application for a Class I FSE License at 1706 Forest Ave.**



Taco Trio  
1706 Forest Avenue  
Portland, Maine 04103

September 29, 2015

To: Mayor Michael Brennan and Portland City Council

From: Karen Rasmussen, Owner, Taco Trio LLC

RE: Liquor License application for new restaurant at 1706 Forest Avenue

Dear Mayor and City Council Members-

This letter serves to document our intent to obtain a full liquor license (vinous, maltous and spirits) for our new restaurant, Taco Trio, located at 1706 Forest Avenue in Portland's Riverton/North Deering area. We will not have a full bar. We plan to serve a variety of local micro-brewery beers, Mexican beer, wine and a very limited selection of mixed drinks compatible with Mexican food (ex: margaritas, mojitos, pina coladas, etc).

We appreciate your consideration of this application. We are happy to be doing business in this neighborhood of Portland.

Sincerely, *Karen Rasmussen*

-Karen Rasmussen

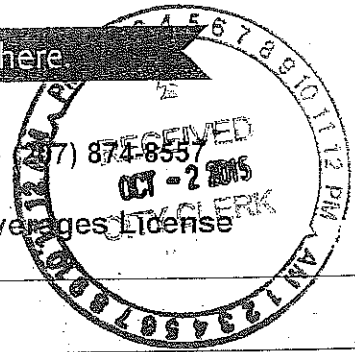
Owner, Taco Trio LLC

Portland, Maine



Yes. Life's good here

Office of the City Clerk • 389 Congress St. • Portland, ME 04101 • (207) 874-8557



# Application for Food Service Establishment with Alcoholic Beverages License

|                                             |                                             |
|---------------------------------------------|---------------------------------------------|
| Business Information:                       |                                             |
| Business Name (d/b/a):                      | Taco Trio                                   |
| Location Address:                           | 1706 Forest Avenue, Portland ME Zip: 04103  |
| If new, what was formerly at this location: | India Bazaar                                |
| Mailing Address:                            | 1706 Forest Avenue, Portland, ME Zip: 04103 |
| Contact Person:                             | Karen Rasmussen                             |
| Contact Person Email:                       | tacotriosapo@gmail.com                      |
| Manager of Establishment:                   | <del>Don</del> Amy Menchel                  |
| Owner of Premises (Landlord):               | Karen Rasmussen DBA Red Brick Realty LLC    |
| Address of Premises Owner:                  | 672 Ocean Avenue, Portland, ME Zip: 04103   |

## Sole Proprietor/Partnership Information (If Corporation, leave blank)

| Name of Owner(s) | Date of Birth | Residence Address |
|------------------|---------------|-------------------|
|                  |               |                   |

## Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)

| Corporate Name     |                 | Corporate Mailing Address                  |                                     |
|--------------------|-----------------|--------------------------------------------|-------------------------------------|
| Taco Trio LLC      |                 | 119 Ocean St, South Portland ME Zip: 04106 |                                     |
| Contact Person:    | Karen Rasmussen | Phone:                                     | 207-272-4904                        |
| Principal Officers | Title           | Date of Birth                              | Residence Address                   |
| Karen Rasmussen    | Owner           | 06/12/1961                                 | 672 Ocean Avenue, Portland ME 04103 |
|                    |                 |                                            |                                     |
|                    |                 |                                            |                                     |
|                    |                 |                                            |                                     |
|                    |                 |                                            |                                     |

### About Your Establishment

|                                        |                                                                                                                     |     |                         |
|----------------------------------------|---------------------------------------------------------------------------------------------------------------------|-----|-------------------------|
| Class of Liquor License:               | 1                                                                                                                   |     |                         |
| Type of food served:                   | Mexican food: tacos, burritos, quesadillas, enchiladas, platos, tamales                                             |     |                         |
| Please circle all that will be served: | <input checked="" type="radio"/> Beer <input checked="" type="radio"/> Wine <input checked="" type="radio"/> Liquor |     |                         |
| Projected percentage of sales:         | Generated from Food:                                                                                                | 90% | Generated from Alcohol: |
| Hours & days of operation:             | Tuesday - Saturday 11am to 9pm                                                                                      |     |                         |

| QUESTIONS                                                                                                                           | Y/N                                                        |
|-------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------|
| Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open? | <input checked="" type="radio"/> Y <input type="radio"/> N |
| If No, please explain:                                                                                                              |                                                            |
| Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?                 | <input checked="" type="radio"/> Y <input type="radio"/> N |
| If yes, give the distance:                                                                                                          |                                                            |
| Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)          | <input checked="" type="radio"/> Y <input type="radio"/> N |
| Will you permit dancing on the premises?                                                                                            | <input checked="" type="radio"/> Y <input type="radio"/> N |
| Will you permit dancing after 1:00 a.m.?                                                                                            | <input checked="" type="radio"/> Y <input type="radio"/> N |
| Will you have outside dining? (If yes, an Outdoor Dining Application is required)                                                   | <input checked="" type="radio"/> Y <input type="radio"/> N |
| If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).                                                      |                                                            |
| Will you have any amusement devices (pinball, video games, juke box)?                                                               | <input checked="" type="radio"/> Y <input type="radio"/> N |
| If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____                                    |                                                            |
| What is your targeted opening date?                                                                                                 |                                                            |
| Does the Issuance of this license directly or indirectly benefit any City employee(s)?                                              | <input checked="" type="radio"/> Y <input type="radio"/> N |
| If Yes, list name(s) of employee(s) and department(s):                                                                              |                                                            |
| Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?      | <input checked="" type="radio"/> Y <input type="radio"/> N |
| If Yes, please list business name(s) and location(s):                                                                               |                                                            |
| Taco Trío, 1706 Forest Avenue, Portland ME<br>Taco Trío Food Truck 6119 Ocean St, South Portland                                    |                                                            |
| Is any principal officer under the age of 21?                                                                                       | <input checked="" type="radio"/> Y <input type="radio"/> N |
| Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?    | <input checked="" type="radio"/> Y <input type="radio"/> N |
| If Yes, please explain:                                                                                                             |                                                            |

I, Karen Rasmussen do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature Karen Rasmussen Title Owner, Taco Trío LLC Date 10/2/15

**BUREAU OF ALCOHOLIC BEVERAGES  
DIVISION OF LIQUOR LICENSING & ENFORCEMENT  
164 STATE HOUSE STATION  
AUGUSTA, ME 04333-0164**



Promise by any person that he or she can expedite a liquor license through influence should be completely disregarded.

To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

**DEPARTMENT USE ONLY**

LICENSE NUMBER:

CLASS:

DEPOSIT DATE

AMT. DEPOSITED:

BY:

CK/MO/CASH:

PRESENT LICENSE EXPIRES N/A new license

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☒ SPIRITUOUS ☒ VINOUS

**INDICATE TYPE OF LICENSE:**

☒ RESTAURANT (Class I,II,III,IV)

☐ HOTEL-OPTINONAL FOOD (Class I-A)

☐ CLASS A LOUNGE (Class X)

☐ CLUB (Class V)

☐ TAVERN (Class IV)

☐ RESTAURANT/LOUNGE (Class XI)

☐ HOTEL (Class I,II,III,IV)

☐ CLUB-ON PREMISE CATERING (Class I)

☐ GOLF CLUB (Class I,II,III,IV)

☐ OTHER: \_\_\_\_\_

**REFER TO PAGE 3 FOR FEE SCHEDULE**

**ALL QUESTIONS MUST BE ANSWERED IN FULL**

|                                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>1. APPLICANT(S) - (Sole Proprietor, Corporation, Limited Liability Co., etc.)</b><br><u>TACO TRIO LLC</u> DOB: _____<br><br>DOB: _____<br><br>DOB: _____<br><b>Address</b> <u>1706 Forest Avenue</u><br><u>Portland</u> <u>ME</u> <u>04103</u><br><b>City/Town</b> <b>State</b> <b>Zip Code</b><br><u>207-536-1395</u> <u>N/A</u><br><b>Telephone Number</b> <b>Fax Number</b><br><u>75-3134800</u><br><b>Federal I.D. #</b> | <b>2. Business Name (D/B/A)</b><br><u>Taco Trio</u><br><br><b>Location (Street Address)</b><br><u>1706 Forest Avenue</u><br><b>City/Town</b> <u>Portland</u> <b>State</b> <u>ME</u> <b>Zip Code</b> <u>04103</u><br><b>Mailing Address</b><br><u>same as above</u><br><b>City/Town</b> <b>State</b> <b>Zip Code</b><br><u>207-536-1395</u><br><b>Business Telephone Number</b> <b>Fax Number</b><br><b>Seller Certificate #</b> <u>Retailer Registration # 1149369</u> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

Cell # to contact: 207-272-4904 → owner

3. If premises is a hotel, indicate number of rooms available for transient guests: N/A

4. State amount of gross income from period of last license: ROOMS \$ \_\_\_\_\_ FOOD \$ \_\_\_\_\_ LIQUOR \$ \_\_\_\_\_ New License

5. Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐

If YES, complete Supplementary Questionnaire

6. Do you permit dancing or entertainment on the licensed premises? YES ☐ NO ☒

7. If manager is to be employed, give name: Amy H Meuchel

8. If business is NEW or under new ownership, indicate starting date: 09-3-2015

**RECEIVED**

**AUG 26 2015**

Liquor Licensing  
& Enforcement

Requested inspection date: 09-08-2015 Business hours: 11a - 9pm Tuesday-Saturday

9. Business records are located at: 119 Ocean St. South Portland, ME 04106

10. Is/are applicants(s) citizens of the United States? YES ☒ NO ☐

11. Is/are applicant(s) residents of the State of Maine? YES ☒ NO ☐

12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:  
Use a separate sheet of paper if necessary.

| Name in Full (Print Clearly) | DOB        | Place of Birth |
|------------------------------|------------|----------------|
| Karen Rasmussen              | 06-12-1961 | Baltimore, MD  |
| Amy Hope Meuchel             | 02-12-1981 | South Korea    |

Residence address on all of the above for previous 5 years (Limit answer to city & state)

K. Rasmussen: 672 Ocean Ave, Portland, ME 04103; 147 Congress St. Portland, ME 04102  
A. Meuchel: 26 Otter Drive Standish, ME 04084

13. Has/have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, of any State of the United States? YES ☐ NO ☒

Name: \_\_\_\_\_ Date of Conviction: \_\_\_\_\_

Offense: \_\_\_\_\_ Location: \_\_\_\_\_

Disposition: \_\_\_\_\_

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?

Yes ☐ No ☒ If Yes, give name: \_\_\_\_\_

15. Has/have applicant(s) formerly held a Maine liquor license? YES ☒ NO ☐ for Taco Trio in South Portland

16. Does/do applicant(s) own the premises? Yes ☒ No ☐ If No give name and address of owner: \_\_\_\_\_

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required) First floor of 1706 Forest Ave, Portland, Maine (a 2.5 story mixed-use building)

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?

YES ☐ NO ☒ Applied for: 8-20-15

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 0.25mi Which of the above is nearest? School

20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☒ NO ☐

If YES, give details: Business Loan from Norway Savings Bank

The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: Portland, ME on August 25, 20 15  
Town/City, State Date

Karen Rasmussen  
Karen Rasmussen  
Signature of Applicant or Corporate Officer(s)  
Karen Rasmussen  
Print Name

Please sign in blue ink

\_\_\_\_\_  
Signature of Applicant or Corporate Officer(s)  
\_\_\_\_\_  
Print Name

### NOTICE – SPECIAL ATTENTION

All applications for NEW or RENEWAL liquor licenses must contact their Municipal Officials or the County Commissioners in unincorporated places for approval of their application for liquor licenses prior to submitting them to the bureau.

**THIS APPROVAL EXPIRES IN 60 DAYS.**

### FEE SCHEDULE

|              |                                                                                                                                                                                                                                        |            |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| ✓ Class I    | Spirituos, Vinous and Malt .....                                                                                                                                                                                                       | \$ 900.00  |
|              | CLASS I: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Vessels; Qualified Caterers; OTB.                           |            |
| Class I-A    | Spirituos, Vinous and Malt, Optional Food (Hotels Only) .....                                                                                                                                                                          | \$1,100.00 |
|              | CLASS I-A: Hotels only that do not serve three meals a day.                                                                                                                                                                            |            |
| Class II     | Spirituos Only .....                                                                                                                                                                                                                   | \$ 550.00  |
|              | CLASS II: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; and Vessels.                                               |            |
| Class III    | Vinous Only .....                                                                                                                                                                                                                      | \$ 220.00  |
|              | CLASS III: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Vessels; Pool Halls; and Bed and Breakfasts. |            |
| Class IV     | Malt Liquor Only .....                                                                                                                                                                                                                 | \$ 220.00  |
|              | CLASS IV: Airlines; Civic Auditoriums; Class A Restaurants; Clubs with catering privileges; Dining Cars; Golf Clubs; Hotels; Indoor Ice Skating Clubs; Indoor Tennis Clubs; Restaurants; Taverns; Pool Halls; and Bed and Breakfasts.  |            |
| Class V      | Spirituos, Vinous and Malt (Clubs without Catering, Bed & Breakfasts) .....                                                                                                                                                            | \$ 495.00  |
|              | CLASS V: Clubs without catering privileges.                                                                                                                                                                                            |            |
| Class X      | Spirituos, Vinous and Malt – Class A Lounge .....                                                                                                                                                                                      | \$2,200.00 |
|              | CLASS X: Class A Lounge                                                                                                                                                                                                                |            |
| Class XI     | Spirituos, Vinous and Malt – Restaurant Lounge .....                                                                                                                                                                                   | \$1,500.00 |
|              | CLASS XI: Restaurant/Lounge; and OTB.                                                                                                                                                                                                  |            |
| ✓ FILING FEE | .....                                                                                                                                                                                                                                  | \$ 10.00   |

**UNORGANIZED TERRITORIES** \$10.00 filing fee shall be paid directly to County Treasurer. All applicants in unorganized territories shall submit along with their application evidence of payment to the County Treasurer.

All fees must accompany application, made payable to: **TREASURER, STATE OF MAINE. – DEPARTMENT OF PUBLIC SAFETY, LIQUOR LICENSING AND INSPECTION DIVISION, 164 STATE HOUSE STATION, AUGUSTA ME 04333-0164.** Payments by check subject to penalty provided by Sec. 3, Title 28A, MRS.



**State of Maine**  
Bureau of Alcoholic Beverages  
Division of Liquor Licensing and Enforcement

**Supplemental Information Required for  
Business Entities Who Are Licensees**

For Office Use Only:

License #: \_\_\_\_\_

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

For information required for Questions 1 to 4, this information is on file with the Maine Secretary of State's office and must match their record information. Please clearly complete this form in its entirety.

1. Exact legal name:

Taco Trio LLC

2. Other business name for your entity (DBA), if any:

Taco Trio

3. Date of filing with the Secretary of State: 2011

4. State in which you are formed: Maine

5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: \_\_\_\_\_

6. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

| Name            | Address for Previous 5 years | Date of Birth | Ownership % |
|-----------------|------------------------------|---------------|-------------|
| Karen Rasmussen | 672 Ocean Avenue, Portland   | 06/12/1961    | 100%        |
| " "             | 147 Congress St, Portland    |               |             |
|                 |                              |               |             |
|                 |                              |               |             |

7. Is any principal person involved with the entity a law enforcement official?

Yes

☐

No

☒

8. If Yes to Question 7, please provide the name and law enforcement agency:

Name: \_\_\_\_\_ Agency: \_\_\_\_\_

# TRADITIONAL MEXICAN FOOD



Monday - Saturday: 11am - 9pm • 1706 Forest Avenue, Portland, Maine  
207.536.1395 • [www.taco-trio.com](http://www.taco-trio.com)



## TACOS



Comes with chips & choice of one salsa per taco.

Two 6 inch corn tortillas per taco, served with onion and cilantro  
\$4 each; Any 3 for \$11

**Carne Asada** - grilled marinated steak  
**Pollo Asado** - grilled marinated chicken  
**Carnitas** - seared pork ★  
**Pastor** - pork with pineapple in adobo sauce ★  
**Chorizo** - Mexican pork sausage with potato ★  
**Barbacoa de Cabra** - goat 'barbecue' ★  
**Pescado** - Mexican beer-battered fish with vegetables en escabeche (slaw) & lime sour cream-mayo  
**Champiñones** - mushrooms, onion, jalapeños & herbs ★●★  
**Pollo con Mole** - chicken with mole sauce, served with cotija cheese  
**ADD:** lettuce - 35¢ each, cheese - 50¢ each



## TAMALES



Comes with choice of one salsa per tamal.

Steamed corn dough with filling, wrapped in corn husk  
choices vary, see specials board - \$4.15 each; 3 for \$11



## SOPAS



Comes with chips & choice of one salsa per sopo.

Handmade "bowls" of fried corn dough, topped with pinto beans,  
lettuce, sour cream, cotija cheese & choice of filling  
\$4.15 each; Any 3 for \$11

**Chorizo** - Mexican pork sausage with potato ★  
**Champiñones** - sauteed mushrooms, onion, jalapeños & herbs ★●  
**Carnitas** - seared pork ★ **Pollo Asado** - grilled marinated chicken



## BURRITOS



Comes with chips & choice of 2 salsas.

12 inch flour tortilla, cheese, rice, pico de gallo,  
beans (black, pinto or mixed) choice of filling \$10.15

**Plain** - (as above) no additional filling - \$8.75 ●  
**Carne Asada** - grilled marinated steak  
**Pollo Asado** - grilled marinated chicken  
**Carnitas** - seared pork  
**Chorizo** - Mexican pork sausage with potato  
**Vegetales Asados** - grilled red & green peppers, red onion, zucchini & yellow squash ●  
**DELUXE:** (add guacamole & sour cream) - \$2.75  
**ADD:** vegetables - \$2.50; extra meat - \$3; lettuce - 60¢;  
sour cream - 85¢; guacamole - \$2.35; extra cheese - \$1.25



## PLATES



**Enchiladas Rojas** - 4 rolled corn tortillas filled with chicken breast, topped  
with spicy tomato árbol salsa, lettuce, radish, sour cream, red onion,  
avocado, and Mexican queso. - \$11 ★  
**Enchiladas Verdes** - 4 rolled corn tortillas filled with chicken breast,  
topped with medium spice tomatillo salsa, melted cheese, sour cream,  
white onion, avocado, and Mexican queso. - \$11 ★  
**Enchiladas de Mole** - 4 rolled corn tortilla filled with melted cheese,  
topped with mole sauce, lettuce, radish, red onion, sour cream, avocado,  
and Mexican queso - \$11 ●  
**Open Burrito Plate** - Any burrito from menu, served on a plate w/ lettuce,  
no tortilla - Comes w/ 2 salsas & chips - gluten free choices available - \$11



## QUESADILLAS



Comes with chips & choice of 2 salsas.

12 inch flour tortilla with cheese & filling

**Queso Only** - mix of melted cheeses - \$7.50 ●  
**Espinaca & Champiñon** - spinach & mushroom with herbs - \$9 ●  
**Vegetales Asados** - grilled red & green peppers, red onion, zucchini &  
yellow squash - \$10 ●  
**Carne Asada** - grilled marinated steak - \$10.15  
**Pollo Asado** - grilled marinated chicken - \$10.15  
**Chorizo** - Mexican pork sausage with potato - \$10.15  
**ADD:** vegetables - \$2.50; extra meat - \$3; extra cheese - \$1.25  
**Kid Quesadilla** - 2 corn tortillas filled with cheese - \$4;  
**ADD:** meat - \$1.75; vegetables - \$1.50



## SIDES



**8oz. Beans** - black, pinto, or mixed - \$2.25 ★●★  
**8oz. Mexican Rice** - \$2.75 ★●★  
**8oz. Rice and Beans** - \$2.75 ★●★  
**Chips** - (corn, flour or mixed) - \$2 ●★  
**Guacamole** - 2oz, \$2.50 / 4oz, \$4.25 ★●★  
**Mole** - 2oz, \$2.50; 4oz, \$4.50 ●★  
**Chips & Guacamole** - 4oz, \$6.80 ★●★  
**Chips & Salsa Fresca** - 4oz, \$3 ★●★  
**Side of Meat** - \$4.15 **Side of Vegetables Asados** - \$3.75 ★●★  
**Extra Salsa** - 2oz, 70¢ each; 4oz, \$1.35



## BEVERAGES



**Agua Frescas** (16 oz) - \$3 (refill - \$1.50) ★●  
**Cans & Bottled Water** - \$1.50  
**Bottled Soda** - \$2.35  
**Mixed Drinks** - Cuervo Gold Margaritas, Bacardi Mojitos - \$6  
**Bottled Beer** - \$4 **Draft Beer** - \$4.50



## DESSERTS



**Flan** (Mexican custard) - \$3.25 ★●



# ENJOY!



## SALSA BAR!

(Salsa choices will vary. Made fresh daily.)

★ ..... gluten free  
● ..... vegetarian  
\* ..... vegan

For **WEEKLY SPECIALS**, be sure to check the

## SPECIALS BOARD

The consumption of raw or undercooked eggs, meat, poultry,  
seafood or shellfish may increase your risk of food borne illness.

08/12/2015

1A:  
 Restaurant 1475sf  
 or Apartment 1142sf

er System Installed or Proposed

[ Use Group M to Group B

ine: R-3

Occupancy load under 50 Group B Occupancy  
 Business Group B Occupancy (Restaurant under 50 people)  
 Residential Group R-3 (single upstairs unit)

Walls separating dwelling units from other occupancies shall be fire  
 partitions  
 Doors separating dwelling units from other occupancies shall be  
 Horizontal Assemblies

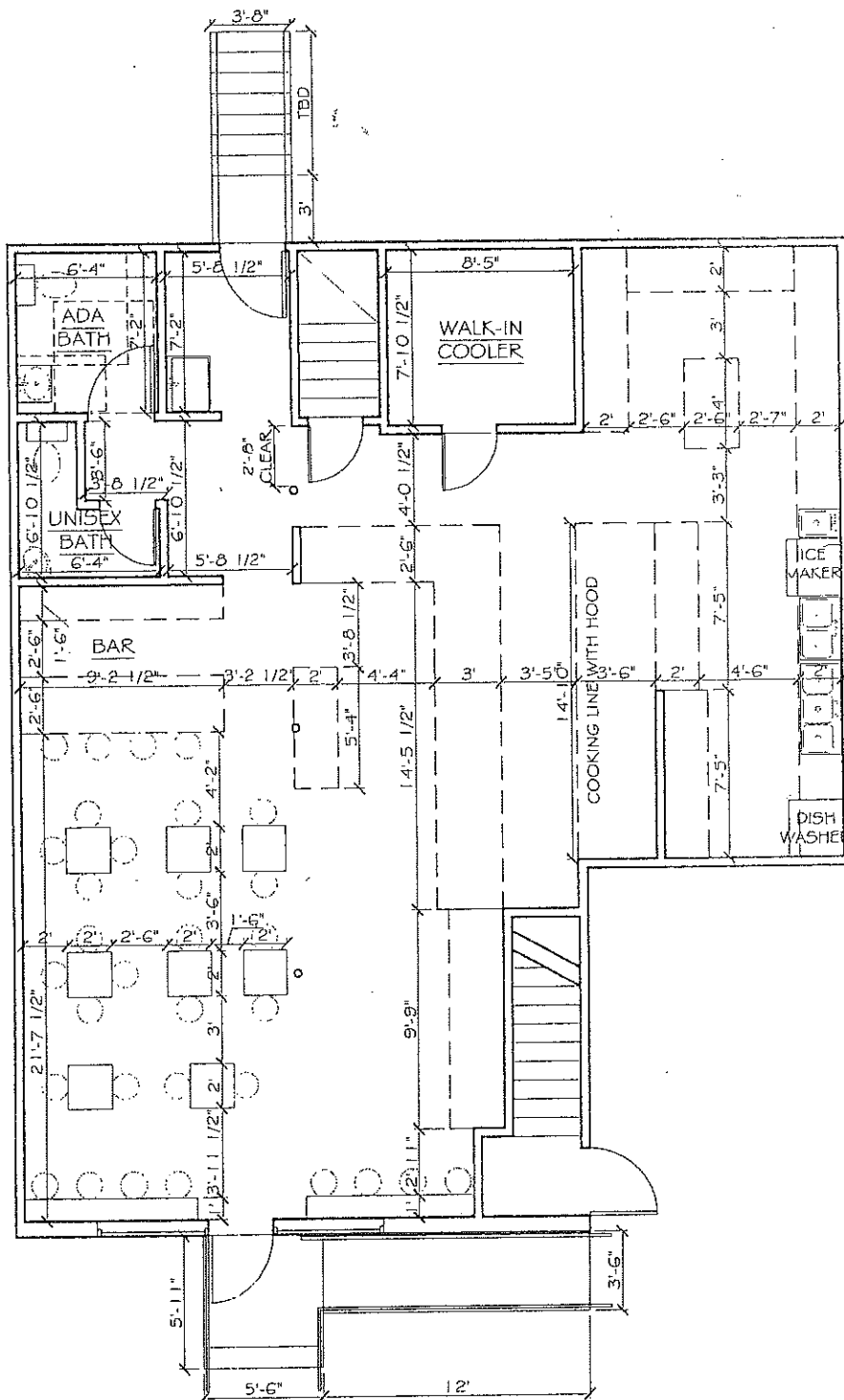
|     |    |                           |         |          |
|-----|----|---------------------------|---------|----------|
| 1   | VB | 2 Stories                 | 9,000sf | 40' tall |
| 1-3 | VB | 3 Stories                 | UL      | 40' tall |
| 1c  |    | Rated Occupancies allowed |         |          |

|    |    |                             |
|----|----|-----------------------------|
| 1d | VB | No required ratings         |
| 1e | VB | x > 10' No ratings required |

Fire Partition Rating: 1 hour  
 Fire separation shall be continuous from decking to decking or fire  
 blocked  
 Supporting construction does not need to be rated for walls separating  
 dwelling units  
 Horizontal Assembly rating: 1 hour

| Occupancy Load Table |        |           |              |
|----------------------|--------|-----------|--------------|
| Residential          | 1142sf | 200 gross | 6 occs       |
| Kitchen              | 495sf  | 200 gross | 3 occs       |
| Assembly (Tables)    | 478sf  | 15 net    | 33 occs      |
| TOTAL OCCUPANTS      |        |           | 42 occupants |

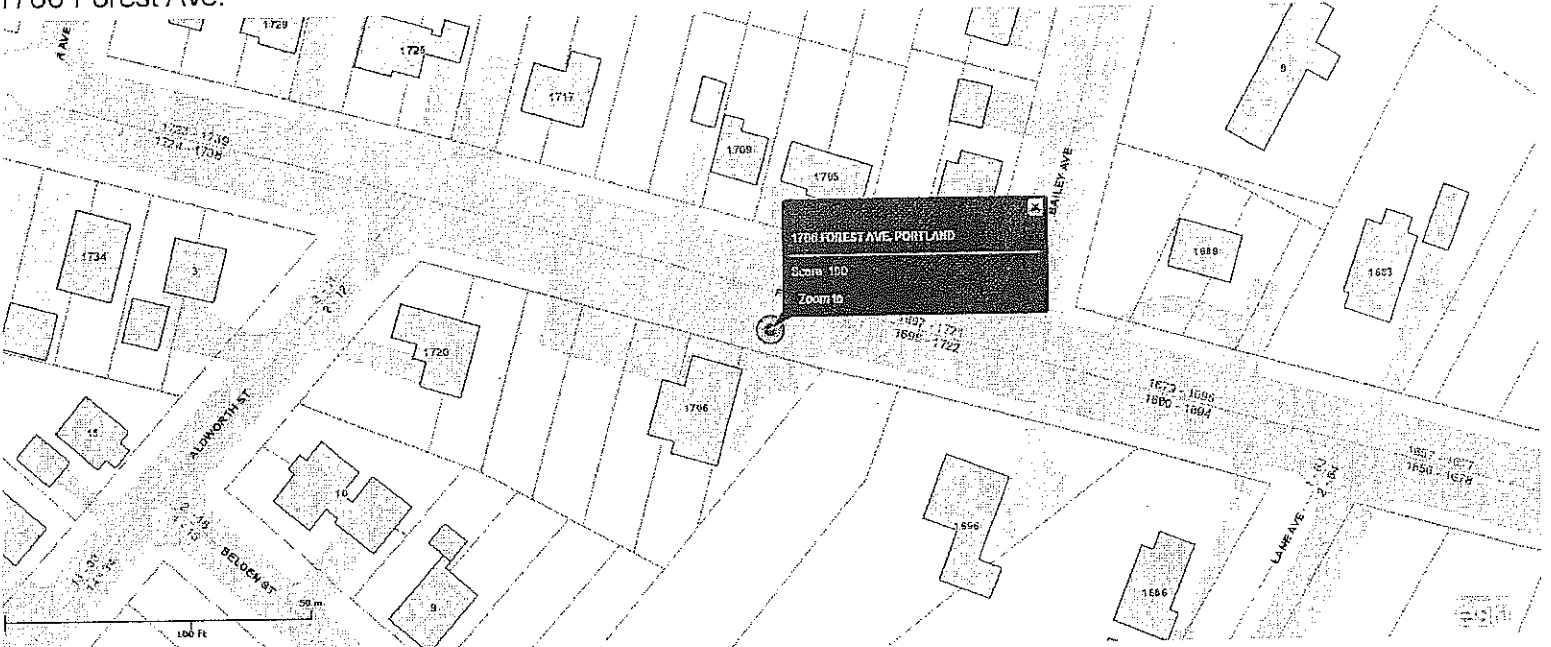
Common Path of Egress Travel Limit: 75'  
 Only (1) exit required for occupancy < 49  
 200' max exit access travel distance  
 Only (1) exit required for occupancy < 49



PROPOSED PLAN  
 0 4'-0" SCALE: 1/4" = 1'-0"

# Taco Trio

1706 Forest Ave.





MAINE STATE BUREAU OF IDENTIFICATION  
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42  
AUGUSTA, ME 04333  
(207) 624-7240 (VOICE)

JANICE GARDNER  
389 CONGRESS STREET  
ROOM 203  
PORTLAND, ME 04101

Transaction Response #: MIQ99C646301

## Criminal History Record

### Introduction

This criminal history record was produced in response to the following request ( Produced on 2015-10-05 ) :  
Inquiries Name(s) AMY H MENCHEL (1981-02-12)

NO MATCH WAS FOUND FOR YOUR REQUEST.



MAINE STATE BUREAU OF IDENTIFICATION  
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42  
AUGUSTA, ME 04333  
(207) 624-7240 (VOICE)

JANICE GARDNER  
389 CONGRESS STREET  
ROOM 203  
PORTLAND, ME 04101

Transaction Response #: MIQ99C662692

## Criminal History Record

### Introduction

This criminal history record was produced in response to the following request ( Produced on 2015-10-20 ) :  
Inquiries Name(s) KAREN RASMUSSEN (1961-06-12)

NO MATCH WAS FOUND FOR YOUR REQUEST.

## Business Licensing - TACO TRIO Business License Approval

---

**From:** Gary Hutcheson  
**To:** Business Licensing  
**Date:** 10/12/2015 2:03 PM  
**Subject:** TACO TRIO Business License Approval

---

TACO TRIO is Approved for their Business License Inspection by the Police Dept.

Date: 10/12/2015

Zone:  
Comments: Class IFSE.

Lt. Gary L Hutcheson  
Portland Police Department  
109 Middle St  
Portland, Maine 04101  
(207) 756-8295

Portland, Maine



Yes. Life's good here.

**Office of the City Clerk**

Katherine L. Jones, CCM, City Clerk

October 20, 2015

Karen Rasmussen  
672 Ocean Ave.  
Portland, ME 04103

Re: Taco Trio LLC d/b/a Taco Trio. Application for a Class I FSE License at 1706 Forest Ave.

Dear Ms. Rasmussen,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, November 2<sup>nd</sup>, at 7:00 p.m.** for the review of your application for a Class I FSE License at 1706 Forest Ave. The meeting will take place in Council Chambers on the 2<sup>nd</sup> floor of City Hall, 389 Congress Street, Portland, ME 04101.

You or a representative of the business must be present at this meeting in the event that the City Council has questions regarding the license application. If there is no representation and questions arise, the issue could be postponed.

Should you have any questions or concerns, please do not hesitate to contact our office directly at (207) 874-8557 or by email, [BL@portlandmaine.gov](mailto:BL@portlandmaine.gov)

Sincerely,

Janice Gardner  
Business License Administrator  
207-874-8557  
[bl@portlandmaine.gov](mailto:bl@portlandmaine.gov)

**Portland Press Herald**  
**Maine Sunday Telegram**  
pressherald.com

**Classified Advertising Proof**

**Legal Advertisement**

**Notice of Public Hearing  
City of Portland**

A Public Hearing will be held on November 2nd at 7:00 P.M., in City Council Chambers, 389 Congress St., on Taco Trio LLC d/b/a Taco Trio. Application for a Class I FSE License at 1706 Forest Ave. Sponsored by Katherine L. Jones, City Clerk.

Order 97-15/16  
Tab 6 11-2-15

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

DAVID BRENERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR. (A/L)

ORDER  
GRANTING MUNICIPAL OFFICERS'  
APPROVAL OF:

**Munjoy Hill Tavern LLC d/b/a Munjoy Hill Tavern. Application for a Class A Lounge License with Entertainment without Dance and Outdoor Dining on Private Property at 189 Congress St.**

Law Office of David S. Turesky

ATTORNEY AT LAW

477 CONGRESS STREET

SUITE 400

PORTLAND, MAINE 04101-3459

(207) 772-7120 • FAX 772-7197

davidturesky@yahoo.com

October 2, 2015

The Mayor and Members of Portland City Council  
Portland City Hall  
389 Congress Street  
Portland, Maine

BY HAND DELIVERY

Re: Liquor license application for Munjoy Hill Tavern, LLC  
189 Congress Street

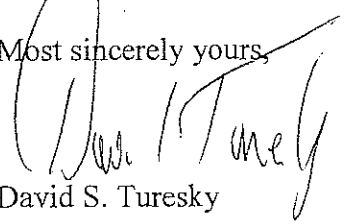
Dear Mr. Mayor and Members of the City Council:

On behalf of Munjoy Hill Tavern, LLC and its principal and sole member, Stanley Dobson, I am having Stan hand-deliver to you this letter of intent, along with a diagram manifesting the layout of the premises, our liquor licensing application, our supplemental application for an entertainment license, our application for a food service license, a supplemental application for this limited liability company, and finally a proposed menu.

If anything at all seems awry here, please do let me know. Mr. Dobson and I stand ready to supplement these materials if and howsoever necessary.

As set forth in these materials, my client hopes to operate a Class A Lounge at this location. He does intend to serve malt, spirituous, and vinous beverages.

Most sincerely yours,

  
David S. Turesky

DST/tf  
enclosures

P.S. Stan will present you with a check of \$126.

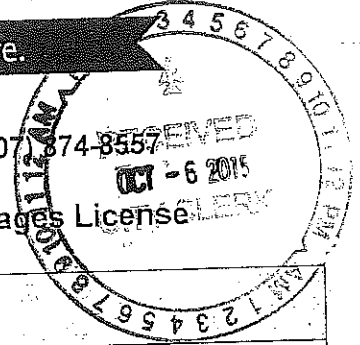
Portland, Maine



Yes. Life's good here.

Office of the City Clerk • 389 Congress St. • Portland, ME 04101 • (207) 874-8557

# Application for Food Service Establishment with Alcoholic Beverages License



|                                             |                                             |
|---------------------------------------------|---------------------------------------------|
| Business Information.                       |                                             |
| Business Name (d/b/a):                      | Munjoy Hill Tavern Phone: 207 939-3836      |
| Location Address:                           | 189 Congress St. Portland, Me Zip: 04101    |
| If new, what was formerly at this location: | MAMA'S CROW BAR                             |
| Mailing Address:                            | 189 Congress Street Portland, Me Zip: 04101 |
| Contact Person:                             | Stanley Dobson Phone: 207 939-3836          |
| Contact Person Email:                       | None                                        |
| Manager of Establishment:                   | Stanley Dobson Phone: 207 939-3836          |
| Owner of Premises (Landlord):               | Shane Dobson                                |
| Address of Premises Owner:                  | 13 Marion St, Portland, Maine Zip: 04101    |

## Sole Proprietor/Partnership Information (If Corporation, leave blank)

| Name of Owner(s) | Date of Birth | Residence Address |
|------------------|---------------|-------------------|
|                  |               |                   |
|                  |               |                   |

## Corporate/LLC/Non-Profit Organization Applicants (If Sole Proprietor or Partnership, leave blank)

| Corporate Name          |                | Corporate Mailing Address                  |                                  |
|-------------------------|----------------|--------------------------------------------|----------------------------------|
| Munjoy Hill Tavern, LLC |                | 189 Congress St Portland, Maine Zip: 04101 |                                  |
| Contact Person:         | Stanley Dobson | Phone:                                     | 207 939-3836                     |
| Principal Officers      | Title          | Date of Birth                              | Residence Address                |
| Stanley Dobson          | Manager        | 7/16/68                                    | 13 Marion St, Portland, Me 04101 |
|                         |                |                                            |                                  |
|                         |                |                                            |                                  |
|                         |                |                                            |                                  |

# About Your Establishment

|                                        |                                                                                                                              |                                       |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| Class of Liquor License:               | Class A Lounge (Class X)                                                                                                     |                                       |
| Type of food served:                   | Casual                                                                                                                       |                                       |
| Please circle all that will be served: | <input checked="" type="checkbox"/> Beer <input checked="" type="checkbox"/> Wine <input checked="" type="checkbox"/> Liquor |                                       |
| Projected percentage of sales:         | Generated from Food: Not now known                                                                                           | Generated from Alcohol: Not now known |
| Hours & days of operation:             | 7 AM → 1 AM                                                                                                                  |                                       |

| QUESTIONS                                                                                                                           | Y/N                                   |
|-------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| Will full-course meals, only capable of consumption with the use of tableware, be served the entire time the establishment is open? | <input checked="" type="checkbox"/> Y |
| If No, please explain:                                                                                                              |                                       |
| We will operate as a lounge                                                                                                         |                                       |
| Is the establishment less than 300 feet from a school, dormitory, church or parish house, or similar establishment?                 | <input checked="" type="checkbox"/> Y |
| If yes, give the distance:                                                                                                          |                                       |
| Will you have entertainment on the premises? (If yes, a Supplemental Application for Dancing & Entertainment is required.)          | <input checked="" type="checkbox"/> Y |
| Will you permit dancing on the premises?                                                                                            | <input checked="" type="checkbox"/> Y |
| Will you permit dancing after 1:00 a.m.?                                                                                            | <input checked="" type="checkbox"/> Y |
| Will you have outside dining? (If yes, an Outdoor Dining Application is required)                                                   | <input checked="" type="checkbox"/> Y |
| If yes, will the outside dining be on PUBLIC or PRIVATE property (circle one).                                                      |                                       |
| Will you have any amusement devices (pinball, video games, juke box)?                                                               | <input checked="" type="checkbox"/> Y |
| If yes, please list: # of pinball machines: _____ # of amusements: _____ # of pool tables: _____                                    |                                       |
| What is your targeted opening date?                                                                                                 |                                       |
| November 1, 2015                                                                                                                    |                                       |
| Does the issuance of this license directly or indirectly benefit any City employee(s)?                                              | <input checked="" type="checkbox"/> Y |
| If Yes, list name(s) of employee(s) and department(s):                                                                              |                                       |
| Have any of the applicants, including the corporation (if applicable), ever held a business license with the City of Portland?      | <input checked="" type="checkbox"/> Y |
| If Yes, please list business name(s) and location(s):                                                                               |                                       |
| Bayside Paving 13 Main St, Portl                                                                                                    |                                       |
| Is any principal officer under the age of 21?                                                                                       | <input checked="" type="checkbox"/> Y |
| Have applicant, partners, associates, or corporate officers ever been arrested, indicted, or convicted for any violation of law?    | <input checked="" type="checkbox"/> Y |
| If Yes, please explain:                                                                                                             |                                       |

I, Stanley Dohm do hereby swear and affirm that every employee in my establishment that serves alcohol to the public has attended server training, or will attend server training within 90 days of their hire. I also understand that at any time the City license administrator can, upon request, require me to produce Server Training certificates for each employee that serves alcohol to the public in my establishment. Failure to meet the training requirement imposed by section 15-41 may result in the denial of a liquor license pursuant to 28-A M.R.S.A. § 653 (2) (G).

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above licensee and further agrees that any misstatement of material fact may result in refusal of license or revocation if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto. I/We, hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/We, hereby waive any rights to privacy with respect thereto.

Signature Stanley Dohm Title Manager Date 9/30/15

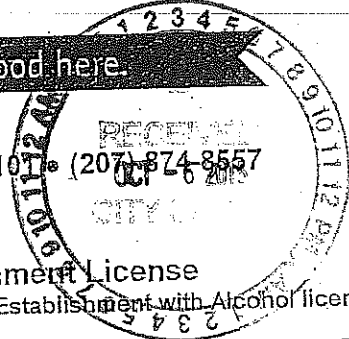
For more information about Liquor Licenses, see Portland City Code Chapter 15 at [www.portlandmaine.gov](http://www.portlandmaine.gov) and M.R.S.A. Title 28-A at [www.maine.gov](http://www.maine.gov)

Portland, Maine



Yes. Life's good here.

Office of the City Clerk • 389 Congress St. • Portland, ME 04101 • (207) 874-8557  
www.portlandmaine.gov



### Supplemental Application for Dancing and Entertainment License

License accompanies a City of Portland Food Service Establishment or Food Service Establishment with Alcohol license.

☒ Entertainment without Dancing: \$270    ☐ Entertainment with Dancing: \$485    ☐ After-Hours (1 a.m. to 3 a.m.): \$545

|                        |                                        |
|------------------------|----------------------------------------|
| Business Information   |                                        |
| Business Name (d/b/a): | Munjoy Hill Tavern                     |
| Location Address:      | 189 Congress St, Portland, Maine 04101 |
| Phone:                 | 207 939-3836                           |
| Zip:                   | 04101                                  |

### About Your Establishment

|                                                                                                                                                  |                                                                                                    |
|--------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------|
| Describe in detail the type and nature of the business and proposed entertainment:                                                               |                                                                                                    |
| A lounge, with a jukebox and an occasional live performance                                                                                      |                                                                                                    |
| Will music be electric, acoustical, or both? (Circle)                                                                                            | (both)                                                                                             |
| Will amplification be used?                                                                                                                      | Y/N                                                                                                |
| If yes, where and at what level?                                                                                                                 | At the lounge, the main level will always be moderate at most, given residential tenants upstairs. |
| Will music be played (Circle all that apply):                                                                                                    | Inside Outside                                                                                     |
| Will you permit dancing on the premises?                                                                                                         | Y/N                                                                                                |
| Will you permit dancing after 1:00 a.m.?                                                                                                         | Y/N                                                                                                |
| What is the distance to the nearest residential dwelling unit both inside and outside the building from where the entertainment will take place? | 15 or 20 feet                                                                                      |
| What is your targeted opening date?                                                                                                              | Nov 1, 2015                                                                                        |
| Does the issuance of this license directly or indirectly benefit any City employee(s)?                                                           | Y/N                                                                                                |
| If Yes, list name(s) of employee(s) and department(s):                                                                                           |                                                                                                    |

Applicant, by signature below, agrees to abide by all laws, orders, ordinances, rules and regulations governing the above license and further agrees that any misstatement of material fact may result in refusal of license or revocation, if one has been granted. Applicant agrees that all taxes and accounts pertaining to the premises will be paid prior to issuance of the license.

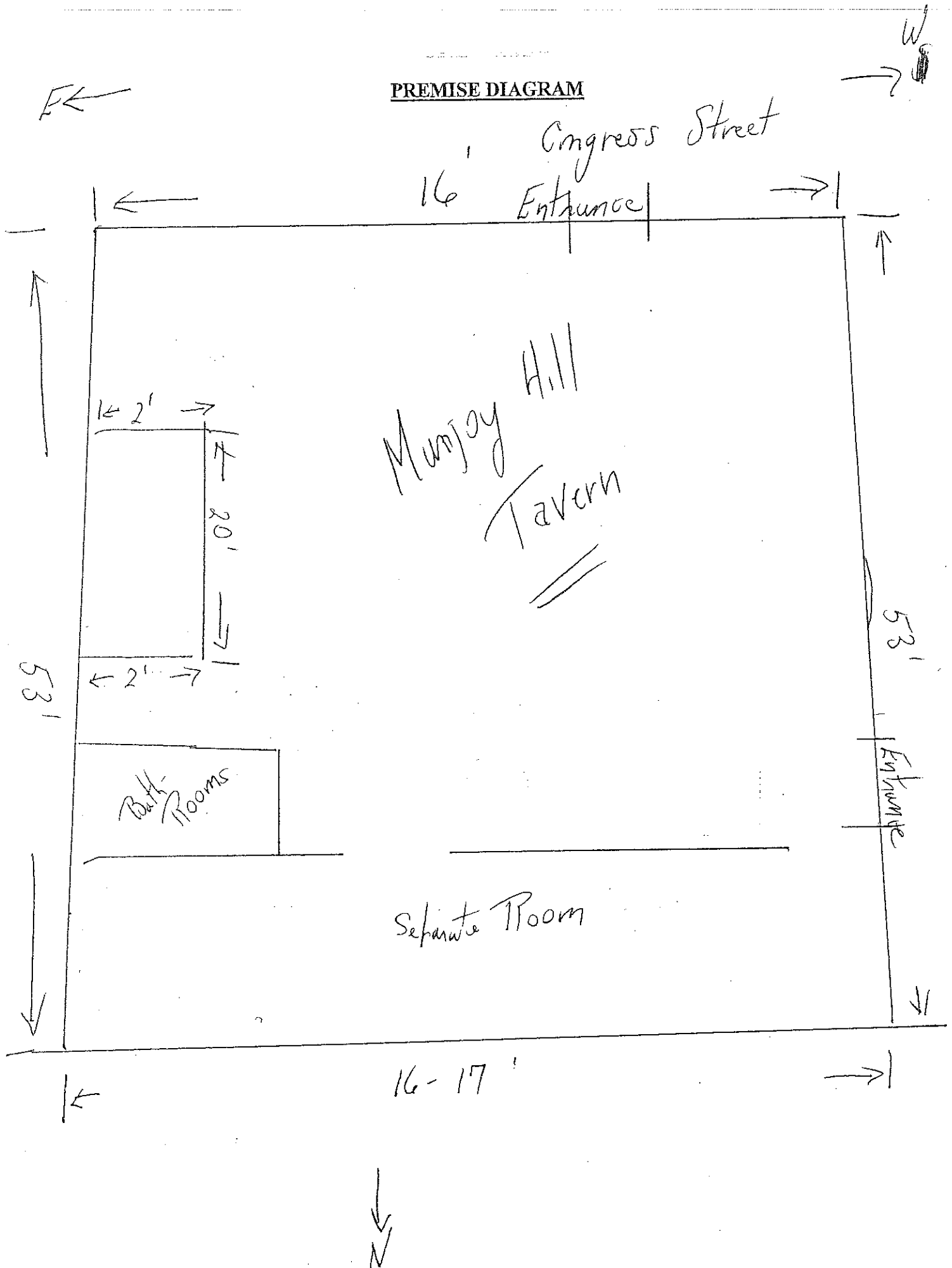
It is understood that this and any application(s) shall become public record and the applicant(s) hereby waive(s) any rights to privacy with respect thereto.

I/ We hereby authorize the release of any criminal history record information to the City Clerk's Office or licensing authority. I/ We hereby waive any rights to privacy with respect thereto.

Signature [Signature] Title Manager Date 9/30/15

For more information, refer to the City Code of Ordinance: Chapter 4 Amusements, at www.portlandmaine.gov

PREMISE DIAGRAM





# Outdoor Dining Permit Application

If you or the property owner owes real estate or personal property taxes or user charges on any property within the City, payment arrangements must be made before permits of any kind are accepted.

|                                                                                                                                                                                                                                           |                                                                          |           |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------|-----------|
| Check all that apply: <input checked="" type="checkbox"/> New Application for Outdoor Dining<br>or <input type="checkbox"/> Renewal Application for Outdoor Dining<br><input type="checkbox"/> Application for dining on Private Property |                                                                          |           |
| <input type="checkbox"/> Outdoor Dining in a Public Park <input type="checkbox"/> If Renewal, are there changes to previous permit?                                                                                                       |                                                                          |           |
| <input type="checkbox"/> Outdoor Dining in a Historic District <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No                                                                                                        |                                                                          |           |
| <input type="checkbox"/> Petition for Exception for Special Circumstances                                                                                                                                                                 |                                                                          |           |
| <input checked="" type="checkbox"/> Liquor License required?                                                                                                                                                                              |                                                                          |           |
| City Clerk signature for liquor license approval: _____<br>OR Pending Council Date: _____                                                                                                                                                 |                                                                          |           |
| Location, Name & Address: <u>Munjoy Hill Tavern 189 Congress St</u>                                                                                                                                                                       | Chart                                                                    | Block Lot |
| Owner Name: <u>Shane Dobsin</u>                                                                                                                                                                                                           | Total Square Footage of Proposed Outdoor Dining Area: <u>400 sq ft ±</u> |           |
| Owner Phone #: <u>317-9306</u>                                                                                                                                                                                                            |                                                                          |           |
| Applicant *must* be owner or lessee                                                                                                                                                                                                       |                                                                          |           |
| Name: <u>Munjoy Hill Tavern, LLC</u>                                                                                                                                                                                                      | Fee: \$80 (Public-Annual) \$125 (Private 1X)                             |           |
| Address: <u>189 Congress St</u>                                                                                                                                                                                                           | Total Sq. Ft.: _____                                                     |           |
| City, State & Zip: <u>Portland, Maine 04101</u>                                                                                                                                                                                           | Sq. Ft. Fee: (sq ft x \$2) \$ _____                                      |           |
| E-Mail: _____                                                                                                                                                                                                                             | (sq ft x \$6 for public parks)                                           |           |
| Current use: <u>Tavern/Hounge</u>                                                                                                                                                                                                         | Total Fees: \$ _____                                                     |           |
| Business name: <u>Munjoy Hill Tavern</u>                                                                                                                                                                                                  | (Permit not issued until all fees are paid)                              |           |
| Seating area dimensions: <u>6' x 30' 4" 15' x 15'</u>                                                                                                                                                                                     |                                                                          |           |
| How many chairs? <u>44 ±</u>                                                                                                                                                                                                              | How many tables? <u>8-10</u>                                             |           |
| <input checked="" type="checkbox"/> Yes Alcohol is served.<br><input type="checkbox"/> No Alcohol being served.                                                                                                                           |                                                                          |           |
| Who should we contact: <u>Stanley Dobsin 04/01</u>                                                                                                                                                                                        | Phone: <u>939-3836</u>                                                   |           |
| Address: <u>13 Munim St Portland, Me</u>                                                                                                                                                                                                  | E Mail: _____                                                            |           |

Please submit all of the information outlined in the Outdoor Dining Application Checklist. Failure to do so will result in the automatic denial of your permit. New applications and renewals are reviewed on an annual basis and should be submitted no later than June 1<sup>st</sup>.

In order to be sure the City fully understands the full scope of the project, the Planning and Development Department may request additional information prior to the issuance of a permit. For further information visit us on-line at [www.portlandmaine.gov](http://www.portlandmaine.gov), stop by the Building Inspections office, room 315 City Hall or call 874-8703.

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Code Official's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

Signature of Applicant: [Signature] Date: 10/6/15

<sup>1</sup> In no instance shall the total square footage of dining area equal more than 10% of park space, unless the applicant receives a waiver from the Director of Parks and Recreation or his or her designee.

# Plot Plan

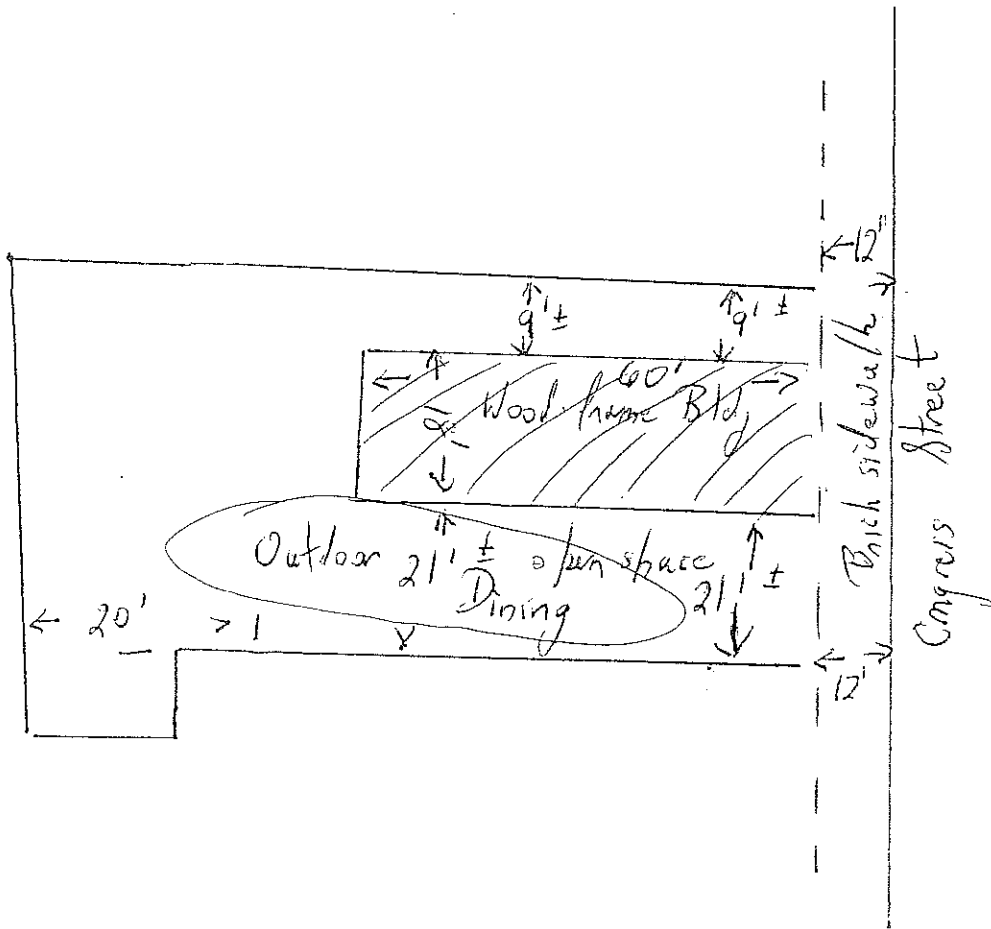
Munjoy Hill Tavern

189 Congress St

E  
↑

For Outdoor Dining

← N



→ S

↓  
W

W. S. S. S.  
10/6/15

Department of Public Safety  
Division

Liquor Licensing & Inspection



Promise by any person that he or she can expedite a liquor license through influence should be completely disregarded. To avoid possible financial loss an applicant, or prospective applicant, should consult with the Division before making any substantial investment in an establishment that now is, or may be, attended by a liquor license.

**BUREAU USE ONLY**

License No. Assigned:

Class:

Deposit Date:

Amt. Deposited:

PRESENT LICENSE EXPIRES \_\_\_\_\_

INDICATE TYPE OF PRIVILEGE: ☒ MALT ☒ SPIRITUOUS ☒ VINOUS

INDICATE TYPE OF LICENSE:

- ☐ RESTAURANT (Class I,II,III,IV)  
☐ HOTEL-OPTINONAL FOOD (Class I-A)  
☒ CLASS A LOUNGE (Class X)  
☐ CLUB (Class V)  
☐ TAVERN (Class IV)

- ☐ RESTAURANT/LOUNGE (Class XI)  
☐ HOTEL (Class I,II,III,IV)  
☐ CLUB-ON PREMISE CATERING (Class I)  
☐ GOLF CLUB (Class I,II,III,IV)  
☐ OTHER: \_\_\_\_\_

REFER TO PAGE 3 FOR FEE SCHEDULE

ALL QUESTIONS MUST BE ANSWERED IN FULL

|                                                                             |  |                                                   |                            |
|-----------------------------------------------------------------------------|--|---------------------------------------------------|----------------------------|
| 1. APPLICANT(S) (Sole Proprietor, Corporation, Limited Liability Co., etc.) |  | 2. Business Name (D/B/A)                          |                            |
| Munjoy Hill Tavern                                                          |  | Munjoy Hill Tavern                                |                            |
| DOB:                                                                        |  | DOB:                                              |                            |
| DOB:                                                                        |  | Location (Street Address)                         |                            |
| Address                                                                     |  | 189 Congress St                                   |                            |
| City/Town                                                                   |  | Portland                                          | State Maine Zip Code 04101 |
| City/Town                                                                   |  | Mailing Address                                   |                            |
| State Me Zip Code 04101                                                     |  | Same                                              |                            |
| City/Town                                                                   |  | Portland                                          | State Me Zip Code 04101    |
| Telephone Number 207-                                                       |  | Business Telephone Number 207-939-3836 Fax Number |                            |
| Federal I.D. # 47-5183871                                                   |  | Seller Certificate #                              |                            |

3. If premises are a hotel, indicate number of rooms available for transient guests: \_\_\_\_\_
4. State amount of gross income from period of last license: ROOMS \$ \_\_\_\_\_ FOOD \$ \_\_\_\_\_ LIQUOR \$ \_\_\_\_\_
5. Is applicant a corporation, limited liability company or limited partnership? YES ☒ NO ☐

complete Supplementary Questionnaire, If YES

6. Do you permit dancing or entertainment on the licensed premises? YES ☒ NO ☐
7. If manager is to be employed, give name: Stanley Dobson
8. If business is NEW or under new ownership, indicate starting date: 11/1/15
- Requested inspection date: Immediately Business hours: 7 a.m. to 1 a.m.
9. Business records are located at: 189 Congress St, Portland, Me 04101
10. Is/are applicants(s) citizens of the United States? YES ☒ NO ☐

11. Is/are applicant(s) residents of the State of Maine? YES ☒ NO ☐

12. List name, date of birth, and place of birth for all applicants, managers, and bar managers. Give maiden name, if married:  
Use a separate sheet of paper if necessary.

| Name in Full (Print Clearly) | DOB     | Place of Birth |
|------------------------------|---------|----------------|
| Stanley Dohm                 | 7/16/68 | Portland       |
|                              |         |                |
|                              |         |                |

Residence address on all of the above for previous 5 years, (Limit answer to city & state)

13 Marion St Portland Maine 04101

13. Has/have applicant(s) or manager ever been convicted of any violation of the law, other than minor traffic violations, of any State of the United States? YES ☐ NO ☒

Name: \_\_\_\_\_

Date of Conviction: \_\_\_\_\_

Offense: \_\_\_\_\_

Location: \_\_\_\_\_

Disposition: \_\_\_\_\_

14. Will any law enforcement official benefit financially either directly or indirectly in your license, if issued?  
Yes ☐ No ☒ If Yes, give name: \_\_\_\_\_

15. Has/have applicant(s) formerly held a Maine liquor license? YES ☐ NO ☒

16. Does/do applicant(s) own the premises? Yes ☒ No ☐ If No give name and address of owner: Shane Dohm (father) 13 Marion St Portland ME 04101

17. Describe in detail the premises to be licensed: (Supplemental Diagram Required)  
a small open-shed tavern

18. Does/do applicant(s) have all the necessary permits required by the State Department of Human Services?  
YES ☐ NO ☒ Applied for: both with

19. What is the distance from the premises to the NEAREST school, school dormitory, church, chapel or parish house, measured from the main entrance of the premises to the main entrance of the school, school dormitory, church, chapel or parish house by the ordinary course of travel? 200 yards Which of the above is nearest? AME Zion St (Shenandoah St)

20. Have you received any assistance financially or otherwise (including any mortgages) from any source other than yourself in the establishment of your business? YES ☐ NO ☒

If YES, give details: \_\_\_\_\_

The Division of Liquor Licensing & Inspection is hereby authorized to obtain and examine all books, records and tax returns pertaining to the business, for which this liquor license is requested, and also such books, records and returns during the year in which any liquor license is in effect.

NOTE: "I understand that false statements made on this form are punishable by law. Knowingly supplying false information on this form is a Class D offense under the Criminal Code, punishable by confinement of up to one year or by monetary fine of up to \$2,000 or both."

Dated at: Portland, Maine on September 30, 2015  
Town/City, State Date

Please sign in blue ink

Signature of Applicant or Corporate Officer(s)

Signature of Applicant or Corporate Officer(s)



**State of Maine**  
**Bureau of Alcoholic Beverages**  
**Division of Liquor Licensing and Enforcement**

**Supplemental Information Required for  
Business Entities Who Are Licensees**

For Office Use Only:

License #: \_\_\_\_\_

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

For information required for Questions 1 to 4, this information is on file with the Maine Secretary of State's office and must match their record information. Please clearly complete this form in its entirety.

1. Exact legal name:

Munjoy Hill Tavern, LLC

2. Other business name for your entity (DBA), if any:

Munjoy Hill Tavern

3. Date of filing with the Secretary of State:

9/8/15

4. State in which you are formed: ME

5. If not a Maine business entity, date on which you were authorized to transact business in the State of Maine: \_\_\_\_\_

6. List the name and addresses for previous 5 years, birth dates, titles of officers, directors and list the percentage ownership: (attached additional sheets as needed)

| Name           | Address for Previous 5 years | Date of Birth | Ownership % |
|----------------|------------------------------|---------------|-------------|
| Stanley Dobson | 13 Main St,<br>PTH           | 7/16/68       | 100         |
|                |                              |               |             |
|                |                              |               |             |
|                |                              |               |             |

7. Is any principal person involved with the entity a law enforcement official?

Yes

☐

No

☒

8. If Yes to Question 7, please provide the name and law enforcement agency:

Name: \_\_\_\_\_ Agency: \_\_\_\_\_

9. Has any principal person involved in the entity ever been convicted of any violation of the law, other than minor traffic violations, in the United States?

Yes

☐

No

☒

10. If Yes to Question 9, please complete the following: (attached additional sheets as needed)

Name: \_\_\_\_\_

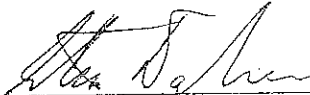
Date of Conviction: \_\_\_\_\_

Offense: \_\_\_\_\_

Location of Conviction: \_\_\_\_\_

Disposition: \_\_\_\_\_

Signature:



Signature of Duly Authorized Person

Date

9/30/15

Stanley Dobsen

Print Name of Duly Authorized Person

If you have questions regarding the legal name or assumed (DBA) name on file with the Secretary of State's office, please call (207) 624-7752. The SOS can only speak to the information on file with their office, not the filing of this supplemental information – please direct any questions about this form to our office at the number below.

Submit Completed Forms To: Bureau of Alcoholic Beverages and Lottery Operations  
Division of Liquor Licensing and Enforcement  
164 State House Station  
Augusta, Me 04333-0101  
Telephone Inquiries: (207) 624-7220  
Fax: (207) 287-3424  
Email Inquiries: [MaineLiquor@Maine.gov](mailto:MaineLiquor@Maine.gov)

# **Projected Menu**

## **Pub 189 / Munjoy Hill Tavern**

### **Starters**

#### **Pan Fried Crabcakes**

#### **Crab Bites**

*Jonah Crab on Ritz, with cheddar cheese, peppers, and herb coating, served with Lemon Caper Aioli*

#### **Stuffed Mushroom Caps**

*Spinach, ricotta cheese, and herb stuffing, topped with mozzarella*

#### **Fish Nuggets**

*Fried, with dipping sauce*

#### **Chicken Tenders**

*Fried, with sweet honey mustard dipping sauce*

#### **Loaded Nachos**

*Topped with fresh farm veggies, loaded with Mexican cheese mix, served with sour cream, salsa, and guacamole.*

### **Salads**

*Served with Rolls and Butter*

#### **Green Salad**

*Local, farm fresh salad mix with cherry tomatoes, onions, peppers, carrots, and cucumbers.*

*Dressing choices: TBA*

#### **Classic Caesar Salad**

*Classic Caesar with romaine lettuce and garlic grilled croutons, shaved parmesan.*

*Add: Chicken, steak, or fish*

### **Soups**

*Cup or Bowl - Served with Rolls and Butter*

- **Soup of the Day**
- **Maine Haddock Chowder**
- **French Onion**

*Check the Board for Our Daily Specials!*

## **Build Your Own Grilled Flatbread Pizza**

Sizes: TBA    *Classic Red or White Cream Sauce*

### ***Toppings:***

- Mushrooms, onions, peppers, olives, tomatoes, broccoli, pineapple, sprouts
- Pepperoni, ham, ground beef, sausage, grilled chicken, grilled turkey
- Mozzarella, American, cheddar, swiss, provolone, ricotta

## **Classic Sandwiches**

*on choice of bread\**

*Served with hand-cut French fries, sweet potato fries, or onion rings*

### **Boneless Chicken Breast**

*Topped with lettuce, tomato, and red onion and our garlic mayo dressing*

### **Sirloin Burger**

*A 6-ounce burger, choose your toppings*

### **Fresh Maine Haddock Sandwich**

### **Classic Club Sandwich**

*Grilled chicken or turkey, crisp bacon, lettuce, tomato, mayo*

### **Veggie Roll-up**

*Your choice of veggies, rolled up in our (flavor) wrap.*

### **Maine Lobster Roll**

*Served with chips and pickle*

### **Maine Crab Roll**

*Served with Chips and Pickle*

\* White, wheat, rye, bulkie roll, wrap, onion roll, Italian bread

## **Sides**

Handcut French Fries

Mac & Cheese

Handcut Sweet Potato Fries

Homemade Baked Beans

Handcut Onion Rings

Grilled Hot Dog with onions

## **Scrumptious Desserts**

*See your server for today's selection of Maggie's homemade desserts!*

## **Beverages**

Soft drinks, Ice Tea, Hot Coffee and Tea, Homemade Lemonade



MAINE STATE BUREAU OF IDENTIFICATION  
45 Commerce Drive, Suite 1 / STATE HOUSE STATION # 42  
AUGUSTA, ME 04333  
(207) 624-7240 (VOICE)

JANICE GARDNER  
389 CONGRESS STREET  
ROOM 203  
PORTLAND, ME 04101

Transaction Response #: MIQ99C653146

## Criminal History Record

### Introduction

This criminal history record was produced in response to the following request ( Produced on 2015-10-09 ) :  
Inquiries Name(s) STANLEY DOBSON (1968-07-16)

The information in this criminal history record is provided subject to the following caveats:

Important! When a criminal history record and juvenile crime information record check is processed by the State Bureau of Identification using personal identifiers such as name and date of birth, it is possible that the record supplied belongs to another person with the same or essentially similar name and date of birth. Confirmation that convictions relate to person whose record has been requested requires fingerprint comparison. If the information contained in this response will be used to disqualify an applicant for employment, housing, credit, or other benefits or programs, the person making the eligibility determination using this record should provide the applicant with an opportunity to complete or contest the accuracy of the criminal history information in the response. An individual may request amendment or correction of criminal history record information by a criminal justice agency pursuant to 16 M.R.S. section 709.

\*\*THIS RESPONSE IS BEING PRODUCED FOR YOUR REQUEST SENT: 2015-10-09

This record, effective September 1, 2000, contains information relating to persons arrested as fugitives from justice, 15 M.R.S section 201.4 or arrested or charged with Maine crimes. It does not include former crimes no longer classified as criminal, or Class D and E crimes in Title 12 or Title 29-A, former Title 29, unless the crime is alcohol-related or drug-related 25 M.R.S. section 1541.4-A.A. For information regarding excluded Marine Resources crimes in Title 12, contact the Department of Marine Resources. For information regarding excluded Inland Fisheries and Wildlife crimes in Title 12, contact the Department of Inland Fisheries and Wildlife. For information relating to excluded crimes in Title 29-A former Title 29, contact the Secretary of State, Motor Vehicle Division. A list of former crimes is available from this Bureau.

### Identification

Subject Name/or potential Alias Name(s)

DOBSON, STANLEY

**Subject Description (date information provided listed in parentheses)**

**State ID Number**  
MES008371

**DOC Number**  
Unknown/NA

**Sex**  
Male

**Race**  
White

**Skin Tone**  
Fair

**Height**  
509 (1993-03-09)

**Weight**  
190 (1993-03-09)

**Date of Birth**  
1968-07-16

**Hair Color**  
Brown (1993-03-09)

**Eye Color**  
Brown (1993-03-09)

**Scars, Marks, and Tattoos**  
Unknown/NA

**Place of Birth**  
ME

**Citizenship**  
US (1993-03-09)

**Residence**  
Residence as of  
Address

1993-03-09  
13 MARION ST  
PORTLAND, ME US

**Caution Information**  
Firearms Disqualified

C - Cleared

**Criminal History**

|           |
|-----------|
| Cycle 001 |
|-----------|

**ATN/Tracking Number**  
**Earliest Event Date**

711963A  
1993-03-09

**Arrest/Charge**  
**Arrest/Charge Date**  
**Arresting/Charging Agency**  
**Subject Name(s)**  
**Arrest Type**  
**Charge 1**

(Cycle 001)  
1993-03-09  
PORTLAND PD; ME0030500  
DOBSON, STANLEY  
Adult

Charge Number 711963A 001  
Charge Tracking Number 711963A  
Charge Case Number 93-9953  
Agency PORTLAND PD; ME0030500  
Offense Date 1993-03-09  
Charge Description ASSAULT (Charge Class D)  
Statute 17-A MRSA SUBSECTION 207  
State Sequence Code 5064

|                        |                                                                      |
|------------------------|----------------------------------------------------------------------|
| Severity Misdemeanor   |                                                                      |
| Prosecutor Disposition | No data supplied                                                     |
| Court Disposition      | (Cycle 001)                                                          |
| Court Case Number      | 93-02359                                                             |
| Court Agency           | 9TH DISTRICT COURT PORTLAND; ME003035J                               |
| Charge 1               |                                                                      |
|                        | Charge Number 711963A 001                                            |
|                        | Charge Tracking Number 711963A                                       |
|                        | Agency 9TH DISTRICT COURT PORTLAND; ME003035J                        |
|                        | Offense Date 1993-03-09                                              |
|                        | Charge Description ASSAULT (Charge Class D)                          |
|                        | Statute 17-A MRSA SUBSECTION 207                                     |
|                        | State Sequence Code 5064                                             |
|                        | Severity Misdemeanor                                                 |
|                        | Disposition 1993-08-26; GUILTY                                       |
| Sentencing             | (Cycle 001)                                                          |
| Sentencing Agency      | 9TH DISTRICT COURT PORTLAND; ME003035J                               |
|                        | Court Case Number 93-02359                                           |
|                        | Charge Number 711963A 001                                            |
|                        | Charge Sequence Number 1                                             |
|                        | Charge Tracking Number 711963A                                       |
|                        | Sentence 1993-08-26: INCARCERATED 60 days COUNTY JAIL ALL BUT 3 DAYS |
|                        | SUSPENDED                                                            |
|                        | 1993-08-26: PROBATION 1 years                                        |
| Corrections            | No data supplied                                                     |

## Index of Agencies

|                  |                                        |
|------------------|----------------------------------------|
| Agency           | 9TH DISTRICT COURT PORTLAND; ME003035J |
| Agency Telephone | 207-822-4205                           |
| Address          | 205 NEWBURY ST<br>PORTLAND, ME 04101   |
| Agency           | PORTLAND PD; ME0030500                 |
| Agency Telephone | 207-874-8479                           |
| Address          | 109 MIDDLE ST<br>PORTLAND, ME 04111    |

**Business Licensing - Re: Munjoy Hill Tavern - 189 Congress St.**

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**From:** Business Licensing  
**To:** Hutcheson, Gary  
**Date:** 10/16/2015 11:54 AM  
**Subject:** Re: Munjoy Hill Tavern - 189 Congress St.

---

Thanks!

>>> Gary Hutcheson 10/15/2015 6:45 PM >>>

I approve.

Lt. Gary L Hutcheson  
Portland Police Department  
109 Middle St  
Portland, Maine 04101  
(207) 756-8295

>>> Business Licensing 10/9/2015 2:27 PM >>>

Hi,

Here's the SBI for Stanley Dobson. Let me know if you have any concerns.

Thanks,  
Janice

>>> Business Licensing 10/9/2015 1:20 PM >>>

Hello,

For your approval:

Munjoy Hill Tavern, LLC d/b/a Munjoy Hill Tavern has submitted an application for a Class A Lounge license with entertainment without dance and outdoor dining on private property. They wish to go before Council on 11/2. This is the former location of Mama's Crow Bar.

Contact: Stanley Dobson - 939-3836

The application is attached. Please put feedback into UI.

Thanks,  
Janice

Business License Administrator  
bl@portlandmaine.gov  
207.874.8557

# Munjoy Hill Tavern

189 Congress St.



Portland, Maine



Yes. Life's good here.

**Office of the City Clerk**

Katherine L. Jones, CCM, City Clerk

October 20, 2015

Stanley Dobson  
13 Marin St.  
Portland, ME 04101

Re: Munjoy Hill Tavern LLC d/b/a Munjoy Hill Tavern. Application for a Class A Lounge License with Entertainment without Dance and Outdoor Dining on Private Property at 189 Congress St.

Dear Mr. Dobson,

This letter shall serve as a reminder of the Public Hearing before the Portland City Council on **Monday, November 2<sup>nd</sup>, at 7:00 p.m.** for the review of your application for a Class A Lounge License with Entertainment without Dance and Outdoor Dining on Private Property at 189 Congress St. The meeting will take place in Council Chambers on the 2<sup>nd</sup> floor of City Hall, 389 Congress Street, Portland, ME 04101.

You or a representative of the business must be present at this meeting in the event that the City Council has questions regarding the license application. If there is no representation and questions arise, the issue could be postponed.

Should you have any questions or concerns, please do not hesitate to contact our office directly at (207) 874-8557 or by email, [BL@portlandmaine.gov](mailto:BL@portlandmaine.gov)

Sincerely,

Janice Gardner  
Business License Administrator  
207-874-8557  
[bl@portlandmaine.gov](mailto:bl@portlandmaine.gov)

**Portland Press Herald**  
**Maine Sunday Telegram**  
pressherald.com

**Classified Advertising Proof**

**Legal Advertisement**

**Notice of Public Hearing  
City of Portland**

A Public Hearing will be held on November 2nd at 7:00 P.M., in City Council Chambers, 389 Congress St., on Munjoy Hill Tavern LLC d/b/a Munjoy Hill Tavern. Application for a Class A Lounge License with Entertainment without Dance and Outdoor Dining on Private Property at 189 Congress St. Sponsored by Katherine L. Jones, City Clerk.

Comm 4-15/16  
Tab 7 11/2/15

**To:** City Council  
**From:** Mayor Michael Brennan  
**Date:** October 20, 2015  
**Re:** East Bayside EPA Areawide Brownfields Study Advisory Group

---

As you know, the Greater Portland Council of Government and the City received a \$200,000 grant from the Environmental Protection Agency to conduct an areawide brownfields planning effort for East Bayside. As this process moves forward, there will be an advisory group of local residents, businesses, and other stakeholders to provide periodic input into the process.

Their charge would be as follows:

*"To advise the project team as it conducts the work of the EPA Areawide Planning Grant for East Bayside on issues that affect stakeholders."*

I have appointed the following members to this group:

- Kate Anker, Running with Scissors
- Heather Sanborn, Rising Tide Brewing
- Laura Mailander, Cultivating Community
- Jay Waterman, Portland Housing Authority
- Zoe Miller, Opportunity Alliance
- Kara Wooldrik, Portland Trails
- A representative from a traditional light industrial business (eg. transportation)
- District 1 Councilor
- Appointee from Greater Portland Landmarks
- Appointee from Portland Adult Education
- Appointee from Muslim Community Center
- 3 appointees from the East Bayside Neighborhood Organization
- 3 appointees from Kennedy Park (residents)

There may be additional members from local businesses or the neighborhood added to this group as it moves forward. The grant is for two years so there is time to make adjustments if needed.

**MEMORANDUM**  
**City Council Agenda Item**

**TO:** Mayor and City Council

**FROM:** Jeff Levine, Director of Planning & Urban Development

**DATE:** 10/22/15

**DISTRIBUTION:** City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

**SUBJECT:** Communication from Mayor re: Appointment of an  
East Bayside Areawide Planning Grant Advisory Committee

**SPONSOR:** Mayor Michael Brennan

(If sponsored by a Council committee, list the date the committee met and the results of vote.)

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

1<sup>st</sup> reading \_\_\_\_\_ Final Action 11/2/15 \_\_\_\_\_

Can action be taken at a later date: x Yes \_\_\_\_\_ No (If no why not?)

**PRESENTATION: (List the presenter(s), type and length of presentation)**

**I. SUMMARY OF ISSUE (Agenda Description)**

The City and GPCOG received a \$200,000 grant from the EPA to conduct Brownfields planning work in East Bayside. As part of that two year process, there will be an advisory committee of stakeholders to advise the project team as it completes this work.

**II. REASON FOR SUBMISSION (Summary of Issue/Background)**

To communicate the Mayor's appointees to the advisory committee to the full Council.

**III. INTENDED RESULT**

A more transparent and inclusive planning process for East Bayside

**IV. COUNCIL GOAL ADDRESSED**

- Promoting housing availability
- Promoting economic development
- Intergovernmental collaboration

**V. FINANCIAL IMPACT**

None. This is grant funded work.

**VI. STAFF ANALYSIS**

Staff supports creation of this committee.

**VII. RECOMMENDATION**

N/A. This is a communication.

**VIII. LIST ATTACHMENTS**

See attached memo.

Prepared by: Jeff Levine

Date: 10/21/15

Order 77-15/16  
~~Tab 14~~ 10-5-15  
~~Tab 13~~ 10-19-15  
Tab 8 11-2-15

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER ADOPTING INDIA STREET SUSTAINABLE NEIGHBORHOOD PLAN  
AND AMENDING THE CITY'S COMPREHENSIVE PLAN**

**ORDERED**, that the India Street Sustainable Neighborhood Plan, attached hereto as Attachment A, is hereby adopted; and

**BE IT FURTHER ORDERED**, that the City's Comprehensive Plan is hereby amended to include the India Street Sustainable Neighborhood Plan.

**MEMORANDUM**  
**City Council Agenda Item**

**TO:** Mayor Brennan and City Council  
**FROM:** Jeff Levine, Director, Planning and Urban Development Department  
**DATE:** September 23, 2015

**DISTRIBUTION:** City Manager Jon Jennings, Mayor Michael Brennan, Assistant City Manager Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, and Julie Sullivan

**SUBJECT:** **ORDER ADOPTING** the India Street Sustainable Neighborhood Plan into the Comprehensive Plan;  
**AMENDMENT** to Portland City Code Chapter 14 (Land Use) to establish the India Street Form-based Code Zone and relevant text and zoning map amendments;  
**ORDER AUTHORIZING** an evaluation of the India Street Form-based Code zone in at least three and no later than five years;  
**ORDER DESIGNATING** the India Street Historic District and relevant Chapter 14 text amendments;  
**ORDER DESIGNATING** 78-88 Middle Street "Abraham S. Levey Building" as an individual Historic Landmark

**SPONSOR:** Beth Boepple, Chair, Planning Board

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

**1<sup>st</sup> reading:** \_\_October 5, 2015\_\_ **Final Action:** \_\_October 19, 2015\_\_

**Can action be taken at a later date:**  X  **Yes** \_\_\_\_\_ **No (If no why not?)**

**PRESENTATION: (List the presenter(s), type and length of presentation)**

Beth Boepple, Chair of the Planning Board, will summarize the proposed policy documents (10 minutes).  
Staff will be available to provide information and answer questions as requested.

**I. SUMMARY OF ISSUE (Agenda Description)**

The Planning Board recommends the adoption of the India Street Sustainable Neighborhood Plan and accompanying implementation tools – the India Street Form-based Code Zone and the India Street Historic District – along with associated map and ordinance text amendments in order to provide policy guidance for the India Street neighborhood.

**II. REASON FOR SUBMISSION (Summary of Issue/Background)**

The India Street Sustainable Neighborhood Plan is a neighborhood policy document requiring Council adoption into the Comprehensive Plan. The establishment of a new zone, and map and text amendments to the City Code of Ordinances require Council approval. Designation of individual landmarks and historic districts requires Council approval.

**III. INTENDED RESULT**

The intended result is to adopt the India Street Sustainable Neighborhood Plan as a Master Plan policy document to guide development in the India Street neighborhood as well as to adopt two implementation tools – the India Street Form-based Code zone and the India Street Historic District – intended to meet key goals and objectives of the neighborhood plan. These are:

- The goal of the ISSNP is to provide policy guidance for the future development of the neighborhood which has not existed up until now.
- The two implementation tools – the Form-based Code and the Historic District – are proposed to address a goal of the neighborhood residents and business owners who initiated the neighborhood planning effort

to protect the existing neighborhood built character, scale, and form and to prevent future development that is incompatible with the existing fabric. Both the form-based code and the historic district promote and allow for a pattern of development that provides for greater housing opportunities, enables infill development on small parcels, and has standards in place that make it possible for new construction to be consistent with the historic pattern of development on the peninsula.

#### **IV. COUNCIL GOAL ADDRESSED**

The policy documents submitted as part of the India Street neighborhood planning are consistent with and advance several of the City Council Common Goals and Objectives for 2014 including *Promote Housing Availability, Transportation Initiatives, and Economic Development*. The implementation of the India Street Form-based Code strives to meet the goal of *Improve City Services* by bringing efficiency to the development review process within that zone.

#### **V. FINANCIAL IMPACT**

There are no known municipal financial impacts associated with this amendment.

#### **VI. STAFF ANALYSIS**

The review found the proposed neighborhood plan, proposed new zone, and proposed new historic district are consistent with the Comprehensive Plan. Refer to the Planning Board Report ([Attachment 1](#)) for further analysis.

#### **VII. RECOMMENDATION**

- 1) On January 20, 2015, the Planning Board voted unanimously (5-0) to recommend the proposed India Street Sustainable Neighborhood Plan to the City Council to be adopted into the Comprehensive Plan.
- 2) On September 15, 2015, the Planning Board voted unanimously (7-0) to recommend the proposed India Street Form-based Code zone and related text and map amendments be approved by the City Council with an additional recommendation for a Council Order requiring a review of the India Street Form-based Code in at least three years and no later than five years from implementation.
- 3) On September 15, 2015, upon the unanimous recommendation of the Historic Preservation Board, the Planning Board voted 5-2 (Soley and Dundon opposed) to recommend that the City Council designate the proposed India Street Historic District and amend the site plan and historic preservation ordinances to clarify the relationship between historic preservation and Form-based Code regulations in the India Street Historic District. These include 1) an added provision under the historic preservation ordinance standards for new construction (Sec. 14-651) which addresses allowable building heights in the India Street Historic District; and 2) an amendment to Sec. 14-526 (18) of the site plan ordinance which applies to the review of new construction within 100 feet of a historic district boundary or landmark. The amendment would clarify that this provision applies only to new construction within 100' of individual landmarks in the India Street Historic District.

#### **VIII. LIST ATTACHMENTS**

1. Planning Board Report to City Council
2. India Street Sustainable Neighborhood Plan
3. India Street Form-based Code zone
4. Map amendment related to the India Street Form-based Code zone
5. Chapter 14 text amendments related to the India Street Form-based Code zone
6. India Street Historic District Designation Report
7. Chapter 14 text amendments related to the India Street Historic District
8. India Street Historic Landmark Designation Report
9. Public Comment received during Planning and Historic Preservation Boards review

Prepared by: Caitlin Cameron, Urban Designer

Date: September 23, 2015



**CITY COUNCIL REPORT**  
**from**  
**PLANNING BOARD**  
**PORTLAND, MAINE**

**India Street Sustainable Neighborhood Plan, India Street Form-based Code Zone, and India Street Historic District and Historic Landmark Designation**  
**CITY OF PORTLAND, APPLICANT**

|                                                                                                           |                                                                  |
|-----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| Submitted to: Portland City Council<br>First Reading: October 5, 2015<br>Second Reading: October 19, 2015 | Prepared by: Portland Planning Board<br>Date: September 23, 2015 |
|-----------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|

## **I. INTRODUCTION**

The India Street neighborhood planning process and the policy document, the India Street Sustainable Neighborhood Plan (ISSNP) are the result of a planning process that began in 2013. Neighborhood residents and business owners approached the City with concerns about the scale and height of proposed new development in the neighborhood. Recognizing that a neighborhood planning process had never been conducted for the India Street neighborhood, the Planning Board recommended a comprehensive process. The planning efforts began with a visioning process undertaken through the Sustain Southern Maine regional planning process as a Center of Opportunity. Following that, the India Street Neighborhood Advisory Committee (ISNAC) was established in the Fall of 2013 under the leadership of Co-chairs Councilor Donoghue and Dick Barringer. The ISNAC, along with City staff from Planning, Housing, and Economic Development, spent a year further developing the plan to its final form as recommended to the City Council. The planning process involved five ISNAC working groups: Housing & Equity; Form Based Code; Economic Development; Historic Preservation; and Infrastructure & Landscape. Each of these work groups developed and recommended policies and initiatives to comprise the Plan.

There are two accompanying implementation tools – the India Street Form-based Code and the India Street Historic District – presented for adoption along with the India Street Sustainable Neighborhood Plan. These tools were developed concurrently with the Plan and reflect the goals and development principles of the Plan and involved significant community input and staff collaboration.

Legal notice for the October 19<sup>th</sup> City Council hearing will be posted in the *Portland Press Herald* on October 5<sup>th</sup> and October 12<sup>th</sup>. Notices will be sent to the interested citizen list and posted on the city's web page.

## **II. PROPOSED POLICY DOCUMENTS**

### **India Street Sustainable Neighborhood Plan (ISSNP) (Attachment 2)**

The India Street Neighborhood Advisory Committee, Co-chaired by Councilor Donoghue and Richard Barringer worked with the Planning Division staff to develop the India Street Sustainable Neighborhood Plan. The result is

a recommendation of a plan that includes five goals, six vision statements, thirteen principles, and twelve critical actions particular to the future of the India Street neighborhood. Among the key recommendations of the Plan are a proposed Local Historic District, the adoption of a Form-based Code, and the consideration of an Inclusionary Zoning Ordinance to address affordable housing needs. If adopted, the Plan will become a component of the City of Portland Comprehensive Plan. However, there is the option for the Council to adopt the ISSNP as a neighborhood master plan without adding it to the Comprehensive Plan which is currently undergoing a State recertification process.

Key points of the ISSNP:

- 5 Goals
  1. Vitality
  2. Good Quality Design
  3. Strong Neighborhood Identity that Builds on its Heritage
  4. Diversity
  5. Enhance Mixed-use Nature of the Neighborhood
- 6 Vision Statements
- 13 Development Principles
  1. Strong Neighborhood Identity
  2. Diversity of Residents
  3. Neighborhood Heritage and Historic Preservation
  4. Mixed-Use Neighborhood
  5. Vibrant Local Economy
  6. Retail Corridors
  7. Guided Growth
  8. Form of Development
  9. Compassionate and Supportive Community
  10. Connected Neighborhood
  11. Quality Infrastructure
  12. Ample Recreation and Open Space
  13. Responsive to Climate Change

The major implementation recommendations of the plan are:

- To establish of an India Street Historic District;
- To develop a Form-based Code to replace the existing zoning districts in this neighborhood, and
- To promote affordable housing City-wide.

**India Street Form-based Code zone (IS-FBC) (Attachments 3,4,5)**

A Form-based Code was first proposed as part of the India Street Sustainable Neighborhood Plan (ISSNP) process. The India Street neighborhood, one of the oldest in the city, has many available development parcels. Consequently, several new developments have recently been built or proposed in this neighborhood. Neighborhood residents called for a neighborhood plan that included consideration of the form of development in the neighborhood, many feeling as though the new development allowed by the current zoning was out of scale with the existing context. While the recently completed ISSNP does include development principles regarding the form of development in this neighborhood, it was determined an overhaul of the underlying zoning was appropriate to achieve the vision of the neighborhood plan document. Much of the existing zoning in this neighborhood was retroactively located and does not reflect the character of the built environment, much of which was developed before the zoning codes existed. The intention of the FBC is to provide zoning code that more adequately and appropriately reflects the built form and scale of the neighborhood. As a mixed-use neighborhood, separation or regulation of uses is not highly desired or appropriate. The FBC is currently

proposed for the India Street neighborhood only and would replace all existing zoning in the neighborhood.

#### Why Form-based Code?

Form-based Code (FBC) is different from Euclidean zoning in that it shifts the priority away from use and focuses on the form, dimensional, and design components of zoning. Traditional Euclidean zoning will often have dimensional requirements but focuses on land use.

Staff examined examples of FBC developed in Yarmouth and Standish in Maine, as well as Knoxville, Cincinnati, and some California cities. Documents from the SmartCode and the Form-based Code Institute were also consulted.

#### Key points of the IS-FBC:

The IS-FBC includes:

- Regulating Plan, which includes way three Subdistricts and locates them in the neighborhood
- Purpose Statement and General Guiding Principles
- Definitions + Illustrations
- General Development Standards
- Subdistrict Dimensional Requirements
- Illustrations
- IS-FBC Building Design Standards (City of Portland Design Manual – approved by the Planning Board)

Subdistricts - The zone is organized by three subdistricts created based on existing forms

- Urban Neighborhood (UN) – small-scale buildings more private in character
- Urban Transitional (UT) – large-scale buildings with flexible ground floors
- Urban Active (UA) – moderate-scale buildings with active ground floors

Land Use – Use is not regulated except for short list of prohibited uses

Parking – The zone seeks flexibility on parking requirements to prevent building forms from being driven by providing parking. The key concern in the neighborhood is maintaining established street walls and infilling lots with buildings rather than surface parking.

- Off-street parking is not required for the first three dwelling units
- All properties are eligible for the fee-in-lieu of parking
- Surface parking is limited to the interior of blocks and side yards

Housing and Sustainability Goals – the new zone is set up to require or encourage smaller building forms, high residential density, and stormwater mitigation.

- Mid-block permeability is required for large blocks
- Residential density is not regulated allowing for flexibility and increased housing provision
- High residential density is granted a height bonus
- Permeable sites and green roofs are eligible for a height bonus

#### **India Street Historic District (Attachments 6, 7, 8)**

The Historic Preservation Work Group recommended that a historic district be established for the India Street neighborhood, based on research and analysis by historic preservation consultants Turk Larry Tracy, Architects. A historic district directly responds the ISSNP goals of neighborhood identity and historic preservation of existing built character. A historic district is also an effective tool in retaining existing human-scaled built fabric – a key goal of the neighborhood plan.

The proposed district designation applies to an area focused around the principal corridors that serve the India Street neighborhood, namely Congress, India and Middle Streets. The proposed district encompasses 7 landmarks (4 previously designated and 3 additional), 36 contributing historic structures and 13 noncontributing structures, as well as several surface parking lots or undeveloped parcels. Note that the district as proposed in the Historic Preservation Board's final recommendation is substantially smaller than that originally considered and focuses on the major religious, institutional, commercial and residential structures that largely define the character of the India Street neighborhood. Not included in the final proposed district are several interior blocks within the neighborhood which are largely residential.

On September 2, 2015, the Historic Preservation Board voted 7-0 to recommend to the Planning Board and City Council that a defined area within the India Street neighborhood be designated a local historic district as delineated below and as further defined/described in the attached India Street Historic District Designation Report. The Historic Preservation Board's recommendation was based on findings that the proposed district meets the designation criteria in Division 3 (Categories and Criteria for Designation) of the historic preservation ordinance (Article IX of the Land Use Code).

Key points of the India Street Historic District:

- 7 Landmarks (4 existing, 3 proposed)
- 36 contributing historic structures
- 13 non-contributing structures
- 1 additional historic landmark designation outside of the proposed district (the Abraham S. Levey Block)

### III. COMPLIANCE WITH COMPREHENSIVE PLAN

The ISSNP, IS-FBC, and India Street Historic District conform to the Comprehensive Plan in the following ways.

**From the *Downtown Vision Plan***

*"Three areas with significant development and redevelopment potential have been identified in areas that are on the perimeter of the Downtown . . . These sites – Bayside, **India Street**, and Gorham's Corner – each display characterizes that are colorful and truly unique. . . . Because market forces have not always produced beneficial results to both public and private interests, the City hopes to provide a design framework that would guide growth."*

*"A Vision of India Street in the Year 2020: Redevelopment would focus on **strengthening the vitality** of the community within and **establishing clearer connections** to the Downtown and Munjoy Hill. **India, Middle, and Congress Streets would reinforce their identities as active retail corridors**, through building infill along the streetlines and through **encouraging small businesses** to relocate to the area. As well, infrastructure improvements and landscaping would make these corridors **pedestrian-oriented spaces**. It is critical to **retain the residential enclaves** east and west of India Street, with special attention to the upper story residential along retail corridors in order to maintain a **certain level of activity**. . . . Because of the large number of vacant lots, **infill of buildings on all streets** is needed to make India Street a more vibrant and continuous community."*

- The ISSNP and the IS-FBC are in agreement with the vision set forth in the *Downtown Vision Plan* for the India Street neighborhood. Goals and Development Principles in the ISSNP directly reflect the vision outlined above. Regulations in the new IS-FBC reflect the concentration of retail and activity on those streets identified here with the requirement of frequent entries, active storefronts. Mixed-uses and active street fronts are encouraged by not regulating or separating uses in the zone

and placing surface parking to the interior of lots. New development is expected to meet the existing patterns of street walls.

### ***From A Community Vision for Portland***

#### ***A City That Values its Natural, Architectural, and Cultural Heritage***

*"Portland is a historic maritime city, which: Retains a rich historic character for both commercial and residential neighborhoods; Offers a broad spectrum of architecture and distinctive landmarks; and Maintains unifying features, such as brick buildings and sidewalks, and established and traditional neighborhoods with narrow and interconnected streets."*

- The IS-FBC and the India Street Historic District guide new development towards context-sensitive designs. The regulations promulgated by the IS-FBC are derived from conditions in the existing built environment and the Historic District protects the existing historic resources.

#### ***A City That is a Good Place to Live***

*"Portland retains a small town feel with a **built environment that is scaled for people, is pedestrian friendly, and is accessible to the community.** Residents value and seek to enhance the safety of the community, the proximity of commercial uses near residences, and the walkable nature of the city. . . .Portland has an active and vibrant downtown both day and night due to its interwoven mix of residential, commercial, institutional, and cultural land uses."*

- The ISSNP encourages mixed-use development and concentrates activity to specific streets.
- The goal of the IS-FBC is to encourage infill development that is appropriate for an urban context that is walkable. This is accomplished by maintaining smaller scale buildings, mixed uses, and frequent entries and ground floor design that provides activity on the street.
- The Historic District helps retain and maintain the existing built environment which is scaled for people.

### ***From Portland's Goals and Policies for the Future***

*State Goal A: "To encourage orderly growth and development in appropriate areas of each community, while protecting the State's rural character, making efficient use of public services and preventing development sprawl."*

- Like other neighborhood plans developed in Portland, the ISSNP and IS-FBC were created to promote and manage growth in an existing urban setting and using existing infrastructure. The code encourages infill development that is appropriate for the India Street community and Portland as a whole.

The Comprehensive Plan is widely supportive of preservation of Portland's historic resources. **Volume 1, State Goal I, To preserve the State's historic and archeological resources**, endorses preserving and enhancing distinctive areas, sites, structures and objects that have historic, cultural, architectural and archeological significance. It includes an overview of preservation efforts in the city, recommendations for furthering preservation, and reference to the adoption, as part of the 1990 Comprehensive Plan, of the Historic Preservation Ordinance, and the Historic Resources Design Manual, both still being utilized today.

- Among the specific responsibilities of the Historic Preservation Board as listed in Sec. 14-609 of the ordinance are: "to conduct or administer an ongoing survey to identify historically, culturally or architecturally significant areas" and "to ...recommend to the Planning Board adoption of ordinances designating structures and areas...as landmarks and districts."

### ***From Housing and Population***

*A Shortage of Housing: "Increasing Portland's **housing stock in developed urban areas** of the city is challenging, but necessary for the long-term health of the city."*

- The IS-FBC, unlike other zones in the city, does not regulate density which allows flexibility of design and housing types that can accommodate more dwelling units.
- The code uses incentives like height bonuses for high residential density.
- The IS-FBC seeks to remove barriers like parking requirements to allow for more housing types and density to be built.

Current Impacts on Neighborhood Stability and Integrity: *"Building the integrity and quality of Portland's neighborhoods is key to encouraging the type of growth Portland needs both to support it in the future and counter regional sprawl."*

- The IS-FBC seeks to address this goal by regulating new development in a way that builds on the existing character and identity of the India Street neighborhood.

#### **From Transportation Resources**

Moving Locally: The Neighborhoods: *"Balancing the realities of the motor age with the imperative of highly livable neighborhoods is at the heart of the transportation issues and policies at the neighborhood level. And it bears directly on the health of the City. If residents who live in the city by choice come to believe their neighborhoods are not safe for walking, are not protected from noisy through-traffic, don't provide easy access to the daily necessities, don't give their children the freedom to move about independently –then the City has lost much of its competitive advantage over the suburbs."*

- The IS-FBC promotes urban development patterns which includes design choices that create safe and walkable streets.

Neighborhood Land Use: *"Some neighborhoods, especially those more recently developed, lack even routine daily services within walking distance. Where such services do exist, the zoning ordinance often considers them to be non-conforming uses."*

- The IS-FBC removes land use regulation (except for a few prohibited uses) to further promote mixed-use development appropriate for an urban neighborhood.

#### **Downtown Parking: Council Goals for Downtown Parking**

*To manage the supply of on and off street parking spaces to achieve maximum and optimum use.*

- The IS-FBC specifies where parking may occur in order to promote active uses at the street and achieve maximum and optimum use of urban property at the street frontage.

*To explore the possibility of using assessments on parking to fund bicycle and pedestrian improvements, so facilities serve multiple uses.*

- The IS-FBC allows developments to take advantage of the parking fee-in-lieu which provides funding to multi-modal transportation infrastructure.

#### **From Waterfront Resources**

Redevelopment of Waterfront East: Character and Impact of Development: *"Development within the eastern waterfront will be compatible with the surrounding areas, neighborhoods, natural environment and maritime uses."*

- The IS-FBC was developed with compatibility to the existing neighborhood and surround areas as a core goal.

Redevelopment of the Waterfront East: Mixed Use: *"Development within the eastern waterfront will create a vital and active mixed use urban area that generates life and use every day of the year and all hours of the day."*

- The ISSNP promotes physical and visual connections to the waterfront.
- The IS-FBC removes land use regulation (except for a few prohibited uses) to further promote mixed-use and active development appropriate for an urban neighborhood.

#### IV. PUBLIC PROCESS

The India Street Sustainable Neighborhood Plan (ISSNP) and accompanying implementation work plan and tools were developed over the course of several years. The process began through the Sustain Southern Maine initiative and was then continued by Planning, Housing, and Economic Development staff with the assistance of the India Street Neighborhood Advisory Committee (ISNAC). The ISNAC forwarded their recommendations to the City Council and HCDC in September, 2014. After that time, the work products were reviewed by the Planning Board and Historic Preservation Board. Throughout the process public meetings were held on the following dates:

- March 16, 2013 – Open House (Sustain Southern Maine)
- April 30, 2013 – Technical Workshop (Sustain Southern Maine)
- September 17, 2013 – Public Meeting (Sustain Southern Maine)
- December 2013 through September, 2014 – India Street Neighborhood Advisory Committee meetings (ISSNP, IS-FBC, and Historic District)
- July 28, 2014 – Public Forum (ISSNP, IS-FBC, and Historic District)
- October 2, 2014 – Housing and Community Development Committee (ISSNP)
- November 25, 2014 – Planning Board Workshop 1 (ISSNP)
- December 9, 2014 – Planning Board Workshop 2 (ISSNP)
- December 10, 2014 – Historic Preservation Board Workshop 1 (Historic District)
- January 20, 2015 – Planning Board Public Hearing (ISSNP)
- February 4, 2015 – Historic Preservation Board Workshop 2 (Historic District)
- February 24, 2015 – Planning Board Workshop 1 (IS-FBC)
- March 30, 2015 – Planning Board Workshop 2 and Site Walk (IS-FBC)
- April 28, 2015 – Planning Board Workshop 1 (Historic District)
- May 6, 2015 – Historic Preservation Board Workshop 3 (Historic District)
- June 9, 2015 – Planning Board Workshop 3 (IS-FBC)
- June 23, 2015 – Planning Board Workshop 4 (IS-FBC and Historic District)
- July 13, 2015 – Neighborhood Meeting (Historic District)
- July 22, 2015 – Historic Preservation Board Workshop 4 (Historic District)
- August 5, 2015 – Historic Preservation Board Workshop 5 (Historic District)
- September 2, 2015 – Historic Preservation Board Hearing (Historic District)
- September 15, 2015 – Planning Board Public Hearing (IS-FBC and Historic District)

The ISSNP and accompanying implementation tools were developed by staff with the assistance and guidance of the India Street Neighborhood Advisory Committee and five working groups covering the following topics of Historic Preservation, Economy, Equity/Housing, Land Development/Form-based Code, and Landscape and Infrastructure. Planning staff also met with the India Street Neighborhood Association, Greater Portland Landmarks, Portland Society for Architecture, and numerous individuals who requested meetings on the topic.

The feedback received was lively and varied throughout the process. Public comment received during the Planning and Historic Preservation Boards processes is included as [Attachment 9](#). For public comment received prior to Planning Board review process, refer to City Council packet from 10.20.14 starting on page 192. Meeting notes and the Minority Report from the ISNAC process can be found beginning on page 179.

Common topics of public comment included:

Interaction with Existing Policy - There were concerns that the recommendations of the India Street Sustainable Neighborhood Plan not be in conflict with the existing Eastern Waterfront Historic District or components of the

Comprehensive Plan such as the Eastern Waterfront Master Plan and the Transportation Plan. Upon review, staff concluded that the Plan is not in conflict with either the Historic District or adopted components of the Comprehensive Plan.

Scale and Form of Development – The public conversation around all three policy documents included debate about appropriate regulation of scale and form of new development. There were differences of opinion about the correct locations in the neighborhood for taller and longer buildings and some members of the public were concerned about the future development potential of their properties.

Balance of IS-FBC and Historic District – Many people commented on the interaction between the historic district and the new zoning code and the level of uncertainty around each as new policies for the neighborhood. The public comment ranged from favoring historic preservation over the IS-FBC and vice versa as well as the desire to make sure the two policies would not be in conflict or redundant. Staff provided materials to explain the difference between the two tools and how they would interact.

Historic District Boundary – At the Planning Board’s September 15 public hearing for the India Street Historic District, nine individuals or organizational representatives provided public comment regarding designation of an India Street Historic District. Six individuals spoke in support of the designation; three expressed opposition. Note that oral testimony was in addition to letters and e-mails forwarded to the Board in advance of the meeting—see Attachment 9.

## **V. PLANNING BOARD DELIBERATION AND RECOMMENDATION**

### India Street Sustainable Neighborhood Plan

During the Planning Board’s deliberations on the Plan, board members weighed the concerns about the overlap of the new India Street Neighborhood Plan with the existing Eastern Waterfront Master Plan – this concern was raised by several property owners in the neighborhood. The board found the two policy documents to not be in conflict and considered both would apply in concert. The board also considered whether the neighborhood boundary was appropriate and found it to be logical considering building and street patterns and general character. Some board members recognized the zoning and development implications of the Plan and expressed the need for careful consideration in crafting of the implementation tools. Generally, the board was supportive of the Plan as a thoroughly researched and workshopped document with significant input from stakeholders. The board also found the Plan as proposed to be compliant with the Comprehensive Plan and not in conflict with any existing policy documents.

**On January 20, 2015, the Planning Board voted unanimously (5-0) to recommend the proposed India Street Sustainable Neighborhood Plan to the City Council to be adopted into the Comprehensive Plan.**

### India Street Form-based Code

The Planning Board deliberated the proposed India Street Form-based Code over the course of four workshops and a public hearing. Board members supported the new code as addressing the goals for mixed-use and appropriately-scale built environment. The board also generally supported the aspects of the IS-FBC which bring efficiency and clarity to the development review and application process. There was concern about the IS-FBC zone resulting in mediocre buildings but the board was confident that amendments could be made to the zone if the need arises. Significant discussion was given to the interaction of the IS-FBC and the new Historic District. Staff included information about how projects would be reviewed and how the two regulatory tools would interact. The Board also discussed the

potential for incompatible uses – a concern raised by some board members and members of the public. The board determined that the existing character and use mix of the neighborhood is already very integrated and did not anticipate future conflicts of use. Overall, the Subdistrict designation and regulations were found to be appropriate and contextual. The board was strongly in favor of requiring an evaluation of the new code in three to five years. The code was praised for being context-specific and balancing predictability and flexibility – two goals expressed by the stakeholders and the ISSNP.

**On September 15, 2015, the Planning Board voted unanimously (7-0) to recommend the proposed India Street Form-based Code zone and related text and map amendments be approved by the City Council with an additional recommendation for a Council Order requiring a review of the India Street Form-based Code in at least three years and no later than five years from implementation.**

### India Street Historic District

During the Planning Board's deliberations, some Board members expressed reservations about establishing an historic district as provided for in Portland's historic preservation ordinance. By definition, an historic *district* is a geographically defined area the boundaries of which are drawn around historically and/or architecturally related structures. Inevitably, historic districts also include within their boundaries some noncontributing buildings or open parcels. Those members of the Board expressing reservations about the historic district recommendation preferred an approach that would individually designate historic structures within the neighborhood, but not create a contiguous district. Under this approach, future development on all open parcels within the neighborhood or redevelopment of noncontributing structures would be subject to review under the Form-Based Code only.

Staff explained that at the Planning Board's request, the Historic Preservation Board had explored alternatives to historic district designation, including the possibility of creating a new "Multiple Property Designation" category within the historic preservation ordinance, but had concluded that designation of an historic district was the appropriate regulatory tool for an area of this nature, which exhibits an identifiable concentration of historic structures that share a common history. Designation of a contiguous historic district designation would not only protect individual historic structures from demolition and encourage sympathetic rehabilitation/alterations/building additions, it would also ensure that the immediate context of these historic structures was reinforced over time through a design review process that ensures compatibility with the major visual characteristics that distinguish the historic properties. Staff noted that the Historic Preservation Board had substantially reduced the size of district in response to feedback from the Planning Board, neighborhood residents and other interested parties. The district as recommended focuses on the principal corridors that serve the India Street neighborhood and includes the major religious, institutional, commercial and residential structures that largely define the character of the neighborhood. Not included in the final proposed district are several interior blocks within the neighborhood which are mostly residential.

India Street Historic District Designation Report and relevant Chapter 14 text amendments are included as Attachment 6 and 7.

**On September 15, 2015 the Planning Board voted (5-2, Soley and Dundon opposed) to recommend the proposed India Street Historic District be designated by City Council with two amendments: that 1) the proposed amendment to the historic preservation ordinance's standards for new construction, which applies to allowable building heights in the India Street Historic District, be revised by staff to apply to existing contributing structures; and 2) the site plan ordinance provision which applies to the review of new construction within 100 feet of a historic district boundary or landmark apply only to landmarks in the India Street Historic District.**

### Landmark Designation of Abraham S. Levey Block

In conjunction with its recommendation to designate the historic core of the India Street neighborhood as a local historic district, the **Historic Preservation Board also recommends to the City Council that the Abraham Levey Block (1922) at 78-88 Middle Street be designated as an individual landmark under Portland's preservation ordinance.** Note that this matter was not formally before the Planning Board because recommendations for individual building designations are forwarded directly to the City Council, as per Sec. 14-619 of the historic preservation ordinance.

The Levey Block, designed by John Calvin and John Howard Stevens, is located at the corner of Franklin and Middle Streets at a major gateway into the India Street neighborhood. Because the building is now physically separated from the core of historic structures that comprise the proposed historic district, individual designation seemed most appropriate. (The alternative would have been to extend the district boundary to include the commercial building, but this approach would have swept in a number of open, undeveloped parcels.)

A photograph and description of the building from the India Street Historic Resources Inventory is included as Attachment 8.

As a landmark designation, the Planning Board does not vote on this item.

# India Street

## Sustainable Neighborhood Plan

Portland, Maine

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Draft recommended by Planning Board, January 2015



*Portland Starts Here . . .*



Vision for India Street (at Middle Street) Image Credit: Richardson & Associates, Saco, ME

**[Insert City Council Order as Passed adopting plan]**

## Acknowledgments

**The India Street Sustainable Neighborhood Plan** has been a widely collaborative effort over the course of two years. This report was shaped and informed by many participants who deserve recognition for their efforts, including the India Street Neighborhood Association, Sustain Southern Maine, the India Street Neighborhood Advisory Committee and associated Working Groups, and of course, the community businesses, residents, workers, organizations, institutions, and developers. Especially critical to the formulation of this neighborhood plan is Hugh Nazor, president of the India Street Neighborhood Association. Without his ceaseless efforts to bring attention to the neighborhood, this Plan would not exist.

In 2013, Portland became a participating city in the Urban Sustainability Accelerator (USA) technical assistance grant through Portland State University, Oregon, which is funded through the Summit Foundation, Toulan School of Urban Studies and Planning, Institute for Sustainable Solution at Portland State University, and the participating cities. Special thanks to Robert Liberty for his enthusiastic support and valuable resources provided through the course of this program. Especially valuable was the consulting work of Michele Reeves, Civilis Consulting, Portland, Oregon.

The India Street Neighborhood Advisory Committee convened in the fall of 2013 to guide the neighborhood plan development. City Councilor Kevin Donoghue and neighborhood resident and emeritus professor at the Muskie School of Public Service Richard Barringer graciously offered their time as co-chairs to this Council-appointed committee. Nineteen members were appointed to this group with wide-ranging expertise and areas of insight; without their time and efforts this plan would not have reached its successful conclusion. Many active and enthusiastic members of the community volunteered to participate in Working Groups in order to brainstorm, strategize, and craft recommendations for the final plan. Many thanks again to all of these members of the India Street and greater Portland community who gave of their time and expertise to craft this plan.

Additional resources and support were provided by key neighborhood organizations. One central to this process was the Portland Society for Architecture which hosted meetings, provided professional advice and collaboration, and financial resources that were especially crucial in the City's participation in the USA technical assistance grant and the subsequent consulting services of Michele Reeves. The Maine Jewish Museum generously provided for the use of their facilities throughout the course of the planning process. Professor Yuseung Kim of USM's Muskie School of Public Service and the students in his Planning Workshops made significant contributions to our work with the creation of a 3d model of the neighborhood and the study, *Portland Starts Here: India Street Neighborhood Recommendations*, available at <http://www.portlandmaine.gov/1114/India-Street>

It must be noted that many dedicated City staff members orchestrated and ushered along this complex process. Recognition is due to Planning Division Director Alex Jaegerman, Senior Planner Bill Needelman (who has since become the Waterfront Coordinator), Urban Designer Caitlin Cameron, and Historic Preservation Program Manager Deb Andrews who led the effort. Additional support was provided by Mary Davis, Housing and Community Development Division Director, Nelle Hanig, Business Programs Manager, Bruce Hyman, Bicycle and Pedestrian Program Coordinator, and Doug Roncarati, Stormwater Program Coordinator.

## India Street Neighborhood Advisory Committee

*Richard Barringer, Co-Chair*  
*Councilor Kevin Donoghue, Co-Chair*  
*Hilary Bassett*  
*Beth Boepple*  
*Carol De Tine*  
*Tom Federle*  
*Bethany Field*  
*Arthur Fink*  
*Ani Helmick*  
*Bobbi Keppel*  
*Alan Kuniholm*  
*Ethan Boxer Macomber*  
*Joe Malone*  
*Brandon Mazer*  
*Linda Murnik*  
*Hugh Nazor*  
*Arlin Smith*  
*Timothy Wilson*  
*Kara Wooldrik*

## City Council

*Michael Brennan, Mayor*  
*Kevin Donoghue, District 1*  
*David Marshall, District 2*  
*Edward Suslovic, District 3*  
*Justin Costa, District 4*  
*David Brenerman, District 5*  
*Jill Duson, At Large*  
*Jon Hinck, At Large*  
*Nicholas Mavodones, At Large*

## Planning Board

*Stuart O'Brien, Chair*  
*Elizabeth Boepple, Vice Chair*  
*David Eaton*  
*Sean Dundon*  
*Bill Hall*  
*Carol Morrisette*  
*Jack Soley*

## Historic Preservation Board

*Scott Benson, Chair*  
*Bruce Woad, Vice Chair*  
*Penny Pollard*  
*John Turk*  
*Ted Oldham*  
*Julia Sheridan*  
*Glen Harmon*

## Working Groups

### Land Development/ Form-based code

*Staff: Caitlin Cameron, Alex Jaegerman*  
*Consultants: Stephanie Carver, GPCOG, and Ken Studtmann, Richardson & Associates*  
*Elizabeth Boepple*  
*Carol De Tine*  
*Tom Federle*  
*Arthur Fink*  
*Alan Kuniholm*  
*Brandon Mazer*  
*Hugh Nazor*  
*Jay Waterman*

### Historic Preservation

*Staff: Deb Andrews*  
*Consultant: Julie Larry, Turk Tracey & Larry Architects*  
*Hilary Bassett*  
*Pamela Cummings*  
*Ed Gardner*  
*Ani Helmick*  
*Joe Malone*  
*Linda Murnik*

### Infrastructure/ Landscape Planning

*Staff: Caitlin Cameron*  
*Jennifer Claster*  
*Bobbi Keppel*  
*Karo Wooldrik*

### Equity/ Housing

*Staff: Mary Davis, Alex Jaegerman*  
*Councilor Kevin Donoghue*  
*Jill Danaher*  
*Bethany Field*  
*David Loranger*  
*Ethan Boxer Macomber*

### Economy

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*Consultant: Michele Reeves, Civilis Consulting*  
*Richard Barringer*  
*Rachelle Curran*  
*Susie Kendeigh*  
*Brandon Mazer*  
*Hugh Nazor*  
*Arlin Smith*  
*Tim Wilson*

## City of Portland, Maine

### Department of Planning and Urban Development

*Jeff Levine, Department Head*  
*Alex Jaegerman, Planning Division Director*  
*Caitlin Cameron, Urban Designer*  
*Deb Andrews, Historic Preservation Manager*  
*Mary Davis, Housing and Community Development Division Director*  
*Bruce Hyman, Bicycle and Pedestrian Program Coordinator*

### Department of Economic Development

*Nelle Hanig, Business Programs Manager*

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## Sustain Southern Maine

*Rebecca Schaffner, Program Manager, GPCOG*  
*Carol Morris, President, Morris Communications*  
*Evan Richert, Town Planner, Richert Planning*  
*Todd Richardson, Landscape Architect, Richardson & Associates*

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## STUDY AREA BOUNDARY

Sustainable Neighborhood Plan  
INDIA STREET, PORTLAND MAINE



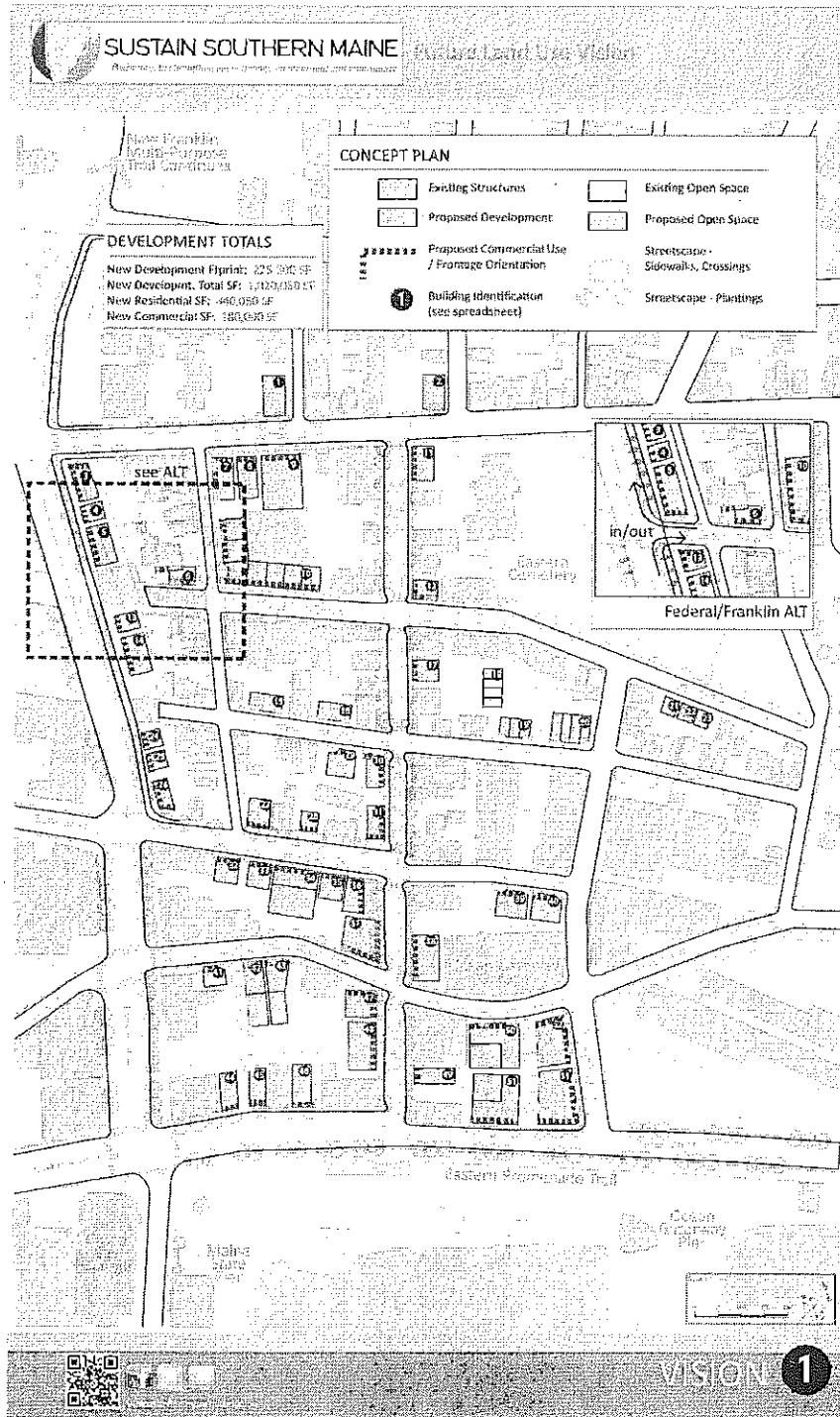
INDIA STREET NEIGHBORHOOD BOUNDARY

## Background – The Planning Process

The India Street neighborhood is situated on the burgeoning Portland peninsula, a beautiful waterside location nestled between the Old Port and Munjoy Hill. As explained below, this area was the nucleus of the birth of Portland as a colonial city, and the City has grown up around India Street. In the years following 2010, this area began to experience development as the recession gradually gave way to resurgent growth. Many large projects were proposed pre-recession that did not come to fruition, and several sizable projects – two hotels, a parking garage, and housing, to name a few – were constructed that began to change the face of this neighborhood. Heavily influenced by downtown and the waterfront, India Street emerged as a magnet for new development, and the community responded with a request for focused planning to guide the future of the area, lest the market forces bring about change that many observers and residents feared would be of a scale and character that does not reflect the community's aspirations.

Community leaders approached the City with this concern, that planning has focused all around this neighborhood, along the waterfront, and in the downtown, but not on this neighborhood as a distinct place, to explore its character and establish a vision for its growth and development. An effort to address the specific issue of building heights along India Street was considered by the Planning Board in June of 2012, and led to the recognition that a comprehensive planning initiative was the more appropriate approach to take. The Planning Office was charged with leading this effort, in partnership with the India Street Neighborhood Association. This planning process has proceeded in two phases.

The first phase began in earnest in January, 2013, with the selection of the India Street neighborhood as a *Center of Opportunity* within the Sustain Southern Maine (SSM) regional planning program, a consortium of Cumberland and York County communities that came together with funding from the U.S. Department of Housing & Urban Development to create a sustainable growth plan for the region. India Street was selected as a pilot community that represents opportunities for regional growth to occur in established urban centers as a strategy to combat sprawl and revitalize our city centers. With a small planning grant from SSM through the Greater Portland Council of Governments, we engaged with the India Street community to create a vision for the India Street neighborhood. Highlights of this effort included a Public Open House at the Jewish Heritage Museum in March, 2013, followed by a day-long workshop of three stakeholder small groups in April, 2013, to convert the ideas from the Open House into neighborhood planning concepts. This input was then synthesized by the planning and consulting team into a series of reports and nine graphic products presenting an emergent neighborhood vision, form, transportation, street systems, landscape, and open space. These were presented in two public forums in June, and later in September, 2013.



Emerging Vision: Sustain Southern Maine Conceptual Plan - June, 2013

The fall of 2013 marked the transition from the visioning work aided by SSM, to the planning production phase marked by the collaboration with another technical assistance resource called the Urban Sustainability Accelerator (USA), a new program created to help mid-sized and smaller urban areas implement sustainability projects, to move their proposals from a concept to reality. This program was made possible through support of Portland State University's Toulan School of Urban Studies and Planning, the Institute for Sustainable Solutions, and a grant from the Summit Foundation. The timing of this technical resource coincided with our ongoing efforts to create a plan for India Street. In November, 2013 we established a stakeholder advisory committee, the India Street Neighborhood Advisory Committee (ISNAC) appointed by the City Council, along with other interested citizens to assist the Planning Office to complete the plan. ISNAC established five work groups to flesh out the plan: Housing & Equity; Land Development & Form-Based Code; Economic Development; Historic Preservation; and Infrastructure & Landscape. These Work Groups met continuously from January through July of 2014 to investigate issues and develop policy and implementation recommendations within their assigned areas. The majority of the substance of this plan is credited to the hard work of these citizen teams with their staff support. Each Work Group reported to the ISNAC on a monthly basis on their findings and recommendations.

The technical assistance through the USA program was ongoing during this period and helped inform the Work Groups in their areas of interest. Highlights include the three-day consulting visit from Michele Reeves, of Civilis Consultants, on February 11 – 13, 2014. Ms. Reeves generated a strong recognition of the stage of India Street's development, and the attributes that lend unique value to the economy of the neighborhood as well as its intrinsic character. True to form, on the night of her final presentation we experienced blizzard-like conditions, so many who could not be there in person viewed the video online. Other highlights included a week-long visitation from a University of California, Davis team headed by Professor Stephen Wheeler and three Landscape Architecture graduate students, who studied the neighborhood and issued a report in December, 2013, *Recommendations for a Sustainable Neighborhood Plan* that focused on environmental sustainability measures for India Street. Also during this intensive working period, we had the benefit of our own University of Southern Maine through Professors Yuseung Kim and Richard Barringer, whose Planning Workshop class produced a May, 2014 report, *Portland Starts Here*, which addresses place branding, economic development, and streetscape recommendations.

In summary, this process relied on our own in-house planning expertise, and the hard work of many very dedicated neighborhood stakeholders who volunteered countless hours to the task. We had some outside consulting and technical resources, where available and as needed, to round out and inform the effort. We are very pleased to convey this plan, which is a tangible product with realistic objectives grounded in an engaged community process.

Finally, several concurrent planning efforts will have direct but still undetermined impacts on the India Street neighborhood and this Plan.

**Public Planning Processes:**

- **The Franklin Street Redesign Phase II** is underway, the objective of which is to narrow the roadway, redesign intersections, and employ Complete Streets policies making the street safe and useable for all modes. The street will ideally take on a more active and urban character but the final results of this process remain to be determined. Considering the feedback received throughout the India Street planning process the neighborhood is most affected by the topics of connectivity and the reposition of the right-of-way. The Transportation Plan of the Comprehensive Plan states, "The City should promote the interconnection of neighborhood streets and pathways, so that there are multiple paths of travel to get to destinations within and between neighborhoods by foot and bicycle, as well as auto." In keeping with the policy for an interconnected street network, the neighborhood would benefit from restoring connections to and in some cases across Franklin Street. At the very least, improved bicycle/pedestrian connections across Franklin Street are necessary and desired; reconnecting vehicular access to Franklin Street from one or both streets (Newbury and Federal) is desired if it can be done safely. If it is determined that no vehicular connection is to be provided at Federal or Newbury streets, remaining public space would be well-suited as a public open space. It is not likely that the neighborhood would be satisfied to have no additional connections to Franklin Street. ISNAC assumes the premise that the neighborhood (and city) would benefit most from increasing the development opportunities within the neighborhood. The neighborhood would also benefit from active, urban uses along Franklin Street. Priority locations for development opportunities include the blocks between Middle and Congress Streets.
- **Lincoln Park** is undergoing a master plan process with future restoration and improvements proposed. The park is a potential open space asset to the India Street neighborhood. Currently, there is a lack of connectivity between the neighborhood and the park and an absence of liveliness and activity. ISNAC supports solutions that balance expansion of Lincoln Park with opportunities for development along the India Street neighborhood edge at Franklin Street. The ISNAC advocates for improved connections between the neighborhood and park, especially pedestrian and bicycle.

**Private Development Projects:**

- **The Portland Company** complex is undergoing a master plan process with proposed significant redevelopment and adaptive reuse of the historic property. Details about the uses and forms are undetermined at the adoption of this plan. As a large neighboring property, what happens on that site will impact the India Street neighborhood, potentially increasing the resident population, office and amenities, and foot and vehicular traffic past and through India Street.
- **Munjoy South Townhouses** is a low-income housing development adjacent to the India Street neighborhood to the East. Developed post-war as part of a city redevelopment strategy, this complex may be redeveloped in the future. It is not known whether future development on this site will remain affordable housing and what form and density it will take. This development is one of the larger affordable housing developments near the India Street neighborhood; its size, proximity, and affordability impact the development of the neighborhood in terms of growth, services, and transportation needs.

## Why a *Sustainable* Neighborhood Plan?

We have proposed this plan as a sustainable neighborhood plan. To understand this approach, it is necessary to review the sustainability principles of Community, Economy, and Environment. Since the City Council adopted the *Sustainable Portland Plan* in 2009, as part of our comprehensive plan, we have endeavored to use the sustainability model in planning and policy making. *Sustainable Portland* offered the final challenge to future policy makers:

**"To become a sustainable community, the City of Portland must commit to a continuous process of self-assessment and adaptation. When faced with decisions, our City government, residents, institutions, and businesses should ask a series of questions:**

- Is this decision good for the environment, the economy, and the community?
- Is this good for the long-term?

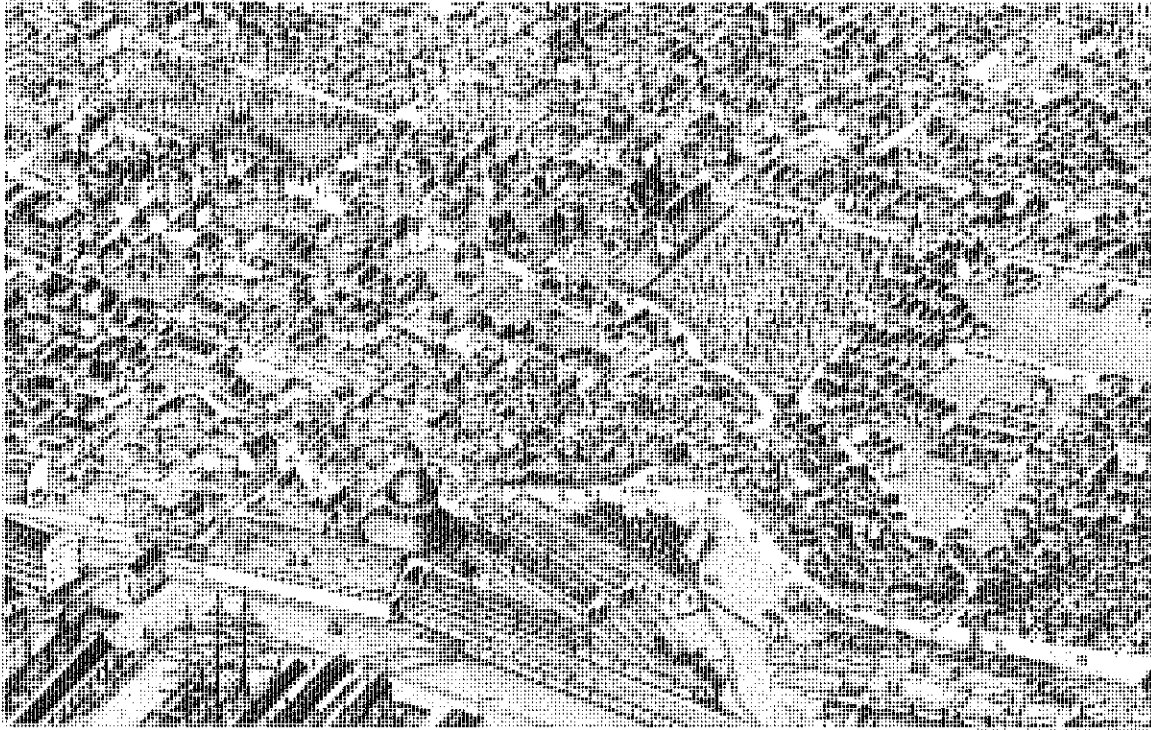
**If the answers are "yes," then the decision will move us toward becoming a more sustainable city."**

Sustainable Portland – Incorporating Sustainability into Everyday Decision Making City of Portland, 2009, Portland Comprehensive Plan

Sustainability principles are imbedded throughout this planning process and plan. We have incorporated the work by Sustain Southern Maine, which looks to urban neighborhood growth as vital to a sustainable region. We have had the technical assistance from the Urban Sustainability Accelerator, which, as the name suggests, seeks to promote sustainable practices in small cities across America. We have looked deep into the neighborhood itself, to examine what is needed to sustain a vibrant, healthy, prosperous future. We could call this a neighborhood development plan, or a neighborhood master plan, or comprehensive plan. The title could change, but the imperative to plan affirmatively for a healthy community, economy, and environment is paramount as we face the challenges and changes to come. This plan touches upon these three factors and presents a balanced set of recommendations that address each of them appropriately for this stage of development in this India Street neighborhood.

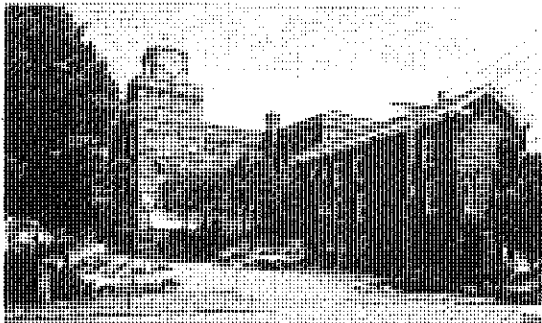
As a City Council-adopted neighborhood plan, the India Street Sustainable Neighborhood Plan becomes an adopted element of the city-wide Comprehensive Plan. A Comprehensive Plan is a long-range plan that provides a policy framework to guide municipal decisions. Portland has conducted numerous long-range planning activities that have produced a variety of components of the Comprehensive Plan, which include functional elements, such as the Transportation Plan, and strategic or geographic area plans, of which this plan is an example.

## History – The India Street Neighborhood



India Street Neighborhood in 1871

India Street has the distinction of being the first street in Portland and the center of the city's earliest settlement. Although little remains from this early chapter in the area's history, the story of what followed is compelling and unlike any other neighborhood in the city. The India Street and waterfront area was the main commercial district of Portland prior to the Great Fire of 1866, when the core of the downtown moved to the Old Port. As early as the 1820's, the India Street Neighborhood was home to a large community of African Americans. Later, it became the point of entry and first home to many of the city's newly-arriving immigrant groups, including Irish, Italian, Jewish, and Scandinavian populations. The neighborhood was the hub of intermodal transportation where shipping and ferries, trains, and land transportation converged around the waterfront generating a center of activity. Newcomers found stability working as laborers on the city's waterfront, Grand Trunk Railroad, and nearby Portland Company. As they became established, each group made its mark on the area, building impressive

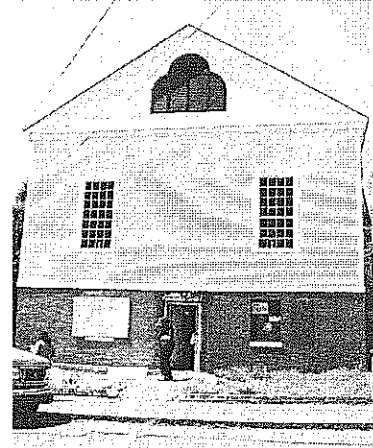


North School (1867)

churches and synagogues and launching a wide range of small businesses and institutions. Public health facilities, including a milk dispensary and medical school, were built on India Street to address the needs of the residents. North School, the largest elementary school in the state when it was built, responded to the transitional nature of the

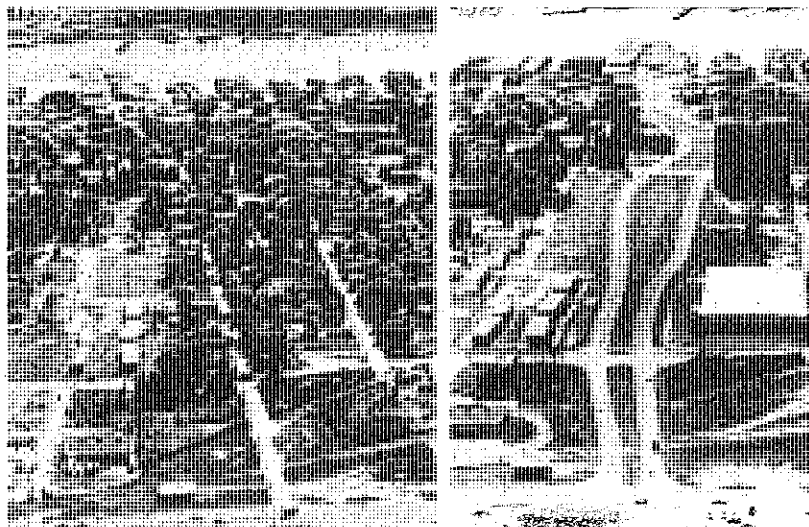
neighborhood by offering occupational training and other innovative programs designed specifically to help the immigrant and first generation children it served.

The historic buildings that remain today tell the story of who lived here and how this neighborhood evolved and functioned. Landmark structures such as North School, the India Street Firehouse, and numerous churches and synagogues are very important to the story. So, too, are the modest wood frame houses owned by the founders of the Abyssinian Meeting House, the triple-deckers that housed immigrant families, and the small commercial structures that were built to serve the needs of a self-contained neighborhood. Just as the neighborhood's remaining historic structures provide tangible evidence of its history, they also establish the strong and appealing visual character of the area.



Abyssinian Meeting House (1828)

Since the mid-20<sup>th</sup> century, the neighborhood has lost a number of key landmarks, including the Grand Trunk Station and the house where Henry Wadsworth Longfellow was born, at the corner of Fore and Hancock streets. Once-dominant population groups have moved on to other parts of the city, leaving the neighborhood with just a few hundred households. Insensitive alterations to historic structures and the clearing of older buildings for surface parking lots and discordant new construction have diminished the character of the neighborhood. The most dramatic change, of course, was the construction of the Franklin Arterial, which entailed the removal of many homes and commercial structures at the western end of the neighborhood, and severed what had been a seamless transition to the downtown core. The removal of homes and construction of Munjoy South public housing on Mountfort Street created another abrupt boundary to the neighborhood where there previously had been none.



Franklin Arterial (1967) changes the neighborhood, creates disconnected conditions



A mix of different building types on Congress St

Notwithstanding these losses, the neighborhood retains numerous elements of its past that warrant recognition and preservation. This historic building fabric could also inform the scale and character of new development, which would result in a lively mix of new and old within a distinctive, human scale, mixed-use neighborhood.

An older, downtown adjacent neighborhood such as India Street has assets that significantly outweigh its challenges. In addition to the cultural significance of the historic neighborhood, today's market values historic architectural fabric that provides a human-scale foundation for future development. Significant parcels, including those formerly in industrial use, are vacant or underused and inviting for redevelopment. As an existing urban neighborhood, it enjoys a relatively complete infrastructure that is ripe to support revitalization. The historic street grid is walkable and contributes both to quality of life and to market value for the land uses served by it. Multi-modal transportation services, both existing and potential, create choices for those who want to live or work in or to visit the neighborhood. This mixed-use neighborhood with proximity to downtown already has a core mix of residential and commercial uses, including long-standing uses that are well recognized and loved, and may serve as springboards to additional development. The most important characteristic of all, however, is the prevalence and importance of *people*; the neighborhood is the product of the people who have been here, past and present, and this plays a key role in shaping the future of the India Street neighborhood.

## India Street Neighborhood Identity Past and Present



From the results of a Neighborhood Workshop with Michele Reeves, Civilis Consulting, February 2014

## Assets to Build Upon

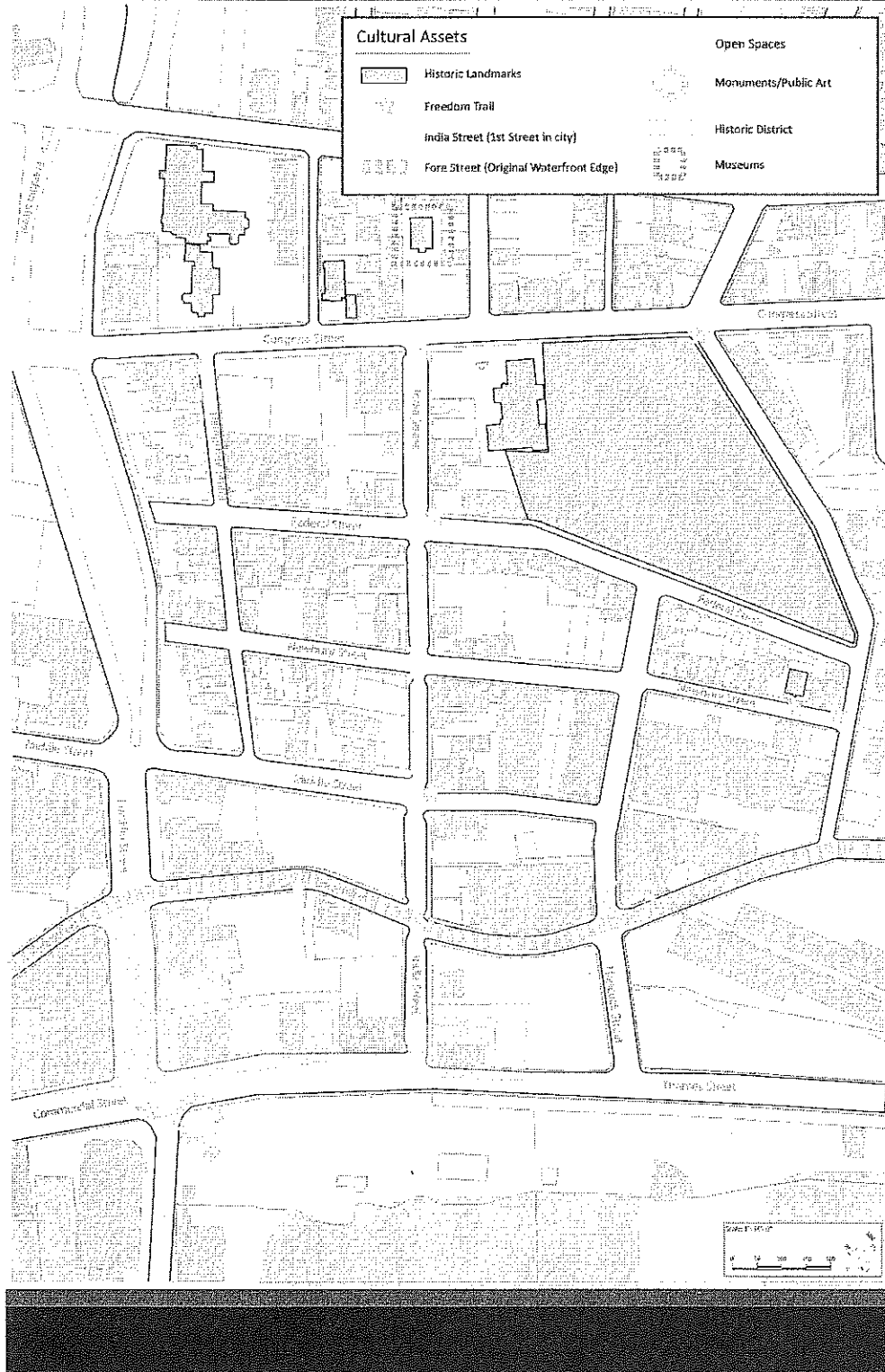
- **Cultural Heritage** – Portland starts here!
- **Historic** – Landmark buildings and a historic building fabric
- **Adjacent** – Waterfront, Residential neighborhoods, Downtown, Ferry and Cruise terminals
- **Shop Local** – Destination and landmark stores; Small, independent business and entrepreneurial culture; Truly mixed-use
- **Food Destination** – Many restaurants that draw people from all over the city and region
- **Accessible** – Walkable, bus connections, ample parking, good biking streets, ferry terminal
- **Geographic Advantage** – The neighborhood slopes to the waterfront, providing views
- **Development Possibilities** – Many development opportunities of varying scale

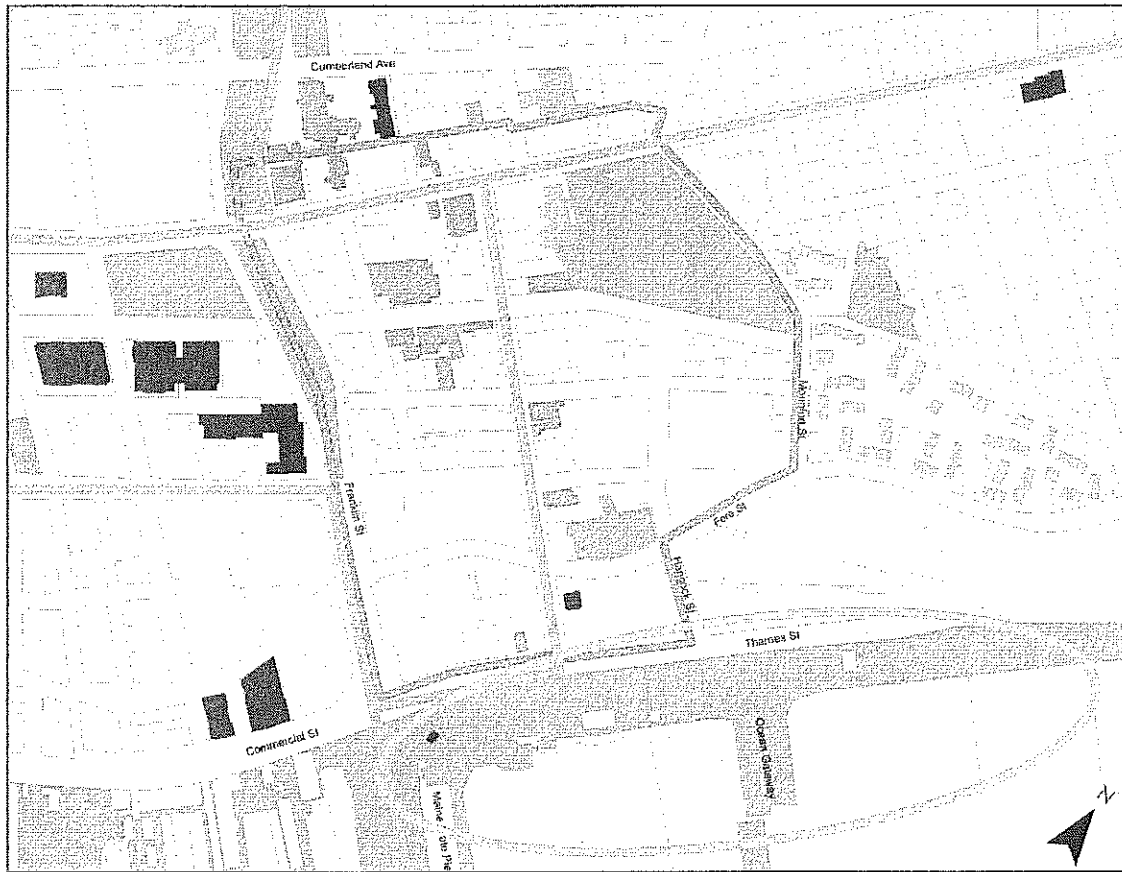
## Challenges to Face

- **A Lack of Clear Identity** – The neighborhood lacks a clear identity and has never before been the subject of a neighborhood plan
- **The Constraints of Past Land Uses** – Industrial uses, many now defunct, were common in neighborhoods like this, with brownfield and clean-up costs associated with them
- **Scale of Development** – Large development sites have resulted in recent redevelopment that does not comport well with the desires of neighborhood residents and businesses, historic buildings, and neighborhood character in height or scale
- **Disconnected** – The neighborhood edges have been seriously altered and/or sealed off

## CULTURAL ASSETS

# Sustainable Neighborhood Plan INDIA STREET, PORTLAND MAINE





### **Physical/Land Assets**

- Waterfront (views and physical access)
- Parks and open space
- Playgrounds – Peppermint Park, Adams Street
- Public open spaces
- Trails
- Recreational facilities – Basketball at Adams Street
- Vacant Land – 21 parcels

### **Transportation & Mobility**

- Bus Routes – 4 bus lines (1, 6, 7, and 8)
- Ocean Gateway Terminal
- Casco Bay Lines Terminal
- Parking Garages

### **Community, Health, and Resources**

- Religious Institutions
- Community groups, Neighborhood Associations
- Advocacy groups and centers
- Clinics and counseling centers
- Community Meeting Spaces
- Hospitals, clinics, and health offices
- Grocery Stores

### **Local Institutions**

- Schools, colleges, and universities
- Fire/Police and other emergency services
- Federal Agencies

### **Affordable Housing**

Assets in the India Street neighborhood and surrounds

## Goals and Vision Statements

The India Street Sustainable Neighborhood Plan is framed by five Goals and six Vision Statements . . .

### GOALS for the India Street Neighborhood

#### Vitality

- The vision for the India Street neighborhood includes vibrant streets. Improvements to the street level environment, public realm, and open spaces will encourage and attract activity.
- Vitality for this neighborhood can be achieved, in part, by encouraging and directing residential growth, especially small infill projects.
- Improving the connectivity (of all modes) to and from the neighborhood will elevate the "adjacent" status of the neighborhood by making it a destination.
- A vital neighborhood also considers its future: the neighborhood seeks to reduce its vulnerability to climate change and embrace strategies that consider future quality of life including transportation, energy, and sea level rise.
- Economic prosperity is a crucial part of neighborhood vitality - strategies around economic development are a high priority.

#### Good Quality Design

- People are attracted to neighborhoods with good quality design. This includes not only the materials and aesthetics of new development but also the street presence and longevity of a project.
- Compatibility, especially in terms of building scale, is essential in a historic and mixed-used neighborhood such as this one.
- In this neighborhood, good quality design also includes good quality rehabilitation of existing and historic buildings.
- Infrastructure improvements shall be included in this goal - the public realm and streetscape are of equal importance to the quality of life as buildings are. Standards for high quality design shall also be held true for infrastructure changes or improvements.

#### Strong Neighborhood Identity that Builds on its Heritage

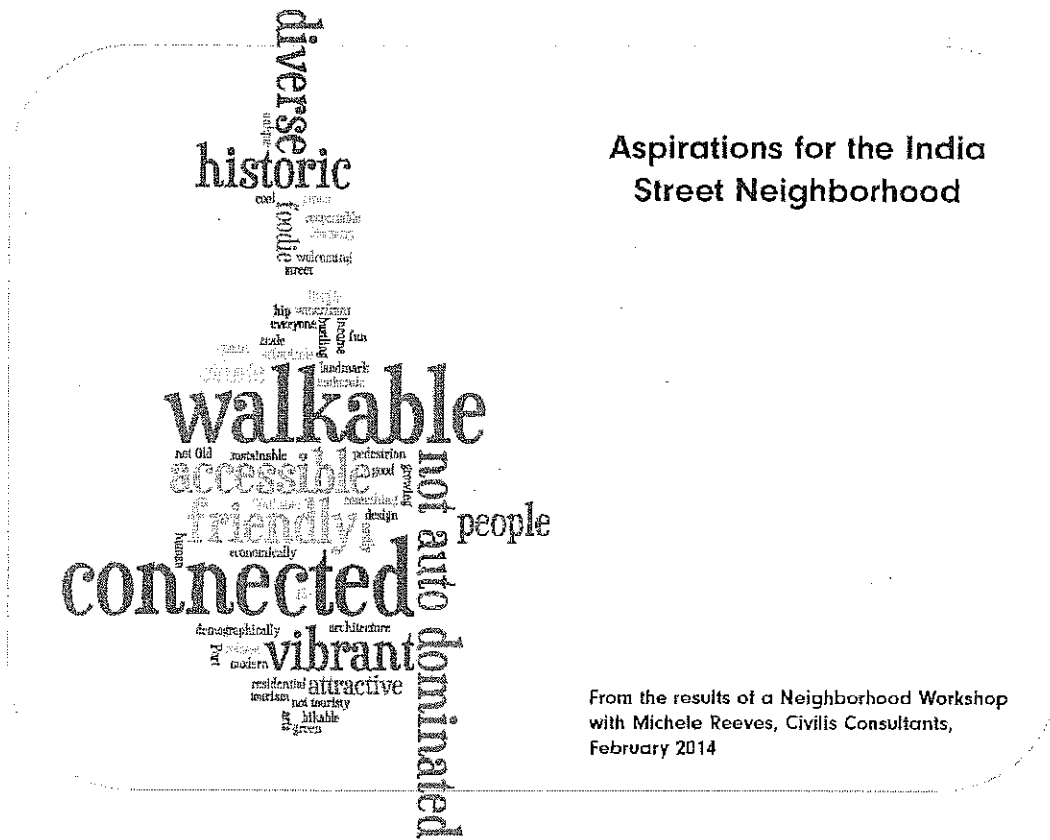
- India Street was the first street in Portland and the neighborhood is rich in cultural history. These qualities are at the heart of the neighborhood identity and should be at the forefront of any strategy that deals with neighborhood character, objectives, relationships, or environment.
- Streetscape and building improvements (both existing and historic) as well as new development should contribute to an identity that promotes the neighborhood to prospective residents, tourists, and adjacent neighborhoods as a destination.
- The historic fabric and landmarks tell a story about this neighborhood and are critically important to its identity.

#### Diversity

- The India Street neighborhood has always hosted a diverse resident population. The neighborhood plan should encourage and maintain that diversity of residents (age, race, ethnicity, gender, family size, income, etc.)
- Quality of life for a diverse population will include considerations such as food access, transportation choices, access to open space, and diversity of residential unit types and ownership models.
- The built environment of the neighborhood is diverse; a dynamic urban neighborhood keeps a diverse mix of building types by including contemporary and historic buildings, and varying building scales.

#### Enhance Mixed-use Nature of Neighborhood

- The India Street Neighborhood is truly a mixed-use neighborhood with residences, business, offices, hotels, retail, and restaurants. The neighborhood plan should allow this mixed-use nature of the neighborhood to continue and to expand.
- New development and the built environment should continue to support and enhance mixed uses.
- The neighborhood plan should especially support existing businesses and attract new businesses to the neighborhood, but especially those that provide services and amenities to neighborhood residents and workers.



## Vision: Cultivating the Future of the India Street Neighborhood

**Vision Statement 1: Sustainable Growth and Development** - The India Street neighborhood is on the cusp of substantial growth and development that will firmly establish its place in the city and region for decades to come. It is poised for growth, and has chosen to shape that growth to its singular character and heritage. It is fitting that this neighborhood welcomes a share of the growth that is happening in greater Portland, given its adjacency to downtown and the waterfront, its walkability, its access to transit, its in-place infrastructure, and its strong mix of and

immediate proximity to housing, jobs, commerce, and services. Over the course of more than two years, this neighborhood has pulled together property owners, residents, and associated stakeholders and community members who care deeply about *how* this neighborhood will evolve and develop. This plan is the result of their efforts and hard work. It presents the vision, principles, and strategies to welcome the right form and shape of growth and development that will bring this transitioning neighborhood to maturity.



**Vision Statement 2: A Neighborhood of Diverse Peoples** – India Street is and always has been diverse, and we wish it to remain so. Histories of immigrant communities – landing here and gaining a foothold, and making their way in America – have left a durable imprint that we celebrate. Maintaining diversity means conscious efforts to welcome all kinds of new arrivals: whether they be move-up urbanists who can live anywhere and choose India Street for its location; or new arrivals continuing the traditional role of this neighborhood, welcoming new immigrants who above all need affordable housing and convenient access to jobs and services; young singles and small households who are embarking on adult life and value the social landscape and access to all that Portland has to offer; working families striving to live responsibly by choosing a compact urban neighborhood where one can afford to live and maintain a low carbon footprint; or an aging population wishing for an active life and access to Portland’s amenities, activities, restaurants, and services. Any and all of these are welcome to make India Street home, and become part of our community.

**Vision Statement 3: An Authentic Neighborhood True to its Heritage** –

Portland’s *first street* was India Street, and it is a point of pride and identity that this neighborhood set the stage for Portland’s growth and development. Vestiges of this history abound, from the religious institutions to the civic and industrial buildings, to the vernacular working class houses on Federal and Newbury and Hampshire streets. These features distinguish the neighborhood from others, adding to the mix of peninsula neighborhoods with a unique community fabric. This heritage creates a sense of responsibility to protect the traces of the past as well as positing a form and pattern for future growth that is recognizable as India Street. We invite development into our neighborhood, as it is essential to its vitality and to fill its voids, particularly in the southern section below Middle Street where there is much vacant land and surface parking. And we will insist that new development add to the indigenous structure of this neighborhood by demonstrating an incremental and varied street, lot, and block pattern. The scale of development may grow but the form must reflect the attributes that typify and reinforce the fabric of this neighborhood.



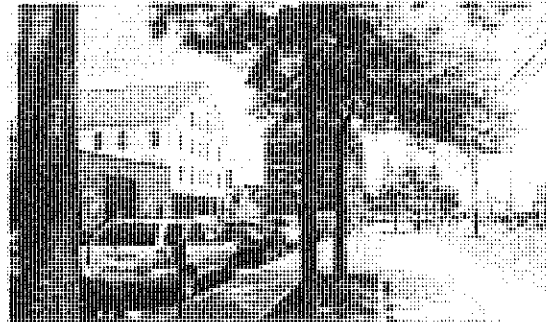
**Vision Statement 4: A Fun, Industrious, Creative, Artisanal, and Prosperous Neighborhood**

– The sidewalks are full of life and commerce. Within a five minute walk multiple food products are prepared, sold, consumed, and savored. Local businesses are mostly home grown and provide authenticity to the neighborhood - the regional brew house, the bakers, the textile and furniture designers, the grocers, the coffee houses, and restaurants. Amato's, one of Maine's few chain establishments, was founded here on India Street around 1902. We will build on this cluster of commercial activity on the core retail streets and create a continuous "trail of crumbs" for visitors and residents to follow from the Old Port and the waterfront, from Commercial Street to Congress Street. We expect that in this area all of the buildings and businesses will engage with the community both visually and functionally, that there will be a "conversation with the street," and people will enjoy being here and engaging in this dialogue.

**Vision Statement 5: A Healthy, Connected, and Active Neighborhood**

– The India Street Neighborhood provides opportunities for health and well-being ranging from health-related services to recreation amenities. Within a short walk are many recreation and open space assets: historic Lincoln Park; the Eastern Promenade Trail that caters to children, runners, bikers, strollers, bladders, boarders, and those just out for a scenic stroll; and a playground tucked into edge of Munjoy Hill off Mountfort Street. These gems are now somewhat hidden from view and access; but with some thoughtful interventions – including generous and well-designed

sidewalks and passageways, good lighting and streetscape furnishings, public art, and intuitive wayfinding strategies – we will embrace these assets and enlist them more fully into the life of the neighborhood. Street connectivity remains a fundamental challenge especially in connecting to and across Franklin Street for all modes, with a pedestrian and bicycle priority. Pedestrian connections throughout the neighborhood need improvements that will enable visitors and residents alike to feel comfortable navigating the area and accessing surrounding amenities.



**Vision Statement 6: A Neighborhood of Strong Identity**

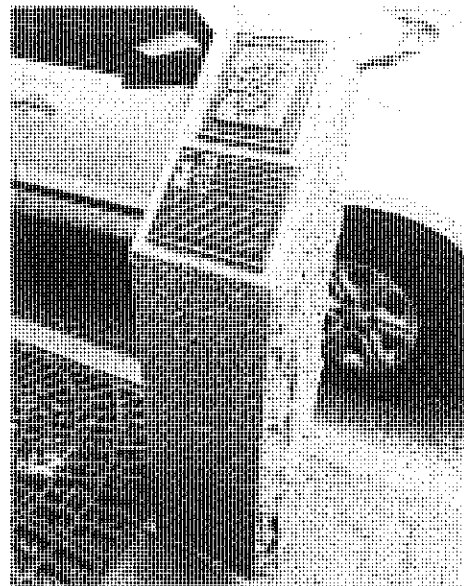
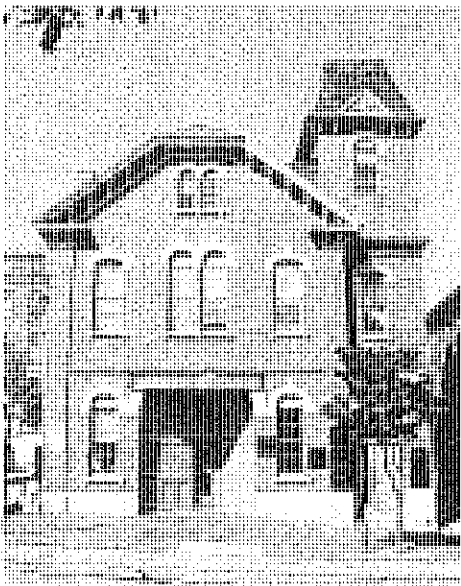
– We have learned a lot about ourselves and our place within the larger community during this planning exploration of the India Street Neighborhood. Our heritage, our diversity, our industriousness, our unique physical character, and our location on Portland's marvelous peninsula all constitute the unique and authentic identity, charm, and spirit of this community. These qualities and characteristics contribute to our pride of place, sense of belonging, and conception of an exceptional community. *Portland Starts Here.* We celebrate this and all it implies. We will share this heritage and identity with the larger community, for us to enjoy, and for others to appreciate.

## Thirteen Development Principles

### 1. Strong Neighborhood Identity

Portland starts here in the India Street neighborhood; the spirit of this place will be reflected in its identity and character, distinct from Old Port and the Downtown. The story of India Street is long and compelling; now is the time to tell and celebrate it.

The India Street Neighborhood presents a human-scale, downtown-adjacent neighborhood with commerce, light industry, authenticity, and community. What visitors and others are less aware of is its distinctive history – Portland's first street and first neighborhood, early maritime connections, later industrial development, period architecture, religious and cultural diversity. The key principle here is to bring these unique characteristics and assets into closer connection and a cohesive neighborhood identity that will permeate the built environment as well as associated housing and business – all serving to strengthen and enhance the community.

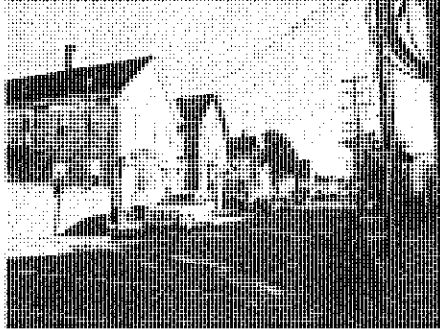


### 2. Diversity of Residents

People are at the very heart of all that India Street Neighborhood is about. It is characterized by diversity, past and present, in all meanings of the word – race, ethnicity, age, religion, ability, household size, and socio/economic status. For the future, the India Street neighborhood will continue to be a place known for its authentic diversity; and diversity of residents and activities will be encouraged and maintained.

Two major factors contribute to neighborhood diversity: housing choice and affordability. The recent housing development trend in the neighborhood has been toward large condominium units, often catering to empty-nester couples and part-year residents. Left to themselves, market forces

alone will provide more of this housing type, while a balance of housing types is desired. The City is especially interested in development that will provide homes for families with children, and young, single workforce households. This should include rental units and a mix of efficiencies, one, two, and three-bedroom units. As the neighborhood residential base grows, so too will the *type* of housing remain varied. Affordability will likewise be considered in development and policy decisions.



### **3. Neighborhood Heritage and Historic Preservation**

Unlike many other neighborhoods on the peninsula, the India Street neighborhood grew to become a strikingly diverse and self-contained neighborhood, with its own “main street,” houses of worship, institutional buildings, and workshop industries that provided employment for minority groups that populated the area. While the neighborhood has lost significant elements of its past, much remains to tell its compelling story. The historic buildings that remain not only tell the story about how this neighborhood has evolved and functioned, but also contribute significantly to its unique character, scale, and patterns.

Protecting and enhancing India Street’s historic building stock is essential if the area is to retain its authenticity and build a strong sense of place. Alterations to existing buildings, both historic and non-historic, will be carefully considered so the neighborhood’s character will not diminish over time. Infill construction will be a clear product of its own time, and respect established development patterns that characterize the neighborhood.

Opportunities to tell the neighborhood’s story, through interpretive signage or other means, will be fully explored and implemented. Understanding the history of the neighborhood will foster pride among local residents and businesses, and will enhance the visitor’s experience.

### **4. Mixed-Use Neighborhood**

The India Street neighborhood is today truly a mixed-use neighborhood with residences, businesses, offices, hotels, retail, and restaurants. The neighborhood plan should allow the mixed-use nature of this neighborhood to continue and expand, with the goal of providing a fair and high quality of life for all manner of people.

Fostering a desirable and diverse neighborhood requires a certain level of services and neighborhood amenities. Important and interesting destinations, from places that supply necessities to those that supply entertainment, are within walking and bicycling distances. Real estate developments, policies, and economic development plans that maintain or grow the level of service and amenities for the neighborhood will be encouraged.

## 5. Vibrant Local Economy

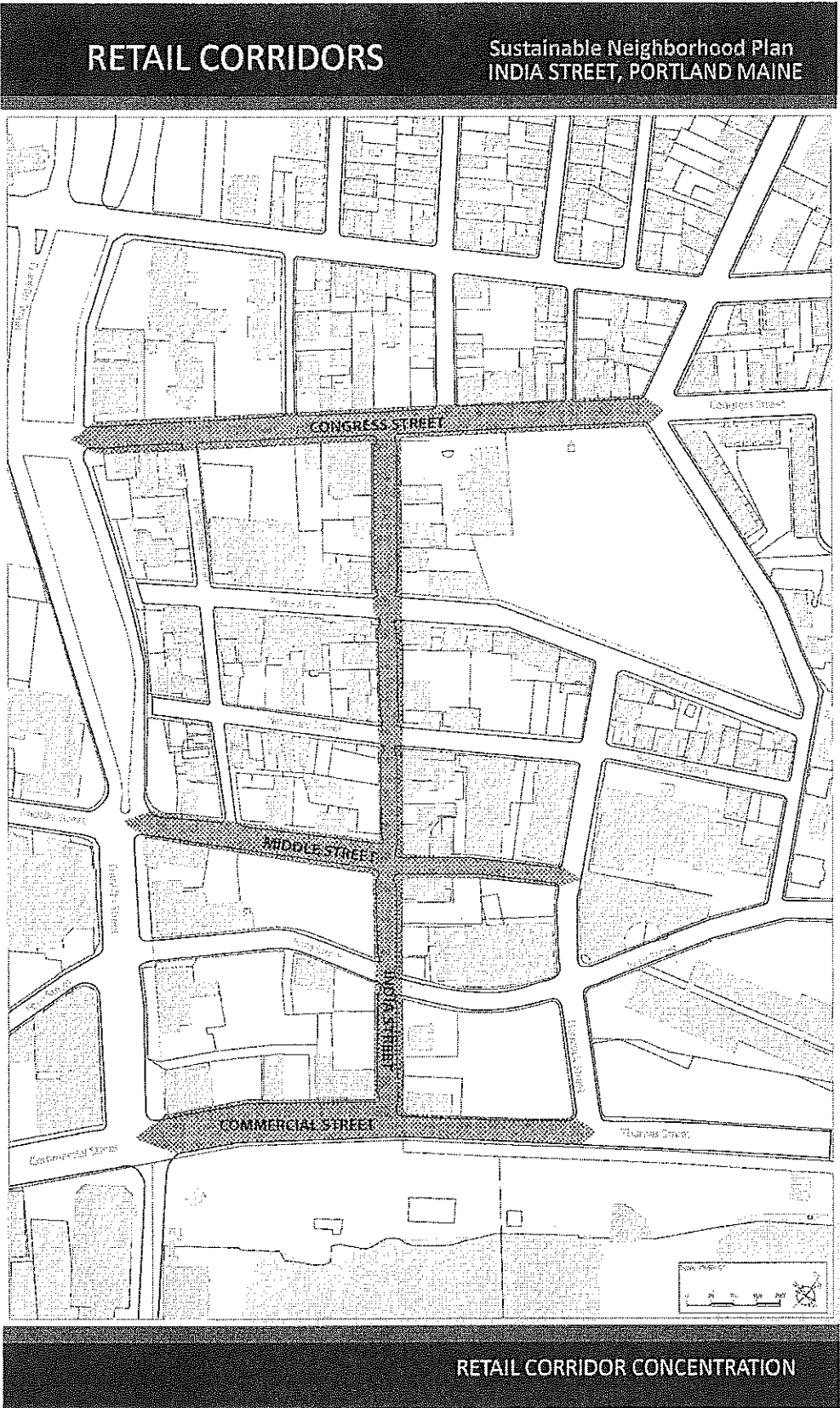
Businesses are important to the success of a mixed-use neighborhood, and the vitality of the India Street Neighborhood economy impacts the city as a whole. The economic goals for the neighborhood are to grow employment opportunities and enhance economic vitality and sustainability.

The India Street neighborhood draws people who recognize and enjoy its unique character and heritage. Those who visit or live in the neighborhood appreciate its authenticity, local artisan retail and eating establishments, and diverse cultural history. Building on these strengths through communication of identity, concentration of commercial uses, protection of the historic and human-scaled built fabric, and stronger relationships within the neighborhood will attract greater numbers of visitors, residents, and businesses to the area and move the neighborhood towards its economic goals.

## 6. Retail Corridors

The India Street Neighborhood is home to destination food and retail businesses, among Portland's most popular. The beginnings of a retail corridor exist on India Street, the neighborhood's main street, as well as on Congress and Commercial streets, and commercial uses are dispersed across the neighborhood. The neighborhood's vitality will be heightened with more concentrated commercial activity – particularly restaurants and retail – along India and on Congress, Commercial, and Middle streets.

Commercial Street is a popular pedestrian route and entry into Portland for cruise ship and ferry passengers. Enticing people to the India Street Neighborhood will depend, in part, on creating a continuous "chain of crumbs" leading from Commercial up India Street. This will require a phased approach, focusing first on recruiting to India Street new retail shops and restaurants, from Commercial up to Middle streets; and then continuing this effort along India all the way to Congress Street. People attract more people; by concentrating retail to strategic corridors the streets become more active and boost economic vitality. This strategy for the neighborhood retail environment will strengthen existing businesses and attract more visitors, residents, and businesses.



## 7. Guided Growth

The India Street neighborhood is an ideal place to target sustainable growth due to the availability of development sites and existing urban infrastructure. Sustainable growth is growth that occurs in an already-established urban neighborhood, taking advantage of existing infrastructure and services. In the case of India Street, the vision is also for residential growth that supports the neighborhood. The district will accommodate a reasonable share of regional growth over the next 25 years, based on its size and proximity to downtown; and gain critical mass that will support a diverse, vibrant, and mixed-use urban neighborhood. The neighborhood desires a healthy mix of uses. The type of growth will be primarily residential with a substantial increase in housing units; there is already an ample supply of hotels developed. Growth will also come from increased density of smaller units of development rather than increased height. All of this growth will only add to its activity and vitality, promoting it as a vibrant neighborhood center within Portland.

There are several areas in which this growth will be located. Due to availability and size of land, significant growth will occur on large redevelopment sites toward the waterfront. As an urban avenue, Franklin Street has valuable frontage along which new development will redefine the neighborhood's edge and contribute to its identity as a desirable residential/mixed-use district. Smaller infill developments will be strongly encouraged as a way to expand the capacity for neighborhood growth and test prospective housing unit types.

## 8. Form of Development

Neighborhood growth will carefully consider of form and scale, with an emphasis on "human scale" development and good quality design. Graduation of form will vary by location so that future new development is appropriate to its surrounding context. Within intact historic streets, form is modulated to approximate surrounding building forms. In larger blocks presently dominated by surface parking, new buildings will be scaled proportionately to allow larger buildings with mass and scale designed to achieve a human scale street presence, protection of street view corridors, and varied and permeable block faces. The intended outcome will be a harmonious composition of new and old buildings that fit well together to create a lively fabric of modern and traditional building forms.

**The Importance of Form** – The identity of a downtown adjacent neighborhood is dictated in large part by its scale and pedestrian-friendly design. Critical elements include<sup>1</sup>:

- Relatively high residential density within a relatively small district, putting many people within walking distance of many activities and, for trips outside of the district, regular and reliable bus service with bus stops;

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<sup>1</sup> These are drawn from the India Street Neighborhood workshop discussion, the City's design manual, and reference materials such as Ewing and Bartholomew, *Pedestrian- and Transit-Oriented Design* (2013).

- A fine-grained mix of uses – both horizontal and vertical – that invite a flow of people at different times of the day, seven days a week;
- A street pattern with pedestrian-scaled blocks. Longer blocks and larger buildings will be interrupted and made permeable by mid-block pedestrian ways, alleys, or streets;
- Continuous sidewalks designed with universal access and widths scaled to the pedestrian activity of the street, to allow two couples walking in opposite directions to comfortably pass each other;
- Strong street walls with development placed close to the property line at street frontage
- Street-oriented buildings, with commercial and mixed use buildings with “permeable” facades – front entrances and fenestration that relate to the street;
- Human-scale buildings – neither so tall as to block a pedestrian’s cone of vision at four stories, nor so horizontally large or dominated by a single use as to discourage the casual interaction between pedestrians and a mix of uses along the street.

## 9. Compassionate and Supportive Community

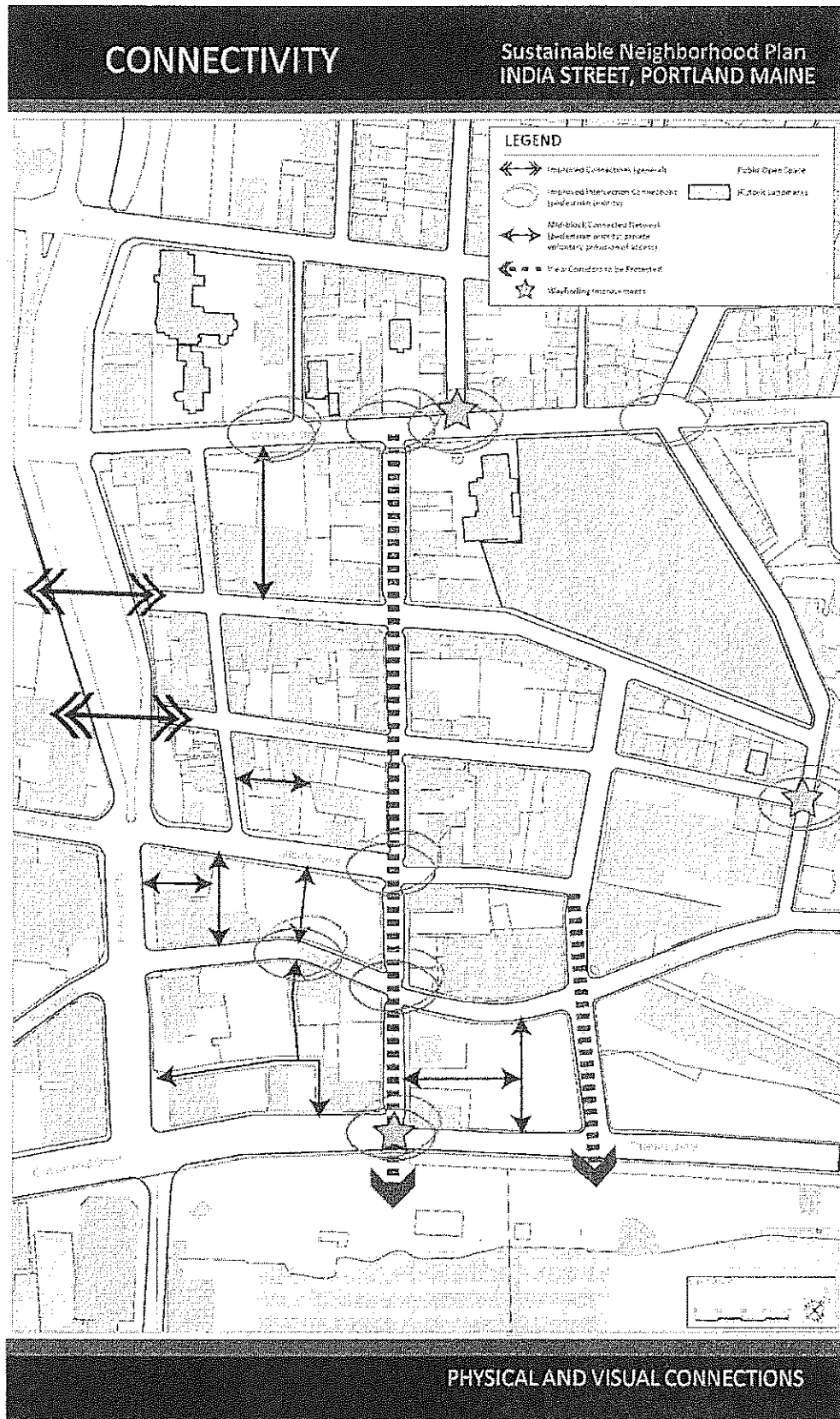
The India Street neighborhood continues a history of welcoming. A walk around the neighborhood reveals a plethora of services and resources ranging from immigrant and elderly services at Catholic Charities, resources for the homeless population at the Cathedral complex and Milestone, low-income housing for the elderly at North School, education opportunities at the Portland Adult Education building, and abundant medical and mental health practices. The compassionate and supportive nature of this neighborhood will be encouraged to prosper; it will continue to be a hospitable landing place for those seeking opportunity in Portland whether it be a new immigrant resident or a fledgling economic enterprise. Efforts to make it accessible with connectivity, transit, and streetscape improvements will go a long way to foster this kind of community.

## 10. Connected Neighborhood

A downtown-adjacent neighborhood that is disconnected from its downtown is an undervalued and underutilized asset. The *adjacent* nature of this neighborhood is both unique and full of potential. India Street abuts many wondrous assets and resources – residential neighborhoods, the downtown district, and the waterfront. *Connections* to these nearby assets and amenities are fundamental to its economic vitality and greater quality of life. Services and opportunities – from jobs to entertainment to governmental services – will be improved by strengthening the connectedness of the neighborhood. From the point of view of the India Street neighborhood, the redesign of Franklin Street is driven in large part by the desire to re-connect this neighborhood and the Downtown. The Transportation Plan of the Comprehensive Plan states, “The City should promote the interconnection of neighborhood streets and pathways, so that there are multiple paths of travel to get to destinations within and between neighborhoods by foot and bicycle, as well as auto.” Reconnecting dead-end streets and formalizing well-loved but informal connection points will help to knit the India Street neighborhood into the city.

The India Street neighborhood already has the fundamental characteristics of a walkable, bikeable neighborhood and the additional advantage of being a transportation hub. The combination of neighborhood adjacency and increased density reinforce the use of alternative transportation modes, reducing dependency on automobiles and allows for the relaxing of parking requirements. Improvements to the local street system, trail system, and transportation system will give priority to connectivity on multiple scales - connectivity to surrounding neighborhoods, connectivity to neighboring assets such as Lincoln Park and the waterfront, and connectivity within the neighborhood, itself. Emphasis will be on pedestrian, bicycle, and transit modes. The walkability of the neighborhood, proximity to jobs on the Portland peninsula, and the availability of bus service will reduce auto dependency. Increased density will support public transportation with shorter time intervals, which, in turn encourages use and viability of the transit system.

Visual connections, especially to the waterfront, are another important type of connection. Wherever possible, access to the waterfront – visual and physical – will be provided as a public amenity. New development will be conscientious of its relationship to the water; view corridors through public rights of way to the water will not be obstructed. Visibility to and from the neighborhood, across Franklin Street and from the water and Commercial Street, will contribute to the identity and presence of the neighborhood, serving to attract visitors as well as elevate the relationship of the neighborhood with the rest of the city.

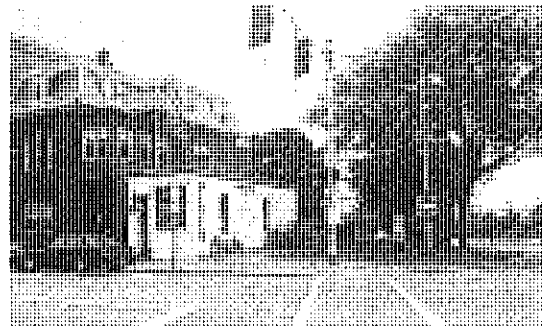
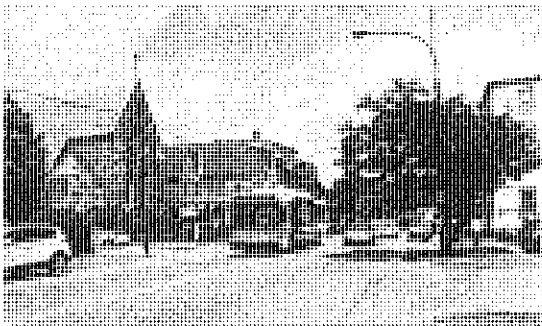


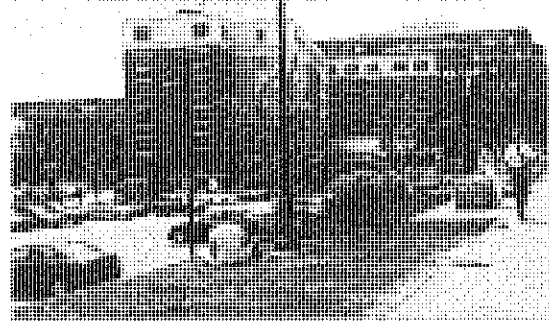
## 11. Quality Infrastructure

The streetscape and landscape play an important role in supporting the neighborhood identity and affording a comfortable, inviting, and human-scaled environment. For infrastructure, emphasis will be placed on the experience one has travelling to and throughout the neighborhood, with Complete Streets as the adopted City strategy. The street grid and transportation infrastructure will be improved with priority given to pedestrian, bicycle, and transit modes. Strategies to improve the streetscape will include increased street trees and plantings, lighting, public restrooms, green infrastructure implementation, wider sidewalks and improved universal access in public right of ways, street furniture deployment, and a neighborhood-wide analysis to evaluate the potential to underground utilities. Neighborhood identity will be reinforced through streetscape design elements with particular priority on India Street which will include street trees, public art, unique and cohesive street furniture, pavement options that have a storytelling or identity component, and gateway elements signaling entrances to the neighborhood.

Vehicle parking, especially surface parking lots, will be de-emphasized. On-street parking, reduced off-street parking requirements, modest off-street lots, structured parking, and car-sharing services will all be needed to satisfy demand. In the India Street neighborhood, the recent structured parking with excess space (as of 2013) was created to relieve some of the constraint that might otherwise exist and to facilitate development of surrounding parcels. Use of shared parking and utility infrastructure strategies will be encouraged.

Finally, improvements to telecommunication infrastructure is crucial to making the India Street neighborhood and the city an attractive place to locate for residents and businesses who increasingly rely on internet access for quality of life and work.





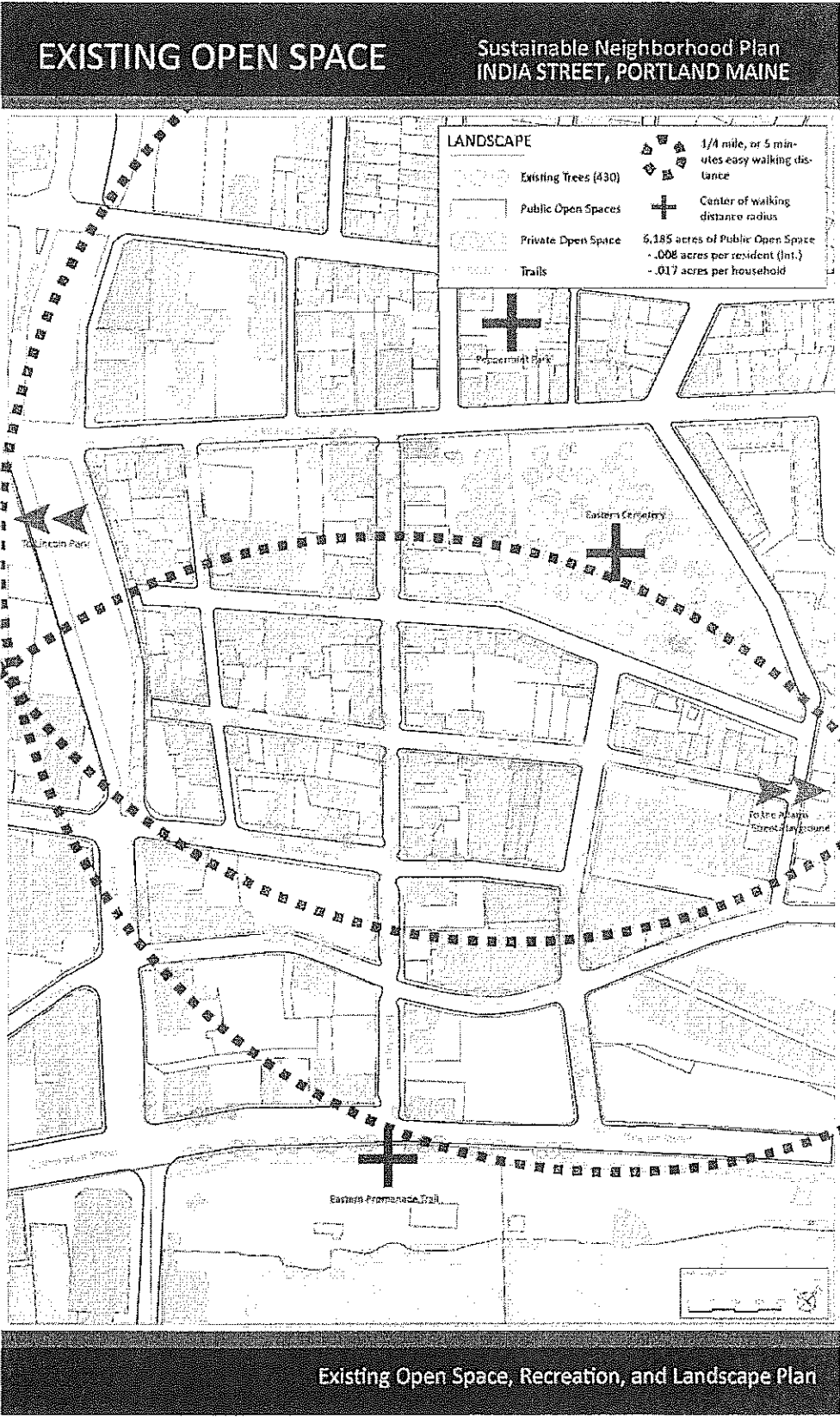
## 12. Ample Recreation and Open Space

Open space is a most precious commodity in the small, urban India Street neighborhood. Open space amenities greatly enhance quality of life for residents and workers, make for a more attractive built environment, and create opportunities for community gathering and interaction. Every opportunity to improve or enhance public open spaces will be pursued. This principle addresses a guiding principle of the existing open space and recreation plan for the City of Portland, *Green Spaces, Blue Edges*:

Neighborhoods form the foundation of *Green Spaces, Blue Edges*. The plan exists to serve the health and enjoyment of the neighborhood residents.

- Neighborhoods should have open space focal points
- Recreational opportunities should be available for all ages and genders
- Neighborhood open space should be within walking distance
- Portland residents appreciate their park system

The neighborhood has three avenues to maximize the potential for open spaces of different types and uses: 1) Create new open spaces at the pumping station property, along Franklin Street, and at the foot of India Street, 2) Improve and maintain existing spaces (including private green spaces) within the neighborhood by implementing the Eastern Cemetery Master Plan, for example, and 3) Connect to surrounding open space amenities such as Lincoln Park, playgrounds in Peppermint Park and Adams Street, and the Eastern Promenade Trail.



# Sustainable Neighborhood Plan INDIA STREET, PORTLAND MAINE



### 13. Responsive to Climate Change

As a waterfront-adjacent district, climate change is especially compelling to the India Street neighborhood. Adapting to sea-level rise, reducing stormwater runoff, and mitigating heat island effect are especially important to address, as the neighborhood continues to develop and improve. Future plans for this district will consider such features as low-impact design in public and private development, reduction in impervious surfaces and subsequent opportunity to increase greenery and street trees, flexible ground floor designs, and treatment of roof surfaces to reduce heat island effect and solar reflectance. Incremental changes, including modifying structures and facilities on the water's edge to be more resilient to sea-level rise, will be pursued by both public and private interests. The future India Street neighborhood will be a model to demonstrate that planning for climate change is a benefit to residents', visitors', and workers' quality of life and the quality of the built environment.



## Implementation Plan

In order to implement the policies laid out in the India Street Sustainable Neighborhood Plan, twelve **Critical Actions** have been drafted to form an Implementation Plan. Critical Actions are inter-related and high priority initiatives, representing the top one or two strategies from each India Street Neighborhood Advisory Committee Working Group. These twelve Critical Actions are intended to guide the City in measures that can be taken to fulfill the Plan principles and meet the "SMART" test articulated by the City Council as part of its 2014 goal-setting process:

Specific  
Measurable  
Attainable  
Realistic  
Tangible

It is important to note that the Implementation Plan is meant to guide the City but will not be included in the Comprehensive Plan as policy. These initiatives, taken individually and collectively, will help the City to achieve the policies and objectives of this Plan, but each action will require individual review, consideration, and decision-making in light of the resources available and competing objectives of the City at the time. It is not expected that each item will proceed exactly as prescribed, but that these programs and initiatives, among others that might arise, will be considered in the implementation of this Plan. The creation of these Critical Actions ensures the policy document – the India Street Sustainable Neighborhood Plan – is translated into clear action and will have a beneficial, tangible impact.

## **DIVISION 15.2 IS-FBC - INDIA STREET FORM-BASED CODE ZONE**

### **SEC. 14- XXX. PURPOSE**

The India Street Form-based Code is different than traditional zoning, placing the primary emphasis on a building's physical form and its relationship to the street, and de-emphasizing land use. The intent of the India Street Form-based Code zone is to establish a zoning district that encourages a vibrant, walkable, mixed-use, urban district, preserves and values the existing historic neighborhood fabric, and fosters and supports local businesses and residential areas. The components of a Form-Based Code include the Guiding Principles, REGULATING PLAN, Subdistricts, General Development Standards, Dimensional Requirements, BUILDING DESIGN STANDARDS, Diagrams, and Definitions.

The goal of the India Street Form-based Code is the creation and preservation of an active and human-scale public realm and the reinforcement of existing neighborhood character through good street space design.

- a) GENERAL GUIDING PRINCIPLES: The General Guiding Principles set forth here shall be applicable to all subdistricts within the India Street Form-based Code Zone.
  - 1. The street is a coherent space, with consistent building and streetscape character on both sides of the street. This agreement of buildings and streetscape across the street contributes to a clear public space and district identity.
  - 2. The street wall is visually well defined. Land should be clearly public or private. Buildings contribute to the vital and safe public space while providing a clear boundary to the private, protected realm.
  - 3. Street walls are engaged with the street environment. Buildings are inviting places that interact with and contribute to the street vitality. Inactive edges, vehicle storage, garbage, and mechanical equipment should be kept away from the street. 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.
  - 4. Buildings are designed for the urban environment. Buildings must be designed for the urban situation within the district which often includes mixed-uses. Buildings are positioned near the street and FACADES are oriented to the street.
  - 5. Respect historic character. If a property is within the India Street Historic District, **Sec. xx** is applicable. New construction, BUILDING ADDITIONS, or ALTERATIONS in the India Street Historic District shall reflect and complement the character defining features and elements of the existing historic development to which it is visually related.

### **SEC. 14- XX APPLICABILITY**

The requirements set forth in this Division shall apply to all new development, primary and accessory structures, including BUILDING ADDITIONS within the India Street Form-based Code Zone as designated on the India Street REGULATING PLAN.

## SEC. 14-XX DEFINITIONS

Terms used throughout this Form-based Code Zone may be defined in Section 14-47 or elsewhere in the Zoning Ordinance. Terms not so defined shall be accorded their commonly accepted meanings. In the event of any conflict between the definitions in this Section and those in Section 14-47, or any other sections of the Zoning Ordinance, the Subdivision Rules and Regulations, or any other local land use ordinances, rules or regulations, those of this Form-based Code Zone shall take precedence.

**ALTERATION:** A change or rearrangement in the structural supports, exterior appearance, or removing from or otherwise affecting the exterior appearance of a structure.

**BUILDING ADDITION:** Any increase to footprint or volume of an existing structure. See Table 14.1c. Building – Principal & Accessory

**BUILDABLE AREA:** The area enclosed by the front, side, and rear yard setbacks and limited by lot coverage.

**BUILDING, ACCESSORY:** Detached 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. See Table 14.1c. Building – Principal & Accessory

**BUILDING, PRINCIPAL:** The main structure(s) on a lot having the predominant area and extent, and/or use. A lot may have more than one principal building. See Table 14.1c. Building – Principal & Accessory

**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 DESIGN STANDARD (BDS):** The basic design parameters governing building form, including intent, guidelines, and standards for architectural elements such as proportion, articulation, fenestration, entries, roof lines, and materials.

**ELEVATION:** An exterior wall of a building not along a frontage line. See FAÇADE and Table 14.1e. Frontage & Lot Lines

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

**EXPRESSION LINE:** A line prescribed at a certain level of a building for the major part of the width of a FAÇADE, expressed by a variation in material or by a limited projection such as a molding or balcony.

**FAÇADE:** Any exterior wall of a structure exposed to public view from a public right-of-way. See ELEVATION and Table 14.1e. Frontage & Lot Lines

**FAÇADE, BLANK:** Building façade that contains expanses of wall area with no windows, no entrances, no articulation, and no other elements or features, or is otherwise undifferentiated.

**GREEN ROOF:** A roof of a building that is partially or completely covered with vegetation and designed to meet the Maine Stormwater Best Management Practices Manual standards and recommendations. A green roof installation must serve the purpose of reducing stormwater runoff through retention or slowing and consist of an assembly that at a minimum includes a root repellent system, a drainage system, a filtering layer, a growing medium and plants, and shall be installed on a waterproof membrane. The vegetated area of a green roof may be considered pervious for zoning impervious calculations.

**LOT LAYER:** A range of depth of a lot within which certain elements are permitted. See Table 14.1d. Lot Layers

**MID-BLOCK PERMEABILITY:** A continuous, open-air corridor at least 20' in width that connects two streets or public rights-of-way and physically provides a break in the street wall. The corridor must be unobstructed and open to the sky for the majority of its length.

**PARTY WALL:** Any partition wall common to two adjacent or attached buildings.

**REGULATING PLAN:** A zoning map or set of maps that shows the boundary of the area and subdistricts subject to regulation by the India Street Form-based Code.

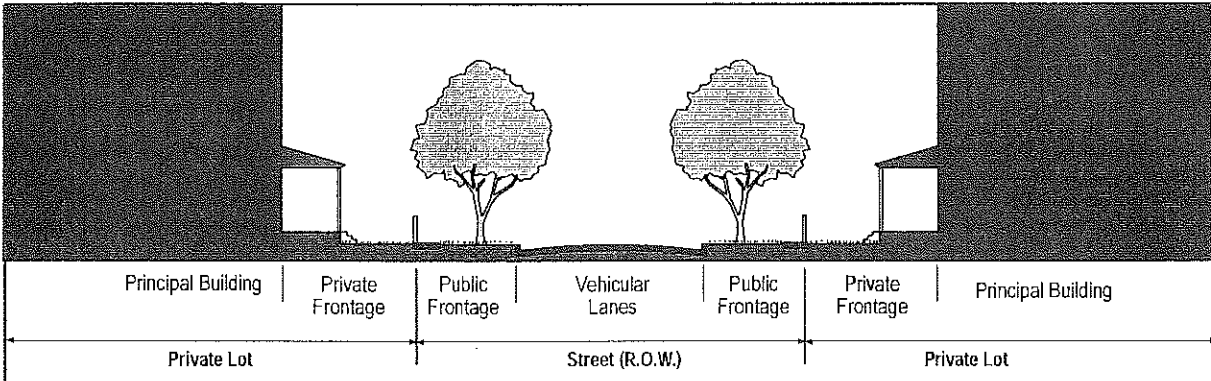
**STEPBACK:** A building setback of a specified distance measured from the ground floor building face that occurs at a prescribed number of stories or height above the ground.

**YARD, SIDE:** A yard adjoining a side lot line extending from the front yard to the rear yard, the width of which shall be the shortest horizontal distance between the side lot line and any structure. On corner lots, non-frontage yards shall be considered side yards. See Table 14.1.b. Setback Designations

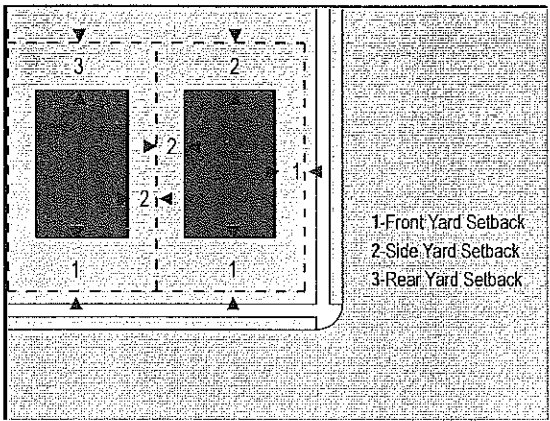
**ZERO LOT LINE:** The location of a structure on a lot such that one or more of the structure sides rests directly on a lot line. See Table 14.1e. Frontage & Lot Lines

**TABLE 14.1 DEFINITIONS ILLUSTRATED**

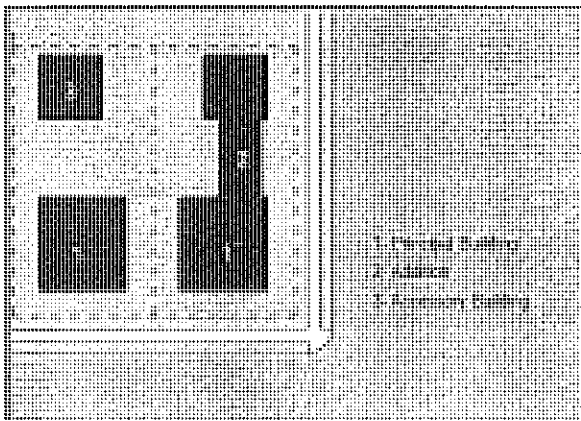
**a. STREETS & FRONTAGES**



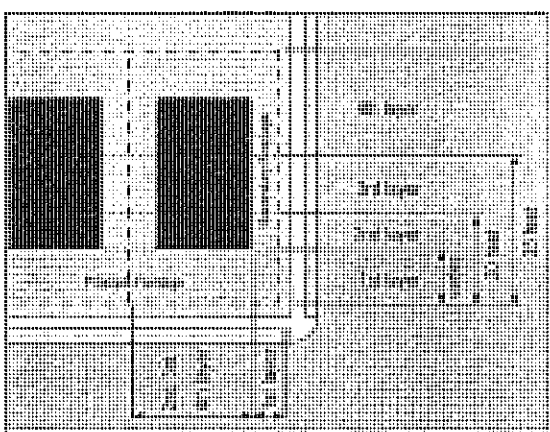
**b. SETBACK DESIGNATIONS**



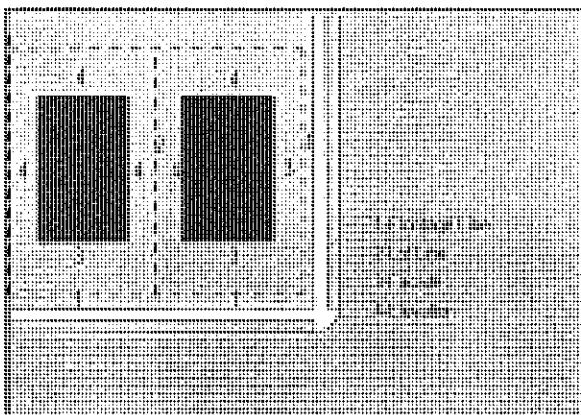
**c. BUILDING - PRINCIPAL & ACCESSORY**



**d. LOT LAYERS**



**e. FRONTAGE & LOT LINES**

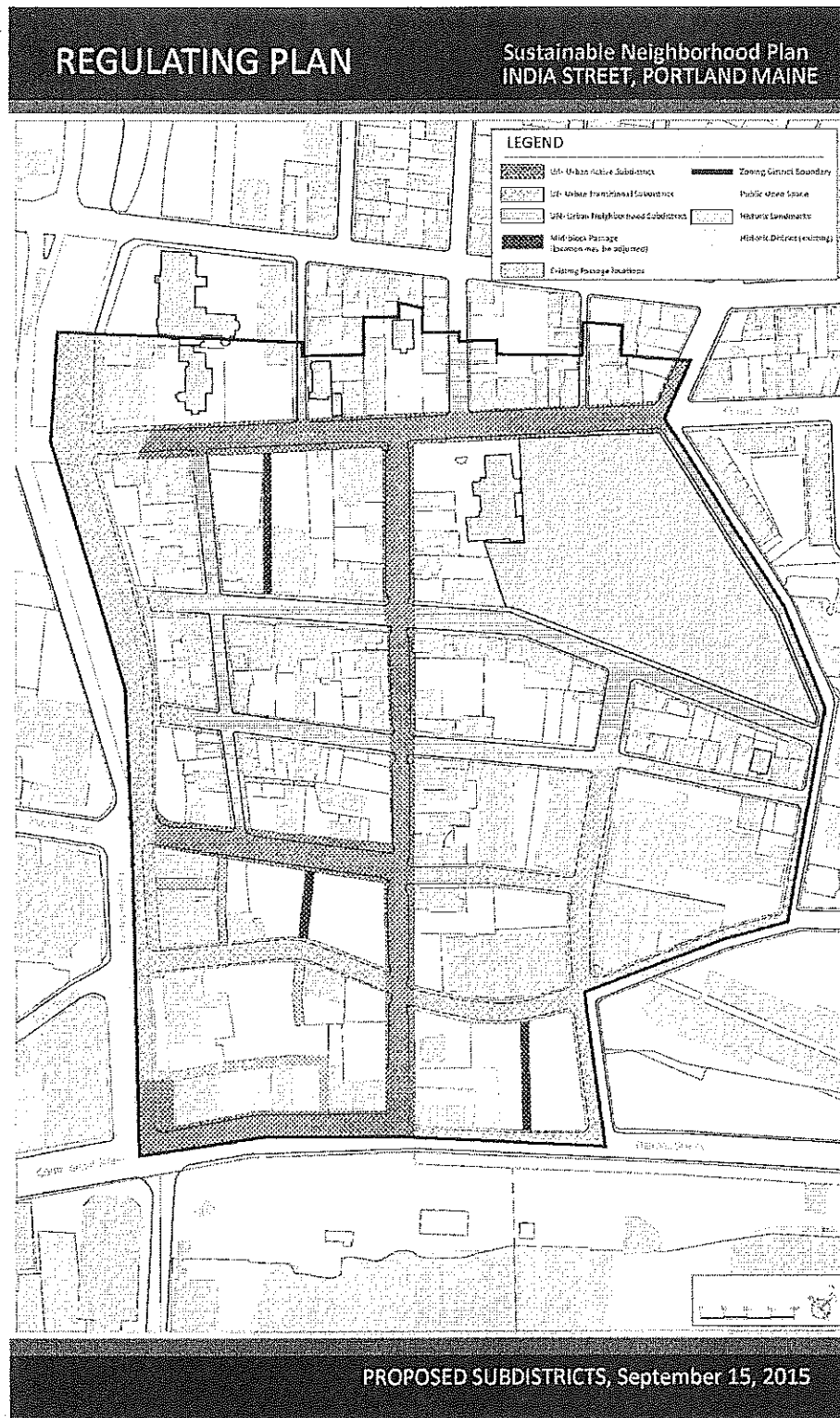


## **SEC. 14-XX ESTABLISHMENT OF SUBDISTRICTS**

The India Street Form-based Code Zone as shown on the REGULATING PLAN is divided into three subdistricts.

- a) Urban Neighborhood (UN) Subdistrict
- b) Urban Transitional (UT) Subdistrict
- c) Urban Active (UA) Subdistrict

## SECTION 14-XX REGULATING PLAN



## SEC. 14-XX GENERAL DEVELOPMENT STANDARDS

The following standards apply to all subdistricts unless expressly stated otherwise.

- a) PROHIBITED USES – uses not to be established in the India Street Form-based Code Zone include:

*Correctional facilities,*

*Cremation facilities,*

*Drive-through facilities,*

*High-impact industrial uses, including industrial uses that are prohibited in the IL zone, specifically Section 14-233(c), (e – y), (aa),*

*Major/minor auto-service station,*

*Truck terminals,*

*Waste related services,*

*and storage and parking facilities for Class 1 flammable and combustible liquids (having an aggregate total of more than 100 gallons) but excluding storage that is part of a motorized vehicle or pleasure craft facility.*

- b) SITING STANDARDS

1. MID-BLOCK PERMEABILITY

- a. Lots with frontage on two streets roughly parallel to Commercial/Thames Street, for each and every 200' in street line length of lot, a full break between structures of at least 20' in width shall be provided roughly perpendicular to Commercial/Thames Street and within the middle third of the applicable street frontage. (see Table 14.2a. Mid-Block Permeability)
- b. Is encouraged in any location that connects existing public or private alleys, passages, or streets.
- c. Any development providing MID-BLOCK PERMEABILITY with public access between two streets is eligible for one (1) additional story of up to 12' in height (see Sec. 14-xx (c) Height Bonuses). Public access shall be defined through a legal agreement such as an easement or license.
- d. Refer to REGULATING PLAN for identified required MID-BLOCK PERMEABILITY locations.

2. Frontage Requirements – Additional Building Length is allowed beyond the maximum building length under the following circumstances and according to the table below:

- a. ATTACHED BUILDINGS: An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed. A PARTY WALL condition is required at least every 30' and for the entire height of each building. (see Table 14.2.d Additional Building Length – ATTACHED BUILDINGS).
- b. Ground Floor Partitions: Additional building length is permitted with the provision of ground floor partitions where the following conditions are met: (see Table 14.2.f Additional Building Length – Ground Floor Partitions)
  1. Partitions must extend from the FAÇADE at least 2/3rds of the building depth.
  2. Partitions must be architecturally expressed on the building exterior.
  3. Each module created by partition must have at least one functional, street-facing entry.

4. Modules created by partition shall be sized to have reasonable function and proportion in relation to overall building length.
- c. Massing Variation: Additional building length is permitted where at least 30% and up to 40% of the total FACADE building length is set back to the 3<sup>rd</sup> LOT LAYER (at least 20') (see Table 14.2.e Additional Building Length – Massing Variation).
- d. Structured Parking Exception: Additional building length for one FACADE without partition walls is allowed for the use of ground-level structured parking.

| Additional Building Length |                    |                                |                   |                              |
|----------------------------|--------------------|--------------------------------|-------------------|------------------------------|
| Subdistrict                | ATTACHED BUILDINGS | Ground Floor Partitions        | Massing Variation | Structured Parking Exception |
| UN                         | unlimited run      | Not allowed                    | Not allowed       | Not allowed                  |
| UT                         | unlimited run      | 200' max. length;<br>2 modules | 200' max. length  | 200' max. length             |
| UA                         | unlimited run      | 150' max. length;<br>3 modules | Not allowed       | 150' max. length             |

### 3. Setbacks

- a. Side Yard Setbacks for Small Lots – Lots with street frontage of less than 35' are not required to have side yards.
- b. Where new construction or BUILDING ADDITIONS creates a side yard of less than 5', a maintenance easement is required where a combination of the side yard and easement must be at least 5'. PARTY WALL conditions are exempt from providing a maintenance easement.
- c. Building FACADES within 10' of a corner are exempt from setback requirements in order to allow special corner architectural treatments.
- d. ATTACHED BUILDINGS on Individual Lots - Subdivision developments consisting of horizontally attached buildings on individual lots are not required to have side yards between buildings where a PARTY WALL condition will exist, but shall be required to meet the applicable side yard requirements at the external and internal subdivision lot boundaries between buildings that are not attached to each other.

### 4. Landscaping and Screening

- a. Surface parking areas shall be screened from view from sidewalks, public-right-of-ways, and public open spaces using landscaping, walls, fencing, or a combination thereof.
- b. Wall/Fence Dimensional Requirements

| Wall/Fence Dimensional Requirements |         |                                       |
|-------------------------------------|---------|---------------------------------------|
| LOT LAYER                           | Height  | Visual Permeability                   |
| 1 <sup>ST</sup>                     | 6' max. | Required above 2' from sidewalk grade |
| 2 <sup>ND</sup> – 4 <sup>TH</sup>   | 8' max. | n/a                                   |

### 5. BUILDING ADDITIONS

- a. BUILDING ADDITIONS which exceed the footprint of the existing building to which it is an addition or which exceeds 50,000 square feet shall be subject to Level III Site Plan review.
- b. A BUILDING ADDITION length may match but not exceed the length of the existing building to which it is an addition. All other Subdistrict Dimensional Requirements shall apply. (See Table 14.2b. Additions)

- c. BUILDING ADDITIONS may match existing building in number and height of stories. All other Subdistrict Height Standards shall apply.

c) HEIGHT STANDARDS

1. Height Bonus

a. Applicability:

1. If principal frontage faces a UT street or Congress Street, then the building is eligible for a height bonus.
2. Only one height bonus may be applied per structure.

b. One (1) additional story of up to 12' in height is allowed if one of the following provisions is met:

1. For residential development with residential density equal to or greater than 150 dwelling units per acre (density may be achieved with the bonus floor)
2. For any development providing a GREEN ROOF, where:
  - ☐ at least 50% of the cumulative lot area is pervious and,
  - ☐ at least 50% of the cumulative roof area is a GREEN ROOF. GREEN ROOF area may be applied towards the 50% lot area requirement.

| Height Bonuses            |                          |                                              |                     |                   |                                 |                                                                                                   |
|---------------------------|--------------------------|----------------------------------------------|---------------------|-------------------|---------------------------------|---------------------------------------------------------------------------------------------------|
| Subdistrict               | Maximum pre-bonus Height | Mid-block permeability (publicly accessible) | Residential Density | GREEN ROOF        | Maximum Height based on bonuses | Minimum Bonus floor Stepback (from the ground floor building edge facing any public right-of-way) |
| UN                        | n/a                      | n/a                                          | n/a                 | n/a               | n/a                             | n/a                                                                                               |
| UT                        | 65' and 6 stories        | 1 story Up to 12'                            | 1 story Up to 12'   | 1 story Up to 12' | 77' up to 7 stories             | 15'                                                                                               |
| UA (Congress Street only) | 50' and 4 stories        | 1 story Up to 12'                            | 1 story Up to 12'   | 1 story Up to 12' | 62' up to 5 stories             | 15'                                                                                               |

d) PARKING STANDARDS

1. Parking shall be provided as per Division 20 Off-Street Parking of Chapter 14 Land Use Code.
2. Structured parking must meet the BDS for *Structured Parking* (see City of Portland Design Manual).
3. In the case of a BUILDING ADDITION, non-conforming existing surface parking may remain. In the case of new construction, surface parking must be brought into conformance with IS-FBC standards.

## SEC 14-XX. SUBDISTRICT DIMENSIONAL REQUIREMENTS

# UN

### Urban Neighborhood (UN) Subdistrict:

**INTENT:** The intent of this subdistrict is to maintain and promote a small-scale, less active urban fabric. Buildings may be more private in character and have smaller footprints with building types including, but not limited to, single-family, rowhouses, duplexes, triple-deckers, and double-triples. Building frontages may be less transparent and entries may be raised above sidewalk level with frontage types including raised, recessed doorways, porches, and stoops. The streetscape has variable setbacks and landscaping with many buildings within one block and streets and sidewalks tend to be narrow.

#### SITING STANDARDS

|                                  |                         |
|----------------------------------|-------------------------|
| Orientation - Principal Frontage | determined by applicant |
| Lot Coverage                     | 90% max                 |

#### FRONTAGE REQUIREMENTS (1st LOT LAYER)

|                                                                                             |          |
|---------------------------------------------------------------------------------------------|----------|
| Building Length - Principal facade                                                          | 30' max. |
| Building Length - Secondary fac.                                                            | 50' max. |
| at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.2c.) |          |

|                              |                       |
|------------------------------|-----------------------|
| Additional Building Length   | (see also Table 14.2) |
| ATTACHED BUILDINGS           | unlimited run         |
| Ground Floor Partitions      | not allowed           |
| Massing Variation            | not allowed           |
| Structured Parking Exception | not allowed           |

#### SETBACKS

|                                |                                                                                                |
|--------------------------------|------------------------------------------------------------------------------------------------|
| Principal Building             |                                                                                                |
| (a) Front Yard (1st Lot Layer) | 5' max.                                                                                        |
| Setback Applicability          | 75% of total building length must be built within 1st LOT LAYER                                |
| (b) Side Yard*                 | 5' min. - May be reduced to zero provided that the cumulative side yards are not less than 10' |
| (c) Rear Yard                  | 10' min.                                                                                       |
| Accessory Building             | 2nd thru 4th LOT LAYERS                                                                        |
| Side Yard                      | 5' min.                                                                                        |
| Rear Yard                      | 5' min.                                                                                        |

#### BUILDING ENTRIES (SEE ALSO BDS)

|                           |                         |
|---------------------------|-------------------------|
| Frequency at frontage     | at least 35'            |
| Principal Entries         |                         |
| Orientation               | any orientation allowed |
| Elevated Stoop (> 1 step) | allowed                 |

#### HEIGHT STANDARDS

|                      |                         |
|----------------------|-------------------------|
| Principal Building   |                         |
| Building Height Min. | 25', at least 2 stories |
| Building Height Max. | 45', up to 4 stories    |
| Ground Story Height  | n/a                     |
| Accessory Building   |                         |
| Building Height Max. | 25'                     |

#### PARKING STANDARDS

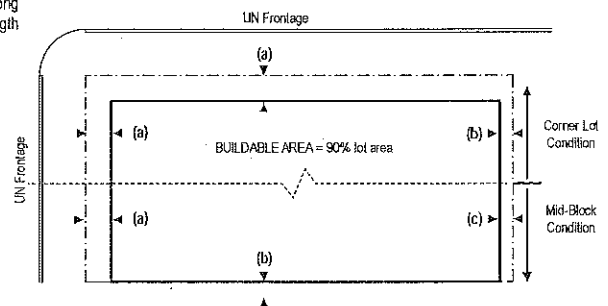
|                                           |                                                                 |
|-------------------------------------------|-----------------------------------------------------------------|
| Surface Parking Location                  |                                                                 |
| Side Yard                                 | 20' max in width per lot; may not exceed 50% of frontage length |
| Rear Yard                                 | 4th LOT LAYER only                                              |
| Garage at frontage (attached or detached) |                                                                 |
| Garage Door Setback (min)                 | 2nd LOT LAYER                                                   |
| Garage Door Opening (max)                 | 9' up to 40% of facade length                                   |
|                                           | 20' max. limit                                                  |

#### Notes and Exceptions

\* Zero lot lines are allowed under certain conditions (see Sec 14.xxb)3. Setbacks)

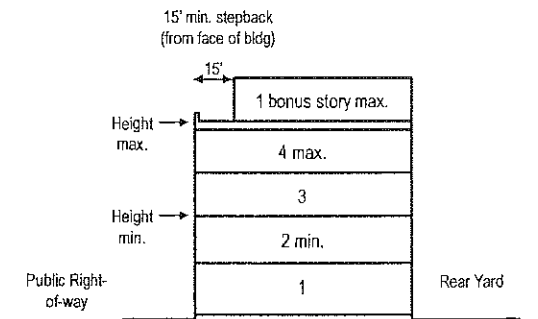
#### SITING STANDARDS

- The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
- FACADES shall be built along the frontage lines to the length specified in the table.



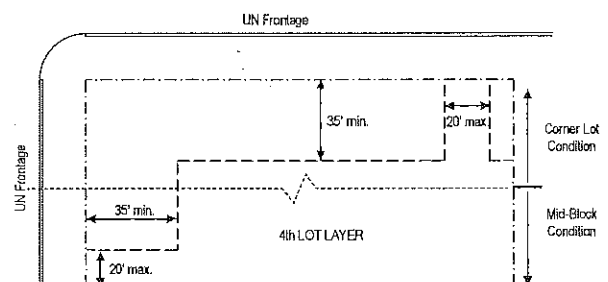
#### HEIGHT STANDARDS

- Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
- Number of Stories excludes attics and raised basements.



#### PARKING STANDARDS

- Surface parking areas may be provided within the shaded area shown.



## SEC 14-XX. SUBDISTRICT DIMENSIONAL REQUIREMENTS

# UT

### Urban Transitional (UT) Subdistrict:

**INTENT:** The intent of this subdistrict is to encourage higher density, mixed-use building types that accommodate any use. Building frontages are a mix of activity level, have larger footprints, and the most flexibility of height and scale. Building ground floor spaces tend to accommodate flexible and changing uses with frontage types including doorways, forecourts, arcades, and storefronts. The streetscape may be less active than the UA subdistrict with wide sidewalks, street trees, and setbacks and setbacks providing relief from large building masses.

#### SITING STANDARDS

|                                                                                             |                         |
|---------------------------------------------------------------------------------------------|-------------------------|
| Orientation - Principal Frontage                                                            | determined by applicant |
| Lot Coverage                                                                                | 90% max                 |
| <b>FRONTAGE REQUIREMENTS (1st LOT LAYER)</b>                                                |                         |
| Building Length                                                                             | 100' max.               |
| at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.2c.) |                         |
| Additional Building Length                                                                  | (see also Table 14.2)   |
| ATTACHED BUILDINGS                                                                          | unlimited run           |
| Ground Floor Partitions                                                                     | 200' max., 2 modules    |
| Massing Variation                                                                           | 200' max.               |
| Structured Parking Exception                                                                | 200' max.               |

#### SETBACKS

|                                        |                                                                                                 |
|----------------------------------------|-------------------------------------------------------------------------------------------------|
| <b>Principal Building</b>              |                                                                                                 |
| (a) Front Yard (1st Lot Layer)         | 10' min.                                                                                        |
| Setback Applicability                  | 75% of total building length must be built within 1st LOT LAYER                                 |
| (b) Side Yard*                         | 10' min. - May be reduced to zero provided that the cumulative side yards are not less than 20' |
| (c) Rear Yard                          | 10' min.                                                                                        |
| (d) STEPBACK (adjacent to UN)          | 10' min. setback after 45' height                                                               |
| <b>Accessory Building</b>              |                                                                                                 |
| Side Yard                              | 5' min.                                                                                         |
| Rear Yard                              | 5' min.                                                                                         |
| <b>BUILDING ENTRIES (SEE ALSO BDS)</b> |                                                                                                 |
| Frequency at frontage                  | at least 95'                                                                                    |
| <b>Principal Entries</b>               |                                                                                                 |
| Orientation                            | any allowed                                                                                     |
| Elevated Stoop (>1 step)               | allowed                                                                                         |

#### HEIGHT STANDARDS

|                           |                      |
|---------------------------|----------------------|
| <b>Principal Building</b> |                      |
| Building Height Min.      | 3 stories            |
| Building Height Max.      | 65', up to 6 stories |
| Ground Story Height       | n/a                  |
| <b>Accessory Building</b> |                      |
| Building Height Max.      | 25'                  |

#### PARKING STANDARDS

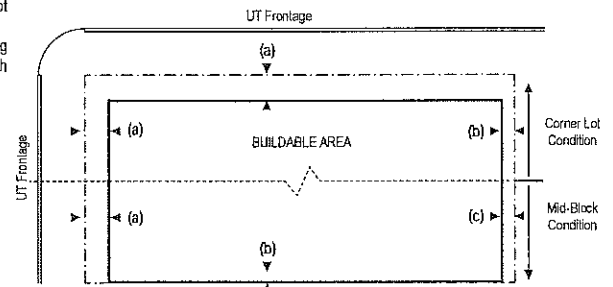
|                                                  |                               |
|--------------------------------------------------|-------------------------------|
| Surface Parking Location                         | 4th LOT LAYER only            |
| <b>Garage at frontage (attached or detached)</b> |                               |
| Garage Door Setback (min)                        | 2nd LOT LAYER                 |
| Garage Door Opening (max)                        | 9' up to 40% of facade length |
|                                                  | 20' max. limit                |

#### Notes and Exceptions

\*Zero lot lines are allowed under certain conditions (see Sec 14.xxb)3. Setbacks)

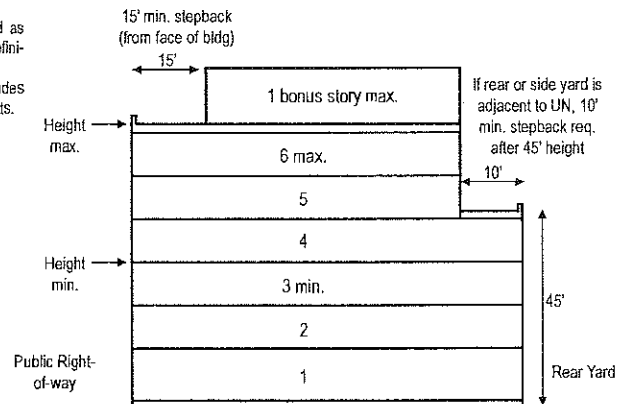
#### SITING STANDARDS

- The FACADES and ELEVATIONS of Principal Structures shall be distanced from the lot lines as shown.
- FACADES shall be built along the frontage lines to the length specified in the table.



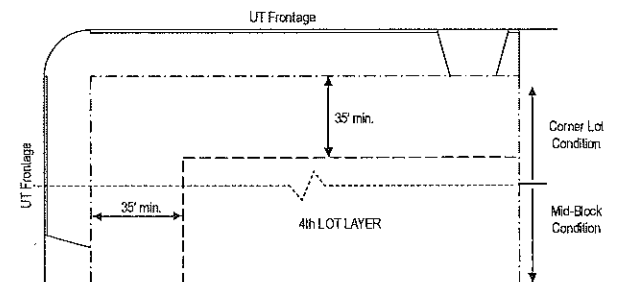
#### HEIGHT STANDARDS

- Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
- Number of Stories excludes attics and raised basements.



#### PARKING STANDARDS

- Surface parking areas may be provided within the 4th LOT LAYER (shaded area) as shown.



## SEC 14-XX. SUBDISTRICT DIMENSIONAL REQUIREMENTS

# UA

### Urban Active (UA) Subdistrict:

**INTENT:** The intent of this subdistrict is to maintain and promote moderate-scale, diverse, mixed-use neighborhood with vibrant streets and active ground floor spaces. Buildings are more active and engage with the street at the ground level. Building frontages are transparent and entries are at sidewalk level with frontage types including storefronts and recessed doorways. The streetscape has steady street planting, and buildings set close to the street providing a consistent street wall.

### SITING STANDARDS

|                                              |                                                                                             |
|----------------------------------------------|---------------------------------------------------------------------------------------------|
| Orientation - Principal Frontage             | face a UA street                                                                            |
| Lot Coverage                                 | 90% max                                                                                     |
| <b>FRONTAGE REQUIREMENTS (1st LOT LAYER)</b> |                                                                                             |
| Building Length                              | 50' max.                                                                                    |
|                                              | at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.2c.) |
| Additional Building Length                   | (see also Table 14.2)                                                                       |
| ATTACHED BUILDINGS                           | unlimited run                                                                               |
| Ground Floor Partitions                      | 150' max., 3 modules                                                                        |
| Massing Variation                            | not allowed                                                                                 |
| Structured Parking Exception                 | 150' max.                                                                                   |
| Fenestration, ground floor                   | 60-90% (see BDS) facade area                                                                |

### SETBACKS

|                                 |                                                                                                |
|---------------------------------|------------------------------------------------------------------------------------------------|
| <b>Principal Building</b>       |                                                                                                |
| (a) Front Yard* (1st Lot Layer) | 5'0" max.                                                                                      |
| Setback Applicability           | 75% of total building length must be built within 1st LOT LAYER                                |
| (b) Side Yard**                 | 5' min. - May be reduced to zero provided that the cumulative side yards are not less than 10' |
| (c) Rear Yard                   | 10'0" min.                                                                                     |
| Accessory Building              | 2nd thru 4th LOT LAYERS                                                                        |
| Side Yard                       | 5'0" min.                                                                                      |
| Rear Yard                       | 5'0" min.                                                                                      |

### BUILDING ENTRIES (SEE ALSO BDS)

|                          |                                       |
|--------------------------|---------------------------------------|
| Frequency at frontage    | at least 40'                          |
| <b>Principal Entries</b> |                                       |
| Orientation              | at least 1 facing UA street or corner |
| Elevated Stoop (>1 step) | not allowed                           |

### HEIGHT STANDARDS

|                           |                      |
|---------------------------|----------------------|
| <b>Principal Building</b> |                      |
| Building Height Min.      | 3 stories            |
| Building Height Max.      | 50', up to 4 stories |
| Ground Story Height       | 12'0" min. clear     |
| <b>Accessory Building</b> |                      |
| Building Height Max.      | 25'                  |

### PARKING STANDARDS

|                                                  |                    |
|--------------------------------------------------|--------------------|
| Surface Parking Location                         | 4th LOT LAYER only |
| <b>Garage at frontage (attached or detached)</b> |                    |
| Garage Door Setback                              | 3rd LOT LAYER      |
| Garage Door Opening (max)                        | n/a                |

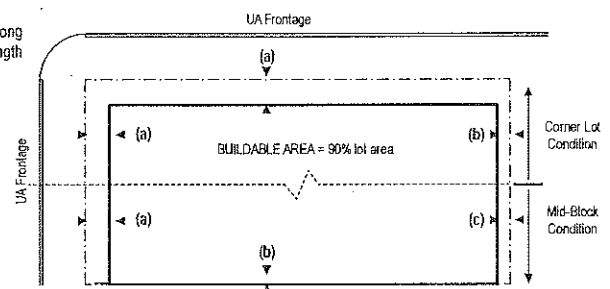
### Notes and Exceptions

\* Up to 10'0" max. front yard setback is allowed if ground plane at frontage is a continuation of the accessible public right-of-way

\*\* Zero lot lines are allowed under certain conditions (see Sec 14.xx.b)3. Setbacks)

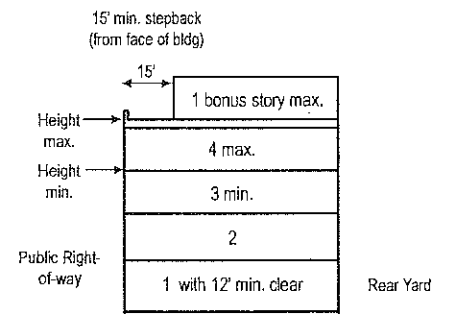
### SITING STANDARDS

- The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
- FACADES shall be built along the frontage lines to the length specified in the table.



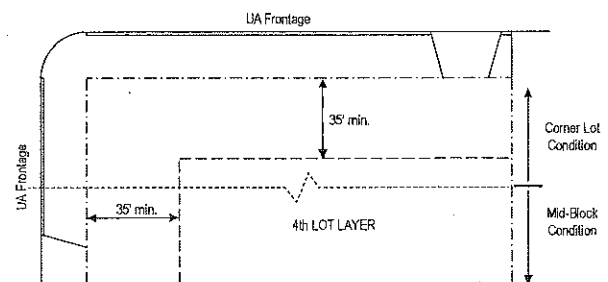
### HEIGHT STANDARDS

- Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
- Number of Stories excludes attics and raised basements.



### PARKING STANDARDS

- Surface parking areas may be provided within the 4th LOT LAYER (shaded area) as shown.



## SEC 14-XX SUBDISTRICT DIMENSIONAL REQUIREMENTS

# CORNER

### Corner Lot:

For corner lots where two different subdistricts intersect at a street corner, the Dimensional Requirements and Building Design Standards of the "dominant" subdistrict shall apply from the 1st through 3rd Lot Layer (35' deep into the lot measured from the dominant lot line) along its associated street frontage or public ways including required mid-block permeability. Otherwise, Dimensional Requirements shall be according to subdistrict onto which the building FACADE faces.

### ORIENTATION

- Corner lots shall be treated as having street frontage on all streets regardless of building orientation
- Principal Building shall designate a Principal Frontage and Secondary Frontage\*
- In the case of a corner lot having UA frontage, the Principal Frontage must face a UA street\*

### SETBACKS

- |                                |                          |
|--------------------------------|--------------------------|
| (a) Front Yard (1st Lot Layer) | according to subdistrict |
| (b) Side Yard                  | according to subdistrict |

Building facades within 10' of a corner are exempt from setback requirements in order to allow special architectural treatments.

### UA INTERSECTS UT

|                                                                          |                              |
|--------------------------------------------------------------------------|------------------------------|
| Dominant Subdistrict (35' deep)                                          | UA                           |
| Orientation - Principal Frontage                                         | UA street                    |
| Dominant Building Design Standards (applicable 35' deep)                 |                              |
| Ground Story Height                                                      | 12' min. clear               |
| Fenestration, ground floor                                               | 60-90% (see BDS) facade area |
| (measured as a percentage of the FACADE that is 2' above sidewalk grade) |                              |

### UA INTERSECTS UN

|                                                                          |                              |
|--------------------------------------------------------------------------|------------------------------|
| Dominant Subdistrict (35' deep)                                          | UA                           |
| Orientation - Principal Frontage                                         | UA street                    |
| Building Length - UN FACADES                                             | 100' max.                    |
| Dominant Building Design Standards (applicable 35' deep)                 |                              |
| Ground Story Height                                                      | 12' min. clear               |
| Fenestration, ground floor                                               | 60-90% (see BDS) facade area |
| (measured as a percentage of the FACADE that is 2' above sidewalk grade) |                              |

### UT INTERSECTS UN

|                                                                                                            |                         |
|------------------------------------------------------------------------------------------------------------|-------------------------|
| Dominant Subdistrict (35' deep)                                                                            | UN                      |
| Orientation - Principal Frontage                                                                           | determined by applicant |
| • Corner lots shall be treated as having street frontage on all streets regardless of building orientation |                         |

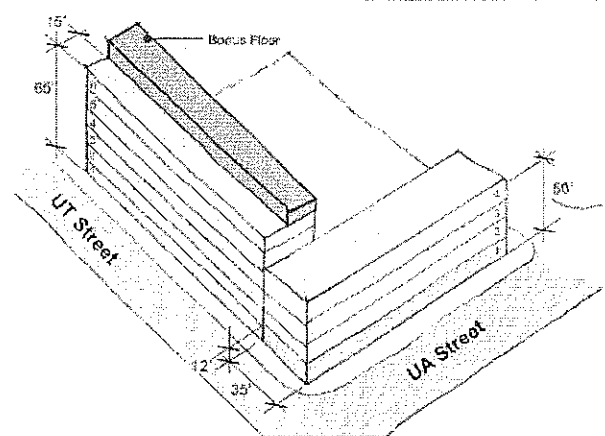
### UN INTERSECTS UN

|                           |          |
|---------------------------|----------|
| Building Length maximums: |          |
| Principal Frontage        | 30' max. |
| Secondary Frontage        | 50' max. |

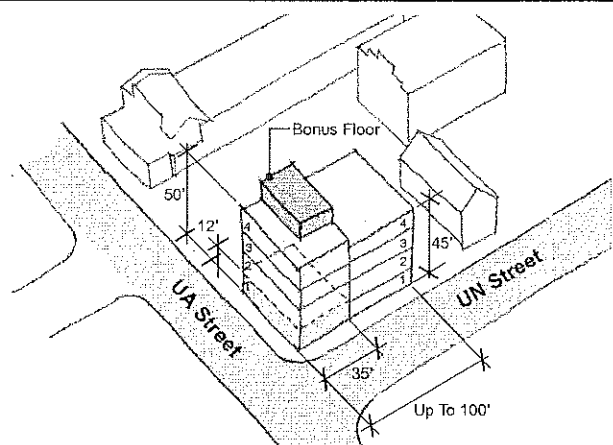
### Notes and Exceptions

- \* Does not have to correspond to legal building address

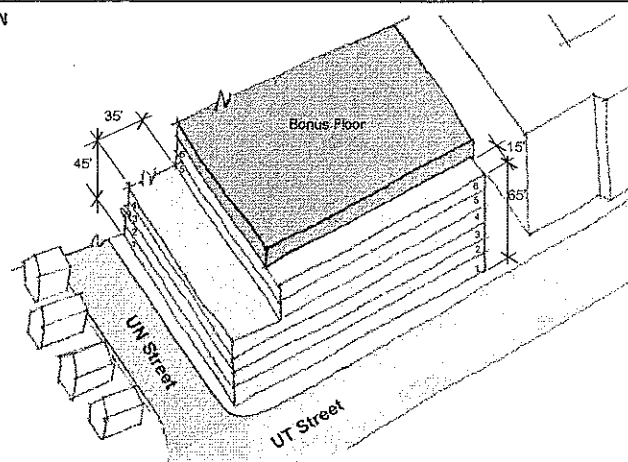
UA INTERSECTS UT  
(example only)



UA INTERSECTS UN  
(example only)

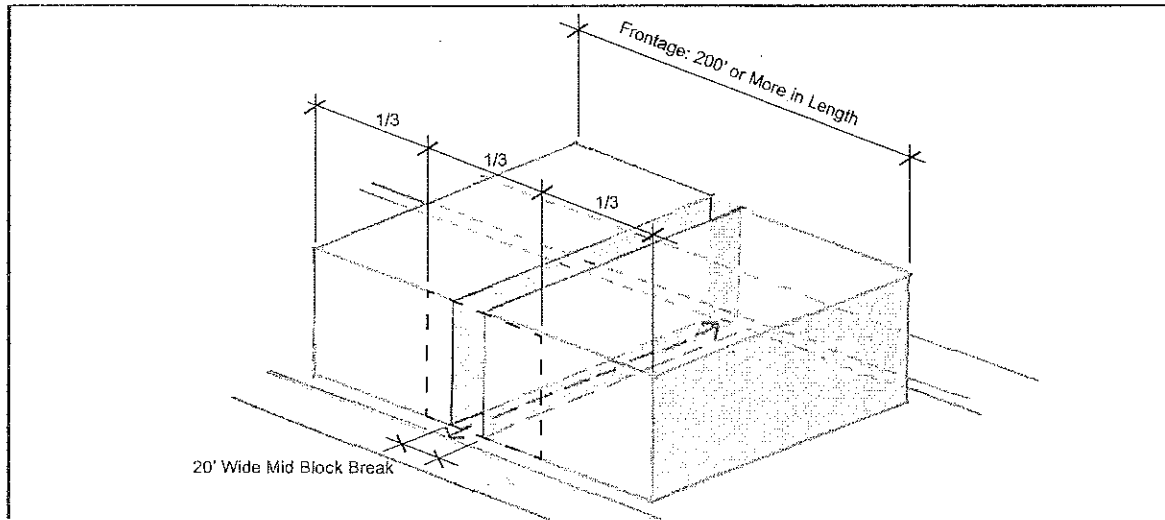


UT INTERSECTS UN  
(example only)

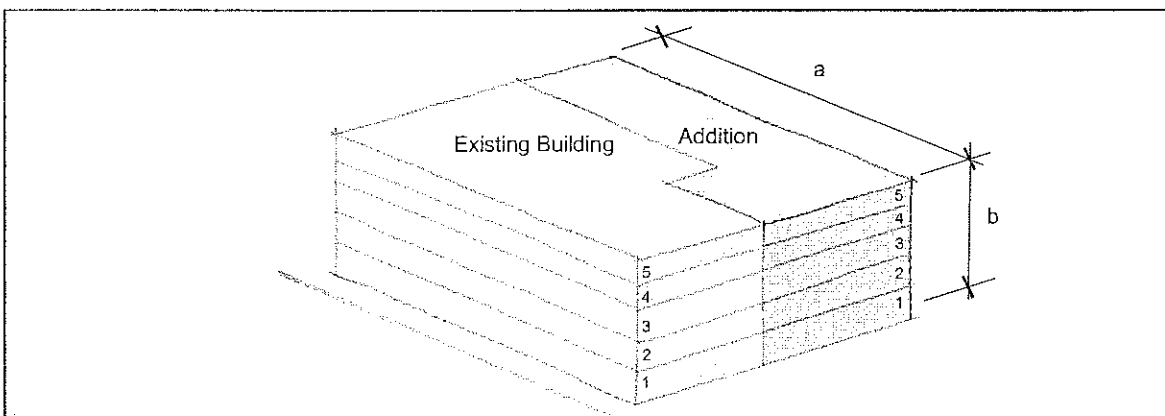


**TABLE 14.2 DIMENSIONAL REQUIREMENTS ILLUSTRATED**

**a. MID-BLOCK PERMEABILITY**

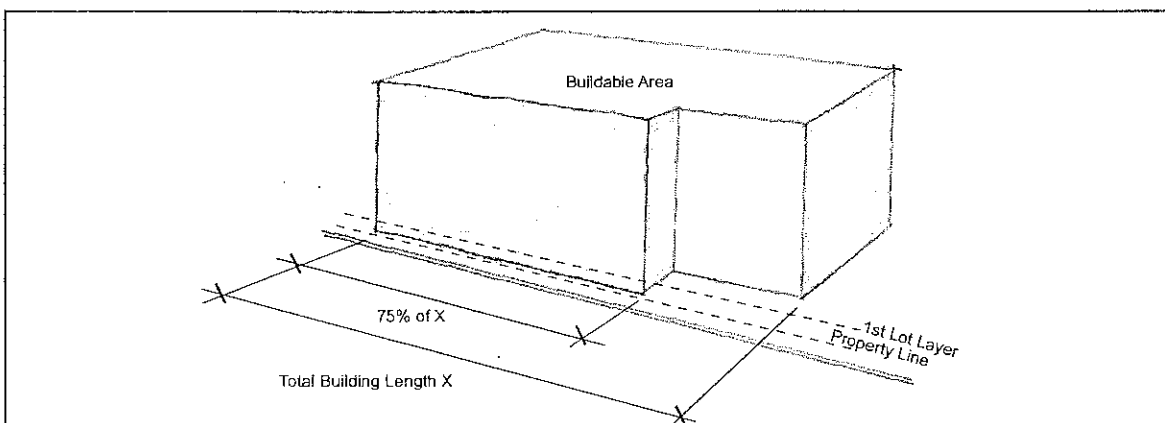


**b. ADDITION**



- a - Addition length may match but not exceed the length of existing building to which it is an addition. All other Subdistrict Dimensional Requirements apply.
- b - Addition height may match existing building in number and height of stories. All other Subdistrict Height Standards apply.

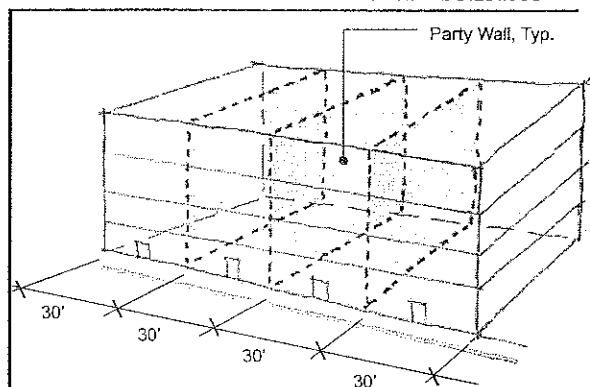
**c. BUILDING LENGTH - 1st LOT LAYER**



At least 75% of the total building length must be within the 1st LOT LAYER.

**TABLE 14.2 DIMENSIONAL REQUIREMENTS ILLUSTRATED**

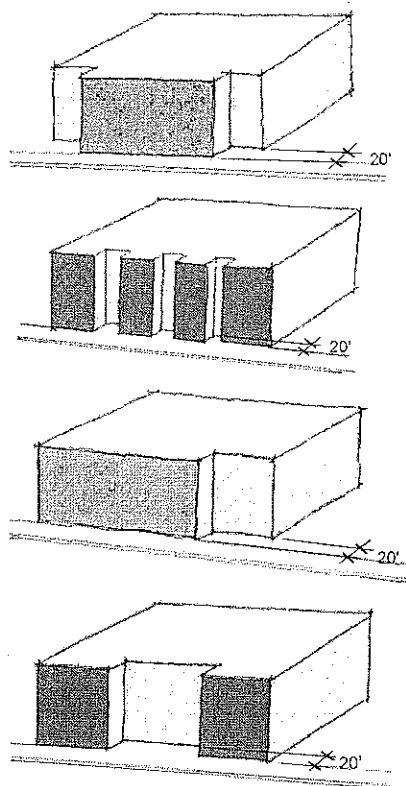
**d. ADDITIONAL BUILDING LENGTH - ATTACHED BUILDINGS**



An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed.

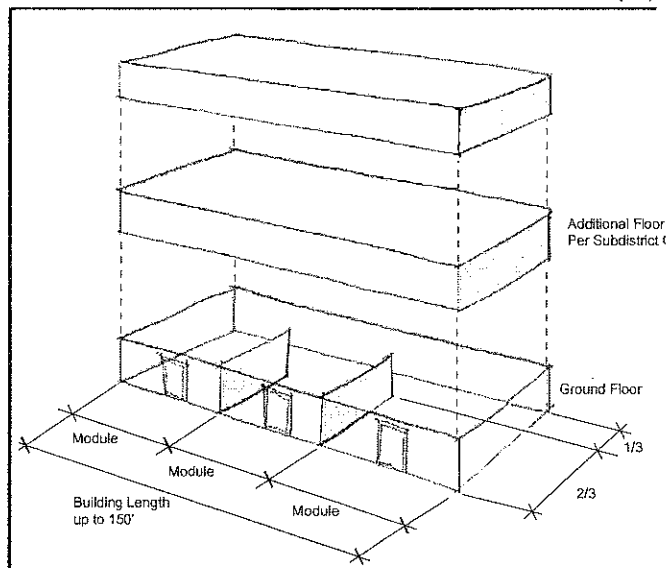
A PARTY WALL condition is required at least every 30' and for the entire height of each building.

**e. ADDITIONAL BUILDING LENGTH - MASSING VARIATION (UT)**



Additional building length is permitted where at least 30% and up to 40% of the total building length is setback to the 3rd LOT LAYER (20').

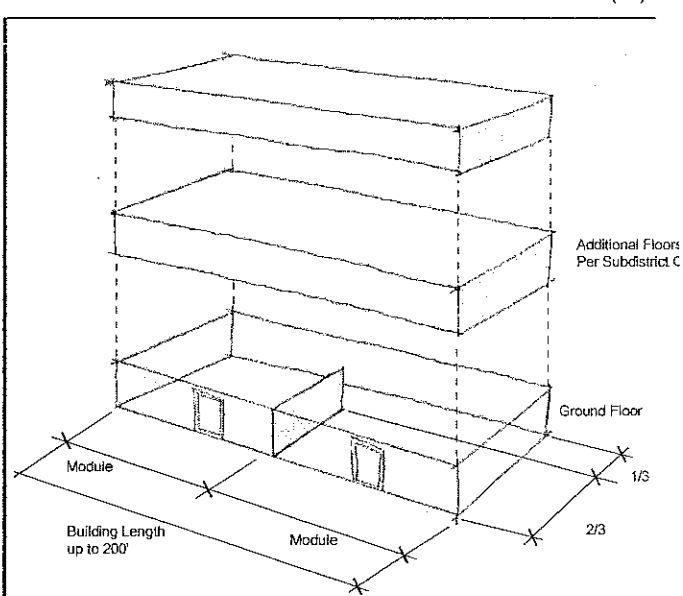
**f.1. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UA)**



Additional Building Length is permitted up to 150' with the provision of a least two Ground Floor Partitions

See General Development Standards and BDS for additional requirements.

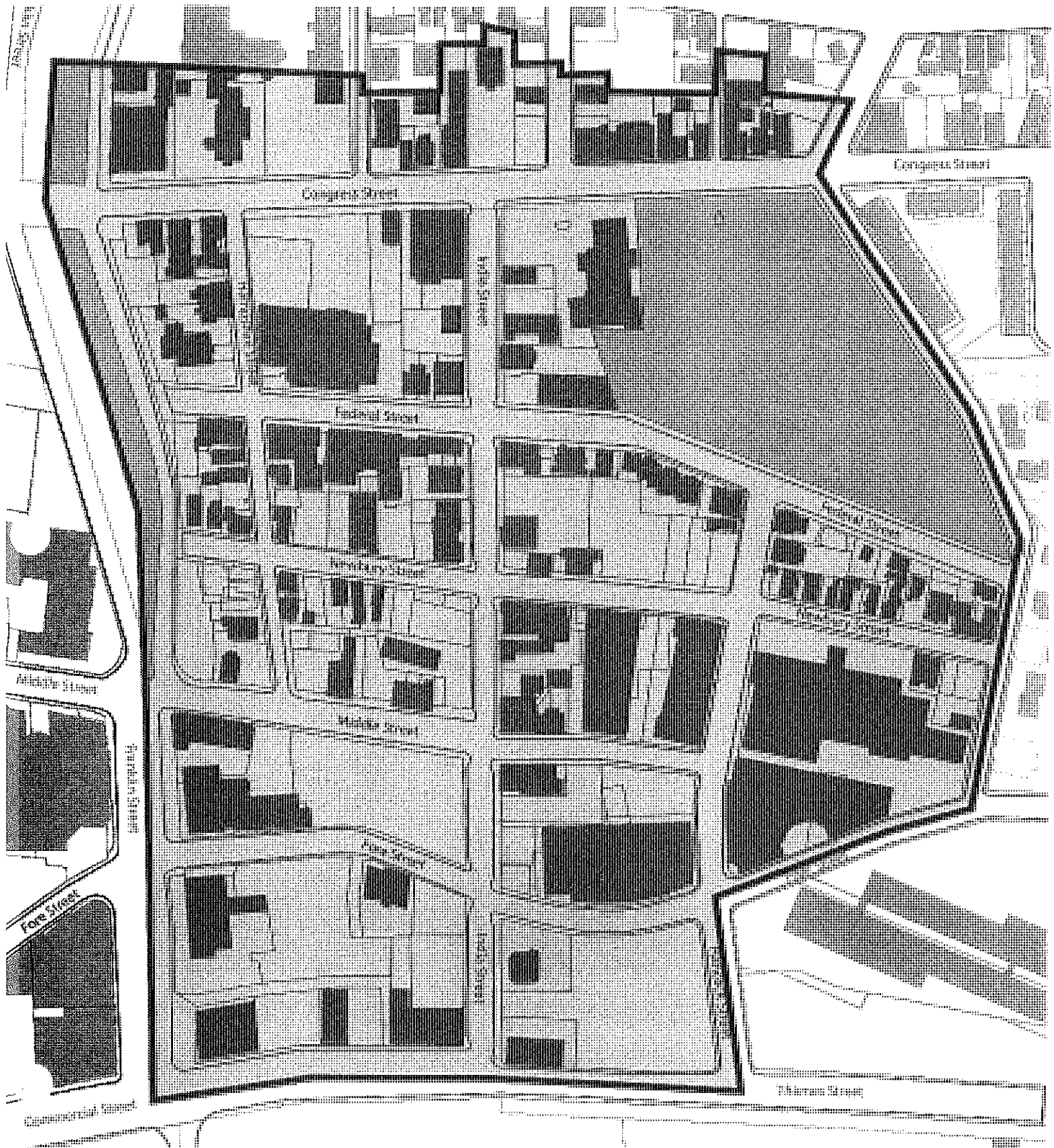
**f.2. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UT)**



Additional Building Length is permitted up to 200' with the provision of at least one Ground Floor Partition.

See General Development Standards and the BDS for additional requirements.

**Proposed Zoning Map Amendment**  
All existing zones would be replaced by the India Street Form-based Code



**Cross reference(s)**--Definitions and rules of construction generally, § 1-2.

**Sec. 14-48. Establishment of zones.**

In order to carry out the provisions of this article, the city is hereby divided into the following classes of zones:

- (a) R-1 Residential zone
- (b) R-2 Residential zone
- (c) R-3 Residential zone
- (d) FH Flexible housing zone
- (e) R-4 Residential zone
- (f) R-5 Residential zone
- (g) R-5A Residential zone
- (h) R-6 Residential zone
- (i) R-7 Residential zone
- (j) IR-1 Island residential zone
- (k) IR-2 Island residential zone
- (l) IR-3 Island residential zone
- (m) Island transfer station overlay zone
- (n) R-P Residence-professional zone
- (o) R-OS Recreation and open space zone
- (p) B-1 and B-1b Neighborhood business zones
- (q) B-2 and B-2b Community business zone
- (r) A-B Airport business zone
- (s) B-3, B-3b and B-3c downtown business zones
- (t) I-B Island business zone

- (u) B-4 Commercial corridor zone
- (u-1) B-5 Urban commercial mixed use zone
- (v) O-P Office park zone
- (w) I-L and I-Lb Industrial zones
- (x) I-M, I-Ma and I-Mb Industrial zones
- (y) I-H and I-Hb Industrial zones
- (z) B-6 Eastern Waterfront Mixed Zone
- (aa) Reserved
- (bb) Waterfront central zone
- (cc) Waterfront port development zone
- (dd) Reserved
- (ee) R-P Resource protection zone
- (ff) Helistop overlay zone
- (gg) Shoreland zone
- (hh) Flood plain
- (ii) S-P Stream protection zone
- (jj) IS-FBC India Street Form-based Code zone.

(Code 1968, § 602.1.B; Ord. No. 499-74, § 1, 8-19-74; Ord. No. 536-74, § 1, 8-19-74; Ord. No. 334-76, § 1, 7-7-76; Ord. No. 15-92, § 2, 6-15-92; Ord. No. 101-93, 9-20-93; Ord. No. 164-97, § 2, 1-6-97; Ord. No. 156-01, §1, 1-17-01; Ord. 184-14/15, 6-1-2015)

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\*Editor's note--Although not expressly amended by the ordinances enacted subsequent to 1976 which created the several classes of zones, § 14-48 has been expanded to encompass all zoning classifications in the city at the discretion of the editor in consultation with the corporation counsel.  
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**Sec. 14-49. Zoning maps.**

state or federal law. "Disturbed area" does not include routine maintenance, but does include re-development and new impervious areas.

- c. The construction of any temporary or permanent parking area, paving of existing unpaved surface parking areas between 1,000 and 7,500 square feet, or creation of other impervious surface areas between 1,000 and 7,500 square feet.
- d. The rehabilitation or reconstruction, but not new construction, of piers, docks, wharves, bridges, retaining walls, and other structures located within the shoreland zone.
- e. A site alteration in which vehicle access is proposed from more than one (1) street;

(e) *Level II Site Plan Review.* Development meeting the criteria listed below will undergo Level II Site Plan Review as follows:

- 1. The construction of any new structures having a total floor area of less than ten thousand (10,000) square feet in all zones except in the Industrial zones and the IS-FBC zone. In any Industrial zone, the construction of new structures having a total floor area of less than twenty thousand (20,000) square feet. In the IS-FBC zone, the construction of new structures having a total floor area of less than fifty thousand (50,000) square feet;
- 2. The construction of any new temporary or permanent parking area, paving of existing unpaved surface parking areas in excess of 7,500 square feet and serving less than 75 vehicles, or creation of other impervious surface area greater than 7,500 square feet;
- 3. The construction of any building addition(s) having a total floor area of less than ten thousand (10,000) square feet cumulatively within a three-year period in all zones except in the Industrial zones and the IS-FBC zone. In any Industrial Zone, the construction of building addition(s) having a total floor area of less than twenty thousand (20,000) square feet. In the IS-FBC zone, the construction of building addition(s) having a total floor area of less than fifty thousand (50,000) square feet.

(f) *Level III Site Plan Review.* Development meeting the criteria listed below will undergo Level III Site Plan Review as follows:

1. The construction of any new structures having a total floor area of ten thousand (10,000) square feet or more in all zones except the Industrial zones and IS-FBC zone. In any Industrial zone, the construction of new structures having a total floor area of twenty thousand (20,000) square feet or more. In the IS-FBC zone, the construction of new structures having a total floor area of fifty thousand (50,000) square feet or more;
2. The construction of any new temporary or permanent surface parking area(s) or paving of existing unpaved surface areas for more than seventy-five (75) vehicles except in the case of temporary parking;
3. The construction of any building addition(s), cumulatively having ~~either~~ a total floor area of ten thousand (10,000) square feet or more within any three-year period in all zones except in the Industrial zones and IS-FBC zone. In Industrial zones, for the construction of building addition(s) having a total floor area of twenty thousand (20,000) square feet or more. In the IS-FBC zone, for the construction of building addition(s) either having a total floor area of fifty thousand (50,000) square feet or more or having a total floor area exceeding that of the existing building to which it is an addition.
4. A change in the use of a total floor area of twenty thousand (20,000) square feet or more in any existing building cumulatively within any three-year period in all zones,
5. Multiple-family development except for in the IS-FBC zone;
6. The addition of one or two dwelling units to a building, if the additional dwelling unit or units requires subdivision review under Maine State Statutes and Portland's Subdivision Ordinance;
7. The construction of any new major or minor auto business in the B-2 or B-5 zone, or the construction of any new major or minor auto business with a structure greater than ten thousand (10,000) square

(j) *Waterfront Zone parking requirements; Eastern Waterfront Port Zone; Waterfront Central Zone; Waterfront Port Development Zone; Waterfront Special Use Zone:* Off-street parking is required at fifty (50%) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.

(k) *Residential development on the peninsula and in the R-6 and R-6A Zones, including new construction, alterations that increase the number of units, and changes of use:*

1. Except as provided below, there shall be one (1) space per unit
2. The required parking for multi-unit residential buildings may be partially met through provision of shared-use vehicles, which are vehicles owned and maintained by the owner/manager of the building and available for use on a fee basis to the residents of the building. One shared use vehicle shall be deemed to satisfy eight (8) required car spaces, but in no case shall more than 50% of the parking requirement be satisfied by shared vehicle use.
3. The planning board may establish a parking requirement that is less than the normally required number of spaces upon a finding of unique conditions that result in a lesser parking demand, such as housing for persons who cannot drive, housing that participates in a travel demand management program, availability of transit, or housing which includes permanent restrictions on automobile usage, and which is permanently restricted from utilizing resident on-street parking stickers.
4. No parking shall be required for the first three units in the R-6 Residential Zone or the IS-FBC Zone.
5. For alterations of buildings containing three or more dwelling units in the R-6 zone no parking shall be required for the creation of one additional dwelling unit above existing conditions

- (c) The Planning Board may be substituted for the Board of Appeals only where an applicant is otherwise before the Planning Board for site plan approval.

Whenever any exception to the parking requirements under this section has been finally denied on its merits by either the Zoning Board of Appeals or the Planning Board, a second request for an exception seeking essentially the same relief, whether or not in the same form or on the same theory, shall not be brought before either body within one (1) year of such denial unless, in the opinion of the board before which it was initially brought, substantial new evidence is available or a mistake of law or fact significantly affected the prior denial.

(Code 1968, § 602.14.M; Ord. No. 541-84, 5-7-84; Ord. No. 94-99, 11-15-99)

**Sec. 14-345. Peninsula fee-in-lieu of parking.**

Any major or minor development subject to site plan review located in a non-residential zone or the IS-FBC zone on the Portland Peninsula shall either provide the required parking or pay a fee according to the provisions of (a) and (b) below.

- (a) Provide the number of off-street parking spaces according to the provisions of section 14-332 (uses requiring off-street parking) and section 14-334 (off-site parking) of this division; or,
- (b) Pay a fee-in-lieu of parking of not less than \$5,000.00 as adjusted annually per (c) below, per space not provided. Fees shall be deposited into the Sustainable Transportation Fund, as established in section 14-346 of this division.
- (c) The value of the fee shall be adjusted annually according to the Engineer's News Record construction index as published on January 1<sup>st</sup> of the current calendar year. The fee adjustment shall be calculated by taking the index amount published on January 1<sup>st</sup>, of the current year, divided by the index amount published on January 1, 2010 (8660), multiplied by (the fee amount from (b) above). The base fee, the adjustment index, or the calculation method may be otherwise amended by action of the city council from time to time.
- (d) The fee shall be paid on or before the date upon which

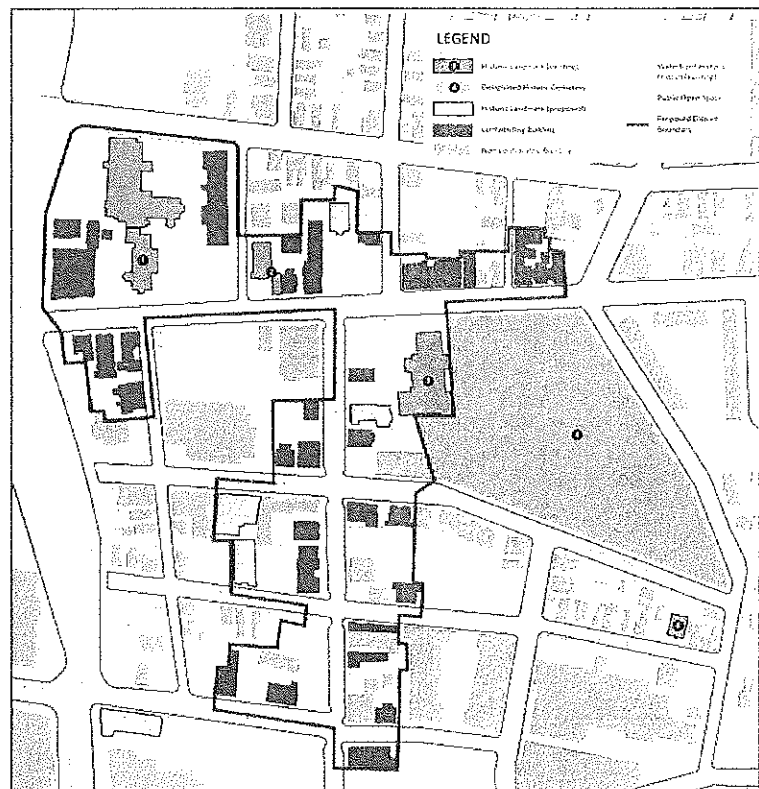
# India Street Historic District Designation Report



## General Description of the District

The India Street neighborhood as we know it today encompasses a 19-block area, extending west to east from Franklin Arterial to Washington Avenue/Mountfort Street and north to south from Congress Street to Commercial Street. Within this larger neighborhood boundary, the proposed **India Street Historic District** encompasses portions of 10 blocks and is focused on the major corridors (Congress, India and Middle) that define the historic core of the neighborhood and around which many of the neighborhood's most significant institutional, commercial, religious and residential structures are concentrated.

Within or just outside the district boundaries are located five previously-designated landmark structures or sites. These include the Cathedral of the Immaculate Conception, St. Paul's Church and Parish Hall, North School, the Abyssinian Meeting House and Eastern Cemetery. Four additional landmarks are proposed for designation in conjunction with the district designation. These include the former Etz Chaim Synagogue (now Maine Jewish Heritage Museum), the former India Street Fire Station, St. Peter's Catholic Church, the former Shaarey Tphiloh Synagogue, and the Abraham S. Levey Commercial Block. These structures are recommended for landmark status based on their significance in the development of the neighborhood, their architectural significance and/or their position at a key gateway into the neighborhood.



See full-sized map of district attached to this report.

In addition to these individual landmarks, the district includes approximately 36 contributing historic structures and 13 noncontributing structures, as well as several surface parking lots or undeveloped parcels. Within the district are exhibited a wide variety of building types—institutional, religious, commercial, and residential—reflecting the area's history as a largely self-contained neighborhood settled early on by African Americans and later by successive waves of immigrant groups (including

Irish, Italian, Eastern European and Scandinavian) who established their own places of worship, commercial enterprises and services to support the needs of their community.

Although the district includes a few scattered buildings that predate the Great Fire of 1866, most of the existing historic resources were built between 1866 and 1920. Existing historic structures are mostly brick, with the exception of a few wood frame structures. Predominant building styles include Italianate and Second Empire. Also represented in the district are several early 20<sup>th</sup> century commercial blocks and multi-family triple deckers which are typical of their construction era.

## **History of the India Street Neighborhood**

The history of the India Street neighborhood is as old as the history of Portland itself, as it was the site of the first European settlement on the Portland peninsula. Nothing, however, exists from this first settlement or from other early attempts at settlement. The first settlement was destroyed during conflicts with Native Americans in the 17<sup>th</sup> century, rebuilt and then destroyed again in the late 18<sup>th</sup> century by the British. Even the waterfront no longer resembles its early configuration, having been filled in during the mid-nineteenth century to accommodate maritime and railroad development.

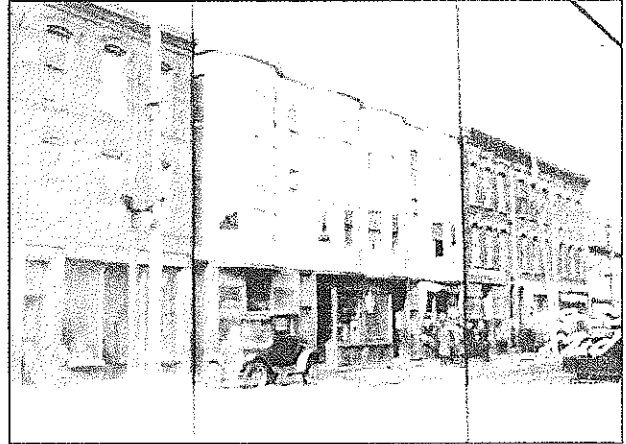
Notwithstanding the loss of structures and sites associated with the neighborhood's earliest periods of development (with the exception of Eastern Cemetery), the remaining building stock provides a compelling story of the neighborhood during the nineteenth and twentieth centuries—illustrating not only the wide range of activities that were supported in this area but also the unique resident mix that populated the neighborhood and gave it its rich, ethnically diverse character.

Life in the India Street neighborhood during the early 19<sup>th</sup> century revolved largely around waterfront activities. A significant number of the laborers and mariners were free black men who prospered in Portland's maritime economy, settled in the India Street neighborhood, and built their own homes. In 1828 the community built their own church, the Abyssinian Meetinghouse on Newbury Street.

As the African American population prospered and moved out of the neighborhood, they were replaced by Irish immigrants who worked on the waterfront and in the construction of the Atlantic and St. Lawrence Railroad. The Great Fire of 1866 destroyed nearly all the neighborhood once again. Only a few brick dwellings and a small number of resources at the eastern end of Federal and Newbury Streets were spared. Rebuilding was swift, however. Nearly sixty percent of the extant historic resources in the neighborhood were built from 1866 to 1890. Architects from all over the region moved to Portland to help in the rebuilding efforts. Most of the buildings constructed immediately after the fire were built of brick in the predominate styles of the period, Italianate and Second Empire. Almost all the residential buildings built after the fire were multi-family reflecting the increasing need

for housing the City's growing population. The City's increase in population was significantly impacted by European immigration.

Following the Irish were immigrants from Eastern Europe and Italy. At the turn-of-the-20<sup>th</sup> century 4,000 immigrants a year were passing through the port city. Many settled in the India Street neighborhood, drawn by its close proximity to jobs on the railroad, on the waterfront, or at nearby industrial complexes, like the Portland Company and Thomas Laughlin Company. The cultural and economic impact of each of these immigrant communities on the India Street neighborhood can be found in the variety of the religious buildings that are the area's key landmarks and in the many family businesses established in the neighborhood, some that continue to the present day.



Reflecting the neighborhood's multicultural nature and tradition of living above one's place of business, this 3-family building on Middle Street with store on the ground floor was owned by Hyman Finklestein in 1924. The flanking brick buildings remain.

In the mid twentieth century abutting neighborhoods to the east and west of India Street were targeted for urban renewal. Demolition for the construction of Franklin Arterial and the Munjoy South development shrunk the historic boundaries of the India Street neighborhood. Although there have been physical changes in recent decades, many of the immigrant families and their family businesses continue to have a strong presence in the neighborhood.

For a more detailed history of the neighborhood, please see *A History of Portland's India Street Neighborhood*, researched and written by ttl-architects for the City of Portland. Historical and architectural information about individual structures within the district is provided in an historic resources inventory prepared by ttl-architects.

## Significance of the India Street Neighborhood

### Historical and Cultural Significance

The India Street neighborhood is significant for its association with the City's nineteenth century free African American population. Two thirds of Portland's African American citizens in the first half of the nineteenth century lived in the India Street neighborhood. The center of their community was the

Abyssinian Church built in 1828. The church, listed on the National Register of Historic Places in 2006, served as the community's religious center, meeting hall, and school. Many of the homes and businesses associated with this community were destroyed in the Great Fire of 1866; however a small group of homes on or near Newbury Street and the church survived the fire. Although the Abyssinian Meeting House is located outside the proposed district boundaries (primarily because of its physical separation from the area of concentration of extant historic structures), it is individually designated as a local landmark and is strongly associated with the history, development and significance of the neighborhood.

The neighborhood is also significant for its strong role in Portland's immigration history. First settled by European immigrants and later joined by a by a strong concentration of free black citizens, these groups were followed by large numbers of Irish, Italian, and Eastern European Jewish immigrants. It was also home to immigrants from Canada, Scotland, Finland, Sweden and Portugal, although in smaller numbers. Its close proximity to the waterfront, the railroad, industrial centers like the Portland Company, and to the commercial center of the city that developed post-Fire along Middle Street provided these newcomers easy access to jobs.

The neighborhood's sites, structures, and areas express the significance of 19<sup>th</sup> and 20<sup>th</sup> century immigrants on the cultural history of Portland. Multi-family dwellings, like the neighborhood's many duplexes, triple deckers, and apartment buildings, built following the fire and into the early twentieth century accommodated large multi-generational families, making the area one of the city's densest urban neighborhoods. While many of these immigrant families lived in modest homes within the neighborhood, their influence is present in large landmark religious structures like St. Paul's Church and Rectory, the Abyssinian Meeting House, Shaarey Tphiloh, St. Peter's Catholic Church, and the Cathedral of Immaculate Conception.

While the neighborhood was home to nationally notable persons like Henry Wadsworth Longfellow and General Samuel C. Fessenden and locally notable persons like Ruben Ruby, Abraham W. Niles, and James McGlinchy, it was also the home and workplace of numerous members of the city's various immigrant communities. These immigrants have significantly shaped the culture, history, and development of Portland in a myriad of ways. Some through their public service, like City Councilor Richard Duddy and his son City Councilor Edward Duddy, or through their community engagement, like Dr. Elias Caplan, a WWI medical corps veteran and the city's second Jewish physician, who along with his wife, was active in local and statewide community organizations. Many of the immigrants became well known and prominent businesspeople. Giovanni Amato settled in Portland circa 1902 and created the iconic sandwich known as the Italian in his bakery at the corner of Newbury and India Streets. At their home on Newbury Street, Vincenzo and Maria Realì started the Village Café, which was greatly

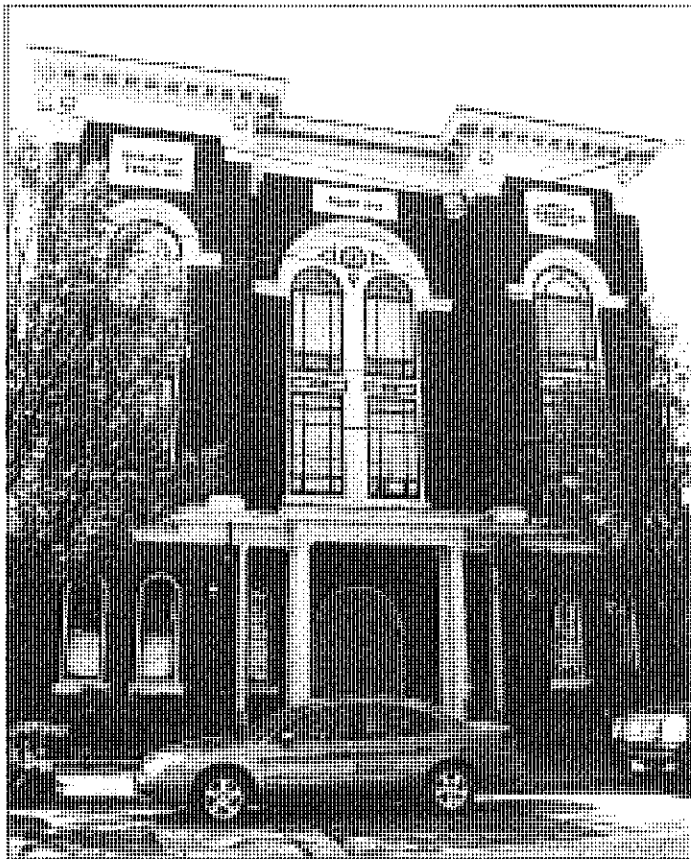
expanded and operated by their son and grandson. Jacob Levinsky first established his military surplus store on Washington Avenue before moving to India and Congress Street in 1920.

### Architectural Significance

The proposed district possesses a significant concentration of buildings and structures that are united aesthetically. The neighborhood contains many examples, both high style and vernacular, of the Italianate and Second Empire styles. Both styles were popular when a large portion of the neighborhood was rebuilt following the Great Fire of 1866. Almost sixty percent of the 117 historic resources surveyed in the neighborhood were built from 1866 to 1890. Like the adjacent Old Port area, rebuilt during the same period, the predominance of these styles creates a distinctive architectural identity for the neighborhood.

The remaining resources in the neighborhood reflect a variety of styles prevalent in the nineteenth and twentieth centuries. Other styles present in the neighborhood include Federal (Joseph Barbour House,

c 1846, 123-125 Newbury Street), Greek Revival (Woodbury & Dorcas Poole Hatch House, 1867-1873, 32 Hampshire Street), Gothic (St. Paul's Church and Rectory, 1869, 279 Congress Street), Renaissance Revival (St. Peter's Catholic Church, 1929, 82 Federal Street), and Beaux Arts (Shaarey Tphiloh Synagogue, 1904, 145-147 Newbury Street).



The India Street neighborhood boasts an unusually high number of landmark buildings, many of which are religious structures built by various immigrant groups.

Several examples of four-bay brick double houses are present in the district. This multi-family building type, with paired central entrances, is present in the Greek Revival (25-27 Middle Street), Federal (123-125 Newbury Street), Italianate (45-47 Hancock Street), and Second Empire Styles (98-100 India Street).

Following the Great Fire of 1866 many architects from around the region moved to Portland to work in the city. They worked in conjunction with local

architects and builders to rebuild the city as quickly as possible following the devastating fire. Classically trained in the Beaux Arts method, most of the architects were facile at creating beautiful and well-proportioned buildings in the variety of styles popular in the middle of the nineteenth century.

Levi Newcomb was the architect for the 1867 North School as well as the 1867 First Baptist Church at 353 Congress Street. Construction of the Franklin Street arterial effectively severed the church from the India Street neighborhood it once served. His firm, Levi Newcomb & Son, was located in Boston, but after the Great Fire of 1866 he relocated his firm to Portland. The firm returned to Boston in 1868.

George Browne Pelham was an English born architect who immigrated to Canada before moving to the United States. He, like many other architects of the period didn't stay in Portland long, as he opened an architectural office in New York City in 1875. He designed the James R Lunt-Harriet W Weatherbee Block (1868) at 98-100 India Street and St. Paul's Church and Rectory (1869) at 279 Congress Street.

George M. Harding was a prominent Portland architect who designed the India Street Fire Station in 1867. (He was also responsible for the design of the Rackleff Block at 127-133 Middle Street (1867), the Thompson Block at 117-125 Middle Street (1867), the Woodman Building at 133-141 Middle Street (1867), the Boyd Block at 178 Middle Street (1868), and his own residence at 6 Deering Street.)

The Shaarey Tphiloh Synagogue of 1904 on Newbury Street and the Workingmen's Club Building of 1904 at the southern end of neighborhood on Commercial Street were designed by John James Cunningham. Cunningham had his start in Portland, working in the office of noted Portland architect Francis Fassett from 1892-1896. He left Portland to work in Boston, came back to Portland at the turn of the century and in 1905 established with his father and brother FW Cunningham & Sons, an architecture and construction firm. The firm was also responsible for a number of other Portland landmarks, including the Cumberland County Courthouse, the Federal Courthouse, the Fidelity Building, Mercy Hospital, Union Station, and the Nathan Clifford School.

### **Integrity of the District's Historic Structures**

The historic character and integrity of the larger India Street neighborhood has been somewhat eroded in recent decades by demolition, introduction of large surface parking lots and incompatible development. This has had an especially marked impact on the neighborhood's interior blocks that abut the main thoroughfares. The area identified for historic district designation, however, which encompasses key stretches of the neighborhood's major vehicular corridors (Congress Street, the upper portion of India Street and Middle Street), has experienced less of this erosion and still exhibits a strong sense of the neighborhood's 19<sup>th</sup> and early 20<sup>th</sup> century character.

The district includes a relatively high percentage of local landmark structures that are not only historically and architecturally noteworthy, but which have also been well preserved. In addition, there are numerous other historic institutional, commercial, mixed use, and multi-family residential structures that, while not landmarks in and of themselves, nevertheless retain a high level of architectural integrity and lend a strong visual cohesiveness to this portion of larger neighborhood.

It is worth noting here that several blocks within the interior of the neighborhood—outside the boundaries of the proposed historic district—still exhibit a number of historic single-family and multi-family residential structures. Although a number of the buildings, particularly the wood-framed structures, have been altered by replacement windows and/or siding, most retain their original form, massing and scale and, in several cases, key architectural details such as front door surrounds and hoods. Although not architecturally noteworthy, these buildings reflect the nature of the area's population and represent the modest vernacular structures that made up much of the neighborhood's building stock during most of its history. Where small concentrations of these structures remain—on lower Hampshire Street and on Newbury Street, west of the Abyssinian--their similarity of scale and massing provides a measure of architectural cohesiveness and historic character to their respective blocks. Although the decision was ultimately made not to include these blocks within the final proposed district boundary due to the spotty nature of most of these blocks as well as other considerations, the preservation and stewardship of the area's historic vernacular housing stock is strongly encouraged.

### **Visual Character of the India Street Historic District**

Although the district encompasses a wide variety of building types, a number of common visual characteristics serve to unify the district. A preponderance of brick buildings and an architectural vocabulary shared by the Italianate and Second Empire styles popular during the second half of the 19<sup>th</sup> century provide a level of visual consistency. Also, the substantial, blocky massing of the district's many duplexes provides a strong unifying form to the area's building stock. With few exceptions, the buildings fill their respective lots and sit directly at the sidewalk line. This is



The neighborhood's large number of brick Italianate and Second Empire duplexes, with their simple blocky massing, serves as a unifying visual characteristic of the district

especially true on India Street. Building heights on India and Middle are generally consistent as well; most of the historic structures are 2 ½ to 3 stories tall.

Within the district, the Congress Street corridor exhibits the greatest diversity of scale and form. Relatively massive buildings such as North School are located across the street from long, one-story commercial blocks. The stone façade of St. Paul's Church, the matchboard wood exterior of St. Paul's Rectory and the striking clapboard Italianate double house at the corner of Congress and Hampshire provide a level of architectural contrast and relief to the otherwise brick streetwall. Also, the otherwise consistent building setback (or lack thereof) is broken at several points along the street: at the Cathedral complex, Maine Jewish Heritage Museum and North School. Notwithstanding the more architecturally varied nature of Congress Street, its strong concentration of 19<sup>th</sup> century and early 20<sup>th</sup> century structures clearly communicates the area's rich history. (The one notable exception within this historic fabric is the large 1971 shopping plaza on the south side of the street between Hampshire and India (which is not included within the district boundaries).

### **Classification of Individual Structures within District Boundary**

Please see the India Street Historic Resources Survey for an architectural description and history of each structure within the district.

| <b>Street</b>          | <b>Original Building Name or Use</b>       | <b>Date</b> | <b>Classification</b> |
|------------------------|--------------------------------------------|-------------|-----------------------|
| <b>Congress Street</b> |                                            |             |                       |
| 223 Congress           | James O'Brien's Shoe Store & Apt. Building | ca. 1903    | Contributing          |
| 225-227 Congress       | Duddy Family Grocery Store & Dwelling      | ca. 1870    | Contributing          |
| 229-231 Congress       | Duddy & McPhee Store & Apts.               | ca. 1914    | Contributing          |
| 235 Congress           | Daniel Lucy Watch Store & Apt. House       | ca. 1881    | Noncontributing       |
| 239 Congress           | E. Thomas Apts & Store                     | ca. 1875    | Noncontributing       |
| 241 Congress           | Edward Murphy Store & Apts.                | 1888        | Contributing          |
| 243-247 Congress       | Edward Murphy Block                        | 1923 & 1924 | Contributing          |
| 248 Congress           | North Street School                        | 1867        | Landmark              |
| 249 Congress           | Farris Bros. Dry Goods Store               | ca. 1912    | Contributing          |

|                                 |                                                             |            |                             |
|---------------------------------|-------------------------------------------------------------|------------|-----------------------------|
| 251 Congress                    | Bakery, Cleansers & Dyers                                   | ca. 1935   | Contributing                |
| 267 Congress                    | Etz Chaim Synagogue                                         | 1921       | Landmark                    |
| 272 Congress                    | MMC Family Practice Center                                  | 1999       | Noncontributing             |
| 273 Congress                    | John Swett House and Store                                  | 1865, 1923 | Contributing                |
| 277 Congress                    | James Cunningham House                                      | ca. 1875   | Contributing                |
| 279 Congress                    | St. Paul's Church & Rectory                                 | 1869       | Landmark                    |
| 281 Congress                    | James Cunningham Carriage House                             | ca. 1900   | Contributing                |
| 284 Congress                    | Catir Apartments                                            | 1928       | Noncontributing             |
| 289 Congress<br>(172-196 Cumb.) | Cathedral of the Immaculate Conception<br>& Bishops House   | 1869       | Landmark                    |
| 312 Congress                    | Bristol Apartment Building                                  | ca. 1910   | Contributing                |
| 290 Congress                    | Congress Plaza                                              | 1971       | Noncontributing             |
| 306 Congress                    | Captain Charles Chase House                                 | 1867       | Contributing                |
| 316 Congress                    | George S. Swasey House                                      | ca. 1867   | Contributing                |
| 316a Congress                   | Dr. Elias Caplan Office Building                            | ca. 1914   | Contributing                |
| 317 Congress                    | Guild Hall, Cathedral of the Imm. Con.                      | 1923       | Contributing                |
| <b>Federal Street</b>           |                                                             |            |                             |
| 56 Federal                      | Double triple-decker                                        | 1906-07    | Contributing                |
| 63 Federal                      | Lewis Garage                                                | 1927       | Noncontributing             |
| 69-71 Federal                   | John Gulliver Block                                         | 1868       | Contributing                |
| 73-75 Federal                   | Horatio Quincy Block                                        | 1867       | Contributing                |
| 68-76 Federal                   | St. Peter's Catholic Church<br>St. Peter's ancillary bldgs. | 1929       | Landmark<br>Noncontributing |

**Hampshire Street**

|                 |                                   |          |              |
|-----------------|-----------------------------------|----------|--------------|
| 60-62 Hampshire | John Barbour & Jane Staples Block | 1867     | Contributing |
| 68 Hampshire    | J. Davis House                    | ca. 1867 | Contributing |

**India Street**

|              |                                       |          |                 |
|--------------|---------------------------------------|----------|-----------------|
| 45 India     | Cartonio's Store                      | ca. 1930 | Contributing    |
| 47 India     | Commercial Fruit Building             | 1968     | Noncontributing |
| 50 India     | Jenny Mfg. Co. Service Station        | ca. 1938 | Noncontributing |
| 55 India     | Commercial Structure                  | 1968     | Noncontributing |
| 61 India     | Larrabee House & Stable               | 1866-67  | Contributing    |
| 65 India     | Bowdoin College Edw. Mason Dispensary | 1912     | Noncontributing |
| 67 India     | Giovanni Amato's Bakery               | 1922     | Contributing    |
| 71 India     | Amato's                               | 2000     | Noncontributing |
| 72-74 India  | Peter Tabachnik Grocery Store         | ca. 1915 | Contributing    |
| 76 India     | Mary Damery House                     | 1884     | Contributing    |
| 78 India     | Franklin Simonds Block                | 1883-84  | Contributing    |
| 85-87 India  | Simonds Dye House                     | 1868     | Contributing    |
| 95 India     | Franklin Symonds Block                | 1880     | Contributing    |
| 97 India     | India Street Fire Station             | 1867     | Landmark        |
| 98-100 India | James R. Lunt-Harriet Wetherbee Block | 1868     | Contributing    |
| 105 India    | Patrick Feeney House                  | ca. 1874 | Contributing    |

**Locust Street**

|             |                  |      |              |
|-------------|------------------|------|--------------|
| 2-26 Locust | Cathedral School | 1927 | Contributing |
|-------------|------------------|------|--------------|

**Middle Street**

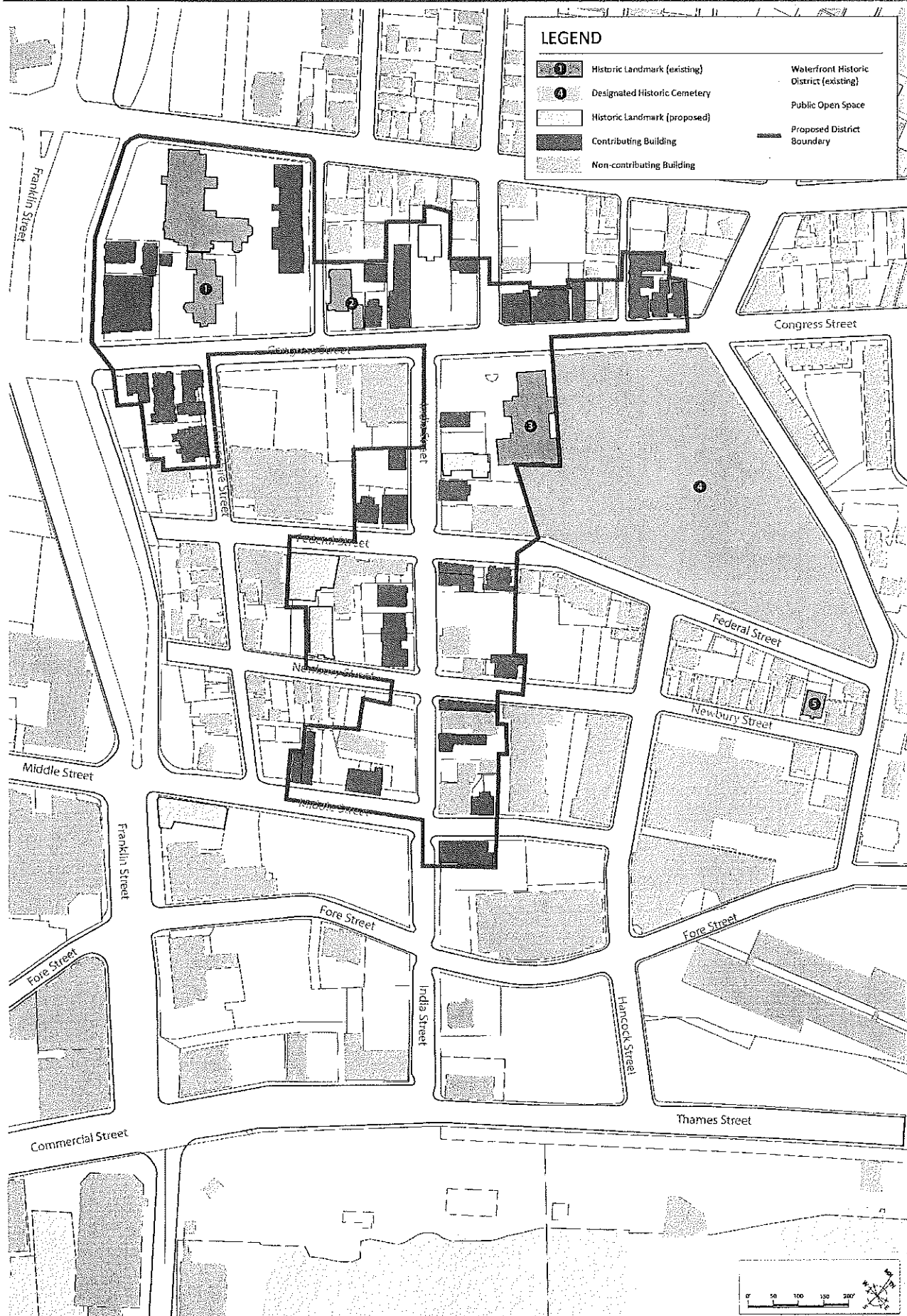
|              |                                   |         |                                    |
|--------------|-----------------------------------|---------|------------------------------------|
| 25-27 Middle | George Jewett Block               | 1856-58 | Contributing                       |
| 39-37 Middle | James McGlinchy Block             | 1868    | Contributing                       |
| 59 Middle    | Abrams Block                      | 1867    | Contributing                       |
| 78-88 Middle | Abraham S. Levey Commercial Block | 1922    | Landmark<br>(outside distr. boun.) |

**Newbury**

|                 |                                  |          |                                   |
|-----------------|----------------------------------|----------|-----------------------------------|
| 73-75 Newbury   | Abyssinian Meeting House         | 1828     | Landmark<br>(outside dist. boun.) |
| 123-125 Newbury | Joseph Barbour House             | by 1846  | Contributing                      |
| 129 Newbury     | Dominic Reali Realty building    | 1977     | Noncontributing                   |
| 137-139 Newbury | Abel Chase & Emery Cushing House | ca. 1867 | Contributing                      |
| 145 Newbury     | Shaarey Tphiloh Synagogue        | 1904     | Landmark                          |

# HISTORIC PRESERVATION

Sustainable Neighborhood Plan  
INDIA STREET, PORTLAND MAINE



ice from loading or falling onto adjacent properties or public ways.

4. *View corridors:*

- a. The massing, location and height of development shall not substantially obstruct public views corridors identified in the Downtown Vision View Corridor Protection Plan, as provided in the City of Portland Design Manual, Appendix 1.

5. *Historic Resources:*

- a. Developments affecting designated landmarks or within designated historic districts or historic landscape districts: Any proposed development required to obtain a certificate of appropriateness under article IX (historic preservation) of the land use code shall be exempt from the following design standards, as described in the Design Manual:
  - (i) Section (b) of the Design Manual (development in B-3 zone), except for (b) (1) e.2. (increasing setback beyond street build-to line), (b) (1)f. (shadow impact on open space), (b)(1)h. (wind impacts), and (b)(1)g. (setbacks from existing structures);
  - (ii) Section (c) of the Design Manual (development in B-5 and B-5b zones), except for (c)a. (shared infrastructure) and (c)d. (parking lot location);
  - (iii) Section (k) of the Design Manual (small residential lot development in R-6 zone);
  - (iv) Section (e) of the Design Manual (University of Southern Maine);
  - (v) Section (f) of the Design Manual (development in B-7 zone), except for (f)(1)a. (transportation demand management);
  - (vi) Section (g) of the Design Manual

(development in Eastern Waterfront zone).  
(vii) Section (1) of the Design Manual (IS-  
FBC Building Design Standards)

b. Development adjacent to designated landmarks, historic districts or historic landscape districts: when any part of a proposed development is within one hundred (100) feet of any designated landmark, historic district, except the India Street historic district, or historic landscape district, such development shall be generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity of the proposed development. Character-defining elements of landmarks and historic districts are identified in the historic resources inventory and respective historic district designation reports. For the purposes of this provision, "compatible" design shall be defined as design which respects the established building patterns and visual characteristics that exist in a given setting and, at the same time, is a distinct product of its own time. To aid the planning board in its deliberations, historic preservation staff shall provide a written analysis of the proposed development's immediate context, identifying the major character-defining elements and any established building patterns that characterize the context.

c. Preservation and/or Documentation of Archaeological Resources. Where a state or local archaeological resource is known to exist or is discovered on the site, the developer shall inform the City and State and shall protect and/or document such resources.

(i) Protection shall include leaving archaeological resources untouched beneath a new development through adaptation of foundation design or architectural layout.

(ii) Where the applicant can demonstrate that

documentary, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other structures or objects.

- (g) The surface cleaning of structures and objects, if appropriate, shall be undertaken with the gentlest means possible. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be undertaken.
- (h) Every reasonable effort shall be made to protect and preserve significant archeological resources affected by or adjacent to any project. If resources must be disturbed, mitigation measures shall be undertaken.
- (i) Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural or archeological materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the size, scale, color, material and character of the property, neighborhood or environment.
- (j) Wherever possible, new additions or alterations to structures and objects shall be undertaken in such a manner that, if such additions or alterations were to be removed in the future, the essential form and integrity of the historic property would be unimpaired.

(Ord. No. 235-90, 2-26-90; Ord. No. 220-93, § 12, 5-17-93)

#### **Sec. 14-651. Standards for review of new construction.**

In considering an application for a certificate of appropriateness involving new construction, the historic preservation board and the planning board shall apply the following general standards as may be applicable to the context of the proposed construction. The intent and application of the following standards are further described in the historic resources design manual and shall guide the board in its review.

(a) *Scale and Form:*

1. *Height.* In addition to the applicable requirements of articles III, IV and V of this chapter, the proposed height shall be visibly compatible with surrounding structures when viewed from any street

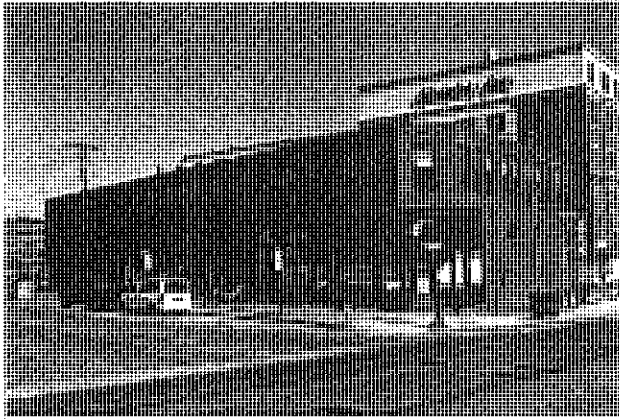
or open space and in compliance with any design guidelines.

2. *Width.* The width of a building shall be visually compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.
3. *Proportion of principal facades.* The relationship of the width to the height of the principal elevations shall be visually compatible with structures, public ways and open spaces to which it is visually related.
4. *Roof shapes.* The roof shape of a structure shall be visually compatible with the structures to which it is visually related.
5. *Scale of a structure.* The size and mass of structures in relation to open spaces, windows, door openings, porches and balconies shall be visually compatible with the structures, public ways and places to which they are visually related.
6. *Applicability to Congress Street historic district.* In the Congress Street historic district, for new construction within the B3 zone, the historic preservation board shall not impose conditions more restrictive than the dimensional requirements (Sec 14-220) of the B3 zone.
7. *Applicability to India Street historic district.* For new construction within the India Street Historic District, the historic preservation board shall not impose conditions more restrictive than the dimensional requirements of the IS-FBC zone, except for in the case of a building addition which proposes to change the height of a contributing historic structure.

(b) *Composition of principal facades:*

1. *Proportion of openings.* The relationship of the width to height of windows and doors shall be visually compatible with structures, public ways and places to which the building is visually related.

**78-88 Middle Street** Abraham S. Levey Commercial Block, 1922  
*Proposed for Individual Landmark Designation*



**Architectural Description**

The two story commercial block at 78-88 Middle Street is a two story flat roofed brick building that retains its long original nine bay pattern along Middle Street. The building abuts the sidewalk along Middle and Franklin Street. The street level bay pattern is defined by a series of eight wide storefronts set within broad masonry openings. Each corner of the Middle Street facade is truncated, presenting an 8 foot wide section of diagonal facade. The ninth bay at the corner of Middle and Franklin features a broad, recessed wooden storefront that spans the corner. A full glass wooden entry door with transom above provides access to a well known and nationally recognized restaurant. Two pebble clad risers lead to the entry and the corner recessed alcove is supported by two 8" diameter painted steel columns. A single pane wood storefront window with painted wood panel below flanks each side of the entry door. The steel columns support a band of transom window above the recessed alcove. A single pane appears at the truncated facade and one pane appears to either side, above the recessed alcove. One additional wooden storefront/transom combination extends along Franklin Street and Middle Street. The adjacent fifth through eighth bay each contain a broad central wood storefront window and transom with narrower sidelight/transom combination. The third section of each bay contains a recessed, full light wood entry door. All bays are separated by a 16" wide brick pier. The fourth bay at Middle Street is an arched top brick opening that provides access to the offices above. The first three bays at street level have similar storefront treatment. The third bay has an entry door and the first and second bays replace the door with a matching thin storefront. The first second and third bays each have a quarter round canvas canopy. The truncated corner at the first bay has a simple fixed pane window that matches the return at the east facing facade. The final first story feature at the east facing facade is a full light wood exit door with transom. The canopy above wraps the truncated corner and east facing openings. The second story openings relate to the bays below and are comprised of individual one-over-one metal double hung windows in the following patterns: the first bay is a grouping of two double hung windows separated by a 12" wide brick pier; the second bay is three double hung window separated by a 12" wide pier; the third bay matches the second and the fourth bay is a single one-over-one metal double hung. The fifth second floor bay contains only two metal double hungs separated by

wider brick piers. The sixth, seventh and eighth bays have three one-over-one metal double hung windows, separated by a 16" brick pier between windows within each bay. A 4'-8" wide brick pier separates bays. The ninth bay is two metal double hungs and a single metal double hung at the truncated corner. All second story windows are capped with flat jack arch that in turn support a corbelled soldier course frieze band. Three more courses of brick appear above the soldier course frieze band which in turn is capped by a course of painted metal roof termination flashing. The second story windows share a sill band of projecting bricks. The secondary facade along Franklin Street presents two simple horizontally proportioned fixed windows at the first floor level. Three windows appear at the basement level towards the rear and the second story presents groupings of metal double hung windows in the following pattern, left to right: three, two, three, two. A small chimney appears at the rooftop at the southwest corner along Franklin.

### **Historical Narrative**

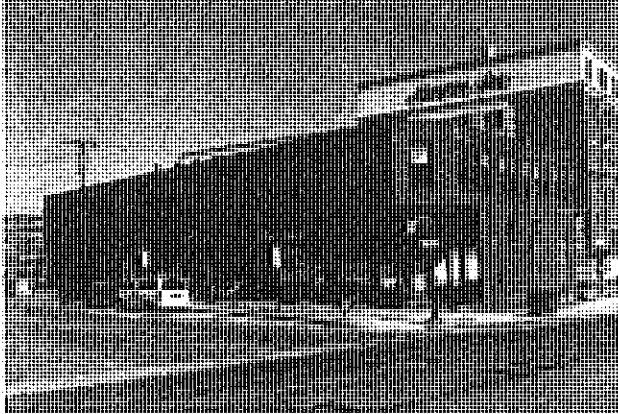
Built 1922, designed by John Calvin and John Howard Stevens, contractor was Antonio Leo, owner was Abraham S. Levey, a house painter.

In 1924, the first year tenants occupied the new structure, the Reliable Furniture & Clothing store and David Blumenthal, a fruit dealer, were listed at the address.

In 1930, the Great A & P Tea Company occupied one storefront. There was also the New England Supply Co. Dry Goods and Rose Caiazzo's restaurant.

In 1940, shops included Louis Blumenthal's meat market, Anthony Albano's restaurant, Benjamin Levinsky's fruit store, and the State Upholstering Co. Blumenthal's kosher meat market closed in the mid-70's. State Upholstering was at the address still in 1950.

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**Public Comment**

**India Street Sustainable Neighborhood Plan**

**Planning Board 2015**

**THOMPSON, BULL, FUREY, BASS & MACCOLL, LLC, P.A.**

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December 22, 2014

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Planning Board  
City of Portland

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Bill Hall, Member  
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Jack Soley, Member  
Planning Board  
City of Portland

**RE: India Street Comprehensive Plan**

Dear Board Members:

Thank you for considering the concerns of our client, Simba, Inc., with the proposed India Street Sustainable Neighborhood Plan ("ISP").

**The Fore Street Properties Belong in the Eastern Waterfront District, Not the ISP**

Simba fully supports the effort of the nearby India Street neighborhood to plan its future. But the narrow appendage south of Fore Street included in the ISP is near the core of Portland's Eastern Waterfront District. The land should remain in that district. Enclosed are copies of petitions signed by the vast majority of property owners located in the area asking that they remain in the Eastern Waterfront District – and not in the ISP.

The principal characteristics of the two block appendage are their existing connection to the waterfront and the historic Old Port, their connection to the substantial adjacent city-owned waterfront parcels, the extensive open, developable land, their history as a commercial and transportation hub and the exciting opportunity they collectively provide to the entire city and the property owners. Precisely these characteristics informed the recent decision to adopt the Master Plan for Redevelopment of the Eastern Waterfront that was fashioned by a highly-skilled, 33-member committee. The preamble to the Eastern Waterfront Master Plan correctly observes that

The challenge is to develop the marine passenger industry and to re-develop the underutilized uplands without negatively impacting the existing and future residential neighbors. The Master Plan envisions new development in the area to be an amenity and an asset to neighborhood residents, the greater City, and the visiting public.

The preamble also explains that it addresses that challenge through an "integrated Master Plan [that] allows the City to support the working waterfront, promote economic development, and enhance and protect our residential neighborhoods."

The City's existing master plan correctly identifies the "India Street Impact Area" as an area that "surrounds" the Eastern Waterfront Area and confirms that "the Waterfront Development Master Planning Committee[] worked to mitigate negative impacts to the surrounding areas [including India Street] and to encourage development that compliments and enhances the character of the eastern peninsula."

The existing Master Plan thus strikes the proper balance in zoning and planning for the land south of Fore Street. It should, as the Eastern Waterfront Master Plan states, "develop into an extension of the surrounding areas while establishing its own identity as a new urban neighborhood."

The draft ISP includes no explanation for why the Eastern Waterfront Plan should be supplanted below Fore Street – or for how the two disparate (but overlapping) plans would interrelate. Instead of a coordinated approach, the ISP simply includes no reference to the existing Eastern Waterfront Plan. Perhaps this could have been predicted. Whereas the Eastern Waterfront Plan assumes a bold citywide perspective, the ISP looks primarily inward – at the understandable desires of residents and property owners of *part* of the area the ISP would govern. The narrower focus is the natural but unfortunate result of the process. Work on the ISP was assigned to the Planning Office "in partnership with the [private] India Street Neighborhood Association." Neither the Association's officers nor the committee that drafted the plan include owners or occupants of property below Fore Street. As a result, no explanation has been provided (even though one has been repeatedly requested) for why their land should be included – and their interests have not been taken into account.

Regardless of how or why the owners of property below Fore Street were excluded, one conclusion is inescapable from review of the ISP. As the following table demonstrates, the land below Fore Street does not share the common characteristics of the India Street Neighborhood:

| India Street as Described in the Plan                                                                                                 | Reality of The Land Below Fore Street                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|---------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| The ISP states that the neighborhood has no existing plan.                                                                            | The properties below Fore Street are governed by the 141-page Eastern Waterfront Master Plan crafted in 2002 by a distinguished 33-member committee and amended in 2004 and 2006.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| The ISP describes an area with "religious institutions, working class houses" and "diverse" residents and an ethnic feel and history. | The history and feel of the area below Fore Street is entirely different. It was initially Clay Cove. Since being filled, the area has been an important commercial center. More than fifty years ago, the city destroyed all housing that had been added. In 1957, the City declared the area a slum, took all residential properties by eminent domain and bulldozed them.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| The ISP describes "a neighborhood of strong identity" that is "disconnected" and should be "distinct from the Old Port."              | The land below Fore Street does not share that "strong identity," nor is it divorced from the Old Port and the historic waterfront. All street connections at and below Fore Street were preserved when Franklin Arterial was widened. In 1997 the council added much of the land below Fore Street to the existing Old Port/Waterfront historic district. While the area below Fore Street retains Old Port connections, these owners generally are not members of the newly-formed (2010) India Street Neighborhood Association. No property owners below Fore Street were included in the committee that drafted the ISP. None are members of the committees working on new zoning ordinances. The owners below Fore Street are not complaining about their exclusion. They simply and correctly believe they are appropriately assigned to the Eastern Waterfront District. They're happy where they are. |
| The ISP describes an area with "diversity of residents."                                                                              | There are <i>no</i> residences below Fore Street.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| The ISP depicts a neighborhood that is generally four blocks wide.                                                                    | Below Fore Street only the two-block appendage that includes the Simba lot are proposed for inclusion. The adjacent Portland Company property and the large city-owned parcels south of Commercial Street all remain in the Eastern Waterfront District — <i>not</i> the ISP. That of course has Simba and its neighbors wondering why they should be subject to regulation under the ISP, while the city's land is not.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |

With due respect, the India Street Association's relationship with the properties below Fore Street is not neighbors planning their own future. The Association seeks to coopt outsiders already subject to different, detailed planning provisions and assuming a role as their new regulator.<sup>1</sup>

### The Perils of Excess, Inconsistent Planning

Any municipal zoning ordinance must be "pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body." 30-A M.R.S.A. § 4352(2). As the Bayside experience demonstrates, zoning ordinances and projects are therefore subject to attack as "inconsistent" with the plan. The risk is greatly magnified for property owners included in separate, uncoordinated planning districts.

The Eastern Waterfront Master Plan added 141 pages to Portland's Comprehensive Plan that now exceeds 2,500 pages. The section of the ISP being considered would add extensive new provisions to the plan for Simba's land. The draft ISP includes no explanation for why Fore Street is included, no attempt to coordinate the two planning districts, and, remarkably, no mention the Eastern Waterfront Plan at all.

Although they share some similarities,<sup>2</sup> the two plans are fundamentally different in scope, outlook and detail. Some of the more general differences are outlined above. The following are a few examples of more detailed inconsistencies:

1. The ISP suggests that the "form [of development including below Fore Street] must reflect the attributes that typify" the development further up the hill. The Eastern Waterfront Plan, on the other hand, calls for the same land to "develop into an extension of the surrounding areas while establishing its **own identity as a new urban neighborhood.**"
2. The existing Eastern Waterfront Plan establishes a "street hierarchy" identifying Fore Street as second in a list of "primary streets." The ISP assigns it a more secondary status.
3. The Eastern Waterfront Plan has detailed height restrictions; the ISP outlines different height restrictions.
4. ISP states that development (including below Fore Street) must not "block a pedestrian's cone of vision at four stories." Our best guess is that the phrase means exterior walls of buildings allowed to be more than four stories should be stepped back so the higher

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<sup>1</sup> At a recent Planning Board meeting, the president of the Association mistakenly suggested the neighborhood boundaries were blessed by state and the federal government when the Association was formed and granted tax exempt status in 2010. Neither governmental process included any evaluation of neighborhood boundaries.

<sup>2</sup> Of course, the similarities are no reason to subject the properties below Fore Street to the ISP. Planning restrictions and requirements already governing the area need not be reiterated.

stories cannot be seen from sidewalks. Page 7 of the detailed "Building Height Study" incorporated into the Eastern Waterfront Plan provides exactly the opposite: "In this area with limited building heights, the high point of a project should not be in the center of a block or stepped back too far from the street edge as to not have a presence at the street level."

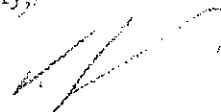
5. At the same page (7), the existing plan states that "large recessed plazas defined by three facades should not breach the street wall" in the Eastern Waterfront District. On the other hand, the ISP seems to require three-walled recesses.
6. The Eastern Waterfront Plan plainly contemplates for Fore Street substantial growth and a "new urban neighborhood" developed with sensitivity to the India Street neighborhood and other "impact areas." The ISP states that "wherever possible access to the waterfront – visual and physical – will be preserved." As some anti-development lawyer is certain eventually to argue, it is "possible" to preserve all existing water views only by rejecting whatever development is proposed.

The Bayside experience argues against including detailed requirements (as compared with more general goals) in a comprehensive plan. Regardless of the merits of more detailed planning, subjecting property owners to two, detailed, inconsistent comprehensive plans would be far worse than the Bayside debacle. It would be a full employment plan for lawyers and a prescription for failure.

The land below Fore Street is part of Portland's historic waterfront. It should remain where it is: in the Eastern Waterfront District. Good planning policy, fairness, the best interests of the entire city, and the reasonable request of the property owners all dictate that result.

Thank you for considering our concerns and views.

Sincerely,



Edward S. MacColl

ESM/ea  
Enclosure

## PETITION CONCERNING INDIA STREET PLAN

Dear Portland City Councilors,

We are owners of land below Fore Street that has been included in the India Street Neighborhood Plan. Although we appreciate the hard work that apparently has been under way by folks who live further up the hill and others for a few years to develop the plan, we are concerned by the inclusion of our neighborhood in that plan and by the contents of the plan document for the following reasons:

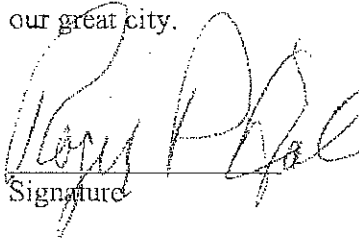
1. The nineteen-person Advisory Committee that drafted the plan includes no owners or occupants of property in our neighborhood below Fore Street;
2. Many of us were not aware of the planning process until it had been ongoing for a year or more; although some of us have taken the time to speak at public meetings, we have had not meaningful response to our concern about our inclusion in the proposed district, and of course none of us were given a vote on any aspect of the plan;
3. The land below Fore Street is quite different from the balance of the proposed district in history, use, potential and character; as the report reflects, the area properly within the India Street Neighborhood was and is a melting pot of residential and mixed uses. For much of the history described in the plan, however, the area below Fore Street was a cove (Clay Cove). Before and after being filled (when Commercial Street was constructed) the area has always been an important commercial center;
4. None of our properties is currently residential;
5. The balance (represented portion) of the proposed district is three or four blocks across, but below Fore Street the district is only two blocks wide; the Portland Company property, immediately to the east, is being treated separately. That seems appropriate,

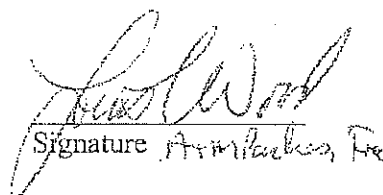
given the history of the Portland Company property as an important commercial and water front parcel, unlike the India Street residential neighborhood. But our properties, too, are and have been commercial properties; and

6. Our properties represent a unique opportunity for the City and for us owners. In investing in these properties, we took into consideration their unique history and characteristics and those opportunities. We fully understand that in planning the future of our properties the interests of folks further up the hill, our neighbors on other sides and the city as a whole should be taken into account. But just as it would be unfair for our area to be developed without consideration for others, we believe it fundamentally wrong for a group that represents only the folks up the hill to make the rules for us.

In light of these considerations, we respectfully ask that the two blocks below Fore Street be excluded from the proposed district and that we be included and our voices heard in any process that will determine the future of our properties.

Thank you for taking the time to consider our views and concerns, and for your service to our great city.

|                                                                                     |                   |                  |                              |
|-------------------------------------------------------------------------------------|-------------------|------------------|------------------------------|
|  | <u>ROGER PAHL</u> | <u>PRESIDENT</u> | <u>234 - FORE ST.</u>        |
| Signature                                                                           | Printed Name      | Title            | Address of affected property |

|                                                                                     |                      |                       |                              |
|-------------------------------------------------------------------------------------|----------------------|-----------------------|------------------------------|
|  | <u>LOUIS C. WOOD</u> | <u>Vice President</u> | <u>15 Franklin St</u>        |
| Signature                                                                           | Printed Name         | Title                 | Address of affected property |

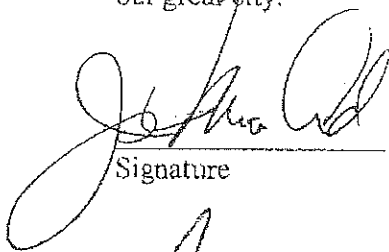
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Thank you for taking the time to consider our views and concerns, and for your service to

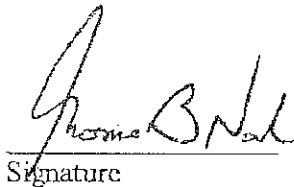
our great city.



Signature

James MacAdam owner/occupant  
Printed Name Title

208 Fore Street  
Address of affected property



Signature

Auto Europe Holdings  
THOMAS B. NOVAK VP FINANCE & TREASURER  
Printed Name Title

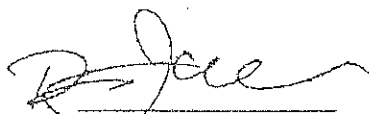
39 Commercial  
Portland ME 04101  
Address of affected property

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Signature

|                                    |       |                              |
|------------------------------------|-------|------------------------------|
| <i>CASCO PORTLAND PARTNERS LLC</i> |       |                              |
| <i>DENNY JACOBUS, AS MANAGER</i>   |       |                              |
| Printed Name                       | Title | Address of affected property |
|                                    |       | <i>1 COMMERCIAL ST.</i>      |

Signature

Printed Name

Title

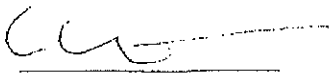
Address of affected property

property, immediately to the east, is being treated separately. That seems appropriate, given the history of the Portland Company property as an important commercial and water front parcel, unlike the India Street residential neighborhood. But our properties, too, are and have been commercial properties; and

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Thank you for taking the time to consider our views and concerns, and for your service to our great city.

|                                                                                     |                     |                  |                              |
|-------------------------------------------------------------------------------------|---------------------|------------------|------------------------------|
|  | <u>ART BANISTER</u> | <u>PRESIDENT</u> | <u>SALT &amp; THE FORTH</u>  |
| Signature                                                                           | Printed Name        | Title            | Address of affected property |

|                    |                       |                |                                       |
|--------------------|-----------------------|----------------|---------------------------------------|
| _____<br>Signature | _____<br>Printed Name | _____<br>Title | _____<br>Address of affected property |
|--------------------|-----------------------|----------------|---------------------------------------|

## **Greater Portland Landmarks**

### **Planning Board Comments on the India Street Master Plan and Process**

**December 9, 2014**

Greater Portland Landmarks actively participated in the India Street Advisory Committee and supports the India Street Master Plan. We strongly support the policy recommendation to create an India Street Historic District. An historic district supports the major goals of the proposed plan and is compatible with other elements of the plan, including promoting diversity, affordable housing, and economic vitality and growth. The American Planning Association has designated both Congress Street, this year, and Commercial Street as great streets in America, both of which are part of historic districts. Historic preservation is a proven strategy for enhancing the economic development and livability of Portland and is named as a goal of the City's comprehensive plan.

Historic district designation also encourages new construction that is compatible with the character of the area and is clearly of its own time. Buildings such as the CIEE building on Fore Street, the addition to the Blake Warehouse on Commercial Street, and the new affordable housing called Elm Terrace at 68 High Street show the range of contemporary buildings, and uses, that have been built in historic districts.

India Street has been and is a diverse neighborhood which reflects the Immigrant Story as part of its diverse history. The India Street area was notable in the early-to-mid-19<sup>th</sup> century for its free black population, which provided the workforce for nearby maritime and industrial operations. After the Great Fire of 1866 families of European and African American descent were joined in an increasingly dense neighborhood by successive waves of immigrants including Irish, Italian, and at the turn of the 20th century, Eastern European Jews. Each wave of immigrants left their mark on the neighborhood establishing houses of worship, residences and businesses, many of which continue to the present. No other designated historic district in the City features this part of Portland's history.

Historic district designation is a technique to manage change over the long haul. As we see in other historic districts, the consistent attention to the historic built fabric has resulted in vital and dynamic neighborhoods and downtown areas. Concern has been expressed about the cost of rehabilitation. However, construction projects, old and new, can be expensive, especially when they involve quality materials and craftsmanship, no matter the location. Preservation tax incentives for rehabilitation are one way to help alleviate costs as are façade improvement grants.

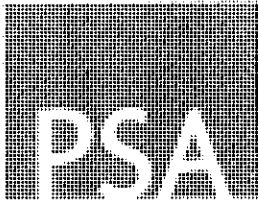
A major reason for the India Street Master Planning process has been the concern of residents that large, out of scale buildings were beginning to dominate the neighborhood. The proposed Form Based Code alone will not alleviate the massive structures that inspired the master planning process in the first place, nor will it address

the quality of materials and design details that make for good new construction. We believe that both the Historic District and Form Based Code should be developed in tandem and work in tandem.

Landmarks looks forward to continuing involvement in the India Street Master Plan implementation, including the proposed Historic District and Form Based Code.

Thank you for your consideration.

Christopher Closs  
Preservation Services Advisor  
Greater Portland Landmarks  
93 High Street  
Portland, ME 04101  
[www.portlandlandmarks.org](http://www.portlandlandmarks.org)



## INDIA STREET SUSTAINABLE NEIGHBORHOOD PLAN

The Portland Society for Architecture appreciates the great effort by the many people who have developed this neighborhood plan. The plan addresses connectivity across Franklin St.; increases housing diversity ; reinforces India St. businesses; creates a recreation hub at the foot of India St.; builds a model water and sewer infrastructure. PSA has been pleased to be a part of the planning process and hopes to continue to do so.

### HISTORIC DESIGNATION

However, PSA does not support the proposal to designate this neighborhood an Historic District. A designated neighborhood should "demonstrate a high degree of historical, cultural and/or architectural significance". India Street was Portland's first street, but the India Street that was -- is no more. It is even unlikely that the India Street destroyed by the Great Fire bore much resemblance to the first India Street. Aside from a small handful of already landmarked buildings, the map of Cultural Assets is most notable for what exists in memory and not on the ground: Fore Street as the first waterfront and India Street as the first street. This does not mean that this neighborhood is without culture or has not been the scene of important events -- but that its current culture comes from its enormous variety, not its historic texture.

Does this neighborhood offer a collection of buildings that are remarkable, unique, historically significant or that provide a coherent picture of its history or the story of Portland? The Historic District Map reveals that contributing buildings are scattered among vacant parcels, older non-contributing buildings or among ones that are not yet 50 years old. This map does not look like the map of contributing buildings on the West End or Congress St. or any other historic district. In fact, it is likely that a map of any neighborhood in Portland would have many fewer 'holes' and a much greater proportion of contributing buildings than this one does.

The Plan lists a 'lack of clear identity' as the neighborhood's first challenge. What will looking to its past rather than its future do for its identity problem? Historic District designation has profound economic repercussions. While the plan calls for maintaining and reinforcing neighborhood economic diversity, 'gentrification by designation' frequently results when cities do not take very aggressive measures to counter that tendency. Tax credits, limited to income producing buildings, do not offer enough money to overcome the fact that property owners in Historic Districts need to have deeper pockets than owners elsewhere. Likewise, the goal of having businesses that provide services to neighborhood residents and workers is hampered by having every storefront renovation dictated by the history of the building rather than by the future of the business.



The plan seems to endorse increased residential density without increased building height. To the degree that historic districting will control the height of infill buildings, there will not be enough new neighbors to support the extensive retail development that is planned. New buildings matching the bulk of historic buildings will house many fewer people than 100 years ago, because household size is so much smaller now. Unit reduction is already happening in buildings that are being renovated – and while family size drops, the apparent need for greater space grows.

Historic designation will not give the 'authenticity' this plan seeks. It is an attempt to build a new historic 'feel' that is long gone. It will remove an entire neighborhood from the natural evolution of the city --- an evolution that accounts for the India Street neighborhood's vitality and diversity right now.

#### FORM-BASED CODE

It is not possible to have an informed opinion on form-based code while so little is known about the nature of the code or its provisions. The plan should not include the Plan of Character Districts – until those districts are defined by the provisions of the code.

Thank you.

Portland Society for Architecture

## **Greater Portland Landmarks Comments on the India Street Master Plan and Process October 15, 2014**

Greater Portland Landmarks actively participated in the India Street Advisory Committee and supports the India Street Master Plan draft that has been forwarded to the City Council from the Council's Housing and Community Development committee. We strongly support the policy recommendation to create an India Street Historic District to preserve the historic fabric of the neighborhood that includes buildings that are not only historically significant for their architectural character, but also have merit as representations of larger social, cultural, and historic events in Portland. Consideration of a potential district resulted from a planning board recommendation several years ago, when neighborhood residents raised concern about the scale and impacts of new construction in the neighborhood.

To prepare to consider the possibility of an historic district, the City commissioned extensive research including a study of every property that could be in a potential district. This information helped guide the work of subcommittee to study proposed boundaries of a district. The work included consultation with the Maine Historic Preservation Commission regarding concurrent National Register district designation to provide access to historic preservation tax credits.

We would like to provide accurate information to address several assumptions presented at the final meeting:

One purpose of an historic district in this neighborhood is to preserve the historic fabric of a neighborhood that is the site of the earliest settlement of Portland; was significantly impacted by Portland's ocean, railroad, and land transportation economy; was a focal point for immigration including the earliest African American neighborhood, as well as Jewish, Italian, and other immigrant communities; and contains distinctive civic and religious buildings.

Another purpose of an historic district is to provide a consistent review process for the entire neighborhood. Landmark buildings are important, and there are eight in the area, however the additional historic buildings that contribute to the historic character and significance of the area are important in retaining its scale and architectural character as well as to convey the story of the neighborhood. Consistent improvement and development review standards give assurances to property owners of all types that their investments will be respected and protected.

There are buildings of many ages and styles in the India Street neighborhood that reflect its long history – it is not a homogeneous neighborhood like the Old Port. It includes many more modest structures that are not architect designed, but that do reflect the evolution of our city and represent the pedestrian oriented human scale that characterizes Portland. The neighborhood is not unlike the near West End where more modest buildings comprise the majority of the historic fabric. Consultant Michelle Reeves cited the potential for reinvestment in this neighborhood with a variety of evolving uses. This makes sense to us. The relatively small scale of the buildings is an advantage in many cases.

We have provided information on the attachment about the historic preservation tax credit program. The Maine program has special provision for smaller projects between \$50,000 and \$250,000 and work can include a wide range of projects from upgrading HVAC systems, repairing roofs, walls, floors, chimneys and porches, among other items. The property must be an income producing property.

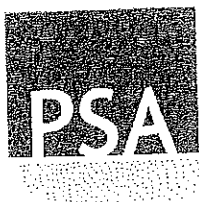
One of the major reasons for the India Street Master Planning process has been the concern of residents that large, out of scale buildings, such as the Bay House complex, were beginning to dominate the architectural character of the neighborhood. As we have seen from the work completed to date, the Form Based Code alone will not alleviate the massive structures that inspired the master planning process in the first place, nor will it address the quality of materials and design details that make for good new construction. Historic Districts and Form Based Codes work well together and each address different aspects of the planning process. We believe that both should be developed in tandem and work in tandem.

With the above in mind, we would like to propose a revision to the process going forward. Part of the reason the ISNAC failed to reach a clear consensus was because the so-called working groups were largely working independently. The same pattern continues as the historic district and the form-based code discussions progress on their parallel paths. A more integrated path could be more effective, where the historic program staff participates in the form-based code development process; where the form based code and Historic District working groups meet together to review both items as they progress towards a final recommendation; where the form based code committee draft goes to the historic preservation board for review prior to the final draft; and where there is a historic preservation board workshop to review the Historic District boundary and form based code guidelines. The goal would be to ensure that there is not conflict between the two areas of the plan and that the review process will be easier because there is consistency and agreement.

Thank you for your consideration.

Hilary Bassett  
Executive Director  
Greater Portland Landmarks  
93 High Street  
Portland, ME 04101  
[www.portlandlandmarks.org](http://www.portlandlandmarks.org)

**Public Comment**  
**India Street Form-based Code**  
**Planning Board 2015**



15 September 2015

To: Stuart O'Brien, Chair, and Members of the Portland Planning Board  
RE: India Street Sustainable Neighborhood Plan:  
Critical Action 8: Adopt a Form-based Code

Dear Stuart O'Brien, Chair, and Members of the Board:

The Portland Society for Architecture (PSA) participated in the study for the India Street Sustainable Neighborhood Plan including representation on the Public Advisory Panel to introduce Form-based Code to replace the existing zoning code in this neighborhood. Because of its thorough public process, significant community participation, and agreement on social principles outlined in the preface, extensive use of staff time, and our own efforts to contribute substantively, PSA supports the Form-based Code for the India Street Neighborhood as a test site for future expansion of FBC in Portland – with reservations.

As a zoning practice that is intended to provide regulations that will guide development vis-à-vis urban design in this district, it places an emphasis on how the buildings meet the street, contribute to the street wall, and complement historic architecture. This FBC, like others in its genre, is focused on building a contextual urban design that will be conducive to an active street life, safety, and prosperity.

The code is also intended to expedite the development review process by concentrating design review at the staff level in order to reduce approval time and expense. While there has been a great effort to develop design standards as a means of fortifying the judgment of staff and of assisting the developer, we have reservations about the language in the proposal and design standards. Will words like reflect, relate, reasonable, respect, and compatible produce tangible results in architectural projects that can be fairly reviewed by staff?

Height bonuses are included to encourage housing density along some streets, and green roofs will enable a higher level of sustainability. (These are significant areas of overlapping innovative values with social, economic, and architectural commonality.) Yet we have reservations with respect to creative building solutions and innovative contemporary architectural design being permitted in a district where the design standards promote conformity in terms of facades, fenestration, and building entrances. Will design standards aimed at efficient approvals and avoiding undesirable projects sacrifice the potential for the urban landscape to develop artistically and with architectural integrity?

Is there a reasonable appeals process that allows for a fluid process for architecture that may not conform to standard prescription, but creatively and aesthetically meets the needs of clients with interesting business/development ideas?

With these reservations in mind, we propose that the FBC be enacted here as a test or experimental district with a sunset provision that allows it to be withdrawn at the end of five years if, after evaluation of the results and after revisions are tested, the code does not meet the goals of sustaining the neighborhood landscape.

Respectfully,  
The Portland Society for Architecture

Portland Society for Architecture  
PO Box 4444  
Portland, Oregon 97208  
www.portlandsocietyforarchitecture.org

**Greater Portland Landmarks Statement  
for the Planning Board Public Hearing Sept. 15, 2015**

Greater Portland Landmarks has been actively involved in the India Street neighborhood master planning process that also includes a new Form-Based zoning code. We support creation of a form based code in this neighborhood, but we also strongly believe that it is only through historic district designation that it will be possible to truly preserve the neighborhood's authentic character. Within an historic district property owners are assured that the abutting properties will be held to the same standards that they are with regard to design details, quality of materials, and protection from demolition – elements that are not addressed by the form-based zoning.

Historic districts and form based zoning are different, but complementary planning tools. We urge you to treat them as such. We appreciate the clarification provided in the staff report of the interaction of the form based code and historic preservation guidelines regarding review processes, heights and the 100 foot rule. We also urge your support for the amendment proposed by the historic preservation board that addresses the height issues.

Thank you for considering our views.

Hilary Bassett  
Executive Director  
Greater Portland Landmarks

June 9, 2015

• **Mid-block permeability / passages**

India Street FBC Draft/ Planning Board — Peter Monro, ASLA, 32 May St.

The word “**passages**” has been replaced with “**mid-block permeability**” in the Draft when referring to bonus height qualifiers. (Section 14—XX, b.1) In other locations of the DRAFT, both “passages” and “midblock permeability” remain in the draft. Neither is defined either here or elsewhere in the Ordinances that I can find.

Lacking a definition in discussions of Midtown, this Board agreed to consider private, time-limited pathways through retail establishments as sufficient to achieve “mid-block permeability.” A passage through Bay House has locked gates, openable only by tenants.

These sorts of paths do not offer the kinds of advantages to the public or to city vibrancy that merit bonus height or density of development.

At Bay House, the path breaks what could have been one large building into two. Retail store crossings do not do that. But true public passages do a great deal more than break down building masses. They

- provide unobstructed, round-the-clock access to all
- walkable shortcuts to homes and stores,
- social interaction,
- facades for windows and entries to businesses or housing,
- intimate courtyards, and
- access to utilities.

Please adopt a definition of “passages” or “mid-block permeability” that assures those benefits before granting height bonuses for them. At a minimum, please assure that passages are clear, direct public openings in or between buildings that are open 24/7.

Also, please replace license agreements—which do not convey permanent access or a public interest in the land underlying a passage—with “easements or rights-of-way,” which are permanent and do convey a public interest in passages, as legal bases for granting height bonuses.

Thank you.

The Planning Board asked a question in two different ways at the first workshop on the India Street Plan using Form Based Code. The following response is from the point of view of the neighborhood.

### **Preamble**

One must remember that the India Street Neighborhood planning process was initiated to correct the past handling of this, until recently, unrecognized neighborhood. Specifically, the ISN was zoned as a result of: assigning use zones to pre-existing housing; a “business district” height overlay from the west; the Eastern Waterfront plan from the south; and a height overlay designed to increase density that was resisted farther east and settled in the ISN.

The resulting flurry of development included many massive buildings with long and undistinguished facades. When these could not be built under the patchwork zoning, they were allowed as “contract zones”. When they were permitted because they met the requirements of a particular zone, there was no way to control quality or scale and massing. The Planning Board had virtually no discretionary authority.

More than one consultant said the equivalent of: Recent projects that were permitted should be made up for by the next project being great. The next project turned out to be Seaside Lofts.

The plan, already approved by the PB, is best implemented with FBC

### **What Problems does using FBC solve?**

The first improvement (problem solved) by FBC is the recognition of a unique neighborhood in need of three different development requirements of form and scale. No use zone addresses massing limits (width or depth of a building).

Most basically, present zoning has never been representative of existing use nor compatible with the desires for development is any part of the neighborhood. The new code will be.

Use zoning represents – wrongly – the uses that are desired in the neighborhood. The guidance of the new FBC presents what the city wants to see built in the neighborhood. With so many open parcels, this is what pro-active zoning should always do.

The limited discretionary judgments allowed of staff, the Planning Board and Council, under the present zoning, are insufficient to prevent the approval of buildings lacking in architectural design and appropriate scale. FBC is one way to assure that more enforceable equivalents of (now unmet) design guidelines are taken seriously.

Requirements for setbacks, heights etc. are applied uniformly in subdistricts to maintain and improve the traditional character of those subdistricts. Presently a setback may be dependent upon the zoning of a neighboring lot rather than the one being developed. Intersects between zones are frequent and random.

## Cannot the same results be obtained with Euclidian zoning?

It would be possible; of course, to construct Euclidian zones to accomplish much the same thing as the ISN plan calls for. The trouble is that such zones would also be brand new, applicable only in the ISN and even more confusing than the present zoning.

One original (short cut) objective of the ISNA was to have the entire neighborhood zoned B2b. As more study was done and as the needs of the City for increased density were accepted, this was no longer seen as the best solution. While possibly a good start for what we now call the *neighborhood subdistrict*, there would have to be changes such as: setbacks; some increased language to institute meaningful and enforceable design guidelines and the establishment of width limits, among others. That would mean a B2c zone that would probably apply only to the ISN.

Similarly, the B2b in the *active subdistrict* would become the B2d, with changes like the above but allowing extra height to encourage better commercial space and allowing different setbacks, parking facilities etc.

The *transitional subdistrict* would require some kind of B6 modification to address all of the desired characteristics that are so easily defined in a FBC.

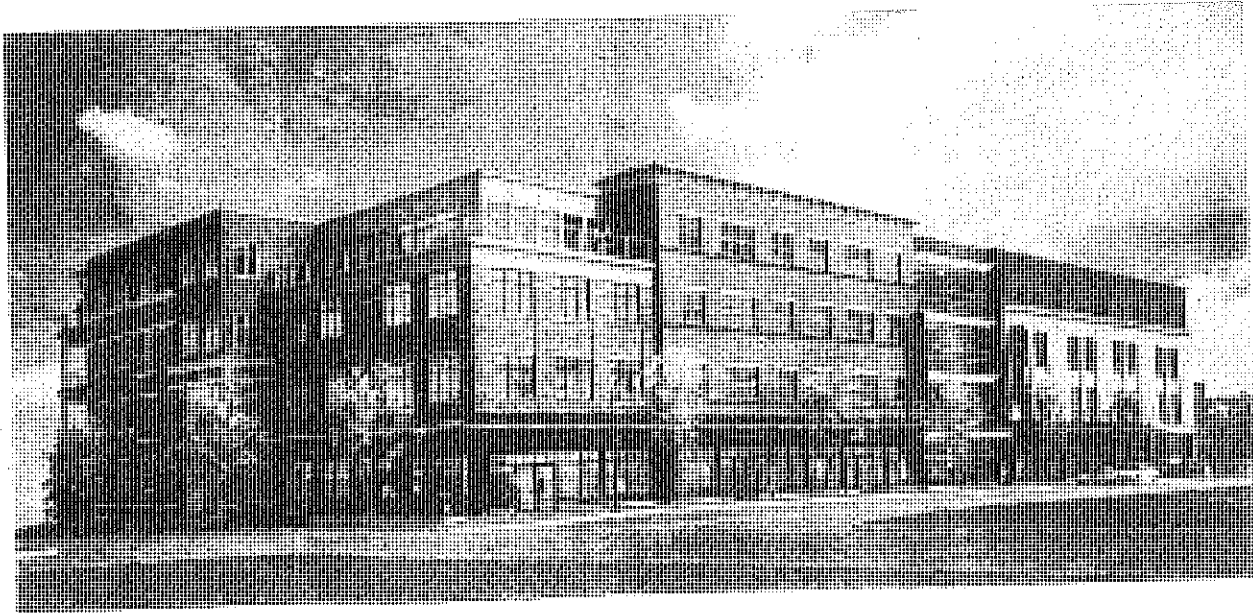
These three subdistricts are each part of one planned neighborhood and should be written so as to reflect that commonality. Each has different elements and needs to benefit the neighborhood as well as City needs. These desires are most directly, honestly and enforceable presented in a FBC intended only for the areas they address.

## One more thing

The illustrations in the draft FBC are the simple representation of the maximum envelopes within which buildings may be designed. No structure neither has to go to the maximum dimensions, nor has to have the alternative of party walls, nor to have a need to meet any significantly restrictive requirement. Efforts were made to be inclusive of the expressed desires of all stakeholders willing to participate over a three-year period.

Heights and scale have been extended far beyond what the neighborhood originally desired. Nonetheless, the ability to build truly out of scale buildings in the most sensitive subdistricts has been appropriately limited.

The neighborhood worked with the developer to modify the building pictured below. The massive 300 foot long scale was still overwhelming after the improved façade treatment. While better than other recent projects allowed in the neighborhood, this structure is just too massive and would have changed the character and texture of the India-Middle Street corner. What the new plan and the FBC would allow would be better for the neighborhood. Like others built recently in the ISN, this building was in-house engineered by the developer rather than being architecturally designed.



Windy Street View

June 07, 2010

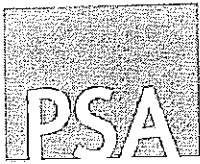


# JORDAN'S REDEVELOPMENT PHASE II

Planning Map



CHARTERED SURVEYORS & ENGINEERS



24 February 2015

To: Members of the Portland Planning Board  
RE: India Street Sustainable Neighborhood Plan:  
Critical Action 8: Adopt a Form-based Code

Board of Directors  
Alan Kimbom AIA LEED AP BD+C  
*President*  
Stuart C. O'Brien, Esq.  
*Vice President*  
Scott Tompkins  
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Nathan R. Smith, Esq.  
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Paul N. Stevens AIA  
Jesse Thompson AIA LEED AP BD+C  
Jacky Vassallo  
Graham Vickers AIA  
Adam Wallace

Portland Society for Architecture  
PO BOX 5521  
Portland, Maine 04111  
[www.portlandarchitecture.org](http://www.portlandarchitecture.org)

Dear Members of the Board:

The PSA is cognizant of the great effort by staff and others in this production ----- but the PSA is strongly opposed to the current proposal before the Board. We plan to respond in more detail later, but have some initial comments. The specifications of the proposed FBC for the India Street District goes way beyond a simple set of common guidelines to prescribe a very high level of specificity and visual appearance; it represents a virtual 'taking' of the building facades from their owners. Instead of the natural evolution of this urban neighborhood that is represented by diversity, vitality, and authenticity, we will be forcing a 'cookie-cutter' approach upon its property owners and residents that is stuck in time, neither honoring our existing historic structures, nor looking to the future, and above all turning its back to Portland's proud architectural heritage.

The PSA is one-hundred percent behind the idea of creating a pedestrian friendly mixed use urban neighborhood and believes that a simple set of common sense guidelines can do that. This proposal is neither simple nor commonsensical.

Respectfully,  
The Portland Society for Architecture

## India Street Neighborhood Association 12/12/2014

### Responses to questions asked at the 12/9/2014 PB workshop.

India Street Plan: existing vs form based code; How will Form Based Codes be better?

Planning Board Members:

I am certain that Alex and Caitlin will answer your questions from their point of view. I want to be sure that you also have a full understanding of the neighborhood's thinking without having to extend your meeting time by talking at length.

\_\_\_\_Hugh

#### Existing code reflects no plan

The existing structures in the neighborhood are not, for the most part, the result of present regulations but preceded them. Euclidean districts were essentially assigned to preexisting blocks or buildings based not on any planning but on the "best fit" of a zone, regarding use and height, to what was already in place. This common practice results in many problems for later development.

What buildings have resulted from the Eastern Waterfront Plan and the later height overlay are the primary cause of the desire to devise a better plan to save the remaining neighborhood.

#### "Contract" zoning

Special arrangements such as contract zoning or language changes have had to be used to allow almost all new construction in the ISN. Existing regulations do not allow for the approval of projects that match market driven demand or that the neighborhood and the city should have. This results in developer-led proposals for contract zones rather than planned development. It also causes needless long and complex project approval processes. A form based code (FBC) could eliminate this considerable problem.

#### Rebuild and in-fill

Because of Euclidian zoning requirements such as setback, minimum lot size, maximum number of units limitations, parking requirements etc., it is not possible to rebuild pre-existing building forms or to build an otherwise desirable building in an infill project. FBC will fix this most easily.

#### Width and depth (scale, massing and neighborhood texture)

Existing code has no minimum width nor depth. This has allowed for development that is demonstrably out of scale with the neighborhood. A FBC will encourage the development of economically practical designs that fit the texture of the neighborhood with the visual character of limited scale and massing.

The PB has recently had to voice regret in having to approve a most undesirable development because of a lack of appropriate controls in the existing code.

#### Height (scale and neighborhood texture)

Existing zoning, having been assigned rather than planned, does not consider the effects of different heights along significant street-scapes. FBC will fix that. Existing code speaks only to maximum height. The residential density goals of the ISN plan will not be met with more one or two story buildings. While future development may seek to achieve the maximum allowed height, FBC will assure a minimum desired height. Please note that there is now no building fronting on India or Middle Street that is over 45 feet high - most are significantly lower.

#### Architectural and construction quality

Existing regulations do not sufficiently address design or construction quality. Inexpensive cladding and confused coloration or variegation are frequently proposed as a substitute for worthy design. Economics rather than quality is the major determinant of construction mode and implementation.

#### Traditional building forms

Row houses and other party wall built structures are not uncommon in Portland and there are a number of examples in the ISN. Existing regulation does not allow such development. Structures of appropriate height and width may be more practically built without the appearance or "feel" of excessive massing. The apparent proportionality of each "building" within a structure can preserve the street "feel".

### Unit size and parking

The existing requirements work against residential density by allowing fewer and larger units that do not serve the goals of the ISN plan. Small units of one bedroom or studio design could attract residents with smaller budgets who do not regularly use cars and cannot afford the price of large units. Parking requirements could be reduced to reward the construction of greater unit density.

### Use vs form (utilization)

Some recent projects have required commercial use of some first floor spaces. The result has been some space being long empty. FBC will require some zones to build first floor forms that could be used to accommodate commercial uses while allowing other uses when the market did not produce a commercial tenant. The greater flexibility serves both the goals of the ISN plan and the immediate needs of the marketplace. While increased residential density is a goal, so is active street traffic and full building utilization. Any unit could be used as a live/work space with no limits of use.

### Mid-block permeability

Mid-block permeability is a good idea that is best expressed in more specific ways. Some locations do not lend themselves to this idea while others benefit easily from such a requirement. A FBC has the advantage of specifying the locations at which such requirements are located. There is also the ability to envision the need to limit continuous undesirable wall-massing along any such mid-block passage.

### Forced lot combination

The sometimes-applied concept of forced lot combination can be a problem for an owner who has or buys two or more contiguous, non-conforming lots. Forced combination is used in shoreline zones to minimize shoreline density and contamination. Suburban areas that wish to enforce a larger minimum lot size than was used in the past also apply this rule. Lots, in common ownership, are also looked at collectively in Maine subdivision statutes for the purpose of defining a "parcel" or "section" which are concepts applied to certain decisions regarding lot division. That statute includes no forced combining of lots of record. Confusion about this seems to have hampered some development possibilities. In any case, a FBC for the ISN neighborhood has no apparent need for a minimum lot size.

## Other considerations

### Gentrification

There was a question about gentrification and the limited ability to achieving diversity called for in the ISN plan. It is true that there is some overreach in the language of the plan. As Browning said: "Ah, but a man's reach should exceed his grasp, or what's a heaven for?" The goal is to promote what diversity might be kept or increased. Gentrification is a product of many demographic and financial conditions. No plan, short of buying and developing land in such a way as to avoid any displacement, can do more than try to limit the worst of gentrification. The plan strives toward diversity and sustainability; it will never totally achieve either.

### Boundaries

The boundaries of the ISN were fully debated both among the group that started the ISNA and at the first few public meetings. The boundaries were specifically accepted by the City as those for the planning process. There were some who were not eager to have their land included. Some of those, nonetheless, participated heavily in the process and helped the plan to be inclusive.

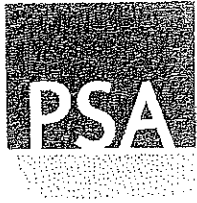
Others decided not to participate but continue to speak against having any plan at all. Lawyers have been hired not to represent the desires of land holders by participating in the process but to defeat the plan and/or to exempt certain parcels from the plan. The "we were not involved in the planning" is a familiar tactic. What element of the plan is being opposed is not usually specified. In fact, no element of the plan that might cause concern has yet been presented. Efforts continue to include all interested parties in the planning.

Every one of the consultants involved in the planning has agreed that the major entry points into the neighborhood are critical. These are Middle Street at Franklin, India Street at Congress, Congress Street at Franklin and India Street at Commercial. The North side of Commercial between Franklin and India is already in an Historic District and is an important part of the total fabric of the neighborhood.

**Public Comment**

**India Street Historic District**

**Historic Preservation Board & Planning Board 2015**



15 September 2015

To: Stuart O'Brien, Chair, and Members of the Portland Planning Board  
RE: India Street Sustainable Neighborhood Plan:  
Critical Action 5: Create a Local Historic District

Dear Stuart O'Brien, Chair, and Members of the Planning Board:

The Portland Society for Architecture (PSA) is in favor of the historic district boundary dated 2 September 2015. Its size now represents the core of contributing buildings, existing historic landmarks, and proposed landmarks along India and Congress Streets.

Because the proposed Historic District and design review criteria are being introduced concurrently with the Form-based Code criteria in this neighborhood, there is a strong perception that coordination and clarification on the jurisdiction of duties to approve construction height and volume on the boundary edge are crucial to their mutual success. While the recent iteration proposed in Section 14-651 Standards for New Construction Scale and Form: *Applicability to India Street Historic District* is such an attempt, it is of concern that the Historic Preservation Board and FBC review processes may have the unintended consequence of supporting conflict at the expense of building owners' capacity to advance projects otherwise in keeping with the sustainable neighborhood planning goals.

Respectfully,  
The Portland Society for Architecture

Portland Society for Architecture  
1000 NE 11th  
Portland, Oregon 97232  
503.241.1111

**Greater Portland Landmarks Statement  
for the Planning Board Public Hearing Sept. 15, 2015**

Greater Portland Landmarks strongly believes that the proposed India Street Historic District is the most effective way to protect the historic buildings, preserve the character of the neighborhood, and bring the benefits of a consistent review process that have proven successful in the Old Port and Congress Street Historic Districts.

The proposed India Street Historic District emerged from a lengthy and inclusive public process. It meets the designation criteria established in city ordinances. It is consistent with the City's comprehensive plan, which supports historic preservation. The intent of the Historic District is not to prevent change, but to thoughtfully manage it over time and over changes in property ownership.

We support the Historic Preservation Board's proposed district boundaries that focus on the area with the highest concentration of historic synagogues and churches, commercial storefronts, schools and civic structures such as the North School, Fire Station, Shaarey Tphiloh Synagogue, Cathedral of the Immaculate Conception, and St. Peter's Church.

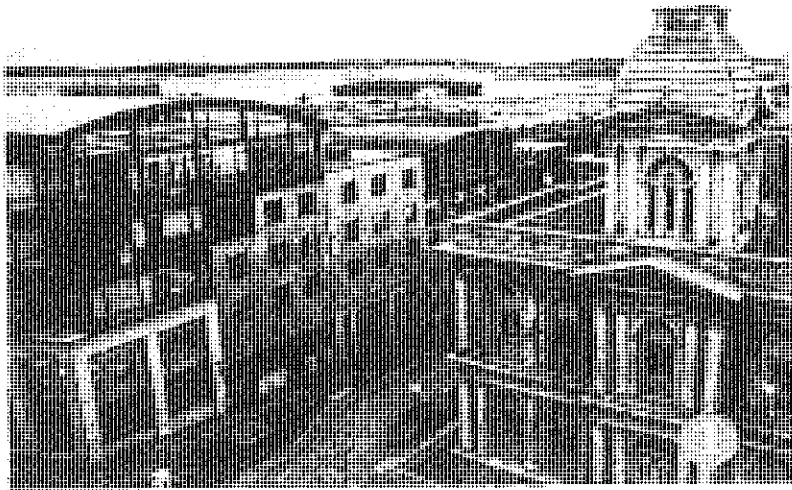
We support the proposed ordinance amendment as drafted in the staff report to integrate the historic district designation with the new form based zoning. This clarifies: 1) that the underlying heights allowed by the Form Based Code may not be limited by the historic preservation board review, except for vertical additions to historic buildings; and 2) that the Historic Preservation review for new construction has the ability to adjust how the maximum and minimum heights are achieved by a proposed project.

An India Street Historic District will celebrate the history of immigrants and working people of Portland's past, while encouraging sensitive new infill construction on vacant lots, flexibility of building use and architectural innovation. I would like to share some illustrations showing the range of new construction projects that have been approved in historic districts.

We urge that you accept the historic preservation board's proposal and recommend its approval by the City Council.

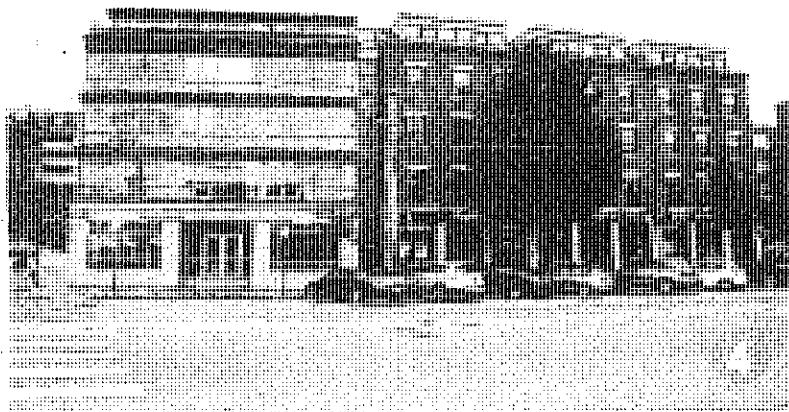
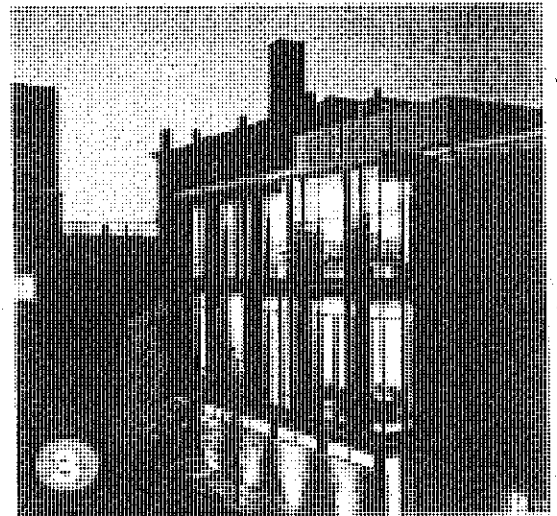
Thank you for considering our views.

Hilary Bassett  
Executive Director

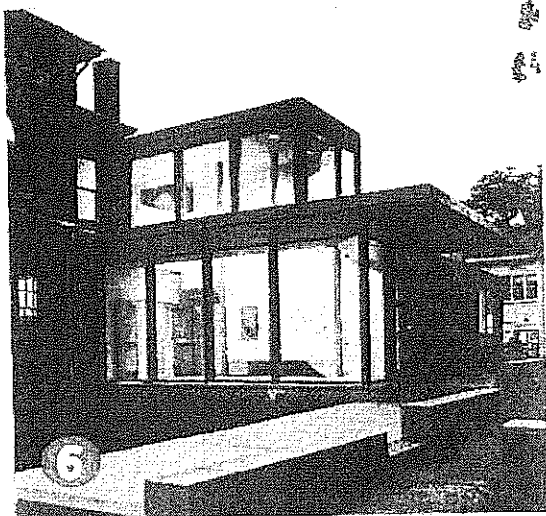


# Contemporary architecture approved by the Historic Preservation Board

Greater Portland Landmarks / more info at [portlandlandmarks.org](http://portlandlandmarks.org)



Old Port + Congress Street Historic Districts  
Portland, Maine



1. CIEE Building, 2007\*  
300 Fore Street

2. Elevation Burger  
205 Commercial Street

3. Brown Research Library  
Maine Historical Society

4. Blake Warehouse Addition  
93 Commercial Street

5. Chase Leavitt Block Addition  
10 Dana Street

6. Waynflete Art Center+  
360 Spring Street

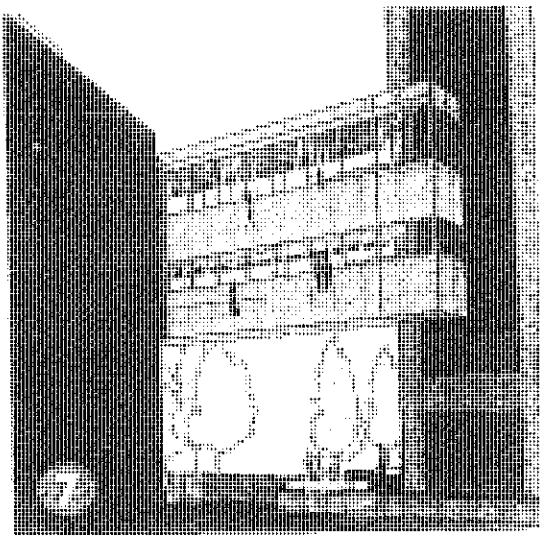
7. MEMIC Building Connector, 2016  
75 York Street

8. Elm Terrace, 2013  
Danforth & High Street

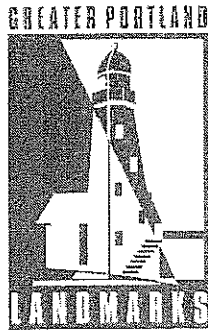
9. Peloton Labs, 2010  
795 Congress Street

\*Photo by Corey Templeton

+Photo by Brian Vanden Brink



Old Port, Congress Street + West End Historic Districts  
Portland, Maine



## **India Street Historic District: A Planning Tool to Address Neighborhood Goals**

### Why should the City consider designating an India Street Historic District?

The India Street area was notable in the early-to-mid-19<sup>th</sup> century for its free black population, which provided the workforce for nearby maritime and industrial operations. After the Great Fire of 1866 families of European and African American descent were joined in an increasingly dense neighborhood by successive waves of immigrants including Irish, Italian, and at the turn of the 20<sup>th</sup> century, Eastern European Jews. Each wave of immigrants left their mark on the neighborhood establishing houses of worship, residences and businesses, many of which continue to the present. The proposed historic district, which encompasses most of this area, would meet the City ordinance's criteria for designation as an area representative of a broad period of 19<sup>th</sup> and early 20<sup>th</sup> century architectural, cultural and social history in Portland.

### Is creating an historic district here a new idea?

No. There is a long history of consideration by City staff and Council Committees that the historic resources in the India Street neighborhood warrant recognition and protection. In the face of extensive development pressures in the late 1990s, the City of Portland commissioned Greater Portland Landmarks to prepare a preliminary historic resources inventory of the area, which was completed in 2002. In 2007 the Council's Housing & Community Development Committee voiced support for a potential India Street district. In 2011 the Planning Board endorsed efforts to establish a historic district.

### What is an historic district?

An historic district is a geographically definable area that possesses a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. The City of Portland's historic preservation ordinance cites specific criteria for designation of a local historic district.

### How would creating an historic district help achieve goals of the India Street Neighborhood Plan?

An historic district designation would advance the goals of vitality, good quality design, strong neighborhood identity, diversity and mixed-use. The Plan states: "The historic fabric and landmarks tell a story about this neighborhood and are critically important to its identity."

### Are there too many open sites or noncontributing buildings to justify designation of this area as an historic district?

While there have been many losses of individual buildings over the years, there are enough properties remaining to give a sense of the evolution of the neighborhood, and its relationship to the city. The designation standards of the National Register of Historic Places, which guide the City's designation approach, support boundaries that can accommodate non-contributing buildings that comprise up to 50% of the structures of the district.

What makes this historic district different from others already designated in the City?

The India Street neighborhood tells the Immigrant Story of Portland's 19<sup>th</sup> century African American and Irish immigrant working class populations and 20<sup>th</sup> century Italian, Jewish and other immigrant groups. No other designated historic district in the City features this part of Portland's history.

What would be the public benefit of designating an historic district in the India Street Neighborhood?

As older properties are developed and new buildings constructed within the district, the architectural character of the contributing and landmark buildings would be reinforced through renovations of existing buildings and newly built projects that are complementary in scale and massing. The resulting urban district would advance the neighborhoods' goals of vitality, good quality design, strong neighborhood identity, diversity and mixed-use.

If an historic district is designated here, would new building construction be allowed?

New building construction would be encouraged. Projects are reviewed to ensure they do not detract from the existing historic fabric of the district. New approaches to architectural design, that are clearly of our own time, are welcomed. Examples of new buildings or additions using both traditional elements and contemporary designs can be found throughout Portland's existing historic districts.

Could federal and state tax incentives assist developers of historic buildings in the district?

Yes. Developers of income producing commercial or residential projects could use a 20% federal tax credit and 25% state tax credit if they meet standards established to ensure that the character-defining features of these buildings are maintained in the course of the rehabilitation work. An additional 5% is available for rehabilitation projects that include affordable housing.

Would historic designation lead to gentrification of the neighborhood?

Gentrification is defined as, "the buying and renovation of houses and stores in deteriorated urban neighborhoods by upper- or middle-income families or individuals, thus improving property values but often displacing low-income families and small businesses." Gentrification is happening in this neighborhood regardless of historic designation. An historic district could encourage maintaining and redeveloping the existing housing stock thereby helping to maintain the diversity of housing stock that the plan seeks.

Would historic district designation impair the ability of the neighborhood to achieve the neighborhood plan's goals to add housing units and increase density?

There is sufficient land available in the neighborhood either open now or occupied by non-contributing buildings within and in close proximity to the likely boundaries of an historic district to allow for residential development of increased density to meet potential market demand.

Would an India Street Historic District serve to suppress economic vitality in the area?

On the contrary, studies have shown nationwide that reinvestment often follows historic district designations, raising property values and City tax revenues. In a recent study, Greater Portland Landmarks documented the rise in valuation of historic rehabilitation and new construction projects in the Old Port Historic District in 2003 that were subject to review and approval of the Historic Preservation Program. They range from redevelopment of vacant lots to rehabilitation of existing buildings.

Would adopting a form-based code for the India Street Neighborhood instead of creating an historic district preserve the sense of historic character in the area?

No. A form-based code would not protect historic features of the existing historic buildings that contribute to the neighborhood, nor the historic buildings themselves. Nor would there be review of design quality of details of new construction as they relate to the historic context. A form-based code and historic district designation, however, can serve as complementary planning tools.

September 15, 2015

To: Members of Portland's Planning Board  
Re: Public Hearing on Proposed Designation of India Street Historic District - Sept. 15  
From: Sally Oldham, Portland Resident

I write these comments to urge members of the Planning Board to support the proposal to designate the India Street Historic District. Designating this area a historic district will help preserve the special and unique personality of the India Street neighborhood.

The neighborhood plan developed by residents, business owners and stakeholders identifies this area as significant to Portland's history and architectural quality and urges designation of an historic district to help achieve many of the goals identified in this plan. A task group of the India Street Neighborhood Advisory Committee worked over many months to develop proposed boundaries for this district based on professional research and evaluation in a consultant report commissioned by the City.

The Historic Preservation Board has held a number of workshops, a site visit and responded to much public comment in coming to its thoughtfully considered recommendation for district boundaries. This boundary is tightly drawn to encompass institutional, commercial and religious buildings at the core of the neighborhood.

Designation will not impede new development in the neighborhood or design creativity within the district's boundaries. It will allow the City's Historic Preservation Board to manage change within this limited area so that future generations can recognize the appearance of the core of this neighborhood and help to celebrate the stories of its unique history as the focus of a neighborhood of immigrant settlers and workers.

The impacts of historic district designation in Portland and other cities across the nation demonstrate that this planning tool is one that often supports increases in property values, draws new investment and allows locally-owned businesses to thrive.

The results of preserving historic buildings and areas of Portland has been cited over and over as a key to the City's outstanding success in achieving high recognition as an attractive and livable city.

In closing, I would urge you to consider the overall public interest in designating this limited area as a locally designated historic district in order to maintain the special qualities of this neighborhood as it evolves and responds to new development opportunities into the future.

**Deb Andrews - Support for India Street Historic District**

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**From:** Ann Swardlick <aswardlick@swardlick.com>  
**To:** <dga@portlandmaine.gov>  
**Date:** 9/15/2015 11:30 AM  
**Subject:** Support for India Street Historic District

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Dear Deb,

Please convey my very strong support for Historic District designation in the India Street neighborhood of Portland. Historic district designations have been shown to increase property values and encourage investment in other Portland neighborhoods over the years and India Street will be no exception.

There is so much of the City's history, fabric, architectural richness, and beauty to be preserved here. While we all want to see smart investment in our community, if we allow the current development wave to sweep away our history, what have we gained? We've seen this happen and lived to regret it.

I believe the Historic District designation would raise awareness of this unique neighborhood, enhance an asset that the City should be celebrating and promoting, and encourage neighborhood improvement, while not stifling growth. This is exactly what we need.

Thank you,

Ann

**Ann Swardlick**  
Freelance Copywriter  
207-653-4146  
aswardlick@swardlick.com  
annswardlickwrites.com

**From:** Linda Murnik <lmurnik@me.com>  
**To:** <dga@portlandmaine.gov>  
**Date:** 9/1/2015 3:48 PM  
**Subject:** India Street Historic Designation

To the Historic Preservation Board Members:

Although I cannot attend the Historic Preservation public meeting on September 2, I write as a former resident and one long involved with the India Street neighborhood. I write to support ISN's designation as an Historic District as one long involved with preservation in Portland as chair of Greater Portland Landmarks public issues committee and as a long past president of the Board. I've also been a good and appreciative customer of Micucci's for decades - no matter where I've lived in Portland.

As the oldest and most diverse neighborhood in the city and past home to successive waves of immigrants and workers of all sorts for over several hundred years in a developing shipping and industrial period, ISN deserves designation.

Portland continues to change rapidly. To protect the historic buildings, significant houses of worship, commercial and residential buildings that remain at its' core - even though not all are in architectural high style - and to help tell the neighborhood's story, ISN deserves designation.

Historic districts work. Not only do they attract visitors and new commerce, but the economic benefits in rehabilitating income-producing properties are very real. They help to sustain a healthy mixed-use neighborhood, and improve property values (as my husband and I discovered when we rehabbed a building on Park St. in the 1980's).

Much to the dismay of many residents, the pressure for large-scale higher rise development in the neighborhood is strong and will continue, but the benefit of added scrutiny and a consistent review process that comes with historic designation is a form of protection for period buildings that should not be underestimated. "Downtown adjacent" neighborhoods are understandably under pressure, but the value of preserving the historic character of a city while sensitively integrating new development of appropriate scale is of enormous long-term value to a city.

I strongly urge the members of the Historic Preservation Board to support designation of the India Street Neighborhood as an Historic District.

Sincerely,  
Linda J. Murnik

**Deb Andrews - Bill Stauffer comments**

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**From:** <bstauffer@eco-story.com>  
**To:** <dga@portlandmaine.gov>  
**Date:** 8/5/2015 3:10 PM  
**Subject:** Bill Stauffer comments

---

I am sorry that I will be out of town on vacation for tonight's meeting.

I would like to reiterate that as a business owner and property owner within this district that I am in full support of an historic district for the India Street Neighborhood. In the past I was not in favor of historic districts but have changed my mind for the following reasons:

1. I owned several buildings that became part of the West End's historic district a few years after I purchased these properties. What I found was that the historic approval process was quite easy. In fact, most of my approvals for work done were approved at the clerical level.
2. It is clear that historic guidelines increases property values. As I have said before a well maintained historic building allows the owner to offer high end units or market rates. However, a building with vinyl siding and other non period details will always be limited by its "skin" in terms of rental or resale values.
3. Some have said that historic regulations gentrifies or increases rents above market. If this were true, some of our recent buildings like the Bay House would be inexpensive housing —yet this is simply not true. There is no correlation between non period and non-historic buildings offering lower rents.
4. There are numerous examples of modern new construction that fits within the historic guidelines. I ask anyone to compare the look of these buildings to the buildings that were not required to conform to historic guidelines.

Thank you,

Bill Stauffer

Bill Stauffer  
PH: (207) 699-5727 x11  
FX: (207) 699-2321

Eco-story LED Lighting  
151 Newbury Street  
Portland, ME 04101  
USA  
[www.eco-story.com](http://www.eco-story.com)

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Att. 5

26 and 28 Hampshire Street  
Portland, Maine 04101  
May 28, 2015

Portland Maine Historic Preservation Board  
389 Congress Street  
Fourth Floor  
Portland, Maine 04101

Dear Board Members,

After careful consideration, we, the property owners of 26 Hampshire Street and 28 Hampshire Street, wish to express our general opposition to the existing proposal to create an historic district in the India Street neighborhood, and our specific opposition to including our buildings as contributing structures to this proposed district -- especially when coupled with current and proposed building codes on our block.

We are opposed to this plan for the following reasons:

1. While we support the cause of preservation, we agree with the Portland Society for Architecture that many of the buildings in the proposed historic district, including ours, are of limited historical value, and that preservation of actual historic structures can be accomplished by designating actual historic structures as official landmarks.
2. Our structures are of an age and construction style that is hardly unique to the city, the state, or New England in general. Moreover, similar structures within the historic district boundaries have been excluded as contributing structures with no explanation.
3. The city has already allowed similar adjacent structures on our block -- that bounded by Hampshire, Newbury, Middle, and Franklin Streets -- to be demolished. Under the proposed historic district form-based code plan, construction on these adjacent lots will be allowed to heights of 45 and 65 feet while providing no assurance that we will not be capped at our existing 30-foot heights. This disparity will severely limit the value and livability of our properties, while distracting from any character they may have.
4. We have received no assurance from the Board that inclusion of our properties in the proposed historic district will not result in higher repair costs or negative affect on our properties' resale values. This is important because unlike most of those advocating for this district, we are owners and residents of the neighborhood.

Please remove our properties from this plan.

Sincerely,

*Camela de Fazio*

*Bethy 2 Freed*

Portland Maine Historic Preservation Board  
389 Congress Street  
Fourth Floor  
Portland, Maine 04011

Dear Board Members,

After careful consideration, I wish to express my general opposition to the existing proposal to create an historic district or Multiple Resource Designation in the India Street neighborhood, and my specific opposition to including any of my buildings in any preservation plan. My buildings are listed below:

53 Federal Street  
48 Hancock Street  
49-51 Hancock Street

I am opposed to all of my buildings being included in these plans for the following reasons:

1. While I support the cause of preservation, I agree with the Portland Society for Architecture that many of the buildings in the proposed historic district, including mine, are of limited historical value, and that preservation of actual historic structures can be accomplished by designating these structures as official landmarks.
2. My structures are of an age and construction style that is hardly unique to the city, the state, or New England in general. Moreover, similar structures within the historic district boundaries have been excluded as contributing structures with no explanation.
3. I feel that I am best suited to decide what is best for my property, and do not wish to submit to Historic Preservation Board oversight or bear higher construction and repair costs associated with board mandates.
4. Although 2 of my properties are designated as non-contributing, all of my properties are within 100' of property that is designated as contributing. I am opposed to the entire boundary of the proposed historic district.

Please remove all my property from any historic preservation plans.

Sincerely,

A handwritten signature in cursive script, appearing to read "Liv Chase".

Liv Chase

Deb Andrew,  
\*Portland Maine Historic Preservation Board\*  
\*389 Congress Street\*  
\*Fourth Floor\*  
\*Portland, Maine 04011\*

Date: 8/4/15

\*Dear Board Members,\*

\*After careful consideration, I wish to express my general opposition to the existing proposal to create an historic district or Multiple Resource Designation in the India Street neighborhood, and my specific opposition to including my building as a contributing structure in any preservation plan.\*

\*I am opposed to my building's inclusion in these plans for the following reasons:\*

\*1. While I support the cause of preservation, I agree with the Portland Society for Architecture that many of the buildings in the proposed historic district, including mine, are of limited historical value, and that preservation of actual historic structures can be accomplished by designating these structures as official landmarks.\*

\*2. My structure is of an age and construction style that is hardly unique to the city, the state, or New England in general. Moreover, similar structures within the historic district boundaries have been excluded as contributing structures with no explanation.\*

\*3. I feel that I am best suited to decide what is best for my property, and do not wish to submit to Historic Preservation Board oversight or bear higher construction and repair costs associated with board mandates.\*

\*Please remove my property from any historic preservation plans.\*

\*Sincerely,\*

Florence A. Olebe  
Owner, 142 Newbury, St. Property

**Deb Andrews - Request for withdrawl**

**From:** Brent Adler <brentadler@gmail.com>  
**To:** <DGA@portlandmaine.gov>  
**Date:** 7/22/2015 3:21 PM  
**Subject:** Request for withdrawl  
**CC:** Chris Korzen <chriskorzen@gmail.com>, <livchase@yahoo.com>

Portland Maine Historic Preservation Board  
389 Congress Street  
Fourth Floor  
Portland, Maine 04011

Dear Board Members,

Throughout the efforts of the Portland Historic Preservation board to bundle a historic district with the proposed Form Based Code submission my opposition has not changed. My Partner and I own 3 buildings in the neighborhood. All three are within 100' of a proposed "landmark" designation and 1 has been classified as "contributing". After attending a neighborhood awareness meeting on the implications of the proposed historic district I am further convinced that this designation will greatly impact my ability to make improvements to my investment properties and will create a near impossible feat to demolish and build new. Our investment properties were purchased without such a designation and we wish to have control over how our properties are classified, therefore we request to be removed from any district or classification that will place us in a hardship to make improvements or build new. Our one "contributing" building has no distinguishing characteristics unlike the other 4 buildings on the block that are non contributing. Half of the structures on the Federal Hancock block are non contributing yet the other half are. I hardly classify this as a district but a hand picked unlucky few. Thank you

Brent Adler  
49-51 Hancock St  
48 Hancock St  
52 Federal St

---  
Brent Adler  
cell 207-518-7038  
PO Box 15372  
Portland, ME 04112

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**Greater Portland Landmarks Statement  
for the Historic Preservation Board Public Hearing Sept. 2, 2015**

Greater Portland Landmarks strongly believes that it is essential to designate a historic district at the core of the India Street neighborhood in order to maintain its distinctive identity and authentic historic character. India Street served as an important link to the city from the waterfront and was home to generations of immigrants who left their mark in the buildings they created and inhabited in the neighborhood.

We support the Historic Preservation Board's proposed district boundaries. These boundaries focus on the area with the highest concentration of historic synagogues and churches, commercial storefronts, schools and civic structures such as the North School, Fire Station, Shaarey Tphiloh synagogue, Cathedral of the Immaculate Conception, and St. Peter's Church.

We also support landmark designation for the Abraham Levey Block, a commercial building designed by architects John Calvin Stevens and John Howard Stevens in 1922, that defines an important corner as you enter the neighborhood and relates to the buildings in the district but lies just outside the boundaries.

Landmarks has been actively involved in the India Street neighborhood master planning process that also includes new Form-Based zoning code. While we support creation of a form based code in this neighborhood, we believe it is only through historic district designation that it will be possible to truly preserve the neighborhood's authentic character. Within an historic district property owners are assured that the abutting properties will be held to the same standards that they are with regard to design details, quality of materials, and protection from demolition – elements that are not addressed by the form-based zoning.

We support the proposed ordinance amendment as drafted in the staff report to integrate the historic district designation with the new form based zoning. This clarifies: 1) that the underlying heights allowed by the Form Based Code may not be limited by the historic preservation board review, except for vertical additions to historic buildings; and 2) that the Historic Preservation review for new construction has the ability to adjust how the maximum and minimum heights are achieved by a proposed project;

The intent of the Historic District is not to prevent change, but to thoughtfully manage it over time and over changes in property ownership. **We believe that India Street Historic District supports the goals of the Master Plan and is the most effective way to protect the historic buildings, preserve the character of the neighborhood, and bring the benefits of consistent review process that have been proven in the Old Port and Congress Street historic districts.**

An India Street Historic District will celebrate the history of immigrants and working people of Portland's past, while encouraging sensitive new infill construction on vacant lots, flexibility of building use and architectural innovation. We urge adoption of the district as proposed.

Thank you for considering our views.

Hilary Bassett  
Executive Director

**From:** alice white <alilib@main.nc.us>  
**To:** <dga@portlandmaine.gov>  
**Date:** 8/5/2015 3:32 PM  
**Subject:** I hate what has happened to the neighborhood East of Franklin Arterial and within the confines of Congress and the Bay

I was a resident of Munjoy Hill.

The move was precipitated because the neighborhood within the above boundary 'including India Street' has changed too much, and not in the right direction.

The Morrill building coming down was not good. But the two crappy 'low rent' hotels with contemporary exteriors built in the past six years DO NOT ENHANCE THE NEIGHBORHOOD.

The Western half of the East End, has already lost 60% of it's previous charm.

Older residential buildings look stupid next to cheap contemporary commercial buildings. Why cant anyone see that?

The older brick and stone commercial buildings that are still functioning in the neighborhood are like 'hens teeth'. When a few more go: you can throw the towel in on the West end of the EAST END.

;) )

a previous resident of Munjoy Hill, I particularly chose that area as my home because I hate homogeneous neighborhoods, and I dislike inexpensive unattractive new development.

I have done preservation projects all over the Eastern Seaboard from Georgia to Massachusettes from 1973 until 2010.

I wqw involved in the first historic renovations EVER conceived and completed in many medium sized cities in the South and on the East Coast.

I am close to 70 years old, and don't want to live in a neighborhood that looks like a war zone. Old does not mean 'bad' or 'poor'. There has not been one attractive building added to the East End in ten years.

YOU ARE MAKING A MESS by not requiring preservation of the remaining architectural treasures that you have. Even small commercial buildings count for something.

STOP the wrecking and think in the long term. If you don't start preservation now, you will NEVER have any historic district.

Alice E White  
Falmouth, Maine  
(HATED MOVING AWAY FROM THE CITY).

**From:** Adair O'Reilly <daysmill@me.com>  
**To:** "dga@portlandmaine.gov" <dga@portlandmaine.gov>  
**CC:** "frlogan8@gmail.com" <frlogan8@gmail.com>  
**Date:** 9/14/2015 8:25 PM  
**Subject:** India Street Historic Preservation District

Ms. Deb Andrews  
Historic Preservation Program Manager  
City of Portland, Maine

Dear Deb,

Thank you for taking the time to speak with me today. I am writing in reference to the India Street Historic Preservation District at the request of Father Samuel Logan, Rector of Saint Paul's Church which is located at 279 Congress Street.

As I mentioned during our conversation, we support the inclusion of the Church and Rectory buildings in the Historic Preservation District, however we request that the Parish Hall building be removed from the District's boundary.

Although once a carriage house, the Parish Hall has had extensive modifications to its exterior over the years and does not have any significant architectural merit. In addition, only a small portion of the building is visible from Congress St. since it sets well back at the end of a narrow driveway.

Please feel free to call me at 294-1050 or Father Logan at 828-2012. If you wish, we would be pleased to have you do a site inspection.

Once again, thank you for your time and concern. I look forward to hearing from you.

Sincerely,

Adair Kathleen O'Reilly  
Vestryman  
Saint Paul's Church

Sent from my iPad

**Deb Andrews - The India Street Historic District**

**From:** Joan Leitzer <joanleitzer@gmail.com>  
**To:** <dga@portlandmaine.gov>  
**Date:** 9/15/2015 4:06 PM  
**Subject:** The India Street Historic District

I would like you to know of my support, as a resident of Portland, of making India Street a historic district.

Please bring my letter to the attention of the Planning Board at tonight's meeting.

Joan Leitzer, M.D.

**Deb Andrews - Proposed India Street Historic District**

**From:** Kenneth Spirer <kenspirer@gmail.com>  
**To:** <dga@portlandmaine.gov>  
**Date:** 9/15/2015 3:48 PM  
**Subject:** Proposed India Street Historic District  
**Attachments:** India Street District09152015.pdf

I support the position of Greater Portland Landmarks regarding the creation of an India Street Historic District.

Ken Spirer

**Deb Andrews - Historic Preservation Board-9/2-India Street Neighborhood**

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**From:** Liv Chase <livchase@yahoo.com>  
**To:** Deb Andrews <dga@portlandmaine.gov>, Chris Korzen <chriskorzen@gmail.com...>  
**Date:** 8/30/2015 9:27 AM  
**Subject:** Historic Preservation Board-9/2-India Street Neighborhood

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Dear Historic Preservation Board,

I am not able to attend this upcoming meeting on the India Street Neighborhood. I have reviewed the latest proposed boundary for a historic district in the India Street Neighborhood. Although the latest boundary is a smaller area and the properties that I currently own are outside of the district, I am still opposed to the idea of any historic district for the following reasons: 1) The 100' foot rule still impacts my property at 52 Federal St. and any other property within 100' of the historic district. Although the design guidelines are less restrictive within 100' of the district, they are still more restrictive than the guidelines that currently exist. 2) I do not agree that the contributing buildings represented in the proposed boundary are significant (with the exception of a few individual buildings) and creating a historic district will only cause added cost, time, and money for the owners of these properties. 3) At the last meeting I attended, Deb Andrews presented the idea that the Historic District was a benefit to everyone because it "protected" historic buildings from being torn down. I am extremely confident, based on all of the neighbors that I know in the neighborhood, if they purchased brick buildings, they are interested in keeping them that way. Therefore, I do not see how regulating the mortar used on bricks or preventing someone from making a building more energy efficient, is a means of "protecting" current building stock. 4) Lastly, as a comment from a neighbor, Frank Reall, the real threat to the neighborhood is large scale upcoming development and there is no longer a way to change this because it is too late. All of the larger parcels have been sold, permitted for construction under the current code, and they will move forward regardless. The only thing that a historic district will do for our neighborhood is place major restriction on small property owners that don't have the funds to make repairs that are historic in nature.

Based on these comments and observation, I am recommending that the proposed historic district is eliminated and individual properties can hold a "historic designation" if there are specific properties that the city feels need to be protected.

Regards,  
Liv Chase

**From:** Kelly <kellyamaine@gmail.com>  
**To:** "dga@portlandmaine.gov" <dga@portlandmaine.gov>  
**Date:** 7/24/2015 4:14 PM  
**Subject:** Request for exclusion

To the Historic Preservation Board, Attention Chair Scott Benson

My name is Kelly Williams and my husband, Walter, and I own the properties located at 316 and 316a Congress Street. We are requesting that our property is excluded in the historic designation in that area. We feel that it will limit the future plans we have for the property. Sincerely, Kelly Williams

Sent from my iPad

**Deb Andrews - 125 Newbury Street**

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**From:** Lindsay Clarke <clarkelindsay@gmail.com>  
**To:** <dga@portlandmaine.gov>  
**Date:** 9/7/2015 9:36 AM  
**Subject:** 125 Newbury Street

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To Whom It May Concern,

I am writing as the owner of 125 Newbury Street, Portland, ME 04101. In the current draft of the proposed India Street Historic District, my property has been included as the only historic building on its block. I am writing to formally request that my building be excluded from the India Street Historic District.

Thank you for your cooperation.

Sincerely,

Lindsay Clarke  
125 Newbury Street  
Portland, ME 04101

[clarkelindsay@gmail.com](mailto:clarkelindsay@gmail.com)  
207-518-8218

**Deb Andrews - India Street Preservation**

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**From:** Tony Castro <tonycaastro.company@yahoo.com>  
**To:** "dga@portlandmaine.gov" <dga@portlandmaine.gov>, "info@portlandlandmarks..."  
**Date:** 8/5/2015 1:58 PM  
**Subject:** India Street Preservation

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I regret that I will not be able to attend the meeting tonight but do wish to express my support for the proposed 'India Street Historic District'. Sincerely, Tony Castro

<http://www.tonycaastrocompany.com>

372 Intervale Road  
New Gloucester, Maine 04260  
phone (207) 926-5618

**Deb Andrews - I agree**

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**From:** Sue Cabot <suecabot4@gmail.com>  
**To:** <dga@portlandmaine.gov>  
**Date:** 8/5/2015 1:52 PM  
**Subject:** I agree

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I agree with Greater Portland Landmarksâ€™™ endorsement of the proposed India Street Historic District entwined with a zoning change.

Sincerely,

Sue Cabot  
49 Morning St.  
Portland 04101  
780.0351

To: City of Portland City Council

From: Paula Guillemette Agopian

Re: India Street HP Designation

The City of Portland was conceived and born here. It all began here. This proposal speaks to the core of the City and the neighborhood, and I emphasize "core". It has been a long time coming and should have been done long ago. "Better late than never". Our future is our past and our past is our future. There has been much thought and some compromise. We must all remember anything brought forward is subject to review as it is in all districts. Lets do it now!!!

Sincerely,

A handwritten signature in cursive script that reads "Paula". The signature is written in black ink and has a long, horizontal flourish extending to the right.

Paula Guillemette Agopian

cc. Mayor Brennan, City of Portland Planning Board, Historic Preservation Board, Deb Andrews, Hillary Bassett, Landmarks

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

*Order 78-15/16*  
~~*Tab 15 10-5-15*~~  
~~*Tab 14 10-17-15*~~  
*Tab 9 11-2-15*  
DAVID H. BRENERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER DESIGNATING THE  
ABRAHAM S. LEVEY BUILDING AT 78-88 MIDDLE STREET  
AS A LANDMARK**

**ORDERED,** that pursuant to the recommendation of the Historic Preservation Board under Article IX of Portland City Code Chapter 14, the Abraham S. Levey Building at 78-88 Middle Street is hereby designated as a Landmark.

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

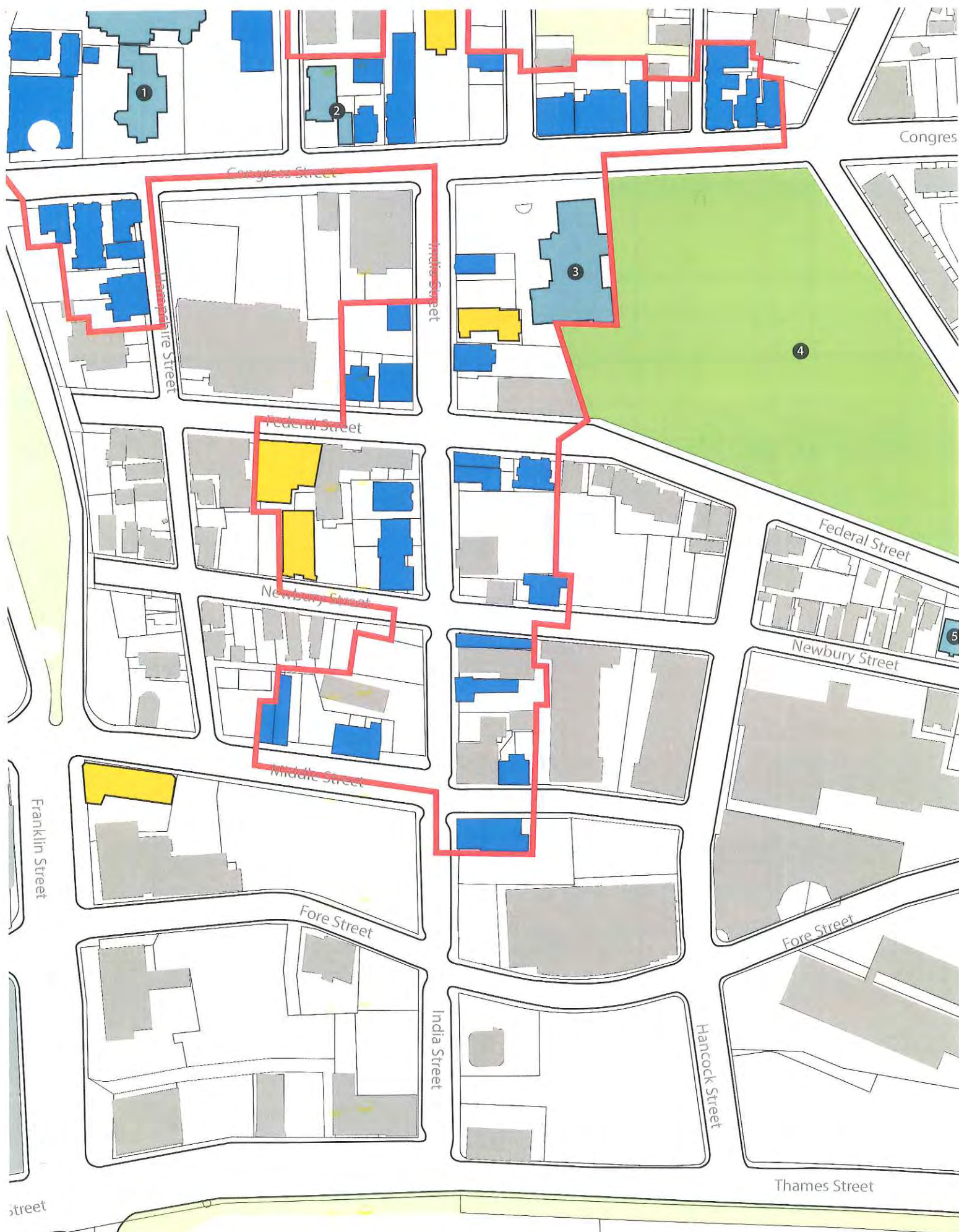
**CITY OF PORTLAND  
IN THE CITY COUNCIL**

Order 79-15/16  
~~Tab 16 10-5-15~~  
~~Tab 15 10-19-15~~  
~~Tab 10 11-2-15~~  
DAVID H. BRENNERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER DESIGNATING INDIA STREET AS A HISTORIC DISTRICT AND  
AMENDING THE MAP OF HISTORIC DISTRICTS**

- WHEREAS,** the City Council is authorized pursuant to Portland City Code Chapter 14, Section 622 to designate a defined area in the City as an historic district; and
- WHEREAS,** the Portland Historic Preservation Board and Planning Board have both recommended the designation of the India Street Historic District; and
- WHEREAS,** the designation of the India Street Historic District will fulfill a stated objective of the Comprehensive Plan to protect the City's historic resources through ongoing identification and designation of eligible landmarks and districts as well as the stated goals and objectives of the India Street Sustainable Neighborhood Plan; and
- WHEREAS,** the designation will formally recognize the unique history of the India Street neighborhood which was home to generations of immigrants on first arriving in the City of Portland; and
- WHEREAS,** the designation will prevent the demolition of identified historic structures within the India Street district; avoid the incremental loss of character that can occur through inappropriate building alterations and additions over time; and encourage new infill development that is compatible with the neighborhood's historic character; and
- WHEREAS,** the designation will stabilize and enhance the property values and economic vitality in the India Street neighborhood and increase the attractiveness of the India Street district to visitors to the city; and
- WHEREAS,** the designation will provide owners of income-producing properties access to federal and state tax incentives available for the rehabilitation of historic properties;
- NOW THEREFORE BE IT HEREBY ORDERED** that, pursuant to Chapter 14, Section 622, the Portland City Council hereby designates India Street, as shown on the attached map, as the India Street Historic District; and

**BE IT FURTHER ORDERED**, that the map of Historic Districts with Landmarks and Historic Landscape Districts is hereby amended to include the India Street Historic District as set forth on the attached map.



MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

*Order 83-15/16*  
~~*Tab 20 10-5-15*~~  
~~*Tab 19 10-19-15*~~  
~~*Tab 17 11-2-15*~~  
DAVID H. BRENNERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 14. LAND USE, ARTICLE III. ZONING, ARTICLE V. SITE PLAN  
AND ARTICLE IX. HISTORIC PRESERVATION  
Re: India Street Historic District and Form-Based Code Zone**

I. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,  
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

*That Chapter 14, Articles III, V and IX, Sections 14-48,  
14-275.1-14-275.9, 14-332.1, 14-345, 14-523, 14-526 and 14-651  
of the Portland City Code are hereby amended to read as follows:*

Art. I. In General, § 14-1--14-15  
Art. II. Planning Board, § 14-16--14-45  
Art. III. Zoning, § 14-46--14-490  
Div. 1. Generally, § 14-46--14-59

...

Div. 15.1. B-6 Eastern Waterfront Mixed Zone § 14-268--  
14-275.274  
Div. 15.2 India Street Form-Based Code Zone (IS-FBC) §  
14-275.1--14-275.7  
Div. 16. Waynflete School Overlay Zone, § 14-276--14-  
276.10

...

**Sec. 14-48. Establishment of zones.**

In order to carry out the provisions of this article, the  
city is hereby divided into the following classes of zones:

(a) R-1 Residential zone

...

(ii) S-P Stream protection zone-

(jj) IS-FBC India Street Form-based Code zone.

...

DIVISION 15.2. INDIA STREET FORM-BASED CODE ZONE (IS-FBC)

Sec. 14-275.1 Purpose.

The India Street Form-based Code is different than traditional zoning, placing the primary emphasis on a building's physical form and its relationship to the street, and de-emphasizing land use. The intent of the India Street Form-based Code Zone is to establish a zoning district that encourages a vibrant, walkable, mixed-use urban district, preserves and values the existing historic neighborhood fabric, and fosters and supports local businesses and residential areas. The components of a Form-Based Code include the Guiding Principles, REGULATING PLAN, Subdistricts, General Development Standards, Dimensional Requirements, BUILDING DESIGN STANDARDS, Diagrams, and Definitions.

The goal of the India Street Form-based Code is the creation and preservation of an active and human-scale public realm and the reinforcement of existing neighborhood character through good street space design.

(a) GENERAL GUIDING PRINCIPLES: The General Guiding Principles set forth here shall be applicable to all subdistricts within the India Street Form-based Code Zone.

1. The street is a coherent space, with consistent building and streetscape character on both sides of the street. This agreement of buildings and streetscape across the street contributes to a clear public space and district identity.
2. The street wall is visually well defined. Land should be clearly public or private. Buildings contribute to the vital and safe public space while providing a clear boundary to the private, protected realm.
3. Street walls are engaged with the street environment. Buildings are inviting places that interact with and contribute to the street vitality. Inactive edges, vehicle storage, garbage, and mechanical equipment should be kept

away from the street. 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.

4. Buildings are designed for the urban environment. Buildings must be designed for the urban situation within the subdistrict which often includes mixed-uses. Buildings are positioned near the street and FACADES are oriented to the street.
5. Respect historic character. If a property is within the India Street Historic District, Article IX Historic Preservation is applicable. New construction, BUILDING ADDITIONS, or ALTERATIONS in the India Street Historic District shall reflect and complement the character defining features and elements of the existing historic development to which it is visually related.

#### Sec. 14-275.2. Applicability.

The requirements set forth in this Division shall apply to all new development, primary and accessory structures, including BUILDING ADDITIONS within the India Street Form-based Code Zone as designated on the India Street REGULATING PLAN

#### Sec. 14-275.3. Establishment of subdistricts.

The India Street Form-based Code Zone as shown on the REGULATING PLAN is divided into three subdistricts:

- (a) Urban Neighborhood (UN) Subdistrict;
- (b) Urban Transitional (UT) Subdistrict; and
- (c) Urban Active (UA) Subdistrict.

#### Sec. 14-275.4. Definitions.

Terms used throughout this India Street Form-based Code Zone may be defined in Section 14-47 or elsewhere in Article III, Zoning. Terms not so defined shall be accorded their commonly accepted meanings. In the event of any conflict

between the definitions in this section and those in Section 14-47, or any other sections of Article III, Zoning, the Subdivision Rules and Regulations, or any other local land use ordinances, rules or regulations, those of this India Street Form-based Code Zone shall take precedence.

ALTERATION means a change or rearrangement in the structural supports, exterior appearance, or removing from or otherwise affecting the exterior appearance of a structure.

BUILDING ADDITION means any increase to footprint or volume of an existing structure. See Table 14.275.4c. Building - Principal & Accessory

BUILDABLE AREA means the area enclosed by the front, side, and rear yard setbacks and limited by lot coverage.

BUILDING, ACCESSORY means detached 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. See Table 14.275.4c. Building - Principal & Accessory.

BUILDING, PRINCIPAL means the main structure(s) on a lot having the predominant area and extent, and/or use. A lot may have more than one principal building. See Table 14.275.4c. Building - Principal & Accessory.

BUILDINGS, ATTACHED means 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 DESIGN STANDARD (BDS) means the basic design parameters governing building form, including intent, guidelines, and standards for architectural elements such as proportion, articulation, fenestration, entries, roof lines, and materials.

ELEVATION means an exterior wall of a building not along a frontage line. See FAÇADE and Table 14.275.4e. Frontage & Lot Lines.

ENTRANCE, PRINCIPAL means the main point of access for pedestrians into a building. A building may have more than one principal entrance.

EXPRESSION LINE means a line prescribed at a certain level of a building for the major part of the width of a FAÇADE, expressed by a variation in material or by a limited projection such as a molding or balcony.

FAÇADE means any exterior wall of a structure exposed to public view from a public right-of-way. See ELEVATION and Table 14.275.4e. Frontage & Lot Lines.

FAÇADE, BLANK means a building façade that contains expanses of wall area with no windows, no entrances, no articulation, and no other elements or features, or is otherwise undifferentiated.

GREEN ROOF means a roof of a building that is partially or completely covered with vegetation and designed to meet the Maine Stormwater Best Management Practices Manual standards and recommendations. A green roof installation must serve the purpose of reducing stormwater runoff through retention or slowing and consist of an assembly that at a minimum includes a root repellent system, a drainage system, a filtering layer, a growing medium and plants, and shall be installed on a waterproof membrane. The vegetated area of a green roof may be considered pervious for zoning impervious calculations.

LOT LAYER means a range of depth of a lot within which certain elements are permitted. See Table 14.275.4d. Lot Layers.

MID-BLOCK PERMEABILITY means a continuous, open-air corridor at least 20' in width that connects two streets or public rights-of-way and physically provides a break in the street wall. The corridor must be unobstructed and open to the sky for the majority of its length.

PARTY WALL means any partition wall common to two adjacent or attached buildings.

REGULATING PLAN means a zoning map that shows the boundary of the area and subdistricts subject to regulation by the India Street Form-based Code.

STEPBACK means a building setback of a specified distance measured from the ground floor building face that occurs at a prescribed number of stories or height above the ground.

YARD, SIDE means a yard adjoining a side lot line extending from the front yard to the rear yard, the width of which shall be the shortest horizontal distance between the side lot line and any structure. On corner lots, non-frontage yards shall be considered side yards. See Table 14.275.4b. Setback Designations.

ZERO LOT LINE means the location of a structure on a lot such that one or more of the structure sides rests directly on a lot line. See Table 14.275.4e. Frontage & Lot Lines.

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND**  
**IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER AUTHORIZING IMPLEMENTATION OF THE CONVERSION OF  
STATE AND HIGH STREETS FROM ONE-WAY TO TWO-WAY**

**ORDERED**, the conversion of State and High streets from one-way to two-way traffic is hereby authorized.

AMENDMENT 1 TO ORDER 83-15/16

Re: India Street Historic District and Form-Based Code Zone  
PREPARED BY CORPORATION COUNSEL FOR COUNCILOR BRENERMAN  
RE: PROPOSED APPLICABILITY LANGUAGE

I. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,  
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

*That Chapter 14, Articles III, V and IX, Sections 14-48,  
14-275.1-14-275.9, 14-332.1, 14-345, 14-523, 14-526 and 14-651  
of the Portland City Code are hereby amended to read as follows:*

Art. I. In General, § 14-1--14-15

...

BE IT FURTHER ORDERED, that this Amendment shall not apply to  
any site plan or subdivision application that has been  
determined by the Planning Division to be complete and  
sent to departments for review on or before the date  
of adoption of this Amendment; and

...

AMENDMENT 2 TO ORDER 83-15/16

Re: India Street Historic District and Form-Based Code Zone  
PREPARED BY CORPORATION COUNSEL FOR COUNCILOR DONOGHUE  
RE: ADDITION TO DEFINITION OF "STEPBACK"

I. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,  
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

*That Chapter 14, Articles III, V and IX, Sections 14-48,  
14-275.1-14-275.9, 14-332.1, 14-345, 14-523, 14-526 and 14-651  
of the Portland City Code are hereby amended to read as follows:*

Art. I. In General, § 14-1--14-15

...

Sec. 14-275.4. Definitions.

Terms used throughout this India Street Form-based Code Zone may be defined in Section 14-47 or elsewhere in Article III, Zoning. Terms not so defined shall be accorded their commonly accepted meanings. In the event of any conflict between the definitions in this section and those in Section 14-47, or any other sections of Article III, Zoning, the Subdivision Rules and Regulations, or any other local land use ordinances, rules or regulations, those of this India Street Form-based Code Zone shall take precedence.

...

STEPBACK means a building setback of a specified distance measured from the ground floor building face that occurs at a prescribed number of stories or height above the ground and excludes the minimum necessary housing of elevators, stairways, tanks, fans, or other building operating equipment not intended for human occupancy.

YARD, SIDE means a yard adjoining a side lot line extending from the front yard to the rear yard, the width of which shall be the shortest horizontal distance between the side lot line and any structure. On corner lots, non-frontage yards shall be considered side yards. See Table 14.275.4b. Setback Designations.

...

AMENDMENT 3 TO ORDER 83-15/16

Re: India Street Historic District and Form-Based Code Zone  
PREPARED BY CORPORATION COUNSEL FOR COUNCILOR DONOGHUE  
RE: HEIGHT BONUSES FOR WORKFORCE AND LOW-INCOME HOUSING

I. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,  
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

*That Chapter 14, Articles III, V and IX, Sections 14-48,  
14-275.1-14-275.9, 14-332.1, 14-345, 14-523, 14-526 and 14-651  
of the Portland City Code are hereby amended to read as follows:*

Art. I. In General, § 14-1--14-15

...

Sec. 14-275.6. General development standards.

The following standards apply to all subdistricts unless  
expressly stated otherwise.

(a) *Prohibited uses* - uses not to be established in the  
India Street Form-based Code Zone include:

...

(c) Height standards.

1. Height bonus.

a. Applicability:

1. If principal frontage faces a UT  
street, UN street, or Congress Street,  
then the building is eligible for a  
height bonus.

2. Only one height bonus may be applied  
per structure.

b. One (1) additional story of up to 12 feet in  
height is allowed if one of the following  
provisions is met:

1. For residential development with  
residential density equal to or greater

than 150 dwelling units per acre (density may be achieved with the bonus floor);

2. For any development providing a GREEN ROOF, where:

i At least 50% of the cumulative lot area is pervious; and

ii At least 50% of the cumulative roof area is a GREEN ROOF. GREEN ROOF area may be applied towards the 50% lot area requirement.

3. For residential development where 20% of the units meet the definition of either "Workforce Housing Unit for Sale" or "Low-income Housing Unit for Rent" as per Section 14-485.

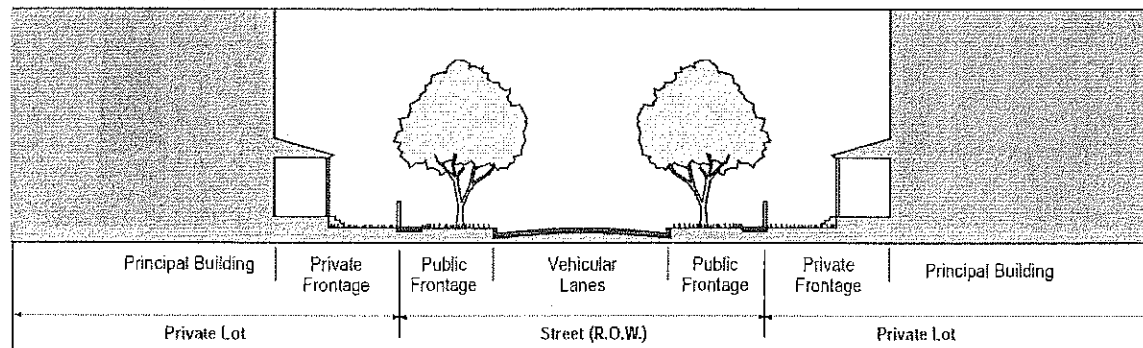
|             |                           | Height Bonuses        |                                               |                   |                   |                   |                         |                             |
|-------------|---------------------------|-----------------------|-----------------------------------------------|-------------------|-------------------|-------------------|-------------------------|-----------------------------|
| Subdistrict |                           | Max. Pre-bonus Height | MID-BLOCK PERMEABILITY (publicly accessible ) | Res. Density      | GREEN ROOF        | Afford. Housing   | Max. Height w/ Bonus    | Min. Bonus Floor Stepback * |
|             | UN                        | 45' and 4 stories n/a | n/a                                           | n/a               | n/a               | 1 story Up to 12' | 57' up to 5 stories n/a | 15' n/a                     |
|             | UT                        | 65' and 6 stories     | 1 story Up to 12'                             | 1 story Up to 12' | 1 story Up to 12' | 1 story Up to 12' | 77' up to 7 stories     | 15'                         |
|             | UA (Congress Street only) | 50' and 4 stories     | 1 story Up to 12'                             | 1 story Up to 12' | 1 story Up to 12' | 1 story Up to 12' | 62' up to 5 stories     | 15'                         |

a\*measured from the ground floor building edge facing any public right-of-way

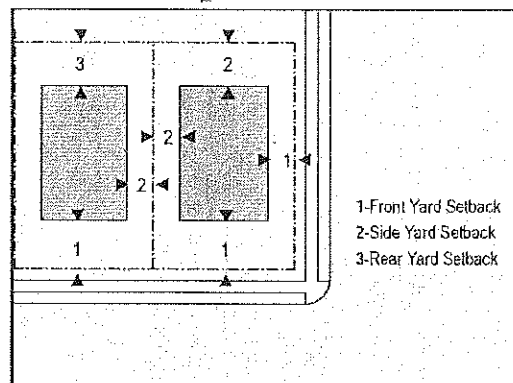
...

**TABLE 14.275.4 DEFINITIONS ILLUSTRATED**

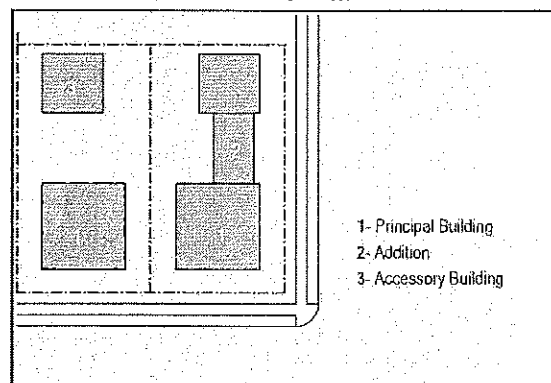
**a. STREETS & FRONTAGES**



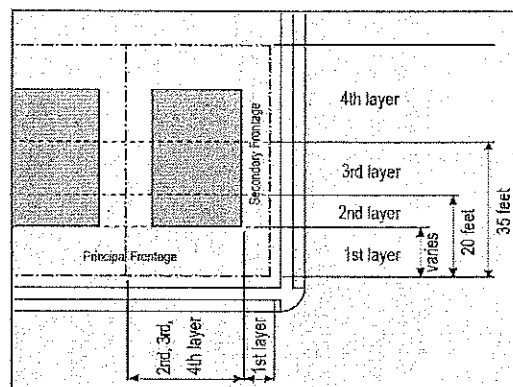
**b. SETBACK DESIGNATIONS**



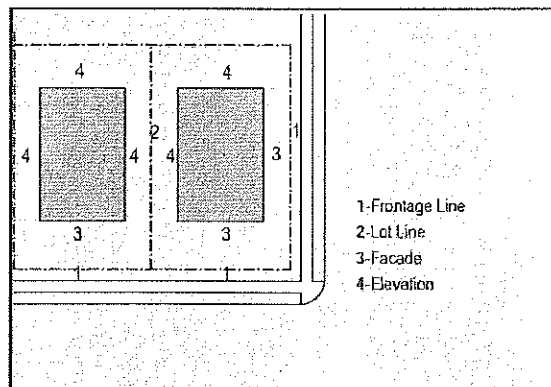
**c. BUILDING - PRINCIPAL & ACCESSORY**



**d. LOT LAYERS**



**e. FRONTAGE & LOT LINES**



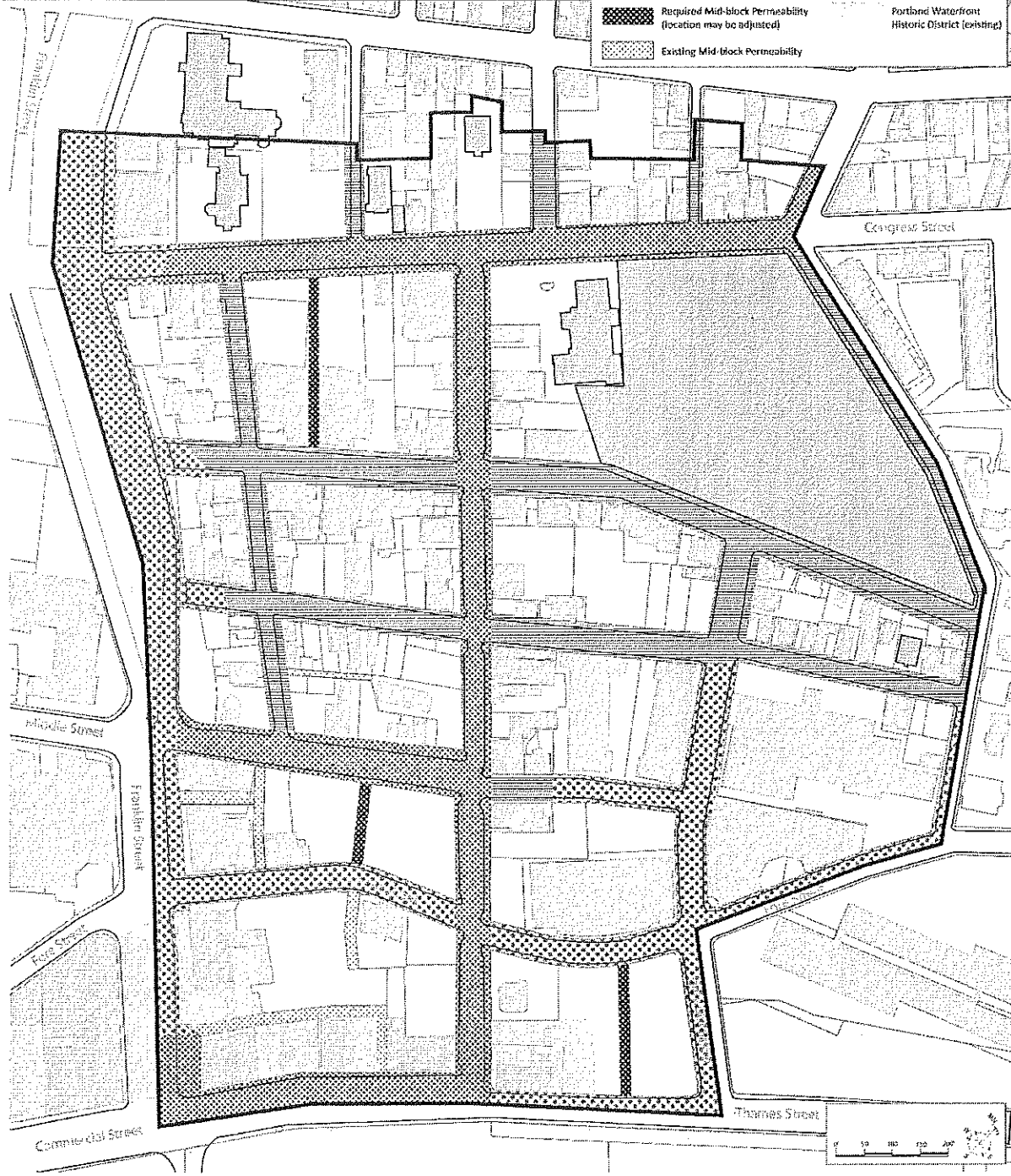
Sec. 14-275.5. Regulating Plan.

The REGULATING PLAN shows the location of the zone boundary and subdistricts subject to regulation by the IS-FBC zone.

# REGULATING PLAN

## LEGEND

- |  |                                                               |  |                                                     |
|--|---------------------------------------------------------------|--|-----------------------------------------------------|
|  | UA - Urban Active Subdistrict                                 |  | Zoning District Boundary                            |
|  | UT - Urban Transitional Subdistrict                           |  | Public Open Space                                   |
|  | UN - Urban Neighborhood Subdistrict                           |  | Historic Landmarks                                  |
|  | Required Mid-block Permeability<br>(location may be adjusted) |  | Portland Waterfront<br>Historic District (existing) |
|  | Existing Mid-block Permeability                               |  |                                                     |



Sec. 14-275.6. General development standards.

The following standards apply to all subdistricts unless expressly stated otherwise.

(a) Prohibited uses - uses not to be established in the India Street Form-based Code Zone include:

1. Correctional facilities;
2. Cremation facilities;
3. Drive-through facilities;
4. High-impact industrial uses, including industrial uses that are prohibited in the IL zone, specifically Section 14-233(c), (e - y), (aa);
5. Major/minor auto-service station;
6. Truck terminals;
7. Waste related services; and
8. Storage and parking facilities for Class 1 flammable and combustible liquids (having an aggregate total of more than 100 gallons) but excluding storage that is part of a motorized vehicle or pleasure craft facility.

(b) Siting standards.

1. MID-BLOCK PERMEABILITY.

- a. Lots with frontage on two streets roughly parallel to Commercial/Thames Street, for each and every 200 feet in street line length of lot, a full break between structures of at least 20 feet in width shall be provided roughly perpendicular to Commercial/Thames Street and within the middle third of the applicable street frontage. (see Table 14.275.7a. Mid-Block Permeability)

- b. Is encouraged in any location that connects existing public or private alleys, passages, or streets.
- c. Any development providing MID-BLOCK PERMEABILITY with public access between two streets is eligible for one (1) additional story of up to 12' in height (see Sec. 14-275.6(c) Height Standards). Public access shall be defined through a legal agreement such as an easement or license.
- d. Refer to REGULATING PLAN for identified required MID-BLOCK PERMEABILITY locations.

2. Frontage requirements - Additional Building Length is allowed beyond the maximum building length under the following circumstances and according to the table below:

- a. ATTACHED BUILDINGS: An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed. A PARTY WALL condition is required at least every 30' and for the entire height of each building. (see Table 14.275.7d Additional Building Length - ATTACHED BUILDINGS).
- b. Ground Floor Partitions: Additional building length is permitted with the provision of ground floor partitions where the following conditions are met: (see Table 14.275.7f Additional Building Length - Ground Floor Partitions)
  - 1. Partitions must extend from the FAÇADE at least 2/3rds of the building depth.
  - 2. Partitions must be architecturally expressed on the building exterior.
  - 3. Each module created by partition must have at least one functional, street-facing entry.

4. Modules created by partition shall be sized to have reasonable function and proportion in relation to overall building length.

c. Massing Variation: Additional building length is permitted where at least 30% and up to 40% of the total FACADE building length is set back to the 3<sup>rd</sup> LOT LAYER (at least 20') (see Table 14.275.7e Additional Building Length - Massing Variation).

d. Structured Parking Exception: Additional building length for one FACADE without partition walls is allowed for the use of ground-level structured parking.

| <u>Additional Building Length</u> |                           |                                    |                          |                                     |  |
|-----------------------------------|---------------------------|------------------------------------|--------------------------|-------------------------------------|--|
| <u>Subdistrict</u>                | <u>ATTACHED BUILDINGS</u> | <u>Ground Floor Partitions</u>     | <u>Massing Variation</u> | <u>Structured Parking Exception</u> |  |
| <u>UN</u>                         | <u>unlimited run</u>      | <u>Not allowed</u>                 | <u>Not allowed</u>       | <u>Not allowed</u>                  |  |
| <u>UT</u>                         | <u>unlimited run</u>      | <u>200' max. length; 2 modules</u> | <u>200' max. length</u>  | <u>200' max. length</u>             |  |
| <u>UA</u>                         | <u>unlimited run</u>      | <u>150' max. length; 3 modules</u> | <u>Not allowed</u>       | <u>150' max. length</u>             |  |

3. Setbacks.

a. Side Yard Setbacks for Small Lots - Lots with street frontage of less than 35' are not required to have side yards.

b. Where new construction or BUILDING ADDITIONS creates a side yard of less than 5', a maintenance easement is required where a combination of the side yard and easement must be at least 5'. PARTY WALL conditions are exempt from providing a maintenance easement.

c. Building FACADES within 10' of a corner are exempt from setback requirements in order to allow special corner architectural treatments.

d. ATTACHED BUILDINGS on Individual Lots - Subdivision developments consisting of horizontally attached buildings on individual lots are not required to have side yards between buildings where a PARTY WALL condition will exist, but shall be required to meet the applicable side yard requirements at the external and internal subdivision lot boundaries between buildings that are not attached to each other.

4. Landscaping and screening.

a. Surface parking areas shall be screened from view from sidewalks, public-right-of-ways, and public open spaces using landscaping, walls, fencing, or a combination thereof.

b. Wall/Fence Dimensional Requirements

| <u>Wall/Fence Dimensional Requirements</u> |                |                                              |
|--------------------------------------------|----------------|----------------------------------------------|
| <u>LOT LAYER</u>                           | <u>Height</u>  | <u>Visual Permeability</u>                   |
| <u>1<sup>ST</sup></u>                      | <u>6' max.</u> | <u>Required above 2' from sidewalk grade</u> |
| <u>2<sup>ND</sup> - 4<sup>TH</sup></u>     | <u>8' max.</u> | <u>n/a</u>                                   |

5. BUILDING ADDITIONS.

a. BUILDING ADDITIONS which exceed the footprint of the existing building to which it is an addition or which exceeds 50,000 square feet shall be subject to Level III Site Plan review.

b. A BUILDING ADDITION length may match but not exceed the length of the existing building to which it is an addition. All other Subdistrict Dimensional Requirements shall apply. (See Table 14.275.7b. Addition)

c. BUILDING ADDITIONS may match existing building in number and height of stories. All other Subdistrict Height Standards shall apply.

(c) Height standards.

1. Height bonus.

a. Applicability:

1. If principal frontage faces a UT street or Congress Street, then the building is eligible for a height bonus.
2. Only one height bonus may be applied per structure.

b. One (1) additional story of up to 12 feet in height is allowed if one of the following provisions is met:

1. For residential development with residential density equal to or greater than 150 dwelling units per acre (density may be achieved with the bonus floor);
2. For any development providing a GREEN ROOF, where:
  - i At least 50% of the cumulative lot area is pervious; and
  - ii At least 50% of the cumulative roof area is a GREEN ROOF. GREEN ROOF area may be applied towards the 50% lot area requirement.

Height Bonuses

| <u>Subdistrict</u>               | <u>Max. Pre-bonus Height</u> | <u>MID-BLOCK PERMEABILITY (publicly accessible)</u> | <u>Res. Density</u>      | <u>GREEN ROOF</u>        | <u>Max. Height w/ Bonus</u> | <u>Min. Bonus Floor Stepback*</u> |
|----------------------------------|------------------------------|-----------------------------------------------------|--------------------------|--------------------------|-----------------------------|-----------------------------------|
| <u>UN</u>                        | n/a                          | n/a                                                 | n/a                      | n/a                      | n/a                         | n/a                               |
| <u>UT</u>                        | <u>65' and 6 stories</u>     | <u>1 story Up to 12'</u>                            | <u>1 story Up to 12'</u> | <u>1 story Up to 12'</u> | <u>77' up to 7 stories</u>  | <u>15'</u>                        |
| <u>UA (Congress Street only)</u> | <u>50' and 4 stories</u>     | <u>1 story Up to 12'</u>                            | <u>1 story Up to 12'</u> | <u>1 story Up to 12'</u> | <u>62' up to 5 stories</u>  | <u>15'</u>                        |

\*measured from the ground floor building edge facing any public right-of-way

(d) Parking standards.

1. Parking shall be provided as per Division 20 Off-Street Parking of Chapter 14 Land Use Code.
2. Structured parking must meet the BDS for Structured Parking (see City of Portland Design Manual).
3. In the case of a BUILDING ADDITION, non-conforming existing surface parking may remain. In the case of new construction, surface parking must be brought into conformance with IS-FBC standards.

Sec. 14-275.7. Subdistrict dimensional requirements.

(a) Urban Neighborhood (UN) subdistrict.

Intent: The intent of this subdistrict is to maintain and promote a small-scale, less active urban fabric. Buildings may be more private in character and have smaller footprints with building types including, but not limited to, single-family, rowhouses, duplexes, triple-deckers, and double-triples. Building frontages may be less transparent and entries may be raised above sidewalk level with frontage types including raised, recessed doorways, porches, and stoops. The streetscape has variable setbacks and landscaping with many buildings within one block and streets tend to be narrow.

**SITING STANDARDS**

|                                  |                         |
|----------------------------------|-------------------------|
| Orientation - Principal Frontage | determined by applicant |
| Lot Coverage                     | 90% max                 |

**FRONTAGE REQUIREMENTS (1st LOT LAYER)**

|                                                                                                  |          |
|--------------------------------------------------------------------------------------------------|----------|
| Building Length - Principal facade                                                               | 30' max. |
| Building Length - Secondary fac.                                                                 | 50' max. |
| at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.275.7 c.) |          |

|                              |                           |
|------------------------------|---------------------------|
| Additional Building Length   | (see also Table 14.275.7) |
| ATTACHED BUILDINGS           | unlimited run             |
| Ground Floor Partitions      | not allowed               |
| Massing Variation            | not allowed               |
| Structured Parking Exception | not allowed               |

**SETBACKS**

|                                |                                                                                                |
|--------------------------------|------------------------------------------------------------------------------------------------|
| Principal Building             |                                                                                                |
| (a) Front Yard (1st Lot Layer) | 5' max.                                                                                        |
| Setback Applicability          | 75% of total building length must be built within 1st LOT LAYER                                |
| (b) Side Yard*                 | 5' min. - May be reduced to zero provided that the cumulative side yards are not less than 10' |
| (c) Rear Yard                  | 10' min.                                                                                       |
| Accessory Building             | 2nd thru 4th LOT LAYERS                                                                        |
| Side Yard                      | 5' min.                                                                                        |
| Rear Yard                      | 5' min.                                                                                        |

**BUILDING ENTRIES (SEE ALSO BDS)**

|                           |                         |
|---------------------------|-------------------------|
| Frequency at frontage     | at least 35             |
| Principal Entries         |                         |
| Orientation               | any orientation allowed |
| Elevated Stoop (> 1 step) | allowed                 |

**HEIGHT STANDARDS**

|                      |                         |
|----------------------|-------------------------|
| Principal Building   |                         |
| Building Height Min. | 25', at least 2 stories |
| Building Height Max. | 45', up to 4 stories    |
| Ground Story Height  | n/a                     |
| Accessory Building   |                         |
| Building Height Max. | 25'                     |

**PARKING STANDARDS**

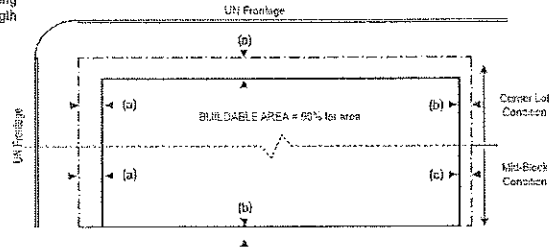
|                                           |                                                                 |
|-------------------------------------------|-----------------------------------------------------------------|
| Surface Parking Location                  |                                                                 |
| Side Yard                                 | 20' max in width per lot; may not exceed 50% of frontage length |
| Rear Yard                                 | 4th LOT LAYER only                                              |
| Garage at frontage (attached or detached) |                                                                 |
| Garage Door Setback (min)                 | 2nd LOT LAYER                                                   |
| Garage Door Opening (max)                 | 9' up to 40% of facade length                                   |
|                                           | 20' max. limit                                                  |

**Notes and Exceptions**

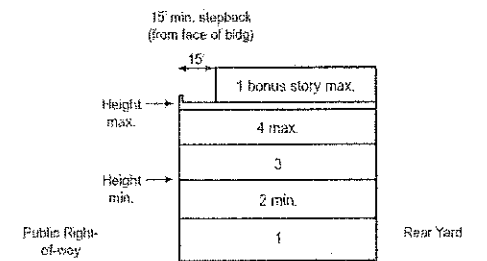
\* Zero lot lines are allowed under certain conditions (see Sec. 14.275.6(b) 3. Setbacks)

**SITING STANDARDS**

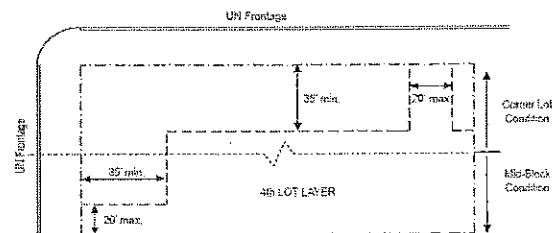
1. The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
2. FACADES shall be built along the frontage lines to the length specified in the table.

**HEIGHT STANDARDS**

1. Height shall be measured as specified in Sec. 14.47 Definitions "Building, height of."
2. Number of Stories excludes attics and raised basements.

**PARKING STANDARDS**

1. Surface parking areas may be provided within the shaded area shown.

**(b) Urban Transitional (UT) subdistrict.**

**Intent:** The intent of this subdistrict is to encourage higher density, mixed-use building types that accommodate any use. Building frontages are a mix of activity level, have larger footprints, and the most flexibility of height and scale. Building ground floor spaces tend to accommodate flexible and changing uses with frontage types including doorways, forecourts, arcades, and storefronts. The streetscape may be less active than the UA subdistrict with wide sidewalks, street trees, and setbacks and stepbacks providing relief from large building masses.

## SITING STANDARDS

|                                                                                                  |                           |
|--------------------------------------------------------------------------------------------------|---------------------------|
| Orientation - Principal Frontage                                                                 | determined by applicant   |
| Lot Coverage                                                                                     | 90% max                   |
| <b>FRONTAGE REQUIREMENTS (1st LOT LAYER)</b>                                                     |                           |
| Building Length                                                                                  | 100' max.                 |
| at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.275.7 c.) |                           |
| Additional Building Length                                                                       | (see also Table 14.275.7) |
| ATTACHED BUILDINGS                                                                               | unlimited run             |
| Ground Floor Partitions                                                                          | 200' max., 2 modules      |
| Massing Variation                                                                                | 200' max.                 |
| Structured Parking Exception                                                                     | 200' max.                 |

## SETBACKS

|                                |                                                                                                 |
|--------------------------------|-------------------------------------------------------------------------------------------------|
| Principal Building             |                                                                                                 |
| (a) Front Yard (1st Lot Layer) | 10' min.                                                                                        |
| Setback Applicability          | 75% of total building length must be built within 1st LOT LAYER                                 |
| (b) Side Yard*                 | 10' min. - May be reduced to zero provided that the cumulative side yards are not less than 20' |
| (c) Rear Yard                  | 10' min.                                                                                        |
| (d) STEPBACK (adjacent to UN)  | 10' min. setback after 45' height                                                               |
| Accessory Building             | 2nd thru 4th LOT LAYER                                                                          |
| Side Yard                      | 5' min.                                                                                         |
| Rear Yard                      | 5' min.                                                                                         |

## BUILDING ENTRIES (SEE ALSO BDS)

|                          |              |
|--------------------------|--------------|
| Frequency at frontage    | at least 95' |
| Principal Entries        |              |
| Orientation              | any allowed  |
| Elevated Stoop (>1 step) | allowed      |

## HEIGHT STANDARDS

|                      |                      |
|----------------------|----------------------|
| Principal Building   |                      |
| Building Height Min. | 3 stories            |
| Building Height Max. | 65', up to 6 stories |
| Ground Story Height  | n/a                  |
| Accessory Building   |                      |
| Building Height Max. | 25'                  |

## PARKING STANDARDS

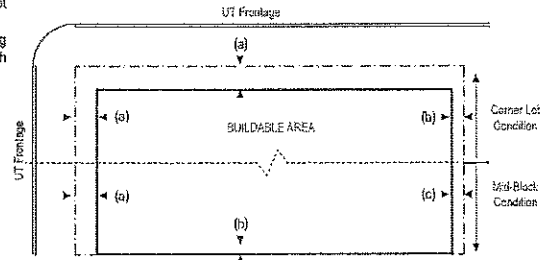
|                                           |                               |
|-------------------------------------------|-------------------------------|
| Surface Parking Location                  | 4th LOT LAYER only            |
| Garage at frontage (attached or detached) |                               |
| Garage Door Setback (min)                 | 2nd LOT LAYER                 |
| Garage Door Opening (max)                 | 9' up to 40% of facade length |
|                                           | 20' max. limit                |

## Notes and Exceptions

\* Zero lot lines are allowed under certain conditions (see Sec. 14.275.6(b) 3. Setbacks)

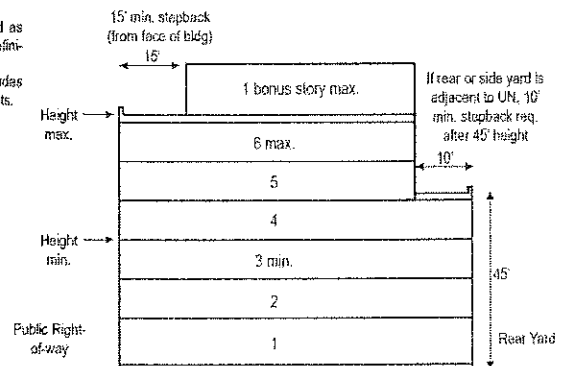
## SITING STANDARDS

- The FACADES and ELEVATIONS of Principal Structures shall be distanced from the lot lines as shown.
- FACADES shall be built along the frontage lines to the length specified in the table.



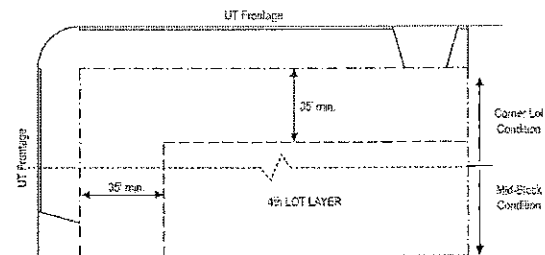
## HEIGHT STANDARDS

- Height shall be measured as specified in Sec. 14.47 Definitions "Building height of."
- Number of Stories excludes attics and raised basements.



## PARKING STANDARDS

- Surface parking areas may be provided within the 4th LOT LAYER (shaded area) as shown.



## (c) Urban Active (UA) subdistrict.

Intent: The intent of this subdistrict is to maintain and promote a moderate-scale, diverse, mixed-use neighborhood with vibrant streets and active ground floor spaces. Buildings are more active and engage the street at the ground level. Building frontages are transparent and entries are at sidewalk level with frontage types including storefronts and recessed doorways. The streetscape has steady street planting, and buildings set close to the street providing a consistent street wall.

## SITING STANDARDS

|                                  |                  |
|----------------------------------|------------------|
| Orientation - Principal Frontage | face a UA street |
| Lot Coverage                     | 90% max          |

### FRONTAGE REQUIREMENTS (1st LOT LAYER)

|                                                                                                  |                              |
|--------------------------------------------------------------------------------------------------|------------------------------|
| Building Length                                                                                  | 50' max.                     |
| at least 75% of total building length must be built within 1st LOT LAYER (see Table 14.275.7 c.) |                              |
| Additional Building Length                                                                       | (see also Table 14.275.7)    |
| ATTACHED BUILDINGS                                                                               | unlimited run                |
| Ground Floor Partitions                                                                          | 150' max., 3 modules         |
| Massing Variation                                                                                | not allowed                  |
| Structured Parking Exception                                                                     | 150' max.                    |
| Fenestration, ground floor                                                                       | 60-90% (see BDS) facade area |

### SETBACKS

|                                 |                                                                                                |
|---------------------------------|------------------------------------------------------------------------------------------------|
| <b>Principal Building</b>       |                                                                                                |
| (a) Front Yard* (1st Lot Layer) | 5'0" max.                                                                                      |
| Setback Applicability           | 75% of total building length must be built within 1st LOT LAYER                                |
| (b) Side Yard**                 | 5' min. - May be reduced to zero provided that the cumulative side yards are not less than 10' |
| (c) Rear Yard                   | 10'0" min.                                                                                     |
| <b>Accessory Building</b>       |                                                                                                |
| Side Yard                       | 5'0" min.                                                                                      |
| Rear Yard                       | 5'0" min.                                                                                      |

### BUILDING ENTRIES (SEE ALSO BDS)

|                           |                                       |
|---------------------------|---------------------------------------|
| Frequency at frontage     | at least 40'                          |
| <b>Principal Entries</b>  |                                       |
| Orientation               | at least 1 facing UA street or corner |
| Elevated Stoop (> 1 step) | not allowed                           |

### HEIGHT STANDARDS

|                           |                      |
|---------------------------|----------------------|
| <b>Principal Building</b> |                      |
| Building Height Min.      | 3 stories            |
| Building Height Max.      | 50', up to 4 stories |
| Ground Story Height       | 12'0" min. clear     |
| <b>Accessory Building</b> |                      |
| Building Height Max       | 25'                  |

### PARKING STANDARDS

|                                                  |                    |
|--------------------------------------------------|--------------------|
| Surface Parking Location                         | 4th LOT LAYER only |
| <b>Garage at frontage (attached or detached)</b> |                    |
| Garage Door Setback                              | 3rd LOT LAYER      |
| Garage Door Opening (max)                        | n/a                |

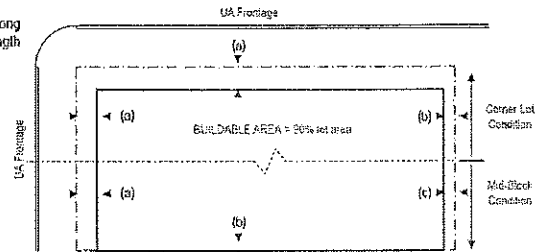
### Notes and Exceptions

\* Up to 10'0" max. front yard setback is allowed if ground plane at frontage is a continuation of the accessible public right-of-way

\*\* Zero lot lines are allowed under certain conditions (see Sec. 14.275.6(b) 3. Setbacks)

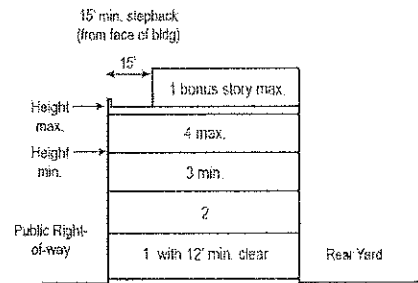
### SITING STANDARDS

1. The FACADES and ELEVATIONS of Principal Buildings shall be distanced from the lot lines as shown.
2. FACADES shall be built along the frontage lines to the length specified in the table.



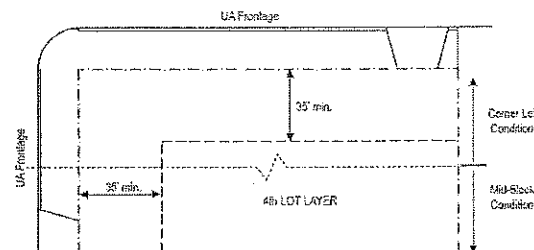
### HEIGHT STANDARDS

1. Height shall be measured as specified in Sec. 14-47 Definitions "Building, height of."
2. Number of Stories excludes attics and raised basements.



### PARKING STANDARDS

1. Surface parking areas may be provided within the 4th LOT LAYER (shaded area) as shown.



### (d) Corner conditions.

For corner lots where two subdistricts intersect at a street corner, the *Dimensional Requirements* and *Building Design Standards* of the "dominant" subdistrict shall apply from the 1<sup>st</sup> through 3<sup>rd</sup> LOT LAYER (35 feet deep into the lot measured from the dominant lot line) along its associated street frontage or public ways including required mid-block permeability. Otherwise, *Dimensional Requirements* shall be according to the subdistrict onto which the building FAÇADE faces.

## ORIENTATION

- Corner lots shall be treated as having street frontage on all streets regardless of building orientation
- Principal Building shall designate a Principal Frontage and Secondary Frontage\*
- In the case of a corner lot having UA frontage, the Principal Frontage must face a UA street\*

## SETBACKS

- (a) Front Yard (1st Lot Layer) | according to subdistrict  
 (b) Side Yard | according to subdistrict

Building facades within 10' of a corner are exempt from setback requirements in order to allow special architectural treatments

## UA INTERSECTS UT

|                                                                          |                              |
|--------------------------------------------------------------------------|------------------------------|
| Dominant Subdistrict (35' deep)                                          | UA                           |
| Orientation - Principal Frontage                                         | UA street                    |
| Dominant Building Design Standards (applicable 35' deep)                 |                              |
| Ground Story Height                                                      | 12' min. clear               |
| Fenestration, ground floor                                               | 60-90% (see BDS) facade area |
| (measured as a percentage of the FACADE that is 2' above sidewalk grade) |                              |

## UA INTERSECTS UN

|                                                                          |                              |
|--------------------------------------------------------------------------|------------------------------|
| Dominant Subdistrict (35' deep)                                          | UA                           |
| Orientation - Principal Frontage                                         | UA street                    |
| Building Length - UN FACADES                                             | 100' max.                    |
| Dominant Building Design Standards (applicable 35' deep)                 |                              |
| Ground Story Height                                                      | 12' min. clear               |
| Fenestration, ground floor                                               | 60-90% (see BDS) facade area |
| (measured as a percentage of the FACADE that is 2' above sidewalk grade) |                              |

## UT INTERSECTS UN

|                                                                                                            |                         |
|------------------------------------------------------------------------------------------------------------|-------------------------|
| Dominant Subdistrict (35' deep)                                                                            | UN                      |
| Orientation - Principal Frontage                                                                           | determined by applicant |
| • Corner lots shall be treated as having street frontage on all streets regardless of building orientation |                         |

## UN INTERSECTS UN

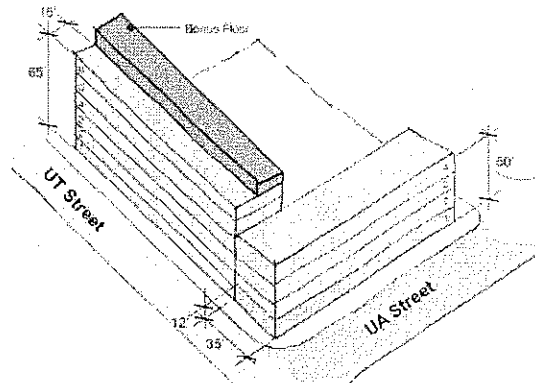
|                           |          |
|---------------------------|----------|
| Building Length maximums: |          |
| Principal Frontage        | 30' max. |
| Secondary Frontage        | 50' max. |

## Notes and Exceptions

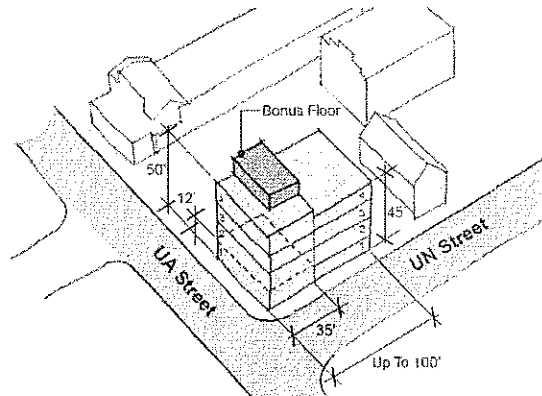
- \* Does not have to correspond to legal building address

# CORNER

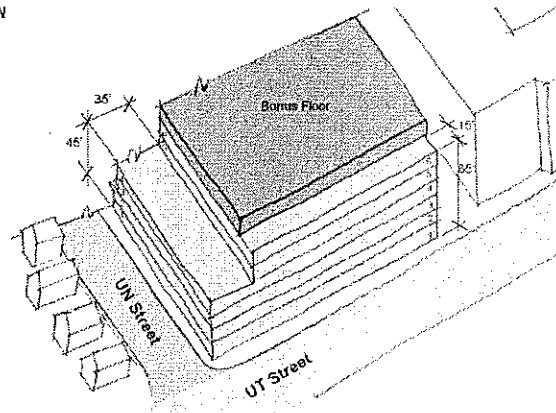
UA INTERSECTS UT  
(example only)



UA INTERSECTS UN  
(example only)

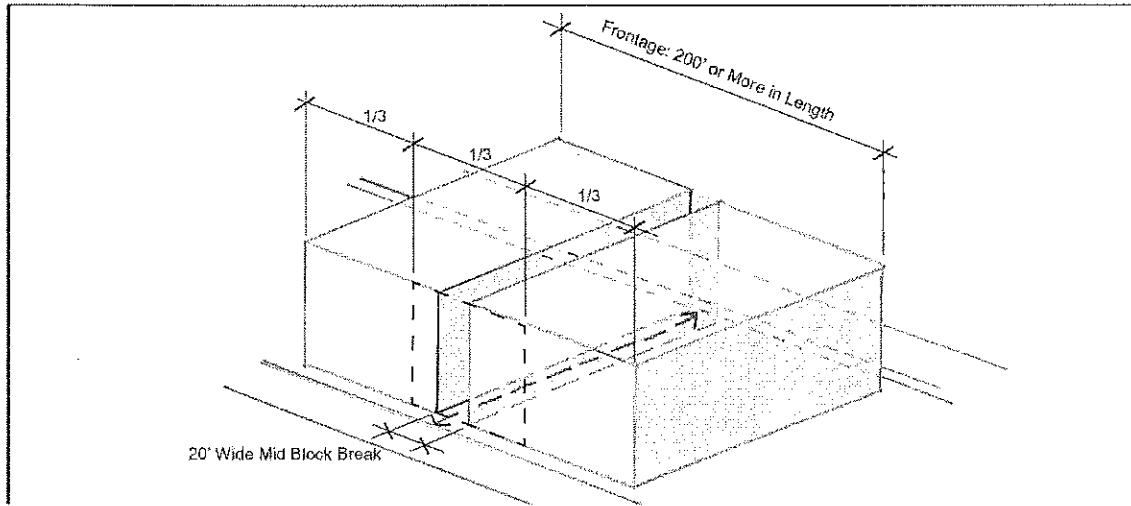


UT INTERSECTS UN  
(example only)

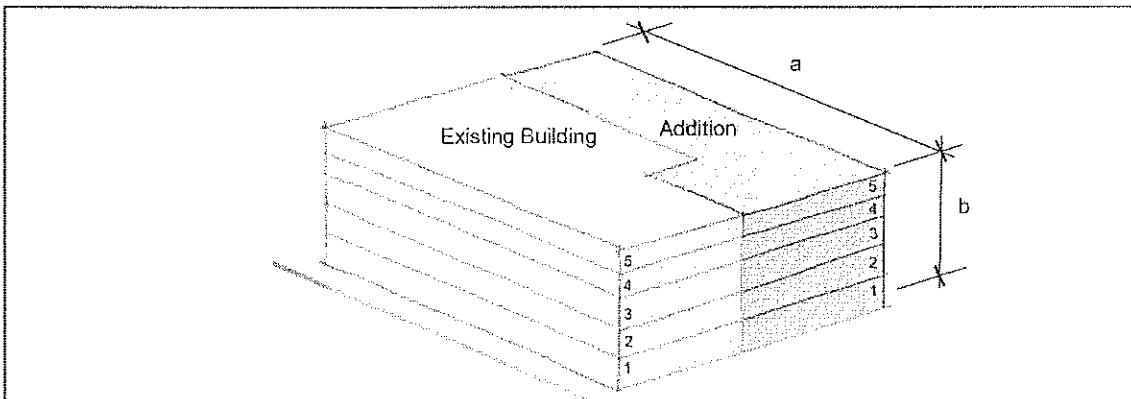


**TABLE 14.275.7 DIMENSIONAL REQUIREMENTS ILLUSTRATED**

**a. MID-BLOCK PERMEABILITY**

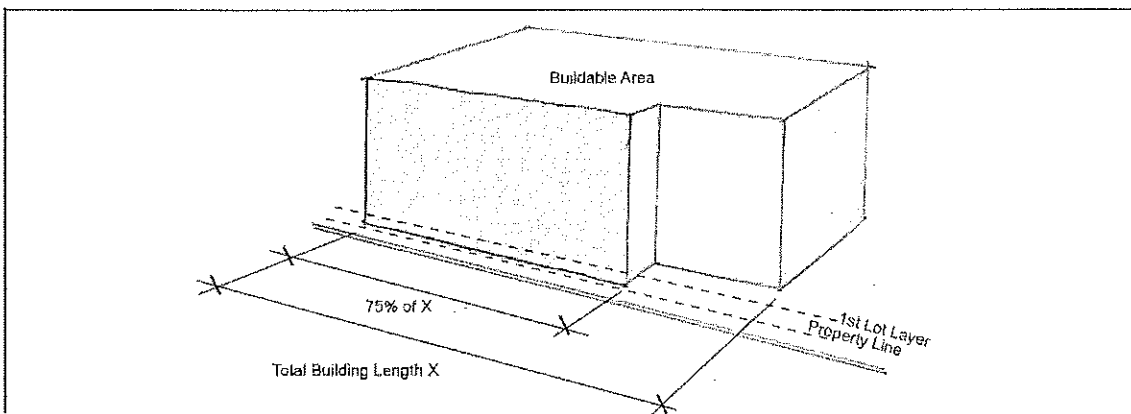


**b. ADDITION**



- a - Addition length may match but not exceed the length of existing building to which it is an addition. All other Subdistrict Dimensional Requirements apply.
- b - Addition height may match existing building in number and height of stories. All other Subdistrict Height Standards apply.

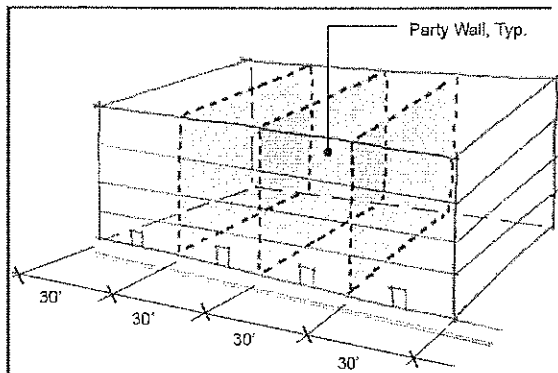
**c. BUILDING LENGTH - 1st LOT LAYER**



At least 75% of the total building length must be within the 1st LOT LAYER.

**TABLE 14.275.7 DIMENSIONAL REQUIREMENTS ILLUSTRATED (CONTINUED)**

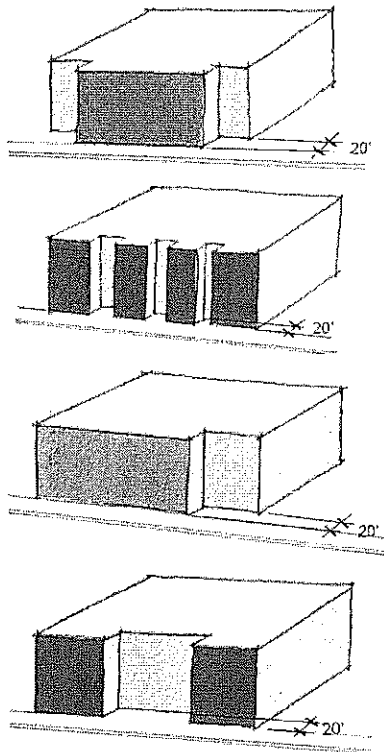
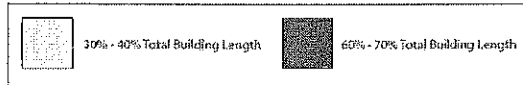
**d. ADDITIONAL BUILDING LENGTH - ATTACHED BUILDINGS**



An unlimited number of ATTACHED BUILDINGS having up to 30' street-facing building length is allowed.

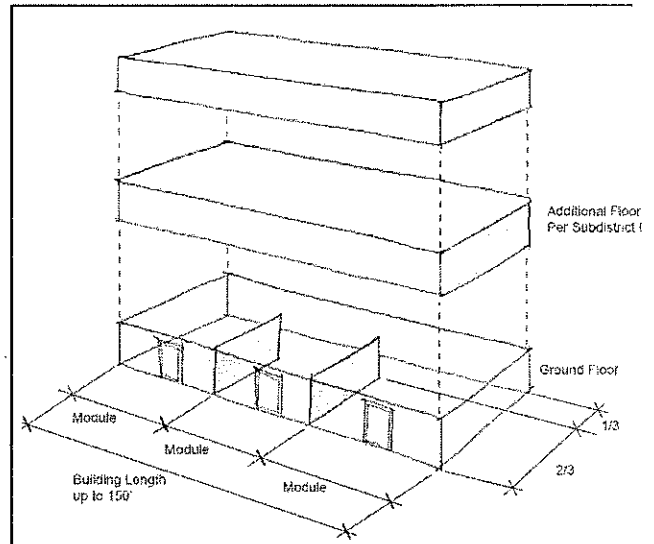
A PARTY WALL condition is required at least every 30' and for the entire height of each building.

**e. ADDITIONAL BUILDING LENGTH - MASSING VARIATION (UT)**



Additional building length is permitted where at least 30% and up to 40% of the total building length is setback to the 3rd LOT LAYER (20').

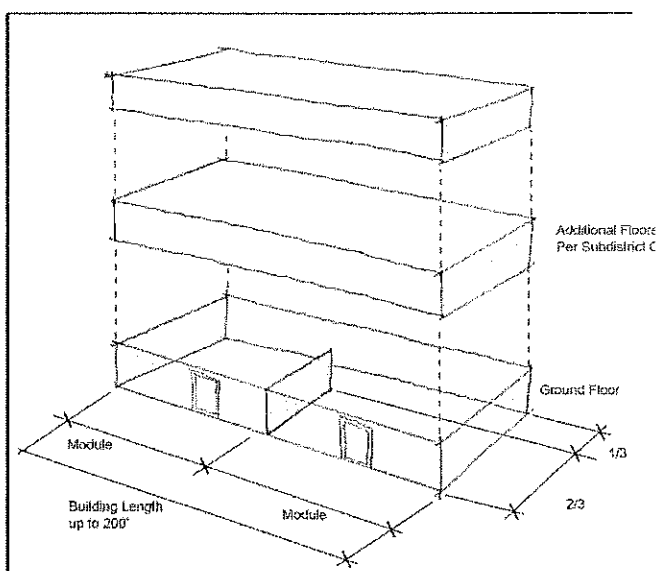
**f.1. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UA)**



Additional Building Length is permitted up to 150' with the provision of a least two Ground Floor Partitions

See General Development Standards and BDS for additional requirements.

**f.2. ADDITIONAL BUILDING LENGTH - GROUND FLOOR PARTITIONS (UT)**



Additional Building Length is permitted up to 200' with the provision of at least one Ground Floor Partition.

See General Development Standards and the BDS for additional requirements.

...

**Sec. 14-332.1. Zone specific off-street parking exceptions and modifications.**

The off-street parking requirements established for uses, established above in section 14-332 of this division, are hereby modified for the following zones according to the provisions described below.

- (a) *IR-3, Island Residential Zone, Off-street parking:*  
Off-street parking shall not be required irrespective of the requirements of division 20 (off-street parking) of this article.

...

- (k) *Residential development on the peninsula and in the R-6 and R-6A Zones, including new construction, alterations that increase the number of units, and changes of use:*
  - 1. Except as provided below, there shall be one (1) space per unit
  - 2. The required parking for multi-unit residential buildings may be partially met through provision of shared-use vehicles, which are vehicles owned and maintained by the owner/manager of the building and available for use on a fee basis to the residents of the building. One shared use vehicle shall be deemed to satisfy eight (8) required car spaces, but in no case shall more than 50% of the parking requirement be satisfied by shared vehicle use.
  - 3. The planning board may establish a parking requirement that is less than the normally required number of spaces upon a finding of unique conditions that result in a lesser parking demand, such as housing for persons who cannot drive, housing that participates in a travel demand management program, availability of transit, or housing which includes permanent restrictions on automobile usage, and which is permanently restricted from utilizing resident on-street parking stickers.

4. No parking shall be required for the first three units in the R-6 Residential Zone or the IS-FBC Zone.
5. For alterations of buildings containing three or more dwelling units in the R-6 zone no parking shall be required for the creation of one additional dwelling unit above existing conditions as of June 3, 2015. This exemption may be utilized one time.

...

**Sec. 14-345. Peninsula fee-in-lieu of parking.**

Any major or minor development subject to site plan review located in a non-residential zone or the IS-FBC zone on the Portland Peninsula shall either provide the required parking or pay a fee according to the provisions of (a) and (b) below.

...

**Sec. 14-523. Required Approvals and Applicability.**

(a) *Required Approval.* An application for site plan approval shall be reviewed by the Planning Board or Planning Authority as specified below. The Planning Board or Planning Authority shall approve, approve with conditions or deny an application pursuant to the standards, procedures, technical criteria and design criteria contained in this article, as demonstrated by the applicant.

...

(e) *Level II Site Plan Review.* Development meeting the criteria listed below will undergo Level II Site Plan Review as follows:

1. The construction of any new structures having a total floor area of less than ten thousand (10,000) square feet in all zones except in the Industrial zones and the IS-FBC zone. In any Industrial zone, the construction of new structures having a total floor area of less than twenty thousand (20,000) square feet. In the IS-FBC zone, the construction of new structures having a total floor area of less than fifty

thousand (50,000) square feet;

2. The construction of any new temporary or permanent parking area, paving of existing unpaved surface parking areas in excess of 7,500 square feet and serving less than 75 vehicles, or creation of other impervious surface area greater than 7,500 square feet;
3. The construction of any building addition(s) having a total floor area of less than ten thousand (10,000) square feet cumulatively within a three-year period in all zones except in the Industrial zones and the IS-FBC zone. In any Industrial Zone, the construction of building addition(s) having a total floor area of less than twenty thousand (20,000) square feet. In the IS-FBC zone, the construction of building addition(s) having a total floor area of less than fifty thousand (50,000) square feet.
4. Park improvements consisting of new structures or buildings of less than 10,000 square feet and/or facilities encompassing an area of greater than 7,500 square feet and less than 20,000 square, excluding the rehabilitation or replacement in kind of existing facilities.

...

(f) *Level III Site Plan Review*. Development meeting the criteria listed below will undergo Level III Site Plan Review as follows:

1. The construction of any new structures having a total floor area of ten thousand (10,000) square feet or more in all zones except the Industrial zones and IS-FBC zone. In any Industrial zone, the construction of new structures having a total floor area of twenty thousand (20,000) square feet or more. In the IS-FBC zone, the construction of new structures having a total floor area of fifty thousand (50,000) square feet or more;
2. The construction of any new temporary or permanent surface parking area(s) or paving of existing unpaved surface areas for more than seventy-five (75) vehicles except in the case of temporary parking;
3. The construction of any building addition(s),

cumulatively having ~~either~~ a total floor area of ten thousand (10,000) square feet or more within any three-year period in all zones except in the Industrial zones and IS-FBC zone. In Industrial zones, for the construction of building addition(s) having a total floor area of twenty thousand (20,000) square feet or more. + In the IS-FBC zone, for the construction of building addition(s) either having a total floor area of fifty thousand (50,000) square feet or more or having a total floor area exceeding that of the existing building to which it is an addition.

4. A change in the use of a total floor area of twenty thousand (20,000) square feet or more in any existing building cumulatively within any three-year period in all zones,
5. Multiple-family development except for in the IS-FBC zone;
6. The addition of one or two dwelling units to a building, if the additional dwelling unit or units requires subdivision review under Maine State Statutes and Portland's Subdivision Ordinance;

...

#### **Sec. 14-526. Site plan standards.**

*Requirements for approval.* The Planning Board or Planning Authority shall not approve a site plan application unless the development proposal meets the following criteria:

- (a) *Transportation Standards*

...

- (d) *Site Design Standards*

1. *Massing, Ventilation and Wind Impact:*

...

5. *Historic Resources:*

- a. Developments affecting designated landmarks or within designated historic districts or historic landscape districts: Any proposed development required to obtain a certificate of appropriateness under article IX (historic preservation) of the land use code

shall be exempt from the following design standards, as described in the Design Manual:

- (i) Section (b) of the Design Manual (development in B-3 zone), except for (b) (1) e.2. (increasing setback beyond street build-to line), (b) (1) f. (shadow impact on open space), (b) (1) h. (wind impacts), and (b) (1) g. (setbacks from existing structures);
- (ii) Section (c) of the Design Manual (development in B-5 and B-5b zones), except for (c) a. (shared infrastructure) and (c) d. (parking lot location);
- (iii) Section (k) of the Design Manual (small residential lot development in R-6 zone);
- (iv) Section (e) of the Design Manual (University of Southern Maine);
- (v) Section (f) of the Design Manual (development in B-7 zone), except for (f) (1) a. (transportation demand management);
- (vi) Section (g) of the Design Manual (development in Eastern Waterfront zone).
- (vii) Section (l) of the Design Manual (IS-FBC Building Design Standards)

- b. Development adjacent to designated landmarks, historic districts or historic landscape districts: when any part of a proposed development is within one hundred (100) feet of any designated landmark, historic district, except the India Street historic district, or historic landscape district, such development shall be

generally compatible with the major character-defining elements of the landmark or portion of the district in the immediate vicinity of the proposed development. Character-defining elements of landmarks and historic districts are identified in the historic resources inventory and respective historic district designation reports. For the purposes of this provision, "compatible" design shall be defined as design which respects the established building patterns and visual characteristics that exist in a given setting and, at the same time, is a distinct product of its own time. To aid the planning board in its deliberations, historic preservation staff shall provide a written analysis of the proposed development's immediate context, identifying the major character-defining elements and any established building patterns that characterize the context.

...

**Sec. 14-651. Standards for review of new construction.**

In considering an application for a certificate of appropriateness involving new construction, the historic preservation board and the planning board shall apply the following general standards as may be applicable to the context of the proposed construction. The intent and application of the following standards are further described in the historic resources design manual and shall guide the board in its review.

(a) *Scale and form:*

1. *Height.* In addition to the applicable requirements of articles III, IV and V of this chapter, the proposed height shall be visibly compatible with surrounding structures when viewed from any street or open space and in compliance with any design guidelines.

...

5. Applicability to India Street historic district.  
For new construction within the India Street

Historic District, the historic preservation board shall not impose conditions more restrictive than the dimensional requirements of the IS-FBC zone, except for in the case of a building addition which proposes to change the height of a contributing historic structure.

**BE IT FURTHER ORDERED,** that an evaluation of the India Street Form-based Code Zone, in at least three and no more than five years following its adoption, is hereby authorized.

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

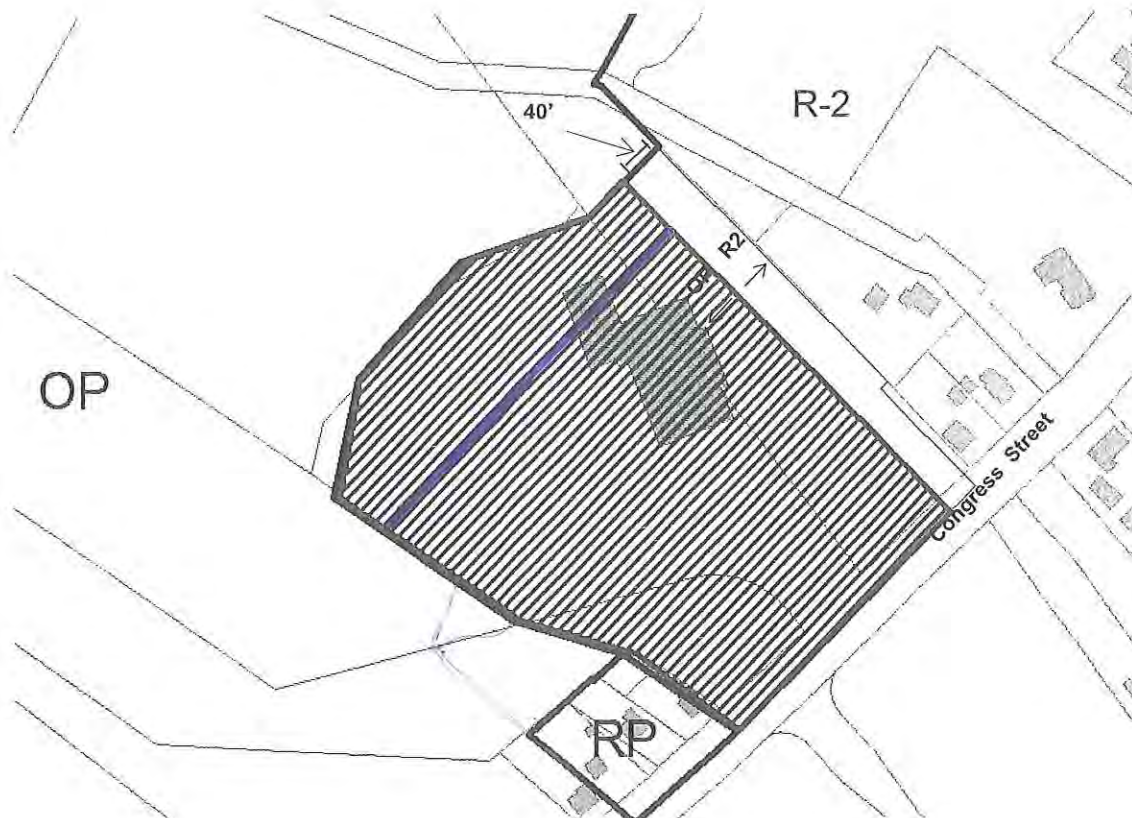
**CITY OF PORTLAND  
IN THE CITY COUNCIL**

Order 84-15/16  
~~Tab 21 10-5-15~~  
~~Tab 20 10-19-15~~  
Tab 18  
DAVID H. BRENNER/M  
RAL C. DUSON  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)  
11-2-15

**AMENDMENT TO ZONING MAP  
RE: 1945 CONGRESS STREET**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE  
IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change amendment and specifically rezoning the R-2 Zone at 1945 Congress Street to Office Park (O-P) in the red area of the figure below.



TO: Mayor Brennan and Members of the City Council

FROM: David Silk, 1187 Westbrook St

RE: Proposed Rezone of 1945 Congress Street from R-2 to OP

Property Owner: Portland Lodge #188 BPOE of USA ("Elks Club")

I respectfully urge you to vote against the Elks Club's proposal to change the existing R-2 zone for the property at 1945 Congress St to an Office Park ("OP") zone.

There is a litany of problems, inconsistencies, and concerns with the Elks Club's request:

The proposal is piece-meal rezoning, unwise and unsound. There is no compelling need for this zone change. It is, moreover, inconsistent with the Comprehensive Plan, good zoning practices, the City's Jetport Plans, including how the Jetport interacts with the Historic District and the neighborhood, the history and pattern of development in this area, taxpayer investment in Thompson's Point, the documented overloading of already saturated traffic in the JetPort area, and the way in which the City has handled other areas and developments, including St. Patrick's Church and Mercy Hospital. Further, approval would send a problematic message to many similar properties throughout the City, encouraging them to line up and cash out with similar zone changes, from residential to commercial.

The sole motivation behind this far-reaching effort for piece-meal rezoning is increased financial benefit for the property owner. There is little else to recommend it. Changing zoning to create a windfall for one property owner is hardly consistent with the Comprehensive Plan, or good zoning practices.

The Elks Club's proposal would replace a conforming use with a non-conforming use, as the Elks Club as a place of assembly is not allowed in an OP zone. This switch is clearly not consistent with the Comprehensive Plan. The purpose of zoning is to eliminate non-conforming uses, not to create more of them.

Further, the proposal is 180 degrees opposite the Comprehensive Plan's goal to address serious unmet needs for more housing, including housing for seniors and working families. Taking land that is zoned for residential use and switching it to a zone that prohibits all residential use is not consistent with the Comprehensive Plan. In stark contrast, preserving land zoned for residential use is consistent with the City's Comprehensive Plan.

The Elks Club's proposal is doubly problematic, as it would ignore unmet needs outlined in the Comprehensive Plan, in favor of zoning that is already plentiful. Meanwhile, there's an ideal location for new professional offices at nearby Thompson's Point that taxpayers are already supporting with \$32 million in Tax Incentive Financing (TIF).

The Elks Club's property at 1945 Congress Street is presently zoned R-2. It consists of an almost 7 acre parcel. The property has been zoned residential since 1945. When the Elks Club acquired the property in the late 1960s, the parcel was zoned R-2. At that time the property was rezoned from R-2 to R-6 so as to allow the club to develop the property as a social/fraternal hall under what was then known as an "exception" to the uses permitted in the R-6.

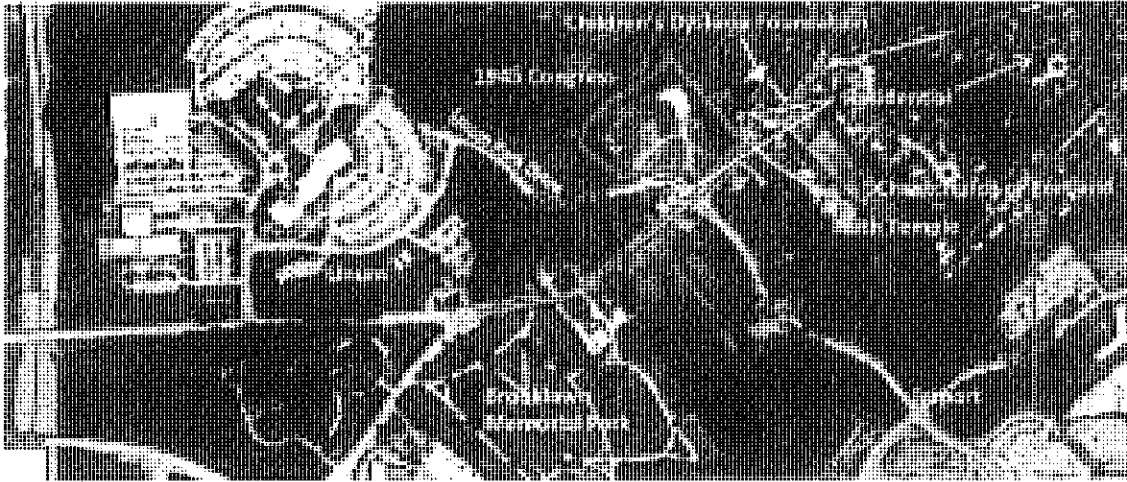
Social/fraternal halls, together with churches, are now known as "Places of Assembly" under the Land Use Code. Places of assembly, like institutional uses (schools) are conditional uses allowed in all residential zones. The City has many places of assembly located in residential zones on busy streets. In the late 1980s when the new entrance to the Jet Port and to UNUM was proposed, zoning for the area site was examined. At that time, the Elks Club property was subsequently rezoned back to R-2 and not to OP. When the OP zone was extended to accommodate UNUM's expansion, the site was not included in the OP zone, likely due to the fact that on either side of the site are existing residents. Residential uses are not permitted in the OP zone.

The Elks Club now wants to rezone the property to OP because its property is worth a lot more when zoned to allow for nonresidential uses. Zoned R-2, the land is assessed at \$512,000. With the zone change, the developer will pay \$1.25M for just the land. The Elks Club will remain on the property and continue to operate out of its existing building. In addition, the developer proposes to build two large professional office buildings on the property, one 15,000 square feet in area to be sited right on Congress Street, and the other 25,000 square feet in area.

The purpose of the OP zone is to "provide *substantial areas* for integrated development of professional offices *in a park-or campus-like setting* which are of the highest quality, are well maintained and *are compatible with their natural surroundings.*" The UNUM campus is in an OP zone and is an example of professional offices located in a park or campus-like setting with the offices set well back from any public way. That is not what the Elks Club's proposal calls for.

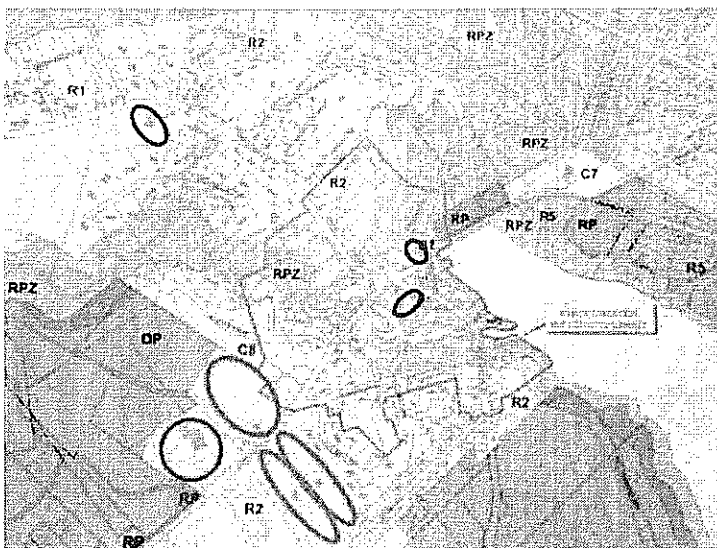
Places of assembly are not allowed in the OP zone. So if rezoned to OP, the Elks Club as a place of assembly will go from being a permitted/conforming use in the R-2 zone, to being a prohibited/nonconforming use in the OP zone. It is unheard of to rezone *a single parcel* in the City so that an existing use on that *single parcel* that is intended to continue indefinitely after the zone change is converted from conforming to non-conforming. Yet that is what the Elks Club's proposal calls for.

In my 11 years on the Planning Board, I do not recall any rezoning proposal for just one parcel that called for converting an existing legal use on the parcel from conforming to nonconforming. That is because the goal of zoning is to eliminate non-conforming uses. What the Elks Club proposes here is the antithesis of zoning and totally against the Comprehensive



Places of assembly are classified as a type of institutional use in the Land Use Code. They are required to have large areas. As the Comprehensive Plan at H-7 states: "Any new institutional use should be required to have a lot size of sufficient area to accommodate all activities, including parking and to absorb impacts and growth needs of the institution."

Because proper zoning has required places of assembly located in residential areas to have large lots, these organizations, when their membership falls off, will be motivated, as the Elks Club is now, to seek to rezone their lots to permit professional offices or other commercial uses. Three such organizations are located on the same stretch of Congress Street as the Elks Club. While these lots are not quite as large as the Elks Club's parcel, on which the Elks Club seeks to locate two multistory professional office buildings, these lots are clearly sufficient to locate say one professional office building. See areas circled in red below.



Thompson's Point, located about a mile away, traffic and other enhancements have already been made as part of the \$32M TIF to make ready for among other uses, the professional offices as proposed at the Elks Club site.

The Comprehensive Plan section on Transportation Resources at page 1 notes, *traffic must be minimized in order to maintain the health of neighborhoods*. "If residents who live in the city by choice come to believe their neighborhoods are not safe for walking, are not protected from noisy through-traffic, don't provide easy access to the daily necessities, don't give their children the freedom to move about independently – then the City has lost much of its competitive advantage over the suburbs."

The professional office use proposed under the Elks Club's rezone is already legal and can be readily accommodated without a zone change at Thompson's Point. So to rezone land zoned residential to allow for office development cannot be about filling a City need. To be consistent with the Comprehensive Plan, the City should be directing professional office space development to areas already zoned for that use, e.g., Thompson Point with ready access off of a parkway that does not run through a neighborhood.

To allow any property owner like the Elks Club to rezone its parcel simply to make more money is not a legitimate reason to rezone. Otherwise the Council will be flooded with rezone requests in coming years by other places of assembly located in residential zones with parking and excess land with access to a major street. If the Elks Club can cash out, they too, will want to cash out as well, with a zone change that will allow for office buildings in what has been a residential zone.

#### **A. The Elks Club proposal is piece-meal rezoning, unwise and unsound.**

The Elks Club's property is located in very close proximity to the Stroudwater Historic District ("SHD"). The SHD was added to the National Register of Historic Places in 1973.<sup>1</sup> It is expansive and obviously worthy of protection. Any rezoning of the area in close proximity to any historical district should be done with eye to ensuring the rezone will not negatively impact the historical district.

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<sup>1</sup> "The significance of Stroudwater Historic District is not limited to the merits of individual buildings. The whole formed by these single elements stands today as a fine example of a nineteenth-century village. The pattern of the village's growth is visible in the sequence of its architecture. Although the commercial enterprises carried on in the village are no longer in existence, their sites are clearly evident. The current residents of Stroudwater take pride in their historic village. Their homes are well maintained; many are restored to their original exterior appearance. .... The sense of history that envelops Stroudwater is heightened because the buildings have been continuously lived in and cared for." Beard, p 302

OP designation for the UNUM property on Blueberry Hill ensured that the view from outer Congress Street was of a campus set back from the road. There are several cemeteries in the immediate area that provide for, and are consistent with, the preservation of the R-2 zone. Before this longstanding pattern is changed, having been last reaffirmed in the 1980s, there should be a master planning process.

A thoughtful process should unfold to develop a vision to govern the area, which looks at uses, setbacks, lighting, and design standards. This ensures that any non-residential development that occurs is compatible with the existing residential uses. It also ensures that development is not driven solely by the wants of just one property owner seeking to maximize its return regardless of the impact on others.

Two members of this Council have recognized the need for sound planning before embarking on zone changes. They recently stated:

*"A good leader must have a well-thought-out plan and take risks to bring people together to realize that vision. Without direction, our priorities are not defined and our path is not clear. A good leader must listen. When residents feel like they have not been heard, and have been ignored, we end up as a city governed by referendum, as was the case with Congress Square and now the Portland Co. development. A good leader must bring people together. Without collaboration, people become frustrated and divided. They concern themselves more with getting their way than they do with making their way toward long-term solutions that work for everybody."*<sup>2</sup>

Vision and direction are not created by meeting the wants of one property owner to make as much money as it can through a rezone, regardless of how benevolent the property owner may be. Vision and direction are created through a collaborative, inclusive process that looks at what is best for the whole.

#### **B. Rezoning is not intended to increase the return to a property owner.**

To the extent that any part of your decision is premised on the Elks Club's assertion that its property cannot be put to other uses, it is important to understand that there has been no showing that such is the case. The property has not, to my knowledge, ever been placed on the market for non-commercial uses. The Elks Club has not engaged the City to work with it on possible residential development opportunities. The fact that the Elks Club could make more money is not a valid reason to rezone.

---

<sup>2</sup> E. Suslovic & N. Mavodones, *Portland Press Herald*, August 25, 2015.

It is worth reiterating the purposes of the OP zone, as it raises the question whether any use of that portion of the Elks Club's property to be rezoned OP can even be developed in any manner consistent with the purposes of the OP zone. If not, the property should not be rezoned.

The Comprehensive Plan describes the OP zone as follows: "Developments in the O-P zone are to be characterized by spacious and high quality development. Large lots, relatively low building coverage, low impervious surface areas, *significant open space* and landscaping and thoughtful building design are exemplary characteristics of O-P developments which are appropriate and beneficial to the City of Portland." Neighborhood Commercial Land Use Policies and Land Use Plan, (1988) page 22.

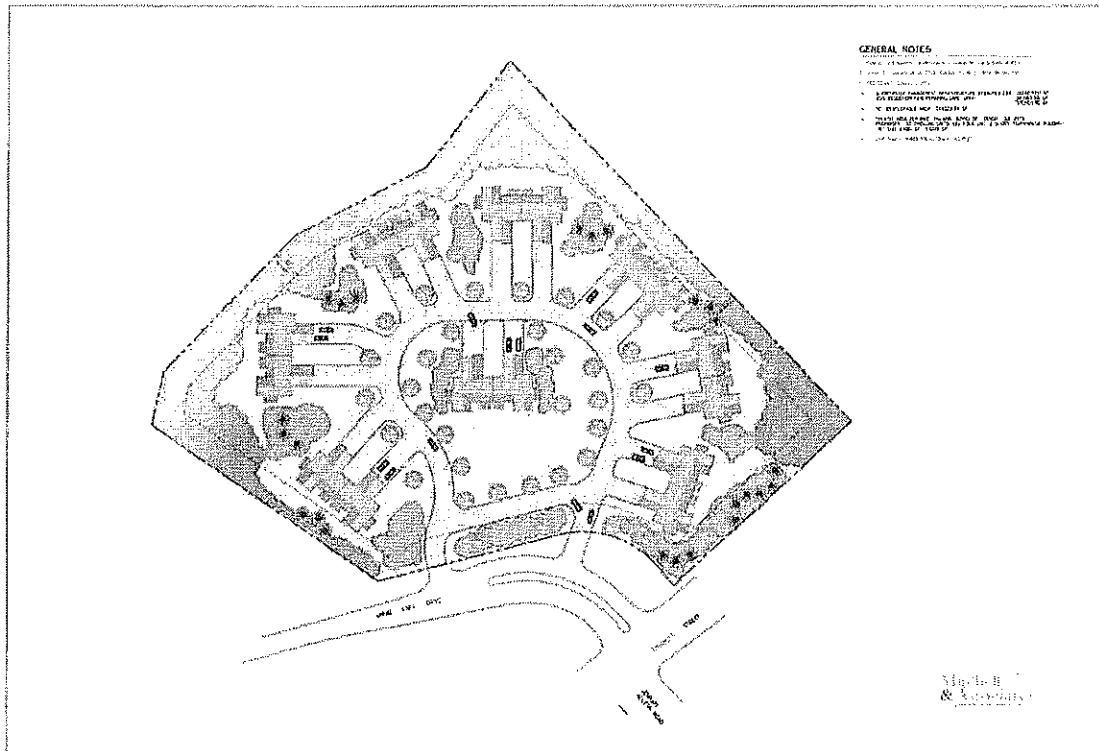
The best that may be said about the proposal is that it may, at the end of the day, look better than what is there now. But that is, has never been and never should be the test for a rezone; otherwise a place of assembly (or for that matter any property owner) can simply let its building become run down and lose any charm, and then claim that, if the rezone is permitted, the eye sore will be gone.

Looking at the purposes for the OP zone, it is clear that the proposal cannot be called "spacious." It is not a large lot with low building coverage but a small lot with three buildings to be shoehorned on the lot with a sea of parking. There is no open space. There is no campus-like feel. The proposed office buildings are run-of-the-mill office buildings, with one located on the front at Congress Street. None of UNUM's buildings are located within 200 feet of Congress Street. The proposal, clearly on its face, does not meet the City's standard for an OP zone.

The OP standards also call for a "Master Plan" of the office park that shall include a design relationship to the site to show integration of open space and the natural features. The integration required in the Master Plan "*shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens and benches.*" Before the Council acted on rezoning what the Mercy Hospital parcel, it first required Mercy to submit a Master Plan for the site. As there, there should be here by the Elks Club, a showing of possible building envelopes and integration making a threshold showing the OP standards can be met. None of the concept plans the applicant presented to you make this threshold showing. If it is not practicable to meet the OP standards, the property should not be rezoned.

One is hard pressed to say that the to-be created lot, crammed with three buildings, constitutes a "substantial area" as that term is used in the OP zone. By comparison, UNUM's property designated OP is at least 15 times larger than what the Elks Club's proposed OP zone is. The applicant's proposal does not show any integrated development or any park- or campus-like setting. With the area to be occupied by the two new buildings with added pavement for

Extending commercial zones so as to displace all residential uses is not a goal of the Comprehensive Plan. Instead, the Comprehensive Plan has as a goal to “encourage neighborhood livability with higher density multi-family & innovative mixed use protects along major public transpiration routes.” Congress Street is served by METRO. The Elks Club property could readily be developed into multi-family housing. One proposal submitted to the Planning Board depicted the possible development of 32 units of housing at the site as follows:



The City has a limited supply of land zoned residential and that land certainly should not be rezoned for the benefit of a place of assembly so as to eliminate the possibility of any residential use in the future without serious study and an overwhelming, compelling need. The Comprehensive Plan speaks to encouraging residential development and discouraging any development that could displace housing for non-residential uses. With its \$32M TIF already in place, Thompson’s Point stands ready, willing, and able to accommodate the development proposed here. It makes no sense to rezone the Elks Club for two professional office buildings simply to enrich the Elks Club.

More importantly, the Council must ask what will be the impact of the rezone on both the abutting and nearby residential uses and will the rezone lead to the deterioration of those areas and eventual loss of residential uses. If the answer is yes, as I think it is, the rezone should not be approved as it will result in the loss of residential dwellings.

setbacks, to ensure any new development that occurs is consistent with the area being a gateway to the City and with bordering a large, residential, historic district.

As an example, when entering SHD near the Fore River, when the office building known as "Stroudwater Crossing" was built, a significant design feature was the use of distinctive clapboard siding and pane windows in recognition that the building borders a historic district. These design features are totally absent from the Elks Club's proposal. Under the OP standards, there is no way for the Board to require the developer to take into account the location of the site bordering a historic district in reviewing the design and siting of the proposed office buildings. Any rezoning could add those elements.

Additionally, the Elks Club's analysis submitted to the Planning Board on how the rezone is consistent with the Comprehensive Plan suffers from a fatal flaw. That analysis necessarily assumes that the OP zone text would be amended to allow for places of assembly so that places of assembly would be a permitted use in the OP zone. On one level, this makes sense because as noted earlier, it is contrary to zoning practice to rezone *one parcel* alone and convert an existing conforming use that is to be continued after the zone change to a nonconforming use. The purpose for zoning is to eliminate nonconforming uses, not to create nonconforming uses. But the Planning Board did not recommend changing the OP zone to allow for any places of assembly. No text changes to the OP zone have been proposed. Without a change to the OP zone to allow for places of assembly as a permitted use, there is no basis to conclude the rezone proposal is consistent with the Comprehensive Plan.

*Nowhere in the Comprehensive Plan is there a goal to rezone a parcel so as to convert an ongoing legal conforming use to a nonconforming use.* The City should not be promoting such a practice simply to accommodate the needs of one property owner.

**E. The Elks Club's proposed rezoning should be denied and only revisited after a master planning process is completed for the area.**

*"Without direction, our priorities are not defined and our path is not clear."* In an area where the existing pattern of development is clear, to change that pattern only to maximize the return to one property owner is unsound zoning. Right down the road is Thompson's Point where professional offices are intended to be located.

If there is to be change in this area, a substantial change from the R-2 and places of assembly serving as buffers to existing abutting residences, it should be the result of a *"well-thought-out plan."* This is a gateway area to the City in many ways. There should be a plan for the area. The Elks Club's proposal is not a well-thought-out plan. It converts a present legal use to one prohibited in the proposed new zone. The parcel is not suitable for OP designation. The

**From:** "James Casterella Jr." <jcasterella33@yahoo.com>  
**To:** "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>  
**Date:** 7/26/2015 8:03 PM  
**Subject:** Tuesday, July 28th, workshop re: 1945 Congress St. proposed zoning amendment

Hi, Nell,

My name is James Casterella and I live at 1967 Congress St., two houses away from the Elks Club. I'm not sure if I can make Tuesday's Workshop so I wanted to email you with my thoughts

First of all, I completely support Northland Enterprises' zoning map amendment application. I think it's very important that visitors to Maine, flying into Portland Jetport, drive onto Congress Street with a view of an attractive, modern building such as is being proposed by Northland. As it stands right now, those same visitors see somewhat of an eyesore: they see a huge, usually empty parking lot, and a somewhat rundown, tired looking Elks Club. The Elks Club deserves a facelift and also deserves the opportunity to stay at its current location. Additionally, I'm hoping that the Planning Board will consider extending the zoning change to include my house (at 1967 Congress St) as well as my neighbor's house. We are the last two residential houses on Congress Street and the only two residential properties to the left of the UNUM entrance. My neighbor and I would like the opportunity to be zoned similar to the Elks Club so that professional development of our properties becomes a possibility.

If you have any questions please feel free to contact me via email or at 831-7297.

Thank you for your time,  
James Casterella

To: City of Portland City Council

From: Paula Guillemette Agopian

Re: India Street HP Designation

The City of Portland was conceived and born here. It all began here. This proposal speaks to the core of the City and the neighborhood, and I emphasize "core". It has been a long time coming and should have been done long ago. "Better late than never". Our future is our past and our past is our future. There has been much thought and some compromise. We must all remember anything brought forward is subject to review as it is in all districts. Lets do it now!!!

Sincerely,

A handwritten signature in cursive script, appearing to read "Paula", followed by a horizontal line.

Paula Guillemette Agopian

cc. Mayor Brennan, City of Portland Planning Board, Historic Preservation Board, Deb Andrews, Hillary Bassett, Landmarks

**MEMORANDUM**  
**City Council Agenda Item**

**TO:** City Council

**FROM:** Jeff Levine, Director, Planning and Urban Development Department

**DATE:** September 23, 2015

**DISTRIBUTION:** Mayor Michael Brennan; Jon Jennings, City Manager; Danielle West-Chuhta, Corporation Counsel; Jennifer Thompson, Associate Corporation Counsel; Sonia Bean; Nancy English

**SUBJECT:** O-P Zoning Map Amendment Request  
1945 Congress Street

**SPONSOR:** Stuart O'Brien, Chair, Planning Board

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

**1<sup>st</sup> reading** October 5, 2015      **Final Action** October 19, 2015

**Can action be taken at a later date:**      Yes        X   No (If no why not?) Public notices will appear in the newspaper and be mailed in advance of the public hearing.

**PRESENTATION:** Elizabeth Boepple, Planning Board Vice Chair, and/or Jeff Levine, Director, Planning and Urban Development, 5 minute oral presentation

**I. SUMMARY OF ISSUE (Agenda Description)**

On September 8, 2015 the planning board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) to recommend a map amendment to change the zoning for the property at 1945 Congress Street from Residential R-2 to Office Park (O-P), with a 40 foot buffer of R-2 retained at the easterly side of the site. The amendment would make office a permitted use on the site, and thus allow Northland Enterprises, LLC, the applicant, to redevelop the property with medical and general office buildings under the development standards and design criteria of the Office Park zone.

**II. REASON FOR SUBMISSION (Summary of Issue/Background)**

1945 Congress Street lies at the intersection of International Parkway/UNUM Park Drive and Congress Street, at a major gateway to the City of Portland. The site has been developed by the Elks Club since the late 1960s. Northland proposes to redevelop the site with medical and professional office buildings and renovate the Elks Lodge, allowing the Elks to remain on the property. This plan is contingent upon a rezoning of the site to allow office as a permitted use. Thus, Northland has applied for a zoning map amendment to change the zoning on the site to Office Park (O-P). The O-P zone can be found immediately west of the site on the UNUM property.

**III. INTENDED RESULT**

The proposed map change will allow the redevelopment of 1945 Congress Street for office use.

**IV. COUNCIL GOAL ADDRESSED**

The proposed map amendment will facilitate the redevelopment of an existing lot for medical and professional office use. In this, it will address the following council goal:

*Promote economic development in the city in a manner that provides for increased property values, diversification across industry sectors, and high paying jobs.*

## V. FINANCIAL IMPACT

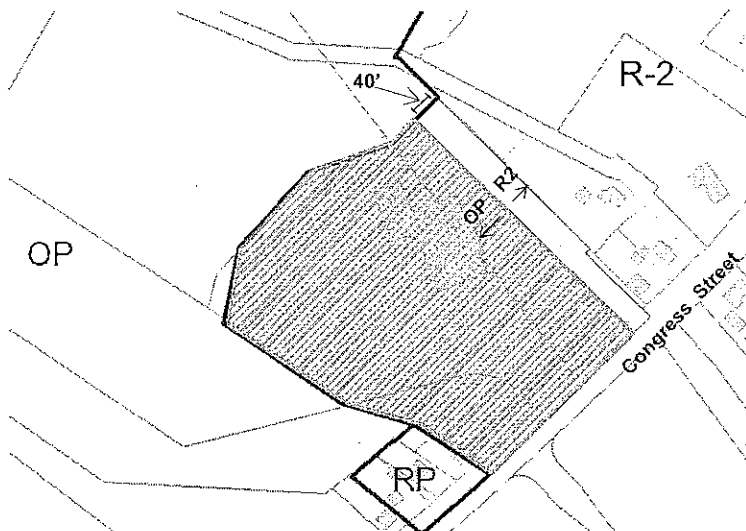
The zone change will allow the development of office uses on the 1945 Congress Street site, which has the potential to generate revenue for the city.

## VI. PLANNING BOARD ANALYSIS

The four members of the board who supported the proposed zone change found that the site is more suitable for office than for residential use, given its location across from the Jetport entrance on a heavily-traveled commuter corridor. They held that that the zone change is a logical extension of the existing O-P zone which lies to the north and west. They identified distinguishing factors on the 1945 Congress Street site, including its size, its adjacency with the O-P zone on two sides, and its access from a secondary road with a signalized intersection on Congress Street, which differentiate it from neighboring sites to the east which might be considered for O-P zoning in the future. Lastly, they noted that the O-P zone includes strong provisions related to buffering and open space which, under site plan review, would serve to preserve or even enhance the Congress Street/UNUM Park Drive intersection as a gateway and green entry to the city.

Two members of the board expressed reservations with respect to the proposed zone change and therefore voted against its recommendation. These members questioned the ability of the site to support the "campus-like" setting prescribed by the O-P zoning and, likewise, the suitability of the location for such a use. These members also raised concerns regarding the desire of the Elks to remain on the site under legal non-conforming status. Lastly, these board members expressed reservations with reference to competing policies of the comprehensive plan, particularly those which promote the stability of residential neighborhoods and residential growth.

Ultimately, the majority of the board voted to support a rezoning to O-P for the 1945 Congress Street site. In order to create a buffer for the residential properties to the east, the board recommended rezoning to a line parallel with the eastern property boundary and offset at a distance of 40 feet. This line mirrors one proposed by the applicant in early discussions with the board and allows some R-2 to be preserved on the site.



## VII. RECOMMENDATION

On September 8, 2015, the planning board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) that the proposed map amendment to change the zoning for 1945 Congress Street, as shown in the figure at left, is consistent with the comprehensive plan. The board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) to recommend adoption of the proposed amendment to the City Council.

## VIII. ATTACHMENTS

1. Order
2. Planning Board Report to City Council

Prepared by:

Signature

September 23, 2015  
Date



## PLANNING BOARD REPORT PORTLAND, MAINE

Map Amendment for 1945 Congress Street  
Rezone from R-2 to O-P  
Northland Enterprises, LLC, Applicant

Submitted to: Portland City Council  
Public Hearing Date: October 19, 2015  
Project #: 2014-227

Prepared by: Portland Planning Board  
Date: September 23, 2015  
CBLs: 216-A-6, 217-A-1

### I. INTRODUCTION

On September 8, 2015, the planning board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) to recommend to the city council a zoning map amendment, proposed by Northland Enterprises, LLC, for a site at 1945 Congress Street. The property is currently zoned Residential R-2 and is occupied by Elks Lodge #188. The applicant proposes to rezone the lot to Office Park (O-P) in order to allow the development of medical and general office buildings on the site.

The board originally considered the zone change request at a workshop in January, 2015, and subsequently reviewed the proposal at two additional workshops and one public hearing. These meetings included considerable discussion of the suitability of the O-P zone for this location, the type of development the O-P zone might foster on the site, possible alternative zoning designations, consistency with the comprehensive plan, and the potential for the rezoning to act as a precedent for further requests for rezoning to the east. The board heard public comments about encroachment on residential neighborhoods; traffic, environmental, and visual impacts; the need for more comprehensive planning efforts in this area of the city; and the opportunities this rezoning might present for this gateway area of the city. Ultimately, the board voted to recommend the rezoning to the city council.

A legal ad for the October 19 city council hearing will be posted on the city's web page and appear in the *Portland Press Herald* on October 13 and 14, 2015. Notices will also be sent to 70 property owners within 500 feet of the site and to the interested citizen list.

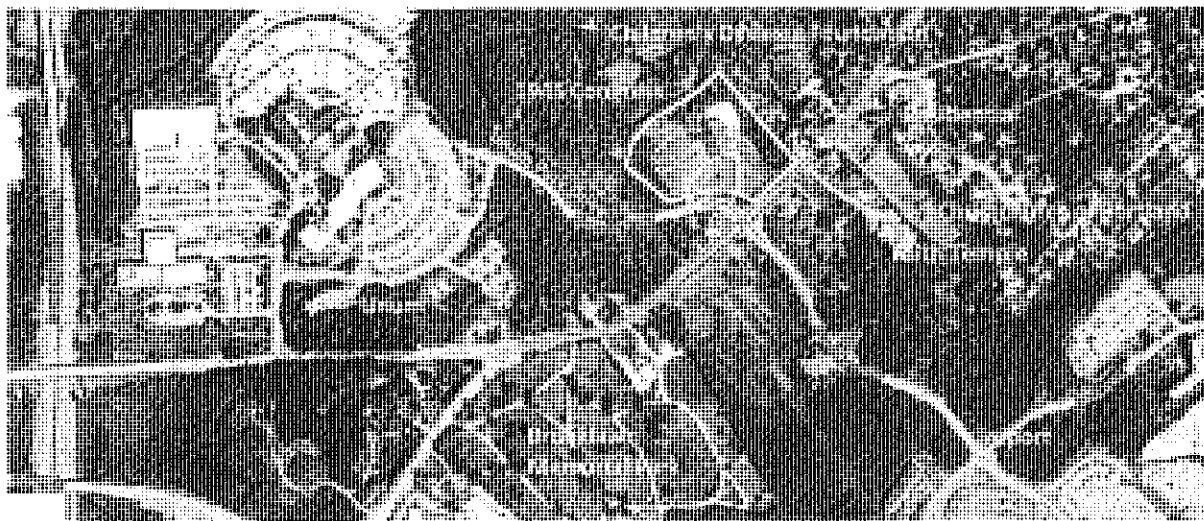


Figure 1: 1945 Congress Street in context.

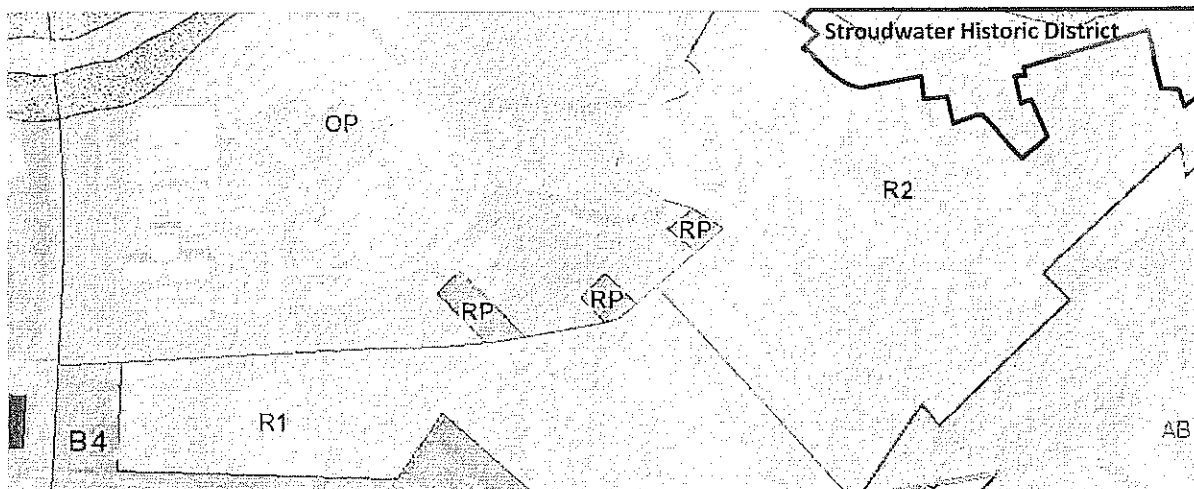


Figure 2: 1945 Congress Street, existing zoning

## II. BACKGROUND

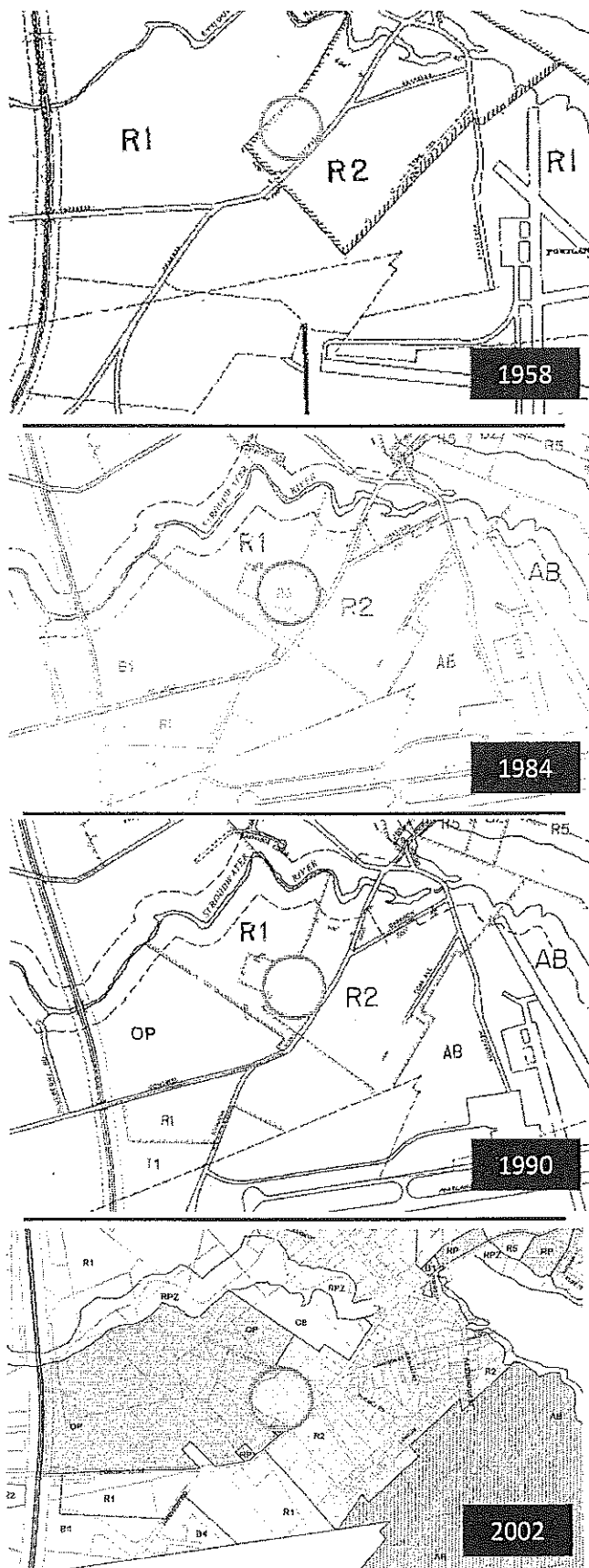
The 1945 Congress Street site is approximately 7 acres in size and has housed Lodge #188 of the Benevolent and Protective Order of Elks and their associated parking since the late 1960s. Although the site has frontage on Congress Street, access is from UNUM Park Drive. Residential uses abut the site both to the northeast and southwest. UNUM lies directly to the west, the Jetport lies due south, and several places of assembly sit across Congress Street to the east.

The site is currently zoned Residential R-2, as is the land to the south and east, which is developed largely with single-family homes (Figure 2). The residential neighborhood around Garrison Street, within this R-2 zone, is nationally designated as the Stroudwater Historic District. A Residential R-1 zone can be found to the west south of Congress Street; this zone houses the Brooklawn and Temple Beth El cemeteries. UNUM lies in the nearest Office Park (O-P) zone, to the immediate west and north of the site. Several small Residence-Professional (R-P) zones can also be found to the west on Congress Street. The R-P zone immediately west of 1945 Congress houses several single family homes; the other R-P zones in this area generally provide sites for retail and personal service establishments in repurposed residential buildings.

## III. ZONING AND POLICY HISTORY

A brief examination of the zoning and policy record shows that the zoning in the vicinity of the 1945 Congress Street site has been fairly dynamic over time. Early city zoning maps show the property in residential (RA) zoning, reflecting the historic character of the area as farmland. Following a major initiative by the city to revise the zoning ordinance in the late 1950s, the 1945 Congress parcel and its surroundings were zoned to Residential R-2, the zoning designation that exists today. Records indicate that at some point in the mid- to late 1960s, however, the city council actually considered and approved a rezoning of the site to R-6 with the intent of allowing the Elks to develop, apparently under conditional status; the Elks appeared before the Board of Appeals in the late 1960s for an "exception" to the R-6 zoning in order allow the construction of their "club and lodge" and the "formation of a softball field." By the late 1970s, UNUM had also relocated to outer Congress Street, where the zoning map had been altered to depict a B-1 zone (Figure 3).

The early 1980s saw an effort by the city to consider the economic development potential of a number of city neighborhoods and commercial centers. The resulting reports suggested that the city aggressively market the "Airport Development Area," and more specifically the end of Cobb Avenue/Westbrook Street, as a major manufacturing or office headquarters site. However, no rezoning of this area was ever completed, and



the zoning remained unchanged through the early 1980s.

In 1988, as part of a review of the city's commercial land use policy, the city's *Neighborhood Commercial Land Use Policies and Land Use Plan* created the Office Park (O-P) zone. The plan read, "[t]he need exists for a zone that would allow larger scale office development on larger lots in what could be considered more suburban locations. The parcels, while suburban in character, might have limited potential for residential development, due in part, for example, by proximity to the Jetport, or to the topography of the site, or its physical boundaries such as a busy arterial [sic]" (22). In a continuation of the economic development work conducted by the city in the early 1980s, the plan identified UNUM and Congress Street/Cobb Avenue (in conjunction with the Airport Business zone) as areas for potential rezoning to O-P. In the wake of this plan, the city modified the zoning map to show O-P at the UNUM site. However, none of the surrounding area was converted to O-P. By the late 1980s, the Elks Lodge had actually been rezoned back to R-2. The area at the end of Cobb Avenue remained in R-2 as well. It should be noted that, through the 1990s, as UNUM grew, the O-P zone north of Congress Street did extend eastward, subsuming much of the R-1 residential zone south of the Stroudwater River and north of the existing R-2 zone.

In the early 1990s, the Portland International Jetport developed plans to relocate the airport access road from Westbrook Street to its current location. As part of the 1994 *Airport Master Plan*, the city generally considered land uses on airport land south of Congress Street in the location of the access road, ultimately suggesting that most of this property be held as open space/buffer, with small portion at the point of highest elevation to be used for "terminal support." While the road portion of the plan was realized, this land use recommendation was not, and the land around the access road remained as a buffer in the R-2 zone. Similarly, Cobb Avenue has never been rezoned.

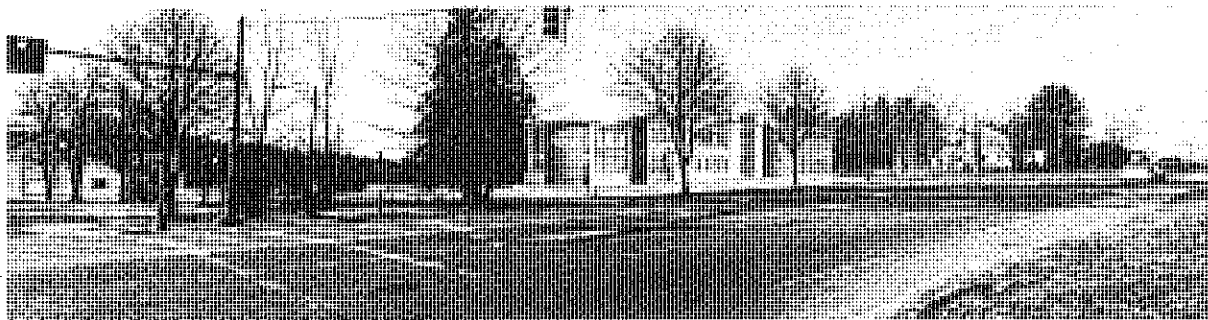
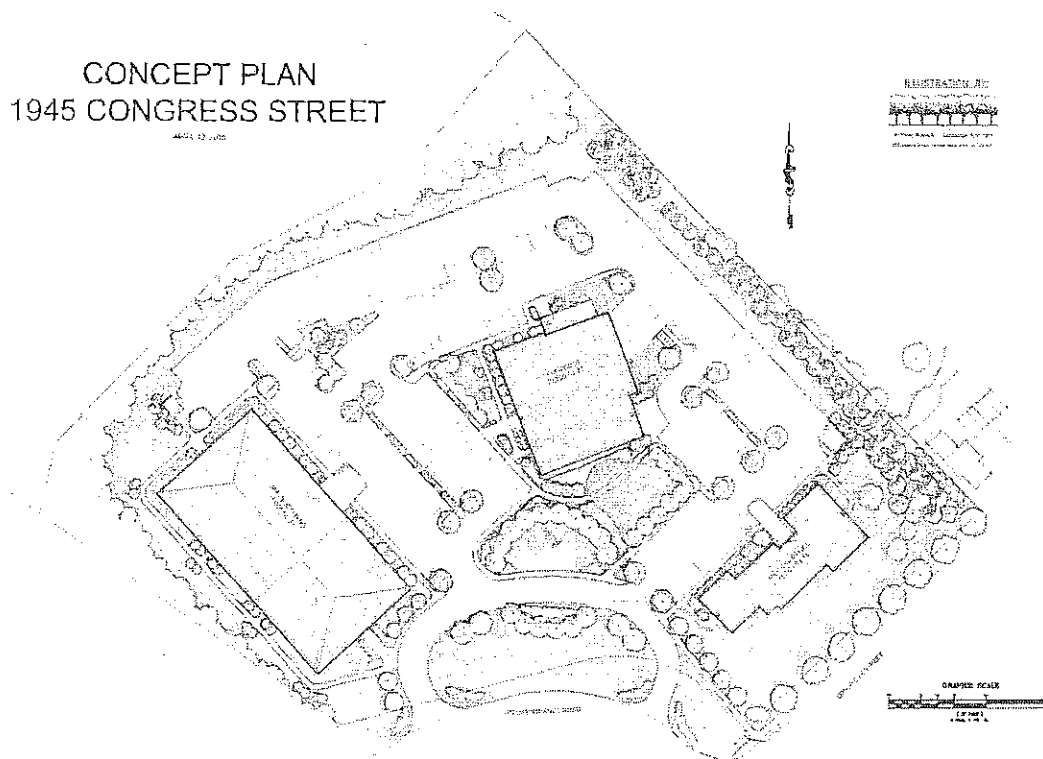
Figure 3: Zoning history, Outer Congress Street, with 1945 Congress highlighted

It

should be noted that the 1945 Congress site has been the subject of planning board and council deliberations as recently as 2012. At that time, Husson University proposed to develop the lot as part of their Southern Maine campus. In order to do so, they required a zoning text amendment to allow colleges, universities, and trade schools as conditional uses in the R-2 zone. Although the city council adopted the text amendment to this effect in April of 2012, Husson ultimately elected to locate elsewhere, and the 1945 Congress site was never redeveloped.

#### IV. SITE AND CONCEPTUAL PLAN

For reference, the applicant has provided a conceptual plan depicting the proposed development on the 1945 Congress site (*Figure 4 and Plan 1*). The plan shows access much as it exists today, with a landscaped focal area around the Elks statue at the entrance to the site. The Elks Lodge remains in a smaller renovated building at the rear of the property, with two new office buildings enclosing it to the south and west. The plan includes buffer plantings along the eastern property line, and existing landscaping is maintained at the rear and western boundaries of the site. The applicant has provided photos depicting thick evergreen landscaping as a treatment for the eastern property line (*Attachment 7*). The plan includes a significant amount of off-street parking, including bus and motorcycle parking spaces. A bus shelter is also included in the plans.



Figures 4 and 5: Conceptual plan (top); rendering from Congress Street looking east (bottom)

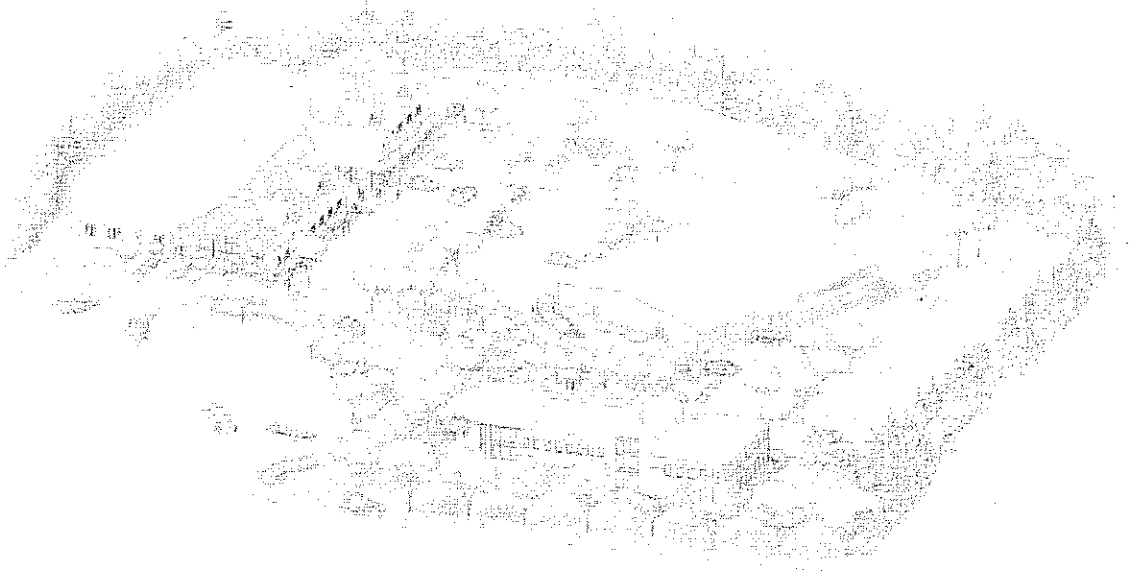


Figure 6: rendering of conceptual plan from Congress Street

In addition to the concept plan, the applicant has provided several renderings showing the site as envisioned under a zone change to the O-P (*Figures 5 and 6 and Plans 2-8*). These begin to depict the scale of the proposed buildings, the setbacks, and some of the buffering shown in the concept plan. The plan, as well as the design of the buildings proposed on the site, would be considered in detail under site plan review.

It should be noted that the applicant has submitted a purchase and sale agreement which demonstrates their intent to sell a 10 foot strip of land on the eastern portion of the site to the abutting landowner in an effort to allow the preservation of a buffer in that location and, further, allow that neighbor's property to become conforming under the R-2 zone. The purchase and sale agreement includes an exhibit depicting the land transfer, which would effectively cut a notch out of the eastern property line of the 1945 Congress Street site (*Attachment 10*).

## V. REVIEW OF POTENTIAL ZONING DESIGNATIONS

|                         |                   |                       |                                               |
|-------------------------|-------------------|-----------------------|-----------------------------------------------|
| <b>Current Zoning:</b>  | R-2 (Residential) | <b>Proposed Uses:</b> | Elks Lodge; medical office;<br>general office |
| <b>Proposed Zoning:</b> | O-P (Office Park) | <b>Parcel Area:</b>   | 304,892 SF (6.99 acres)                       |
| <b>Current Uses:</b>    | Elks Lodge        |                       |                                               |

Over the course of this zone change review, the board discussed the possibility of a variety of alternatives to the proposed Office Park (O-P) zoning designation, including the Office Park (O-P) zone with a text amendment to allow places of assembly as conditional uses, the Residence-Professional (R-P) zone, the Neighborhood Business (B-1) zone, the Community Business (B-2) zone, and the Residential R-3 zone as well. All of these alternatives are briefly summarized below. Tables comparing purpose statements, permitted uses, and dimensional requirements of these zones appear in *Attachment A*.

### 1. Existing Residential R-2

The existing R-2 zone is clearly designed to encourage large lot, single-family residential development. The zone permits a very limited range of uses, including single-family homes, municipal uses, and home occupations, by right. With a conditional use permit under the existing R-2 zoning, the lot could be redeveloped as a university or school (as has been previously considered under a separate zoning amendment application related to Husson University), or as a long-term, extended care or day care facility, among other uses. Residential buildout would be governed by a 10,000 SF minimum lot size and a street frontage requirement of 50 feet. Non-residential buildout would basically be limited by the maximum lot coverage regulation of 20%, with floor area further restricted by maximums which would apply in the case of a college or university (24,000 SF) or place of assembly (5,000 – 9,000 SF for small or medium places of assembly). The applicant's desired use, medical and general office, is not permitted.

## **2. Office Park (O-P)**

The purpose of the O-P zone is to provide locations for office and associated uses 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." Under the proposed zone change to O-P, in addition to office, some more industrial uses, such as printing and publishing establishments and high-technology manufacturing, would be permitted either by right or conditionally. The potential buildout of the lot is more significant, with 60% maximum impervious surface (which, it should be noted, includes building footprints and is meant to preserve some open space on site) and a height limit of 55 feet. The O-P zone requires a master plan subject to development standards specific to the zone. (This master plan requirement predates and is distinct from the recently adopted provisions under the site plan ordinance for master development plans.) Under the O-P zone's master plan requirement, any office park developed in the zone would be reviewed according to development standards regulating the design, landscaping, sidewalks, screening, preservation of natural features, traffic, lighting, and signs of the development. The master plan review, in addition to site plan (as well as potentially subdivision) review, would provide the planning board a significant opportunity to guide the site's development.

## **3. Office Park (O-P) with Text Amendment**

At the first workshop on this zone change request, the planning board discussed the fact that an O-P zoning designation for the site would render the Elks Lodge a non-conforming use, as places of assembly are not technically permitted under the existing O-P language. It should be noted that Ann Machado, the city's Zoning Administrator, has confirmed that the Elks Lodge would become a *legal* non-conforming use (*Attachment B*), and that the applicant has not indicated any concerns with the issue of non-conformity. However, the board did consider the option of a text amendment to make places of assembly a conditional use in the O-P zone. This option was largely dismissed given the desire to preserve O-P zones for the purposes of office uses.

## **4. Residence-Professional (R-P)**

The R-P has also been examined as a potential option for the site, as this zone allows the proposed use and can be found proximate to the 1945 Congress Street site. The R-P zone is written to function as a buffer between residential and more intensive non-residential areas and is often used to bookend business zones. Under a zone change to R-P, a broad array of uses would be permitted, including residential, professional office, and business services. Daycares, schools, places of assembly, and long-term care facilities would be permitted as conditional uses. The buildout of these uses would be controlled by a .45 maximum floor area ratio and a 60% maximum impervious surface limit established by the nearest residential zone. The height limit, at 45 feet, would be less than under the O-P. However, the R-P does not provide for the master plan design control of the O-P zone. It also allows for much smaller lot size, lesser setbacks, and thus more intensive development. As a result, it is generally deemed a less desirable alternative than the O-P designation in this context.

## **5. Neighborhood and Community Business B-1 and B-2**

Similarly, the board also considered the Neighborhood and Community Business B-1 and B-2 zones as options for the site. These zoning designations would allow a much broader range of uses than the R-2 or the O-P and would also allow much greater lot coverage on the site. For these reasons, these zoning designations were largely dismissed.

## **6. Residential R-3**

Over the course of the review, the board also investigated the question of higher density residential rezoning. The R-3 zone, for example, would permit planned residential unit developments (PRUDs) of a townhouse style at a density of one unit/6,500 SF of net land area. At this ratio, 30-40 units could theoretically be permitted on the 1945 Congress Street site. The R-3 would also conditionally allow sheltered care group homes, schools, extended care facilities, hospitals, and day care facilities. The R-3 would not accommodate the applicant's desire for office uses.

At the board's request, the applicant submitted a housing feasibility analysis which examined the financial feasibility of residential development under the R-3 zone (*Attachment 9*). This analysis tested a 40-unit

multi-family housing scenario under the provisions for the R-3 zone, as well as higher density scenarios of 80 market rate or mixed income units under a theoretical zone, and generally found all of these scenarios financially untenable. (It is worth noting that the study also tested the financial viability of 8- and 15- lot single-family subdivision scenarios (assuming that the developer would sell the buildable lots under the R-2 provisions) and likewise found that development costs would necessitate sale prices out of line with the current market.) As a result, the concept of a residential rezoning was not pursued.

## **VI. O-P ZONING AND POTENTIAL IMPACTS**

The question of the impacts of the proposed development emerged repeatedly over the course of the zone change review, with neighbors raising concerns about the traffic, environmental, and aesthetic implications of a zoning amendment. Specific impacts of any proposed development would be examined in detail at the site plan stage, but a cursory consideration of the potential repercussions of a zone change to O-P, given the type and intensity of uses which might be developed under the new zoning designation, was conducted early in the zone change review.

As discussed above, the permitted uses and the dimensional requirements of the existing R-2 essentially limit the site largely to single-family residential development. Given this, the R-2 does not bear the risk of exceptionally deleterious traffic, environmental, or other effects. If granted a permit by the planning board, some of the R-2's conditional uses, however, including schools or day care facilities, could come with traffic, light, and noise implications. To some extent, lot coverage and lot size requirements would serve to temper the effects of any development of this kind.

Environmental, noise, and traffic impacts are likely to be greater under a zone change to O-P, in light of the greater buildout allowed and the differing uses permitted. As previously discussed, the O-P does require a master plan which could help mitigate detrimental effects. The O-P development standards, written under *Section 14-230.13*, require that development proposals:

- Demonstrate a reasonably unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation, open space, drainage, and vegetation and other natural features;
- Include a landscape program;
- Conform to restrictions on impervious surfaces and the location of pavement;
- Include internal sidewalks which take advantage of the topography and natural features of the site;
- Include buffer areas abutting residential zones uses and screening for parking lots and driveways from public view;
- Include efforts to preserve natural features including, but not limited to, existing vegetation, flood plains, rock outcroppings, surface water bodies, drainage swales and courses, and wetlands;
- Demonstrate that additional traffic generated by the project itself can be reasonably accommodated on existing public streets;
- Coordinate the scale, texture, color, and massing of buildings, with emphasis on the appearance of building facades from public streets, driveways, parking areas, and other nearby buildings; and
- Identify the location and style of lighting and signage and coordinate these with the building and landscaping design.

Given the interest in the traffic implications of the proposed zone change, the board requested trip generation estimates from Tom Errico, the city's consulting traffic engineer, based on the full potential buildout under the existing and proposed zoning designations. These estimates represent a worst case scenario; they assume office development under an O-P zoning designation that maximizes the building envelope within height, impervious surface, and floor area ratio limits. The estimates show that considerably more traffic could theoretically be generated under the O-P zoning than could be generated with a residential redevelopment of the existing site under the existing R-2 zoning.

Mr. Errico writes,

*I have conducted a preliminary trip generation analysis for the...development assumptions you have provided and the results are summarized in the following table. The trip generation estimates were computed for the Weekday AM and PM peak hours and were based on the Trip Generation Manual, Institute of Transportation Engineers, 9<sup>th</sup> Edition.*

| Zone             | Density              | Peak Hour Volume Entering and Exiting |              |
|------------------|----------------------|---------------------------------------|--------------|
|                  |                      | AM                                    | PM           |
| Existing R-2     | 14 Residential Units | 10 Vehicles                           | 14 Vehicles  |
| Office Park (OP) | 192,563 SF Office    | 302 Vehicles                          | 288 Vehicles |

It should be noted that the 'Existing R-2' numbers cited here do not reflect actual trip generation numbers from the site under the current use by the Elks Lodge. The 2012 Husson application associated with the site included some trip generation estimates for the Elks Lodge use, based not on counts but on trip generation ratios from the Institute of Transportation Engineers. At the time, Husson's traffic engineer estimated 55-70 trips to/from the site during the AM and PM peak hours. Review of the Elks website finds lodge hours from 9:30 a.m. to 9 p.m. and regular meetings on Monday nights at 7, suggesting that much of the existing traffic from the site would actually be off-peak. Anecdotally, there is some indication that most trips under the existing condition may occur once a week during daytime hours when a regular event is held at the lodge. For reference, there are approximately 200 parking spaces on site.

In subsequent correspondence, Mr. Errico adds,

*I would like to note that based upon the trip generation levels noted in my previous email, a comprehensive traffic impact study would be required to assess impacts to the area roadway system. Please note the following:*

- The Congress Street/International Parkway/UNUM Drive intersection will serve as the primary access point for any development. Use of this existing signalized intersection seems appropriate, but any development application would be required to assess the ability of this traffic signal to adequately accommodate the added traffic.*
- The Congress Street/Johnson Road intersection seems to operate at an acceptable level of service, but review of conditions would be required.*

This traffic analysis would occur at the time of site plan review.

In this vein, it should be noted that the city is currently in the process of a design project for outer Congress Street near this area. The plans include pedestrian and transit improvements at Westbrook Street, additional crosswalks near Garrison Street, and enhancements to the inbound merge area east of International Parkway/UNUM Drive. In addition, Mr. Errico writes that the "MaineDOT will be upgrading the traffic signal at the Congress Street/Westbrook Street intersection. This intersection currently experiences congestion problems, but it is unlikely any capacity enhancements will be possible given constraints" (Attachment C).

## **VII. O-P ZONING AND THE COMPREHENSIVE PLAN**

There has also been considerable discussion regarding the comprehensive plan over the course of this zone change review. In making a recommendation to the City Council, the board is asked to determine if the proposed zoning map amendment is "consistent" with the adopted comprehensive plan. In this light, the applicant's submittal includes a lengthy narrative arguing the question of consistency (Attachment 6). This narrative draws heavily from the *Community Commercial Policies and Land Use Plan* of 1987-88 which, among other goals, stated that the city should "[p]romote new office park development of high quality in outlying areas for development seeking a suburban-style setting" and "[a]ccommodate the city's commercial activity within a range of functionally and physically defined commercial centers." The narrative cites comprehensive plan policy around developing commercial centers on transit corridors. Maybe most convincingly, the submittal quotes the plan language creating the O-P zone, which, as stated above, explicitly noted the need for a "zone that would allow larger scale office development on larger lots in what

could be considered more suburban locations. The parcels, while suburban in character, might have limited potential for residential development, due in part, for example, by proximity to the Jetport, or to the topography of the site, or its physical boundaries such as a busy arterial." The plan identifies Congress Street/Cobb Avenue, south of the site across Congress Street, as a potential O-P zone. The comprehensive plan more broadly identifies this part of the city as a growth area (*Attachment E*).

Responding to concerns regarding encroachment into residential areas, the narrative also argues that Stroudwater has developed differently from other neighborhoods in the city, with significantly less of its land area in residential use, more of its land vacant, and more recent commercial and industrial development. The narrative further argues that, though the 1945 Congress site is currently zoned residential, the likelihood of residential redevelopment is small.

It should also be noted that there is policy in the comprehensive plan that counters some of these arguments. The comprehensive plan includes numerous goals and policies, many originating in the 1991 *Downtown Vision*, meant to concentrate office development in the city's downtown core and away from suburban locations. With respect to the loss of the R-2 zoning, in *Housing: Sustaining Portland's Future*, the city establishes a policy of protecting "the stability of Portland's residential neighborhoods from excessive encroachment by inappropriately scaled and obtrusive commercial, institutional, governmental, and other non-residential uses." In a similar vein, the city's *Industry and Commerce Plan* from 1994 includes goals related to "protect[ing]...residential zones." Neighbors of the proposal have noted these comprehensive plan policies, and have suggested that removing land from the R-2 stock and placing it in a zone where housing is prohibited would serve to eliminate the potential for additional housing, directly contradicting elements of the comprehensive plan.

#### VIII. O-P ZONING AND THE QUESTION OF PRECEDENT

Over the course of this zoning amendment application review, concerns about precedent and commercial encroachment have repeatedly arisen as well. Neighbors have voiced strong objections to the idea of an O-P rezoning, arguing that a rezoning will have a "domino effect" on parcels to the east, including several other existing places of assembly, including Faith Temple and Christchurch of Portland. These properties, much like the Elks', sit in the R-2 zone on large lots fronting Congress Street. In some cases, O-P zoning can be found immediately adjacent to these sites, and in at least one case, these sites are currently for sale.

With the aim of informing the discussion on this matter, Corporation Counsel provided a memo which directly addresses the precedential effect of zoning decisions (*Attachment D*). This memo states, first and foremost, that

*Because zoning is a legislative act and ultimately an exercise of legislative judgment by the City Council (subject to the "consistency" analysis discussed above), a zoning decision is not binding per se. (Joseph T. Bockrath, Zoning Board's Grant of New Application for Zone Change, Variance, or Special Exception After Denial of Previous Application Covering Same Property or Part Thereof, 52 A.L.R.3d 494, 2b ("Being the result of a 'legislative process,' a zone change is not binding on future determinations . . .")) In other words, because zoning requires an exercise of discretion and legislative judgment, a legislative body like the Council is entitled to exercise that discretion however it sees fit – provided of course that its decision is consistent with the comprehensive plan, is not arbitrary, nor discriminatory. Therefore, even where the Board/Council denies a proposed zoning amendment with respect to a parcel of property this year, it would not be bound by that decision if the request were renewed next year. Id. at 3a (collecting cases). Having said that, in order to avoid an allegation that it is exercising its legislative discretion in an arbitrary or capricious manner, in such a situation the Board/Council would be well advised to articulate the change in circumstances that justifies a divergent exercise of its discretion with respect to the same parcel of land.*

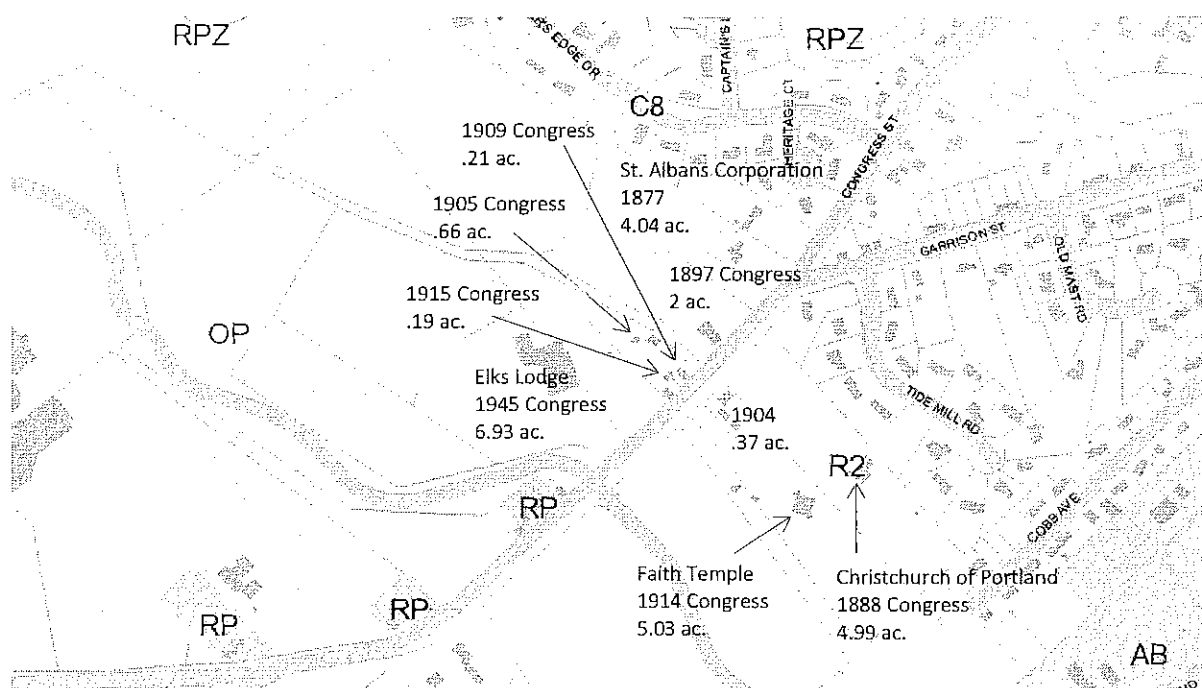


Figure 7: Parcel sizes and context in vicinity of 1945 Congress Street

Ms. Thompson identifies examples from case law which have been used to justify differing zoning decisions with respect to “seemingly similar properties,” such as changes to the property in question, changes to the surrounding neighborhood, changed traffic impacts, or changes in the zoning amendment requested.

In this light, the planning board discussed several distinguishing factors which can be cited to differentiate the Elks’ site from the properties in question to the east (Figure 7). The 1945 Congress parcel, which is almost seven acres in size, is larger than the easterly sites, which generally range from less than an acre to five acres in size. The Elks’ site is contiguous with the O-P zone on two sides, while these other sites share one border with the O-P zone at most. Lastly, the 1945 Congress Street site has access from a secondary road with the benefit of a signalized intersection with Congress Street; all of the easterly sites would rely on access directly from Congress Street.

## IX. PUBLIC COMMENT

Over the course of the zone change review, the planning board received a significant number of public comments related to the proposed zone change (PC-1-43). These comments generally fall into several categories. A number express concerns about impacts of the proposed office development. These comments raise questions about potential traffic impacts; pedestrian safety in the area; building design, parking, and siting with respect to the O-P development standards; buffering from adjacent residential properties; and the effects on what many perceive as an important gateway with valuable natural resource and open space attributes. Other comments argue that the proposed zoning map amendment is inconsistent with the comprehensive plan. Most of these build cases on the housing objectives of the plan, raising concerns that land will be taken from the potential housing supply and that the zone change would eliminate the potential for single-family development on the site. The board has received a public comment from a neighbor which went so far as to develop a concept for residential redevelopment on the site (PC-21). Last, a number of comments raise larger questions regarding “piecemeal zoning,” the need for a broader vision for Stroudwater and outer Congress, and the potential for encroachment on existing residential neighborhoods, particularly to the east. The Stroudwater Village Association has requested repeatedly (and most recently in correspondence dated August 31) that the board defer any zoning decision until a more comprehensive neighborhood planning effort can be undertaken (PC-14, PC-23, and PC-31). It should be noted that the city also received a number of letters from Elks Club members requesting that the board approve the plans (PC-13).

## X. BOARD DELIBERATION AND RECOMMENDATION

In its deliberations, the planning board clearly acknowledged the importance of this area of outer Congress Street to both the immediate neighborhood and as a gateway to the city more broadly. Board members also recognized the need to carefully consider the transition between a heavily commercial area west of this site and the sensitive residential and natural areas to the north and east. The board agreed that the Planning Division should work within its resources as part of the airport master planning process to address questions of land use in this unique and important part of the city.

The four members of the board who supported the proposed zone change, in contrast, argued that the site is more suitable for office than for residential use, given its location across from the Jetport entrance on a heavily-traveled commuter corridor. They held that that the zone change could be considered a logical extension of the existing O-P zone, which sits to the north and west. With respect to the question of precedent, they identified distinguishing factors on the 1945 Congress Street site, including its size, its adjacency with the O-P zone on two sides, and its access from a secondary road with a signalized intersection on Congress Street, which can be used to differentiate it from neighboring sites. Lastly, they noted that the O-P zone includes strong provisions related to buffering and open space which, under site plan review, could serve to preserve or even enhance the Congress Street/UNUM Park Drive intersection as a gateway and green entry to the city.

There were two members of the board who expressed reservations with respect to the proposed zone change and therefore voted against its recommendation. These members questioned the ability of the site to support the "campus-like" setting prescribed by the O-P zoning and, likewise, the suitability of the site for such a use. These members also raised concerns regarding the desire of the Elks to remain on the site under legal non-conforming status. Lastly, these board members expressed reservations with reference to competing policies of the comprehensive plan, particularly those which promote the stability of residential neighborhoods and residential growth.

Ultimately, the majority of the board voted to support a rezoning to O-P for the 1945 Congress Street site. In order to create a buffer for the residential properties to the east, the board recommended rezoning to a line parallel with the eastern property boundary and offset at a distance of 40 feet. This line mirrors one proposed by the applicant in early discussions with the board and allows some R-2 to be preserved on the site. This approach has been used in limited instances elsewhere in the city, often with a zone line that parallels a street.

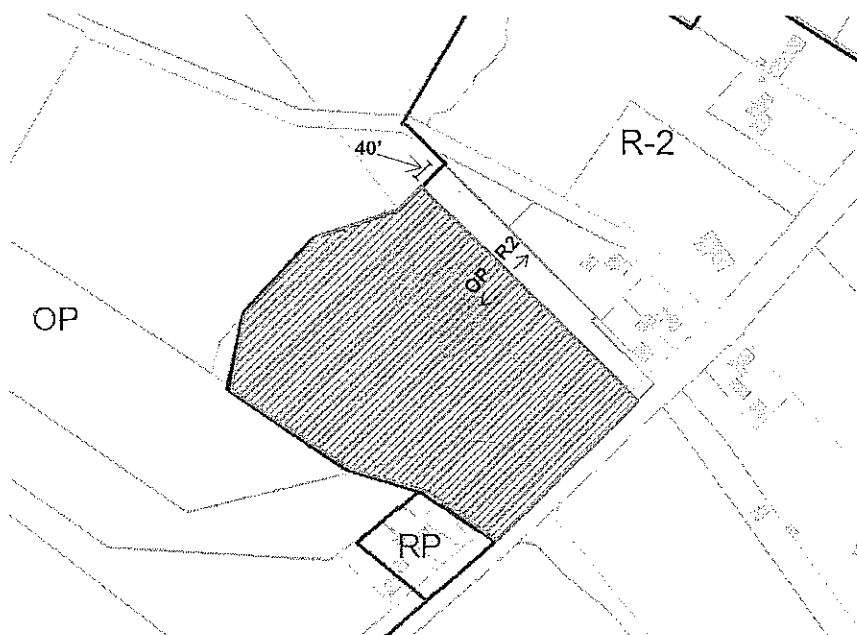


Figure 8: Area of proposed zone change, 1945 Congress Street

The board voted 4-2 (Hall and Morrisette opposed, O'Brien absent) as follows:

Based on the material provided in this report, public testimony, a review of applicable policies, and other information, the planning board finds that the proposed map amendment to change the zoning on the north side of Congress Street at UNUM Park Drive from Residential R-2 to Office Park (O-P), as shown in the map

above, is consistent with the Comprehensive Plan and recommends adoption of the proposed amendment to the city council.

## **XI. ATTACHMENTS**

### **PLANNING BOARD REPORT ATTACHMENTS**

- A. Zoning alternatives tables
- B. Zoning administrator review (email from Ann Machado)
- C. Traffic engineer review (email from Tom Errico)
- D. Corporation counsel memo on zoning amendments (Memo from Jennifer Thompson)
- E. Growth area memo (excerpted from 6/28/15 memo to City Council)

### **APPLICANT'S SUBMITTALS**

- 1. Applicant's cover letter (11/21/14)
- 2. Authorization letter (11/21/14)
- 3. Purchase & sale agreement (Elks Lodge)
- 4. Applicant's cover letter (4/13/15)
- 5. Zoning amendment application
- 6. Comprehensive plan narrative
- 7. Buffering photos
- 8. Neighborhood meeting packet
- 9. Housing redevelopment feasibility analysis
- 10. Purchase & sale agreement (DuBois)

### **PLANS**

- Plan 1. Concept plan
- Plan 2. Propose Elks site from above
- Plan 3. Rendering of both proposed buildings
- Plan 4. Clark Insurance building
- Plan 5. Office building on Congress Street
- Plan 6. Congress Street view from east
- Plan 7. Congress Street view from west
- Plan 8. Rendering from Congress Street

### **PUBLIC COMMENT**

- PC-1. Letter from Bill Linnell, Joyce Gauthier, and Janet Burns, 1/14/15
- PC-2. Letter from David Silk, 1/14/15
- PC-3. Letter from Bill Linnell, Joyce Gauthier, and Janet Burns, 1/16/15
- PC-4. Letter from Lucie Tardif, 1/19/15
- PC-5. Email from Joe and Carolyn Heasley, 1/19/15
- PC-6. Letter from Dan Koloski, SVA President, 1/20/15
- PC-7. Email from John Sommer, 1/20/15
- PC-8. Email from Rob Rosenberg, 1/22/15
- PC-9. Email from David Silk, 1/22/15
- PC-10. Email from Bill Linnell, 1/23/15
- PC-11. Email from Paul Dubois, 1/24/15
- PC-12. Letter from Margaret Doyle, 1/30/15
- PC-13. Letters from Elks Lodge Members, 3/15
- PC-14. Email from SVA, 5/25/15
- PC-15. Email from Angela Wheaton, 5/26/15
- PC-16. Email from Charlton Smith, 5/26/15
- PC-17. Email from Marc Hodroff, 5/26/15
- PC-18. Letter from David Silk, 5/26/15
- PC-19. Email from Elizabeth Hoglund, 5/26/15
- PC-20. Letter from Mary Lou Kimball, 5/27/15
- PC-21. Letter from Mitchell & Associates on behalf of Bill Linnell, 7/13/15

PC-22. Email from Paul Dubois, 7/22/15  
PC-23. Statement from Stroudwater Village Association, 7/23/15  
PC-24. Email from James Casterella, 7/26/15  
PC-25. Email from William Linnell, 7/28/15  
PC-26. Email from David Silk, 7/28/15  
PC-27. Email from Charlton Smith, 8/20/15  
PC-28. Email from Angela Wheaton, 8/20/15  
PC-29. Email from Eugenia O'Brien, 8/21/15  
PC-30. Email from Betsy Smith, 8/21/15  
PC-31. Email from Karen Hinchliffe, 8/25/15  
PC-32. Email from Patricia Adriance, 8/26/15  
PC-33. Statement from the Stroudwater Village Association, 8/31/15  
PC-34. Email from David Silk, 9/3/15  
PC-35. Email from Bill Linnell, 9/3/15  
PC-36. Email from Elizabeth Hoglund, 9/4/15  
PC-37. Email from Patricia Bernard, 9/4/15  
PC-38. Email from Barbara Turitz, 9/7/15  
PC-39. Email from Edward Resnisky, 9/7/15  
PC-40. Email from Valerie Libby, 9/8/15  
PC-41. Email from Joseph McDonnell, 9/8/15  
PC-42. Email from Bill Lairsey, 9/8/15  
PC-43. Email from Anthony Buxton, 9/8/15

File: 13151

**PINKHAM & GREER  
CIVIL ENGINEERS**

28 VANNAH AVE. PORTLAND, ME. 04103  
Tel: 207.781.5242 Fax: 207.781.4245

November 21, 2014

Att. 1

Ms. Barbara Barhydt, Planning Department  
City of Portland  
389 Congress Street, 4th Floor  
Portland, ME 04101

RE: ELKS PROPERTY, ZONE CHANGE

Dear Barbara,

I would like to thank you and the City Staff Members that attended our meeting on Wednesday, for their input. Based on that starting point, on behalf of Northland Enterprises, Inc., we would like to continue our development process with a zone change. Attached is a revised zoning map that changes this property to Office Park (OP) from the existing Residential 2 (R2) designation. This will expand the OP District that currently encompasses the UNUM Development.

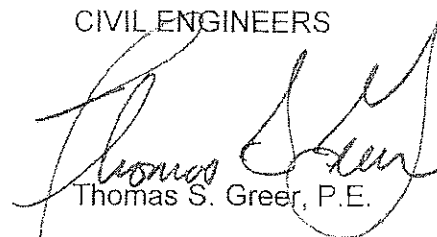
It is our understanding the Elks Club will be left as an existing non-conforming use. They will be allowed to shrink their footprint but not expand it.

Our goal is to get through the zone change and planning board approval process by April. We understand this is a tight time frame, but we do not want to loose track of that goal.

If you have any questions, please feel free to call. Thank you for your assistance.

Sincerely,

PINKHAM & GREER  
CIVIL ENGINEERS



Thomas S. Greer, P.E.

cc: (1) David Lloyd, Josh Benthien, Rex Bell, Brad Fries, File

Enclosures

TSG/rjs

Northland Enterprises, LLC  
17 South St, 3rd Flr  
Portland, ME 04101

(207) 780-0223

November 21, 2014

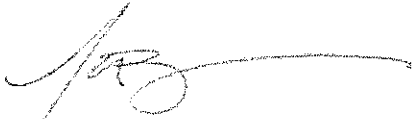
To Whom It May Concern

This letter is to inform you that Thomas S. Greer and his associates of Pinkham & Greer Civil Engineers in Portland are hereby authorized to represent Northland Enterprises, Inc. throughout the approval process of Elks Club in Portland, Maine.

This includes representing us with the City of Portland and Department of Environmental Protection, as well as any other State or local agencies who may become involved in the process.

Should you have any questions or concerns, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Josh Benthien', with a long horizontal flourish extending to the right.

Mr. Josh Benthien

# FIRST AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("First Amendment") is dated as of August \_\_, 2014 by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3<sup>rd</sup> floor, Portland, Maine ("Buyer").

## RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, (the "Purchase Agreement").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including September 30, 2014 and Buyer and Seller shall have until September 30, 2014 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate as set forth more fully in Paragraph 5.1.
2. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this First Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

### SELLER:

Portland Lodge No. 188, of the Benevolent  
and Protective Order of Elks of the United  
States of America

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

Name: Timothy Smith  
Title: Exalted Ruler

BUYER:

Northland Enterprises, LLC

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
Dr. Michael Bedecs

## SECOND AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("Second Amendment") is dated as of September 22, 2014 by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3<sup>rd</sup> floor, Portland, Maine ("Buyer").

### RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, (the "Purchase Agreement").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including November 8, 2014 and Buyer and Seller shall have until November 8, 2014 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate as set forth more fully in Paragraph 5.1.
2. Buyer and Seller agree that Seller has obtained Member approval and that the deadline for Seller to obtain Grand Lodge approval has been extended to October 9, 2014.
2. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Second Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Second Amendment as of the date first set forth above.

### SELLER:

Portland Lodge No. 188, of the Benevolent  
and Protective Order of Elks of the United  
States of America

By:

  
Name: Timothy Smith  
Title: Exalted Ruler

BUYER:

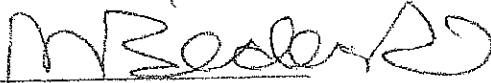
Northland Enterprises, LLC

By: 

Name: Rex Best

9/22/14

Title: Partner



9/23/14

Dr. Michael Bedets

**THIRD AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT**

This Amendment to Purchase and Sale Agreement ("Third Amendment") is dated as of November 7, 2014, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3<sup>rd</sup> floor, Portland, Maine (collectively "Buyer").

**RECITALS**

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, and that certain Second Amendment dated September 22, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including November 25, 2014 and Buyer and Seller shall have until November 25, 2014 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Third Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

**SELLER:**

Portland Lodge No. 188, of the Benevolent  
and Protective Order of Elks of the United  
States of America

By: 

Name: Timothy Smith  
Title: Exalted Ruler

BUYER:

Northland Enterprises, LLC

By:

Name:

DR. MICHAEL BEDECS

Title:

OWNER

  
Dr. Michael Bedecs

SEVENTH 26 Third Amendment to ETKs property P&S doc

## FOURTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("Fourth Amendment") is dated as of November 24, 2014, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3<sup>rd</sup> floor, Portland, Maine (collectively "Buyer").

### RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, and that certain Third Amendment dated November 7, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including December 4, 2014 and Buyer and Seller shall have until December 4, 2014 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Future extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," may be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and any such extension agreement shall be binding on Buyer and Seller.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Fourth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent  
and Protective Order of Elks of the United  
States of America

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

Name: Timothy Smith  
Title: Exalted Ruler

BUYER:

Northland Enterprises, LLC

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

Name: Ray Bell  
Title: Partner

Michael Bedecs  
Dr. Michael Bedecs

(RE)

## **FIFTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT**

This Amendment to Purchase and Sale Agreement ("Fifth Amendment") is dated as of December 4, 2014, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3<sup>rd</sup> floor, Portland, Maine (collectively "Buyer").

### **RECITALS**

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014 and that Fourth Amendment dated November 24, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree to amend the Purchase Agreement as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended as follows:
  - a. the "Additional Contingencies Expiration Date" is hereby extended, up to and including December 19, 2014 with respect to all matters listed in Paragraph 5.1 except for the matters described in Paragraph 5.1(1) and Buyer and Seller shall have until December 19, 2014 to agree upon all matters listed in Paragraph 5.1 (except for the matters described in Paragraph 5.1(1) which shall have a later date and are addressed below) or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
  - b. the "Additional Contingencies Expiration Date" is hereby extended, up to and including December 31, 2014 with respect to all matters described in Paragraph 5.1(1) including all matters relating to the specifications of, and the work to be performed with respect to, the code compliant exterior wall and façade listed in Paragraph 1(b) of the Purchase Agreement as well as the specific configuration of the Seller's Retained Building, including the location of the end of Seller's Retained Building, and including agreement on plans drafted with respect to such work (all of which hereinafter is referred to as the "Building Specification Contingency") and Buyer and Seller shall have until December 31, 2014 to agree upon all matters relating to the Building

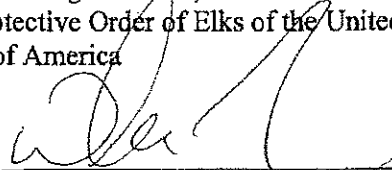
Specification Contingency or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.

2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Fifth Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Fifth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent  
and Protective Order of Elks of the United  
States of America

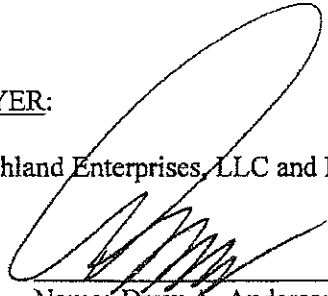
By: 

Name: William H. Leete, Jr., Esq.

Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

By: 

Name: Drew A. Anderson, Esq.

Title: Its Attorney

## SIXTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Sixth Amendment to Purchase and Sale Agreement ("Sixth Amendment") is dated as of December 18, 2014, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3<sup>rd</sup> floor, Portland, Maine (collectively "Buyer").

### RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014, that certain Fourth Amendment dated November 24, 2014 and that certain Fifth Amendment dated December 4, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to further extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

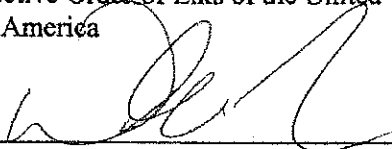
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including January 9, 2015 and Buyer and Seller shall have until January 9, 2015 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Sixth Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Sixth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

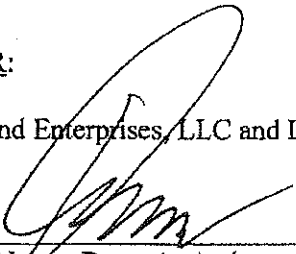
Portland Lodge No. 188, of the Benevolent  
and Protective Order of Elks of the United  
States of America

By: 

Name: William H. Leete, Jr., Esq.  
Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

By: 

Name: Drew A. Anderson, Esq.  
Title: Its Attorney

## SEVENTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Seventh Amendment to Purchase and Sale Agreement ("Seventh Amendment") is dated as of January 8, 2015, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3<sup>rd</sup> floor, Portland, Maine (collectively "Buyer").

### RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014, that certain Fourth Amendment dated November 24, 2014, that certain Fifth Amendment dated December 4, 2014, and that certain Sixth Amendment dated December 18, 2014 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to further extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

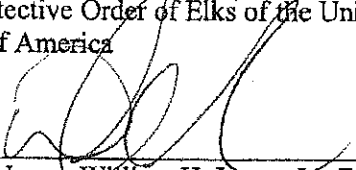
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including January 23, 2015 and Buyer and Seller shall have until January 23, 2015 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Seventh Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Seventh Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent  
and Protective Order of Elks of the United  
States of America

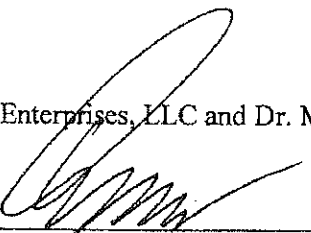
By: 

Name: William H. Lecte, Jr., Esq.

Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

By: 

Name: Drew A. Anderson, Esq.

Title: Its Attorney

## **EIGHTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT**

This Eighth Amendment to Purchase and Sale Agreement ("Eighth Amendment") is dated as of January 20, 2015, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3<sup>rd</sup> floor, Portland, Maine (collectively "Buyer").

### **RECITALS**

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014, that certain Fourth Amendment dated November 24, 2014, that certain Fifth Amendment dated December 4, 2014, that certain Sixth Amendment dated December 18, 2014, and that certain Seventh Amendment dated January 8, 2015 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to further extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

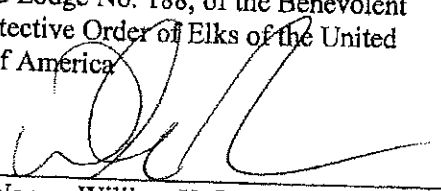
NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including January 30, 2015 and Buyer and Seller shall have until January 30, 2015 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Eighth Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Eighth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent  
and Protective Order of Elks of the United  
States of America

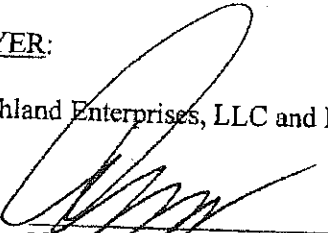
By: 

Name: William H. Leete, Jr., Esq.

Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

By: 

Name: Drew A. Anderson, Esq.

Title: Its Attorney

## NINTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Ninth Amendment to Purchase and Sale Agreement ("Ninth Amendment") is dated as of January 30, 2015, by and between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America (collectively "Seller"), having a place of business at 1945 Congress Street, Portland, Maine and Dr. Michael Bedecs, having a place of business at 1375 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3<sup>rd</sup> floor, Portland, Maine (collectively "Buyer").

### RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, that certain Third Amendment dated November 7, 2014, that certain Fourth Amendment dated November 24, 2014, that certain Fifth Amendment dated December 4, 2014, that certain Sixth Amendment dated December 18, 2014, that certain Seventh Amendment dated January 8, 2015, and that certain Eighth Amendment dated January 20, 2015 (hereinafter the "Purchase Agreement").

WHEREAS, the parties wish to further extend the date for certain contingencies under the Purchase Agreement to permit adequate time to complete them.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Paragraph 5.1 of the Purchase Agreement "Seller and Purchaser Additional Contingencies" is hereby amended so that the "Additional Contingencies Expiration Date" is hereby extended, up to and including April 10, 2015 and Buyer and Seller shall have until April 10, 2015 to agree upon all matters listed in Paragraph 5.1 or to exercise their right to terminate the Purchase Agreement as set forth more fully in Paragraph 5.1.
2. Buyer and Seller have authorized extensions of deadlines contained in the Purchase Agreement, including, without limitation, with respect to the "Additional Contingencies Expiration Date," to be agreed upon by the attorneys for the parties (Drew Anderson for Buyer, William H. Leete, Jr. for Seller) by electronic mail, and accordingly this Ninth Amendment has been agreed upon and shall be executed by the attorneys for Buyer and Seller pursuant to such authorization.
3. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Ninth Amendment, shall remain unchanged, except for the expressly stated amendments contained herein.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 188, of the Benevolent  
and Protective Order of Elks of the United  
States of America

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

Name: William H. Leete, Jr., Esq.  
Title: Its Attorney

BUYER:

Northland Enterprises, LLC and Dr. Michael Bedecs

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

Name: Drew A. Anderson, Esq.  
Title: Its Attorney

## TENTH AMENDMENT TO REAL ESTATE PURCHASE AND SALE AGREEMENT

This Amendment to Purchase and Sale Agreement ("Tenth Amendment") is dated as of April 11, 2015, by and between Portland Equity Sec. L.P., a Delaware limited liability partnership and Protective Order of Easement of the United States of America, collectively "Seller", having a place of business at 1044 Congress Street, Portland, Maine and Mr. Michael Bedens having a place of business at 1044 Congress Street, Portland, Maine and Northland Enterprises, LLC, and/or its assigns, having a place of business at 17 South Street, 3<sup>rd</sup> Floor, Portland, Maine (collectively "Buyer").

### RECITALS

WHEREAS, Seller and Buyer entered into a certain Purchase and Sale Agreement dated as of June 11, 2014, as amended by that certain First Amendment dated August 5, 2014, that certain Second Amendment dated September 22, 2014, Third Amendment dated November 7, 2014, Fourth Amendment dated November 24, 2014, Fifth Amendment dated December 4, 2014, Sixth Amendment dated December 13, 2014, Seventh Amendment dated January 8, 2015, Eighth Amendment dated January 20, 2015, and Ninth Amendment dated January 30, 2015 (hereinafter the "Purchase Agreement") and;

WHEREAS, Seller and Buyer acknowledge and agree that there are certain outstanding contingencies with respect to the land and the zoning and land use contingencies set forth in Section 6 of the Purchase Agreement, and certain of the Seller and Purchaser Additional Contingencies set forth in Section 5.1 of the Purchase Agreement as further described in this Amendment; and

WHEREAS, Seller and Buyer wish to confirm Buyer's exercise of its right to extend the Zoning Contingency expiration Date to 90 days as provided in Section 6 of the Purchase Agreement;

WHEREAS, Seller and Buyer have agreed upon certain of the Seller and Purchaser Additional Contingencies as set forth in Section 5.1(2), (3), (4), and (5) as set forth herein;

WHEREAS, Seller and Buyer wish to extend the time upon which the Seller and Purchaser Additional Contingencies set forth in Section 5.1(1) and (5) and related matters shall be satisfied and make the Additional Contingency Expiration Date with respect to those contingencies contemporaneous with the Zoning Contingency Expiration Date;

WHEREAS, Pursuant to paragraph 2.1 of the Purchase Agreement, "Seller and Purchaser Additional Contingencies", the parties have agreed upon a standing certain of the Additional Contingencies, and wish to memorialize those agreements in this Amendment; and

WHEREAS, Seller and Buyer acknowledge and agree that all contingency provisions and time periods set forth in the Purchase Agreement other than those set forth above or otherwise preserved under this agreement in no respect and that neither Seller nor Buyer have any rights to terminate the Purchase Agreement pursuant thereto;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

1. This is attached to this Agreement as part of the documentation of certain additional agreements of Buyer and Seller as follows:

- a. Schedule A - Plans and Specifications of Condominium Documents;
- b. Schedule B - Work Schedule and Property Loss;
- c. Schedule C - Form of Note or First Deed.

Seller and Buyer hereby acknowledge and agree that Schedules A, B and C, have not be separately executed, that Buyer and Seller agree as their terms, and further that the signatures of Seller and Buyer on this Tenth Amendment are intended to be and shall be deemed to be effective as though Seller's and Buyer's signatures each appeared upon Schedules A, B and C, and further that such schedules shall be incorporated into this Tenth Amendment as though fully set forth.

Buyer and Seller further agree that Schedules A, B and C satisfy the Additional Contingencies set forth in subparagraphs 2, 3, 4 and 5 of Paragraph 5.1 of the Purchase Agreement and represent the agreement of the parties with respect to such Additional Contingencies.

2. Seller and Buyer confirm Buyer's election to change the Zoning Contingency Expiration Date by ninety (90) days as provided in Section 5.1 of the Purchase Agreement, which Zoning Contingency Expiration Date is now June 21, 2018.

3. Seller and Buyer acknowledge and agree that the Seller and Purchaser Additional Contingencies set forth in Section 5.1.1) opportunities and work to be performed on Seller's Remained Building; and (3) a number of parking spaces to be allocated to Seller; are very likely to be determined only in connection with, and as a part of, Buyer's zoning, permitting and approval process set forth in Section 6 of the Purchase Agreement. Therefore, the parties hereby amend the Purchase Agreement so that the Additional Contingencies Expiration Date with respect to the Section 5.1.1) and (3) matters (the "Remaining 5.1 Matters") shall be the same as the Zoning Contingency Expiration Date, as extended and modified pursuant to this Amendment.

4. Seller and Buyer further agree that the "Remaining 5.1 Matters" shall be interpreted broadly as follows:

- a) The matters to be agreed upon under Section 5.1.1) shall include all work to be performed with respect to the (1) Building together with all work to be performed relating to the Building and the area surrounding the Building, including, without limitation the form and location of any sewer, water or other utility connections in addition to the matters expressly set forth in 5.1.1) and other matters set forth in the Purchase Agreement.
- b) The matters to be agreed upon under Section 5.1.3) shall include the total number, configuration, size, ownership, location, appearance and maintenance of parking spaces, in addition to the matters expressly set forth in 5.1.3) and other matters set forth in the Purchase Agreement.

Nothing in this paragraph is intended to, nor shall be deemed to, terminate or waive any right of either Seller or Buyer to have the Purchase Agreement pursuant to Section 5.

5. Buyer agrees to keep Seller apprised of the progress of obtaining approvals and shall promptly notify Seller's counsel of any filings with the City of Portland, with any municipal agency or any court filing or appeal.

6. The Purchase Agreement shall remain in full force and effect, except as expressly amended hereby. Without limiting the general nature of the foregoing, any paragraphs of the Purchase Agreement amended by this Ninth Amendment shall remain unchanged, except for the expressly stated amendments contained herein. Any capitalized terms not defined in this Amendment shall have the meaning given them in the Purchase Agreement.

IN WITNESS WHEREOF, Seller and Buyer have executed this Amendment as of the date first set forth above.

SELLER:

Portland Lodge No. 158, of the Benevolent  
and Protective Order of Elks of the United  
States of America

By:

Name: Timothy Smith  
Title: Deafened Ruler

BUYER:

Northland Enterprises, LLC

By:

Name: Michael Beales  
Title: General Manager

Michael Beales  
Dr. Michael Beales

WITNESSES:

## REAL ESTATE PURCHASE AND SALE AGREEMENT

This Agreement, dated the 11<sup>th</sup> day of June, 2014 (the "Contract Date"), is between Portland Lodge No. 188, of the Benevolent and Protective Order of Elks of the United States of America ("Seller"), having a place of business at 1945 Congress Street, Portland, Maine, and Dr. Michael Bedecs having a place of business at 1375 Congress Street, Portland, ME and Northland Enterprises, LLC, or its permitted assignee (collectively, "Purchaser"), having a place of business at 17 South Street, 3<sup>rd</sup> floor, Portland, Maine 04101. The parties agree as follows:

### 1. Purchase and Sale of Property: Condominium Conversion.

(a) Subject to the terms and conditions set forth herein, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the following described property owned by Seller (collectively, the "Property"):

- (i) That certain lot or parcel of real property known as 1945 Congress Street, Portland, Maine, being a portion of the property described in a deed from Elks Home, Portland, Maine, Lodge No. 188 Benevolent and Protective order of Elks to Seller, and recorded in the Cumberland County Registry of Deeds at Book 6157, Page 37, provided that the conveyance shall not include the retained portion of the Seller's building (being approximately 13,000 square feet of the total usable footprint of such building including the storage area) (the "Seller's Retained Building"). The property to be conveyed is generally identified on the Concept Plan attached to and made a part hereof as Exhibit A.
- (ii) A portion of the existing building on the real property shall be removed and demolished by Buyer and a new interior and exterior wall installed, with all of the foregoing in a manner acceptable to the parties as set forth in Section 5.1, and the configuration of the Seller's Retained Building to be as shown on the sketch plan attached to and made a part hereof as Exhibit B. All fixtures and improvements situated on the real property owned by Seller are to be retained by Seller and shall be part of Seller's Retained Building.
- (iii) For sake of clarity, Seller is retaining the Seller's Retained Building, an Elk statue and flag and flagpole as well as an Elks sign (such statue, flagpole and sign to be limited common elements under the condominium documents) to be located near Congress Street entrance at the general location designated on Exhibit C (such location to be subject to requirements that may be set out in any permits and approvals for the property and state and local sign ordinances), together with a pro rata

interest in the parking areas and common areas of the real property, all to be set forth in the condominium documents (more fully described below) to be prepared and recorded immediately following recording of the Deed (defined below). Purchaser agrees to cause a Maine Licensed Professional Surveyor to prepare and provide to Seller a metes and bounds description of the Property (including the property to be conveyed by Seller and the property to be retained) within ninety (90) days after the date the Lodge Approvals are obtained.

(b) Contemporaneously with the delivery and recording of the Deed, Purchaser shall cause to be recorded a Declaration of Condominium whereby the Property is converted to condominium ownership. The Condominium documents shall be prepared at Purchaser's cost and expense, shall be delivered in complete form to Seller on or before thirty (30) days after the Zoning Contingency expiration date and shall be subject to Seller's approval, not to be unreasonably withheld, delayed or conditioned. The Condominium documents shall, among other things, create a separate unit for the Seller's Retained Building ("Seller's Unit"), which shall include as limited common elements at a minimum the required number of parking spaces for Seller's Unit to satisfy all applicable zoning requirements, but at a minimum five (5) parking spaces per 1,000 square feet (Purchaser acknowledges, however, Seller's need for additional parking spaces on certain days and on weekends), and a pro-rata share of the common elements of the condominium, as well as provide a budget including anticipated condominium fees that will be due to the Condominium Association. Purchaser shall, as soon as practicable after the Closing and in consultation with Seller as to the schedule of work, perform the work necessary to reduce the size of the Seller's existing building to the Seller's Retained Building and erect a code-compliant exterior wall in form and substance acceptable to Seller as part of Seller's Unit. Purchaser shall also construct a new façade on all sides of Seller's Unit building and separate the utilities so that Seller's Unit is a separate and distinct Unit. Purchaser's work, the new building configuration and the location of the wall shall be more specifically identified in scope and cost as set forth in this Purchase and Sale Agreement (detail attached as Addendum #1).

Purchaser shall submit plans and specifications to Seller with respect to the foregoing work prior to submission to the City of Portland or its lender, which plans and specifications shall be subject to Seller's approval, not to be unreasonably withheld, delayed or conditioned. Purchaser will construct the improvements to Seller's Unit in accordance with the plans and specifications. Purchaser shall conduct such work in such a manner as to minimize as much as possible any disruption to Seller's use and enjoyment of Seller's Unit, in particular at times when any banquets, weddings, or similar revenue producing events are taking place. Work shall be conducted between the hours of 7:00 AM and 5:00 PM, Monday through Friday. Purchaser shall minimize any weekend or night construction activities, and if work is required during those times, Purchaser will notify Seller and to help minimize the impact to Seller's business, Seller's approval shall

be required prior to the performance of any such work. Without limiting the general nature of the foregoing, no blasting, pile driving or similarly loud work shall be performed on Tuesdays between 10:00 am and 4:30 pm (when barge operates) or on weekends from Friday at 5:00 pm until Monday morning at 7:00 am.

c) Seller shall give Purchaser a right of first refusal to purchase Seller's Unit at Purchaser's option if at any time Seller decides to sell the Seller's Unit. Purchaser shall pay the amount set forth in any written offer made in a purchase and sale agreement Seller receives from a bona fide arms-length third party, minus a credit equal to an amount to be determined (either a dollar amount or a manner for calculating a dollar amount) by the parties in accordance with Section 5.1 of this Agreement ("Purchaser's Improvement Credit"). Without limiting the foregoing, Purchaser's Improvement Credit shall be calculated based upon the costs that Purchaser anticipates it shall pay for work on the common area infrastructure and other common area improvements to the Property, together with the cost of renovations to Seller's Retained Building including erection of new exterior wall and re-skinning of Seller's Retained Building, pro-rated based on the ownership interests allocated to Seller's Unit under the condominium documents. The dollar amount of Purchaser's Improvement Credit shall be reduced by equal 10% increments upon each anniversary of the date Purchaser's renovations to Seller's Retained Building are completed, with the manner of establishing such date to be determined by the parties in accordance with Section 5.1 of this Agreement (such date, the "Completion Date"), such that Purchaser's Improvement Credit shall be reduced to zero upon the tenth anniversary of the Completion Date. Seller and Purchaser agree to enter into a Right of First Refusal Agreement at the Closing in recordable form, containing terms and conditions reasonably satisfactory to the parties.

2. Purchase Price. The agreed purchase price for the Property is One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00) (the "Purchase Price"), payable as follows:

(a)(i) Fifty Thousand Dollars (\$50,000) has been paid into escrow prior to the date hereof, and an additional Fifty Thousand Dollars (\$50,000), for a total deposit of One Hundred Thousand Dollars (\$100,000.00) shall be paid within two (2) business days of the later to occur of (i) the Additional Contingencies Expiration Date (as defined in Paragraph 3.1) or (ii) the date the Lodge Approvals (as defined in Section 8(a)) are obtained, which amount shall be held by Malone Commercial Brokers ("Escrow Agent") as earnest money deposit hereunder and shall be applied as part payment of the purchase price (the "Deposit"). Purchaser may terminate this Agreement only based upon the grounds set forth below in paragraphs 5, 5.1 and 8, and only prior to the Zoning Contingency Expiration Date (defined below). Upon a timely, valid termination, the refundable portion of the Deposit shall be promptly returned to Purchaser. Nothing herein shall be deemed to limit Purchaser's right to terminate this Agreement pursuant to paragraph 6.

(a)(2)(i) Sixty (60) days after both the Lodge Approvals and UNUM Release as set forth in Paragraph 8 have been obtained (provided this Agreement has not been terminated in accordance with its terms by either party prior thereto), Five Thousand Dollars (\$5,000.00) of the Deposit shall become non-refundable notwithstanding anything in this Agreement to the contrary.

(ii) The remainder of the Deposit shall become non-refundable upon the Zoning Contingency Expiration Date (as defined below) provided this Agreement has not been terminated in accordance with its terms by either party prior thereto, and except for Seller's default under this Agreement or Seller's inability to convey title in accordance with Paragraph 4 of this Agreement; and

(b) The balance of the Purchase Price of \$1,150,000.00 shall be paid at the time of delivery of the deed in good certified or bank check(s), or by wire transfer.

The Deposit shall be placed in a non-interest-bearing escrow account.

3. Adjustments. Real estate taxes for the then current tax period shall be apportioned as of the day of closing under this Agreement and the net amount thereof shall be added to or deducted from, as the case may be, the purchase price payable by the Purchaser at the time of delivery of the Deed.

4. Conveyance: Title.

(a) Seller shall convey the Property to Purchaser by good and sufficient quitclaim deed with covenant (the "Deed"). Title to the Property shall be good and marketable and shall be free and clear of all liens and encumbrances except (i) zoning restrictions, building laws and land use matters, provided same do not prevent or unreasonably interfere with Purchaser's intended use and development of the Property; (ii) easements and restrictions of record; (iii) current taxes and assessments; (iv) any liens for municipal betterments assessed after the date of the Closing under this Agreement; and (v) any "Defects of Title" (defined below) as accepted or waived by Purchaser pursuant to Section 4(b).

(b) Purchaser shall notify Seller of any and all defects in title which are of record, or which would otherwise make Seller unable to give title to the Property as herein stipulated, including, without limitation as provided in Section 4(a) (any of which is called herein a "Defect of Title") within forty-five (45) days of the later to occur of the receipt of the Lodge Approvals or UNUM Release. With respect to the existence of any Defect of Title that does not exist on the date of this Agreement, but which arises prior to Closing, Purchaser shall notify Seller of any such Defect of Title which arises six (6) or more days prior to closing, at least five (5) days prior to closing, and any other defects

arising thereafter, on or prior to the Closing. If Purchaser notifies Seller of any Defects in Title, then the Seller shall use diligent efforts to remove any such Defects in Title (but shall not be required to expend in excess of \$10,000 to remove any such defect which shall be exclusive of any mortgages or liens which may be discharged by the payment of money only), in which event the time for performance hereof shall be extended for a period of time reasonably sufficient to permit the Seller to perform hereunder, not to exceed sixty (60) days in any event. Seller may also elect to use funds from the Closing under this Agreement to remove any Defects in Title, which shall be sufficient to correct such defects and satisfy its obligations under this paragraph. If such Defects of Title are not corrected or remedied as provided herein within such additional 60-day period, then Purchaser shall elect, either (i) to accept title to the Property subject to the uncured Defects of Title, or (ii) to terminate this Agreement, whereupon, notwithstanding Paragraph 2(a)(2)(ii) the entire Deposit, except for the \$5,000 described in Section 2(a)(2)(i) shall be returned to Purchaser and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement.

5. Due Diligence Period, Materials Delivered by Seller, Inspections and Right to Terminate.

(a) Seller shall provide to Purchaser copies of such surveys and plans, and engineering reports (including environmental reports, studies or evaluations) of the Property that Seller may have in its control or possession within seven (7) business days of the Contract Date.

(b) Purchaser and others whom Purchaser may designate may, at Purchaser's option and at its sole risk and expense, retain a person or persons to examine the Property and prepare mechanical, structural, environmental or physical reports of the Property, including without limitation surveying, conducting test borings, wetlands analysis, groundwater sampling, and in general conducting all other tests, analysis and studies of the Property which Purchaser deems prudent in connection with Purchaser's intended use and development of the Property. Purchaser and such designees shall have the right to enter the Property at all reasonable times during normal business hours with at least twenty four (24) hours prior notice to Seller to conduct such tests, studies and investigations. Purchaser shall not interrupt nor unreasonably interfere with Seller's business. Purchaser shall at its own expense restore the Property to its present condition, and agrees to hold Seller harmless and indemnify Seller from any loss or liability resulting from or arising out of the entrance by Purchaser, its agents, members, managers, officers, agents, subcontractors or employees upon the Property for the purposes set forth herein or for any other purpose, including, without limitation, any of their acts or omissions while on or about the Property, and this indemnity provision shall survive the Closing hereunder, or if the Closing does not occur, the termination of this Agreement.

All such inspections shall be done by qualified inspectors chosen and paid for by Purchaser.

(c) At any time on or prior to the date that is 30 days after the Contract Date (the "Due Diligence Period Expiration Date"), Purchaser shall have the right to terminate this Agreement if Purchaser determines, in its sole discretion, that it is not satisfied with (i) the material delivered to Purchaser pursuant to subsection (a) hereof; or (ii) any of the inspections set forth in subsection (b) above, by giving written notice to Seller on or before the end of the Due Diligence Expiration Date. If Purchaser timely gives notice of such dissatisfaction, then the Deposit shall be returned to Purchaser and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement. If Purchaser fails to give such written notice on or before the end of the Due Diligence Expiration Date, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this Section.

(d) Purchaser agrees that all information made available to Purchaser (all of which is referred to herein as "Confidential Information"), will be kept confidential and will be disclosed only to professional advisors engaged in connection with the proposed transaction. Purchaser agrees that it is Purchaser's responsibility to ensure that such advisors shall agree to and shall keep such information confidential. Any provisions herein to the contrary notwithstanding, the provisions of this Section 5(d) shall survive the Closing of this Agreement or if the Closing does not take place, the termination of this Agreement.

(e) For the purposes of this Section 5, the term "Property" shall be deemed to include Seller's Retained Building.

5.1 Seller and Purchaser Additional Contingencies. Seller and Purchaser agree that to expedite the execution of this Agreement, there are certain matters upon which the parties shall work to reach agreement within sixty (60) days of the Contract Date (the "Additional Contingencies Expiration Date") and if the parties are unable to reach such agreement, then either Purchaser or Seller may terminate this Agreement by notice in writing to the other party on or before the Additional Contingencies Expiration Date.

The matters which are to be agreed upon prior to the Additional Contingencies Expiration Date are:

1. The specifications of, and the work to be performed with respect to, the code compliant exterior wall and façade listed in Section 1(b) of the Agreement as well as the specific configuration of the Seller's Retained Building, including the location of the end of Seller's Retained Building;

2. The primary components of the condominium documents described in Section 1(b) of this Agreement, including, without limitation, the composition of ownership, voting and expenses (including the allocation of and responsibility for expenses with respect to buildings, the parking lot, common areas and limited common elements);
3. Purchaser's work schedule and limits on the same to accommodate Seller's business and event schedule;
4. The Right of First Refusal requested by Purchaser, including without limitation agreement on what a "bona fide arms-length third party" means and a mechanism to resolve any dispute over whether a party is a "bona fide arms-length party"; either a dollar amount or a manner for calculating the dollar amount of Purchaser's Improvement Credit; and the manner in which the Completion Date is to be established; and
5. The number of parking spaces to be allocated to Seller, or to which Seller has right to use, under the condominium documents or otherwise and their location.
6. The future retail uses of the Property.

6. Zoning and Land Use Contingency. Except to the extent expressly provided herein, including, without limitation, with respect to the non-refundable character of some of the Deposit as set forth in Section 2 of this Agreement, Purchaser's obligations under this Agreement are subject and conditioned upon the Purchaser's ability to obtain all required local, state and federal permits and approvals, including without limitation FAA approval if required (including expiration of all applicable appeal periods with no appeal having been made) to construct an additional 55,000 square feet (or more if zoning and permitting allow) of commercial space (including but not limited to office, retail (subject to agreement of the parties in accordance with Section 3.1) and medical office space) on the Property (in one or more newly constructed buildings), such approvals to be satisfactory to Purchaser in its sole discretion, within 180 days after the date the Lodge Approvals have been obtained (the "Zoning Contingency Expiration Date"). Such approvals shall include a change in zoning classification to an office park or "O-P" classification. All costs associated with permitting and approvals to be at Purchaser's sole expense. Seller agrees to cooperate and participate in the approval process by attending meetings or causing its legal counsel or other representatives to attend such meetings as shall be reasonably requested by Purchaser, at Seller's reasonable cost and expense (Seller recognizing that all such permits and approvals are to Seller's benefit as well). Seller shall not be required to incur any costs other than those associated with attending such meetings. Purchaser agrees to provide Seller with copies of its development plans and any concept plans, as they may be amended or revised during the permitting process, for Seller's review and approval, such approval not to be unreasonably withheld, delayed or conditioned. Seller's approval to any such development plans shall be deemed granted if Seller has not responded to a request for approval within twenty (20) business days from the date of Purchaser's submission to

Seller. In the event this permit and approval condition is not satisfied by the Zoning Contingency Expiration Date, and provided Purchaser is using diligent good faith efforts to satisfy same, Purchaser shall have the right to extend that deadline by up to an additional ninety (90) days by written notice of extension to Seller, in which event the Zoning Contingency Expiration Date shall be extended to include such 90 day period. If Purchaser for any reason has not obtained all required local, state and federal permits and approvals, including, without limitation site plan approval, and expiration of all applicable appeal periods with no appeal having been made, by the Zoning Contingency Expiration Date, then Purchaser may terminate this Agreement by written notice to Seller within such period (as it may be extended), whereupon the refundable portion of the Deposit shall be returned to Purchaser and this Agreement shall be of no further force and effect.

7. Purchaser's Financial Capacity. Purchaser shall provide to Seller by on or before fifteen (15) days after the Contract Date with documentation reasonably satisfactory to Seller regarding Purchaser's financial capability to pay the Purchase Price and fund the cost of construction as contemplated in this Agreement. If Seller is not reasonably satisfied with Purchaser's evidence of financial capability, then Seller shall have the right to terminate this Agreement, whereupon the Deposit shall be returned to Purchaser and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement.

8. Seller's Authority to Convey; Release of Right of First Refusal.

(a). Seller's obligations under this Agreement are subject and conditioned upon Seller (i) obtaining the consent and approval of the transaction described herein from the members of its Lodge (the "Members' Approval"), and (ii) the Elks Club's Grand Lodge ("the Grand Lodge Approval") (collectively the "Lodge Approvals"). Seller agrees to seek to obtain the Members' Approval within sixty (60) days from the Contract Date and agrees to seek to obtain Grand Lodge Approval within ninety (90) days from Contract Date, provided however that Seller shall have the option by notice to Purchaser to extend each of the Lodge Approval deadlines by up to thirty (30) additional days if it determines such extension to be necessary. If both Lodge Approvals are not obtained within ninety (90) days from the Contract Date (or within such longer period as Seller shall elect as set forth above), Seller and Purchaser shall have the right at any time thereafter to terminate this Agreement, whereupon the Deposit shall be immediately returned to Purchaser and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement.

(b). Seller's obligations under this Agreement are also subject to and conditioned upon Seller obtaining from UNUM a release of its Right of First Refusal (the "UNUM

Release") within sixty (60) days from the Contract Date. If such Right of First Refusal is not obtained within such 60 day period, Seller and Purchaser shall have the right at any time thereafter to terminate this Agreement, whereupon the Deposit shall be immediately returned to Purchase and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement.

(c). Intentionally Omitted.

9. Time for Performance, Delivery of Deed. The transfer of title (the "Closing") shall take place on a date that is thirty (30) days after the Zoning Contingency Expiration Date at ten a.m. at the offices of Murray, Plumb & Murray or at such other place as shall be mutually agreed to by Purchaser and Seller, unless extended as provided herein. TIME IS OF THE ESSENCE.

10. Use of Purchase Money to Clear Title. To enable the Seller to make conveyance as herein provided, the Seller may at the time of delivery of the Deed, use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of the Deed.

11. Possession and Condition of Property. Full possession of the Property (subject to Seller's retained ownership and rights set forth herein, including, without limitation, under any condominium documents) free of all tenants and occupants (except for Seller and its members, employees, affiliates and the like) is to be delivered at Closing.

12. Representations

(a) Seller represents, covenants and warrants to and agrees with Purchaser as follows:

(1) Seller is the current owner of the Property, and except for the approvals and releases that must be obtained as provided herein (including, without limitation, member approval) and to which its obligations hereunder are subject, has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Seller of its obligations hereunder will not conflict with, or result in breach of any regulation, order, judgment, injunction or decree of any court or governmental authority or any agreement or instrument to which Seller is a party or by which it is bound.

(2) There are no tenancies, occupancies or licenses affecting the Property, except as set forth explicitly in this Agreement.

(3) Intentionally Omitted.

(4) No work has been done on the Property which could give rise to any liens on the Property, except those for which Seller intends to pay in the ordinary course of business and no contracts are outstanding or in effect with respect to the doing of any such work except those for which Seller intends to pay in the ordinary course of business.

(5) To the best of Seller's knowledge there is no notice, suit, order, decree, claim, writ, injunction, or judgment relating to material violations of any laws, ordinances, codes, regulations or other requirements with respect to the Property (or any portion thereof) in, of or by any court or governmental authority having jurisdiction.

(6) To the best of Seller's knowledge there is no condemnation proceeding pending or threatened against any portion of the Property.

(7) During the period of Seller's ownership and to the best of Seller's knowledge prior to its ownership of the Property, there has been no leakage, seepage or other release or discharge of any hazardous waste or matter, toxic substance, pesticide or petroleum product or derivative on the Property. The Property has not been used during Seller's ownership, or to Seller's knowledge during any prior period of ownership, for the storage, collection or depositing, whether intentional or unintentional, of any hazardous waste, toxic substance, pesticide or petroleum product or derivative, except for an underground storage tank or to the extent oil or gas products have been stored for heating, cooking or other use by Seller. There are no underground storage tanks located at the Property that have not been removed or filled and Seller is not aware of any underground storage tanks at the Property placed there by Seller or anyone else that have not been removed or filled. If the existing underground storage tank(s) must be removed for any reason, Purchaser shall remove the tank at its cost and expense, but the cost of such removal shall be included in Purchaser's Improvement Credit.

(b) Purchaser represents, covenants and warrants to and agrees with Seller that Purchaser has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder, and the execution and delivery of this Agreement and the performance by Purchaser of its obligations hereunder (i) have been duly authorized by all requisite organizational action; and (ii) will not conflict with, or result in a breach of, any of the terms, covenants and provisions of the by-laws or articles of

organization of Purchaser or any law or any regulation, order, judgment, writ, injunction or decree of any court or governmental authority, or any agreement or instrument to which Purchaser is a party or by which it is bound.

13. Affirmative Covenants of Seller. Seller agrees, pending closing, that:

(a) Unless disputed by Seller, Seller shall pay, when due, all taxes and assessments of every type or nature levied or assessed against the Property of which Seller has actual notice, and unless disputed by Seller, any claim, lien or encumbrance of which Seller has actual notice against the Property that might materially affect Seller's ability to fulfill its obligations hereunder. To the extent Seller disputes such a tax, assessment, claim, lien or encumbrance, Seller agrees to take reasonable steps to contest the same.

(b) Seller (i) shall not commit or suffer waste and (ii) shall comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the Property and will not suffer or permit any violation thereof.

14. Broker's Commission. If this transaction closes, Seller shall be responsible for the payment of a brokerage commission to Malone Commercial Brokers. Seller shall have no obligation to make any payment to the The Boulos Company which Purchaser agrees shall obtain any commission which it may claim solely from Malone Commercial Brokers. If either Seller or Purchaser have employed or engaged any other broker or agent in connection with this transaction or have incurred any other obligation, contingent or otherwise, for a broker's or finder's fee with respect to the matters provided for in this Agreement, the party incurring any such obligation shall be solely responsible therefor. Each party agrees to indemnify and hold the other party harmless from and against any and all costs, expenses, claims, losses or damages, including reasonable attorneys and paralegal fees, resulting from a violation of the representations, warranties and covenants set forth in this Section and this agreement to indemnify and hold harmless shall survive the Closing hereunder, or if the Closing does not occur, the termination of this Agreement.

15. Default.

(a) If Purchaser fails to perform its obligations as set forth in this Agreement, then Seller as its sole remedy at law or in equity shall be entitled to retain the Deposit as liquidated damages as a result of such failure to perform and this Agreement shall be deemed terminated. Purchaser acknowledges that Seller's damages because of Purchaser's failure to perform are difficult to ascertain and agree that the amount of the Deposit represents a reasonable estimate of the minimum amount of Seller's damages as a result thereof.

(b) If Seller fails to perform its obligations as set forth in this Agreement, Purchaser shall, in addition to its remedies in equity to which it is otherwise limited (including the right to specific performance), be entitled to receive the Deposit together with reimbursement for expenses incurred by Purchaser in obtaining the reports referred to in Paragraph 5 which shall not exceed \$5,000. Except for such reimbursement for expenses which shall not exceed \$5,000, Purchaser shall not be entitled to any damages of any kind whatsoever.

(c) In the event either Purchaser or Seller is alleged to have failed to perform its obligations hereunder, the party so claiming shall give notice in writing to the allegedly breaching party and the party shall have ten (10) days following the receipt of such notice in which to cure the alleged breach.

16. Purchaser's Conditions. The obligation of Purchaser to close under this Agreement is subject to the following conditions precedent:

(a) The representations and warranties of Seller shall be materially true in all respects, and Seller shall so certify, unless an event has occurred which makes such representation untrue, in which case Seller shall give notice of the same to Purchaser prior to closing.

(b) Seller shall have performed and complied with all the terms and conditions required by this Agreement to be performed and complied with by Seller at or prior to Closing.

17. Notice. Whenever notice is given or required to be given by either of the parties hereto to the other, it shall be deemed to have been given if in writing and mailed by certified or registered mail, return receipt requested, postage prepaid, or hand delivered, addressed to the parties at the address set forth in the first paragraph above or to such other address(es) as either party shall have last designated by like notice in writing. Copies of all notices to Purchaser shall be sent to Murray, Plumb & Murray, 75 Pearl Street, Portland, Maine 04101, Attention: Drew A. Anderson, Esq. Copies of all notices to Seller shall be sent to Exalted Ruler Timothy Smith, Elk's Lodge, Portland Lodge 188, 1945 Congress Street, Portland, Maine 04103, with a copy to counsel, William H. Leete, Jr., Esq., Leete & Lemieux, P.A., P.O. Box 7740, Portland, Maine 04112. All notices shall be effective upon hand delivery, receipt or two (2) business days after date of mailing, whichever first occurs. The respective attorneys for the parties are authorized to give and receive notices with the same effect as if given or received by the parties hereto.

18. Further Assurances. The parties agree that up to and after the date of Closing, they shall do such things and execute, acknowledge and deliver any and all

additional instruments, documents and materials as either party may reasonably request to fully effectuate the purposes of this Agreement.

19. Construction of Agreement. This instrument, executed in duplicate, is to be construed as a Maine contract, is to take effect as a sealed instrument, sets forth the entire contract between the parties, is binding upon and inures to the benefit of the parties hereto and their respective heirs, devisees, executors, administrators, successors and assigns, and may be cancelled, modified or amended only by a written instrument executed by both the Seller and Purchaser. If two or more persons are named herein as Purchaser and Seller their obligations hereunder shall be joint and several. The captions are used only as a matter of convenience and are not to be considered a part of this Agreement or to be used in determining the intent of the parties to it. This Agreement may not be recorded by Purchaser, and any such recording shall be deemed to automatically terminate this Agreement.

20. Risk of Loss. The risk of loss shall remain on Seller at all times until closing except for loss or damage to the extent either caused by or arising from the act or omission of Purchaser, its members, managers, officers, agents, subcontractors or employees.

21. Miscellaneous.

(a) Seller and Purchaser shall each pay their portion of the Maine State Transfer Tax.

(b) Seller hereby certifies that Seller is a resident of the State of Maine. Seller hereby acknowledges Purchaser's requirement to withhold 2¼% of the purchase price pursuant to 36 M.R.S.A. §5250-A if Seller is not a resident of the State of Maine, unless Seller presents to Purchaser at closing a Certificate of Exemption or Certificate of Reduction from the State of Maine Bureau of Taxation.

(c) By signing this Contract, Purchaser acknowledges that Purchaser has been notified of the State of Maine's withholding tax requirement pursuant to 36 M.R.S.A. §5250-A.

(d) Seller hereby certifies that Seller is a resident of the United States of America and is not subject to the 10% withholding tax imposed upon "foreign persons" by Section 1445(a) of the Internal Revenue Code of 1954.

(e) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors in interest and assigns. Purchaser shall be entitled to assign its right, title and interest herein to any limited liability company, partnership or other entity, whether now existing or hereafter

formed, controlled by, controlling or under common control with Purchaser or its principals. Any assignee shall expressly assume all of Purchaser's duties, obligations and liabilities hereunder. No such assignment shall release the named Purchaser from its obligations hereunder.

(f) It is understood and agreed that all understandings, agreements, warranties or representations, either oral or in writing, including without limitation any letters of intent or prior agreements, heretofore between the parties hereto are merged in and superseded by this Agreement, which document alone fully and completely expresses the parties' agreement with respect to the transactions covered hereby. This Agreement may not be modified in any manner except by a subsequent instrument in writing signed by Seller and Purchaser.

(g) This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall constitute but one and the same instrument.

(h) If the date for performance of any obligation hereunder, or the giving of any notice hereunder, falls on a Saturday, Sunday or a legal holiday in the State of Maine, the period for such performance, or the giving of any notice hereunder, shall be extended to the next business day.

(i) This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Maine.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument as of the date set forth below their respective signatures, to be effective as of the Contract Date.

SELLER:

Portland Lodge No. 138, of the Benevolent  
and Protective Order of Elks of the United  
States of America

Dated: June 11, 2014

By: [Signature]

PURCHASER:

Northland Enterprises, LLC

Dated: June 11, 2014

By: [Signature]

Dr. Michael Bedons  
Dr. Michael Bedons

#### ACKNOWLEDGEMENT

The undersigned acknowledges receipt of the \$100,000.00 Deposit and a copy of this Agreement and agrees to hold, account for and deliver the Deposit in accordance with the terms of this Agreement.

Malone Commercial Brokers

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

File: 13151

**PINKHAM & GREER**  
**CIVIL ENGINEERS**

28 VANNAH AVE. PORTLAND, ME. 04103  
Tel: 207.781.5242 Fax: 207.781.4245

April 13, 2015

Att. 4

Ms. Helen Donaldson, Planner-Planning & Urban Development  
City of Portland  
389 Congress Street  
Portland, ME 04101

RE: REQUEST FOR ZONE CHANGE, 1945 CONGRESS STREET  
NORTHLAND DEVELOPMENT

Dear Helen,

Based on the input from the Planning staff and Board as well as from the public, we have modified the site design of 1945 Congress Street. The current re-development plans proposes the following:

- The Elks Club building will remain on site, and their building will be reduced from 23,204 sq/ ft. to 13,646 sq. ft. The developer will make improvements to the exterior of the building and Elks Club officials have stated they intend to make substantive improvements to the interior of the building.
- The medical building of 15,000 sq. ft. is included as a separate stand-alone building placed along Congress Street.
- The third building on the campus will be a two-story building with a 25,000 sq. ft. footprint and 10,000 sq. ft. on the 2<sup>nd</sup> floor. This building will be utilized for general office.
- Attached is a revised Zone Map and Text Application.

The two new buildings relate to each other physically. The renovated Elks club is set back from the street and is the less dominate architecture of the campus. The campus is tied together with its master plan and circulation pattern.

Our request to the City has two components:

1. We request the 7.01 acre property be rezoned from Residential (R2) to Office Park (OP); the same zone that abuts 2 sides of the subject property to include the adjacent Unum site.
2. We request that "places of assembly" be added to the OP Zone as a *conditional* use. This is consistent with what we believe the Planning Board has recommended.

As part of the submission, please find attached a letter from our attorney, Mr. John Bannon of Murray Plumb & Murray which addresses why the proposed project and the request for zone change of the subject property to O-P and a zoning text amendment to allow *places of assembly* to be a conditional use is consistent with the intent of the City of Portland Comprehensive Plan.

Ms. Helen Donaldson  
April 13, 2015  
Page 2 of 2  
File: 13151

**PINKHAM & GREER**  
**CIVIL ENGINEERS**

Attached is a revised Illustrative Site Plan prepared by Tony Muench, RLA Landscape Architect. The entrance to the site and the parking has been revised in an attempt to create more of a campus feeling. In addition, buffering between the subject site and the adjacent residential neighbors has been increased. See attached photographs of the current screen and what a proposed screen would look like. It will create a full screen when mature.

David Lloyd AIA, of Archetype, has done further work on the architectural design which illustrate street views of the 3 buildings.

Considerable thought and has gone into the amount of and the layout of the parking areas. We have taken into consideration the future needs of our building owners and tenants, while attempting to keep the parking to the smallest practical amount. The current site has 205 lined parking spaces and a gravel parking area that can accommodate an additional 45 parking spaces (a total of 250 current parking spaces). The current plan is to increase the total amount of building square footage on the site by 40,442 SF and increase the number of parking spaces to a total of 282 parking spaces. This is an increase of 32 new parking spaces, or less then 1 new parking space per 1,000 SF of new building SF. We believe this is a very reasonable increase. Based on the condominium plan, and resulting 3 distinct condo units, we feel that the city's initial parking & traffic impact study should be revised.

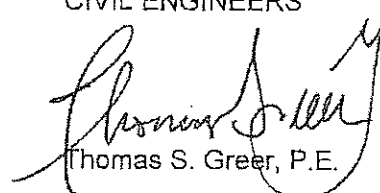
We have also added a bus shelter at the Congress Street stop. This should encourage the use of public transportation.

We believe the current re-development plan for the Elks site addresses buffering concerns of abutter's; has attempted to give the site a more campus like feel and has provided for adequate parking for the owners and tenants while addressing the Planning Board request to reduce parking spaces, from the original proposal of 305 parking spaces. We believe with Attroney Bannon's letter we have addressed the fact that this project is consistent with the City's Comprehensive Plan.

Thank you in advance for your consideration.

Sincerely,

PINKHAM & GREER  
CIVIL ENGINEERS



Thomas S. Greer, P.E.

cc: File

Enclosures

TSG/rjs

PROJECT NAME: 1945 Congress Street

PROPOSED DEVELOPMENT ADDRESS:

1945 Congress Street

PROJECT DESCRIPTION:

The project renovates the Elks building and adds a 15,000 sq. ft medical building  
and a 35,300 sq. ft. general office building.

CHART/BLOCK/LOT: 216-A-6 / 217-A-1

## CONTACT INFORMATION:

|                                                                                                                                                                                                                          |                                                                                                                                            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Applicant – must be owner, Lessee or Buyer</b><br>Name: Josh Benthien & Rex Bell<br>Business Name, if applicable: Northland Enterprises, LLC<br>Address: 17 South Street<br>City/State : Portland, ME Zip Code: 04101 | <b>Applicant Contact Information</b><br>Work # 207.780.0223<br>Home#<br>Cell # Fax#<br>e-mail: josh@northlandus.com<br>rex@northlandus.com |
| <b>Owner – (if different from Applicant)</b><br>Name: Portland Lodge #188 BPOE of USA<br>Address: 1945 Congress Street<br>City/State : Portland, ME Zip Code: 04102                                                      | <b>Owner Contact Information</b><br>Work #<br>Home#<br>Cell # Fax#<br>e-mail:                                                              |
| <b>Agent/ Representative Pinkham &amp; Greer, Civil Engineers</b><br>Name: Thomas S. Greer, P.E.<br>Address: 28 Vannah Avenue<br>City/State : Portland, ME Zip Code: 04103                                               | <b>Agent/Representative Contact information</b><br>Work # 207.781.5242<br>Cell #<br>e-mail: tgreer@pinkhamandgreer.com                     |
| <b>Billing Information Josh Benthien &amp; Rex Bell</b><br>Name: Northland Enterprises, LLC<br>Address: 17 South Street<br>City/State : Portland, ME Zip Code: 04101                                                     | <b>Billing Information</b><br>Work # 207.780.0223<br>Cell # Fax#<br>e-mail: josh@northlandus.com<br>rex@northlandus.com                    |

|                                                                                                                                                          |                                                                                                                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| <b>Engineer</b> Pinkham & Greer Civil Engineers<br>Name: Thomas S. Greer, P.E.<br>Address: 28 Vannah Avenue<br>City/State : Portland, ME Zip Code: 04103 | <b>Engineer Contact Information</b><br>Work # 207.781.5242<br>Cell # Fax# 207.781.4245<br>e-mail: tgreer@pinkhamandgreer.com |
| <b>Surveyor</b> Maine Survey Consultants, Inc<br>Name: Del Maxfield<br>Address: PO Box 485<br>City/State : Harrison, ME Zip Code: 04040                  | <b>Surveyor Contact Information</b><br>Work # 207.583.6159<br>Cell # Fax#<br>e-mail: dmaxfield@mainesurveyconsultants.com    |
| <b>Architect</b> Archetype Architects<br>Name: David Lloyd<br>Address: 48 Union Wharf<br>City/State : Portland, ME Zip Code: 04101                       | <b>Architect Contact Information</b><br>Work # 207.772.6022<br>Cell # Fax#<br>e-mail: lloyd@archetypepa.com                  |
| <b>Attorney</b> Murray, Plumb & Murry<br>Name: Drew Anderson<br>Address: PO Box 9785<br>City/State : Portland, ME Zip Code: 04104                        | <b>Attorney Contact Information</b><br>Work # 207.773.5651<br>Cell # Fax#<br>e-mail: DAA@mpmlaw.com                          |

**Right, Title, or Interest:** Please identify the status of the applicant's right, title, or interest in the subject property:

We have a Purchase and Sales Agreement.

**Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property.**  
(For example, a deed, option or contract to purchase or lease the subject property.)

**Vicinity Map:** Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use.  
(Applicant may utilize the City Zoning Map or Parcel Map as a source.)

**Existing Use:** Describe the existing use of the subject property:

The existing property is used by the Elks as a place of assembly.

Current Zoning Designation(s): Residential 2

**Proposed Use of Property:** Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

The existing Elks use will continue. We are adding a general office use and  
a medical office use.

**Site Plan:** On a separate sheet, please provide a site plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 50'.) Contract and conditional rezoning applications may require additional site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

**APPLICATION FEES:**

Check all reviews that apply. (Payment may be made by Credit Card, Cash or Check payable to the City of Portland.)

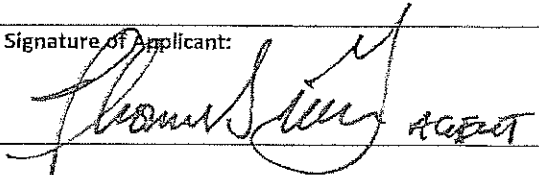
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Zoning Map Amendment</b><br/><input checked="" type="checkbox"/> \$2,000.00 (from <u>R2</u> zone to <u>OP</u> zone)</p> <p><b>Zoning Text Amendment</b><br/><input checked="" type="checkbox"/> \$2,000.00 (to Section 14-_____) 230.11.1</p> <p><b>Combination Zoning Text Amendment and Zoning Map Amendment</b><br/><input checked="" type="checkbox"/> \$3,000.00</p> <p><b>Conditional or Contract Zone</b><br/>____ \$3,000.00<br/>(A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)</p> | <p>The City invoices separately for the following:</p> <ul style="list-style-type: none"><li>• Notices (\$.75 each)</li><li>• Legal Ad (% of total Ad)</li><li>• Planning Review (\$40.00 hour)</li><li>• Legal Review (\$75.00 hour)</li><li>•</li></ul> <p>Third party review fees are assessed separately. Any outside reviews or analysis requested from the Applicant as part of the development review, are the responsibility of the Applicant and are separate from any application or invoice fees.</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**APPLICATION SUBMISSION:**

1. All plans and written application materials must be submitted electronically on a CD or thumb drive with each plan submitted as separate files, with individual file names which can be found on the **Electronic Plan and Document Submittal** page of the City's website at <http://me-portland.civicplus.com/764/Electronic-Plan-and-Document-Submittal>
2. The submission shall include the following materials:
  - a. One (1) paper set of the zoning amendment application, concept plan and written narrative.
  - b. Contract and conditional rezoning applications must include site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations and compatible with the surrounding neighborhood.

**APPLICANT SIGNATURE:**

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Planning Authority and Code Enforcement's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

|                                                                                                               |                  |
|---------------------------------------------------------------------------------------------------------------|------------------|
| Signature of Applicant:<br> | Date:<br>4/13/15 |
|---------------------------------------------------------------------------------------------------------------|------------------|



April 16, 2015

Helen Donaldson, Planner  
Department of Planning and Urban Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

**Re: *Application of Northland Enterprises, LLC for Zoning Map Amendment and Zoning Text Amendment for 1945 Congress Street / Consistency with the Comprehensive Plan***

Dear Nell:

This office represents Northland Enterprises, LLC (hereafter "Northland"), which has applied to the Planning Board for review and approval of a zoning map amendment for the Elks Club property located at 1945 Congress Street (hereafter the "Property") as well as a zoning text amendment to LUO § 14-230.11.1 to add "places of assembly" as a conditional use within the O-P Office Park District. I am writing today to explain why amending the official zoning map to change the Property's zoning designation from the R-2 Residential District to the O-P Office Park District, and adding places of assembly as conditional uses in the O-P Office Park District, would be consistent with the City's Comprehensive Plan.

## **I. ZONING MAP AMENDMENT**

### **A. The Meaning of "Consistency with the Comprehensive Plan."**

In *Rommel v. City of Portland*, 2014 ME 114, ¶ 13-14, 102 A.3d 1168, 1172, the Maine Supreme Court recently summarized the City's broad discretion to determine when a proposed rezoning is consistent with the Comprehensive Plan. It is unnecessary that a proposed zoning map amendment comply strictly with every portion of the Plan. Rather, when a court reviews the City's decision to rezone a property, the scope of the court's inquiry is limited to determining whether the City Council could have, from the evidence before it, found that the rezoning was in "*basic harmony*" with the Comprehensive Plan:

*Celebrating over 40 years and thousands of valued relationships*

75 Pearl Street PO Box 9785 Portland, ME 04104-5085 (207) 775-5651  
[www.mplaw.com](http://www.mplaw.com)

A zoning or rezoning action need not perfectly fulfill the goals of a comprehensive plan; it may be in basic harmony with the plan so long as it “strikes a reasonable balance among the municipality’s various zoning goals” or “overlap[s] considerably” with the plan.

*Id.* In addition, because the Comprehensive Plan consists of numerous different land use policies, adopted at different times, that sometimes conflict, whether a proposed rezoning is “consistent” with the Comprehensive Plan can only be determined by examining the Plan as a whole. *Id.* “A municipality may conclude that a rezoning action is consistent with a comprehensive plan when it is in harmony with *some* provisions of the plan, even if the action appears *inconsistent* with *other* provisions of the plan.” *Id.* (emphasis added).

## **B. The Property and Its Context**

The Property is an approximately 7-acre parcel that has been the site of Elks Lodge #188 (hereafter the “Lodge”) since the late 1960’s. The Lodge is a “place of assembly” as defined in LUO § 14-47. The zoning districts in the Property’s immediate vicinity are shown in Figure 1 below:

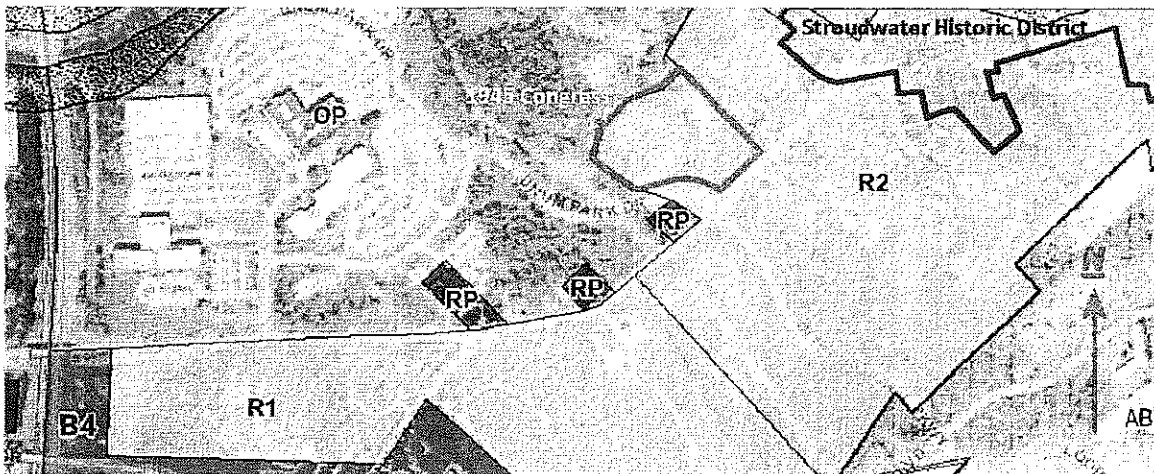


Figure 1  
Zoning Districts in the Vicinity of the Property<sup>1</sup>

<sup>1</sup> Figure 1 appears as “Figure 2” in the Planning Board Memorandum by Nell Donaldson, Planner, dated January 20, 2014 (hereafter the “Donaldson Memorandum”).

The Property is bounded on the northwest and west by the existing OP District occupied by Unum. Although a small portion of the westerly boundary abuts an area within the R-2 District, that area is consumed by the entrance and exit of Unum Park Drive, which also serves as the sole access to the Property. Likewise, although the Property's southeasterly boundary abuts a portion of the R-2 District, the closest portion of that R-2 District is occupied by the right-of-way of outer Congress Street. Only on the northeast is the Property directly abutted by land within the R-2 District that is substantially devoted to residential purposes.

Some of the actual land uses in the Property's immediate vicinity are shown in Figure 2 below:

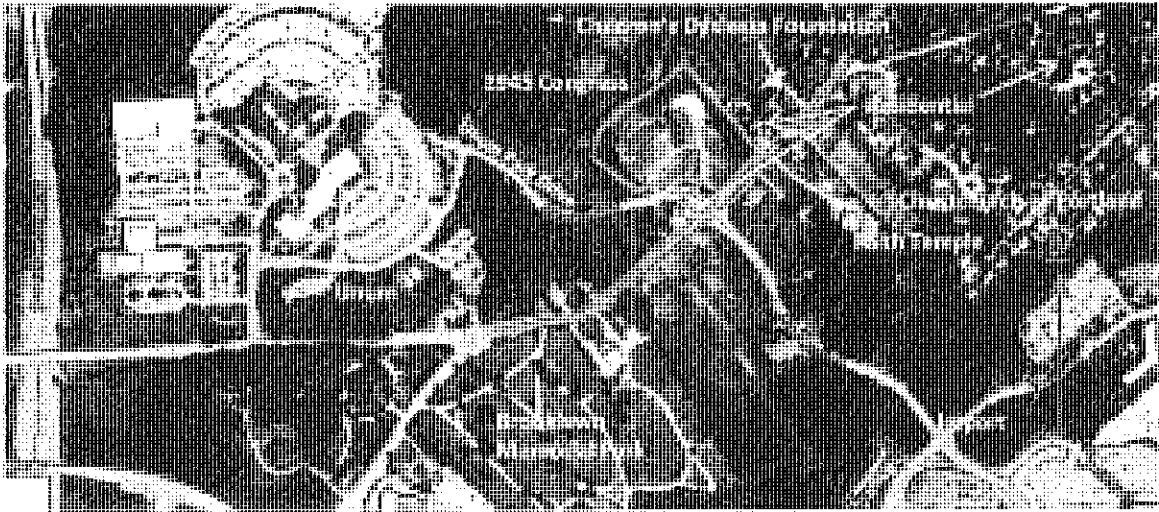


Figure 2  
Actual Land Uses in the Vicinity of the Property<sup>2</sup>

It is apparent from Figure 2 that a majority of the land area in the Property's immediate vicinity is put to non-residential uses. Directly opposite the Property on the southeast is a large tract of R-2 District land which is owned by the Jetport and bisected by Jetport Access Road/International Parkway. Much of the R-1 District to the southwest side of the Jetport land is occupied by Brooklawn Memorial Park. Although a significant amount of residentially-used

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<sup>2</sup> Figure 2 appears as "Figure 1" in the Donaldson Memorandum. Note that, although the lot just south of the entrance/exit from the Unum campus is indicated in Figure 2 above as being a residential *structure*, is – as shown in Figure 1 on the previous page of this letter – *zoned* within a Residence-Professional (RP) District.

R-2 District land can be found to the north and east of the Property, even that area is punctuated by non-residential establishments permitted as a conditional use in the R-2 District: for example, The Children's Dyslexia Foundation, Christ Church of Portland, and Faith Temple.

Northland understands and respects the desires expressed by local residents that the residential portions of the Stroudwater neighborhood be protected as much as is reasonable. However, it is unrealistic to expect that the Property itself can feasibly be devoted to residential uses. The Property is now, and for half a century has been, the site of a large Lodge building and a correspondingly expansive, paved parking lot. Significantly, Northland's proposed redevelopment of the Property would require no significant increase in the number of parking spaces on the Property. As currently laid out, the Property includes 204 marked parking spaces plus a gravel parking area large enough to accommodate 45-50 additional parking spaces. The most recent Project design calls for a total of 256 parking spaces plus 26 handicapped and compact size parking spaces.

The area surrounding the Property has evolved in a manner that is predominantly commercial and institutional rather than residential. Because of, among other things, (a) its location between the Unum campus, Faith Temple, and the rapidly-expanding International Jetport; (b) its placement directly opposite the intersection of Congress Street and the Jetport Access Road/ International Parkway; and (c) the fact that its only access will for the indefinite future be shared by a multitude of Unum employees and customers, the Property can never be developed as a desirable residential neighborhood. The Property's future has been determined, not by the aims of the applicants, but by the course of adjacent development.

**C. To Rezone the Property from R-2 to O-P is Consistent With the Comprehensive Plan**

To rezone the Property from R-2 to O-P is in basic harmony with the Comprehensive Plan because it would promote the goals of:

**1. Strengthening and diversifying the City's economy**

*"Portland is the largest city in Maine and is the economic and service center for the region. Portland continues to attract people of workforce age due to diverse job opportunities (particularly in business and*

*technology), quality employment, and a stable economy.*"<sup>3</sup> (emphasis added)

\*\*\*

*"Portland's future will...[c]apitalize on Portland's economic assets and develop a strong economy based upon traditional industries, a strong retail and office center, and emergent opportunities in industry, business, and coastal commerce."*<sup>4</sup> (emphasis added)

\*\*\*

*"[The City should:]*

- *Accommodate the City's commercial activity within a range of functionally and physically defined commercial centers.*
- *Promote preservation and revitalization of its existing commercial centers and maintain a scale within them that is compatible and integrated with other land use.*
- *Encourage the development of new commercial enterprises within the existing neighborhood centers and CBD.... [and]*
- *Promote new office park development of high quality in outlying areas for development seeking a suburban-style setting."*<sup>5</sup> (emphasis added)

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<sup>3</sup> II. PORTLAND'S COMMUNITY VISION FOR THE FUTURE / Distinctive Features to Value, Preserve and Build Upon And Future Directions for Portland / A COMMUNITY VISION FOR PORTLAND / DISTINCTIVE FEATURES OF PORTLAND TO VALUE, PRESERVE & BUILD UPON / I. A City That Provides For People

(unnumbered page near beginning of the Comprehensive Plan) [Throughout this analysis citations to the Comprehensive Plan will be made with reference both to the specific section/subsection of the Plan as well as the page number, where available]

<sup>4</sup> II. PORTLAND'S COMMUNITY VISION FOR THE FUTURE / Distinctive Features to Value, Preserve and Build Upon And Future Directions for Portland / A COMMUNITY VISION FOR PORTLAND / FUTURE DIRECTIONS FOR PORTLAND / I. Build a Vibrant Small City

(unnumbered page near beginning of the Comprehensive Plan)

<sup>5</sup> VII. COMMUNITY COMMERCIAL POLICES AND LAND USE PLAN - September 1987-1988 / Development Goals

\*\*\*

*"[The City should:] [p]rovide for economic growth and development in the City as set forth in the Comprehensive Plan."*<sup>6</sup> (emphasis added)

\*\*\*

*"[The City should:]*

**Strengthen and Diversify the Economic Base**

- create a variety of job opportunities for the full spectrum of the labor pool which:
  - o are appropriate to our current and potential skills
  - o provide good pay and benefits - a living wage
  - o are rewarding/satisfying ... [and]
  - o "strengthen and diversify the tax base.

**Improve the Quality of Life**

- recognize that jobs and prosperity improve the standard of living for residents ...
- reduce tax burden on residential property owners.<sup>7</sup>(emphasis added)

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(Comprehensive Plan, page 28)

<sup>6</sup> STATE GOAL B: To plan for, finance and develop an efficient system of public facilities and services to accommodate anticipated growth and economic development;

**I. PORTLAND CAPITAL IMPROVEMENT PLAN — 2001-2010**

**Capital Improvement Goals**

(Comprehensive Plan, page 29)

\*\*\*

"[Portland should:]

**Target Specific Opportunities**

- o capitalize on location/telecommunications/transportation infrastructure, port, airport, highways, etc."<sup>8</sup>

\*\*\*

*"A positive trend of late has been the development of offices above retail uses which has helped to enhance the character of commercial development. An office's image is often very important to the business person and more effort toward property maintenance and site planning is evident. Such efforts can send a positive message to residential property owners that commercial and residential uses can coexist."<sup>9</sup> (emphasis added)*

\*\*\*

*"Coupled with the existing centers, office parks on carefully selected sites can help improve the City's economic base by offering developers a choice of development opportunities."<sup>10</sup>(emphasis added)*

\*\*\*

---

<sup>7</sup> STATE GOAL C. To promote an economic climate which increases job opportunities and overall economic well-being;

II. PORTLAND INDUSTRY AND COMMERCE PLAN – 1994

(Comprehensive Plan, page 37)

<sup>8</sup> STATE GOAL C. To promote an economic climate which increases job opportunities and overall economic well-being;

II. PORTLAND INDUSTRY AND COMMERCE PLAN – 1994

(Comprehensive Plan, page 38)

<sup>9</sup> *Community Commercial Policies and Land Use Plan* (1988), page 14

<sup>10</sup> *Id.*

**2. Acknowledge that Stroudwater has evolved differently from other neighborhoods**

*B. Off-Peninsula - Outer Ring Neighborhoods — Existing Land Uses*

*The outer ring neighborhoods grew significantly with residential development, but the percentage of land devoted to residential uses is less than found in the inner neighborhoods. It is important to note that vacant land accounts for a larger share of each neighborhood's total land area. Over 77% of North Deering is developed in residential use followed by Riverton with 71%, Nason's Corner with 63% and Riverside with 44%. Stroudwater has only 17.5% of its land area developed in residential use. ...Vacant land in the outer ring neighborhoods has declined to less than half of its 1978 share. Stroudwater has the largest percentage of vacant land (24%) and Riverton has the least with 2%.*

*Commercial uses have remained relatively stable in the outer ring neighborhoods, except for Stroudwater where commercial uses grew by 9% in 1989 and 23% in 1999. A new airport access road and a new Maine Turnpike Interchange have spurred new business development within Stroudwater....The industrial uses in Nason's Corner, North Deering, and Riverton remained constant or declined slightly during the 20-year time frame. Industrial uses expanded in Riverside and Stroudwater to 21% and 10.4% of the total neighborhood land area, respectively. Tax-exempt property declined as a percentage of the total land area in all of these neighborhoods, except Stroudwater.* <sup>11</sup> (emphasis added)

In sum, the Comprehensive Plan confirms that less than 20% of the Stroudwater neighborhood is devoted to residential uses; that nearly a quarter of the total land mass is vacant; that Stroudwater has experienced a higher rate of commercial development than any other outer-ring-neighborhood, and ranks second only to Riverside in industrial development; and that Stroudwater is the only such neighborhood in which the percentage of the total land mass devoted

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<sup>11</sup> EXISTING LAND USE / Inventory and Analysis / EXISTING LAND USE AND DEVELOPABLE LAND / ... III. EXISTING LAND USE BY NEIGHBORHOODS

to tax-exempt uses has increased. A rezoning of the Property from R-2 to O-P is, relative to parcels in other outer-ring neighborhoods, particularly appropriate.<sup>12</sup>

**3. Facilitate integration of the City's land use patterns with the development of a modern, multi-modal transportation system**

Although traffic-management considerations might not initially seem to interact with land use policy, the Comprehensive Plan sees them as being inextricably linked:

*Issues of transportation cannot be resolved unless the use of land is organized in a way that allows them to be resolved. It's been said that the best way to solve problems of congestion and pollution caused by autos is to build cities that don't need them. That is no longer realistic. But the Plan recognizes that there must be fundamental change in land use regulations: from a code of land use patterns that leave no choice but the single-occupant auto to a code of patterns that give other modes a fighting chance. The new patterns must phase away from separating the elements that make up a community (like homes, schools, churches, and small businesses) and allow a mixing and proximity of such uses where it seems natural to do so.<sup>13</sup> (emphasis in original)*

In other words, a philosophy of maintaining strict separation between residential and business uses within the City is not only outdated, but undesirable.

The Property is located on one of the most heavily-traveled bus routes within the Greater Portland Transit District.<sup>14</sup> The City has already identified the

---

<sup>12</sup> Some neighbors have critiqued the proposed rezoning because it would eliminate the *potential* for the Property to be converted from use as a place of assembly to a residential use. It is true that one policy of the Comprehensive Plan is to "establish a standard of 'no net loss of housing' for all proposed development." L. Housing: Sustaining Portland's Future –November 18, 2002 /Goal/ Policies (Comprehensive Plan, page 45). However, that policy does not advocate that land, such as the Property, which has never been put to residential purposes, be converted to housing. There can be no "net loss" of housing that has never existed. As noted elsewhere in this analysis, the Comprehensive Plan recognizes that factors such as proximity to the Jetport and to busy arterial and collector streets renders residential development infeasible on the Property.

<sup>13</sup> *A Time of Change: Portland Transportation Plan* (1993), page 2

<sup>14</sup> *Id.* at page 27.

Outer Congress Street area, which includes the Property, as the location for a pilot project for “a package of measures for ‘travel demand management,’” including “strong intermodal design at the Jetport.”<sup>15</sup> Stroudwater/Libbytown has been identified as one of the City’s eight “transportation districts.”<sup>16</sup> The Comprehensive Plan advocates that transportation districts serve as centers for the integration of the diverse land uses needed to serve the needs of the residents of those districts:

*The City should promote a land use pattern that allows for opportunities for people to work and meet a larger share of their everyday needs within or adjacent to their transportation district.*

*The City should continue to encourage businesses to locate in established employment centers, including Downtown, that are served by public transportation or that have the critical mass necessary to support alternative modes of transportation.*

*The City should allow development along transit corridors and near community commercial centers to evolve at a density sufficient to make public transit, walking, and biking viable options.*<sup>17</sup>(emphasis added)

\*\*\*

*[The City should] [e]ncourage neighborhood business centers throughout the city to reduce dependence on the car and to make neighborhood life without a car more practical.*<sup>18</sup> (emphasis added)

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<sup>15</sup> *Id.* at pages 9-10, 70.

<sup>16</sup> *Id.* at page 23

<sup>17</sup> *Id.* at page 24

<sup>18</sup> -- PORTLAND’S GOALS AND POLICIES FOR THE FUTURE

STATE GOAL A: To encourage orderly growth and development in appropriate areas of each community, while protecting the State’s rural character, making efficient use of public services and preventing development sprawl;...

...I. HOUSING: SUSTAINING PORTLAND’S FUTURE — November 18, 2002

...Policies

\*\*\*

*"[Portland should] [c]reate local multi-modal centers for the City's commuters and mass transit passengers, building on the presence of existing centers of activity, connected with each other and with regional transport centers."<sup>19</sup> (emphasis added)*

\*\*\*

*"The City should continue to develop an interconnected and seamless transportation system encompassing both local and regional transportation centers."<sup>20</sup>*

**4. Achieve the City's original goals for creating the O-P Zone in general, and near the Jetport in particular.**

The City created the O-P Zone in 1988 because of concern that the existing Residence-Professional (RP) District was being used to develop office complexes that were too large to serve as a transition between residential and business uses:

*Historically there has been one zone (R-P) in the City which permits, almost exclusively, professional offices and residential uses. Originally, the R-P Zone developments in the City were small-scale, and met the intent of the zone as a transitional or buffer district. Recently, however, approximately half the developments on the sites zoned to R-P are bigger in size (two acres or more) and scale than what was originally intended for the zone.<sup>21</sup> (emphasis added)*

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(Comprehensive Plan, page 22)

<sup>19</sup> -- III. A TIME OF CHANGE: PORTLAND TRANSPORTATION PLAN - July 1993 / Transportation Policies

(Comprehensive Plan, p. 24)

<sup>20</sup> II. A TIME OF CHANGE: PORTLAND TRANSPORTATION PLAN - July 1993  
....Transportation Policies

(Comprehensive Plan, page 31)

<sup>21</sup> Neighborhood Commercial Land Use Policies and Land Use Plan (1988), page 22

Thus the Property, which is 7 acres in size, is more than three times larger than the largest site the City had intended to be zoned within the R-P District.<sup>22</sup>

Moreover, the Property is the very type of area where the Comprehensive Plan considers the O-P Zone to be most appropriate: one that has limited potential for residential development because of proximity to the Jetport and adjacency to a busy thoroughfare such as outer Congress Street:

*The need exists for a zone that would allow larger scale office development on larger lots in what could be considered more suburban locations. The parcels, while suburban in character, might have limited potential for residential development, due in part, for example, by proximity to the Jetport, or to the topography of the site, or its physical boundaries such as a busy arterial. ...<sup>23</sup> (emphasis added)*

Indeed, the creators of the O-P District could have had the Property in mind when they wrote:

*Land is more plentiful in these outlying locations, which may be a critical factor if a significant amount of parking is required for the development.... These settings provide a suitable location for a company headquarters or complex of office buildings serving several tenants. Access to the office parks is primarily from major arterials, although secondary roads may also provide access....<sup>24</sup>*

To be sure, the City established a quid pro quo for developers who seek to develop land in an O-P Zone:

*Developments in the O-P zone are to be characterized by spacious and high quality development. Large lots, relatively low building coverage, low impervious surface area, significant open space and landscaping,<sup>25</sup> and*

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<sup>22</sup> Presently, the minimum lot size within the R-P Zone is a mere 6,000 sq. ft. LUO § 14-149(a).

<sup>23</sup> *Neighborhood Commercial Land Use Policies and Land Use Plan* (1988), page 22

<sup>24</sup> *Id.*

<sup>25</sup> Northland acknowledges the ambitious design standards intended for O-P office complexes and intends to create a suitably high-quality development. However, it is important to recall that the Property is not a vacant lot with significant amounts of vegetation or other natural

*thoughtful building design are exemplary characteristics of O-P developments which are appropriate and beneficial to the City of Portland.*<sup>26</sup>

However, contrary to what some critics of this proposal evidently believe, the O-P Zone was not intended to be reserved only for extraordinarily large or topographically complex parcels such as the UNUM site. Recall that the O-P Zone is intended to be only one step up from the R-P District, in which the City considered the largest suitable lot to be about *two* acres in size. Under the LUO, an Office PUD or Office Subdivision may be built on a parcel with a minimum gross area of only *three* acres. LUO § 14-230.11. Significantly, three of the seven areas that the Plan drafters specifically mentioned as potential candidates for O-P Zoning are in close proximity to the Property: UNUM (directly adjacent to the Property), “Congress Street/Cobb Avenue (in conjunction with AB zone)” (almost directly across Congress Street from the Property), and the “Northwest corner of Congress Street and Frost Street” (about 4,000 linear feet from the nearest corner of the Property, and half that distance from the Stroudwater Historic District).<sup>27</sup> Neither were the buildings considered suitable for an O-P District limited to those of a modest size or simple configuration: “*This type of zone can accommodate single or multiple buildings on a site. Large scale or tall buildings are also appropriate.*”<sup>28</sup> (emphasis added) Thus, although the O-P District is plainly intended to encourage high-quality office development, it is also intended to accommodate a wide variety of potential design approaches to such development.

## II. ZONING TEXT AMENDMENT

Northland will not repeat here the portions of the above discussion that are already pertinent to the proposed zoning text amendment to LUO § 14-230.11.1 to add places of assembly as a conditional use in the O-P Zone. The purpose of that zoning text amendment is to prevent the existing Elks’ Lodge from being reduced to the status of a legally nonconforming use if the zoning of the Property is changed from the R-2 Zone to the O-P Zone.

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features. Rather, it is occupied by a large building, extensive areas of impervious parking space, and mowed lawns.

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

**A. The Context of Uses Allowed in the O-P Zone.**

Under LUO § 14-230.11, the O-P Zone allows, as expressly-permitted uses, office parks containing professional offices and office complexes, research and development establishments, printing and publishing establishments, day care facilities, and wind energy systems. In addition, LUO § 14-230.11.1 authorizes, as conditional uses, “high technology manufacturing of biotechnology, pharmaceutical, and nanotechnology products;” temporary wind anemometer towers; and free-standing wind energy systems. A place of assembly would be less intensive than most of those uses.

**B. The Context of “Places of Assembly” as Conditional Uses.**

For several decades, the LUO has allowed “places of assembly” as a conditional use in virtually every residential district, including the R-2 Zone in which the Property is currently included:

|             |                      |
|-------------|----------------------|
| R-1 Zone    | LUO § 14-68(b)(3)    |
| R-2 Zone    | LUO § 14-78(b)(3)    |
| R-3 Zone    | LUO § 14-88(b)(3)    |
| R-4 Zone    | LUO § 14-103(b)(2)   |
| R-5 Zone    | LUO § 14-118(b)(3)   |
| R-6/6A Zone | LUO § 14-137(b)(4)   |
| IR-1 Zone   | LUO § 14-145.3(b)(2) |
| IR-2 Zone   | LUO § 14-145.9(b)(2) |

Because places of assembly such as the Elks Lodge are deemed compatible with such a wide variety of residential uses, it would be irrational to exclude such an activity from the list of conditional uses allowed in the more commercially-oriented O-P Zone. In the context of the Property in particular, the proposed zoning text amendment would limit places of assembly to the same conditional status they have under the present R-2 Zoning.

**C. The Proposed Zoning Text Amendment Adding Places of Assembly as a Conditional Use in the O-P Zone is Consistent with the Comprehensive Plan.**

The Comprehensive Plan does not specifically address the subject of “places of assembly.” However, because “places of assembly” are classified in all zoning districts as a species of “institutional” use, it is useful to review how the Comprehensive Plan describes the City’s policies toward institutional uses.

The Comprehensive Plan discusses institutional uses only in connection with their suitability for inclusion in residential zones. The Plan evidently has identified no problems associated with institutional uses in business or commercial zones such as the O-P Zone. Even in the context of residential zones, the Comprehensive Plan says only the following:

- *Institutional uses, where they are to be allowed in residential zones, should be designated conditional uses with review before the Planning Board.*
- *Any new institutional use should be required to have a lot size of sufficient area to accommodate all activities, including parking and to absorb impacts and growth needs of the institution.*
- *Reasonable expansion of existing institutions should be accommodated, but effective use of existing lot area should be required.*
- *For both new development and expansion of existing institutions, the displacement or conversion of existing dwellings should be avoided, and that an institutional development proposal that causes significant residential displacement should be cause for denial of conditional use approval.<sup>29</sup>*

*At the same time, concerns have been raised about institutional expansions, which have converted or demolished housing or purchased residential structures only to neglect them until they are a blight on the neighborhood. Housing is a critical component of the city's infrastructure. Any redevelopment initiatives, commercial or residential, should result in a no "net loss" of housing for the city as a whole.<sup>30</sup>*

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<sup>29</sup> STATE GOAL D: To encourage and promote affordable, decent housing opportunities for all Maine citizens: ...

V. REGULATION OF INSTITUTIONAL USES IN RESIDENTIAL ZONES  
– 1983 (Planning Board Report #46-83)

(Comprehensive Plan, page 48)

<sup>30</sup> HOUSING AND POPULATION –Inventory and Analysis

The proposed zoning text amendment to add “places of assembly” as a conditional use in the O-P Zone is in basic harmony with the above principles because it would apply only to the O-P Zone, not to any residential zone. The proposed zoning text amendment allows “places of assembly” in the O-P Zone only as a conditional use, and all Office Park Planned Unit Developments and Subdivisions are further subject to mandatory Planning Board Site Plan Review. LUO § 14-230.11.

The proposed zoning text amendment does not, by itself, increase the likelihood that the building or expansion of institutional uses in O-P Zones would cause unreasonable displacement of existing housing. That issue can be adequately addressed by the Board of Appeals during Conditional Use Review and by the Planning Board under Site Plan review of any particular development proposal. In the context of the proposed Project, however, that issue cannot arise, because the Property has not been in the past, and cannot realistically be in the future, used for residential housing that could be displaced by institutional uses.

### CONCLUSION

Although the proposed rezoning of 1945 Congress Street and zoning text amendment may not simultaneously satisfy *every* policy goal expressed in the Comprehensive Plan, they are not legally required to do so. All that the law mandates is that the proposals be in “basic harmony” with the Comprehensive Plan either by striking “a reasonable balance among the municipality’s various zoning goals” or by “overlap[ping] considerably” with the Plan.

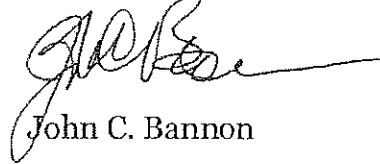
A municipality may conclude that a rezoning action is consistent with a comprehensive plan when it is in harmony with *some* provisions of the plan, even if the action appears *inconsistent* with *other* provisions of the plan.

*Remmel v. City of Portland*, 2014 ME 114, ¶ 13-14, 102 A.3d 1168, 1172. Under that liberal standard, Northland’s proposals are consistent with the Comprehensive Plan.

April 16, 2015  
Page 17

Thank you for your attention to this letter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John C. Bannon", with a long horizontal flourish extending to the right.

JCB/kpm

cc: Rex Bell  
Josh Benthian  
Alex Jaegerman, Director, Planning Division



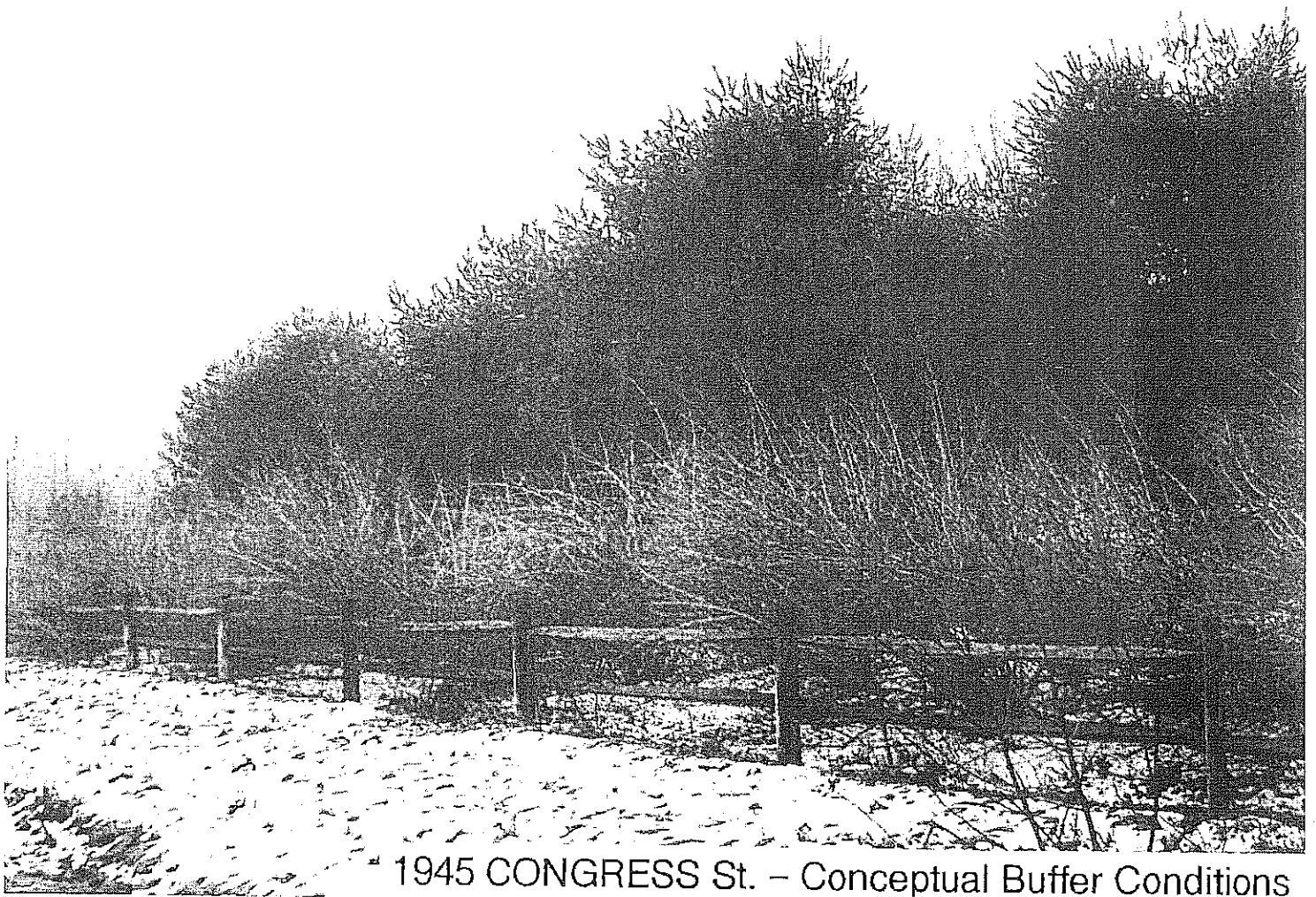
1945 CONGRESS St. – Existing Conditions



1945 CONGRESS ST. - Existing Conditions



1945 CONGRESS St. - Conceptual Buffer Conditions



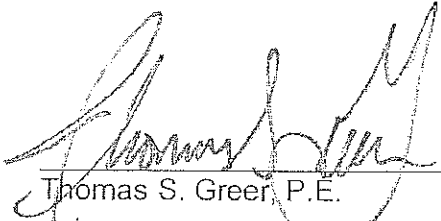
1945 CONGRESS St. – Conceptual Buffer Conditions

## Neighborhood Meeting Certification

I, Thomas S. Greer, P.E., Pinkham & Greer, Civil Engineers hereby certify that a neighborhood meeting was held on January 5, 2015 at 1945 Congress Street at 5:00 pm.

I also certify that on December 22, 2014, invitations were mailed to the following:

1. All addresses on the mailing list provided by the Planning Division which includes property owners within 500 feet of the proposed development or within 1000 feet of a proposed industrial subdivision or industrial zone change.
2. Residents on the "interested parties" list.
3. A digital copy of the notice was also provided to the Planning Division (jmy@portlandmaine.gov and ldobson@portlandmaine.gov) and the assigned planner to be forwarded to those on the interested citizen list who receive e-mail notices.

  
\_\_\_\_\_  
Thomas S. Greer, P.E.

1/7/15  
\_\_\_\_\_  
(date)

Attached to this certification are:

1. Copy of the invitation sent
2. Sign-in sheet
3. Meeting minutes

**You are Invited to  
a  
Neighborhood Meeting**

December 22, 2014

Dear Neighbor:

The team at Northland Enterprises, LLC is working with the Elks' to create a new look and use of the site. The Elks' building will be downsized and renovated to give it a fresh look and become more functional for their use.

The additions to the site will include a 15,000 sq. ft. medical building along Congress Street and a 35,000 sq. ft. building along the UNUM side of the site. These changes will allow the site to be brought up to current environmental standards.

This meeting is for a Zone Change for the property. As part of the City's approval process, we will hold two public informational meetings which you are invited to attend. The first meeting will be:

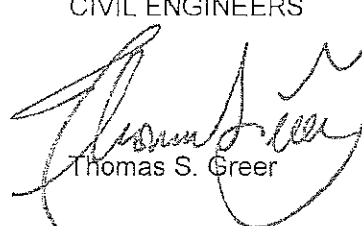
Meeting Location: 1945 Congress Street, the Elks Building  
Meeting Date: Monday, January 5, 2015  
Meeting Time: 5:00 pm

The City code requires that property owners within 500 feet of the proposed development and residents on the "interested parties list" be invited to participate in the neighborhood meeting. A sign in sheet will be circulated and minutes of the meeting will be taken. Both the sign up sheet and minutes will be submitted to the Planning Board.

If you have any questions, please call Tom Greer @ 207-781-5242.

Sincerely,

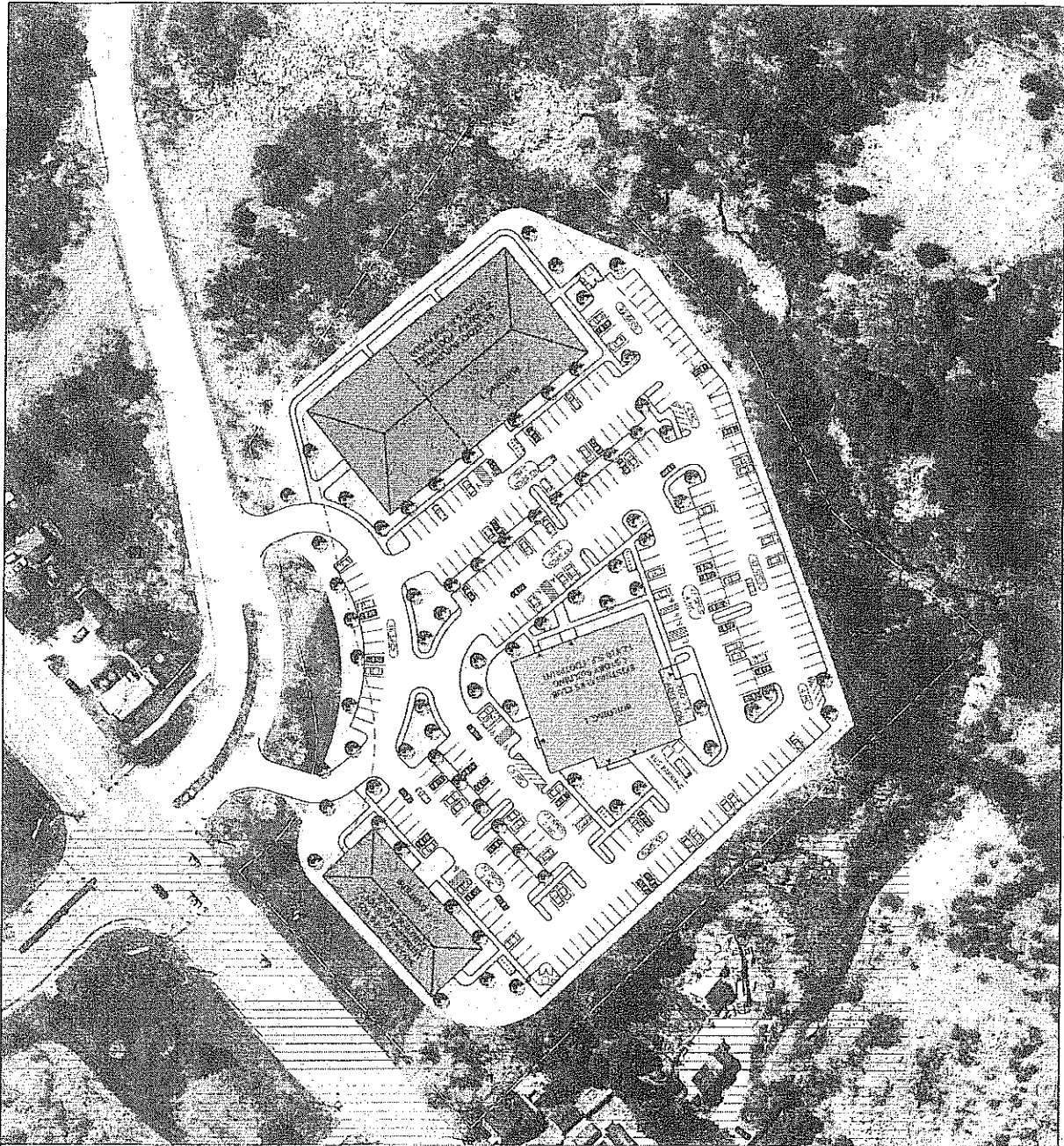
PINKHAM & GREER  
CIVIL ENGINEERS



Thomas S. Greer

Applicant: Northland Enterprises, LLC (Josh Benthien & Rex Bell)  
17 South Street  
Portland, ME 04101

Owner: Portland Lodge #188 BPOE of USA  
1945 Congress Street  
Portland, ME 04102



|           |                                                             |                                                                                 |                                                                   |                                                  |                                                                                                                        |
|-----------|-------------------------------------------------------------|---------------------------------------------------------------------------------|-------------------------------------------------------------------|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| <p>03</p> | <p>1945 CONGRESS STREET<br/>ELKS LODGE, PORTLAND, MAINE</p> | <p>NORTHLAND ENTERPRISES, LLC<br/>17 SOUTH STREET<br/>PORTLAND, MAINE 04101</p> | <p>SCALE: AS SHOWN<br/>DATE: DECEMBER, 1995<br/>PROJECT: 1742</p> | <p>OWNER: JON<br/>DESIGN: TSS<br/>CHECK: JHE</p> | <p>PINKHAM &amp; GREER<br/>CIVIL ENGINEERS<br/>25 LAMAR AVENUE, PORTLAND, ME 04101<br/>TEL: 233-8151 FAX: 233-8152</p> |
|-----------|-------------------------------------------------------------|---------------------------------------------------------------------------------|-------------------------------------------------------------------|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|

NEIGHBORHOOD MEETING ATTENDEE LIST  
1945 Congress Street  
January 5, 2015

|                                                                    |                                                                                                                                                             |
|--------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|
| TOM GREEN<br>BIRKHAM & GREEN<br>23 VANDERBILT AVE<br>PORTLAND, ME. | DAN MOLOSHI (SUN PRESIDENT)<br>1296 WESTBOROUGH ST<br>PORTLAND<br>STROUDWATER VILLAGE ATTENDANCE @ 6:00 PM                                                  |
| Tim Smith<br>1945 Congress St<br>Portland Me.                      | Anita Baldones<br>33 Old Mast Rd.<br>Portland, ME 04102                                                                                                     |
| John Rex, UACM<br>1945 Congress St<br>Portland, ME 04102           | BILL LINNELL + JOYCE BATHIER.<br>1905 CONGRESS ST<br>PORTLAND, ME 04102  |
| James Casterella<br>1967 Congress St<br>Portland, 04102            | Josh Bathier - Northland<br>9 Rocky Hill Road<br>CAPE ELIZABETH, 04107                                                                                      |
| BRAD FRIES<br>17 South St, 3rd Fl<br>Portland, ME 04101            | Rex Bell - Northland<br>4 Wood Road<br>CAPE ELIZABETH, ME 04107                                                                                             |
| Mary Joa Kimball<br>49 Vindele St.<br>Scarborough, ME 04074        | CATHERINE ALEXANDER<br>UNUM<br>2211 Congress St<br>Portland, ME 04122                                                                                       |
| PAT ADRIANCE<br>16 LONGFELLOW ROAD<br>GORHAM, ME 04058             | JOE Winschel<br>1945 Congress St<br>Portland, ME                                                                                                            |
| PAT ADRIANCE<br>SAME AS ABOVE                                      | MICHAEL ROGERS<br>66 RIVER'S EDGE DR<br>PORTLAND                                                                                                            |
| Dennis S. Richett<br>20 Woodbury St.<br>Portland, Me.              | Joan & Sandy Boal<br>37 Old Mast Rd.<br>Portland, Me.                                                                                                       |
| Carol Burcliff<br>194 DEBOR ST<br>Scarborough ME 04074             | ERIC GRIFFIN<br>42 PENRITH RD<br>PORTLAND ME 04102                                                                                                          |



CAPT LINNELL @ yahoo.com

**Neighborhood Meeting Summary**  
**1945 Congress Street**  
**January 5, 2015**

The meeting started at 5:10pm and concluded around 5:45pm. It seemed to be well attended. The Attendance List is attached. Several people showed up during the meeting but did not sign in.

- A presentation by Thomas Greer was made highlighting the location of the project and noting the process for the zone change, the site plan and subdivision approvals. This is the first of two public information meeting to be held for this project.
- The features of the site were noted, including removing a section of the Elk's building, and renovating the remainder of the building. A new 15,000 sq. ft. medical office building will be constructed along Congress Street and a 25,000 to 35,000 sq. ft. building will be constructed on the west side of the existing parking lot.

In response to questions the following responses were made:

- The entrances to the site will remain in the same locations.
- A pylon sign will likely be placed out at the Congress Street entrance and some type of signage will be on the buildings. Way finding signs and parking signs will be throughout the parking fields.
- Bike racks, motorcycle, and scooter parking is provided and sidewalks for pedestrian connections are provided. No trail network is included.
- The parking meets or exceeds the City's requirements. On Tuesday's, Bingo at the Elk's will create the maximum demand. A parking study will be part of the submittals to the City.
- The site will have improved stormwater management. It will include treatment and flow control. A final selection of the treatment system has not been made.
- The site will have new lighting, meeting current standards. It will be computer controlled so it can be limited in the time it is on. It will be shielded and at lower levels than older parking lots. It will be LED lights.

The schedule for the project includes:

- Zone Change in the next 2 months.
- Site Plan and Subdivision Approval by May.

**PINKHAM & GREER  
CIVIL ENGINEERS**

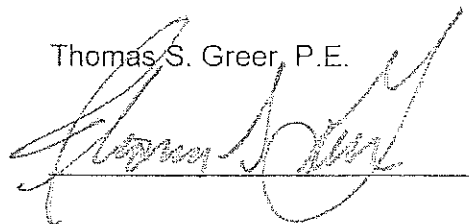
- Start Construction on the Elk's in June.
- Medical Building construction in June.

The general office building will be constructed when a tenant/owner is confirmed.

- The preliminary elevation views of the Elk's building and the general office building were shown. No drawings of the medical office were shown.
- Our neighbor, adjacent Congress Street, Bill Linnell, noted he was opposed to the project and thought a housing project would meet the Comprehensive Plan better. We noted we had sent a brief summary of how this project conforms to the Comprehensive Plan to the staff already. He will get a copy of that.
- There was general discussion about the bus route and if the rerouting of the line would impact this project. We did not think it would have much impact on the project.

The above summary of the meeting is respectfully prepared and submitted by:

Thomas S. Greer, P.E.

A handwritten signature in dark ink, appearing to read 'Thomas S. Greer', is written over a horizontal line. The signature is stylized and cursive.



July 8, 2015

*Via email*

Helen Donaldson  
City of Portland Planning Division  
389 Congress Street  
Portland, Maine 04101

RE: Housing redevelopment feasibility for 1945 Congress Street

Nell,

At the May 26<sup>th</sup> Planning Board workshop, the Board requested that we provide an analysis of the feasibility of single family and low density multifamily housing on the Elks Site. Members of the Stroudwater Village have suggested that such a use would be more consistent with the Comprehensive Plan, but have failed to test the fiscal reality and sustainability of such a redevelopment.

**Single Family Home Development Experience:**

While one of our principals has significant firsthand experience, Northland as a company has never undertaken a single family subdivision project, so our analysis of that option has been limited to pricing out a subdivision with buildable lots that would be sold for housing construction, rather than incorporating assumptions regarding the costs associated with building and selling single family homes.

**Multifamily Development Experience:**

Northland has developed and owned over 400 units of multifamily housing projects. Those properties include those financed with Low Income Housing Tax Credits, backed by Section 8 Contracts and "market rate" conventionally financed complexes. It is with this institutional knowledge and understanding of the costs associated with their respective developments and operations that we have developed our analysis regarding multifamily housing feasibility.

**Single Family Analysis:**

Based on the current R2 Zone and the required minimum lot size, eight lots could be created if the Elks remained on site, and fifteen lots could be created if the Elks were to leave the site. In both scenarios, two lots would require curb cuts on Congress

Street, the others would utilize a shared interior road within the development. In our analyses we used the current purchase price in the eight-lot scenario, and for the fifteen-lot scenario, we used the previous contract price when the Elks had contemplated leaving the site when Husson College was the prospective buyer. We asked an experienced construction estimator to come up with the costs associated with both subdivision scenarios to include all paving, stubbing of utilities and landscape buffering. We applied estimates for soft costs for the two scenarios that averaged under 8% of the total deal size. Finally, we estimated the carrying costs associated with the construction financing and equity raise that would be required to fund the development and projected that it would take twelve months to sell eight lots, and a total of sixteen months to sell out the entire fifteen lots.

In the eight-lot scenario we are assuming the purchase price of the land is equal to our current contract price approved by the Portland Elks and the Grand Lodge. In the Fifteen Lot scenario we have assumed a purchase price of \$2.5 million, which is equal to the price that the Elks have previously agreed to for an outright sale. These purchase price assumptions aside the feasibility of either scenario does not change if the site were sold for \$1.

Based on these assumptions, the following sale prices for buildable lots would need to be achieved for the project to be viable (*Note that we have backed into a break-even sale price, not accounting for profit to the Developer or Equity Investors*).

#### Eight Lot Scenario:

|                          |             |
|--------------------------|-------------|
| Total Development Costs: | \$2,891,566 |
| Price per lot:           | \$385,000   |
| Less Sales Cost:         | -\$184,800  |
| Net Profit:              | \$3,634     |

#### Fifteen Lot Scenario:

|                          |             |
|--------------------------|-------------|
| Total Development Costs: | \$4,496,606 |
| Price per lot:           | \$319,000   |
| Less Sales Cost:         | -\$287,100  |
| Net Profit:              | \$1,294     |

There have been two sales of housing lots within the last year within a one mile radius, neither of which justify the pricing that would be required of either the eight or fifteen lot development scenarios. The comps are:

| House Lots w/in 1 mile in 12 last months | Comp #1          | Comp # 2           |
|------------------------------------------|------------------|--------------------|
| Address                                  | 15 Riverview St. | 1331 Westbrook St. |
| Size (acres):                            | 14 Acre          | 1.48 Acre          |
| Lot Square Footage:                      | 6,098            | 64,469             |
| Sale Price:                              | \$44,000         | \$92,625           |
| Price Per SF:                            | \$7.22           | \$1.44             |
| Equivalent price for a 10,000sf lot:     | \$72,200         | \$14,440           |
| Sale Date:                               | 9/22/14          | 10/17/14           |

In our opinion, based on these recent sales, and the price required to break even on selling single family house lots, the redevelopment of the Elks site into single family housing lots would not be feasible under the current market conditions. See attached Appendix A for a more detailed list of currently listed and recently sold land parcels within one mile of the Elks Site.

### Multifamily Housing Analysis:

#### **Income Assumptions:**

For our multifamily feasibility analysis we used rental rate assumptions based on a Portland wide market study that we commissioned for a downtown project that we are planning to begin later this year. In April 2015 Northland hired the Signal Group of South Portland to determine the current market rate rents for 1 and 2 bedroom units, and compare those to the rents that someone making 100% of the Area Median Income (AMI) could afford. The resulting \$1,460 per-month suggested market rents for 2bdrm units were used in our analysis. For vacancy loss we used 5% annually, which is consistent with larger scattered site off-peninsula apartments.

#### **Expense Assumptions:**

Our annual apartment expense assumptions were based on our historical per/unit expenses across our five apartment complexes in Southern Maine. We also utilized the 2013 Institute of Real Estate Management (IREM) income and expense analysis for garden style apartments in our region (attached as Appendix B). The expense ratio in IREM is listed as between 36.5% of Revenue on the low side, and 53.2% on the high side; for this analysis we used 37.1% as a target; a percentage which in our opinion is quite aggressive.

### Scenarios:

We tested three "market rate" apartment scenarios. The first scenario is based on the unit count for a multifamily development that would be allowed if the zone is changed to R3, *as it is important to note that under the current R2 Zoning, no multifamily housing would be legally permissible.* The other two scenarios were analyzed after the first scenario proved financially unfeasible, and both of these scenarios would require further zone changes to allow for even more density.

Scenario #1 – 40 market rate units at market rents per the Signal Group study  
Scenario #2 – 80 market rate units at market rents per the Signal Group study  
Scenario #3 – 80 luxury rental units at rents required to make project feasible.

#### **Summary:**

| Scenario   | #1 | #2 | #3 | Notes |
|------------|----|----|----|-------|
| # of units | 40 | 80 | 80 |       |

|                                                                                        |              |              |           |                                                  |
|----------------------------------------------------------------------------------------|--------------|--------------|-----------|--------------------------------------------------|
| Monthly Rent                                                                           | \$1,460      | \$1,460      | \$1,920   |                                                  |
| P/Unit Cost                                                                            | 250,000      | \$198,568    | \$205,078 | Includes acquisition and all site and soft costs |
| P/Unit appraised value                                                                 | \$139,917    | \$139,917    | \$205,352 | Based on 7.25% Cap Rate                          |
| Funding Gap<br>(difference between appraised value and total costs of the development) | -\$4,403,310 | -\$4,692,037 | +\$21,888 |                                                  |

The funding gap resulting in both the 40 and 80 unit market rate complexes is not unusual for this market, but does render both of those scenarios unfeasible. In our experience for a new construction market rate housing to make financial sense, rents need to be greater than \$1,650 per month for a one-bedroom apartment.

This analysis assumes that the Elks leave the site, and are justly compensated for the land, but even if they sold the land for \$1, the result of the analysis for the first two scenarios would be the same; neither scenario would be feasible with funding gaps over \$2million.

#### Low Income Housing Scenario:

Northland has completed multifamily projects utilizing both the competitive 9% Low Income Housing Tax Credit ("LIHTC") and the 4% Tax Exempt Bond Financing. The 9% LIHTC program is a competitive program utilizing a finite amount of scarce resources from the Maine State Housing Authority ("MSHA"). Every year, developers apply for this credit with specific projects in mind, and MSHA reviews the application and scores the project based on a number of qualitative criteria.

Based on the profile of this project, and the current scoring guidelines, there is little chance that it would qualify for the 9% LIHTC credit, therefore the only possible LIHTC financing that we have analyzed is the 4% Tax Exempt Bond financing which is considered "as of right" and administered without the competitive scoring associated with the 9% credit.

The construction costs of this type of development are slightly lower than a conventional market rate apartment complex, and we have taken that into account, but the soft costs associated with the bond financing are significantly higher than those associated with market rate complexes. The program requires that a minimum of 40% of the units are limited to tenants who make less than 60% of Area median Income ("AMI") and those rents are limited to \$1,041 per month (see Appendix C for detail on Tax Credit income and rent limits). The remainder of the units would be leased without income restriction at the previously noted \$1,460 per month market rate. The assumption for land costs in this scenario is the aforementioned \$2.5million purchase price.

The summary of the 4% LIHTC scenario is as follows:

|                                  |               |
|----------------------------------|---------------|
| Total Number of Units            | 80            |
| 60% AMI units (\$1,041)          | 32            |
| Market rate units (\$1,460)      | 48            |
| Expense Ratio                    | 39%           |
| Construction Cost Per Unit       | \$120,000     |
| Total Development cost per Unit  | \$211,224     |
| Total Gross Development cost     | \$16,897,959  |
| Conventional Debt and Equity     | -\$10,641,655 |
| Tax Credit Equity & Deferred Fee | \$1,888,818   |
| Resulting Funding Gap            | -\$4,367,486  |

As the above gap demonstrates, even utilizing the 4% Low Income Housing Tax Credit in conjunction with bond financing does not solve for the funding gap that exists. The lower rents required under the LIHTC program reduces the resulting appraised value, as the \$10,641,655 valuation (\$133,021 Per Unit) would be developed utilizing using the net income of the property, and the lower rents reduce that annual income.

It should be noted that even if the Elks sold the site for \$1. the funding gap would be nearly \$1.8 million in this scenario.

**SUMMARY:**

Based on our experience in developing multifamily housing, both market rate and affordable, and our understanding of the costs associated with creating lots for single family housing, and the realities of the current rental market and the demand and prices paid for housing lots, neither scenarios are feasible development alternatives for 1945 Congress Street.

Despite the desire of those who want to see this developed for housing, the reality is that without a zone change allowing for a commercial use, this property will not be redeveloped until rents rise significantly (32%) in Portland or the price paid for housing lots quadruple.

Sincerely,



Josh Benthien  
Partner  
Northland Enterprises

Prepared By: Conor R. Beliveau

CMA 1 - Line

Listings as of 07/07/15 at 1:17 pm

Property Type is 'Land' Status is 'Active' Status is 'Sold' Status Contracted Search Date is 07/07/2015 to 07/07/2014 Latitude, Longitude is within 1.00 mi of 10-15 Congress St, Portland Maine

| Land              |                       |           |      |              |          |             |            |            |            |       |     |
|-------------------|-----------------------|-----------|------|--------------|----------|-------------|------------|------------|------------|-------|-----|
| Active Properties |                       |           |      |              |          |             |            |            |            |       |     |
| MLS #             | Address               | Town      | Acre | \$/Acre      | Lot SqFt | \$/Lot SqFt | List Price |            |            |       | DOM |
| 11145603          | 1877 Congress Street  | Portland  | 4.04 |              | 175,982  | \$2.16      | \$380,000  |            |            |       |     |
| # LISTINGS: 1     |                       | Medians:  |      |              | 175,982  | \$2.16      | \$380,000  |            |            |       | 462 |
|                   |                       | Minimums: |      |              | 175,982  | \$2.16      | \$380,000  |            |            |       | 462 |
|                   |                       | Maximums: |      |              | 175,982  | \$2.16      | \$380,000  |            |            |       | 462 |
|                   |                       | Averages: |      |              | 175,982  | \$2.16      | \$380,000  |            |            |       | 462 |
| Sold Properties   |                       |           |      |              |          |             |            |            |            |       |     |
| MLS #             | Address               | Town      | Acre | \$/Acre      | Lot SqFt | \$/Lot SqFt | List Price | Sold Price | Sold Date  | SP:LP | DOM |
| 111140877         | 15 Riverview Street   | Portland  | 0.14 | \$314,285.71 | 6,098    | \$7.22      | \$54,900   | \$44,000   | 09/22/2014 | 80.15 |     |
| 1123502           | 1331 Westbrook Street | Portland  | 1.48 | \$62,584.46  | 64,469   | \$1.44      | \$109,000  | \$92,625   | 10/17/2014 | 84.98 |     |
| # LISTINGS: 2     |                       | Medians:  |      |              | 35,284   | \$4.33      | \$61,950   | \$69,313   |            | 82.56 | 13  |
|                   |                       | Minimums: |      |              | 6,098    | \$1.44      | \$54,900   | \$44,000   |            | 80.15 | 3   |
|                   |                       | Maximums: |      |              | 64,469   | \$7.22      | \$109,000  | \$92,625   |            | 84.98 | 23  |
|                   |                       | Averages: |      |              | 35,284   | \$4.33      | \$61,950   | \$68,313   |            | 82.56 | 13  |

Quick Statistics ( 3 Listings Total )

|            | Min      | Max       | Average   | Median    |
|------------|----------|-----------|-----------|-----------|
| List Price | \$54,900 | \$380,000 | \$181,300 | \$109,000 |
| Sold Price | \$44,000 | \$92,625  | \$68,313  | \$68,313  |

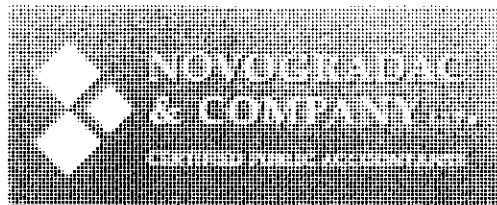
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This is a broker price opinion or comparative market analysis and should not be considered an appraisal. In making any decision that relies upon my work, you should know that I have not followed the guidelines for development of an appraisal or analysis contained in the Uniform Standards of Professional Appraisal Practice of the Appraisal Foundation.



|                               | 61 BUILDINGS<br>1,776,576 RENTABLE SQUARE FEET |        |        |        |                |       |       |         | 61 BUILDINGS<br>20,974,445 RENTABLE SQUARE FEET |        |        |        |                |       |       |         |
|-------------------------------|------------------------------------------------|--------|--------|--------|----------------|-------|-------|---------|-------------------------------------------------|--------|--------|--------|----------------|-------|-------|---------|
|                               | BLDG'S                                         |        |        |        | ---% OF GPI--- |       |       |         | BLDG'S                                          |        |        |        | ---% OF GPI--- |       |       |         |
|                               |                                                | MED    | LOW    | HIGH   | MED            | LOW   | HIGH  | \$/UNIT |                                                 | MED    | LOW    | HIGH   | MED            | LOW   | HIGH  | \$/UNIT |
| <b>INCOME</b>                 |                                                |        |        |        |                |       |       |         |                                                 |        |        |        |                |       |       |         |
| RENTS-APARTMENTS              | ( 64)                                          | 97.2%  | 95.8%  | 98.4%  | 16.07          | 12.22 | 18.93 | 13748   | ( 91)                                           | 96.6%  | 94.5%  | 98.5%  | 14.96          | 12.83 | 17.99 | 13205   |
| RENTS-GARAGE/PARKING          | ( 16)                                          | .4     | .2     | .8     | .10            | .02   | .13   | 72      | ( 20)                                           | .8     | .3     | 1.2    | .16            | .06   | .24   | 154     |
| RENTS-STORIES/OFFICES         | ( 2)                                           | 17.9   |        |        | 2.73           |       |       | 2996    | ( 1)                                            | 2.5    |        |        | .47            |       |       | 327     |
| GROSS POSSIBLE RENTS          | ( 64)                                          | 97.5%  | 96.2%  | 98.6%  | 16.07          | 12.22 | 19.25 | 13912   | ( 91)                                           | 96.9%  | 94.8%  | 98.7%  | 14.98          | 12.83 | 18.29 | 13208   |
| CONCESSIONS                   | ( 26)                                          | .9     | .5     | 1.3    | .13            | .08   | .25   | 107     | ( 55)                                           | .8     | .4     | 1.3    | .13            | .04   | .32   | 122     |
| VACANCIES/RENT LOSS           | ( 64)                                          | 4.8    | 2.7    | 6.4    | .76            | .45   | 1.17  | 633     | ( 89)                                           | 5.4    | 4.1    | 9.2    | .92            | .63   | 1.31  | 366     |
| TOTAL RENTS COLLECTED         | ( 64)                                          | 92.0   | 88.7   | 93.9   | 14.90          | 11.23 | 17.92 | 13131   | ( 91)                                           | 89.1   | 85.4   | 92.0   | 13.76          | 11.50 | 16.67 | 12328   |
| <b>OTHER INCOME</b>           | ( 52)                                          | 2.7    | 1.8    | 3.9    | .46            | .27   | .79   | 409     | ( 78)                                           | 4.0    | 2.8    | 5.6    | .62            | .26   | 1.01  | 558     |
| GROSS POSSIBLE INCOME         | ( 64)                                          | 100.0% | 100.0% | 100.0% | 16.55          | 12.31 | 19.69 | 14379   | ( 91)                                           | 100.0% | 100.0% | 100.0% | 15.59          | 13.23 | 19.04 | 13848   |
| TOTAL COLLECTIONS             | ( 64)                                          | 95.0   | 92.8   | 96.4   | 16.17          | 11.29 | 18.52 | 13499   | ( 91)                                           | 94.2   | 89.3   | 93.7   | 14.60          | 11.99 | 17.50 | 12926   |
| <b>EXPENSES</b>               |                                                |        |        |        |                |       |       |         |                                                 |        |        |        |                |       |       |         |
| MANAGEMENT FEE                | ( 61)                                          | 4.8    | 4.0    | 6.1    | .71            | .55   | .96   | 627     | ( 87)                                           | 4.4    | 3.2    | 4.9    | .64            | .52   | .78   | 634     |
| OTHER ADMINISTRATIVE**        | ( 64)                                          | 8.1    | 5.6    | 11.8   | 1.27           | .99   | 1.68  | 1077    | ( 87)                                           | 5.1    | 2.7    | 7.6    | .81            | .41   | 1.34  | 708     |
| SUBTOTAL ADMINIST.            | ( 64)                                          | 13.6%  | 9.8%   | 17.0%  | 2.11           | 1.58  | 2.45  | 1382    | ( 91)                                           | 8.2%   | 6.5%   | 11.7%  | 1.41           | 1.02  | 1.88  | 1364    |
| <b>SUPPLIES</b>               | ( 59)                                          | .4     | .1     | .8     | .07            | .02   | .14   | 59      | ( 81)                                           | .2     | .1     | .8     | .05            | .01   | .13   | 47      |
| HEATING FUEL-CA ONLY*         | ( 20)                                          | 1.3    | .4     | 3.1    | .13            | .05   | .35   | 157     | ( 50)                                           | 4      | 2      | 1.2    | .06            | .03   | .18   | 48      |
| CA & APTS.*                   | ( 30)                                          | 3.7    | 2.4    | 5.5    | .62            | .35   | 1.05  | 483     | ( 43)                                           | 4.6    | 2.9    | 7.2    | .72            | .43   | 1.00  | 572     |
| ELECTRICITY-CA ONLY*          | ( 43)                                          | 1.5    | .9     | 1.9    | .19            | .11   | .28   | 165     | ( 74)                                           | 1.1    | .4     | 1.6    | .17            | .06   | .25   | 146     |
| CA & APTS.*                   | ( 19)                                          | 2.8    | 1.9    | 3.8    | .44            | .39   | .51   | 363     | ( 9)                                            | 2.1    |        |        | .31            |       |       | 206     |
| WATER/SEWER-CA ONLY*          | ( 17)                                          | 3.4    | 1.8    | 5.0    | .67            | .27   | .97   | 609     | ( 27)                                           | 1.9    | .9     | 3.1    | .34            | .20   | .55   | 365     |
| CA & APTS.*                   | ( 44)                                          | 3.5    | 2.6    | 5.1    | .87            | .33   | .74   | 483     | ( 59)                                           | 3.9    | 2.7    | 5.2    | .65            | .44   | .86   | 554     |
| GAS-----CA ONLY*              | ( 12)                                          | .7     | .5     | .8     | .12            | .01   | .17   | 95      | ( 19)                                           | .2     | .1     | .3     | .03            | .01   | .05   | 33      |
| CA & APTS.*                   | ( 20)                                          | 3.9    | .6     | 4.5    | .82            | .06   | .81   | 488     | ( 9)                                            | 5.5    |        |        | .92            |       |       | 762     |
| BUILDING SERVICES             | ( 58)                                          | 1.4    | .7     | 2.0    | .19            | .13   | .33   | 173     | ( 82)                                           | 1.3    | .7     | 3.2    | .21            | .11   | .59   | 181     |
| OTHER OPERATING               | ( 47)                                          | .3     | .2     | .8     | .04            | .02   | .13   | 33      | ( 47)                                           | .9     | .3     | 1.9    | .15            | .05   | .45   | 140     |
| SUBTOTAL OPERATING            | ( 64)                                          | 11.8%  | 8.4%   | 15.3%  | 1.72           | 1.23  | 2.61  | 1498    | ( 91)                                           | 10.4%  | 6.0%   | 16.9%  | 1.67           | 1.08  | 2.54  | 1354    |
| <b>SECURITY**</b>             | ( 26)                                          | .2     | .0     | .5     | .03            |       | .09   | 26      | ( 26)                                           | .2     | .1     | .3     | .03            | .01   | .07   | 22      |
| GROUND MAINTENANCE**          | ( 60)                                          | 1.6    | .9     | 2.1    | .27            | .15   | .35   | 235     | ( 83)                                           | 1.8    | 1.3    | 2.5    | .32            | .16   | .60   | 266     |
| MAINTENANCE-REPAIRS           | ( 64)                                          | 2.6    | 1.6    | 3.9    | .43            | .38   | .58   | 370     | ( 91)                                           | 2.6    | 1.2    | 3.8    | .43            | .18   | .75   | 294     |
| PAINTING/DECORATING**         | ( 59)                                          | 1.2    | .7     | 1.4    | .20            | .07   | .25   | 180     | ( 86)                                           | 1.1    | .8     | 1.6    | .21            | .13   | .29   | 184     |
| SUBTOTAL MAINTENANCE          | ( 64)                                          | 5.8%   | 4.5%   | 7.4%   | .88            | .66   | 1.29  | 778     | ( 91)                                           | 5.7%   | 4.3%   | 6.9%   | .87            | .64   | 1.16  | 762     |
| <b>REAL ESTATE TAXES</b>      | ( 64)                                          | 9.6    | 6.8    | 13.0   | 1.41           | 1.13  | 3.01  | 1203    | ( 89)                                           | 9.8    | 7.6    | 13.3   | 1.61           | 1.17  | 1.77  | 1385    |
| OTHER TAX/FEE/PERMIT          | ( 33)                                          | .2     | .1     | 1.5    | .04            | .01   | .20   | 27      | ( 38)                                           | .2     | .1     | 1.1    | .03            | .01   | .15   | 30      |
| INSURANCE                     | ( 64)                                          | 2.5    | 1.7    | 5.2    | .38            | .30   | .49   | 320     | ( 87)                                           | 2.1    | 1.1    | 2.9    | .38            | .26   | .43   | 286     |
| SUBTOTAL TAX-INSURANCE        | ( 64)                                          | 12.7%  | 9.4%   | 15.7%  | 1.80           | 1.57  | 2.63  | 1710    | ( 89)                                           | 12.9%  | 10.0%  | 15.9%  | 1.97           | 1.62  | 2.57  | 1703    |
| <b>RECREATION/AMENITIES**</b> | ( 37)                                          | .5     | .4     | .7     | .08            | .06   | .13   | 71      | ( 41)                                           | .2     | .1     | .3     | .03            | .01   | .05   | 32      |
| OTHER PAYROLL                 | ( 60)                                          | 6.1    | 4.1    | 7.8    | .92            | .58   | 1.22  | 749     | ( 67)                                           | 4.5    | 3.6    | 6.1    | .72            | .60   | 1.04  | 639     |
| <b>TOTAL ALL EXPENSES</b>     | ( 64)                                          | 51.5%  | 44.4%  | 60.9%  | 7.59           | 6.51  | 9.98  | 6213    | ( 91)                                           | 43.8%  | 36.3%  | 53.2%  | 6.96           | 5.82  | 8.40  | 6243    |
| <b>NET OPERATING INCOME</b>   | ( 64)                                          | 42.3%  | 33.3%  | 51.4%  | 6.37           | 4.50  | 9.59  | 6271    | ( 91)                                           | 39.2%  | 37.2%  | 55.4%  | 5.15           | 4.68  | 10.46 | 6652    |
| <b>PAYROLL RECAP**</b>        | ( 47)                                          | 9.4    | 6.7    | 11.7   | 1.30           | 1.01  | 1.59  | 1188    | ( 62)                                           | 7.9    | 5.1    | 10.5   | 1.32           | .93   | 1.77  | 1169    |

FOOTNOTE: For a description of Utility Expense (\*) and Payroll Cost (\*\*) reporting and an explanation of the report layout and method of data analysis, refer to the sections entitled *Guidelines for the Use of this Data and Interpretation of a Page of Data*. For definitions of the income and expense categories, refer to the Appendix. Copyright © 2013, Institute of Real Estate Management



If you would like to engage Novogradac & Company LLP to calculate the rent & income limits for your property, please contact Thomas Stagg at [thomas.stagg@novoco.com](mailto:thomas.stagg@novoco.com).

You can view demographic information and a detailed list of affordable housing properties in [COMPART](#).

Click on the icons below to view historical charts.

|                                                |                                                                                                                                                                                             |
|------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Affordable Housing Program                     | IRS Section 42 Low-Income Housing Tax Credit (LIHTC)                                                                                                                                        |
| Year (1)(2)                                    | 2015 (effective 03/06/15)                                                                                                                                                                   |
| State                                          | ME                                                                                                                                                                                          |
| County                                         | Cumberland County                                                                                                                                                                           |
| MSA                                            | Portland, ME HUD Metro FMR Area                                                                                                                                                             |
| Persons / Bedroom                              | 1.5 Person / Bedroom                                                                                                                                                                        |
| 4-person AMI                                   | \$77,100                                                                                                                                                                                    |
| National Non-Metropolitan Median Income (2)(4) | \$54,100                                                                                                                                                                                    |
| HERA Special (5)                               | Not eligible                                                                                                                                                                                |
| Held Harmless (6)                              | You have indicated that your project was placed in service on or after 03/06/2015 and is therefore eligible to have its income and rent limit held harmless beginning with the 2015 limits. |
| Placed in Service Date (7)                     | On or after 03/06/2015.                                                                                                                                                                     |
| Rent Floor Election (8) (9)                    | Effective on or after 03/06/2015.                                                                                                                                                           |

|           |                                                                                   |        |          |
|-----------|-----------------------------------------------------------------------------------|--------|----------|
|           |                                                                                   | 50.00% | 425,000% |
| 1 Person  |  | 32,400 | 45,360   |
| 2 Person  |  | 37,020 | 51,828   |
| 3 Person  |  | 41,640 | 58,296   |
| 4 Person  |  | 46,260 | 64,764   |
| 5 Person  |  | 49,980 | 69,972   |
| 6 Person  |  | 53,700 | 75,180   |
| 7 Person  |  | 57,420 | 80,388   |
| 8 Person  |  | 61,080 | 85,512   |
| 9 Person  |  | 64,740 | 90,636   |
| 10 Person |  | 68,460 | 95,844   |
| 11 Person |  | 72,180 | 101,052  |
| 12 Person |  | 75,840 | 106,176  |

Bedrooms (People)

2 Bedrooms (3.0)



20.00%

1.041

100%

1.074

Before using the numbers from the Rent & Income Limit Calculator®, we strongly recommend that you check with the applicable state housing agency to verify that the state agrees with the numbers. The numbers round down to the nearest \$1.

This Rent & Income Limit Calculator® does not calculate low-income housing tax credit (LIHTC) limits greater than 50% LIHTC or 60% LIHTC limits, depending on the minimum set-aside elected with the IRS on Form 8609 in accordance with Internal Revenue Code Section 42(i)(3)(A). In other words, if the 20/50 minimum set-aside was elected then 50% LIHTC is the maximum rent calculated and allowed to qualify as a tax credit unit; or if the 40/60 minimum set-aside was elected then 60% LIHTC is the maximum allowed to qualify as a tax credit unit.

Revenue Ruling 83-24 require that the LIHTC rent & income levels start their calculations with the HUD published very low-income (VLI) amounts because the HUD published VLI amounts include certain HUD adjustments, such as high housing cost for high FMR areas to increase income, and state non-metropolitan median income to provide a floor for income limits. The result is that many counties have VLI amounts that are different than 50% of the AMI published by HUD (the 4-person AMGI we have shown above). The Novogradac Rent & Income Calculator® starts by default with the HUD published VLI amounts in accordance with Revenue Ruling 83-24.

(1) The rent and income limits for each year are effective beginning with the effective date shown above. There is a grace period for 45 days to implement the new rent and income limits, which means that the old limits can be relied upon for 45 days after the effective date of the new limits. For example income limits effective 12/04/2012, can be relied on until 1/17/2013. For more information, see Revenue Ruling 94-57.

IRS LIRC Newsletter #48 and IRS LIRC Newsletter #50 clarify that for projects placed in service during the 45-day grace period, the owner may choose the new or the old income limits. For example, if a project was placed in service on 1/8/2013 and the 2012 income limits are higher than the 2013 income limits, an owner may use the higher income limits from 2012 to income qualify tenants and set rents accordingly because the project was placed in service with the 45-day grace period.

Please note, the Rent & Income Limit Calculator® does not apply a 45-day grace period automatically. The user needs to indicate that the placed in service date and/or gross rent floor date occurred 45 days earlier (in the prior HUD Fiscal Year) if they want to apply the 45-day rule under Revenue Ruling 94-57 that allows owners to rely on the prior year. Therefore, projects that were placed in service during the 45-day grace period, and want to use the prior year, should select that they were placed in service as of the prior year. For example, if a project placed in service on 1/8/2013, and the project wanted to use the 45-day grace period, the user should select that their project was in service prior to 12/4/2012. Similarly, projects that have a gross rent floor effective as of the carryover allocation date (or reservation letter date for bond projects) during the 45-day grace period, and want to use the prior year, should select that the gross rent floor was effective as of the prior year. For example, if a project received a carryover allocation letter on 1/8/2013, and the owner did not elect placed in service date as the gross rent floor, and the project wanted to use the 45-day grace period, the user should select that their gross rent floor was effective prior to 12/4/2012.

(2) For HUD FY 2013 HUD originally issued income limits on December 4, 2012 then issued revised income limits on December 11, 2012. In IRS LIRC Newsletter #50, the IRS has stated that the effective date for the revised FY 2013 income limits is December 4, 2012. Based on this guidance, the Rent & Income Limit Calculator® uses December 4, 2013 for the effective date for the revised FY 2013 limits. Please see IRS LIRC Newsletter #50 for more detail.

(3) An area may lose its rural area status. There is no clear guidance that a project is held harmless at the national non-metropolitan income limits when an area loses its rural status. The Rent & Income Limit Calculator® assumes that a project that is not indicated as rural in the current year was also not rural in the prior year, and therefore, does not receive hold harmless treatment based on the prior year national non-metro amount.

Please consult your state agency and tax advisor for further clarification.

(4) USDA may change their determination of what projects qualify as rural during the course of a year. Please periodically check with USDA to determine the continued rural eligibility of your project.

The national non-metropolitan median income has been adjusted for household size based on the family size adjustments outlined in the HUD Briefing Materials and as shown in each year's HUD FAQ. The IRS did not specify whether or not to round to the nearest \$50, however, the Rent & Income Limit Calculator® will round to the nearest \$50 in accordance with the methodology referenced in HUD Briefing Materials.

<sup>(6)</sup> A project uses HERA Special if income was determined prior to 1/1/2009 and the project is in a HERA Special county. A project's income limits are held harmless at the prior year income limits if income was determined in the prior year or earlier and the income limits have decreased. Please note that the IRS has informally indicated that the definition of "determined" for purposes of the HERA Special and MTSP Hold Harmless income limits means that a project was placed in service. Please see [IRS LHC Newsletter #25](#) for more information about "determined" and projects with buildings that were placed in service before and after HUD income limit effective dates. Therefore, projects placed in service prior to 1/1/2009 are generally eligible for HERA Special. Please see footnote 7 for information about acquisition/rehabilitation projects.

<sup>(6)</sup> Internal Revenue Code Section 142(d)(2)(i) indicates that hold harmless applies on a calendar year. The Rent & Income Limit Calculator® assumes that "calendar year" in the hold harmless rule means the HUD Fiscal Year. For example, the 2009 calendar year means the HUD Fiscal Year from 3/19/2009 through 5/13/2010. In other words, the Rent & Income Limit Calculator® assumes that "calendar year" in the hold harmless rule means the highest income level achieved during any HUD Fiscal Year.

The Rent & Income Limit Calculator® assumes that a rural project will receive hold harmless treatment at the national non-metro amount based on the prior year national non-metro amount if the national non-metro median income were to fall from year to year. If a rural project qualifies for HERA Special and the HERA Special is higher than the national non-metro, then the HERA Special amount will be used. Please note that the IRS has not issued guidance that specifically allows hold harmless treatment at the national non-metro amount for rural projects, however, Internal Revenue Code 42(g)(4) by reference to Internal Revenue Code 142(d)(2)(E) implies that hold harmless treatment would apply at the national non-metro amount for rural projects. Please consult your tax advisor for further clarification.

<sup>(7)</sup> Please note that for acquisition/rehabilitation projects, the IRS guidance indicates that income and rent limits are determined at the later of the acquisition date or when management begins income-qualifying households in the project. For example, if a project was acquired in 2011, the rehabilitation was placed-in-service in 2012, and management began income-qualifying households in 2011 then the project would be considered placed in service in 2011 for income and rent purposes. If a project was acquired in 2011, the rehabilitation was placed-in-service in 2012, and management began income-qualifying households when the rehabilitation placed-in-service in 2012, then the project would be considered placed in service in 2012 for income and rent purposes. Please see [IRS LHC Newsletter #25](#) for more detail. Please consult your tax advisor for further clarification.

<sup>(8)</sup> [Revenue Procedure 94-57](#) gives guidance on the gross rent floor election.

#### **Tax credit projects without bond financing:**

"The Internal Revenue Service will treat the gross rent floor in section 42(g)(2)(A) as taking effect on the date an Agency initially allocates a housing credit dollar amount to the building [generally referred to as the 42M letter] under section 42(h)(1). However, the Service will treat the gross rent floor as taking effect on a building's placed in service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed in service date and inform the Agency that made the allocation to the building no later than the date on which the building is placed in service."

#### **Tax credit projects with bond financing:**

"The Service will treat the gross rent floor as taking effect on a building's placed in service date if the building owner designates that date as the date on which the gross rent floor will take effect for the building. An owner must make this designation to use the placed in service date and inform the Agency that issued the determination letter to the building no later than the date on which the building is placed in service."

<sup>(9)</sup> The Rent & Income Limit Calculator® assumes all buildings in a project have a rent floor effective date under [Revenue Procedure 94-57](#) in the same HUD Fiscal Year. However, if your buildings have rent floor effective dates under [Revenue Procedure 94-57](#) in different HUD Fiscal Years, then you should run the calculator separately for each group of buildings in a particular HUD Fiscal Year.

The Rent & Income Limit Calculator® assumes that different AMGI limits (40%, 35%, 30%, etc.) chosen by the user will also have a rent floor election under [Revenue Procedure 94-57](#) from the same HUD Fiscal Year that applies to the federal level of 50% or 60%.

<sup>(10)</sup> The Consolidated Appropriations Act of 2014 changed how the 30% income limits is calculated. The 30% limit,

which is now called the extremely low income limit, is determined by taking the greater of the 30% income limit as calculated by HUD or the poverty level as determined by the Department of Health and Human Services, which is then capped at the 50% Very Low Income Limit (VLI) published by HUD. HUD has only published the data up to 8 people. For household sizes above 8 people please visit the following website:

[http://www.huduser.org/portal/datasets/vli/index\\_00011.html](http://www.huduser.org/portal/datasets/vli/index_00011.html)

**Terms of Use:**

Utility allowances are inputted by the user and are not reviewed or verified by Novogradac & Company LLP. Novogradac & Company LLP provides no assurance of the accuracy of the particular results you may obtain from the Rent & Income Limit Calculator®; which is designed only to be a quick reference tool and is no substitute for professional tax and accounting advice. The Rent & Income Limit Calculator® should not be used for any final financial decisions. IRS guidelines and actual HUD amounts should be used for any final decisions. Novogradac & Company LLP does not guarantee the accuracy of the amounts shown above. As consideration for your use of this tool, free of any requirement to pay any related monetary compensation to Novogradac & Company LLP, you agree to hold Novogradac & Company LLP harmless from any damages and claims related to use of the Rent & Income Limit Calculator®. If you do not agree with the terms of this paragraph, you may not use the Rent & Income Limit Calculator®.

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REAL ESTATE PURCHASE AND SALE AGREEMENT

This AGREEMENT, dated the 27<sup>th</sup> day of August, 2015 (the "Contract Date"), is between Northland Enterprises, LLC, or its permitted assignee, having a place of business at 17 South Street, 3<sup>rd</sup> floor, Portland, Maine 04101, and Dr. Michael Bedecs having a place of business at 1375 Congress Street, Portland, Maine 04102 (collectively, "Seller") and Paul Dubois and Kimberly A. Dubois (collectively "Purchaser"), an individual with an address at 1915 Congress Street, Portland, Maine 04102.

WHEREAS, pursuant to that certain Real Estate Purchase and Sale Agreement dated June 11, 2014, as amended (the "Elks P&S"), by and among Seller, Dr. Michael Bedecs ("Bedecs"), and Portland Lodge No. 188 of the Benevolent and Protective Order of Elks of the United States of America (the "Elks"), and subject to terms and conditions thereof, Seller (together with Bedecs), is the potential purchaser of certain land and buildings as further described in the Elks P&S (the "Elks Property"); and

WHEREAS, in order to proceed with the purchase of the Elks Property and Seller's intended development thereof, Seller requires the City of Portland to approve a change in zoning from Residential R-2 to Office Park (O-P) (the "Zoning Change"); and

WHEREAS, Purchaser's existing property abuts the Elks Property ("Purchaser's Abutting Lot"); and

WHEREAS, Purchaser's Abutting Lot is a non-conforming lot; and

WHEREAS, Seller, contingent upon the closing on the Elks Property by Seller, has agreed to convey a 10 foot wide strip of land to Purchaser, pursuant to the terms hereof;

NOW, THEREFORE, the parties agree as follows:

1. **Purchase and Sale of Property.** Subject to the terms and conditions set forth herein, Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, a certain strip of land measuring approximately 10 feet by 156 feet long (the "Property") abutting Purchaser's existing property, as further described on the sketch plan attached hereto as Exhibit A. The parties agree that the final description of the Property shall be a metes and bounds description to be prepared by Seller.

2. **Consideration.** Purchaser agrees to make the following agreed consideration for the Property (the "Consideration"):

- (a) Purchaser shall pay Seller's actual costs and expenses of the conveyance, including without limitation Seller's engineering, surveying.

and legal fees; provided, however, that the total of such fees shall not exceed \$1,750; and

(b) Purchaser shall make a one-time donation to the Elks of \$1,500.

The foregoing Consideration shall be paid at Closing.

3. Adjustments. Real estate taxes for the then current tax period shall be apportioned as of the day of performance of this Agreement and the net amount thereof shall be added to or deducted from, as the case may be, the Consideration payable by the Purchaser at the time of delivery of the deed.

4. Conveyance. Seller shall convey the Property to Purchaser by good and sufficient quitclaim deed with covenant (the "Deed").

5. Contingencies. The Seller's obligation to close hereunder is expressly conditioned on the following:

(a) Seller shall have obtained the Zoning Change;

(b) Seller shall have obtained Site Plan Approval and all other approvals from the City of Portland as Seller may deem necessary and proper for Seller's intended use of the Elks Property;

(c) Seller shall have obtained all building and other permits for the commencement of work on the Elks Property; and

(d) Seller shall have closed on the Elks Property pursuant to the Elks P&S.

6. Time for Performance; Delivery of Deed. The transfer of title (the "Closing") shall take place on same date, time, and place as the closing to be held pursuant to the Elks P&S, as such date may be extended, or at such other place as shall be mutually agreed to by Purchaser and Seller. TIME IS OF THE ESSENCE.

7. Broker's Commissions. Seller and Purchaser represent to each other that no real estate broker, licensed or otherwise, brought about this transaction. The parties agree to indemnify and hold each other harmless from and against any and all claims, liabilities, damages, costs and expenses (including without limitation, reasonable attorneys and paralegal fees) arising out of or in connection with any claim made against the other party by any person claiming any fee or commission with respect to the sale of

the Property. The provisions of this paragraph shall survive the delivery of the deed hereunder.

8. **Default.**

(a) If Purchaser fails to perform its obligations as set forth in this Agreement, then Seller's sole and exclusive remedy shall be to seek equitable relief for specific performance in lieu of recovering money damages.

(b) If Seller fails to perform its obligations as set forth in this Agreement, Purchaser may pursue any remedy at law or in equity to which it may be entitled, including without limitation specific performance.

9. **Acceptance of Deed.**

The acceptance of the Deed by Purchaser at the Closing shall be deemed to be the full performance and discharge of every agreement, obligation and representation made on the part of Seller, except as expressly set forth herein or in such Deed. No provisions, agreements or representations herein shall survive the Closing except as specifically stated herein. The Property is being sold and will be conveyed "as is" without any representation or warranties as to habitability, merchantability, fitness, condition or otherwise. Neither party is relying upon any statements or representations not embodied in this Agreement.

10. **Risk of Loss.** The risk of loss shall remain on Seller at all times until closing except for loss or damage to the extent caused by Purchaser.

11. **Miscellaneous.**

(a) Seller and Purchaser shall each pay their portion of the Maine State Transfer Tax, if any. The parties anticipate no Maine State Transfer Tax shall be due.

(b) Seller hereby certifies that Seller is a resident of the State of Maine. Seller hereby acknowledges Purchaser's requirement to withhold 2½% of the Consideration pursuant to 36 M.R.S.A. § 5250-A if Seller is not a resident of the State of Maine, unless Seller presents to Purchaser at closing a Certificate of Exemption or Certificate of Reduction from the State of Maine Bureau of Taxation.

(c) By signing this Agreement, Purchaser acknowledges that Purchaser has been notified of the State of Maine's withholding tax requirement pursuant to 36 M.R.S.A. § 5250-A.

(d) Seller hereby certifies that Seller is a resident of the United States of America and is not subject to the 10% withholding tax imposed upon "foreign persons" by Section 1445(a) of the Internal Revenue Code of 1954.

(e) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors in interest and permitted assigns.

(f) Purchaser's rights under the Agreement are not assignable without the prior written consent of Seller, which consent shall not be unreasonably withheld. Any purported assignment in violation of this provision shall, at Seller's option, be null and void and shall confer no rights on the purported assignee and may, at Seller's option, be treated as a default by Purchaser hereunder.

(g) It is understood and agreed that all understandings, agreements, warranties or representations, either oral or in writing, including without limitation any letters of intent or prior agreements, heretofore between the parties hereto are merged in and superseded by this Agreement, which document alone fully and completely expresses the parties' agreement with respect to the transactions covered hereby. This Agreement may not be modified in any manner except by a subsequent instrument in writing signed by Seller and Purchaser.

(h) This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall constitute but one and the same instrument.

(i) If the date for performance of any obligation hereunder, or the giving of any notice hereunder, falls on a Saturday, Sunday or a legal holiday in the State of Maine, the period for such performance, or the giving of any notice hereunder, shall be extended to the next business day.

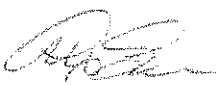
(j) This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Maine.

12. **Expiration of Offer.** This Agreement, executed by Seller, constitutes an offer to sell to Purchaser on the terms described herein, which offer shall be deemed automatically withdrawn if not accepted by Purchaser, evidenced by delivery to Seller of a copy of this Agreement executed by Purchaser, on or before Friday, August 28, 2015, at 5PM.

IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument as of the date set forth below their respective signatures, to be effective as of the Contract Date.

SELLER:

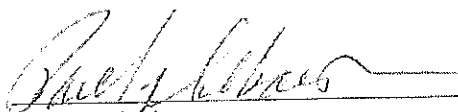
Northland Enterprises, LLC.

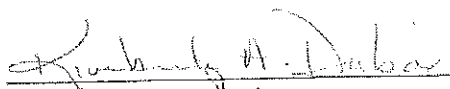
By:  9/27/15  
Rex Bell

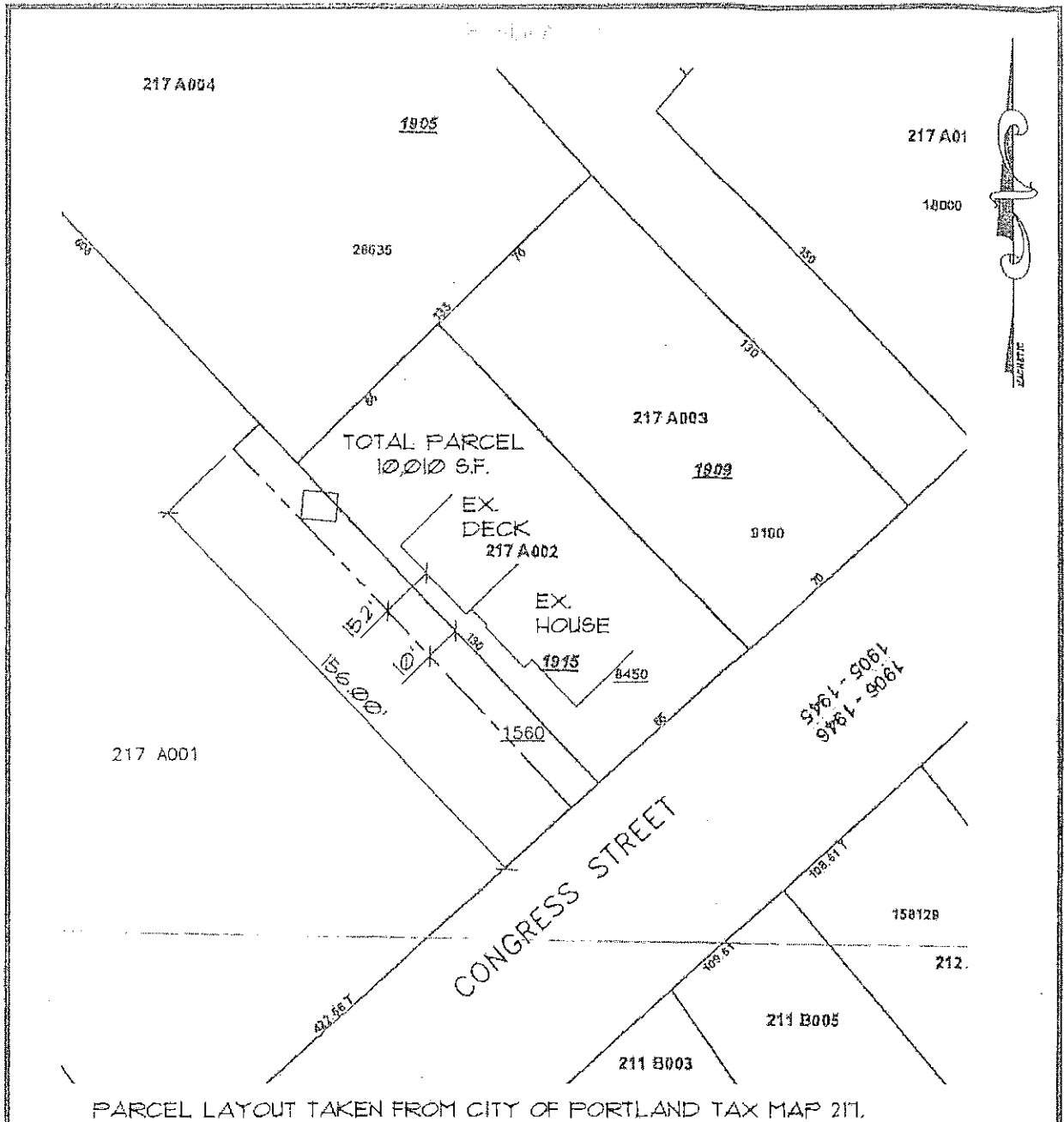
Its: Manager

  
Dr. Michael Bedecs

PURCHASER:

  
Paul Dubois

  
Kimberly A. Dubois



## 1915 CONGRESS STREET LAND TRANSFER

**PINKHAM & GREER**  
**CIVIL ENGINEERS**

NORTHLAND ENTERPRISES, LLC  
 1945 CONGRESS STREET  
 ELKS LODGE, PORTLAND, MAINE

**CSK-2**

28 VANNAH AVE. PORTLAND, ME. 04103

SCALE: 1"=40'

DATE: AUGUST 24, 2015

CHK BY: TSG

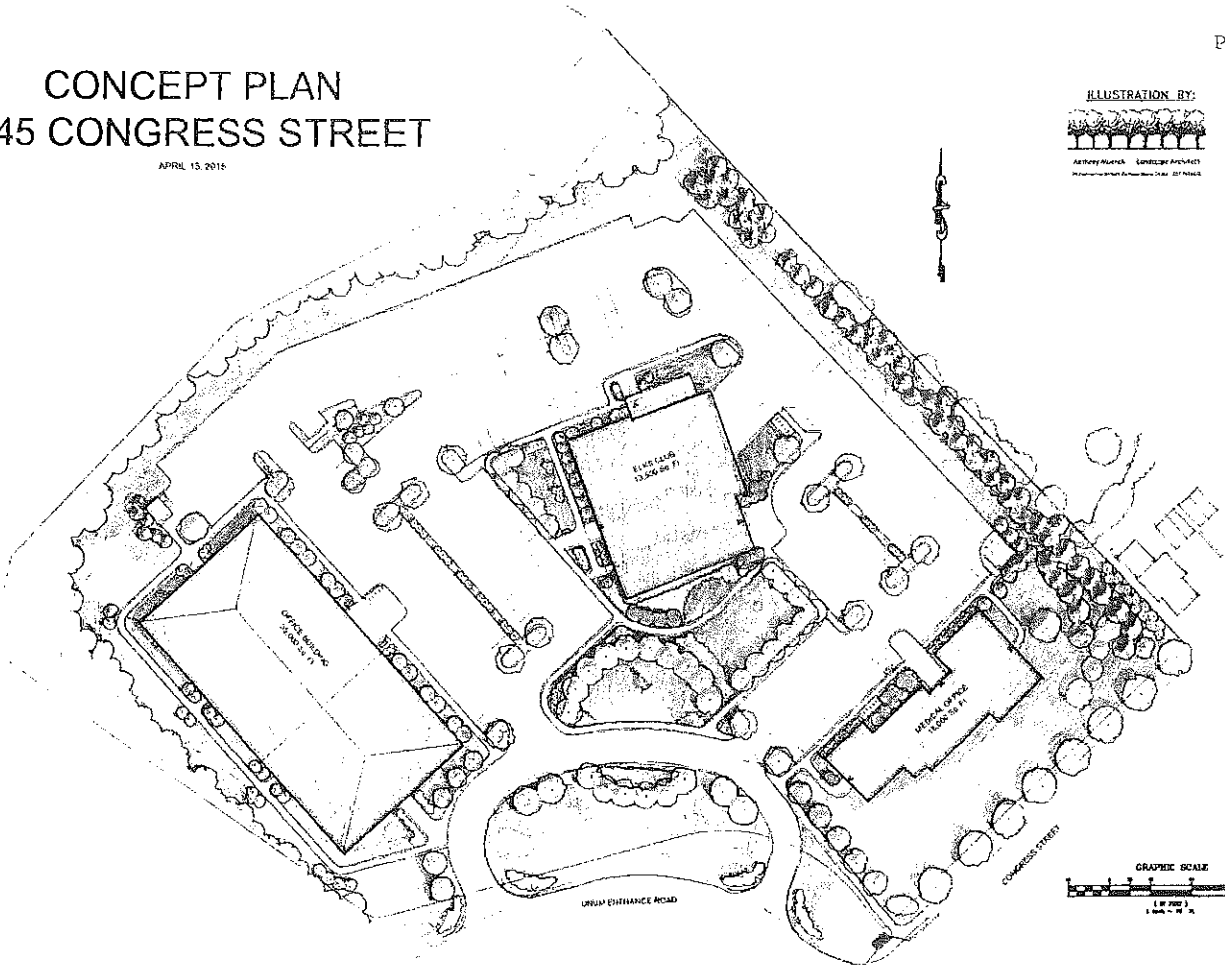
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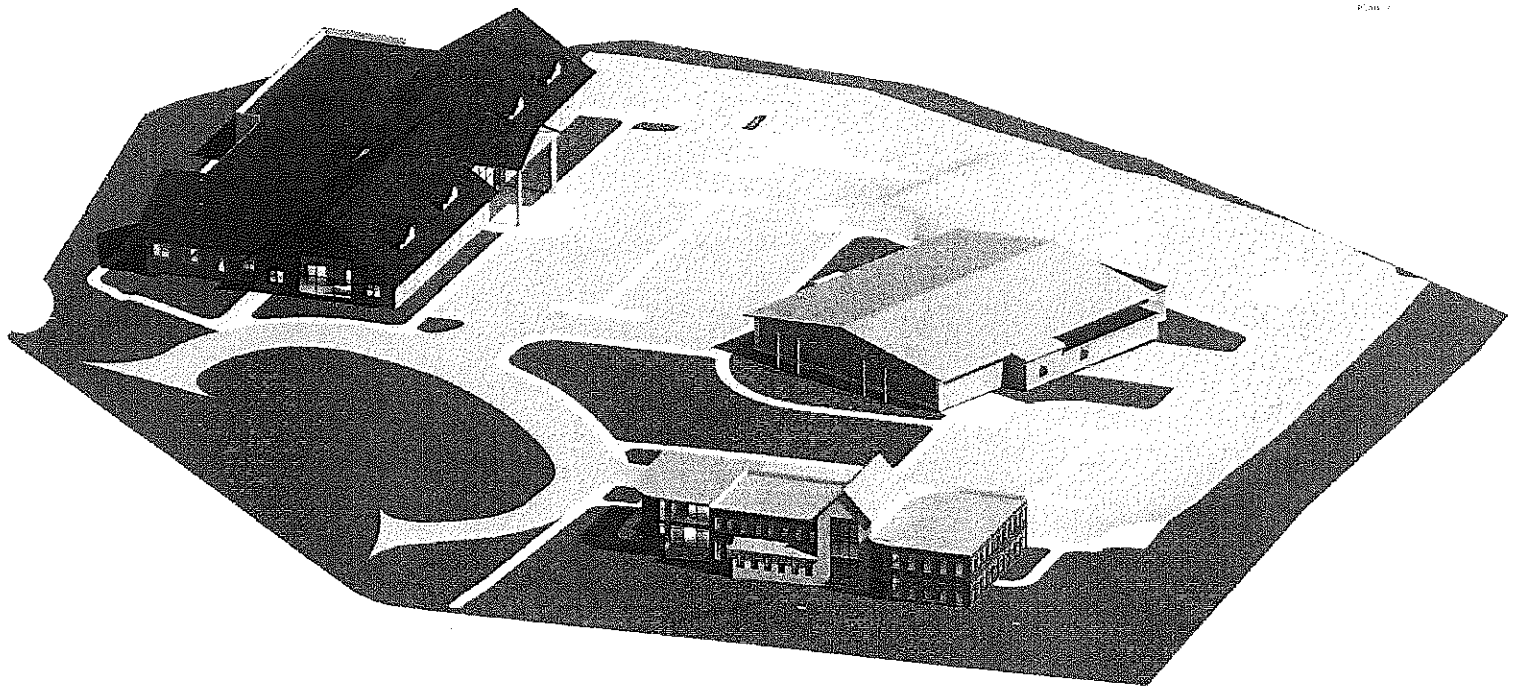
PKS (B) KMD

# CONCEPT PLAN 1945 CONGRESS STREET

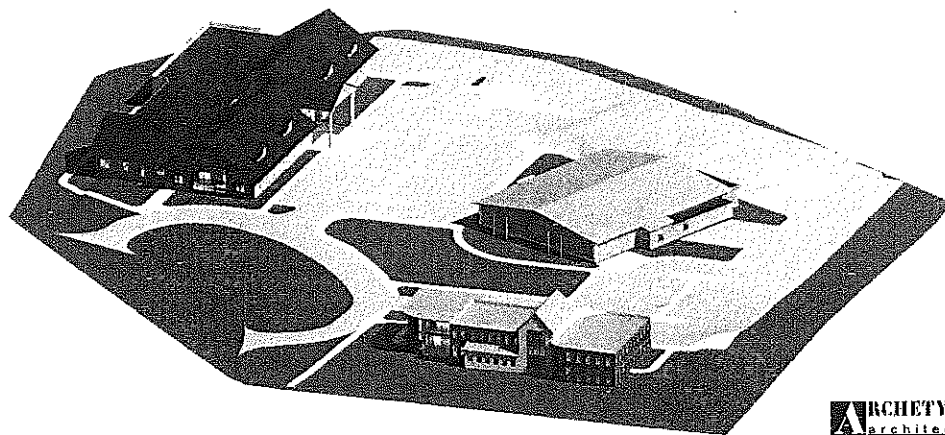
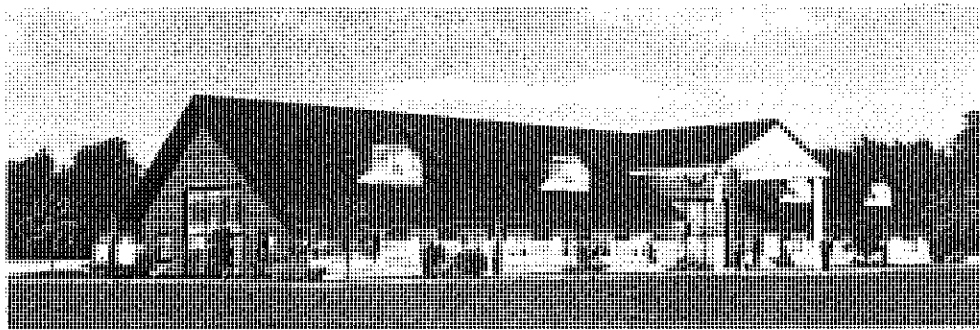
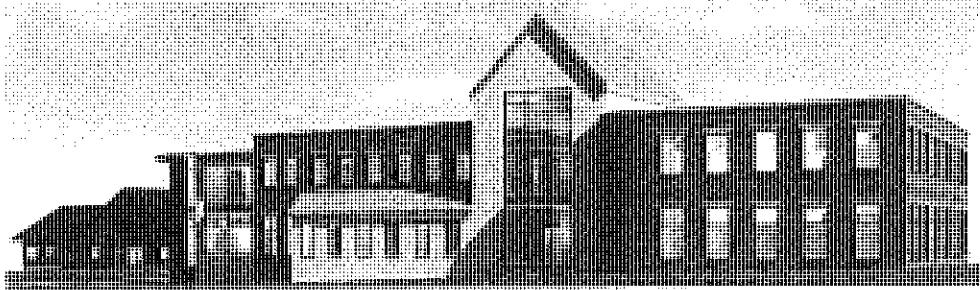
APRIL 15, 2016

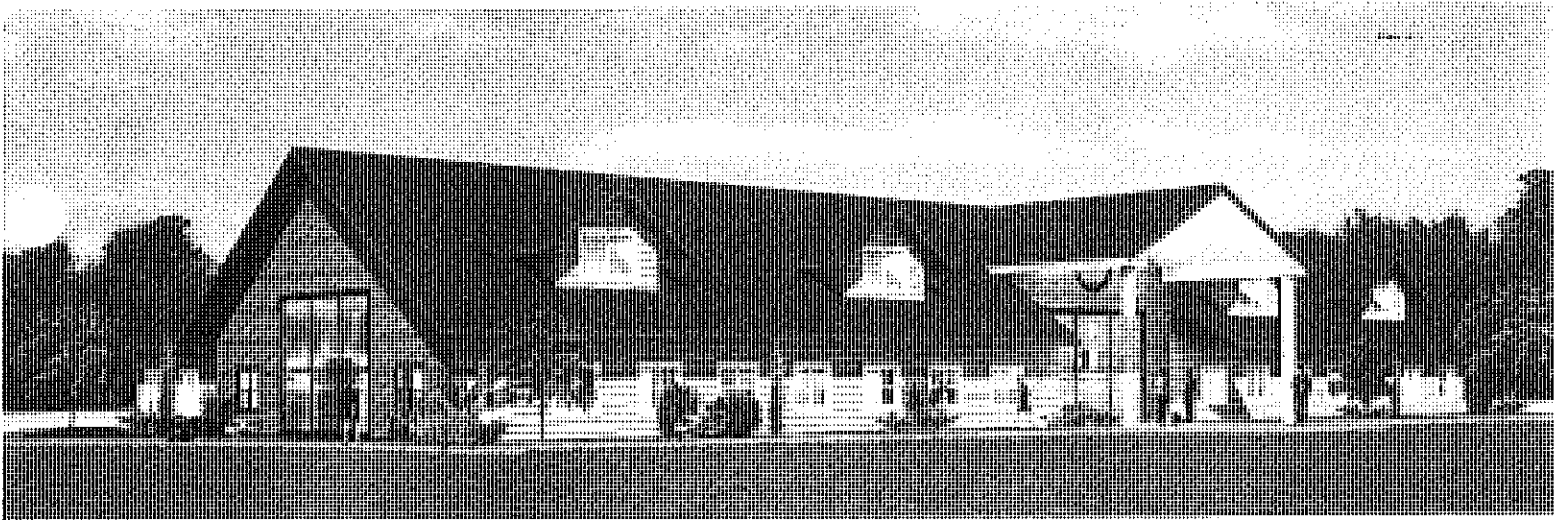
ILLUSTRATION BY:  
ANTHONY MARCHETTI LANDSCAPE ARCHITECT  
10100 W. 10TH AVE. SUITE 200 DENVER, CO 80202

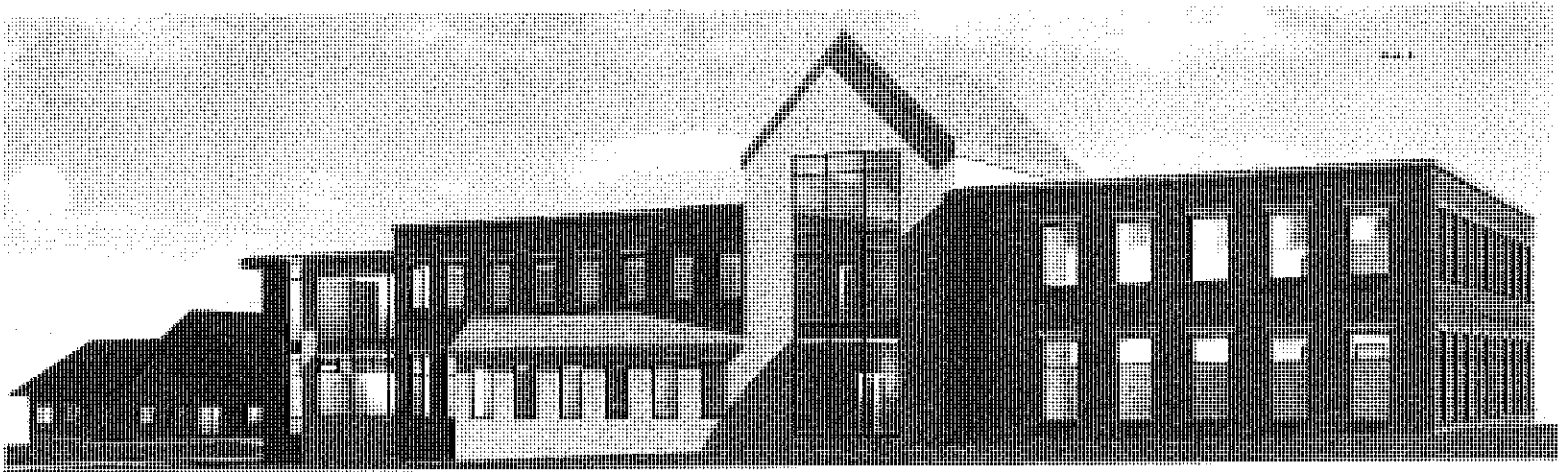


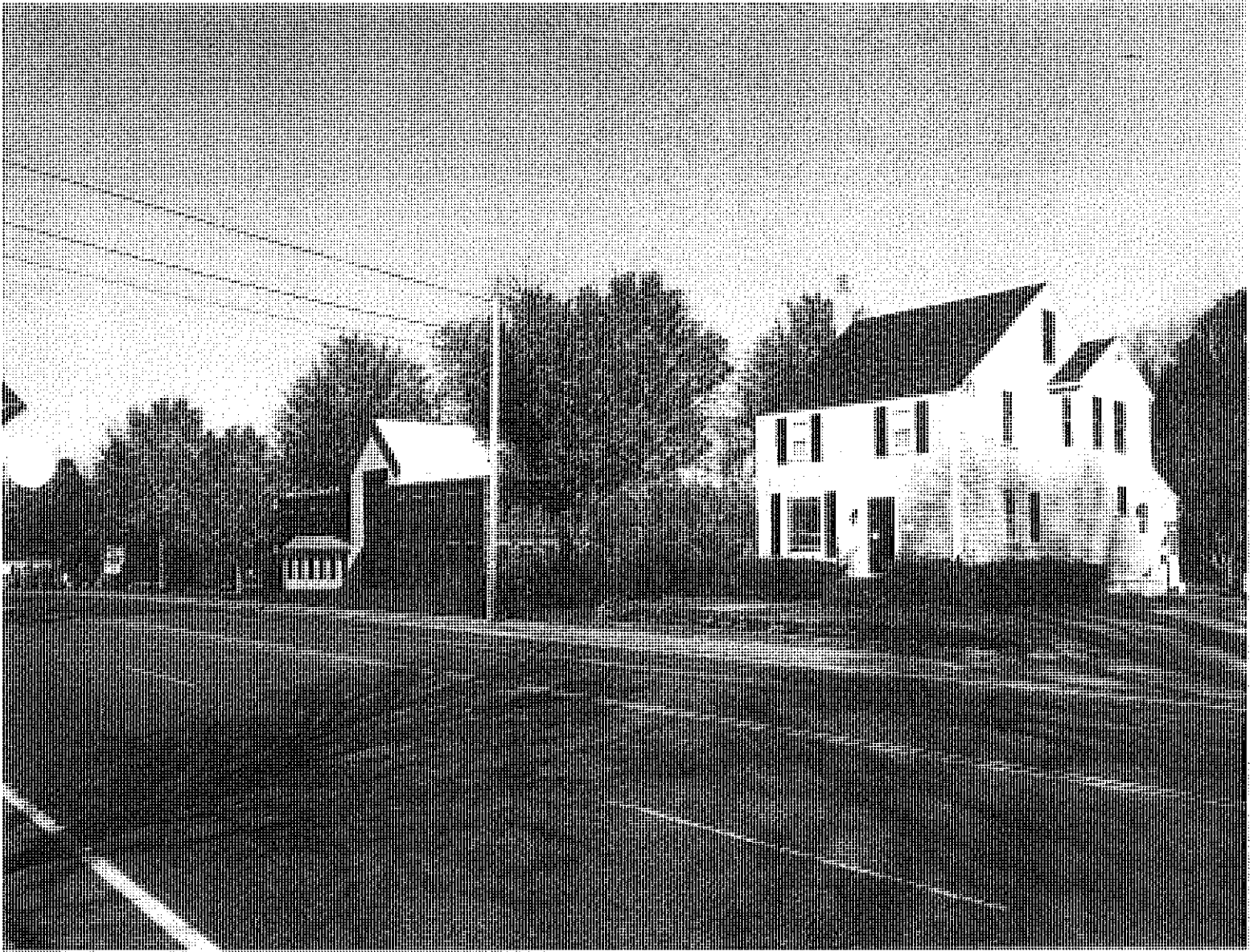


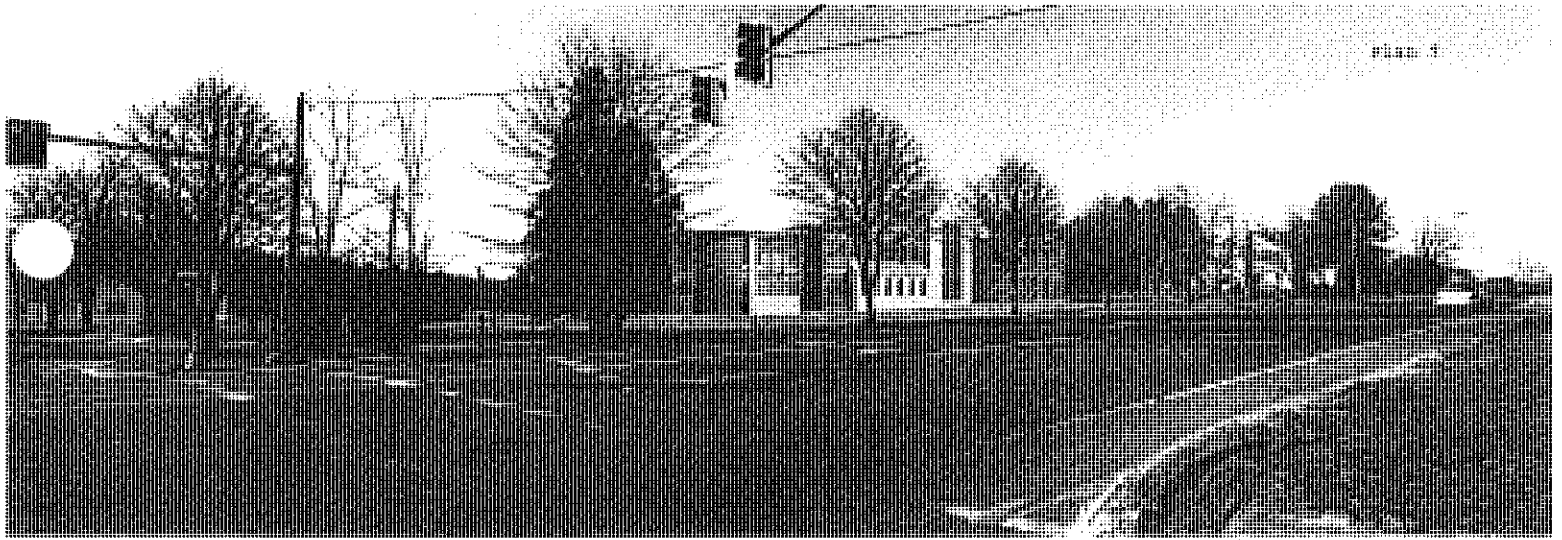
Plan 3











William S. Linnell & Joyce Gauthier, et al,  
1905 Congress Street  
Portland, ME 04102-1903

January 16, 2015

Mr. Alex Jaegerman  
Director,  
Planning and Urban Development Department  
City of Portland  
389 Congress Street  
Portland, ME 04101

RE: Elks Club Property Zone Change Application, 1945 Congress Street

Dear Alex:

In addition to the comments we sent along Wednesday, please distribute and post these comments describing our concerns regarding the proposed zoning change.

**First:** There have been comments suggesting that instead of changing the zoning to OP, that there may be interest in changing the zoning to R-P. We believe that R-P zoning would be equally inappropriate for this project, as the ordinance states that the purpose of the R-P zone is for low-intensity business use.

Section 14-146 of the code reads:

"The purposes of the R-P residence-professional zone are:

- (a) To provide appropriate location for the development and operation of low-intensity business uses, including professional offices on or near major arterials, that are compatible in scale, density and use with surrounding and adjacent residential neighborhoods; or
- (b) To serve as a transition or buffer zone between residential and more intensive nonresidential zones. "

This project, by no stretch of the imagination, can be legitimately called "low-intensity". It actually calls for a high-intensity build out, traffic, and use of the property. Indeed, the submittal calls for 45,310 square feet of building footprint, with 137,201 square feet of office space. Further, nearly every available square inch of remaining land is to be paved, with capacity for some three hundred cars. The city's traffic analysis estimates that during peak hours, traffic volume entering and leaving would be 214 cars *per hour* in the morning, and 204 cars *per hour* in the evening.

In reality, this project simply cannot be deemed low-intensity, and therefore it cannot meet the very definition of the purpose of the R-P zone. To vote in support of a change to R-P would be to declare open season on Portland's zoning laws.

**Second:** The heavy traffic expected with this project, as mentioned above, would seriously compromise all the efforts, planning, and resources that the city has expended in traffic calming in this very location from Westbrook Street to the Airport. To add this onslaught of traffic to this area of limited additional capacity, would be at cross purposes to all that has been done, and is still planned. In stark contrast, keeping the lot zoned R-2 would have little increase in traffic.

**Third:** There are three churches in the area which may follow the Elks' lead if these zoning changes are approved. Their membership could either increase or decline, resulting in their desire to sell, and apply for the same zoning changes as the Elks. The Planning Board, and particularly those who live near these churches would be faced with a dramatic change in the character of the neighborhood.

**Fourth:** As staff has noted in their comments on this project, (see Memorandum dated 1-16, section VII, Comprehensive Plan Analysis) the Comprehensive Plan calls for directing office development to the downtown area.

The Planning staff says, "It should also be noted that there is policy in the comprehensive plan that seeks to focus office development in the downtown core; the "Office Economy" goals from the 1991 Downtown Vision plan include "[s]trengthen[ing] and enhanc[ing] the Downtown as the prominent professional office center of the State and northern New England." In a similar vein, the city's Industry and Commerce Plan from 1994 includes goals related to "preserv[ing], protect[ing], and strengthen[ing] neighborhoods" and "protect[ing]...residential zones."

The proposed plan to increase office development out of the downtown area is in direct contradiction to the Comprehensive Plan. For this reason also, the Planning Board should reject the zone change.

**Fifth:** I also note that the staff analysis of the Comprehensive Plan mentioned in section VII would benefit from more discussion of the Comprehensive Plan's stated goals to create all kinds of housing. Page 43 of the Comprehensive Plan is devoted to housing goals, yet the staff analysis is practically silent on the issue. I quote at length from page 43 of the comprehensive Plan because it is unequivocally adamant about creating housing:

Page 43 reads, "... **Portland has a long history of planning for its housing needs and programs** ...

**I. HOUSING: SUSTAINING PORTLAND'S FUTURE- November 18, 2002**

**Overall Goal**

Portland, as Maine's largest city, will strive to provide a sufficient supply of quality housing commensurate with a manageable level of growth to sustain the city as a healthy urban center in which to live and work, and its position as a growing regional economic and service center.

The existing housing stock will be enhanced and preserved, **and a wide variety of housing will be designed and created** to support Portland's continued economic development, insure the safety of its citizens, and **maintain its vibrant and stable neighborhoods**.

When seeking solutions to Portland's housing needs and issues, the city will strive for innovation and creativity in the areas of urban design, **expenditure of its financial resources**, and **the use and reuse of land** and buildings to ensure that residential development fits within Portland's unique living environment.

**Goal**

**Ensure that an adequate supply of housing is available to meet the needs, preferences, and financial capabilities of all Portland households, now and in the future.**" (emphasis added)

It is hard to imagine that the Comprehensive Plan could be any clearer or stronger in calling for more housing. This imperative for more housing should be recognized by planning staff and Planning Board members, and applied in consideration of this proposal. The Elks Club proposal is 180 degrees contrary to the Comprehensive Plan.

**Sixth:** I would like to straighten out a disconnect in the staff report on the January 5th neighborhood meeting. In the Memorandum to the Planning Board dated January 16, section VIII, "Public Comment," the staff report states that

"Comments at that meeting seemed to include questions about signs, parking requirements, stormwater management and environmental impacts, and lighting. Some neighbors expressed general opposition (Attachment 3)." (emphasis added)

Please contrast that assessment of "general opposition" with the developer's report of the meeting:

"Our neighbor, adjacent Congress Street, Bill Linnell, noted he was opposed to the project and thought a housing project would meet the Comprehensive Plan better. We noted we had sent a brief summary of how this project conforms to the Comprehensive Plan to the staff already. He will get a copy of that."

-I, the undersigned Bill Linnell, was the one who expressed opposition, speaking also for Joyce Gauthier, who was present, and Janet Burns, who was not. My opposition was specific in challenging the plan as "grossly inconsistent with the Comprehensive Plan."

I would like those who read about that neighborhood meeting to know that from day one, I expressed, on behalf of myself, a neighbor across the street, and another abutter, an unambiguous challenge to the

proposal with respect to its inconsistency with the Comprehensive Plan, namely that the proposed zone change is grossly inconsistent with the clear, stated, unmistakable policy goal of creating more housing in the future. I compared the Comprehensive Plan's focus on housing to the new Meghan Trainor song "All About that Bass," saying that "the Comprehensive Plan is **all about housing**." I said further that 'When you remove land from R-2 to OP, you are eliminating the possibility for housing. The City's Comprehensive Plan is all about creating new housing—all kinds of housing, including single family. In fact, if you knock down an existing apartment building to be replaced with non-residential uses, the developer has to contribute money for replacement housing. In this instance, the City would be totally eliminating land zoned for housing, and changing it to a zone that does not allow for housing.'

In short, the neighborhood meeting included specific, pointed opposition to the proposal as it contradicts the Comprehensive Plan's mandate of creating more housing. I ask that this opposition be recorded in the staff's comments.

**Finally:** For all the reasons listed above, we continue to respectfully ask the Planning Board to recommend to the City Council that the proposed zoning changes be denied.

Sincerely,

William S. Linnell & Joyce Gauthier 1905 Congress Street

Janet Burns 1904 Congress Street

January 14, 2015

David P. Silk  
1187 Westbrook Street  
Portland, ME 04102-1928

Ms. Helen Donaldson  
Planning and Urban Development Department  
City of Portland  
389 Congress Street  
Portland, ME 04101

RE Elks Club Property Zone Change Application, 1945 Congress Street

Dear Neil:

I live in the Stroudwater neighborhood and I am a member of the Stroudwater Village Association. I write in my own individual capacity to express my view as to why the Planning Board should not recommend to the City Council approval of Northland Enterprises, Inc.'s application to rezone the Elks Club property at 1945 Congress Street from R-2 to OP. Can you please forward this letter to the Board as part of the packet of information the Board is to receive on the applicant's proposal.

As an initial matter, in the applicant's material you were kind enough to send to me, I did not see anywhere the applicant's explanation on how the proposed zone change is consistent with the Comprehensive Plan. Unless and until the applicant attempts to explain how it's parcel specific zone change application is consistent with the Comprehensive Plan, and makes that information timely available to the public prior to any Planning Board meeting, the Board should defer hearing the proposal.

I am not aware of any proposed one parcel only zone change (as opposed to a large area with multiple parcels) that sought to change an existing and to be continued use on the property from legally conforming to legally nonconforming but that is what the applicant seeks here. The applicant represents that with the proposed parcel zone change the Elks Club will continue to be used as a place of

assembly. Application at 4. A place of assembly is a conditional use in the R-2 zone because it is viewed as typically harmonious with residential uses. Places of assembly are not permitted, either by right or as a conditional use, in the OP zone. I cannot think of any zoning justification for a parcel only zone change that has the effect of converting an existing and to be continued use from legally conforming to legally nonconforming. I am not aware of anywhere in the Comprehensive Plan where it is a planning goal of the City through a parcel only zone change to convert a legally conforming use that is to be continued to nonconforming. By definition if the change is approved, the City would be permitting a nonconforming use to continue. But the goal of zoning is to eliminate over time nonconforming uses, not to convert legal uses into to a use prohibited in the proposed zone. It cannot be consistent with the Comprehensive Plan to approve a parcel only zone change that makes an existing lawful use nonconforming.

Continuing on the issue of consistency with the Compressive Plan, the City has a very clear goal of creating more housing, all kinds of housing. As a R-2 zone, permitted uses include single family detached residential housing. The area of the City zoned R-2 is finite and located in the outlying areas (off of outer Auburn Street, outer Washington Ave, outer Allen Ave, outer Westbrook Street and outer Congress Street). Most of these streets are major traffic carrying arterials and have limited additional capacity for traffic.

The purpose of R-2 is to "provide for low-density residential development characterized by single-family home on individual lots in outlying areas of the city and along traffic corridors with limited additional traffic capacity." Looking at the zoning map one can see that much of the R-2 has been built out over the last twenty to thirty years consistent with the standards in the R-2. But some open areas remain including areas along outer Congress Street. I am not aware of any reason why the stated policy of the R-2 zone remains less vibrant today. In contrast to the applicant's proposed multi-story professional office buildings, single family detached residential uses in these areas would cause less of an impact on already overburdened roads.

Conditional uses in the R-2 include places of assembly. In the R-2 over the last 30 years several places of assembly located to the R-2 zone. That can be seen on outer Congress Street (as well as outer Washington Ave., outer Allen Ave. and

outer Westbrook Street). On outer Congress Street there are two places of assembly (churches) located almost across the street from the Elks Club. When these places of assembly located to outer Congress Street they knew of the limited uses in the R-2 zone. Because of the limitation on use, they knew if they ever decide to sell, the market would be quite limited. That limitation on use has served the conditional uses quite well as the uses have been established in a residential zone in a manner consistent with the characteristics of the area. The two churches and the Elks Club are situated with significant open space facing Congress Street with the building to hold the assembly and parking set back quite a distance from Congress Street, all to preserve the open space characteristics of outer Congress Street and to be compatible with the permitted R-2 uses. The proposed zone change will destroy this balance.

A zone change should not be approved simply to accommodate the financial goals of a property owner especially when the owner developed the property aware of the limitations on use. Unlike the Williston West Church, the Elks Club building lacks any unique historical features. It is not a landmark structure and need not be preserved if its location interferes with the development of residential subdivision which means more housing for the City in an area zoned for housing.

Also relative to outer Congress Street, in the last 20 years two significant single family residential subdivisions (Tide Mills and River's Edge) have been built out directly off of Congress Street in very close proximity to the Elks Club as contemplated by the R-2 zone. River's Edge was built as a contract zone (conditional R-3) but is fully consistent with the policy and permitted uses in the R-2. They are both very close to Congress Street and are fully built out as there is a demand for single family detached housing within the City.

The Comprehensive Plan has as a goal of no net loss of housing for all development. That goal is incorporated into the Land Use Code. While there is no existing housing on the Elks Club property, changing the zone from R-2 to OP removes the land from the R-2 capable of being developed for residential housing. Residential uses are prohibited in the OP zone. Rezoning land to eliminate residential uses like removing dwelling units with no replacement of those units is clearly not consistent with the Comprehensive Plan's goal of creating more housing in the City.

While the Board is not acting on any site plan application at this time, the applicant's proposed site plan visual shows that the applicant is proposing two multi-story generic commercial/medical office buildings with lots of parking and nothing close to what meets the OP purposes and standards.

The purpose of the OP is to "provide substantial areas for integrated development of professional offices in a park-or campus-like setting which are of the highest quality, are well maintained and are compatible with their natural surroundings." One is hard pressed to see in the visual any park or campus like setting compatible with the natural surroundings. The 1945 Congress Street lot is not a "substantial area." If Board members are not familiar with an OP zone, they should ride by and through UNUM's campus. That will show that there is little if any parking visible from the street, significant natural features remain between the street and improvements, open space remains and is visible from the public way, trails and sidewalks are available, and the site clearly has a park or campus like feel. Compare UNUM's development to the OP policies and standard and you will see UNUM fits. The applicant's proposal absolutely does not.

In reality, the applicant's proposal is a run of the mill multi-story professional office structure that pretty much consumes most of the site. It is clearly not a campus. It clearly does not create a park like setting. Unlike the UNUM campus, and the places of assembly along outer Congress Street and near the site, one of the two proposed multi-story office buildings fronts immediately on Congress Street. It is not set back from Congress Street with an open space and natural vegetation buffer between the development and the street. It is not compatible with the natural surroundings and with the existing development pattern created by the nearby homes and places of assembly.

The OP standards call for a Master Plan of the office park that shall include a design relationship to the site to show integration of open space and the natural features. That integration "shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens and benches." None of that can be included on the proposed site given the proposed building envelopes and parking. One cannot shoehorn the features of an OP zone into this site and legitimately call what is proposed within the realm of what the OP zone envisions.

On the visual there are no internal sidewalks that take advantage of the "topography and natural features of the site." There is a mass of parking being proposed right next to what will still be a R-2 zone with little preserved of the natural features. Because of the lack of a campus setting and retention of natural features, the proposed multi-story buildings will loom large over the abutting residential dwelling units. I see no buffer and screening of the type called for by the OP standards which shall be of a "dense and continuous nature and shall incorporate trees, shrubs, fencing, berms and related elements." I do not see any preservation of natural features which includes existing vegetation. It appears it will be mostly paved over. To call this site suitable for OP designation based on the proposed plan is not possible.

In sum, it appears to me the only reason for the zone change is to accommodate the applicant and to maximize the financial return to the Elks Club. The proposed zone change permits broader uses, professional offices, which makes the land more valuable. But the standard to judge the merits of a zone change is not whether the owner, a place of assembly that is often a non-profit and not subject to property tax, should be able to maximize the return on its investment when the assembly loses critical mass. Otherwise we might as well not have zoning. Having located in the R-2 zone as a place of assembly the owners were on notice that permitted and conditional uses are quite limited. The zone should not be changed simply to broaden the market and/or increase the return for the owners.

Both Tide Mill and River's Edge are successful residential subdivisions located on outer Congress Street on the same block as 1945 Congress. The purpose of the R-2 zone is to direct the placement of additional residential subdivisions in the area. That has occurred. There remains demand for single family detached residential housing in the City. Such development increases the population of the City which is also a goal of the Comprehensive Plan (helps reverse the urban flight). The land is clearly suitable for residential development as it is similar in kind and location to the land that has been recently developed for residential uses. The land should not be removed from the inventory of land available to serve that need simply to maximize the Elks Club's return.

Throughout the City, many places of assembly are conditional uses in residential zones located on major arterials in zones that do not allow for office complexes or other commercial developments. As noted above see outer Washington Ave.,

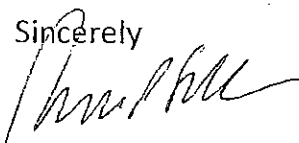
Allen Ave. and Westbrook Street for recent (last 30 years) examples of development of places of assembly in residential zones. Permitting those conditional uses in otherwise residential zones was not an invitation once the assembly's financial health changes to throw away the limitations on uses in the residential zones. When it purchased the 1945 Congress Street property and located to outer Congress Street, presumably the price the Elks Club paid recognized the then limitation on uses. There is nothing unfair or unwise here in affirming the value of the R-2 zone.

The R-2 zone was created consistent with the Comprehensive Plan. As stated in the overall purpose of the Land Use Ordinance, section 14-46: "This article is made with reasonable consideration, among other things, to the character of each zone and its peculiar suitability for particular uses and with a view to conserving and stabilizing the value of property and encouraging the most appropriate use of land throughout the community."

In light of the above, I respectfully request the Board vote not to recommend to the City Council the proposed parcel only zone change for 1945 Congress Street. It is entirely consistent with the Comprehensive Plan for the property to remain R-2 as it will conserve and stabilize the value of property and encourage the use of the property in the manner consistent with the R-2 zone.

Thanks for reading this letter and your service to the City.

Sincerely

A handwritten signature in black ink, appearing to read "David P. Silk", written over the word "Sincerely".

David P. Silk

William S. Linnell, et al,  
1905 Congress Street  
Portland, ME 04102-1903

January 14, 2015

Ms. Helen Donaldson,  
Planning and Urban Development Department  
City of Portland  
389 Congress Street  
Portland, ME 04101

RE: Elks Club Property Zone Change Application, 1945 Congress Street

Dear Ms. Donaldson:

We are abutters to the proposed development. We believe that, to be consistent with the City's stated goals, zoning ordinances, and the Comprehensive Plan, the Planning Board should not recommend to the Council their approval of Northland Enterprise's proposed zoning change from R-2 to OP. Please share this letter with the Planning Board so that they may read it before the workshop on the 20th.

First: Taking this land out of R-2 forever reduces the opportunity for more single-family housing which is a major city goal. This proposal is in total opposition to the Comprehensive Plan, and the purpose of the R-2 zone which is "To provide for low-density residential development in outlying areas of the city and along traffic corridors with limited additional traffic capacity." (Code of Ordinances Sec. 14-76).

The Comprehensive Plan states that the housing goal is to "Ensure that an adequate supply of housing is available to meet the needs, preferences, and financial capabilities of all Portland households, now and in the future." (page 43. Emphasis added.) To change the zoning would therefore be in direct contradiction to stated policies of providing housing including single family detached residential units, for the future. That goal is to help stop sprawl. Further, there is still an increasing demand for housing in the city; that has not changed, and neither have these policies.

Second: When the Elks bought this land, they knew there were limits to its uses, just as we did when we bought the abutting property. Instead of following the limitations of the zone in which they settled, they are asking the board to change the rules for maximum profit. They could follow the existing rules and develop the land for housing, which we would welcome, just as two fairly recent developments have done nearby, namely, at Rivers' Edge and Tide Mills. That would be consistent with current, established rules and policies. It's nice for developers to increase their profits, but their profits should not dictate public policy, nor circumvent the rules and reasons for zoning.

Third: The developer seems to want to create a brand new zone, where two different, mutually exclusive, zones can exist. The current zone allows for the Elks Club to exist (meeting places). But such meeting places are not allowed in the proposed OP zone. Yet the developer wants to change the zone AND keep the Elks Club there. It seems that this approach is asking too much of the Planning Board. It is certainly a radical notion, which would result in the back-door creation of a bizarre new zone.

Fourth: If approved, the proposal would be zoned OP, but would really just look like they stuck in a couple of office buildings, oversized for the area, and then paved the rest of the lot. A few scattered shrubs and a bike rack by no sense of the imagination meet the OP standards for a "park or campus like setting". This lot is not very big. Adding the needed elements such as open space, preserving natural features, trails, sidewalks, gardens, and setbacks with full buffering is not be possible given the size of the buildings they are trying to cram into this lot. To allow this project to proceed would be to ignore the intent and purpose of the OP zone.

Fifth: Traffic is already heavy on Congress Street. Adding more office buildings instead of single family homes would make traffic much worse, not better. The current zoning properly recognizes that single family homes work better on (repeated from above) "outlying areas of the city and long traffic corridors with limited additional traffic capacity." If there's a better example of an 'outlying traffic corridor with limited additional traffic capacity' than the area around 1945 Congress Street, we'd like to know what it is.

Sixth: No developer should be able to achieve, by Planning Board vote, what the City's ordinances and policies clearly don't allow. To create a bizarre new zone at the expense of the integrity of the zoning process would be a mistake. The developer would enjoy the windfall, and the tax base would admittedly increase from what it is today, but nearby and recent developments attest to the viability of neighborhood housing development on outer Congress Street, without sacrificing the protection of the zoning policies and process. Throwing two multi-story office buildings with an ocean of parking into the neighborhood will only lead to a deterioration of the neighborhood, a neighborhood that has been recently improved by the traffic movement changes and will be enhanced with the proposed cross walk at the end of Garrison Street and a lower speed limit. There is a neighborhood here even if you do not see it when you head out to SOPO to shop. The tax base can be increased without shortchanging the process.

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Finally, for the above reasons, we ask that the Planning Board to vote not to recommend the proposed zoning change for 1945 Congress Street to the City Council.

Sincerely,

William S. Linnell & Joyce Gauthier 1905 Congress Street

Janet Burns 1904 Congress Street (diagonally across Congress Street from the site)

**From:** "Lucie Tardif" <ltardifl@maine.rr.com>  
**To:** <aqj@portlandmaine.gov>  
**Date:** 1/19/2015 6:27 PM  
**Subject:** Zoning change proposal for 1945 Congress Street

Dear Mr. Jaegerman,

I am a resident of the Stroudwater area and have been made aware of the Elks Club's application for a zoning change at their property on Outer Congress Street.

If the Elks succeed in their application, the zoning change proposed would have serious implications to the area and Stroudwater residents' way of life. Lack of a car warrants that I travel mostly by bus to and from work at the Jetport Plaza or downtown. In order to commute to work, I must cross Congress Street near the light just above Stroudwater Crossing in the wake of southbound (toward the Mall) traffic at a very busy time of the morning.

Should the Elks achieve their desired result, that traffic will increase substantially, particularly if they erect two professional office buildings (and keep the current Elks Club building) with space for up to 300 cars. If traffic is increased further, I'll never get across the street! I am in my late 50s, but I know some elderly who take the bus and must make that trek across the street. Since they cannot move very fast, they are taking their very lives into their hands.

This zoning change which would allow for two buildings as well as increased traffic (at high speeds, despite posted limits) would raise the risk level for accidents and loss of life. It would also fly in the face of traffic calming plans for the area. You cannot allow the construction of professional office buildings and expect to calm the increased traffic. Outer Congress Street is already a speedway!

I also find it disturbing that an area with lots of green space and lush growth right now, complementing the historic neighborhood it abuts, would be eliminated by further construction. That area is a welcome break to the eyes after one leaves behind dense residential area and approaches a busy commercial area at the other end (the airport, shopping centers, the Mall, etc.). It is relaxing to travel through that area right now and creates a calming effect on its own. New professional buildings will reduce the beauty of nature that exists there now, exacerbating traffic and increasing the number of drivers and therefore the level of tension already present in drivers anxious to get to work and eager to leave at the end of the day.

I understand the Elks Club's request will also violate the city's Comprehensive Plan. What was the point of the Plan if the City does not intend to enforce it? Portland has already come precariously close to doing that with the Midtown project, and were it not for some savvy and watchful citizens, the City just might have gotten away with pushing it past Portland residents.

Please pay attention to your own policies and consider the detrimental effect the Elks Club's proposal will have on the area. Do not allow them the ability to push this through.

Thank you for your attention.

Sincerely,  
Lucie Tardif  
13 Brewer Street  
Portland

**From:** Joe Heasly <jheasly1@maine.rr.com>  
**To:** <hcd@portlandmaine.gov>  
**CC:** <stroudwatervillageassociation@gmail.com>, <captlinell@yahoo.com>, Carolyn Heasly <caroalic@maine.rr.com>  
**Date:** 1/19/2015 9:33 PM  
**Subject:** 1945 Congress St (Elks Club) Proposal comment

Hello Ms Donaldson,

My wife and I live at 1832 Congress St, and have recently become aware of the Elks Club's proposal for their parcel at 1945 Congress St. We'd like to offer our thoughts on the project as we understand it, which is to create an 'office condominium' of three buildings (two new, one a smaller incarnation of the current Elks building) if the current R-2 zoning can be changed to OP.

We prefer that the parcel remain residential. There are two nearby 'assembly' uses on outer Congress St; we don't want a precedent set in this instance that would increase the pressure for non-residential uses bordering Stroudwater Village.

We are concerned about how this project will impact the traffic-calming efforts that the city has underway for this stretch of Congress St. Additional offices on the site will certainly generate a small but steady increase in the number of vehicles traveling to and from the site.

We'd like a chance to hear more from the Elks and their partners in this exercise about their plans. It may have gotten lost in the holiday shuffle, but I don't recall getting any notice of the neighborhood meeting that was apparently held recently. I understand that the Stroudwater Village Association has a community meeting coming up in February and that they are willing to host a meeting of the Elks, et al, with the community. Is it possible for the board to defer any decisions until that to happen before the board makes its decision?

We will not be able to attend the Board's workshop tomorrow afternoon, would you please convey our thoughts to the Board?

Finally, would you please add us to the 'interested parties' list for this project?

Thank you,  
Joe Heasly  
Carolyn Heasly  
1832 Congress St

**From:** Stroudwater Village Association Board of Trustees <stroudwatervillageassociation@gmail.com>  
**To:** <hed@portlandmaine.gov>  
**CC:** Edward Suslovic <edsuslovic@portlandmaine.gov>, Mike Murray <msm@portlandmaine.gov>  
**Date:** 1/20/2015 11:49 AM  
**Subject:** Stroudwater Village Association Letter to Planning Board RE: 1945 Congress Street (Elks Club)

**TO:** Nell Donaldson, Planner, Planning Division  
**FROM:** Stroudwater Village Association  
**RE:** 1945 Congress Street. (Elks Club) rezoning request from Northland Enterprises  
**DATE:** January 20, 2015

\*The Stroudwater Village Association requests a tabling of the zoning decision requested by Northland Enterprises for the Elks property at 1945 Congress Street until residents can understand more specifics about the proposed project and the wider implications for the neighborhood. \*

Specifically, we would like to invite the developers and city staff to present to area residents in person at the SVA's annual pancake breakfast event, to be held on Saturday, February 14th at 8:30-10:00AM at the Stroudwater Baptist Church. We suggest this event as we believe it will provide a good representative turnout from area residents, though another public meeting would also be possible.

Many neighborhood residents have reported to the SVA that they have only been recently made aware of the project, and those who have been made aware of it are very divided in their reactions.

Some residents have viewed the proposal as a general improvement to the existing site usage, even while expressing concerns about the details, building locations, aesthetics and environmental impact of the proposed development. Those residents expect to work with the developers to assuage their concerns before providing support to such a project.

Other residents, in clear opposition to the overall development, have expressed a preference for residential (as opposed to commercial) development on the site, referencing incompatibility with the residential nature of the neighborhood, increased traffic flows, impact on abutting property owners, that the current proposal does not comply with the City's Comprehensive Plan, as well as concern about setting precedent for other similar sites within our neighborhood.

In any case, it's clear that more information is needed in order for residents to assess the impact of this zoning change and project. As such, we request the decision be tabled until further information about the project can be provided.

-Dan Koloski, SVA President  
 On behalf of the Stroudwater Village Association

The Stroudwater Village Association is a Maine Non-Profit corporation. All residents of Stroudwater are members and invited to participate in all of our activities.

Find us on the web at <http://www.livinginportland.org/stroudwater.htm>  
 Find us on Facebook at  
<https://www.facebook.com/StroudwaterVillageAssociation>

**From:** John Sommer <john@svindulgence.com>  
**To:** "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>, "edsuslovic@portlandmaine.gov" <edsuslovic@portlandmaine.gov>  
**Date:** 1/20/2015 8:46 AM  
**Subject:** 1945 congress street proposed zoning change

Hello Neil, I live on Garrison Street, nearby to the proposed changes. I am writing to provide some comments regarding the proposed zoning change at 1945 congress street. My concerns follow below:

- This change is in direct opposition to the city's comprehensive plan and zoning rules. Avoiding a piecemeal approach to zoning (what this change represents) is the underlying objective to the comprehensive plan.

- Would help establish the precedent for creeping changes....I notice there is an abutting parcel up for sale (behind the mason's school)...will the changes be applied to that parcel as well?

- At present there is a "buffer" between the residential areas of Stroudwater and the commercial areas; that area is the R2 zone on both sides of Congress Street (elks and churches across the street). This zoning change would effectively end that "buffer".

Thank you for your consideration. John Sommer 51 Garrison Street Portland, ME 04102

**From:** Rob Roseuberg <robkellyrosenberg@gmail.com>  
**To:** <hcd@portlandmaine.gov>  
**Date:** 1/22/2015 7:59 AM  
**Subject:** RE: Elks Club Property Zone Change Application, 1945 Congress Street

Mr. Alex Jaegerman

Planning and Urban Development Department

City of Portland

389 Congress Street

Portland, ME 04101

Dear Mr. Jaegerman,

We live at 1859 Congress Street, near the Elks Club and abutters to the Masonic Learning Center. We are across from the top of Garrison Street, where the new traffic light and crosswalk will make it easier to cross Congress Street and walk to the dam. The historic district starts with our property, but does us little good if the current zoning laws and the Comprehensive Plan are scuttled.

The zoning change is not what the Comprehensive Plan dictates. The significant traffic impact would undo what we've achieved in restoring the neighborhood which has been spit by Congress Street for too long.

The proposed change would also set a precedent for the Masons, whom we abut, as well as the four or five churches in the area.

Please ask the Planning Board to follow the Comprehensive Plan and recommend that the City Council leave the zoning for 1945 Congress Street as it is, with no changes.

Sincerely,

Rob Rosenberg      robkellyrosenberg@gmail.com

1859 Congress St 409-9652

From: David Silk <DSilk@curtisthaxter.com>  
 To: Helen Donaldson <hcd@portlandmaine.gov>  
 Date: 1/22/2015 9:38 AM  
 Subject: RE: 1945 Congress

Hi Neil: Thanks for the update. I understand there will be another workshop. Can you let me know when that will be? In the interim can I get a copy of the recording of Tuesday's workshop. I am happy to pay whatever cost are incurred in making a copy of the recording.

You saw by my letter that I fail to see how this project fits within either the OP or RP zone. I just do not see it. My main issue is that the project should not drive the zoning. The land in the area is zoned R-2. Maybe it should remain residential with options for more dense residential uses such as apartments. If the City does not want the land used for residential development, then maybe the zoning should be changed but it should be done with a vision to what the area should become, one that should insure it is compatible with the area and effort to calm traffic. Area wide rezone could incorporate design standards for commercial uses. Piece meal parcel specific zone changes to accommodate an individual property owner's needs (and a particular buyer's needs) of the moment will only lead to hodgepodge of uses and designs that will not create any continuity in the area that is on the edge of a historic district. I am not sure folks understand the positive image the open space creates to those new to Portland when exiting the JetPort onto Congress Street. If that is to be changed I would think the City wants to see what comes in its place maintains that positive experience. It is a gateway.

David

-----Original Message-----

From: Helen Donaldson [mailto:hcd@portlandmaine.gov]  
 Sent: Tuesday, January 20, 2015 9:45 AM  
 To: David Silk  
 Subject: RE: 1945 Congress

David,

I'm back in the office now and have had a chance to read your letter. I appreciate your thoughts, and I will make sure that the Board is aware of your correspondence at the workshop this afternoon.

The date of a hearing will depend on how the conversation goes at the workshop. I will be sure to let you know when a date is set.

Best,  
 Neil

Neil Donaldson  
 Planner, City of Portland  
 874-8723  
 hcd@portlandmaine.gov

>>> David Silk 01/14/15 11:57 AM >>>  
 Hi Neil:

I have some concerns on the 1945 Congress Street parcel zone change application and have put them in the attached letter. Can you include the letter in the PB packet for the upcoming workshop scheduled on the 20th. I may not be able to make the workshop because of a work commitment but let me know when the public hearing occurs as I hope I can attend that hearing. I assume the packet for the workshop will be available on line prior to the workshop but if not, could you send it to me when it is publically available. Thanks for your help and have a great day. David

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

**From:** <captlinnell@yahoo.com>  
**To:** Helen Donaldson<hcd@portlandmaine.gov>  
**Date:** 1/23/2015 9:01 AM  
**Subject:** Food for thought

Neil,

Please include these sentiments in the discussion on the Elks Club Property:

How about this approach: What if the city looked at the Elks parcel from the point of view of the Comprehensive Plan: plan it to be truly compatible with the existing neighborhood, with historic- compatible single-family-looking houses near Congress street, appropriate for this gateway location coming into the city, and address housing needs as outlined in the Comprehensive Plan- a development with apartments, including some handicapped accessible, some suited for large families. Maybe a community building with a basketball court; a soccer field, garden space, and parking in the center. More density for the developer, but traffic would be much less intense. Housing needs are improved.

Bill Linnell

Sent from Windows Mail

>>> Paul Dubois <pdubois1915@yahoo.com> Saturday, January 24, 2015 10:00 PM >>>

Our property is a single family home abutting the Elks club property. After listening to the board, we feel strongly that the board should consider the Elk's application for a zoning change very carefully. We have a wonderful home in a residential area adjacent to Stroudwater Village and cannot begin to tell you how fantastic it is to live on outer Congress. We get to live in Portland but have off street parking. We have immediate access to the Stroudwater Trail, easy kayak access to the Fore River, Casco Bay and Stroudwater River. We have enough room for raised bed gardens and compost all our green waste on site. We have great access to the city bus system and the Jetport (literally walking distance). I can sit in my recliner and occasionally see deer that live in the area. Last year we were visited by a family of wild turkeys on a daily basis. My wife works 3 miles up Congress Street and I get to my job in 12 minutes every morning. The City's Comprehensive Plan directed the Board to facilitate new residential housing opportunities and I can't think of a better neighborhood to build a home. Changing the zoning for over 7 acres of potential housing is inconsistent with that mandate. The Elk's claim that they will never sell or in no possible scenario would they ever allow residential development on the property seems ridiculous especially in light of the fact that they have entered into several contract over that last few years to do just that. The reason they are asking for a zone change is to maximize the sale or development potential for their property. We all know that the financial potential of selling or developing commercial property far out ways that of residential ,this is why the City's Comprehensive Plan had to address the matter specifically. If the Elks want to further develop their property then they can do so by providing up to 14 new fantastic housing lots. Their contention that residential homes cannot be near the Elk's property (because they sell alcohol) falls flat on our ears. We have lived here and raised our children here with no negative impacts from the private and locked club. If the Board approves this application then we will never get to know if in fact the Elks will sell and move (opening up a wonderful opportunity for new housing for Portland). Even if they stay, there is a chance that future members will decide to sell several housing lots-the truth is that we don't know, and definitely the Elk's don't know, what a future membership will or won't do. The Elk's bought the property at a significant discount as compared to buying similar property in a commercial zone and they have reaped the benefits of lower valuation resulting in lower property taxes for all these years- they got what they paid for. If the Board approves this zoning change they will increase the value of the Elk's property substantially but only by devaluing the abutters properties-where is the fairness in that.

Having said all that, it seemed clear at the workshop that the board members were intent on going through with a zoning change even if it meant changing the text (once again for this property) of the zoning ordinance. We are extremely concerned about maintaining or creating the maximum buffer possible especially in light of the fact that we have a nonconforming lot with inadequate set backs all along the abutting property line. The Elks have been very poor at maintaining their property and despite our best efforts we have been unable to get them to do so (trees have actually fallen and damaged our house). We heard the developer say that their intent is to maintain the existing tree line as a buffer and implied they would somehow enhance it. Well, our property is not at all protected by a tree line. Our house is 6 ft from the Elk's line which gives us absolutely no room to create our own buffer. We have asked the Elk's to sell us a small piece of land (about .10 acre) to allow us to conform with set backs. They could not come to consensus. Transferring this small amount of land would allow us to maintain our own buffer in the likely event the Elk's fail to follow through over time. The land we're talking about is currently part of a bamboo growth that is very unique and provides a perfect green barrier. The Elks have (at least once in the past) considered destroying this buffer and creating a "park". We feel this would be terrible and could preserve this truly unique ecological treasure if they would only allow this small concession. I believe that this is a fair request and ask that the Board make it a condition of the zoning change approval that the Elks sell us enough land to at least have the recommended setback of 15 feet from our house as a buffer.

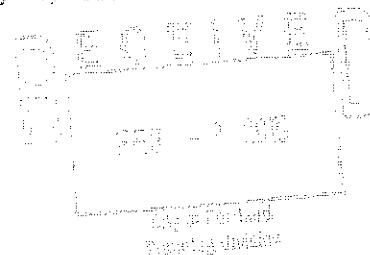
We do thank the Board for your efforts to maximize the tax base but this particular zoning change with the implied text changes discussed is at the least impulsive and at worst in complete violation of the intent of the City's Comprehensive Plan. If you are intent on proceeding then please consider the impact on our property and neighborhood and act to minimize those impacts that are negative. If you approve this zoning change then the Elk's will realize a significant windfall and should be required to share that windfall by minimizing the negative effects on abutters and the neighborhood. Wouldn't it be nice to have a public access to the Stroudwater trails with a few parking spaces or a kayak and canoe access to the Stroudwater River?

Thank you in advance for your diligent consideration.

Paul And Kimberly Dubois  
1915 Congress Street  
Portland Maine 04102  
(207)899-2599

188 Whitney Avenue  
Portland, Maine 04102  
January 30, 2015

Planning and Urban Development Department  
City of Portland  
389 Congress Street  
Portland, Maine 04101



RE: Elks Club Property Zone Change Application, 1945 Congress Street

To Whom It May Concern:

I frequently travel outer Congress Street along the route of the Elks Club and the Portland Airport. It seems to me that a number of drivers using that route ignore the traffic laws that are in place along that section of the Stroudwater neighborhood.

If a change must be made in the zoning from R-2 to OP, I hope you would decide that a better plan would follow existing zoning already in place in Portland.

The area needs more opportunities for family housing units to help stop sprawl. The city is in desperate need of affordable housing for the middle class workers who work here and would like to be able to live in Portland.

I think the Stroudwater neighborhood and other residents of Portland deserve a safe thoroughfare through that outlying area of the city.

Very truly yours,

*Margaret C. Doyle*

(Mrs. Leonard F. Doyle)

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

Dear Board Members,

I am a member of the Portland Elk's Lodge #188. As a member, I am aware of the plans we have to make some exciting changes to our building and property.

For those of you who are unaware of what the Elk's Lodge does for the community that embraces them, the following is only an example of the community support that we provide;

Annually;

We give (2) \$1,000 scholarships to Portland area high school seniors to begin their college life.

We participate in a "Hoop Shoot" which is a statewide event for children of all ages. To that end, before they go to the final contest, we serve them breakfast, prepared by our volunteers.

We have a "Drug Awareness" program that we offer to educate our Portland youth.

We raise funds for the Maine Children's Cancer Program

We present dictionaries to several of Portland's 3<sup>rd</sup> graders.

We raise funds to distribute to several of Portland soup kitchens.

We do multiple things for the veteran's of Maine, not the least of which is to support what is known as the annual "Stand Down". The "Stand Down" provides a hot meal, change of clothes, medical and dental exams as well the opportunity for housing, to all of our homeless Veterans in the State.

We provide breakfast for the now "2<sup>nd</sup> Annual Summit Project which honors our fallen Vet's.

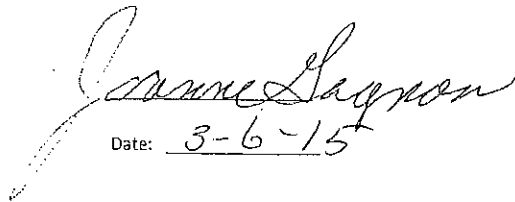
As you see, I could go on for pages but you get the idea. We are very proud of our substantial contribution to our community.

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Please give this request your immediate attention and to that end, we thank you in advance

Respectfully,

A handwritten signature in dark ink, appearing to read "James Lagon", is written over a horizontal line. Below the signature, the word "Date:" is printed, followed by the handwritten date "3-6-15".

Date: 3-6-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

Dear Board Members,

I am a member of the Portland Elk's Lodge #188. As a member, I am aware of the plans we have to make some exciting changes to our building and property.

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Respectfully,

*Lucille Lundy*

Date: 3-6-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

*Marlene Haraden*

Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Date: 3-26-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

  
Date: March 4, 2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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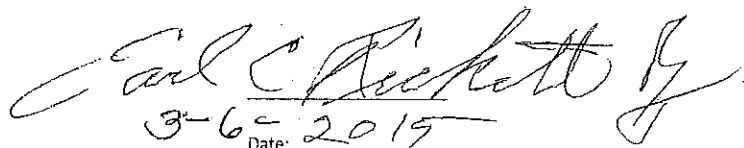
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Respectfully,

  
Date: 3-6-2015

Member # 010812

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Date:

3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Date: 3/

Thank you so much!

Kathy Miller Cripps

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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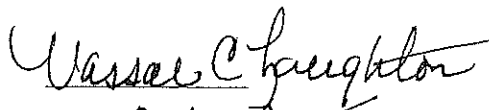
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Respectfully,

*Robert J. Pomeroy*

Date: 3-15-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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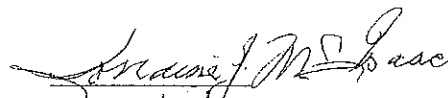
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Date: 3/6/2015

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Date: 3-6-15

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Date: 5-06-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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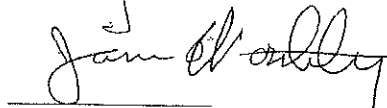
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Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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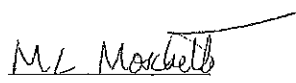
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Date: Mar 6, 2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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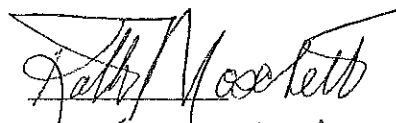
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Date: 6 March 15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

Dear Board Members,

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Annually;

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Respectfully,

*Joseph W. Winkler*, TREASURER

Date:

3/6/15

To: Planning Board

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*Louise Erickson*

Date: 3-6-2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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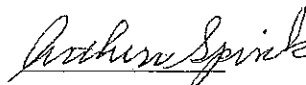
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Date: 3-6-15

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*Geraldine O. Pomerleau*

Date: *March 6, 2015*

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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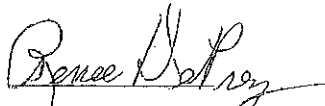
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Date: 3 - 6 - 15

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Date: 3-6-75

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Date: 3-6-15

To: Planning Board

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*Warren Gilman*

Date: 3/6/15

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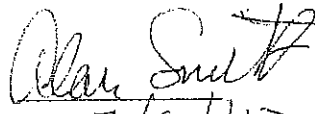
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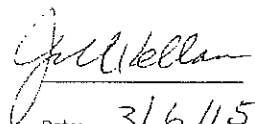
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Date: 3-16-15

Mason

To: Planning Board

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389 Congress Street

Portland, Maine 04101

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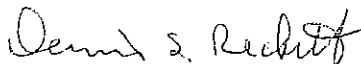
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Date: 3-6-15

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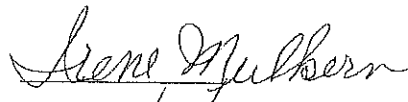
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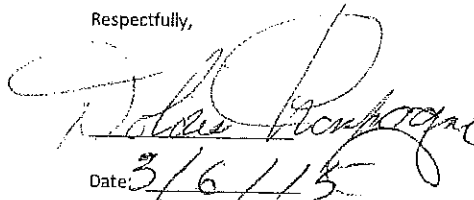
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Date: 3/6/15

Champagne

To: Planning Board

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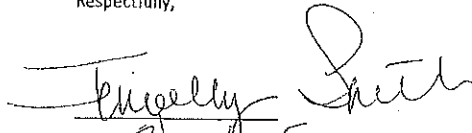
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Respectfully,

  
Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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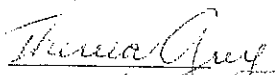
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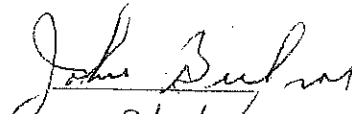
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Respectfully,

*Camille Gillette*

Date: 3/6/15

To: Planning Board

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Portland, Maine 04101

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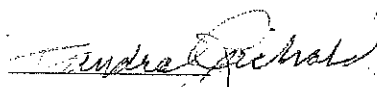
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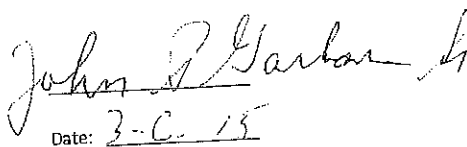
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Date: 3-C-15

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To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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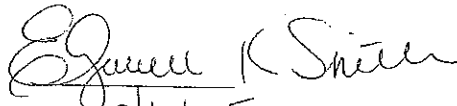
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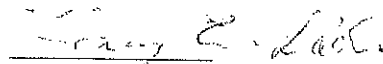
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Date: 2/10/11

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Respectfully,

*Martha Bouette*  
*Scholarship Chair*

Date:

*03/07/15*

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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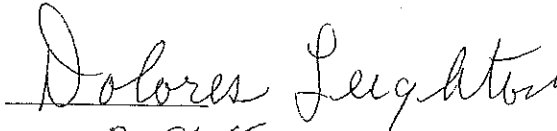
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Date: 3-8-15

To: Planning Board

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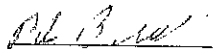
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Date: Apr 8

To: Planning Board

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389 Congress Street

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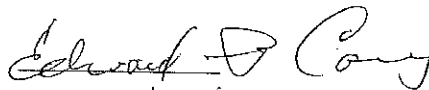
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Date: 3/8/15

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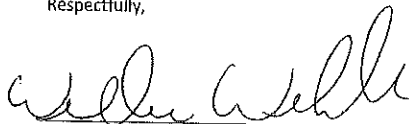
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Date:

3-8-15

To: Planning Board

Portland, Maine

389 Congress Street

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Please give this request your immediate attention and to that end, we thank you in advance

Respectfully,



Date: 3/8/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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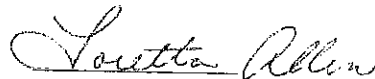
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Respectfully,

*George Pacillo*

Date: 3/8/10

Pacillo

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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Respectfully,

Pat Roberts

Date: 3-8-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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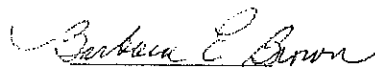
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Respectfully,



Date:

Mar 8, 2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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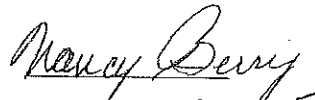
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Date: 03-08-2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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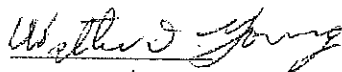
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Date: 3/8/15

To: Planning Board

Portland, Maine

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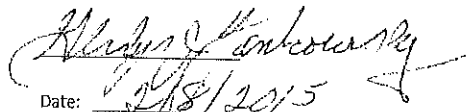
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Date: 12/8/2015

To: Planning Board

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Portland, Maine 04101

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Respectfully,

Judith Von Thelen  
Date: 3/6/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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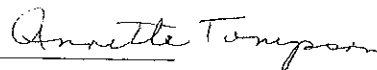
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Date: 3/9/15

To: Planning Board

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389 Congress Street

Portland, Maine 04101

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*Janice Parker*  
Date: 3-9-15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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*Bruce M. Jordan*

Date: 3/9/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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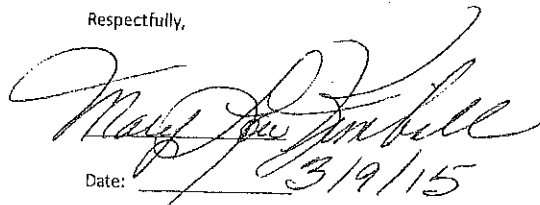
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Date: 3/19/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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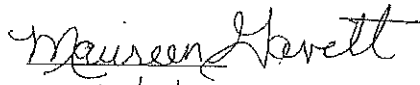
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Portland, Maine

389 Congress Street

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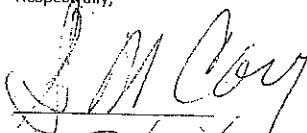
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Date: 3/12/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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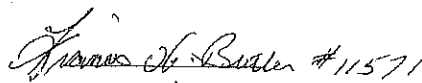
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Notification from your Board to our Lodge of an actual date that you are ready to review our request would be so appreciated.

Please give this request your immediate attention and to that end, we thank you in advance

Respectfully,

 #11571

Date: 3/12/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

Dear Board Members,

I am a member of the Portland Elk's Lodge #188. As a member, I am aware of the plans we have to make some exciting changes to our building and property.

For those of you who are unaware of what the Elk's Lodge does for the community that embraces them, the following is only an example of the community support that we provide;

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Please give this request your immediate attention and to that end, we thank you in advance

Respectfully,

*Margaret Cooper*  
Date: March 12, 2015

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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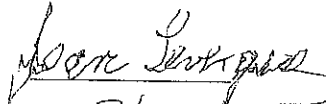
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Date: 3/13/15

Levesgue

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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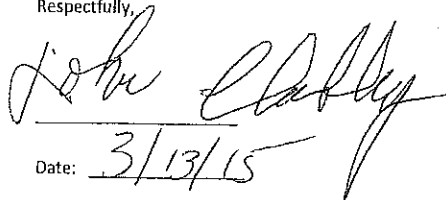
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Date: 3/13/15

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Portland, Maine

389 Congress Street

Portland, Maine 04101

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Date: 3/13/15

Dougherty

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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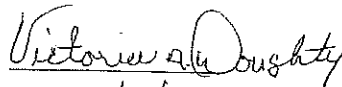
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Date: 3/13/2015

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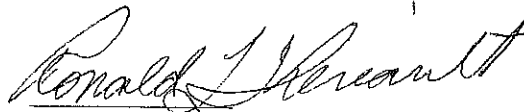
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Date:

3-13-14

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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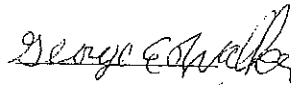
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Date: 3/13/2015

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Respectfully,

*Sharon Castellucci*  
Date: 3/13/15

To: Planning Board

Portland, Maine

389 Congress Street

Portland, Maine 04101

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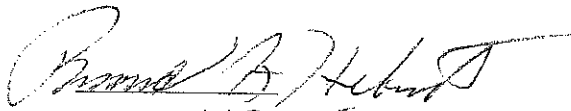
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Respectfully,

  
Date: 3/17/15

**From:** Stroudwater Village Association Board of Trustees <stroudwatervillageassociation@gmail.com>  
**To:** Helen Donaldson <hcd@portlandmaine.gov>  
**CC:** Edward Suslovic <edsuslovic@portlandmaine.gov>, Paul Bradbry <phb@portlandmaine.gov>, Jeff Levine <jlevine@portlandmaine.gov>, Mike Murray <msm@portlandmaine.gov>  
**Date:** 5/25/2015 5:25 PM  
**Subject:** Statement from the Stroudwater Village Association regarding proposed rezoning of 1945 Congress Street

\*May 25, 2015\*

\*TO: \*Helen Donaldson, Portland Planning Office

\*CC: \*Ed Suslovic, Jeff Levine, Paul Bradbury, Mike Murray

\*Statement from the Stroudwater Village Association regarding proposed rezoning of 1945 Congress Street\*

The SVA has been actively conversing with residents and SVA members regarding the proposed rezoning and redevelopment of the Elks Club property at 1945 Congress Street. Based on the feedback we have received over several meetings, \*the SVA recommends the city deny the request for zoning conversion at this time and instead undertake a comprehensive planning process\* \*for the intersection and contiguous properties as a whole\* rather than just this one single property.

Specifically:

- The intersection in question (Congress and International Parkway) represents a gateway intersection to Portland and to the Jetport, and redevelopment of this parcel provides an opportunity to shape many visitors' first impression of our city.
- Many Stroudwater residents desire to see the specific property remained zoned as residential, in anticipation of potential residential development similar to the River's Edge and Tide Mill neighborhoods, which would also be in keeping with the city's Comprehensive Plan.
- Almost all Stroudwater residents are concerned about the precedent a potential zoning conversion establishes for numerous other similar properties within the neighborhood.
- There is concern about the visual effect the specific proposed building along Congress Street would have on traffic/speeding as well as on abutting property owners, especially as we complete the Phase II Outer Congress St. traffic and safety improvements in partnership with the City.
- Residents very much appreciate the openness with which the proposed developers and buyer have shared information and we note and applaud their attempts to incorporate some of our feedback into the proposal. On the other hand, it should be noted that the seller (Elks Club), who will be remaining on site, has shown no interest in engaging with the neighborhood in the past or regarding this latest proposal.

To sum up, residents have meaningful concerns about some aspects of the specific development proposal, but our larger concerns relate to the overall zoning conversion and implications for the intersection and the neighborhood. Given the importance of this intersection to the neighborhood, the Jetport, UNUM and the City, \*the SVA recommends the city deny the request for zoning conversion at this time and instead undertake a comprehensive planning process\* \*for the intersection and contiguous properties as a whole\* rather than just this one single property.

- The Stroudwater Village Association Board of Trustees

The Stroudwater Village Association is a Maine Non-Profit corporation. All residents of Stroudwater are members and invited to participate in all of our activities.

Find us on the web at <http://www.livinginportland.org/stroudwater.htm>

Find us on Facebook at

<https://www.facebook.com/StroudwaterVillageAssociation>

**From:** "Angela J. Wheaton" <angelajwheaton@yahoo.com>  
**To:** "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>  
**CC:** "stroudwatervillageassociation@gmail.com" <stroudwatervillageassociation@gmail.com>  
**Date:** 5/26/2015 10:18 AM  
**Subject:** Deny Stroudwater Zoning Conversion Proposal

Dear Portland Planning Board, As a resident of the Stroudwater neighborhood, I would like to ask that you deny the zoning conversion request re: the Elks Club site.

I greatly appreciate your thoughtful review and consideration of this proposal as well as your inclusion of current residents in the process. I strongly urge you to deny this request in favor of a more comprehensive plan that would take the entire area into consideration.

Thanks for your time and consideration. Sincerely, AJW

Angela J. Wheaton  
30 Partridge Rd.  
Portland, ME 04102

**From:** Charlton Smith <charltonsmith@inac.com>  
**To:** <hcd@portlandmaine.gov>  
**Date:** 5/26/2015 10:38 AM  
**Subject:** Elk's Club zoning change question

Dear Ms. Donaldson,

I live at 85 River's Edge Drive off Congress St. between the airport entrance and Westbrook St.

The traffic on Congress St. at commuting times is extremely heavy now and will be overwhelmed by the addition of the number of cars that will result from the commercial development that has been proposed for the Elk's Club property.

Residents of River's Edge Drive already have difficulty getting on to Congress St. and sometimes we must resort to turning right (when we want to turn left) and driving to the intersection where the Elk's Club is located to turn around by using the entrance road to the Elk's Club and then returning to the streetlights opposite the airport entrance road in order to turn left. If more cars are forced to use this method to get to downtown Portland from River's Edge Drive the congestion at the Elk's Club entrance will be even more extreme than the Planning Department perhaps realizes.

There are presently 26 homes at River's Edge Drive many with 2 or more cars coming and going at typical commuting times. It is important that the Planning Department takes into account these cars when determining how much traffic Congress St. can accommodate, especially when some of the traffic from River's Edge Drive will be forced to use the entrance to the Elk's Club property as a means for getting from River's Edge Drive to downtown Portland.

Thank you for your consideration.

Charlton Smith

**From:** Marc Hodroff <marchodroff@yahoo.com>  
**To:** <hcd@portlandmaine.gov>  
**CC:** "stroudwatervillageassociation@gmail.com" <stroudwatervillageassociation@gmail.com>  
**Date:** 5/26/2015 12:34 PM  
**Subject:** 1945 Congress Street (Elks Club Property)

To whom it may concern:

I will not currently be able to attend the meeting for 5/26/15. I appreciate the opportunity to provide feedback. For the current time I would not be in favor of rezoning the area to an office park from its current residential status.

In review, this would have an impact on the area and adjacent residential areas including the potential impact on the river and environment.

Noise and traffic will also have an impact on the current residents.

I think a big impact will be traffic management. Currently as a resident in the Stroudwater area, I know that outer Congress in that area is already too busy and becomes bottle necked in that area across from the Elks Club at commute times. I have seen several accidents in that area and have a concern it is already not able to accommodate the current traffic load.

Sincerely,

Marc Hodroff 48 Partridge Circle Portland

To: Planning Board Members:

RE: Portland Elks Lodge -1945 Congress Street -Rezone Proposal

From: David Silk, 1187 Westbrook St.

Dated: May 26, 2015

Sorry I could not be present at today's workshop to speak to the Portland Elks Lodge ("Lodge") revised rezone application that if approved would allow for the addition of construction of two large medical office buildings on the Lodge's property at 1945 Congress Street currently zoned as R-2 and allow in a Office Park zone places of assembly. I previously expressed my concerns with the proposal which in my mind are not resolved simply by making places of assembly permitted uses in the Office Park zone. That just raises more red flags. In sum, there is no good reason to approve the rezone request. That the Lodge does not want to sell its land to a residential developer is not a valid reason to grant the Lodge's application. Unlike the recently granted Williston West rezone, the Lodge's building is not a historic structure. There is no compelling reason to rezone the Lodge's property because the building is not worth preserving. The Lodge has not suggested as much. Also unlike Williston West, the Lodge has not demonstrated residential development of the parcel is not feasible.

Rezoning should not be about maximizing the economic return to the property owner. The Lodge wants the rezone as it will get paid a lot more money for commercial development than for a residential development. With an aging membership, the payment will go a long way to help the Lodge continue. But that is not the reason the rezone. Otherwise every place of assembly with excess land located as a conditional use in a residential zone will be looking to enrich its treasury through a rezone to permit a commercial use on the property together with a place of assembly. Just in this area there are several other places of assembly with open space fronting on Congress Street that could be rezoned to allow on the front portion of the parcel commercial or retain use. The places of assembly were located at the back end of the properties to preserve the open space and residential characteristics of the area. With the added funds from a rezone, those places of assembly could extend their lives and I expect will be next in line.

The fact that the place of assembly has been permitted as a conditional use in a residential zone should not be used as shoehorn to add to the conditional use prohibited commercial uses once the organization no longer can sustain itself. Places of assembly do have a limited life and as the Board has seen throughout the City, they close. Most recently last month the Methodist church off of Forest Ave was placed on the market because membership declined so that the assembly could not be maintained. It happened with Williston West. It happened with the Chestnut Street church and St. Patrick's Church. It is a common occurrence in Maine. [http://www.pressherald.com/2013/07/31/here-is-the-church--where-are-the-people\\_2013-07-31/](http://www.pressherald.com/2013/07/31/here-is-the-church--where-are-the-people_2013-07-31/) As society changes, it will happen elsewhere in the City. Absent compelling needs to say save a historic structure, the answer when a place of assembly no longer economically can work is not to rezone to allow commercial uses in a residential zone but to allow the conditional use to revert to its residential status so residential development consistent with the underlying zone can occur. If that means the building is demolished so be it.

So I respectfully request that the Board not support the Lodge's rezone application. Instead, the Board should encourage the City to develop a vision for outer Congress Street (between Garrison Street and Johnson Street) and for International Pkwy and determine whether all or some of that area should remain zoned R-2 and if not, what uses should be permitted and what design standards should be adopted to ensure if any housing complex, commercial or retail development is to be permitted, that that development occur in this area is compatible with the existing residential uses and historic nature of SVA. The vision should also include the JetPort as the drive from the JetPort on International Pkwy to Congress Street is a gateway into the City.

### **Background**

The Lodge was built in the late 1960s on a 7 acre parcel located on outer Congress Street in the R-2 zone. The R-2 zone is a residential zone intended primarily for single family homes. As a place of assembly the Lodge is a conditional use in the R-2 zone. Single family homes abut the Club property. Almost next door to the Lodge property is property owned by the Masonic Lodge, also is a conditional use in the R-2 zone. Single family homes also abut the Masonic property. On the opposite side of the street, the land is also zoned R-2

with single family homes and churches (places of assembly) permitted as a conditional use. Commercial uses such as three or four story medical office buildings and retail uses are prohibited in the R-2 zone.

According to the City's Land Use Ordinance (LUO) the purpose of the R-2 zone is 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." That describes outer Congress Street between Garrison Street and Johnson Street quite accurately.

In the last few years, the City has invested money to slow traffic as it moves through outer Congress Street into the City. The City plans to install a cross walk from Garrison Street across Congress Street in order to make pedestrian movements safer. The hope is to eliminate or minimize the canyon like effect Congress Street has on the Stroudwater neighborhood.

#### **Lodge looking to sell**

The Lodge has been looking to sell and/or develop its property for some time. At one point the Lodge intended to sell all of its land to Husson College and relocate to Warren Ave. So there is a market short of permitting commercial uses.

Per statements made by Lodge representatives at a recent Planning Board workshop, apparently the Lodge is adamant it will not sell its property for residential development as the Lodge would not realize any return on its building (it would likely be removed) which has been partially exempt from property taxes for many years. Instead, the Lodge wants to maximize its return by getting money for the building and the land believes it can with a zone change to allow for commercial uses. The Lodge's proposal would max out development on the lot. The Lodge would stay on the lot and two new multi-story medical office buildings with a parking lot for over 200 cars would be installed. More traffic on Congress Street would be added at the peak times. The Lodge needs a zone change to make this happen.

The Masonic property just down the street is also for sale. It is not clear if the Lodge gets a zone change, whether the Masons will be next in line. I surmise they would be. Both churches across the street would see the value of their tax

exempt property increase significantly if rezoned to commercial uses. Like the Lodge, they too could become interested in permitting development on that portion of their property along Congress Street to reap the gains from a zone change.

These areas are all in close proximity to International Pkwy, which is also zoned on either side as R-2. Many commercial and retail operations, super gas stations, hotels, coffee and doughnut shops, convenient stores, etc. would jump at the opportunity to have a place of business along outer Congress Street between Garrison and Johnson Streets or along International Pkwy. With piece meal rezoning, the intersection of International Pkwy at Congress Street could resemble say the corner of Auburn Street and Allen Ave. Not my vision for the area but a good possibility with what I call Let's Make a Deal piece meal zoning. The traffic calming measures recently added could be eliminated to handle the resulting increased traffic demands. Congress Street could be widened more.

There are other uses residential in nature that would be much more compatible with the area and serve the Comprehensive Plan. Located on a bus line close, the site would be a great site for senior citizen housing. For the last 20 years, I have served on the board of a not for profit corporation that develops rent restricted senior housing. The location of the Lodge's property along a bus line and a short bus ride to needed services is ideal location for senior housing. Rezoning the property to allow for senior housing would be much more consistent with the Comprehensive Plans number one goal of creating more housing for all of Portland's citizens.

#### **Why the Board should not support the Lodge's rezone application.**

The Board should not support the Club's rezone application. On a broad scale, given the City's most prominent zoning goal is to create more housing, all kinds of housing, throughout the City, why the City would ever want to rezone land from residential to commercial or retail so as to eliminate the possibility of residential development is beyond me.

There are those who believe commercial development is needed in order to increase property tax revenue. The City needs more money or tax rates will be even higher. If the Board's view is that any land should be rezoned at any owner's

behest regardless of the underlying zone so as to increase the tax base, then the Board should support the rezone. Just be aware that rezone applications that will soon follow not only for land along outer Congress Street between Garrison and Johnson Street and International Pkwy also perhaps outer Westbrook Street and/or where uses can be changed from say a conditional use (say an existing church) to a commercial or retail use. You will end up with a hodgepodge of commercial and retail development that fits the needs of the particular developer. A four-story medical building for one, a doughnut/coffee shop for another. A super gas/food-stop for another. Greater tax revenue for sure. So much for the existing folks who live in the single family homes as they will eventually find living in their homes intolerable. Those houses can be torn down (loss of housing for the City). In its place the City will have a helter-skelter retail/commercial development right on the edge of Stroudwater that makes for a bright neon gateway into the City.

Personally, I think rezoning simply to boost the economic return to an existing property owner is about the worst reason to justify any rezone of a property. Regardless of how bad the City needs more property tax revenues, zoning in the City is intended to direct and guide suitable development and at the same time provide stability to neighborhoods. Neighborhoods should not be sold down the river simply based on the latest and greatest development plan that needs a contract or rezone to happen. So I suggest the first question to ask is not how the City can find a way for the Lodge to increase its return on property the Lodge bought knowing it was zoned residential. It is not finding a shoe horn to fit the Lodge's particular proposal under the OP or RP zone when clearly the proposed development is totally inconsistent with those zones.

The first question to ask I suggest is whether the underlying area zoned as R-2, not just the specific parcel, but all of the area mentioned above, should be changed in the first instance. Given the City's housing goals and recent efforts to change the LUO to make it easier to create more housing, and given the recent (in the last 15 years) full build out of the River's Edge and Tide Mills residential subdivisions, I have a hard time seeing any legitimate justification to change from a residential zone as it will make less housing. Sure, the Lodge may not make as much money and the Mason's buyer's pool may be smaller, but it is entirely consistent with the Comprehensive Plan to keep the area zoned R-2 or similar residential use. With 7 acres of land, and a minimum lot size of 10,000 square

feet, the property could be developed with a number of homes. Or it could be developed into senior housing.

But others may disagree on what the area should become. Change is constant whether we like it or not. I respect that and that leads to the second question. What do the neighborhood and the City want the area from Johnson Street to Garrison Street inclusive of International Pkwy to become? What type of uses should be permitted? What types of design standards should be developed? What heights and massing should be permitted? What is the vision for the area all now zoned as R-2? We need a vision to guide any rezoning. We should rely on the whims of any particular property owner's self-interest.

### **Need for a Vision**

That vision creating process should include not only the area from Johnson Street to Garrison Street inclusive of International Pkwy but also JetPort Blvd. International Parkway runs from Congress Street almost to the JetPort Blvd and as noted above is zoned R-2 on both sides. It serves as the gateway into the City and is located in the shadows of a historic district. For many visitors to Maine it is the first site they see on exiting the JetPort.

That portion of the JetPort Blvd in Portland is zoned Airport Business (an area intended to provide for the development of airport-related development). Just over the line in South Portland on JetPort Blvd an office building (for DHS) was located, clearly not an airport-related development. With only so much land available to meet future needs, the vision process should include the JetPort and the City of South Portland relative to zoning along all of JetPort Blvd so as to be consistent with any common goals.

The vision needs to account for traffic demands both now and projected in the future as it is the JetPort's goal to serve more and not less. Both the City and South Portland have shared traffic issues which are impacted by the uses permitted.

In sum, the vision creating process would include all of the stakeholders in the area including the owners and residents of the homes to be greatly impacted by any change. A vision creating process can examine existing zoning, possible uses, and design standards that are compatible with the existing uses and the historic

nature of Stroudwater. Sure, a vision creating process takes time but in the last decade the City has found the resources to engage in a vision creating process for such places as India Street, Bayside, East End Waterfront, USM, outer Brighton Ave, etc.

The Lodge's property should not be rezoned until the vision process is completed. That is not an unjust result. The Lodge property is a conditional use in a residential zone and commercial uses are not allowed. Over the years and today it has received a substantial property tax break because it is considered a fraternal society with the land assessed based on other than a commercial use. The Lodge can sell today at a price that recognizes the legal uses applicable today if need be. Sure, it may not maximize its return but rezoning should not be about maximizing the owners return. The Lodge's needs should not trump the needs of the local community to decide whether the R-2 no longer makes sense for the area, and if so what uses permitted and what design standards should be adopted to ensure development occurs in a cohesive pattern respectful of existing uses and limited road capacity.

There is no reason simply to rezone to meet the needs of a particular buyer who has a development plan, a plan that in no uncertain terms can be called consistent with the standards for an Office Park zone (the rezone it wants) or Residence-Professional (a fall back rezone). The Office Park zone is intended to create a campus type setting with lots of open space among other features. The Lodge's development plan is anything but that. The Residence-Professional zone allows for existing residential structures or structures of similar size and scale to be used for professional offices. The Lodge's development plan is also anything but that. The closest business zones, at Westgate, are B-1 and B-2, and those zones would allow for a multitude of commercial and retail uses. The Lodge's development plan fits like a glove into the B-2 zone except for the fact it abuts single family residences.

In sum, I ask that the Board decline to recommend to the City Council the Lodge's rezone application and instead recommend the City initiate a master planning process for the area. That way a vision can be created that will be inclusive of all the stakeholders, resulting in development compatible with the existing residential uses and a great gateway into historic Stroudwater and the City.

**From:** Elizabeth Hoglund <eahoglund1@gmail.com>  
**To:** <hed@portlandmaine.gov>  
**CC:** Ed Suslovic <edsuslovic@portlandmaine.gov>, Stroudwater Village Association Board of Trustees  
 <stroudwatervillageassociation@gmail.com>  
**Date:** 5/26/2015 1:56 PM  
**Subject:** Re:1945 Congress Street Zone Change

Please present the contents of this email to the Planning Board

I write to opine on the matter of rezoning 1945 Congress Street. I have reviewed the materials, attending some meetings and draw on my past experiences regarding this parcel and the neighborhood.

I do not accept the point that the zone has to be changed to make the property marketable or that it is valueless unless it can be used as proposed. The property can be used as currently zoned; the impediment to the sale is price and the desires of the sellers. While the Elks have not been able to lure a buyer for residential use, it does not mean that the parcel cannot so be used. Until recently, as I am sure you are aware, the development of such parcels was weak. The market has changed and if the price fit the market it would be desirable. The Stroudwater neighborhood is a very desirable neighborhood and will remain so unless it gets undermined by zone changes allowing commercial, including large medical buildings, development.

In sum, zones should not be changed simply to allow the seller to obtain a better price, especially when the parcel is well suited for the existing zone.

A second concern is the size and location of the proposed development. The essence of Stroudwater is not tall buildings on the edge of the street. Such a structure would visually change the neighborhood. The requirement that buildings are of the same size and nature of neighbors would not be met. The small, lovely residences abutting this parcel do not look like tall office complexes. The visual impact would be to negate the traffic problems by sending a message this is not a residential neighborhood. The city and state have spent many hours and dollars trying to preserve this aspect while moving traffic. More importantly, the remaining residences could then build similar structures to match this proposed building.

The proposed zone change a few years ago to allow for an educational use is different from the current request. The sale of the property to Husson University, a few years ago was acceptable because of the nature and size of the building, its location on the property and the overall use of the property as an educational facility. It was Not a number of medical and other use buildings on the edge of the street. These uses can be built elsewhere in an appropriately zoned area.

Please recognize the serious negative impact this zone change would have on the neighborhood and therefore the city.

I am a resident of 138 Stroudwater Road, and have many years of experience in trying to balance the needs of development with the preservation of the neighborhood. Many projects and proposals have been endorsed because they fit the needs of the land owner and the neighborhood. This one does not.

Thank you for your consideration of these points.

Mary Lou Kimball  
49 Vindale Street

Scarborough, ME 04074

207-232-1613

[marylou@canfieldsystems.com](mailto:marylou@canfieldsystems.com)

May 27, 2015

City Planning Board  
City of Portland  
389 Congress St.  
Portland, ME 04101

Dear Sirs and Madame;

I would like to start my letter today by apologizing for standing at an inappropriate time in your workshop last night. I know and understand protocol and procedure and do respect your need to follow them. I am a member of the Portland Elk's Lodge #188 and would like to add comments that I only seem to have after listening to the Board's discussion.

My reason for standing was the hope to add to your summary a reminder of the comment that Carol, and again I apologize for the familiarity, made with regard to when the R2 zone was put in place. She suggested that if she felt that the City had forced that zoning on The Elk's, that she might be more sympathetic to our quest. I had hoped to get that question into your charge to your staff for the next workshop. I was told by Northland and by the Exalted Ruler that they individually would get the answer and present it to you.

Since I have further comments, I thought that I would take this opportunity to add a bit more information, as your chairman did comment that in this case, more is better. One of the Board members, and I think it was David, said that you need to think about "What we would want for this area if we set the Elk's Lodge aside?". I believe that's smart thinking because if we weren't in the picture, I believe you would see the value in making this Gateway to the City an Op or RP zone. As the chairman said you have the authority to then consider the inclusion of the Portland Elk's Lodge as a non-conforming entity.

A comment I heard repeated last night from the Board that I heard in January, really bothers me and I would like to speak to it at this time. "The Portland Elk's Lodge bought their own problem when they came to this location.". Well, here's the thing; we came to this location in 1968 and I am reasonable confident that we were in that location before any of our neighbors could have "bought their problem". They knew we were there, just like they knew the airport was here. Whenever I hear a comment about "our problem", financial or otherwise, I am disturbed and I'd like to tell you why. Granted we have a need to downsize as membership has dropped off for many fraternal organizations but we all believe that we can continue to aid the people in our community, in a better way with more resources. Our finances should not enter into your decision at all. WE DO CARE about our neighbors, in fact, we invited them to meet with us at the lodge at the outset of this endeavor. We don't view ourselves as a problem but are eager to be a part of the solution.

But, as long as we are on the subject of our finances, please allow me to plant another thought in your discussion. Since we arrived at this location in Portland, we have been paying property tax on 7 acres currently in excess of \$25,000 and that is with a non-profit discount. Why do I mention that? Because if this project goes through the discount will only apply to our footprint of approx. 12,000 sq. ft. and the city will realize a greater tax revenue, as I see it.

Last night was the first I heard of the Clark Insurance Co. joining in the development of this project. I was thrilled to hear it for a variety of reasons, not the least of which is traffic and parking. As the gentleman said, the traffic pattern would go virtually unaltered as they are currently just a few hundred feet down the road, now. This is largely, I believe, an office for corporate work and is predominantly housing employees not a "large insurance selling outlet". The parking would be used predominately for their employees. I see us; The Elk's, Dr. Bedec, and the Insurance Company as good neighbors.

I am curious, on a side note, and I will ask the question of others. One neighbor commented that a taller building would encourage speed. I may not be the sharpest knife in the drawer but I am hard pressed to get that. And Dr. Bedec's building is no taller than the neighbor's house. My curiosity is such that I think I would like to see that in a study.

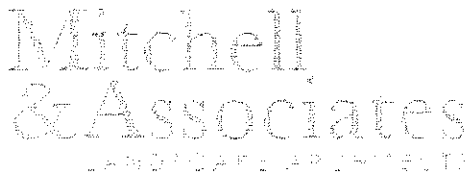
I have taken up enough of your time and will close by saying that, I personally recognize that your task for the City is a daunting one. It's a large old City that has evolved rapidly over the last century. I wish you best of luck in your efforts.

With respect,

A handwritten signature in cursive script, appearing to read "Mary Lou Kimball". The signature is fluid and somewhat stylized, with the first name "Mary" and last name "Kimball" clearly distinguishable.

Mary Lou Kimball

Member Portland Elk's Lodge #188



The Wood at Stroud  
 70-10000 10th Ave  
 Portland, Maine 04101  
 P 207.773.4427  
 F 207.773.4427  
 www.mitchellassociates.com

July 13, 2015

Ms. Nell Donaldson, Planner  
 and Planning Board Members  
 City of Portland  
 389 Congress Street  
 Portland, Maine 04101

RE: 1945 Congress Street

Dear Nell and Planning Board Members,

On behalf of the Stroudwater neighbors, Mitchell & Associates has prepared the enclosed concept residential development plan based on an R3 zoning change and using the PRUD provisions of the Land Use Ordinance. The proposed concept is for 32 dwelling units in four (4) unit townhouse style residential housing. Based on our understanding of the site, the calculations for determining density used a conservative number for stormwater management and the 20% deduction for the remaining land area. The net density, using these calculations would allow 33 dwelling units. The layout has been designed to provide adequate buffering along Congress Street and the adjacent residential neighborhood, create usable open space and safe access for residents and emergency vehicles.

This plan has been prepared to demonstrate an alternative development proposal that is more in keeping with the Comprehensive Plan, current zoning, the Stroudwater neighborhood and provide a reasonable expectation of a viable use of the property. Enclosed for your review is a copy of the concept site plan. We would be happy to respond to any questions or comments you may have.

Sincerely,

Mitchell & Associates

A handwritten signature in black ink, appearing to read "ROB METCALF". The signature is stylized with a large, looped "R" and "M".

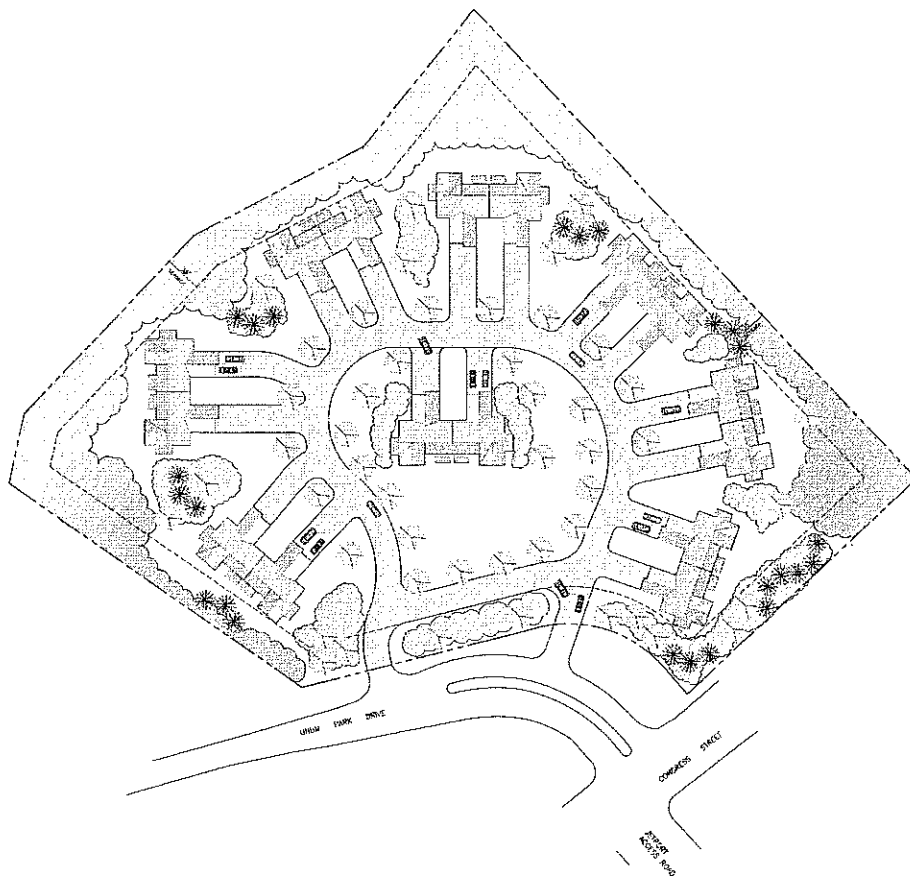
Robert B. Metcalf; Principal

Maine Licensed Landscape Architect

Enclosure

Cc Janet Burns

Bill Linnell



#### GENERAL NOTES

1. ALL DIMENSIONS ARE SHOWN UNLESS OTHERWISE NOTED.
2. CONCEPTS BASED UPON 2010 ZONING ORDINANCE.
3. SEE DENSITY CALCULATIONS.
4. DEVELOPMENT MANAGEMENT INFRASTRUCTURE (DMMI) IS SHOWN AS A CONCEPTUAL PLAN. DMMI IS NOT TO BE CONSIDERED A PART OF THE DEVELOPMENT.
5. SEE SITE PLAN FOR BUILDING FOOTPRINTS AND DMMI IS SHOWN AS A CONCEPTUAL PLAN. DMMI IS NOT TO BE CONSIDERED A PART OF THE DEVELOPMENT.
6. SEE TRAIL MAP FOR TRAIL LOCATION.

Alternate Housing Development  
1945 Congress Street

June 5, 2025  
Scale: 1" = 40'

Prepared by:

**Mitchell**  
**& Associates**  
ARCHITECTS

**From:** Paul Dubois <pdubois1915@yahoo.com>  
**To:** Helen Donaldson <HCD@portlandmaine.gov>  
**Date:** 7/22/2015 9:28 AM  
**Subject:** 1945 Congress zoning change submittal response from Dubois, 1915 Congress St

Nell, I'm so sorry for the confusion but I've received differing info from the neighbors about the proposal. Once I had a opportunity to read it for myself, I realized that I needed to correct some of the statements that were in the email I submitted yesterday. Is it possible to disregard or delete that response and submit this one instead. Thanks again for your help and sorry for the extra work.

July 28th will be the 4th time I have had to take a day off from work to speak at a workshop about this property development. Despite the fairly significant loss of income and the scrambling I have to do to find someone to replace me at work, we will come to speak because my wife, Kiki and I feel we have to do whatever we can to preserve the home we have made here in Portland. We are very fortunate to have created a great home bordering Stroudwater Village that is both relatively private yet convenient to all the amenities that this great city has to offer. We bought this distressed and non-conforming property (at the height of a real estate boom) because we knew with enough blood sweat and tears that we could build a home that we can afford while still being located in what is arguably the best city in the US. The biggest benefit to living at 1915 Congress is the privacy we enjoy especially at the property line bordering the Elks. For the last 14 years the city has enjoyed accepting about 3 times the taxes they would have received if we had not renovated this property. In that same period, the Elks have enjoyed reduced taxes due to their R2 residential zoning and have neglected their property to the point that they are once again in front of the Board, hat in hand, looking for a bailout claiming they can't afford to keep their property. If this proposal is passed, they get to sell their property for almost twice it's value while the best feature of our property (the privacy we enjoy) will be destroyed. Let's be clear, this proposal is specifically a way for the Elks to maximize the profitability of their real estate. By their own admission they point out that the property is only worth maybe \$1.5 million in a residential zone while a change in zoning may bring the value to 2.5 million. This is at least \$1,000,000 that they have to gain. That is a great incentive for the Elks to influence this Board. The neighboring property owners do not have these resources and we rely primarily on this Board and City Council to provide some balance. We have banded together in our opposition and even are providing some plans that support our position that this zoning change, if approved, 1) will be detrimental to the surrounding properties and is inherently unfair to those families that live in this area 2) is without question too large and intrusive a build out of the property and 3) will forever eliminate the opportunity for this property to be used for what it is best suited - residential development. The Elks have no right to maximize every last cent from the development of their property but all the incentives are there- 1 million of them.

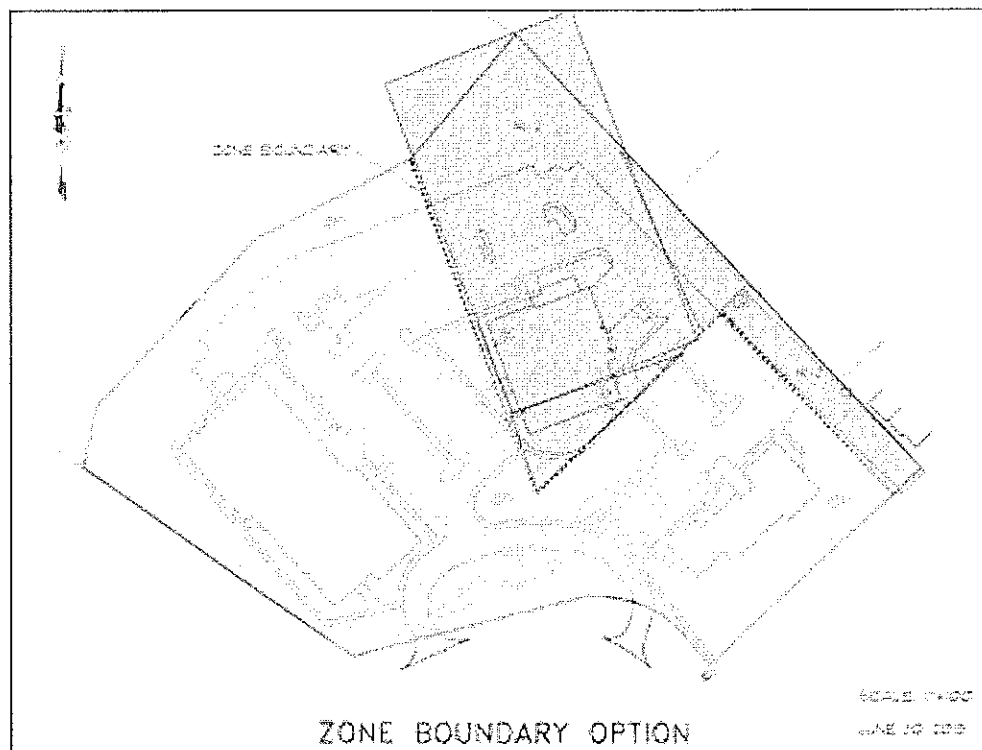
Each time we are asked to return to review additional submittals, I am dismayed to find that they lack any substantive changes reflecting the suggestions from the neighbors. They have 7 acres to work with but still seem to insist on placing a huge and unattractive building as close to the corner of Congress St and the closest residential property-my house. The latest submittal, proposing a 40 ft preservation of the R2 zone, is a step in the right direction but once again we are looking at virtually the same plan. I cannot blame the developer for trying to develop this property to it's fullest potential but the Board should not let this happen. Maintaining the R2 zone for the Elks building while sacrificing the most visible (and most proximal area to the existing residential structure) is really insufficient to minimize the impact on the neighboring properties. Please do not reward the Elks for their neglect and poor judgement while penalizing those of us that have acted prudently and improved our properties for the benefit of our families and the community. Every neighbor (except for one property hoping to be included in the zoning change) is telling you that this proposal is ill advised. Don't be confused, this proposal is all about greed and the proponents have one million reasons to influence your decision. Paul and Kiki Dubois

1915 Congress Street  
 Portland Maine 04102  
 (207)899-2599

**STATEMENT from the Stroudwater Village Association regarding the proposed rezoning of 1945 Congress Street (Elks Club Property).** [stroudwatervillageassociation@gmail.com](mailto:stroudwatervillageassociation@gmail.com)

This statement specifically references updates to the rezoning proposal in July, 2015 and should be considered in addition to our prior letters to the Planning Board from January 2015 and May 2015.

The Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken. Such a visioning process should involve all stakeholders, including but not limited to residents, the City of Portland, the Portland Jetport, MDOT, UNUM and other businesses and organizations in the neighborhood such as the Elks Club, the Tate House, area places of assembly and the several businesses on Congress Street near the Fore River. The Planning Board has been reticent to undertake such a process, but the latest zoning map submitted by the applicant (Fig 1) illustrates perfectly why such a visioning process is critical before any decisions are made.

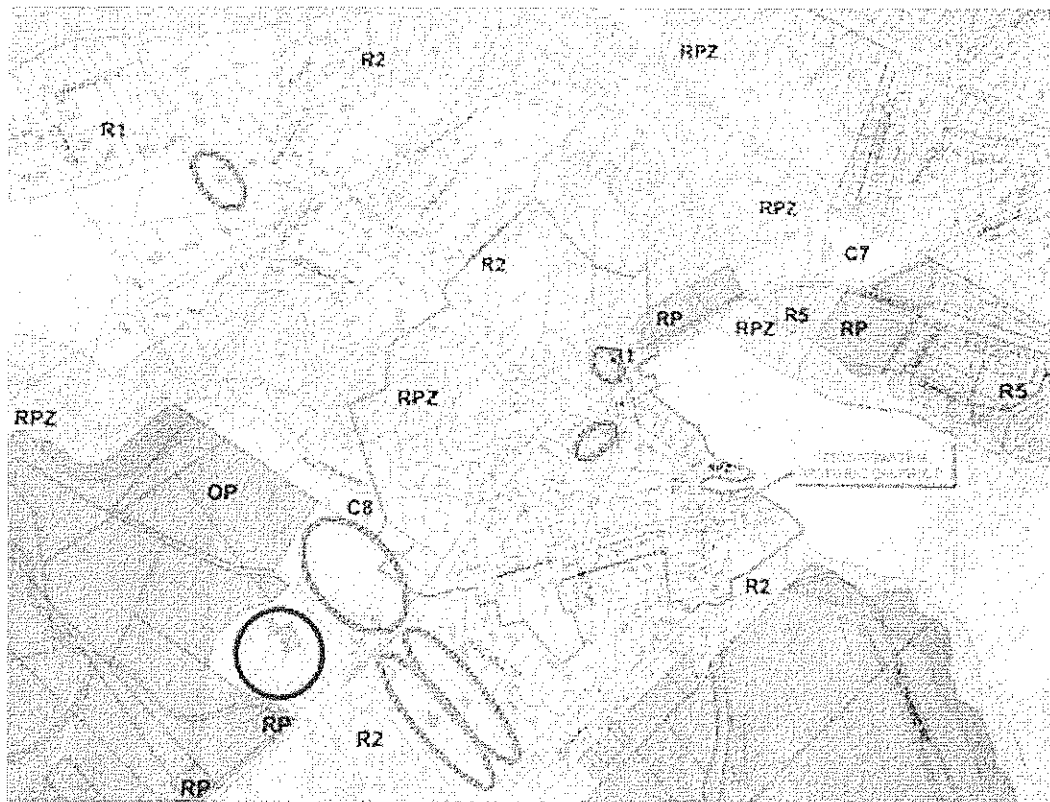


*Figure 1. Zone Boundary Option submitted by Applicant, showing the small amount of R-2 zoning remaining (blue) that would allow a tax-exempt, conditional-use seller to stay on the land in comparison with the large amount of land (green) allowed to the seller to “cash out” to a commercial developer.*

Put simply, the zoning proposal allows an existing tax-exempt, conditional-use organization to simply draw a box around itself and then carve up and “cash out” the rest of its land at maximum market value for commercial development, regardless of the will of other area stakeholders. Clearly a great deal for

the seller/organization and commercial developers, but a bad deal for the City and for the neighborhood – not to mention probably not the intent of conditional use zoning and tax exemption in the first place.

Far more ominous and concerning to the SVA than just this one parcel is the precedent this would establish for similar would-be sellers in the area. Figure 2 shows the potential “domino effect” of the potential rezoning gift from the city to other would-be sellers. Once the Elks (blue circle) are allowed to do this, why wouldn’t any responsible board member of other similar organizations (churches, Masons, the Tate House), consider “cashing out” their land? We know that Congress Street and Westbrook Street frontage would be very attractive to gas stations, donut and coffee shops, etc. On what leg would the city or neighborhood stand to prevent that kind of future activity when we are allowing it now?



*Figure 2. Stroudwater Village neighborhood zoning map highlighting potential sellers in red who are similar to the Elks (in blue). “Similar” in this case means tax-exempt, conditional use organizations sitting on large amounts of land that may be attractive to “cashing out” via piecemeal development.*

Stroudwater residents, and the SVA, are not opposed to all change in principle. If the City would like to have a conversation about how to incorporate more mixed-use activity into Stroudwater, by all means, let’s have it. But let’s have it with all stakeholders, and think about the big-picture effects, not just parcel-by-parcel. To restate, **the Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.**

**From:** "James Casterella Jr." <jcasterella33@yahoo.com>  
**To:** "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>  
**Date:** 7/26/2015 8:03 PM  
**Subject:** Tuesday, July 28th, workshop re: 1945 Congress St. proposed zoning amendment

Hi, Neil,

My name is James Casterella and I live at 1967 Congress St., two houses away from the Elks Club. I'm not sure if I can make Tuesday's Workshop so I wanted to email you with my thoughts.

First of all, I completely support Northland Enterprises' zoning map amendment application. I think it's very important that visitors to Maine, flying into Portland Jetport, drive onto Congress Street with a view of an attractive, modern building such as is being proposed by Northland. As it stands right now, those same visitors see somewhat of an eyesore: they see a huge, usually empty parking lot, and a somewhat rundown, tired looking Elks Club. The Elks Club deserves a facelift and also deserves the opportunity to stay at its current location.

Additionally, I'm hoping that the Planning Board will consider extending the zoning change to include my house (at 1967 Congress St) as well as my neighbor's house. We are the last two residential houses on Congress Street and the only two residential properties to the left of the UNUM entrance. My neighbor and I would like the opportunity to be zoned similar to the Elks Club so that professional development of our properties becomes a possibility.

If you have any questions please feel free to contact me via email or at 831-7297.

Thank you for your time,

James Casterella

**From:** <captlinnell@yahoo.com>  
**To:** Helen Donaldson <HCD@portlandmaine.gov>  
**Date:** 7/28/2015 11:19 AM  
**Subject:** Elks Club comments

William S. Linnell  
 1905 Congress Street  
 Portland, Maine 04102  
 207-409-0100  
 CaptLinnell@yahoo.com

Helen Donaldson  
 Planning Board

July 28, 2015

Dear Nell:

Please add these comments for the Planning Board concerning the Elks Club project--

This proposal is a farce: The developer is asking the Planning Board to throw its own rules out the window and approve what is essentially a contract zone, while calling it an OP Zone. Let's call it what it is. It is a contract zone proposal. It fits neither Office Park nor Residence Professional zoning specifications. A contract zone is a contract zone is a contract zone. It is a contract zone, and should be voted down as such. The Planning Board should not be complicit in this thinly veiled mockery of its rules.

The mockery continues as the developer's most strenuous argument for a zoning change is for greater profits. Portland's zoning laws do not contain any language that allows desire for greater profits as criteria for zoning decisions.

If profits are to be a major factor in the Planning Board's decision-making, then the ordinances should reflect this factor, and outline guidelines and criteria for weighing profit margins in decision-making for zoning changes. But the zoning laws contain no such provisions.

In short, the developer is asking the Planning Board to approve a contract zone, pretend that it is an Office Park Zone, and justify it for reasons that do not exist in zoning regulations. It is hard to imagine a more farcical mission for the Planning Board to join in on. Clearly, this request has no respect for the Planning Board, its rules, regulations, or process.

A cautionary note: If the Planning Board doesn't respect its own rules, regulations or process, no one else will, either: No doubt other non-profits and developers in Portland would also like to take advantage of this "approve, pretend, and justify" approach to zoning, if it comes to fruition.

I also find no ordinance that allows for zoning classification due to the owner's claim to being "a good citizen" or "doing a lot for the community".

I ask that the Planning Board confirm that this type of argument is irrelevant and inappropriate, lest those in opposition to the Elks Plan be obligated to list our contributions to society also, for Planning Board consideration.

Abutters to the Elks property have produced a preliminary but accurate drawing which shows the feasibility of 32 town house units on this parcel. We suggest that a zoning change to R3, which would easily allow residential development of the property in question, would be far more reasonable, would be consistent with zoning rules, and would have the support of the neighborhood.

Thank you for your consideration

Bill Linnell

William S. Linnell

1905 Congress Street

Sent from Windows Mail

**From:** David Silk <DSilk@curtisthaxter.com>  
**To:** Helen Donaldson <HCD@portlandmaine.gov>  
**Date:** 7/28/2015 9:09 AM  
**Subject:** 1945 Congress Street

Nell: Can you share this email with the Planning Board members as my comments on the latest proposed rezone for 1945 Congress Street. I expect the PB members in their packets will have my comments from the prior two proposed rezone proposals for 1945 Congress Street so I will not repeat in detail my earlier comments which I fully stand behind.

The current zone is a residential zone. There is no compelling reason to rezone the property to allow for commercial uses. I am not aware of any provision in the Land Use Ordinance that allows for the Board to consider as part of a rezoning analysis the need for the property owner to maximize his or her economic return but that is in essence what the applicant is now asking the Board to do.

The applicant has stated several times that it will never consider selling the property for residential use even though the property is zoned for residential use. The message is loud and clear that under the Comprehensive Plan the penultimate goal is the creation of more housing. Removing land from a residential zone to allow a non-profit operating as a conditional use place of assembly in a residential zone to maximize its return makes no sense whatsoever. Unlike Williston-West Church, there is no compelling need to preserve the building at 1945 Congress Street. There are numerous other places of assembly in residential zones that would jump at the chance for a partial rezone of their parcel because to allow for the non-residential use of land would make the land more valuable and help pay bills. But that should not be what rezoning of a conditional use in a residential zone should be about.

The Northland alternative housing analysis is flawed. It does not provide the estimates generated by the unnamed "experienced construction estimator" who arrived at the estimated costs for a eight lot or fifteen lot subdivision scenario. That estimate clearly should see the light of day so it can be subject to critical review and comment. Since this a workshop, the Board should ask the applicant to submit immediately the detailed estimates referenced in the report.

The analysis assumes that the cost of the land is the present contract price of \$2.5M. Per City records on line, the land today is assessed by the City for \$500,000. There is no analysis prepared by Northland of either an eight or fifteen lot subdivision using \$500,000 as the land development cost. Northland uses two land sales within a one mile radius of the subject to determine market rates for vacant lots. The market area is much greater than one mile of the subject and obviously should have included a much broader reach.

Northland's analysis does not include an analysis of what would be permitted under R-3, not as multi-family rental units, but as owner occupied townhouses, which would not be subject to Northland's rent limitation assumptions. It does not use \$500,000 as the land development cost and does not provide the detail of the analysis. Again since this a workshop, the Board should ask the applicant to submit immediately the detailed estimates referenced in the report.

The piecemeal cut up of the parcel makes no sense whatsoever, with zone lines cutting through parking stalls. When an applicant has to reach that far it should send off alarms. As mentioned earlier, the OP is for a campus like setting. What is presented for OP on the plan marked "Zone Change Option" leaves no room in the sea of pavement and buildings for a campus like setting.

Finally, Northland makes no showing that the land and building cannot be used by another non-profit as a place of assembly. A place of assembly (a church) uses space at 58 City Line Drive which is former warehouse right down the street the 1945 Congress. Apparently it has out grown the location and is looking to relocate to Spring Street in Westbrook. Another example is the growing Muslim community that is bursting at the seams at their present place assembly in Bayside. Recently a former Lutheran place of assembly on outer Brighton Street was purchased by a growing a Hispanic congregation and continues as a place of assembly. The applicant has not demonstrated the absence of a market for other non-profit organizations which utilizes places of assembly and who could make use of the site. To be sure, I doubt those nonprofit organizations will pay \$2.5M for the property but zoning should not be about gerrymandering the zoning to maximize economic return for a non-profit that for years has operated as a conditional use in a residential zone and has been and remains exempt in whole or in substantial part from paying property taxes.

Thanks for listening.

David Silk  
 1187 Westbrook Street

**From:** Charlton Smith <charltonsmith@me.com>  
**To:** Helen Donaldson <HCD@portlandmaine.gov>  
**Date:** 8/20/2015 3:26 PM  
**Subject:** Re: Planning Board Hearing - Proposed Zone Change at 1945 Congress Street

Dear Ms. Donaldson,

Thank you for your email.

As I have written to your office before I am very concerned that roughly 25 families living at River's Edge will have substantially increased difficulty exiting from River's Edge Drive onto Congress St. We are already forced by the Congress St. traffic to turn right at times in order to go left into Portland and that means that we have to turn around in the Elks Club entrance road and use the lights at Airport Drive to get on the inbound side of Congress St. This not only inconveniences us but it will add substantially to the traffic congestion at the streetlights and intersection in front of the Elks Club.

This is a very serious matter and I hope that the City's engineers have taken it into consideration.

Best regards,

Charlton Smith  
 85 River's Edge Drive

On Aug 19, 2015, at 8:46 AM, Helen Donaldson wrote:

> Dear Interested Party,  
 >  
 > The Planning Board will hold its final hearing on the proposed zone change at 1945 Congress Street on Tuesday, September 8 at 7 p.m. in City Council chambers. (Please note that this item will likely not be first on the agenda. The final agenda will be posted on the city's website (<http://www.portlandmaine.gov/Calendar.aspx?EID=1582>) closer to the meeting date.) As of now, the applicant has submitted no additional materials for review.  
 >  
 > All public comments received by our office will be provided to the board at the hearing. However, if you have additional comments (or questions), please don't hesitate to let me know.  
 >  
 > Best,  
 > Neil  
 >  
 >  
 >  
 > \_\_\_\_\_  
 > Neil Donaldson  
 > City of Portland Planning Division  
 > 389 Congress Street  
 > Portland, Maine 04101  
 > 874-8723  
 > [hcd@portlandmaine.gov](mailto:hcd@portlandmaine.gov)  
 >  
 > --

**From:** "Angela J. Wheaton" <angelajwheaton@yahoo.com>  
**To:** Helen Donaldson <hcd@portlandmaine.gov>  
**Date:** 8/20/2015 3:03 PM  
**Subject:** Fw: Deny Stroudwater Zoning Conversion Proposal

Dear Portland Planning Board, As a resident of the Stroudwater neighborhood, I would like to ask that you deny the zoning conversion request re: the Elks Club site.

I greatly appreciate your thoughtful review and consideration of this proposal as well as your inclusion of current residents in the process. I strongly urge you to deny this request in favor of a more comprehensive plan that would take the entire area into consideration.

Thanks for your time and consideration. Sincerely, AJW

Angela J. Wheaton  
30 Partridge Rd.  
Portland, ME 04102

**From:** Eugenia O'Brien <genieme80@gmail.com>  
**To:** <hcd@portlandmaine.gov>  
**CC:** Stroudwater Village Association of Trustees <stroudwatervillageassociation@gmail.com>  
**Date:** 8/21/2015 10:25 PM  
**Subject:** 1945 Congress Street: Elks re-Zoning in Stroudwater

August 21, 2015

Dear Planning Board and City Council Members,

I wish to express dismay, even horror, regarding the proposed changes to the current zoning which would impact 1945 Congress Street (Elks site) in Stroudwater.

My concerns come from a long history of attentiveness to this 'Gateway Area' to the city, which was so named by the city and airport representatives as part of the big push for the massive expansion at the Portland International Jetport. 'Forever Green' was the other term tossed around regarding both sides of Congress Street as an entrance into the historic center of Stroudwater, which was to be preserved as 'open vista'. Homes along outer Congress Street past the Elks/UNUM entrance have long ago been turned into businesses while Portland continues its need for residential housing. Instead, we should be reversing this trend back to family homes and directing new business construction to sites already zoned for those purposes.

This concentrated large scale construction will also negatively impact the migratory patterns of the wild life that currently have access to the open field setting and Stroudwater River. A long-time Portland resident, my home is located on this fresh water source and we have a parade of foxes, turkey, fisher cats, coyotes and deer through our yard. The songbirds, water birds and fowl are a separate issue, as Cornell Ornithologists and other scientists work to educate how to preserve habitat that nourishes what we seem hellbent on destroying. The bees and butterflies continue to return to the milkweed and field flowers while animals enjoy scrub cover and wild berries which will be irreparably altered by this degree of construction with its quantity of impervious ground cover and resultant contamination by parking lot run off. The animal sculptures at the jetport become a mockery of what WAS in the neighborhood if we do not protect this part of Portland's very real charm.

Please think long and hard before approving this construction. This does not fit the site of residential homes or neighborhood feel and mars the Forever Green and Gateway Area stance the city espoused previously. It would irreparably harm the entrance to Historic Stroudwater with commercial buildings. The city should not backtrack on its promises to its citizens and honor the words and commitment previously made.

Sincerely,  
 Eugenia O'Brien  
 1376 Westbrook Street  
 Portland, Maine 04102 (207) 773-5610

PS - We can't keep encroaching on animal habitat and be surprised when there are repercussions we have self-created. Leave this space open, green, and the wild habitat that creates that buffer to the fresh water source upon which nature relies. Additionally, we have bears, moose, cows and chickens out here - and we choose to be here and pay high taxes for that reason.

**From:** Betsy Smith <betsysmith429@gmail.com>  
**To:** <hed@portlandmaine.gov>  
**CC:** Stroudwater Village Association Board of Trustees <stroudwatervillageassociation@gmail.com>  
**Date:** 8/21/2015 4:39 PM  
**Subject:** 1945 Congress Street

Neil,

My family (we're a family of four with two children) built a home in the Stroudwater Village area just last year. We built here because we loved the feel and nature of the community, with its historic homes, and small and close knit neighborhoods.

We jumped through hoops ensuring we followed all the codes and regulations set forth by the city of Portland. At times we questioned why we were building in Portland because there were so many darn restrictions.

The answer, of course, is that the result of those strict codes and regulations is what makes Portland such a wonderful place to live. Clearly, there have been smart and forward looking people involved in making codes and regulations for Portland, and the result is a city that has beauty with function.

I understand the city wants to rewrite some of the codes and regulations to allow mega commercial development at 1945 Congress St. Seriously? Isn't this the area of town where we had to jump through all the code-and-regulation hoops in order to live within the context of this beautiful village? Why in the world would you change the codes to allow mega commercial development in a village where the codes result in a beautiful livable city? And if you do change the codes, shouldn't it be done in the same smart and forward looking context that the people before you did -- to ensure you keep Portland beautiful, functional, and livable?

We should not rezone this beautiful residential village to allow commercial development until we have a suitable master plan and we know what impact the change of codes will have on this area. It's not smart or strategic or forward looking -- all the things that make Portland the great city it is.

Betsy Smith  
63 Stroudwater Road

207-939-7769

**From:** <kshstrat@maine.rr.com>  
**To:** Helen Donaldson <HCD@portlandmaine.gov>  
**Date:** 8/25/2015 3:02 PM  
**Subject:** Re: Elks property

Let me be clear: I do NOT believe this will be wise. I opposed. This Rezoning at this location seems to contradict what we have been working toward and been told at every turn by our city planners fit our area: traffic calming, environmental concern, neighborhood, historic preservation etc etc

From Karen S Hinchliffe 207 671-2353

On Aug 25, 2015, at 2:53 PM, Helen Donaldson <HCD@portlandmaine.gov> wrote:

Ms. Hinchliffe,

I will make sure your comment appears in the planning board report for the hearing on this proposal on Tuesday, 9/8/15.

Best,  
Neil

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Neil Donaldson  
City of Portland Planning Division  
389 Congress Street  
Portland, Maine 04101  
874-8723  
hcd@portlandmaine.gov  
>>> <kshstrat@maine.rr.com> 8/25/2015 4:33 AM >>>  
Rezoning? We haven't understood how this will be better for our community.

Stroudwater resident  
Karen  
1221 westbrook street

2076712353

From Karen S Hinchliffe 207 671-2353

--

Patricia C. Adriance  
16 Longfellow Road, Gorham ME 04038-1845  
207-839-4445

August 26, 2015

Neil Donaldson, Planner  
Planning Division  
City Hall, 4<sup>th</sup> Floor  
389 Congress Street  
Portland, ME 04101

Re: Public Hearing – 1945 Congress Street  
Application #2014-227 or CBL #216-A-6

Dear Mr. Donaldson,

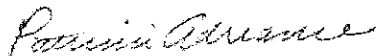
As a member of the Portland Elk's Lodge #188 I want to thank you and members of the Planning Board for your indulgence during this zoning change ordeal that has pitted the local residents and the applicant, Northland Enterprises, and the Elks against each other.

I have attended most of the work shop meetings along with meetings at the Elk's lodge to address many of the concerns raised during the meetings. That being said, I believe that the issues raised have all been met by Northland Enterprises.

It is fair to say we'll never satisfy the Stroudwater Association. No one (even myself) embraces change, but after reviewing all aspects of what has been submitted to the Planning Board, I believe it is economically the best that can be achieved and to keep the Elk's Club in Portland; a club which has been part of the Portland landscape for over 100 years. We're a great organization and have not caused the City or our neighbors with any problems and it will stay that way.

We've been trying for three years to make changes at the Lodge and I'd like to think we've earned your vote to change the zoning from R-2 to OP and move us closer to making the Gateway to Portland a pleasant site.

Yours truly,



Patricia Adriance

**STATEMENT from the Stroudwater Village Association regarding the proposed rezoning of 1945 Congress Street (Elks Club Property), September 2015. [stroudwatervillageassociation@gmail.com](mailto:stroudwatervillageassociation@gmail.com)**

This statement should be considered in addition to our prior letters to the Planning Board from January 2015, May 2015 and July 2015.

**The Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.**

At the July 2015 workshop regarding this zoning request, those in attendance heard members of the planning board and City staff say that the City does not have time or resources to initiate a visioning process for the neighborhood at this time. As taxpayers, we understand the problems of limited resources and are disappointed that such a process needs to be delayed. We are willing to wait, however, so that we can focus our collaborative work with the City in implementing the Outer Congress Street Phase II improvements scheduled for this year.

However, just as we are being told to wait, the same planning board and City staff are able and willing to muster the time and interest to make one-off zoning changes like the proposed one. Instead of thinking about the big picture and placing a project in its context, the planning board is green-lighting a project that will redraw the big picture. Whether or not this redrawing is the intended consequence of the individual action is irrelevant. The fact remains that this proposed zoning conversion will pave the way for other zoning conversion proposals in the Stroudwater area. At this point there are essentially no rules of engagement or generally understood expectations in place to deal with the proposals that will follow.

In the prior workshop, the planning board seemed to accept the fact that zoning decisions do not imply legal precedent. That offers small consolation since this is not a legal matter. We are not discussing lawbreaking here – we are discussing what we want an area of the city we love to look like in 2, 5, 10, 20 years – coincidentally at the same time that the City is revising the Comprehensive Plan and we are working with our neighbors at the Jetport on their Sustainability Master Plan. These conversations should be coupled, not siloed – if stakeholders are invited to have such a big picture discussion, who knows what we will learn – perhaps there's an interest in more retail, or arts and entertainment, or different kinds of residential development such as housing for UNUM and/or Jetport employees.

But if we choose not to have that big picture conversation now, and instead let it be redrawn by itself, the opportunity is lost.

**To restate, the Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.**

TO: Members of the Planning Board

FROM: David Silk, 1187 Westbrook St

RE: Proposed Rezone of 1945 Congress Street

Property Owner: Portland Lodge #188 BPOE of USA ("Elks Club")

For the following reasons, I urge you to vote not to recommend to the City Council the Elks Club's rezone request. The rezone proposal is not consistent with the existing pattern of development and the comprehensive plan, the OP zone being proposed, and represents unsound planning.

The Elks Club property at 1945 Congress Street is presently zoned R-2. It consists of a 6.9993 acre parcel. The portion of the lot to be rezoned OP is about 4.7 acres. As the Planning Staff's July 28, 2015 memo explains, the property has been zoned residential since 1945. When the Elks Club acquired the property in the late 1960s, the parcel was zoned R-2. At that time the property was rezoned from R-2 to R-6 so as to allow the club to develop the property as a social/fraternal hall under what was then known as an "exception" to the uses permitted in the R-6. Exceptions in the late 1960s are now known as conditional uses. Conditional uses are permitted on the basis in general, the conditional use is compatible with the underlying permitted uses. Places of assembly, like schools, are conditional uses in all of the present residential zones. Without objection from the Elks Club, the property in the late 1980s was rezoned from R-6 back to R-2. Today the club is known as a place of assembly and permitted as a conditional use in the R-2.

The Elks Club wants to rezone because its property is worth a lot more when zoned as a commercial property. Zoned R-2, the land is assessed at \$512,000. With the zone change, Northland will pay a reported \$1.25M for just the land. The Elks Club annually receives a substantial tax break (about 30%) due to its status as a not for profit social fraternal organization. The Elks Club recognizes that the short strip of land along Congress Street, between Westbrook Street and where outer Congress Street merges with Johnson Road, has lots of traffic. The very high volume of traffic means great visibility to any commercial use located on the strip. Any open space along Congress Street, if rezoned, will significantly increase in value. Someone like Northland will pay a lot of money to develop commercial land.

The Elks Club is not alone as a conditional use in the R-2 zone with open space along a busy road. As the map on page 6 of the July 28, 2015 Planning Staff memo shows (copy attached), in the immediate vicinity of the Elks Club and in the R-2 zone, there are three other properties of between 4 and 6 acres with conditional uses located thereon, Faith Temple, Christchurch of Portland and St. Albans Corporation (Masonic Learning Center). Like the Elks Club, they too could seek to divide their existing parcels and rezone to a commercial zone the front portion of

the lot with frontage along Congress Street. The lots zoned commercial may be a bit smaller than the 4.7 acre lot the Elks Club seeks to create, but the difference would not preclude location of a commercial development. Note the Elks Club seeks to erect two multi-story buildings with a total square footage of 40,000 square feet on the to be created 4.7 acre parcel. The other conditional uses could easily seek just to place one building along Congress Street and forgo a second building.

The same occurrence is ripe to happen at other places of assembly conditional uses located in residential zones such as ones situated along Allen Ave, Westbrook Street, Outer Washington Ave and Ocean Ave, just to identify a few locations off peninsula. With high traffic counts and frontage available to be developed, numerous places of assembly could seek to divide their present lot to allow for commercial development on a to be created front lot abutting the street in what otherwise is a residential zone while maintaining the conditional use place of assembly in the rear. No one can begrudge the Elks Club or others from attempting to do so. Self-interest often involves attempting to maximize what one can. Brokers earn more based on higher sale prices and look for ways to make deals happen. But allowing conditional uses in residential zones with ample frontage along an outer arterial to divide and develop the front portion for commercial uses is unsound zoning.

Note there is no shortage of land zoned for commercial development in the City. So the need to rezone to allow for commercial development is not about filling a need. To allow any property owner to divide just a portion of its property and rezone the new parcel simply to make more money is not a legitimate reason to rezone. Otherwise this Board will be flooded with rezone requests.

Zoning is also not about guaranteeing to a property owner the highest price that can be had if some or all of a parcel were to be rezoned.

Rezoning should be about respecting the process and at looking at the neighborhood in which the property is situated and examining whether the rezone will have adverse impacts on surrounding properties, whether it is compatible with existing uses, whether it is consistent with existing patterns of development and consistent with overall goals of the City. Viewed from a process perspective, the Elks Club's proposal is unsound and should not be recommended for approval to the City Council.

**A. Piece-meal rezoning is unwise and unsound.**

As an initial matter, any rezoning in this area should not be done piece-meal. The Elks Club's property is located in very close proximity to the Stroudwater Historic District ("SHD"). The SHD was added to the National Register of Historic Places in 1973.<sup>1</sup> Attached hereto is a map

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<sup>1</sup> *"The significance of Stroudwater Historic District is not limited to the merits of individual buildings. The whole formed by these single elements stands today as a fine example of a*

showing the breath and extent of the SHD. It is expansive and obviously worthy of protection. Any rezoning of the area in close proximity to any historical district, especially when the rezone is to change an existing residential zone and convert it to commercial uses, should be done with eye to ensuring the rezone will not negatively impact the historical district.

The Elks Club's property is located in close proximity to the City's main entrance to the Jetport and sits across the street from two large parcels owned by the City also zoned R-2. The area is a gateway to the Jetport and an entrance to the UNUM campus. As part of the 1994 Jetport Master plan, the City owned land was identified as land to be held and maintained as open space/buffer in the R-2 zone. See July 23, 2015 Planning Staff report at page 3. While the report does not say as a buffer to what, it is clear the buffer is to protect the existing residential uses and the SHD located nearby from non-residential uses that would adversely impact the existing residential uses and the SHD. If the City owned land located directly across the street from the Elks Club is zoned as R-2 in order to be a buffer for this purpose, it makes absolutely no sense to remove the R-2 designation for the Elks Club's property located just across the street. The distance and proximity of both the City property and the Elks Club's property to existing residential homes and the SHD are no different. Keeping the R-2 designation for the Elks Club's property is therefore consistent with a zoning goal of the City, as stated in the Jetport Master Plan, to keep the R-2 zone as is to serve as a buffer to existing residences and the SHD.

If you look at the map presented on page 6 of the July 23, 2015 Planning Staff report (copy attached), and if you have visited the area, you will observe that the four conditional uses located in the R-2 zone in the area just along Congress Street just outside of the SHD were all developed in a similar manner. This was not achieved by accident. The main building and parking on each lot are located well off of Congress Street. The structures housing the Elks Club, Faith Temple, Christchurch of Portland and the Masonic Learning Center were located in such a way that significant open and green space remained between Congress Street and the area developed. The open space was at least as deep as the lots used for residential uses. The conditional uses and parking associated therewith were all well set back from the street. Why? All of the conditional uses were located so as to not negatively impact the existing abutting residential uses and the character of the area at the doorstep to the SHD. That is the clear pattern of development in the area. It is unsound planning to allow for a rezone that is totally disregards the planning that has occurred in the area as evidenced by the actual development that has occurred and the Jetport Master Plan discussed above. Yet that is what the Elks Club's proposal asks you to do.

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*nineteenth-century village. The pattern of the village's growth is visible in the sequence of its architecture. Although the commercial enterprises carried on in the village are no longer in existence, their sites are clearly evident. The current residents of Stroudwater take pride in their historic village. Their homes are well maintained; many are restored to their original exterior appearance. .... The sense of history that envelops Stroudwater is heightened because the buildings have been continuously lived in and cared for." Beard, p 302*

The Elks Club proposed rezone which would allow for a multi-story office building located right along Congress Street. Such a result is entirely inconsistent with the development that has occurred along this segment of Congress Street over the last 50 years. It is an unwarranted, disrespectful and unsound and driven by money and not by sound zoning.

These observations have led many to request that before any piece-meal zoning occurs, that the City undertake a planning process to best identify how the area should be zoned. The area is a very important gateway to Portland, not only from the west but for travelers who arrive by air. It is bordered to the east by two large cemeteries, to the west by the SHD and to the North by the UNUM campus that has all of its offices setback at significant distances from Congress Street. There are numerous residential structures in use in the area including ones abutting the Elks Club's property. The planning to date in this area intentionally maintained open space characteristics along Congress Street by preventing structures housing conditional uses from being sited right along Congress Street. The 1995 Jetport Master plan reaffirmed the important role the open space has in creating a buffer for the existing residential uses and the SHP. The OP designation for the UNUM property on Blueberry Hill ensured that the view from outer Congress Street was of a campus set back from the road. There are several cemeteries in the immediate area that provide for and are consistent with the preservation of the R-2 zone. Before this longstanding pattern is changed, there should be a master planning process.

In other areas of the City, the USM neighborhood, India Street and Forest Ave, a thoughtful process has been followed to look at uses, setbacks, lighting, and design standards all to develop a vision to govern the area. This ensures that any non-residential development that occurs is compatible with the existing residential uses. It also ensures that development is not driven solely by the wants of just one property owner seeking to maximize its return regardless of the impact on others. With the Jetport gateway and the SHD at the footstep of the Elks Club's property, and in an area that since at least 1945 has been zoned residential, sound zoning requires process that looks at the whole area, and includes all of the stakeholders.

Those who speak against a master planning process need to offer reasons why it should not be undertaken. The District Councilor for Stroudwater, who is fully supportive of the Elks Club rezone proposal, naturally states no money can be had to pay for a master planning process. So therefore he says consideration of the rezone proposal should not be held up pending a planning process. In other words, it is not a priority and therefore let the market drive the zoning and forget about vision. That approach will only result in unsound zoning. If there is a will, there is a way. If the City can find money to pay to pave the floor of the duck pond in Deering Oaks, it can find the money to fund the development of a "well-thought-out plan" for this important area of the City. With the revenue the Jetport brings in, some of that can be earmarked to study this critical area.

Interesting the same Councilor had this to say recently about the importance of collaboration and vision in processing zoning changes.

*"A good leader must have a well-thought-out plan and take risks to bring people together to realize that vision. Without direction, our priorities are not defined and our path is not clear. A good leader must listen. When residents feel like they have not been heard, and have been ignored, we end up as a city governed by referendum, as was the case with Congress Square and now the Portland Co. development. A good leader must bring people together. Without collaboration, people become frustrated and divided. They concern themselves more with getting their way than they do with making their way toward long-term solutions that work for everybody."*<sup>2</sup>

Vision and direction are not created by meeting the want of one property owner to make as much money as it can through a rezone, regardless of how benevolent the property owner may be. Vision and direction are created through a collaborative inclusive process that looks at what is best for the whole.

**B. Rezoning is not intended to increase the return to property owner.**

To the extent any part of your decision is premised on the Elks Club's assertion that its property cannot be put to other uses, there has been no showing that is the case. It has not to my knowledge been put on the market for non-commercial uses. Recent examples show that places of assembly permitted as conditional uses in residential zones can be sold and used for other than commercial purposes. Earlier this year, the former Saint Patrick's Roman Catholic Church located next to Westgate on Congress Street was sold to the non-profit Jewish Community Alliance. The Church had been on the market for several years and eventually a buyer was found. Selling that Church can be no more difficult than selling the Elks Club. The former Saint Patrick's property was zoned R-5. The Church and its broker did not come to the City to seek a zone change to allow for commercial uses in order to maximize its return even though property abutted a business district (Westgate zoned B-2). Instead, working with its broker, it found a buyer who did not need a zone change to make a productive use of the property. The Elks Club has made no showing that it could not find a similar type of buyer for its property. The fact that the Elks Club would make less money is not a valid reason to rezone.

The Elks Club, a non-profit organization partially exempt from paying property taxes, is on record in the proceedings before this Board that it would "never" list the property for sale for residential use and "never" sell its property for any residential use. Having its land valued as residential for the last 50 years and taken advantage of that valuation to pay a lot less in taxes than had the land been valued commercial, it is an interesting pronouncement to make. In any event, it is unsound zoning to rezone a property simply because the owner refuses even to consider selling for the permitted or conditional uses for the zone.

For sure, the Elks Club will point to the Northland submittal dated July 8, 2015 purporting to show that selected residential uses of the property cannot be had. That is beside the point. I am sure Saint Patrick's Roman Catholic Church could have submitted a similar analysis but that did

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<sup>2</sup> Press Herald, August 25, 2015.

not preclude the Church from finding a buyer for the property that could use the property without a zone change.

To the extent any reliance is to be placed on the self-serving Northland analysis, that analysis should be submitted to peer review. It should be part of this Board's due diligence to do so. This Board as a matter of course submits for peer review traffic studies, engineering plans, storm-water plans and the like for properties to be developed under site plan review consistent with permitted uses in the zone. If a property owner is going to present an analysis to show that even if the property was given away, no residential development would be economically feasible, such an analysis needs to be submitted to peer review. There is more at stake with a rezone than with development consistent with permitted uses. The Board needs to do its homework.

Given recent residential developments, planned and proposed in the City, I find it difficult to find Northland's claim credible. But the Board should not take my word, it should submit the question of whether the property could be economically developed for residential uses to peer review along with the rest of Northland's analysis. As an example, I am sure Avesta or Community Housing of Maine could review Northland's LIHTC analysis and offer meaningful insights. Other residential uses can be similar submitted to an experienced entity for peer review.

Do not be confused by Northland's initial use of \$2.5M as the value of the property in its analysis. The assessed value of the land is \$512,000. Also I do not believe it is sound to base a zoning decision on the claim that the property cannot be used for uses permitted in residential zone when the property has been used since 1945 in a manner consistent with the residential zone it is in.

**C. The Elks Club has not shown that the property to be rezoned OP can even be developed consistent with the OP standards.**

Common sense should suggest to you that the Elks Club's proposed rezone map is unsound. See attached for copy of map. It is driven by the fact that in the OP zone, places of assembly are not permitted uses. The Elks Club's building still to be used as a place of assembly will remain in the R-2 zone as a conditional use with 10 foot setbacks. The remaining portion of the lot is to be carved off and rezoned to OP. So the net result is to allow for a non-permitted use in the OP zone to be located just 10 feet away from the new OP zone line. That is unsound zoning and an abuse of the process.

It is worth reiterating again the purposes of the OP zone as it raises the question whether any use of that portion of the Elks Club's property to be rezoned OP can even be developed in any manner consistent with the purposes of the OP zone. If not, the property should not be rezoned.

The purpose of the OP zone is to "provide *substantial areas* for integrated development of professional offices in a park-or campus-like setting which are of the highest quality, are well

maintained and *are compatible with their natural surroundings.*" The Elks Club's entire parcel is about 7 acres (6.993 per the Assessor's records). It is not clear what is the exact size of that portion of the lot proposed to be rezoned OP, but it appears from the map provided to be about two-thirds of the whole lot, or say 4.7 acres.

One is hard pressed to say that the to be created 4.7 acre lot is a "substantial area" as that term is used in the OP zone. By comparison UNUM's property designated OP is at least 15 times larger than what the Elks Club's proposed OP zone. The applicant's map does not show any integrated development. The applicant's visual does not even attempt to show any park or campus like setting compatible with the natural surroundings. With the area to be occupied by the two new buildings with added pavement for parking it is impossible to see any potential for any park or campus like setting as viewed from the Congress Street corridor. Compare the applicant's proposed view with the view of the UNUM campus from Congress Street.

On the visuals there are no internal sidewalks that take advantage of the "topography and natural features of the site." There is a mass of parking being proposed right next to what will still be a R-2 zone with little preserved of the natural features. I see no room for any buffer and screening of the type called for by the OP standards between the remaining R-2 zone and the proposed OP zone: "dense and continuous nature and shall incorporate trees, shrubs, fencing, berms and related elements." Instead there is pavement. I do not see any preservation of natural features which includes existing vegetation. It appears it will be mostly paved over.

The OP standards call for a "Master Plan" of the office park that shall include a design relationship to the site to show integration of open space and the natural features. It would be prudent before the Board makes any recommendation on the rezone to require the applicant to actually submit a Master Plan evidencing *it is even possible to develop the 4.7 acre to be created parcel in a manner consistent with the OP standards.* The integration required in the Master Plan "shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens and benches." There should be a showing of possible building envelopes and integration making a threshold showing the OP standards can be met. None of the concept plans the applicant presented to you make this threshold showing. That fact should be a red flag to the Board. If it is not practicable to meet the OP standards the property should not be rezoned.

**D. The proposed rezone is not consistent with the Comprehensive Plan.**

Turning to the Comprehensive Plan, that plan has as a goal no net loss of housing for all development. City reports issued over the last 12 months repeat the same message; there is a huge need for all kinds of housing in the City. For example, the Director of Planning and Urban Development for the City reported at a City Housing and Community Development meeting earlier this year that based on current trends, there is a gap of 24% to 33% in the supply and demand of workforce housing. He noted that there is unmet demand for 3 bedroom housing that

can accommodate working families. Other City officials have noted there is substantial unmet need for senior housing to accommodate for downsizing by existing Portland seniors. Having served for the last 20 years on the board of non-profit developer of senior housing projects in Maine and New Hampshire, I can vouch for that need. The site certainly is capable of sustaining a viable senior housing development. There is an unmet need for all kinds of housing. Peer review will show the property can be developed for residential use.

The goal of not losing any and creating more housing is incorporated into the Land Use Code and is likely the highest goal of the Comprehensive Plan. While there is no existing housing on the Elks Club's property, changing the zone from R-2 to OP removes the land from being used for residential housing. Residential uses are prohibited in the OP zone. Rezoning land to eliminate residential uses like removing dwelling units with no replacement of those units is clearly not consistent with the Comprehensive Plan's goal of creating more housing in the City.

More importantly, the Board must ask what will be the impact of the rezone on the abutting and nearby residential uses and will the rezone lead to the deterioration of those areas and eventual loss of residential uses? If the answer is yes, as I think it is, the rezone should not be approved as it will result in the loss of residential dwellings. These residences have already been burdened with the traffic on Congress Street. Soon commercial developers will be looking to buy the existing residences conditioned on a zone change and they will point to the new 40,000 square feet of office space nearby as the basis for the change in the character of the area. The goal is to protect the integrity of neighborhoods and not allow them to be eroded away. That is why the Jetport Master Plan recognizes the R-2 zone along Congress Street as an important buffer.

**E. The Elks Club's proposed rezone should not be recommended to the City Council.**

In sum, it appears to me the only reason for the proposed zone change is to maximize the financial return to the Elks Club. The Elks Club's proposal does not seek just to rezone that rear portion of its property contiguous with the existing OP zone which would ensure that any commercial building would be located well off of Congress Street and the green space along Congress Street would be preserved. That more limited zone change would provide less money to the Elks Club but at the same time preserve the pattern of development that has occurred on Congress Street in this area, a pattern intended to act as a buffer to the R-2 zone and the SHD. See attached drawing. Of course proposing a more modest zone change consistent with the character of the neighborhood would not yield as high a return to the Elks Club. Hence that is why a more modest proposal is not before you.

Taking the proposal as the Elks Club has presented, with two buildings and not just one, extending the OP zone so it fronts Congress Street so the applicant can place a large commercial building right along Congress Street, and not just limiting the OP rezone to the rear of the lot, contiguous with the present OP zone to ensure the green space along Congress Street remains, the proposal is unsound. If the Elks Club is bound and determined at all costs to develop that

portion of its property between its existing building and Congress Street, the Board should not recommend the proposed zone change until a master planning process occurs that looks at the section of Congress Street from the edge of the SHD to Johnson Road and includes review of the all of the R-2 designation along this section of Congress Street with all of the stakeholders at the table.

*“Without direction, our priorities are not defined and our path is not clear.”* In an area where the existing pattern of development is clear, to change that pattern only to maximize the return to for one property owner is unsound zoning. It is not a path this Board should follow and it is not a path this Board should recommend that the City Council follow. If there is to be change in this area, change from the R-2 acting as buffer, it should be the result of a *“well-thought-out plan.”* The Elks Club’s proposal is not a well-thought-out plan.

Thank you for your consideration.

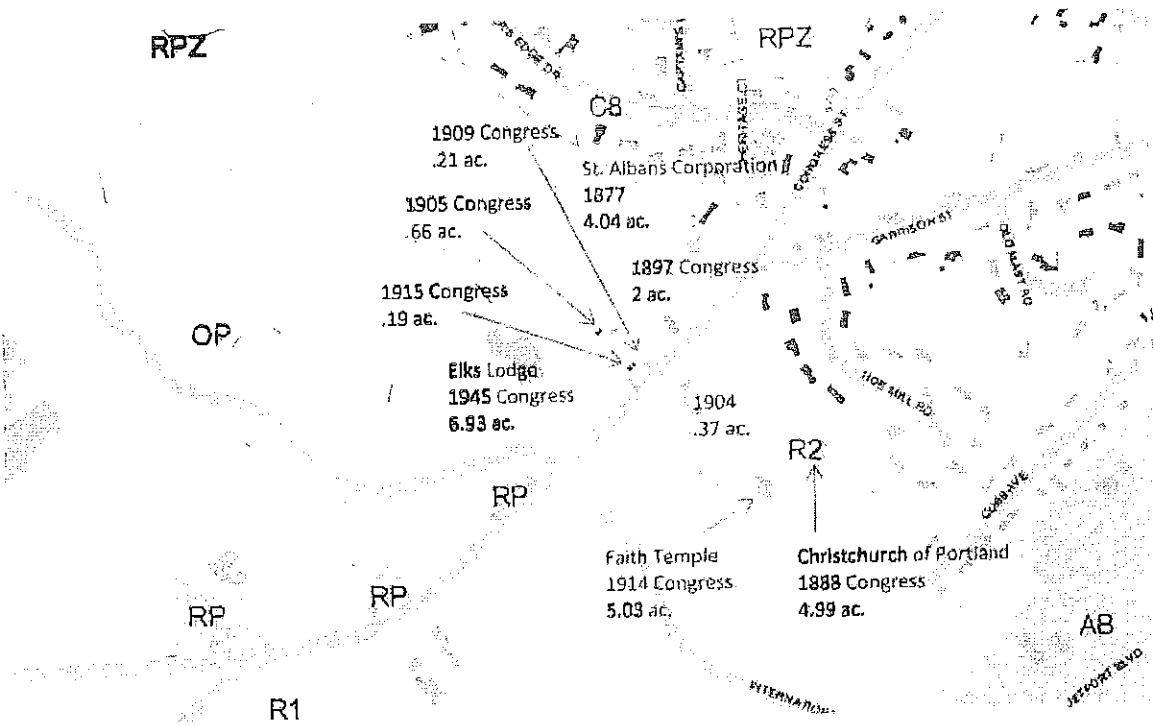
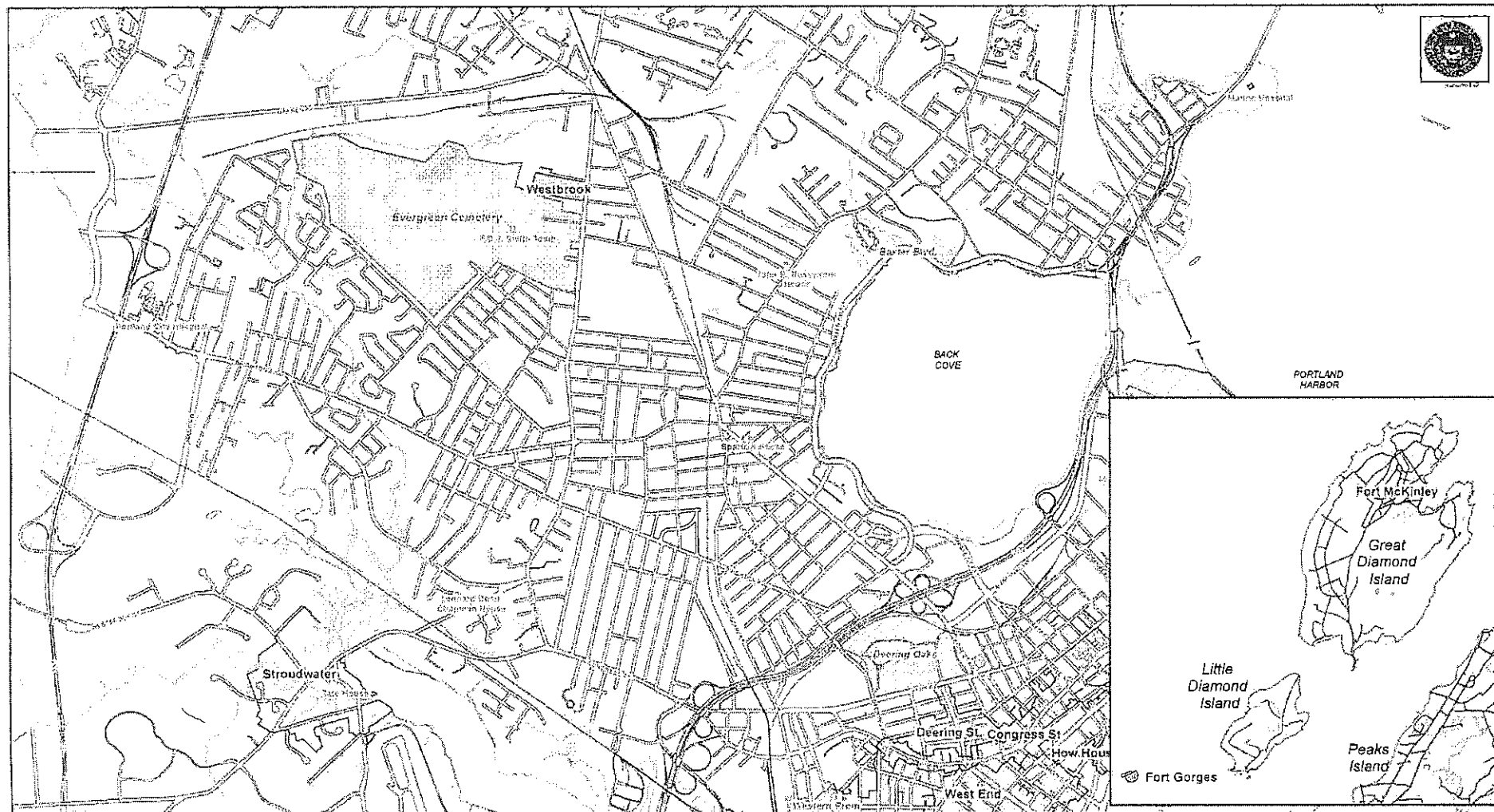


Figure 4: Parcel sizes and context in vicinity of 1945 Congress Street

Page 6 - Staff Memo July 28, 2015



# **Historic Districts with Historic Landscapes, Cemeteries & Individual Landmarks**

Off Peninsula & Islands

Effective April 15, 2009

City of Portland, Maine Department of Planning & Development and the Department of Public Services

## **Historic Districts**

- Congress St.
- Deering St.
- Fort McKinley
- How Houses

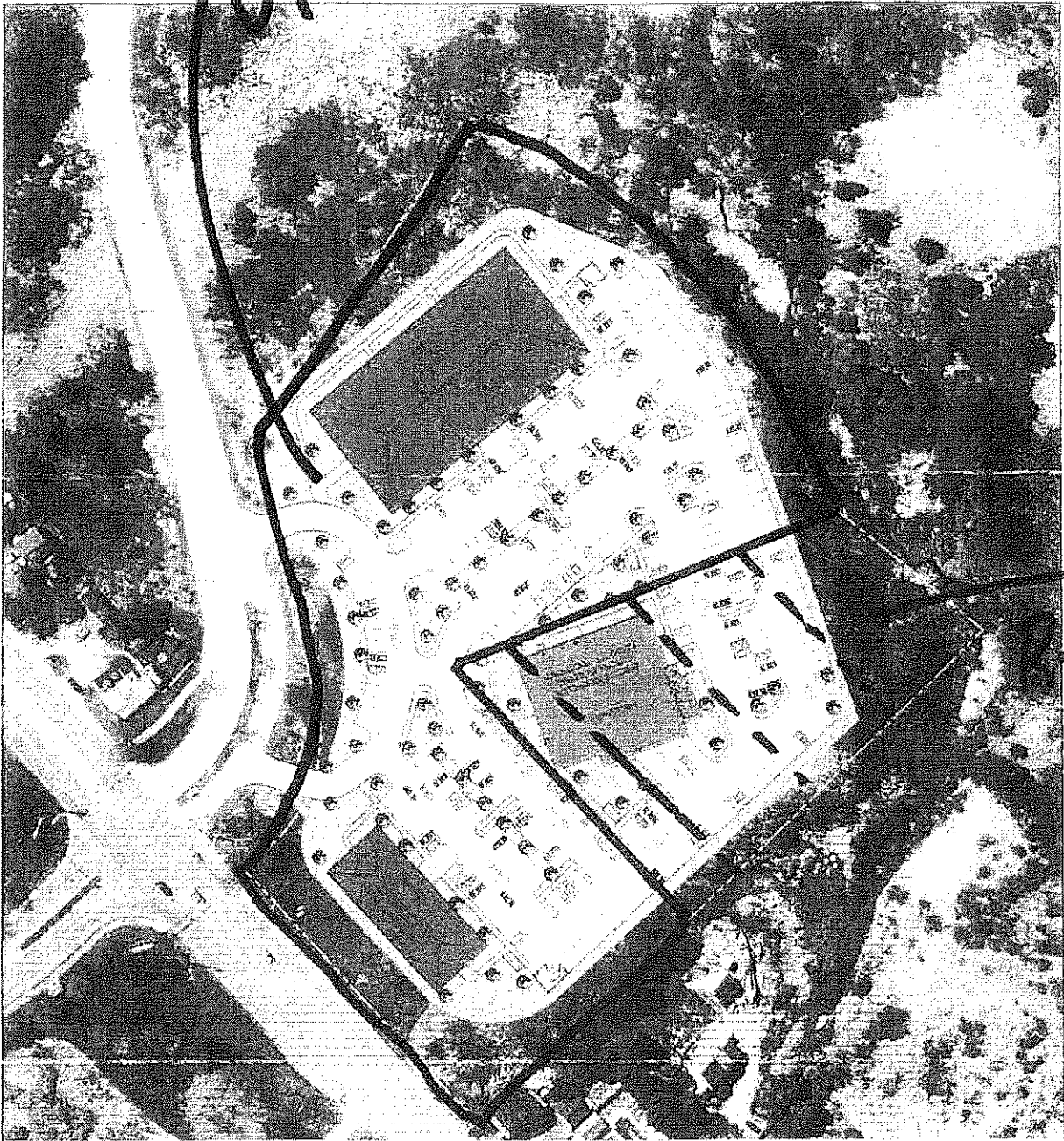
- Old Port
- Stroudwater
- West End
- Westbrook

- Historic Landmarks
- Historic Landscapes
- Historic Cemeteries



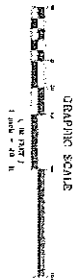
Ellis Club proposed resort.

DP



2

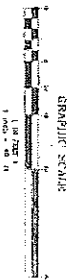
NOT FOR CONSTRUCTION



|    |                                                     |                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |                                                |
|----|-----------------------------------------------------|------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|------------------------------------------------|
| 03 | 1945 CONGRESS STREET<br>ELKS LODGE, PORTLAND, MAINE | NORTHLAND ENTERPRISES, LLC<br>17 SOUTH STREET<br>PORTLAND, MAINE 04101 | <p>THIS SITE PLAN IS A PRELIMINARY DESIGN AND IS NOT TO BE USED FOR CONSTRUCTION. IT IS THE PROPERTY OF PINKHAM &amp; GREER CIVIL ENGINEERS, INC. AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF PINKHAM &amp; GREER CIVIL ENGINEERS, INC.</p> |  |  | <p>PINKHAM &amp; GREER<br/>CIVIL ENGINEERS</p> |
|    | SITE PLAN                                           |                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                            |  |  |                                                |

11-2

NOT FOR CONSTRUCTION



33

## SITE PLAN

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DATE: 1-28-73 PAGE: 20
TIME: 0800 CREAT: TEL
AUTHOR: JCH CHERB
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[illegible]

**PINKHAM & GREER  
CIVIL ENGINEERS**

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Ms Helen Donaldson  
City of Portland  
Planning Board

September 3, 2015

Hi Nell,

Please share this letter with the Planning Board in advance of the 9.8.15 Public Hearing re the Elks Club Zoning Change Request.

I ask that the Planning Board recommend that the Elks Club zoning change request be denied.

**The request is inappropriate: the Plan that the Elks have submitted doesn't fit the very zoning standard that they are asking for.**

According to zoning rules, the Office Park Zone (OP), such as is found on the neighboring Unum property, requires a "park- or campus-like setting", with lots of open space, trees, walking paths, and so on. The Elks proposal is much different. The plan that they have submitted is too full of buildings and parking lots to begin to address the park-like requirements of the standard. As such, it is clearly an attempt to "shoehorn" buildings and parking into a much denser arrangement than the OP zone calls for. Buildings and a dominating parking lot do not make a campus-like setting. If the Planning Board is going to follow its own rules, the plan should be rejected, until and unless dramatically re-configured, probably with one-half as much new construction, to allow for "substantial areas for integrated development of professional offices in a park-or campus-like setting which are of the highest quality, are well-maintained, and are compatible with their natural surroundings."

In the meantime, the plan should be rejected. **As the applicant has presented a grossly inappropriate plan, it would be further inappropriate to approve the plan and rely on site planning to correct the gross inconsistencies with the spirit and intent of the OP zone.** Approval of such a flawed plan would put the cart dramatically before the horse, sending a troubling and wrong message to the applicant and other would-be applicants.

Furthermore, as has also been revealed, the OP zone does not allow for uses such as the Elks Club within its boundaries. **The applicant hopes to literally circumvent the standard by drawing a line around the club, and changing the zoning just outside this line.** Approval of this scheme would make a mockery of the zoning process. Further, similar organizations could expect to step up for the same treatment, changing zoning where convenient, and circumventing the planning process.

From the beginning, the Elks and their business associates have maintained that residential development would not be feasible at this location. But we have hired consultants who have

drawn an alternative development, with a 32-unit townhouse configuration, that we have previously shared with the Planning Board, and is clearly feasible.

Additionally, we now have figures from another consultant that put complete site development at \$24,775 per unit (\$792,800/32). See attached breakdown of costs. Site development costs of \$792,800, added to a sale price of \$512,000 (the assessed value of the land), yield per-unit costs of the site at \$40,775. If the sale price were \$1,000,000, the per-unit cost jumps (only) to \$56,025.

I am confident that townhouse lots that are builder-ready at \$40,775 to \$56,025 each, in one of the most desirable neighborhoods in Portland, would be easy to sell. Building costs of \$125 per square foot, including a contingency of 10%, would suggest sale prices of \$237,352 to \$254,127 for brand-new, 1,400 square-foot townhouses, and \$264,852 to \$281,627 for the 1,600 square-foot versions.

At the higher end, these prices translate to \$ 8,572,064 in taxable real estate for the city. **We welcome peer-reviewed studies from the City to verify these estimates.** So far, the only figures have come from the developers and their friends.

In sum, the premise that residential development is not feasible is flawed. And the plan simply doesn't fit the standards of the zone designation that the applicant is asking for. Therefore I ask that the Planning Board recommend, in accordance with its own standards, that this project be rejected.

Many Thanks,

Bill Linnell

1905 Congress

409-0100

CaptLinnell@yahoo.com

|                      |  |           |  |               |       |               |  |
|----------------------|--|-----------|--|---------------|-------|---------------|--|
| THE ELK'S LODGE      |  | QUANTITY  |  | UNIT COST     |       | SUBTOTAL      |  |
| 1945 Congress Street |  |           |  |               |       |               |  |
|                      |  |           |  |               |       |               |  |
| Building Demolition  |  | 23,100 SF |  | \$ 3.50 / SF  |       | \$ 80,850.00  |  |
| Site Demolition      |  | 4,500 SY  |  | \$ 3.50 / SY  |       | \$ 15,750.00  |  |
| Roadway              |  | 1,000 LF  |  | \$ 118 / LF   |       | \$ 118,000.00 |  |
| Sidewalk             |  | 1,000 LF  |  | \$ 12 / LF    |       | \$ 12,000.00  |  |
| Earthwork            |  | LS        |  | \$ 15,000.00  |       | \$ 15,000.00  |  |
| Sanitary Sewer Main  |  | 820 LF    |  | \$ 110 / LF   |       | \$ 90,200.00  |  |
| House Sewer Piping   |  | 800 LF    |  | \$ 32 LF      |       | \$ 25,600.00  |  |
| Water Main           |  | 1,200 LF  |  | \$ 147 / LF   |       | \$ 176,400.00 |  |
| Storm Drainage       |  | LS        |  | \$ 160,000.00 |       | \$ 160,000.00 |  |
| Utilities            |  | LS        |  | \$ 36,000.00  |       | \$ 36,000.00  |  |
| Landscaping          |  | LS        |  | \$ 55,000.00  |       | \$ 55,000.00  |  |
| Erosion Control      |  | LS        |  | \$ 8,000.00   |       | \$ 8,000.00   |  |
|                      |  |           |  |               |       |               |  |
|                      |  |           |  |               | Total | \$ 792,800.00 |  |
|                      |  |           |  |               |       |               |  |
|                      |  |           |  |               |       |               |  |
|                      |  |           |  |               |       |               |  |

**From:** Elizabeth HOGLUND <eahoglund1@gmail.com>  
**To:** <hcd@portlandmaine.gov>  
**CC:** Elizabeth HOGLUND <ehoglund@maine.rr.com>  
**Date:** 9/4/2015 11:44 AM  
**Subject:** 1945 Congress Street

Dear Planning Board:

I have heard that some of this Board favor the rezoning of the parcel located at 1945 Congress Street, for among other reasons, that it would enhance or complement development of the Jetport access road. Unfortunately, you are most likely unaware of the reasons that access road is, is to remain undeveloped.

The opinion and foresight of your predecessors and the City Council, saw the green entry road/exit road to be a fabulous statement of the nature of Portland and its wonderful uniqueness. They knew that a stream of ugly buildings touting merchandise etc that can be purchased anywhere, was not a benefit. They also agreed that the loss of farm land that was being taken to build this road was a significant loss to the neighborhood, the visual impact on visitors, and residents alike. To compensate for this loss and to preserve the value of a clean, green entry, the City Council promised the Stroudwater residents, and collaterally the citizens of Portland, that the road would never be developed.

A few years later, a proposal was made to allow some development such as car rentals, thankfully the promise of no development was "remembered" and that effort stopped. The current Council and Planning Board need to be reminded of their predecessors' vision of the value of the green space and, more importantly, the value of remaining true to commitments.

Thus in addition to such development being a poor idea, it is most contrary to the promises/representations made and at the heart of democratic principles and trust in city officials.

I urge you disapprise yourselves of any concept, let alone plan to develop the access road.

I further state that this is a baseless reason to support the zoning change for 1945 Congress Street.

As stated in a communication to you earlier, The property is ripe for residential development and absolutely does not need a complex set of office buildings to be viable- especially as proposed.

I urge you to heed the comments from those of us who live here, many for decades, and not fall prey to the whims of a lucrative sale to an existing landowner.

Thank You, Elizabeth Hoglund.(

a 25 year member of the Stroudwater Village Assoc Board of Trustees and ten year president of the Association with hundreds of hours spent working with the city on acceptable improvements. in

Stroudwater and elsewhere and a person with a good memory

**From:** Patricia Bernard <mainemama@hotmail.com>  
**To:** "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>  
**Date:** 9/4/2015 8:52 PM  
**Subject:** Elks club property

I'm concerned about the rezoning of the property. This city seems to be willy nilly about zoning commercial property in residential areas. There is an ordinance that says that commercial property cannot infringe on residential areas. The middle class is having enough trouble affording to live in this city without having commercial interests encroach on the livability of residential areas. The property was unsuitable for a college, what makes it suitable for an office park? I thought the comprehensive plan for the city locked in residential areas and the planning board should not invade them on the whim of some developers request to do so. Also those of us that live off Congress St have trouble accessing the street now, especially if we need to turn left, I feel that Congress St has reached it's saturation point in traffic. I remember from other meetings that there's a "failed" category for streets and I would like to know just how close Congress St. is from that designation. I'm also concerned looking at the picture, that the parking lot is awfully close to the embankment and the runoff and snow banks appear to threaten the river.

Ms. Donaldson could you please pass my concerns on to the board.

Thank you,

Patricia Bernard  
13 Lassell St.

**From:** Barbara Turitz <barbara@turitz.com>  
**To:** <HCD@portlandmaine.gov>  
**Date:** 9/7/2015 2:40 PM  
**Subject:** Elks Club rezoning

Dear Ms Donaldson

I am emailing you to ask that the Planning Board recommend that the Elks Club zoning change request be denied.

While we have little knowledge of zoning regulations, we do know that this particular request is an example of spot zoning. If allowed, what would stop the churches in the neighborhood from selling land to raise money by circumventing the rules in the same manner.

The Stroudwater neighborhood has worked diligently over the years with the city to retain the Village atmosphere. This request for rezoning would certainly erode that atmosphere.

Thank you very much for bringing this email to the planning board's attention

Sincerely  
David and Barbara Turitz  
33 Partridge Circle  
Portland

**From:** Edward Resnisky <edwardresnisky@yahoo.com>  
**To:** "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>  
**Date:** 9/7/2015 8:52 PM  
**Subject:** Elks Club Zone Change Proposal

To the Planning Board:

I live at 50 Rivers Edge Drive in Stroudwater. I am also somewhat acquainted with zoning issues as I own income property on the peninsula. One of the biggest questions that I look forward to hearing answered at the public hearing is how this proposal fits the standards for the Office Park Zone (?).

Also, it seems that a residential build-out of the property would generate far more tax revenue (double or triple) for the city than is currently received from the Elks Club.

Thank you.

Ed Resnisky 50 Rivers Edge Drive

**From:** Valerie Libby <valerieslibby@gmail.com>  
**To:** <HCD@portlandmaine.gov>  
**Date:** 9/8/2015 7:50 AM  
**Subject:** The Elks Club/Rezoning

Ms. Donaldson,

I am writing because we won't be able to make the City Council meeting tonight about the Elks Club's proposed rezoning. We have lived in the Stroudwater section of Portland for more than 27 years. We are strongly opposed to the rezoning of the Elks Club. We concur with David Silk, who has articulated our concerns very well. We support his memo, which he will be presenting to the Planning Board this evening.

We have tried to call Ed Suslovic to voice our concerns and to urge him to vote against the rezoning but his voice mailbox is full.....likely from people attempting to reach him about this issue and his misguided position about tipped wage earners. The City Council members really need to find a way to make it easier for their constituents to reach them! We have tried to reach him and others on other issues and they do not keep their voice mailboxes accessible. Nor so they respond to e-mails sent to them.

On behalf of my husband, W. John Wipfler, as well as myself,

Valerie Libby-Wipfler  
71 Tide Mill Road, Portland  
207-879-1917

**From:** Joseph McDonnell <jmcdonnell20@gmail.com>  
**To:** "HCD@portlandmaine.gov" <HCD@portlandmaine.gov>  
**Date:** 9/8/2015 10:29 AM  
**Subject:** Elk Club Proposal

Dear Ms. Donaldson,

My wife and I are residents of Stroudwater and are unable to attend the hearing on the Elk Club proposal. We urge that the planning board deny this request, keep Stroudwater residential, and encourage commercial activity to be located downtown. In good economic times, there is a tendency to encourage commercial activity to wonder beyond the downtown area but with such a policy planning boards run the risk of having an empty downtown during recessions. Thank you for this consideration.

Joseph and Carla McDonnell  
1413 Westbrook Street  
Portland, Maine 04102

Sent from my iPad

**From:** "Bill Lairsey" <wlairsey@maine.rr.com>  
**To:** <hcd@portlandmaine.gov>  
**CC:** <Mlairsey8@aol.com>, <captlinnell@yahoo.com>, <edsuslovic@portlandmaine.gov>  
**Date:** 9/8/2015 11:35 AM  
**Subject:** Re-Zoning of Elks Property

Nell Donaldson,

After review my wife and I are against this proposal and favor the solution offered by Bill Linnell to keep this area residential. The Elks Re-Zoning would set the stage in the long run for a McDonalds at the Airport entrance.  
NO THANKS. Bill Lairsey

Bill Lairsey

40 Spar Ln.

Portland, ME 04102

Tel: 207.828.3918

Cell: 207.650.1761

**From:** "Buxton, Anthony W." <ABuxton@preti.com>  
**To:** "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>  
**Date:** 9/8/2015 5:07 PM  
**Subject:** Tonight's Planning Board Consideration of the Proposal for 1945 Congress Street

Dear Mr Donaldson:

I have met with the developers of the proposed project and with opponents. I write to offer a comment that would seem to be critical to the decision to be made this evening.

For more than a decade, a critical focus of land use planning in Portland has been improvement of the " Gateways" to Portland, those entry points which make the critical first impressions on visitors and subsequent reinforcing impressions on residents. By coincidence, the Elks Club site and the Jetport entrance across Congress Street are Portland's Western Gateway.

By good planning ( to date), this Western Gateway has become a " brand "for both Portland and Maine, light woods and fields populated by gifts of wildlife sculpture that emphasize our state's beauty and respect for the environment. The Gateway, seen by hundreds of thousands of travelers each year, tells people weary of the mundane ugliness of most airports that Maine is a different, better place.

Further development of the Elks Club site must occur, if at all, only after careful consideration of the effect on the Western Gateway of Portland. Land use decisions which are by nature piecemeal will inevitably destroy the opportunity to make a sound, wholistic decision.

This is why zoning is comprehensive in nature and in law. The decision before you tonight is far more than a decision about one piece of land. It is a decision about whether, as a community with choices, we will make those decisions comprehensively with our eyes on a better future or myopically with our eyes only on the details of the political moment.

This is why spot zoning is unlawful, and why zoning requires a longer view. Please step back tonight. And decide to take that longer view. Please deny the requested zoning change unless and until the Planning Board undertakes a comprehensive review of Portland's Western Gateway and it's zoning. Then, and only then, will the sound purposes of our zoning ordinance, and our society, be properly considered.

Thank you for your consideration.

Anthony W. Buxton  
 138 Stroudwater Road  
 Portland, Maine.

Anthony W. Buxton  
 Chair, Energy Group | Co-Chair, Climate Strategy Group  
 207.623.5300 Tel  
 abuxton@preti.com  
 Bio | LinkedIn | Twitter | preti.com

PretiFlaherty  
 45 Memorial Circle  
 P.O. Box 1058  
 Augusta, ME 04332-1058

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Table 1: Comparison of Purpose Statements

Att. A

| R-2                                                                                                                                                                                                            | R-3                                                                                                                                                                                                                                                                                                                                                           | B-1                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | B-2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | O-P                                                                                                                                                                                                                                      | R-P                                                                                                                                                                                                                                                                                                                                                                         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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. | 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. Such development shall respond to the physical qualities of a site and complement the scale, character and style of the surrounding neighborhood. | To provide limited areas for the location of small-scale commercial establishments intended to serve a local market. As a result, uses shall be complimentary, quiet and generally do not disturb the comfort and enjoyment of the adjoining neighborhood environment. Uses shall be designed for the pedestrian scale and will 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. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3). This zone shall encourage mixed use buildings such as commercial first floor with residential uses above or combined retail/office uses in a multistory structure. The zone also provides the opportunity for mixed use and high residential density in on-peninsula locations. Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service | <p>1. 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.</p> <p>2. The variety, sites and intensity of the permitted commercial uses in the B-2 zone are intended to be greater than those permitted in the B-1 neighborhood</p> <p>3. The B-2 zone will provide a broad range of goods and services and general businesses 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</p> <p>4. The B-2 and B-2b will provide locations for moderate to high density housing in urban neighborhoods along arterials.</p> | To provide substantial areas for integrated development of professional 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. | To provide appropriate location for the development and operation of low-intensity business uses, including professional 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 3: Comparison of Permitted and Conditional Uses

|               | Permitted Use                                                                                        | R-2 | R-3 | B-1/B-1b | B-2/B-2b/B-2c | O-P | R-P |
|---------------|------------------------------------------------------------------------------------------------------|-----|-----|----------|---------------|-----|-----|
|               | Conditional Use                                                                                      |     |     |          |               |     |     |
| Residential   | Alteration or construction of single-family detached dwelling to accommodate accessory dwelling unit | 4   | 4   |          |               |     |     |
|               | Alteration of existing structure to accommodate 1+ dwelling units                                    |     |     |          |               |     |     |
|               | Alteration of existing structure to accommodate 3+ dwelling units                                    |     |     |          |               |     |     |
|               | Any residential use permitted in the abutting (or nearest) residential zone                          |     |     | 4, 10    |               |     |     |
|               | Attached single-family and two-family dwellings                                                      |     |     |          |               |     |     |
|               | Single-family detached dwellings                                                                     |     |     |          |               |     |     |
|               | Two-family dwellings                                                                                 |     |     |          |               |     |     |
|               | Multi-family dwellings                                                                               |     |     | 4, 10    |               |     |     |
|               | Handicapped family units                                                                             |     |     |          |               |     |     |
|               | Sheltered care group home                                                                            | 3   | 3   |          |               |     |     |
|               | Special needs independent living units                                                               |     |     |          |               |     |     |
|               | Single-family single- or multiple-component manufactured housing                                     |     |     |          |               |     |     |
|               | Combined living/working spaces                                                                       |     |     | 4, 10    |               |     |     |
|               | Lodging houses (or conversion into)                                                                  |     |     | 4        |               |     |     |
|               | PRUDs                                                                                                |     | 4   |          |               |     |     |
|               | Multiplex development                                                                                |     |     |          |               |     |     |
|               | Elementary, middle, and secondary schools                                                            | 5   | 5   | 4        |               |     |     |
|               | Chancellery                                                                                          |     |     |          |               |     |     |
|               | Clinics                                                                                              |     |     | 4, 4     |               |     |     |
|               | College, university or trade schools                                                                 | 5   |     |          |               |     |     |
| Institutional | Day care facilities or home babysitting services                                                     | 4   | 4   |          |               |     |     |
|               | Governmental buildings and uses                                                                      |     |     |          |               |     |     |
|               | Hospital                                                                                             |     | 5   |          |               |     |     |
|               | Intermediate care facilities for 13+ people                                                          | 5   | 5   |          |               |     |     |
|               | Long-term and extended care facilities                                                               | 5   | 5   |          |               |     |     |
|               | Municipal uses                                                                                       |     | 5   | 4        |               |     |     |
|               | Nursery schools and kindergartens                                                                    |     |     |          |               |     |     |
|               | Places of assembly                                                                                   | 5   | 5   |          |               |     |     |
|               | Schools                                                                                              |     |     |          |               |     |     |
|               | Veterinary hospitals                                                                                 |     |     |          |               |     |     |
|               | Automobile dealerships                                                                               |     |     |          | 4             |     |     |
|               | Banking services                                                                                     |     |     |          |               |     |     |
|               | Bed and breakfasts (or conversion into)                                                              |     |     | 4, 10    |               |     |     |
|               | Beverage dealers                                                                                     |     |     | 4        |               |     |     |
|               | Billiard parlors                                                                                     |     |     |          |               |     |     |
|               | Business services                                                                                    |     |     | 4        |               |     |     |
|               | Car washes                                                                                           |     |     |          | 4             |     |     |
|               | Conversion into bed and breakfast                                                                    |     |     |          |               |     |     |
|               | Craft and specialty shops                                                                            |     |     |          |               |     |     |
|               | Drinking establishments                                                                              |     |     |          |               |     |     |
|               | Drive-throughs when accessory to a principal use on the same lot                                     |     |     |          | 4, 2 only     |     |     |
|               | Exhibition halls                                                                                     |     |     |          |               |     |     |
|               | General offices                                                                                      |     |     | 4        |               |     |     |
|               | Health clubs and gymnasiums                                                                          |     |     |          |               |     |     |
|               | Home occupation                                                                                      |     |     |          |               |     |     |
|               | Hostels                                                                                              |     |     | 4        |               |     |     |
|               | Hotels                                                                                               |     |     |          |               |     |     |
|               | Laundry and dry cleaning services                                                                    |     |     |          |               |     |     |
|               | Lumber and building materials dealers                                                                |     |     |          |               |     |     |
|               | Major and minor gasoline service stations                                                            |     |     |          | 4             |     |     |
|               | Meeting and convention halls                                                                         |     |     |          |               |     |     |
|               | Miscellaneous repair services                                                                        |     |     |          |               |     |     |
|               | Mortuaries or funeral homes                                                                          |     |     |          |               |     |     |
|               | Motel                                                                                                |     |     |          |               |     |     |
|               | Museums and art galleries                                                                            |     |     |          |               |     |     |
|               | Offices of building tradespeople                                                                     |     |     |          |               |     |     |
|               | Offices other than professional offices                                                              |     |     |          |               |     |     |
|               | Off-street parking lots and garages                                                                  |     | 4   |          |               |     |     |
|               | Personal services                                                                                    |     |     |          |               |     |     |
|               | Professional offices <sup>12</sup>                                                                   |     |     |          |               |     |     |
|               | Registered medical marijuana dispensaries                                                            |     |     |          |               |     |     |

Table 3: Comparison of Permitted and Conditional Uses

|            | Permitted Use                                                                   | R-2 | R-3 | B-1/B-1b | B-2/B-2b/B-2c | D-P | R-P |
|------------|---------------------------------------------------------------------------------|-----|-----|----------|---------------|-----|-----|
|            | Conditional Use                                                                 |     |     |          |               |     |     |
| Business   | Restaurants                                                                     |     |     | 1, 4     |               |     |     |
|            | Retail establishments                                                           |     |     | 1, 4     |               |     |     |
|            | Theaters                                                                        |     |     |          |               |     |     |
| Industrial | Breweries, including associated bottling activities                             |     |     |          |               |     |     |
|            | Building contractors and construction and engineering services                  |     |     |          |               |     |     |
|            | Cabinet and carpentry shops                                                     |     |     |          |               |     |     |
|            | Cold storage facilities                                                         |     |     |          |               |     |     |
|            | Commercial kitchens or other food preparation                                   |     |     |          |               |     |     |
|            | Communication studios or broadcast and receiving facilities                     |     |     |          |               |     |     |
|            | Correctional pre-release facilities                                             |     |     |          |               |     |     |
|            | Dairies and bakeries                                                            |     |     |          |               |     |     |
|            | Food processing                                                                 |     |     |          |               |     |     |
|            | High-technology manufacturing                                                   |     |     |          |               |     |     |
|            | Intermodal transportation facilities                                            |     |     |          |               |     |     |
|            | Low impact industrial uses                                                      |     |     |          |               |     |     |
|            | Lumber yards                                                                    |     |     |          |               |     |     |
|            | Nurseries                                                                       |     |     |          |               |     |     |
|            | Printing and publishing establishments                                          |     |     |          | 4             |     |     |
|            | Recycling & solid waste disposal facilities                                     |     |     |          | 4             |     |     |
|            | Research and development and back office uses                                   |     |     |          |               |     |     |
|            | Studios for artists and craftspeople                                            |     |     | 4        | 4             |     |     |
|            | Temporary wind anemometer towers                                                | 4   | 4   | 4        | 4             |     |     |
|            | Tow lots                                                                        |     |     |          |               |     |     |
|            | Utility substations                                                             |     |     | 6        |               |     |     |
|            | Warehousing and wholesaling                                                     |     |     |          | 4             |     |     |
|            | Wind energy systems                                                             |     |     |          |               |     |     |
| Marine     | Boat repair yards                                                               |     |     |          |               |     |     |
|            | Boat storage facilities                                                         |     |     |          |               |     |     |
|            | Harbor and marine supplies and services and ship supply                         |     |     |          |               |     |     |
|            | Marine products wholesaling and retailing                                       |     |     |          |               |     |     |
|            | Marine repair services and machine shops                                        |     |     |          |               |     |     |
|            | Marine museums and aquariums                                                    |     |     |          |               |     |     |
|            | Seafood processing for human consumption                                        |     |     |          |               |     |     |
|            | Seafood packing and packaging                                                   |     |     |          |               |     |     |
|            | Seafood distribution                                                            |     |     |          |               |     |     |
|            | Shipbuilding and facilities for construction, maintenance and repair of vessels |     |     |          |               |     |     |
| Other      | Accessory uses                                                                  |     |     | 1        |               |     |     |
|            | Any conditional uses permitted in abutting residential zones                    |     |     |          |               |     |     |
|            | Agriculture                                                                     |     |     |          |               |     |     |
|            | Parking and storage of agricultural equipment used on premises                  |     |     |          |               |     |     |
|            | Cemeteries                                                                      |     |     |          |               |     |     |
|            | Parks                                                                           |     |     |          |               |     |     |
|            | Raising of domestic animals for noncommercial purposes                          |     |     |          |               |     |     |
|            | Neighborhood center                                                             |     |     | 1        |               |     |     |

1 See applicable performance standards in code.

2 Excluding those explicitly noted in the code.

3 For up to 12 individuals. See code for additional regulations.

4 Subject to certain conditions. See code.

5 Subject to conditions of 14-474 as well as others under zoning designation.

6 Permitted or conditional depending on size. See code.

7 Permitted uses in the R-7 Compact Urban Residential Overlay Zone, shall be the uses permitted in the R-6 Zone, except that different dimensional requirements shall apply.

8 Permitted in the B-1 and on the ground floor of buildings in the B-1b.

9 In any structure with commercial use on the first floor, multifamily dwellings are permitted above the first floor.

10 Permitted in the B-1 and above the ground floor of buildings in the B-1b.

11 Permitted in an office park with a minimum gross area of at least 3 acres of land, consisting of either an Office Park PUD on one lot or a subdivision.

12 Professional offices are defined in Section 14-47 as "the office of a doctor, dentist, optometrist, psychologist, accountant, lawyer, architect, engineer, or similar professional."

Table 2: Comparison of Dimensional Requirements

|                                | R-2                                                                                                                                                                                                                                             | R-3 <sup>10</sup>                                                                                                                                                                                                                         | B-1/B-1b <sup>12</sup>                                                                                                                                                                                                                    | B-2/B-2b/B-2c                                                                                                                                                                                                                                                                                                                                                                        | O-P                                                                                                                                                                                                                              | R-P <sup>20</sup>                                                                                                                                                                                                                                                   |
|--------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Min. Lot Size</b>           | Residential: 10,000 SF<br>Long-term, extended, intermediate care: 3<br>School: 2 ac.<br>Municipal: 10,000 SF<br>College, univ.: 2 ac.<br>Other: 10,000 SF<br>For all, see note <sup>16</sup>                                                    | Residential: 6,500 SF <sup>2</sup><br>Long-term, extended, intermediate care: 2 ac.<br>Place of assembly: see code<br>Municipal: 6,500 SF<br>Hospital: 10 ac.<br>PRUD: 3 ac.                                                              | School: 20,000 SF<br><br>Place of Assembly: 10,000 SF<br><br>Other Non-Res Uses: None<br><br>Residential: None                                                                                                                            | None                                                                                                                                                                                                                                                                                                                                                                                 | 1.5 ac.                                                                                                                                                                                                                          | 6,000 SF                                                                                                                                                                                                                                                            |
| <b>Min. Lot Area per D.U.</b>  | 10,000 SF                                                                                                                                                                                                                                       | PRUD: 6,500 SF net land area<br>Other: 6,500 SF                                                                                                                                                                                           | On-peninsula: 435 SF<br>Off-peninsula: min. lot area of nearest residential zone, except 1,000 SF for multi-family dwellings above first floor                                                                                            | On-peninsula: 435 SF<br>Off-peninsula: 1,500 SF, or 435 SF if active street frontage                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                     |
| <b>Min. Street Frontage</b>    | 50 ft.                                                                                                                                                                                                                                          | 50 ft. <sup>27</sup>                                                                                                                                                                                                                      | 20 ft.                                                                                                                                                                                                                                    | 20 ft.                                                                                                                                                                                                                                                                                                                                                                               | 100 ft.                                                                                                                                                                                                                          | 60 ft.                                                                                                                                                                                                                                                              |
| <b>Min. Lot Width</b>          | 80 ft.                                                                                                                                                                                                                                          | 65 ft.                                                                                                                                                                                                                                    | None                                                                                                                                                                                                                                      | None                                                                                                                                                                                                                                                                                                                                                                                 | 150 ft.                                                                                                                                                                                                                          | 50 ft.                                                                                                                                                                                                                                                              |
| <b>Min. Front Yard</b>         | 25 ft. (principal or accessory)                                                                                                                                                                                                                 | 25 ft. (principal or accessory) <sup>18</sup>                                                                                                                                                                                             | None                                                                                                                                                                                                                                      | None                                                                                                                                                                                                                                                                                                                                                                                 | 50 ft. <sup>25</sup>                                                                                                                                                                                                             | 20 ft., except that front yard need not exceed avg. depth of adjacent yards. <sup>17</sup>                                                                                                                                                                          |
| <b>Max. Front yard</b>         |                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                           | 10 ft., or the maximum front yard setback shall not exceed the average depth of nearest developed lots if that average depth is less than 10 ft.                                                                                          | No more than 10 feet, except that the Planning Board or Planning Authority may approve a different amount for irregularly shaped lots or lots with frontage less than 40 feet provided this standard is met to the maximum extent practicable. <sup>22</sup>                                                                                                                         |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                     |
| <b>Min. Rear Yard</b>          | Principal or accessory >100 SF: 25 ft.<br><br>Accessory detached <144 SF: 5 ft.                                                                                                                                                                 | Principal or attached accessory > 100 SF: 25 ft.<br><br>Accessory detached <144 SF: 5 ft.                                                                                                                                                 | Principal: None, except 10 ft. if abutting a residential zone.<br><br>Accessory: None, except 5 ft. if abutting a residential zone                                                                                                        | Principal: 10 ft.<br><br>Accessory: 5 ft.                                                                                                                                                                                                                                                                                                                                            | 50 ft. <sup>25</sup>                                                                                                                                                                                                             | Principal: 20 ft.<br><br>Accessory detached: 7 ft.                                                                                                                                                                                                                  |
| <b>Min. Side Yard</b>          | Principal or accessory >100 SF:<br><br>1-1 1/2 stories: 12 ft. <sup>30</sup><br><br>2 stories: 14 ft. <sup>30</sup><br><br>2 1/2 stories: 16 ft. <sup>30</sup><br><br>Accessory detached <144 SF: 5 ft.<br><br>Side yard on side street: 20 ft. | 1 story: 8 ft. <sup>29</sup><br><br>1 1/2 stories: 8 ft. <sup>29</sup><br><br>2 stories: 14 ft. <sup>29</sup><br><br>2 1/2 stories: 16 ft. <sup>29</sup><br><br>Accessory detached <144 SF: 5 ft.<br><br>Side yard on side street: 20 ft. | Principal: None, except 5 ft. if abutting residential zone.<br><br>Accessory: None, except 5 ft. if abutting a residential zone<br><br>Side yard on side street: 10 ft. max (only applies to one side street in cases with more than one) | Principal: None<br><br>Accessory: 5 ft.<br><br>Side yard on side street: None                                                                                                                                                                                                                                                                                                        | 25 ft., except 40 ft. where side yard abuts residential zone or use <sup>29</sup>                                                                                                                                                | Principal:<br>1 story: 10 ft.<br>2 stories: 12 ft.<br>3+ stories: 14 ft. <sup>34</sup><br><br>Accessory detached: 7 ft.<br><br>Side yard on side street:<br>1-2 stories: 15 ft.<br>3+ stories: 18 ft.                                                               |
| <b>Setbacks</b>                |                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                           | Portions of a structure above 35 ft shall be no closer than 10 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.                                    | Portions of a structure above 35 ft shall be no closer than 5 ft from the side property line and no closer than 15 feet from the rear property line when such property line abuts a residential zone.                                                                                                                                                                                |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                     |
| <b>Max. Structure Height</b>   | Principal or attached accessory: 35 ft.<br><br>Accessory detached: 18 ft.                                                                                                                                                                       | Principal or attached accessory: 35 ft.<br><br>Accessory detached: 18 ft.                                                                                                                                                                 | Off-peninsula: 35 ft., except where abutting R-6, where max. height shall be the max. height of R-6 <sup>23</sup><br><br>On-peninsula: 45 ft., except 50 ft. along Congress Street if commercial first floor & residential upper floors.  | 45 feet except as provided for below:<br>a. 50 feet if first floor is partially or wholly occupied by a commercial use.<br>b. 65 feet in B-2 and B-2c zones on lots >5 acres provided that all setbacks, except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet.<br>c. 65 feet within 65 feet of Franklin St. | 55 ft., except that on lots or within office-park subdivisions which are > 50 ac., 75 ft. is permitted, including roof appurtenances, if each minimum yard dimension is increased by 1 ft. for each 1 ft. of height above 55 ft. | 45 ft., except where the lot abuts an R-6 residential zone, the maximum permitted height shall be the maximum permitted height of the R-6 zone. If there is a difference in height between abutting R-6 zones, the least restrictive height limitation shall apply. |
| <b>Max. Floor Area</b>         | See note <sup>7</sup>                                                                                                                                                                                                                           | See note <sup>7</sup>                                                                                                                                                                                                                     | Total maximum first floor area for non-residential uses per structure: 10,000 SF <sup>24</sup><br>Total maximum floor area per retail establishment: 5,000 SF                                                                             | None                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                     |
| <b>Max. Floor Area Ratio</b>   |                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                  | See abutting residential zone. If none, see nearest residential zone. <sup>34</sup>                                                                                                                                                                                 |
| <b>Max. Lot Coverage</b>       | 20%                                                                                                                                                                                                                                             | 35%                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                           | None                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                     |
| <b>Open Space Ratio</b>        |                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                           | None                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                  |                                                                                                                                                                                                                                                                     |
| <b>Max. Impervious Surface</b> |                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                           | 90%                                                                                                                                                                                                                                       | Residential: None<br>Other uses in B-2 and B-2c: 80%<br>Other uses in B-2b: 90%                                                                                                                                                                                                                                                                                                      | 60%                                                                                                                                                                                                                              | See abutting residential zone. If none, see nearest residential zone. <sup>35</sup>                                                                                                                                                                                 |

<sup>1</sup> except for front yard setbacks and side yard on side street setbacks, increase by 1 foot for each foot of height over 45 feet.<sup>2</sup> See definition in 14-388.<sup>3</sup> except as provided for lots of record in section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article. A lot in an unsevered residential district shall meet the provisions of the state Minimum Lot Size Law, 32 M.R.S.A. Section 4607.<sup>4</sup> Other restrictions apply for lodging houses, intermediate care facilities.<sup>5</sup> The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than ten (10) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots.<sup>6</sup> Other restrictions apply for bed and breakfasts.<sup>7</sup> Minimum/maximum gross floor area requirements exist for particular uses, which may include places of assembly, beds and breakfasts; and colleges, universities, or trade schools. See code.<sup>8</sup> Other dimensional standards apply for small residential lot development.<sup>9</sup> These amendments will be brought to the Planning Board in the fall of 2014 for review, and are still subject to change.<sup>10</sup> for uses other than utility substations (B-4).<sup>11</sup> The front yard of a lot existing as of May 23, 1988 and less than 100 ft. deep need not be deeper than 20% the depth of the lot.<sup>12</sup> The commercial first floor uses shall utilize at least 75 percent of the first floor frontage along Congress Street and shall have an average depth of at least 20 feet; residential uses off-peninsula under section 14-162(a) shall meet requirements of abutting or nearest residential zone.<sup>13</sup> Except when B-1 properties abut an R-6A zone, the maximum height shall be 45 ft.<sup>14</sup> Structures which existed prior to date of enactment of the B-1/B-1b zones are exempt.<sup>15</sup> Building additions do not have to meet this section; if a lot has less than 40 ft. of frontage and is more than 100 ft. deep, then no max. setback is required. If existing structures are within 20 ft. of the street or meet the front yard max. and the remainder of the lot has<sup>16</sup> Provided that for uses specified, no minimum lot area shall be required in the following cases: Uses existing as of June 1, 1983: Expansion onto land abutting the lot on which the principal use is located: Expansion onto land other than the lot on which the principal use is located to the extent the<sup>17</sup> except that lots located in a subdivision approved after the effective date of Ord. No. 165-97 pursuant to section 14-497.5 shall meet the street frontage requirements approved as part of the subdivision plan under the terms of this section.<sup>18</sup> A front yard need not exceed the average depth of front yards on either side of the lot. A lot of record existing as of June 5, 1957, and less than one hundred (100) feet deep need not be deeper than twenty (20) percent of the depth of the lot.<sup>19</sup> The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than eight (8) feet in width. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots.<sup>20</sup> See other dimensional requirements relating specifically to PRUDs.<sup>21</sup> See other dimensional requirements for small residential lot development, which can be applied if a lot is vacant, used exclusively for parking, contains structures not used for residential purposes, or created from a single lot division of a developed lot and results in a lot meeting the dimensional re-<sup>22</sup> Maximum length of unpermitted blank wall along a public street or publicly accessible pedestrian way: 15 ft. in PAD overlay zone; 30 ft. in all other areas.<sup>23</sup> FMRs for residential zones as follows: R-1/R-2: 45; R-3: 55; R-4/R-5/R-6: 65.<sup>24</sup> For parcels in B-2b on West Commercial south of Danforth and parcels on Thompson's Point, see code.<sup>25</sup> The Planning Board can reduce by up to fifty (50) percent the minimum yard setback if a rear yard within the lot is correspondingly increased so that the combined minimum setbacks on all four (4) sides equal one hundred fifty (150) feet. If two (2) or more buildings are located on one (1) lot, only<sup>26</sup> Residential uses permitted under section 14-162(a) shall meet the requirements of each abutting or nearest residential zone.<sup>27</sup> The front yard of a lot existing as of April 4, 1988, which lot is less than one hundred (100) feet deep, need not be deeper than ten (10) percent of the depth of the lot.<sup>28</sup> The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, provided, however, no side yard shall be reduced to less than seven (7) feet in width.<sup>29</sup> Impervious surface ratios as follows: R-1/R-2: 6; R-3: 7; R-4/R-5/R-6: 8.<sup>30</sup> The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than twelve (12) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots.<sup>31</sup> Maximum FMRs are as follows: R-1/R-2: 45; R-3: 55; R-4/R-5/R-6: 65.<sup>32</sup> This requirement may be reduced by up to twenty (20) percent for a special needs independent living unit.<sup>33</sup> The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than ten (10) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots.<sup>34</sup> A side yard on a side street need not exceed the average depth of front setback directly abutting the lot.<sup>35</sup> except as described in section 14-201(b).<sup>36</sup> No structure may extend beyond the building line established for any runway or roadway, if provided, rear yards must not be less than five (5) feet in width.

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**MEMORANDUM**

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**To:** FILE  
**From:** Nell Donaldson  
**Subject:** Application ID: 2014-227  
**Date:** 12/17/2014

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**Comments Submitted by: Ann Machado/Zoning on 12/2/2014**

The proposal is for a Map Amendment to change the zone for the property located at 1945 Congress Street from R-2 Residential to O-P Office Park Zone in order to build a 15,000 sf medical building and a 35,300 sf office building. These two proposed uses are permitted uses in the O-P zone. The Elks building is a conforming use in the R-2 zone as a place of assembly (fraternal organization). If the lot is changed to the O-P zone, the Elks building as a place of assembly would become a legal nonconforming use. The use could be maintained but the building could not be expanded and the nonconforming use would be abandoned if the use as a place of assembly is discontinued for twelve months. The existing lot meets the minimum gross area requirement of three acres for an office park and it meets the minimum street frontage of one hundred feet.

Att. C

**From:** Tom Errico <thomas.errico@tylin.com>  
**To:** Helen Donaldson <HCD@portlandmaine.gov>  
**Date:** 1/9/2015 3:51 PM  
**Subject:** RE: Fwd: Office Development at Elks Lodge Site off Unum Drive

Hi Nell – I would like to note that based upon the trip generation levels noted in my previous email, a comprehensive traffic impact study would be required to assess impacts to the area roadway system. Please note the following:

The Congress Street/International Parkway/UNUM Drive intersection will serve as the primary access point for any development. Use of this existing signalized intersection seems appropriate, but any development application would be required to access the ability of this traffic signal to adequately accommodate the added traffic.

The City recently implemented Phase I of the Outer Congress Street Streetscape Study with the intent of providing a balanced multi-modal transportation street. Phase I primarily reduced the number of travel lanes on certain sections of Congress Street between Steven Avenue and International Parkway/UNUM Drive. The City continues to review conditions and will be implementing Phase II of the Plan this year which will seek to enhance the inbound merge area east of International Parkway/UNUM Drive, add a crosswalk near Garrison Street, and implement pedestrian and transit improvements at Westbrook Street.

MaineDOT will be upgrading the traffic signal at the Congress Street/Westbrook Street intersection. This intersection currently experiences congestion problems, but it is unlikely any capacity enhancements will be possible given constraints.

The Congress Street/Johnson Road intersection seems to operate at an acceptable level of service, but review of conditions would be required.

If you have any questions, please let me know.

Best regards,

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director  
[T.Y. Lin International] T.Y. Lin International  
12 Northbrook Drive  
Falmouth, ME 04105  
207.781.4721 (main)  
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207.400.0719 (mobile)  
207.781.4753 (fax)  
thomas.errico@tylin.com <mailto:thomas.errico@tylin.com>  
Visit us online at [www.tylin.com](http://www.tylin.com) <http://www.tylin.com>  
Twitter | Facebook | LinkedIn | YouTube

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From: Helen Donaldson [mailto:HCD@portlandmaine.gov]  
Sent: Monday, January 05, 2015 10:27 AM  
To: Tom Errico  
Subject: RE: Fwd: Office Development at Elks Lodge Site off Unum Drive

Great. Thanks, Tom. There are likely to be questions about impacts to operations on Congress Street and the light at Unum Park Drive. Can you make any general statements on that? Maybe alluding to existing trips generated by the Elks?

Tell me if I'm asking you to go too far out on a limb here!

Nell

---

Nell Donaldson  
City of Portland Planning Division  
389 Congress Street  
Portland, Maine 04101  
874-8723

[hcd@portlandmaine.gov](mailto:hcd@portlandmaine.gov) <mailto:hcd@portlandmaine.gov>

>>> Tom Errico <thomas.errico@tylin.com> <mailto:thomas.errico@tylin.com>> 1/5/2015 9:54 AM >>>

Hi Nell – I have conducted a preliminary trip generation analysis for the three development assumptions you have provided and the results are

summarized in the following table. The trip generation estimates were computed for the Weekday AM and PM peak hours and were based on the Trip Generation Manual, Institute of Transportation Engineers, 9th Edition.

Land Use Zone

Density

AM Peak Hour Traffic Volume Enter and Exiting

PM Peak Hour Traffic Volume Enter and Exiting

Existing R-2

14 Residential Units

10 Vehicles

14 Vehicles

Office Park (OP)

192,563 Square Feet of Office Space

302 Vehicles

288 Vehicles

Resource Protection (RP)

137,201 Square Feet of Office Space

214 Vehicles

204 Vehicles

If you have any questions or need additional information, please contact me.

Best regards,

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director  
[T.Y. Lin International] T.Y. Lin International  
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Falmouth, ME 04105  
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From: Helen Donaldson [mailto:HCD@portlandmaine.gov]  
Sent: Monday, January 05, 2015 8:22 AM  
To: Tom Errico  
Subject: RE: Fwd: Office Development at Elks Lodge Site off Unum Drive

Thanks, Tom. This is helpful.

I'm trying to get a draft of this memo to Barbara this week, as I'm out for some of next and the workshop is on the 20th. Can you take a look at those buildout calculations when you get a chance (attached again here) and let me know what you think in terms of a general comparison of trip generation?

Thanks, Tom.

Nell

>>> Tom Errico <thomas.errico@tylin.com<mailto:thomas.errico@tylin.com>> 12/31/2014 3:59 PM >>>

Hi Nell – Attached is a concept plan set that is still evolving, so please note that it will be changing. Thanks and let me know if you have any questions.

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director  
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From: Helen Donaldson [mailto:HCD@portlandmaine.gov]  
Sent: Wednesday, December 31, 2014 11:09 AM  
To: Tom Errico  
Subject: Re: Fwd: Office Development at Elks Lodge Site off Unum Drive

Thanks, Tom. I can't think of anything else in terms of development out there, but Barbara may know of something.

I'm looking forward to seeing the outer Congress plans when you get a chance. I didn't even realize anything was happening there.

Nell

>>> Tom Errico <thomas.errico@tylin.com<mailto:thomas.errico@tylin.com>> 12/31/2014 9:48 AM >>>

Sent from my iPhone

Begin forwarded message:

From: "Diane W. Morabito" <mtrdwm@myfairpoint.net<mailto:mtrdwm@myfairpoint.net>>

Date: December 29, 2014, 1:09:18 PM EST

To: 'Barbara Barhydt' <BAB@portlandmaine.gov<mailto:BAB@portlandmaine.gov>>

Cc: Tom Errico <thomas.errico@tylin.com<mailto:thomas.errico@tylin.com>>

Subject: Office Development at Elks Lodge Site off Unum Drive

Hi Barbara,

I am writing regarding the proposed medical and general offices at the Elks Lodge site off Unum Drive (off Congress Street). We are doing the traffic study and traffic permitting for the office development. Are there any other development projects approved but not constructed, or pending approval, that will impact Congress Avenue volumes in that area that I should consider in my traffic analysis?

As always, thanks for your assistance and Best Wishes for the New Year.

Diane

Diane W. Morabito, P.E. PTOE

President

Maine Traffic Resources

25 Vine Street

Gardiner, ME 04345

(O) 207-582-5252

(M) 207-441-0703

**From:** Tom Errico <thomas.errico@tylin.com>  
**To:** Helen Donaldson <HCD@portlandmaine.gov>  
**Date:** 1/5/2015 10:07 AM  
**Subject:** RE: Fwd: Office Development at Elks Lodge Site off Unum Drive

Hi Nell – I have conducted a preliminary trip generation analysis for the three development assumptions you have provided and the results are summarized in the following table. The trip generation estimates were computed for the Weekday AM and PM peak hours and were based on the Trip Generation Manual, Institute of Transportation Engineers, 9th Edition.

| <i>Zone</i>                        | <i>Density</i>                                 | <i>AM Peak Hour Traffic<br/>Volume Enter and Exiting</i> | <i>PM Peak Hour Traffic<br/>Volume Enter and Exiting</i> |
|------------------------------------|------------------------------------------------|----------------------------------------------------------|----------------------------------------------------------|
| <i>Existing R-2</i>                | <i>14 Residential Units</i>                    | <i>10 Vehicles</i>                                       | <i>14 Vehicles</i>                                       |
| <i>Office Park (OP)</i>            | <i>192,563 Square Feet of<br/>Office Space</i> | <i>302 Vehicles</i>                                      | <i>288 Vehicles</i>                                      |
| <i>Residence Professional (RP)</i> | <i>137,201 Square Feet of<br/>Office Space</i> | <i>214 Vehicles</i>                                      | <i>204 Vehicles</i>                                      |

If you have any questions or need additional information, please contact me.

Best regards,

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director  
[T.Y. Lin International] T.Y. Lin International  
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Falmouth, ME 04105  
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## MEMORANDUM

TO: Nell Donaldson and City of Portland Planning Board

FROM: Jennifer L. Thompson, Associate Corporation Counsel

DATE: September 8, 2015

RE: Zoning Amendments

---

I understand that, in connection with an application to amend the zoning map for 1945 Congress Street, a question has arisen as to the precedential effect of map amendments and the extent to which a recommendation by the Planning Board or a zoning change approved by the Council can or should bind further requests for zoning changes. This memo will address that question.

I. Overview of Zoning

As you know, “[z]oning is a legislative function, the authority for which flows from the police powers of governmental bodies,<sup>1</sup> and all property is held subject to the right of the government to regulate its use in the exercise of the police power.” 83 Am Jur 2d Zoning and Planning § 6. Under the Maine statute authorizing municipalities to enact zoning regulations, a municipal “zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body . . .” 30-A M.R.S. § 4352(2).

Accordingly, when considering a proposed zoning ordinance or a proposed amendment to an existing zoning ordinance, the first question is whether the proposal is “consistent” with the Comprehensive Plan. The Maine Law Court has interpreted the term *consistent* to mean that the proposed use/agreement must be “in basic harmony with . . .” the City’s comprehensive plan (the “Plan”) and existing and permitted uses in the original zone. *Consistency* does not mean, however, that a project has to be the “best possible use” for a site/location. See *Vella v. Town of Camden*, 677 A.2d 1051, 1053 (Me. 1996) (citing *LaBonta, et al. v. City of Waterville*, 528 A.2d 1262, 1265); see also *City of Old Town v. Dimoulas*, 2002 ME 133, ¶ 20, 803 A.2d 1018, 1024.

The Comprehensive Plan outlines “a compilation of policy directives and goals” for the development of the City. Among other things, the policies outlined in the Plan address the City’s infrastructure, commercial/business development, transportation resources, industry, and commerce and residential housing. See City of Portland Comprehensive Plan. Since these goals and policies can sometimes compete and/or conflict with one another, it is the Planning Board’s/City Council’s task to

balance and accommodate the many goals and policies contained in the Plan in a way that advances the City's overall best interests. See *Adelman v. Town of Baldwin et al.*, 2000 ME 91, ¶ 24, 750 A.2d 577, 585-586 (citations omitted); see also *LaBonta*, 528 A.2d at 1265.

Recently, the Law Court further clarified the consistency analysis in *Remmel v. City of Portland*, 2014 ME 114, ¶¶ 13-14, 102 A.3d 1168, 1172 and the City's broad discretion to determine when a proposed rezoning is consistent with the Comprehensive Plan. According to the Court in *Remmel*, it is not necessary that a proposed zoning amendment comply strictly with every portion of the Plan. Rather, when a court reviews the City's decision to rezone a property, the scope of the court's inquiry is limited to determine whether the Planning Board/City Council could have, from the evidence before it, found that the rezoning was in "basic harmony" with the Comprehensive Plan:

A zoning or rezoning action need not perfectly fulfill the goals of a comprehensive plan; it may be in basic harmony with the plan so long as it "strikes a reasonable balance among the municipality's various zoning goals" or "overlap[s] considerably" with the plan.

In addition, because the Comprehensive Plan consists of numerous different land use policies, adopted at different times, that sometimes conflict, whether a proposed rezoning is "consistent" with the Comprehensive Plan can only be determined by examining the Plan as a whole. "A municipality may conclude that a rezoning action is consistent with the comprehensive plan when it is in harmony with some provisions of the plan, even if the action appears inconsistent with other provisions of the plan." *Id.*

## II. Precedential Effect of Zoning Enactments or Amendments

With that general overview of zoning, I turn now to the question at hand, namely: Does this Board's recommendation (or the Council's ultimate decision) on rezoning a particular piece of property somehow bind it with respect to future amendments to zoning of the same property or of surrounding areas or properties? Generally speaking, the answer is no . . . with a caveat.

Because zoning is a legislative act and ultimately an exercise of legislative judgment by the City Council (subject to the "consistency" analysis discussed above), a zoning decision is not binding per se. Joseph T. Bockrath, *Zoning Board's Grant of New Application for Zone Change, Variance, or Special Exception After Denial of Previous Application Covering Same Property or Part Thereof*, 52 A.L.R.3d 494, 2b ("Being the result of a 'legislative process,' a zone change is not binding on future determinations . . .") In other words, because zoning requires an exercise of discretion and legislative judgment, a legislative body like the Council is entitled to exercise that discretion however it sees fit — provided of

course that its decision is consistent with the comprehensive plan, is not arbitrary, nor discriminatory. Therefore, even where the Board/Council denies a proposed zoning amendment with respect to a parcel of property this year, it would not be bound by that decision if the request were renewed next year. *Id.* at 3a (collecting cases). Having said that, in order to avoid an allegation that it is exercising its legislative discretion in an arbitrary or capricious manner, in such a situation the Board/Council would be well advised to articulate the change in circumstances that justifies a divergent exercise of its discretion with respect to the same parcel of land.<sup>1</sup>

Additionally, there may be situations where a prior zoning decision by the Board or Council might be looked to by a future Board/Council and where, while not binding, that prior decision may nevertheless inform or impact a future decision. For example, if the Board/Council were to amend the boundaries of a zone this year to include an additional parcel of property (Parcel A) and then a request came in next year to further extend the boundary to a neighboring lot (Parcel B), the Board/Council may feel constrained by the “consistency analysis” done with respect Parcel A when it is doing that analysis of Parcel B. That is, if rezoning Parcel A this year from R-3 to R-2 is consistent with the comprehensive plan, and Parcel B is substantially the same as Parcel A, the Board/Council may be hard pressed to conclude next year that including Parcel B in R-2 is not also consistent with the Comprehensive Plan. After all, if rezoning A was consistent, why wouldn’t rezoning B also be consistent?

On the other hand, however, parcels of property each inherently unique such that there may well be more than sufficient differences in the consistency analysis to justify different zoning decisions with respect to different, though neighboring, parcels of land. Therefore, while legislative acts like zoning enactments and amendments are not binding in the same way that judicial decisions are binding, in order to avoid confusion or the appearance of inconsistent or arbitrary exercises of legislative discretion, the Planning Board and the Council would be well advised to expressly articulate the bases for their conclusions regarding consistency and where those conclusions differ with respect to seemingly similar properties, articulate the differences that underlie those conclusions.

---

<sup>1</sup> Some examples in the case law include, changes to the property, changes to the surrounding neighborhood, changed traffic impacts, or changes in the zoning amendment requested.

**From:** Mihku Paul-Anderson <mihkupaul@gmail.com>  
**To:** <hcd@portlandmaine.gov>  
**Date:** 10/19/2015 1:19 PM  
**Subject:** Elks Lodge re-zoning

Dear Ms. Donaldson,

I am writing in opposition to the Elks Club re-zoning and development by Northland Corp. I am well aware that this project will most likely go forward as the city Planning Board supports granting the zone change. But I would like to add my voice to this issue as much activity is taking place in my neighborhood that is not positive in nature.

I've seen Portland undergo many changes since I moved here in 1986. I was born and raised in Maine, upstate, and moved to Portland for job opportunities. That said, I left an excellent job at Rennsalaer Polytechnic Institute in order to return to Maine because the quality of living is so good. Portland is somewhat unique as a city, in that it contains many diverse businesses, a burgeoning arts community and a robust historical society that works to protect heritage buildings. The runaway development that I've seen in the last 5 years is rapidly changing the face and feel of our little city, not always for the better.

I am a homeowner on the western edge of the city, on Westbrook St. across from Camelot Farm. We were happy to have found such a fantastic neighborhood with plenty of green space in Portland. In just 2 years I have seen that space being steadily eroded. I often speak with my neighbors on Westbrook St. about their concerns here, and one thing I hear is that they feel the city doesn't really care about them because they are not in the affluent section of Stroudwater.

Here is what I have observed in my short time of living in Stroudwater:

1. Constant speeding, often at highway speeds of 45 mph past our homes. I am told this has been an on-going problem and has actually improved.

Commercial vehicles and heavy equipment (dump trucks, tree company trucks, flatbeds hauling large equipment) exceeding the speed limit daily.

\*\* when I spoke with the city, I was told they "had no jurisdiction" and I had to talk with DOT. DOT told me they "leave that to the city."

\*\* Our street is clearly used as a sort of bypass in to Portland and accidents occur on a regular basis. I don't believe the city wants to correct

this problem because this usage is convenient and thus complaints are ignored. Speeding vehicles include Portland Water District, RTP, and even Portland school buses.

\*\* The traffic speed and congestion on Congress St. in the western gateway are becoming serious issues, yet I have not heard of any "plan" to

deal with this issue, even though the Elks development would increase traffic there during peak hours.

2. In the winter, our sidewalks are not cleared, and snow removal does not happen. Thus the sidewalk becomes a large frozen snowbank and I must

walk in the road with my dog, taking my life in my hands because of speeding traffic. I am aware that home owners are expected to clear sidewalks in front of their house, but this is often not sufficient.

3. The sidewalks along our street are very overgrown in places so that it has become quite narrow. Street drains are clogged with debris. I say this because Westbrook St. is not well maintained by the city even though our taxes here are quite high. We seem to have been forgotten.

4. When the gas company needed a 20 foot corridor through the woodland that is adjacent to the Fore River Trail, they sent in a harvester that hacked

major thoroughfares through the woods that are 30-40 feet wide, with stumps jutting up everywhere (frontage) and no run-off remediation. Since the

PWD decided they needed a corridor as well, more than 60 % of this woodland has been clearcut and left a mess. Scattering a bit of hay on an

embankment is not sufficient. The loss of these trees represents decades of growth, and the loss of understory impacts vernal pools on the trail

which support natural ecologies. Yes, it is city land. However, the city could have informed residents of this action and worked to do it in a low impact

manner, preserving the remaining green space and keeping it tidy. That did not happen.

5. Now, the Camelot Farm acreage is on the market. The sign says "Ideal for Development." The location of this large parcel is at the end of Westbrook

St. but begins near Stroudwater Christian Church just a few houses from my own. I have grave concerns that this land will be allowed to develop as a commercial endeavor and destroy what remains of the green space out here. Why do I think that could happen? I believe that the

development pressure will trump the wishes of the residents and the existing comprehensive plan for our city. This is exactly why we need

to

have a plan for this area and honor those decisions.

You may say that the issues highlighted here are not directly about the Elks Club development proposal. However, I list them as a resident homeowner because it seems to be part of a disturbing pattern by the city that does not respect the rights of homeowners here. Stroudwater is diverse in its population. Not everyone can be lumped into one category. There are many families, with children and pets on our street, as well as retired seniors. Not all of us are affluent. We care about our neighborhood and would like to see its beauty and value preserved the same way as any other neighborhood. In the years to come, development pressure in Portland will most certainly increase, and this area will be seen as a viable option even though it is residential. I urge the PB to consider the big picture and work to create a long term plan for Stroudwater that respects resident homeowners and preserves the quality green space that exists here.

Respectfully Yours,

Mihku Paul  
1603 Westbrook St.

mihkupaul@gmail.com

TO: Mayor Brennan and Members of the City Council

FROM: David Silk, 1187 Westbrook St

RE: Proposed Rezone of 1945 Congress Street from R-2 to OP

Property Owner: Portland Lodge #188 BPOE of USA ("Elks Club")

I respectfully urge you to vote against the Elks Club's proposal to change the existing R-2 zone for the property at 1945 Congress St to an Office Park ("OP") zone.

There is a litany of problems, inconsistencies, and concerns with the Elks Club's request:

The proposal is piece-meal rezoning, unwise and unsound. There is no compelling need for this zone change. It is, moreover, inconsistent with the Comprehensive Plan, good zoning practices, the City's Jetport Plans, including how the Jetport interacts with the Historic District and the neighborhood, the history and pattern of development in this area, taxpayer investment in Thompson's Point, the documented overloading of already saturated traffic in the JetPort area, and the way in which the City has handled other areas and developments, including St. Patrick's Church and Mercy Hospital. Further, approval would send a problematic message to many similar properties throughout the City, encouraging them to line up and cash out with similar zone changes, from residential to commercial.

The sole motivation behind this far-reaching effort for piece-meal rezoning is increased financial benefit for the property owner. There is little else to recommend it. Changing zoning to create a windfall for one property owner is hardly consistent with the Comprehensive Plan, or good zoning practices.

The Elks Club's proposal would replace a conforming use with a non-conforming use, as the Elks Club as a place of assembly is not allowed in an OP zone. This switch is clearly not consistent with the Comprehensive Plan. The purpose of zoning is to eliminate non-conforming uses, not to create more of them.

Further, the proposal is 180 degrees opposite the Comprehensive Plan's goal to address serious unmet needs for more housing, including housing for seniors and working families. Taking land that is zoned for residential use and switching it to a zone that prohibits all residential use is not consistent with the Comprehensive Plan. In stark contrast, preserving land zoned for residential use is consistent with the City's Comprehensive Plan.

The Elks Club's proposal is doubly problematic, as it would ignore unmet needs outlined in the Comprehensive Plan, in favor of zoning that is already plentiful. Meanwhile, there's an ideal location for new professional offices at nearby Thompson's Point that taxpayers are already supporting with \$32 million in Tax Incentive Financing (TIF).

With the Thompson's Point development zone change in place and traffic improvements already implemented there, the Elks Club's proposed 40,000 square feet of professional office space, which will generate 300 additional vehicle trips at peak time, should be directed to Thompson's Point. Per Tom Errico, in this area of Congress Street, intersections are already maxed out. If the rezone is approved, the increased traffic will among other impacts stifle the JetPort's needs down the road, a result that makes no sense given the traffic capacity for this type of development recently built out at Thompson's Point.

As the two most longstanding members of the Planning Board (Hall and Morrisette) recognized in voting against this proposed rezone, rezoning one property used a place of assembly as a conditional use in a residential zone so the assembly members can achieve a much great sale price is not a goal of the Comprehensive Plan. Rezoning a parcel, to allow for a use not allowed in the zone, absent compelling needs such as the need to preserve a significant historic landmark, is unwise and unsound zoning.

Instead of the rezone, zoning for this gateway area of the City should be reviewed comprehensively to determine whether the zoning should be changed at all, and if so, to what uses, and with what design guidelines. This review should be done in conjunction with the ongoing JetPort master planning process, as this area is on the border of both an historic residential district and the JetPort. Instead of piece-meal zoning, driven here by the wants of just one property owner, any rezoning should only occur after full participation and consideration of the interests of all of the stakeholders. The City should be leading the way, not the developer.

The area:



The Elks Club's property at 1945 Congress Street is presently zoned R-2. It consists of an almost 7 acre parcel. The property has been zoned residential since 1945. When the Elks Club acquired the property in the late 1960s, the parcel was zoned R-2. At that time the property was rezoned from R-2 to R-6 so as to allow the club to develop the property as a social/fraternal hall under what was then known as an "exception" to the uses permitted in the R-6.

Social/fraternal halls, together with churches, are now known as "Places of Assembly" under the Land Use Code. Places of assembly, like institutional uses (schools) are conditional uses allowed in all residential zones. The City has many places of assembly located in residential zones on busy streets. In the late 1980s when the new entrance to the Jet Port and to UNUM was proposed, zoning for the area site was examined. At that time, the Elks Club property was subsequently rezoned back to R-2 and not to OP. When the OP zone was extended to accommodate UNUM's expansion, the site was not included in the OP zone, likely due to the fact that on either side of the site are existing residents. Residential uses are not permitted in the OP zone.

The Elks Club now wants to rezone the property to OP because its property is worth a lot more when zoned to allow for nonresidential uses. Zoned R-2, the land is assessed at \$512,000. With the zone change, the developer will pay \$1.25M for just the land. The Elks Club will remain on the property and continue to operate out of its existing building. In addition, the developer proposes to build two large professional office buildings on the property, one 15,000 square feet in area to be sited right on Congress Street, and the other 25,000 square feet in area.

The purpose of the OP zone is to "provide *substantial areas* for integrated development of professional offices *in a park-or campus-like setting* which are of the highest quality, are well maintained and *are compatible with their natural surroundings.*" The UNUM campus is in an OP zone and is an example of professional offices located in a park or campus-like setting with the offices set well back from any public way. That is not what the Elks Club's proposal calls for.

Places of assembly are not allowed in the OP zone. So if rezoned to OP, the Elks Club as a place of assembly will go from being a permitted/conforming use in the R-2 zone, to being a prohibited/nonconforming use in the OP zone. It is unheard of to rezone *a single parcel* in the City so that an existing use on that *single parcel* that is intended to continue indefinitely after the zone change is converted from conforming to non-conforming. Yet that is what the Elks Club's proposal calls for.

In my 11 years on the Planning Board, I do not recall any rezoning proposal for just one parcel that called for converting an existing legal use on the parcel from conforming to nonconforming. That is because the goal of zoning is to eliminate non-conforming uses. What the Elks Club proposes here is the antithesis of zoning and totally against the Comprehensive

Plan. Maine courts have always observed that the purpose of zoning is to eliminate non-conforming uses, not to create them. See *Oliver v City of Rockland*, 1998 ME 88, ¶ 9, 710 A.2d 905, 908 ("The policy of zoning is to abolish nonconforming uses as speedily as justice will permit."). For this reason alone you should vote against the rezone.

Places of assembly often have limited lives. A few years back, this Council wrestled with a conditional zoning agreement for a place of assembly in an R-4 zone. The owner of the former Williston West Church sought a conditional zoning agreement to allow for the operation of a business on the property and promised to invest money to preserve a historic landmark. Such a use was not permitted in the R-4 zone. Given the Church was a very significant historic structure and the property could not be redeveloped solely for residential use unless the conditional zoning agreement was approved, the Church building's future was at best unclear. However, the Elks Club's building on the property is not a historic landmark and there is no suggestion from anyone that it should be considered one.

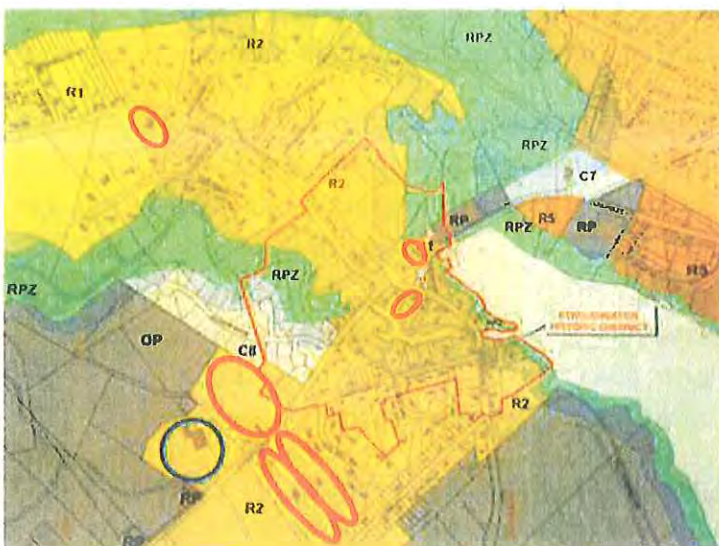
In recent years, places of assembly with declining membership have been repurposed without (a) making the use nonconforming in the zone and (b) without changing the underlying zone. The most recent example occurred less than a mile away from the Elks Club. Earlier this year, the former Saint Patrick's Roman Catholic Church, (a place of assembly permitted as a conditional use in a residential zone), located next to Westgate on Congress Street, was sold to the non-profit Jewish Community Alliance. The Church had been on the market for many years and eventually a buyer was found. The Saint Patrick's property was zoned R-5. The Church did not come to the City to seek a zone change to allow for commercial uses in order to maximize its return even though property abutted a very active business district (Westgate zoned B-2). Instead, it found a buyer that did not need a zone change. It took time but it happened.

In the immediate vicinity of the Elks Club and in the R-2 zone, there are three other properties of between 4 and 6 acres with conditional uses (places of assembly) located thereon, Faith Temple, Christchurch of Portland and St. Albans Corporation (Masonic Learning Center).



Places of assembly are classified as a type of institutional use in the Land Use Code. They are required to have large areas. As the Comprehensive Plan at H-7 states: "Any new institutional use should be required to have a lot size of sufficient area to accommodate all activities, including parking and to absorb impacts and growth needs of the institution."

Because proper zoning has required places of assembly located in residential areas to have large lots, these organizations, when their membership falls off, will be motivated, as the Elks Club is now, to seek to rezone their lots to permit professional offices or other commercial uses. Three such organizations are located on the same stretch of Congress Street as the Elks Club. While these lots are not quite as large as the Elks Club's parcel, on which the Elks Club seeks to locate two multistory professional office buildings, these lots are clearly sufficient to locate say one professional office building. See areas circled in red below.



The same occurrence is ripe to happen at other places of assembly, city-wide. Many other places of assembly have been permitted as conditional uses in residential zones in the City, ones that have a lot of sufficient size to absorb the impacts and growth needs of the place of assembly. Such places of assembly are situated along Allen Ave., Forest Ave., Westbrook St., Washington Ave., Brighton Ave., Woodfords St., Stevens Ave., Canco Road and Ocean Ave., just to identify a few locations of places of assembly with large lot sizes. They are also similar in that they border busy streets with high traffic counts, with parking and large areas that were intended to serve as buffer to adjacent residential uses. Numerous places of assembly could follow the Elks Club's lead and seek a zone change so the "excess land" (really the land intended to act as a buffer to adjacent residences) can be used for professional offices or other nonresidential uses.

The place of assembly at Canco Road and Washington Ave in a R-3 zone is a prime example as it has ample size, parking and access near a signalized intersection. The case is the same on outer Allen Ave, outer Washington Ave, Westbrook Street, and Ocean Ave., where, if need be, signaled intersections could be installed.

Note there is no shortage of land zoned for professional offices in the City. The 2011 rezone at the 30 plus acre Thompson's Point project located off of Congress Street, a project that received a \$32 million TIF, allows for the development of over 100,000 square feet of professional offices. The proposed users of the office buildings to be located on the Elks Club both are already located on Congress Street. In fact for one of the proposed users, Thompson Point is much closer to its existing office than the Elks Club's property. With the substantial street improvements already made at Thompson's Point, improvements made to handle increased capacity, the traffic resulting from the two professional offices can already be handled at Thompson's Point. That is not the case at the Elks Club's property, where recent traffic improvements have been made to minimize the impact on the surrounding neighborhood. Lanes have been reduced from two lanes to one as an example.

Tom Errico made clear to the Planning Board that with the proposed zone change, peak hour trips at the site will be 302 vehicles in the morning and 288 vehicles in the evening, substantially more than anticipated for an R-2 zone and way more than the peak trips now at the site. Mr. Errico notes that most of the traffic at the site presently is off peak, which is typical with most places of assembly permitted as conditional uses in a residential zone. He observed that the Congress Street/Westbrook Street intersection "currently experiences congestion problems" and it is simply not possible to make further "any capacity enhancements." In other words, at peak time, it is already at capacity.

With the Jetport looking to increase demand, any rezoning should take into account the finite road capacity. The solution is not to add 300 trips at peak time, especially not, when at

Thompson's Point, located about a mile away, traffic and other enhancements have already been made as part of the \$32M TIF to make ready for among other uses, the professional offices as proposed at the Elks Club site.

The Comprehensive Plan section on Transportation Resources at page 1 notes, *traffic must be minimized in order to maintain the health of neighborhoods*. "If residents who live in the city by choice come to believe their neighborhoods are not safe for walking, are not protected from noisy through-traffic, don't provide easy access to the daily necessities, don't give their children the freedom to move about independently – then the City has lost much of its competitive advantage over the suburbs."

The professional office use proposed under the Elks Club's rezone is already legal and can be readily accommodated without a zone change at Thompson's Point. So to rezone land zoned residential to allow for office development cannot be about filling a City need. To be consistent with the Comprehensive Plan, the City should be directing professional office space development to areas already zoned for that use, e.g., Thompson Point with ready access off of a parkway that does not run through a neighborhood.

To allow any property owner like the Elks Club to rezone its parcel simply to make more money is not a legitimate reason to rezone. Otherwise the Council will be flooded with rezone requests in coming years by other places of assembly located in residential zones with parking and excess land with access to a major street. If the Elks Club can cash out, they too, will want to cash out as well, with a zone change that will allow for office buildings in what has been a residential zone.

**A. The Elks Club proposal is piece-meal rezoning, unwise and unsound.**

The Elks Club's property is located in very close proximity to the Stroudwater Historic District ("SHD"). The SHD was added to the National Register of Historic Places in 1973.<sup>1</sup> It is expansive and obviously worthy of protection. Any rezoning of the area in close proximity to any historical district should be done with eye to ensuring the rezone will not negatively impact the historical district.

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<sup>1</sup> "The significance of Stroudwater Historic District is not limited to the merits of individual buildings. The whole formed by these single elements stands today as a fine example of a nineteenth-century village. The pattern of the village's growth is visible in the sequence of its architecture. Although the commercial enterprises carried on in the village are no longer in existence, their sites are clearly evident. The current residents of Stroudwater take pride in their historic village. Their homes are well maintained; many are restored to their original exterior appearance. .... The sense of history that envelops Stroudwater is heightened because the buildings have been continuously lived in and cared for." Beard, p 302

The Elks Club's property is also located in close proximity to the City's main entrance to the Jetport and sits across the street from two large parcels owned by the City which are also zoned R-2. The area is a gateway to the Jetport and an entrance to the UNUM campus.

As part of the 1994 Jetport Master plan, the City-owned land was identified as land to be held and maintained as open space/buffer for the existing R-2 zone. See July 23, 2015 Planning Staff report at page 3. If the City-owned land, located directly across the street from the Elks Club is zoned as R-2 in order to be a buffer, it makes absolutely no sense to remove the R-2 designation for the Elks Club's property located just across the street. The distance and proximity of both the City property and the Elks Club's property to existing residential homes and the SHD are no different. As a place of assembly in a residential zone, the Elks Club was required to have a large parcel with open space to act as a buffer to the adjacent residences. Unless and until the Master Plan is revisited, which should be done, keeping the R-2 designation for the Elks Club's property is fully consistent with the zoning goals of the City.

The history of zoning and development in the area is important. If you look at the map above and if you have visited the area, you will observe that the four conditional uses located in the R-2 zone in the area just along Congress Street just outside of the SHD were all developed in a similar manner as the Elks Club. This was not achieved by accident. The main building and parking on each lot are located well off of Congress Street so as to provide buffering to the residences located on Congress Street. The open space was at least as deep as the lots used for residential uses. The conditional uses and parking associated therewith were all well set back from the street. That is the clear pattern of development in the area. It is unsound planning to allow for a rezone that is totally disregards the planning that has occurred in the area as evidenced by the actual development that has occurred and the Jetport Master Plan discussed above. Yet that is what the Elks Club's proposal asks you to do.

These observations have led many to request that before any piece-meal zoning occurs, that the City, through the ongoing JetPort master planning process, undertake a planning process to best identify how the area should be rezoned, if at all. The area is an important gateway to Portland, not only from the west, but for travelers who arrive by air. It is bordered to the east by two large cemeteries, to the west by the SHD, and to the North by the UNUM campus that has its entire office complex set back at significant distances from Congress Street, fully consistent with the OP standards. There are numerous residential structures in use in the area *including ones abutting the Elks Club's property*. The planning to date in this area intentionally maintained open space characteristics along Congress Street by preventing structures housing conditional uses from being sited right along Congress Street, thereby buffering the places of assembly from the existing residences. The 1995 Jetport Master plan reaffirmed the important role the open space has in creating a buffer for the existing residential uses and the SHP. The

OP designation for the UNUM property on Blueberry Hill ensured that the view from outer Congress Street was of a campus set back from the road. There are several cemeteries in the immediate area that provide for, and are consistent with, the preservation of the R-2 zone. Before this longstanding pattern is changed, having been last reaffirmed in the 1980s, there should be a master planning process.

A thoughtful process should unfold to develop a vision to govern the area, which looks at uses, setbacks, lighting, and design standards. This ensures that any non-residential development that occurs is compatible with the existing residential uses. It also ensures that development is not driven solely by the wants of just one property owner seeking to maximize its return regardless of the impact on others.

Two members of this Council have recognized the need for sound planning before embarking on zone changes. They recently stated:

*"A good leader must have a well-thought-out plan and take risks to bring people together to realize that vision. Without direction, our priorities are not defined and our path is not clear. A good leader must listen. When residents feel like they have not been heard, and have been ignored, we end up as a city governed by referendum, as was the case with Congress Square and now the Portland Co. development. A good leader must bring people together. Without collaboration, people become frustrated and divided. They concern themselves more with getting their way than they do with making their way toward long-term solutions that work for everybody."*<sup>2</sup>

Vision and direction are not created by meeting the wants of one property owner to make as much money as it can through a rezone, regardless of how benevolent the property owner may be. Vision and direction are created through a collaborative, inclusive process that looks at what is best for the whole.

**B. Rezoning is not intended to increase the return to a property owner.**

To the extent that any part of your decision is premised on the Elks Club's assertion that its property cannot be put to other uses, it is important to understand that there has been no showing that such is the case. The property has not, to my knowledge, ever been placed on the market for non-commercial uses. The Elks Club has not engaged the City to work with it on possible residential development opportunities. The fact that the Elks Club could make more money is not a valid reason to rezone.

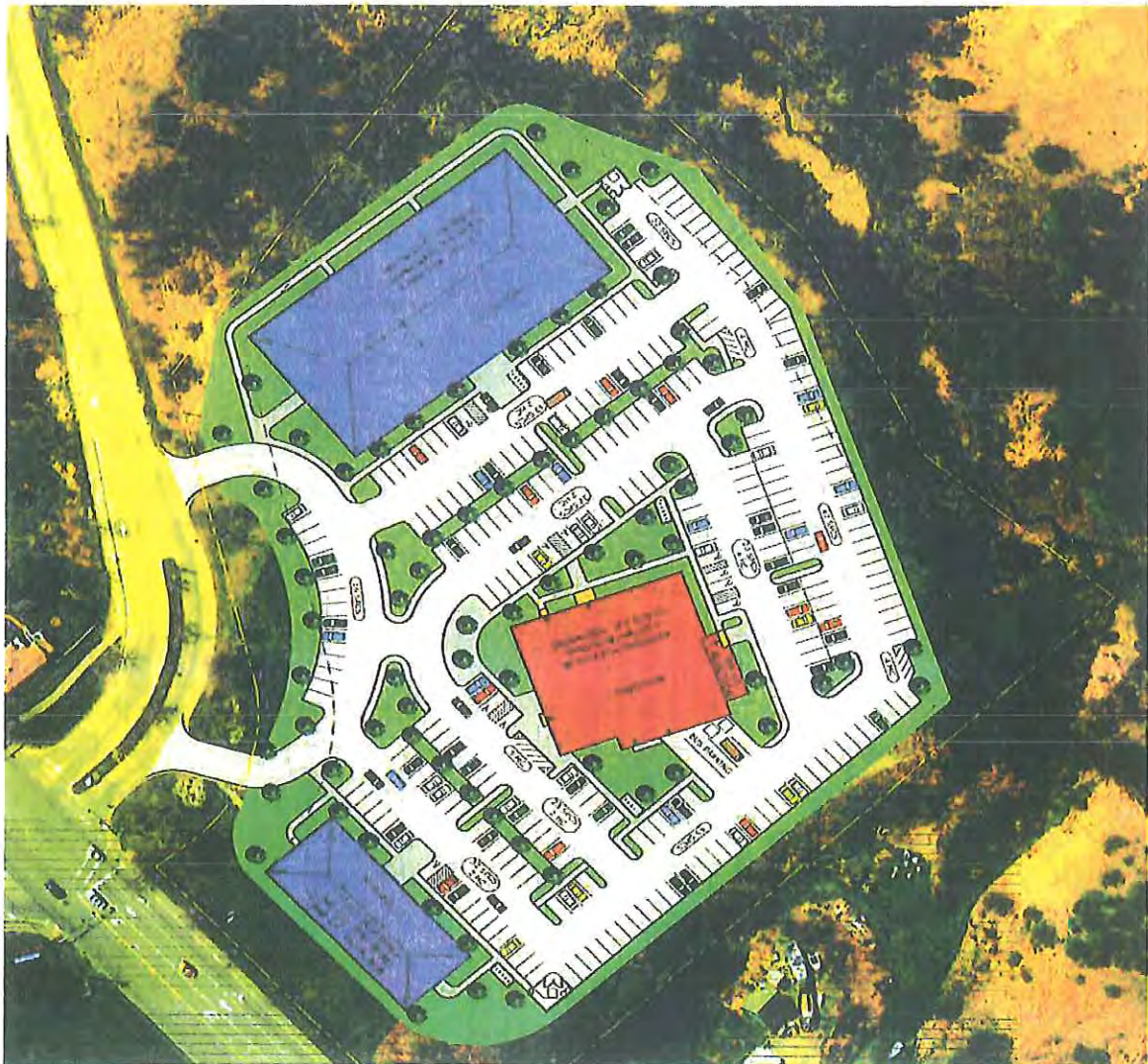
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<sup>2</sup> E. Suslovic & N. Mavodones, *Portland Press Herald*, August 25, 2015.

Indeed, the Elks Club told the Planning Board that it would “never” list the property for sale for residential use and would “never” sell its property for any residential use. It has not looked at rezoning the property as an R-5 or even as a conditional use. It has not engaged the City for a TIF or other means of assistance (density change) in the development of housing on the site. Why? -Because the Elks Club will not get paid \$1.25M for land assessed at just over \$500k. It will make far less without a zone change. But again, the zone change should not be about what is good for the place of assembly. It is unsound zoning to rezone a property simply because the owner refuses even to consider selling for the permitted or conditional uses for the zone.

**C. The Elks Club has not shown that the property to be rezoned OP can even be developed consistent with the OP standards.**

Here is the Elks Club’s proposal:



It is worth reiterating the purposes of the OP zone, as it raises the question whether any use of that portion of the Elks Club's property to be rezoned OP can even be developed in any manner consistent with the purposes of the OP zone. If not, the property should not be rezoned.

The Comprehensive Plan describes the OP zone as follows: "Developments in the O-P zone are to be characterized by spacious and high quality development. Large lots, relatively low building coverage, low impervious surface areas, *significant open space* and landscaping and thoughtful building design are exemplary characteristics of O-P developments which are appropriate and beneficial to the City of Portland." Neighborhood Commercial Land Use Policies and Land Use Plan, (1988) page 22.

The best that may be said about the proposal is that it may, at the end of the day, look better than what is there now. But that is, has never been and never should be the test for a rezone; otherwise a place of assembly (or for that matter any property owner) can simply let its building become run down and lose any charm, and then claim that, if the rezone is permitted, the eye sore will be gone.

Looking at the purposes for the OP zone, it is clear that the proposal cannot be called "spacious." It is not a large lot with low building coverage but a small lot with three buildings to be shoehorned on the lot with a sea of parking. There is no open space. There is no campus-like feel. The proposed office buildings are run-of-the-mill office buildings, with one located on the front at Congress Street. None of UNUM's buildings are located within 200 feet of Congress Street. The proposal, clearly on its face, does not meet the City's standard for an OP zone.

The OP standards also call for a "Master Plan" of the office park that shall include a design relationship to the site to show integration of open space and the natural features. The integration required in the Master Plan "*shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens and benches.*" Before the Council acted on rezoning what the Mercy Hospital parcel, it first required Mercy to submit a Master Plan for the site. As there, there should be here by the Elks Club, a showing of possible building envelopes and integration making a threshold showing the OP standards can be met. None of the concept plans the applicant presented to you make this threshold showing. If it is not practicable to meet the OP standards, the property should not be rezoned.

One is hard pressed to say that the to-be created lot, crammed with three buildings, constitutes a "substantial area" as that term is used in the OP zone. By comparison, UNUM's property designated OP is at least 15 times larger than what the Elks Club's proposed OP zone is. The applicant's proposal does not show any integrated development or any park- or campus- like setting. With the area to be occupied by the two new buildings with added pavement for

parking it is impossible to see any potential for any park- or campus-like setting as viewed from the Congress Street corridor. Compare the applicant's proposed view with the view of the UNUM campus from Congress Street.

The test is not whether it looks better than what is existing. As the proposed development does not fit the characteristics of an OP zone, you should vote against the proposed rezone. If this lot, which has no open space and has no campus feel, is deemed suitable for OP designation (a designation again that prohibits actually places of assembly and residential uses) I am sure when the fiscal need arises, other places of assembly with excess land on a busy street will be looking to obtain a zone change to OP. Why wouldn't they?

**D. The proposed rezone is not consistent with the Comprehensive Plan.**

Turning to the Comprehensive Plan, that plan has, as a goal, no net loss of housing for all development, and the creation of new housing of all kinds. City reports issued over the last 12 months repeat the same message; there is a huge need for all kinds of housing in the City. For example, the Director of Planning and Urban Development for the City reported at a City Housing and Community Development meeting earlier this year, that based on current trends, there is a gap of 24% to 33% in the supply and demand of workforce housing. He noted that there is unmet demand for 3 bedroom housing that can accommodate working families. Other City officials have noted there is substantial unmet need for senior housing to accommodate for downsizing by existing Portland seniors. That downsizing will free up existing housing to be filled with families and others. Having served for the last 20 years on the board of a non-profit developer of senior housing projects in Maine and New Hampshire, I can vouch for that trend and need. While perhaps not at a land cost of \$1.25M, the site certainly is capable of sustaining a viable housing development. In sum, there is an unmet need for all kinds of housing in Portland, and the Elk's proposal is in direct conflict with this significant unmet need.

The goal of not losing any and creating more housing is incorporated into the Land Use Code and is the highest goal of the Comprehensive Plan. Part of the Comprehensive Plan implementation plan calls for an analysis of each residential zone *"to identify opportunities to increase the capacity of all the neighborhoods to accommodate new housing."* The implementation plan also calls for the City to be proactive and to work with residential developers to identify and remove barriers to housing development of all kinds.

Here, the Elks Club has made no effort to work with the City on possible residential development, whether it be rezoning for a different residential district, a conditional use agreement, changes in density or a TIF. Rather, the sole focus of the Elks Club has been on maximizing its economic return and to do so it wants to rezone the land so all residential uses will be prohibited. Maximizing economic return is not a goal of the Comprehensive Plan.

Extending commercial zones so as to displace all residential uses is not a goal of the Comprehensive Plan. Instead, the Comprehensive Plan has as a goal to “encourage neighborhood livability with higher density multi-family & innovative mixed use protects along major public transpiration routes.” Congress Street is served by METRO. The Elks Club property could readily be developed into multi-family housing. One proposal submitted to the Planning Board depicted the possible development of 32 units of housing at the site as follows:



The City has a limited supply of land zoned residential and that land certainly should not be rezoned for the benefit of a place of assembly so as to eliminate the possibility of any residential use in the future without serious study and an overwhelming, compelling need. The Comprehensive Plan speaks to encouraging residential development and discouraging any development that could displace housing for non-residential uses. With its \$32M TIF already in place, Thompson's Point stands ready, willing, and able to accommodate the development proposed here. It makes no sense to rezone the Elks Club for two professional office buildings simply to enrich the Elks Club.

More importantly, the Council must ask what will be the impact of the rezone on both the abutting and nearby residential uses and will the rezone lead to the deterioration of those areas and eventual loss of residential uses. If the answer is yes, as I think it is, the rezone should not be approved as it will result in the loss of residential dwellings.

The two residential property owners located on Congress Street on the other side of the UNUM entrance submitted a letter to the Board asking that as part of the Elks Club's rezoning request that their two residential properties be rezoned to OP "so that professional development of our properties becomes a possibility." (See letter attached.) It is not known why the Board ignored their request and did not include the two residential properties within the area for rezoning consideration. The property owners clearly asked for such consideration. Both of the residential properties abut the existing OP zone. A rezone of the two parcels to OP would accomplish the same result as the rezone for the Elks Club: increase the value of the two residential lots and make existing conforming uses (residential) nonconforming in the OP zone. The properties are the same distance from the signalized intersection and could be accessed from the UNUM entrance. Why say yes to the Elks Club and no to the two residents of the City?

This highlights the problem with piece-meal rezoning driven by the desire of a single property owner to maximize his or her return. The OP zone borders a number of residences as well as the Elks Club. If the justification offered for the Elks Club rezone is it is a "natural extension of the existing OP zone" for property that can be accessed from the UNUM access road with a signalized intersection, then there is no reason not to also honor the residential property owners' request and rezone those lots as well to OP. They will make a lot more money selling their land if rezoned OP just like the Elks Club seeks to do. But to what end: the loss of residential housing. The City should be seeking to preserve residential housing and not be taking steps to make housing less desirable, like making them islands surrounded by a wall of professional offices.

Similarly, across the street from the Elks Club is land owned by the City presently zoned R-2 with frontage on the International Parkway that benefits from a signalized intersection. Why not extend the OP across the street to this land as it benefits from the same characteristics offered by the Elks Club to support its rezone request? It could be sold simply as a "natural extension" of the OP as the Elks Club tries to sell its rezone request. The City would stand to make a lot of money. But we know, when last examined in the late 1980s, the decision was made not to extend the OP zone to the Elks Club property, not to extend the OP to the two residences, and not to extend the OP across the street to the City land, likely due to the fact that none of these areas met the definition of the OP zone (substantial area, significant open space and natural features and campus like environment). What has changed in the area since then? Not much by way of any further development since the 1980s. The only thing that has changed since then is the Elks Club's desire to maximize its take on any sale of its land.

All of these observations point to the need for planning to occur at this area before any rezoning is considered-- planning that can look not only at uses, but performance standards and

setbacks, to ensure any new development that occurs is consistent with the area being a gateway to the City and with bordering a large, residential, historic district.

As an example, when entering SHD near the Fore River, when the office building known as "Stroudwater Crossing" was built, a significant design feature was the use of distinctive clapboard siding and pane windows in recognition that the building borders a historic district. These design features are totally absent from the Elks Club's proposal. Under the OP standards, there is no way for the Board to require the developer to take into account the location of the site bordering a historic district in reviewing the design and siting of the proposed office buildings. Any rezoning could add those elements.

Additionally, the Elks Club's analysis submitted to the Planning Board on how the rezone is consistent with the Comprehensive Plan suffers from a fatal flaw. That analysis necessarily assumes that the OP zone text would be amended to allow for places of assembly so that places of assembly would be a permitted use in the OP zone. On one level, this makes sense because as noted earlier, it is contrary to zoning practice to rezone *one parcel* alone and convert an existing conforming use that is to be continued after the zone change to a nonconforming use. The purpose for zoning is to eliminate nonconforming uses, not to create nonconforming uses. But the Planning Board did not recommend changing the OP zone to allow for any places of assembly. No text changes to the OP zone have been proposed. Without a change to the OP zone to allow for places of assembly as a permitted use, there is no basis to conclude the rezone proposal is consistent with the Comprehensive Plan.

*Nowhere in the Comprehensive Plan is there a goal to rezone a parcel so as to convert an ongoing legal conforming use to a nonconforming use.* The City should not be promoting such a practice simply to accommodate the needs of one property owner.

**E. The Elks Club's proposed rezoning should be denied and only revisited after a master planning process is completed for the area.**

*"Without direction, our priorities are not defined and our path is not clear."* In an area where the existing pattern of development is clear, to change that pattern only to maximize the return to one property owner is unsound zoning. Right down the road is Thompson's Point where professional offices are intended to be located.

If there is to be change in this area, a substantial change from the R-2 and places of assembly serving as buffers to existing abutting residences, it should be the result of a *"well-thought-out plan."* This is a gateway area to the City in many ways. There should be a plan for the area. The Elks Club's proposal is not a well-thought-out plan. It converts a present legal use to one prohibited in the proposed new zone. The parcel is not suitable for OP designation. The

development will substantially burden an already maxed- out traffic corridor when just down the road at Thompson's Point, traffic improvements have already been made to handle the exact type of development proposed here. The parcel only rezone only sets the stage for other places of assembly located in residential zones to seek a similar zone change.

I respectfully request you vote to deny the rezone proposal and fold this area into the Jetport master planning process. A planning process should first be undertaken to determine what all stakeholders see this area becoming so that any reasoning can be consistent with an overall plan. Changes should not unfold on a piece meal basis driven solely by the financial needs of a single property owner. While that solution may work very well for the Elks Club, it is not a solution that is in the best interest of all the other stakeholders. There needs to be an overall plan first.

Thank you for your consideration.



October 13, 2015

To The Portland City Council,

Northland Enterprises and Doctor Michael Bedecs, have the Elks Lodge property at 1945 Congress Street under contract. We have plans to collaborate with the Elks to redevelop the property following a zoning map amendment request to change the site from R2 to OP, which is the zone on the adjacent Unum campus. .

Northland and Bedecs propose to purchase the property, remove part of the existing Elks building and make improvements to the exterior of the remaining building; build a 15,000 square foot medical building for Dr. Bedecs and develop a 25,000 square foot building for Clark Insurance.

Through our numerous neighborhood and city meetings it has come to our attention that the City of Portland has plans to make improvements to Congress Street in the vicinity of the Elks property. We have come to learn that there is a gap in the amount of funding required to perform the work, which has caused significant delays in implementing the improvements.

Northland met recently with City Manager Jon Jennings, City Councilor Ed Suslovic and Jeff Levine of the City Planning office to discuss making a contribution towards the Congress Street improvement project. Assuming the we are successful in getting all the necessary approvals to close on the acquisition of the property, Northland is in agreement to make a financial contribution to the street improvement project. We are not able to commit to a dollar amount until we have a better understanding of our total development cost, however we will go on record of stating we will support the street project.

Thank you for your consideration of our request for a zone change.  
Sincerely,

Rex Bell, Josh Benthien, Northland Enterprises and  
Dr. Michael Bedecs.

17 South Street, 3<sup>rd</sup> Floor  
Portland, Maine, 04101  
207-780-0223  
[www.northlandus.com](http://www.northlandus.com)

**From:** <roz@homesinnaine.com>  
**To:** <hcd@portlandmaine.gov>  
**Date:** 10/6/2015 11:16 PM  
**Subject:** Elks Club land re-zoning

I have no objection to the re-zoning.

I do feel it would be wise to follow up with a vision for the city for Stroudwater area and residents.

Sent from my iPhone

**From:** "James Casterella Jr." <jcasterella33@yahoo.com>  
**To:** "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>  
**Date:** 7/26/2015 8:03 PM  
**Subject:** Tuesday, July 28th, workshop re: 1945 Congress St. proposed zoning amendment

Hi, Nell,

My name is James Casterella and I live at 1967 Congress St., two houses away from the Elks Club. I'm not sure if I can make Tuesday's Workshop so I wanted to email you with my thoughts

First of all, I completely support Northland Enterprises' zoning map amendment application. I think it's very important that visitors to Maine, flying into Portland Jetport, drive onto Congress Street with a view of an attractive, modern building such as is being proposed by Northland. As it stands right now, those same visitors see somewhat of an eyesore: they see a huge, usually empty parking lot, and a somewhat rundown, tired looking Elks Club. The Elks Club deserves a facelift and also deserves the opportunity to stay at its current location.

Additionally, I'm hoping that the Planning Board will consider extending the zoning change to include my house (at 1967 Congress St) as well as my neighbor's house. We are the last two residential houses on Congress Street and the only two residential properties to the left of the UNUM entrance. My neighbor and I would like the opportunity to be zoned similar to the Elks Club so that professional development of our properties becomes a possibility.

If you have any questions please feel free to contact me via email or at 831-7297.

Thank you for your time,

James Casterella

**From:** paul jeffery <pj6481@yahoo.com>  
**To:** "hcd@portlandmaine.gov" <hcd@portlandmaine.gov>  
**Date:** 10/13/2015 9:29 PM  
**Subject:** Fw: 1945 congress st project

On Tuesday, October 13, 2015 9:21 PM, paul jeffery <pj6481@yahoo.com> wrote:

support projecthigh and best use  
DOESNT EFFECT THE STROUDWATER NIEGHBORHOODLET'S KEEP ELKS AND CLARKS INSUR IN PORTLAND

**STATEMENT from the Stroudwater Village Association regarding the proposed rezoning of 1945 Congress Street (Elks Club Property), October 2015. [stroudwatervillageassociation@gmail.com](mailto:stroudwatervillageassociation@gmail.com)**

This statement should be considered in addition to our prior letters to the Planning Board from January 2015, May 2015, July 2015 and September 2015.

**The Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.**

Consider these facts:

- At the September 2015 workshop regarding this zoning request, several members of the planning board and City staff stated their agreement that it makes sense to do a proper visioning exercise for the Jetport and Stroudwater area, including but not limited to the abutting intersection and the Stroudwater Historic District, before a split vote of 4-2 (nowhere near unanimous) to recommend approval of the request.
- The City has just now kicked off the process to review and re-certify its Comprehensive Plan, and is in the middle of the process of updating the Jetport's Sustainability Master Plan.
- The Outer Congress Street Phase II traffic calming improvements (some of which are quite close to this parcel) are scheduled to be implemented in the near future.
- Most alarming, in the short time since this application process began, parcels surrounding several other similar properties (flagged by the SVA in our July letter) have come on the market or changed their market status (for example, gone under contract). Rumor abounds that these are commercial developments. In addition, we know that several individual residential owners have petitioned to be included in any hypothetical commercial zoning. Given the financial incentive that "cashing out" to commercial developers represents, it is likely more will follow.

The SVA and our members remain surprised by and uncomfortable with the City's insistence on rezoning a single parcel ahead of proper planning for the area. We believe that to do so is shortsighted and reckless, especially given the timing relative to planning processes already underway. Inputs from the Comprehensive Plan and Jetport Master Plan updates, as well as from the stakeholders (including but not limited to SVA members and the Elks Club), should be incorporated into a clear and transparent visioning process. This is especially important since, as described in the last bullet above, we are already seeing evidence of the "domino effect" of this potential parcel rezoning. There are at this point no rules of engagement or even a common understanding about the implications of this potential change.

Bottom line: we have not heard a valid reason for tinkering with zoning *before* thinking about the big picture. Indeed, given the potential mess being created, we believe the big picture should be driving zoning, not the other way around.

To restate, **the Stroudwater Village Association remains opposed to any one-off rezoning of the parcel at 1945 Congress Street, or for that matter any other individual parcel in the neighborhood area, until a comprehensive visioning process for the neighborhood is undertaken.**

**From:** Joe Heasly <jheasly1@maine.rr.com>  
**To:** Helen Donaldson <hcd@portlandmaine.gov>  
**CC:** Ed Suslovic <edsuslovic@portlandmaine.gov>, <stroudwatervillageassociation@gmail.com>, <captlinnell@yahoo.com>, Carolyn Heasly <caroalic@maine.rr.com>  
**Date:** 10/18/2015 7:55 PM  
**Subject:** 1945 Congress Street zone change - comment for Council meeting

Dear Ms. Donaldson,

Thank you for the notice of the upcoming City Council consideration of the Elks Clubs' zone change request for 1945 Congress Street. Will you please forward our comments to the Council members for their consideration during the meeting? Schedule conflicts don't allow us to attend in person.

To the members of the Portland City Council:

It is pretty clear to us that the primary driver for their zone change request is the B. P. O. Elks Lodge's desire to achieve a profitable end-game as their membership and resources have dwindled beyond the point where they can maintain their presence at 1945 Congress St. However, as many of our neighbors have pointed out, the primary purpose of zoning, and of zoning change, is not to maximize profits for a particular property owner or developer, but to maximize conformance with a municipal development plan.

As property owners at 1832 Congress Street, we 'bought into' the pros and cons of our purchase in 1978, much as the Elks did 10 years before us. When our resources have dwindled to the point where we can no longer maintain our presence at 1832 Congress St, we will also sell. In contrast to the Elks, we expect to have to live with financial impacts of those same pros and cons – as they have evolved in the intervening decades – without recourse to a change in the zoning rules to allow us to maximize our return. This issue of basic fairness is a primary reason for our opposition to the proposed zoning change at 1945 Congress Street from 'R-2' to 'OP'.

We have other reasons for our opposition, as well. If the Elks' request is granted, there are many other parcels, nearby and across the city, where place of assembly usages could also become the bases for zone change requests. These parcels are big enough, and impacted by factors such as major arterials and existing industrial or commercial uses, that they meet the basic OP criteria. The rebuttal that the Board and the Council would not be setting precedents in the judicial sense is specious – if essentially the same political and economic arguments are in play for essentially the same kinds of parcels, why would the Board and/or Council be moved to come to different determinations? We believe that the correct determination is to deny this request.

It will be unfortunate if the Elks' request is granted. In the event that it is, we have this request: that the interest in and emphasis on this parcel's importance as a significant contributor to the western Gateway to Portland be given real weight. The OP zone's emphases on buffering between the development and the surrounding area, the importance of a park or campus-like appearance with corresponding amenities, as well as the aesthetic appearance of the buildings themselves, will gain in importance if we are not to end by trading an old eyesore for a new one.

Thank you for your consideration of our input,

Joe and Carolyn Heasly  
1832 Congress Street

**From:** "Beal, Sandy" <abeal@medicalmutual.com>  
**To:** "'hcd@portlandmaine.gov'" <hcd@portlandmaine.gov>  
**Date:** 10/19/2015 9:47 AM  
**Subject:** Elks Clubs' zone change request for 1945 Congress Street

Good morning Nell Donaldson,

I reside at 37 Old Mast Road, in Stroudwater Village.

I am extremely concerned about the current activity that may lead to future pressures to develop more of the Stroudwater area for other than residential development. I am concerned about the development for the surrounding area of the jetport entrance. With the amount of traffic flow through this area, I believe developers may find this land area attractive for commercial development, regardless of current zoning. At a recent workshop I attended at USM, a statement was made that the person had never met a developer who thought that zoning was not restrictive enough. In other words, current zoning is just a start for most developers and they normally want exceptions made.

Currently there is 4 acres of land under contract just past 1871 Congress Street, and on the other side of Stroudwater the Rogers estate on Westbrook Street near the turnpike overpass now has 44 acres of land posted for sale/development.

To accept a re-zoning of the Elks Club without a solid vision of what Stroudwater should look like for the immediate and long-term future is short-sighted on the part of the City of Portland. What's next??? I am extremely concerned about what Stroudwater might become without the City of Portland having a vision in place. So much of what I have seen in this process of the Elks Club is basically "Follow The Money," i.e. the primary factor is economic benefit to the Elks Club, Dr. Bedecs and the developer. It is not upholding current zoning, and this may lead to future pressures along the same line.

Sandy Beal

Sandy Beal \* Senior Underwriter  
Tel: 207.775.2791

[cid:image001.png@01D04451.FB1E96B0]

One City Center \* PO Box 15275 \* Portland, Maine 04112-5275  
www.medicalmutual.com<<http://www.medicalmutual.com/>> \* Follow: @MedicalMutual<<https://twitter.com/medicalmutual>>

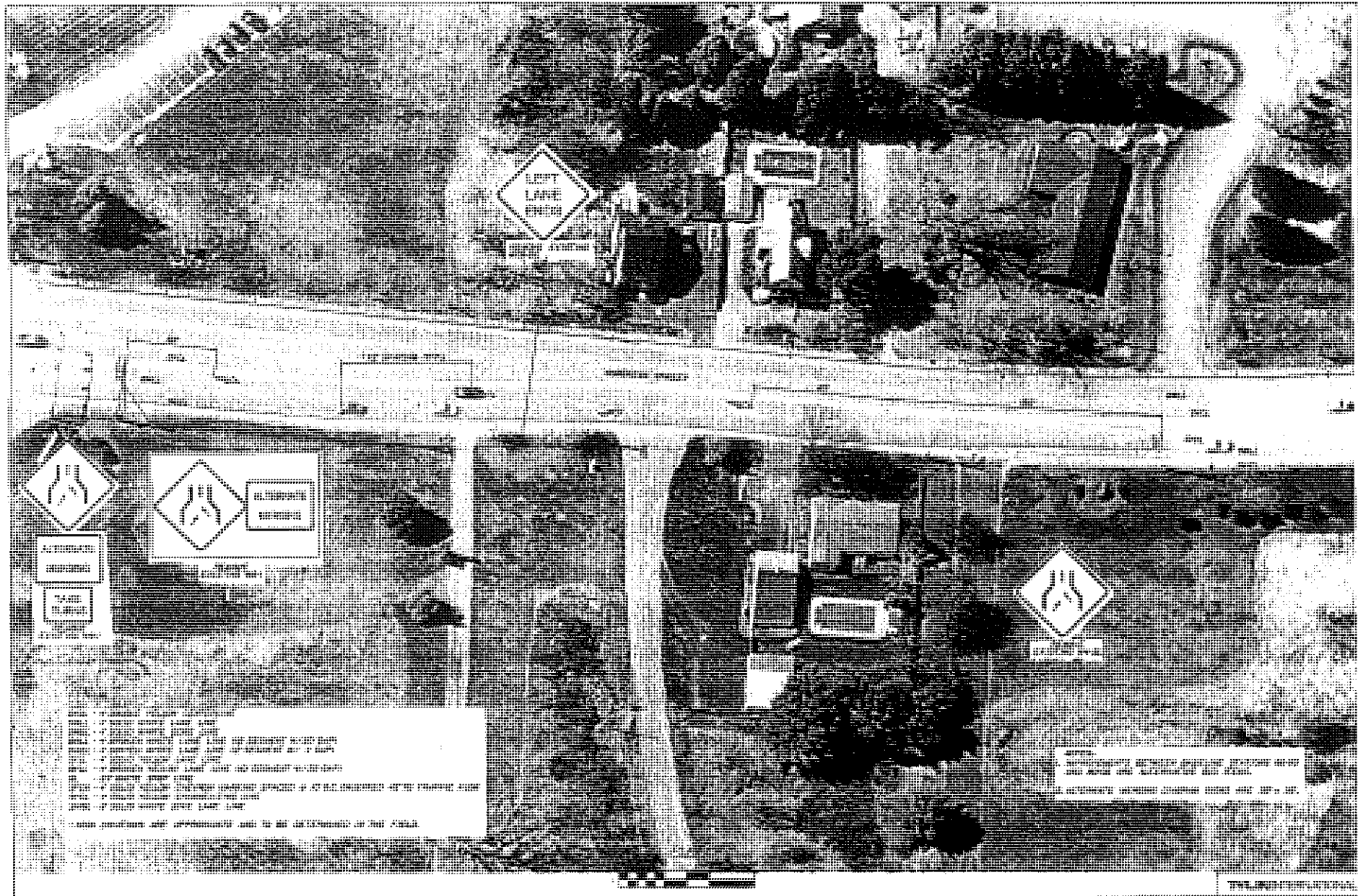
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**From:** Paul Dubois <pdubois1915@yahoo.com>  
**To:** Rex Bell <rex@northlandus.com>, Michael Bedecs <mbedecs@gmail.com>, Josh Benthien <josh@northlandus.com>, Helen Donaldson <hcd@portlandmaine.gov>  
**Date:** 10/19/2015 10:40 AM  
**Subject:** Tonight's Council Meeting regarding 1945 Congress St Zoning Change

Nell, I just got a call from work, they are no longer able to cover my shift for tonight so I won't be able to attend the Council meeting.

We had expected to speak before the Council in favor of the zoning change. As you know, our change of heart resulted from the executed P&S agreement that modifies the lot line thereby allowing our adjacent residential house lot to be conforming in size and set back. We believe this helps us secure a better buffer and results in an enhanced residential character for our home at 1915 Congress Street despite the obvious impacts of the proposed development of the adjacent property. As I have testified in several Planning Board meetings, we believe that it is crucial to promote whatever can be done to buffer these adjacent properties from commercial developments such as the one proposed tonight. We feel that Northland and Dr. Bedecs have been sensitive to our concerns and recommend that the Council approve their request for a zoning change. Nell, would you please make this email available to the Board Members for review. Again, thanks for all your help as I don't believe we would have come to this resolution without it.

Paul and Kimberly Dubois 1915 Congress Street Portland Maine 04102 (207)899-2599



UTAH DEPARTMENT OF TRANSPORTATION

PLANNING & DESIGN DIVISION

PROJECT NO. 123456789

DATE: 10/15/2023

BY: J. SMITH

UTAH DEPARTMENT OF TRANSPORTATION

PLANNING & DESIGN DIVISION

PROJECT NO. 123456789

DATE: 10/15/2023

BY: J. SMITH

UTAH DEPARTMENT OF TRANSPORTATION

PLANNING & DESIGN DIVISION

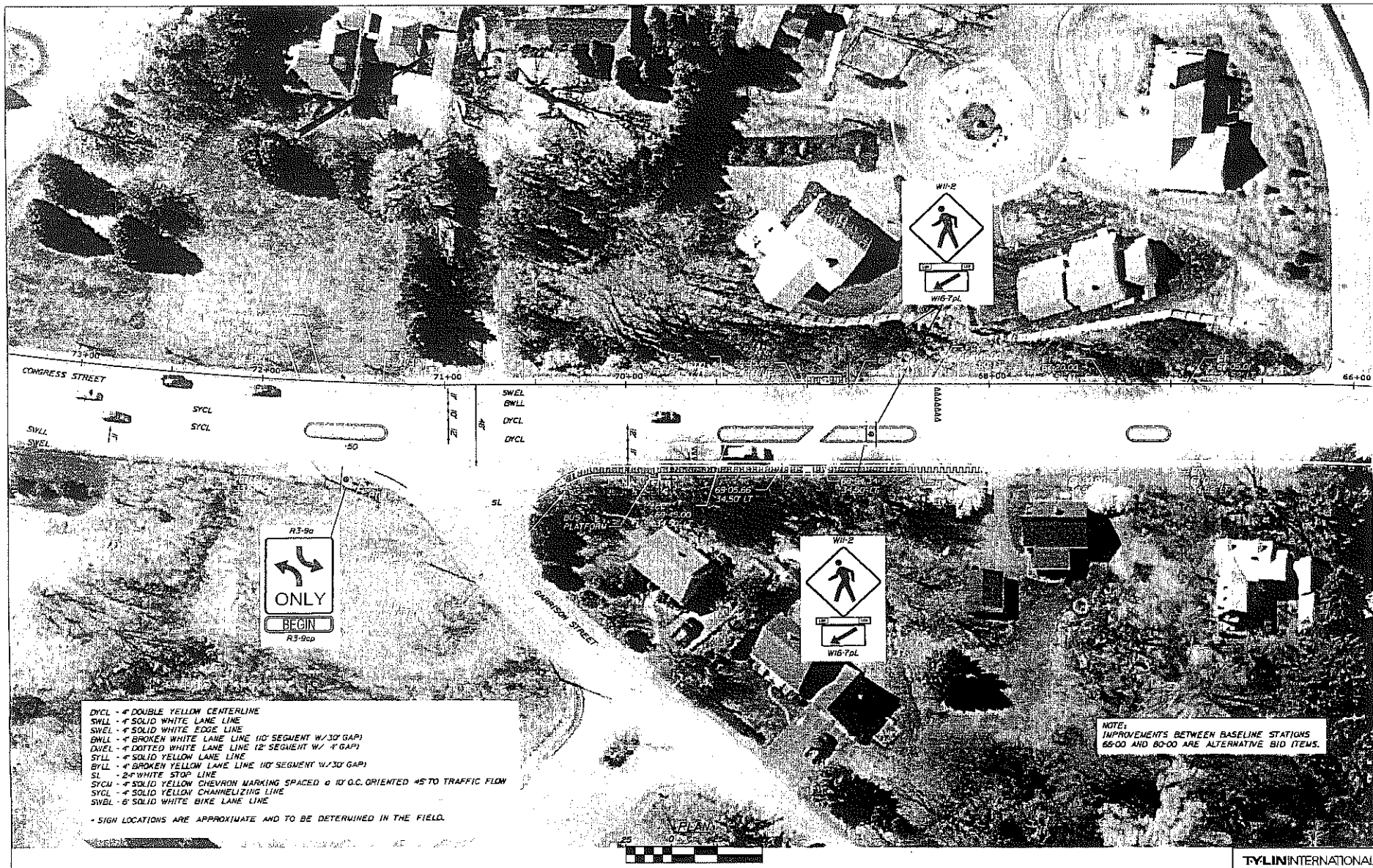
PROJECT NO. 123456789

DATE: 10/15/2023

BY: J. SMITH

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LEGEND

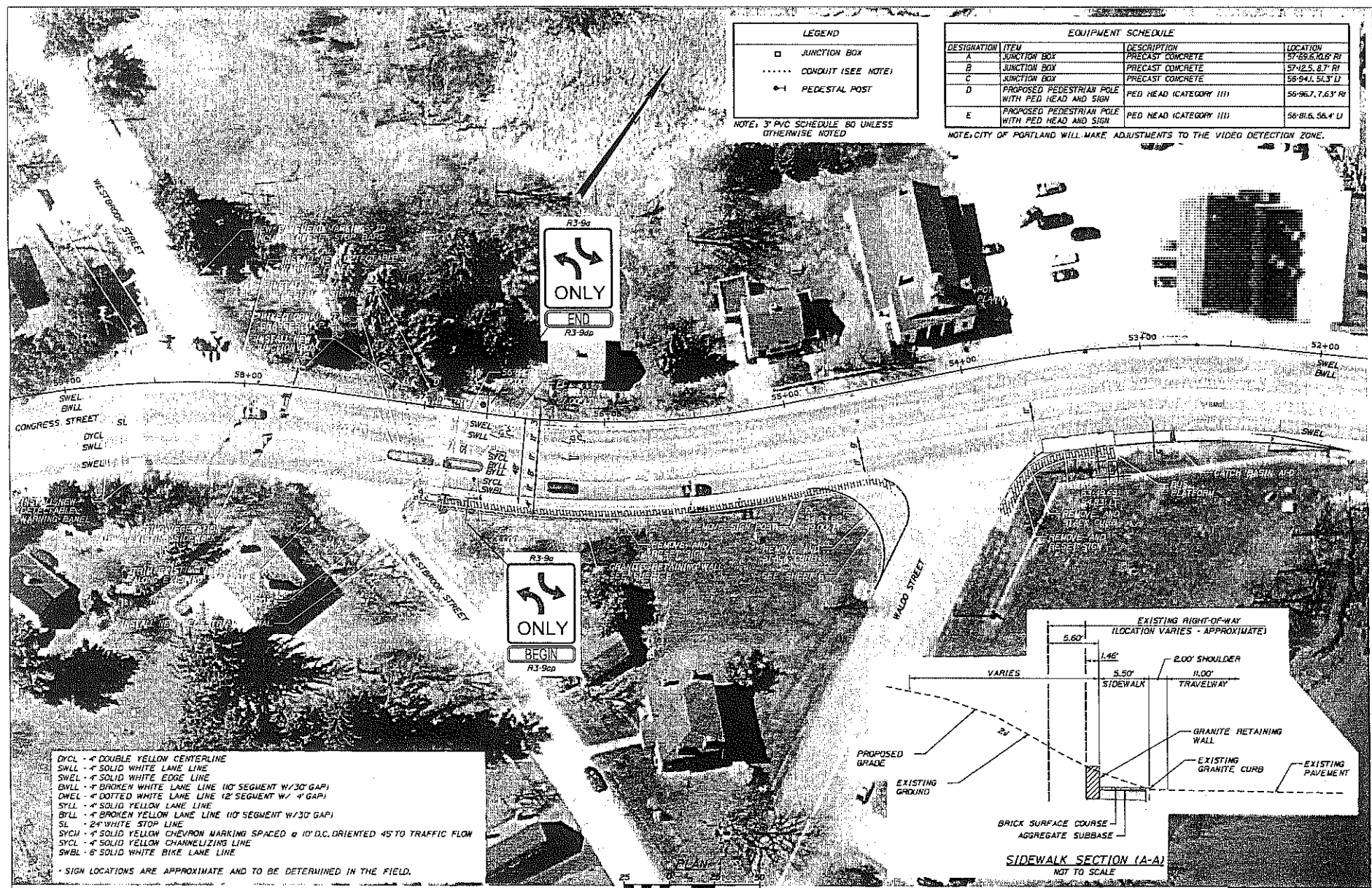
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| □     | JUNCTION BOX       |
| ..... | CONDUIT (SEE NOTE) |
| +     | PEDESTAL POST      |

NOTE: 3" PVC SCHEDULE 80 UNLESS OTHERWISE NOTED

EQUIPMENT SCHEDULE

| DESIGNATION | ITEM                                            | DESCRIPTION             | LOCATION          |
|-------------|-------------------------------------------------|-------------------------|-------------------|
| A           | JUNCTION BOX                                    | PRECAST CONCRETE        | 57+65.6, R/LB RI  |
| B           | JUNCTION BOX                                    | PRECAST CONCRETE        | 57+12.5, R/LB RI  |
| C           | JUNCTION BOX                                    | PRECAST CONCRETE        | 58+94.1, S/LB LI  |
| D           | PROPOSED PEDESTRIAN POLE WITH PED HEAD AND SIGN | PED HEAD (CATEGORY III) | 56+96.7, T.63' RI |
| E           | PROPOSED PEDESTRIAN POLE WITH PED HEAD AND SIGN | PED HEAD (CATEGORY III) | 56+81.6, S/LB LI  |

NOTE: CITY OF PORTLAND WILL MAKE ADJUSTMENTS TO THE VIDEO DETECTION ZONE.



- DYCL - 4" DOUBLE YELLOW CENTERLINE
  - SWEL - 4" SOLID WHITE LANE LINE
  - DWEL - 4" BROKEN WHITE LANE LINE (10' SEGMENT W/ 30' GAP)
  - SYLL - 4" SOLID YELLOW LANE LINE
  - BYLL - 4" BROKEN YELLOW LANE LINE (10' SEGMENT W/ 30' GAP)
  - SL - 24" WHITE STOP LINE
  - SYCH - 4" SOLID YELLOW CHEVRON MARKING SPACED @ 10' O.C. ORIENTED 45° TO TRAFFIC FLOW
  - SYCL - 4" SOLID YELLOW CHANNELIZING LINE
  - SWBL - 6" SOLID WHITE BIKE LANE LINE
- \* SIGN LOCATIONS ARE APPROXIMATE AND TO BE DETERMINED IN THE FIELD.

REVISIONS

| NO. | DATE | BY | CHKD. | DESC. |
|-----|------|----|-------|-------|
| 1   |      |    |       |       |

OUTER CONGRESS STREET IMPROVEMENTS  
PLAN - 3

CITY OF PORTLAND, MAINE  
PUBLIC SERVICES DEPARTMENT  
ENGINEERING DIVISION



SHEET # 5 OF 11  
PLAN NUMBER

TYLIN INTERNATIONAL

*Order 92-15/16*  
*Tab 23 10-19-15*  
*Tab 13 11-2-15*

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

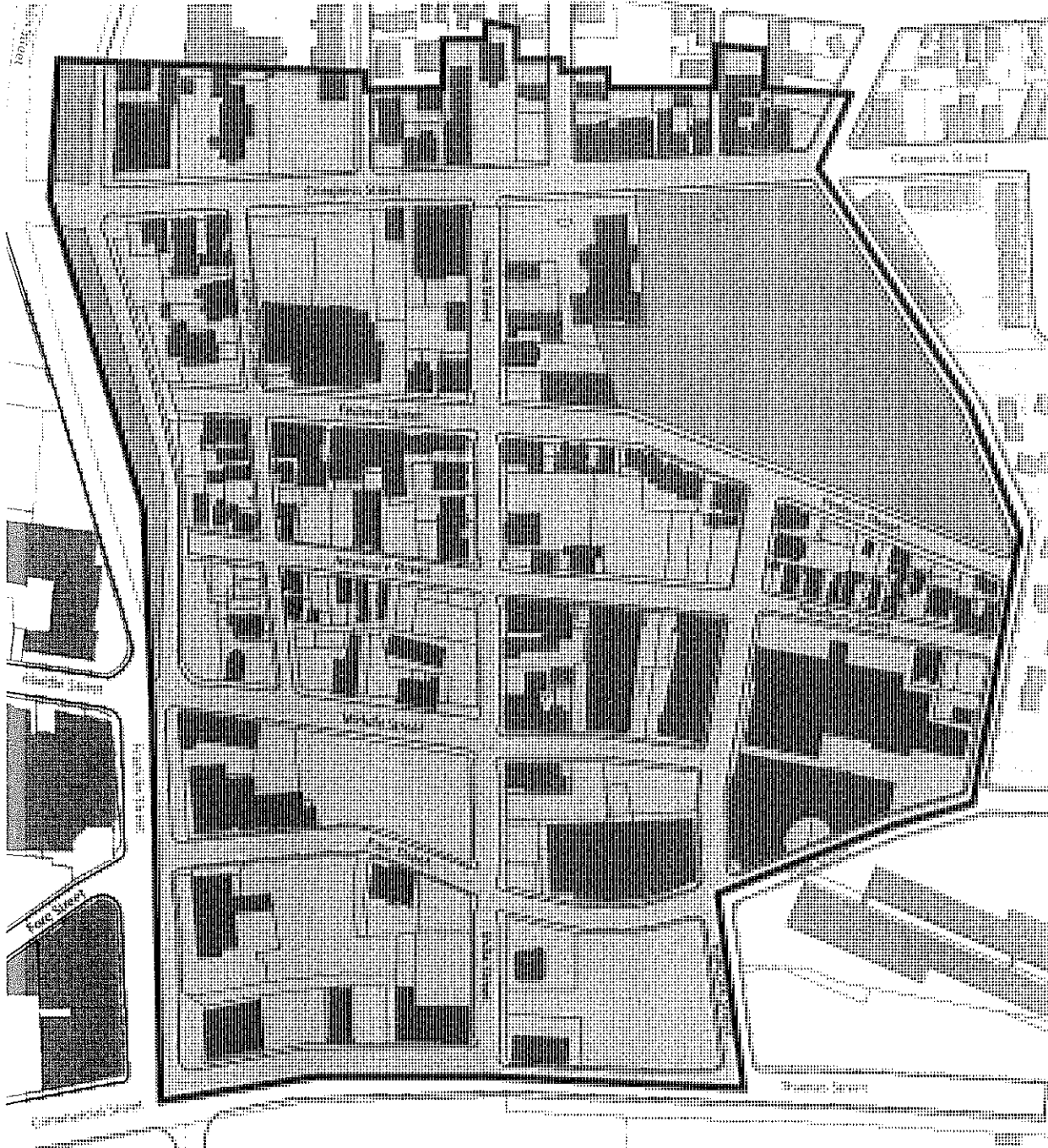
**AMENDMENT TO ZONING MAP  
RE: INDIA STREET FORM-BASED CODE ZONE**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE  
IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

That the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49, be and hereby is amended by adopting the following map change amendment and specifically rezoning all of the area of whatever zone within the borders of the figure attached as the India Street Form-based Code Zone.

# Proposed Zoning Map Amendment

All existing zones would be replaced by the India Street Form-based Code



Order 98-15/16  
Tab 14 11-2-15

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO CITY CODE CHAPTER 2  
(ADMINISTRATION) ARTICLE VIII.**

**Re: Director of the Bureau of Emergency Preparedness**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN  
CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. That Chapter 2 (Administration, Article VIII, Sections 2-403 to 2-411 are amended to read as follows:

**ARTICLE VIII. EMERGENCY PREPAREDNESS**

...

**Sec. 2-403. Organization.**

(a) The City Manager shall be responsible for the bureau's organization, administration and operation. The City Manager may employ such permanent or temporary employees as he or she deems necessary and prescribe their duties.

(b) The City Council shall review the existing operational organization to ascertain the bureau's ability to cope with its responsibilities and shall approve the city's emergency preparedness plan.

**Sec. 2-404. Appointment of ~~Fire Chief~~ Director of Bureau; duties and responsibilities**

The City Manager or his or her designee shall ~~appoint be~~ the ~~Fire Chief as~~ Director of the Bureau, ~~who and~~ shall coordinate the activities of all city departments, organizations and agencies for emergency preparedness within the city and maintain a liaison with other emergency preparedness agencies, public safety agencies, and have such additional duties as ~~prescribed by the City Manager~~ necessary.

**Sec. 2-405. Rules and regulations.**

The ~~Fire Chief~~ Director of the Bureau shall prepare, ~~under the direction of the City Manager,~~ such policies as may be deemed necessary for the administration and operational requirements of the bureau, which policies must be approved by the City Council prior to becoming effective.

#### **Sec. 2-406. Emergency proclamation.**

(a) The City Manager shall have the power and authority, after consultation with the Mayor, or ~~senior-city~~ City Council members in the Mayor's absence, to issue a proclamation that an emergency exists whenever a disaster or civil emergency exists or appears imminent. The proclamation may declare that an emergency exists in any or all sections of the city. If the City Manager is temporarily absent from the City or otherwise unavailable, the ~~Assistant-Deputy~~ City Manager may issue the proclamation that an emergency exists. If neither the City Manager nor the ~~Assistant-Deputy~~ City Manager are available, then the following persons shall have the power and authority to issue a proclamation that an emergency exists, in the following order of succession: the Fire Chief; if he is unavailable, the Chief of Police; if he is unavailable, the Director of Public ~~Works~~ Services. A copy of such proclamation shall be filed within twenty-four (24) hours in the office of the City Clerk.

(b) Notwithstanding the above, when consultation with the Mayor would result in a substantial delay in an effective response in alleviating or preventing an emergency or disaster, the City Manager is authorized to take whatever actions are necessary to prevent the loss of life and property in the City.

(c) The City Manager ~~and as the~~ Director of the Bureau ~~Fire Chief~~ shall be responsible for submitting a full report to the City Council of all actions taken as a result of the declared emergency as soon as the City Council can be convened.

#### **Sec. 2-407. Termination of emergency.**

(a) When the City Manager is satisfied that a disaster or civil emergency no longer exists, he or she shall terminate the emergency proclamation by another proclamation affecting the sections of the city covered by the original proclamation, or any

part thereof. Said termination of emergency shall be filed in the office of the City Clerk.

(b) No state of emergency may continue for longer than five (5) days unless renewed by the City Council.

**Sec. 2-408. City Manager's duties and emergency powers.**

(a) During any period when an emergency or disaster exists or appears imminent, the City Manager may promulgate such regulations as he or she deems necessary, and consistent with the purposes of this article, to protect life and property and to preserve critical resources. Such regulations may include, but are not limited to, the following:

- (1) Regulations prohibiting or restricting the movement of vehicles in areas within or without the city;
- (2) Regulations facilitating or restricting the movement of persons within the city;
- (3) Regulations pertaining to the movement of persons from hazardous areas within the city;
- (4) Such other regulations necessary to preserve public peace, health and safety.

Nothing in this section shall be construed to limit the authority or responsibility of any department to proceed under powers and authority granted to them by state statute, city ordinance or the charter of the city.

(b) The City Manager or ~~his~~ designee may order the evacuation of persons from hazardous areas within the city.

(c) The City Manager shall be authorized to request aid or assistance from the state or any political subdivision of the state and shall render assistance to other political subdivisions under the provisions of Title 37-B, M.R.S.A.

(d) The City Manager may obtain vital supplies, equipment and other items found lacking and needed for the protection of health, life and property.

(e) The provisions of this section will terminate at the end of the declared emergency.

**Sec. 2-409. Emergency operational plans.**

The Director of the Bureau ~~Fire Chief~~ shall prepare an emergency operational plan for the city, which shall be submitted to the City Council for approval. The emergency plan shall reflect the use of the National Incident Management System (NIMS) as its primary command and control system for all city, county, state and federal agencies.

It shall be the responsibility of all municipal departments and agencies to perform the functions assigned and to maintain their portions of the plan in a current state of readiness. The city plan shall be reviewed periodically by the City Manager in conjunction with all city department heads ~~and the~~ by his or her authority as the Director of the Bureau. ~~Fire Chief~~

**~~Sec.~~ 2-410. Immunity from liability.**

All members of emergency preparedness forces, while engaged in emergency preparedness activities, shall be immune from liability, as set forth in Title 37-B, Section M.R.S. A. § 822.

**Sec. 2-411. Compensation for injuries.**

All members of emergency preparedness forces shall be deemed to be employees of the state when engaged in training or on duty and shall have all of the rights of state employees under the Workmen's Compensation Act, as set forth in Title 37-B ~~M.R.S.A.~~ § 823.

**MEMORANDUM**  
**City Council Agenda Item**

**TO:** Mayor and City Council

**FROM:** City Manager Jon Jennings

**DATE:** October 13, 2015

**DISTRIBUTION:** City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

**SUBJECT:** Amendment to City Code Chapter 2 (Administration) Article VIII. Re: Director of the Bureau of Emergency Preparedness

**SPONSOR:** City Manager Jon Jennings

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

1<sup>st</sup> reading 11/2/2015 Final Action 11/16/2015

Can action be taken at a later date: \_\_\_\_ Yes    ☒ No (If no why not?) Appointment is necessary as soon as possible.

**PRESENTATION:** (List the presenter(s), type and length of presentation)

**I. SUMMARY OF ISSUE (Agenda Description)**

The Bureau of Emergency Preparedness was established by Portland City Code Section 2-401 in 1990 and amended in 2005, to "ensure the complete and efficient utilization of the city's facilities and resources to prevent, prepare and respond to all hazards, natural or manmade." In the past, the Manager has appointed the City's fire chief as director of the bureau. By this amendment, the director would be the City Manager or his or her designee. This amendment allows the manager appointed as the Director of Bureau of Emergency Preparedness to be focused on the needs of that position and the City, which have become more complex with every passing year.

**II. REASON FOR SUBMISSION (Summary of Issue/Background)**

To provide that the Director of the Bureau of Emergency Preparedness is the City Manager or his or her designee.

**III. INTENDED RESULT**

See above.

#### **IV. COUNCIL GOAL ADDRESSED**

Ensuring public safety.

#### **V. FINANCIAL IMPACT**

None.

#### **VI. STAFF ANALYSIS**

The attached Ordinance Amendment is approved as to form by Corporation Counsel.

#### **VII. RECOMMENDATION**

This amendment is recommended for passage by the City Manager.

#### **VIII. LIST ATTACHMENTS**

**Amendment to City Code Chapter 2 (Administration) Article VIII. Re: Director of the Bureau of Emergency Preparedness**

Prepared by: Nancy English

Date: October 13, 2015

Bean/agendamemo/rev7/20/15

*Order 99-15/16  
Tab 15 -11-2-15*

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 10 (FIRE PREVENTION AND PROTECTION)  
ARTICLE VIII - SIGNALING SYSTEMS FOR THE PROTECTION OF LIFE AND  
PROPERTY, Sections 10-101 to 10-102  
Re: Wireless Alarm System**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,  
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS**

*That Chapter 10, Article VIII, Sections 10-101 to 10-102 of  
the City of Portland Code are hereby amended to read as follows:*

...

**ARTICLE VIII. SIGNALING SYSTEMS FOR THE PROTECTION OF LIFE AND  
PROPERTY.**

...

**Sec. 10-101. Certain master box connections required.**

The following buildings, as classified by the NFPA 101 Life Safety Code, 2009 edition, shall be connected by master box alarm system to the dispatch center where another section of this code requires such buildings to have a fire alarm system:

- (a) *New and existing structures including the following:*
- (1) Places of assembly;
  - (2) Educational facilities including post-secondary;
  - (3) Day-care facilities, excluding day-care homes;
  - (4) Health care facilities;
  - (5) Ambulatory health care facilities;

- (6) Nursing homes;
- (7) Large residential board and care facilities;
- (8) Detention and correctional occupancies;
- (9) Hotels, motels and dormitories;
- (10) Apartments for the elderly;
- (11) Mercantile occupancies;
- (12) Industrial occupancies;
- (13) High-rise buildings.

(b) *New buildings including the following:*

- (1) Residential occupancies (20 or more units).

(c) The following buildings shall be connected by master box alarm system to either the dispatch center or an approved private central station:

- (1) Buildings containing high hazard contents;
- (2) Special structures as determined by the fire chief.

New buildings shall be connected to a City approved wireless Master Box Alarm System prior to the issuance of any certificate of occupancy.— Prior to January 1, 2017, all buildings required to be connected by Master Box Alarm System shall convert their existing mechanical Master Box Alarm System to a City of Portland approved wireless Master Box Alarm System.  
~~Existing buildings shall be connected within eighteen (18) months of the effective date of this article, provided, however, that the fire chief may, in writing, grant up to a six-month extension upon a clear showing of unusual practical difficulty or undue financial hardship.~~

Each master box alarm system shall be installed, maintained, inspected and tested in accordance with all applicable codes and regulations. Each alarm user shall, prior to occupancy, produce satisfactory evidence of compliance with this paragraph to the fire chief.

(Ord. No. 25-10/11, 8-16-10)

**Sec. 10-102. Master box connections to the dispatch center.**

(a) *New connections.* No buildings, other than those listed in section 10-67 of this article and those which, if new, would be required to connect under subsection (b) hereof shall, after the effective date hereof, be permitted to connect by master box alarm system to the dispatch center. Any person eligible to make a connection hereunder may apply to the fire chief on a form to be devised by him for such purpose. Said application shall contain insurance and indemnification requirements as determined by the fire chief. Applications shall be acted upon when complete, provided, however, that nothing herein shall require the fire chief to approve any application or to provide or maintain sufficient capacity for such connections as may otherwise be eligible hereunder. No connection shall be made without prior payment of the new connection and annual maintenance fees prescribed in this section, and unless the fire chief first finds that the building to be connected and the alarm system meet all applicable codes and regulations. All connections shall be made by the alarm user under the direction and supervision of the fire chief and at the alarm user's expense, except that final connection to the dispatch center shall be made by the fire chief.

(b) *Existing connections.* Any alarm user having an existing connection by master box alarm system to the dispatch center, whether or not connecting a building listed in section 10-67 of this article, shall, within thirty (30) days of written notice by the authority having jurisdiction, elect, in writing whether or not to retain the connection. Any alarm user electing to retain a connection shall simultaneously therewith pay the annual maintenance fee prescribed in this section. Any alarm user electing not to retain a connection, and any alarm user failing to make an election, shall forthwith be notified in writing by the fire chief of the impending disconnection of the alarm system, which shall be disconnected by the fire chief as soon thereafter as practicable.

(c) *Connection and maintenance fees.* The following fees shall apply to each fire alarm system connected to the dispatch center:

- (1) New connection fee . . . . . \$500.00
- (2) Annual maintenance fee . . . . . 225.00

Except that for each  
additional alarm system  
at the same location . . . . . 100.00

(3) Conversion of mechanical  
Master Box Alarm System to  
Wireless Mater Box Alarm  
System . . . . . 275.00

Form

First-time payments of the annual maintenance fee shall be prorated over the number of months, including any fraction thereof, remaining between the date of payment and the following June thirtieth, provided, however, that in no case shall the fee be reduced to less than half. The annual maintenance fee shall thereafter be due and payable in full on July first. If payment is not made within thirty (30) days thereafter, the alarm user shall forthwith be notified in writing by the fire chief of the impending disconnection of the alarm system, which shall be disconnected by the fire chief as soon thereafter as practicable. Any unpaid charges assessed under this section shall be enforceable by lien against the property serviced by the alarm and shall be collected pursuant to section 1-16 of this Code.

(d) *Reconnections.* Any fire alarm system disconnected pursuant to subsection (b) of this section shall not be reconnected without prior payment of the annual maintenance fee prescribed in this section and a reconnection fee of one-hundred dollars (\$100.00), except that if reconnection is not made within thirty (30) days after disconnection, the reconnection fee shall be the same as the new connection fee prescribed in this section. Any alarm system disconnected at the request of the alarm user for purposes of inspection, testing or repair shall be reconnected up to three (3) times in any year at no additional charge, after which, however, the alarm system shall not be reconnected without prior payment of a reconnection fee of one-hundred dollars (\$100.00).



## Portland Fire Department Headquarters Office of the Fire Chief

**To:** Public Safety Health & Human Services Committee  
**From:** Asst. Chief Keith Gautreau, Portland Fire Department  
**Date:** October 5, 2015  
**Re:** Migration to Wireless Technology (AES Masterbox)

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**Purpose:** The purpose for this presentation is to inform the Committee members of our current Municipal Fire Alarm System and the reason for upgrading to newer technology. Portland's current system consists of three types (*see below*) which have been in service since the 1970's. The system uses mechanical transmitter with overhead and underground wiring to send a fire alarm signal to the dispatch center for emergency response. There is approximately 400 miles of old and tattered wire that requires constant maintenance and troubleshooting resulting sometimes in overtime for staff and technicians to mitigate. These circuits and system have been in need of an upgrade for a few years now. If the system fails we stand to have over two hundred buildings without fire protection and given the amount of time spent on maintenance the last few years the time to upgrade has come. The Fire Department is recommending moving the current subscribers (*see Master Boxes in Buildings in table #1 below*) of the old mechanical wired Municipal System to a wireless technology. In short, in an effort to avoid lack of fire protection in a large number of buildings the Fire Department is recommending to force current subscribers by City Ordinance (Chapter 10) to move to the wireless technology AES Transmitter (American Electronic Security). This is the type of technology that is being used by all new buildings that meet the requirement of our Chapter 10, Fire Prevention in City Ordinance.

### Existing Municipal Fire Alarm System:

- Three types of Emergency Call boxes:
  1. Municipal Emergency Call Box tied into Dispatch Center (Red Boxes on the street)
  2. Telephone Style EVCS (Emergency Voice Calling System) Box
  3. Master Box Alarms which are in structures or buildings
    - (See Attachment #1 for required buildings)
- The City has removed 119 of the **EVCS Boxes** electronically.
  - Due to lack of repair parts
  - System was installed in the late 70's & has created a liability issue
  - 90% of our Fire Alarm Technician call backs were for nuisance alarms
  - Pedestals are rusting below ground level which will eventually require costly replacement

### **Advantages to the new Wireless Municipal Alarm System:**

- Low maintenance costs to the City
- The subscriber assumes the role of maintaining their wireless unit
- Allows our dispatch center to receive more information about the emergency
- The wireless system sends a test signal every 24 hours to Dispatch Center, mechanical system has to be manually tested by a person
- The wireless network has the ability to expand to cover other geographical areas without incurring a large expense
- AES Technology has the ability to monitor for security in City Buildings as well

## **CITY MASTER BOX SUMMARY**

**Table #1**

| <b>BOX ALARM TYPE</b>                                 |              |
|-------------------------------------------------------|--------------|
| <b>EVCS BOXES REMOVED</b>                             | <b>119</b>   |
| <b>EVCS BOXES IN SERVICE</b>                          | <b>0</b>     |
| <b>AES WIRELESS BOXES IN SERVICE</b>                  | <b>156**</b> |
| <b>MASTER BOXES IN BUILDINGS</b>                      | <b>249</b>   |
| <b>CITY BOXES ON THE STREET</b>                       | <b>167</b>   |
| <b>TOTAL ESTIMATED BOXES IN SERVICE as of 6/10/15</b> | <b>572</b>   |

**\*\* Does not include South Portland's 6 AES Boxes or 7 Security AES Boxes in Portland.**

### **Estimated Cost**

#### **Subscribers:**

The cost to current subscribers to convert over to the new wireless technology is approximately \$1,500 - \$2,000. The City's cost would be 1-2 hours labor per location from our Fire Alarm Technician (Dick Andrews) programming and testing the installation.

#### **What the City charges for a new AES Box installation:**

New AES Box Installation = \$500 which includes

- \$275.00 (One time connection fee)
- \$225.00 (annual monitoring fee) Approx. \$80,000 in revenue yearly.

#### **Cost for City Buildings:**

The cost to the City would be \$750 per Box. The City's Fire Alarm Technician can legally install the equipment so there is no need to contract a Private Fire Alarm company.

#### **City Buildings that require a conversion:**

**Table #2**

|    | <b>LOCATION</b>                | <b>EST. COST</b> |
|----|--------------------------------|------------------|
| 1. | Police Station                 | \$750.00         |
| 2. | City Hall / Merrill Auditorium | \$750.00         |

|                         |                                                 |                    |
|-------------------------|-------------------------------------------------|--------------------|
| 3.                      | Munjoy Fire Station                             | \$750.00           |
| 4.                      | Maine State Pier (40 Commercial St.)            | \$750.00           |
| 5.                      | Air Rescue Station                              | \$750.00           |
| 6.                      | Barron Center (2 AES Boxes)                     | \$1,500.00         |
| 7.                      | Public Services Vehicle Maint. Garage**         | \$750.00           |
| 8.                      | Public Services Plow Bay**                      | \$750.00           |
| 9.                      | 85 Hanover Trades / Traffic**                   | \$750.00           |
| 10.                     | East End School                                 | \$750.00           |
| 11.                     | Presumpsot School                               | \$750.00           |
| 12.                     | Lyman Moore School                              | \$750.00           |
| 13.                     | Lyseth School                                   | \$750.00           |
| 14.                     | Reiche                                          | \$750.00           |
| 15.                     | King Middle                                     | \$750.00           |
| 16.                     | Hall School                                     | \$750.00           |
| 17.                     | New Douglas School                              | \$750.00           |
| 18.                     | Lincoln Middle                                  | \$750.00           |
| 19.                     | Cliff Island School / Cliff Island Fire Station | \$750.00           |
| <b>ESTIMATED TOTAL=</b> |                                                 | <b>\$15,000.00</b> |

**MEMORANDUM**  
**City Council Agenda Item**

**TO:** Mayor and City Council

**FROM:** Councilor Edward J. Suslovic, Chair, Public Safety, Health & Human Services Committee

**DATE:** 10/19/2015

**DISTRIBUTION:** City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

**SUBJECT:** Amendment to Portland City Code Chapter 10 (Fire Prevention and Protection) Article VIII. – Signaling Systems for the Protection of Life and Property, Sections 10-101 to 10-102 Re: Wireless Alarm System

**SPONSOR:** Councilor Edward J. Suslovic, Chair, Public Safety, Health & Human Services Committee

(If sponsored by a Council committee, list the date the committee met and the results of vote.)

The Public Safety/Health & Human Services Committee recommended consideration by the full council at its October 13, 2015 meeting by a vote of 4-0.

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

1<sup>st</sup> reading Nov. 2, 2015 Final Action Nov. 16, 2015

Can action be taken at a later date:      Yes   X   No (If no why not?) Committee requested prompt consideration to upgrade new systems.

**PRESENTATION:** (List the presenter(s), type and length of presentation)

**I. SUMMARY OF ISSUE (Agenda Description)**

The City's present Municipal Fire Alarm System, which has been in place since the 1970s, uses mechanical transmitters with overhead and underground wiring to send a signal to the dispatch center. The proposed new system utilizes wireless technology and is much more efficient. Several buildings are required by Code to be attached to the system via Master Boxes. The Fire Department is requesting that 1) any new buildings required to have a master box have a City-approved wireless master box; and 2) those buildings that presently have a mechanical master box replace the mechanical master box with a City-approved wireless master box. The only Council action required is amendment of Chapter 10 to clarify that new buildings required

to have a master box must have a wireless master box and to require those buildings that have a mechanical master box migrate to a wireless master box by January 1, 2017.

## **II. REASON FOR SUBMISSION (Summary of Issue/Background)**

Upgrade to fire alarm systems and improvement in efficiency.

## **III. INTENDED RESULT**

See above.

## **IV. COUNCIL GOAL ADDRESSED**

n/a

## **V. FINANCIAL IMPACT**

The Ordinance amendments add a \$275 conversion fee, which will apply to buildings that have not already converted from a mechanical Master Box to a wireless Master Box. Accordingly, there will be a small increase in revenue. Additionally, there will be a \$750.00 cost per building for 19 City buildings that have not already converted from a mechanical Master Box to a wireless Master Box, for a total cost of \$15,000.00. .

## **VI. STAFF ANALYSIS**

The Ordinance amendments proposed are approved by the Office of Corporation Counsel as to form.

## **VII. RECOMMENDATION**

The Public Safety/Health & Human Services Committee recommended consideration by the full council at its October 13, 2015 meeting by a vote of 4-0.

## **VIII. LIST ATTACHMENTS**

**Amendment to Portland City Code Chapter 10 (Fire Prevention and Protection) Article VIII. – Signaling Systems for the Protection of Life and Property, Sections 10-101 to 10-102**  
**Re: Wireless Alarm System**

Memo from Assistant Fire Chief Keith Gautreau re: Master Alarm Box Requirements 10/5/2015

Prepared by: Adam Lee, Associate Corporation Counsel

Date: 10/20/2015

Order 100-15/16  
Tab 16 11-2-15

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE  
CHAPTER 14. LAND USE, ARTICLE III. ZONING.  
SECTIONS 14-182, 14-295 and 14-296  
Re: Commercial Kitchens and Small Gravel Lots**

**I. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,  
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

*That Chapter 14, Article III, Sections 14-182, 14-295 and  
14-296 of the Portland City Code are hereby amended to read as  
follows:*

**Sec. 14-182. Permitted uses.**

The following uses are permitted in the B-2, B-2b and B-2c  
zones except that any use involving a drive-through is  
prohibited in these zones unless otherwise provided in section  
14-183:

**(a) Residential:**

1. Attached single-family and two-family dwellings;
2. Multi-family dwellings;
3. Handicapped family units;
4. Combined living/working spaces including, but not  
limited to, artist residences with studio space;  
and

**(b) Business:**

1. General, business and professional offices, as  
defined in section 14-47;

...

19. Registered medical marijuana dispensaries.

20. Commercial kitchens provided the commercial kitchen includes retail sales or a tasting room within the principal structure. Commercial kitchens in the B-2b shall be no greater than 7,000 square feet in floor area.

(c) *Institutional:*

1. Long term, extended and intermediate care facility;

...

**Sec. 14-295. Permitted uses.**

The following uses are permitted in the B-7 zone:

(a) *Commercial:*

1. Professional, business, and general offices:
2. Restaurants and other eating and drinking establishments;

...

24. Surface parking existing as of March 9, 2005 and in continuous existence thereafter, including the reorganization of parking spaces and maneuvering aisles. This section shall apply to surface parking accessory to a principle use and a parking lot as a principal use. Existing surface parking that does not comply with the standards of sec. 14-299 (f) may continue, provided that any modifications to the site layout, development constituting a site plan, or building renovations exceeding a value of thirty (30) percent of the assessed value of the building on file at the City of Portland Assessor's Office, shall require the parking to be upgraded to meet the standards of sec. 14-299 (f) to the extent practicable.

25. Surface parking created after March 9, 2005, provided that the spaces (and newly created maneuvering aisles) are thirty-five (35) feet or greater from a street and further that the

standards below (a to c) are also met. This section shall apply to surface parking accessory to a principal use or a parking lot as principle use. The thirty-five (35) foot setback need not apply in the case of a property in which eighty (80%) of the property frontage has a building within ten (10) feet of the property frontage and or a driveway located perpendicular to the site. The parking area shall meet the standards of sec. 14-299 (f).

- a. No surface parking shall be encumbered by lease or other use commitment to an off-site use exceeding twenty-four month term; and
- b. For surface parking areas of twenty-thousand (20,000) square feet or greater in area, lease or other use agreements for surface parking shall not preclude the relocation of such parking for more than twenty-four (24) month terms; and
- c. Any such parking shall in its lease stipulate that developer/owner reserves the right to relocate said parking or convert surface parking to structured parking as long as the replacement parking is located a reasonable distance from the associated use.

(26) Notwithstanding Sec. 14-295(a)(24) and (25) above, surface parking that does not meet the 35-foot parking setback, provided that:

- a. All or a portion of the 35 foot setback area had a gravel surface on September 29, 2015.
- b. The total gravel surface area on the lot and any contiguous lots did not exceed 15,000 square feet on September 29, 2015.
- c. The parking spaces provide parking to a principle building on the same lot and or a principle building on a contiguous lot.
- d. One of the buildings described in paragraph c above meets the minimum height

requirements of the Bayside Height Overlay Map and/or a building on the site has a floor area of 25,000 SF or greater

e. The total number of spaces within 35 foot setback in combination with other spaces on the lot does not exceed the minimum parking spaces required in sec. 14-526 (a) (4) (a) (1).

f. The proposed parking spaces meets the landscape and buffer requirements of 14-299 (F).

g. Parking spaces within the 35 foot setback shall provide stormwater quality treatment if required by the City of Portland Stormwater Management Standards and the Maine DEP Chapter 500 Stormwater Management Standards. If not required, an alternative low impact development treatment system approved by the Planning Board shall be provided.

(27) Bakeries, coffee roasters and commercial kitchens provided such uses include retail sales or a tasting room within the principle building.

...

#### **Sec. 14-296. Conditional uses.**

(a) The following uses shall be permitted as conditional uses in the B-7 zone as provided in section 14-474 (conditional uses), provided that, notwithstanding section 14-474 (a) or any other provision of this code, the planning board shall be substituted for the board of appeals as the reviewing authority:

1. *Commercial use:*

...

2. *Industrial uses:*

...

- a. High technology manufacturing of biotechnology, pharmaceutical, and nanotechnology products, including accessory warehousing, provided that:
  - i. A minimum of one-third of the total square footage devoted to manufacturing is 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; and
  - ii. Rooftop equipment shall be integrated into the overall building design and shall be screened as necessary; and
  - iii. 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 six-hundred (600) feet of the principle use referenced above.
- b. Breweries including associated bottling activities;
- c. ~~Bakeries, coffee roasters, and commercial kitchens having no retail sales within the principal structure;~~

...

**MEMORANDUM**  
**City Council Agenda Item**

**TO:** Mayor and City Council

**FROM:** Jeff Levine, Director of Planning and Urban Development

**DATE:** October 21, 2015

**DISTRIBUTION:** City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

**SUBJECT:** B-7, B-2 and B-2b Zoning Text Amendments

**SPONSOR:** Elizabeth Boepple, Chair, Planning Board

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

**1<sup>st</sup> reading** November 2, 2015    **Final Action** November 16, 2015

**Can action be taken at a later date:**   X   Yes        No (If no why not?)

**PRESENTATION: (List the presenter(s), type and length of presentation)**

Brief presentation by Elizebeth Boepple, Chair of the Planning Board and Planning Staff (if necessary).

**I. SUMMARY OF ISSUE (Agenda Description)**

The Planning Board is forwarding a positive recommendation on a series of zoning text amendments to the B-7 zone regarding small surface parking areas and amendments to allow commercial kitchens in the B-7, B-2 and B-2b.

Amendments to the B-7 zoning text are proposed to provide flexibility in the regulation of small gravel parking lots for underutilized properties pursuing redevelopment. The amendments use a carrot approach allowing a reduced parking setback for small gravel areas that are converted to surface parking in exchange for a minimum level of redevelopment activity. This incentive measure supports the Bayside policy of creating a denser urban neighborhood but not at the expense of allowing excessive surface parking without some linkage to building development.

The existing zoning text should be updated to allow commercial kitchens as a permitted use in the B-7, B-2 and B-2b zones. Commercial kitchens provide space for food entrepreneurs to initiate and grow their businesses including the ability to have retail related space which also supports retail activity in business zones. A commercial kitchen is expected to be developed in Bayside shortly.

**II. REASON FOR SUBMISSION (Summary of Issue/Background)**

The existing B-7 text needs to be revised to address the regulation of small gravel parking lots in supporting the redevelopment of underutilized properties in Bayside. Providing flexibility in the conversion of small gravel areas to surface parking is a way to spur specific redevelopment activity.

The existing zoning text needs updating to reflect a new trend in commercial kitchen facilities which function as incubator space for food entrepreneurs to help grow their businesses including the ability to have retail space on the premises. The text amendment applies to the B-7, B-2 and B-2b zones.

### **III. INTENDED RESULT**

The B-7 parking amendment is intended result to allow smaller scale existing gravel areas to be converted into surface parking if the developer proposes a significant level of redevelopment. This provision relaxes the normal parking lot setback (35 feet) requirement in exchange for a certain level of redevelopment activity.

The commercial kitchen use amendment for the B-7, B-2 and B-2b is intended to be compatible with other uses in these zones while providing a facility for food entrepreneurs to initiate and grow their business. The amendment requires commercial kitchens to have retail space or a tasting room to support pedestrian and retail activity in these commercial districts. This amendment also incorporates the same treatment for bakeries and coffee roasters.

### **IV. COUNCIL GOAL ADDRESSED**

The amendments address the general Economic Goal of promoting Economic Development in a manner that provides for increased property values, diversification across industry sectors, and high paying jobs. The parking amendments leverage site redevelopment with flexible parking provisions while the commercial kitchen amendment provides for a use that is a catalyst for job creation in the food industry.

### **V. FINANCIAL IMPACT**

These amendments do not require the expenditure of city funds. The amendments will have a positive influence on redevelopment and creating new jobs.

### **VI. STAFF ANALYSIS**

The proposed B-7 parking amendment helps facilitate the redevelopment of underutilized properties while supporting a more urban and mixed use district as envisioned by the Bayside Plan.

The commercial kitchen amendments introduce a use which will support retail activity in the B-7, B-2 and B-2b while providing a facility for food entrepreneurs to initiate and grow their businesses.

### **VII. RECOMMENDATION**

At a public hearing held on September 29, 2015, the Planning Board voted 5 to 0 (Dundon absent) to recommend approval to the City Council a series of amendments described in the attached material. Planning Staff supports the Planning Board's recommendation.

#### **VIII. LIST ATTACHMENTS**

1. Order (text amendment attached; order will be similar)
2. Planning Board Report

Prepared by: Richard Knowland, Senior Planner

Date: October 21, 2015

## Planning Board Recommended Zoning Text Amendments

**Proposed B-7 Text Amendment: Add the following under Sec. 14-295 (a) (26) as a permitted use.**

(26) Notwithstanding Sec. 14-295 (a) (24) and (25) above, surface parking that does not meet the 35-foot parking setback, provided that:

- a. All or a portion of the 35 foot setback area had a gravel surface on September 29, 2015.
- b. The total gravel surface area on the lot and any contiguous lots did not exceed 15,000 square feet on September 29, 2015.
- c. The parking spaces provide parking to a principle building on the same lot and or a principle building on a contiguous lot.
- d. One of the buildings described in paragraph c above meets the minimum height requirements of the Bayside Height Overlay Map and/or a building on the site has a floor area of 25,000 SF or greater.
- e. The total number of spaces within 35 foot setback in combination with other spaces on the lot does not exceed the minimum parking spaces required in sec. 14-526 (a) (4)(a)(1).
- f. The proposed parking spaces meets the landscape and buffer requirements of 14-299 (F).
- g. Parking spaces within the 35 foot setback shall provide stormwater quality treatment if required by the City of Portland Stormwater Management Standards and the Maine DEP Chapter 500 Stormwater Management Standards. If not required, an alternative low impact development treatment system approved by the Planning Board shall be provided.

**Proposed B-7 Text Amendment: Add the following under Sec. 14-295 (a) (27), as a permitted use (commercial).**

(27) Bakeries, coffee roasters and commercial kitchens provided such uses include retail sales or a tasting room within the principle building.

**Delete the following section under Sec. 14-296 (a)(2)(c) as a conditional use.**

~~(c) Bakeries, coffee roasters and commercial kitchens having no retail sales within principal structure.~~

**Proposed B-2/B-2b Text Amendment: Add the following section under Sec. 14-182 (b) (20), as a permitted use.**

(20) Commercial kitchens provided the commercial kitchen includes retail sales or a tasting room within the principal structure. Commercial kitchens in the B-2b shall be no greater than 7,000 square feet in floor area.



## **PLANNING BOARD REPORT PORTLAND, MAINE**

Proposed Zoning Amendments  
Surface Parking (B-7) and Commercial Kitchens (B-7, B-2 and B-2b)  
City of Portland, Applicant

|                                                                      |                                                                                    |
|----------------------------------------------------------------------|------------------------------------------------------------------------------------|
| Submitted to: Portland City Council<br>From: Portland Planning Board | Prepared by: Richard Knowland, Senior Planner<br>Report Prepared: October 21, 2015 |
|----------------------------------------------------------------------|------------------------------------------------------------------------------------|

### **I. INTRODUCTION**

The Planning Board is forwarding a positive recommendation to the City Council on several zoning text amendments. See page 5 of this report or Attachment 1 for recommended text. These amendments include the following:

B-7 (surface parking)...This amendment provides flexibility in the regulation of small gravel parking lots if significant redevelopment activity occurs on the site. This provision allows a relaxation of the normal parking setback (from the street) in exchange for a minimum level of redevelopment activity taking place on a site. This provision will allow projects such as the Bayside Bowl expansion and the Schlotterbeck & Foss housing development to move forward using small existing gravel lots for parking.

Commercial Kitchens (B-7, B-2 and B-2b)...This amendment allows commercial kitchens as a permitted use providing a facility for food entrepreneurs to initiate and grow their business. With a requirement for commercial kitchens to have retail space or a tasting room within the building, this amendment supports pedestrian and retail activity in business districts. Commercial kitchens have gained a national reputation as a catalyst for job creation.

### **II. BACKGROUND – Bayside Vision and B-7 Surface Parking**

#### **A. Bayside Vision**

Perhaps the most challenging issue in Bayside is the regulation of surface parking. The basic premise of the A New Vision For Bayside (Bayside Plan) is that the neighborhood should be a dense mixed use district. The Bayside Plan uses such phrases as an “attractive urban gateway and extension of the downtown”, “mixed use and compact

development” and “quality pedestrian experience”. A guiding principle of the plan is that parking structures are encouraged to “avoid extensive land consumption by surface parking lots”. The desired model for Bayside’s future is a transit oriented development “free from the dependence upon the automobile”.

The existing surface parking regulations support the Bayside Plan by requiring new parking spaces to be a minimum of 35 feet from the street thus emphasizing the presence of buildings along the street edge rather than surface parking. Ideally all vacant or underutilized sites in Bayside would instantly become redeveloped with new multi-story buildings and minimal surface parking. The reality is that it will take some time for market forces to absorb new development to justify larger scale development with accompanying structured parking. Realizing the incremental nature of achieving the Bayside Vision, in 2011 the City Council approved a series of amendments that provided flexibility for surface parking. The thought was this change would assist redevelopment or reuse of existing buildings on smaller lots in supporting the transition of Bayside from a warehouse/industrial district to a mixed use district. This initiative did not address the issue of small gravel lots which is the subject of the proposed amendments described in this report.

## **B. Existing Gravel Areas in B-7**

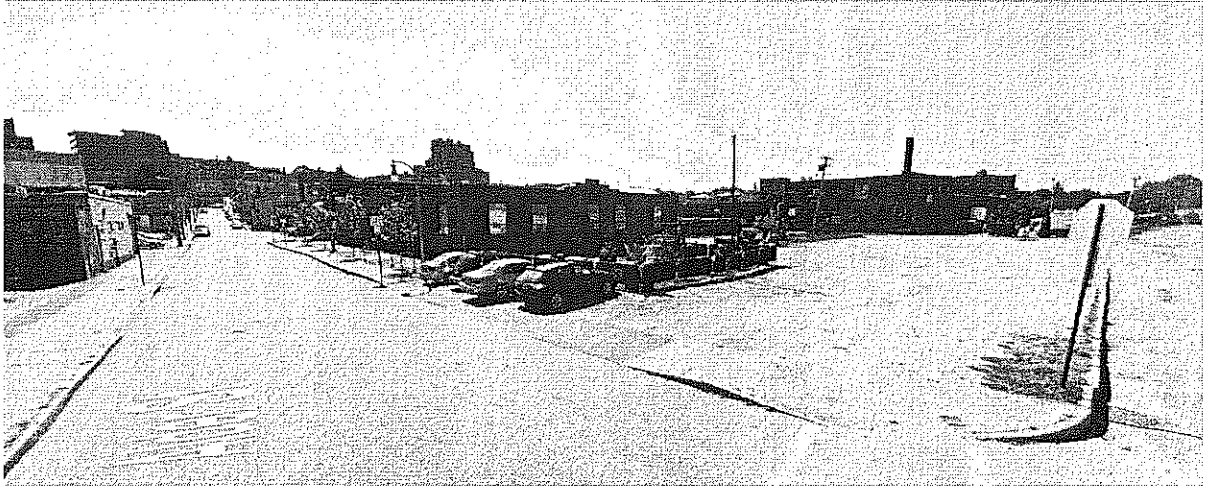
The proposed amendments are intended to provide flexibility in the parking setback requirements if a certain scale of redevelopment activity occurs on the site or an abutting parcel. The narrative below lists all 4 sites eligible for the amendments as well as anticipated development initiatives supported by the amendments.

**Schlotterbeck & Foss...** A housing 55 unit development proposal for this light industrial building is expected to be submitted shortly. Existing site includes a 5 story building; black top parking lot; and gravel parking. Gravel area 10,314 SF in size. Total parcel area is 1.07 acres. Size of gravel area and height of building (5 stories) would qualify under the proposed amendments.



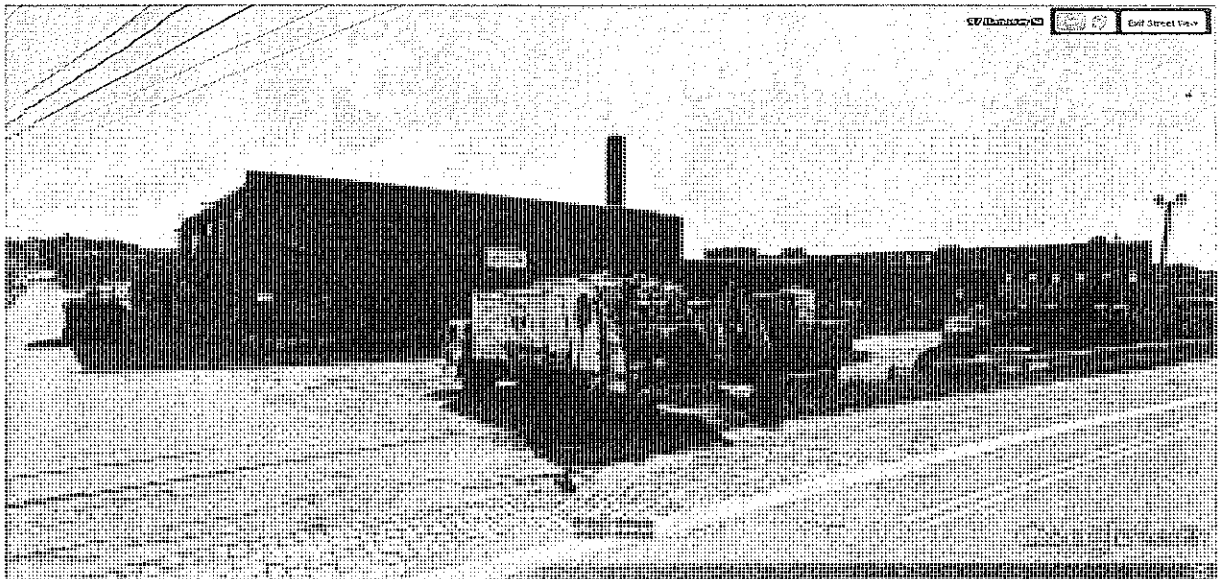
**View of Schlotterbeck & Foss Building Corner of Preble Street and Kennebec Street**

**Bayside Bowl...** Bayside Bowl established a bowling alley in a former retail/warehouse building in 2009. Planning Board recently approved an expansion of the bowling alley. Gravel area 14,280 SF in size. Total parcel area is 1.27 acres. Size of gravel area and building floor area (30,000 SF) would qualify under the proposed amendments.



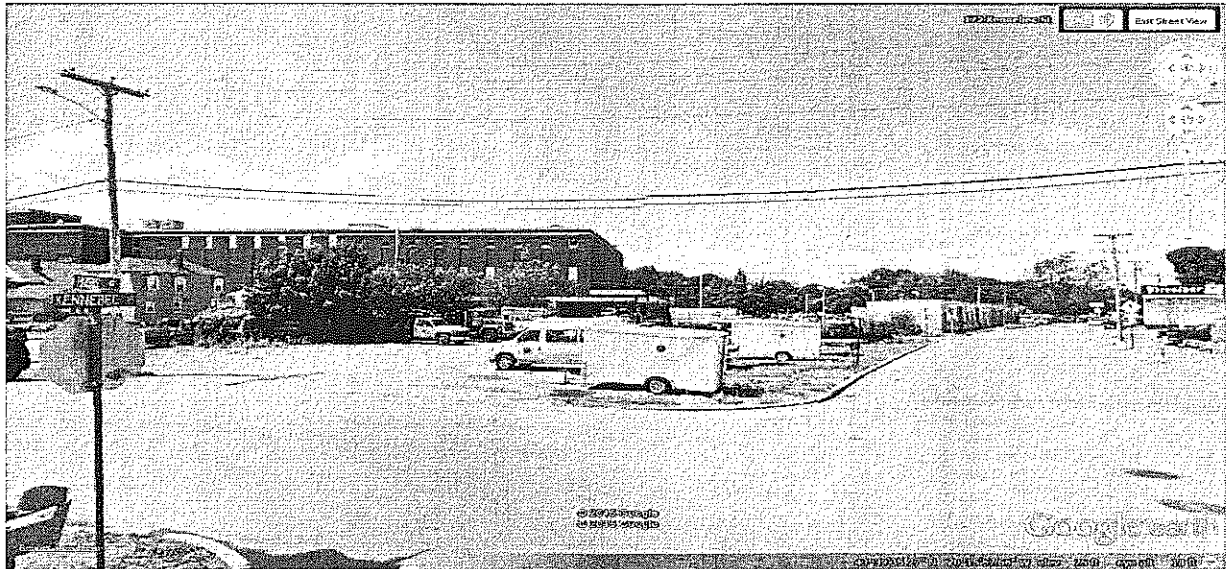
**View of Bayside Bowl Corner of Alder Street and Kennebec Street**

**156-174 Kennebec Street DPS Parking Lot...** This gravel lot is contiguous with the DPS brick building at 82 Hanover Street which offers intriguing future reuse possibilities. This parking area could help support the redevelopment of the brick building either as parking or as a building addition. Gravel area about 2,000 SF in size but part of a larger parking area (15,092 SF) for DPS trucks. Size of gravel and brick building floor area (40,768 SF) would qualify under the proposed amendments assuming the brick building is redeveloped in the future



**View of 156-174 Kennebec Street, Corner of Hanover Street and Kennebec Street**

**176-188 Kennebec Street DPS Parking Lot...** Gravel area 9,659 SF in size (entire lot) qualifies under the proposed amendments. Redevelopment possibilities include a new building meeting the minimum height or minimum floor area requirements as well as a redevelopment proposal with the adjacent New Systems Laundry building.



**View of 176-178 Kennebec Street , Corner of Kennebec Street and Parris Street**

#### **Other Gravel Parking Lots In Bayside:**

The proposed amendments are intended to address small scale gravel lots of 15,000 SF or less that are linked to significant redevelopment activities. Larger gravel parcels such as the Noyes/Oakhurst Dairy lot (2 acres, Somerset-Pearl-Kennebec-Chestnut Block) and E.Perry scrap yard (1.65 acres, 115 Lancaster Street) would not qualify since their gravel area exceeds 15,000 SF limit. Presumably larger size parcels are better able to integrate parking needs into their development program (whether structured or surface) than smaller size parcels. Larger parcels also have greater redevelopment potential which should not be squandered with excessive surface parking.

The Verizon site (Somerset and Marginal Way) also would not qualify since it has a gravel area exceeding 15,000 SF and the building on the site does meet the applicable minimum height or floor area requirements.

### **III. EXISTING B-7 SURFACE PARKING ZONING TEXT**

The existing B-7 provisions for surface parking are summarized below. The entire text is shown as Attachment 3.

**Sec. 14-295(a)(24):** This section effectively grandfathers existing blacktop parking areas from the 35 foot parking setback (measured from the street right-of-way line). This provision acknowledges that it may take time for market conditions to absorb larger scale development but in the interim smaller scale reuse projects can help transition Bayside to a mixed use district.

**Sec. 14-295 (a)(25):** This section reflects the original B-7 zoning text intent (passed in 2006) that newly constructed surface parking spaces should be a minimum of 35 feet from the street to de-emphasize surface parking along the street edge and to reserve such space for building development. In 2010 it was amended to make new parking spaces a permitted use rather than a conditional use. This provision has worked well for larger scale projects such as the Intermed building and Midtown where parking garages are used rather than surface parking.

#### **IV. PROPOSED B-7 ZONING TEXT AMENDMENTS (SURFACE PARKING)**

Proposed text amendments are intended to address the status of existing gravel areas posed by such sites as Bayside Bowl and Schlotterbeck & Foss that offer significant redevelopment opportunities. The amendments use a carrot by allowing existing gravel areas to be converted to surface parking (within 35 feet of the street) if the developer proposes a minimum but significant level of redevelopment activity on the site or a contiguous site. This incentive measure supports the Bayside policy of creating a denser urban neighborhood but not at the expense of allowing excessive surface parking without some linkage to building development. A model for this concept is the Bayside Bowl project.

The provision focuses on smaller gravel areas (15,000 SF or less) so that larger lots which presumably have a greater ability to address parking setbacks will continue to meet the normal setback requirements. The lots in question are typically smaller lots that were part of the rail road corridor and sold to abutters and others in the 1980s and 1990s but never redeveloped. This proposed amendment links flexibility in parking regulations with some level of building development activity.

Gravel lots **eligible** for this amendment include: Bayside Bowl; Schlotterbeck & Foss; 156-174 Kennebec Street (next to large DPS brick building); and 176-178 Kennebec Street (corner of Kennebec Street and Parris Street). **Not eligible** are Oakhurst Dairy Truck/Noyes parking lot; E.Perry Scrap Yard; Verizon site and Bayside Rail Yard.

**Proposed Text Amendment: Add the following section under Sec. 14-295 (a) (26) as a permitted use.**

(26) Notwithstanding Sec. 14-295 (a) (24) and (25) above, surface parking that does not meet the 35-foot parking setback, provided that:

- a. All or a portion of the 35 foot setback area had a gravel surface on September 29, 2015.

**Note:** Gravel areas in the B-7 are listed in section II of this memo.

- b. The total gravel surface area on the lot and any contiguous lots did not exceed 15,000 square feet on September 29, 2015.

**Note:** The 15,000 SF limit is intended to limit the application of this provision. Eligible sites are listed above. Larger scale lots should be able to meet the normal setback requirements.

- c. The parking spaces provide parking to a principle building on the same lot and or a principle building on a contiguous lot.

**Note:** The gravel area must be contiguous with redevelopment activity or on the same lot qualifying for the reduced parking set back. In some cases the gravel area may have a separate deed from where the redevelopment is taking place although it still must be contiguous to it. This provision is not intended to provide off-site parking for another use.

- d. One of the buildings described in paragraph c above meets the minimum height requirements of the Bayside Height Overlay Map and/or a building on the site has a floor area of 25,000 SF or greater.

**Note:** Links flexibility in parking setbacks in exchange for a minimum scale of building development.

- e. The total number of spaces within 35 foot setback in combination with other spaces on the lot does not exceed the minimum parking spaces required in sec. 14-526 (a) (4)(a)(1).

**Note:** Use of the gravel parking area must not result in parking that is excessive for the site beyond normal minimum parking requirements.

- f. The proposed parking spaces meets the landscape and buffer requirements of 14-299 (F).

**Note:** This standard requires that parking must not occupy a portion of a public sidewalk; driveway entrances must meet the City of Portland Technical Manual Standards; and that landscape and buffer standards must meet City of Portland Technical and Design Manual.

- g. Parking spaces within the 35 foot setback shall provide stormwater quality treatment if required by the City of Portland Stormwater Management Standards and the Maine DEP Chapter 500 Stormwater Management Standards. If not required, an alternative low impact development treatment system approved by the Planning Board shall be provided.

**Note:** This standard requires some level of stormwater quality treatment for projects taking advantage of the amendment.

## **V. PROPOSED ZONING AMENDMENT (COMMERCIAL KITCHENS)**

The Planning Board is recommending amendments to the B-7, B-2 and B-2b to allow commercial kitchens. An amendment allowing commercial kitchens as a permitted use was originally packaged with the surface parking amendments when it became apparent that a commercial kitchen expressed interest in Bayside. Later the commercial kitchen developer (Neil Spillane of Forq Food) indicated the facility would be located in a B-2b zone (272 Lancaster Street) adjacent to the existing B-7 zone in Bayside. The property is highlighted in yellow in the map below.



By way of background commercial kitchens are facilities used for the cooking and preparation of food for retail or wholesale purposes. Typically individuals or small businesses rent the facilities to prepare their product including packaging and other production related activities. Commercial kitchens are often called kitchen incubators because they provide the opportunity for entrepreneurs to initiate and grow their business. These uses have gained a national reputation as a catalyst for job creation. Food plays a major role in Portland's economy as exemplified by the White House designation of Greater Portland as one of 12 Manufacturing Communities in the nation. See Attachment 6. See also Attachment 7 for information on kitchen incubators.

### **A. B-7 Zoning Text**

#### **Existing Zoning Text**

In the B-7 zone sec. 14-296 (a)(2)(c) identifies "bakeries, coffee roasters, and commercial kitchens having no retail sales within the principle structure" as a conditional use.

Planning Staff received feedback that it would be advantageous for commercial kitchens to have retail space or a tasting room to promote businesses using the facility. Curiously a retail use within a commercial kitchen is specifically excluded under the

present text which seems counterproductive to the goals of creating a pedestrian friendly and mixed use district in Bayside.

**Proposed B-7 Text Amendment:** Add the following section under Sec. 14-295 (a) (27) as a permitted use (commercial):

(27) Bakeries, coffee roasters and commercial kitchens provided such uses include retail sales or a tasting room within the principle building.

**Delete** the following section under Sec. 14-296 (a)(2)(c), conditional uses:

~~(c) Bakeries, coffee roasters and commercial kitchens having no retail sales within principal structure.~~

### **B-7 Land Use Policy and Comprehensive Plan Considerations**

The existing conditional use provisions evidently were borrowed from the text of a previous industrial zone in which retail uses were not allowed. This is understandable given the goals of an industrial zone that is charged with growing the City's industrial base. The B-7 on the other hand is a mixed use zone in which housing, retail, offices and some commercial related industrial uses (smaller scale) are allowed. Given the context of the Bayside Plan, a retail use or tasting room within a commercial kitchen seems totally appropriate since street side pedestrian activity is a planning principle of that document.

The Bayside Plan and the B-7 purpose section emphasizes a district featuring a "mix of uses", "a quality pedestrian environment", an "urban vitality" along with other urban qualities. The proposed text amendment for a bakery, coffee roaster and commercial kitchen with the inclusion for retail sales or a tasting room reinforces these qualities and is similar to other uses allowed in the B-7 zone such as restaurants and retail uses. The proposed text amendment supports the intent of Bayside land use policies as an urban district.

### **B. B-2/B-2b Zoning Text**

#### **Existing B-2/B-2b Zoning Text**

The B-2/B-2b zone does not list commercial kitchens as a permitted or conditional use but features similar uses such as bakeries and restaurants. Sec. 14-182(16) lists "bakeries existing in existence since November 15, 1997" as a permitted use. The following paragraph in the text (17) states bakeries established after November 15, 1997 are required to have retail sales within principle structures. Bakeries in the B-2b are further limited to a floor area of no greater than 7,000 SF. Evidently there was a concern that bakeries should have a retail presence contributing to the pedestrian and retail vitality of the zoning district rather than a self-contained "industrial bakery". The limitation on floor area speaks to a preference for a retail scale bakery in contrast to a larger industrial bakery such as the former J.J. Nissen facility.

**Proposed B-2/B-2b Text Amendment:** Add the following section under Sec. 14-182 (b) (20), as a permitted use.

(20) Commercial kitchens provided the commercial kitchen includes retail sales or a tasting room within the principal structure. Commercial kitchens in the B-2b shall be no greater than 7,000 square feet in floor area.

### **B-2/B-2b Land Use Policy and Comprehensive Plan Considerations**

A commercial kitchen (with a requirement of retail sales or tasting room) is similar to other permitted uses in the B-2/B-2b such as bakeries and restaurants. The provision for retail sales or tasting room supports the “people activity” inherent in a B-2/B-2b retail district. A commercial kitchen as described in this report is a relatively new use which is not reflected in the existing text.

The B-2b purpose section states it is intended to “provide neighborhood and community retail and service establishments” while the B-2 is intended to “provide a broad range of goods and services and general businesses with a mixture of large and small buildings such a grocery stores, shops and services located in major shopping centers and along arterial streets”. Commercial kitchens appear to be consistent with and supportive of these purpose statements.

The B-2b provides a 7,000 square foot floor area limitation on commercial kitchens which is consistent with the existing treatment of bakeries. This provision guards against larger facilities that would more appropriately be located in off-peninsula areas or in industrial zones.

## **VI. PROCESS AND RECOMMENDATION**

The Planning Board held an initial workshop on the amendments on August 11, 2015. Public notice of the workshop consisted of a legal ad appearing in the August 3, 2015 and August 4, 2015 editions of the Portland Press Herald and notices to the Interested Parties List.

A public hearing on the amendments was held on September 29, 2015. Public notice of workshop and public hearing consisted of a legal ad appearing in the September 21, 2015 and September 22, 2015 editions of the Portland Press Herald and notices to the Interested Parties List.

At the public hearing three people spoke in support of the amendments. Two of the speakers expressed a concern that the text language should have been simplified. Planning Board members recognized the complexity of the language but felt that more general language would have undermined the intent of the amendment and invited unintended consequences.

Planning Staff attended a Bayside Neighborhood Association meeting on October 6, 2015 to provide an overview of the proposed amendments. There were no negative comments expressed regarding the amendments.

At the public hearing, the Planning Board voted on three separate motions for the B-7 surface parking amendments; the B-7 commercial kitchen amendments; and the B-2/B-2b commercial kitchen amendments. All three motions were approved 5 to 0 (Dundon absent). The motion is shown below.

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 September 29, 2015 and on the basis of the testimony presented at the public hearing, the Planning Board finds that the proposed amendment is consistent with Portland's Comprehensive Plan and therefore recommends adoption of the amendments to the City Council.

#### **ATTACHMENTS**

1. Planning Board Recommended Zoning Text Amendments
2. Bayside Bowl Site plan
3. Existing B-7 surface parking zoning text
4. Maine Stormwater Management Practices Manual (excerpt)
5. Limited Intensity Development Stormwater Treatment Systems (excerpt)
6. Greater Portland Sustainable Food Production Cluster Info
7. U.S. Kitchen Incubators: An Industry Snapshot, dated August 5, 2013 (excerpt)



## Planning Board Recommended Zoning Text Amendments

**Proposed B-7 Text Amendment:** Add the following under Sec. 14-295 (a) (26) as a permitted use.

(26) Notwithstanding Sec. 14-295 (a) (24) and (25) above, surface parking that does not meet the 35-foot parking setback, provided that:

- a. All or a portion of the 35 foot setback area had a gravel surface on September 29, 2015.
- b. The total gravel surface area on the lot and any contiguous lots did not exceed 15,000 square feet on September 29, 2015.
- c. The parking spaces provide parking to a principle building on the same lot and or a principle building on a contiguous lot.
- d. One of the buildings described in paragraph c above meets the minimum height requirements of the Bayside Height Overlay Map and/or a building on the site has a floor area of 25,000 SF or greater.
- e. The total number of spaces within 35 foot setback in combination with other spaces on the lot does not exceed the minimum parking spaces required in sec. 14-526 (a) (4)(a)(1).
- f. The proposed parking spaces meets the landscape and buffer requirements of 14-299 (F).
- g. Parking spaces within the 35 foot setback shall provide stormwater quality treatment if required by the City of Portland Stormwater Management Standards and the Maine DEP Chapter 500 Stormwater Management Standards. If not required, an alternative low impact development treatment system approved by the Planning Board shall be provided.

**Proposed B-7 Text Amendment:** Add the following under Sec. 14-295 (a) (27), as a permitted use (commercial).

(27) Bakeries, coffee roasters and commercial kitchens provided such uses include retail sales or a tasting room within the principle building.

**Delete the following section under Sec. 14-296 (a)(2)(c) as a conditional use.**

~~(c) Bakeries, coffee roasters and commercial kitchens having no retail sales within principal structure.~~

Proposed B-2/B-2b Text Amendment: Add the following section under Sec. 14-182 (b) (20), as a permitted use.

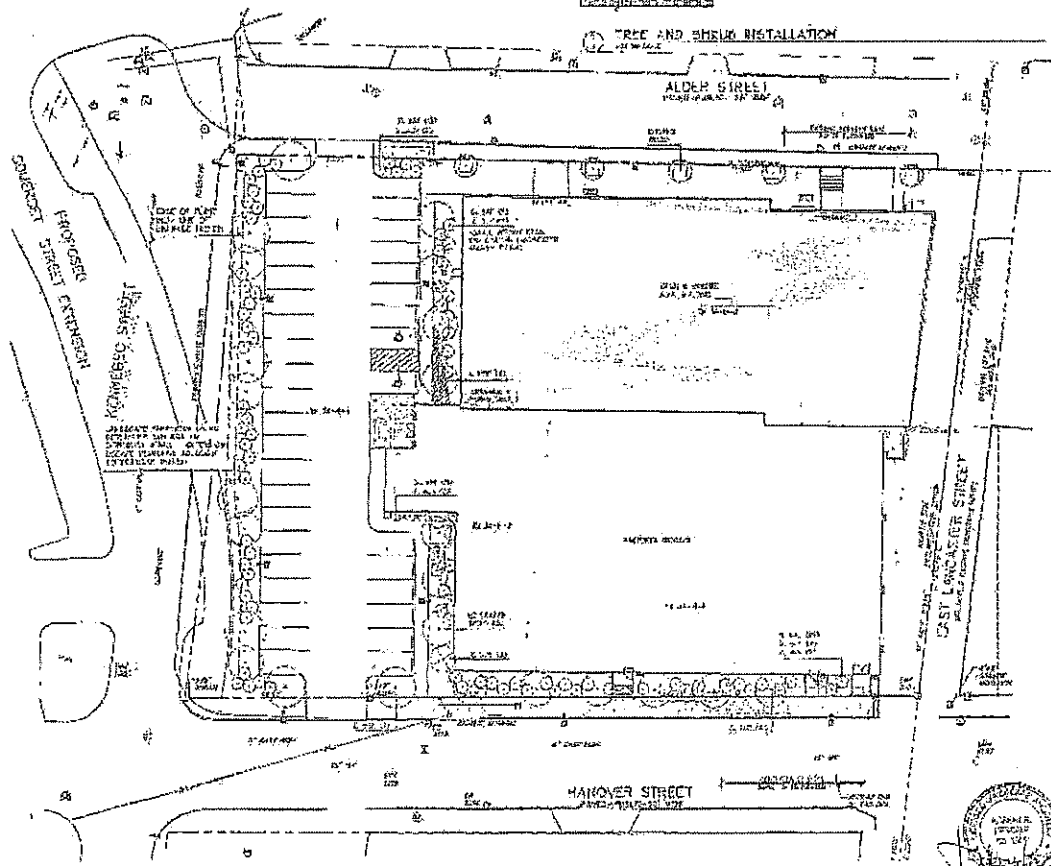
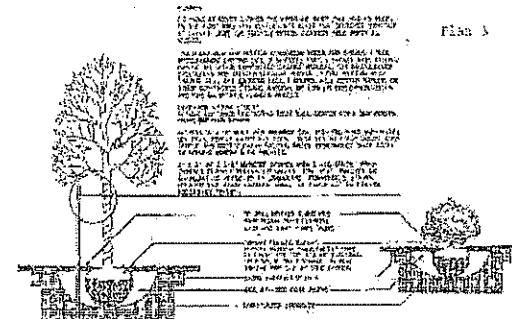
(20) Commercial kitchens provided the commercial kitchen includes retail sales or a tasting room within the principal structure. Commercial kitchens in the B-2b shall be no greater than 7,000 square feet in floor area.

# GENERAL PLANTING NOTES

1. ALL PLANTING SHALL BE DONE IN ACCORDANCE WITH THE LATEST EDITION OF THE STANDARD SPECIFICATIONS FOR HIGHWAYS AND BRIDGES, AS REVISED BY THE BOARD OF SUPERVISORS, AND THE LATEST EDITION OF THE STANDARD SPECIFICATIONS FOR LANDSCAPE ARCHITECTURE, AS REVISED BY THE BOARD OF SUPERVISORS.
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## PLANT LIST

| SY | QTY | POTENTIAL NAME      | CULTURAL NAME      | SIZE |
|----|-----|---------------------|--------------------|------|
| 1  | 1   | ASH                 | FRAXINUS AMERICANA | 12"  |
| 2  | 1   | BEECH               | FAGUS SP.          | 12"  |
| 3  | 1   | DOGWOOD             | COSSYLIA CORNUTA   | 12"  |
| 4  | 1   | HAWTHORN            | CRATAEGUS SP.      | 12"  |
| 5  | 1   | RED BUD             | JAPANESE SP.       | 12"  |
| 6  | 1   | SPRING BURNING BUSH | CEANOTHUS SP.      | 12"  |
| 7  | 1   | WINTER GREEN        | EUONYMUS SP.       | 12"  |
| 8  | 1   | YEW                 | TAXUS SP.          | 12"  |
| 9  | 1   | DOGWOOD             | COSSYLIA CORNUTA   | 12"  |
| 10 | 1   | HAWTHORN            | CRATAEGUS SP.      | 12"  |
| 11 | 1   | RED BUD             | JAPANESE SP.       | 12"  |
| 12 | 1   | SPRING BURNING BUSH | CEANOTHUS SP.      | 12"  |
| 13 | 1   | WINTER GREEN        | EUONYMUS SP.       | 12"  |
| 14 | 1   | YEW                 | TAXUS SP.          | 12"  |



## LEGEND

| SYMBOL | DESCRIPTION         |
|--------|---------------------|
| 1      | ASH                 |
| 2      | BEECH               |
| 3      | DOGWOOD             |
| 4      | HAWTHORN            |
| 5      | RED BUD             |
| 6      | SPRING BURNING BUSH |
| 7      | WINTER GREEN        |
| 8      | YEW                 |
| 9      | DOGWOOD             |
| 10     | HAWTHORN            |
| 11     | RED BUD             |
| 12     | SPRING BURNING BUSH |
| 13     | WINTER GREEN        |
| 14     | YEW                 |

Prepared For:  
City of Portland  
Department of Public Works  
Portland, Maine

Prepared By:  
Landscape Architect  
Portland, Maine

BAYSIDE BOWL  
55 Alder Street  
Portland, Maine

DATE: JANUARY 11, 1912

SCALE: AS SHOWN

NOTES:

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EXCERPT

Maine Department of Environmental Protection

Home → Land → Programs → Stormwater → Stormwater BMPs

# Maine Stormwater Best Management Practices Manual

This page:

Manual

Certification for inspection and maintenance of Stormwater BMPs

Engineering List Serve

## Maine Stormwater Best Practices Manual

The files below are in pdf format, unless otherwise indicated, and may take some time to load. To view PDF files, get Adobe Acrobat Reader [here](#).

General contact: Marianne Hubert, (207) 215-6485

Introduction

### Volume I. Stormwater Management Manual

- Chapter 1. Introduction
- Chapter 2. DEP Stormwater Management Objectives
- Chapter 3. Low Impact Development
- Chapter 4. Pollution Prevention
- Chapter 5. Stormwater Design Considerations
- Appendix A. Rain Garden Layouts
- Appendix B. Landscape Design Standards for Stormwater Management

### Volume II. Phosphorus Control in Lake Watersheds: A Technical Guide to Evaluating New Development

- Chapter 1. Introduction
- Chapter 2. The Watershed Budget
- Chapter 3. Meeting the Project's Phosphorus Budget
- Chapter 4. Treatment Factors for Phosphorus BMPs
- Chapter 5. Credits for Mitigation and Compensation Fees
- Chapter 6. Performance Standards for Smaller Projects
- Appendix A. Phosphorus and Lake Water Quality
- Appendix B. DEP's Method for Defining Watershed Per Acre Phosphorus Allocations
- Appendix C. Per Acre Phosphorus Allocations for Selected Maine Lakes
  - Sorted by Lake Name
  - Sorted by Town Name
- Appendix D. Worksheets (excel files)
  - Worksheet 1. PPB Calculations



- Worksheet 2. Pre-PPE and Post-PPE Calculations
- Worksheet 3. Mitigation Credit
- Worksheet 4. Project Phosphorus Export Summary
- Appendix E. Alternative Method for Small Commercial-type Developments Located Within Designated Growth Areas
- Appendix F. See "Lake Stormwater Phosphorus Compensation Fee Program" page.

#### **Volume III. BMP Technical Design Manual**

- Chapter 1. Introduction
- Chapter 2. Stormwater Hydrology
- Chapter 3. Peak Flow Control / Detention Basins
- Chapter 4. Wet Ponds
- Chapter 5. Vegetated Buffers revised June 2010. Chapter 5 figures
- Chapter 6. Infiltration BMPs
- Chapter 7.0. Filtration BMP revised June 2009. Chapter 7 figures
- Chapter 7.1. Grassed Underdrained Soil Filter BMP (updated May 2014)
- Chapter 7.2. Underdrained Bioretention Cell BMP (updated May 2014)
- Chapter 7.3. Underdrained Subsurface Sand Filter BMP
- Chapter 7.4. Stormtreat Filter BMP
- Chapter 7.5. Filterra
- Chapter 7.6. Roof Dripline Filtration BMP
- Chapter 7.7. Manmade Pervious Surfaces
- Chapter 7.8. The Stormfilter®
- Chapter 8.0. Conveyance and Distribution Systems
- Chapter 8.1. Vegetated Swales
- Chapter 8.2. Flow Splitters and Bypass
- Chapter 8.3. Level Spreaders
- Chapter 8.4. Permeable Road Base (October 2010)
- Chapter 9. Separator BMPs
- Chapter 10. LID Design Practices and Techniques
- Chapter 11. Designing for Operation & Maintenance
- Appendix A. Hydrologic Data for Maine
- Appendix B. Runoff Estimation & Hydrologic Models
- Appendix C. Proprietary Hydrology and Hydraulics Computer Program
- Appendix D. Templates for Deed Restrictions & Conservation Easements
- Appendix E. Example LID Measures

### **Certification for Inspection and Maintenance of Stormwater BMPs**

Municipalities that are regulated under Maine's Municipal Separate Stormwater Sewer Systems (MS4) program require that the person who conducts post-construction inspections of Stormwater Best Management Practices (BMPs) at the facilities in their town be qualified as a Post-Construction Stormwater Inspector. Unless in possession of a degree in engineering or natural resources or with experience with stormwater management in the State of Maine, successfully completing the DEP test on inspecting and maintaining stormwater BMPs is necessary. More information and the test is found in the following file:

- Stormwater BMP inspector test and answer sheet

## Section 7.5

### Filtterra Bioretention Systems

#### 7.5.1 Product Description

The Filtterra® bioretention filtration system is a self-contained stormwater treatment system. The technology packages soil media, plants and drainage infrastructure similar to those found in typical bioretention best management practices (BMPs) into a specially designed, pre-fabricated concrete housing (Figure 1). The Filtterra® is a flow-through system, intended to provide decentralized, distributed stormwater treatment control within a wide range of urbanized settings. The Filtterra® technology is well-suited for incorporation into Low Impact Development (LID) site and stormwater treatment design. The Filtterra® technology is capable of providing effective removal of suspended sediments, nutrients, heavy metals, and TPH from treated stormwater flows. For more information, please review a Whitepaper on the Filtterra® technology at [www.filtterra.com](http://www.filtterra.com).

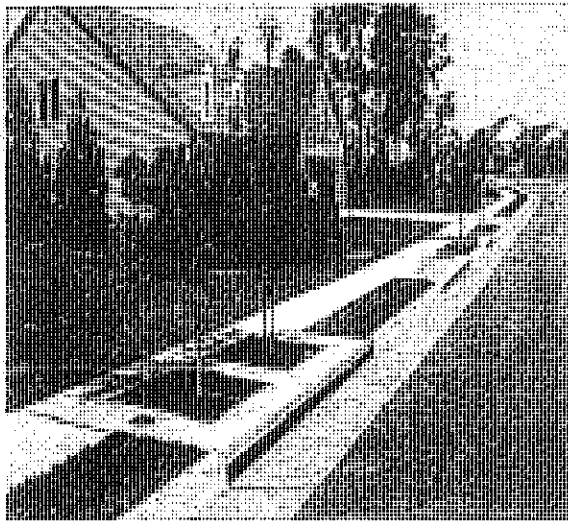
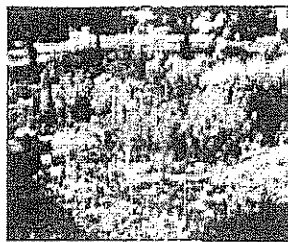


Figure 1. Filtterra® Bioretention Stormwater Treatment System

The Filtterra® design is based on the principles of traditional bioretention technologies such as filter strips and rain gardens. Bioretention systems and similar micro-scale controls are intended to enhance the treatment capacity of developed landscapes and reduce reliance on larger downstream controls such as detention basins. They may provide significant treatment over the entire course of a typical runoff event if designed, sited, installed and maintained appropriately. Bioretention technologies operate similarly to under drain filters in terms of particulate settling; filtration, adsorption and absorption of pollutants. Unit treatment processes more specific to bioretention include nutrient uptake, transpiration and other measures associated with the vegetation and root structure.

The Filtterra® technology is intended to address common problems and limitations of typical bioretention systems, providing an easily-installed, easily-maintained, standardized bioretention design. In terms of installation, maintenance and functionality, the Filtterra® also shares similarities with common sand or sand/organic filtration technologies. The most critical element of the Filtterra® design is the specialized soil media, composed to optimize the flow-through rates and treatment capacity of the system. The top of the Filtterra® system is typically enclosed, with a tree frame and grate incorporated into the lid to accommodate the specified vegetation and maintenance access. To help improve uniformity and consistency of performance, Americast offers comprehensive, customized sizing and installation guidance to Filtterra® customers and an extensive on-site maintenance service.

EXCERPT



#### About the new Website design

Please view the **Site Map** if you need assistance locating a particular page on the LID Urban Design Tools Website.

This update is merely a design change. No content has been changed or updated.

#### Trouble with Website?

If you have any trouble accessing pages on this website, please **contact** us by email and we will get back to you as soon as possible.

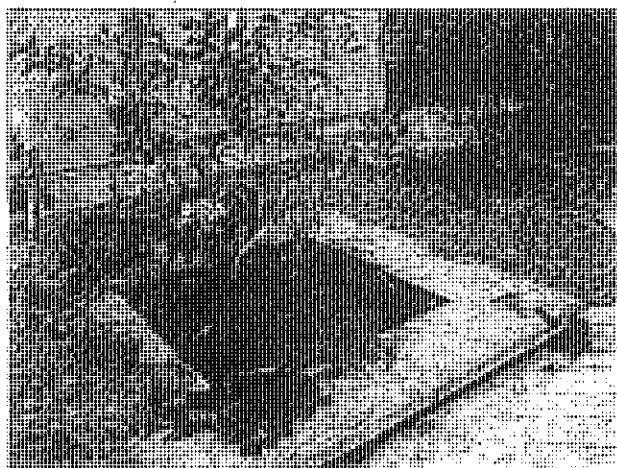
Please include the URL (i.e. web page link) that you are referring to so that we may better assist you. Thanks.

## Tree Box Filters

### Specifications

#### Planning / Design Considerations<sup>1</sup>

Tree box filters should be designed (sizing, spacing, installation and location) in accordance with manufacturer's specifications. The designer is responsible for selecting and providing the appropriate site design parameters for a particular design to the manufacture to ensure proper application of the device.



Example of a completed tree box filter  
(Source: Americast, Inc.)

#### Soils Investigation

When tree box filters is being used to infiltrate treated runoff into the surrounding subsoil refer to the local jurisdiction's requirements for soil studies and infiltration design criteria. It is recommended that there be one soil boring log for each structure. A gravel storage area under the tree box filter can be sized to meet local infiltration volumes and soil infiltration rates.

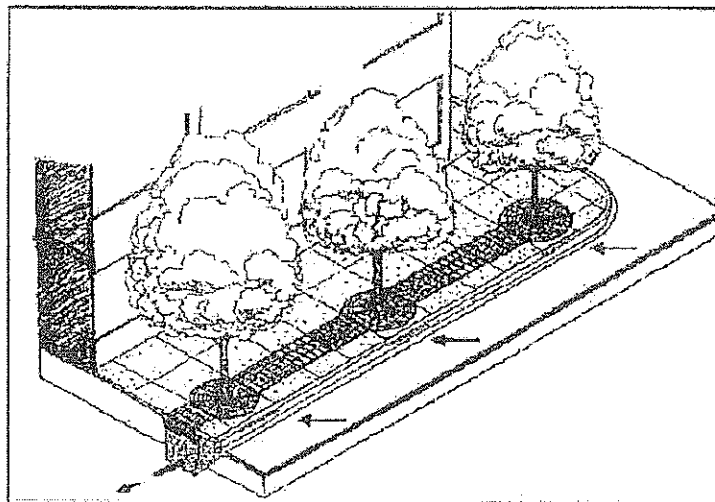
#### Site Conditions

A tree box filter with its enclosed non-permeable concrete container makes it ideal for situations where infiltration is undesirable or not possible. These situations would include: clay soils, karst topography, high groundwater conditions, close proximity to buildings, steep slopes, contaminated soils, brownfields sites, highly contaminated runoff, maintenance facilities and gas stations. For "hot spots" where chemical spills are likely, the under-drain system can be fitted with a emergency shut-off valve to quickly close the discharge drain pipe isolating the spill in the concrete container for easy clean-up, removal and replacement of the filter system.

Tree box filters are unique since a major decision is to consider how to integrate its plants into your landscape designs. They can be blended into your landscape scheme or it can be the centerpiece of the landscape design. In many cases, tree box filters can help you meet both stormwater and landscape requirements making it both multifunctional and multi-beneficial.

#### Urban Retrofit Conditions

Tree box filters are highly adaptable and can be used for all developments and in all soil conditions. Since the filter is contained in a concrete box and completely sealed it can be built in and around roadways, sidewalks, buildings and parking lots without fear of developing piping that could cause sinkholes or ground subsidence. It can also be installed on any slope conditions typical of parking lots and roadways. In highly urban areas, tree box filters can be used in the design of an entire streetscape converting the typical non-functional streetscape into large stormwater or combined sewer flow filter device.



**Manufactured Tree Box Filters For Stormwater Management**  
(Source: Virginia DCR Stormwater Management Program)

Tree box filters are best incorporated into the overall site or streetscape-landscaping plan. The individual box locations, designs and plants must integrate a combination of drainage infrastructure considerations, grades, unique site conditions, utility locations, water quality requirements, aesthetics and landscaping requirements.

#### Aesthetic Considerations

Aesthetic considerations for tree box filters must be evaluated early in the site planning process. While topography and hydraulic considerations may dictate the general placement of each structure, overall aesthetics of the site and tree box filter design should be integrated into the site plan and stormwater concept plan from their inception. Both the stormwater engineer and the landscape architect must participate in developing the layout of facilities, design of unique site infrastructure features and types of plants to be used.

#### Sediment Control

Similar to bioretention facilities, tree box filters should not be installed prior to full site stabilization without adequate protection. Without protection during construction the system will become choked with sediment rendering it inoperable from the outset. Simply providing some type of inlet filtering mechanism during construction will not adequately control the sediment. One large storm may completely clog the tree box



#### About the new Website design

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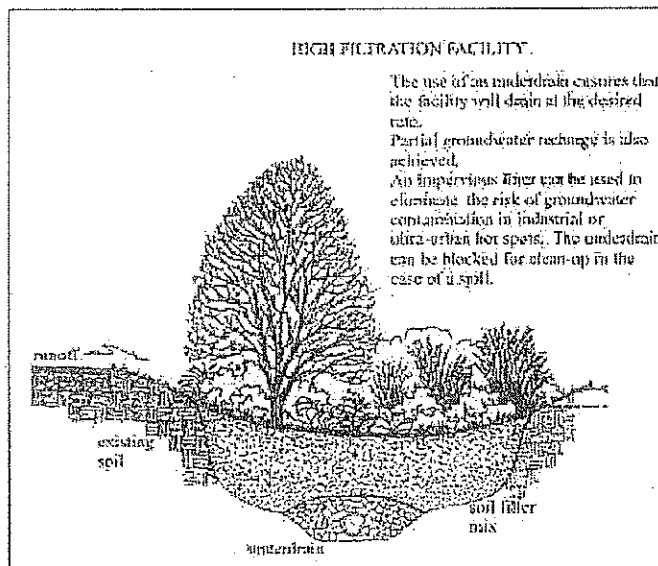
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## Bioretention

### Watershed Benefits

#### Pollutant Filtering

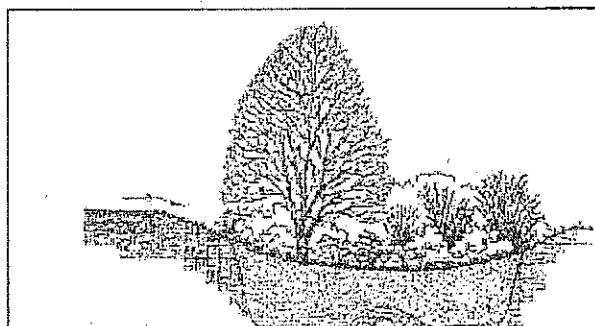
Bioretention areas function as soil and plant-based filtration devices that



remove pollutants through a variety of physical, biological, and chemical treatment processes. The reduction of pollutant loads to receiving waters is necessary for achieving regulatory water quality goals. For example, several

states, including Maryland, have agreed to work towards reducing nutrient runoff to the Chesapeake Bay by 40%. A number of laboratory and field experiments have been conducted by the University of Maryland in conjunction with Prince George's County Department of Environmental Resources and the National Science Foundation in order to quantify the effectiveness of bioretention cells in terms of pollutant removal.<sup>1</sup> A web site dedicated to this work can be found at <http://www.ence.umd.edu/~apdavis/Bioret.htm>.

In general, the studies have found that properly designed and constructed bioretention cells are able to achieve excellent removal of **heavy metals**. Users of this technique can expect typical copper (Cu), zinc (Zn), and lead (Pb) reductions of greater than 90%, with only small variations in results. Removal efficiencies as high as 98% and 99% have been achieved for Pb and Zn. The mulch layer is credited with playing the greatest role in this uptake, with nearly all of the metal removal occurring within the top few inches of the bioretention system. Heavy



metals affiliate strongly with the organic matter in this layer. On the other hand, **phosphorus** removal appears to increase linearly with depth and reach a maximum of approximately 80% by about 2 to 3 feet depth. The likely mechanism for the removal of the phosphorus is its sorption onto aluminum, iron, and clay minerals in the soil. **TKN (nitrogen)** removal also appears to depend on depth but showed more variability in removal efficiencies between studies. An average removal efficiency for cell effluent is around 60%. Generally 70 to 80% reduction in **ammonia** was achieved in the lower levels of sampled bioretention cells. Finally, **nitrate** removal is quite variable, with the bioretention cells demonstrating a production of nitrate in some cases due to nitrification reactions. Currently, the University of Maryland research group is looking at the possibility of incorporating into the bioretention cell design a fluctuating aerobic/anaerobic zone below a raised underdrain pipe in order to facilitate denitrification and thus nitrate removal.<sup>2</sup>

Fluctuating aerobic/anaerobic zone below a raised underdrain

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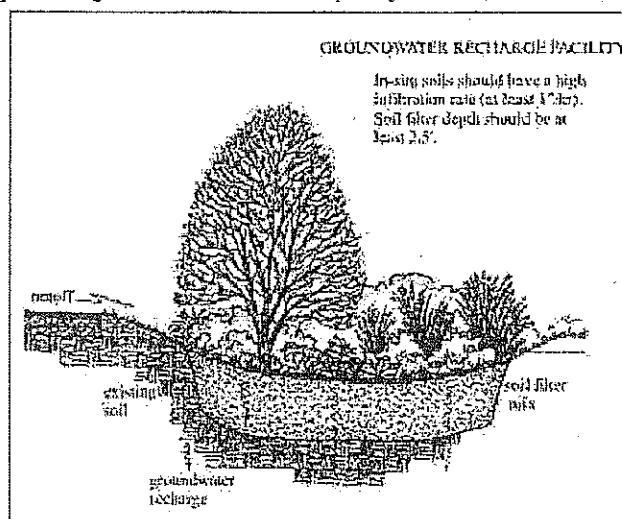
*These studies indicate that in urban areas where heavy metals are the focal pollutants, shallow bioretention facilities with a significant mulch layer may be recommended. In residential areas, however, where the primary pollutants of concern are nitrogen and phosphorus, the depth dependence will require deeper cells that reach approximately 2 to 3 feet.*

Other pollutants of concern are also addressed by the bioretention cells. For example, sedimentation can occur in the ponding area as the velocity of the runoff slows and solids fall out of suspension. Field studies at the University of Virginia have indicated 86% removal for **Total Suspended Solids (TSS)**, 97% for **Chemical Oxygen Demand (COD)**, and 67% for **Oil and Grease**.<sup>3</sup> Additional work with laboratory media columns at the University of Maryland has demonstrated potential bioretention cell removal efficiencies greater than 98% for total suspended solids and oil/grease.<sup>4</sup>

Return to top

### Runoff Volume and Timing

One of the primary objectives of LID site design is to minimize, detain, and retain post development runoff uniformly throughout a site so as to mimic the site's predevelopment hydrologic functions.<sup>5</sup> Originally designed for providing an element of water quality control, bioretention cells can achieve



GROUNDWATER RECHARGE FACILITY

In-situ soils should have a high infiltration rate (at least 1"/hr). Soil filter depth should be at least 2.5'.

**quantity control** as well. By infiltrating and temporarily storing runoff water, bioretention cells reduce a site's overall runoff volume and help to maintain the

predevelopment peak discharge rate and timing. The volume of runoff that needs to be controlled in order to replicate natural watershed conditions

# Greater Portland Sustainable Food Production Cluster

## Portland, Maine--America's Foodiest Small Town

bon appétit

On May 28, 2014, the White House designated the Greater Portland Sustainable Food Production Cluster, led by the Greater Portland Council of Governments (GPCOG), as one of 12 Manufacturing Communities in the nation. The Investing in Manufacturing Communities Partnership (IMCP) is sponsored by the U.S. Economic Development Administration.

### Potential Impact

2,500

Jobs

\$400

million

### White House designates 12 'Manufacturing Communities'

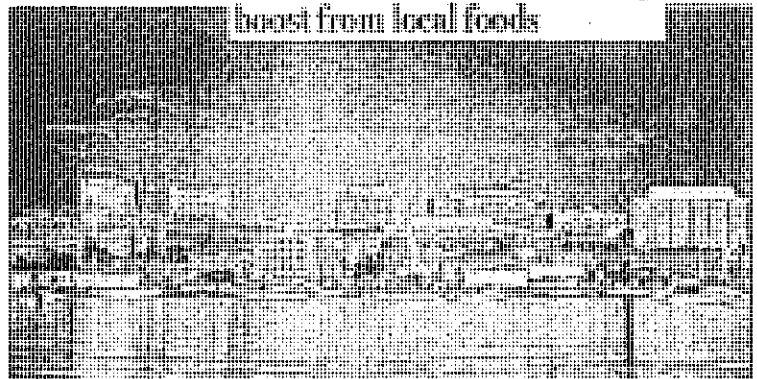
Portland wins federal manufacturing designation for food and agriculture

#### Goals

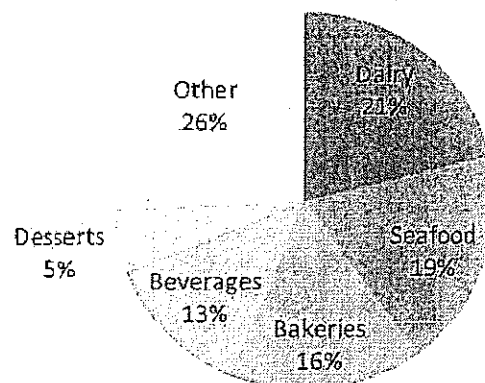
- Scale up home enterprises to food manufacturing operations
- Find markets for the food that is raised
- Add value to raw food and shipped out of state for processing
- Increase gross margins for Maine food
- Replace imported manufacturing inputs with Maine products
- Replace imports by households, restaurants and institutions with local food

The Greater Portland Council of Governments (GPCOG) has been designated as one of 12 Manufacturing Communities in the nation by the U.S. Economic Development Administration (EDA). The designation is part of the Investing in Manufacturing Communities Partnership (IMCP) program, which is designed to help manufacturing communities across the country create jobs and grow their economies. The GPCOG is a regional organization that represents the interests of the Greater Portland area, including the cities of Portland, Bangor, and Presque Isle. The designation is a significant achievement for the GPCOG and the Greater Portland area, as it recognizes the region's commitment to manufacturing and its potential to create jobs and grow its economy. The GPCOG will now be able to access a variety of resources and support from the EDA, including technical assistance, training, and funding. This designation is a testament to the hard work and dedication of the GPCOG and the Greater Portland area, and it is a source of pride for all who are involved in the region's manufacturing sector.

### Portland seeks manufacturing boost from local foods



### Food Processing Jobs in Cumberland County



1,812

jobs

64

Businesses

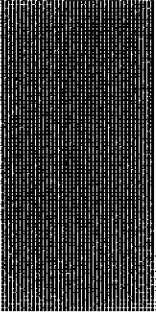
\$582

Million in sales

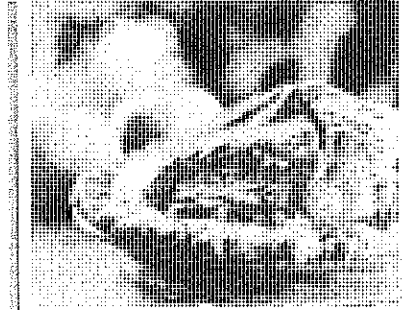
31%

Maine's processing sector

ATT. 7  
EXCERPT



## U.S. KITCHEN INCUBATORS: AN INDUSTRY SNAPSHOT



AUGUST 5, 2013

### REPORT PRODUCED BY:

Econsult Solutions, Inc.  
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Philadelphia, PA 19102

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## 1.0 INTRODUCTION

Over the past five years a significant number of kitchen incubators have opened around the country, prompting the need for a national survey and industry snapshot. Kitchen incubators are shared-use commercial kitchens that culinary entrepreneurs can rent by the hour or block of time in order to commercially produce food products. The need for a kitchen incubator stems from the fact that in many places it is illegal to run a food business out of a home kitchen. In many jurisdictions food products may only be prepared for wholesale or retail in a commercial kitchen that is licensed by the proper local or state regulatory agencies. Even in areas where certain products may be legally produced from home (per cottage food laws), many products still require a licensed facility, and in addition, most home kitchens cannot accommodate commercial-grade equipment and are not appropriate for running a business enterprise.

Entrepreneurs who need licensed commercial kitchens often rent space from a restaurant after hours, use a church basement kitchen, or seek any other type of kitchens that may be available. Often these facilities are not ideal due to a lack of flexibility of when the space is available, inconsistent access, expense, and a lack of adequate equipment. Kitchen incubators/accelerators and shared-use kitchens seek to fill this gap and provide facilities for these entrepreneurs. This report speaks to the difference between a kitchen incubator/accelerator and a shared-use kitchen which will be discussed in a later section.

Currently there are at least 135 shared-use commercial kitchen facilities across the U.S. and there has been major attention recently around kitchen incubators. An April 11, 2013 article from Initiative for a Competitive Inner City (ICIC) explains, "First it was food trucks, and now it's kitchen incubators. They are popping up in cities left and right. Once a novelty, the kitchen incubator seems to have become commonplace."<sup>1</sup> This interest in kitchen incubators is coupled with a trend of increased investment in the food industry. An April 28, 2013 article in *The New York Times* explained "In the last year, venture capital firms in the valley have funneled about \$350 million into food projects, and investment deals in the sector were 37 percent higher than the previous year..."<sup>2</sup>

Expanding interest in kitchen incubators is not surprising considering recent trends in the culinary industry. Across the nation, local, fresh, organic and artisanal products are gaining market share, as consumers buy into the "locavore" movement. Additionally, kitchen incubators may be viewed as a type of "maker space," a term used to describe co-working facilities focusing on a variety of handmade products. Increasingly multi-sector maker spaces are including food-industry facilities or full-scale kitchen incubators in their models.

---

<sup>1</sup> Amanda Maher, "Are Kitchen Incubators the Greatest Thing Since Sliced Bread?" ICIC, April 11 2013, <http://www.icic.org/connection/blog-entry/kitchen-incubators>.

<sup>2</sup> Jenna Wortham and Claire Cain Miller, "Venture Capitalists Are Making Bigger Bets on Food Start-Ups," *The New York Times*, April 28, 2013, <http://www.nytimes.com/2013/04/29/business/venture-capitalists-are-making-bigger-bets-on-food-start-ups.html?ref=business>.

While the concept of a shared-use commercial kitchen is not new, the recent batch of incubators demonstrates diversity and creativity of approaches and models. One of the most significant differentiators is that some facilities' primary approach is providing space for rent and little else, whereas others are incubators in the true sense of the word, providing business assistance and classes, access to low-interest lending, and supporting entrepreneurs in obtaining sales venues, distribution, and contract opportunities.

Based on this observed growth in the number of kitchen incubators, Econsult Solutions, Inc. (ESI) decided to initiate a survey of the kitchen incubator landscape in the U.S. The purpose of this research is to inform operators of existing and planned kitchen incubators to better understand national models of kitchen incubators and approaches to culinary micro-enterprise development. In addition this research will inform ESI's own work as it advises clients who are developing their own kitchen incubator projects. ESI hopes that this survey encourages additional research into national models for kitchen incubators, in order to better inform the industry and encourage local economic growth and new resources for micro-entrepreneurs.

## TERMINOLOGY

It is important to note that there is a significant difference between a "shared-use kitchen" and an "incubator" or "accelerator." The main differentiator is that a shared-use kitchen provides little to no supportive resources, training, or capacity building for entrepreneurs. An incubator can be further differentiated from an accelerator by the fact that an incubator is focused on new and very early-stage businesses, whereas an accelerator is focused on established businesses looking to move on to a more robust stage of business development.

This study found that frequently, the terms "shared-use kitchen" and "kitchen incubator/accelerator" are used interchangeably. This fact can be problematic because many entrepreneurs require more than a shared-use kitchen in order to effectively legitimize and grow their business. There is certainly a place for shared-use kitchens; however, they do not satisfy the range of capacity-building resources that culinary entrepreneurs often need. One question asked of respondents in this study seeks to identify the types of business supportive services provided, in order to determine whether a facility is a shared-use kitchen or an incubator/accelerator, and if the latter, how robust the capacity building services are.

It should be noted that there are still other types of shared-use kitchen environments: "community kitchens." These types of facilities are not typically focused on any sort of small business development, but rather to support neighborhood stakeholders and institutions. Community kitchens can take a variety of forms, being used to cook meals for donation in low-income geographies, for cooking classes, to provide a space for hobbyists, to accommodate eating clubs, to support community programming (such as health/nutrition or youth programs), or a variety of other uses. While some of the kitchens surveyed may be defined more as shared-use kitchens, we sought to eliminate those that seemed to be primarily community kitchens.

Many facilities run a fine line between being a shared-use kitchen and an incubator or an incubator and an accelerator. ESI determined that it was not truly feasible or productive to

differentiate between these three types of facilities. However, ESI did seek to eliminate community kitchens from the survey. Throughout this report the term “incubator” is used to represent the facilities surveyed here, keeping in mind that some may be better defined as shared-use kitchens with limited business support services, and others as accelerators, focusing on later stage business growth.

## DIFFERENT MODELS

Kitchen incubators come in a variety of forms. The most common is a facility with kitchens, prep spaces, and baking equipment, including some type of loading facilities and cold/dry storage. Some are more heavily focused on baking than others. Examples of the variations seen across the country are expressed below:

- Recently, kitchen incubators have served increasingly as **food truck commissaries**, and some, like Food Fort (Columbus, OH) are heavily focused on accommodating food trucks.
- A number of incubators are focused on helping **low-income, minority, and immigrant communities**, such as La Cocina (San Francisco), which focuses on Latina entrepreneurs.
- Some of the larger incubators are **affiliated with universities**, such as ACEnet (Athens, OH) or Rutgers Food Innovation Center (Bridgeton, NJ), and these tend to focus on product innovation.
- Most of the incubators that provide **significant small-business capacity building** resources are not-for-profit; however, a few for-profit incubators place a very strong focus on small business development at a level that meets or exceeds the top not-for-profit incubators. A good example is Union Kitchen (Washington, DC).
- A handful of incubators are focusing on **beer brewing**. As the craft beer movement grows, there will surely be more such facilities. One example is Bake, Boil, and Brew (San Antonio, TX).
- Some incubators, such as Organic Food Incubator (Long Island City, NY), have gotten into **packaging and co-packing** for their member entrepreneurs.
- Some make the connection between **culinary workforce development and entrepreneurship**. Increasingly, programs that provide culinary workforce training are seeing a portion of their clients interested in starting their own food business. One example of a workforce/incubator hybrid is Hot Bread Kitchen (Harlem, NY).
- Several incubators are **connected with farmers markets or public markets**. This relationship seems to produce a very positive synergy. Examples include Watertown Farm Market Kitchen (Watertown, WI), and YorkKitchen (York, PA).
- Some incubators include a substantial **classroom training kitchen**, such as the Center for Culinary Enterprises (Philadelphia, PA), whose classroom kitchen functions as a TV studio.

## CHALLENGES

Some prominent kitchen incubators went out of business and closed their doors in the early 2000s, creating concern about the sustainability of the business model. However, with the

booming interest in local and artisanal food, the demand for kitchen space has exploded over the past decade, creating the demand that has bred new kitchen incubators across the country. For most of these incubators it is too early to tell if they will be successful, however, it is clear that there is much more interest in local food production and culinary entrepreneurship than there was even a decade ago. This new demand may create the impetus that incubators need to truly succeed.

Yet, there remain major challenges in operating a successful incubator. Chief among them is the fact that incubators rise and fall based on the success of their member entrepreneurs. Many entrepreneurs are ill-equipped to run a small business and need substantially more than a shared kitchen. For this reason, it seems evident that if incubators are to succeed, they will need to adopt a holistic and comprehensive approach to small business development—especially when serving as a matchmaker between entrepreneurs and sales venues, such as procurement contracts.

Other potential issues relate to the design and flow of the facility, how reservations are made and payments transacted, and the ability to attract enough high-quality entrepreneurs. A whole other set of issues revolve around the nature of food sanitation regulations within different jurisdictions, and how those regulations are enforced by local regulatory authorities. These regulations vary widely and allow some incubators to function effectively while presenting a daunting stumbling block to others.

## IMPACTS/OUTCOMES

Throughout this report it is continually stressed that little data exist on the performance and impact of incubators, in part because most do not collect any. In addition, the large majority of facilities are very new. However, it is still important to analyze the state of the industry through a framework of what these facilities seek to achieve. There are several ways to look at the impacts and outcomes of kitchen incubators. The most obvious is to look at how many businesses that were created from these facilities are still in business one year or two years later. Another typical metric is growth of member entrepreneurs' business through traditional indicators such as sales volume and gross revenue. For incubators that do collect data, the most popular seems to be jobs created. This metric can be expanded by looking at the nature and pay scale of those jobs. The data show that incubators tend to have a significant percentage of their clients being women, an ethnic/racial minority, and/or coming from low-income backgrounds. Even if a facility does not intentionally seek to have an impact on economic inclusion, they often de facto do, and so this metric can also be used to evaluate the impact of an incubator.

Order 101-15/16  
Tab 17 11-2-15

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND**  
**IN THE CITY COUNCIL**

DAVID H. BRENERMAN (5)  
JILL C. DUSON (A/L)  
JON HINCK (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO PORTLAND CITY CODE**  
**CHAPTER 14. LAND USE, ARTICLE III. ZONING. SECTION 14-230.2**  
**Re: Self-Storage Units and Equipment Storage**

**I. BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

*That Chapter 14, Article III, Sections 14-230.2 of the Portland City Code is hereby amended to read as follows:*

**Sec. 14-230.2. Conditional uses.**

(a) The following uses shall be permitted as conditional uses in the B-5 and B-5b urban commercial mixed use zones, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority, and further provided that, in addition to the provisions of section 14-474(c)(2), they shall also meet the requirements set forth below:

**1. Commercial:**

- a. Reserved. Self-storage facilities in B-5 zone (on-peninsula locations only) in buildings existing as of [enactment date]; and
- b. Outdoor storage of rental and moving equipment in B-5 zone (on-peninsula locations only) on sites with buildings existing of [enactment date]; and
  - i. 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; and

- ii. A landscape buffer shall be provided in  
accordance with the landscape and buffer  
requirements of the City of Portland  
Technical and Design Manual.

2. *Industrial:*

- a. Low impact industrial uses over ten thousand (10,000) square feet provided that they meet the following requirements:

...

**MEMORANDUM**  
**City Council Agenda Item**

**TO:** Mayor and City Council

**FROM:** Jeff Levine, Director of Planning and Urban Development

**DATE:** October 21, 2015

**DISTRIBUTION:** City Manager, Mayor, Anita LaChance, Sonia Bean, Danielle West-Chuhta, Nancy English, Julie Sullivan

**SUBJECT:** B-5 Zoning Text Amendments

**SPONSOR:** Elizabeth Boepple, Chair, Planning Board

**COUNCIL MEETING DATE ACTION IS REQUESTED:**

**1<sup>st</sup> reading** November 2, 2015    **Final Action** November 17, 2015

**Can action be taken at a later date:**   X   Yes        No (If no why not?)

**PRESENTATION:** Brief presentation by the Chair of the Planning Board and Planning Staff (if necessary). Brief presentation by U-Haul representative.

**I. SUMMARY OF ISSUE (Agenda Description)**

The Planning Board is forwarding a positive recommendation on proposed B-5 zoning text amendments regarding self-storage facilities and outdoor storage of moving and rental equipment. The amendments address a request initiated by U-Haul for their property at 411 and 425 Marginal Way. The amendments balance U-Haul's request to accommodate their facility needs, while restricting self-storage uses to conditional uses in existing buildings in on-peninsula B-5 locations and incorporating design standards to address building façade and landscape buffer concerns.

**II. REASON FOR SUBMISSION (Summary of Issue/Background)**

U-Haul initiated a request to change the B-5 zoning text to address their desire to expand their self-storage services and to support their need for outdoor storage of moving and rental equipment at their Marginal Way property. The Planning Board recommendation addresses U-Haul's request but limits such uses to conditional uses in existing buildings in on-peninsula B-5 locations and provides for standards to mitigate the visual impact of such uses.

### **III. INTENDED RESULT**

The amendments addresses U-Haul's desire to expand their self-storage facilities and confirms the use of outside storage of moving and rental equipment in the B-5 zone. The Planning Board's recommendation recognizes U-Haul's stated needs but regulates self-storage uses to conditional uses in on-peninsula B-5 locations and incorporates design standards to address building façade and landscape buffer concerns. Outdoor storage of moving and rental equipment is also regulated as a conditional use.

### **IV. COUNCIL GOAL ADDRESSED**

The proposed amendments does directly address a Council Goal although it does generally promote general economic development.

### **V. FINANCIAL IMPACT**

These amendments do not require the expenditure of City funds.

### **VI. STAFF ANALYSIS**

The proposed amendments accomplishes U-Haul's desire of allowing self-storage facilities and outdoor storage of moving and rental equipment at their existing business on Marginal Way. The amendments have been drafted narrowly to limit the geographic location of these uses in the B-5 (on-peninsula locations) while providing appropriate design standards that mitigate the visual impacts of such uses.

### **VII. RECOMMENDATION**

At a public hearing on September 29, 2015, the Planning Board voted 5 to 0 (Dundon absent) to recommend to the City Council the zoning amendments described in the attached material.

### **VIII. LIST ATTACHMENTS**

1. Order (text amendment attached; order will be similar)
2. Planning Board Report

Prepared by: Richard Knowland, Senior Planner

Date: October 20, 2015

## PLANNING BOARD RECOMMENDED B-5 ZONING TEXT AMENDMENTS

**B-5 Text Amendments: Add the following under Section 14-230.2 (a) (1) as conditional use.**

1. Commercial

- (a) Self-storage facilities in B-5 zone (on-peninsula locations only) in buildings existing as of (enactment date)
- (b) Outdoor storage of rental and moving equipment in B-5 zone (on-peninsula locations only) on sites with buildings existing of (enactment date)
  - i. 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.
  - ii. A landscape buffer shall be provided in accordance with the landscape and buffer requirements of the City of Portland Technical and Design Manual.



## **PLANNING BOARD REPORT PORTLAND, MAINE**

U-Haul B-5 Zoning Amendments  
411 and 425 Marginal Way  
Proposed B-5 Zoning Amendments  
#2015-090

U-Haul Moving and Storage Co. of Maine and N.H, Applicant

|                                                                      |                                                                                    |
|----------------------------------------------------------------------|------------------------------------------------------------------------------------|
| Submitted to: Portland City Council<br>From: Portland Planning Board | Prepared by: Richard Knowland, Senior Planner<br>Report Prepared: October 21, 2015 |
|----------------------------------------------------------------------|------------------------------------------------------------------------------------|

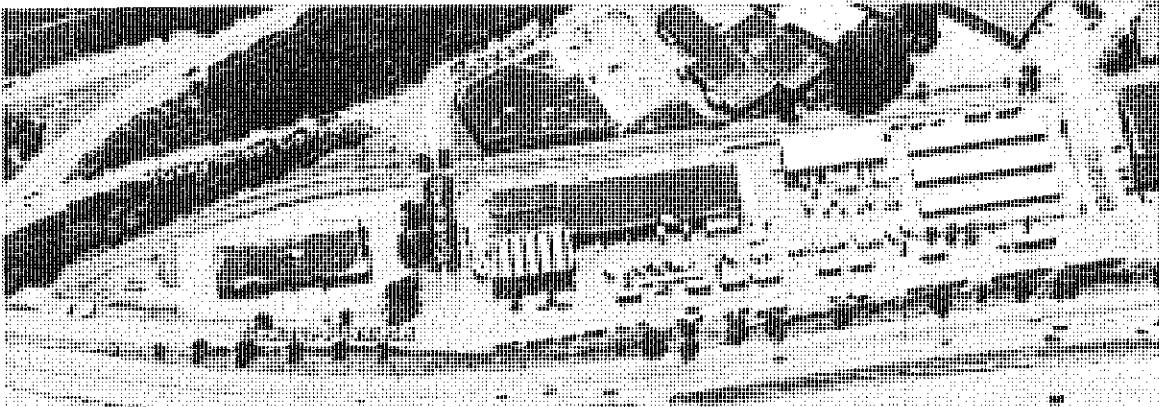
### **I. INTRODUCTION**

The Planning Board is forwarding a positive recommendation to the City Council on a series of text amendments regarding a proposal initiated by U-Haul Moving and Storage Co. of New Hampshire and Maine to amend the B-5 zone text to allow self-storage facilities and outdoor storage of moving and rental equipment. The amendments proposed by U-Haul pertain to their facility in the vicinity of 411 to 425 Marginal Way. The Board's recommendation limits the geographic location of these uses to the peninsula as a conditional use including standards that address the visual impact of outside storage.

### **II. APPLICANT PROPOSAL**

Applicant is requesting a text amendment allowing self-storage facilities (on-peninsula) and outdoor storage of moving and rental equipment (on-peninsula) in the B-5 zone as a permitted use. The current B-5 zone does not allow self-storage uses. The closest use in the B-5 zone akin to self-storage facilities is warehousing which the Zoning Administrator has determined is not the same use.

Recently the applicant acquired a one story building at 425 Marginal Way (the old AAA building). U-Haul received staff site plan approval for a retail use and equipment storage on October 22, 2014 for this site. Upon further consideration, applicant would like to pursue a self-storage facility for this property, but presently zoning does not allow this use. U-Haul would also like to specifically amend the text by adding outdoor storage of moving and rental equipment as a permitted use.



**U-Haul Properties – 425 Marginal Way on left and 411 Marginal Way on right**

### **III. BACKGROUND**

U-Haul has occupied their existing facility at 411 Marginal Way property for over 30 years. A review of City zoning maps reveals a previous I-2 Industrial designation for this site (zoning maps dated 1975 and February 1990). The parcel was rezoned along with other East Bayside properties from I-2 to B-5 when the B-5 zoning text was enacted in 1993. The B-5 was extended for all lots having frontage on Marginal Way while properties along Anderson Street (south of the rail corridor, now the Bayside Trail) remained an industrial designation (now I-Lb).

The earlier I-2 zoning text allowed the U-Haul use as a permitted use. City files indicate that U-Haul received a site plan approval in the 1980's and a site plan approval in 1992 for "three mini-self storage units" with zoning noted as I-2 zone. When the U-Haul site was later designated B-5, the U-Haul use evidently became non-conforming (at least for self-storage) on their main site.

The I-Lb that replaced the I-2 zone does not allow self-storage so extending the adjacent I-Lb district to the U-Haul site is not an option.

It appears the B-4 zone is the lone zoning district specifically allowing a self-storage use.

### **IV. LAND USE POLICY AND COMPREHENSIVE PLAN CONSIDERATIONS**

#### Purpose Section

The purpose section (sec 14-230) of the B-5 Urban Commercial Mixed Use Zone is shown below.

The purpose of the B-5 and B-5b zones is to provide zones in areas of the peninsula near the central business district where a mixture of uses, including marine, industrial, commercial and residential, is encouraged. The B-5 and B-5b zones are characterized by larger undeveloped lots with great potential for denser, clustered, urban mixed use development and more efficient reuse of existing land and buildings.

It is anticipated that such cleaner, mixed uses would rely on a shared infrastructure system, including service alleys, parking lots, public transportation facilities, stormwater management, and driveways.

#### Existing B-5 and B-5b Zones

B-5 -- Aside from the existing East Bayside B-5 that runs along Marginal Way, there are several other areas of the city that have B-5 zones. At the corner of Marginal Way and Forest Avenue there is a small B-5 which includes a CMP sub-station and Enterprise Rental. This is a remnant of the old B-5 zone in West Bayside which was replaced by the B-7.

Thompsons Point is zoned B-5 as is the Waynflete School recreation parcel along the Fore River and several other nearby parcels including land on the southerly end of Powsland Street. The Waynflete parcel and Powsland Street parcels are questionable as a B-5 designation and merit consideration for a different zone.

B-5b – There are three B-5b zones on the peninsula. B-5b districts have been implemented in intown locations where a more urban and dense development pattern is desired in context to its neighboring area. Generally “b” designations in the zoning ordinance have been used to distinguish an urban application of a zone (such as B-1b, B-2b, B-5b) in contrast to a less urban location (in the case of B-5, a site such as Thompsons Point).

Two of the B-5b zones are located east and west of the Fore River Bridge along the northerly side of Commercial Street. One zone runs west of the bridge to near Cassidy Point. The second runs from Harbor View Park to the new Marriot Courtyard Hotel. The third zone includes several blocks by Fore Street and India Street.

Zoning Implications – The proposed text amendment is limited to B-5 districts in “on-peninsula locations”. Given the context of Thompson’s Point and the Waynflete parcels, this is an appropriate restriction as self-storage (and storage for moving and rental equipment) would seem highly undesirable for these locations.

The three B-5b zones listed above are also inappropriate locations for self-storage (and outdoor storage of moving and rental equipment). These districts are in urban areas in which dense development incorporating uses for housing and employment opportunities are far more appropriate than storage. The Planning Board recommendation limits the proposed B-5 amendments to on-peninsula locations only and further excludes these uses from the B-5b.

#### East Bayside Neighborhood Study

In 2009 the Muskie School of Public Service and the East Bayside Neighborhood Organization collaborated on a neighborhood study of East Bayside. The study is shown as Attachment 1. The study included a preliminary neighborhood asset review, business district survey and community forums to discuss neighborhood issues. The report’s recommendations focused primarily on physical improvements such as pedestrian amenities, streetscapes, open space and trail linkages with very limited discussion on land use policy. This study was not formally adopted by the City.

The study did recommend that a neighborhood master vision and long term plan be initiated. One of the suggested issues to be explored in a vision plan was the following:

The industrial district north of Fox Street offered the greatest potential for redevelopment. A long-range vision should explore the potential of strategically modifying allowed uses, and envision the potential of future public and private development in this area to meet community needs.

#### East Bayside Brownfields Area Wide Plan

The Greater Portland Council of Governments and the City of Portland are cooperating with the US EPA in a brownfields planning project for East Bayside. The project will include brownfields soil testing, identification of neighborhood assets and liabilities, design charrettes, public forums, marketing study and a brownfields area wide plan. While the project will focus on particular brownfields sites, it provides the opportunity to engage the neighborhood in planning related issues. Unfortunately U-Haul and the brownfields project are on separate time lines. The brownfields project started in September but has a two year project time line for completion.

### **V. PLANNING BOARD RECOMMENDED ZONING TEXT AMENDMENTS**

The applicant's original proposal and the Planning Board's recommendation are presented below.

#### **Applicant's Original Proposal**

Insert in Section 14-230.1 (b) (4) and (5) [Permitted Use] new text as follows:

(4) Self-storage facilities (on-peninsula)

(5) Moving equipment rental and outdoor storage (on-peninsula)

#### **Planning Board Recommendation**

The Planning Board recommendation makes a number of revisions to the original U-Haul proposal. Rather than a permitted use, the Board's recommendation requires self-storage facilities and outdoor storage of rental and moving equipment as a conditional use. Such uses are restricted to on-peninsula locations and self-storage is limited to existing buildings. Design standards were added to prevent rental equipment from migrating onto public sidewalks or within the city right-of-way as well as landscape buffer areas. Landscape standards are referenced in the text and a new façade standard was added to the B-5/B-5b standards of the Portland Design Manual to address visual interest for blank building facades.

The Planning Board recommendation is shown below.

Insert in Section 14-230.2 (a) (1) new text [Conditional Use] as follows:

## 1. Commercial

- (a) Self-storage facilities in B-5 zone (on-peninsula locations only) in buildings existing as of (enactment date)
- (b) Outdoor storage of rental and moving equipment in B-5 zone (on-peninsula locations only) on sites with buildings existing of (enactment date)
  - i. 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.
  - ii. A landscape buffer shall be provided in accordance with the landscape and buffer requirements of the City of Portland Technical and Design Manual.

## VI. SUMMARY

U-Haul submitted a text amendment proposal to the B-5 zone text to allow self-storage facilities and outdoor storage of moving and rental equipment as a permitted use. During the review process, the text has been revised to more closely regulate these uses by restricting them to existing buildings in on-peninsula B-5 locations as conditional uses as well as incorporating design standards to address building façade and landscape buffer concerns. The practical effect of these text amendments is to limit the number of possible locations. Presently the U-Haul building and site features are more suburban than urban which is in contrast to the purpose section of the B-5 zone but the amendments are intended to help mitigate the visual impact of the uses.

East Bayside is clearly a neighborhood in transition with many changes over the past decade particularly the introduction of new uses in the B-5 and I-Lb zone. While the upcoming brownfields planning study could be a helpful forum to discuss land use policy issues and a future vision for East Bayside, the timing of that study and the applicant's present application do not mesh. Staff in reviewing the applicant's proposal has attempted to narrow the scope of the amendments since a self-storage use and outdoor storage of equipment is problematic for most of the other B-5/B-5b zones in the city. Several Board members commented having initial mixed feelings about the U-Haul proposal but upon further reflection recognized U-Haul's tenure at their Marginal Way location and the business service they provide, sought to draft a zoning proposal that worked for U-Haul while addressing the impacts associated with this use.

## I. PLANNING PROCESS AND PLANNING BOARD RECOMMENDATION

The Planning Board held a workshop on the U-Haul proposal on August 11, 2015. In addition to a legal ad appearing in the Portland Press Herald on August 3, 2015 and August 4, 2015, notices were also sent to the Interested Parties List.

The Board held a public hearing on September 29, 2015. In addition to a legal ad appearing in the Portland Press Herald on September 21, 2015 and September 25, 2015, notices were also sent to the Interested Parties List.

At the public hearing the Planning Board voted 5 to 0 (Dundon absent) on the following motion.

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 September 29, 2015 and on the basis of the testimony presented at the public hearing, the Planning Board finds that the proposed B-5 zoning text amendments (Planning Board version) is consistent with Portland's Comprehensive Plan and recommends adoption of the amendments (Planning Board version) to the City Council.

## **ATTACHMENTS**

### Staff Attachments

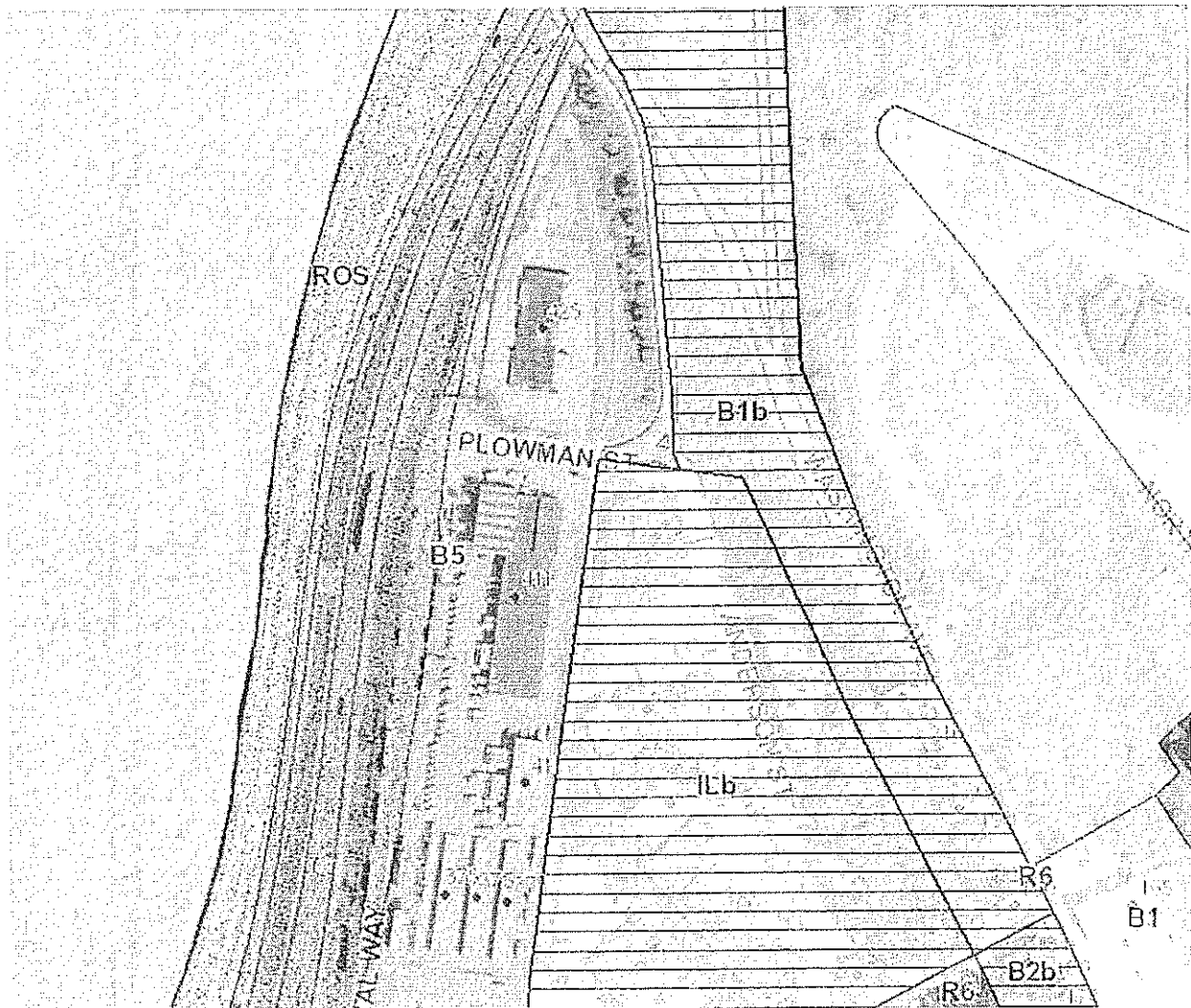
1. Vicinity Zoning Map
2. Planning Board Recommended Zoning Text Amendment
3. 425 Marginal Way Site Plan Administrative Review (2014)
4. East Bayside Neighborhood Study (excerpt)
5. Written Public Comment

### Applicant Submissions

- A. U-Haul Application
- B. Original Applicant Text Amendment



Zoning Districts in Vicinity of U-Haul Parcels



U-Haul Parcels at 425 Marginal Way and 411 Marginal Way

## PLANNING BOARD RECOMMENDED B-5 ZONING TEXT AMENDMENTS

**B-5 Text Amendments:** Add the following under Section 14-230.2 (a) (1) as conditional use.

## 1. Commercial

- (a) Self-storage facilities in B-5 zone (on-peninsula locations only) in buildings existing as of (enactment date)
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  - ii. A landscape buffer shall be provided in accordance with the landscape and buffer requirements of the City of Portland Technical and Design Manual.



Att. 4

EXCERPT

# East Bayside Neighborhood Study

Prepared by the **Planning Workshop, 2009**

Muskie School of Public Service

*Community Planning & Development Program*



# **East Bayside Neighborhood Study**

---

## **Planning Workshop 2009**

Community Planning & Development Program, Muskie School of Public Service

### **Community Client:**

East Bayside Neighborhood Organization  
Belinda Ray, president  
Ward Willis, liaison to Planning Workshop

### **Community Partners:**

Kevin Donoghue, Portland City Councilor (District 1)

Portland Housing Authority  
Mark Adelson, Assistant Director

City of Portland Public Services  
Mike Bobinsky, Director

Franklin Arterial Study Group  
Marcos Miller, Co-Chair

### **Planning Workshop 2009:**

Alan Holt, Adjunct Professor  
Cotton Estes, Teaching Assistant  
Jessa Berna, Paul Connair, Sophie DeMaio, Shelley Hodges,  
Emily Reinholt, & William Walker, students.



UNIVERSITY OF  
SOUTHERN MAINE

## Muskie School of Public Service

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Spring 2009

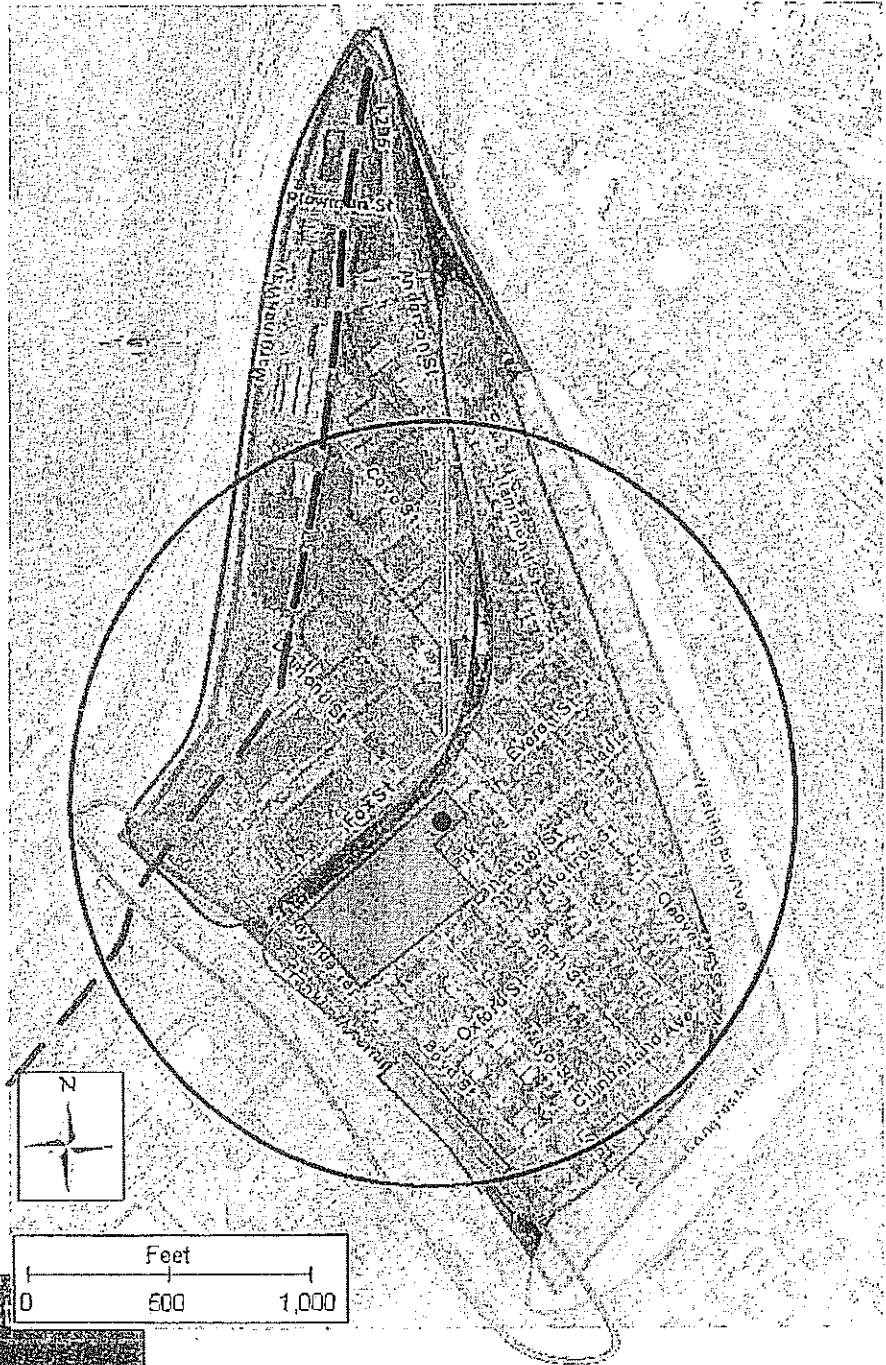
Since its establishment in 2002, the Planning Workshop has been an annual course offering in the Muskie's Community Planning and Development program that provides students with an opportunity to work directly with a client on a community planning issue. The students essentially form a consulting group that works with a community client to identify issues and execute a work plan. The Workshop aims to provide students with an opportunity to apply their planning studies to a real world situation, as well as to offer a community service.

Last fall, just about the time that I needed to find a class project for the Workshop, I wound up in a carpool with Belinda Ray, president of the East Bayside Neighborhood Organization. As we were driving upstate to canvas for a presidential campaign, a sense of hope and expectation infused our conversation as we talked about the possibility for a better country and world. I was even more inspired though by the sense of mission and passion that Belinda conveyed in talking about her own neighborhood. If ever there were a champion of town planner/activist Patrick Geddes's injunction to "Think Global, Act Local," (Evolution of Cities; 1905), Belinda was it.

Soon after, the East Bayside Neighborhood Organization and Portland City Councilor Kevin Donoghue (and Planning Workshop alum '05) formally invited the Planning Workshop to assist EBNO in their on-going capacity building, and to help empower the neighborhood's voice with a number of on-going initiatives. East Bayside, the most diversely populated census tract in the State, proved a perfect laboratory for the class, providing a textbook example of the physical elements (positive and negative) that influence neighborhood functions. Better yet, the people we met through the neighborhood organization, the Kennedy Park tenants' association, area businesses, non-profit groups, the Portland Housing Authority, and the City of Portland Public Services were ever generous to the class. So many people helped that there's not room to name everyone, though I'd be remiss not to extend special thanks to EBNO member Ward Willis who attended so many classes that he should be getting a grade along with the students (A+).

Finally I want to extend my appreciation to the students of this year's Planning Workshop. Every student fully embraced the assignment and the neighborhood, and all went beyond the call of class duty. This year's Workshop convinced my once again that the future of the planning profession in Maine is in good hands.

Alan Holt  
*Adjunct professor; Planning Workshop, Muskie CPD*



- Commercial District
- Residential District
- Lower Bayside District
- Franklin Arterial
- 5-Minute Walk

## East Bayside Neighborhood

# East Bayside Neighborhood Study

## Planning Workshop 2009

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## I. Overview

Defined by I-295, Franklin Arterial, Congress Street and Washington Avenue, East Bayside constitutes a significant and very distinct neighborhood within Portland. This shape of this neighborhood has undergone tremendous physical change over the past 200 years through human intervention— with a series of filling project of Back Cove that has expanded the northern boundary periodically, nearly doubling the size of the neighborhood. The last major physical intervention came with the construction of the Franklin Arterial which effectively segregated this neighborhood from what is now referred to simply as Bayside, the area to the west of the arterial.

Besides its strong physical boundaries, East Bayside is also home to the most diverse population in the State. The Portland Housing Authority's properties in this neighborhood, comprising 197 dwellings, represent 21 countries of origin. Furthermore, East Bayside has perhaps the most diverse spectrum of land uses of any neighborhood in Portland; the neighborhood includes a range of residential property types; light industrial uses; open space and parks; and retail & commercial businesses.

The neighborhood is located within a short walk to downtown, and is a prime gateway neighborhood by virtue of its adjacency to Franklin Arterial. In short, East Bayside's location, physical parameters, diversity of people and land uses not only make the neighborhood unique in Portland, but presents unique opportunities for the future.

The East Bayside Neighborhood Organization (EBNO) was formed in 2007 to represent and promote the community's interests. In spring of 2009 the Muskie School's Planning Workshop assisted EBNO's efforts by analyzing the neighborhood from historical and planning perspectives, and assessing how future planning – locally and within the greater context of Portland-- can benefit East Bayside. The recommendations included in this report are products of the classes' analysis of East Bayside to date, and are accompanied by the hope for continued research and collaboration with EBNO in the future.

Section II of this report summarizes several background studies conducted by the Planning Workshop including historical, demographic and geographic information about East Bayside. This information was collected during the initial stages of the Planning Workshop in an effort to familiarize students with the character of East Bayside and establish a lens through which to assess and direct future research. Findings were supplemented by academic readings that focused on elements of functional neighborhoods. Readings included seminal works such as "The Image of the City" by Kevin Lynch, 1960, "The Death and Life of Great American Cities" by Jane Jacobs, 1961, "A Pattern Language" by Christopher Alexander, 1977, and "The Next American Metropolis" by Peter Calthorpe, 1993.

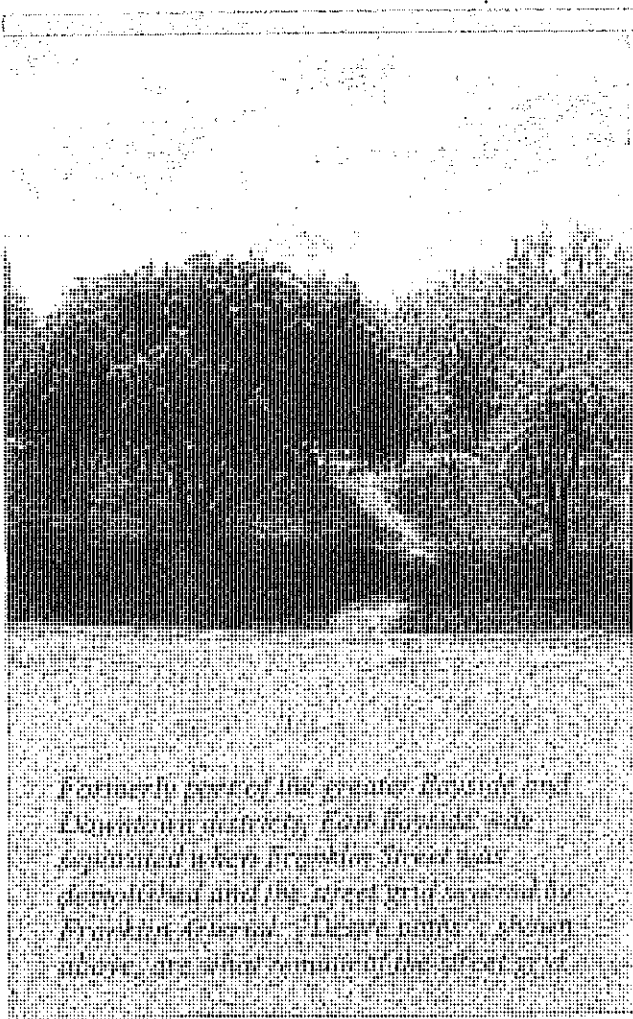
Section III, IV and V report on the classes' subsequent efforts to tap the community's opinions about their physical surroundings and ideas for improvement. In order to access the business sector of East Bayside, the Planning Workshop devised and administered 55 surveys in person, to business owners in the "Commercial" and "Lower East Bayside" districts of East Bayside. Analyses of these surveys is presented in Section III, followed by the raw data and details of the surveys in Appendices B and C.

Community outreach efforts also took form in two workshops in which East Bayside residents were invited to share their opinions and brainstorm improvements to the neighborhood. Each workshop catered to different audiences, focusing on specific issues within East Bayside. The first workshop was open to everyone in the neighborhood, and hosted in collaboration with EBNO and the Portland Housing Authority. The second forum was held at Portland High School and was directed toward East Bayside youth and focused on potential improvements for Fox Field. Sections IV and V report on the workshop process and findings, followed by the entire results in Appendix A.

Section VI presents the Planning Workshop's recommendations to the East Bayside Neighborhood Organization which are premised on the classes' research and valuable input from the community. East Bayside neighborhood requires both holistic design improvements as well as itemized material upgrades in order to preserve and enhance the quality of life here. The public concern over safety often relates to physical problems, like dead-end streets and a lack of amenities like sidewalks and lighting. The neighborhood is also in dire need of improved connectivity-- both to the city, and within East Bayside. The issue of connections is especially pertinent today, in light of the Franklin Arterial redesign and Bayside Trail.

This report highlights many reasons why East Bayside neighborhood is an asset to Portland, yet also underscores many challenges facing its residents. The Planning Workshop hopes that this report can assist with the ongoing efforts of EBNO, the City of Portland, the Portland Housing Authority, and the Franklin Street Study in their ongoing efforts to improve the lives of neighborhood residents, and the beauty, safety and vitality of the neighborhood for the benefit of all of Portland.

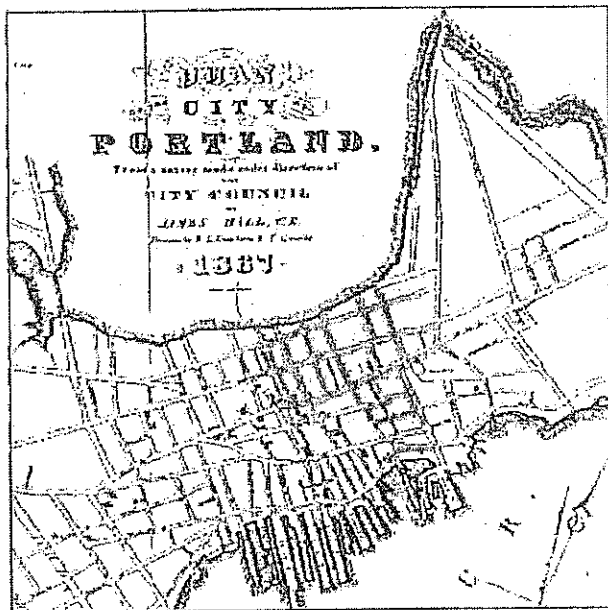
## II. Preliminary Neighborhood Studies



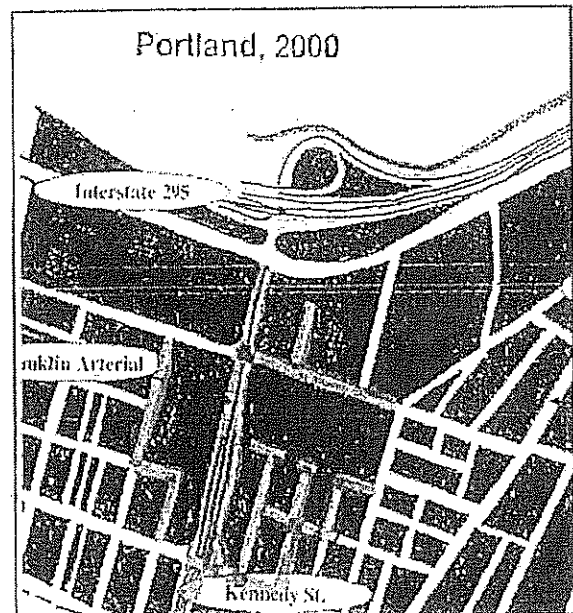
East Bayside is physically defined by major thoroughways like Congress Street and Rt. 295. Franklin Arterial also serves as a boundary, as well as a harsh edge to the neighborhood. The Arterial is the most identifiable culprit for the sense of isolation from the rest of the city that one experiences here.

Urbanists concur that human-scaled streets arranged in small street blocks with ample "connector streets" are critical to vital neighborhoods. Historically, the neighborhood was built on a grid of small, interconnected blocks that exemplify this principle of good neighborhood design. However, the building of the Franklin Arterial disrupted this block pattern. The resulting dead-end streets, superblocs, and broken pedestrian & vehicular connections present an ongoing challenge to the neighborhood.

The Planning Workshop observed and participated in the Franklin Street Reclamation Authority Study. More than any other Portland neighborhood, the outcome of this Study will affect East Bayside for generations.



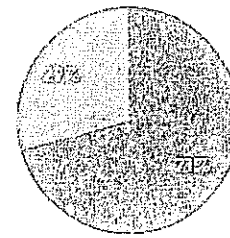
*Historic street grid in Bayside*



*Reminisce of the street grid after the Arterial*

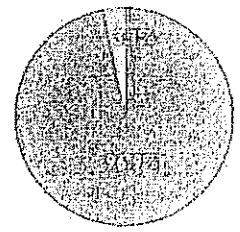
East Bayside is also characterized by an impressive diversity of ethnicity, culture, land-use and commercial activity. Jane Jacobs, Kevin Lynch, and Peter Calthorpe all describe diversity of land uses and of populations as fundamental ingredients to a vibrant and self-sustaining neighborhood or city. East Bayside benefits from the proximity of residential, commercial and industrial districts, as well as having representation from many different ethnic influences, all within the perimeter of a 5-minute walk. Its diversity distinguishes East Bayside from the rest of Maine, making it an asset to the City of Portland.

East Bayside

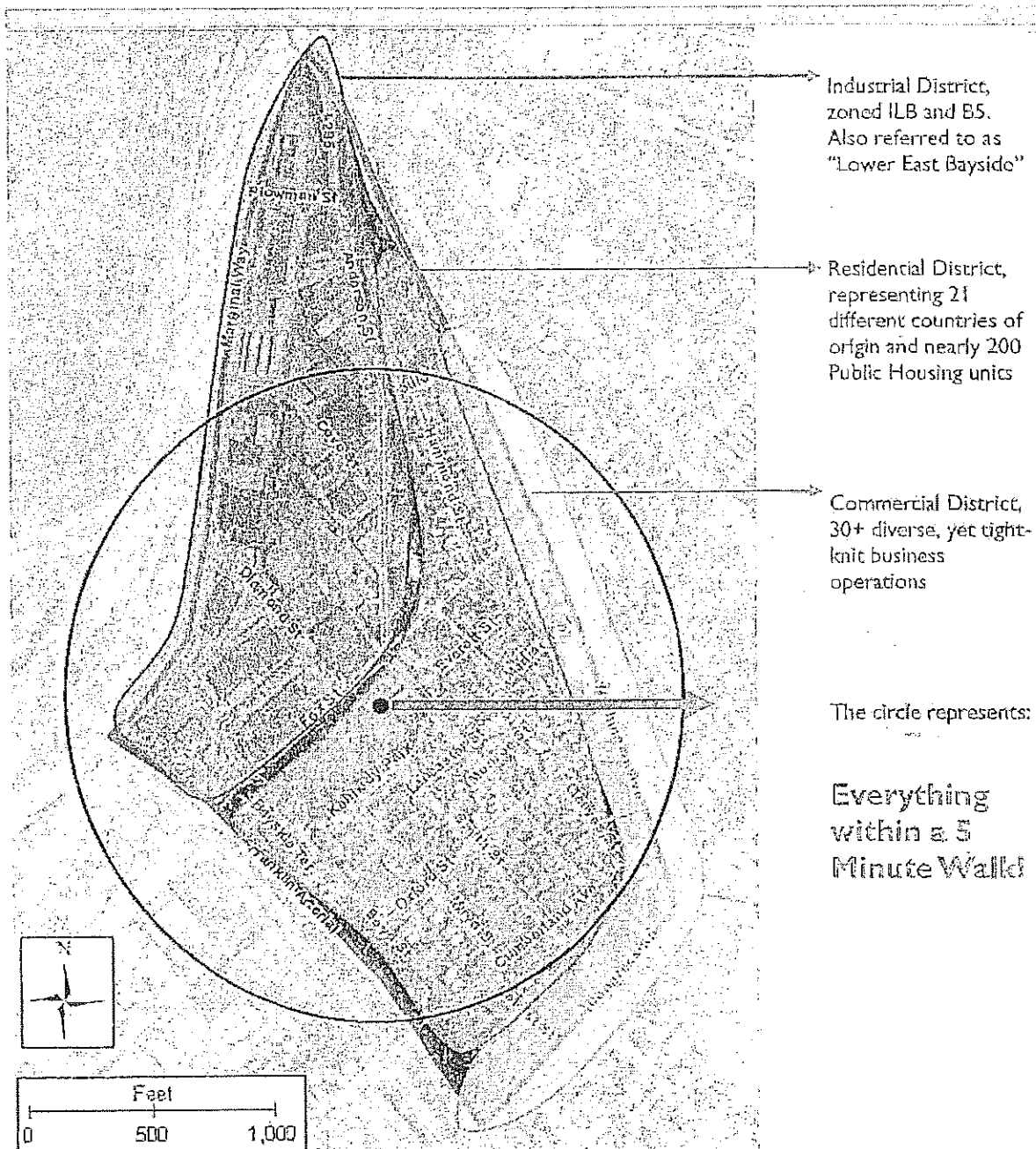


□ White  
□ Other races

Maine



□ White  
□ Other races

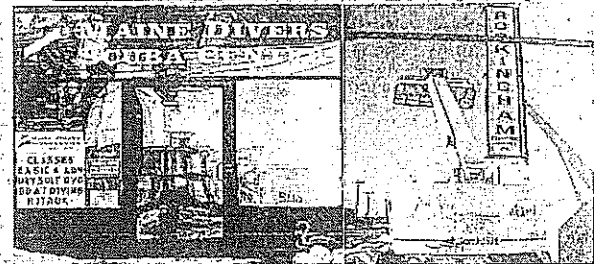
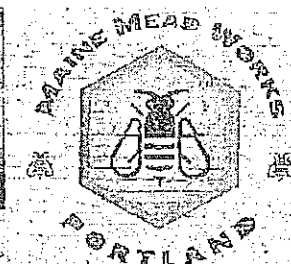
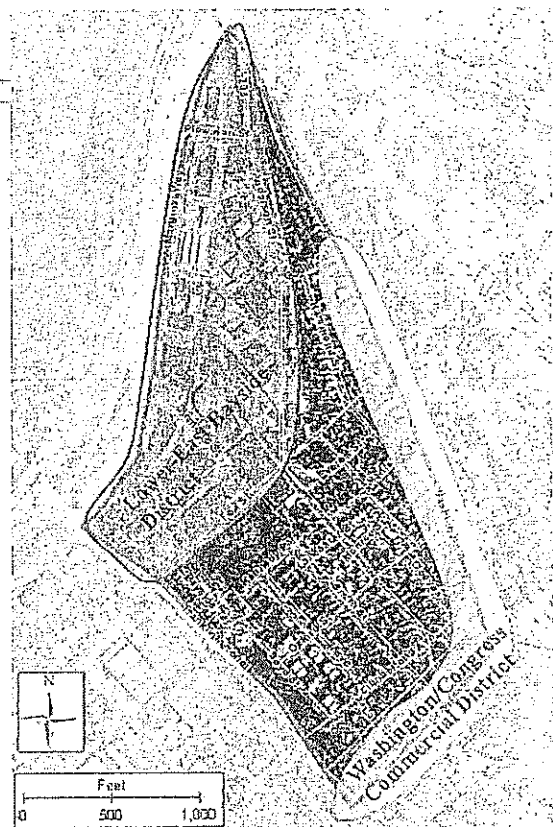


### III. Business Districts Surveys

In April, 2009 the Planning Workshop conducted 55 surveys among businesses in the Lower East Bayside District and Washington/Congress Commercial Districts (see map to left) in an effort to better understand the nature of commercial activity in the area as well as the businesses' concerns and desires for the future of East Bayside.

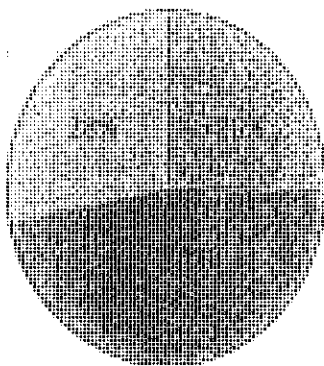
Two surveys were designed, tailoring to the particularities of each district. Common questions included background information on the businesses, as well as subjective questions regarding the businesses' physical location and connection to the larger East Bayside community.

The surveys were conducted in person with business owners, (with few exceptions for telephone interviews due to limited business hours). The raw data and surveys samples for Lower East Bayside and Commercial districts can be found in Appendices B and C.



#### Lower East Bayside District

*Lower East Bayside: Years in Business*



- ☐ < 2
- ☐ 5-12
- ☐ > 15

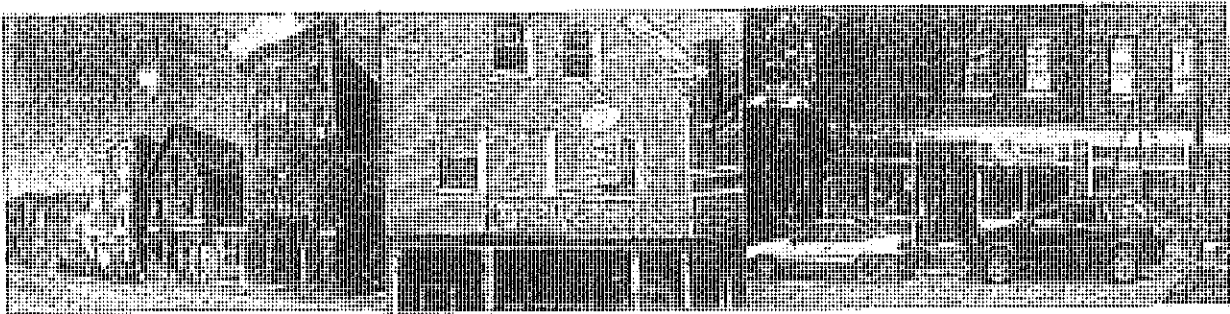
The 40 surveys from Lower East Bayside revealed an impressive amount and diversity of commercial activity. Businesses here range from retail, arts and crafts, non-profit, manufacturing, distribution, storage, and repair services, and more. Business size varies between one and 70 employees; the median employee count was eight. The range of business life spans also attests to the diverse commercial environment and healthy mix of new and old industry here. Roughly one-quarter of businesses are younger than two years (in their East Bayside location), and another quarter of the businesses are 15 years old or more.

The most popular reasons for locating in the district included inexpensive rent, availability of industrial-scale space, and proximity to Rt. 295 and Portland. Most customers here use vehicles, although there were several exceptions for charity services and arts related businesses that attract local pedestrians and bikers.

The majority of businesses in this area were content with current zoning, traffic and parking, and transportation in the area. The few noteworthy exceptions included: desire for permitted retail in the I-Lb (Low-Impact Industrial zone), safety concerns about overnight parking, road disrepair and traffic along Fox Street. Business owners were also discontented by inadequate or nonexistent sidewalks and lack of safety measures for bikers (particularly along Fox Street).

66% of businesses anticipate that the impending Bayside Trail will be a positive for the district. There is also considerable anxiety that the trail will diminish commercial properties by way of its physical construction, and by inviting vandalism and rent inflation. Although realty pricing was not formally addressed in the survey, many business owners in Lower East Bayside related a strong interest in maintaining affordable rent in light of future developments such as the Bayside Trail and re-design of Franklin Arterial.

65% of businesses also indicated strong interests in supporting community projects; particularly ones directed toward cleanup, youth, safety and public art.



### Washington/Congress Commercial District

15 businesses were surveyed along Commercial Street, Cumberland Avenue and Washington Avenue. Compared to Lower East Bayside, these Commercial District businesses are younger (60% under five years old), and cater more frequently toward the immediate neighborhood including Munjoy Hill. Over 50% of the customer bases for the businesses surveyed are primarily pedestrians or bikers. This Commercial District is also unique because of the high concentration of arts-related businesses (40%), and ethnically oriented shops and restaurants.

The survey data indicated general consensus among business owners about their concerns related to the area and desires for improvement. Street litter is a major concern among business owners here. 80% of owners identified trash as one of the foremost issues, and several specifically identified the 7-11 gas station as the source point. Remedial suggestions included simply adding more trash cans on the streets, and potentially devising a trash removal system with help from the City of Portland. Several people also suggested neighborhood-based environmental education programs.

Trees were another popular priority for streetscape improvement (75% of votes). A few business owners suggested that trees are a good option for beautifying the street because window boxes tend to invite vandalism. General streetcaping and landscaping, especially adding bike racks, were also identified by roughly 60% of business owners as desirable means of district improvement. The idea of park benches, however, was unpopular for the same reason as window boxes. People expressed general skepticism about any amenity that may facilitate vandalism or loitering at night.

## The Next Phase: Master Vision and Long-Term Planning

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The Recommendations in this report address issues associated with current planning initiatives, and respond to key ideas that surfaced from the community. The redevelopment of Franklin Arterial and the construction of Bayside Trail both pose critical opportunities for design improvements in East Bayside if EBNO can attach a clear community vision to the impetus that is underway. The issues raised by East Bayside citizens and business owners (like streetscape, transit amenities and Fox Field improvements) are also important, and are perhaps more immediate, tangible goals to address.

These topics warrant further study and can become the next steps for securing the future of the neighborhood. EBNO should also devote efforts to go beyond these immediate planning initiatives to develop a long-term, cohesive vision for the future of the neighborhood. A long-range vision should include a master plan for physical improvements (public and private) as well as implementation strategies. Besides the issues already highlighted in this report, a comprehensive long-range vision should address some of the more intractable physical issues in the neighborhood including:

- Reconnecting key components of the historic street grid, including but not necessarily limited to Oxford Street (east-west across Franklin Arterial) and Lancaster Street to the north-south. Reconnecting streets would require imagining how the PHA dwellings in this vicinity could be modified, rebuilt or potentially replaced.
- In conjunction with the above listed recommendation, a long-range vision should consider how other PHA housing development might be modified or reconstructed to be more responsive to the street and better integrated with the historic development pattern. This revisioning of the PHA housing stock also provides an opportunity to image new sustainable design solutions and architectural forms that promote safer neighborhoods with "defensible space." PHA parking lots should be considered as potential redevelopment sites for more valuable community needs including additional housing.
- The industrial district north of Fox Street offered the greatest potential for redevelopment. A long-range vision should explore the potential of strategically modifying allowed uses, and envision the potential of future public and private development in this area to meet community needs. A vision for this area should embrace the City's Environmental Sustainability Goals, and provide a model for new urban redevelopment for the 21st century.

In creating a long-term vision, EBNO should work cooperatively with the City of Portland and the Portland Public Housing Authority, and should maximize community involvement by engaging residents, businesses, and non-profits in the neighborhood. EBNO should leverage additional community resources for this planning effort by soliciting continued involvement from the Muskie School of Public Service as well as other community partners.

ATT. 5

>>> Peter Bass <pbass@maine.rr.com> 6/9/2015 10:05 AM >>>

Jeff,

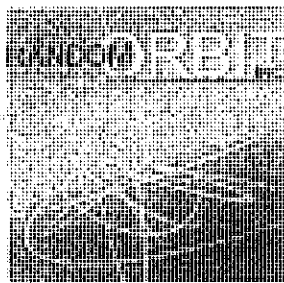
I got notice of U-Haul's request to change zoning for 425 Marginal Way from B5 to I-LB. I certainly have no problem with this change and the proposed uses. I know how protective the City is of this in town I-LB zone. Just thinking out loud- I wonder if you would consider at the same time, a zone change for a property from I-LB to B5 that would result in no net change to the I-LB. 50 Cove St. is nearly adjacent to the B5 across Anderson and is in a location that would actually be more appropriate as B5 than the U-Haul property. Let me know if there is a chance to pursue this. Thanks.

Peter

--  
Peter Bass  
Random Orbit, Inc.

17 Chestnut St.  
Portland, Maine 04101

207-772-6005 office  
207-712-0954 cell



<http://www.randomorbitinc.com>

file:///C:/Users/rwk/AppData/Local/Temp/XPgrpwise/5576D3FFPortlandCityHall1001653... 6/10/2015

ATT. A-1



July 31, 2015

Barbara Bachydt  
Development Review Manager  
City of Portland Planning Division  
389 Congress Street  
Portland, Maine 04101

RE: Application for Zoning Text Change  
425 Marginal Way  
Portland, Maine

Dear Barbara,

On May 19, 2015 Walsh Engineering Associates, Inc. (WEA) submitted an application for Zoning Map Amendment and Text Change on behalf of the U-Haul Moving and Storage Co. of New Hampshire and Maine (Applicant). Based on our recent meetings and conversations, Walsh Engineering Associates, Inc. (WEA) is providing this revised application to request a text change to the City of Portland Zoning ordinance. The purpose of the proposed text change is to allow for the Applicant to operate a self-storage facility within the existing building at the property located at 425 Marginal Way (Tax Map 8, Block A, Lot 5) and make the existing facility at 411 Marginal Way a conforming use.

The Applicant proposes that Section 14-230.1 - Permitted Uses within the B-5 Urban Commercial and Mixed Use Zone be modified to include the following permitted uses "on-peninsula" within the B-5 zone only:

- Self Storage facilities (on peninsula)
- Moving equipment rental and outdoor storage (on peninsula)

The proposed text change is indicated on the enclosed excerpt from Section 14-230.1.

With this submission, we respectfully request to be placed on the next available Planning Board workshop agenda to discuss the project with the Planning Board. Please contact me if you have any questions or require any additional information.

Respectfully,

A handwritten signature in dark ink, appearing to read "William R. Walsh, III". The signature is fluid and cursive, with the last name "Walsh" being more prominent.

William R. Walsh, III, PE  
Walsh Engineering Associates, Inc.

enc. Proposed Zoning Ordinance Text Change

cc. Jon Hynes, President, U-Haul Moving and Storage Co. of New Hampshire and Maine  
John Loranger, U-Haul Moving and Storage Co. of New Hampshire and Maine



**Zoning Map/Text Amendment/Contract or Conditional  
Rezoning Application  
Portland, Maine**

Planning and Urban Development Department  
Planning Division

Portland's Planning and Urban Development Department coordinates the review of requests for zoning map amendments, zoning text amendments and contract or conditional re-zoning. The Division also coordinates site plan, subdivision and other applications under the City's Land Use Code. Attached is the application form for a Zone Change.

Portland's development review process and requirements are outlined in the Land Use Code (Chapter 24) which is available on our website:

Land Use Code: <http://me-portland.civicplus.com/DocumentCenter/Home/View/1080>

Design Manual: <http://me-portland.civicplus.com/DocumentCenter/View/2355>

Technical Manual: <http://me-portland.civicplus.com/DocumentCenter/View/2356>

Planning Division  
Fourth Floor, City Hall  
389 Congress Street  
(207) 874-8719

Office Hours  
Monday thru Friday  
8:00 a.m. - 4:30 p.m.

PROJECT NAME: Uhaul Facility

PROPOSED DEVELOPMENT ADDRESS:

425 Marginal Way, Portland, Maine

PROJECT DESCRIPTION:

The Applicant is proposing a Text Change such that self-storage is an allowed use on the subject property.

CHART/BLOCK/LOT: 8/A/5

CONTACT INFORMATION:

|                                                                                                                                                                                                                                                                           |                                                                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Applicant — must be owner, Lessee or Buyer</p> <p>Name: Jon Hynes, President<br/>U-Haul International, Inc.</p> <p>Business Name, if applicable: U-Haul Co. of N.H. &amp; ME</p> <p>Address: 515 South Willow St</p> <p>City/State: Manchester, NH Zip Code: 03103</p> | <p>Applicant Contact Information</p> <p>Work # 603-627-9182</p> <p>Home#</p> <p>Cell # 413-237-3048 Fax#</p> <p>e-mail: 790_EA@uhaul.com</p> |
| <p>Owner — (if different from Applicant)</p> <p>Name: Same as Applicant</p> <p>Address:</p> <p>City/State: Zip Code:</p>                                                                                                                                                  | <p>Owner Contact Information</p> <p>Work # Same as Applicant</p> <p>Home#</p> <p>Cell # Fax#</p> <p>e-mail:</p>                              |
| <p>Agent/ Representative</p> <p>Name: William Walsh, III, PE<br/>Walsh Engineering Associates, Inc.</p> <p>Address: 1 Karen Drive, Suite 2A</p> <p>City/State: Westbrook, ME Zip Code: 04092</p>                                                                          | <p>Agent/Representative Contact Information</p> <p>Work # 207-553-9898</p> <p>Cell # 207-650-8855</p> <p>e-mail: bill@walsh-eng.com</p>      |
| <p>Billing Information</p> <p>Name: Jon Hynes, President<br/>U-Haul Co. of N.H. &amp; ME</p> <p>Address: 515 South Willow St</p> <p>City/State: Manchester, NH Zip Code:</p>                                                                                              | <p>Billing Information</p> <p>Work # 603-627-9182</p> <p>Cell # 413-237-3048 Fax#</p> <p>e-mail: 790_EA@uhaul.com</p>                        |

|                                                                                                                                                                        |                                                                                                                              |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------|
| <b>Engineer</b><br>Name: William Walsh, III, PE<br>Name: Walsh Engineering Associates, Inc.<br>Address: 1 Karen Drive, Suite 2A<br>City/State: Westbrook, ME Zip Code: | <b>Engineer Contact Information</b><br>Work # 207-553-9898<br>Cell # 207-650-8855 Fax#<br>e-mail: bill@walsh-eng.com         |
| <b>Surveyor</b><br>Name: Bruce Martinson, PLS<br>Name: Sitelines, PA<br>Address: 8 Cumberland Street<br>City/State: Brunswick, ME Zip Code:                            | <b>Surveyor Contact Information</b><br>Work # 207-725-1200<br>Cell # Fax# 207-725-1114<br>e-mail: bmartinson@sitelinespa.com |
| <b>Architect</b><br>Name:<br>Address:<br>City/State: Zip Code:                                                                                                         | <b>Architect Contact Information</b><br>Work #<br>Cell # Fax#<br>e-mail:                                                     |
| <b>Attorney</b><br>Name:<br>Address:<br>City/State: Zip Code:                                                                                                          | <b>Attorney Contact Information</b><br>Work #<br>Cell # Fax#<br>e-mail:                                                      |

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

The property is currently owned by the Applicant. The deed is attached.

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

Existing Use: Describe the existing use of the subject property:

The property and existing building is currently being used by the Applicant for warehousing and equipment storage. A site plan application (Project ID #2014-184) was approved by the City on October 24, 2015 for exterior site improvements not related to the proposed text change.

Current Zoning Designation(s): B-5 Urban Commercial Zone

**Proposed Use of Property:** Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

The Applicant is proposing to use the site as a self-storage facility, warehousing, and outdoor storage of moving equipment rentals. The applicant proposes a text change to Section 14-230.1 to include "Self Storage Facilities" and "Moving equipment rental and outdoor storage" as allowed uses within the B-5 zone, on-peninsula only. No additional exterior site improvements are proposed other than what was approved per Project ID #2014-184.

**Site Plan:** On a separate sheet, please provide a site plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 50'.) Contract and conditional rezoning applications may require additional site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

#### APPLICATION FEES:

Check all reviews that apply. (Payment may be made by Credit Card, Cash or Check payable to the City of Portland.)

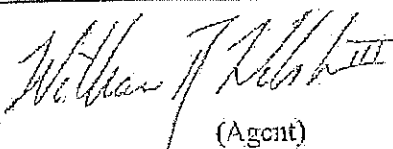
|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Zoning Map Amendment<br/>         ____ \$2,000.00 (from ____ zone to ____ zone)</p> <p>Zoning Text Amendment<br/> <input checked="" type="checkbox"/> \$2,000.00 (to Section 14-230.1)<br/>         (Fee paid with previous submission)</p> <p>Combination Zoning Text Amendment and Zoning Map Amendment<br/>         ____ \$3,000.00</p> <p>Conditional or Contract Zone<br/>         ____ \$3,000.00<br/>         (A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)</p> | <p>The City invoices separately for the following:</p> <ul style="list-style-type: none"> <li>• Notices (\$.75 each)</li> <li>• Legal Ad (% of total Ad)</li> <li>• Planning Review (\$40.00 hour)</li> <li>• Legal Review (\$75.00 hour)</li> </ul> <p>Third party review fees are assessed separately. Any outside reviews or analysis requested from the Applicant as part of the development review, are the responsibility of the Applicant and are separate from any application or invoice fees.</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**APPLICATION SUBMISSION:**

1. All plans and written application materials must be submitted electronically on a CD or thumb drive with each plan submitted as separate files, with individual file names which can be found on the **Electronic Plan and Document Submittal** page of the City's website at <http://me-portland.civicplus.com/764/Electronic-Plan-and-Document-Submittal>
2. The submission shall include the following materials:
  - a. One (1) paper set of the zoning amendment application, concept plan and written narrative.
  - b. Contract and conditional rezoning applications must include site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations and compatible with the surrounding neighborhood.

**APPLICANT SIGNATURE:**

I hereby certify that I am the Owner of record of the named property, or that the owner of record authorizes the proposed work and that I have been authorized by the owner to make this application as his/her authorized agent. I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in this application is issued, I certify that the Planning Authority and Code Enforcement's authorized representative shall have the authority to enter all areas covered by this permit at any reasonable hour to enforce the provisions of the codes applicable to this permit.

|                    |                                                                                                |                  |
|--------------------|------------------------------------------------------------------------------------------------|------------------|
| Signature of Appli | <br>(Agent) | Date:<br>7/31/15 |
|--------------------|------------------------------------------------------------------------------------------------|------------------|

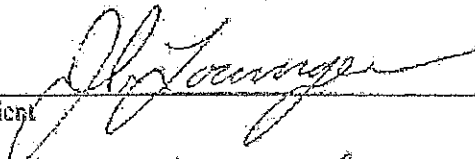
A-7

Date:

To Whom It May Concern,

By this letter, the undersigned authorizes Walsh Engineering Associates, Inc. to act as the agent for the undersigned in the preparation and submission of all Federal, State, and Local City permit applications and relevant documents and correspondence for all necessary permits for the site improvements at 425 Marginal Way, Portland, Maine; to attend meetings and site visits; to appear before all boards, commissions, and committees, and to provide such other services as are necessary and appropriate in furtherance of the aforementioned project.

Sincerely,

  
Client

John LORANGER  
U-Haul Company of NH & MAINE  
515 South Willow Street  
MANCHESTER N.H. 03103

A-8

Doc# 60235 BR#31051 Pg# 28

MAINE REAL ESTATE TAX PAID

**WARRANTY DEED**  
**(Maine Statutory Short Form)**

KNOW ALL PERSONS BY THESE PRESENTS, that AAA Northern New England, a Maine nonprofit mutual benefit corporation, Grantor, whose mailing address is 68 Marginal Way, Portland, Maine 04101, for consideration paid, hereby GRANTS to Five SAC Self-Storage Corporation, a Nevada corporation, Grantee, whose mailing address is 1250 E. Missouri, Phoenix, Arizona 85014, with WARRANTY COVENANTS, the land with buildings thereon situated at 425 Marginal Way, City of Portland, County of Cumberland, State of Maine, described as follows:

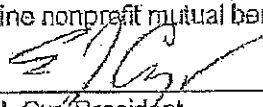
See attached Exhibit A

This conveyance is made subject to easements, covenants, conditions and restrictions of record, if any.

IN WITNESS WHEREOF, said Grantor has caused this instrument to be signed in its company name by Eric J. Cyr, its President pursuant to due authority, this 24th day of September, 2013.

AAA Northern New England,  
a Maine nonprofit mutual benefit corporation

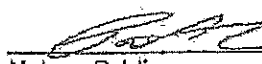
X

  
Eric J. Cyr, President

STATE OF MAINE  
COUNTY OF CUMBERLAND

Then personally appeared the above named Eric J. Cyr, President of AAA Northern New England and acknowledged the foregoing instrument to be his free act and deed in his capacity and the free act and deed of said corporation.

Before me:

  
Notary Public

Printed Name: Patrick Moody

PATRICK MOODY  
Notary Public, Maine  
My Commission Expires June 04, 2016

SEAL

**Exhibit A**  
**Legal Description**

Real property in the City/Town of Portland, County of Cumberland, State of Maine, described as follows:

**Parcel One:**

A certain lot or parcel of land, situated in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning on the easterly side line of Marginal Way at the point of curve of the first curve in Marginal Way northerly of Plowman Street; thence southerly along the easterly side line of Marginal Way, a distance of seventy-six and seven tenths (76.7) feet to another point of curve, being the junction of the easterly side line of Marginal Way with the northerly side line of Plowman Street; thence southerly and easterly, along a curve in the northerly side line of Plowman Street, a distance of seventy-six and ninety-seven one-hundredths (76.97) feet, measured on the arc, to the point of tangent of the aforementioned curve; thence easterly along the northerly side line of Plowman Street, a distance of one hundred thirty (130) feet, more or less, to the westerly side line of land of the Portland Terminal Company, hereinafter called "Railroad Location;" thence northerly along the westerly side line of said Railroad Location, a distance of seventy-three (73) feet, more or less, to a point of curve in the westerly side line of said Railroad Location; thence northerly along the westerly side line of said Railroad Location, following a curve thereon, a distance of one hundred fifty-seven and eight one-hundredths (157.08) feet, more or less, to the point of tangent of the aforementioned curve; thence northerly along the westerly side line of said Railroad Location, a distance of two hundred nineteen and ninety-three one-hundredths (219.93) feet, more or less, to the easterly side line of land of the State of Maine; thence southwesterly, making an included angle of  $25^{\circ} 30'$  through the South with the southerly direction of the last described course and on the line of land of the State of Maine, a distance of seventy and four tenths (70.4) feet to a granite monument; thence southwesterly, making a deflection angle of  $23^{\circ} 08'$  to the right and along the line of land of the State of Maine, a distance of forty-six and nine tenths (46.9) feet to a point; thence westerly, making a deflection angle of  $23^{\circ} 51'$  to the right, a distance of sixty-one and thirty-eight one-hundredths (61.38) feet to the easterly side line of Marginal Way; thence southerly along the easterly side line of Marginal Way, a distance of one hundred sixty-two and eleven one-hundredths (162.11) feet to the point of beginning.

**Parcel Two:**

Also another parcel of land, bounded and described as follows:

Beginning at a point in a curve on the northerly side line of Plowman Street, distant twenty-eight and seventy-five one-hundredths (28.75) feet, more or less, from the point of curve of said curve in the northerly side line of Plowman Street nearest its junction with the westerly side line of Anderson Street; thence easterly along the curve in said northerly side line of Plowman Street to the westerly side line of Anderson Street; thence along the westerly side line of Anderson Street to land of the State of Maine; thence westerly by land of the State of Maine to a granite monument; thence westerly from said monument and on the same course to the easterly side line of land of the Portland Terminal Company; thence southerly by land of the Portland Terminal Company to the northerly side line of Plowman Street at the point of beginning.

Excepting from the above described premises such portion thereof as was conveyed by the Maine Automobile Association to the State of Maine by deed dated November 28, 1973, and recorded in said registry in Book 3488, Page 279.

2. Low impact industrial uses with total floor area of less than ten thousand (10,000) square feet and which meet the performance standards of the I-L zone;

3. Breweries, including associated bottling activities.

(c) Marine:

INSERT: 4. Self Storage Facilities (on-peninsula)  
5. Moving equipment rental and outdoor storage (on-peninsula)

3. Harbor and marine supplies and services and ship supply;
4. Reserved;
5. Shipbuilding and facilities for construction, maintenance and repair of vessels;
6. Marine museums and aquariums;
7. Reserved;
8. Boat repair yards;
9. Boat storage facilities;
10. Seafood processing for human consumption;
11. Seafood packing and packaging;
12. Seafood distribution;

(d) Residential:

1. Attached single-family, two-family and multifamily dwellings;
2. Handicapped family units;
3. Lodging houses;
4. Combined living/working spaces, including but not limited to artist residences with studio space.