

28-J-15

863

137 Newbury St.

Zone change

Luke MacFadyen

on Spreadsheet

**CITY OF PORTLAND, MAINE  
CITY COUNCIL AGENDA REQUEST FORM**

**TO:** Sonia Bean, Senior Administrative Assistant  
**FROM:** Sarah Hopkins, Development Review Services Manager  
**DATE:** March 7, 2006  
**SUBJECT:** Agenda Request Re: Rezoning of 137 Newbury Street  
Sponsored by: Planning Board

- 1) Council Meeting at which action is requested:

1<sup>st</sup> Reading: March 22, 2005  
Final Action: April 3, 2006

Submission Deadlines:

- 1 electronic copy of packet due 2 weeks prior to Council meeting date for the agenda meeting
- 5 hard copies due the Thursday before the Council meeting

- 2) Can action be taken at a later date? x YES \_\_\_ NO

**I. SUMMARY OF ISSUE**

The Planning Board is forwarding a recommendation for the rezoning of property located at 137 Newbury Street. The property is owned by Luke McFadyen and is currently subject to a conditional zone. The applicant's intent is to have the property subject to less restriction on use.

The Planning Board recommends a rezoning to the B-1b zone, given the surrounding uses.

**II. REASON FOR SUBMISSION**

The rezoning will allow the first floor of the building to be used for B1 uses while maintaining the upper floors for residential use.

**III. INTENDED RESULT**

See above.

**IV. FINANCIAL IMPACT**

None.

**V. STAFF ANALYSIS & RECOMMENDATION**

The Planning Board voted unanimously to recommend the rezoning to City Council.

- 3) Index of Supplemental Material

Planning Report #04-06B

**PLANNING REPORT # 04-06B**

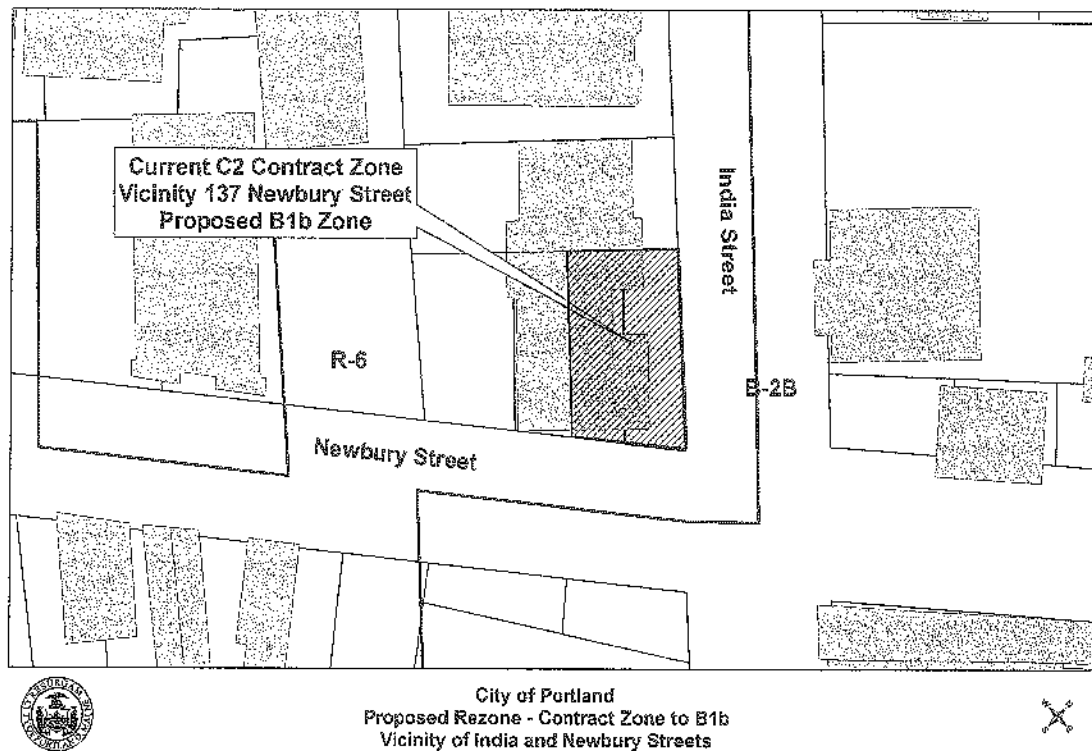
**ZONING AMENDMENT  
C2 CONDITIONAL ZONE TO B1-B ZONE  
INDIA STREET BETWEEN NEWBURY AND FEDERAL  
LUKE MACFADYEN, APPLICANT**

Submitted to:  
Portland City Council  
March 7, 2006

Submitted by  
Portland Planning Board

The Planning Board is forwarding a recommendation for the rezoning of property located at 137 Newbury Street. The property is owned by Luke McFadyen and is currently subject to a conditional zone. The applicant's intent is to have the property subject to less restriction on use.

The Planning Board recommends a rezoning to the B-1b zone, given the surrounding uses.



## I. Project Summary

Applicant: Luke Macfadyen  
15 Howard Street  
Portland, ME 04101

Location: 137 Newbury Street

Current Zoning: Conditional B1 Zone C2

Proposed Zoning: B1b Zone



## **II. Project Background and Description**

On January 3, 1990, the property at 137 Newbury Street was conditionally rezoned from R6 to a Conditional B1 Zone (C2). The intent of the rezoning, as expressed in a December 5, 1989 memo from a then Assistant City Manager to the City Manager, was to, "...maintain the residential uses on the upper floors of the building while allowing business uses on the first floor".

The range of business uses allowed was limited first floor retail by the conditions of the rezone as follows (from Conditional Zone C2, Attachment C):

- The first floor uses shall be limited to retail uses.
- The first floor shall have no more than two (2) retail uses.

While zoning in the area has undergone some changes since 1990, the subject site (Zone C2) is still situated in what otherwise continues to be an R6 zone. The B2b zone covers the opposite side of India Street (Attachment H).

The applicant has indicated that the first floor use restrictions of C2 have made it difficult for him to keep first floor tenant spaces occupied. The applicant cites turning away potential tenants due to zoning determinations against their desired use.

## **III. Planning Board Discussion**

Planning Board members discussed their preference to remove the conditional zoning for the site, and rezone the property as a B-1b zone. The Planning Board also considered rezoning the length of India Street, between Newbury and Federal as a B-1b zone for discussion purposes, but during the public hearing, voted against the larger area.

## **IV. Policy Considerations/Consistency with the Comprehensive Plan**

The India Street corridor is rapidly changing as shown in the Eastern Waterfront Master Plan and recent development projects. The introduction of a mixed-use hotel, condominium, retail complex two blocks south of the parcel attests to the changing nature of the area, as does the proposed Village redevelopment and Longfellow mixed-use project to the east.

The original conditional rezoning of the property was approved when the B-1b zone did not yet exist. In fact, a number of similar conditional rezonings in the India Street neighborhood prompted the adoption of the B-1b zone.

As stated in the purpose statement of the B-1b zone:

*The purpose of the B-1b neighborhood business zone is to provide appropriate opportunities for the establishment of smallscale ground floor commercial uses in existing buildings, serving a local market, while preserving residential uses and character above the ground floor of structures. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3).*

*Suitable locations for this zone may include street intersections, arterial streets, and sites with existing or traditional neighborhood retail and service uses.*

Also, as stated in the permitted use section, the zone maintains the requirement for upper story residential uses, while allowing business and personal uses on the ground floor. Moreover, the B-1b zone allows residential uses on the ground floor, as well.

Such a concept of requiring residential uses above business uses along transportation corridors is recommended by the Housing Plan and Transportation Plan sections of the City's Comprehensive Plan.

#### **V. Planning Board Recommendation**

The Planning Board voted unanimously to recommend a rezoning to the B-1b zone to the City Council for the property located at 137 Newbury Street.

#### **VI. Motions for the City Council to Consider**

On the basis of plans and materials submitted by the applicant and included in Planning Report #04-06B, the City Council finds the rezoning of 137 Newbury Street to be [consistent/inconsistent] with the City's Comprehensive Plan and therefore adopts the zoning amendment.

#### **Attachments**

- A. Application
- B. Property Deed
- C. Conditional B1 Rezone C2
- D. 1989 Council Agenda Request
- E. Planning Board Report #84-89, December 1989
- F. Site Photo
- G. B1b Zoning Text
- H. Zoning Map



City of Portland, Maine  
Department of Planning and Development  
Zone Change Application

Application ID: 863 Application Date: 10/03/2005 CBL: 028 J015001 Property Location: 137 Newbury St

**Applicant Information:**

Macfadyen Luke  
Name

Business Name

15 Howard St  
Address

Portland, ME 04101  
City, State and Zip

207-871-1075

Telephone

Fax

**Applicant's Right, Title or Interest in Subject Property:**

**Current Zoning Designation:** C2

**Existing Use of Property:**

4 condominiums, 2 retail (1st floor) and 2 residential  
(2nd and 3rd floors).

**Proposed Use of Property:**

Broaden allowable retail uses for the two retail units.

**Property Owner:**

Macfadyen Luke  
Name

15 Howard St  
Address

Portland, ME 04101  
City, State and Zip

Telephone

Fax

Amendment A ☒ B1b

Amendment B ☐

Amendment C ☐

Section 14: \_\_\_\_\_

Requested:

(A1)

**Planning Approval**

REVIEW TYPE: Committee Review

RECOMMENDATION DATE: \_\_\_\_\_ APPROVAL DATE: \_\_\_\_\_ ENACTMENT DATE: \_\_\_\_\_



APPLICATION FOR ZONING AMENDMENT  
City of Portland, Maine  
Department of Planning and Development  
Portland Planning Board

1. Applicant Information:

LUKE G. MACFADYEN

Name

15 Howard St.

Address

Portland Me

871-1075

Phone

Fax

2. Subject Property:

(137 Newbury St) #70 + #72 India

Address

Portland ME

028-J-015

Assessor's Reference (Chart-Block-Lot)

3. Property Owner: ☒ Applicant ☐ Other

Name

ABOVE

Address

Phone

Fax

4. Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property.

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.)

5. 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.)

6. Existing Use:

Describe the existing use of the subject property:

4 Condominiums  
2 Retail (1st Floor)  
2 Residential (2nd - 3rd Floors)

7. Current Zoning Designation(s): Conditional B1

8. 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.

Broaden Allowable Retail Uses for the two  
Retail Units.

9. Sketch Plan: On a separate sheet please provide a sketch 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"=100'.)

10. Proposed Zoning: Please check all that apply:

A. ☒ Zoning Map Amendment, from CBI to B1B

B. ☐ Zoning Text Amendment to Section 14-

For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).

C. ☐ Conditional or Contract Zone

A conditional or contract rezoning may 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 and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

11. **Application Fee:** An Application Fee must be submitted by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below). The applicant also agrees to pay all costs of publication (or advertising) of the Workshop and Public Hearing Notices as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

✓ Fee for Service Deposit (\$200.00)  
(Required for all applications in addition to the applicable application fee listed below)

---

✓ Zoning Map Amendment \$2,000.00  
Zoning Text Amendment \$2,000.00  
Contract/Conditional Rezoning  
Under 5,000 sq. ft. \$1,000.00  
5,000 sq. ft. and over \$3,000.00  
Legal Advertisements percent of total bill  
Notices .55 cents each  
(receipt of application, workshop and public hearing)

NOTE: Legal notices placed in the newspaper for the public hearing meeting are required by State Statute and local ordinance. Applicants will be billed by the Planning Division.

12. **Signature:** The above information is true and accurate to the best of my knowledge.

9/23/05  
Date of Filing

Mike S. [Signature]  
Signature of Applicant

**Further Information:**

Please contact the Planning Division for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board  
Portland, Maine

Effective: July 6, 1998

A4

## EXHIBIT A

BK 1441 PG 057

A certain lot or parcel of land with the buildings thereon, situated on the westerly corner of India and Newbury Streets in the Portland, County of Cumberland and State of Maine, and being numbered 137 on said Newbury Street and 72 on said India and bounded and described as follows:

Beginning at the stone monument at said westerly corner of India and Newbury Streets; thence running southwesterly by said Newbury Street, twenty-three (23) feet and four (4) inches to a point in line with the center of the partition wall of the two li standing on the premises; thence northwesterly through the center of said partition wall and continuing in the same direction seventy-two (72) feet and four (4) inches in all to land formerly of Mary Demery; thence northeasterly by said Demery; twenty-two (22) feet and one and one-half (1.5) inches to said India Street; thence southeasterly by said India Street, seven (7) feet and seven (7) inches to the point of beginning.

CZ

BI

RECEIVED  
RECORDS & CLERK OF DEED

BK14411PG056

91824

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS

THAT, Samuel T. Minervino and Robert M. Minervino and Albert J. Aceto of 137 Newbury St., County Cumberland, State of Maine for consideration paid, grant to Luke MacFadyen of 19 Howard St., Portland, County Cumberland, State of Maine, with WARRANTY COVENANTS, the land in Portland, County of Cumberland, Maine, described as follows:

See Exhibit A attached hereto and made a part hereof

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of December, 1998.

MAINE REAL ESTATE TAX PAID

*[Signature]*  
Witness

*[Signature]*  
Samuel T. Minervino

*[Signature]*  
Robert M. Minervino

*[Signature]*  
Albert J. Aceto

STATE OF Maine  
COUNTY OF Cumberland

On this 17th day of December, 1998, personally appeared before me the above-named Samuel T. Minervino, Robert M. Minervino and Albert J. Aceto, and acknowledged the foregoing to be his/her free act and deed.

*[Signature]*  
Notary Public/Attorney at Law  
John E. Stetson

My Commission Expires:

*[Signature]*

B2



C2

City of Portland, Maine  
IN THE CITY COUNCIL

(16)197-12/18/89

AMENDMENT TO ZONING MAP  
RE: CONDITIONAL B-1 REZONING  
137 NEWBURY 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 March 1958, 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 map change amendment shown on Attachment 1.

Said rezoning shall be subject to the following conditions:

1. The second and third floors shall be maintained as residential uses.
2. The first floor uses shall be limited to retail uses.
3. The first floor shall have no more than two (2) retail uses.
4. The storefront shall be on India Street and the storefront design shall be compatible with neighboring properties on India Street. Stairs to the storefront shall be reviewed by Planning Staff for compatibility.
5. The exterior stairs above the first floor shall be reviewed for compliance with zoning.
6. The applicant shall record the approved conditions of rezoning in the Cumberland County Registry of Deeds and shall submit proof of recording to the Planning Authority.
7. The signage for the retail use shall be appropriate for a small scale retail use.
8. This conditional rezoning shall remain in effect only as long as this building exists on this property and shall not apply to any other structure.

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the subject

B-1INDNEWBZONING.AMD.NLB.001  
12.1.89

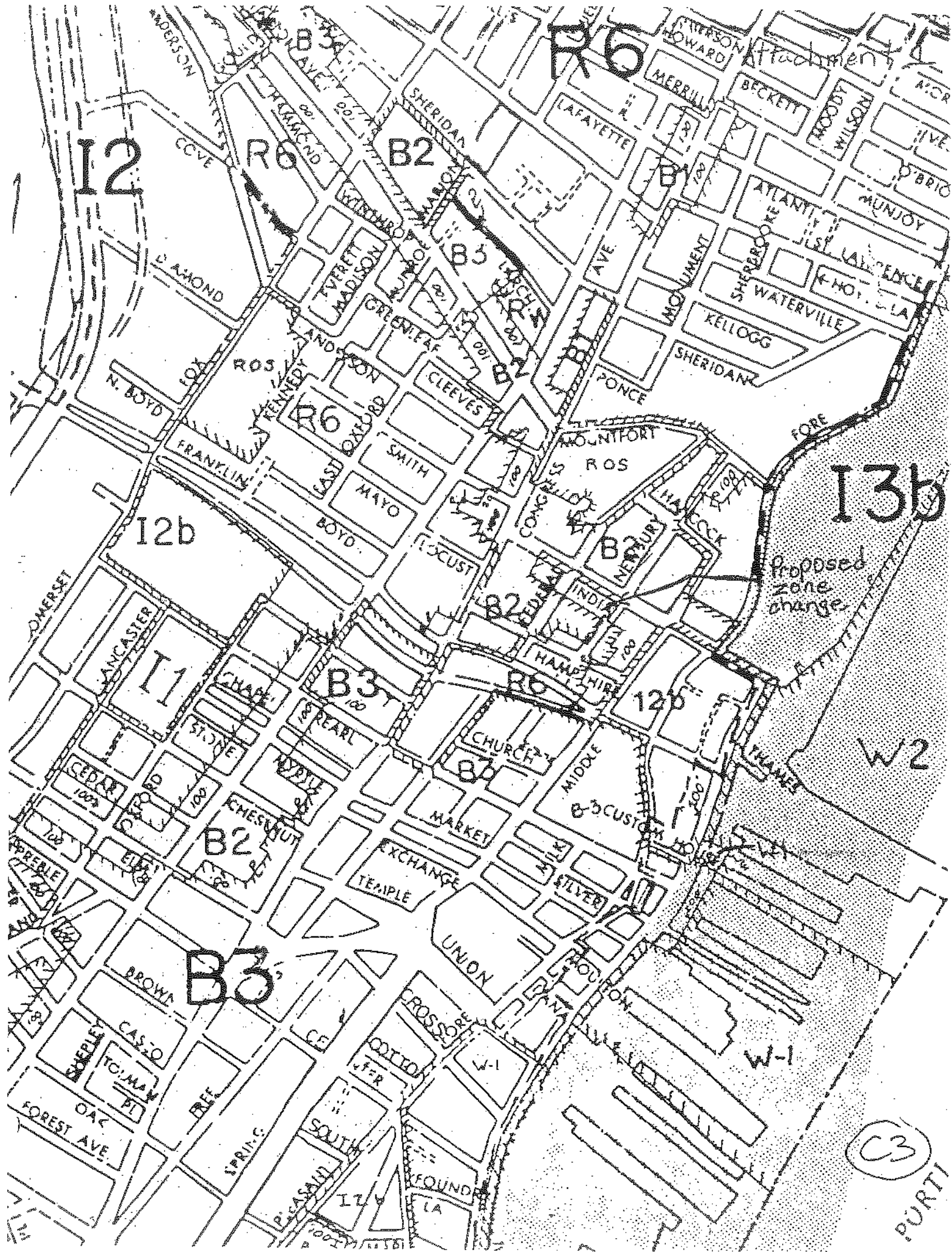
C1

premises, shall bind the owner, its successors and assigns, of said property or any part thereof or interest therein, and any party in possession or occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by the City of Portland, by and through its duly authorized representatives.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event of a breach of any condition(s), the developer shall apply for a modification to the concept plan. The Planning Board will attempt to resolve the issues resulting in the breach. That resolution may include a recommendation to the City Council that the site be rezoned to R-6.



CITY OF PORTLAND, MAINE  
MEMORANDUM

TO: Nadeen M. Daniels, Assistant to the City Manager  
FROM: Joseph E. Gray, Jr., Director of Planning and Urban Development  
DATE: December 5, 1989  
SUBJECT: Minervino Conditional Rezoning

Please place this item on the next available Council agenda:

The conditional rezoning of 137 Newbury Street, from R-6 Residential to B-1 Business.

Background

On November 28, 1989 the Portland Planning board voted 7-0 to recommend to the City Council the conditional rezoning from R-6 Residential to B-1 Business, of a 3 story building located at 137 Newbury Street. The building is a duplex, with the applicants lot being 1,449 sq. ft. and the building being 4,026 sq. ft. The building is shown in a photograph, which is attachment 4 in Planning Report #84-89. The proposed storefront is depicted in a drawing included as attachment 5.

The conditions are intended to maintain residential uses in the upper floors of the building while allowing business uses on the first floor. The specific conditions and penalty section is included in the report.

Attachments

1. Council Order and Map
2. Planning Report #84-89

(D)

CONDITIONAL REZONING

137 NEWBURY STREET

SAMUEL MINERVINO, APPLICANT

Submitted by:

Portland Planning Board  
Portland, Maine

December 12, 1989

(E1)

## I. Introduction

Samuel Minervino is requesting a conditional rezoning, from R-6 Residential to B-1 Business, for the first floor of a building located at 137 Newbury Street. The 1,449 sq. ft. lot contains a 4,026 sq. ft., 3 story, brick building. The building is shown in a photograph, included as Attachment 4. The property owned by the applicant fronts on India Street. A vicinity map and letter from the applicant is included as Attachments 1 and 2.

Public notice for this project consisted of legal advertisements in the Guy Gannett Newspaper, notice to area residents and property owners, a notice posted in the City Clerk's office, and a placard displayed on site.

## II. Summary of Findings

Zoning	R-6 Residential
Land Area	1,449 sq. ft.
Total Square Footage	4,026 sq. ft.
Number of Stories	3
Land Uses	The building is located in a narrow strip of R-6 Residential, surrounded on 3 sides by business uses. The recently approved 73 India Street, 18,000 sq. ft. office and retail is across India Street.

## III. Planning Board Review

The India Street area has undergone a transition from a predominately residential area to one dominated by business uses along India Street with a small residential neighborhood remaining between India and Franklin Streets. Residential uses along India Street have gradually given way to commercial uses. Such uses, along with the 24 Hour Club, have affected the marketability of residential uses. The Board has recognized that the remaining residential uses, especially in the upper floors of buildings in the area, are a valuable housing resource. Given the failure of residential uses on the ground floor, the best way of balancing the preservation of the residential character, and allowing for some small scale retail uses which will provide a return from the property, is conditional rezoning. This action would allow for compatability with the Land Development Plan since it retains dwelling units, and will allow for repairs and improvements to the building.

This project originally came to the Board as a conventional zone change request, from R-6 to B-1. At the September 26 workshop, the Board expressed their concern with preserving the residential character of the neighborhood, but also communicated the willingness to review a conditional rezoning request. At a subsequent workshop, the Board examined a list of potential conditions. The conditions are designed to maintain residential uses in the second and third floors while

ensuring that the retail uses are compatible with the B-1 zone and the surrounding neighborhood. The applicant will be making some repairs and improvements to the building, specifically at the proposed storefront entrance. The improvements here consist of a detailed entryway with a porch and railings. A reduction of a rendering of the India Street facade of the building is included as Attachment 5. The conditions and penalties of the rezoning are:

1. The second and third floors shall be maintained as residential uses.
2. The B-1 Business zone on the first floor shall be limited to retail uses.
3. The first floor shall have no more than 2 retail uses.
4. The storefront shall be on India Street and the storefront design shall be compatible with neighboring properties on India Street.
5. The exterior stairs shall be reviewed by Planning Staff for compatibility with zoning.
6. The applicant shall record the approved conditions of rezoning in the Cumberland County Registry of Deeds and submit proof of recording to the Planning Authority.
7. The signage for the retail use shall be appropriate for a small scale retail use.
8. This conditional rezoning shall remain in effect only so long as this building exists on this property and shall not apply to any other structure

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with subject premises, shall bind the owner, its successors and assigns, of said property or any part thereof or interest therein, and any party in possession of occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by, the City of Portland, by and through its duly authorized representatives.

If any of the restrictions, provisions, conditions or portions thereof set forth herein is for any reason held invalid or unconstitutional any court of competent jurisdictions, such portion shall be deemed, as separate, distinct and independent provision and such determination shall not affect the validity of remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event of a breach of any condition(s), the developer shall apply for the modifications to the approved plan. The Planning Board will attempt to resolve the issues resulting in the breach. That resolution may include a recommendation to the City Council that the site be rezoned to R-6.

E3

#### IV. Findings of the Planning Board

At the November 28, 1989 public hearing, the Planning Board voted 7-0 on the following motion with conditions:

On the basis of plans and materials submitted by the applicant and on the basis of information contained in Planning Report #77-89 relevant to standards for conditional rezoning, Section 14-60 and/or other findings as follows:

That the Planning Board recommends the conditional rezoning of 137 Newbury Street from R-6 to B-1 subject to the following conditions:

1. The second and third floors shall be maintained as residential uses.
2. The B-1 Business zone on the first floor shall be limited to retail uses.
3. The first floor shall have no more than 2 retail uses.
4. The storefront shall be on India Street and the storefront design shall be compatible with neighboring properties on India Street; and stairs to the storefront shall be compatible and reviewed by the staff.
5. The exterior stairs shall be reviewed by Planning Staff for compatibility with zoning.
6. The applicant shall record the approved conditions of rezoning in the Cumberland County Registry of Deeds and submit proof of recording to the Planning Authority.
7. The signage for the retail use shall be appropriate for a small scale retail use.
8. This conditional rezoning shall remain in effect only so long as this building exists on this property and shall not apply to any other structure.

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with subject premises, shall bind the owner, its successors and assigns, of said property or any part thereof or interest therein, and any party in possession of occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by, the City of Portland, by and through its duly authorized representatives.

If any of the restrictions, provisions, conditions or portions thereof set forth herein is for any reason held invalid or unconstitutional any court of competent jurisdictions, such portion shall be deemed, as separate, distinct and independent provision and such determination shall not affect the validity of remaining portions hereof.

(E4)



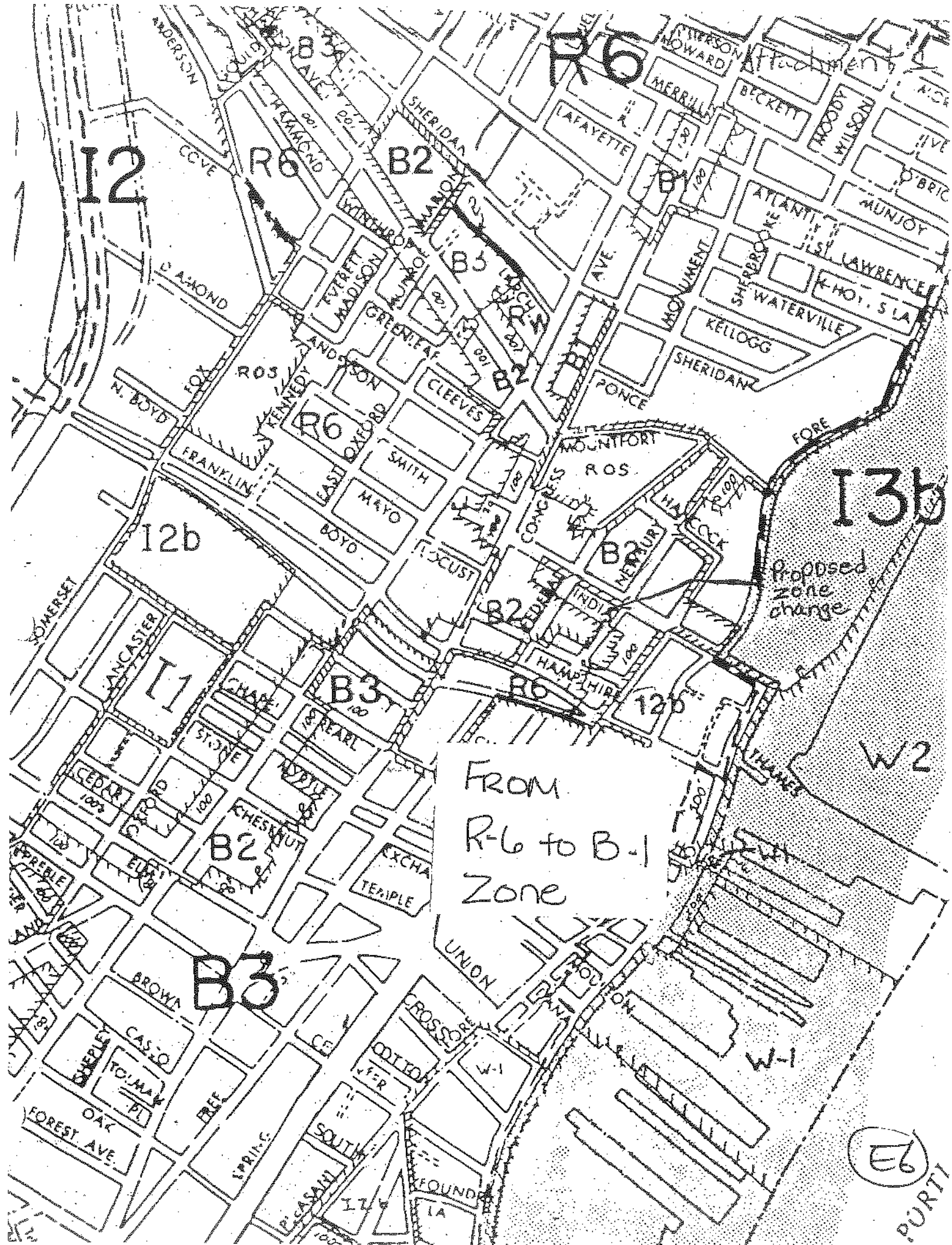
Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event of a breach of any condition(s), the developer shall apply for the modifications to the approved plan. The Planning Board will attempt to resolve the issues resulting in the breach. That resolution may include a recommendation to the City Council that the site be rezoned to R-6.

Attachments

1. Vicinity Map
2. Applicant's Letter
3. Site Plan
4. Photograph of Building
5. Reduction of Rendering

ES



I2

R6

R6

B2

12b

I3b

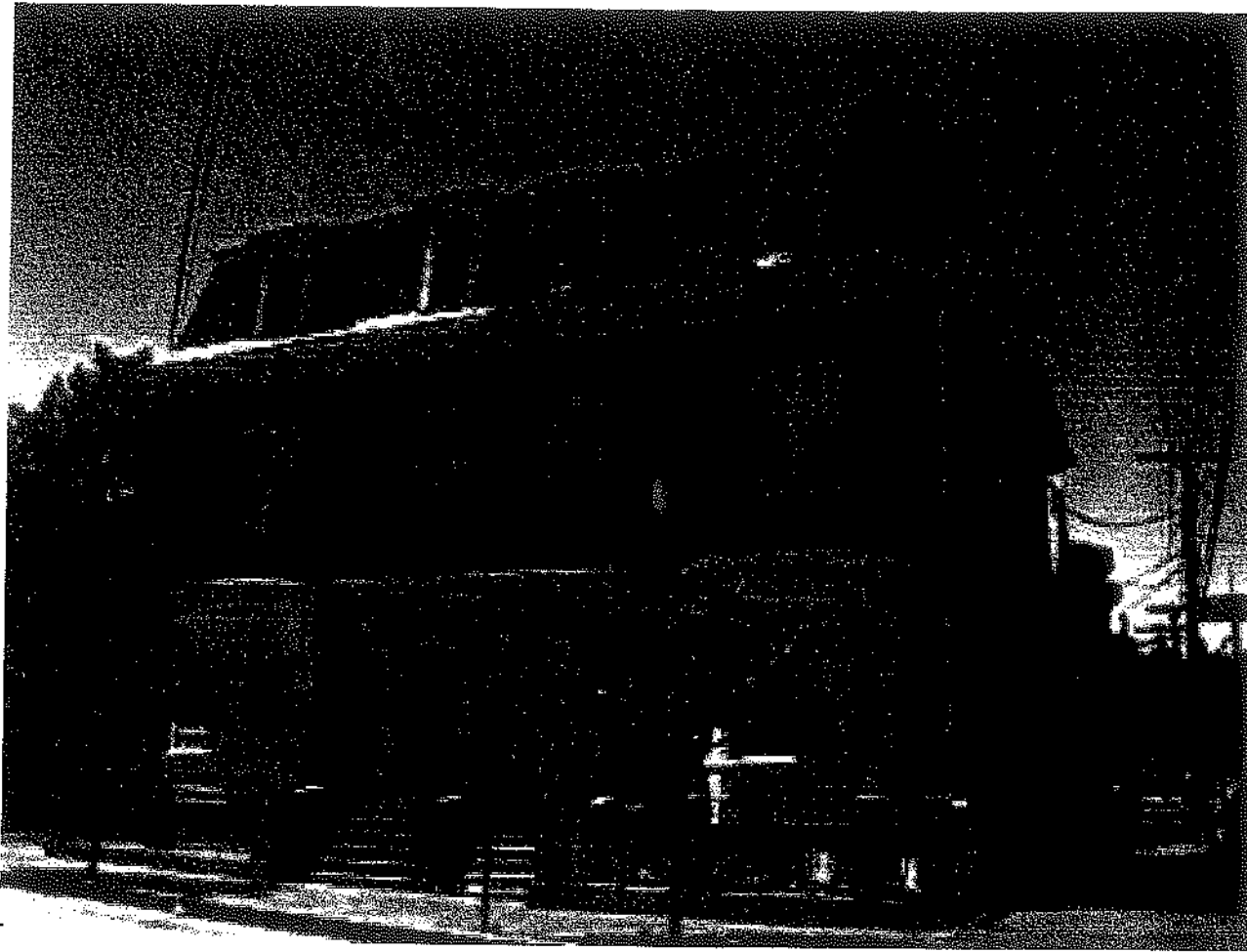
Proposed  
zone  
change

FROM  
R-6 to B-1  
Zone

W2

B3

E6  
PORT



(F)

- (c) Loading areas shall be screened and parking areas shall be screened and landscaped so as to avoid a large continuous expanse of paved area.
- (d) Buildings and structures shall be sited to avoid obstructing significant scenic views presently enjoyed by nearby residents, passersby, and users of the site.
- (e) Storage of commodities and equipment shall be completely enclosed within buildings or provided with screening by a fence, wall, or landscaping.
- (f) The outer perimeter of playfields, playlots, and other active recreational areas shall be screened, or shall be located a reasonable distance from any residential use.
- (g) Off-street parking shall conform to the requirements of division 20 of this article, where applicable. Otherwise, off-street parking adequate to serve projected employee and visitor needs shall be provided. Parking needs projections provided by the applicant or the planning department should be considered in the review.

(Ord. No. 232-81, § 602.7B.6, 11-16-81)

**Sec. 14-159. Shoreland and flood plain management regulations.**

Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.

(Ord. No. 232-81, § 602.7B.7, 11-16-81; Ord. No. 15-92, § 15, 6-15-92)

**Sec. 14-160. Reserved.**

**DIVISION 9. B-1 AND B-1b NEIGHBORHOOD BUSINESS ZONES\***

-----  
\*Editor's note--Ord. No. 292-88, adopted Apr. 4, 1988, with an effective date of July 1, 1988, repealed §§ 14-161--14-167 of Div. 9, B-1 Business Zone, of this article and enacted in lieu thereof similar new provisions as set out in §§ 14-161--14-167. Formerly, such sections derived from §§ 602.8.A--602.8.G of the city's 1968 Code and from Ord. No. 74-72, adopted Mar. 6, 1972, and Ord. No. 499-74, § 4, adopted Aug. 19, 1974.  
-----

**Sec. 14-161. Purpose.**

**(a) B-1 Neighborhood Business Zone**

The purpose of the B-1 neighborhood business zone is to provide limited areas for the location of smallscale 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.

Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.

**(b) B-1b Neighborhood Business Zone**

The purpose of the B-1b neighborhood business zone is to provide appropriate opportunities for the establishment of smallscale ground floor commercial uses in existing buildings, serving a local market, while preserving residential uses and character above the ground floor of structures. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3).

Suitable locations for this zone may include street intersections, arterial streets, and sites with existing or traditional neighborhood retail and service uses.

(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 1, 11-15-93; Ord. No. 94-99, 11-15-99)

**Sec. 14-162. Permitted uses.**

(a) The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone. For

permitted uses in the upper stories of buildings in the B-1b zone, refer to subsection (5) below: in existence on November 15, 1993:

(1) *Residential*

- a. Any residential use permitted in the residential zone abutting the lot is permitted. If there is no abutting residential zone, any residential use permitted in the nearest residential zone to the lot is permitted. In the case of two (2) or more abutting residential zones, any residential use permitted in the most restrictive such zone is permitted.
- b. In any structure with commercial use on the first floor, multifamily dwellings are permitted above the first floor.

(2) *Business:*

- a. Professional offices, as defined in section 14-47, but excluding veterinarians.
- b. Business services, as defined in section 14-47, but excluding beverage container redemption centers.
- c. Personal services, as defined in section 14-47.
- d. Offices of building tradesmen, provided there is no exterior storage of building materials.
- e. Retail establishments, provided such do not include drive-through sales or services and do not operate between the hours of eleven (11) p.m. and six (6) a.m. and do not accept deliveries or services between the hours of ten (10) p.m. to seven (7) a.m.
- f. Beverage dealers (as defined in 32 M.R.S.A. 1862) provided they meet the following requirements:
  - 1. Maximum total floor area for beverage container redemptions, including the storage of spent beverage containers, shall be no

greater than five hundred (500) sq. ft. or ten (10) percent of the total floor area of the facility, whichever is less;

2. Beverage container redemption is an accessory use to a principal retail use that includes beverage sales. Local beverage container redemption centers as defined in 32 M.R.S.A. 1867, as may be amended, are not allowed as a principal use.

3. Storage of all beverage containers shall be contained entirely within the building providing retail sales.

(3) Institutional:

- a. Church or other place of worship;
- b. Municipal offices;
- c. Elementary, middle and secondary schools;
- d. Nursery schools and kindergarten;
- e. Clinics of less than three thousand (3,000) square feet of total floor space.

(4) Other:

- a. Lodging houses;
- b. Utility substations, as defined in section 14-47, subject to the standards of article V (site plan);
- c. Day care facilities or babysitting services;
- d. Accessory uses as provided in section 14-404;
- e. Bed and breakfast, subject to the standards of article V (site plan).

(5) Uses permitted above the ground floor level of buildings in the B-1b zone:

a. Any residential use set forth in section 14-162(a);

b. Bed and breakfast, subject to the standards of article V (site plan).

(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 2, 11-15-93; Ord. No. 125-97, § 5, 3-3-97; Ord. No. 94-99, 11-15-99)

**Sec. 14-163. Conditional uses.**

The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone, as provided in section 14-474 (conditional uses), if they meet the following requirements:

(a) Restaurants, provided they meet the following requirements:

1. Maximum total floor area for use of the public shall be one thousand (1,000) square feet;
2. The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. each day;
3. Food service and consumption are the primary function of the restaurant; and
4. There shall be no drive-through service.

(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 3, 11-15-93; Ord. No. 94-99, 11-15-99)

**Sec. 14-164. Prohibited uses.**

Uses not enumerated in sections 14-162 and 14-163 as either permitted or conditional uses are prohibited.

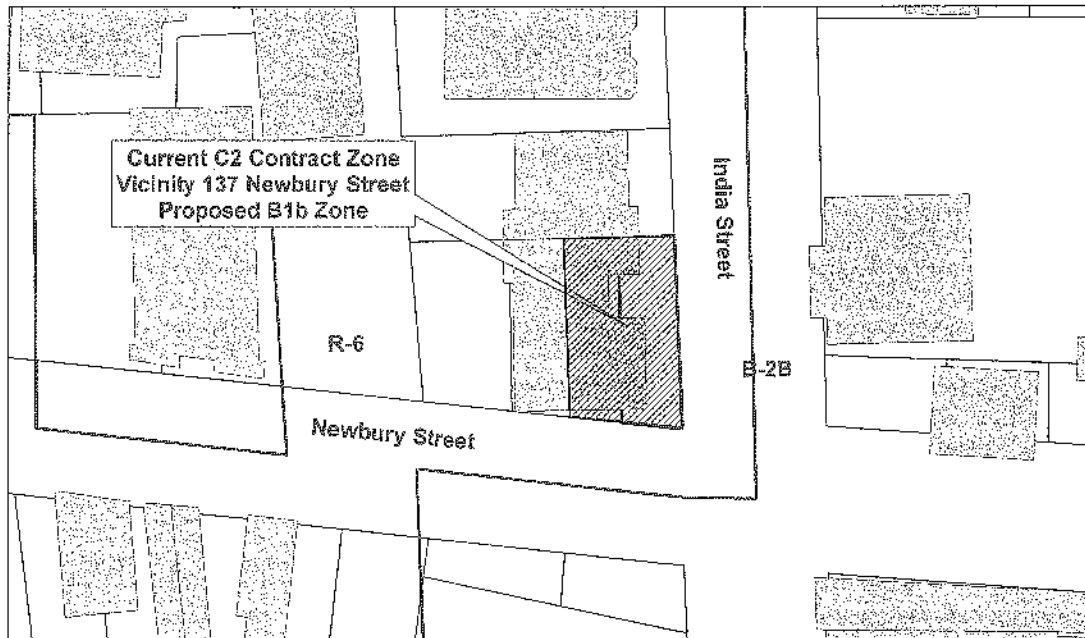
(Ord. No. 292-88, 4-4-88)

**Sec. 14-165. ~~Dimensional requirements.~~**

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, residential uses permitted under section 14-162(a) shall meet the requirements of such abutting or nearest residential zone except as noted below, and nonresidential uses in the B-1 and B1-b zone shall meet the following minimum requirements:

45





City of Portland  
Proposed Rezone - Contract Zone to B1b  
Vicinity of India and Newbury Streets





**CITY OF PORTLAND**

March 30, 1999

Mr. Luke S. MacFadyen  
19 Howard Street  
Portland, Maine 04101

RE: 137 Newbury Street, Fire Escape Alterations.

Dear Mr. MacFadyen,

Planning staff has received and approved your submissions for fire escape improvements and screening as they pertain to the Contract Zone on this property. Approval is conditioned on the choice of colors for the project. Planning staff requires that a "dark, recessive" color be used to finish the improvements, and colors are to be approved by this office prior to application.

This approval is based on the drawings as received on March 29, 1999, with the exception of a slight change to the arched entry over the stairs which will be built according to an updated sketch provided on March 30, 1999. During our discussion, I neglected to ask you about the color intended for the project. As exterior egress stairways are to have a "minimal visual impact upon the building", the choice of colors greatly influences the impact of this project on the building and the street. I apologize for not finalizing this detail with you during your visit to the Planning Office. Please contact me if you have any questions; 874-8722.

Sincerely,

A handwritten signature in dark ink, appearing to read "Bill Needelman".

William B. Needelman, Planner

Essex Council  
Approved by AE

CC: Alex Jaegerman, Chief Planner  
Marge Schmuckal, Zoning

O:\PLAN\DEVREV\WNWBRY137\LSF3-31-.WPD

**From:** Barbara Barhydt  
**To:** Alex Jaegerman  
**Date:** Mon, Apr 26, 1999 11:48 AM  
**Subject:** Fire Escape Questions

Luke McFadyen (871-1075) came in to see you and he was upset. He had applied for a permit for an exterior fire escape and was told it had to be in dark recessive colors- city approved. He wanted the list of approved colors and wanted to know what authority the City had to regulate this. He wanted to pick his own colors. He has chosen Benjamin Moore - Essex Green. I said someone would get back to him.

I checked with Marge and his property was rezoned with a contract zone. When he came in, she said it had to be reviewed by Planning. She thought either Bill or Alan (wasn't Alan) had approved it with conditions. I don't know what the conditions were since, the paperwork has been forwarded to one of the inspectors. I have found the copy of contract conditions (C-2) and will put them in your box. The 4th condition states that stairs to the storefront shall be reviewed by Planning for compatibility, but I don't see anything regarding fire escapes. There is another contract zone near this one on Federal Street that requires the applicant to meet historic preservation ordinance, but there is no language like that in this contract.

He seemed to want to talk with you since he knows you and he said you were familiar with his property. Do you want to call him or do you want me to call him?

C2

Alex -  
re: my e-mail on  
fire escapes  
(10/1/97 - 12/18/97)

**City of Portland, Maine**  
IN THE CITY COUNCIL

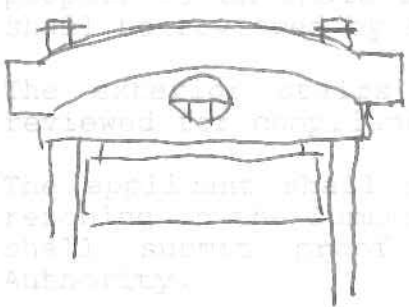
**AMENDMENT TO ZONING MAP**  
**RE: CONDITIONAL B-1 REZONING**  
**137 NEWBURY STREET**

**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 March 1958, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by S14-49, be and hereby is amended by adopting the map change amendment shown on Attachment 1.

Said rezoning shall be subject to the following conditions:

1. The second and third floors shall be maintained as not vertical glass.
2. The first floor shall be a minimum of 10 feet wide.
3. The first floor shall be a minimum of 10 feet wide.



Revised Arch Detail  
over entrance to  
Deck

The above conditions, as proposed and approved, shall be an essential part of the rezoning, shall run with the subject

City of Portland, Maine

IN THE CITY COUNCIL

Ordinance 1101  
Tab 8 12:45:27  
7-7 1:5:40

AMENDMENT TO PORTLAND CITY CODE  
§14-440 (ZONING ORDINANCE)  
RE: EXTERIOR EGRESS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND, MAINE  
IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

That new Section 14-440 of the Portland City Code is hereby  
enacted, said section to read as follows:

Sec. 14-440. Exterior egress.

Notwithstanding any other provision of this code, the building  
authority may permit the installation of an exterior egress stair  
or an upgrade of an existing exterior fire escape for a conforming  
or lawfully nonconforming dwelling unit existing as of (date of  
passage) if such egress is required to meet current fire or other  
life safety codes, provided that the owner demonstrates to the  
building authority that:

- (1) There is no practical and economically reasonable way to  
provide such egress within the interior of the building,  
as demonstrated by the submission of detailed floor plans  
showing the projected cost of and the impact on the  
existing dwelling from an interior stair;
- (2) The stairway and associated landings and other building  
fixtures are designed and will be constructed to have a  
minimal visual impact upon the building, especially as  
viewed from any public way or public open space, as  
demonstrated by photographs of the front and any other  
affected facades of the building and plans or drawings of  
the proposed egress stairs;
- (3) Reductions to setbacks granted under this section shall  
be the least amount required to meet life safety code  
requirements; and
- (4) Exterior stairways on buildings subject to regulation  
under article IX of this chapter shall require review and  
approval under the provisions of that article.

Zoning Division  
Marge Schmuckal  
Zoning Administrator



Department of Urban Development  
Joseph E. Gray, Jr.  
Director

*TO: Alex Jaegerman*

**CITY OF PORTLAND**

Luke S. MacFadyen  
19 Howard Street  
Portland, ME 04101

February 12, 1999

*871-1075  
Return March 3*

RE: 137 Newbury Street - C-2/B-1 - 028-J-015

Dear Mr. MacFadyen,

*Planned landscape OK*

*Not proposed to increase dwelling units.*

I am in receipt of your permit for alterations at 137 Newbury Street. There are several issues as to why I can not issue this permit under the City of Portland's Zoning Ordinance. First, your permit application states that this is a three unit building. A building permit application issued on 2/8/1990 changed the use of the building from three units to two units with retail stores. That would be the allowable use at this time. You would not be able to change the use back to three dwelling units at this time. The B-1 zone defers to the R-6 zone for its residential requirements. You need at least 1,000 sq. feet of land area per dwelling unit as one of the major R-6 requirements. This lot is very small and has only 1,449 sq. feet of land area, not the 3,000 sq. feet required.

Secondly, this property was granted a contract zone by the Planning Department and the City Council during that same time period. There are substantial conditions placed on this building because of that rezoning/contract zone. Those conditions include #5 which states, exterior stairs shall be reviewed by Planning Staff for compatibility with zoning. I have included a copy of the contract requirements with this letter. Any specific questions about this contract zone should be directed to the Planning Department and/or Alex Jaegerman, the Chief Planner at 874-8724.

Please note that last year when this building was on the market, the fact that this building was under a contract zone, and had limitations was widely distributed to the owner, some prospective purchasers and several Realtors.

As I stated, at this time this permit can not be issued do to the limitations of the Zoning Ordinance as outlined. Please feel free to contact me if you have any questions regarding this matter.

Very Truly Yours,

*Marge Schmuckal*  
Marge Schmuckal  
Zoning Administrator

*Planning to approve  
Stairs -  
Need details  
of Ind. &  
elevation*

cc: Steven Bauer, 22 Fleetwood Street, Portland, ME 04102 — 764-2488  
Mark Adelson, Housing & Neighborhood Services  
Alex Jaegerman, Planning  
File 761 018

Attachment



#### IV. Findings of the Planning Board

At the November 28, 1989 public hearing, the Planning Board voted 7-0 on the following motion with conditions:

On the basis of plans and materials submitted by the applicant and on the basis of information contained in Planning Report #77-89 relevant to standards for conditional rezoning, Section 14-60 and/or other findings as follows:

That the Planning Board recommends the conditional rezoning of 137 Newbury Street from R-6 to B-1 subject to the following conditions:

1. The second and third floors shall be maintained as residential uses.
2. The B-1 Business zone on the first floor shall be limited to retail uses.
3. The first floor shall have no more than 2 retail uses.
4. The storefront shall be on India Street and the storefront design shall be compatible with neighboring properties on India Street; and stairs to the storefront shall be compatible and reviewed by the staff.
5. The exterior stairs shall be reviewed by Planning Staff for compatibility with zoning. *(Make it as unobtrusive & attractive as possible.)*
6. The applicant shall record the approved conditions of rezoning in the Cumberland County Registry of Deeds and submit proof of recording to the Planning Authority.
7. The signage for the retail use shall be appropriate for a small scale retail use.
8. This conditional rezoning shall remain in effect only so long as this building exists on this property and shall not apply to any other structure

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with subject premises, shall bind the owner, his successors and assigns, of said property or any part thereof or interest therein, and any party in possession of occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by, the City of Portland, by and through its duly authorized representatives.

If any of the restrictions, provisions, conditions or portions thereof set forth herein is for any reason held invalid or unconstitutional any court of competent jurisdictions, such portion shall be deemed, as separate, distinct and independent provision and such determination shall not affect the validity of remaining portions hereof.



Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event of a breach of any condition(s), the developer shall apply for the modifications to the approved plan. The Planning Board will attempt to resolve the issues resulting in the breach. That resolution may include a recommendation to the City Council that the site be rezoned to R-6.

#### Attachments

1. Vicinity Map
2. Applicant's Letter
3. Site Plan
4. Photograph of Building
5. Reduction of Rendering

Alex for 137 Newbury St



~~Property at~~ Property at 137 Newbury St.  
(corner of India + Newbury)

from Microfiche

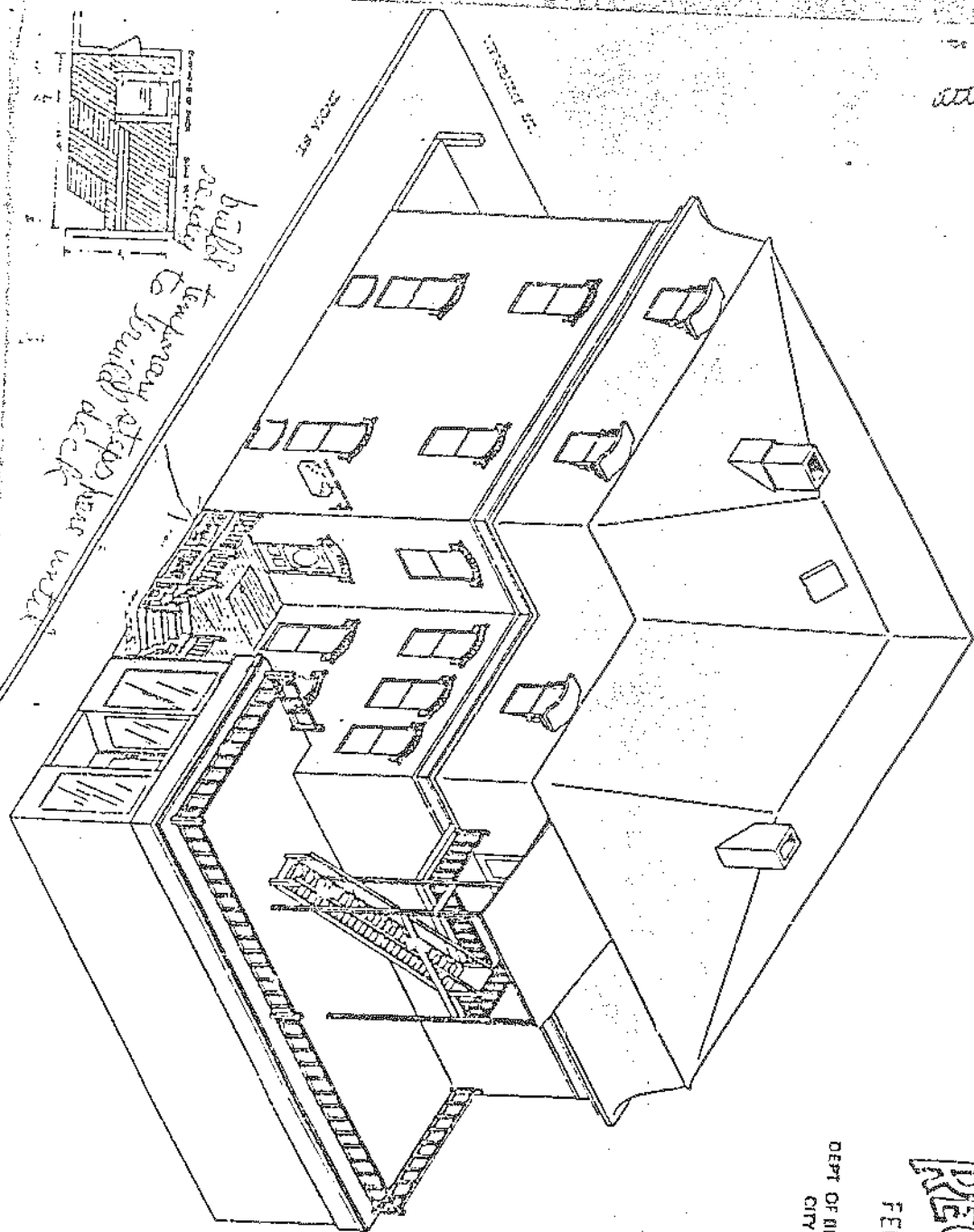
137 Newbury St

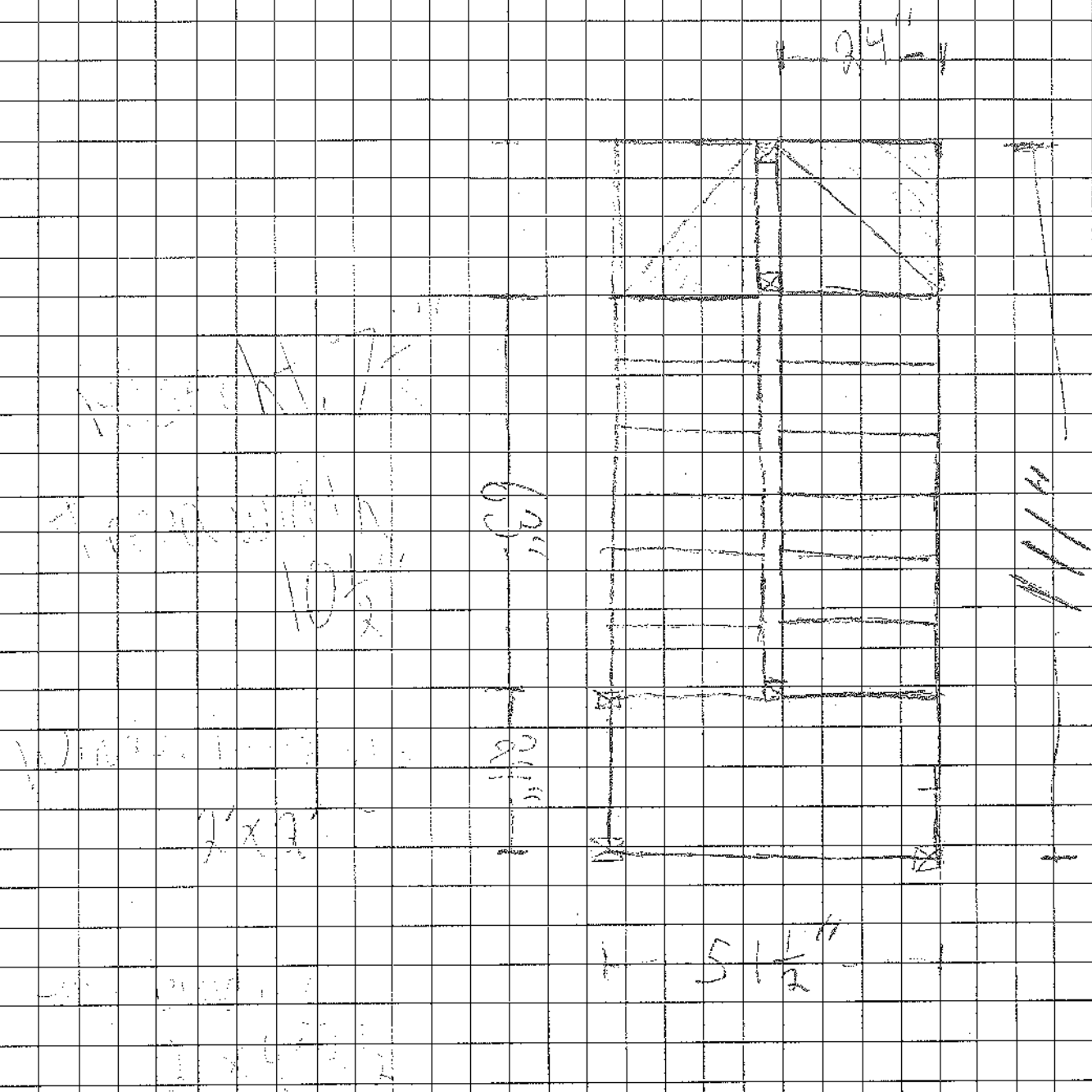
attachment

RECEIVED

FEB 01 1930

DEPT OF BUILDING INSPECTION  
CITY OF PORTLAND





EXTERIOR STAIRCASE FROM ROOF OF STOREFRONT  
DOWN TO DECK. STAIRCASE AND HANDRAIL TO  
BE CONSTRUCTED OF PRESSURE TREATED WOOD AND  
TO CONFORM TO SAFETY CODES -



EXISTING BUILDING

EXISTING DECK

9'-3"

10'-0"

10'-0"

10'-0"

10'-0"

5'-7 1/2"

1'-7 1/2"

10'-0"



Lee right, table OK? approp. appl. cant.  
B1b

John B1b for all is consistent.

condition  
if not  
like appl. appl.

6-0 B1b 137N.

4-2 Odokana  
Lounry  
Patterson.

ZONING AMENDMENT  
C2 CONDITIONAL ZONE TO B1-B ZONE  
INDIA STREET BETWEEN NEWBURY AND FEDERAL  
LUKE MACFADYEN, APPLICANT

City Council  
update  
map for ad.  
report.  
Wohr...

Submitted to:  
Portland Planning Board  
January 6, 2006

Submitted by  
Sarah Hopkins  
Development Review Services Manager

Luke Macfadyen has requested a recommendation from the Planning Board to the City Council for an amendment of the zoning for 137 Newbury Street. The property is currently subject to a conditional zone and the applicant intent is to have the project subject to less restriction on use.

A B-1b zone has been discussed as an appropriate zone for the site and at the Planning Board's suggestion, a larger area along India Street has been advertised as well.

## **I. Project Summary**

Applicant: Luke Macfadyen  
15 Howard Street  
Portland, ME 04101

Location: 137 Newbury Street

Current Zoning: Conditional B1 Zone C2

Proposed Zoning: Amended C2 expanding allowable first floor uses to those allowed in the B1b zone.

## **II. Project Background and Description**

On January 3, 1990, the property at 137 Newbury Street was conditionally rezoned from R6 to a Conditional B1 Zone (C2). The intent of the rezoning, as expressed in a December 5, 1989 memo from a then Assistant City Manager to the City Manager, was to, "...maintain the residential uses on the upper floors of the building while allowing business uses on the first floor".

The range of business uses allowed was limited first floor retail by the conditions of the rezone as follows (from Conditional Zone C2, Attachment C):

- The first floor uses shall be limited to retail uses.
- The first floor shall have no more than two (2) retail uses.

While zoning in the area has undergone some changes since 1990, the subject site (Zone C2) is still situated in what otherwise continues to be an R6 zone. The B2b zone covers the opposite side of India Street (Attachment H).

The applicant has indicated that the first floor use restrictions of C2 have made it difficult for him to keep first floor tenant spaces occupied. The applicant cites turning away potential tenants due to zoning determinations against their desired use.

Sec. 14-180. Reserved.



### III. Planning Board Discussion

During the November 15 workshop, Planning Board members discussed their preference to remove the conditional zoning for the site, and rezone the property as a B-1b zone. The Planning Board also directed staff to advertise the length of India Street, between Newbury and Federal as a B-1b zone for discussion purposes.

### IV. Policy Considerations/Consistency with the Comprehensive Plan

The India Street corridor is rapidly changing as shown in the Eastern Waterfront Master Plan and recent development projects. The introduction of a mixed-use hotel, condominium, retail complex two blocks south of the parcel attests to the changing nature of the area, as does the proposed Village redevelopment and Longfellow mixed-use project to the east.

The original conditional rezoning of the property was approved when the B-1b zone did not yet exist. In fact, a number of similar conditional rezonings in the India Street neighborhood prompted the adoption of the B-1b zone.

As stated in the purpose statement of the B-1b zone:

*The purpose of the B-1b neighborhood business zone is to provide appropriate opportunities for the establishment of smallscale ground floor commercial uses in existing buildings, serving a local market, while preserving residential uses and character above the ground floor of structures. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3).*

*Suitable locations for this zone may include street intersections, arterial streets, and sites with existing or traditional neighborhood retail and service uses.*

Also, as stated in the permitted use section, the zone maintains the requirement for upper story residential uses, while allowing business and personal uses on the ground floor. Moreover, the B-1b zone allows residential uses on the ground floor, as well.

Such a concept of requiring residential uses above business uses along transportation corridors is recommended by the Housing Plan and Transportation Plan sections of the City's Comprehensive Plan.

Photographs of the buildings in the area are included with a context map as Attachment H.

## **V. Staff Recommendation**

The Planning Department supports the rezoning of the property at 137 Newbury Street, as well as the properties located along India Street as advertised. Currently, retail uses are located on the ground floor of 137 Newbury, fronting on India Street. 76 and 80 India Street contain residential uses on the ground floor and upper stories; however, were there to be redevelopment of the sites, B-1b would be appropriate. Likewise, the Rectory is located at the corner of Federal and India. The use is institutional and allowed as a conditional use in the existing R-6 zone. Should the site be redeveloped, a B-1b zone would be appropriate, as well.

## **III. Motions for the Board to Consider**

On the basis of plans and materials submitted by the applicant and included in Planning Report #04-06, the Planning Board finds the rezoning of 137 Newbury Street, 76 and 80 India Street and St. Peter's Rectory at 68 Federal Street.

### **Attachments**

- A. Application
- B. Property Deed
- C. Conditional B1 Rezone C2
- D. 1989 Council Agenda Request
- E. Planning Board Report #84-89, December 1989
- F. Site Photo
- G. B1b Zoning Text
- H. Zoning Map and Context Map



City of Portland, Maine  
Department of Planning and Development  
Zone Change Application

Application ID: 863 Application Date: 10/03/2005 CBL: 028 J015001 Property Location: 137 Newbury St

Applicant Information:

Macfadyen Luke

Name

Business Name

15 Howard St

Address

Portland, ME 04101

City, State and Zip

207-871-1075

Telephone

Fax

Applicant's Right, Title or Interest in Subject Property:

Current Zoning Designation: C2

Existing Use of Property:

4 condominiums, 2 retail (1st floor) and 2 residential  
(2nd and 3rd floors).

Proposed Use of Property:

Broaden allowable retail uses for the two retail units.

Property Owner:

Macfadyen Luke

Name

15 Howard St

Address

Portland, ME 04101

City, State and Zip

Telephone

Fax

Amendment A ☒ B1b

Amendment B ☐

Amendment C ☐

Section 14:

Requested:

(A1)

Planning Approval

REVIEW TYPE: Committee Review

RECOMMENDATION DATE: \_\_\_\_\_

APPROVAL DATE: \_\_\_\_\_

ENACTMENT DATE: \_\_\_\_\_



APPLICATION FOR ZONING AMENDMENT  
City of Portland, Maine  
Department of Planning and Development  
Portland Planning Board

1. Applicant Information:

Luke G. MacFadyen

Name

15 Howard St.

Address

Portland Me

871-1075

Phone

Fax

2. Subject Property:

(137 Newbury St) #70+ #72 India

Address

Portland ME

028-J-015

Assessor's Reference (Chart-Block-Lot)

3. Property Owner: ☒ Applicant ☐ Other

Name

ABOUE

Address

Phone

Fax

4. Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

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.)

5. 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.)

6. Existing Use:

Describe the existing use of the subject property:

4 Condominiums  
2 Retail (1st Floor)  
2 Residential (2nd - 3rd Floors)

7. Current Zoning Designation(s): Conditional B1

8. 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.

Broaden allowable retail uses for the two retail units.

9. Sketch Plan: On a separate sheet please provide a sketch 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"=100'.)

10. Proposed Zoning: Please check all that apply:

- A. ☒ Zoning Map Amendment, from CBI to B1B
- B. ☐ Zoning Text Amendment to Section 14-

For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (~~example~~), and language to be added is depicted with underline (example).

- C. ☐ Conditional or Contract Zone

A conditional or contract rezoning may 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 and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

11. **Application Fee:** An Application Fee must be submitted by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below). The applicant also agrees to pay all costs of publication (or advertising) of the Workshop and Public Hearing Notices as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

✓ Fee for Service Deposit (\$200.00)

(Required for all applications in addition to the applicable application fee listed below)

---

✓ Zoning Map Amendment	\$2,000.00
Zoning Text Amendment	\$2,000.00
Contract/Conditional Rezoning	
Under 5,000 sq. ft.	\$1,000.00
5,000 sq. ft. and over	\$3,000.00
Legal Advertisements	percent of total bill
Notices	.55 cents each
(receipt of application, workshop and public hearing)	

NOTE: Legal notices placed in the newspaper for the public hearing meeting are required by State Statute and local ordinance. Applicants will be billed by the Planning Division.

12. **Signature:** The above information is true and accurate to the best of my knowledge.

9/23/05  
Date of Filing

Walter S. M. [Signature]  
Signature of Applicant

**Further Information:**

Please contact the Planning Division for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board  
Portland, Maine

Effective: July 6, 1998

## EXHIBIT A

BK 14411 PG 057

A certain lot or parcel of land with the buildings thereon, situated on the westerly corner of India and Newbury Streets in the Portland, County of Cumberland and State of Maine, and being numbered 137 on said Newbury Street and 72 on said India and bounded and described as follows:

Beginning at the stone monument at said westerly corner of India and Newbury Streets; thence running southwesterly by said Newbury Street, twenty-three (23) feet and four (4) inches to a point in line with the center of the partition wall of the two houses standing on the premises; thence northwesterly through the center of said partition wall and continuing in the same direction seventy-two (72) feet and four (4) inches in all to land formerly of Mary Demery; thence northeasterly by said Demery's twenty-two (22) feet and one and one-half (1.5) inches to said India Street; thence southeasterly by said India Street, seven (7) feet and seven (7) inches to the point of beginning.

RZ

BI

RECEIVED  
RECORDS SECTION OF DEED

BK 144 11 PG 056

91824

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS

THAT, Samuel T. Minervino and Robert M. Minervino and Albert J. Aceto of 137 Newbury St., County Cumberland, State of Maine for consideration paid, grants to Lake MacFarlen of 19 Howard St., Portland, County Cumberland, State of Maine, with WARRANTY COVENANTS, the land in Portland, County of Cumberland, Maine, described as follows:

See Exhibit A attached hereto and made a part hereof

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of December, 1998.

MAINE REAL ESTATE TAX PAID

*[Signature]*  
Witness

*[Signature]*  
Samuel T. Minervino

*[Signature]*  
Robert M. Minervino

*[Signature]*  
Albert J. Aceto

STATE OF Maine  
COUNTY OF Cumberland

On this 17th day of December, 1998, personally appeared before me the above-named Samuel T. Minervino, Robert M. Minervino and Albert J. Aceto, and acknowledged the foregoing to be his/her free act and deed.

*[Signature]*  
Notary Public/Attorney at Law  
John E. Stetson

My Commission Expires

B2



City of Portland, Maine  
IN THE CITY COUNCIL

(16)197-12/18/89

AMENDMENT TO ZONING MAP  
RE: CONDITIONAL B-1 REZONING  
137 NEWBURY 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 March 1958, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by S14-49, be and hereby is amended by adopting the map change amendment shown on Attachment 1.

Said rezoning shall be subject to the following conditions:

1. The second and third floors shall be maintained as residential uses.
2. The first floor uses shall be limited to retail uses.
3. The first floor shall have no more than two (2) retail uses.
4. The storefront shall be on India Street and the storefront design shall be compatible with neighboring properties on India Street. Stairs to the storefront shall be reviewed by Planning Staff for compatibility.
5. The exterior stairs above the first floor shall be reviewed for compliance with zoning.
6. The applicant shall record the approved conditions of rezoning in the Cumberland County Registry of Deeds and shall submit proof of recording to the Planning Authority.
7. The signage for the retail use shall be appropriate for a small scale retail use.
8. This conditional rezoning shall remain in effect only as long as this building exists on this property and shall not apply to any other structure.

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the subject

B-1LINDNEWBZONING.AMD.NLB.001  
12.1.89

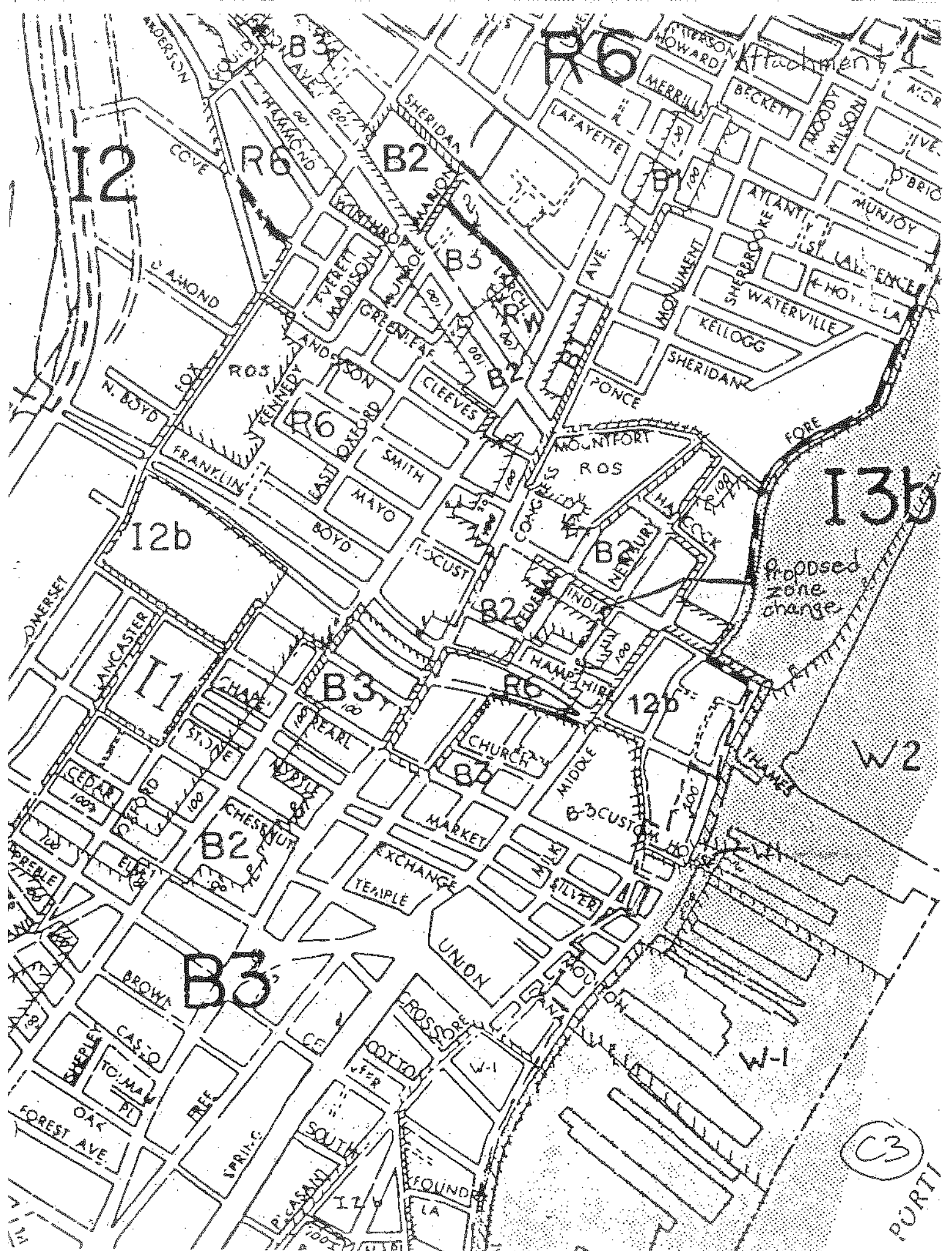
(C1)

premises, shall bind the owner, its successors and assigns, of said property or any part thereof or interest therein, and any party in possession or occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by the City of Portland, by and through its duly authorized representatives.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event of a breach of any condition(s), the developer shall apply for a modification to the concept plan. The Planning Board will attempt to resolve the issues resulting in the breach. That resolution may include a recommendation to the City Council that the site be rezoned to R-6.



I2

R6

Attachment

R8

B2

B3

I2b

I3b

Proposed zone change

I1

B3

I2b

W2

B2

B3

C3

PARTI

CITY OF PORTLAND, MAINE  
MEMORANDUM

TO: Nadeen M. Daniels, Assistant to the City Manager  
FROM: Joseph E. Gray, Jr., Director of Planning and Urban Development  
DATE: December 5, 1989  
SUBJECT: Minervino Conditional Rezoning

Please place this item on the next available Council agenda:

The conditional rezoning of 137 Newbury Street, from R-6 Residential to B-1 Business.

Background

On November 28, 1989 the Portland Planning board voted 7-0 to recommend to the City Council the conditional rezoning from R-6 Residential to B-1 Business, of a 3 story building located at 137 Newbury Street. The building is a duplex, with the applicants lot being 1,449 sq. ft. and the building being 4,026 sq. ft. The building is shown in a photograph, which is attachment 4 in Planning Report #84-89. The proposed storefront is depicted in a drawing included as attachment 5.

The conditions are intended to maintain residential uses in the upper floors of the building while allowing business uses on the first floor. The specific conditions and penalty section is included in the report.

Attachments

1. Council Order and Map
2. Planning Report #84-89

(D)

CONDITIONAL REZONING

137 NEWBURY STREET

SAMUEL MINERVINO, APPLICANT

Submitted by:

Portland Planning Board  
Portland, Maine

December 12, 1989

(E)

## I. Introduction

Samuel Minervino is requesting a conditional rezoning, from R-6 Residential to B-1 Business, for the first floor of a building located at 137 Newbury Street. The 1,449 sq. ft. lot contains a 4,026 sq. ft., 3 story, brick building. The building is shown in a photograph, included as Attachment 4. The property owned by the applicant fronts on India Street. A vicinity map and letter from the applicant is included as Attachments 1 and 2.

Public notice for this project consisted of legal advertisements in the Guy Gannett Newspaper, notice to area residents and property owners, a notice posted in the City Clerk's office, and a placard displayed on site.

## II. Summary of Findings

Zoning	R-6 Residential
Land Area	1,449 sq. ft.
Total Square Footage	4,026 sq. ft.
Number of Stories	3
Land Uses	The building is located in a narrow strip of R-6 Residential, surrounded on 3 sides by business uses. The recently approved 73 India Street, 18,000 sq. ft. office and retail is across India Street.

## III. Planning Board Review

The India Street area has undergone a transition from a predominately residential area to one dominated by business uses along India Street with a small residential neighborhood remaining between India and Franklin Streets. Residential uses along India Street have gradually given way to commercial uses. Such uses, along with the 24 Hour Club, have affected the marketability of residential uses. The Board has recognized that the remaining residential uses, especially in the upper floors of buildings in the area, are a valuable housing resource. Given the failure of residential uses on the ground floor, the best way of balancing the preservation of the residential character, and allowing for some small scale retail uses which will provide a return from the property, is conditional rezoning. This action would allow for compatibility with the Land Development Plan since it retains dwelling units, and will allow for repairs and improvements to the building.

This project originally came to the Board as a conventional zone change request, from R-6 to B-1. At the September 26 workshop, the Board expressed their concern with preserving the residential character of the neighborhood, but also communicated the willingness to review a conditional rezoning request. At a subsequent workshop, the Board examined a list of potential conditions. The conditions are designed to maintain residential uses in the second and third floors while

E2

ensuring that the retail uses are compatible with the B-1 zone and the surrounding neighborhood. The applicant will be making some repairs and improvements to the building, specifically at the proposed storefront entrance. The improvements here consist of a detailed entryway with a porch and railings. A reduction of a rendering of the India Street facade of the building is included as Attachment 5. The conditions and penalties of the rezoning are:

1. The second and third floors shall be maintained as residential uses.
2. The B-1 Business zone on the first floor shall be limited to retail uses.
3. The first floor shall have no more than 2 retail uses.
4. The storefront shall be on India Street and the storefront design shall be compatible with neighboring properties on India Street.
5. The exterior stairs shall be reviewed by Planning Staff for compatibility with zoning.
6. The applicant shall record the approved conditions of rezoning in the Cumberland County Registry of Deeds and submit proof of recording to the Planning Authority.
7. The signage for the retail use shall be appropriate for a small scale retail use.
8. This conditional rezoning shall remain in effect only so long as this building exists on this property and shall not apply to any other structure

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with subject premises, shall bind the owner, its successors and assigns, of said property or any part thereof or interest therein, and any party in possession of occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by, the City of Portland, by and through its duly authorized representatives.

If any of the restrictions, provisions, conditions or portions thereof set forth herein is for any reason held invalid or unconstitutional any court of competent jurisdictions, such portion shall be deemed, as separate, distinct and independent provision and such determination shall not affect the validity of remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event of a breach of any condition(s), the developer shall apply for the modifications to the approved plan. The Planning Board will attempt to resolve the issues resulting in the breach. That resolution may include a recommendation to the City Council that the site be rezoned to R-6.

E3

#### IV. Findings of the Planning Board

At the November 28, 1989 public hearing, the Planning Board voted 7-0 on the following motion with conditions:

On the basis of plans and materials submitted by the applicant and on the basis of information contained in Planning Report #77-89 relevant to standards for conditional rezoning, Section 14-60 and/or other findings as follows:

That the Planning Board recommends the conditional rezoning of 137 Newbury Street from R-6 to B-1 subject to the following conditions:

1. The second and third floors shall be maintained as residential uses.
2. The B-1 Business zone on the first floor shall be limited to retail uses.
3. The first floor shall have no more than 2 retail uses.
4. The storefront shall be on India Street and the storefront design shall be compatible with neighboring properties on India Street; and stairs to the storefront shall be compatible and reviewed by the staff.
5. The exterior stairs shall be reviewed by Planning Staff for compatibility with zoning.
6. The applicant shall record the approved conditions of rezoning in the Cumberland County Registry of Deeds and submit proof of recording to the Planning Authority.
7. The signage for the retail use shall be appropriate for a small scale retail use.
8. This conditional rezoning shall remain in effect only so long as this building exists on this property and shall not apply to any other structure.

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with subject premises, shall bind the owner, its successors and assigns, of said property or any part thereof or interest therein, and any party in possession of occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by, the City of Portland, by and through its duly authorized representatives.

If any of the restrictions, provisions, conditions or portions thereof set forth herein is for any reason held invalid or unconstitutional any court of competent jurisdiction, such portion shall be deemed, as separate, distinct and independent provision and such determination shall not affect the validity of remaining portions hereof.

(E4)



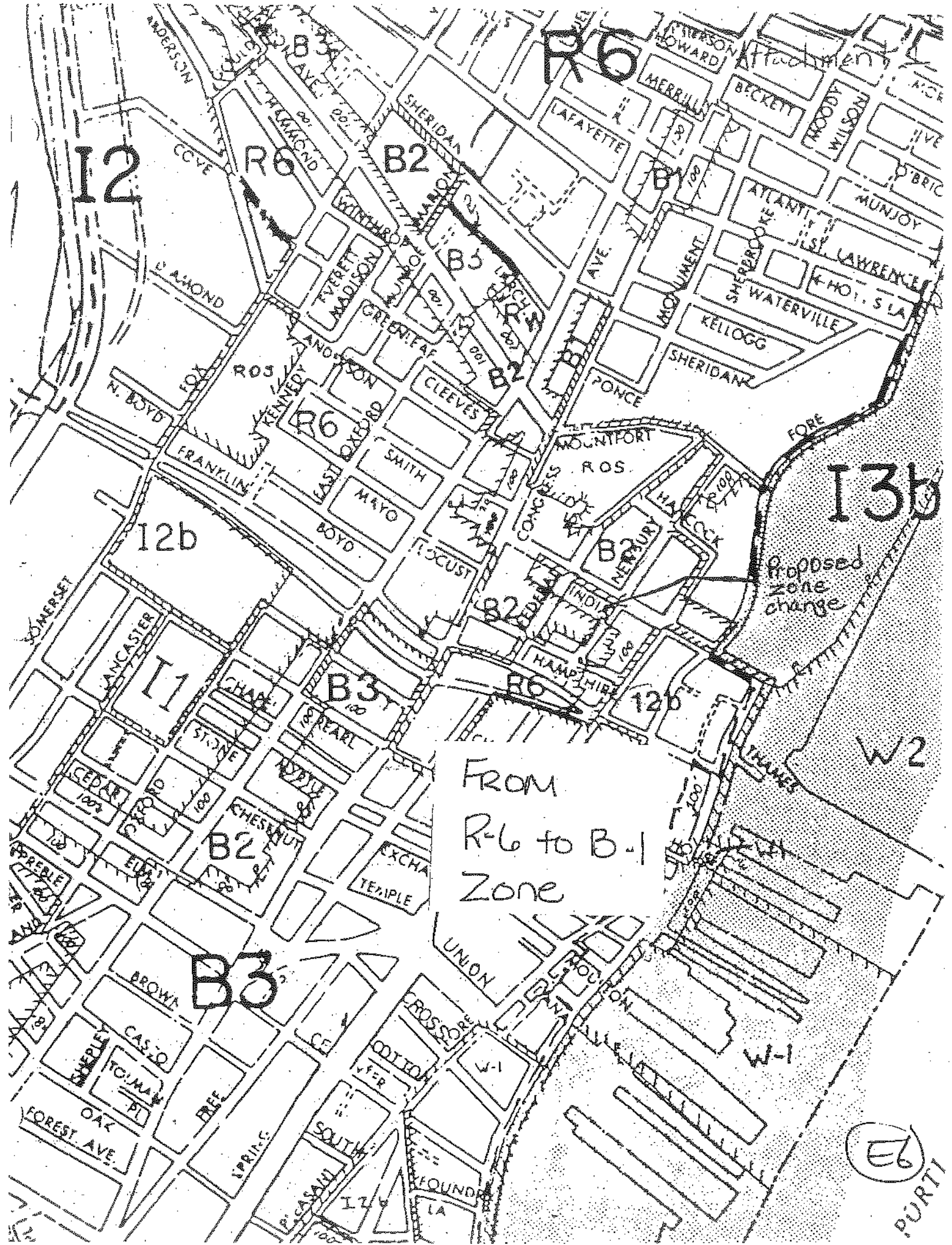
Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

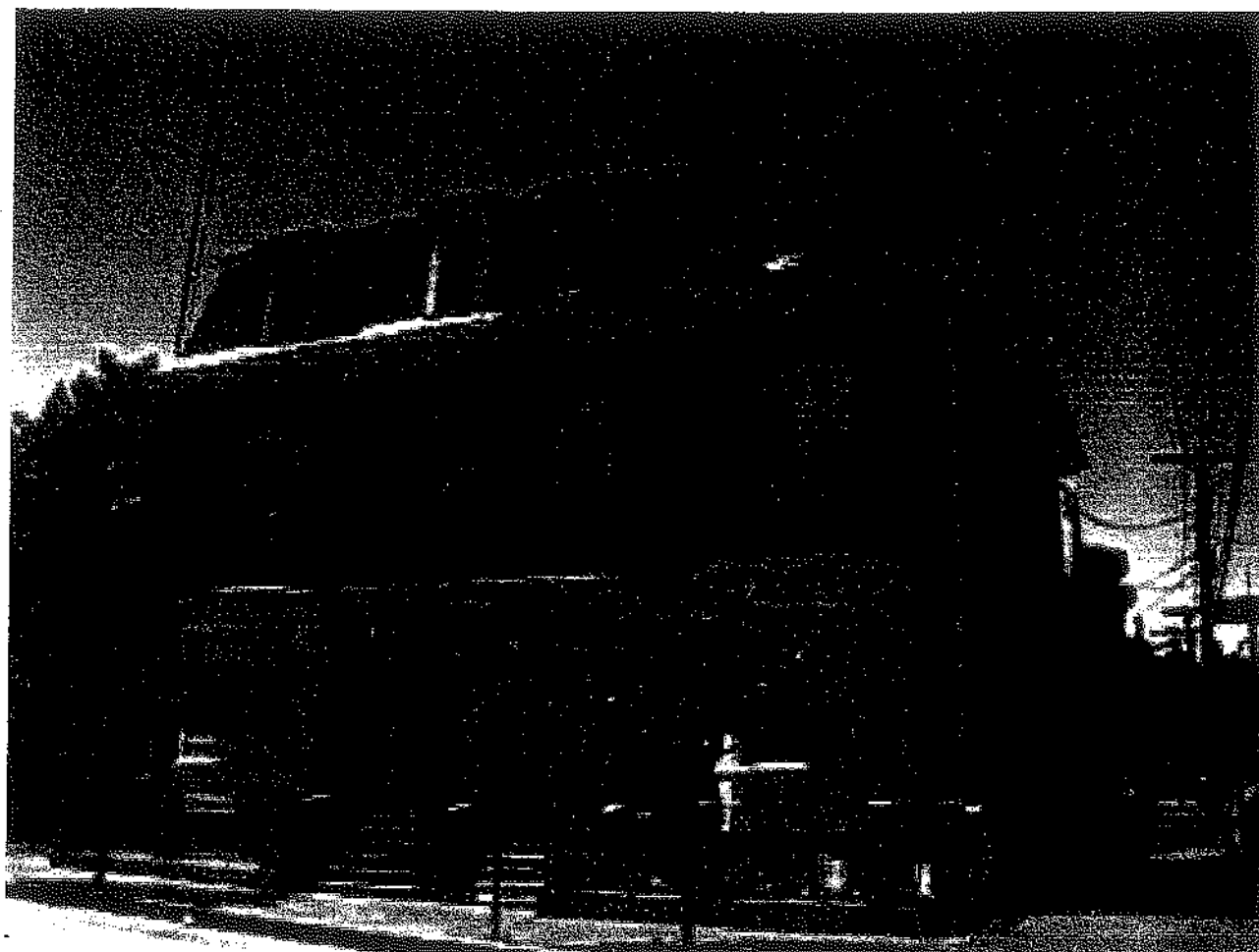
In the event of a breach of any condition(s), the developer shall apply for the modifications to the approved plan. The Planning Board will attempt to resolve the issues resulting in the breach. That resolution may include a recommendation to the City Council that the site be rezoned to R-6.

Attachments

1. Vicinity Map
2. Applicant's Letter
3. Site Plan
4. Photograph of Building
5. Reduction of Rendering

ES





(F)

- (c) Loading areas shall be screened and parking areas shall be screened and landscaped so as to avoid a large continuous expanse of paved area.
- (d) Buildings and structures shall be sited to avoid obstructing significant scenic views presently enjoyed by nearby residents, passersby, and users of the site.
- (e) Storage of commodities and equipment shall be completely enclosed within buildings or provided with screening by a fence, wall, or landscaping.
- (f) The outer perimeter of playfields, playlots, and other active recreational areas shall be screened, or shall be located a reasonable distance from any residential use.
- (g) Off-street parking shall conform to the requirements of division 20 of this article, where applicable. Otherwise, off-street parking adequate to serve projected employee and visitor needs shall be provided. Parking needs projections provided by the applicant or the planning department should be considered in the review.

(Ord. No. 232-81, § 602.7B.6, 11-16-81)

**Sec. 14-159. Shoreland and flood plain management regulations.**

Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.

(Ord. No. 232-81, § 602.7B.7, 11-16-81; Ord. No. 15-92, § 15, 6-15-92)

**Sec. 14-160. Reserved.**

**DIVISION 9. B-1 AND B-1b NEIGHBORHOOD BUSINESS ZONES\***

-----  
\*Editor's note--Ord. No. 292-88, adopted Apr. 4, 1988, with an effective date of July 1, 1988, repealed §§ 14-161--14-167 of Div. 9, B-1 Business Zone, of this article and enacted in lieu thereof similar new provisions as set out in §§ 14-161--14-167. Formerly, such sections derived from §§ 602.8.A--602.8.G of the city's 1968 Code and from Ord. No. 74-72, adopted Mar. 6, 1972, and Ord. No. 499-74, § 4, adopted Aug. 19, 1974.  
-----

**Sec. 14-161. Purpose.**

**(a) B-1 Neighborhood Business Zone**

The purpose of the B-1 neighborhood business zone is to provide limited areas for the location of smallscale 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.

Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.

**(b) B-1b Neighborhood Business Zone**

The purpose of the B-1b neighborhood business zone is to provide appropriate opportunities for the establishment of smallscale ground floor commercial uses in existing buildings, serving a local market, while preserving residential uses and character above the ground floor of structures. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3).

Suitable locations for this zone may include street intersections, arterial streets, and sites with existing or traditional neighborhood retail and service uses.

(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 1, 11-15-93; Ord. No. 94-99, 11-15-99)

**Sec. 14-162. Permitted uses.**

(a) The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone. For

permitted uses in the upper stories of buildings in the B-1b zone, refer to subsection (5) below: in existence on November 15, 1993:

(1) *Residential*

- a. Any residential use permitted in the residential zone abutting the lot is permitted. If there is no abutting residential zone, any residential use permitted in the nearest residential zone to the lot is permitted. In the case of two (2) or more abutting residential zones, any residential use permitted in the most restrictive such zone is permitted.
- b. In any structure with commercial use on the first floor, multifamily dwellings are permitted above the first floor.

(2) *Business:*

- a. Professional offices, as defined in section 14-47, but excluding veterinarians.
- b. Business services, as defined in section 14-47, but excluding beverage container redemption centers.
- c. Personal services, as defined in section 14-47.
- d. Offices of building tradesmen, provided there is no exterior storage of building materials.
- e. Retail establishments, provided such do not include drive-through sales or services and do not operate between the hours of eleven (11) p.m. and six (6) a.m. and do not accept deliveries or services between the hours of ten (10) p.m. to seven (7) a.m.
- f. Beverage dealers (as defined in 32 M.R.S.A. 1862) provided they meet the following requirements:
  1. Maximum total floor area for beverage container redemptions, including the storage of spent beverage containers, shall be no

greater than five hundred (500) sq. ft. or ten (10) percent of the total floor area of the facility, whichever is less;

2. Beverage container redemption is an accessory use to a principal retail use that includes beverage sales. Local beverage container redemption centers as defined in 32 M.R.S.A. 1867, as may be amended, are not allowed as a principal use.
3. Storage of all beverage containers shall be contained entirely within the building providing retail sales.

(3) Institutional:

- a. Church or other place of worship;
- b. Municipal offices;
- c. Elementary, middle and secondary schools;
- d. Nursery schools and kindergarten;
- e. Clinics of less than three thousand (3,000) square feet of total floor space.

(4) Other:

- a. Lodging houses;
- b. Utility substations, as defined in section 14-47, subject to the standards of article V (site plan);
- c. Day care facilities or babysitting services;
- d. Accessory uses as provided in section 14-404;
- e. Bed and breakfast, subject to the standards of article V (site plan).

(5) Uses permitted above the ground floor level of buildings in the B-1b zone:

- a. Any residential use set forth in section 14-162(a);
- b. Bed and breakfast, subject to the standards of article V (site plan).

(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 2, 11-15-93; Ord. No. 125-97, § 5, 3-3-97; Ord. No. 94-99, 11-15-99)

#### Sec. 14-163. Conditional uses.

The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone, as provided in section 14-474 (conditional uses), if they meet the following requirements:

- (a) Restaurants, provided they meet the following requirements:

- 1. Maximum total floor area for use of the public shall be one thousand (1,000) square feet;
- 2. The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. each day;
- 3. Food service and consumption are the primary function of the restaurant; and
- 4. There shall be no drive-through service.

(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 3, 11-15-93; Ord. No. 94-99, 11-15-99)

#### Sec. 14-164. Prohibited uses.

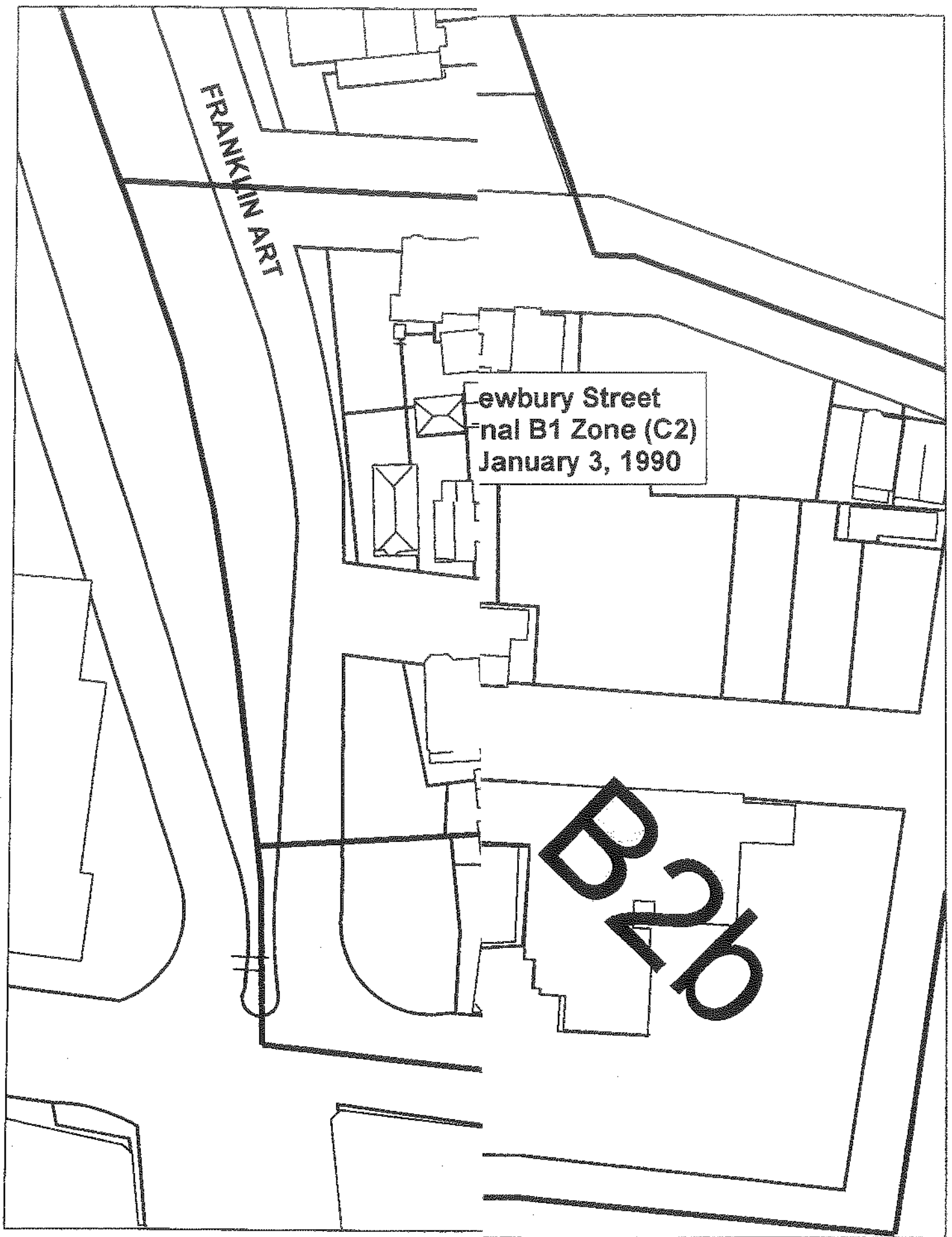
Uses not enumerated in sections 14-162 and 14-163 as either permitted or conditional uses are prohibited.

(Ord. No. 292-88, 4-4-88)

#### Sec. 14-165. ~~Dimensional requirements.~~

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, residential uses ~~permitted under section 14-162(a) shall meet the requirements of~~ such abutting or nearest residential zone except as noted below, and nonresidential uses in the B-1 and B1-b zone shall meet the following minimum requirements:





137 Newbury Street - Context



**Memorandum**  
Department of Planning and Development  
Planning Division



---

**To:** Chair Lowry and Members of the Portland Planning Board  
**From:** Ethan Boxer-Macomber, Planner  
**Date:** November 10, 2005  
**Re:** 137 Newbury Street  
Proposed Amendment to Conditional Zoning

---

A November 15, 2005 workshop has been scheduled for the Planning Board to consider the subject application.

**I. Project Summary**

**Applicant:** Luke Macfadyen  
15 Howard Street  
Portland, Maine 04101

**Location:** 137 Newbury Street

**Current Zoning:** Conditional B1 Zone C2

**Proposed Zoning:** Amended C2 expanding allowable first floor uses to those allowed in the B1b zone.

**II. Project Background and Description**

On January 3, 1990, the property at 137 Newbury Street was conditionally rezoned from R6 to a Conditional B1 Zone (C2). The intent of the rezoning, as expressed in a December 5, 1989 memo from a then assistant City manger to the City manager, was to, "...maintain the residential uses on the upper floors of the building while allowing business uses on the first floor."

The range of business uses allowed was limited first floor retail by the conditions of the rezone as follows (from Conditional Zone C2, Attachment C):

- The first floor uses shall be limited to retail uses.
- The first floor shall have no more than two (2) retail uses.

While zoning in the area has undergone some changes since 1990, the subject site (Zone C2) is still

situated in what otherwise continues to be an R6 zone. The B2b zone covers the opposite side of India Street (Attachment H).

The applicant has indicated that the first floor use restrictions of C2 have made it difficult for him to keep first floor tenant spaces occupied. The applicant cites turning away potential tenants due to zoning determinations against their desired use.

While the applicant originally applied for a rezone from C2 to B1b (Attachment A), staff understands that the applicant now requests an amendment to zone C2 so as to expand permissible first floor uses to include all of those permitted in the B1b Neighborhood Business Zone. A complete list of those uses is attached (Attachment G).

Staff will work with the applicant to provide the Board with neighborhood context photos and a discussion of comprehensive plan compliance at the November 15, 2005 workshop.

### III. Attachments

- A. Application
- B. Property Deed
- C. Conditional B1 Rezone C2
- D. 1989 Council Agenda Request
- E. Planning Board Report #84-89, December 1989
- F. Site Photo
- G. B1b Permitted Uses
- H. Context and Zoning Map

**Memorandum**  
**Department of Planning and Development**  
**Planning Division**

**To:** Chair Lowry and Members of the Portland Planning Board

**From:** Ethan Boxer-Macomber, Planner

**Date:** November 10, 2005

**Re:** 137 Newbury Street  
Proposed Amendment to Conditional Zoning

A November 15, 2005 workshop has been scheduled for the Planning Board to consider the subject application.

**I. Project Summary**

**Applicant:**

Luke MacFadyen  
15 Howard Street  
Portland, Maine 04101

**Location:**

137 Newbury Street

**Current Zoning:**

Conditional B1 Zone C2

**Proposed Zoning:**

Amended C2 expanding allowable first floor uses to those allowed in the B1b zone.

**II. Project Background and Description**

On January 3, 1990, the property at 137 Newbury Street was conditionally rezoned from R6 to a Conditional B1 Zone (C2). The intent of the rezoning, as expressed in a December 5, 1989 memo from a then assistant City manager to the City manager, was to, "...maintain the residential uses on the upper floors of the building while allowing business uses on the first floor."

The range of business uses allowed was limited first floor retail by the conditions of the rezoning as follows (from Conditional Zone C2, Attachment C):

- The first floor uses shall be limited to retail uses.
- The first floor shall have no more than two (2) retail uses.

While zoning in the area has undergone some changes since 1990, the subject site (Zone C2) is still



situated in what otherwise continues to be an R6 zone. The B2b zone covers the opposite side of India Street (Attachment H).

The applicant has indicated that the first floor use restrictions of C2 have made it difficult for him to keep first floor tenant spaces occupied. The applicant cites turning away potential tenants due to zoning determinations against their desired use.

While the applicant originally applied for a rezone from C2 to B1b (Attachment A), staff understands that the applicant now requests an amendment to zone C2 so as to expand permissible first floor uses to include all of those permitted in the B1b Neighborhood Business Zone. A complete list of those uses is attached (Attachment G).

Staff will work with the applicant to provide the Board with neighborhood context photos and a discussion of comprehensive plan compliance at the November 15, 2005 workshop.

### III. Attachments

- A. Application
- B. Property Deed
- C. Conditional B1 Rezoning C2
- D. 1989 Council Agenda Request
- E. Planning Board Report #84-89, December 1989
- F. Site Photo
- G. B1b Permitted Uses
- H. Context and Zoning Map



City of Portland, Maine  
Department of Planning and Development  
Zone Change Application

Application ID: 863 Application Date: 10/03/2005 CBL: 028 J015001 Property Location: 137 Newbury St

Applicant Information:

MacTadven Luke  
Name

Business Name

15 Howard St  
Address

Portland, ME 04101  
City, State and Zip

207-871-1075  
Telephone

Applicant's Right, Title or Interest in Subject Property:

Current Zoning Designation: C2

Existing Use of Property:

4 condominiums, 2 retail (1st floor) and 2 residential  
(2nd and 3rd floors).

Proposed Use of Property:

Broaden allowable retail uses for the two retail units.

Property Owner:

MacTadven Luke  
Name

15 Howard St  
Address

Portland, ME 04101  
City, State and Zip

Telephone

Amendment A ☒ B1b

Amendment B ☐

Amendment C ☐

Section 14:

Requested:

Planning Approval

RECOMMENDATION DATE:

APPROVAL DATE:

ENACTMENT DATE:

REVIEW TYPE: Committee Review

A-1

APPLICATION FOR ZONING AMENDMENT  
City of Portland, Maine  
Department of Planning and Development  
Portland Planning Board



1.

Applicant Information:

Luke S. MacFadyen

Name

15 Howard St.

Address

Portland Me

Phone

871-1075

Fax

3.

Property Owner:

☒ Applicant

☐ Other

Name

Abouf

Address

4.

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

Phone

Fax

5.

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.)

Assessor's Reference (Chart-Block-Lot)

028-5-015

Address

Portland Me

Subject Property:

2.

#70+

(137 Newbury St) #72 Ind

A2

Existing Use:

Describe the existing use of the subject property:

4 Condominiums  
2 Retail (1st Floor)  
2 Residential (2nd - 3rd Floors)

7.

Current Zoning Designation(s):

Conditional B1

8.

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.

Broader allowable retail uses for the two retail units.

9.

Sketch Plan: On a separate sheet please provide a sketch 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"=100')

10.

Proposed Zoning: Please check all that apply:

✓ Zoning Map Amendment, from CBI to B1B

B.

Zoning Text Amendment to Section 14-

C.

Conditional or Contract Zone

For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).  
A conditional or contract rezoning may 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 and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)



11.

**Application Fee:** An Application Fee must be submitted by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below). The applicant also agrees to pay all costs of publication (or advertising) of the Workshop and Public Hearing Notices as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

Fee for Service Deposit (\$200.00)

(Required for all applications in addition to the applicable application fee listed below)

Zoning Map Amendment \$2,000.00

Zoning Text Amendment \$2,000.00

Contract/Conditional Rezoning

Under 5,000 sq. ft. \$1,000.00

5,000 sq. ft. and over \$3,000.00

Legal Advertisements percent of total bill

Notices .55 cents each

(receipt of application, workshop and public hearing)

**NOTE:** Legal notices placed in the newspaper for the public hearing meeting are required by State Statute and local ordinance. Applicants will be billed by the Planning Division.

12.

**Signature:** The above information is true and accurate to the best of my knowledge.

Date of Filing

Signature of Applicant

**Further Information:**

Please contact the Planning Division for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board  
Portland, Maine

Effective: July 6, 1998

44

BK 164116057

EXHIBIT A

A certain lot or parcel of land with the buildings thereon, situated on the westerly corner of India and Newbury Streets in the Portland, County of Cumberland and State of Maine, and being numbered 137 on said Newbury Street and 72 on said India

and bounded and described as follows:

Beginning at the stone monument at said westerly corner of India and Newbury Streets; thence running southwesterly by a line of the premises, thence northwesterly through the center of said premises wall and continuing in the same direct

seventy-two (72) feet and four (4) inches to all to land formerly of Mary Demery; thence northeasterly by said Damery's

twenty-two (22) feet and one and one-half (1.5) inches to said India Street; thence southeasterly by said India Street, seven

(75) feet and seven (7) inches to the point of beginning.

OK

B1

RECEIVED  
RECORDS & DEEDS

BK1441180556

91824

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS

THAT, Samuel T. Minervino and Robert M. Minervino and Albert J. Accio of 137 Newbury St., County Cumberland, State of Maine for consideration paid, grants to Luke MacFadyen of 19 Howard St., Portland, County Cumberland, State of Maine, with WARRANTY COVENANTS, the land in Portland, County of Cumberland, Maine, described as follows:

See Exhibit A attached hereto and made a part hereof

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of December, 1998.

Samuel T. Minervino  
Robert M. Minervino  
Albert J. Accio

STATE OF Maine  
COUNTY OF Cumberland

On this 17th day of December, 1998, personally appeared before me the above-named Samuel T. Minervino, Robert M. Minervino and Albert J. Accio, and acknowledged the foregoing to be their free act and deed.

Notary Public/Attorney at Law

Sam E. Stashman

My Commission Expires

B2



**City of Portland, Maine**

IN THE CITY COUNCIL

(16) 197 - 12/18/87

**AMENDMENT TO ZONING MAP  
RE: CONDITIONAL B-1 REZONING  
137 NEWBURY 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 March 1958, 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 map change amendment shown on Attachment 1.

Said rezoning shall be subject to the following conditions:

1. The second and third floors shall be maintained as residential uses.

2. The first floor uses shall be limited to retail uses.

3. The first floor shall have no more than two (2) retail uses.

4. The storefront shall be on India Street and the storefront design shall be compatible with neighboring properties on India Street. Stairs to the storefront shall be reviewed by Planning Staff for compatibility.

5. The exterior stairs above the first floor shall be reviewed for compliance with zoning.

6. The applicant shall record the approved conditions of rezoning in the Cumberland County Registry of Deeds and shall submit proof of recording to the Planning Authority.

7. The signage for the retail use shall be appropriate for a small scale retail use.

8. This conditional rezoning shall remain in effect only as long as this building exists on this property and shall not apply to any other structure.

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the subject

B-1INDNEWBZONING.AMD.NLB.001

12.1.89

C1

C2

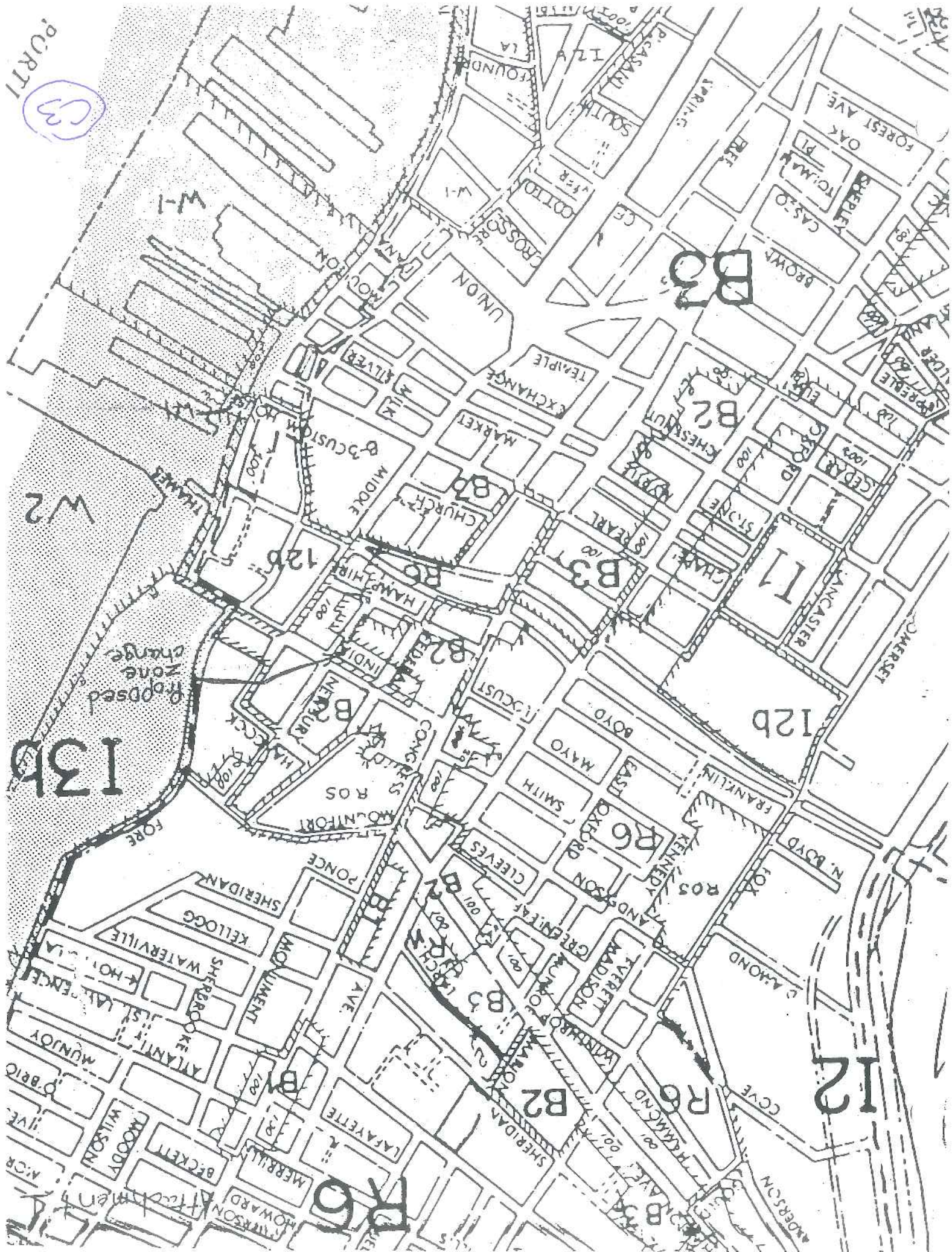
premises, shall bind the owner, its successors and assigns, of said property or any part thereof or interest therein, and any party in possession or occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by the City of Portland, by and through its duly authorized representatives.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event of a breach of any condition(s), the developer shall apply for a modification to the concept plan. The Planning Board will attempt to resolve the issues resulting in the breach. That resolution may include a recommendation to the City Council that the site be rezoned to R-6.







CITY OF PORTLAND, MAINE  
MEMORANDUM

TO: Nadeen M. Daniels, Assistant to the City Manager  
FROM: Joseph E. Gray, Jr., Director of Planning and Urban Development  
DATE: December 5, 1989  
SUBJECT: Minervino Conditional Rezoning

Please place this item on the next available Council agenda:

The conditional rezoning of 137 Newbury Street, from R-6 Residential to B-1 Business.

Background

On November 28, 1989 the Portland Planning board voted 7-0 to recommend to the City Council the conditional rezoning from R-6 Residential to B-1 Business, of a 3 story building located at 137 Newbury Street. The building is a duplex, with the applicants lot being 1,449 sq. ft., and the building being 4,026 sq. ft. The building is shown in a photograph, which is attachment 4 in Planning Report #84-89. The proposed storefront is depicted in a drawing included as attachment 5.

The conditions are intended to maintain residential uses in the upper floors of the building while allowing business uses on the first floor. The specific conditions and penalty section is included in the report.

Attachments

1. Council Order and Map
2. Planning Report #84-89

⑤

(E1)

December 12, 1989

Portland Planning Board  
Portland, Maine

Submitted by:

SAMUEL MINERVINO, APPLICANT

137 NEWBURY STREET

CONDITIONAL REZONING



## I. Introduction

Samuel Minervino is requesting a conditional rezoning, from R-6 Residential to B-1 Business, for the first floor of a building located at 137 Newbury Street. The 1,449 sq. ft. lot contains a 4,026 sq. ft., 3 story, brick building. The building is shown in a photograph, included as Attachment 4. The property owned by the applicant fronts on India Street. A vicinity map and letter from the applicant is included as Attachments 1 and 2.

Public notice for this project consisted of legal advertisements in the Guy Gannett Newspaper, notice to area residents and property owners, a notice posted in the City Clerk's office, and a placard displayed on site.

## II. Summary of Findings

Zoning	Land Area	Total Square Footage	Number of Stories	Land Uses
R-6 Residential	1,449 sq. ft.	4,026 sq. ft.	3	

The building is located in a narrow strip of R-6 Residential, surrounded on 3 sides by business uses. The recently approved 73 India Street, 18,000 sq. ft. office and retail is across India Street.

## III. Planning Board Review

The India Street area has undergone a transition from a predominately residential area to one dominated by business uses along India Street with a small residential neighborhood remaining between India and Franklin Streets. Residential uses along India Street have gradually given way to commercial uses. Such uses, along with the 24 Hour Club, have affected the marketability of residential uses. The Board has recognized that the remaining residential uses, especially in the upper floors of buildings in the area, are a valuable housing resource. Given the failure of residential uses on the ground floor, the best way of balancing the preservation of the residential character, and allowing for some small scale retail uses which will provide a return from the property, is conditional rezoning. This action would allow for compatibility with the Land Development Plan since it retains dwelling units, and will allow for repairs and improvements to the building.

This project originally came to the Board as a conventional zone change request, from R-6 to B-1. At the September 26 workshop, the Board expressed their concern with preserving the residential character of the neighborhood, but also communicated the willingness to review a conditional rezoning request. At a subsequent workshop, the Board examined a list of potential conditions. The conditions are designed to maintain residential uses in the second and third floors while

ensuring that the retail uses are compatible with the B-1 zone and the surrounding neighborhood. The applicant will be making some repairs and improvements to the building, specifically at the proposed storefront entrance. The improvements here consist of a detailed entryway with a porch and railings. A reduction of a rendering of the India Street facade of the building is included as Attachment 5. The conditions and penalties of the rezoning are:

1. The second and third floors shall be maintained as residential uses.
2. The B-1 Business zone on the first floor shall be limited to retail uses.
3. The first floor shall have no more than 2 retail uses.
4. The storefront shall be on India Street and the storefront design shall be compatible with neighboring properties on India Street.
5. The exterior stairs shall be reviewed by Planning Staff for compatibility with zoning.
6. The applicant shall record the approved conditions of rezoning in the Cumberland County Registry of Deeds and submit proof of recording to the Planning Authority.
7. The signage for the retail use shall be appropriate for a small scale retail use.
8. This conditional rezoning shall remain in effect only so long as this building exists on this property and shall not apply to any other structure

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with subject premises, shall bind the owner, its successors and assigns, of said property or any part thereof or interest therein, and any party in possession of occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by, the City of Portland, by and through its duly authorized representatives.

If any of the restrictions, provisions, conditions or portions thereof set forth herein is for any reason held invalid or unconstitutional any court of competent jurisdiction, such portion shall be deemed, as separate, distinct and independent provision and such determination shall not affect the validity of remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event of a breach of any condition(s), the developer shall apply for the modifications to the approved plan. The Planning Board will attempt to resolve the issues resulting in the breach. That resolution may include a recommendation to the City Council that the site be rezoned to R-6.



#### IV. Findings of the Planning Board

At the November 28, 1989 public hearing, the Planning Board voted 7-0 on the following motion with conditions:

On the basis of plans and materials submitted by the applicant and on the basis of information contained in Planning Report #77-89 relevant to standards for conditional rezoning, Section 14-60 and/or other findings as follows:

- That the Planning Board recommends the conditional rezoning of 137 Newbury Street from R-6 to B-1 subject to the following conditions:
1. The second and third floors shall be maintained as residential uses.
  2. The B-1 Business zone on the first floor shall be limited to retail uses.
  3. The first floor shall have no more than 2 retail uses.
  4. The storefront shall be on India Street and the storefront design shall be compatible with neighboring properties on India Street; and stairs to the storefront shall be compatible and reviewed by the staff.
  5. The exterior stairs shall be reviewed by Planning Staff for compatibility with zoning.
  6. The applicant shall record the approved conditions of rezoning in the Cumberland County Registry of Deeds and submit proof of recording to the Planning Authority.
  7. The signage for the retail use shall be appropriate for a small scale retail use.
  8. This conditional rezoning shall remain in effect only so long as this building exists on this property and shall not apply to any other structure

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with subject premises, shall bind the owner, its successors and assigns, of said property or any part thereof or interest therein, and any party in possession of occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by, the City of Portland, by and through its duly authorized representatives.

If any of the restrictions, provisions, conditions or portions thereof set forth herein is for any reason held invalid or unconstitutional any court of competent jurisdiction, such portion shall be deemed, as separate, distinct and independent provision and such determination shall not affect the validity of remaining portions hereof.

EH

ES

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event of a breach of any condition(s), the developer shall apply for the modifications to the approved plan. The Planning Board will attempt to resolve the issues resulting in the breach. That resolution may include a recommendation to the City Council that the site be rezoned to R-6.

Attachments

1. Vicinity Map
2. Applicant's Letter
3. Site Plan
4. Photograph of Building
5. Reduction of Rendering







F



(c) Loading areas shall be screened and parking areas shall be screened and landscaped so as to avoid a large continuous expanse of paved area.

(d) Buildings and structures shall be sited to avoid obstructing significant scenic views presently enjoyed by nearby residents, passersby, and users of the site.

(e) Storage of commodities and equipment shall be completely enclosed within buildings or provided with screening by a fence, wall, or landscaping.

(f) The outer perimeter of playfields, playlots, and other active recreational areas shall be screened, or shall be located a reasonable distance from any residential use.

(g) Off-street parking shall conform to the requirements of division 20 of this article, where applicable. Otherwise, off-street parking adequate to serve protected employee and visitor needs shall be provided. Parking needs projections provided by the applicant or the planning department should be considered in the review.

(Ord. No. 232-81, § 602.7B.6, 11-16-81)

Sec. 14-159. Shoreland and flood plain management regulations.

Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.  
(Ord. No. 232-81, § 602.7B.7, 11-16-81; Ord. No. 15-92, § 15, 6-15-92)

Sec. 14-160. Reserved.

**DIVISION 9. B-1 AND B-1B NEIGHBORHOOD BUSINESS ZONES\***

\*Editor's note--Ord. No. 292-88, adopted Apr. 4, 1988, with an effective date of July 1, 1988, repealed §§ 14-161--14-167 of Div. 9, B-1 Business Zone, of this article and enacted in lieu thereof similar new provisions as set out in §§ 14-161--14-167. Formerly, such sections derived from §§ 602.8.A--602.8.G of the city's 1968 code and from Ord. No. 74-72, adopted Mar. 6, 1972, and Ord. No. 499-74, § 4, adopted Aug. 19, 1974.



Sec. 14-161. Purpose.

(a) B-1 Neighborhood Business Zone

The purpose of the B-1 neighborhood business zone is to provide limited areas for the location of smallscale 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.

Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.

(b) B-1b Neighborhood Business Zone

The purpose of the B-1b neighborhood business zone is to provide appropriate opportunities for the establishment of smallscale ground floor commercial uses in existing buildings, serving a local market, while preserving residential uses and character above the ground floor of structures. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3).

Suitable locations for this zone may include street intersections, arterial streets, and sites with existing or traditional neighborhood retail and service uses.  
(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 1, 11-15-93; Ord. No. 94-99, 11-15-99)

Sec. 14-162. Permitted uses.

(a) The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone. For



permitted uses in the upper stories of buildings in the B-1b zone, refer to subsection (5) below: in existence on November 15, 1993:

(1) Residential

- a. Any residential use permitted in the residential zone abutting the lot is permitted. If there is no abutting residential zone, any residential use permitted in the nearest residential zone to the lot is permitted. In the case of two (2) or more abutting residential zones, any residential use permitted in the most restrictive such zone is permitted.
- b. In any structure with commercial use on the first floor, multifamily dwellings are permitted above the first floor.

(2) Business:

- a. Professional offices, as defined in section 14-47, but excluding veterinarians.
- b. Business services, as defined in section 14-47, but excluding beverage container redemption centers.
- c. Personal services, as defined in section 14-47.
- d. Offices of building tradesmen, provided there is no exterior storage of building materials.
- e. Retail establishments, provided such do not include drive-through sales or services and do not operate between the hours of eleven (11) p.m. and six (6) a.m. and do not accept deliveries or services between the hours of ten (10) p.m. to seven (7) a.m.

- f. Beverage dealers (as defined in 32 M.R.S.A. 1862) provided they meet the following requirements:

1. Maximum total floor area for beverage container redemptions, including the storage of spent beverage containers, shall be no

greater than five hundred (500) sq. ft. or ten (10) percent of the total floor area of the facility, whichever is less;

2. Beverage container redemption is an accessory use to a principal retail use that includes beverage sales. Local beverage container redemption centers as defined in 32 M.R.S.A. 1867, as may be amended, are not allowed as a principal use.

3. Storage of all beverage containers shall be contained entirely within the building providing retail sales.

(3) - Institutional:

a. Church or other place of worship;

b. Municipal offices;

c. Elementary, middle and secondary schools;

d. Nursery schools and kindergarten;

e. Clinics of less than three thousand (3,000) square feet of total floor space.

(4) Other:

a. Lodging houses;

b. Utility substations, as defined in section 14-47, subject to the standards of article V (site plan);

c. Day care facilities or babysitting services;

d. Accessory uses as provided in section 14-404;

e. Bed and breakfast, subject to the standards of article V (site plan).

(5) Uses permitted above the ground floor level of buildings in the B-1b zone:

- a. Any residential use set forth in section 14-162(a);
- b. Bed and breakfast, subject to the standards of article V (site plan).
- (Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 2, 11-15-93; Ord. No. 125-97, § 5, 3-3-97; Ord. No. 94-99, 11-15-99)
- Sec. 14-163. Conditional uses.

The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone, as provided in section 14-474 (conditional uses), if they meet the following requirements:

- (a) Restaurants, provided they meet the following requirements:

1. Maximum total floor area for use of the public shall be one thousand (1,000) square feet;
2. The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. each day;
3. Food service and consumption are the primary function of the restaurant; and
4. There shall be no drive-through service.

(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 3, 11-15-93; Ord. No. 94-99, 11-15-99)

Sec. 14-164. Prohibited uses.

Uses not enumerated in sections 14-162 and 14-163 as either permitted or conditional uses are prohibited.

(Ord. No. 292-88, 4-4-88)

Sec. 14-165. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, residential uses permitted under section 14-162(a) shall meet the requirements of such abutting or nearest residential zone except as noted below, and nonresidential uses in the B-1 and B1-b zone shall meet the following minimum requirements:

**PLANNING REPORT # 04-06**

**ZONING AMENDMENT  
C2 CONDITIONAL ZONE TO B1-B ZONE  
INDIA STREET BETWEEN NEWBURY AND FEDERAL  
LUKE MACFADYEN, APPLICANT**

Submitted to:  
Portland Planning Board  
January 6, 2006

Submitted by  
Sarah Hopkins  
Development Review Services Manager



Luke Macfadyen has requested a recommendation from the Planning Board to the City Council for an amendment of the zoning for 137 Newbury Street. The property is currently subject to a conditional zone and the applicant intent is to have the project subject to less restriction on use.

A B-1b zone has been discussed as an appropriate zone for the site and at the Planning Board's suggestion, a larger area along India Street has been advertised as well.

## **I. Project Summary**

Applicant: Luke Macfadyen  
15 Howard Street  
Portland, ME 04101

Location: 137 Newbury Street

Current Zoning: Conditional B1 Zone C2

Proposed Zoning: Amended C2 expanding allowable first floor uses to those allowed in the B1b zone.

## **II. Project Background and Description**

On January 3, 1990, the property at 137 Newbury Street was conditionally rezoned from R6 to a Conditional B1 Zone (C2). The intent of the rezoning, as expressed in a December 5, 1989 memo from a then Assistant City Manager to the City Manager, was to, "...maintain the residential uses on the upper floors of the building while allowing business uses on the first floor".

The range of business uses allowed was limited first floor retail by the conditions of the rezone as follows (from Conditional Zone C2, Attachment C):

- The first floor uses shall be limited to retail uses.
- The first floor shall have no more than two (2) retail uses.

While zoning in the area has undergone some changes since 1990, the subject site (Zone C2) is still situated in what otherwise continues to be an R6 zone. The B2b zone covers the opposite side of India Street (Attachment H).

The applicant has indicated that the first floor use restrictions of C2 have made it difficult for him to keep first floor tenant spaces occupied. The applicant cites turning away potential tenants due to zoning determinations against their desired use.

Sec. 14-180. Reserved.

### **III. Planning Board Discussion**

During the November 15 workshop, Planning Board members discussed their preference to remove the conditional zoning for the site, and rezone the property as a B-1b zone. The Planning Board also directed staff to advertise the length of India Street, between Newbury and Federal as a B-1b zone for discussion purposes.

### **IV. Policy Considerations/Consistency with the Comprehensive Plan**

The India Street corridor is rapidly changing as shown in the Eastern Waterfront Master Plan and recent development projects. The introduction of a mixed-use hotel, condominium, retail complex two blocks south of the parcel attests to the changing nature of the area, as does the proposed Village redevelopment and Longfellow mixed-use project to the east.

The original conditional rezoning of the property was approved when the B-1b zone did not yet exist. In fact, a number of similar conditional rezonings in the India Street neighborhood prompted the adoption of the B-1b zone.

As stated in the purpose statement of the B-1b zone:

*The purpose of the B-1b neighborhood business zone is to provide appropriate opportunities for the establishment of smallscale ground floor commercial uses in existing buildings, serving a local market, while preserving residential uses and character above the ground floor of structures. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3).*

*Suitable locations for this zone may include street intersections, arterial streets, and sites with existing or traditional neighborhood retail and service uses.*

Also, as stated in the permitted use section, the zone maintains the requirement for upper story residential uses, while allowing business and personal uses on the ground floor. Moreover, the B-1b zone allows residential uses on the ground floor, as well.

Such a concept of requiring residential uses above business uses along transportation corridors is recommended by the Housing Plan and Transportation Plan sections of the City's Comprehensive Plan.

Photographs of the buildings in the area are included with a context map as Attachment H.

## **V. Staff Recommendation**

The Planning Department supports the rezoning of the property at 137 Newbury Street, as well as the properties located along India Street as advertised. Currently, retail uses are located on the ground floor of 137 Newbury, fronting on India Street. 76 and 80 India Street contain residential uses on the ground floor and upper stories; however, were there to be redevelopment of the sites, B-1b would be appropriate. Likewise, the Rectory is located at the corner of Federal and India. The use is institutional and allowed as a conditional use in the existing R-6 zone. Should the site be redeveloped, a B-1b zone would be appropriate, as well.

## **III. Motions for the Board to Consider**

On the basis of plans and materials submitted by the applicant and included in Planning Report #04-06, the Planning Board finds the rezoning of 137 Newbury Street, 76 and 80 India Street and St. Peter's Rectory at 68 Federal Street.

### **Attachments**

- A. Application
- B. Property Deed
- C. Conditional B1 Rezone C2
- D. 1989 Council Agenda Request
- E. Planning Board Report #84-89, December 1989
- F. Site Photo
- G. B1b Zoning Text
- H. Zoning Map and Context Map





City of Portland, Maine  
Department of Planning and Development  
Zone Change Application

Application ID: 863 Application Date: 10/03/2005 CBL: 028 J015001 Property Location: 137 Newbury St

Applicant Information:

Macfadyen Luke

Name

Business Name

15 Howard St

Address

Portland, ME 04101

City, State and Zip

207-871-1075

Telephone

Fax

Applicant's Right, Title or Interest in Subject Property:

Current Zoning Designation: C2

Existing Use of Property:

4 condominiums, 2 retail (1st floor) and 2 residential  
(2nd and 3rd floors).

Proposed Use of Property:

Broaden allowable retail uses for the two retail units.

Property Owner:

Macfadyen Luke

Name

15 Howard St

Address

Portland, ME 04101

City, State and Zip

Telephone

Fax

Amendment A ☒ B1b

Amendment B ☐

Amendment C ☐

Section 14: \_\_\_\_\_

Requested:

(A1)

Planning Approval

REVIEW TYPE: Committee Review

RECOMMENDATION DATE: \_\_\_\_\_ APPROVAL DATE: \_\_\_\_\_ ENACTMENT DATE: \_\_\_\_\_



APPLICATION FOR ZONING AMENDMENT  
City of Portland, Maine  
Department of Planning and Development  
Portland Planning Board

1. Applicant Information:

Luke G. MacFadyen  
Name

15 Howard St.  
Address

Portland Me

871-1075

Phone

Fax

2. Subject Property:

(137 Newbury St) #70 + #72 Indiv  
Address

Portland ME

028-J-015  
Assessor's Reference (Chart-Block-Lot)

3. Property Owner: ☒ Applicant ☐ Other

Name

ABOVE  
Address

Phone

Fax

4. Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

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.)

5. 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.)

6. Existing Use:

Describe the existing use of the subject property:

4 Condominiums  
2 Retail (1st Floor)  
2 Residential (2nd - 3rd Floors)

7. Current Zoning Designation(s): Conditional B1

8. 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.

Broaden allowable retail uses for the two retail units.

9. Sketch Plan: On a separate sheet please provide a sketch 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"=100'.)

10. Proposed Zoning: Please check all that apply:

A. ☒ Zoning Map Amendment, from CBI to B1B

B. ☐ Zoning Text Amendment to Section 14-

For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).

C. ☐ Conditional or Contract Zone

A conditional or contract rezoning may 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 and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

11. **Application Fee:** An Application Fee must be submitted by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below). The applicant also agrees to pay all costs of publication (or advertising) of the Workshop and Public Hearing Notices as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

✓            Fee for Service Deposit (\$200.00)  
(Required for all applications in addition to the applicable application fee listed below)

---

✓            Zoning Map Amendment            \$2,000.00  
           Zoning Text Amendment            \$2,000.00  
           Contract/Conditional Rezoning  
    Under 5,000 sq. ft.                    \$1,000.00  
    5,000 sq. ft. and over                \$3,000.00  
    Legal Advertisements                percent of total bill  
    Notices                                .55 cents each  
    (receipt of application, workshop and public hearing)

NOTE: Legal notices placed in the newspaper for the public hearing meeting are required by State Statute and local ordinance. Applicants will be billed by the Planning Division.

12. **Signature:** The above information is true and accurate to the best of my knowledge.

          9/23/05            
Date of Filing

          Mike S. McAdams            
Signature of Applicant

**Further Information:**

Please contact the Planning Division for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board  
Portland, Maine

Effective: July 6, 1998

A4

## EXHIBIT A

BK 14411 PG 057

A certain lot or parcel of land with the buildings thereon, situated on the westerly corner of India and Newbury Streets in the Portland, County of Cumberland and State of Maine, and being numbered 137 on said Newbury Street and 72 on said India and bounded and described as follows:

Beginning at the stone monument at said westerly corner of India and Newbury Streets; thence running southwesterly by said Newbury Street, twenty-three (23) feet and four (4) inches to a point in line with the center of the partition wall of the two buildings standing on the premises; thence northwesterly through the center of said partition wall and continuing in the same direction seventy-two (72) feet and four (4) inches in all to land formerly of Mary Demery; thence northeastwardly by said Demery's twenty-two (22) feet and one and one-half (1.5) inches to said India Street; thence southeastwardly by said India Street, seven (7) feet and seven (7) inches to the point of beginning.

CZ

BI

RECEIVED  
RECORDED & INDEXED  
OFFICE OF THE CLERK OF COURTS  
MAINE

BK 14411P0056

91824

WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS

THAT, Samuel T. Minervino and Robert M. Minervino and Albert J. Accio of 137 Newbury St., County Cumberland, State of Maine for consideration paid, grants to Luke MacFadden of 19 Howard St., Portland, County Cumberland, State of Maine, with WARRANTY COVENANTS, the land in Portland, County of Cumberland, Maine, described as follows:

See Exhibit A attached hereto and made a part hereof

IN WITNESS WHEREOF, I have hereunto set my hand this 17th day of December, 1998.

MAINE REAL ESTATE TAX PAID

*[Signature]*  
Witness

*[Signature]*  
Samuel T. Minervino

*[Signature]*  
Robert M. Minervino

*[Signature]*  
Albert J. Accio

STATE OF Maine  
COUNTY OF Cumberland

On this 17th day of December, 1998, personally appeared before me the above-named Samuel T. Minervino, Robert M. Minervino and Albert J. Accio, and acknowledged the foregoing to be his/her part and deed.

*[Signature]*  
Notary Public/Attorney at Law  
John E. Stetson

My Commission Expires:

B2

C2

City of Portland, Maine  
IN THE CITY COUNCIL

(16)197-12/18/89

AMENDMENT TO ZONING MAP  
RE: CONDITIONAL B-1 REZONING  
137 NEWBURY 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 March 1958, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by S14-49, be and hereby is amended by adopting the map change amendment shown on Attachment 1.

Said rezoning shall be subject to the following conditions:

1. The second and third floors shall be maintained as residential uses.
2. The first floor uses shall be limited to retail uses.
3. The first floor shall have no more than two (2) retail uses.
4. The storefront shall be on India Street and the storefront design shall be compatible with neighboring properties on India Street. Stairs to the storefront shall be reviewed by Planning Staff for compatibility.
5. The exterior stairs above the first floor shall be reviewed for compliance with zoning.
6. The applicant shall record the approved conditions of rezoning in the Cumberland County Registry of Deeds and shall submit proof of recording to the Planning Authority.
7. The signage for the retail use shall be appropriate for a small scale retail use.
8. This conditional rezoning shall remain in effect only as long as this building exists on this property and shall not apply to any other structure.

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the subject

B-1INDNEWBZONING.AMD.NLB.001  
12.1.89

C1

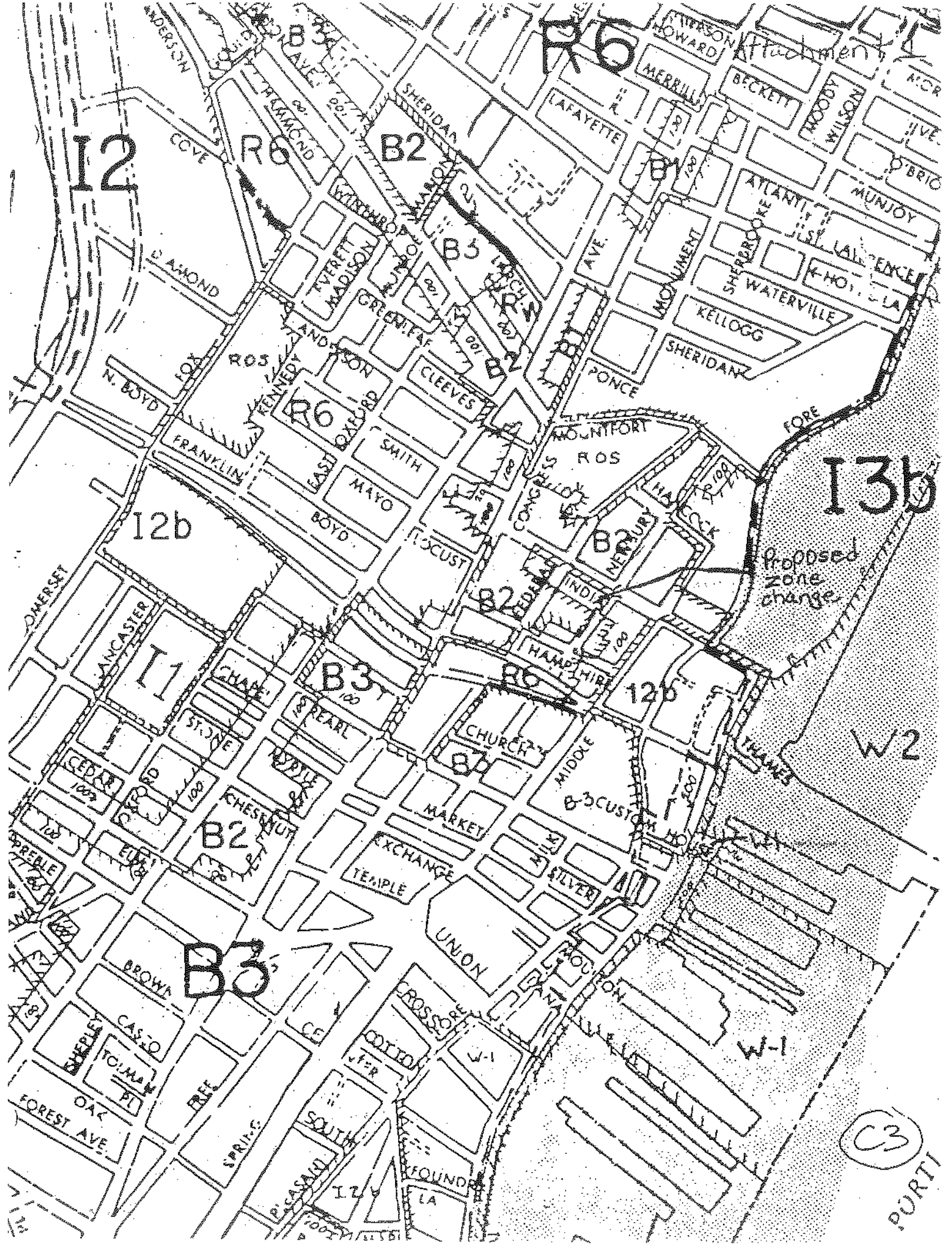
premises, shall bind the owner, its successors and assigns, of said property or any part thereof or interest therein, and any party in possession or occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by the City of Portland, by and through its duly authorized representatives.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event of a breach of any condition(s), the developer shall apply for a modification to the concept plan. The Planning Board will attempt to resolve the issues resulting in the breach. That resolution may include a recommendation to the City Council that the site be rezoned to R-6.





I2

R6

R6

B2

B3

I2b

I3b

Proposed zone change

I1

B3

B2

B3

I2b

W2

W-1

C3

PORT

CITY OF PORTLAND, MAINE  
MEMORANDUM

TO: Nadeen M. Daniels, Assistant to the City Manager  
FROM: Joseph E. Gray, Jr., Director of Planning and Urban Development  
DATE: December 5, 1989  
SUBJECT: Minervino Conditional Rezoning

Please place this item on the next available Council agenda:

The conditional rezoning of 137 Newbury Street, from R-6 Residential to B-1 Business.

Background

On November 28, 1989 the Portland Planning board voted 7-0 to recommend to the City Council the conditional rezoning from R-6 Residential to B-1 Business, of a 3 story building located at 137 Newbury Street. The building is a duplex, with the applicants lot being 1,449 sq. ft. and the building being 4,026 sq. ft. The building is shown in a photograph, which is attachment 4 in Planning Report #84-89. The proposed storefront is depicted in a drawing included as attachment 5.

The conditions are intended to maintain residential uses in the upper floors of the building while allowing business uses on the first floor. The specific conditions and penalty section is included in the report.

Attachments

1. Council Order and Map
2. Planning Report #84-89

(D)

CONDITIONAL REZONING

137 NEWBURY STREET

SAMUEL MINERVINO, APPLICANT

Submitted by:

Portland Planning Board  
Portland, Maine

December 12, 1989

(E1)

## I. Introduction

Samuel Minervino is requesting a conditional rezoning, from R-6 Residential to B-1 Business, for the first floor of a building located at 137 Newbury Street. The 1,449 sq. ft. lot contains a 4,026 sq. ft., 3 story, brick building. The building is shown in a photograph, included as Attachment 4. The property owned by the applicant fronts on India Street. A vicinity map and letter from the applicant is included as Attachments 1 and 2.

Public notice for this project consisted of legal advertisements in the Guy Gannett Newspaper, notice to area residents and property owners, a notice posted in the City Clerk's office, and a placard displayed on site.

## II. Summary of Findings

Zoning	R-6 Residential
Land Area	1,449 sq. ft.
Total Square Footage	4,026 sq. ft.
Number of Stories	3
Land Uses	The building is located in a narrow strip of R-6 Residential, surrounded on 3 sides by business uses. The recently approved 73 India Street, 18,000 sq. ft. office and retail is across India Street.

## III. Planning Board Review

The India Street area has undergone a transition from a predominately residential area to one dominated by business uses along India Street with a small residential neighborhood remaining between India and Franklin Streets. Residential uses along India Street have gradually given way to commercial uses. Such uses, along with the 24 Hour Club, have affected the marketability of residential uses. The Board has recognized that the remaining residential uses, especially in the upper floors of buildings in the area, are a valuable housing resource. Given the failure of residential uses on the ground floor, the best way of balancing the preservation of the residential character, and allowing for some small scale retail uses which will provide a return from the property, is conditional rezoning. This action would allow for compatibility with the Land Development Plan since it retains dwelling units, and will allow for repairs and improvements to the building.

This project originally came to the Board as a conventional zone change request, from R-6 to B-1. At the September 26 workshop, the Board expressed their concern with preserving the residential character of the neighborhood, but also communicated the willingness to review a conditional rezoning request. At a subsequent workshop, the Board examined a list of potential conditions. The conditions are designed to maintain residential uses in the second and third floors while

E2

#### IV. Findings of the Planning Board

At the November 28, 1989 public hearing, the Planning Board voted 7-0 on the following motion with conditions:

On the basis of plans and materials submitted by the applicant and on the basis of information contained in Planning Report #77-89 relevant to standards for conditional rezoning, Section 14-60 and/or other findings as follows:

That the Planning Board recommends the conditional rezoning of 137 Newbury Street from R-6 to B-1 subject to the following conditions:

1. The second and third floors shall be maintained as residential uses.
2. The B-1 Business zone on the first floor shall be limited to retail uses.
3. The first floor shall have no more than 2 retail uses.
4. The storefront shall be on India Street and the storefront design shall be compatible with neighboring properties on India Street; and stairs to the storefront shall be compatible and reviewed by the staff.
5. The exterior stairs shall be reviewed by Planning Staff for compatibility with zoning.
6. The applicant shall record the approved conditions of rezoning in the Cumberland County Registry of Deeds and submit proof of recording to the Planning Authority.
7. The signage for the retail use shall be appropriate for a small scale retail use.
8. This conditional rezoning shall remain in effect only so long as this building exists on this property and shall not apply to any other structure

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with subject premises, shall bind the owner, its successors and assigns, of said property or any part thereof or interest therein, and any party in possession of occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by, the City of Portland, by and through its duly authorized representatives.

If any of the restrictions, provisions, conditions or portions thereof set forth herein is for any reason held invalid or unconstitutional any court of competent jurisdictions, such portion shall be deemed, as separate, distinct and independent provision and such determination shall not affect the validity of remaining portions hereof.

(E4)

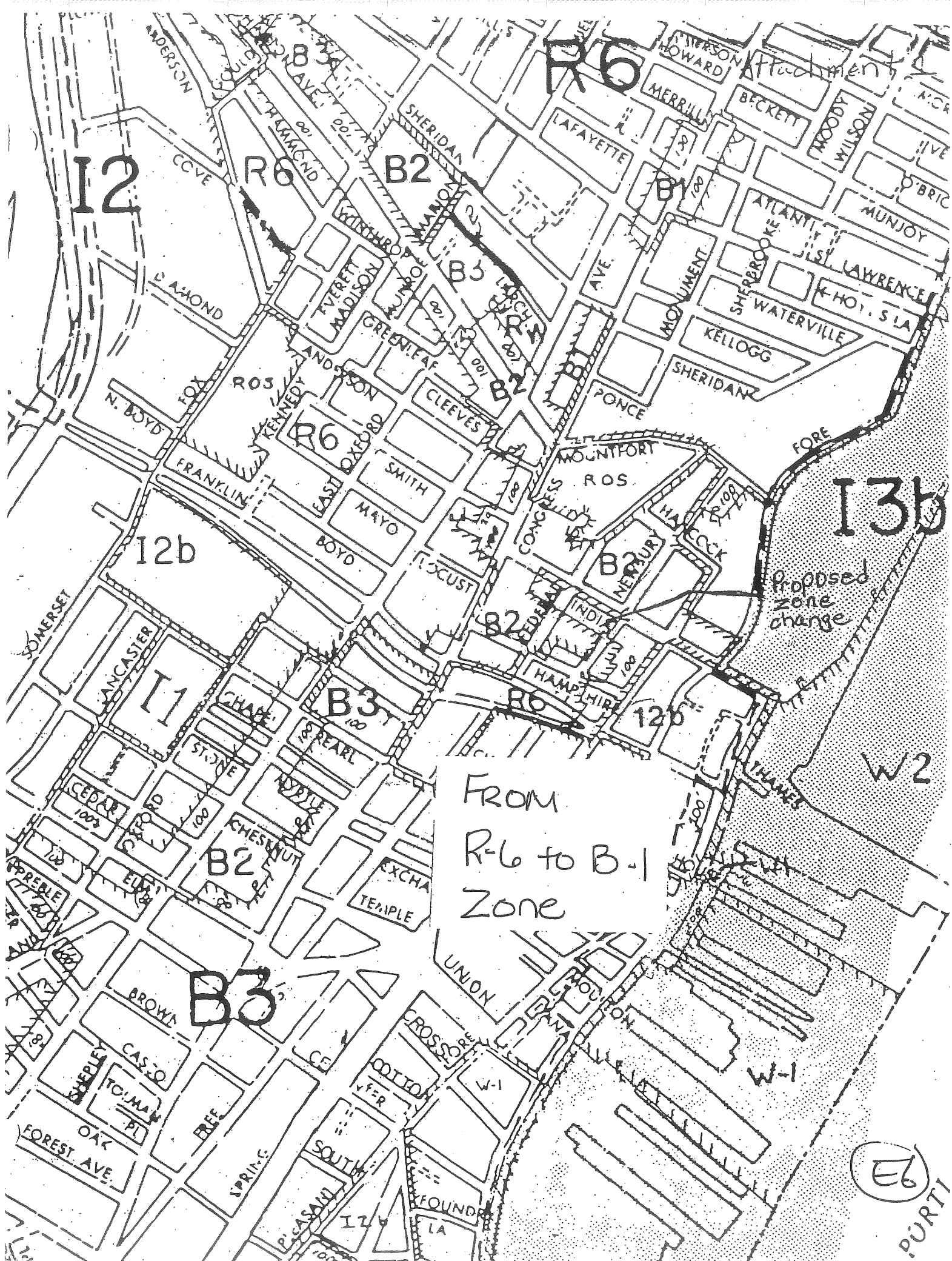
Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event of a breach of any condition(s), the developer shall apply for the modifications to the approved plan. The Planning Board will attempt to resolve the issues resulting in the breach. That resolution may include a recommendation to the City Council that the site be rezoned to R-6.

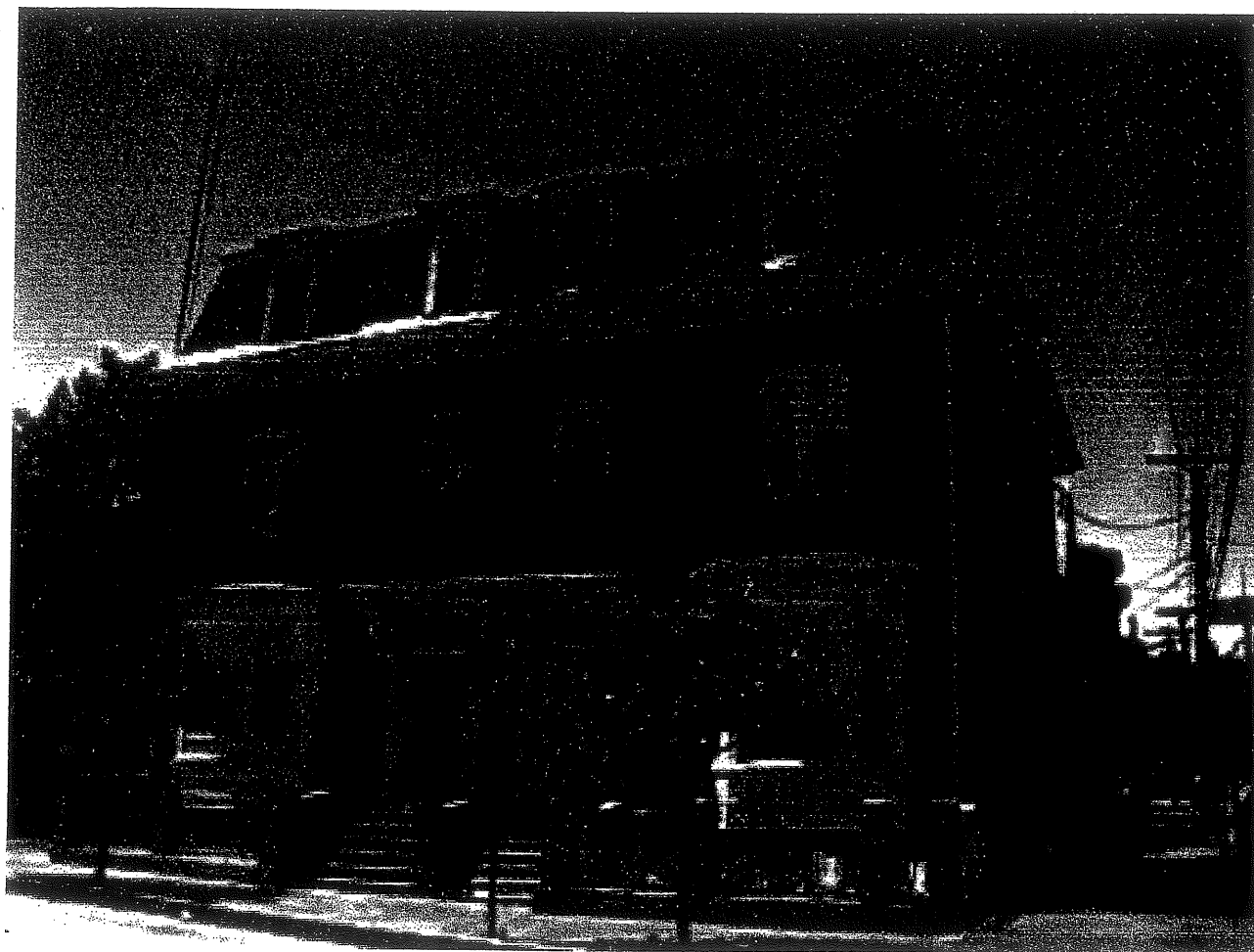
Attachments

1. Vicinity Map
2. Applicant's Letter
3. Site Plan
4. Photograph of Building
5. Reduction of Rendering

E5







(F)

- (c) Loading areas shall be screened and parking areas shall be screened and landscaped so as to avoid a large continuous expanse of paved area.
- (d) Buildings and structures shall be sited to avoid obstructing significant scenic views presently enjoyed by nearby residents, passersby, and users of the site.
- (e) Storage of commodities and equipment shall be completely enclosed within buildings or provided with screening by a fence, wall, or landscaping.
- (f) The outer perimeter of playfields, playlots, and other active recreational areas shall be screened, or shall be located a reasonable distance from any residential use.
- (g) Off-street parking shall conform to the requirements of division 20 of this article, where applicable. Otherwise, off-street parking adequate to serve projected employee and visitor needs shall be provided. Parking needs projections provided by the applicant or the planning department should be considered in the review.

(Ord. No. 232-81, § 602.7B.6, 11-16-81)

**Sec. 14-159. Shoreland and flood plain management regulations.**

Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.

(Ord. No. 232-81, § 602.7B.7, 11-16-81; Ord. No. 15-92, § 15, 6-15-92)

**Sec. 14-160. Reserved.**

**DIVISION 9. B-1 AND B-1b NEIGHBORHOOD BUSINESS ZONES\***

-----  
\*Editor's note--Ord. No. 292-88, adopted Apr. 4, 1988, with an effective date of July 1, 1988, repealed §§ 14-161--14-167 of Div. 9, B-1 Business Zone, of this article and enacted in lieu thereof similar new provisions as set out in §§ 14-161--14-167. Formerly, such sections derived from §§ 602.8.A--602.8.G of the city's 1968 Code and from Ord. No. 74-72, adopted Mar. 6, 1972, and Ord. No. 499-74, § 4, adopted Aug. 19, 1974.  
-----

**Sec. 14-161. Purpose.**

**(a) B-1 Neighborhood Business Zone**

The purpose of the B-1 neighborhood business zone is to provide limited areas for the location of smallscale 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.

Suitable locations for this zone may include street intersections and arterial streets with existing or proposed traditional neighborhood retail and service uses.

**(b) B-1b Neighborhood Business Zone**

The purpose of the B-1b neighborhood business zone is to provide appropriate opportunities for the establishment of smallscale ground floor commercial uses in existing buildings, serving a local market, while preserving residential uses and character above the ground floor of structures. Building additions are encouraged but not required to meet the maximum setbacks of 14-165(c)(3).

Suitable locations for this zone may include street intersections, arterial streets, and sites with existing or traditional neighborhood retail and service uses.

(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 1, 11-15-93; Ord. No. 94-99, 11-15-99)

**Sec. 14-162. Permitted uses.**

(a) The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone. For

permitted uses in the upper stories of buildings in the B-1b zone, refer to subsection (5) below: in existence on November 15, 1993:

(1) *Residential*

- a. Any residential use permitted in the residential zone abutting the lot is permitted. If there is no abutting residential zone, any residential use permitted in the nearest residential zone to the lot is permitted. In the case of two (2) or more abutting residential zones, any residential use permitted in the most restrictive such zone is permitted.
- b. In any structure with commercial use on the first floor, multifamily dwellings are permitted above the first floor.

(2) *Business:*

- a. Professional offices, as defined in section 14-47, but excluding veterinarians.
- b. Business services, as defined in section 14-47, but excluding beverage container redemption centers.
- c. Personal services, as defined in section 14-47.
- d. Offices of building tradesmen, provided there is no exterior storage of building materials.
- e. Retail establishments, provided such do not include drive-through sales or services and do not operate between the hours of eleven (11) p.m. and six (6) a.m. and do not accept deliveries or services between the hours of ten (10) p.m. to seven (7) a.m.
- f. Beverage dealers (as defined in 32 M.R.S.A. 1862) provided they meet the following requirements:
  1. Maximum total floor area for beverage container redemptions, including the storage of spent beverage containers, shall be no

greater than five hundred (500) sq. ft. or ten (10) percent of the total floor area of the facility, whichever is less;

2. Beverage container redemption is an accessory use to a principal retail use that includes beverage sales. Local beverage container redemption centers as defined in 32 M.R.S.A. 1867, as may be amended, are not allowed as a principal use.
3. Storage of all beverage containers shall be contained entirely within the building providing retail sales.

(3) *Institutional:*

- a. Church or other place of worship;
- b. Municipal offices;
- c. Elementary, middle and secondary schools;
- d. Nursery schools and kindergarten;
- e. Clinics of less than three thousand (3,000) square feet of total floor space.

(4) *Other:*

- a. Lodging houses;
- b. Utility substations, as defined in section 14-47, subject to the standards of article V (site plan);
- c. Day care facilities or babysitting services;
- d. Accessory uses as provided in section 14-404;
- e. Bed and breakfast, subject to the standards of article V (site plan).

(5) Uses permitted above the ground floor level of buildings in the B-1b zone:

- a. Any residential use set forth in section 14-162(a);
- b. Bed and breakfast, subject to the standards of article V (site plan).

(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 2, 11-15-93; Ord. No. 125-97, § 5, 3-3-97; Ord. No. 94-99, 11-15-99)

#### Sec. 14-163. Conditional uses.

The following uses are permitted in the B-1 zone and on the ground floor level of buildings in the B-1b zone, as provided in section 14-474 (conditional uses), if they meet the following requirements:

- (a) Restaurants, provided they meet the following requirements:

- 1. Maximum total floor area for use of the public shall be one thousand (1,000) square feet;
- 2. The hours of operation shall be limited to between 6:00 a.m. and 11:00 p.m. each day;
- 3. Food service and consumption are the primary function of the restaurant; and
- 4. There shall be no drive-through service.

(Ord. No. 292-88, 4-4-88; Ord. No. 133-93, § 3, 11-15-93; Ord. No. 94-99, 11-15-99)

#### Sec. 14-164. Prohibited uses.

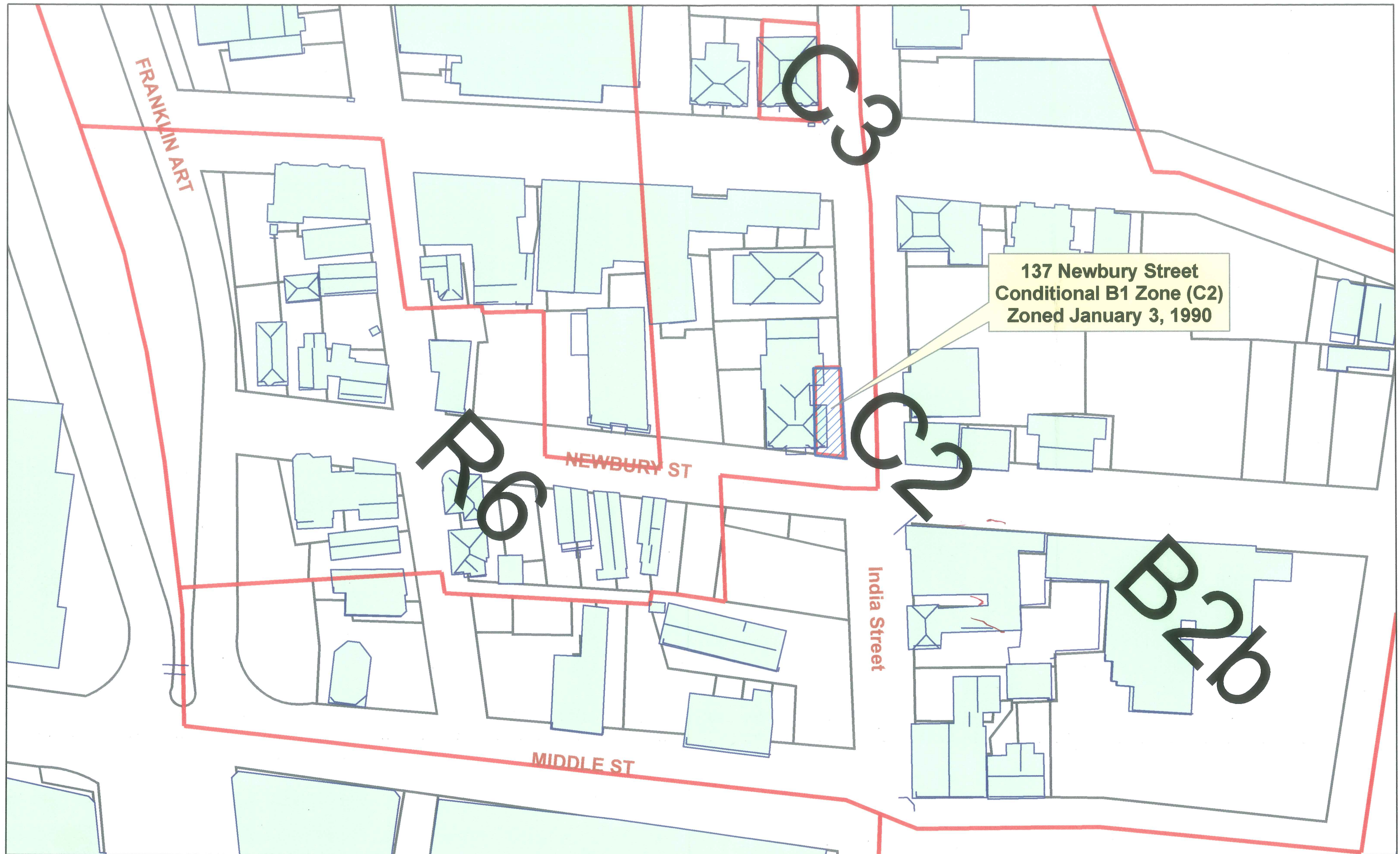
Uses not enumerated in sections 14-162 and 14-163 as either permitted or conditional uses are prohibited.

(Ord. No. 292-88, 4-4-88)

#### Sec. 14-165. ~~Dimensional requirements.~~

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, residential uses ~~permitted under section 14-162(a)~~ shall meet the requirements of such abutting or nearest residential zone except as noted below, and nonresidential uses in the B-1 and B1-b zone shall meet the following minimum requirements:

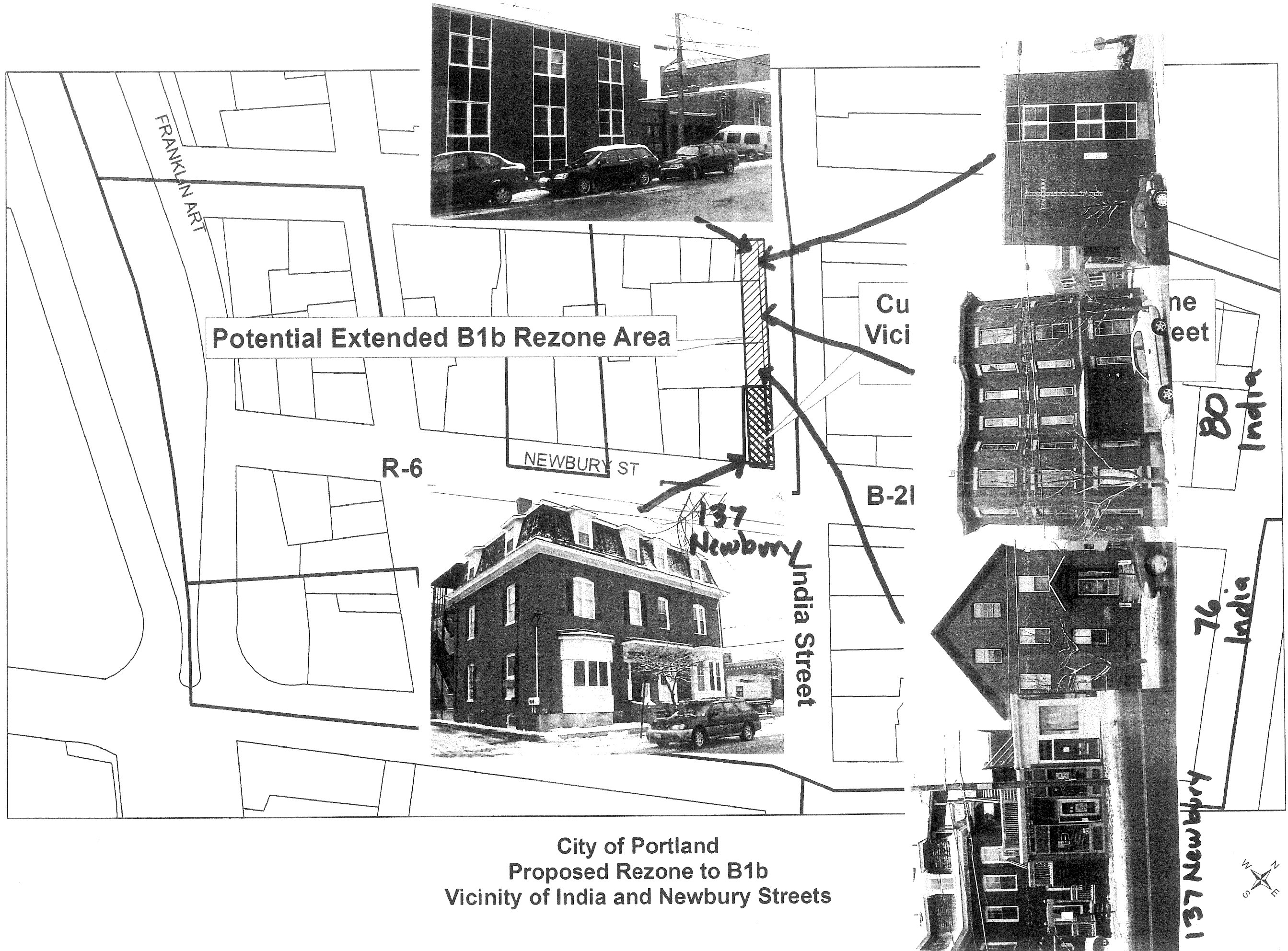


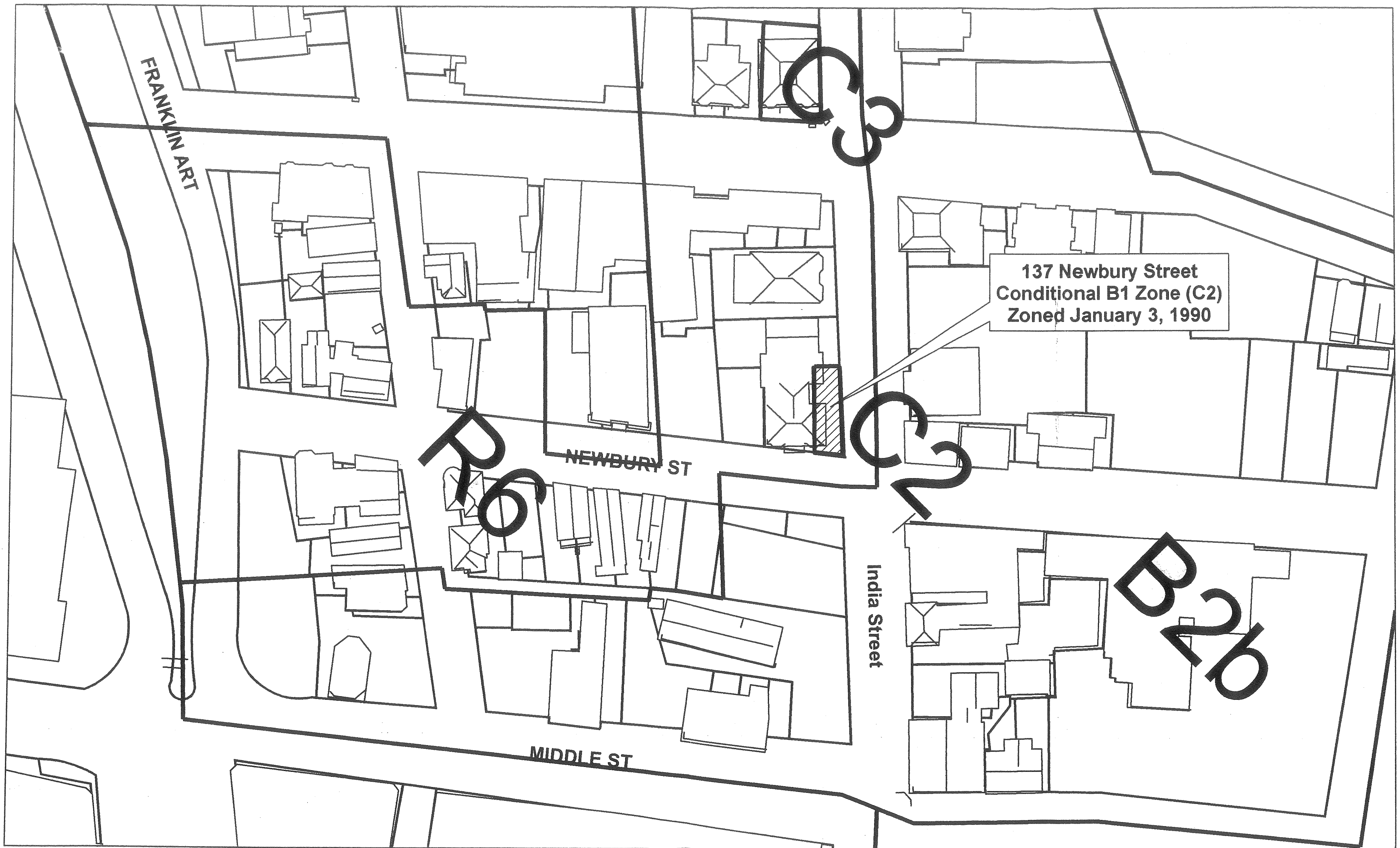


137 Newbury Street - Context Map



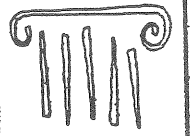






137 Newbury Street - Context Map



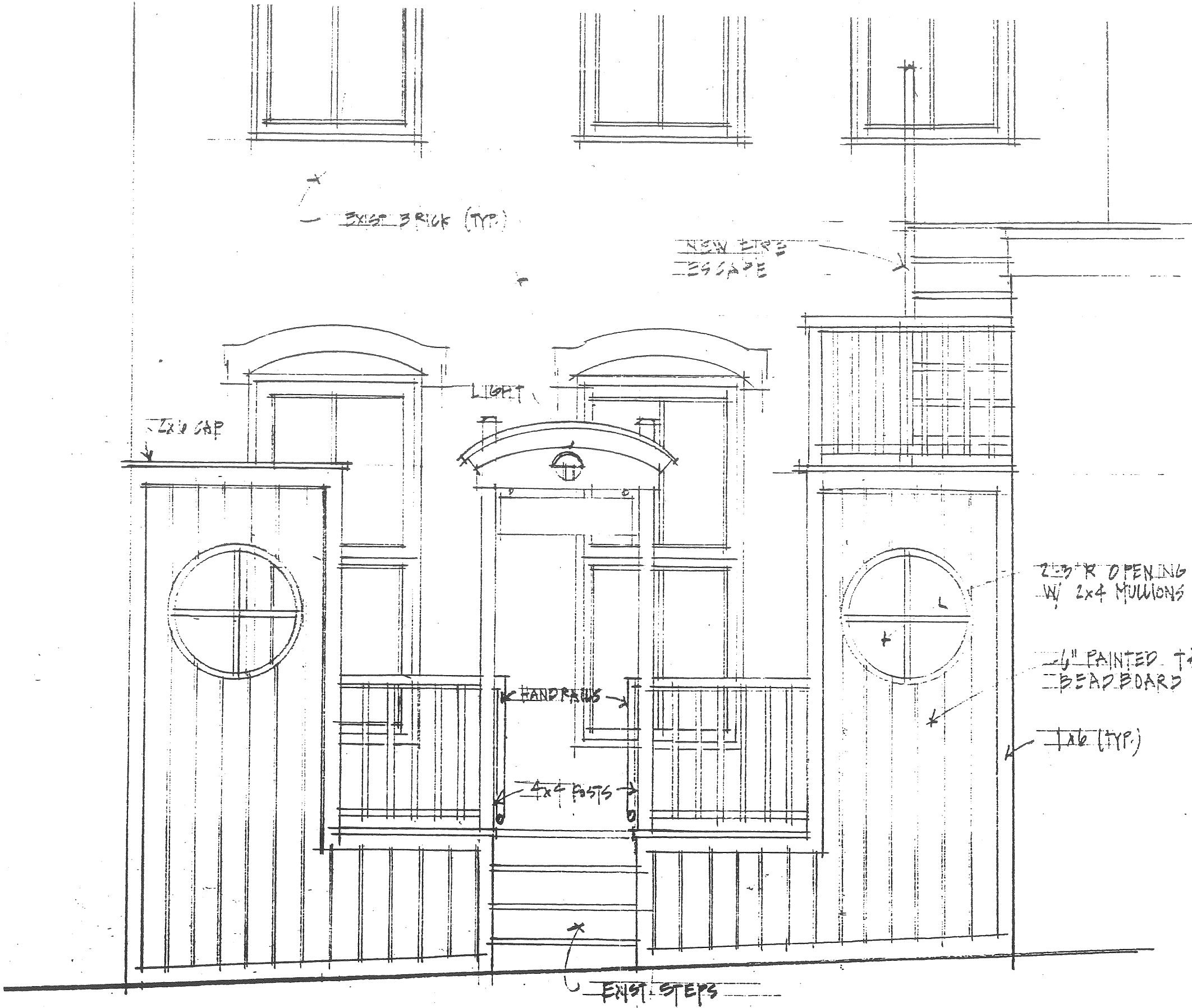


PORT CITY  
ARCHITECTURE

65 NEWBURY STREET  
PORTLAND, ME 04101  
807.761.9000  
fax: 761.2010  
portcity@portcityarch.com

© COPYRIGHT

None or reproduction  
of the contents of this  
document is not per-  
mitted without written  
permission of PORT CITY  
ARCHITECTURE, PA

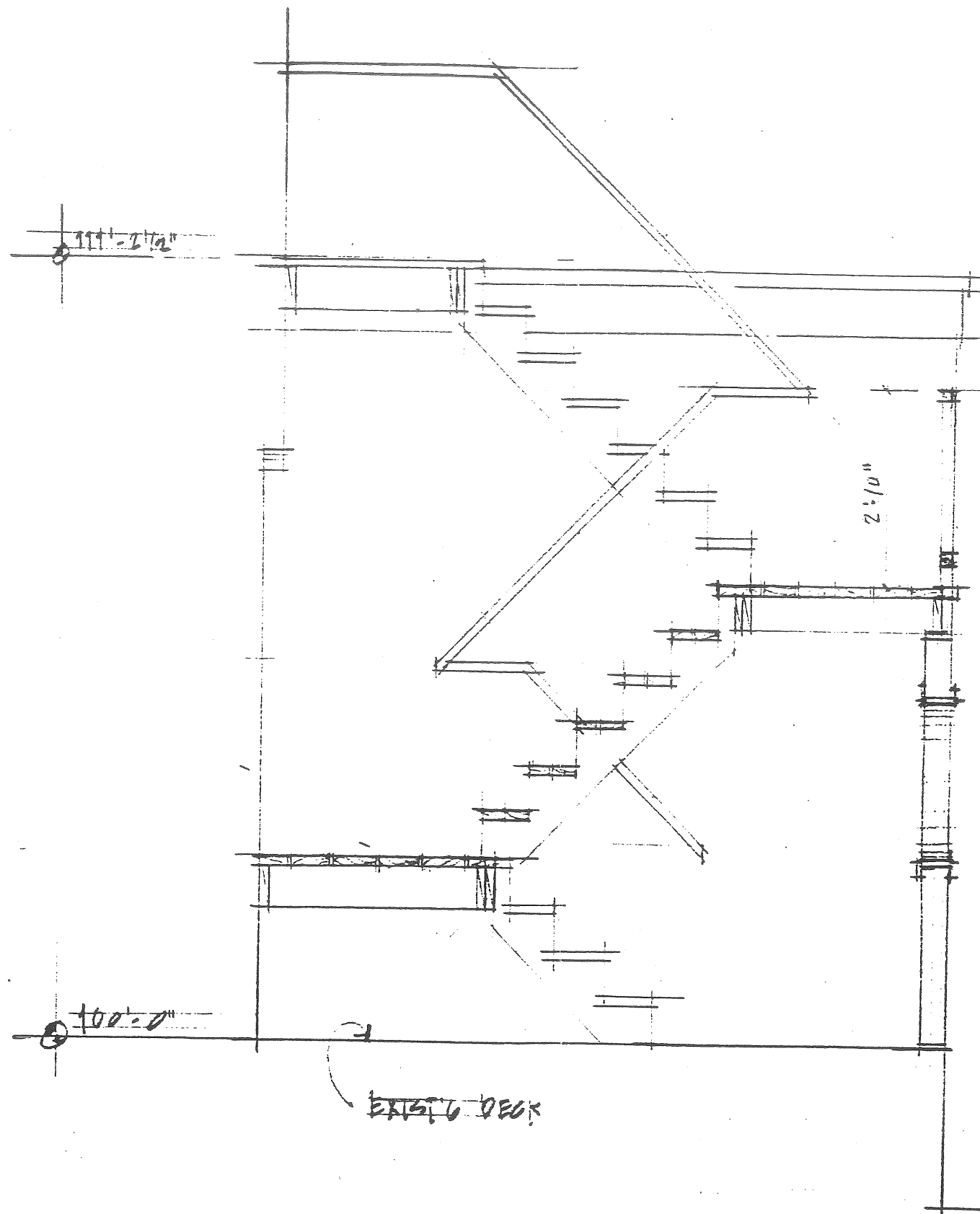


MacFadyen Apartments  
Newbury Street  
Portland, Maine

JOB:-

ISSUE DATE

PRELIM.	-
FINAL	-
BID	-
C.D.'s	-
REVISION	-
PRINT	-



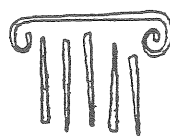
FIRE ESCAPE  
STAIR INFO:

17 RISES @ 7'9 1/2"

10 TREADS @ 8"

ALL MEMBERS

NOMINAL 2" THK



PORT CITY  
ARCHITECTURE

65 NEWBURY STREET  
PORTLAND, ME 04101  
807.761.9000  
fax 761.2010  
portcity@juno.net

© COPYRIGHT

Reproduction or reproduction  
of the contents of this  
document is not per-  
mitted without written  
permission of PORT CITY  
ARCHITECTURE PA

MacFadyen Apartments  
Newbury Street  
Portland, Maine

JOB:-

ISSUE DATE	
PRELIM.	-
FINAL	-
BID	-
C.D.'s	-
REVISION	-
PRINT	-



