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Fore River Company

Five Milk Street

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Portland, Maine 04112

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March 8, 1995

Mr. Joseph Gray  
Department of Planning and Urban Development  
389 Congress Street  
Portland, ME 04101

re: Baxter Building redevelopment

Dear Joe,

I am writing to update you on our search for a downtown site for Diversified Communications' headquarters and to ask you to clarify certain zoning and planning issues relating to one of the sites we and they are now focussing on. As you know, we had previously investigated the former JJ Newbury's or "5 & 10" building at 540 Congress Street. When that was found not to be feasible, we began looking at the "Baxter Building," just up the street at 562 Congress. We are still working with the owner of that building to try to resolve questions relating to existing tenancies and leases, and are simultaneously working on due diligence issues more directly tied to the building and its financing, including land use issues.

With respect to land use issues, both as they relate to use and to financing, we need to develop a definitive list of regulatory review steps which the City will require in connection with our proposed development. Background which may be helpful to you and your staff is as follows:

The Status Quo

The building contains a below grade basement, five floors of ± 17,000 gross square feet each, and a sixth floor of ±6,000 gross square feet. The ground floor contains a lobby through the middle of the building, with entrances on Congress and Free Streets. Catholic Charities Maine occupies all of the ground floor west of that lobby (±6,000 square feet) and all of the second floor, under a lease expiring in August 2003, with two five year renewal options thereafter.

East of the lobby, the ground floor (±9,000 gross square feet) has two leases in place and considerable vacant space. One lease is with Casco Bank (now Key), which has been a tenant since 1981, and which uses the space as a back office, with the only retail exposure being an ATM machine in a vestibule on Congress Street. Their space stops just short of frontage on Free Street, at the Free Street freight elevator entrance. The lease continues bumping along on short term extensions, as it has in recent years. The second lease is with Queen of Hats, at 548 Congress Street, now in the middle of its one year term, and with a one year renewal provision.

The third through sixth floors are vacant. The basement, as well as having mechanical systems, has some ancillary use by building tenants.

The Future

If we purchase the building, Diversified Communications would occupy the fourth through sixth floors and the third floor would initially be offered for lease by us on a spec basis. These floors would be used for general office and administrative purposes. Diversified Communications would have an option to expand into the third floor at a later date.

037-G-014

We assume Catholic Charities Maine will stay through its original term, and may renew pursuant to either or both of its five year options.

We propose to reconfigure the Congress Street frontage, east of the lobby and wrapping just around the Oak Street corner, into small retail shops, of perhaps 600 square feet each. The final shop size would be determined based on our assessment of what the market demanded. Diversified may want to add a new private lobby adjacent to the existing lobby, providing direct access to its elevators. Diversified also presently intends to occupy ±3,000 feet of ground floor space as a mail room and distribution center. Much of this space may be internal, but we would expect them to occupy some building frontage on Oak and/or Free Streets. Given the current lack of storefront facades on Oak and Free Streets and the apparent lack of retail demand, we intend not to provide retail uses on those streets (except for the Oak & Congress corner, which could wrap around Oak Street as retail). Whatever frontage on Oak and Free Streets was not taken by Diversified would be offered as office space, similar to the current use of Catholic Charities on the west side of the building's ground floor.

In connection with our renovations, we intend to install all new windows on floors three through six, and probably at some future date on the second floor. We intend to install skylights and perhaps a deck on a portion of the roof, but are not proposing any rooftop additions. Storefront modifications on Congress Street may be undertaken, depending upon the final layout of shops.

Our Questions Relating to Proposed Renovations:

B-37ac  
within 100 ft of Historic Dist will be taken

While we have not completed detailed plans for renovation of the Baxter Building, we have developed conceptual plans, and want to make sure we understand how our plans mesh with City of Portland land use provisions. Our goal is to understand ourselves, and be able to explain to Diversified and to potential lenders what land use issues arise from this project. To guide you through our understanding of how the various provisions might interact in this case, I have tried to break our questions into the individual issues which we think are important. The goal behind these individual questions is to make sure that we understand the permitting requirements before we make a commitment to the building, seek financing, or get too far on design and planning.

APPEARS correct

We think the Baxter Building is not in the nearby historic district; the City's map seems to support our view, but the map is fine and the district line is bold. Please confirm our view that the property is not in the historic district, or advise us that it is.

"No"

Are there any plans or discussions under way which might lead to the Baxter Building being included in any expanded or new historic district? NO

To renovate floors three through six for office use, we think we need a building permit, but will not trigger change of use review or otherwise trigger site plan review by these proposed renovations, since the immediately preceding and historical use of these areas has been as office space. Are we correct that upper floor renovations will only require a building permit?

yes

Agreed  
True NO SITE REQUIRED

Will installation of new windows, a roof deck, or HVAC or elevator equipment on the roof require any additional review? → NO Side Plan

yes Bldg permit

→ yes

We assume that the ground floor space on Congress, Oak and Free Streets is within a PAD district, and that any non-retail use in this area will require the City's approval. We further assume that, if the Planning Department concurs with our assessment that smaller retail spaces in this area are more marketable, the Department would support configuration of our retail spaces on Congress Street to a depth which worked from a design point of view, even if that depth were less than the 40 feet required under PAS provisions. Are these assumptions correct? → NO

More technically  
Are some non-retail uses allowed

Planning Board can modify as condition of use (not administratively)

NO Just the storefront  
& what is N

Will improvements or modifications to retail storefronts trigger any additional review to other parts of the building or to the building as a whole, beyond the PAD review of the storefront work itself?

We assume no PAD review would be required if we choose to add a new lobby adjacent to the existing one, with entrances on Free and/or Congress Street. Is this assumption correct? *but not necessarily*

Under what conditions, if any, would the Department support our request for non-retail uses facing Oak and Free Streets, similar to the current use of Catholic Charities on the west side of the building?

We believe that the City's land use ordinances may subject parts of the Baxter Building to review for compatibility with the historic district in the event change of use review were triggered, pursuant to 14.526 (18). One of the issues is how distance to the Historic District boundary is measured, and where exactly the boundary is. Will change of use review of a portion of the Baxter Building trigger any review for compatibility with the historic district or trigger Historic Preservation Ordinance review? Are there any other actions we might take which would not require change of use review which might nevertheless require compatibility review or Historic Preservation Ordinance review?

We assume that any change of use of 5,000 square feet or more of ground floor area will trigger change of use review by staff or Planning Board, but that change of use of less than 5,000 square feet will not trigger change of use review. We suspect that the renovations of the ground floor Catholic Charities space on the west side of the building may have triggered change of use review, as more than 5,000 square feet were involved. We assume that sufficient time has passed since the Catholic Charities work was permitted so that we will start with a "fresh" three year period within which the 5,000 square feet rule applies. Are these assumptions correct?

Are there any land use requirements which have not been met relative to the Catholic Charities space of which we should be aware because of the impact those requirements might have on our plans? If we have a lease obligation to allow Catholic Charities to renew their ground floor lease potentially through 2013, will we be in compliance with the PAD requirements?

We assume that installation of a new lobby adjacent to the existing one on the ground floor will not constitute a "change of use," but will rather be considered circulation space which does not fall within the scope of the change of use provisions. Is this assumption correct?

We assume that any portion of the premises currently leased by Casco (Key) Bank for back office space, if continued to be used by Diversified as back office space for purposes such as a mail room and distribution uses, would not be part of any change of use calculation. Is this assumption correct?

Assuming our plans do not trigger change of use review, will there be any permits other than building permits and sign permits required for us to proceed as proposed above?

We look forward to your guidance on these issues and thank you for your help in trying to find an in-town location for Diversified.

Sincerely,  
PWA - KUC  
Peter W. Quesada

cc: Alex Jagerman

Next week to talk with Quesada

only issued in August 1993  
if he changes more use - He doesn't h

if it is for office? small but we need the use pattern in square footage

agree Site PLAN PAD

100' of line

yes with 3 year

check files Free St condition is the trigger

NO

need unless increased

HVAC PAD Review