



Memorandum

Planning and Urban Development Department

Planning Division

To: Carol Morrissette, Chair and Members of the Portland Planning Board

From: Jean Fraser, Planner

Date: November 9, 2012

Re: Mixed Use Development at 321 Commercial Street; Level III Site Plan/Subdivision, J B Brown & Sons Applicant.

Project #: 2012-615 **CBL:** 40-E-3

Meeting Date: November 13, 2012

I. INTRODUCTION

The applicant, Vincent Veroneau of J B Brown & Sons, has submitted an application for a Level III Site Plan, Subdivision and Traffic Movement Permit review for a new development on a gravel parking lot at 321 Commercial Street, between Maple Street and the Baxter Place building. The proposal is for a six story 111,180 sq ft mixed use building to include a restaurant, a 131 room hotel (Courtyard by Marriott) and 14 residential units, along with associated landscaping and 28 parking spaces. A further 86 off-site spaces are proposed for valet parking on nearby parking lots owned by the applicant.

Notice has been sent to 130 property owners and interested citizens in the vicinity of the project and was printed in the November 5th and 6th, 2012 editions of the *Portland Press Herald*.

Applicant: J B Brown & Sons

Consultants: Opechee Construction Corporation (engineers and architects)

Required reviews: The proposal is being reviewed by the Planning Board under the Land Use Code provisions 14-497 (Subdivisions); 14-526 (Site Plan); and Traffic Movement Permit (delegated authority from the state). The proposal is also subject to Historic Preservation Board review (Certificate of appropriateness) as it is located within the Old Port Historic District, and therefore the proposal is exempt from some of the Site Plan B5b design standards.

The applicant has asked for waivers as listed below:

<i>Requested Waiver</i>	<i>Standard and any waiver provisions</i>
Location and spacing of driveways: Driveway separation, to allow driveways 80 feet apart on Maple Street (details in <u>Att.E</u>)	<i>Technical Manual 1.7.1.7.</i> Along arterial, collector and local streets, the minimum acceptable spacing between double or multiple driveways for driveways on adjacent lots or on the same parcel shall meet the criteria below: for 30mph speed limit, minimum separation of 125 feet.
Required number of bicycle parking spaces: To allow a reduction from the required 26 spaces (20 required for hotel/restaurant; 6 required for residential) to 14 bicycle parking spaces around the site and space for 6 residential bikes within a storage room on the sixth floor. Street (see <u>Attachment E</u> for details)	<i>Parking:</i> b. Location and Required Number of Bicycle Parking Spaces: (i) The site plan shall provide secure bicycle parking in conformance with Section 1 of the Technical Manual and shall meet the following requirements: (b) <i>Non-residential structures.</i> Two (2) bicycle parking spaces for every ten (10) vehicle parking spaces for the first one hundred (100) required vehicle parking spaces, plus one (1) bicycle parking space for every twenty (20) required motor vehicle parking space over one hundred (100) required vehicle parking spaces.

II. PROJECT DATA

<i>DATA</i>	<i>Phase II Proposed new building</i>
Total Site Acreage	38,770 sq ft
Existing Zoning	B5b
No of Lots	one
Existing Use	Gravel parking lot
Proposed Uses	Hotel, Restaurant and Residential
Proposed number of residential units	14
Proposed residential unit size	Seven 1-bedroom; seven 2-bedroom
Proposed structure height	64 ft 10 in average
Total Disturbed Area	56,780 sq ft (including area within ROW)
Existing impervious areas	48,736 sq ft
Proposed impervious areas	51,249 sq ft
New Impervious surface	2,513 sq ft
Proposed building footprint	19,324 sq f
Proposed floorspace	
• Restaurant:	• 7,460 sq ft
• Hotel:	• 84,380 sq ft
• 14 Residential Units:	• 18,396 sq ft (plus 944 sq ft lobby)
• Total:	• 111,180 sq ft
Proposed parking spaces	26 on site
Proposed handicapped parking spaces	2 on site
Proposed total number of parking spaces	28 on site (86 off site)
Proposed number of new bicycle parking spaces	20 (14 on site; 6 within residential storage on 6 th floor)
Estimated Cost of Project:	\$17.5 million
Uses in Vicinity:	Commercial; school/research; Fish Pier

III. EXISTING CONDITIONS



Prepared by Department of Planning and Development based on GIS Workgroup Data

The site is currently a gravel parking lot at an important gateway location on the west side of Commercial Street and within the Old Port Historic District. The Fish Pier, the Cumberland Cold Storage



From Commercial Street



Building (now Pierce Atwood) and the Gulf of Maine Research Institute are on the opposite side of Commercial Street. The Fassett designed Baxter Place commercial building is immediately to the north, separated from the site by Foundry Lane (one-way towards Commercial Street and mostly cobbles, lined with four street trees).

Foundry Lane is a discontinued street (discontinued in 1995) where the City has reserved pedestrian and utility access rights. The discontinuance agreement requires that the Planning Board review the site plan for any changes in Foundry lane (Attachment 9).

To the west of the site is an existing landscaped parking lot that serves the Cannery at 14 York Street; although adjacent to the site it will remain as serving the Cannery and will not be utilized for the proposed development.



Foundry lane looking towards Commercial Street; Baxter Place building to left



Maple Street looking towards commercial Street; parking area on left not part of proposal except re sidewalk



Location for Baxter Academy on Maple Street

Across Maple Street to the south is Rufus Deering and the building at the corner of York and Maple is currently under review for the Baxter Academy High School.

There is a concrete sidewalk, an unused curb cut, and four street trees along the property frontage on Commercial Street. There are no sidewalks and one existing curb cut on the Maple Street property frontage.

IV. PROPOSED DEVELOPMENT

The applicant has submitted a site plan and supporting engineering plans (Attachment Plans 1 to 13) and is proposing to construct a six story (approximately 65 feet high) single mixed use building totaling 111,180 sq ft, with a 7,460 sq ft restaurant located on the first floor, a hotel on the remainder of the first floor and the next four floors (18,635 sq ft each) and 14 residential units on the sixth floor totaling 18,396 sq ft. (Attachment A).

The main hotel entrance is adjacent to Foundry Lane on Commercial Street, highlighted by a large bumpout in Commercial Street at that point. The restaurant is accessed farther west from Commercial Street and includes a patio facing west at the corner of Maple and Commercial Street. The residential units are accessed from a separate entrance and lobby on Maple Street.

Primary vehicle access to the site is proposed to be via Foundry Lane, converted to a 2-way access, which leads to a porche cochere on the rear of the building. Parking for 24 vehicles (14 for the residences; 10 for the restaurant) is proposed to the rear of the building. The project requires a Traffic Movement Permit and the TMP Submission (Attachment G.1) details the assumed trip numbers and distribution.

The submitted *Parking Study* (Attachment G.2) indicates a further 86 parking spaces are required for the hotel. These will be provided as valet-only parking spaces on two nearby off-site parking lots (shown in yellow dotted line on the aerial above and in Attachment L) accessed from York Street that are already owned by the applicant.

The calculation of the parking requirement for the hotel is based on an assumption that Transportation Demand Management (TDM) measures will result in a 10% reduction in parking demand. The TDM Study is attached at Attachment G.3.



York St. access drives for off-site parking lots

The applicant proposes to construct new brick sidewalks along both Commercial Street and Maple Street, and install new street trees (largely replacing existing street trees). On street parking is proposed to be reorganized, with a net increase of one space.

V. Staff Review

a. Zoning:

The following comments have been provided by Marge Schmuckal, Zoning Administrator:

This project is proposing a structure with 131 Hotel units with restaurant/retail and 14 residential dwelling units. The entire project is located in the B-5b Zone. All the proposed uses are allowed in the B-5b zone.

The zoning analysis stated that an average building grade calculations were attached. I could not find that page. Please direct me to where that information is located or provide separately. The elevations indicate that the average grade is 13.5 elevation. Based on that unverified information, the height of the building is given as 64' 10". The maximum building height is 65'.

The application stated that there were 14 residential dwelling units. However the information on the floors breakdown stated that there was a 944 sq. ft. dwelling unit on the first floor. Where is that located? Is that still part of the project? The sixth floor is currently showing 14 residential dwelling units. Are there really 15 residential units? I want to confirm the type of residential units. Are these leased or condominium units?

14-332.1 (g) in the parking section of the Ordinance states that there are no zoning parking requirements.

Separate permits will be required for any signage. All HVAC systems must meet the maximum allowable noise requirements of the zone. At the time of permits, it will be necessary to submit data concerning the dBA out-put for individual units.

The applicant did include the height analysis in the original submissions (Attachment C) and an updated zoning comment will be provided for the workshop. The applicant has clarified that there is no residential unit on the first floor, just the entrance lobby with elevators.

b. Submissions and Right, Title and Interest:

The submitted survey (Attachment Plan 2) has been reviewed by DPS and revisions have been requested in Attachment 4. Further discussion of the subdivision plan (Attachment Plan 3) will be required once the proposals are more firm.

The applicant has provided evidence of right, title and interest in Attachment B. Part of Foundry Lane is not owned by the applicant, and an access agreement has been drafted (Attachment D) with the abutting owner to provide access and parking usable by both parties.

c. Subdivision Review: 14-497. Subdivision General Requirements (a) Review Criteria

Water, Air Pollution and Soil Erosion

The submitted Stormwater Pollution Prevention Plan (Attachment I.2) addresses erosion and water pollution and is considered satisfactory (Attachment 3). The applicant has submitted a capacity letter from the Portland Water District dated 10.15.2012 (Attachment J).

Impacts on existing or proposed highways and public roads

Traffic Movement Permit (TMP)

The proposed development requires a State of Maine Traffic Movement Permit (TMP) as it generates between 100 and 200 trips. The TMP would be issued by the City under delegated authority. The TMP application and scoping documentation was submitted 10.11.2012 (Attachment G.1) and a Scoping meeting was held on 11.7.2012. At the Scoping Meeting the Consulting Traffic Engineer Reviewer, Tom Errico, requested further information regarding traffic generation and further analysis of the implications of the left turn out of Foundry Lane; there has not been time for the applicant to respond.

Sanitary Sewer

The application has been reviewed by the Department of Public Services (DPS) and is satisfactory subject to revisions regarding the design of the grease trap (Attachment 4). A capacity to serve letter is awaited.

Storm water

The site is currently gravel and impervious and the proposals result in a net increase of 2,513 sq ft. (including new impervious in the right of way), of which 272 sq ft is within the site boundaries (Attachments A and J). The Peer Engineering Reviewer comments are included in Attachment 3, with some additional comments from DPS in Attachment 4. It is understood that a small scale treatment feature would be adequate to address this issue- either a tree filter, or a stormwater planter as described by the City Arborist below and in Attachment 1. The DPS comments also state it would be desirable to use portions of the bump-outs areas for green area stormwater treatment (Attachment 4).

Solid Waste

The submissions (Attachments J and Plan 6) confirm that an enclosed refuse enclosure is proposed at the rear of the site near Maple Street and would be managed by a commercial waste removal firm.

Scenic Beauty and Street Trees

There are about 13 existing small street trees along Maple Street, Commercial Street and Foundry Lane that appear to be removed by the proposals although not all are shown on the Demolition Plan (Attachment Plan 5). The four trees along Maple Street are more substantial and are proposed to be removed to allow for a new brick sidewalk. As noted in the DPS comments (Attachment 4), the proposed sidewalk here would also require removal of a utility pole and fire hydrant and it is suggested that the design of this section of new sidewalk be reconsidered.

The applicant has proposed a total of 11 street trees in small tree grates (Attachment Plans 6 and 10).

The City Arborist has commented (Attachment 1):

- *The landscape plan includes 'street-tree' planting along Commercial Street. The proposed trees, Zelkova and Honeylocust are planted in rectangular tree wells with tree grates. Tree grates are spaced in between the diagonal parking spaces which should reduce the vehicle impact. While we strive to plant all trees when possible in raised planters to protect them from compaction and deicing salts this location might be best treated with flush rectangular tree-wells with Neenah tree grates.*
- *Additional planting spaces - there appears to be opportunity to use the two parking lot bump-outs along the right or easterly side of the building to create a larger planting space for tree(s) / landscape planting. Currently the plan shows a tree within a tree grate near the parking lot. A similar treatment proposed in item (a) for Commercial Street and the area near Foundry Lane that could be used to expand the landscape & tree space. Providing larger soil volume for the trees help ensure their survival along with protecting them from winter deicing salt provided by the raised granite planter.*
- *Thus a Recommendation / condition would be to create an ornamental planter(s) in the new Commercial Street bump-out, the bricked in space along Foundry Lane and perhaps a space in the parking lot near Maple Street that would serve also as a storm-water planter. These spaces could be planted with shade tree / ornamental trees, woody and herbaceous planting. These planter(s) could be created by using a second granite curb within the bump-out similar to one used at 494 Congress Street and or the detail sheets in the storm-water information attachment.*

Comprehensive Plan

The applicant has referred to the Comprehensive Plan policies (Attachment J) and the project is compatible with Comprehensive Plan goals and policies.

Financial and Technical Capacity

The applicant has submitted a letter dated 10.17.2012 from Bangor Savings Bank and provided background information on the Opechee Construction Company (Attachment F).



Staff Review: Site Plan 14-526 Site Plan Level III Final Plan Requirements

Transportation impacts - as discussed above under *Subdivision Review*

Access and circulation, loading and servicing

The main access to the hotel is proposed to be via a 2-way Foundry Lane, with secondary access from Maple Street. The internal circulation is broadly acceptable, with several detailed concerns raised by Tom Errico, Transportation Reviewer (Attachment 7):

- *The driveway on Maple Street will require a waiver from the City's technical standards for driveway separation. Give the volume and speed of traffic on Maple Street I support a waiver from the City's technical standards.*
- *The painted areas at the driveway entry on Maple Street should be removed.*
- *The applicant has illustrated a proposed crosswalk on Commercial Street at the easterly corner of Maple Street. I need to review this proposal. My general sense is additional features are needed for safe pedestrian crossing. I would also note that the alignment of the crosswalk on the site plan will need to be adjusted to meet the City's perpendicular alignment design preference. The crosswalk paint detail would also need to be "Block" style.*
- *It appears that a pedestrian easement will be required for sidewalks areas abutting the project.*
- *For development projects in the area, the City has been requesting monetary contributions towards the installation of a traffic signal at the Commercial Street/High Street intersection. I will provide and estimate of the contribution amount in the future.*
- *The applicant should provide details on how truck deliveries will be accommodated.*

Public Transit Access

The ordinance requirements do not apply to this project.

Vehicle Parking

The applicant has submitted a *Parking Study Memorandum* dated 10.22.2012 (Attachment G.2) which assesses the parking requirements for each of the proposed components of the project, as follows:

Hotel:	86 spaces
Restaurant:	10 spaces
Residences (14 units):	14 spaces

The proposals include 24 parking spaces on site (to rear, near Maple Street) to address the restaurant and residential requirements, and a further 86 parking spaces are proposed off-site for the hotel. These off-site spaces will be provided as valet-only parking spaces on two nearby off-site parking lots (shown in yellow dotted line on the aerial above and in Attachment L) accessed from York Street that are already owned by the applicant.

The Zoning Administrator has reviewed the legal uses of these proposed off-site parking areas and confirmed that both lots are considered legal parking lots, but that one of them appears to serve uses in the building on the same lot (Attachment 5). Further information is requested to confirm there is adequate parking for both these uses and the proposed hotel.

The Transportation Reviewer has reviewed the *Parking Study* and commented (Attachment 7):

- *The applicant has analyzed the parking demand and supply for the project based on a combination of ITE guidelines and observational data. TE: I have conducted a preliminary review of the parking demand analysis and generally find the methods to be acceptable. The applicant should provide additional supporting data for the use of the 0.65 parking rate for the hotel. Given the availability of*

good parking generation information at the existing Hampton Inn, I would like to gain an understanding on the rates computed locally, versus those established by Hilton Worldwide. I would note that I do not expect the parking demand numbers to change significantly.

- I need to review the design details on the diagonal parking on Commercial Street (e.g. dimensions, painted corner areas, etc.).
- For on-street parking changes, a city council approval will be required. The applicant will be responsible for providing materials in support of the Parking Schedule change.

Foundry Lane

The applicant does not own the portion of Foundry Lane that is being proposed for the main hotel access to the site.

Foundry Lane was discontinued as a public street in 1995 in association with earlier developments by the applicant. The discontinuance was subject to an order by the City of Portland that stated it was subject to “the retention of a public access easement and an easement for public utility facilities” (Attachment 9).

The discontinuance was also subject to an agreement between the City of Portland and J. B. Brown & Sons and Baxter Place Associates. The portion of Foundry Lane near York Street is now owned by J B Brown, and the section closest to commercial Street is owned by Baxter Place Associates. The discontinuance agreement included the following requirements (Attachment 9):

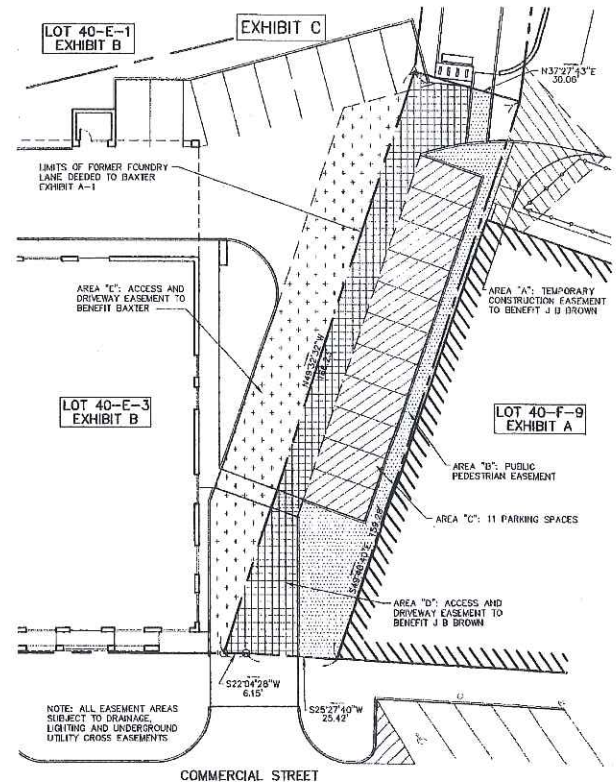
- No structures located in the area of the discontinued street;
- That a site plan for any changes to the area of the discontinued streets be reviewed by the Planning Board ;
- That if J B Brown does not utilize the cobblestones from the discontinued street in its site improvements, then any unused cobblestones shall be returned to the City;
- That the City shall retain the right to reacquire the title to the street under certain conditions.

J B Brown installed the pedestrian improvements, as approved as part of the Cannery Project at 14 York Street, for their portion of Foundry Lane. The current Site Plan addresses the area owned by Baxter Place Associates.

A proposed Access Easement Agreement with the owner of the abutting property (Baxter Place) has been submitted in Attachment D. The proposal allows for joint access over the area and incorporates 11 parking spaces that may be used by either party.



Foundry Lane looking toward Commercial Street



Plan above is from the draft Access Easement Agreement

The Site Plan in Attachment Plan 6 shows the existing brick paved 12 foot wide pedestrian path and proposed bicycle parking and a bench at the end of the existing improved pedestrian path. The proposal is for the path to be extended, at a 5 foot width, down to Commercial Street between the proposed parking spaces and the Baxter Building.

Staff have raised a number of concerns:

- The Historic Preservation Board “*Regarding Foundry Lane, Board members noted that its treatment at the top of the block, done as part of an earlier project, was very successful in that it preserved the memory of the historic alleyway and created an attractive pedestrian corridor. They felt it was important that this treatment continue on the lower portion of Foundry Lane to the extent possible.*” (Attachment 8)
- The existing four street trees (shown on Attachment Plans 2 and 4) are replaced with two trees in small grates and this appears to be an opportunity for some larger scale landscape treatment that is consistent with the historic context and meets stormwater management and site landscaping objectives;
- DPS has commented: *A pedestrian easement is shown on the south side of the former Foundry Lane. A sidewalk is now proposed on the north side of the former Foundry Lane. Will a new easement be necessary? The discontinuance does not call for a Pedestrian Easement. Is there a recorded document which defines it as a Pedestrian Easement?*
- The Transportation reviewer comments: *The 11 parking spaces on the former Foundry Lane do not appear to meet City dimensional standards. A waiver will be required. I would also note that there is general concern about pedestrian accessibility in this area and modifications to the plan may be necessary* (Attachment 7).

Staff suggest that the layout and design of this area be reconsidered and the pedestrian easement issue be clarified.

Bicycle parking

The ordinance requires a total of 26 bicycle parking spaces on the site and the applicant has requested a waiver to allow them to provide 14 bicycle parking spaces around the site and 6 within the residential storage room on the sixth floor (Attachment E).

DPS comments (Attachment 4):

1. *I disagree with the applicant’s assessment that very few hotel occupants will bring bicycles and do not support the request for a waiver for less bike parking. I feel the full 26 required bike parking spaces should be provide since Portland already is and will continue to be more bike friendly. The applicant should try to find spaces for bike parking on Commercial Street side of the property.*

Snow Storage

Snow storage areas have not been shown on the submitted plans.

Transportation Demand Management plan

The applicant has submitted a *Transportation Demand Management Plan* (TDM) dated 11.22.2012 (Attachment G.3) which has been reviewed by Tom Errico:

- *I have reviewed the TDM and generally find the program to be acceptable. Some of the details of the program need to be clarified/expanded, but overall the approach is acceptable. I'll provide clarifying comments in the future. I would note that the traffic impact study will assume an evaluation of impacts assuming a 10% reduction in vehicle trips based upon the implementation of TDM strategies. Accordingly, the program should credibly reduce traffic by 10%. (Attachment 7)*

Preservation of significant natural resources and Landscaping – see above under *Subdivision Review*

The applicants have submitted a detailed Landscaping Plan (Attachment Plan 10). The City Arborist has commented (Attachment 1):

b) In addition to the proposed street-trees the landscape plan also includes ornamental landscape planting in the parking area to the back of the building along with several crab-apple trees. Recommendation would be to use a larger species (taller) where possible to provide shade and screening to the building scale. The proposed crabapples would mature around 15' height by the same width. A recent site visit revealed nearby that narrow but tall, Ginkgo trees looked perfect in the nearby parking lot landscape. Other options could include: Upright Pin Oak or other Oak cultivars like 'Crimson Spire', 'Regal Prince' - similar types used on Fore Street in front of the Evie Cianchette building; Katsura tree, or Oxydendrum.

Water quality, Stormwater Management and Erosion Control - as discussed under *Subdivision Review*

Public Safety (CPTED)

The proposals are satisfactory.

Fire prevention

Captain Chris Pirone of the Fire Department has provided general comments (Attachment 2) and may have more detailed comments once the Foundry Lane layout is finalized. The applicant has confirmed that hydrants are available in both Maple and Commercial Street but further information may be requested regarding flow rates etc.

Capacity of Public utilities

The submissions (Attachment J) include confirmation from most utilities.

Massing, Ventilation and Wind Impact

The applicant has submitted elevations and renderings (Attachment Plans 19 to 24) which give an indication of the scale and bulk of the proposed building. The massing of the proposal is one of the characteristics reviewed by the Historic Preservation Board. On November 7, 2012 the Historic Preservation Board held a workshop on this project, at which time the Board raised questions and concerns regarding the massing and layout of the building (see ***Historic Resources*** below).

View Corridors - There are no view corridors that impact this site.

Historic Resources

The entire site is within the Old Port Historic District and requires a Certificate of Appropriateness from the Historic Preservation Board. The applicant has addressed the HP standards in Attachment K). The Historic Preservation Board conducted a preliminary Workshop on November 7, 2012 and the

Historic Preservation Program Manager has summarized the nature of the preliminary comments (Attachment 8):

The Historic Preservation Board held a preliminary review of the proposed hotel development at 321 Commercial Street on November 7th. Recognizing that the plans, elevations and perspective views were still quite preliminary, Historic Preservation Board members did express a threshold concern about the plan and massing of the proposed building as it relates to the geometry of the subject parcel and the abutting street and alleyway. They also raised a number of questions and concerns about the building design.

Exterior Lighting

The applicant has submitted a plan (Attachment Plan 11) and lighting specification (Attachment J) for freestanding site lighting. The lighting levels technically do not meet the Technical Standards in respect of light trespass at the property boundaries (required to be at 0.1 footcandles or less at the property line) and the Board may need to waive these if warranted.

It is not clear whether building mounted lights are proposed (some sconces are illustrated in the renderings). Exterior light fixtures are also within the purview of the Historic Preservation Board.

Signage and Wayfinding

A signage and wayfinding plan is recommended to be submitted in view of the three uses in the building (and three entrances) and to ensure the vehicle circulation is managed efficiently.

Construction Management Plan

The Construction Management Plan has been submitted (Attachment Plan 14) and reviewed by Tom Errico:

- *I have reviewed the conceptual Construction Management Plan and generally find the concept to be acceptable (maintaining sidewalk and bicycle facilities on Commercial Street). I would note that specific details will need to be coordinated prior to construction. (Attachment 7)*

Zoning Related Design Standards: B5b Design Standards

The proposal is subject to the following design standards:

(c) B-5 AND B5-B URBAN COMMERCIAL BUSINESS ZONES:

- (1) **STANDARDS.** Development located in the B-5 and B-5b zones shall meet the following additional standards:
 - a. **Shared infrastructure:** Shared circulation, parking, and transportation infrastructure shall be provided to the extent practicable, with utilization of joint curb cuts, walkways, service alleys, bus pull-out areas, and related infrastructure shared with abutting lots and roadways. Easements for access for abutting properties and shared internal access points at property lines shall be provided where possible to facilitate present or future sharing of access and infrastructure.
 - b. **Buildings and uses** shall be located close to the street where practicable. Corner lots shall fill into the corner and shall provide an architectural presence and focus to mark the corner.
 - c. **Buildings** shall be oriented toward the street and shall include prominent facades with windows and entrances oriented toward the street. Uses that include public access to a building or commercial/office uses in mixed-use developments shall be oriented toward major streets whenever possible.
 - d. **Parking lots** shall be located to the maximum extent practicable toward the rear of the property and shall be located along property lines where joint use or combined parking areas with abutting properties are proposed or anticipated.

The applicant has submitted a narrative addressing all of these standards (Attachment K) but only Standards **a.** and **d.** are subject to the Planning Board site plan review, as b and c are exempt because of the Historic Preservation review of the proposal for a Certificate of Appropriateness.

Staff are recommending the applicant consider design revisions to the Foundry Lane access to better serve pedestrians and to meet standard **a.** Standard **d.** has been addressed by the proposals.

VI. PUBLIC COMMENT

The Planning Division has not received any public comments as of the date of completing this memorandum.

VIII. NEXT STEPS

Suggested next steps include:

- Address zoning comments
- Clarify whether residential units are apartments or condos; if condos, submit Draft Condo docs
- Revise survey and subdivision plan
- Respond to Traffic Movement Scoping meeting and Transportation Review comments, including re parking requirements
- Address stormwater and landscaping comments, especially regarding the incorporation of stormwater planters
- Reconsider the layout and design of Foundry Lane
- Increase bicycle parking provision
- Address comments from the Fire and Public Services Departments
- Submit signage and wayfinding plan
- Submit further information including capacity letters, service vehicles, and snow storage
- Clarify lighting proposals and review re light trespass
- Address any Planning Board comments
- Planning Board to schedule Public Hearing.

ATTACHMENTS:

PLANNING BOARD MEMO ATTACHMENTS

1. City Arborist comments 11.8.2012 (updated from 11.2.2012)
2. Fire Department comments 11.1.2012
3. Peer Engineer comments 11.6.2012
4. DPS comments 11.7.2012
5. Zoning Administrator comments re off site parking areas 11.5.2012
6. Zoning Administrator comments re the proposal 11.8.2012
7. Traffic Reviewer comments 11.9.2012
8. Historic preservation summary of 11.7.2012 HP Workshop
9. Background Info Foundry Lane - Discontinuance Order and Agreement

APPLICANT'S SUBMITTAL

- A. Cover letter and Site Plan Application
- B. Right, Title and Interest; State/Federal approvals required; Ref to Boundary survey

- C. Compliance with Zoning Requirements
- D. Proposed Access Easement for foundry lane area
- E. Waiver Requests
- F. Financial and Technical Capacity
- G. Traffic and parking reports
 - 1. TMP submission
 - 2. Applicants Parking Study
 - 3. Transportation Demand Management Plan (TDM)
- H. Significant Natural Features and Project Narrative
- I. Stormwater Analysis
 - 1. Stormwater Management Plan Addendum
 - 2. Stormwater Pollution Prevention Plan
- J. Remainder of written materials, including lighting specs
- K. Consistency with Design standards
- L. Off Site Lots intended for valet parking
- M. Photos from applicant

PLANS

- 1. Plan 1 Cover Sheet
- 2. Plan 2 Boundary survey
- 3. Draft Subdivision Plan
- 4. Existing conditions
- 5. Demolition Plan
- 6. Site plan
- 7. Utility Plan
- 8. Grading Plan
- 9. Temp Erosion and Control Plan
- 10. Landscaping Plan
- 11. Photometrics Plan
- 12. Construction Details
- 13. Sanitary Sewer and Drain Details
- 14. Construction Plan
 - 15 to 17 Floor Plans
 - 18 Section Plan of building
 - 19 to 22 Elevations
 - 23 to 25 Renderings

From: Jeff Tarling
To: Jean Fraser
CC: David Margolis-Pineo
Date: 11/8/2012 1:47 PM (updated from 11.2.12)
Subject: 321 Commercial Street

Hi Jean -

I reviewed the landscape plan for the proposed 321 Commercial Street project and offer the following landscape comments:

- a) The landscape plan includes 'street-tree' planting along Commercial Street. The proposed trees, Zelkova and Honeylocust are planted in rectangular tree wells with tree grates. Tree grates are spaced in between the diagonal parking spaces which should reduce the vehicle impact. While we strive to plant all trees when possible in raised planters to protect them from compaction and deicing salts this location might be best treated with flush rectangular tree-wells with Neenah tree grates.
- b) In addition to the proposed street-trees the landscape plan also includes ornamental landscape planting in the parking area to the back of the building along with several crab-apple trees. Recommendation would be to use a larger species (taller) where possible to provide shade and screening to the building scale. The proposed crabapples would mature around 15' height by the same width. A recent site visit revealed nearby that narrow but tall, Ginkgo trees looked perfect in the nearby parking lot landscape. Other options could include: Upright Pin Oak or other Oak cultivars like 'Crimson Spire', 'Regal Prince' - similar types used on Fore Street in front of the Evie Cianchette building; Katsura tree, or Oxydendrum.
- c) Additional planting spaces - there appears to be opportunity to use the two parking lot bump-outs along the right or easterly side of the building to create a larger planting space for tree(s) / landscape planting. Currently the plan shows a tree within a tree grate near the parking lot. A similar treatment proposed in item (a) for Commercial Street and the area near Foundry Lane that could be used to expand the landscape & tree space. Providing larger soil volume for the trees help ensure their survival along with protecting them from winter deicing salt provided by the raised granite planter.

Thus a Recommendation / condition would be to create an ornamental planter(s) in the new Commercial Street bump-out, the bricked in space along Foundry Lane and perhaps a space in the parking lot near Maple Street that would serve also as a storm-water planter. These spaces could be planted with shade tree / ornamental trees, woody and herbaceous planting. These planter(s) could be created by using a second granite curb within the bump-out similar to one used at 494 Congress Street and or the detail sheets in the storm-water information attachment.

Jeff Tarling
City Arborist

Re Stormwater Planters

portlandonline • subscribe • sign in

Search Green Streets

type your search here

Home What We Do Customer Services Programs Library

Sustainable Stormwater Tabor to the River Sewer Construction Projects Watershed Restoration Portland Brownfields CWSP Clean Rivers Education

POL → Government → Bureaus & Offices → Environmental Services → Programs → Sustainable Stormwater → Case Studies → Green Streets

SW 12th Avenue Green Street - Printable Version

The SW 12th Avenue Green Street at SW 12th and Montgomery on the Portland State University campus utilizes a series of landscaped stormwater planters designed to capture and infiltrate approximately 8,000 square feet of street runoff.

This innovative streetscape project effectively manages street runoff while still maintaining strong pedestrian circulation and on-street parking.

Built in summer 2005, this street retrofit project demonstrates how both new and existing streets in downtown or highly urbanized areas can be designed to provide direct environmental benefits and be aesthetically integrated into the urban streetscape.

This green street project is effective and functional, and it also successfully integrates landscaped stormwater planters into the urban fabric.



Case Studies

Green Streets

[Ecoroof](#)

[Commercial/Institutional Property](#)

[Multifamily Residential Property](#)

[Pervious Pavement](#)

Table of Contents

[SE Ankeny Green Street Report](#)

[NE Fremont Green Street Report](#)

[SW 12th Avenue Green Street Report](#)

[SE Tibbetts Street Fact Sheet](#)

[SE Ankeny Green Street](#)

[New Seasons Fact Sheet](#)

SW 12th Avenue Green Street

[NE Siskiyou Green Street Fact Sheet](#)

[NE Siskiyou Green Street Report](#)

[SW Texas Green Street](#)

Questions & Comments

If you have any questions or comments, please contact our [site administrator](#).

How It Works

The 12th Avenue Green Street project disconnects street stormwater runoff from a storm sewer that drains directly into the Willamette River and manages it on-site using a landscape approach. Stormwater runoff from SW 12th flows downhill along the existing curb until it reaches the first of four stormwater planters.

A 12-inch curb cut channels the street runoff into the first stormwater planter. Once inside the planter, the water is allowed to collect until it reaches a depth of six inches. The landscape system within each planter allows the water to infiltrate in the soil at a rate of four inches per hour.

If a rain event is intense enough, water will exit through the planter's second curb cut, flow back out into the street and eventually enter the next downstream stormwater planter.



Depending on how intense a particular storm is, runoff will continue its downhill "dance" from planter to planter until all of the stormwater planters are at capacity. Once exceeding capacity, the water exits the last stormwater planter and enters the storm sewer.

With the new stormwater facilities now in place, nearly all of SW 12th Avenue's annual street runoff, estimated at 180,000 gallons, is managed by its landscape system.

Design Challenges

The main challenge for retrofitting SW 12th Avenue was finding enough space for pedestrians, on-street parking, street trees, landscaping, street lighting, signage, **and** stormwater planters within an eight-foot wide space.

A three-foot wide parking egress zone was dedicated for people to access their vehicles without competing with the stormwater planters. Perpendicular pathways were located between each stormwater planter so that a pedestrian would not have to walk very far to access their cars or the sidewalk.

A four-inch curb exposure at each planter indicates to the pedestrian that there is a drop in grade. Each curb cut that allows the street runoff to enter the stormwater planters has an ADA accessible grate to allow for unencumbered pedestrian flow along the parking egress zone.



An Award Winning Design

The SW 12th Avenue Green Street Project has received a [national award of honor from the American Society of Landscape Architects \(ASLA\)](#). Bureau of Environmental Services green street specialist Kevin Robert Perry designed the innovative street stormwater project. The city completed the construction of the \$30,000 demonstration project in June 2005 and has continually monitored its performance over the



Attachment 2.1

From: Chris Pirone
To: Fraser, Jean
Date: 11/1/2012 5:07 PM
Subject: 321 Commercial Fire Comments

Fire Comments:

All construction and installation shall comply with 2009 NFPA 1, 2009 NFPA 101.

All construction and installation shall comply with City Code Chapter 10.
<http://www.portlandmaine.gov/citycode/chapter010.pdf>

Street addresses shall be marked on the structure and shall be as approved by the City E-911 Addressing Officer. Contact Michelle Sweeney at 874-8682 for further information.

2009 NFPA 11.14 Plan Review

1.14.2 The applicant shall be responsible that the following conditions are met:
The construction documents include all of the fire protection requirements.
The shop drawings are correct and in compliance with applicable codes and standards.
The contractor maintains an approved set of construction documents on site.

2009 NFPA 1 Chapter 18 Fire Department Access and Water Supply

2009 NFPA 1 18.2.3 Fire Department Access Roads

18.2.3.1 Required Access
18.2.3.2 Access to Building
18.2.3.3 Multiple Access Roads
2009 NFPA 1 18.2.3.4 Specifications

2009 NFPA 1 18.2.3.4.1 Dimensions

18.2.3.4.1.1 Fire Department access roads shall have an unobstructed width of not less than 20 ft.
18.2.3.4.1.2 Fire department access roads shall have an unobstructed vertical clearance of not less than 13 ft 6 in.
18.2.4 Obstruction and Control of Fire Department Access Road.
18.2.4.2 Closure of Accessways.

2009 NFPA 1 18.2.3.4.1 Dimensions

18.2.3.4.1.1 Fire Department access roads shall have an unobstructed width of not less than 20 ft.
18.2.4 Obstruction and Control of Fire Department Access Road.
18.2.4.1.1 The required width of a fire department access road shall not be obstructed in any manner, including by the parking of vehicles.
18.2.4.2 Closure of Accessways.
18.2.4.2.2 Where required, gates and barricades shall be secured in an approved manner.
-Knox padlocks are required at gates (locks are to be ordered at Central Fire Station 380 Congress St.)

18.3 Water Supplies and Fire Hydrants

18.3.4.1 Clear Space Around Hydrants. A 3 ft clear space shall be maintained around the circumference

of fire hydrants except as otherwise required or approved.

-If the building has a sprinkler system; fire hydrants must be within 100' but no closer than 40'.

-Fire Department Connections shall not be located where large diameter hose may block egress.

-Private fire mains and fire hydrants shall be maintained, tested and painted in accordance with Fire Department Regulations.

<http://www.portlandmaine.gov/fireprevention/fdrulesandregulations.pdf>

18.4 Fire Flow Requirements for Buildings

All construction and installation shall comply with City of Portland Fire Department Building Regulations.

<http://www.portlandmaine.gov/fireprevention/fdrulesandregulations.pdf>

Pay special attention to: Chapter 3 Fire Department Access Equipment

Pay special attention to: Chapter 4 Building, Stair, Suite and Room Designation

Pay special attention to: Chapter 5 Emergency Alarm Systems

Pay special attention to: Chapter 6 Suppression Systems

Captain Chris Pirone
Portland Fire Department
Fire Prevention Bureau
380 Congress Street
Portland, ME 04101
(t) 207.874.8405
(f) 207.874.8410

**COMMITMENT & INTEGRITY
DRIVE RESULTS**

41 Hutchins Drive T 800.426.4262
 Portland, Maine 04102 T 207.774.2112
 www.woodardcurran.com F 207.774.6635

MEMORANDUM

TO: Jean Fraser, Planner
FROM: David Senus, P.E. & Ashley Auger, E.I.T.
DATE: November 6, 2012
RE: 321 Commercial St. Mixed Use Development, Level III Final Site Plan/Subdivision Application

Woodard & Curran has reviewed the Level III Final Site Plan/Subdivision Application for the Mixed Use Development located at 321 Commercial Street in Portland, Maine. The project consists of development of a six story mixed use building with a 131 room hotel, 7,000 Square-Feet (SF) of restaurant space, and 14 residential units on the site of an existing gravel surface parking lot. The project proposes a net increase of 2,513 square feet of impervious area on the site.

Documents Provided By Applicant

- Level III Site Plan/Subdivision Application and attachments dated October 22, 2012, prepared by Opechee Construction Corporation, on behalf of J.B. Brown & Sons.
- Engineering Plans, Sheets C01-C13, CMTC, S01 & CP01-CP04, dated October 22, 2012, prepared by Opechee Construction Corporation, on behalf of J.B. Brown & Sons.

Comments

- 1) In accordance with Section 5 of the City of Portland Technical Manual, a Level III development project is required to submit a stormwater management plan pursuant to the regulations of Maine DEP Chapter 500 Stormwater Management Rules, including conformance with the Basic, General, and Flooding Standards:
 - a) Basic Standards: Plans, notes, and details have been provided to address erosion and sediment control requirements, inspection and maintenance requirements, and good housekeeping practices in accordance with Appendix A, B, & C of MaineDEP Chapter 500.
 - b) General Standards: The project primarily includes re-development of existing impervious areas. However, the project does include 2,513 square feet of new impervious area. Redevelopment of the existing impervious areas of the site qualifies for an exemption from meeting the General Standards; however, the Applicant must provide stormwater treatment in accordance with the General Standards for an area equivalent to the proposed 2,513 square feet of new impervious area. Inspection and maintenance of any proposed stormwater quality treatment features will need to be included in the Inspection and Maintenance Plan in accordance with and in reference to MaineDEP Chapter 500 guidelines and Chapter 32 of the City of Portland Code of Ordinances
 - c) Flooding Standard: The project will result in approximately 2,513 SF of new impervious surface. The Applicant has submitted a detailed stormwater model indicating a minor increase in post-development runoff rates for the project relative to pre-development conditions during certain storm events. Stormwater from the project site will enter the City storm drain system which ultimately discharges to the tidal Fore River, a tributary to Casco Bay (the Atlantic Ocean). Projects that discharge to the Ocean are eligible for a waiver from the Flooding Standard. The project qualifies for a waiver from meeting the flooding standard so long as the City of Portland Department of Public Services confirms capacity to accept the minor increase in flow into the City storm drain system.
- 2) The following details should be provided for work within the City Right-of-Way, in accordance with the City of Portland Technical Manual:
 - a) A brick driveway apron with bituminous base, per Figure I-11
- 3) Please clarify the use of the "Catch Basin Inlet" detail versus the "Precast Catch Basin" detail (Sheet C11). Unless unique situations warrant, the City would require the "Precast Catch Basin" detail with 3' sump & outlet trap.

November 7, 2012

TO: Barbara Barhydt
Jean Fraser
FROM: David Margolis-Pineo
RE: Review Comments: 311 - 331 Commercial Street -

The Department of Public Services has the following preliminary comments concerning this proposed project. Final comments may be forthcoming.

1. I disagree with the applicant's assessment that very few hotel occupants will bring bicycles and do not support the request for a waiver for less bike parking. I feel the full 26 required bike parking spaces should be provided since Portland already is and will continue to be more bike friendly. The applicant should try to find spaces for bike parking on Commercial Street side of the property.
2. It is noted that the stormwater drainage system will be removed from the site. How will drainage on to the site from the pipe to be plugged be affected? Please refer to the City of Portland Technical Manual Section 2.4.11. for the requirements to abandon sewer pipes in the City right of way. Please indicate on the plans how the contractor will meet this requirement.
3. It would be desirable to use portion(s) of the proposed bump outs for green area stormwater treatment.
4. The applicant is proposing to install a brick sidewalk the entire length of Maple St. Near York St there is a utility pole and fire hydrant. If possible it would be desirable to install an esplanade with this sidewalk.
5. A pedestrian easement is shown on the south side of the former Foundry Lane. A sidewalk is now proposed on the north side of the former Foundry Lane. Will a new easement be necessary?
6. Please refer to the City of Portland Technical Manual, Figure II-19 for sizing and design of the proposed an external grease trap.
7. Foundry Lane was discontinued by the City of Portland on March 20, 1995. The city retained 1.) A Public Access Easement and 2.) An easement for Public Utility Facilities. There is a "Pedestrian Easement" shown in Foundry Lane. The discontinuance does not call for a Pedestrian Easement. Is there a recorded document which defines it as a Pedestrian Easement?
8. MDOT took a non-tangent curve at the corner of Commercial Street and Foundry Lane in 1991. This is not shown.
9. Curve at Commercial Street and Maple Street needs a chord bearing and distance for mathematical closure. This was a MDOT 1991 taking.
10. Note 8. Elevations. The monument referred to is not an Official City of Portland Benchmark Monument. Michelle Sweeney of this office has called the surveyor and brought it to his attention.
11. "BM: Bolt in Top Ring of Hydrant" on northerly side of Commercial Street. Is that the top flange of the hydrant? Is it a top of a bolt over the main Fire Department connection spout or one of the side spouts?
12. Suggest adding another benchmark to allow for checking in to since we have experienced fire hydrants being repaired or altered between the plan preparation and the building construction phases.
13. No City of Portland Right of Way plans have been referenced. Please state which plans were used.
14. No City of Portland Sewer or Utility plans have been referenced. Plan reference will aid in evaluation of the infrastructure as shown. Please state which plans were used. It would be helpful to indicate flow direction on sewers.
15. Shading and hatching of areas obscures text in various locations.
16. North Arrow refers to Magnetic North and not Grid North.
17. Proposed three-foot offset survey monuments will be requested at four locations to be determined.

Attachment 5

Zoning comments re
of-site parking lots

From: Marge Schmuckal
To: Jean Fraser
CC: Alex Jaegerman; Barbara Barhydt
Date: 11/5/2012 10:45 AM
Subject: Re: Parking lots at 60-70 Danforth Street for Commercial Street Hotel

This parking lot is part of the entire lot with a principal structure already on it and is considered accessory to the existing building and its uses. If the Applicant wants to use this lot, we would need to see a zoning analysis of the uses in the building and the required number of spaces for the building. Any "left over" parking spaces could be used for the Hotel.

Marge

>>> Jean Fraser 11/2/2012 1:54 PM >>>
Marge

I have just received confirmation from the applicant as to which parking lots are proposed to be used for valet parking (see attached, which is from the applicant).

In addition to the one you researched, they are also proposing to use the nearer lot on York that is part of 50 Danforth Street (040 C009); its indicated as "manufacturing and construction" in the Assessors records. Could you please confirm that this parking area is a legal parking lot.

Thank you
Jean

>>> Marge Schmuckal 10/31/2012 12:03 PM >>>
I have found two allowances for parking lots on file for 60-70 Danforth Street.

The first is the two lots right on Danforth Street. That parking lot was approved by the Planning Board as evidenced by an approval letter from the Planning Director (would anyone like to tell me if they remember who the Planning Director was in 1959?). There is a certificate of occupancy for that parking lot on file also.

The parking lot in the rear was approved by a Board of Appeals decision on 12/3/1959. I didn't find a certificate of occupancy on file, but I consider it to be a legal parking lot.

Marge

Zoning comments re proposal

Jean Fraser - 311-221 Commercial Street

From: Marge Schmuckal
To: Jean Fraser
Date: 11/8/2012 12:38 PM
Subject: 311-221 Commercial Street

One Solution is not working, so here is an e-mail:

311-331 Commercial Street - 040-E-003
#2012-615 B-5b and Historic Overlay
11/8/2012

This project is proposing a structure with 131 Hotel units with restaurant/retail and 14 residential dwelling units. The entire project is located in the B-5b Zone. All the proposed uses are allowed in the B-5b zone.

The zoning analysis stated that an average building grade calculations were attached. I could not find that page. Please direct me to where that information is located or provide separately. The elevations indicate that the average grade is 13.5 elevation. Based on that unverified information, the height of the building is given as 64' 10". The maximum building height is 65'.

The application stated that there were 14 residential dwelling units. However the information on the floors breakdown stated that there was a 944 sq. ft. dwelling unit on the first floor. Where is that located? Is that still part of the project? The sixth floor is currently showing 14 residential dwelling units. Are there really 15 residential units? I want to confirm the type of residential units. Are these leased or condominium units?

14-332.1 (g) in the parking section of the Ordinance states that there are no zoning parking requirements.

Separate permits will be required for any signage. All HVAC systems must meet the maximum allowable noise requirements of the zone. At the time of permits, it will be necessary to submit data concerning the dBA out-put for individual units.

Marge Schmuckal
Zoning Administrator

From: Tom Errico <thomas.errico@tylin.com>
To: Jean Fraser <JF@portlandmaine.gov>
CC: "Margolis-Pineo, David" <DMP@portlandmaine.gov>, "jbartlett@portlandmaine.gov" <jbartlett@portlandmaine.gov>, Katherine Earley <KAS@portlandmaine.gov>, Jeff Tarling <JST@portlandmaine.gov>
Date: 11/9/2012 8:43 AM
Subject: 321 Commercial Street

Jean - I have reviewed the plans and my preliminary comments are noted below. I would note that a Traffic Movement Permit scoping meeting occurred today and therefore comments regarding the traffic impact study will be transmitted at a later date.

- * I have reviewed the conceptual Construction Management Plan and generally find the concept to be acceptable (maintaining sidewalk and bicycle facilities on Commercial Street). I would note that specific details will need to be coordinated prior to construction.
- * I have conducted a preliminary review of the parking demand analysis and generally find the methods to be acceptable. The applicant should provide additional supporting data for the use of the 0.65 parking rate for the hotel. Given the availability of good parking generation information at the existing Hampton Inn, I would like to gain an understanding on the rates computed locally, versus those established by Hilton Worldwide. I would note that I do not expect the parking demand numbers to change significantly.
- * The driveway on Maple Street will require a waiver from the City's technical standards for driveway separation. Give the volume and speed of traffic on Maple Street I support a waiver from the City's technical standards.
- * The painted areas at the driveway entry on Maple Street should be removed.
- * The applicant has illustrated a proposed crosswalk on Commercial Street at the easterly corner of Maple Street. I need to review this proposal. My general sense is additional features are needed for safe pedestrian crossing. I would also note that the alignment of the crosswalk on the site plan will need to be adjusted to meet the City's perpendicular alignment design preference. The crosswalk paint detail would also need to be "Block" style.
- * It appears that a pedestrian easement will be required for sidewalks areas abutting the project.
- * The 11 parking spaces on the former Foundry Lane do not appear to meet City dimensional standards. A waiver will be required. I would also note that there is general concern about pedestrian accessibility in this area and modifications to the plan may be necessary.
- * I need to review the design details on the diagonal parking on Commercial Street (e.g. dimensions, painted corner areas, etc.).
- * For on-street parking changes, a city council approval will be required. The applicant will be responsible for providing materials in support of the Parking Schedule change.
- * For development projects in the area, the City has been requesting monetary contributions towards the installation of a traffic signal at the Commercial Street/High Street intersection. I will provide and estimate of the contribution amount in the future.
- * The applicant should provide details on how truck deliveries will be accommodated.
- * I have reviewed the TDM and generally find the program to be acceptable. Some of the details of the program need to be clarified/expanded, but overall the approach is acceptable. I'll provide clarifying comments in the future. I would note that the traffic impact study will assume an evaluation of impacts assuming a 10% reduction in vehicle trips based upon the implementation of TDM strategies. Accordingly, the program should credibly reduce traffic by 10%.

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director

Jean Fraser - Summary of Historic Preservation Board's Preliminary Workshop on Proposed Hotel at 321 Commercial

From: Deb Andrews
To: Jean Fraser
Date: 11/9/2012 11:21 AM
Subject: Summary of Historic Preservation Board's Preliminary Workshop on Proposed Hotel at 321 Commercial

The Historic Preservation Board held a preliminary review of the proposed hotel development at 321 Commercial Street on November 7th. Recognizing that the plans, elevations and perspective views were still quite preliminary, Historic Preservation Board members did express a threshold concern about the plan and massing of the proposed building as it relates to the geometry of the subject parcel and the abutting street and alleyway. They also raised a number of questions and concerns about the building design. Regarding Foundry Lane, Board members noted that its treatment at the top of the block, done as part of an earlier project, was very successful in that it preserved the memory of the historic alleyway and created an attractive pedestrian corridor. They felt it was important that this treatment continue on the lower portion of Foundry Lane to the extent possible.

BK11924PG010

FOUNDRYLANEDIS.CON.001
02.16.95

21428

AGREEMENT BETWEEN
CITY OF PORTLAND

AND

J.B. BROWN & SONS AND BAXTER PLACE ASSOCIATES

AGREEMENT made this 6 day of May, 1995 by and between the CITY OF PORTLAND, a body corporate and politic, located in Cumberland County and State of Maine (hereinafter the "CITY"), J.B. BROWN & SONS, a Maine , located in Portland, Maine (hereinafter "J.B. BROWN"), and BAXTER PLACE ASSOCIATES, a Maine , located in Falmouth, Maine (hereinafter "BAXTER PLACE").

W I T N E S S E T H:

WHEREAS, J.B. BROWN and BAXTER PLACE did request, pursuant to 23 M.R.S.A. §3026, a discontinuance of Foundry Lane, a street accepted and owned by the CITY, in order to facilitate development by J.B. BROWN of a site located on York Street in Portland which contains the Lewis Building, and rearrangement of the site owned by BAXTER PLACE in order to further assist in this development; and

WHEREAS, the Planning Board of the City of Portland, pursuant to §14-30(14) of the Portland City Code, and after notice and hearing and due deliberation thereon, recommended that the City Council discontinue the street, subject to certain limitations and restrictions; and

WHEREAS, the CITY by and through its City Council agreed to discontinue Foundry Lane pursuant to 23 M.R.S.A. §3026 in order to

assist in the redevelopment of these properties and further authorized the execution of this Agreement on *May/16*, 1995;

NOW, THEREFORE, in consideration of the mutual promises made by each party to the other, the parties covenant and agree as follows:

1. The CITY shall discontinue Foundry Lane pursuant to 23 M.R.S.A. §3026. Said discontinuance shall be subject to the easements retained in the discontinuance order, a copy of which is attached hereto as Exhibit A.
2. There shall be no structures located in the area of the discontinued street.
3. J.B. BROWN and BAXTER PLACE shall submit a site plan or site plans for any changes to the area of the discontinued streets. Such site plan or plans shall be reviewed by the Planning Board and may be submitted as part of the site plan for the Lewis Building change of use.
4. If J.B. BROWN does not utilize the cobblestones from the discontinued street in its site improvements, then any cobblestones not so used shall be returned to the CITY.
5. It is understood by each of the parties to this Agreement that the discontinuance of Foundry Lane has been approved by the CITY in order to facilitate the renovation and reuse of the Lewis Building. The CITY shall retain the right to reacquire the title to the street in the event that J.B. BROWN or a successor developer has not completed the renovation or begun the new use of the building within three (3) years of the date of this Agreement. The CITY shall have the right to reacquire Foundry Lane by simply demanding that J.B. BROWN and BAXTER PLACE, or their successors and assigns, reconvey Foundry Lane to the CITY in consideration of one dollar.
6. In the event that the CITY elects to have Foundry Lane reconveyed to it, it may also require J.B. BROWN, BAXTER PLACE, or their successors and assigns, to restore Foundry Lane to a passable condition.

FOUNDRYLANEDIS.CON.001
02.16.95

WITNESS:

Sonia S. Bean

Robert P. Patterson

CITY OF PORTLAND

By Robert B. Ganley
Robert B. Ganley
Its City Manager

J.B. BROWN & SONS

By Charles E. Primm III
Charles E. Primm III
Its President

BAXTER PLACE ASSOCIATES

By [Signature]
Its Partner

STATE OF MAINE
CUMBERLAND, ss. , 1995

Personally appeared the above-named Robert B. Ganley, in his capacity as City Manager, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the City of Portland.

Before me,
Sonia S. Bean
Notary Public/Attorney at Law

STATE OF MAINE
CUMBERLAND, ss. May 16, 1995

Personally appeared the above-named Charles E. Primm III, in his capacity as President, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of J.B. Brown, Inc.

Before me,
Robert P. Patterson
Notary Public/Attorney at Law

FOUNDRYLANEDIS.CON.001
02.16.95

STATE OF MAINE
CUMBERLAND, ss.

April 13, 1995

Personally appeared the above-named *Kenneth A. Astor*, in his capacity as *Partner*, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Baxter Place Associates.

Before me

C. M. Mearns

Notary Public/Attorney at Law

My Commission Expires

May 13, 2000

SEAL

9.5

0197

ORDER

DISCONTINUING FOUNDRY LANE

(The Planning Board, Kenneth Cole III, Chair)

IN THE CITY COUNCIL

March 20, 1995

James M. Daniels

Attest: _____
City Clerk

Yes _____ Says _____
Councillor Allen made a motion for passage of Order 197. Motion seconded by Councillor McDonough. Order 197 passed; 8 yeas. (Councillor Campbell out.)

A TRUE COPY. ATTEST:

James M. Daniels

CITY CLERK

DATED APR 25 1995

BK11924P6014

9.5

BK 11924 PG 015

Order 141
Tab 10 3-6-95

9.6

City of Portland, Maine
IN THE CITY COUNCIL

ORDER DISCONTINUING FOUNDRY LANE

ORDERED, that Foundry Lane, as described in Exhibit A, be and hereby is discontinued, pursuant to 23 M.R.S.A. §3026. This discontinuance shall be subject to the retention of a public access easement and an easement for public utility facilities.

The names of the abutting property owners are:

J.B. Brown & Sons
482 Congress Street
Portland, Maine 04112-0207.

Baxter Place Associates
170 U.S. Route One
Falmouth, Maine 04105.

The amount of damages awarded as a result of this discontinuance is : \$0.00.

FOUNDRYLANEDIS.ORD
02.24.95

EXHIBIT "A"

Beginning at the corner of a granite plinth on the Northwesterly side line of Commercial Street, distant Northeasterly two hundred fifty-four and sixty-two one hundredths (254.62) feet from the intersection of the Northwesterly side line of Commercial Street with the Easterly side line of Maple Street; thence Westerly with an included angle of one hundred eight degrees and twenty-three minutes ($108^{\circ}-23'$) from the Southwesterly direction of Commercial Street a distance of one hundred sixty-five and nine tenths (165.90) feet to a point; thence Westerly with a deflection angle to the left of eleven degrees and forty-seven minutes ($11^{\circ}-47'$) a distance of one hundred fifty-nine and eighty-five hundredths (159.85) feet to a point in the Southeasterly side line of York Street. Said street is to be thirty (30) feet wide and to lie on the Easterly side of the above described line and to be called Foundry Lane; and all the land lying between the above described line and the Easterly side line of Foundry Lane so hereby taken for said street.

The above description was copied from City of Portland Records, Volume 36, page 90 and 91 and was accepted by the City Council on October 7, 1907.

RECEIVED
RECORDED REGISTRY OF DEEDS

95 MAY 18 PM 2:04

CUMBERLAND COUNTY

John B. O'Brien