

CBL:

152-B-1

FOLDER NAME:

CDC

file name:

9-3-04 memo

PROJECT:

Monrill's Crossing

ADDRESS:

33 Allen Avenue

Memorandum
Department of Planning and Development
Planning Division



To: Councilor Cloutier and Members of the Community Development Committee

Cc.: Lee Urban, Director of Planning and Development

From: Sarah Hopkins, Development Review Services Manager

Date: September 3, 2004

Re: Packard Development

Introduction

On August 24, 2004, the Planning Board held a public hearing on Packard Development's proposed conditional rezoning of the Morrill's Corner parcel. The vote resulted in a (3-3) tie with Lowry abstaining and Beal, Tevanian and Anton opposing the recommendation.

Development Proposal

The development parcel is currently zoned B-2 Business, I-L Industrial and R-5 Residential. In order to proceed with the development proposal, the applicant has requested a conditional rezoning and has also made a proposal to the City's Community Development Committee for the purchase of two City-owned parcels of land.

The development will consist of an anchor grocery tenant of approximately 65,821 sq. ft., as well as additional retail tenants, for a total of 132,000 sq. ft. of retail space. The proposal anticipates the demolition of the Bingo Hall and the potential future expansion of the boxing club to 14,000 sq ft. The existing Bruno's Restaurant will remain. Residential uses proposed for the project include up to ten apartments above the Allen Ave retail buildings, up to 24 townhouse units along Princeton St. and up to twenty-four apartments to the rear of the site adjacent to Cambridge Street.

In order to develop the property as shown, Packard proposes to purchase the two City-owned parcels: one lot on Magnolia is needed to provide viable access into the site; the other lot is located to the rear of the site, off Cambridge Street, and is proposed for open space.

Conditional Rezoning Text

The conditional rezoning text as amended by the Planning Board is attached to this memo.

Important aspects of the proposal for the Board were the timing and phasing of the housing components, timing of the open space improvements and the clarification that additional traffic improvements may be necessary as part of Site Plan review, if the conditional rezoning is approved by the City Council.

Planning Board Deliberations

The criteria used by the Planning Board in making its recommendation to the City Council are:

- That the proposed conditional B-2 rezoning of the Packard site is consistent with the City's Comprehensive Plan; and
- As required under 30-A M.R.S.A Section 4352, that the proposed conditional rezoning:
 - is consistent with the local growth management program adopted under this chapter;
 - establishes rezoned areas that are consistent with the existing and permitted uses within the original zones; and
 - only includes conditions and restrictions that relate to the physical development or operation of the property.

The Planning Board members in favor of the rezoning cited the failure of the existing zoning of the Morrill's Corner site to attract residential, business or industrial uses, the consistency of the proposal with the Comprehensive plan with the transit and pedestrian amenities and diverse housing opportunities. Additionally, the applicant's efforts to improve the layout and architecture of the project were applauded by members of the Board as good examples of innovative design.

Board members opposed to the proposal stated that the state law was not met since some uses proposed by Packard (housing, retail) are not permitted in the underlying industrial zone. Some Board members determined that the proposal was inconsistent with the Comprehensive Plan by its anticipated draw of regional traffic to what is described as a "community center". One member described the potential negative impact on the neighborhood to be greater than the anticipated improvement to the Morrill's Corner intersection. Also discussed was the inconsistency of the proposal with the Comprehensive Plan with the provision of one main access to the site along Allen Avenue.

This matter comes to you for review and recommendation to the City Council regarding the proposed conditional zone and the proposed sale of the two City-owned parcels.

Attachments

Conditional Rezoning Text

Applicant's Presentation Summary

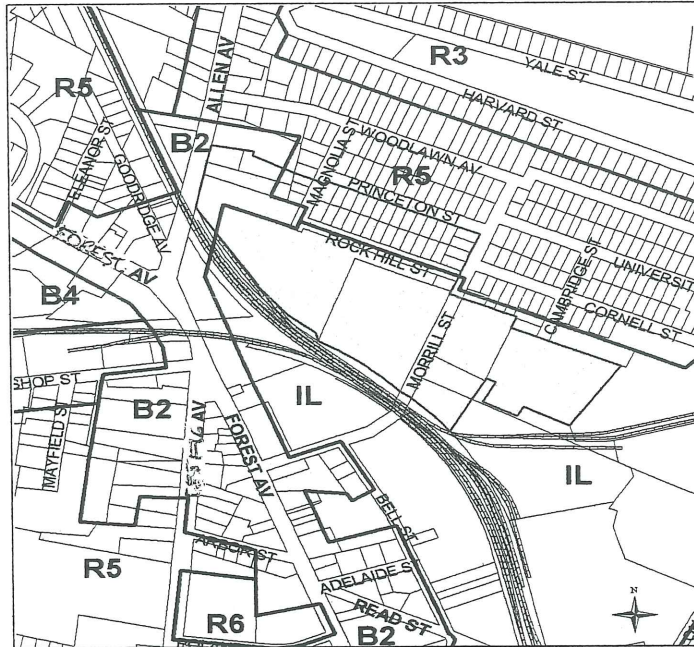
WHEREAS, the **CITY** has determined that the proposed development will be designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odors, and any other potential negative impacts of the proposal through the design and implementation of significant public traffic improvements, stormwater drainage improvements, landscaping and buffering; and

WHEREAS, the **CITY** has determined that because of the unusual nature and unique location of the proposed development and the need for significant public improvements it is necessary and appropriate to have imposed the following conditions and restrictions in order to ensure that the rezoning is consistent with the **CITY'S** comprehensive land use plan; and

WHEREAS, on _____, 2004, the **CITY** authorized amendment to its Zoning Map based upon the terms and conditions contained within this Agreement, which terms and conditions become part of the **CITY'S** zoning requirements; and

NOW, THEREFORE, in consideration of the rezoning, **PACKARD** covenants and agrees as follows:

1. Effective thirty days from the affirmative vote of the City Council on rezoning the **PROPERTY**, by Council Order No. _____, the City amends the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by § 14-49 of the Portland City Code, by adopting the map change amendment for the **PROPERTY** shown herein.



**Proposed Rezoning for Morrill's Corner
from IL, B2 and R5 to Conditional B2**

50 0 50 100150 Feet

Map prepared by the City of Portland's
Department of Planning & Development and the GIS Workgroup

June 2004

This conditional rezoning shall become null and void and the **PROPERTY** shall revert to the existing R-5, B-2 and I-L zones in the event that **PACKARD** fails to record deeds transferring title ownership or long-term leases from White Chapel, LLC; Paul G. and Jonathan White; the City of Portland, except as otherwise provided in Section 6.G of this Agreement; James E. Darling, Jr.; Madeline F. and Jack Adams; and Allen Avenue Plaza, LLC to **PACKARD** within one year from the date of the Council vote. This one-year period shall be extended up to an additional one year period if:

- a. **PACKARD** has applied for all required approvals but has not received all required approvals within the one-year period;
- b. Any other event beyond the control of **PACKARD** has occurred which will delay the closing on some or all of the parcels and **PACKARD** has notified the **CITY** of such event and the projected time period for resolution of the event.

If any required approval, including the approval of the conditional rezoning, has been appealed, then this conditional rezoning shall become null and void and shall revert if **PACKARD** fails to commence construction of Phase I within one (1) year from the final disposition of such appeal.

2. The following plans and documents are attached and incorporated into this

Agreement:

Exhibit A: **PARCEL**

1. Any event at a boxing club located on the **PROPERTY** with ticket sales or attendance numbers in excess of three hundred (300) hundred shall be limited to twelve (12) times per year; and
2. the days of the week such events may be held may be limited by the City, in its discretion, based on concerns of traffic conditions, other events around the City or any other reason deemed to negatively impact public health, welfare or safety; and
3. **PACKARD** shall notify the **CITY'S** parking division four (4) weeks in advance of such event.
4. **PACKARD** shall provide an annual parking management plan to handle the requirements for parking at said events.

The initial plan shall be submitted for review as part of the site plan review for the boxing facility. The plan must include provisions for off site parking and shuttle bus transportation to the **PROPERTY**. Thereafter, the parking management plan shall be updated annually and shall be reviewed on an annual basis by the City's Planning Authority and Parking Division, in its discretion . In any case, parking for daily use and for normal boxing club events shall be met on site.

e. Dwellings, as specified herein:

1. There shall be no fewer than ten (10) apartments (which may be combined live/work spaces) located in the building delineated on the Site Plan as "Proposed Mixed Use: Office/Prof. Service/ Retail/ Residential and "Proposed Retail"). The same shall be built in Phase I of the project. These units may serve as the replacement units for housing units to be displaced by construction of Phase I of the development in accordance with the requirements of the City's Preservation and Replacement of Housing Units Ordinance, § 14-483 et seq. if approved by the City during site plan review. Replacement units shall be available for occupancy before a certificate of occupancy may be issued for the new construction on the original site.
2. There shall be no fewer than 18 or more than 24 townhouses located adjacent to Princeton Street and shown on Exhibit E as Phase II. No temporary or permanent certificate of occupancy shall be granted for the grocery store building until all municipal approvals have been obtained for the Phase II townhouse development and a building permit has been issued for the first townhouse units. Building permits for at least 18 townhouses shall be obtained within 2 years of the commencement of construction of Phase II. **PACKARD** shall post a performance guarantee in the amount of \$50,000.00 per dwelling unit for the 18 townhouses required under this condition (hereinafter referred to as the "Housing Guarantee"), in a form acceptable to the **CITY**. The Housing Guarantee shall be reduced in amount for every six (6)

townhouses built and certificates of occupancy issued for such units. In the event that **PACKARD** fails to complete any or all of the 18 required townhouses, the **CITY** shall have the right to all funds remaining in the Housing Guarantee at the time of default. The **CITY** may utilize the funds in the Housing Guarantee for any housing project or housing-related purpose that it deems appropriate. Notwithstanding any contrary provision of this Agreement, **PACKARD**'s completion of the 18 townhouse unit development or the **CITY**'S call of the Housing Guarantee for any or all of the 18 required units shall satisfy **PACKARD**'s obligations under this subsection to provide 18 dwelling units in Phase II. The Housing Guarantee shall be separate from the performance guarantee required for site improvements on the townhouse site.

3. **PACKARD** may also construct up to 24 additional units in the area designated on Exhibit B, as "Area Reserved for Potential Residential Development" subject to prior subdivision and site plan review. In the event that **PACKARD** elects to construct these additional units, they must otherwise comply with the requirements established for the R-5 zoning district. Prior to construction of residential units, this area may be utilized for overflow parking for the boxing facility in the amount of no more than fifty (50) parking spaces, with the location of the parking spaces to be determined during site plan review. Should **PACKARD** wish to so use this area for parking, it must obtain site plan review and it must grant to the City an easement over the area for use by the public engaged in the use of the recreation/ open space when the parking is not needed for boxing club events. .

The Area Reserved for Potential Residential Development shall be loamed and seeded as part of Phase I of the development of the site as required by Section 5 unless a parking lot is proposed for this area in which case the parking lot proposal shall be subject to site plan approval during Phase I.

f. Accessory uses, including, but not limited to, public trails, parking facilities and structures, utility services, stormwater management systems, community meeting center, and site amenities. The uses listed in this subparagraph f shall be functionally related, physically oriented, and complementary to the principal uses of the site.

6. The uses on the **PROPERTY** will be within multiple buildings, which may be constructed in phases as specifically set forth on Exhibit E. All sections of Phase I and Phase II are required to be developed. Phase II shall be constructed in accordance with the schedule requirements set forth in Paragraph 4.

The following improvements must be constructed during Phase I: no fewer than 10 housing units in compliance with Portland City Code § 14-483 et seq., minimum off-site traffic improvements as shown on Exhibit C, the trail network shown on Exhibit B and E (except for that area labeled "Proposed Pedestrian Way in Princeton Street Right of

coordinated with the building and landscaping design through the use of appropriate materials and finishes. Signage for the development shall meet the standards established in Section 14-369 for multi-tenant lots in the B-2 zoning district, except as otherwise approved pursuant to Section 14-526(a)(23).

d. Traffic improvements: **PACKARD** shall be responsible for the design and installation of, at minimum, the off-site traffic improvements shown on Exhibit C, which improvements shall be made at **PACKARD'S** sole expense, following review and approval by the **CITY**. Such traffic improvements shall include, but not be limited to roadway widening, resignalization, road area for bicycles uninterrupted bike lanes, bus stops, esplanades with street trees, and sidewalks.

e. Open space improvements: In addition to the trail and other open space amenities delineated on Exhibit B, **PACKARD** shall be responsible for improving the parcel currently owned by the **CITY** and located in the vicinity of Cambridge Street (Tax Map 151A-A-13). **PACKARD** shall be responsible for the remediation of the site and for grading a level surface, installation of loam and seed or sod, creation of appropriate drainage and installation of irrigation equipment appropriate to create a multi-purpose field. **PACKARD** shall also be responsible for providing those funds necessary to purchase the playground and similar equipment necessary to improve the multi-purpose field to similar condition as the **CITY'S** Fox Street multipurpose field as it exists as of June 8, 2004. **PACKARD** shall work with the **CITY'S** Department of Parks and Recreation in determining the design and construction standards for the multipurpose field. In the event that ownership of this parcel will remain with the **CITY** or will be reconveyed to the **CITY** after the completion of improvements **PACKARD** shall be granted or shall retain an easement for its stormwater facilities, which shall be located and incorporated on this site in a manner as to allow the construction and use of the multi-purpose field. The open space in this area shall remain accessible to the users of the **PROPERTY**, as well as the general public, by use of the walking trails and any other available access.

PACKARD shall deed to the **CITY** a public recreational easement on and over the "Recreation/Open Space" area, the "Proposed Walking Trail," the sidewalk traversing the site, as well as the "Proposed Pedestrian Way in Princeton Street Right of Way" as delineated on Exhibit B. **PACKARD** shall be responsible for installing the "Proposed Walking Trail" as part of Phase I, as shown on Exhibit B and E, of the development. **PACKARD** shall grant a public recreational easement to the **CITY** for the trail. **PACKARD** shall also be responsible for construction of the multi-purpose field as set forth above in Phase I unless, after **PACKARD** has expended all reasonable efforts, permitting by the Maine DEP is held up or delayed for any reason beyond the control of **PACKARD**. In such case, **PACKARD** shall have an additional one (1) year from the issuance of required DEP permits in which to install the multipurpose field.

8. *Phasing:* **PACKARD** shall be authorized to develop the **PROPERTY** in multiple phases. These phases shall occur in accordance with the phasing plan attached hereto as Exhibit E. As specified in paragraphs 4 and 5, all sections of Phase I and Phase

It are required to be developed. The Area Reserved for Future Residential Development shall be loamed and seeded or constructed for parking/green space as otherwise approved during site plan review.

9. *CSO contribution:* **PACKARD** shall be required to contribute up to \$100,000.00 to the **CITY'S** Fall Brook Combined Sewer Overflow project.

10. *Dimensional Requirements.* The dimensional standards established in Section 14-185 for the B-2 zoning district, as further modified by this Agreement or by Exhibit B, shall apply to the **PROPERTY** as a whole, and not additionally to individual lots (if any) within the **PROPERTY**. For purposes of front yard setbacks, the front yard for each office or retail building developed on the **PROPERTY** shall have as the front yard the area between the building and Allen Avenue. The potential lot divisions for residential development and areas to be subject to long-term ground leases are delineated on Exhibit F. These locations may be changed as part of the subdivision review process. Amendments to these locations, once approved, may occur after Planning Board review and approval of the proposed amendments.

11. **PACKARD**, and its successors and assigns shall maintain the **PROPERTY** and the perimeter of the **PROPERTY** in order to ensure litter and other garbage is not spread/ blown to adjacent properties/neighborhood. **PACKARD** shall provide to the **CITY** a Maintenance Agreement which, in the event **PACKARD** or its successor fails to maintain the **PROPERTY**, would give the **CITY** the right to enter the property for purposes of cleaning up litter and debris, and charge **PACKARD** for its costs. The Property Maintenance Agreement shall include a retrieval program for shopping carts that have been removed from the **PROPERTY**.

The provisions of this Agreement, including the permitted uses listed in paragraph 2, are intended to replace the uses and requirements of the existing R-5 and I-L zones and to limit and supplement the requirements of the existing B-2 zone as set forth in this Agreement, except that the conditional uses included within Portland City Code § 14-483 are specifically excluded.

The above stated restrictions, provisions, and conditions, including all Exhibits to this Agreement, are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit **PACKARD**, any entity affiliated with **PACKARD** that takes title to the **PROPERTY**, their successors and assigns, 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**, by and through its duly authorized representatives. **PACKARD** shall record a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the **PROPERTY**.

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 development, 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 case of any issue related to the **PROPERTY** which is governed by this section, neither **PACKARD** nor its successors or assigns may seek relief which might otherwise be available to them from Portland's Board of Appeals by means of a variance, practical difficulty variance, interpretation appeal, miscellaneous appeal or any other relief which the Board would have jurisdiction to grant. Nothing herein, however, shall bar the issuance of stop work orders.

This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. Following any determination of a zoning violation by the Court or the Zoning Administrator, the City Council, after recommendation of the Planning Board, may amend, modify or rescind its conditional rezoning of the site.

WITNESS:

PACKARD DEVELOPMENT, LLC

By _____

Its: _____

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

_____, 2004

Personally appeared before me the above-named _____, in his/her capacity as _____, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of Packard Development, LLC.

Before me,

Notary Public/Attorney at Law