

CBL:

152-B-1

FOLDER NAME:

PB Memo

file name: 6-22-04 Contract Zone

PROJECT:

Monrill's Crossing

ADDRESS:

33 Allen Avenue

Memorandum  
Department of Planning and Development  
Planning Division

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**To:** Chair Delogu and Members of the Portland Planning Board  
**From:** Sarah Hopkins, Development Review Services Manager  
**Date:** June 17, 2004  
**Re:** Planning Board Workshop June 22, 2004  
Packard Proposed Contract Zone

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### **Introduction**

Packard Development is returning to the Planning Board to continue its presentation of the revised concept plan for the proposed Morrill's Corner Shopping Center. The applicant has introduced a mixed-use approach to the project with the addition of upper-story apartments and offices, town house condominiums and an apartment building. The layout of buildings and architectural renderings appear to be more "pedestrian friendly" with a cohesive design approach.

Packard intends to use this workshop to review the conditional rezoning language associated with the proposal. City staff has been working with the applicant to draft language for the Board's consideration. Included as an attachment to this memo is the most recent contract language as revised by City staff, with the appropriate exhibits. Redlining has been used so the Planning Board can distinguish the revisions and progress made so far. Also included as Attachment 2 is the applicant's "clean" version.

### **Development Proposal**

Packard proposes to develop 128,000 sq ft of retail, upper story development of office space and apartments, a 14,000 sq ft boxing club, and the preservation of the Bruno's restaurant building. The applicant has also introduced a mixed housing element to the proposal with eight upper story apartments (over retail), 20 townhouse condominiums, and potentially 24 multi-family units, for a net gain of 30-40 residential units. 625 parking spaces are proposed for the site, as well as a walking trail and open space. See below a discussion of the various housing components, which should be further secured in the contract language.

The proposal anticipates the demolition of the bingo hall and boxing club, currently located at the front of the site, and the expansion of the boxing club at the rear of the site to a new 14,000 sq ft building. The existing Bruno's Restaurant will remain.



A chart comparing the current proposal with the previous proposal is included as Attachment 3.

### **Conditional Zoning Text**

The most recent iteration of staff-drafted and edited conditions and an explanation of associated issues and concerns follows. The complete text, including "whereas" clauses, is attached to the memo. [Conditional rezoning text is indented and staff comments have wider margins.]

**NOW, THEREFORE**, in consideration of the ~~mutual promises made by each party to the other, the parties~~ rezoning, **PACKARD** covenants and agrees as follows:

1. Effective thirty days from the affirmative vote of the City Council, 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. 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 if:

a. **PACKARD** has applied for all required approvals but has not received all required approvals within the one-year period;

b. Any required approval, including the approval of the conditional rezoning, has been appealed; or

c. 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. ~~Effective upon the recording of deeds transferring title ownership or of long-term leases from White Dove, LLC, Paul G. White, Jonathan White, the City of Portland, except as otherwise provided in Section 6.J of this Agreement, James E. Darling, Jr., Madeline F. and Jack Adams, and Allen Avenue Plaza, LLC to **PACKARD** and receipt by the **CITY** of a statement from **PACKARD** that **PACKARD** has so recorded said deeds or leases, the **CITY** hereby 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 shown on Exhibit A; provided however, that this contract 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 acquire said **PROPERTY** before \_\_\_\_\_, provided that **PACKARD** has acquired any required traffic improvement plan, subdivision, site plan and site location of development approval prior to that date and that there has been no appeal of those approvals. —

INSERT ZONING MAP

The conditional rezoning will go into effect 30 days after City Council approval. The rezoning will be rescinded if the transfer of deeds does not occur within one year of approval unless:

- Packard has applied for all approvals but has not received them within the required year;
- Any required approval have been appealed; or
- Any unforeseen event has occurred out of Packard's control, and the City has been notified and an expected date of resolution offered.

2. The **PROPERTY** shall be developed substantially in accordance with the Site Plan shown on Exhibit B (including the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and landscaping) and the architectural renderings shown on Exhibit \_\_\_\_\_, provided, however, that each Phase, whether classified as a major or minor development, shall be subject to site plan review by the Planning Board, and if applicable, subdivision review by the Planning Board. Any site plan review applications shall fully comply with the Site Plan attached as Exhibit B, and the architectural renderings shown on Exhibit \_\_\_\_\_, and the application requirements contained in article V (site plan) of the Land Use Code. The Planning Board may permit minor deviations from the Site Plan, as long as the deviations are consistent with the purposes of this Agreement. The structure labeled "Existing Boxing/Proposed Expansion" in the northeasterly corner of Exhibit B shall be built with architecture similar to and compatible with that in Exhibit \_\_\_\_\_ for the other structures associated with this project.

Both Staff and applicant are in agreement on this text.

3.2. The **CITY** shall not issue **PACKARD** any building permits for the project until **PACKARD** has 1) acquired the **PROPERTY** in accordance with the requirements of Section 1 of this Agreement and 2) has received all necessary federal, state and **CITY** permits.

Both Staff and applicant are in agreement on this text.

3. ~~The purpose of this contract rezoning is to provide for a mixed use development, including a community shopping center, residential units, offices and a boxing and fitness facility.~~



4. *Permitted Uses.* **PACKARD** shall be authorized to establish and maintain the following uses on the **PROPERTY**:

- a. Retail establishments, business services and personal services, all as defined by Portland City Code §14-47. (which may include restaurants, and business and personal services).
- b. Professional and business offices occupying no more than \_\_\_ square feet.
- c. Day care facilities and adult day care facilities.
- d. Exercise and fitness centers, and health clubs, including but not limited to a boxing and fitness facility. Any boxing facility shall comply with the following restrictions:
  1. Any event at a boxing club located on the **PROPERTY** with ticket sales or attendance numbers in excess of \_\_\_ hundred shall be limited to \_\_\_ times per year; and
  2. such events shall be limited to \_\_\_ (days of the week)
  3. **PACKARD** shall notify the **CITY'S** parking division \_\_\_ weeks in advance of such event; and
  4. the boxing club shall provide a parking management plan to handle the requirements for parking at said events to the parking division for its review and approval, which parking management plan shall include provisions for off site parking and shuttle bus transportation to the **PROPERTY.**

Permitted uses of the retail portion of the shopping center will be those allowed in the B-2 zone, with the exception of conditional uses. Conditional uses in the B-2 zone include gas stations, car washes, warehousing, research & development, printing and publishing.

Concern has been raised regarding the operation and frequency of events at the boxing club. Shared parking between the boxing patrons during events and users of the shopping center may cause conflict. The applicant agrees to provide a parking management study as part of any future site plan review. This plan may include a provision for off-site boxing event parking.

The Board will have to determine whether the parking issue is a threshold issue that should be resolved now. Also, staff has requested a parking supply/demand study, as well as a calculation of parking required by zoning for the proposed uses compared with what is being provided.

As a development over 50,000 sq. ft., the Planning Board would determine the final parking requirement during site plan review.

d. Dwellings, as specified herein:

There shall be no fewer than ten (10) apartments (which may be including 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; and

In consultation with staff from the Housing and Neighborhood Services Division, Planning staff has recommended the removal of the previously proposed multifamily apartment building to the rear of the site. Potential conflicts with loading operations and impacts, as well as the potential isolation of the residential units, provided convincing reasons for the units' removal. As such, staff has encouraged the applicant to increase the housing in the more viable areas; those being the townhouse units along Princeton Street and the upper story apartments closer to Allen Avenue.

For the Allen Avenue units, we were particularly interested in establishing a "critical mass" of housing to foster a sense of security and establishment. Too few units would most likely leave tenants feeling marginalized, and these are the units that embody the mixed-use approach.

Staff issues relate to how many apartments will fit above the retail. In the applicant's proposal, 6 apartment/work live areas are proposed above the second building in from Allen Avenue. The applicant is hesitant to create upper stories on the first building for residential use, since there is an architectural intention to have the buildings "step up" in height as one proceeds from Allen Avenue into the development.

While there are no floor plans at this time, we would suggest that the first building be increased to two stories as one approaches from Allen Ave., securing a portion of second floor area for apartments. Staff is recommending a minimum of twelve (12) to fourteen (14) dwellings be developed above the retail in the two front buildings along the entry drive. If after a reasonable period of time of availability for occupancy, any units fail to be rented, perhaps a conversion to office could be contemplated.

The allowed density of these units may need to be specified in this document.

- ~~• The apartments located near Allen Avenue, which may also be live/work spaces, and the townhouses near Princeton Street shall be required as part of this project. There shall be no fewer than 6 apartments or combined live/work spaces located in the retail building near Allen Avenue and no fewer than 18 or more than 24 townhouses located adjacent to Princeton Street and delineated on the Site Plan as~~

~~“ ”~~



Since the last workshop, the applicant has added more townhouse units along Princeton Street. Again, these additional units are meant to restore some units lost through the removal of the multifamily structure to the rear of the site.

Note also, the one way access through a roundabout from Morrill Street. Such an access will provide for limited, calmed access to the shopping center and townhouses from the residential neighborhood, while prohibiting access to the neighborhood from the shopping center.

- [PLANNING BOARD DISCUSSION NEEDED ON THE FOLLOWING OPTIONS] The same shall be built no later than \_\_\_\_\_ (insert date) **OR** The same shall be built before the Proposed Restaurant/Retail or Proposed Retail buildings delineated on Exhibit B and located at the south-westerly portion of the PROPERTY **OR** The same shall be built prior to the issuance of a certificate of occupancy for the Proposed Restaurant/Retail or Proposed Retail buildings delineated on Exhibit B and located at the south-westerly portion of the PROPERTY.

The draft requires that the town house units be constructed prior to the occupancy of the retail building along the railroad tracks or by a certain date.

Our ultimate preference would be to have the townhouses built at the same time as the supermarket, so that the neighborhood is immediately buffered from the retail operation and its impacts. According to the applicant, the economics of the development of the site do not appear to support this timing. We will need some direction from the Board on when the townhouses must be constructed.

A minimum of \_\_\_\_\_ (insert number) dwelling units shall be constructed as part of Phase I of development in compliance with the requirements of the City's Preservation and Replacement of Housing Units Ordinance §14-483 et.al. Replacement units shall be available for occupancy before a certificate of occupancy may be issued for the new construction on the original site. The remaining units must be constructed, and certificates of occupancy issued no later than \_\_\_\_\_ years from the issuance of the first certificate of occupancy for the PROPERTY.

The applicant must meet the requirements of the housing replacement ordinance. Site Plan may be the most appropriate time to devise the housing plan with assistance from the Housing and Neighborhood Services Division.

- **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 comply with the setback requirements established for the R-57 zoning district.

Staff has reservations about the construction of the affordable housing units to the rear of the site. The units would be isolated from the neighborhood and out of sight. The location of the housing units to the rear of the loading raises additional questions regarding compatibility and income disparity. If the site design and access problems are resolved (with residential access from Cambridge Street rather than through the shopping center), the rear units could be more viable.

Also, if the apartments are to be constructed in the future, under which zoning density, setbacks and parking requirements should they be developed? The surrounding neighborhood is R-5, but the density of the housing development appears to be more of an R-6 or R-7 density.

- 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.

5. 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 no later than \_\_\_ years from the issuance of a certificate of occupancy of the Phase I development OR Phase II shall be constructed prior to the issuance of a building permit for those structures labeled “Proposed Restaurant/Retail or Proposed Retail” on Exhibit B and located at the south-westerly portion of the **PROPERTY** . Phase III is not required to be developed.

The following improvements must be constructed during Phase I: no fewer than \_\_\_ (insert #) of housing units in compliance with Portland City Code §14-483 et.seq., off-site traffic improvements as shown on Exhibit C, the on-site trail network shown on Exhibit B (except for that labeled “Proposed Pedestrian Way in Princeton Street Right of Way” which shall be constructed as part of Phase II). No certificate of occupancy at this site will be issued for any purpose, unless and until such improvements are completed.



If the **PROPERTY** is constructed in Phases, in addition to the requirements contained in the Portland City Code, **PACKARD** nonetheless will be required at the outset to post a performance guarantee to cover all of the following improvements regardless of the Phase:

- Landscaping as follows:
- Traffic improvements as shown on Exhibit C:
- Trail amenities
- Stormwater system
- ????

~~.- The **PROPERTY** shall be developed substantially in accordance with the conceptual site plan shown on Exhibit B, provided, however, that each building, whether classified as a major or minor development, shall be subject to site plan review by the Planning Board, and if applicable, subdivision review by the Planning Board. Any site plan review applications shall fully comply with the detailed site plan application requirements contained in article V (site plan) of the Land Use Code. The Planning Board may permit deviations from the conceptual site plan, as long as the deviations are consistent with the purposes of this Agreement. **MOVED TO PARA 2**~~

As discussed earlier, we will need direction from the Planning Board on the phasing components of the project.

6. *Development Standards.* All site plans in conformance with Exhibit B and Exhibit \_\_\_ (architectural renderings) may be approved by the Planning Board only if, in addition to the dimensional requirements of paragraph 6\_\_ and the applicable provisions of article IV (subdivisions) and article V (site plan), the development meets the following additional development standards:

a. *Design relationship to site:* ~~The development proposals shall demonstrate a reasonably unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and the topography, soil conditions, vegetation, and other natural features of the site. Integration of open spaces and natural features shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens, and benches. The proposed layout of buildings and uses shall demonstrate compatibility between the buildings and other site features within the site. Consideration shall be given to compatibility of proposed perimeter on site development with the existing and future uses off site but adjacent to the **PROPERTY**. The layout and design of the site shall be substantially in compliance with Exhibit B.~~

*b.—Landscaping:* Development proposals shall include a landscape program that is consistent with the landscaping plan shown on Exhibit B. All land areas not covered by structures, parking areas, bus facilities or circulation facilities shall be landscaped and maintained. In order to soften the visual impact of large expanses of pavement in parking lots, vegetation shall be planted or retained in islands or planting strips as shown on Exhibit \_\_\_, ~~where required by article IV (subdivisions) and article V (site plan) of the Land Use Code~~ Development proposals shall include appropriate fencing and/or berming and planting treatment of a dense and continuous nature in order to buffer parking lot visibility from adjacent properties.

Staff and the applicant are in agreement; however, depending on the phasing plan, we may need a temporary landscape mitigation plan during various phases of development.

*eb. Vehicular access.* Vehicular access to the retail and office portion of the site shall be from the signalized access as shown on Exhibit B and shall be coordinated with other off-site traffic improvements as shown on Exhibit C. ~~Emergency access only shall occur at an additional location at Allen Avenue as shown on Exhibit B.~~ A gated emergency access shall be provided at the terminus of ~~either Morrill Street as shown on Exhibit B or Cambridge Street,~~ with the precise location to be determined as part of site plan review. Vehicular access to the residential uses on the site shall be as shown on Exhibit B with the location of the access to the Area Reserved for Potential Residential Development to be established during site plan and subdivision review of such development.

The applicant is working on a detailed plan of the Morrill's Corner traffic improvements. These improvements will be constructed as part of Phase I.

An emergency access gate will be provided at the end of Morrill Street, in response to concerns raised by the Board.

Access to the "area reserved for potential residential development" will be determined at the time of site plan/subdivision review, should a project come forward.

*d.—Pedestrian Orientation:* ~~Development proposals shall include an integrated pedestrian circulation system, including internal sidewalks, to take advantage of the topography and natural features of the site and provide for safe pedestrian access to all buildings and parking areas with the ability to conveniently access all developed portions of the site without additional driving. The pedestrian circulation system shall link with the on-site perimeter pedestrian trail and with adjacent streets as shown on Exhibit B. A public access easement shall be granted to the City or to Portland Trails for the pedestrian walkway on the~~ **PROPERTY.**



~~e. — *Buffers and screens:* Development proposals shall include appropriate fencing and planting treatment of a dense and continuous nature in order to buffer parking lot visibility from adjacent properties.~~

~~f. — Lighting shall be in accordance with the standards set forth in Section 14-526(a)(9).~~

~~g. — *Architectural design:* All buildings shall be designed or approved by a registered architect in the State of Maine. The scale, texture, colors, and massing of the buildings shall be coordinated. The full range of high quality, permanent, and traditional or contemporary building materials and technology may be incorporated in a manner so that the development as a whole embodies distinguishing attributes that achieve the developer's desired degree of excellence and are in conformance with the architectural guidelines provided in any private development restrictions. Particular emphasis shall be placed on the appearance of building facades from public streets, from driveway and parking areas, and from other nearby buildings. Building elevation drawings shall be submitted which indicate architectural style, exterior finishes and color, building height and scale, and location and scale of window and door openings.~~

Staff omitted these paragraphs since the development layout and architecture is guided by the attached exhibits.

*h.c. Signs:* Development proposals shall identify all proposed signage. Building signage shall be designed in proportion and character with the building facades. A pylon sign including tenant signage shall be in accordance with Exhibit D and the location shall be as depicted on Exhibit B. All signs shall be constructed of permanent materials and shall be 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).

A schematic sign is included as Exhibit D of the contract. All signage will be subject to the sign ordinance related to signage in the B-2 zone. There is an provision clause in the Site Plan Ordinance that allows exceptions for certain signs.

*i.d. Traffic improvements:* **PACKARD** shall be responsible for the design and installation of 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, bike lanes, bus stops, esplanades with street trees, and sidewalks.

Staff and the applicant are in agreement with this condition; however, the possibility and location of future bike lanes is still in question.



j. *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) **We need to determine ownership** **\*\***. **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 ~~for~~ **to** create a multi-purpose field, provided that the cost of remediation does not exceed the market value of the site. **What is the market value of the site??** **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. (Get documentation of what is at FOX) **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.

If the cost of remediation of the City-owned parcel (Tax Map 151A-A-13) exceeds the market value of the City-owned parcel, then the Area Reserved for Potential Residential Development shall be utilized as recreation open space. **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. (NEED TO DELINEATE PUBLI SIDEWALK TRAVERSING THE SITE). **PACKARD** shall be responsible for installing the "Proposed Walking Trail" and MULTIPURPOSE FIELD??????? during Phase I.

Please see questions in underline/bold. This section needs work.

The open space improvements must be viewed as an integral part of the development master plan. The cost threshold based on market value should be eliminated from the contract such that the field improvements are assured. We are reviewing the environmental assessment done on this site by the DEP, which suggests that the remediation measures needed are not extreme. Packard should be required to make a firm commitment to this component. As for the eventual ownership of the parkland, we will come back with a staff recommendation after further interdepartmental discussions.



5. *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 and , All sections of Phase 1 and Phase 2 are required to be developed. Phase 3 is not required to be developed.

Phase 3 is the rear future residential housing.

6. *CSO contribution:* **PACKARD** shall be required to ~~make a monetary contribution up to \$100,000.00 to the CITY'S Fall Brook Combined Sewer Overflow project. The amount of this contribution shall be determined by the Planning Board as part of the site plan review for the project.~~

Public Works will work with the applicant to determine an appropriate contribution for the CSO improvements during site plan review. The Board will make the final determination.

7. *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. **DO WE NEED TO ADDRESS SETBACKS FOR TOWNHOUSES?**

The various portions of the site will be developed with ground leases and purchases. The zoning allowance must be determined during the conditional rezoning process.

8. **PACKARD, and its successors and assigns shall maintain the PROPERTY and the perimeter of the PROPERTY \_\_\_\_\_ly 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.**

Staff and the applicant agree on this issue.

9. **PACKARD shall install and maintain a sensed grocery cart system which prevents carts from being removed from the PROPERTY.**

Packard is looking into this technology.

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 section, neither **PACKARD** nor its successors or assigns may seek relief which might otherwise 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 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 MRSA 4452) and City Ordinance. Following any determination of a zoning violation by the Court, the Zoning Administrator, or the Portland Zoning Board of Appeals, the City Council, after recommendation of the Planning Board, may amend, modify or rescind its conditional rezoning of the site.

We have revised the enforcement mechanism as a result of recent court decisions.



~~In the event that **PACKARD** or any successor or assigns fails to continue to utilize the **PROPERTY** in accordance with this Agreement, or in the event of a breach of any condition(s) set forth in this Agreement, the Planning Board shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution may include a recommendation to the City Council that the site be rezoned to the zoning classifications existing immediately prior to the adoption of this Agreement or any successor zone and that the Agreement be terminated, requiring a cessation of the uses permitted herein to the extent that such uses are no longer permitted in the rezoned areas.~~

### Next Workshop

The next workshop on the Packard project will be held on July 20. Packard will present the updated Traffic Study and answer a number of questions raised by the City's Traffic Engineer. We also anticipate bringing back a more refined draft of the conditional rezoning document.

### Attachments

1. Staff Red-Lined Draft Document with Exhibits
2. Applicant's Draft Document
3. Comparison Chart
4. Correspondence from Neighbors

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**CONDITIONAL TRACT ZONE AGREEMENT  
BETWEEN  
CITY OF PORTLAND  
AND  
PACKARD DEVELOPMENT, LLC**

AGREEMENT made this \_\_\_ day of \_\_\_\_\_, 2004 by ~~and between the~~ **CITY OF PORTLAND**, a body corporate and politic, located in Cumberland County and State of Maine (hereinafter the "**CITY**") and **PACKARD DEVELOPMENT, LLC** a Delaware limited liability company with a mailing address of One Wells Avenue, Newton, Massachusetts 02159, and its successors and assigns (hereinafter "**PACKARD**").

**WITNESSETH**

**WHEREAS, PACKARD** seeks to develop property located at and in the vicinity of 33 Allen Avenue in the City of Portland and identified on the City of Portland on the Assessor's maps at Map 435, Block G, Lots 10-12, 21, 22, and 26; Map 151A, Block A, Lots 12 and 13; Map 152, Block C, Lots 2 and 5; and Map 435, Block D, Lots 15, 16, 17 and 18 (hereinafter referred to as the "**PROPERTY**") (See Exhibit A); and

**WHEREAS, PACKARD** proposes to develop the **PROPERTY** as a mixed use development, including residential units, a community shopping center with a grocery store, other retail uses, restaurants, offices, and a boxing club/ gym facility; and

**WHEREAS, the PROPERTY** is currently located in three different zoning districts, R-5, B-2 and I-L; and

**WHEREAS, The purpose of this contract rezoning is to provide for a mixed use development, including a community shopping center, residential units, offices and a boxing and fitness facility.**

**WHEREAS, substantial public improvements** will be required to support any redevelopment of the **PROPERTY**, including but not limited to traffic improvements in the Morrills Corner area; and

**WHEREAS, PACKARD** has developed a traffic improvement plan, which plan has been reviewed by the **CITY**; and

**WHEREAS, the Planning Board of the City of Portland, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Code §§ 14-60 to 14-62, and after notice and hearing and due deliberation thereon, recommended the rezoning of the PROPERTY as aforesaid, subject, however, to certain conditions; and**

**WHEREAS, the CITY** by and through its City Council has determined that said rezoning would be and is pursuant to and consistent with the **CITY'S** comprehensive land use plan and will establish uses that are consistent with the uses in the original zones and the surrounding areas; and

**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 by agreement 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

~~**WHEREAS**, the **CITY** authorized the execution of this Agreement through action of its City Council on \_\_\_\_\_, 2004;~~

**NOW, THEREFORE**, in consideration of the ~~mutual promises made by each party to the other, the parties~~rezoning, **PACKARD** covenants and agrees as follows:

1. Effective thirty days from the affirmative vote of the City Council, 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. 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 if:

a. **PACKARD** has applied for all required approvals but has not received all required approvals within the one-year period;

b. Any required approval, including the approval of the conditional rezoning, has been appealed; or

c. 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. ~~Effective upon the recording of deeds transferring title ownership or of long term leases from White Dove, LLC, Paul G. White, Jonathan White, the City of Portland, except as otherwise provided in Section 6.J of this Agreement, James E. Darling, Jr., Madeline F. and Jack Adams, and Allen Avenue Plaza, LLC to **PACKARD** and receipt by the **CITY** of a statement from **PACKARD** that **PACKARD** has so recorded said deeds or leases, the **CITY** hereby 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 shown on Exhibit A; provided however, that this contract 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 acquire said **PROPERTY** before \_\_\_\_\_, provided that **PACKARD** has acquired any required traffic improvement plan, subdivision, site plan and site location of development approval prior to that date and that there has been no appeal of those approvals. -

### INSERT ZONING MAP

2. The **PROPERTY** shall be developed substantially in accordance with the Site Plan shown on Exhibit B (including the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and landscaping) and the architectural renderings shown on Exhibit \_\_\_\_\_, provided, however, that each Phase, whether classified as a major or minor development, shall be subject to site plan review by the Planning Board, and if applicable, subdivision review by the Planning Board. Any site plan review applications shall fully comply with the Site Plan attached as Exhibit B, and the architectural renderings shown on Exhibit \_\_\_\_\_, and the application requirements contained in article V (site plan) of the Land Use Code. The Planning Board may permit minor deviations from the Site Plan, as long as the deviations are consistent with the purposes of this Agreement. The structure labeled "Existing Boxing/Proposed Expansion" in the northeasterly corner of Exhibit B shall be built with architecture similar to and compatible with that in Exhibit \_\_\_\_\_ for the other structures associated with this project.

3.2. The **CITY** shall not issue **PACKARD** any building permits for the project until **PACKARD** has 1) acquired the **PROPERTY** in accordance with the requirements of Section 1 of this Agreement and 2) has received all necessary federal, state and **CITY** permits.-

3. The purpose of this contract rezoning is to provide for a mixed use development, including a community shopping center, residential units, offices and a boxing and fitness facility.

4. Permitted Uses. **PACKARD** shall be authorized to establish and maintain the following uses on the **PROPERTY**:

a. Retail establishments, business services and personal services, all as defined by Portland City Code §14-47. (~~which may include restaurants, and business and personal services~~).

b. Professional and business offices occupying no more than \_\_\_\_\_ square feet..

c. Day care facilities and adult day care facilities.



d. Exercise and fitness centers, and health clubs, including but not limited to a boxing and fitness facility. Any boxing facility shall comply with the following restrictions:

1. Any event at a boxing club located on the **PROPERTY** with ticket sales or attendance numbers in excess of \_\_\_\_\_ hundred shall be limited to \_\_\_\_\_ times per year; and
2. such events shall be limited to \_\_\_\_\_ (days of the week)
3. **PACKARD** shall notify the **CITY'S** parking division \_\_\_\_\_ weeks in advance of such event; and
4. the boxing club shall provide a parking management plan to handle the requirements for parking at said events to the parking division for its review and approval, which parking management plan shall include provisions for off site parking and shuttle bus transportation to the **PROPERTY**.

e.

Dwellings, as specified herein:

- There shall be no fewer than ten (10) apartments (which may be including 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; and
- ~~The apartments located near Allen Avenue, which may also be live/work spaces, and the townhouses near Princeton Street shall be required as part of this project. There shall be no fewer than 6 apartments or combined live/work spaces located in the retail building near Allen Avenue and no fewer than 18 or more than 24 townhouses located adjacent to Princeton Street and delineated on the Site Plan as "\_\_\_\_\_".~~ **[PLANNING BOARD DISCUSSION NEEDED ON THE FOLLOWING OPTIONS]** The same shall be built no later than \_\_\_\_\_ (insert date) OR The same shall be built before the Proposed Restaurant/Retail or Proposed Retail buildings delineated on Exhibit B and located at the south-westerly portion of the **PROPERTY** OR The same shall be built prior to the issuance of a certificate of occupancy for the Proposed Restaurant/Retail or Proposed Retail buildings delineated on Exhibit B and located at the south-westerly portion of the **PROPERTY**.

A minimum of \_\_\_\_\_ (insert number) dwelling units shall be constructed as part of Phase I of development in compliance with the requirements of the City's Preservation and Replacement of Housing Units Ordinance §14-483 et.al. Replacement units shall be available for occupancy before a certificate of occupancy may be issued for the new construction on the original site. The remaining units must be constructed, and certificates of occupancy issued no later than \_\_\_\_\_ years from the issuance of the first certificate of occupancy for the **PROPERTY**.



- **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 comply with the setback requirements established for the R-57 zoning district.

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.

5. 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 no later than years from the issuance of a certificate of occupancy of the Phase I development OR Phase II shall be constructed prior to the issuance of a building permit for those structures labeled “Proposed Restaurant/Retail or Proposed Retail” on Exhibit B and located at the south-westerly portion of the PROPERTY . Phase III is not required to be developed.

The following improvements must be constructed during Phase I: no fewer than (insert #) of housing units in compliance with Portland City Code §14-483 et.seq., off-site traffic improvements as shown on Exhibit C, the on-site trail network shown on Exhibit B (except for that labeled “Proposed Pedestrian Way in Princeton Street Right of Way” which shall be constructed as part of Phase II). No certificate of occupancy at this site will be issued for any purpose, unless and until such improvements are completed.

If the PROPERTY is constructed in Phases, in addition to the requirements contained in the Portland City Code, PACKARD nonetheless will be required at the outset to post a performance guarantee to cover all of the following improvements regardless of the Phase:

- Landscaping as follows:
- Traffic improvements as shown on Exhibit C:
- Trail amenities
- Stormwater system
- ????

~~The PROPERTY shall be developed substantially in accordance with the conceptual site plan shown on Exhibit B, provided, however, that each building, whether classified as a major or minor development, shall be subject to site plan review by the Planning Board, and if applicable, subdivision review by the Planning Board. Any site plan review applications shall fully comply with the detailed site plan application requirements contained in article V (site plan) of the Land Use Code. The Planning Board may permit~~



deviations from the conceptual site plan, as long as the deviations are consistent with the purposes of this Agreement. MOVED TO PARA 2

6. *Development Standards.* All site plans in conformance with Exhibit B and Exhibit \_\_\_ (architectural renderings) may be approved by the Planning Board only if, in addition to the dimensional requirements of paragraph 6\_\_ and the applicable provisions of article IV (subdivisions) and article V (site plan), the development meets the following additional development standards:

*a. ~~Design relationship to site:~~* ~~The development proposals shall demonstrate a reasonably unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and the topography, soil conditions, vegetation, and other natural features of the site. Integration of open spaces and natural features shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens, and benches. The proposed layout of buildings and uses shall demonstrate compatibility between the buildings and other site features within the site. Consideration shall be given to compatibility of proposed perimeter on site development with the existing and future uses off site but adjacent to the PROPERTY. The layout and design of the site shall be substantially in compliance with Exhibit B.~~

*b. ~~Landscaping:~~* ~~Development proposals shall include a landscape program that is consistent with the landscaping plan shown on Exhibit B. All land areas not covered by structures, parking areas, bus facilities or circulation facilities shall be landscaped and maintained. In order to soften the visual impact of large expanses of pavement in parking lots, vegetation shall be planted or retained in islands or planting strips as shown on Exhibit \_\_, where required by article IV (subdivisions) and article V (site plan) of the Land Use Code. Development proposals shall include appropriate fencing and/or berming and planting treatment of a dense and continuous nature in order to buffer parking lot visibility from adjacent properties.~~

*eb. ~~Vehicular access.~~* ~~Vehicular access to the retail and office portion of the site shall be from the signalized access as shown on Exhibit B and shall be coordinated with other off-site traffic improvements as shown on Exhibit C. Emergency access only shall occur at an additional location at Allen Avenue as shown on Exhibit B. A gated emergency access shall be provided at the terminus of either Morrill Street as shown on Exhibit B or Cambridge Street, with the precise location to be determined as part of site plan review. Vehicular access to the residential uses on the site shall be as shown on Exhibit B with the location of the access to the Area Reserved for Potential Residential Development to be established during site plan and subdivision review of such development.~~

*d. ~~Pedestrian Orientation:~~* ~~Development proposals shall include an integrated pedestrian circulation system, including internal sidewalks, to take advantage of the topography and natural features of the site and provide for safe pedestrian access to~~

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.

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Administrator, or the Portland Zoning Board of Appeals, the City Council, after recommendation of the Planning Board, may amend, modify or rescind its conditional rezoning of the site.

~~In the event that **PACKARD** or any successor or assigns fails to continue to utilize the **PROPERTY** in accordance with this Agreement, or in the event of a breach of any condition(s) set forth in this Agreement, the Planning Board shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution may include a recommendation to the City Council that the site be rezoned to the zoning classifications existing immediately prior to the adoption of this Agreement or any successor zone and that the Agreement be terminated, requiring a cessation of the uses permitted herein to the extent that such uses are no longer permitted in the rezoned areas.~~

**WITNESS:** \_\_\_\_\_ **CITY OF PORTLAND**

\_\_\_\_\_ By \_\_\_\_\_  
\_\_\_\_\_

**WITNESS:** \_\_\_\_\_ **PACKARD DEVELOPMENT, LLC**

\_\_\_\_\_ By \_\_\_\_\_

STATE OF MAINE  
CUMBERLAND, ss. \_\_\_\_\_

\_\_\_\_\_ Personally appeared before me the above-named Joseph E. Gray, 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.

COMMONWEALTH OF MASSACHUSETTS  
MIDDLESEX, ss. \_\_\_\_\_

9. PACKARD, and its successors and assigns shall maintain the PROPERTY and the perimeter of the PROPERTY \_\_\_\_\_ly 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.

10. PACKARD shall install and maintain a sensed grocery cart system which prevents carts from being 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 MRSA 4452) and City Ordinance. Following any determination of a zoning violation by the Court, the Zoning



equipment appropriate ~~for to create~~ a multi-purpose field, provided that the cost of remediation does not exceed the market value of the site. What is the market value of the site?? **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. (Get documentation of what is at FOX) **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.

If the cost of remediation of the City-owned parcel (Tax Map 151A-A-13) exceeds the market value of the City-owned parcel, then the Area Reserved for Potential Residential Development shall be utilized as recreation open space.

**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. (NEED TO DELINEATE PUBLI SIDEWALK TRAVERSING THE SITE). **PACKARD** shall be responsible for installing the "Proposed Walking Trail" and MULTIPURPOSE FIELD????? during Phase I.

6. *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 and , All sections of Phase 1 and Phase 2 are required to be developed. Phase 3 is not required to be developed.

7. *CSO contribution:* **PACKARD** shall be required to ~~make a monetary contribution up to \$100,000.00 to the **CITY'S** Fall Brook Combined Sewer Overflow project. The amount of this contribution shall be determined by the Planning Board as part of the site plan review for the project.~~

8. *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. **DO WE NEED TO ADDRESS SETBACKS FOR TOWNHOUSES?**



all buildings and parking areas with the ability to conveniently access all developed portions of the site without additional driving. The pedestrian circulation system shall link with the on-site perimeter pedestrian trail and with adjacent streets as shown on Exhibit B. A public access easement shall be granted to the City or to Portland Trails for the pedestrian walkway on the ~~PROPERTY~~.

*e. — Buffers and screens:* Development proposals shall include appropriate fencing and planting treatment of a dense and continuous nature in order to buffer parking lot visibility from adjacent properties.

*f. — Lighting* shall be in accordance with the standards set forth in Section 14-526(a)(9).

*g. — Architectural design:* All buildings shall be designed or approved by a registered architect in the State of Maine. The scale, texture, colors, and massing of the buildings shall be coordinated. The full range of high-quality, permanent, and traditional or contemporary building materials and technology may be incorporated in a manner so that the development as a whole embodies distinguishing attributes that achieve the developer's desired degree of excellence and are in conformance with the architectural guidelines provided in any private development restrictions. Particular emphasis shall be placed on the appearance of building facades from public streets, from driveway and parking areas, and from other nearby buildings. Building elevation drawings shall be submitted which indicate architectural style, exterior finishes and color, building height and scale, and location and scale of window and door openings.

*h.c. Signs:* Development proposals shall identify all proposed signage. Building signage shall be designed in proportion and character with the building facades. A pylon sign including tenant signage shall be in accordance with Exhibit D and the location shall be as depicted on Exhibit B. All signs shall be constructed of permanent materials and shall be 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).

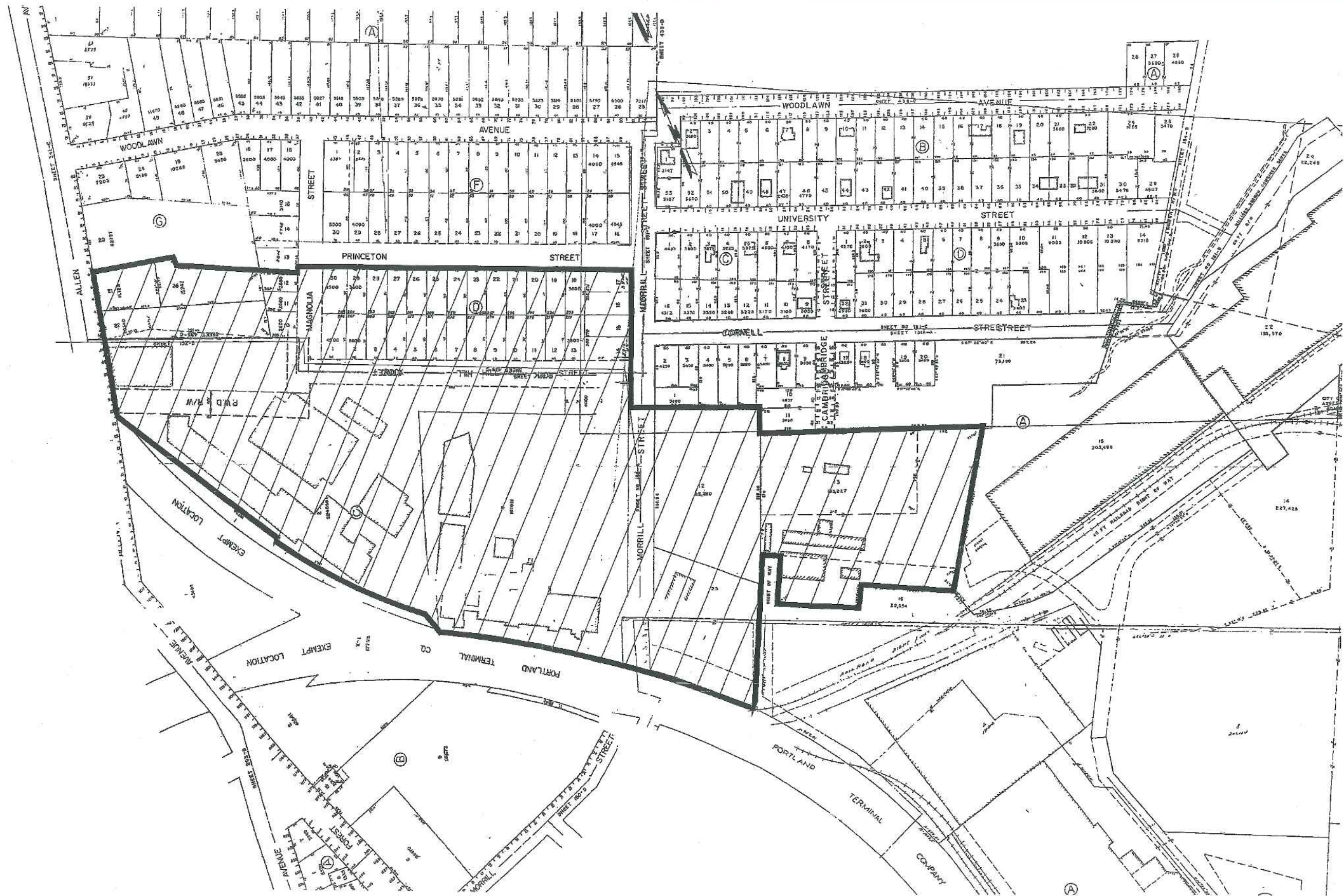
*i.d. Traffic improvements:* **PACKARD** shall be responsible for the design and installation of the off-site traffic improvements shown on Exhibit C, which improvements shall be made at **PACKARD'S** sole expense, following review and approval by the **CITY**. Such traffic improvements shall include,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

*j. 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) **We need to determine ownership \*\***. **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



# Morrill's Crossing Portland, Maine

## Exhibit A Tax Map



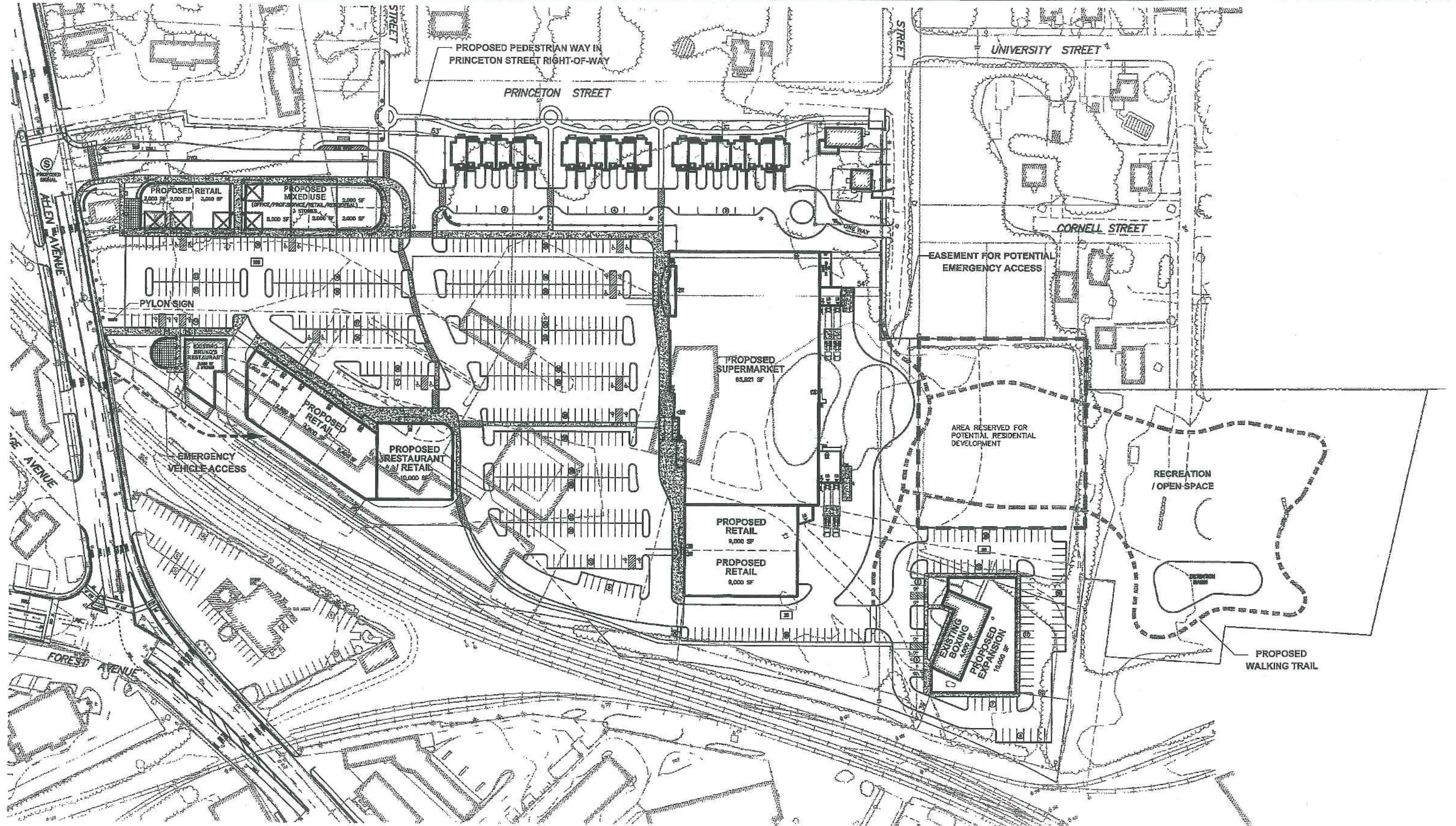


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PACKARD  
DEVELOPMENT

# Morrill's Crossing Portland, Maine

## Exhibit B Site Plan Exhibit





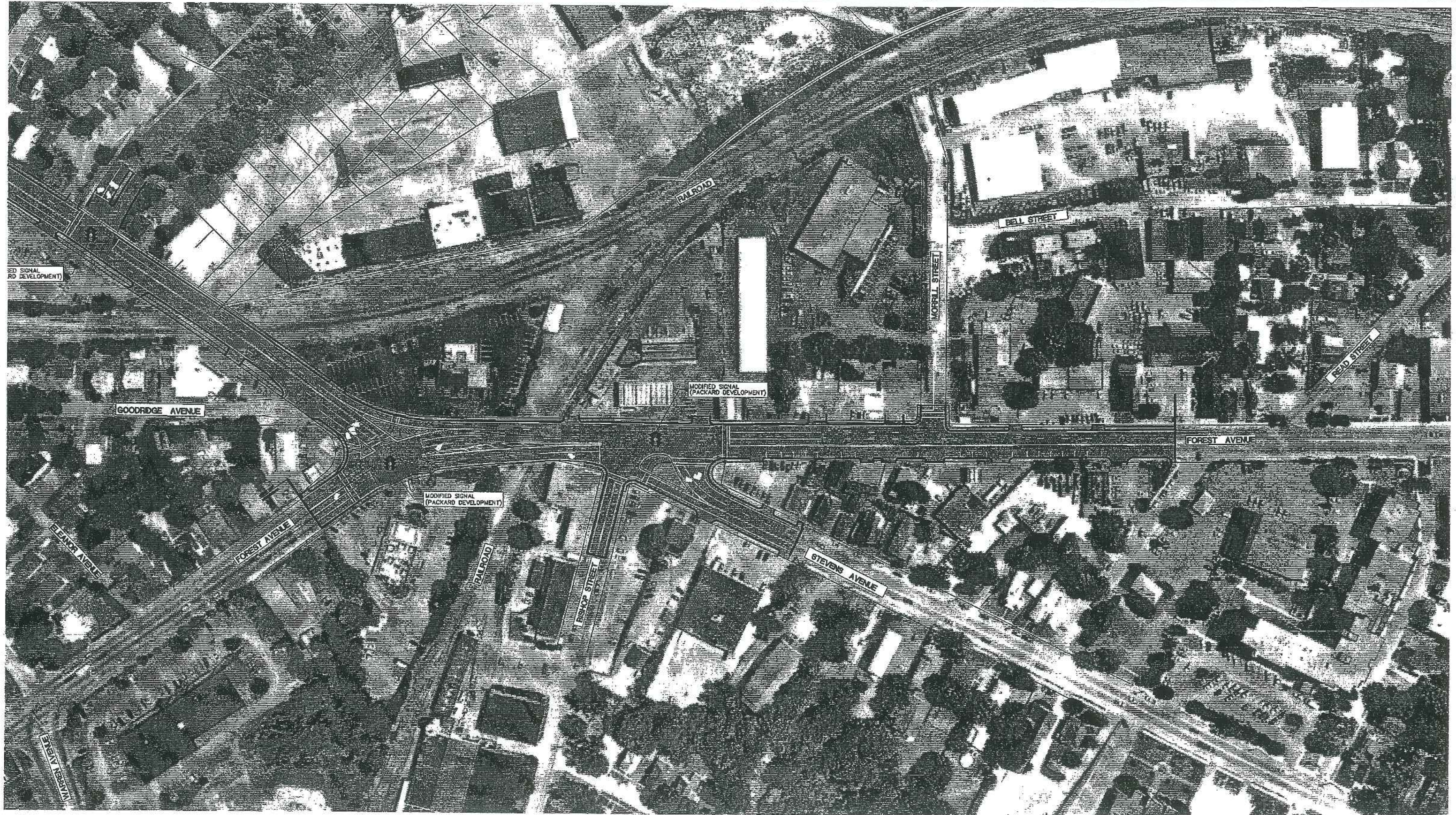
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# Morrill's Crossing

Portland, Maine

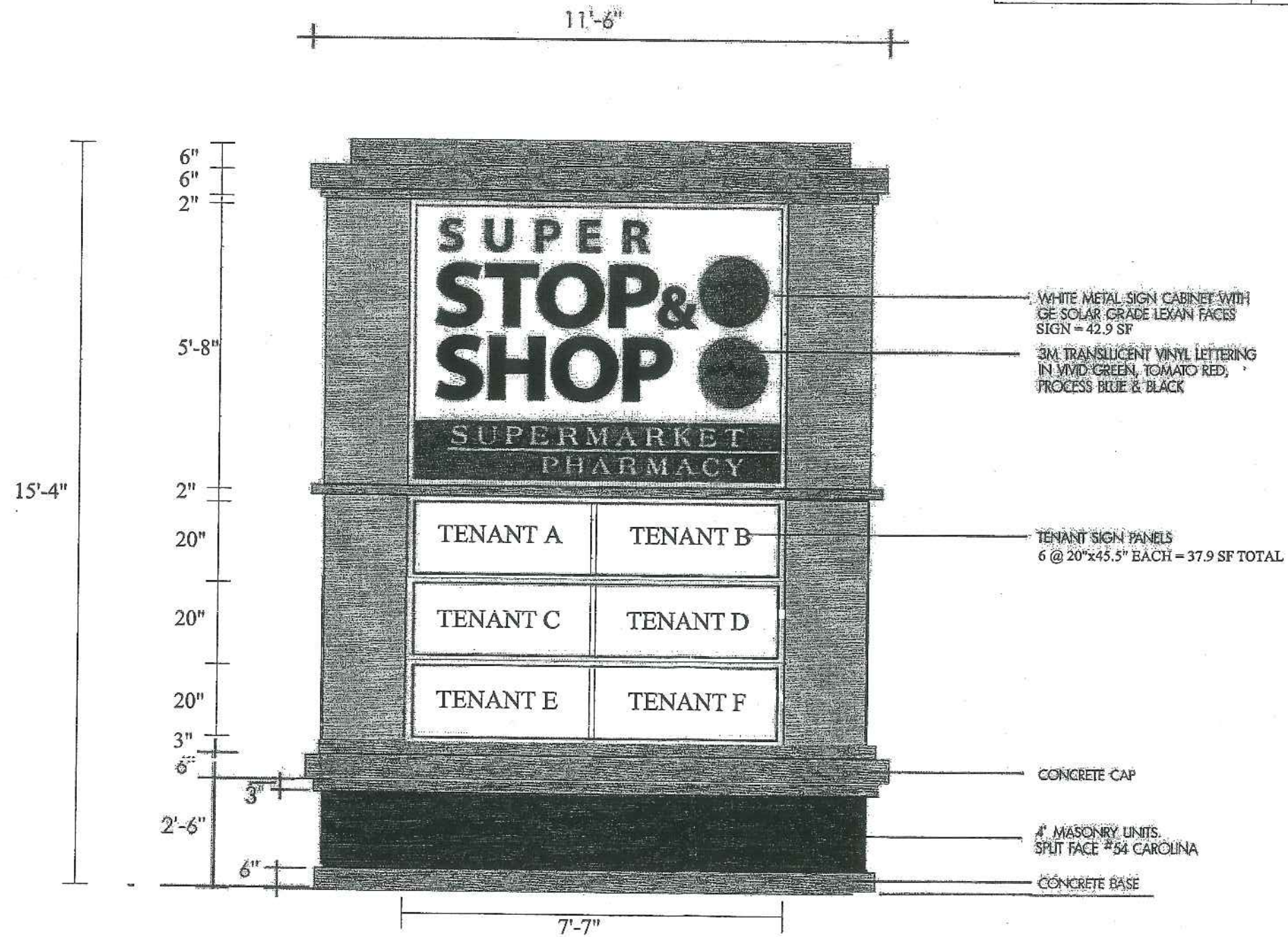
PACKARD  
DEVELOPMENT

## Exhibit C Off-Site Improvements





SIGN SUMMARY	
STOP & SHOP SIGN	42.9 SF
TENANT SIGN PANELS	37.9 SF
TOTAL SIGN AREA	80.8 SF

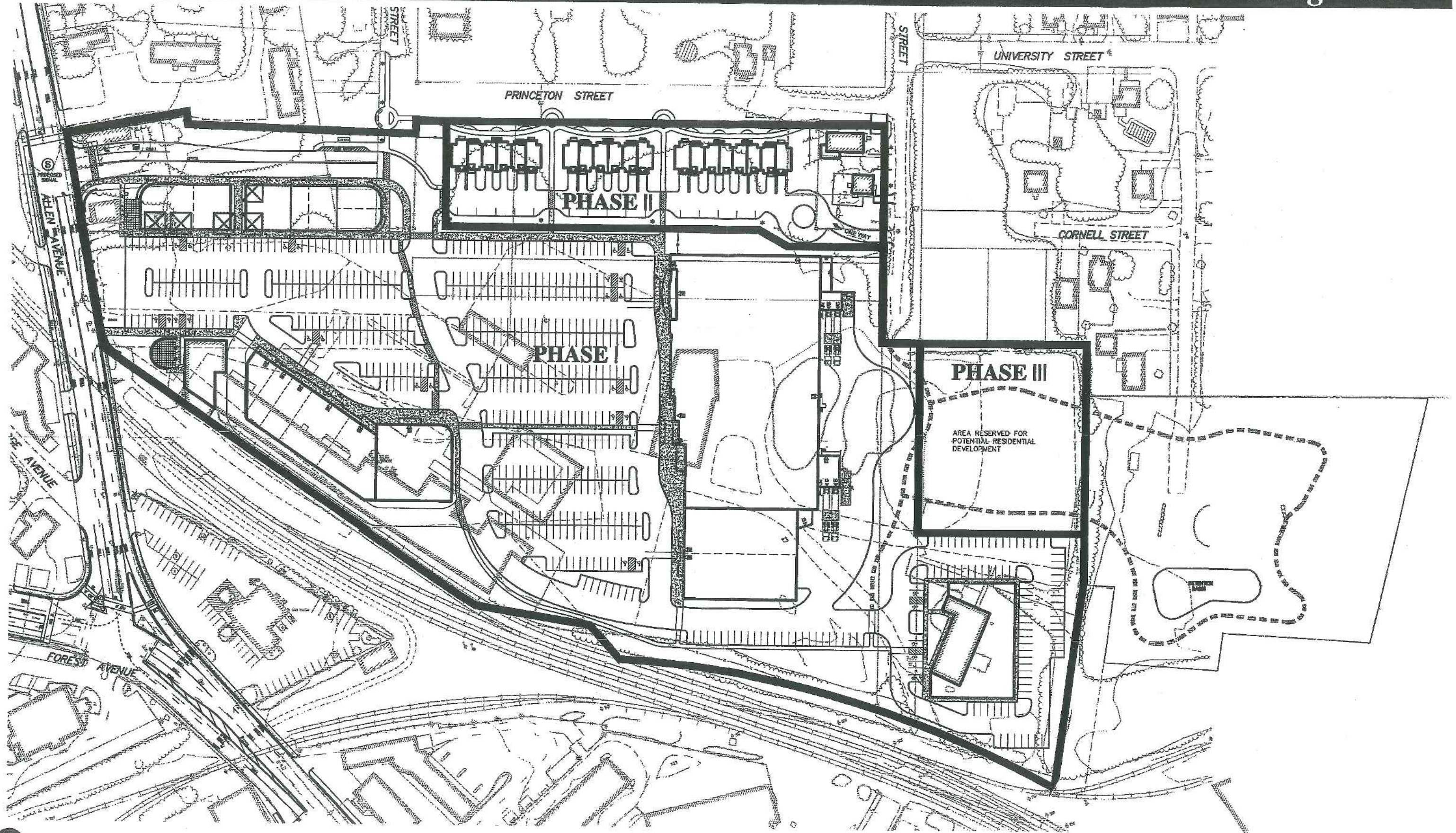




# Morrill's Crossing

Portland, Maine

## Exhibit E Phasing Plan





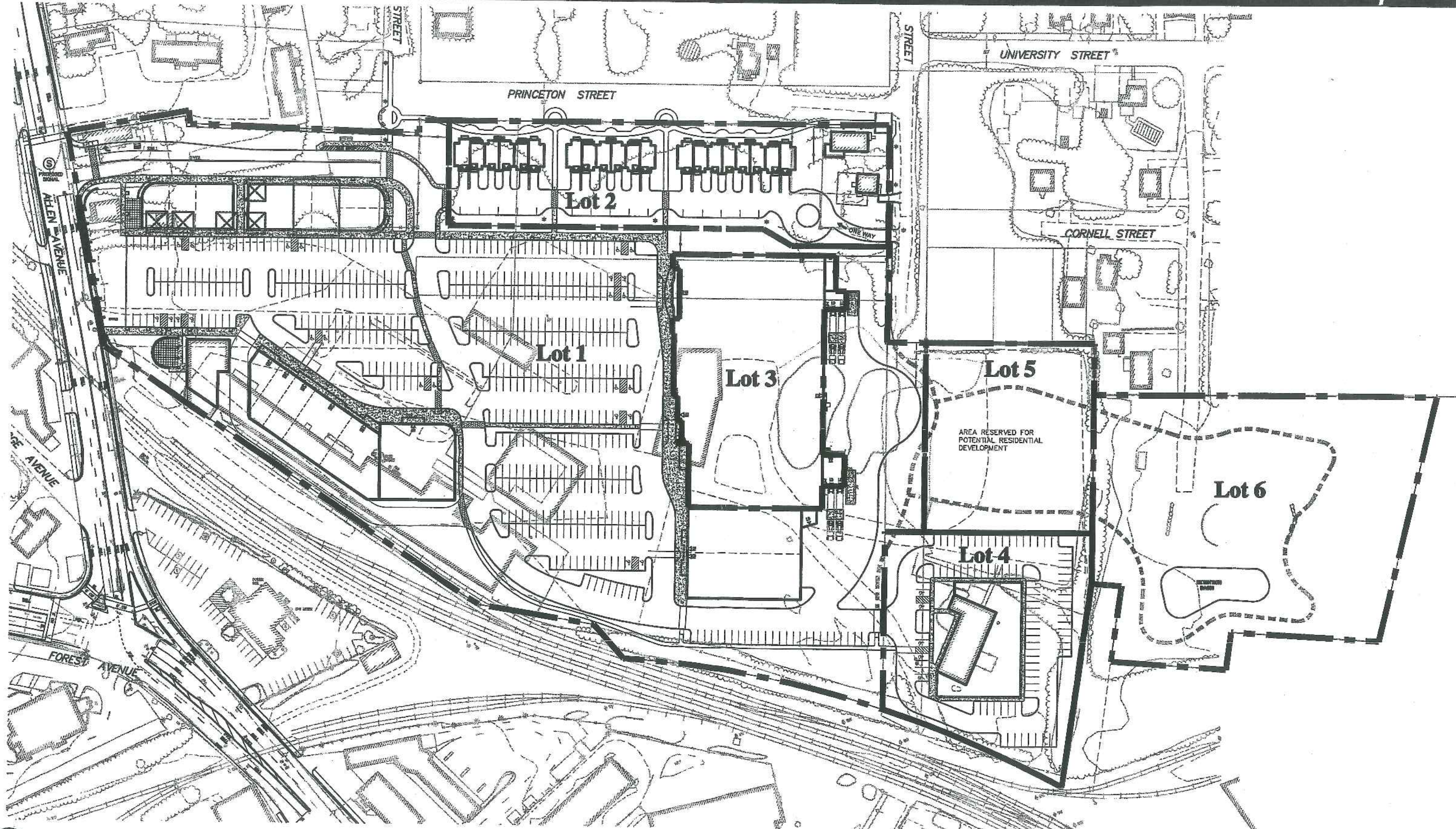
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PACKARD  
DEVELOPMENT

# Morrill's Crossing

Portland, Maine

## Exhibit F Subdivision Concept





### REVISION TO PARAGRAPH 1

Effective thirty days from the affirmative vote of the City Council, 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. 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 apply for required approvals within one year from the date of the vote of the City Council or 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 six months after the receipt of all required approvals from the date of the Council vote. This period shall be extended if:

- a. Any required approval, including the approval of the conditional rezoning, has been appealed; or
- 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.

**CONTRACT ZONE AGREEMENT  
BETWEEN  
CITY OF PORTLAND  
AND  
PACKARD DEVELOPMENT, LLC**

**AGREEMENT** made this \_\_\_ day of \_\_\_\_\_, 2004 by and between the **CITY OF PORTLAND**, a body corporate and politic, located in Cumberland County and State of Maine (hereinafter the "**CITY**") and **PACKARD DEVELOPMENT, LLC** a Delaware limited liability company with a mailing address of One Wells Avenue, Newton, Massachusetts 02159, and its successors and assigns (hereinafter "**PACKARD**").

**WITNESSETH**

**WHEREAS, PACKARD** seeks to develop property located at and in the vicinity of 33 Allen Avenue in the City of Portland and identified on the City of Portland on the Assessor's maps at Map 435, Block G, Lots 10-12, 21, 22, and 26; Map 151A, Block A, Lots 12 and 13; Map 152, Block C, Lots 2 and 5; and Map 435, Block D, Lots 15, 16, 17 and 18 (hereinafter referred to as the "**PROPERTY**"); and

**WHEREAS, PACKARD** proposes to develop the **PROPERTY** as a mixed use development, including residential units, a community shopping center with a grocery store, other retail uses, restaurants, offices, and a boxing club/ gym facility; and

**WHEREAS, the PROPERTY** is currently located in three different zoning districts, R-5, B-2 and I-L; and



**WHEREAS**, substantial public improvements will be required to support any redevelopment of the **PROPERTY**, including but not limited to traffic improvements in the Morrills Corner area; and

**WHEREAS**, **PACKARD** has developed a traffic improvement plan, which plan has been reviewed by the **CITY**; and

**WHEREAS**, the Planning Board of the City of Portland, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Code §§ 14-60 to 14-62, and after notice and hearing and due deliberation thereon, recommended the rezoning of the **PROPERTY** as aforesaid, subject, however, to certain conditions; and

**WHEREAS**, the **CITY** by and through its City Council has determined that said rezoning would be and is pursuant to and consistent with the **CITY'S** comprehensive land use plan and will establish uses that are consistent with the uses in the original zones and the surrounding areas; and

**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 impose by agreement the following



conditions and restrictions in order to ensure that the rezoning is consistent with the CITY'S comprehensive land use plan; and

WHEREAS, the CITY authorized the execution of this Agreement through action of its City Council on \_\_\_\_\_, 2004;

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

1. Effective upon the recording of deeds transferring title ownership or of long-term leases from White Dove, LLC, Paul G. White, Jonathan White, the City of Portland, except as otherwise provided in Section 6.J of this Agreement, James E. Darling, Jr., Madeline F. and Jack Adams, and Allen Avenue Plaza, LLC to **PACKARD** and receipt by the **CITY** of a statement from **PACKARD** that **PACKARD** has so recorded said deeds or leases, the **CITY** hereby 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 shown on Exhibit A; provided however, that this contract 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 acquire said **PROPERTY** before \_\_\_\_\_, provided that **PACKARD** has acquired any required traffic improvement plan, subdivision, site plan and site location of development approval prior to that date and that there has been no appeal of those approvals. |
2. The **CITY** shall not issue **PACKARD** any building permits for the project until **PACKARD** has acquired the **PROPERTY** in accordance with the requirements of Section 1 of this Agreement.
3. The purpose of this contract rezoning is to provide for a mixed use development, including a community shopping center, residential units, offices and a boxing and fitness facility.
4. *Permitted Uses.* **PACKARD** shall be authorized to establish and maintain the following uses on the **PROPERTY**:
  - a. Retail establishments (which may include restaurants, and business and personal services).
  - b. Professional and business offices.
  - c. Day care facilities and adult day care facilities.



- d. Exercise and fitness centers, and health clubs, including but not limited to a boxing and fitness facility.
- e. Dwellings, including combined live/work spaces. The apartments located near Allen Avenue, which may also be live/work spaces, and the townhouses near Princeton Street shall be required as part of this project. There shall be no fewer than 6 apartments or combined live/work spaces located in the retail building near Allen Avenue and no fewer than 18 or more than 24 townhouses located adjacent to Princeton Street. 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 comply with the setback requirements established for the R-7 zoning district.
- f. Accessory uses, including, but not limited to, parking facilities and structures, utility services, stormwater management systems, community meeting center, and site amenities.

The uses listed in subparagraph f shall be functionally related, physically oriented, and complementary to the principal uses of the site.

- 5. The uses on the **PROPERTY** will be within multiple buildings, which may be constructed in phases. The **PROPERTY** shall be developed substantially in accordance with the conceptual site plan shown on Exhibit B, provided, however, that each building, whether classified as a major or minor development, shall be subject to site plan review by the Planning Board, and if applicable, subdivision review by the Planning Board. Any site plan review applications shall fully comply with the detailed site plan application requirements contained in article V (site plan) of the Land Use Code. The Planning Board may permit deviations from the conceptual site plan, as long as the deviations are consistent with the purposes of this Agreement.
- 6. *Development Standards.* All site plans may be approved by the Planning Board only if, in addition to the dimensional requirements of paragraph 6 and the applicable provisions of article IV (subdivisions) and article V (site plan), the development meets the following development standards:
  - a. *Design relationship to site:* The development proposals shall demonstrate a reasonably unified design of the site, including the architecture, the layout of the buildings, pedestrian and vehicular circulation plan, open space, drainage, and the topography, soil conditions, vegetation, and other natural features of the site. Integration of open spaces and natural features shall be achieved by incorporation of outdoor amenities for the benefit of users of the site, such as jogging and walking trails, gardens, and benches. The proposed layout of buildings and uses shall demonstrate compatibility



between the buildings and other site features within the site. Consideration shall be given to compatibility of proposed perimeter on-site development with the existing and future uses off-site but adjacent to the **PROPERTY**. The layout and design of the site shall be substantially in compliance with Exhibit B.

- b. *Landscaping:* Development proposals shall include a landscape program that is consistent with the landscaping plan shown on Exhibit B. All land areas not covered by structures, parking areas, bus facilities or circulation facilities shall be landscaped and maintained. In order to soften the visual impact of large expanses of pavement in parking lots, vegetation shall be planted or retained in islands or planting strips where required by article IV (subdivisions) and article V (site plan) of the Land Use Code.
- c. *Vehicular access.* Vehicular access to the retail and office portion of the site shall be from the signalized access as shown on Exhibit B and shall be coordinated with other off-site traffic improvements as shown on Exhibit C. Emergency access only shall occur at an additional location at Allen Avenue as shown on Exhibit B. A gated emergency access shall be provided at the terminus of either Morrill Street or Cambridge Street, with the precise location to be determined as part of site plan review. Vehicular access to the residential uses on the site shall be as shown on Exhibit B with the location of the access to the Area Reserved for Potential Residential Development to be established during site plan and subdivision review of such development.
- d. *Pedestrian Orientation:* Development proposals shall include an integrated pedestrian circulation system, including internal sidewalks, to take advantage of the topography and natural features of the site and provide for safe pedestrian access to all buildings and parking areas with the ability to conveniently access all developed portions of the site without additional driving. The pedestrian circulation system shall link with the on-site perimeter pedestrian trail and with adjacent streets as shown on Exhibit B. A public access easement shall be granted to the City or to Portland Trails for the pedestrian walkway on the **PROPERTY**.
- e. *Buffers and screens:* Development proposals shall include appropriate fencing and planting treatment of a dense and continuous nature in order to buffer parking lot visibility from adjacent properties.
- f. Lighting shall be in accordance with the standards set forth in Section 14-526(a)(9).
- g. *Architectural design:* All buildings shall be designed or approved by a registered architect in the State of Maine. The scale, texture, colors, and massing of the buildings shall be coordinated. The full range of high-



quality, permanent, and traditional or contemporary building materials and technology may be incorporated in a manner so that the development as a whole embodies distinguishing attributes that achieve the developer's desired degree of excellence and are in conformance with the architectural guidelines provided in any private development restrictions. Particular emphasis shall be placed on the appearance of building facades from public streets, from driveway and parking areas, and from other nearby buildings. Building elevation drawings shall be submitted which indicate architectural style, exterior finishes and color, building height and scale, and location and scale of window and door openings. Buildings shall be constructed in accordance with the architectural design shown on Exhibit

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- h. *Signs:* Development proposals shall identify all proposed signage. Building signage shall be designed in proportion and character with the building facades. A pylon sign including tenant signage shall be in accordance with Exhibit D and the location shall be as depicted on Exhibit B. All signs shall be constructed of permanent materials and shall be 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).
- i. *Traffic improvements:* **PACKARD** shall be responsible for the design and installation of 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**.
- j. *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, provided that the cost of remediation does not exceed the market value of the site. **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 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.

If the cost of remediation of the City-owned parcel (Tax Map 151A-A-13) exceeds the market value of the City-owned parcel, then the Area Reserved for Potential Residential Development shall be utilized as recreation open space.

- k. 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. All sections of Phase 1 and Phase 2 are required to be developed. Phase 3 is not required to be developed.
  - l. CSO contribution: PACKARD shall be required to make a monetary contribution to the CITY'S Fall Brook CSO project. The amount of this contribution shall be determined by the Planning Board as part of the site plan review for the project.
7. *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.
8. 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.

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 event that **PACKARD** or any successor or assigns fails to continue to utilize the **PROPERTY** in accordance with this Agreement, or in the event of a breach of any condition(s) set forth in this Agreement, the Planning Board shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution may include a recommendation to the City Council that the site be rezoned to the zoning classifications existing immediately prior to the adoption of this Agreement or any successor zone and that the Agreement be terminated, requiring a cessation of the uses permitted herein to the extent that such uses are no longer permitted in the rezoned areas.

**WITNESS:**

**CITY OF PORTLAND**



\_\_\_\_\_  
By \_\_\_\_\_  
Joseph E. Gray  
City Manager

**WITNESS: PACKARD DEVELOPMENT, LLC**

\_\_\_\_\_  
By \_\_\_\_\_  
Its

STATE OF MAINE  
CUMBERLAND, ss. Date: \_\_\_\_\_, 2004

Personally appeared before me the above-named Joseph E. Gray, 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,

\_\_\_\_\_  
Notary Public/Attorney at Law

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





Attachment 3

Over the past several months, a new plan has been created for Packard Development's Morrill's Corner project. It is a mixed-use proposal that differs significantly from the previous retail proposal. The new plan results in an increase in open space, a reduction of retail space, and the addition of new housing. The table below summarizes the differences between the two proposals.

	<u>12/03 PLAN</u>	<u>4/04 PLAN</u>	<u>COMMENTS</u>
<u>OVERALL SITE ELEMENTS</u>			
Open Space	30%	40%	Increase of 79,300 SF open space
Parking Count	803	625	Excludes condo garages/driveways
Pedestrian Walkway	Distance (LF) 5,835 (1.1 miles)	Distance (LF) 8,855 (1.7 miles)	
<u>COMMERCIAL</u>			
	Area (SF)	Area (SF)	
Existing Bruno's	3,650	3,650	
Existing Office (above Bruno's)	3,650	3,650	Not included in Total Ground Floor Area
Retail/Restaurant	71,830	62,300	
Proposed Office (above Retail)	---	2,500	Not included in Total Ground Floor Area
Supermarket	75,502	65,821	Mezzanine Reduces (5,970 SF to 5,624 SF)
<b>Total Ground Floor Area of Commercial</b>	<b>150,982</b>	<b>131,771</b>	13% Reduction
Boxing/Bingo	51,000	14,000	Boxing only in 4/04 plan
<u>RESIDENTIAL</u>			
	Units (EA)	Units (EA)	
Apartments (above Retail)	---	8	
Condos	---	18-24	
Multi-Family	---	20-26	
<b>Total</b>	<b>---</b>	<b>46-58</b>	Losing 7 existing = net increase 39-51



Dear Planning Board Members and Council,

June 18th, 2004

These comments are based upon the most recent draft that I was able to obtain on the contract language...Those attached to a memo from Packard's lawyer dated June 11th, 2004. hopefully they will be included in your packet to make my comments simpler to follow. Since writing this, June 17th, the language has been revised. My comments relate to Attachment 2. Most comments continue to be relevant, some ...not so much. Apologies to staff.

**Contract language and zone.** It is premature to be considering the contract language before a decision has been made on this application.. It appears these people are just continuing to waste all of our valuable time. This meeting is simply acting as a place holder for Packard to stay on the agenda. They aren't ready to present or share any new or relevant information..

. I see very few, if any changes here. The only changes appear to be from staff and the others appear written to benefit the applicant.. I see little to no protections for the neighborhood, the larger community, or City in this contract zone. I see few restrictions or conditions here. The conditions / restrictions that I would expect to find here are totally absent. Things like: hours of operations-absent., allowable time of truck delivery -absent., noise and order abatement -absent. No info on the consequences of violating the contract or the recourse of neighbors for violations.

The City DOES not have a good track record of enforcing contract language, even when it IS present. And Stop and Shop doesn't have a good record of following/complying with contract language. Because of the size, nature and impact of this thing. I would expect "tight as a drum" language here. I don't see that here. I was told the reason for doing a contract zone instead of a straight rezoning was that the City has more control in a contract zone. Nowhere do I see the City exerting that control here to protect herself or the community from the impact. Their lawyer wrote it, it was written to benefit the applicant, that's her job. It needs significant revision. This is a waste of our time.

Of the 8 listed as "restrictions/ conditions" most are neither. They are conditions that normally would apply because of the zoning ordinance, site plan review or simply "best practices". They are conditions /guidelines we would expect of ANY applicant. Numbers 2,3,5,6 a, b, e, f, g, h. and ,i, set no conditions or restrictions that I could find. And much of the language seems intended to benefit the applicant not protect the City or community.

The only condition of number 1 is; that should the project "fall thru", the zoning would revert to the original zoning. That is a critical condition and an important flaw to any rezoning, contract zone. Should a project "fall thru" it seems common sense that it should revert to the original zoning. That should however be an ordinance change applying to ALL contract zones or rezoning. It shouldn't be a part of each separate contract zone/ language, since it could easily be forgotten to be included. It should be an ordinance change, until that happens it's important for that language to be included here.

Number 4 limits the uses and needs to be there. What's the deal with the day care and adult day care's inclusion? 4d. Why is the fitness club, health center NOT limited to the Boxing?( that looks like a benefit to the applicant not a restriction of or protection to the neighborhood) 4e. As you may know, many doubt that the housing will ever become reality. It's thrown in for politics and your vote. Given that, it's important that that language be in there. However I am concerned on the "extra later to be built housing." ..why R7 rather than as a PRUD? As I understand it R-7 is specific to Bayside/ the peninsula and was developed for a



specific reason---lack of land, and zoning which limited the building of housing on the peninsula, that was consistent with the traditional mode of housing in the past. Lack of land is not an issue with this application, while wanting to maximize profits is. That is a benefit TO the applicant not a restriction on him or protection to the City/community.

PRUD( Planned Residential Urban Development) was established to and achieves the same goal as the R-7. The difference is it creates dense housing while preserving available green space. It reduces costs for the developer by allowing denser housing and in exchange for that financial saving, green space is preserved on the housing site as common space rather than your own back yard. It's a sensible approach to housing development in an urban area where preserving green space becomes more and more critical, as land pressures continues. We aren't Bayside. We aren't the urban center. Houses three feet apart, while the traditional mode of development in Bayside in the past is NOT the traditional mode of housing in the area around Morrill's Corner. I actively opposed the adoption of the R-7 for Bayside and everywhere else for a number of reasons, which I won't rehash here. Baysiders wanted the R-7, it wasn't up to me to impose my views upon them. Little did I know someone would try to impose it else where. I backed off on my opposition, but still voiced my concerns.. Bayside wanted and needed the R-7 to grow and to accomplish it's "Vision for Bayside". Bayside does a good job of being Bayside . Morrill's Corner does a good job of being Morrill's Corner. Any housing on the site should be done as a PRUD. What's the rational for doing this with R-7 zoning, other than to benefit the applicant?

I intend at a later date to have a fuller "housing" discussion with you all, since we all know that is the heart of the matter here. It was a bad project BEFORE the housing was added . It's STILL a bad project now But we all understand Portland Politics. and the politics of housing. It was a bad project before the housing was added None of the basis for concern or the impact has changed. It might have been made better IF the retail had been removed to make way for the housing. That unfortunately was NOT the case. It's not the housing, but the retail that is having the traffic impact. Simply adding housing to what was already high impact doesn't make it good. or have less of an impact.

Expecting any part of our community to absorb the impact of any one of the 4 components of this project alone would be more than enough of an expectation.. 70,000 plus of grocery, PLUS 70,000 sf of additional retail, PLUS an expended Boxing Club with a seating capacity of 1000+, PLUS 50 units of Housing-- Any one component of the project, alone, any other neighborhood would and has objected too.--- we are no different. The applicant is asking TOO much of us, and asking for too much of a revision to the current zoning.

The Morrill's Corner area has already done more than our fair share in contributing to solving the housing problem and it appears there is no end in sight to our contribution. When the Housing Plan suggested we build 4,000 new housing units in Portland in 10 years, we didn't know all of them were going to be in OUR neighborhood and within a block of THIS site!! ( Washington Crossing, Yale Court, Radcliff Glen, Maggie Lane, Carriage Lane, Oak Ridge and Willow Knoll ) It appears we're becoming the only game in town re housing. I say it's time to stop talking about rebuilding Bayside and actually start DOING it . Ok I cracked open Pandora's box and started talking about the elephant in the room--Housing . It was a bad project before housing was added. It still is. I understand the concern for development of additional housing. To those tempted to embrace this plan because of the added housing, the housing can be accomplished on the City owned land without the deleterious impact of the Packard development. In fact, back in Sept of 2000 that is exactly what the RFP for this City owned land



attempted to accomplish. How did a huge retail center suddenly get attached to that access to City land?

6 j concerns me.. It appears maybe Now they don't want the back city land but want to "use" it for the retention pond. My guess ,and I could be wrong, is that mitigation will cost MORE than the value of the land meaning the mitigation won't happen by this applicant and neither therefore will the public space. This is the first the public has heard of any "public space" aka playground plan for that site.. Before Packard came to town the City had it's own plan for developing that back space and it was exactly this plan a playground athletic type field. It was put on hold when Packard came to town. The City had plans to develop the land ON OUR own, without all of this impact attached to it!.

6k If housing is to be apart of the plan it should be done in phase one to ensure that it is done.

**7 Dimensional Requirements** +( 6j) again appears to be written to benefit the applicant not to protect the City or the community. First we have No idea what the total land area is, absent a survey. They originally were calling the total land area 12 acres. It now appears that that first estimate was just about right. My best estimate is that the total developed area is 18 acres rather than 20 they now like to use. 4 acres of that land is CITY owned land, reducing the land that they have title to, to around 14 acres (the City has NOT yet agreed to sell them ANY land). If the intention is to return the City's 3.1 acre of land (at the back) to the City as suggested in 6j-- then they might have 15 acres left. AND THEN ON TOP OF THAT ---the options, which we never got back to discussing, suggests they have even less land in their possession--since the Boxing club retains ownership of all that land and the adjacent parking. Looking at exhibit F, lot 4 would be the land retained by the current (Boxing Club) owner. If lot 6 ( the city owned land) is 3.1 acres then I'd estimate lot 4 as 2 acres. and likely lot 5 would also be needed by the Boxing Club for additional needed parking as shown on prior maps/exhibits. Uh a 1,000 seat venue will need more parking then shown on exhibit F. Lot 4 and 5 together is close to 4 acres .You see where I am going?? At best, at the end of all the land dealings, Packard MAY have 11 acres , not 20, in their actual possession ----the same amount of land that they mentioned at the beginning of all this. They shouldn't be given credit for land THAT THEY DO NOT HAVE and will NOT have in their possession. It is premature to be even talking about whether to handle the land as a whole or not , since we have NO idea what land we are talking about. Quickly the amount of land ,actually in their possession, has been nearly reduced by half. Number 7 should be thrown out.

**8 is the simplest yet the most critical of all points.** By converting all land to B-2, it seeks to violate, invalidate and over turn state law governing contract zones. And It makes this a REZONING not a contract zone. It should be thrown out. State law says that any contract zone STILL needs to respect the ordinance governing the USE of the existing underlying zones, . in this case the B-2, R-5, and I-L. They want to rewrite the state law governing contract zones.

Lastly in the 11th hour I was able to review the most recent revised draft of the contract language... To suggest that the Boxing Club should be allowed to have OFF -site parking or should have ANY need to use shuttles is just beyond comprehension and an incredulous suggestion. IF parking cannot be provided on site for ALL uses perhaps that would be suggesting that the project is TOO BIG to be accommodated on the existing land!?! This isn't St. Dom's, where you were dealing with an existing structure, on the peninsula, in an already built up neighborhood . They have the land to accommodate the parking, they just don't want it interfering with their primary purpose-maximizing the profits of the retail. If they can't accommodate all of the parking on site than perhaps the retail needs to be reduced!!! Parking



requirements put a natural restraint on the size of a project. The 625 parking spots is insufficient!. If they can't accommodate ALL of the needed parking on site,. doesn't that tell us all something? Are they insane or do they think WE are? And is the Boxing Club owners even a part of this agreement? Are they signing on the dotted line? I do appreciate that there has been some attempt to clarify and nail down the amount of use...but is it enforceable? But OFF site parking--- Give Me A Break!!!! This deal just keeps getting messier and messier.

If they can't provide parking on site the project is TOO big, and the impact is too big. They have the land they just don't want to use it for parking so they can maximize their need for "economy of scale". It's not our job to help them achieve that goal.

From the staff revised copy, I see that many of my concerns have been addressed.

Debra A. Keenan




**NAHB**
[WWW.NAHB.ORG](http://WWW.NAHB.ORG)

NATIONAL ASSOCIATION OF HOME BUILDERS

## TRADITIONAL NEIGHBORHOOD DEVELOPMENT

Normal View

Traditional Neighborhood Development (TND), also called Neotraditional Development or the New Urbanism, refers to a pattern of land planning and development that emulates the towns and suburbs built in the early to mid-20<sup>th</sup> century more than the automobile-dominated suburbs of the 1960s and beyond. While the typical suburbs and planned communities built since the 1960s have stressed a separation of uses and great emphasis on the automobile, traditional neighborhood development stresses a walkable scale, an integration of different housing types and commercial uses, and the building of true town centers with civic uses.

The idea of returning to the traditional neighborhood form arose in the 1980s and grew in popularity in the 1990s. What has led to this vision is a dissatisfaction of some people with some of the by-products of several decades of suburban development patterns. Separation of uses, over-reliance on the automobile, traffic congestion, and social isolation are among the problems that New Urbanism is proposing to solve. The historic antecedents of TNDs are old towns such as Alexandria, Virginia, as well as early suburbs such as Roland Park in Baltimore, Mariemont in Cincinnati, and Pasadena, California, while the antecedents of the new towns and PUDs of the 1960s and 1970s (Columbia, Maryland, for example) were the English Garden Cities and the Greenbelt towns in the U.S.

What is a Traditional Neighborhood Development? Generally, it refers to a project that has a mix of uses and an integrated mix of housing types and price ranges (rather than different products being separated into "pods"); an interconnecting street network (rather than a reliance on cul-de-sacs); a town center, formal civic spaces and squares (rather than informal or "leftover" open spaces); and pedestrian oriented design that pushes garages to the rear of house lots and places parking lots behind buildings instead of in front of them. According to the September-October 1998 issue of *New Urban News*, there are now 97 TNDs in the U.S. that are built or under construction, and another 104 in the planning stage. This includes suburban developments as well as central city developments. Those that are substantially built and have garnered the most national attention are Kentlands (Gaithersburg, MD), Seaside (Florida), Harbor Town, (Memphis, TN), Celebration (Florida), and Laguna West (Sacramento County, CA). More recent projects include Riverside (in Atlanta); Addison Circle (near Dallas); and Redmond Town Center (in Redmond, Washington).

Many zoning and subdivision ordinances do not permit the development of TNDs because of the codes' requirements for large lots, large setbacks, wide streets, and separation of uses. In some cases, Planned Unit Development ordinances have been used to build TNDs, but now more and more localities are adopting specific TND ordinances. Approximately 40 local governments have adopted codes permitting and promoting traditional neighborhood development (see attached list).

**Transit-oriented development** refers to traditional neighborhoods built around transit stops, especially rail transit. The same attributes that make a TND—higher density, walkable scale, mix of uses—are good generators of transit usage. Low-density, dispersed suburbs cannot be well served by transit. Many people propose that building transit-oriented traditional neighborhoods can foster compact development patterns, support transit use, and provide increased choices to consumers, many of whom may choose to live or work near transit.

### Additional Resources

List of Traditional Neighborhood Developments underway from *New Urban News*, September-October,





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NATIONAL ASSOCIATION OF HOME BUILDERS

## HIGH DENSITY DEVELOPMENT AND MIXED-USE DEVELOPMENT

[Normal View](#)

To achieve even more compact development than under cluster development, densities can be increased, resulting in a higher overall number of units built in the same area and reducing the demand for development in other areas. Higher densities can be achieved by building homes on smaller lots, by building attached homes (rowhouses or townhomes) or by building multifamily structures (apartment buildings). But higher densities are often feared.

The aversion to higher densities in this country has legitimate historic roots. Overcrowding of working class and poor people in American cities in the late part of the 19th century and the early part of the 20th century resulted in deplorable conditions and high rates of disease. These conditions resulted in calls for housing reform and the implementation of housing and building codes. For many people trapped in these conditions, less crowded living conditions were a primary goal.

And yet, it must be recognized that density was not necessarily the primary culprit. Poverty, poor sanitation (such as lack of indoor plumbing), and lack of medical services played a big part in the poor conditions. And it is worth noting that many of the places with the highest valued housing today — the Upper East Side of Manhattan; Society Hill in Philadelphia; Georgetown in Washington, DC, and Old Town Alexandria, Virginia — are very high density places.

Rather than being a problem, higher density development can be part of the solution to preserve land, create better communities, and build more affordable housing. Many planners have realized that the problem with many American communities is not too much density, but not enough density. Higher density housing presents opportunities for having more walkable communities, because with enough people living in a small area, neighborhood shopping and schools within walking distance become financially feasible. And it is well understood that higher densities are needed if good transit service is to be feasible.

One form of higher density housing is **multifamily development**. There is a significant market for this type of housing, in a variety of forms — garden-style, mid-rise, and high-rise buildings. In many communities, zoning does not permit multifamily development or restricts it to very small portions of the community, and these zoning codes must be addressed if the full range of housing choices are to be made available to the market.

It also should be understood that higher density development does not necessarily mean multifamily development or high-rise buildings. Higher density could mean **detached homes on smaller lots or attached homes (townhouses)**. Since a typical suburban density is often four units to the acre or less, in many suburban settings densities of five or six units per acre might be considered higher density, and this density can easily be accommodated by building single-family homes.

It is also clear that design plays a more important role when higher densities are being built. Issues of aesthetics, privacy, open space, and vehicle parking are a greater challenge with higher densities and require assistance from design professionals and more focus on design on the part of the developer and builder. **Planned unit developments (PUDs)** are one innovative zoning technique that allows greater flexibility and creativity in site planning and design than is generally possible under conventional zoning



approaches. PUDs typically incorporate one or more compact development options such as cluster development, mixed use, and higher densities. Through developing a parcel on a unified, rather than lot-by-lot, approach, PUDs can achieve more varied and appealing neighborhoods than those created according to standard zoning requirements.

**Mixed use developments** are developments that combine several uses on one site in a coordinated way, including office, retail, hotel, or residential development. Again, zoning can be an issue, and some jurisdictions have adopted specific mixed-use zoning ordinances to permit this development type. While many downtown and suburban projects have been built that combine office, hotel, and retail uses, incorporating housing has not been as common. The designs of many mixed use developments and planned unit developments have been criticized for not integrating the different uses very well; often the location of parking lots and buffers makes walking from one use to another an unpleasant and infrequent occurrence.

**Additional resources:**

- Excerpt from "One Dozen Apartments & Townhomes: A Cost Analysis" by Mark Humphreys, R. Michael Hampton, and Rick Emsiek, a program presented at the NAHB Builder's Show, January 24, 1997.
- Project examples by Torti Gallas and Partners, CHK, Silver Spring, Maryland.
- Project examples by Richardson Nagy Martin, Architecture/Planning, Newport Beach, California.
- Examples of zoning language for higher density development (Asheville, NC; San Antonio, TX, and Arlington, VA) and for mixed use development (Howard County, MD).
- *Density by Design*, James W. Wentling and Lloyd W. Bookout, editors. (includes 25 case studies of higher density housing). Urban Land Institute, 1988.
- *Dollars & Cents of Multifamily Housing*. Urban Land Institute and National Apartment Association, 1997.

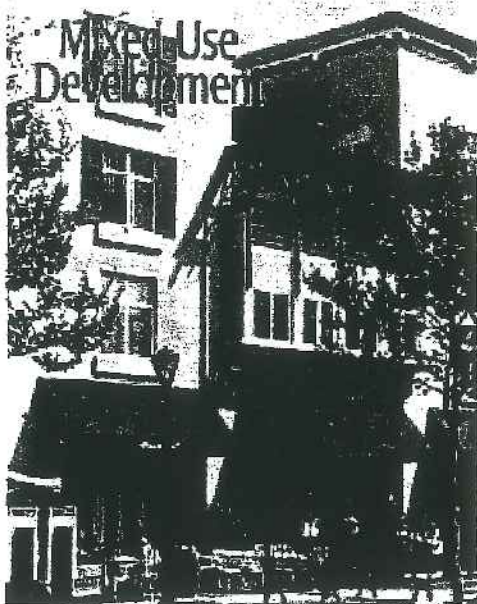


Planner

Mixed use has become a valuable approach to land use planning in Santa Cruz.

by Peter Katzberger

## Promoting Mixed Use Development



It acknowledges the past and offers promises for the future. The city has a history of mixed use development, as Santa Cruz dates back to a time before strict separation of uses became common. In addition to the residents' good judgment that sprawl is not a good idea, Santa Cruz is constrained by the ocean and hills.

Scarce land for development has necessitated the intensification of the use of available land to accommodate future needs. Mixed use development has become an attractive approach, especially in the center of town where services and transportation are most available.

Santa Cruz has integrated the mixed use concept in its community planning, from the policy level of the general plan to the zoning ordinance and its implementing regulations. Not only is mixed use accommodated, it is encouraged by incentives of increased densities and reduced regulations. In part, because of the

redevelopment efforts following the 1989 earthquake, over 200 residential units have been developed in combination with commercial uses on the ground floor.

### General Plan

The General Plan promotes mixed use development in different ways:

- Policies favor the mixed use concept in general. The Land Use Element calls for expanding zoning ordinance provisions for mixed use development and development of incentives to encourage such development.
- The General Plan establishes a policy context. It acknowledges the effects of mixed use, in terms of trip reduction and the contribution to the economic base. The General Plan gives priority to high density mixed residential and commercial development in the center of the city over development of undeveloped lands at the periphery of the city. In addition, it establishes numeric goals for future residential development in the central, essentially commercial areas.
- To ensure that the expectations for residential development and mixed use development are met, the General Plan calls for area and specific plans for the Central Business District area and the adjacent commercial areas. Overall, some 700 new residences are anticipated.
- The General Plan clarifies that land use designations and maps that suggest single use districts actually allow multiple uses. It discusses the rationale of residential uses in nonresidential areas and allows residential uses in commercial, office and industrial districts without creating General Plan inconsistencies.



### **Downtown Recovery Specific Plan**

The Downtown Recovery Specific Plan contains several incentives for mixed use development.

- It allows extra height for mixed use developments. Where the plan ordinarily allows three stories of commercial development, it allows four stories if the upper story use is residential. The "inclusionary" housing requirement is waived for residential development downtown in order to encourage residential development in this commercial area. This requirement would otherwise require that 15 percent of residential development be affordable to low and moderate income households. Santa Cruz has been able to suspend this requirement in the downtown area because it has created large numbers of low and moderate income housing in the area. Residential parking requirements are more flexible. Since the area lies in the parking assessment district, more choices exist for accommodating parking.
- Residential parking requirements are fewer as compared with other areas.

### **Zoning Ordinance**

The Zoning Ordinance contains tools to facilitate mixed use development.

- Residential uses are permitted in commercial, office and industrial zones.
- One and two residences over commercial ground floors are permitted without use permits and without parking requirements. Larger residential projects require use permits, depending on the size of the development.
- The Planned Development Permit provides flexibility in site design. Thus, unusual requirements of mixed use development site design can be addressed and accommodated. Shared parking and reduced parking requirements provide flexibility for mixed use development.

### **Future Mixed Use**

Vertical mixed use development is still difficult for reasons having nothing to do with the city. A pattern more likely to be seen in the future is not vertical mixing of uses, but horizontal mixing, where residential development will be found next to commercial development or where commercial and residential development share the same property but not the same building.

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*Peter Katzlberger served the City of Santa Cruz as planning director before his retirement is establishing Zayante Planning Services, a consulting firm.*

Planner



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## Filling wetlands is part of Greenland shopping center proposal

By MICHAEL GOOT

Democrat Staff Writer

GREENLAND — Packard Development has asked the state Wetlands Bureau to stop review of an application to fill seven acres of wetlands in connection with a shopping center, pending redesign of the plan.

The Newton, Mass.-based developer is seeking to construct a 357,000-square-foot plaza containing a Lowe's, Target and major supermarket.

Collis Adams, administrator for the Wetland Bureau, said state environmental officials have been reviewing and discussing the proposal with the applicant. Their aim is to design a plan that minimizes the impact on the wetlands.

"They (Packard) requested that we not take action on a permit decision until they have an opportunity to address that issue. We've put that process on hold until we hear back from them," he said.

Bureau staff believed the plan's impact on wetlands was "perhaps excessive," Adams said.

The company wants to fill 305,117 square feet of wetlands associated with entrance roads and overall site development.

During a public hearing in July, Portsmouth and Greenland residents criticized the proposal because they said it could threaten wells and the aquifer.

The proposed project is near Pickering Brook and adjacent wetlands, Adams said. Also, the brook flows into the Great Bay estuary.

Adams said the Wetlands Bureau does not yet have a revised plan from Packard.

"We would hope within a month or two we'd be hearing from them. We don't want it linger and I'm sure they don't want it to linger," he said.

Paul Young, spokesman for Packard, described the discussions with the Wetlands Bureau as "ongoing" and said the company has not asked for withdrawal or suspension of the permit.

The mall proposal has already received Planning Board, but must return to the Zoning Board of Adjustment.



In response to a lawsuit by abutters, a Rockingham County Superior Court judge recently ordered the board to rehear Packard's request of a special exception to permit retail sales in an industrial zone.

The court said the board erred when one member voted despite missing two of five meetings on the issue and that the town should have conducted an independent review of the project's impact of property values.

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### Mall mailing misleading 'at best'

By Jack Loftus  
[jloftus@seacoastonline.com](mailto:jloftus@seacoastonline.com)

PORTSMOUTH - When Greenland residents opened their mailboxes on the evening of Jan. 8, they were greeted with the "Packard Development Community News," a publication that Portsmouth City Attorney Bob Sullivan is calling "old news and only part of the story."

"Everything (within the mailing) labeled as a 'victory' is either under appeal or mixed at best," Sullivan said.

Sullivan said that the headlines of the publication, like the 5-2 approval vote of the Greenland Planning Board, do correctly provide past information from September 2003, but can be considered dated news.

Headlines like "Target, Lowe's and Full-Service Supermarket Coming to Greenland," found on the front page of the mailing, are only partially correct, as the appeals filed by Portsmouth and abutters to the proposed development have not been ruled upon by the Superior Court.

"Maybe this is a case of telling someone something enough times (so that they'll believe it)," Sullivan said. "None of the articles are attributed; I wonder who wrote them?"

Rockingham County Superior Court recently upheld an April 2002 decision from the Greenland ZBA that granted the developer a special exception to put the retail mall in an industrial zone. This decision was appealed by Portsmouth and the town of Newington before eventually becoming a "split decision" in December, according to Sullivan.

According to Judge Perkins' order, a retail-sales and service use of the property "is permissible in the industrial district by special exception."



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However, the judge sent the case back to the ZBA, asking the board to reconsider the issue on two grounds.

First, Perkins ruled that ZBA member James Wilbur should have been disqualified from voting on the special-exception matter because he was not fully informed on the issues in a case in which his vote was critical to the outcome.

Wilbur had missed two meetings on the mall plans before the ZBA's vote on the special exception, but he nonetheless participated in the 3-2 vote.

Perkins said the town did not prove that Wilbur had availed himself of the information he missed during the two sessions when he was absent, and ruled that his vote was "erroneous."

The judge also ruled that the ZBA should reconsider its vote because the board failed to get an independent report detailing the effect the mall would have on surrounding property values. Instead, the board relied on a market-appraisal report submitted by Packard, despite an established ZBA policy that requires an independent review of that plans.

Sullivan said there are "various motions filed in Superior Court" that must be resolved before anything else can happen with the case.

There is also a third major appeal pending concerning a permit that would allow Packard to fill seven acres of wetlands. The permit is obtained from the N.H. Department of Environmental Services, and Sullivan said "that permit has not been issued."

Paul Young, a public-relations spokesman at Calypso Communications, which represents the development group, said that the mailing was sent to Greenland residents because there was a "lot of misinformation" concerning the appeals. Young also said that Packard wishes "start a dialogue with the community."

Young said the mailing is a publication of Packard Development and that it will be mailed on a regular basis to residents as information develops.

Also found within the mailing is an "editorial" from Packard Development President Leonard Rudofsky, titled "Looking Towards the Future."

In the editorial, Rudofsky compares the Greenland tax revenues created by commercial properties to those of neighboring Portsmouth and Newington - two parties that have filed appeals concerning the mall development:

"Only 17 percent of total revenues (in Greenland) comes from property taxes on commercial properties, which compares sharply with neighboring communities Newington (71 percent) and Portsmouth (40 percent)," he writes.

Packard Development project leader and spokesman Paul Cincetta could not be reached for comment at press time.

In response to the idea of a "Packard Development Community News" publication for the city of Portsmouth being in the works, Sullivan was not optimistic.

"No, no, I don't think so," Sullivan said.



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Young said that a ruling on this case should be expected within the next few weeks.

Material written by Herald staff writer Nancy Cicco was used in this report.

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### Two towns challenge mall go-ahead in court

By Jack Loftus  
[jloftus@seacoastonline.com](mailto:jloftus@seacoastonline.com)

BRENTWOOD - Attorneys representing Portsmouth and Newington were in Rockingham County Superior Court Tuesday to challenge the Greenland Planning Board's approval of the Packard Development proposal for a mall at the site of the former Sylvania plant on Route 33.

Portsmouth Assistant City Attorney Suzanne Woodland presented the city's principal challenges to the development to Judge Robert Morrill. Those arguments included objections to Packard's traffic proposals and drainage at the site.

The first challenge covered the concerns over traffic safety along Route 33, with a focus on the truck stop at the intersection of Ocean Road and Route 33.

Packard had proposed a second left-turn lane for this intersection to allow truck traffic more room to enter the stop. Woodland argued that this extra lane would "exacerbate the problem of trucks leaving the truck stop."

Woodland presented photographic evidence she said depicted trucks crossing Ocean Road at the intersection. Previously, it had been reported that the traffic increase to the area would reach more than 10,000 vehicles during weekend periods.

The Portsmouth attorney also argued that the Greenland Planning Board had approved the site plan for the development even though it lacked the hydrological data necessary to reach a decision.

Such information is necessary, Woodland argued, because the location at the proposed development site sits near the Great Bog and Pickering Brook. Both areas have sensitive ecosystems and exert a direct environmental influence on the Great Bay.

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Also of concern to the city was the septic system proposed for underneath the parking lot of the mall. Woodland contended it could endanger the sensitive wetland areas.

Deb Furino, of the Greenland Concerned Citizens Organization, had previously predicted that the failure of Packard to develop a suitable septic system would, in effect, doom the project.

"Given that (the developer) cannot come up with an environmentally sound way to deal with the septic system issue, we're confident the (Department of Environmental Services) will not allow this project to go forward," she said.

Packard attorney Robert Murphy said that the project has met preliminary DES approval and that the developers "are more than eager to connect to the private line (at the truck stop), but couldn't overcome political issues."

Murphy expressed displeasure at those who say plans for the mall are constantly changing.

"It is wrong to say that Packard is putting up a moving target," Murphy said.

He said his client has followed the guidelines established by DES, the agency that will ultimately have the final say on the project.

Murphy also attested to the monetary commitment Packard has made to improving the surrounding area. A total of \$300,000 has been pledged to the development of Portsmouth Avenue, and \$200,000 has been pledged to address Route 33 traffic concerns, he said.

Murphy also argued that an appeal concerning open space or "green space" must be taken to the Greenland Zoning Board of Adjustment for review, as the Superior Court has no authority to rule on such a matter.

That was in response to an issue raised by Woodland about how the Greenland Planning Board had interpreted its own definition of "green space," and the septic system proposal from Packard.

The Greenland ordinance states a development, such as the mall, would need at least 25 percent of the lot set aside for "green space." That equates to 13.99 acres, Woodland said.

The current Packard proposal lists a green-space set-aside of only 9.56 acres.

Woodland said she expected a ruling from Judge Morrill in one to four weeks.

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