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PROJECT: Morrills Crossing ~~Contract Review~~

ADDRESS: 33 Allen Avenue

PLANNING BOARD REPORT #30-04

**RECOMMENDATION TO CITY COUNCIL
CONDITIONAL REZONING
VICINITY OF MORRILL'S CORNER
PACKARD DEVELOPMENT, APPLICANT**

Submitted to:

Portland Planning Board
Portland, Maine
August 24, 2004

Submitted by:

Sarah Hopkins
Development Review Services Manager
August 29, 2004

I. INTRODUCTION

Packard Development has requested a public hearing with the Planning Board to present their plans for a retail shopping center at Morrill's Corner. The development parcel is currently zoned B-2 Business, I-L Industrial, and R-5 Residential. In order to proceed with the development proposal, the applicant has requested a conditional rezoning, and has also made a proposal to the City's Community Development Committee for the purchase of two City-owned parcels of land.

The development will consist of an anchor grocery tenant of approximately 65,821 sq ft, as well as additional retail tenants. The proposal anticipates the demolition of the Bingo Hall and the potential future expansion of the boxing club to 14,000 sq ft. The existing Bruno's Restaurant will remain. Residential uses proposed for the project include up to 10 apartments above the Allen Ave retail buildings, up to 24 townhouse units along Princeton St. and up to 24 apartments along Cambridge Street.

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

II. FINDINGS

Current Zoning:	I-L; B-2; R-5
Proposed Zoning:	Conditional B-2
Land Area:	20 acres
Existing Use:	Industrial; commercial; residential
Proposed Use:	Retail shopping center; residential
Land Uses in the Vicinity:	Industrial; commercial; residential

Build-out Comparisons

	Packard	Hannaford	Target, S.P.	Northgate
Retail	131,771	86,000	256,367	112,005
Boxing	1,400	0	0	0
Res. Units	up to 58	0	0	0

anchor 66,000

III. PROPOSED CONDITIONAL ZONE

Included within the submission notebook, is applicant's proposed draft language for the conditional rezoning.

Under Section 14-264, the City has the authority to approve a contract zone under certain circumstances:

Sec. 14-264. Contract or conditional zoning.

A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the following standards:

- (a) The proposed development is consistent with the comprehensive plan.*
- (b) The proposed development is consistent with the purposes of this zone.*
- (c) The proposed development is 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.*
- (d) All plans must include complete information of processes, materials or methods of storage to be used by the development and shall specify how hazardous impacts to neighboring properties will be prevented.*

Additionally, by State statute:

30-A M.R.S.A Section 4352. Zoning ordinances

8... Conditional and Contract rezoning. A zoning ordinance may include provisions for conditional or contract zoning. All rezoning under this subsection must:

- A. Be consistent with the local growth management program adopted under this chapter;*
- B. Establish rezoned areas that are consistent with the existing and permitted uses within the original zones; and*
- C. Only include conditions and restrictions that relate to the physical development or operation of the property.*

IV. CONDITIONAL REZONING TEXT

The Conditional Rezoning text is included in the submission notebook for the Planning Board's review. In summary, the conditions state the following:

1. The zoning will go into effect within one year of the City Council vote unless all approvals have not been received or any other event occurs out of the applicant's control.
2. The uses permitted for the site include those permitted in the B-2 zone, but do not include the conditional uses of the B-2 zone.
3. No fewer than 10 apartments will be provided over the retail businesses along Allen Avenue as part of the first phase of development.
4. Between 18 and 24 townhouses will be built along Princeton Street as the second phase of development. A performance guarantee of \$50,000 per unit will be held until the units are constructed.

5. Up to 24 additional units may be constructed to the rear of the site. Until these units are constructed, the area will be loamed and seeded. Also this area may include a parking lot for up to 50 cars for overflow parking for the boxing club and to provide parking for the recreational space.
6. Phase I will include no fewer than 10 residential units over the retail uses, off site traffic improvements, the trail network, the grocery store and retail shops, parking and boxing club.
7. Phase II will include the townhouses.
8. A recreational space will be provided on the City owned land to the rear of the parcel and a public access easement will be granted to the City for its use.
9. Up to \$100,000 will be contributed toward the Fall Brook CSO project to mitigate runoff into Milliken Brook.

NOTE: The advertised contract included two choices for the Planning Board to consider in the timing and construction of the field. The applicant recommends that it be required to construct the field ONLY if the cost of acquisition and remediation of any contamination does not exceed \$355,000. Staff's position is that the multipurpose field is a necessary and reasonable requirement of the project, and that from a land use planning point of view, the price is irrelevant; the cost of the land will be negotiated with the City Council. Also, the Phasing plan, Exhibit E, does not include the field. Staff strongly recommends that the construction of the field be required as part of Phase I.

V. **PACKARD PROPOSAL AND THE COMPREHENSIVE PLAN**

The Planning Board and City Council will make a determination as to whether the proposed conditional rezoning proposal is consistent with the City's Comprehensive Plan.

There are several components of the Comprehensive Plan; however the most appropriate portions regarding the development of this site appear to be the Transportation Plan, Housing Plan, and Industry and Commerce Plan. The plans highlight land use and transportation considerations affecting the City and to some degree, this parcel in particular.

A. **Transportation Plan**

The goals and policies of the Transportation Plan that may be applicable include the following:

- Provide maximum mobility in a balanced transportation system which encompasses all modes, to support the economic vitality and quality of life of the Portland Community.
- Promote the interconnection of neighborhood streets and pathways, so that there are multiple paths of travel to get to destinations within and between neighborhoods by foot and bicycle, as well as auto.

- Access to METRO service from the interior of local transport centers should be safe and convenient
- Link the transportation Plan with land use planning policies in the City and the region to guide decision making for development and infrastructure investment.
- Ensure that future growth does not foster auto-dependencies.
- Vibrant neighborhoods include nearby, small-scale commercial areas that provide both convenient service and natural meeting places. Provide routine, daily services within walking distance of residents of all neighborhoods, as long as the businesses providing the services are small-scale, are designed compatibly with residences, and fit into the fabric of the neighborhood.
- Promote a land use pattern that allows for opportunities for people to work and meet a larger share of their everyday needs within or adjacent to their transportation district.
- Allow development along transit corridors and nearby community commercial centers to evolve at a density sufficient to make public transit, walking, and biking viable options.
- Create local multi-modal centers for the City's commuters and mass transit passengers, building on the presence of existing centers of activity, wherever possible.
- Coordinate the design, location, and implementation of local transport centers with METRO, without which they cannot succeed.
- Develop and implement a strategy that balances the integrity of the neighborhood against the need to move traffic on the arterials.

The revised plan for "Morrill's Crossing" has incorporated many of the recommendations of the Transportation Plan. Up to 58 residential units, including 10 live/work units are now proposed as part of the development. This housing provides a mixed-use aspect to the proposal as recommended through the Comprehensive Plan, provides a housing density along the Forest/Allen arterial which is a major transit corridor, and provides a mixture of retail uses and services accessible to the surrounding neighborhood by vehicle, bike, or foot.

A common theme running through the Transportation Plan stresses the need for balance between neighborhoods and the growth of adjacent transportation infrastructure. Morrill's Corner, including Allen and Forest Avenues will be improved and widened as part of Packard proposal. The traffic implications and balancing of the traffic needs and neighborhood impacts must be taken into consideration in the review of the Packard proposal.

Even with the mixed use and transit components of the proposal, this Morrill's Crossing project includes a vast amount pavement for approximately 625 parking spaces. As shown through the parking analysis, even with shared parking, there will be certain times of the year when the demand for parking exceeds the supply. The Planning Board and City Council will have to assess the potential

conflict between the size and scale of the plan, it's reliance on car traffic, its traffic volume and the policies of the Transportation Plan.

B. Housing Plan

Relevant housing policies, as excerpted from the City's Housing Plan are as follows:

Policy 1: Ensure an Adequate and Diverse Supply of Housing for All

- Encourage higher density housing for both rental and home ownership opportunities, particularly located near services, such as schools, businesses, institutions, employers, and public transportation.
- Encourage higher density multi-family developments and mixed-use projects with housing, along major public transportation routes, near service areas, and in redevelopment or infill areas.
- Combine housing and economic development strategies to create high-density housing and mixed-use development in business zones.
- Identify vacant land and redevelopment opportunities throughout the City to facilitate the construction of new housing.
- Develop disposition policy for City-owned and tax-acquired property that is in keeping with the City's adopted housing plan.

Policy 5: Sustainable Development

- Encourage neighborhood business centers throughout the city to reduce dependence on the car and to make neighborhood life without a car more practical.
- Innovative Development: Encourage higher density development which incorporates housing above businesses through flexible reviews and shared parking options.
- Incentives for Mixed-Use: Combine housing and economic development initiatives for mixed-use developments near employment centers.

The revised plan incorporates up to 58 residential units. The Housing Plan recommends a diversity of housing types throughout the City. The revised Packard proposal includes three different types of housing:

- the apartments over the retail building closest to Allen Avenue are an excellent example of new residential construction replicating a traditional urban form. The construction of apartments over retail is specifically recommended in the Housing Plan and is permitted in the B-2 zone.
- The townhouses along Princeton St. will serve as a physical buffer between the retail uses and the established Woodlawn neighborhood. One-way access to the shopping center from the neighborhood is also provided through the townhouse parking lot.

- An area to the rear of the site is preserved for "future residential development". While the design and layout of these apartment units caused concern by staff from the Planning and Housing and Neighborhood Services divisions, there is agreement that if a housing development is oriented and connected to the adjacent neighborhood, it will be a viable and desirable place to live.

Housing Replacement Ordinance

The proposed development will displace seven housing units. The applicant will be required to develop a plan to replace the units as part of the Site Plan review.

C. Industry and Commerce Plan

The Industry and Commerce Plan Advisory Committee presented its recommendations to the City Council in June of 1994. Those recommendations were accepted by the City Council and then referred to the Planning Board for implementation through the drafting of text and rezoning of industrial and business zones throughout the City. Those amendments were then adopted by the City Council as part of the Comprehensive Plan.

Pertinent goals of the Industry and Commerce Plan include the following:

- Improve the Quality of Life
 - Recognize that jobs and prosperity improve the standard of living for residents.
 - Preserve, protect, and strengthen neighborhoods
 - Compatible development
 - Confidence/peace of mind regarding industrial neighbors
 - Reduce tax burden on residential property owners
 - Make Portland attractive to new residents and businesses
- Revise zoning
 - Protect neighboring residential zones
 - Adopt clear, predictable, and enforceable regulations
 - Promote compatible development within industrial districts
 - Consider limitations on hours of operation
 - Recognize that a well-managed industry is a good neighbor
 - Accommodate clean industry

Unlike the Transportation Plan, the Industry and Commerce Plan made specific zoning recommendations. The Planning Board received those recommendations, both text and map amendments, and formulated its own zoning policy recommendations to the City Council.

The Morrill's Corner parcel was included in the consideration by both the ICPAC committee and the Planning Board. There was agreement that the site was an underutilized development parcel with access restrictions due to Morrill's corner, and a sensitive location due to the adjacent residential neighborhood.

Future improvements to Morrill's Corner were not anticipated during the drafting of the Industrial Zoning.

For these reasons, the Committee, Planning Board, and finally City Council agreed in zoning the parcel Low Impact IL Industrial nearest the residential zones and IM adjacent to Canco Road. The IL zone has been modified over the years since its adoption, but its Purpose (Section 14-231) reads:

The low impact industrial zone is intended to provide areas in which low impact industrial uses will be compatible with adjacent residential uses, will provide a buffer between residential neighborhoods and the I-M or I-H industrial zones, or will stand alone as a smaller scale industrial district.

The I-L zone is located adjacent to residential neighborhoods, business uses and other industrial uses where the low intensity nature of the uses, as well as their strict performance standards, will ensure the compatibility of the uses with other adjacent industrial and nonindustrial uses.

Performance standards for uses in the I-L zone are designed to maintain compatibility between low impact industrial uses and neighboring nonindustrial and industrial uses. Performance standards include full enclosure of uses and requirements for buffers and screening from adjacent properties.

VI. ASPECTS OF SITE DEVELOPMENT

Existing Conditions

The 20 acre development site is comprised of 7 parcels including White Dove Properties (Portland Boxing Club and several abandoned buildings), three single family residences, Allen Ave LLC (Bruno's, Bingo Time, and a former contractor's yard), and two parcels owned by the City.

Currently, the site contains a mixture of buildings, gravel areas, parking lots, wetland areas, and low wooded growth.

The site is bounded to the south by the Guilford RR, to the north by residential properties, to the west by Allen Avenue, and to the east by residential and industrial properties.

Traffic

Included under the Traffic Tab of the notebook are Tom Errico's final findings, the Traffic Study and VHB's response to Tom Errico's previous memo.

The Planning Board requested that Mr. Errico provide a professional opinion as to the ability of the proposed traffic improvements as proposed by Packard to mitigate the impacts of the Morrill's Crossing development.

Mr. Errico's comments are summarized below. For the entire memo, please refer to the traffic tab in the applicant's submittal.

Based upon the review of the transmitted traffic data, it is Mr. Errico's professional opinion that the proposed Packard Development Project can potentially satisfy requirements for the issuance of a MaineDOT Traffic Movement Permit, and therefore provide acceptable operations following build-out of the project assuming implementation of roadway and traffic control improvements. This conclusion is based upon the preliminary information provided and the anticipated resolution of the following issues:

- The project would need to meet all requirements specified by MaineDOT for issuance of a Traffic Movement Permit. This includes: project scoping meeting; study area definition; traffic volume approval; and provision of acceptable traffic operations to name a few.
- Traffic queues on Forest Avenue between Allen Avenue and Warren Avenue will not be accommodated within the provided storage areas and could create safety and operations problems.
- Existing driveways in the vicinity of the proposed Packard entrance on Allen Avenue do not meet access management standards.
- The proposed parking supply will not meet peak parking demands during the month of December.
- Revised traffic volume counts will need to be conducted.

Technical Review

1. Conceptual improvement plans have been provided for both Allen Avenue and Forest Avenue in the vicinity of the project. Mr. Errico has found the plans to be acceptable for the purposes of Contract Zone decisions. Greater design details and modification of the layout will be required during the permitting phase.
2. A SimTraffic traffic simulation of the Morrill's Corner area has been provided and Mr. Errico has found the methods used generally to be acceptable. He notes that long traffic queues were identified in the review of the simulation on Forest Avenue between Allen Avenue and Warren Avenue and on the Stevens Avenue approach to Forest Avenue. Mitigation of these deficiencies will be required during the permitting phase.
3. As for access management, on-site circulation issues may preclude modification of driveways to Paul White Tile Company. Additionally, lack of cooperation may preclude any changes at the apartment complex. Mr. Errico suggests that efforts continue to investigate solutions that address safety problems that may be created by the Packard Development site drive and that improvement options are available, including turn prohibitions, that would produce safer conditions.
4. As noted in the traffic study, increased delay can be expected at unsignalized intersections in the study area following build-out of the project. For example, delays from Woodlawn Avenue at Allen Avenue are projected to increase by 20 seconds per vehicle during the weekday PM peak hour. However, in many cases, mitigation options are not possible at many of the locations evaluated. All unsignalized intersection will be re-evaluated as part of the Traffic Movement Permit process and details of mitigation can be addressed at that time.
5. Mr. Errico concurs with the plans to provide a one-way connection from the neighborhood to the site.

6. Since traffic volumes were recently collected during at a time when Allen's Corner construction was active, there may have been an influence on the traffic volume distribution. Because of these counts, traffic volumes will be counted again in the future during the permitting phase of the project. This will be a requirement of the Traffic Movement Permit process and the project cannot receive approval until acceptable traffic volumes have been provided.
7. Mr. Errico and the applicant's consultant do not agree on the application of the Urban Compact Zone limitations and as such, whether Levels of Service E or F are acceptable. The applicant's proposed project will need to satisfy requirements contained in the Maine Department of Transportation Rules and Regulations Pertaining To Traffic Movement Permits through the City's Delegated Review Agreement. Specifically, the Rules note: "Unreasonable congestion. Level of Service D, as determined from a capacity analysis, is considered the minimum level of service needed to provide safe and convenient traffic movement. Where a road, intersection, or any approach lane to the specific intersection or intersection being evaluated in the vicinity of the proposed development is determined to operate at LOS E or LOS F in the horizon year, the proposed development is considered to result in unreasonable congestion, unless: Improvements will be made to raise the level of service of the road or intersection to D or above." There are several intersections in the study area that the capacity analysis contained in the Traffic Technical Appendix indicate have movements at Level of Service 'E' or worse.

Mr. Errico concludes by noting that based upon the information provided, these deficiencies can likely be mitigated, and specific details can be determined during the permitting phase. The project would be required to provide acceptable levels of service at all locations, as part of the Traffic Movement Permit process, unless urban compact zone limitations can be justified.

(Also, should this project move forward for site plan review, the Site Plan has its own standard for Levels of Service.)

8. The City requests that a crosswalk be added across Forest Avenue from the McDonald's Restaurant to the channelization island separating flow to Allen Avenue eastbound. Specific details can be determined during the permitting and design processes.
9. Mr Errico recommends that during the permitting phase, vehicle crash history should be updated to account for data available from MaineDOT for the most recent three-year period (2001 to 2003). published and a qualitative review be performed relative to High Crash Locations. This will be a requirement of the Traffic Movement Permit process and the project cannot receive approval until all safety deficient locations within the study area have been addressed.
10. Queuing problems are projected in the Morrill's Corner area following build-out of the project. The level of queuing projected is such that mitigation seems possible. The Traffic Movement Permit review of queuing will be based upon build-out conditions and the documentation that acceptable traffic operations could be provided after the project is constructed.
11. The evaluation of the Forest Avenue/Ocean Avenue intersection needs to be performed in coordination with the Forest Avenue/Woodford Street and Forest Avenue/Read Street intersections during any subsequent permitting phase. All three intersections need to be evaluated together.

12. Specific details on the recommended improvements to pedestrian facilities (sidewalks, crosswalks, etc.) should be provided during any subsequent permitting phase
13. When comparing traffic volumes from the various iterations of traffic reports prepared for this project, volumes have increased and decreased for some locations. As noted previously, updated traffic counts will be required during the permitting phase of the project. This will be a requirement of the Traffic Movement Permit process and the project cannot receive approval until acceptable traffic volumes have been provided.
14. As noted in the parking study, two conditions will exist where the demand will exceed parking supply. The two conditions are during the month of December on a Saturday and Sunday. This issue will need to be addressed during site plan review as part of the Parking Management requirement. The parking analysis is located with the traffic study under the Traffic tab of the notebook.

Conclusion

As noted in the Summary of Findings section, it Mr. Errico's professional opinion that the proposed Packard Development Project can potentially satisfy requirements for the issuance of a MaineDOT Traffic Movement Permit, and therefore provide acceptable operations following build-out of the project assuming implementation of roadway and traffic control improvements. Mr. Errico's comments do not guarantee the applicant issuance of a Traffic Movement Permit and approval of the project from a traffic perspective.

Stormwater

Under Site Location of Development, the applicant will be required to remove 80% of total suspended solids as part of the stormwater treatment program.

Due to past contamination on the City-owned land, a Brownfields study was conducted by the City and DEP. This study is included as Attachment 3 to the report.

The site is designed to discharge stormwater into Milliken Brook. Based on the future work proposed for the Milliken Brook Watershed, the Public Works Department is recommending that the applicant contribute up to \$100,000 towards stormwater/CSO improvements. This requirement is included as part of the conditional rezoning.

Open Space

The main source of disagreement between the City staff and the applicant is on the phasing and implementation of the recreational/open space to the rear of the parcel on the City-owned land. The City staff believes that the provision of this open space is a very necessary amenity and benefit of this development. Further, staff strongly recommends that the recreational improvements be completed as part of Phase I (with the supermarket) unless DEP permitting extends the permitting process beyond Packard's control.

The contract language was advertised to outline both the applicant's proposal for the timing, cost and construction of the field, and the City Staff's preference for the unconditional contribution of the park improvements. We will need direction and clarification from the Board on the timing of the park improvements for recommendation to the City Council. Also, the Phasing Plan will need to be amended to include the parkland/City parcel.

As for pedestrian amenities, the applicant proposes to create a sidewalk/trail network around the site that will connect to trails behind the site along Cambridge and Princeton (paper) streets.

Sidewalks are proposed along Forest and Allen Avenues and connecting in from Allen Avenue to the site.

Fire Safety

An emergency access gate is anticipated at the end of Morrill Street, as recommended by the Fire Department.

VII. NEIGHBORHOOD MEETINGS

Included under the Public Outreach tab of the submission notebook are the minutes and sign in sheet for the required neighborhood meeting held by the applicant. The applicant also held a number of informal meetings with neighbors in the neighborhood last year.

VIII. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials included in Planning Report #30-04, and on the basis of information submitted by the applicant, the Planning Board finds:

That the proposed conditional B-2 rezoning of the Packard site [is/is not] consistent with the City's Comprehensive Plan.; and

As required under 30-A M.R.S.A Section 4352, that the proposed conditional rezoning

- Be consistent with the local growth management program adopted under this chapter;
- Establish rezoned areas that are consistent with the existing and permitted uses within the original zones; and
- Only include conditions and restrictions that relate to the physical development or operation of the property.

Attachments:

1. *New York Times* Article 8/19/04
2. Correspondence from Neighbors
3. Brownfields Study

Notebook Contents

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Aerial photograph

Parcel map

Zoning maps

Section II: Site Photos

Section III: Site Design

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- Emergency Access
- Landscape
- Lighting
- Stormwater
- Architecture

Section IV: Traffic

- VHB Comments 8/19/04
- Tom Errico Final Comments 8/12/04
- VHB Responses to Issues Raised 8/3/04
- Parking Analysis
- Traffic Study

Section V: Zoning/Land Use

- Contract Zone Agreement
- Applicant's Comprehensive Plan Analysis
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Section VI: Public Outreach

- Neighborhood Meeting Minutes and Sign-in
- Market Survey
- Letters of Support