

**City of Portland
Development Review Application
Planning Division Transmittal form**

Application Number: 10-89900004 **Application Date:** 5/19/10

Project Name: WASHINGTON PARK

Address: 901 Washington Ave **CBL:** 170 - F-001-001

Project Description: Zone Change -901 Washington Avenue, R-3 To B-2

Zoning: RESIDENTIAL R-3

Other Reviews Required:

Review Type: TEXT/MAP AMENDMENTS

Applicant:
J. B. Brown & Sons
36 Danforth Street
P.O. Box 207
Portland Me 04112-0207

Distribution List:

<input type="checkbox"/> Planner	Barbara Barhydt	<input type="checkbox"/> Parking	John Peverada
<input type="checkbox"/> Zoning Administrator	Marge Schmuckal	<input type="checkbox"/> Design Review	Alex Jaegerman
<input type="checkbox"/> Traffic	Tom Errico	<input type="checkbox"/> Corporation Counsel	Danielle West-Chuhta
<input type="checkbox"/> Stormwater	Dan Goyette	<input type="checkbox"/> Sanitary Sewer	John Emerson
<input type="checkbox"/> Fire Department	Keith Gautreau	<input type="checkbox"/> Inspections	Tammy Munson
<input type="checkbox"/> City Arborist	Jeff Tarling	<input type="checkbox"/> Historic Preservation	Deb Andrews
<input type="checkbox"/> Engineering	David Margolis- Pineo	<input type="checkbox"/> Outside Agency	
		<input type="checkbox"/> DRC Coordinator	Phil DiPierro

Preliminary Comments needed by:

Final Comments needed by:

From: <pollyp@maine.rr.com>
To: <shukriaw@portlandmaine.gov>
Date: 7/27/2010 11:28 AM
Subject: 901 Washington Mtg Tonight

Hello ,

This is in regards to the conditional rezoning agreement at 901 Washington Ave:

I think a site plan needs to be developed that fits everyone's needs, developers and residents alike, BEFORE a zoning change is granted.

The majority of residents I spoke with are willing to work with the developer to develop a satisfactory plan. I think the resident's concerns are as follows:

- Maintain as many of the mature trees as possible in the 1.5 acre buffer zone.
- With the current site plan, if one looks at the size of the building and the parking, the entire frontage of Washington Ave will be nothing but building and pavement for parking. Parking spaces should be developed in a way that will leave more of the mature trees.
- The building should blend in with the residential feel of this area.

I am concerned that the residents are expected to accept the burden of the risk of the zone-change without a satisfactory site plan being developed. I think the burden of the risk should be placed on the developer; the company should develop a plan that addresses the resident's concerns, then seek the zoning change.

Polly Pruneau
6 Pine Ledge Terrace

From: Manduca Music <manduca@maine.edu>
To: <shukriaw@portlandmaine.gov>
Date: 6/21/2010 7:53 PM
Subject: Rainbow Mall Business Park
Attachments: Part.001

Dear Shukria Wiar,

I am writing concerning the proposed change in zoning from Residential R-3 to Community Business B-2 of 901 Washington Ave.

My first concern is that I just received this postcard which gave me no time to do any research on this plan, nor to change my work schedule to attend the meeting on Tuesday June22 at 3:30.

I am concerned that adding more buildings to this plot of land will further increase traffic and change the residential character of the neighborhood. It is bad enough that we have to contend with the traffic on Washington Ave. The small tree-filled grassy area on Washington Ave provides an excellent buffer for these buildings. To replace it with other buildings will destroy the residential feel.

855 and 861 Washington Ave. received considerable damage due to blasting when the Atrium built buildings, and we also still are contending with water pouring off the road they graded directly into our backyards.

Martin's Point employees park on Rainbow Mall Road, and if you take a look, they leave cigarette butts all over that area. The other day on my walk I had to stamp butts out as people were throwing them out of their windows. Trash is strewn in the woods. People drive very fast out of the parking lot and continually speed around the curve on Rainbow Mall Rd. There have been times I've had to jump up on the green area with my dog as employees have sped out of the parking lot. There are a lot of elderly walkers from Ledgewood and they have complained as well.

We do not wish to see more development in this area. We are still disgusted that the city did nothing to help us with the damage that was caused by the building of the Atrium. It is grossly unfair for those of us who have owned houses here for forty years or more to be surrounded by these buildings. We do not favor this zoning change.

Sincerely, Mark and Elizabeth Manduca 861 Washington

Ave.
Manduca Music
www.manducamusic.com

Traffic:

Cannot get in and out of Pine Ledge Terrace, Pheasant Hill Road or Rainbow Mall Road during drive time. There is an **enormous** traffic flow on Washington Ave. that has increased exponentially in the past five years.

Overflow parking now (people have to park on Rainbow Mall Road) What happens when you add more employees to area

Overbuilding:

Rainbow Mall – then sat empty for a period of time

Andover college - then empty for a period of time

Martin's Point now – what happens when Veranda Street facility is completed

Empty office space in Greater Portland as of June 21 = more than 1 million sq. ft. available according to a commercial real estate professional

EX: Old Portland Press Herald Building = more than 100,000 sq. ft. available

NOTE: CB Ellis Market survey on the Boulos Web site

Noise:

Trees act as a buffer. Remove them and noise level would increase

Irreparably alter residential aspect of area:

Now buildings are behind a façade of MATURE trees.

Residential facilities far outnumber commercial in the bloc from Ocean Ave. to Canco Road. It is a VERY residential area.

Sewer:

Two drains into Fallbrook Run-off - they cannot handle water flow

During heavy precipitation Pine Ledge Terrace floods (often above rocker panels on vehicles).

Pheasant Hill Road floods at intersection with Washington

Another building, plus removal of trees and vegetation, would increase flooding

From: Barbara Barhydt [mailto:BAB@portlandmaine.gov]
Sent: Monday, June 14, 2010 9:07 AM
To: veroneau@jbbrown.com
Cc: Shukria Wiar
Subject: Re: 901 Washington Ave

Hi Vin:

I have added Shukria to this e-mail so that you may contact. We look forward to receiving your response.

Barbara
>>> "Vin Veroneau" <veroneau@jbbrown.com> Monday, June 14, 2010 8:45 AM >>>
Barbara,

Thank you for your time on Friday to discuss the 901 Washington Avenue zone change. I am working on a response email to address some of the questions/concerns raised during the meeting. In the meantime, can you send me Shukria's email address so I can include her in the email? Thanks,

Vin

Vincent P. Veroneau, President
J. B. Brown & Sons
36 Danforth Street
Portland, Maine 04101
T- (207) 774-5908 Ext. 11
F- (207) 774-0898
veroneau@jbbrown.com
www.jbbrown.com

J. B. BROWN & SONS
36 Danforth Street
P.O. Box 207
Portland, Maine 04112-0207
Phone 207-774-5908
Fax 207-774-0898

May 18, 2010

Barbara Barhydt
Development Review Services Manager
Department of Planning and Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Zone Change – 901 Washington Avenue

Dear Ms. Barhydt:

Enclosed please find seven (7) copies of a zone map amendment application and concept plan regarding J.B. Brown & Sons request to rezone a portion of property the company presently owns at 901 Washington Avenue from R-3 to B-2.

The entire Washington Park site is roughly 17.25 acres; approximately 15.75 acres are currently zoned B-2, and 1.5 acres are zoned R-3. The property was originally rezoned and developed in the 1970's as the Rainbow Mall, a grocery anchored center with an enclosed mall housing a number of smaller retailers. We assume the 1.5 acres of R-3 along Washington Avenue remained a "buffer" to the existing residential uses given the heavy traffic generated by a large retail facility.

The retail concept did not work at the property, and J.B. Brown & Sons purchased the facility in 1977, out of foreclosure, from Prudential Insurance. Over the past 30 years, the company has converted the original 103,000sf retail building to office space and in 2001 constructed a new 27,600sf office building on the property. The property is currently 100% occupied with long-term leases to Martin's Point, Maine Medical Center, and Time Warner. Several of the existing tenants have approached us about the possibility of constructing additional office space on the property.

Because the current B-2 zoned land is currently fully developed and office use is not allowed in the R-3 zone, we are requesting a zoning map amendment to change the R-3 zone to a B-2 zone. Our intent is to construct an additional office building of approximately 15,000 - 18,000sf with associated parking of roughly 75 spaces. A basic concept plan is enclosed to give some idea of the development, but we fully understand that a complete submission will be required should the zone change be endorsed by the Planning Board and approved by the City Council.

Barbara Barhydt
City of Portland
Page 2

Given that the current office use has significantly less impact on the surrounding area than the originally approved retail mall, the overall changes in the area that have taken place in the last 30 years, and the fact that the area requested for re-zoning is bound by roads on three sides and our existing development on the fourth, we feel the re-zoning request is not out of character for the area or at odds with the City's comprehensive plan.

Thank you for your efforts. Please do not hesitate to contact me with any questions or if you need additional information.

Sincerely,



Vincent P. Veroneau
President



Zoning Amendment Application

Department of Planning and Development, Planning Division and Planning Board

PROJECT ADDRESS: 901 Washington Avenue

CHART/BLOCK/LOT: 170-F-1, 170-F-2, 174-B-2

CONTACT INFORMATION:

APPLICANT

Name: J.B. Brown & Sons
Address: 36 Danforth St.
P.O. Box 207
Portland, Maine
Zip Code: 04112-0207
Work #: (207) 774-5908
Cell #: (207) 838-3397
Fax #: (207) 774-0898
Home: _____
E-mail: veroneau@jbbrown.com

PROPERTY OWNER

Name: J.B. Brown & Sons
Address: 36 Danforth St.
P.O. Box 207
Portland, Maine
Zip Code: 04112-0207
Work #: (207) 774-5908
Cell #: (207) 838-3397
Fax #: (207) 774-0898
Home: _____
E-mail: veroneau@jbbrown.com

BILLING ADDRESS

Name: J.B. Brown & Sons
Address: 36 Danforth Street
P.O. Box 207
Portland, Maine
Zip: 04112-0207
Work #: (207) 774-5908
Cell #: (207) 838-3397
Fax #: (207) 774-0898
Home: _____
E-mail: jbbrown@jbbrown.com

~As applicable, please include additional contact information on the next page~

AGENT/REPRESENTATIVE

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ARCHITECT

Name: Robert Howe, HKTA
Address: 482 Congress St.
Portland, ME
Zip Code: 04101
Work #: (207) 774-6016
Cell #: _____
Fax #: (207) 774-9128
Home: _____
E-mail: hkta@aol.com

SURVEYOR

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ENGINEER

Name: DeLuca - Hoffman Associates
Address: 778 Main Street
South Portland, Maine
Zip Code: 04106
Work #: (207) 775- 1121
Cell #: _____
Fax #: (207) 879-0896
Home: _____
E-mail: _____

CONSULTANT

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ATTORNEY

Name: David Galgay, Esq., Verrill Dana
Address: One Portland Square
Portland, Maine
Zip Code: 04101
Work #: (207) 774-4000
Cell #: _____
Fax #: _____
Home: _____
E-mail: dgalgay@verrilldana.com

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

Applicant is the owner in fee simple by virtue of a Deed dated 5/9/1977 from Prudential Insurance to Old Port Realty Corp and recorded in the Cumberland County Registry of Deeds at Book 4013, Page 113. ~~J.B. Brown & Sons is the Successor in Interest by merger with Old Port Realty Corp.~~

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

Existing Use:

Describe the existing use of the subject property:

Property is currently being used as office space

Current Zoning Designation(s):

Combination of B-2 & R-3, the approximate area of R-3 requested for re-zoning is 63,772 s.f.

Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

Applicant plans to construct an additional office building on land between the existing parking lot and Washington Avenue, which is currently zoned B-2 and R-3. The Developer will remove a portion of existing landscaped area, which will be replaced with a single story office building, associated parking, and new landscaping.

Sketch Plan: On a separate sheet, please provide a sketch plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1' = 100'.) Contract and conditional rezoning applications may require inclusion of site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

PROJECT DATA

The following information is required where applicable, in order complete the application


Total Site Area	751,844	sq. ft.
Proposed Total Disturbed Area of the Site	425,500	sq. ft.
(If the proposed disturbance is greater than one acre, then the applicant shall apply for a Maine Construction General Permit (MCGP) with DEP and a Stormwater Management Permit, Chapter 500, with the City of Portland.)		
<u>Impervious Surface Area</u>		
Proposed Total Paved Area	277,500	sq. ft.
Existing Total Impervious Area	385,000	sq. ft.
Proposed Total Impervious Area	425,500	sq. ft.
Proposed Impervious Net Change	40,500	sq. ft. (18,000 bldg/22,500 parking)
<u>Building Area</u>		
Existing Building Footprint	130,000	
Proposed Building Footprint	148,000	sq. ft.
Proposed Building Footprint Net change	18,000	sq. ft.
Existing Total Building Floor Area	130,000	sq. ft.
Proposed Total Building Floor Area	148,000	sq. ft.
Proposed Building Floor Area Net Change	18,000	sq. ft.
New Building	yes	(yes or no)
<u>Zoning</u>		
Existing	B2 & R-3	
Proposed	B-2	
<u>Land Use</u>		
Existing	Office	
Proposed	Same	
<u>Residential, if applicable</u>		
Proposed Number of Affordable Housing Units	N/A	
Proposed Number of Residential Units to be Demolished	_____	
Existing Number of Residential Units	_____	
Proposed Number of Residential Units	_____	
Subdivision, Proposed Number of Lots	_____	
<u>Parking Spaces</u>		
Existing Number of Parking Spaces	567	
Proposed Number of Parking Spaces	75	
Number of Handicapped Parking Spaces	20	(included in numbers above)
Proposed Total Parking Spaces	642	
<u>Bicycle Parking Spaces</u>		
Existing Number of Bicycle Parking Spaces	21	
Proposed Number of Bicycle Parking Spaces	7	
Total Bicycle Parking Spaces	28	
<u>Estimated Cost of Project</u>	\$2,000,000	

APPLICATION FEE:

Check the type of zoning review that applies. Payment may be made in cash or check to the City of Portland.

<p>Zoning Map Amendment X <u> </u> \$2,000.00 (from <u>R-3</u> zone to <u>B-2</u> zone)</p> <p>Zoning Text Amendment <u> </u> \$2,000.00 (to Section 14- <u> </u>) (For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (<u>example</u>), and language to be added is depicted with underline (<u>example</u>).</p> <p>Conditional or Contract Zone <u> </u> \$1,000.00 (under 5,000 sq. ft.) <u> </u> \$3,000.00 (5,000 sq. ft. and over)</p> <p>(A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)</p>

Signature: The above information is true and accurate to the best of my knowledge.

<p>Signature of Applicant: </p>	<p>Date: <u>5/17/2010</u></p>
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Further Information

In the event of withdrawal of the zoning amendment application by the applicant, a refund of two-thirds of the amount of the zone change fee will be made to the applicant as long as the request is submitted to the Planning Division prior to the advertisement being submitted to the news paper.

Verrill Dana^{LLP}

Attorneys at Law

DAVID L. GALGAY, JR.
PARTNER
dgalgay@verrilldana.com

ONE PORTLAND SQUARE
PORTLAND, MAINE 04112-0586
207-774-4000 • FAX 207-774-7499
www.verrilldana.com

September 21, 2010

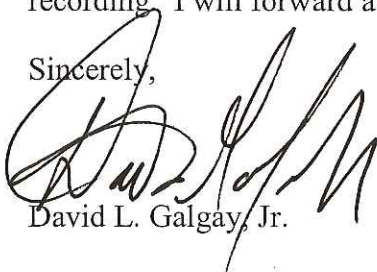
Shukria Wiar, Planner
City of Portland
Planning & Urban Development Department
389 Congress Street, Room 308
Portland, Maine 04101

Re: Conditional Rezone Agreement for 901 Washington Avenue

Dear Ms. Wiar:

Enclosed for your files please find an original Amendment to City Code Se. 14-49 (Zoning Text and Map Amendment) Re: Conditional Rezoning for Property in the Vicinity of 901 Washington Avenue, dated September 21, 2010 signed by Vincent P. Veroneau, President of J.B. Brown & Sons. A duplicate original has been forwarded to the Cumberland County Registry of Deeds for recording. I will forward a copy of the recorded document to you once it is returned.

Sincerely,



David L. Galgay, Jr.

DLG/jacg
Enclosure

c: Vincent P. Veroneau (w/o enclosure)

Order 30-10/11
Given first reading on 8/16/10
Public Hearing and Passage: 9/13/10 8-0 (Donoghue absent)

NICHOLAS M. MAVODONES (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
DORY RICHARDS WAXMAN (A/L)
JILL C. DUSON (A/L)

AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)
RE: CONDITIONAL REZONING FOR PROPERTY
IN THE VICINITY OF 901 WASHINGTON AVENUE

ORDERED, that the zoning map and text of the City of Portland, dated January 17, 2001 as amended and on file in the Department of Planning & Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to reflect a conditional rezoning as detailed below.

CONDITIONAL ZONE AGREEMENT

J.B. BROWN & SONS

AGREEMENT made this 21st day of September, 2010 by **J. B. BROWN & SONS**, a Maine corporation with a principal place of business located at 36 Danforth Street, in Portland, Maine and having a mailing address of P.O. Box 207, Portland, Maine 04112-0207 (hereinafter sometimes referred to as "**DEVELOPER**").

WITNESSETH

WHEREAS, DEVELOPER is the owner of certain land together with the improvements thereon situated at 871-931 Washington Avenue, in the City of Portland, County of Cumberland and State of Maine, and being more particularly described in a certain deed from Prudential Insurance Company of America to Old Port Realty Corp. dated May 9, 1977 and recorded in the Cumberland County Registry of Deeds in **Book 4013, Page 113**, with the **DEVELOPER** being the successor by merger to Old Port Realty Corp. (hereinafter referred to as the "**DEVELOPER'S DEED**"); and

WHEREAS, the property described in the **DEVELOPER'S DEED** consists of approximately 14.5 acres of developed real property and identified in the City of Portland on the Assessor's maps at the following Map, Block and Lot numbers: 170-F-001 and 170-F-002 (hereafter, the foregoing development shall be referred to as "**WASHINGTON PARK**"); and

WHEREAS, the improvements at **WASHINGTON PARK** include two (2) existing buildings, with the first building containing approximately 103,000 square feet and the second building containing approximately 27,600 square feet; together with parking areas and driveways; and

WHEREAS, the currently developed area of **WASHINGTON PARK** (14.5± acres), including a 60± foot wide strip of land dividing the **PROPERTY** (as defined below) running from the developed portion of **WASHINGTON PARK** to Washington Avenue, is located in the B-2 (Community Business) Zone; and

WHEREAS, the **DEVELOPER** seeks to develop a small portion (1.5± acres) of **WASHINGTON PARK**, specifically being the first approximately 163± feet as you enter from Washington Avenue; which property is located in the R-3 (Residential) Zone and also identified in the City of Portland on the Assessor's maps as a portion of the following Map, Block and Lot numbers: 170-F-001 and 170-F-002 (hereinafter referred to as the "**PROPERTY**"), with the exception of the 60± foot wide strip of land strip of land running through the middle from Washington Avenue, which as described above, is located in the B-2 Zone; and

WHEREAS, **DEVELOPER** seeks to more fully develop the **PROPERTY** consistent with B-2 Zone permitted uses; and

WHEREAS, the R-3 zone does not currently allow non-residential uses as permitted uses and the purpose of this conditional rezoning is to allow the **PROPERTY** to be developed for commercial uses allowed in the B-2 Zone (excluding conditional uses authorized in the B-2 Zone); and

WHEREAS, this rezoning is consistent with the purpose B-2 community business zone, which is to provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses and services; and

WHEREAS, this rezoning is consistent with the commercial policies of the **CITY'S** Comprehensive Plan which calls for promoting and revitalizing existing commercial centers and promoting high quality office park development seeking a more suburban-style setting; and

WHEREAS, this rezoning is consistent with the **CITY'S** Comprehensive Plan which also encourages sustainable development patterns and opportunities within the City by promoting efficient land use, conservation of natural resources and easy access to public transportation, services and public amenities.

WHEREAS, the **CITY'S** Comprehensive Plan designates this area as a growth area and a potential mixed use area within the future land use plan; and

WHEREAS, the existing and permitted uses in the neighborhood include a mix of residential along commercial uses along Washington Avenue and institutional uses including the Cheverus playing fields and Cedars Nursing Care Center; 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**, subject, however, to certain conditions; and

WHEREAS, the City of Portland (hereinafter sometimes referred to as 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 plan and will establish uses that are consistent with the uses in the original zones and the surrounding areas; and

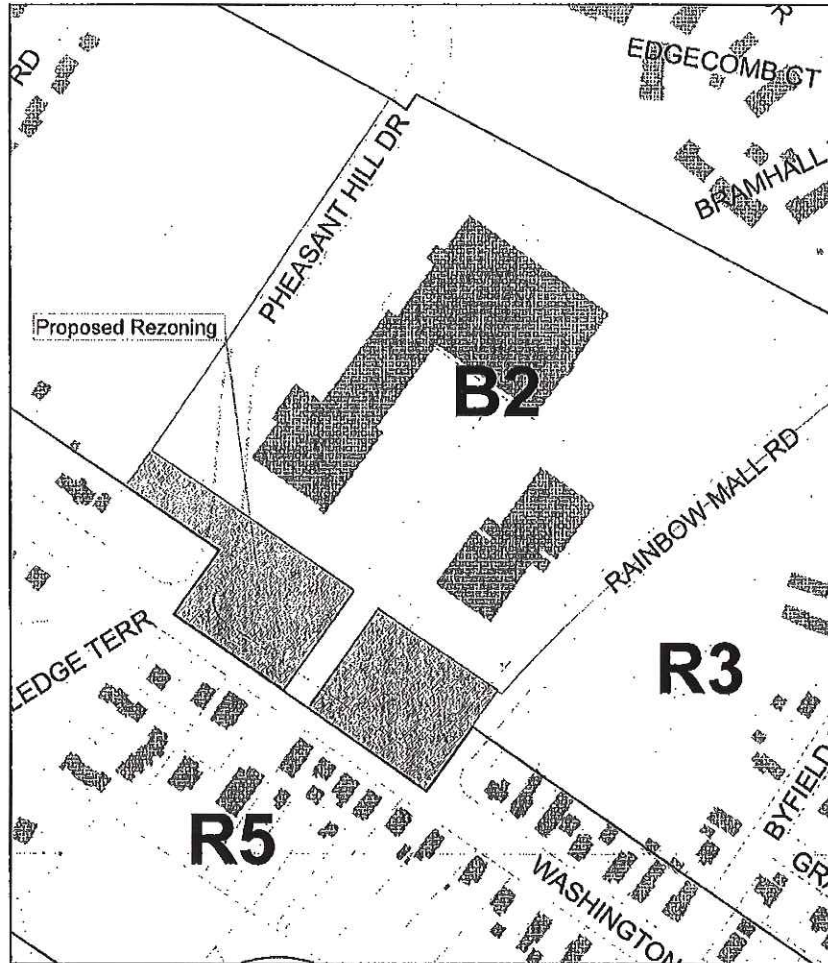
WHEREAS, the CITY has determined that the proposed rezoning will not cause undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents; and

WHEREAS, on September 13, 2010, the CITY authorized an amendment to its Zoning Map based upon the terms and conditions contained within this Agreement, which terms and conditions, run with the land (i.e., the **PROPERTY**) and become part of the CITY's zoning requirements.

NOW, THEREFORE, in consideration of the rezoning, **DEVELOPER**, and its successors and assigns covenants and agrees as follows:

1. Effective thirty days from the affirmative vote of the City Council on rezoning the **PROPERTY**, by Council Order No. 30-10/11, the CITY amends the Zoning Map of the City of Portland, dated January 17, 2001 as amended and on file in the Department of Planning and 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, which **PROPERTY** is depicted on the Map below as the two (2) shaded areas abutting Washington Avenue and bisected by the B-2 Zone strip of land extending to Washington Avenue.

Map 1: Proposed Rezoning



2. The **PROPERTY** shall otherwise conform to the requirements of the B-2 Zone except that the permitted uses of Drinking establishments, Billiard parlors and drive-throughs; and any and all of the Conditional Uses set forth in Section 14-183 of the Portland City Code shall not be allowed on the **PROPERTY**.
3. All of the dimensional requirements of the B-2 zone shall apply to the **PROPERTY**, except that the minimum setback from Washington Avenue shall be at least forty-five (45) feet. Within and throughout this minimum setback from Washington Avenue on the **PROPERTY** there shall be no development (other than pedestrian walkways or other amenities approved by the Planning Board) and the **DEVELOPER** shall provide a landscape buffer (which shall include, but not be limited to, sufficient trees, bushes or vegetation). The exact location and content of the landscape buffer shall be reviewed and approved by the Planning Board during site plan review.

4. The **DEVELOPER** shall meet the performance standards of the B-2 Zone for the operation of all permitted uses on the **PROPERTY**, and the future development of the **PROPERTY** shall first be subject to site plan review by the Planning Board of the City of Portland.
5. The above stated provisions are an essential part of the rezoning, shall bind and benefit **DEVELOPER**, its successors and assigns, and the **PROPERTY**, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives.
6. Within 60 days of the rezoning by the City Council, **DEVELOPER** shall file a duplicate original of this Agreement in the Cumberland County Registry of Deeds. The **DEVELOPER** shall provide to the **CITY** the Book and Page number of said recording.
7. If any of the provisions 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.
8. Except as expressly modified herein, the development, use, and occupancy of the **PROPERTY** 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.
9. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City's Code of Ordinances. Following any determination of a breach (after written notice and a reasonable opportunity to cure) by the **DEVELOPER** or its successors or assigns of the provisions contained herein (whether the Zoning Administrator, the Zoning Board of Appeals, Planning Board or a Court determines such breach), either the Portland Planning Board on its own initiative, or at the request of the Planning Authority, may make a recommendation to the City Council (which the City Council can thereafter act upon) that the Contract Rezoning be modified, this Agreement rescinded, the **PROPERTY** be rezoned, or the **PROPERTY** revert back to the underlying R-3 zone or its equivalent in effect at the time of a breach.
10. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit the **DEVELOPER** or its successors and assigns, and shall inure to the benefit of and be enforceable by the City of Portland, by and through its duly authorized representatives.

Dated: September 21, 2010

J.B.BROWN & SONS

By: [Signature]
Vincent P. Veroneau,
Its President

STATE OF MAINE
COUNTY OF CUMBERLAND

September 21, 2010

Then personally appeared before me the above-named Vincent P. Veroneau, President of J.B. Brown & Sons, and acknowledged the foregoing instrument to be his free act and deed in said capacity, and the free act and deed of J. B. Brown & Sons.

[Signature]
Notary Public/Attorney-at-Law
Print Name: _____
My Commission Expires **DAVID L. GALGAY, JR**
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES DECEMBER 22, 2013

Received
Recorded Register of Deeds
Sep 28, 2010 01:47:32P
Cumberland County
Pamela E. Lavley

CITY COUNCIL REPORT PORTLAND, MAINE

Conditional Rezone Agreement 901 Washington Avenue Conditional Rezone Agreement from R-3 to B-2 JB Brown and Sons, Applicant

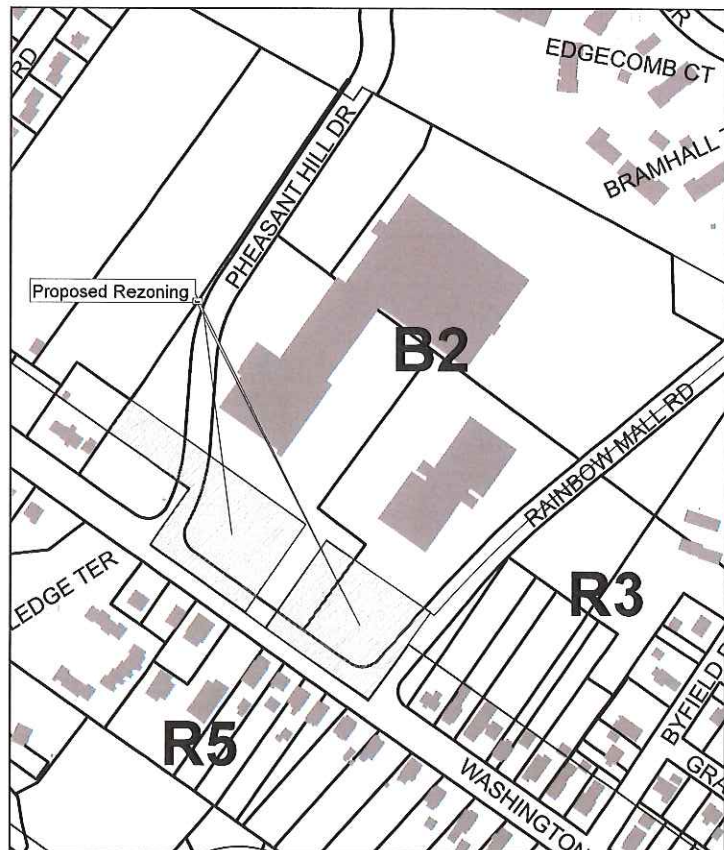
Planning Board Report# 23-10

Submitted to: Portland City Council First Reading: August 16, 2010 Second Reading: September 13, 2010	Prepared by: Portland Planning Board Date: August 12, 2010
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I. PLANNING BOARD RECOMMENDATION

The Planning Board voted unanimously on July 27, 2010 to recommend to City Council the JB Brown and Sons request for a Conditional Rezone Agreement. The Conditional Rezone Agreement changes the portion of 901 Washington Avenue that is currently R3 Residential to conditional B2 Community Business.

The total parcel is currently in two zones with approximately 686,070 sq ft (15.75 acres) in B-2 zone and 65,340 sq ft (1.5 acres) in the R-3 zone along Washington Avenue. The applicant is seeking to rezone this portion of the site, which is within the R-3 zone, in order to permit the construction of an office building. The B-2 portion of the site was developed as the Rainbow Mall and over time the property has been converted to office uses. The applicant intends to expand the office use by constructing an additional office building of approximately 15,000 to 18,000 sq ft with associated parking of approximately 75 spaces.



Even though the land on the other side of the Pheasant Hill Road is part of the conditional B-2 zone, it is unbuildable and no structure will be placed on this portion. It will serve as a

buffer between this property and the proposed future building and the neighborhood on the north side.

Notice of the application was sent to 199 area property owners and was advertised in the Portland Press Herald and on the City website.

Representatives for the applicant include Vin Veroneau of JB Brown and Sons. Submitted application materials and site plans have been included as Attachment A-2 and A-3.

II. PROJECT DATA

- A. **EXISTING ZONING:** B-2 (Community Business) and R-3 (Residential)
- B. **PROPOSED ZONING:** The R-3 portion of the site is proposed to be conditional B-2 (Community Business)
- C. **AREA TO BE REZONED:** 65, 340 SQ. FT. FROM R-3 TO B-2
- D. **TOTAL AREA OF THE SITE:** 751, 410 SQ.FT.
- E. **USES IN VICINITY:** Existing and permitted uses in the neighborhood include a mix of residential along with commercial uses along Washington Avenue and institutional uses, including the Cheverus playing fields and Cedars Nursing Care Center. The property is accessed from Washington Ave. The site abuts an established single-family residential neighborhood zoned Residential (R-3). A planned residential development called Ledgewood is located to the north of the site in an R-5 zone. The immediate properties on either side of Washington Avenue are zoned R-5 and contain a variety of single family, two family and multi-family units. Please see **Table 1** below.

Table 1: Adjacent Zoning and Land Uses

Direction	Zone	Use
<i>North</i>	R-5	Residential, Single-Family Homes
<i>South</i>	R-5	Residential
<i>East</i>	R-3	Residential, Single-Family Homes
<i>West</i>	R-3	Residential, Two-Family Homes

III. PUBLIC COMMENTS AND NEIGHBORHOOD MEETING

a. Identify public comment received

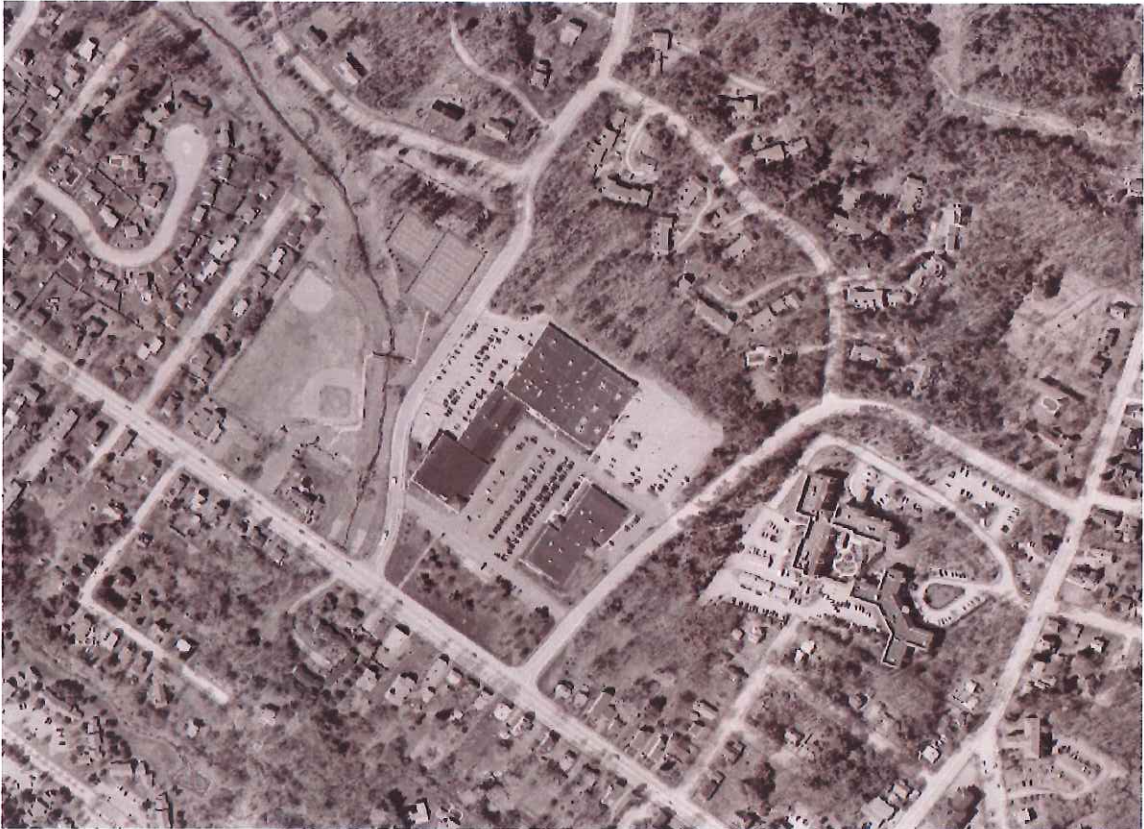
There are four (4) public comments submitted; two via email (J. Menges of 1 Pine Ledge Terrace, Sue Calhousu of Pine Ledge Terrace and Manduca Music of 861 Washington Avenue) and one phone call (Josephine Orlfley of 965 Washington Ave), see Attachment 2 for the emails. Some of the concerns that have been raised about the project are as follows:

- The existing landscaped buffer provides a good barrier from the business park and surrounding neighborhoods.
- Traffic will be increased due to the increased buildings on site.
- The residential feeling of the neighborhood would be lost.

b. Reference Neighborhood Meeting Schedule and Abutter Comments

The applicant held a neighborhood meeting on Saturday, July 12, 2010 at 891 Washington Avenue. There were approximately fourteen (14) area residents that attended this meeting.

Map 2: 2006 Existing Conditions



IV. STAFF REVIEW

A. ZONING ASSESSMENT

The proposed change of the R-3 zone to a B-2 zone would allow for the office use expansion. The B-2 zone permits general, business and professional offices.

B. BACKGROUND AND ZONING ANALYSIS

The property was originally rezoned and developed in the 1970's as the Rainbow Mall, a grocery store center with an enclosed mall accommodating a number of smaller retailers.

The retail concept was unsuccessful and JB Brown and Sons purchased the facility out of foreclosure in 1977. The original building has since been converted to office space and in 2001 an additional office building was constructed on the property. According to the applicant, the buildings are currently all occupied with long-term leases to Martin's Point, Maine Medical Center and Time Warner. The applicant has been approached by the current tenants to expand and construct an additional office space on the property.

Since the property in the B-2 is fully developed and office use is not allowed in the R-3 zone, the applicant is requesting a zoning map amendment to change the R-3 zone to a B-2 zone. The applicant also seeks to retain the broader range of permitted uses within the B-2 zone, if at some time the owners wish to lease space to a business use. The concept plan shows the building set back of 45 feet from Washington Avenue with a walkway to

the public sidewalk. The vehicle circulation would be from within the site and the current driveway entrances. While the 45 foot setback provides green space along the street, it would require an exception from the B-2 design standards that encourage buildings to be built near the street line.

The B-2 zone is intended for businesses that serve the adjoining local community as well as the larger community and allows a broad range of office space uses under the category 'General, business and professional offices'.

A comparison chart, see Attachment 1, breaks down the existing zone (R-3), the B-2 zone and the proposed Conditional Rezone Agreement for your review.

C. CONDITIONAL REZONE AGREEMENT:

After the discussion with the Planning Board during the workshop hearing, the applicant is now proposing a conditional rezone agreement.

The agreement states that this parcel may be developed for commercial uses allowed under the B-2 zone, excluding drinking establishments, Billiard parlors, and all of the Conditional Uses set forth in Section 14-183 of the Portland City Code. The conditional uses listed in B-2 include major and minor auto service stations, car washes, drive-throughs that are adjacent to any residential use or zone, automobile dealerships, printing and publishing establishments, whole sale distribution establishments, research/development and related production establishments, and temporary wind anemometers. The applicant will also provide a forty-five (45') landscaped buffer from Washington Avenue to the proposed building.

The following are some of the highlights of the agreement; please see Council Order for the complete agreement:

***WHEREAS, DEVELOPER** seeks to more fully develop the **PROPERTY** consistent with B-2 Zone permitted uses; and*

***WHEREAS**, the R-3 zone does not currently allow non-residential uses as permitted uses and the purpose of this conditional rezoning is to allow the **PROPERTY** to be developed for commercial uses allowed in the B-2 Zone (excluding conditional uses authorized in the B-2 Zone); and*

***WHEREAS**, this rezoning is consistent with the purpose B-2 community business zone, which is to provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses and services; and*

***WHEREAS**, the commercial policies of the **CITY's** Comprehensive Plan calls for promoting and revitalizing existing commercial centers and promoting high quality office park development seeking a more suburban-style setting; and*

***WHEREAS**, the **CITY's** Comprehensive Plan also encourages sustainable development patterns and opportunities within the City by promoting efficient land use, conservation of natural resources and easy access to public transportation, services and public amenities.*

WHEREAS, the CITY'S Comprehensive Plan designates this area as a growth area and a potential mixed use area within the future land use plan; and

WHEREAS, the existing and permitted uses in the neighborhood include a mix of residential along with commercial uses along Washington Avenue and institutional uses including the Cheverus playing fields and Cedars Nursing Care Center; and

And the conditional rezone agreement goes on to say:

1. *The **PROPERTY** shall otherwise conform to the requirements of the B-2 Zone except that the permitted uses of Drinking establishments and Billiard parlors, and all of the Conditional Uses set forth in Section 14-183 of the Portland City Code shall not be allowed on the **PROPERTY**.*
2. *All of the dimensional requirements of the B-2 Zone shall apply, except that the setback from Washington Avenue shall be forty-five (45) feet. Within this setback, the **DEVELOPER** shall provide a landscape buffer (the content and location of which shall be approved by the Planning Board during site plan review).*
3. *The **DEVELOPER** shall meet the performance standards of the B-2 Zone for the operation of all permitted uses on the **PROPERTY**, and the future development of the **PROPERTY** shall first be subject to site plan review by the Planning Board of the City of Portland.*

D. COMPREHENSIVE PLAN COMPLIANCE

Based on a review of the comprehensive plan, the following statements are relevant to this proposal for the Planning Board's consideration. According to the Future Land Use Map and Growth Areas Map, the site has been designated a growth area in the B-2 Neighborhood Business and R-3 Residential.

i. Goals and Policies

COMMUNITY COMMERCIAL POLICES AND LAND USE PLAN - September 1987-1988

a. Goal

- Accommodate the City's commercial activity within a range of functionally and physically defined commercial centers.
- Promote preservation and revitalization of its existing commercial centers and maintain a scale within them that is compatible and integrated with other land uses.
- Maintain and promote a community, which is attractive to both existing and prospective families and homeowners to help support the neighborhood commercial district.
- Promote new office park development of high quality in outlying areas for development seeking a suburban-style setting.
- Housing: Sustaining Portland's Future

Policy #5: Portland's Comprehensive Plan encourages a manageable level of growth that will sustain the City as a healthy urban center in which to live and work and to achieve a shared vision for Portland. Portland should encourage sustainable development patterns and opportunities within the City by promoting efficient land use, conservation of natural resources, and easy access to public transportation, services, and public amenities.

- ii. Future Land Use Map – B-2 Community Business
- iii. Growth and Rural Areas Map – Growth Area designation

V. PLANNING BOARD MOTIONS

On July 27, 2010, the Planning Board held a public hearing to consider this conditional rezone request.

The Planning Board voted unanimously (4-0, Patterson, Hall, and Lewis absent) that on the basis of plans and materials submitted by the applicant and on the basis of information contained in Planning Report #23-10 relevant to standards for Conditional and Contract Zoning, the Board finds that the proposed conditional rezoning is consistent with the policies of the Comprehensive Plan of the City of Portland. The Planning Board therefore recommends to the City Council approval of the proposed Conditional Rezoning of 901 Washington Avenue.

Attachments:

Planning Board Report Attachments

1. Comparison Chart of the Project Zones
2. Public Comments

Attachment A: Excerpts of Revised Material, 06.18.2010

- A-1 Application
- A-2 Cover Memorandum from Applicant
- A-3 Site Plan
- A-4 B-2 zoning standards

ZONING COMPARISON CHART – SUMMARY

RESIDENTIAL R-3	BUSINESS B-2	CONDITIONAL REZONE AGREEMENT
<p>PERMITTED USES</p> <ol style="list-style-type: none"> 1. RESIDENTIAL – SINGLE FAMILY 2. PLANNED RESIDENTIAL UNIT DEVELOPMENT 3. PARKS 4. HOME OCCUPATION 5. MUNICIPAL USES 	<p>PERMITTED USES</p> <ol style="list-style-type: none"> 1. RESIDENTIAL – SINGLE, TWO FAMILY, MULTIFAMILY, COMBINED LIV ING/WORKING SPACES <p>BUSINESSES – RETAIL, GENERAL, BUSINESS AND PROFESSIONAL OFFICE, PERSONAL SERVICES, OFFICES OF TRADESMAN BUSINESS USES, RETAIL ESTABLISHMENTS RESTAURANTS, DRINKING ESTABLISHMENTS, BILLIARD PARLORS, FUNERAL HOMES, COMMUNICATION STUDIOS, HEALTH CLUBS, VETERINARY HOSPITALS, THEATERS AND PERFORMANCE HALLS, HOTELS AND MOTELS, DRIVE-THROUGHS ASSOCIATED WITH A PERMITTED USE IN THE B-2 ZONE PROVIDED THAT SUCH DO NOT INCLUDE DRIVE-THROUGHS ON ANY LOT ADHACENT TO ANY RESIDENTIAL USE OR ZONE.</p> <p>PROHIBITED:</p> <ol style="list-style-type: none"> a. – USES NOT ENUMERATED IN SECTION 14-182 AND 14-183 AS EITHER PERMITTED USES OR CONDITIONAL USES ARE PROHIBITED. <ol style="list-style-type: none"> 2. INSTITUTIONAL – PRIVATE CLUBS, LONG-TERM CARE FACILITY, PLACE OF ASSEMBLY, MUNICIPAL OFFICE, SCHOOLS, CLINICS LESS THAN 3,000 SF, UNIVERSITIES, TRADE SCHOOLS, AND COLLEGES. 3. OTHER – LODGING HOUSES, BED AND BREAKFAST, DAY CARE, ACCESSORY USES, STUDIOS FOR ARTISTS AND CRAFTSPEOPLE 	<p>PERMITTED USES</p> <ol style="list-style-type: none"> 4. RESIDENTIAL – SINGLE, TWO FAMILY, MULTIFAMILY, COMBINED LIV ING/WORKING SPACES <p>BUSINESSES – RETAIL, GENERAL, BUSINESS AND PROFESSIONAL OFFICE, PERSONAL SERVICES, OFFICES OF TRADESMAN BUSINESS USES, RETAIL ESTABLISHMENTS RESTAURANTS, FUNERAL HOMES, COMMUNICATION STUDIOS, HEALTH CLUBS, VETERINARY HOSPITALS, THEATERS AND PERFORMANCE HALLS, HOTELS AND MOTELS, DRIVE-THROUGHS ASSOCIATED WITH A PERMITTED USE IN THE B-2 ZONE PROVIDED THAT SUCH DO NOT INCLUDE DRIVE-THROUGHS ON ANY LOT ADHACENT TO ANY RESIDENTIAL USE OR ZONE.</p> <p>PROHIBITED:</p> <ol style="list-style-type: none"> a. DRINKING ESTABLISHMENTS, BILLIARD PARLORS, AND CONDITIONAL USES ARE PROHIBITED. <ol style="list-style-type: none"> 5. INSTITUTIONAL – PRIVATE CLUBS, LONG-TERM CARE FACILITY, PLACE OF ASSEMBLY, MUNICIPAL OFFICE, SCHOOLS, CLINICS LESS THAN 3,000 SF, UNIVERSITIES, TRADE SCHOOLS, AND COLLEGES. OTHER – LODGING HOUSES, BED AND BREAKFAST, DAY CARE, ACCESSORY USES, STUDIOS FOR ARTISTS AND CRAFTSPEOPLE
<p>CONDITIONAL USES</p> <ol style="list-style-type: none"> 1. RESIDENTIAL – SHELTER GROUP HOMES, ACCESSORY UNIT TO A SINGLE FAMILY HOME 2. INSTITUTIONAL 	<p>CONDITIONAL USES</p> <ol style="list-style-type: none"> 1. AUTO SERVICE STATIONS 2. DRIVE-THROUGHS 3. AUTOMOBILE DEALERSHIPS 4. CAR WASHES 5. DRIVE-THROUGHS IN THE B-2 OR B-2B ZONES WHICH ARE 	<p>NO CONDITIONAL USES ARE PERMITTED.</p> <p>USES PROHIBITED:</p> <ol style="list-style-type: none"> 1. DRINKING ESTABLISHMENTS 2. BILLIARD PARLORS

<p>USES-ELEMENTARY, MIDDLE AND SECONDARY SCHOOLS, LONG-TERM AND EXTENDED CARE, CHURCH OR PLACE OF WORSHIP, PRIVATE CLUB OR FRATERNAL ORGANIZATION, AND HOSPITAL</p> <p>3. OTHER – PARKING LOT, UTILITY STATION, DAY CARE FACILITIES AND PABY SITTING SERVICES, TEMPORARY WIND ANEMOMETER TOWERS</p>	<p>ADJACENT TO ANY RESIDENTIAL USE OR ZONE, PROVIDED THAT, IN THE B-2B DRIVE-THROUGHS MUST BE ACCESSORY TO A PRINCIPAL USE LOCATED ON THE SAME SITE.</p>	
<p>DIMENSIONAL REQUIREMENTS</p> <p>MINIMUM LOT SIZE</p> <p>6,500 SF FOR RESIDENTIAL (LARGER LOTS REQUIRED FOR OTHER USES.)</p> <p>1. SETBACK</p> <p>a. FRONT – 25 FT.</p> <p>b. REAR – 25 FT.</p> <p>c. SIDE – 8 FT. (1 & 1.5 STORY STRUCTURE)</p> <p>d. SIDE – 14 FT (2 STORY STRUCTURE)</p> <p>e. SIDE – 16 FT (2.5 STORY STRUCTURE)</p>	<p>DIMENSIONAL REQUIREMENTS</p> <p>1. SETBACK</p> <p>a. FRONT – NONE</p> <p>b. REAR – 10 FT., 20 FT. (IF ABUTTING RESIDENTIAL)</p> <p>c. SIDE – NONE, (IF PRINCIPAL AND ACCESSORY STRUCTURES)</p> <p>OTHER REQUIREMENTS</p> <p>a. LANDSCAPING AND SCREENTING</p> <p>b. CURBS AND SIDEWALKS</p> <p>c. OFF-STREET PARKING</p> <p>d. FRONT YARD PARKING</p> <p>e. SIGNS</p> <p>f. EXTERIOR STORAGE</p> <p>g. STORAGE OF VEHICLES</p>	<p>PERFORMANCE STANDARDS</p> <p>1. SETBACK</p> <p>d. FRONT – 45 FT</p> <p>e. REAR – 10 FT., 20 FT. (IF ABUTTING RESIDENTIAL)</p> <p>f. SIDE – NONE, (IF PRINCIPAL AND ACCESSORY STRUCTURES)</p> <p>OTHER REQUIREMENTS</p> <p>a. LANDSCAPING AND SCREENTING</p> <p>b. CURBS AND SIDEWALKS</p> <p>c. OFF-STREET PARKING</p> <p>d. FRONT YARD PARKING</p> <p>e. SIGNS</p> <p>f. EXTERIOR STORAGE</p> <p>g. STORAGE OF VEHICLES</p>

Shukria Wiar - Re: proposed zoning change for Washington Park

From: Barbara Barhydt
To: Menges, J
Date: 7/13/2010 12:09 PM
Subject: Re: proposed zoning change for Washington Park
CC: Jaegerman, Alex; Wiar, Shukria

Hello:

The Planning Board will hold a public hearing on this proposal on July 27, 2010 in room 209 of City Hall. The public hearing begins at 7:00 p.m. and this is tentatively scheduled as the fourth item that evening. The Planning Board will vote on a recommendation to be forwarded to City Council. The City Council will hold a public hearing on the request and make the final decision. The date of the Council meeting is not yet determined.

We will include your comments below in the Planning report going to the Planning Board. Shukria Wiar is the planner assigned to review this proposal.

Thank you.

Barbara

>>> "J Menges" <menges@maine.rr.com> Tuesday, July 13, 2010 11:34 AM >>>
Greetings:

As invited in correspondence from J B Brown & Sons dated 7/1, I am writing to provide comments regarding the proposed zoning change for Washington Park. While I think the developer is trying to do all the right things, I believe there is a fundamental error in the proposed plan; I believe the change will precipitate a negative impact on our neighborhood and this part of the city.

1. Mowing down the beautiful big trees in favor of another brick building and asphalt parking lot leads us further and further away from the aesthetic original to our city, the Forrest City.
2. Also, I can't imagine why the city needs another office building. A much better use of anyone's resources would be in restoring existing spaces that are left vacant. Surely this could be less expensive and generate just as much new tax revenue.

When will the final decision be made about this petition? Will this happen in a public forum? If so, I would like to attend.

Thanks for your time to consider my comments.

Joyce Ann Menges
1 Pine Ledge Ter
Portland, ME 04103

207-828-2096

Shukria Wiar - 901 Washington Ave

From: Sue C <calhousu@hotmail.com>
To: <shukriaw@portlandmaine.gov>
Date: 6/22/2010 9:41 AM
Subject: 901 Washington Ave

To the Planning board - I live accross the street from 901 Washington Ave., on Pine Ledge Terrace, and I am strongly opposed to this zoning change. That area is a beautiful little park, where I walk my dog every day, and it is full of very old, large trees that provide habitat for birds in the neighborhood. It is also a buffer from the road of the ugly, extensive parking lot of the Rainbow Mall. I also assume that it provides absorbtion from the run-off from the parking lot. I intend to check out the plans in city hall before the public hearing. Please keep me informed.

Thank you,
Susan Calhoun

The New Busy think 9 to 5 is a cute idea. Combine multiple calendars with Hotmail. [Get busy.](#)

From: Manduca Music <manduca@maine.edu>
To: <shukriaw@portlandmaine.gov>
Date: 6/21/2010 7:53 PM
Subject: Rainbow Mall Business Park
Attachments: Part.001

Dear Shukria Wiar,

I am writing concerning the proposed change in zoning from Residential R-3 to Community Business B-2 of 901 Washington Ave.

My first concern is that I just received this postcard which gave me no time to do any research on this plan, nor to change my work schedule to attend the meeting on Tuesday June22 at 3:30.

I am concerned that adding more buildings to this plot of land will further increase traffic and change the residential character of the neighborhood. It is bad enough that we have to contend with the traffic on Washington Ave. The small tree-filled grassy area on Washington Ave provides an excellent buffer for these buildings. To replace it with other buildings will destroy the residential feel.

855 and 861 Washington Ave. received considerable damage due to blasting when the Atrium built buildings, and we also still are contending with water pouring off the road they graded directly into our backyards.

Martin's Point employees park on Rainbow Mall Road, and if you take a look, they leave cigarette butts all over that area. The other day on my walk I had to stamp butts out as people were throwing them out of their windows. Trash is strewn in the woods. People drive very fast out of the parking lot and continually speed around the curve on Rainbow Mall Rd. There have been times I've had to jump up on the green area with my dog as employees have sped out of the parking lot. There are a lot of elderly walkers from Ledgewood and they have complained as well.

We do not wish to see more development in this area. We are still disgusted that the city did nothing to help us with the damage that was caused by the building of the Atrium. It is grossly unfair for those of us who have owned houses here for forty years or more to be surrounded by these buildings. We do not favor this zoning change.

Sincerely, Mark and Elizabeth Manduca 861 Washington

Ave.
Manduca Music
www.manducamusic.com



Zoning Amendment Application

Department of Planning and Development, Planning Division and Planning Board

PROJECT ADDRESS: 901 Washington Avenue

CHART/BLOCK/LOT: 170-F-1, 170-F-2, 174-B-2

CONTACT INFORMATION:

APPLICANT

Name: J.B. Brown & Sons
 Address: 36 Danforth St.
P.O. Box 207
Portland, Maine
 Zip Code: 04112-0207
 Work #: (207) 774-5908
 Cell #: (207) 838-3397
 Fax #: (207) 774-0898
 Home: _____
 E-mail: veroneau@jbbrown.com

PROPERTY OWNER

Name: J.B. Brown & Sons
 Address: 36 Danforth St.
P.O. Box 207
Portland, Maine
 Zip Code: 04112-0207
 Work #: (207) 774-5908
 Cell #: (207) 838-3397
 Fax #: (207) 774-0898
 Home: _____
 E-mail: veroneau@jbbrown.com

BILLING ADDRESS

Name: J.B. Brown & Sons
 Address: 36 Danforth Street
P.O. Box 207
Portland, Maine
 Zip: 04112-0207
 Work #: (207) 774-5908
 Cell #: (207) 838-3397
 Fax #: (207) 774-0898
 Home: _____
 E-mail: jbbrown@jbbrown.com

~As applicable, please include additional contact information on the next page~

AGENT/REPRESENTATIVE

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ARCHITECT

Name: Robert Howe, HKTA
Address: 482 Congress St.
Portland, ME
Zip Code: 04101
Work #: (207) 774-6016
Cell #: _____
Fax #: (207) 774-9128
Home: _____
E-mail: hkta@aol.com

SURVEYOR

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ENGINEER

Name: DeLuca - Hoffman Associates
Address: 778 Main Street
South Portland, Maine
Zip Code: 04106
Work #: (207) 775- 1121
Cell #: _____
Fax #: (207) 879-0896
Home: _____
E-mail: _____

CONSULTANT

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ATTORNEY

Name: David Galgay, Esq., Verrill Dana
Address: One Portland Square
Portland, Maine
Zip Code: 04101
Work #: (207) 774-4000
Cell #: _____
Fax #: _____
Home: _____
E-mail: dgalgay@verrilldana.com

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

Applicant is the owner in fee simple by virtue of a Deed dated 5/9/1977 from Prudential Insurance to Old Port Realty Corp and recorded in the Cumberland County Register of Deeds at Book 4013, Page 113. ~~J.B. Brown & Sons is the Successor in Interest by merger with Old Port Realty Corp.~~

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

Existing Use:

Describe the existing use of the subject property:

Property is currently being used as office space

Current Zoning Designation(s):

Combination of B-2 & R-3, the approximate area of R-3 requested for re-zoning is 63,772 s.f.

Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

Applicant plans to construct an additional office building on land between the existing parking lot and Washington Avenue, which is currently zoned B-2 and R-3. The Developer will remove a portion of existing landscaped area, which will be replaced with a single story office building, associated parking, and new landscaping.

Sketch Plan: On a separate sheet, please provide a sketch plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 100'.) Contract and conditional rezoning applications may require inclusion of site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

PROJECT DATA

The following information is required where applicable, in order complete the application


Total Site Area	751,844	sq. ft.
Proposed Total Disturbed Area of the Site	425,500	sq. ft.
(If the proposed disturbance is greater than one acre, then the applicant shall apply for a Maine Construction General Permit (MCGP) with DEP and a Stormwater Management Permit, Chapter 500, with the City of Portland.)		
<u>Impervious Surface Area</u>		
Proposed Total Paved Area	277,500	sq. ft.
Existing Total Impervious Area	385,000	sq. ft.
Proposed Total Impervious Area	425,500	sq. ft.
Proposed Impervious Net Change	40,500	sq. ft.
		18,000 bldg/22,500 parking
<u>Building Area</u>		
Existing Building Footprint	130,000	sq. ft.
Proposed Building Footprint	148,000	sq. ft.
Proposed Building Footprint Net change	18,000	sq. ft.
Existing Total Building Floor Area	130,000	sq. ft.
Proposed Total Building Floor Area	148,000	sq. ft.
Proposed Building Floor Area Net Change	18,000	sq. ft.
New Building	yes	(yes or no)
<u>Zoning</u>		
Existing	B2 & R-3	
Proposed	B-2	
<u>Land Use</u>		
Existing	Office	
Proposed	Same	
<u>Residential, if applicable</u>		
Proposed Number of Affordable Housing Units	N/A	
Proposed Number of Residential Units to be Demolished		
Existing Number of Residential Units		
Proposed Number of Residential Units		
Subdivision, Proposed Number of Lots		
<u>Parking Spaces</u>		
Existing Number of Parking Spaces	567	
Proposed Number of Parking Spaces	75	
Number of Handicapped Parking Spaces	20	(included in numbers above)
Proposed Total Parking Spaces	642	
<u>Bicycle Parking Spaces</u>		
Existing Number of Bicycle Parking Spaces	21	
Proposed Number of Bicycle Parking Spaces	7	
Total Bicycle Parking Spaces	28	
<u>Estimated Cost of Project</u>	\$2,000,000	

APPLICATION FEE:

Check the type of zoning review that applies. Payment may be made in cash or check to the City of Portland.

<p>Zoning Map Amendment X <u> </u> \$2,000.00 (from <u>R-3</u> zone to <u>B-2</u> zone)</p> <p>Zoning Text Amendment <u> </u> \$2,000.00 (to Section 14- <u> </u>) (For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (<u>example</u>), and language to be added is depicted with underline (<u>example</u>).</p> <p>Conditional or Contract Zone <u> </u> \$1,000.00 (under 5,000 sq. ft.) <u> </u> \$3,000.00 (5,000 sq. ft. and over)</p> <p>(A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)</p>

Signature: The above information is true and accurate to the best of my knowledge.

<p>Signature of Applicant: </p>	<p>Date: 5/17/2010</p>
--	----------------------------

Further Information

In the event of withdrawal of the zoning amendment application by the applicant, a refund of two-thirds of the amount of the zone change fee will be made to the applicant as long as the request is submitted to the Planning Division prior to the advertisement being submitted to the news paper.

J. B. BROWN & SONS
36 Danforth Street
P.O. Box 207
Portland, Maine 04112-0207
Phone 207-774-5908
Fax 207-774-0898

May 18, 2010

Barbara Barhydt
Development Review Services Manager
Department of Planning and Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Zone Change – 901 Washington Avenue

Dear Ms. Barhydt:

Enclosed please find seven (7) copies of a zone map amendment application and concept plan regarding J.B. Brown & Sons request to rezone a portion of property the company presently owns at 901 Washington Avenue from R-3 to B-2.

The entire Washington Park site is roughly 17.25 acres; approximately 15.75 acres are currently zoned B-2, and 1.5 acres are zoned R-3. The property was originally rezoned and developed in the 1970's as the Rainbow Mall, a grocery anchored center with an enclosed mall housing a number of smaller retailers. We assume the 1.5 acres of R-3 along Washington Avenue remained a "buffer" to the existing residential uses given the heavy traffic generated by a large retail facility.

The retail concept did not work at the property, and J.B. Brown & Sons purchased the facility in 1977, out of foreclosure, from Prudential Insurance. Over the past 30 years, the company has converted the original 103,000sf retail building to office space and in 2001 constructed a new 27,600sf office building on the property. The property is currently 100% occupied with long-term leases to Martin's Point, Maine Medical Center, and Time Warner. Several of the existing tenants have approached us about the possibility of constructing additional office space on the property.

Because the current B-2 zoned land is currently fully developed and office use is not allowed in the R-3 zone, we are requesting a zoning map amendment to change the R-3 zone to a B-2 zone. Our intent is to construct an additional office building of approximately 15,000 - 18,000sf with associated parking of roughly 75 spaces. A basic concept plan is enclosed to give some idea of the development, but we fully understand that a complete submission will be required should the zone change be endorsed by the Planning Board and approved by the City Council.

Barbara Barhydt
City of Portland
Page 2

Given that the current office use has significantly less impact on the surrounding area than the originally approved retail mall, the overall changes in the area that have taken place in the last 30 years, and the fact that the area requested for re-zoning is bound by roads on three sides and our existing development on the fourth, we feel the re-zoning request is not out of character for the area or at odds with the City's comprehensive plan.

Thank you for your efforts. Please do not hesitate to contact me with any questions or if you need additional information.

Sincerely,



Vincent P. Veroneau
President

NICHOLAS M. MAVODONES (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
DORY RICHARDS WAXMAN (A/L)
JILL C. DUSON (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE
ARTICLE III. ZONING
DIVISION. 10 B-2 and B-2 COMMUNITY BUSINESS ZONES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

*That sections 14-181, 14-182, 14-185 and 14-526 of the
Portland City Code be hereby amended to read as follows:*

Sec. 14-181. Purpose.

(a) B-2 Community Business Zone

The purpose of the B-2 community business zone is:

- (1) To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing and services serving the adjoining neighborhoods and the larger community.
- (2) The variety, sites and intensity of the permitted commercial uses in the B-2 zone are intended to be greater than those permitted in the B-1 neighborhood business zone.
- (3) The B-2 zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, ~~and~~ by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns.

(4) The B-2 and B-2b will provide locations for moderate to high density housing in urban neighborhoods and along arterials.

(b) B-2b Community Business Zone

The B-2b zone is intended to provide neighborhood and community retail, business and service establishments that are oriented to and built close to the street. The B-2b zone is appropriate in areas where a more compact urban development pattern exists such as on-peninsula or in areas off-peninsula where a neighborhood compatible commercial district is established ~~off-peninsula and each area, which~~ exhibits a pedestrian scale and character. Such locations may include the peninsula and other arterials and intersections with an existing urban or neighborhood oriented building pattern. ~~Building additions are encouraged but not required to meet the maximum setbacks of 14-185(e).~~

(c) B-2c Community Business Zone

To protect and enhance the quiet enjoyment of adjoining residential neighborhoods from the impacts of businesses that serve liquor and from other uses that are incompatible with adjoining neighborhoods due to noise.

Sec. 14-182. Permitted uses.

The following uses are permitted in the B-2, B-2b and B-2c zones except that any use involving a drive-throughs is are prohibited in these zones unless otherwise provided in section 14-183:

(a) Residential:

~~1. Any residential use permitted in the residential zone abutting the lot. If there is no abutting residential zone, the nearest residential zone to the lot. In the case of two (2) or more abutting residential zones, the most restrictive such zone; and~~

1. Attached single-family and two-family dwellings;

- 2. Multi-family dwellings are permitted, when the nearest residential zone abutting the lot is R-4, R-5, R-6 or R-7. Multi-family dwellings are permitted in any structure with commercial uses in the first floor regardless of the abutting residential zone;
- 3. Handicapped family units;
- 4. Combined living/working spaces including, but not limited to, artist residences with studio space; and
- ~~5.2. In any structure with commercial uses in the first floor, multi-family dwellings are permitted above the first floor.~~

(b) Business:

- 1. General, business and professional offices, as defined in section 14-47;
- 2. Personal services, as defined in section 14-47;
- 3. Offices of building tradesmen;
- 4. Retail establishments;
- 5. Restaurants, except that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m.;
- 6. Drinking establishments, except that drinking establishment as defined in section 14-47, and bars as defined in section 14-217.5 (a)(1), shall not be permitted in the B-2c zone;
- 7. Billiard parlors;
- 8. Mortuaries or funeral homes;
- 9. Miscellaneous repair services, excluding motor vehicle repair services;
- 10. Communication studios or broadcast and receiving facilities;

- 34
11. Health clubs and gymnasiums;
 12. Veterinary hospitals, but excluding outdoor kennels;
 13. Theaters and performance halls;
 14. Hotels or motels of less than One hundred fifty (150) rooms;
 15. Dairies in existence as of November 15, 1999;
 16. Bakeries in existence as of November 15, 1999;
 17. Bakeries established after November 15, 1999, provided the bakeries include retail sales within the principal structures. Bakeries in the B-2b zone shall be no greater than seven thousand (7,000) square feet in size;
 18. Drive-throughs associated with a permitted use in the B-2 zone provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary;
 19. Drive-throughs associated with a permitted use in the B-2b zone, when accessory to a principal use located on the same lot, provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary.

(c) *Institutional:*

1. Private club or fraternal organization;
2. Long term, extended and intermediate care facility;
3. Clinics, as defined in section 14-47;

- 4. Places of Religious Assembly~~Churches~~ ~~or other~~
~~places of worship;~~
- 5. Kindergarten, elementary, middle and secondary schools;
- 6. College, university, trade schools; and
- 7. Municipal buildings and uses.

(d) Other:

- 1. Lodging houses;
- 2. Day care facilities or babysitting services;
- 3. Utility substations, as defined in section 14-47, subject to the requirements of article V (site plan);
- 4. Accessory uses, as provided in section 14-404;
- 5. Bed and breakfast, subject to the standards of article V (site plan). A bed and breakfast may include a meeting facility if the facility meets the following standards:
 - a. The meeting facility shall be limited to the following types of uses:
 - i. Private parties.
 - ii. Business meetings.
 - iii. Weddings.
 - iv. Receptions.
 - v. Seminars.
 - vi. Business and educational conferences.
 - b. The building in which the bed and breakfast and the meeting facility will be located was in existence on March 3, 1997, and was greater than four thousand (4,000) square feet in floor area on that date.

3.6
a-6 Studios for artists and craft people, provided that the area of such studios does not exceed four thousand (4000) square feet for each studio space.

Sec. 14-185. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, residential uses as permitted under sections 14-182(a) and (b) shall meet the requirements of such abutting or nearest residential zone, and non-residential uses, where permitted, and newly constructed buildings with residential and non-residential uses shall meet the following requirements:

(1) Residential Uses:

(a) Minimum Lot Size: None.

(b) Minimum Street Frontage: None.

(c) Minimum Yard Dimensions:

1. Front yard: None.

2. Rear yard: Ten (10) feet, except where the lot abuts a residential zone, where twenty (20) feet is required.

a. Accessory structures: Five (5) feet.

b. In cases where the height of a new building exceeds forty-five (45) feet adjacent to a residential zone, the rear yard setback shall increase by two (2) feet for every one (1) foot in height above forty-five (45) feet.

c. In cases where a building that qualifies for the maximum front yard exceptions provided in Section 14-185 (1)(c)(5) below, the rear yard setback shall increase by two (2) feet for every one (1) foot in height above thirty-five (35) feet.

3. Side yard: Five (5) feet, except where the lot abuts a residential zone, where twenty (20) feet is required.

a. Accessory structures: Five (5) feet.

b. In cases where the height of a new building exceeds forty-five (45) feet adjacent to a residential zone, the side yard setback shall increase by two (2) feet for every one (1) foot in height above forty-five (45) feet.

c. In cases where a building that qualifies for the maximum front yard exceptions provided in Section 14-185 (1)(c)(5) below, the side yard setback shall increase by two (2) feet for every one (1) foot in height above thirty-five (35) feet.

4. Side yard on a side street: None.

~~4. Pavement Setback: For lots adjacent to a residential zone, pavement shall be set back a minimum of 7.5 feet from the side and rear property lines adjacent to a residential zone.~~

5. Maximum front yard: In the B-2, B-2b and B-2c zones; as provided for in Section 14-185 (2)(c)(1), except that the maximum front yard setback need not apply in the case of a development meeting one (1) or more of the following standards:

a. The lot has less than forty (40) feet of continuous frontage and the lot has a depth of more than one hundred (100) feet from the nearest street; or

b. The structures on the lot meet the maximum front yard or are within twenty (20) feet of the street and the remainder of the lot has less than forty (40) feet of continuous street frontage.

6. Pavement Setback: For lots adjacent to a residential zone, pavement shall be set back a minimum of ten (10) feet from the side and rear property lines adjacent to the residential zone.

3.8
(d) Maximum Impervious Surface Ratio: 90%.

(e) Maximum Residential Density:

1. On-Peninsula Locations, as defined in section 14-47: One thousand (1,000) square feet of land area per dwelling unit. Except that a development may exceed this requirement up to 435 square feet of land area per dwelling provided at least fifty (50) percent of the dwelling units shall have a minimum of two or more bedrooms.

2. Off-Peninsula Locations, as defined in section 14-47:

a. Residential density requirements of the nearest adjacent residential zone shall apply except for multi-family dwellings above the first floor of commercial uses as provided in (b) below.

b. Multi-family dwellings above first floor commercial uses: One Thousand (1,000) square feet of land area per dwelling unit is required.

(f) Maximum Structure Height:

a. B-2 and B-2c zones: Forty-five (45) feet.

b. B-2b zone: Forty-five (45) feet, except in the case of a building with a commercial first floor and residential upper floors, where fifty (50) feet is allowed.

(2) Business and Other Nonresidential Uses:

(a) Minimum lot size:

1. Intermediate, long-term and extended care facilities: Ten thousand (10,000) square feet.

2. Other Nonresidential uses where permitted:

- a. B-2 zone: Ten thousand (10,000) square feet;
- b. B-2b zone: None;
- c. B-2c zone: Ten thousand (10,000) square feet.

3. Where multiple uses are on one (1) lot, the highest applicable minimum lot size must be met.

~~4. Multi-family dwellings above the first floor commercial uses; 1,000 square feet of land area per dwelling unit in off-peninsula locations, as defined in Section 14-47, and 425 square feet of land area per dwelling unit in on-peninsula locations, as defined in Section 14-47.~~

(b) Minimum street frontage: Fifty (50) feet.

(c) Yard dimensions: (Yard dimensions include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum or maximum yard of another structure.)

Except as provided in subsection (e) below, the following setbacks are required:

1. Front Yard

a. Minimum front yard in B-2, B-2b and B-2c zones: None, ~~except that the front yard setback shall not exceed the average depth of the front yards of the closest developed lots on either side of the lot. A developed lot means a lot on which a principal structure has been erected.~~

b. Maximum front yard in the B-2 and B-2c zones: The maximum front yard setback shall not exceed the average depth of the front yard of the closest developed lots on either side of the lot in question unless the Planning Board or planning authority approves a modified setback pursuant to section 14-526(a)(27)(j). For purposes of this section a developed lot means a lot on

3.10
which a principal structure has been erected.

c.b. Maximum front yard in B-2b zone (On-peninsula): The maximum front yard setback shall either be: (i) ten feet; or (ii) in cases where the average depth of the front yard of the nearest developed lots on either side of the lot in question is less than ten feet, the front yard setback of the lot in question shall not exceed such average depth. A "developed lot" means a lot on which a principal structure has been erected.

In the B-2b zone the front yard shall be the yard adjoining the major street as determined by the highest traffic volume.
~~Building additions are not required to meet this maximum setback.~~

d.e. Maximum front yard in B-2b zone (Off-peninsula): None, except that the front yard setback shall not exceed the average depth of the front yards of the closest developed lots on either side of the lot. A developed lot means a lot on which a principal structure has been erected. In the B-2b zone the front yard shall be the yard adjoining the major street as determined by the highest traffic volume.

Where the front yard setback exceeds ten (10) feet, however, a continuous, attractive, and pedestrian scaled edge treatment shall be constructed along the street(s) consisting of street trees spaced at not more than fifteen (15) feet on center, (which otherwise meet the requirements of city arborist) and a combination of the following:

- i. landscaping of no less than four (4) feet in depth; and
- ii. ornamental brick or stone walls; and/or
- iii. ornamental fencing.

The site shall otherwise meet the requirements of article V (Site Plan).

2. Rear yard:

- a. Principal structures: Ten (10) feet. Where a rear yard abuts a residence zone or first floor residential use, twenty (20) feet is required.
- b. Accessory structures: Five (5) feet.

3. Side yard:

- a. Principal and accessory structures: None, except that where a side yard abuts a residential zone or a first floor residential use, ten (10) feet is required.
- b. Accessory structures: Five (5) feet.

c. Side yards on side streets (corner lot): In the B-2 and B-2c zone, a minimum of ten (10) feet. In the B-2b zone a maximum of ten (10) feet except that for any newly constructed building on a lot abutting two (2) or more streets, the maximum side yard shall apply to one street or to the side street that forms a corner with a major street as provided for in the maximum front yard provisions of this section. ~~In the B-2b zone, a maximum of ten (10) feet except that for any new construction on a lot abutting more than two streets, the maximum setback shall not apply beyond the two most major streets. (For purposes of this section, "major street" shall mean that street with the highest traffic volume and the greatest street width in comparison with the remaining streets). This maximum setback shall not apply to building additions.~~

(d) Minimum lot width: None.

(e) Maximum structure height:

3.12
1
a. B-2 and B-2c zones: Forty-five (45) feet, except that on lots in excess of five (5) acres, sixty-five (65) feet is permitted; provided each of the minimum setbacks required under subsection (3) above are increased by one (1) foot in distance for each foot of height above forty-five (45) feet.

b. B-2b zone: Fifty (50) feet.

(f) Maximum impervious surface ratio: Eighty (80) percent in the B-2 and B-2c; Ninety (90) percent in the B-2b.

(3) Building additions: Building additions for residential and non-residential uses are not required to meet the maximum front yard setback or the maximum side yard on side street setback contained in this section.

Sec. 14-526. Standards.

(a) Requirements for approval. The Planning Board or planning authority shall not approve a site plan unless it meets the following criteria:

...

(27) Development located in the B-1, B-1b, B-2, and B-2b zones shall meet the following additional standards. Where noted below, the city encourages adherence to the guidelines contained within the City's Technical and Design Standards and Guidelines, but such adherence is not mandatory in order to meet the standards otherwise set forth herein.

...

j. In general, buildings shall be sited in close proximity to the adjacent streets, but may be set back from streets as necessary to provide appropriate landscaping and pedestrian circulation areas. In cases where internal vehicular circulation patterns needed for safe and efficient ingress and egress are significantly compromised by the maximum building

setback, or the site layout is otherwise unduly compromised with respect to other site plan standards and objectives, the Planning Board or planning authority may modify the maximum setback to accommodate safe and efficient circulation patterns or achieve site layout compliance with applicable site plan standards.

**City of Portland, Maine
City Council Agenda Request Form**

TO: Sonia Bean, Senior Administrative Assistant
FROM: Alexander Jaegerman, Director of Planning Division
DATE: August 3, 2010

- 1) Council meeting at which action is requested: _____
1st reading: August 16, 2010
Final action: September 13, 2010
- 2) Can action be taken at a later date: YES NO
If not, why not:
- 3) This item is sponsored by: William Hall, Chair of the Planning Board

If a memorandum addresses the following issues you may attach and reference the memorandum but please highlight it so staff can easily answer I-V.

I. SUMMARY OF ISSUE

The Planning Board voted unanimously on July 27, 2010 to recommend to City Council JB Brown and Sons request for a conditional rezone agreement to change the portion of 901 Washington Avenue that is currently R3 Residential to conditional B2 Community Business.. The total parcel is currently in two zones; approximately 686,070 sq ft (15.75 acres) in B-2 zone and the frontage along Washington Avenue has 65,340 sq ft (1.5 acres) in the R-3 zone. The applicant is seeking to rezone 65,340 square feet (or 1.5 acres) of the site, which is within the R-3 zone, in order to permit the construction of an office building. The B-2 portion of the site was developed as the Rainbow Mall and over time the property has been converted to office uses. The applicant intends to expand the office use by constructing an additional office building of approximately 15,000 to 18,000 sq ft with associated parking of approximately 75 spaces.

II. REASON FOR SUBMISSION (What issue/problem will this address?)

According to the applicant, the existing buildings are currently all occupied with long-term leases to Martin's Point, Maine Medical Center and Time Warner. The applicant has been approached by the current tenants to expand and construct an additional office space on the property.

Since the property in the B-2 is fully developed and office use is not allowed in the R-3 zone, the applicant is requesting a zoning map amendment to change the R-3 zone to a conditional B-2 zone. The conditional rezoning agreement was suggested by the Planning Board in order to limit the range of permitted and conditional uses that could

occur on the site. The agreement excludes drive-throughs and all the conditional uses of the B-2 zone within the agreement. The applicant agrees with the limitations and is able to retain some of the broader range of business uses within the B-2 zone, if at some time the owners wish to lease space to a business use. The concept plan shows the building set back of 45 feet from Washington Avenue with a walkway to the public sidewalk. The 45 foot setback provides green space along Washington Avenue.

III. INTENDED RESULT (How does it resolve the issue/problem?)

The Conditional Rezone Agreement states that this parcel will be development for commercial uses allowed under the B-2 zone, excluding drive-throughs, drinking establishments, billiard parlors and all the Conditional Uses set forth in Section 14-183 of the Portland City Code. The conditional uses listed in B-2 include major and minor auto service stations, car washes, drive-throughs that are adjacent to any residential use or zone, automobile dealerships, printing and publishing establishments, whole sale distribution establishments, research/development and related production establishments, and temporary wind anemometers. The applicant will also provide a forty-five (45') landscaped buffer from Washington Avenue to the proposed building.

III. FINANCIAL IMPACT

The proposal does not have any known financial impact on the City.

V. STAFF ANALYSIS & RECOMMENDATION

Planning Board Recommendation

On July 27, 2010, the Planning Board held a public hearing to consider this conditional rezone request.

The Planning Board voted unanimously (4-0, Patterson, Hall, and Lewis absent) that on the basis of plans and materials submitted by the applicant and on the basis of information contained in Planning Report #23-10 relevant to standards for Conditional and Contract Zoning, the Board finds that the proposed conditional rezoning is consistent with the policies of the Comprehensive Plan of the City of Portland. The Planning Board therefore recommends to the City Council approval of the proposed Conditional Rezoning of 901 Washington Avenue.

PLANNING BOARD REPORT PORTLAND, MAINE

Conditional Rezone Agreement 901 Washington Avenue Conditional Rezone Agreement from R-3 to B-2 JB Brown and Sons, Applicant

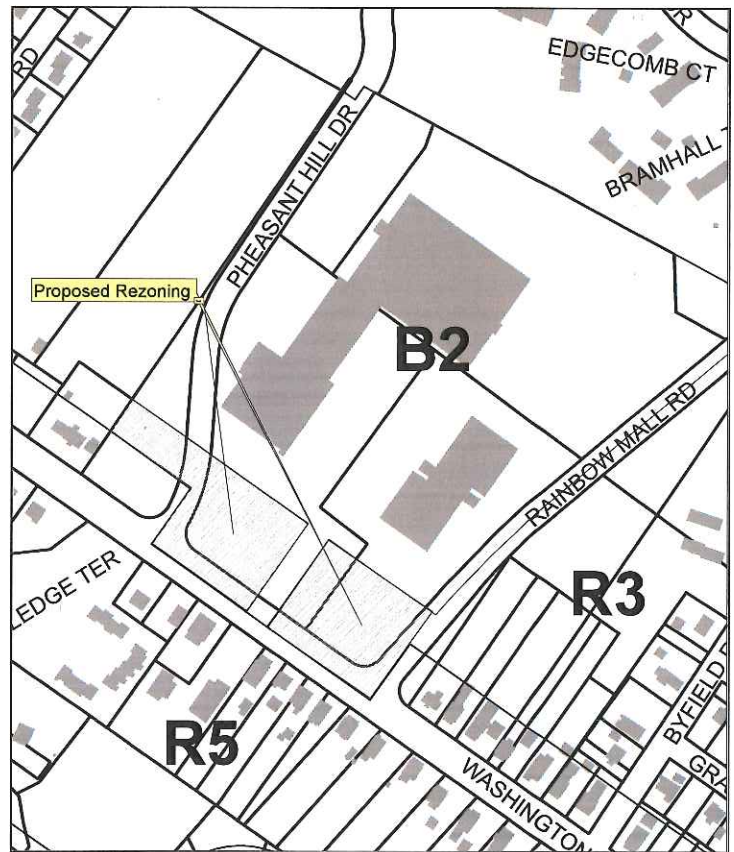
Planning Board Report# 23-10

Submitted to: Portland Planning Board Public Hearing Date: July 27, 2010	Prepared by: Shukria Wiar, Planner Date: July 23, 2010
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I. INTRODUCTION

JB Brown and Sons are requesting a conditional rezone agreement to change their parcel at 901 Washington Avenue from R3 Residential to conditional B2 Community Business along their Washington Avenue frontage, consisting of parcels shown on the City's Tax Map 170, Block F, Lot 001. The parcel is currently in two zones; approximately 686,070 sq ft (15.75 acres) in B-2 zone and 65,340 sq ft (1.5 acres) in R-3. The applicant is seeking to rezone 65,340 square feet (or 1.5 acres) of the site, which is within the R-3 zone, in order to permit the construction of an office building. The B-2 portion of the site was developed as the Rainbow Mall and over time the property has been converted to office uses. The applicant intends to expand the office use by constructing an additional office building of approximately 15,000 to 18,000 sq ft with associated parking of approximately 75 spaces.

Initially, the applicant requested a map amendment from R-3 to B-2 zone. During the workshop meeting on June 21, 2010, the Planning Board expressed concern regarding the potential permitted and conditional uses allowed under the B-2 zone. The R-3 portion of the parcel has served as a buffer between the businesses and the residential uses along Washington Avenue. The Board members expressed concern about the loss of the 'buffer' and the impact on the residential neighborhoods. Due



Map 1: Rezone Map

the concerns of the Board, the applicant has revised their request and is now proposing a conditional B-2 rezone agreement that will not allow the conditional uses of the zone. The proposed project would require major site plan review by the Planning Board if the rezoning is adopted.

Notice of the application and public hearing was sent to 199 area property owners and was advertised in the Portland Press Herald on July 19th and 20th edition and on the City website.

Representatives for the applicant include Vin Veroneau of JB Brown and Sons. Submitted application materials and site plans have been included as Attachment A-2 and A-3.

II. PROJECT DATA

- A. **EXISTING ZONING:** B-2 (Community Business) and R-3 (Residential)
- B. **PROPOSED ZONING:** The R-3 portion of the site is proposed to be conditional B-2 (Community Business)
- C. **AREA TO BE REZONED:** 65, 340 SQ. FT. FROM R-3 TO B-2
- D. **TOTAL AREA OF THE SITE:** 751, 410 SQ.FT.
- E. **USES IN VICINITY:** Existing and permitted uses in the neighborhood include a mix of residential along with commercial uses along Washington Avenue and institutional uses, including the Cheverus playing fields and Cedars Nursing Care Center

The property is accessed from Washington Ave. The site abuts an established single-family residential neighborhood zoned Residential (R-3). A planned residential development called Ledgewood is located to the north of the site in an R-5 zone. The immediate properties on either side of Washington Avenue are zoned R-5 and contain a variety of single family, two family and multi-family units. Please see **Table 1** below.

Table 1: Adjacent Zoning and Land Uses

Direction	Zone	Use
<i>North</i>	R-5	Residential, Single-Family Homes
<i>South</i>	R-5	Residential
<i>East</i>	R-3	Residential, Single-Family Homes
<i>West</i>	R-3	Residential, Two-Family Homes

III. PUBLIC COMMENTS AND NEIGHBORHOOD MEETING

a. Identify public comment received

There are four (4) public comments submitted; two via email (J. Menges of 1 Pine Ledge Terrace, Sue Calhousu of Pine Ledge Terrace and Manduca Music of 861 Washington Avenue) and one phone call (Josephine Orlfley of 965 Washington Ave), see Attachment 4 for the emails. Some of the concerns that have been raised about the project are as follows:

- The existing landscaped buffer provides a good barrier from the business park and surrounding neighborhoods.
- Traffic will be increased due to the increased buildings on site.
- The residential feeling of the neighborhood would be lost.

b. Reference Neighborhood Meeting Schedule and Abutter Comments

The applicant held a neighborhood meeting on Saturday, July 12, 2010 at 891 Washington Avenue. There were approximately fourteen (14) area residents that attended this meeting. Please refer to Attachment 3 for the meeting minutes and attended sheet.

IV. PROJECT DESCRIPTION

The request is to rezone the portion of the property from R-3 to conditional B-2 as the applicant is seeking to construct a 15,000 to 18,000 square foot office building. The site is partially zoned R-3 (65,340 sq. ft.) which does not permit the offices as a permitted use and the B-2 zone permits general, business and professional offices. Even though the land on the other side of the Pheasant Hill Road is part of the conditional B-2 zone, it is unbuildable and no structure will be placed on this portion. This will give even more buffer between this property and the proposed future building and the neighborhood on the north side.

Map 2: 2006 Existing Conditions



V. STAFF REVIEW

A. ZONING ASSESSMENT

According to Marge Schmuckal's analysis, the current office uses and telemarketing services for Time Warner would not be a permitted use in the RP zone, although it may qualify as a conditional use. This would be determined at the time of a conditional use review by the Zoning Board of Appeals.

The proposed change of the R-3 zone to a B-2 zone would allow for the office use expansion. The B-2 zone permits general, business and professional offices.

B. BACKGROUND AND ZONING ANALYSIS

The property was originally rezoned and developed in the 1970's as the Rainbow Mall, a grocery store center with an enclosed mall accommodating a number of smaller retailers. We understand that the original purpose of the 1.5 acres of R-3 along Washington Avenue remained as a visual buffer to the existing surrounding residential uses.

The retail concept was unsuccessful and JB Brown and Sons purchased the facility out of foreclosure in 1977. The original building has since been converted to office space and in 2001 an additional office building was constructed on the property. According to the applicant, the buildings are currently all occupied with long-term leases to Martin's Point, Maine Medical Center and Time Warner. The applicant has been approached by the current tenants to expand and construct an additional office space on the property.

Since the property in the B-2 is fully developed and office use is not allowed in the R-3 zone, the applicant is requesting a zoning map amendment to change the R-3 zone to a B-2 zone. The applicant also seeks to retain the broader range of permitted uses within the B-2 zone, if at some time the owners wish to lease space to a business use. The concept plan shows the building set back of 45 feet from Washington Avenue with a walkway to the public sidewalk. The vehicle circulation would be from within the site and the current driveway entrances. While the 45 foot setback provides green space along the street, it would require an exception from the B-2 design standards that encourage buildings to be built near the street line.

The B-2 text is included as Attachment B and it includes the recommended text amendments that the City Council will be considering at a public hearing on June 21, 2010. The B-2 zone is intended for businesses that serve the adjoining local community as well as the larger community and allows a broad range of office space uses under the category 'General, business and professional offices'.

The following are charts that breakdown the existing zone (R-3), the B-2 zone and the proposed Conditional Rezone Agreement

ZONING COMPARISON – SUMMARY

RESIDENTIAL R-3	BUSINESS B-2	CONDITIONAL REZONE AGREEMENT
PERMITTED USES 1. RESIDENTIAL – SINGLE FAMILY 2. PLANNED RESIDENTIAL UNIT DEVELOPMENT 3. PARKS 4. HOME OCCUPATION 5. MUNICIPAL USES	PERMITTED USES 1. RESIDENTIAL – SINGLE, TWO FAMILY, MULTIFAMILY, COMBINED LIV ING/WORKING SPACES BUSINESSES – RETAIL, GENERAL, BUSINESS AND PROFESSIONAL OFFICE, PERSONAL SERVICES, OFFICES OF TRADESMAN BUSINESS USES, RETAIL ESTABLISHMENTS RESTAURANTS, DRINKING ESTABLISHMENTS, BILLIARD PARLORS, FUNERAL HOMES, COMMUNICATION STUDIOS, HEALTH CLUBS, VETERINARY HOSPITALS, THEATERS AND PERFORMANCE HALLS, HOTELS AND MOTELS, DRIVE-	PERMITTED USES 4. RESIDENTIAL – SINGLE, TWO FAMILY, MULTIFAMILY, COMBINED LIV ING/WORKING SPACES BUSINESSES – RETAIL, GENERAL, BUSINESS AND PROFESSIONAL OFFICE, PERSONAL SERVICES, OFFICES OF TRADESMAN BUSINESS USES, RETAIL ESTABLISHMENTS RESTAURANTS, FUNERAL HOMES, COMMUNICATION STUDIOS, HEALTH CLUBS, VETERINARY HOSPITALS, THEATERS AND

	<p>THROUGHS ASSOCIATED WITH A PERMITTED USE IN THE B-2 ZONE PROVIDED THAT SUCH DO NOT INCLUDE DRIVE-THROUGHS ON ANY LOT ADHACENT TO ANY RESIDENTIAL USE OR ZONE.</p> <p>PROHIBITED:</p> <p>a. – USES NOT ENUMERATED IN SECTION 14-182 AND 14-183 AS EITHER PERMITTED USES OR CONDITIONAL USES ARE PROHIBITED.</p> <p>2. INSTITUTIONAL – PRIVATE CLUBS, LONG-TERM CARE FACILITY, PLACE OF ASSEMBLY, MUNICIPAL OFFICE, SCHOOLS, CLINICS LESS THAN 3,000 SF, UNIVERSITIES, TRADE SCHOOLS, AND COLLEGES.</p> <p>3. OTHER – LODGING HOUSES, BED AND BREAKFAST, DAY CARE, ACCESSORY USES, STUDIOS FOR ARTISTS AND CRAFTSPEOPLE</p>	<p>PERFORMANCE HALLS, HOTELS AND MOTELS, DRIVE-THROUGHS ASSOCIATED WITH A PERMITTED USE IN THE B-2 ZONE PROVIDED THAT SUCH DO NOT INCLUDE DRIVE-THROUGHS ON ANY LOT ADHACENT TO ANY RESIDENTIAL USE OR ZONE.</p> <p>PROHIBITED:</p> <p>a. DRINKING ESTABLISHMENTS, BILLIARD PARLORS, AND CONDITIONAL USES ARE PROHIBITED.</p> <p>5. INSTITUTIONAL – PRIVATE CLUBS, LONG-TERM CARE FACILITY, PLACE OF ASSEMBLY, MUNICIPAL OFFICE, SCHOOLS, CLINICS LESS THAN 3,000 SF, UNIVERSITIES, TRADE SCHOOLS, AND COLLEGES. OTHER – LODGING HOUSES, BED AND BREAKFAST, DAY CARE, ACCESSORY USES, STUDIOS FOR ARTISTS AND CRAFTSPEOPLE</p>
<p>CONDITIONAL USES</p> <p>1. RESIDENTIAL – SHELTER GROUP HOMES, ACCESSORY UNIT TO A SINGLE FAMILY HOME</p> <p>2. INSTITUTIONAL USES-ELEMENTARY, MIDDLE AND SECONDARY SCHOOLS, LONG-TERM AND EXTENDED CARE, CHURCH OR PLACE OF WORSHIP, PRIVATE CLUB OR FRATERNAL ORGANIZATION, AND HOSPITAL</p> <p>3. OTHER – PARKING LOT, UTILITY STATION, DAY CARE FACILITES AND PABY SITTING SERVICES, TEMPORARY WIND ANEMOMETER TOWERS</p>	<p>CONDITIONAL USES</p> <p>1. AUTO SERVICE STATIONS</p> <p>2. DRIVE-THROUGHS</p> <p>3. AUTOMOBILE DEALERSHIPS</p> <p>4. CAR WASHES</p> <p>5. DRIVE-THROUGHS IN THE B-2 OR B-2B ZONES WHICH ARE ADJACENT TO ANY RESIDENTIAL USE OR ZONE, PROVIDED THAT, IN THE B-2B DRIVE-THROUGHS MUST BE ACCESSORY TO A PRINCIPAL USE LOCATED ON THE SAME SITE.</p>	<p>NO CONDITIONAL USES ARE PERMITTED.</p> <p>USES PROHIBITED:</p> <p>1. DRINKING ESTABLISHMENTS</p> <p>2. BILLIARD PARLORS</p>
<p>DIMENSIONAL REQUIREMENTS</p> <p>MINIMUM LOT SIZE</p> <p>6,500 SF FOR RESIDENTIAL</p>	<p>DIMENSIONAL REQUIREMENTS</p> <p>1. SETBACK</p> <p>a. FRONT – NONE</p> <p>b. REAR – 10 FT., 20 FT. (IF</p>	<p>PERFORMANCE STANDARDS</p> <p>1. SETBACK</p> <p>d. FRONT – 45 FT</p> <p>e. REAR – 10 FT., 20 FT. (IF</p>

(LARGER LOTS REQUIRED FOR OTHER USES.) 1. SETBACK a. FRONT – 25 FT. b. REAR – 25 FT. c. SIDE – 8 FT. (1 & 1.5 STORY STRUCTURE) d. SIDE – 14 FT (2 STORY STRUCTURE) e. SIDE – 16 FT (2.5 STORY STRUCTURE)	ABUTTING RESIDENTIAL) c. SIDE – NONE, (IF PRINCIPAL AND ACCESSORY STRUCTURES) OTHER REQUIREMENTS a. LANDSCAPING AND SCREENING b. CURBS AND SIDEWALKS c. OFF-STREET PARKING d. FRONT YARD PARKING e. SIGNS f. EXTERIOR STORAGE g. STORAGE OF VEHICLES	ABUTTING RESIDENTIAL) f. SIDE – NONE, (IF PRINCIPAL AND ACCESSORY STRUCTURES) OTHER REQUIREMENTS a. LANDSCAPING AND SCREENING b. CURBS AND SIDEWALKS c. OFF-STREET PARKING d. FRONT YARD PARKING e. SIGNS f. EXTERIOR STORAGE g. STORAGE OF VEHICLES
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C. CONDITIONAL REZONE AGREEMENT:

After the discussion with the Planning Board during the workshop hearing, the applicant is now proposing a conditional rezone agreement. The following are some of the highlights of the agreement; please see Attachment 1 for the complete agreement:

***WHEREAS, DEVELOPER** seeks to more fully develop the **PROPERTY** consistent with B-2 Zone permitted uses; and*

***WHEREAS,** the R-3 zone does not currently allow non-residential uses as permitted uses and the purpose of this conditional rezoning is to allow the **PROPERTY** to be developed for commercial uses allowed in the B-2 Zone (excluding conditional uses authorized in the B-2 Zone); and*

***WHEREAS,** this rezoning is consistent with the purpose B-2 community business zone, which is to provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses and services; and*

***WHEREAS,** the commercial policies of the **CITY'S** Comprehensive Plan calls for promoting and revitalizing existing commercial centers and promoting high quality office park development seeking a more suburban-style setting; and*

***WHEREAS,** the **CITY'S** Comprehensive Plan also encourages sustainable development patterns and opportunities within the City by promoting efficient land use, conservation of natural resources and easy access to public transportation, services and public amenities.*

***WHEREAS,** the **CITY'S** Comprehensive Plan designates this area as a growth area and a potential mixed use area within the future land use plan; and*

***WHEREAS,** the existing and permitted uses in the neighborhood include a mix of residential along with commercial uses along Washington Avenue and institutional uses including the Cheverus playing fields and Cedars Nursing Care Center; and*

And the conditional rezone agreement goes on to say:

- The **PROPERTY** shall otherwise conform to the requirements of the B-2 Zone except that the permitted uses of Drinking establishments and Billiard parlors, and all of the Conditional Uses set forth in Section 14-183 of the Portland City Code shall not be allowed on the **PROPERTY**.*

2. *All of the dimensional requirements of the B-2 Zone shall apply, except that the setback from Washington Avenue shall be forty-five (45) feet. Within this setback, the **DEVELOPER** shall provide a landscape buffer (the content and location of which shall be approved by the Planning Board during site plan review).*
3. *The **DEVELOPER** shall meet the performance standards of the B-2 Zone for the operation of all permitted uses on the **PROPERTY**, and the future development of the **PROPERTY** shall first be subject to site plan review by the Planning Board of the City of Portland.*

Staff comments: As the above agreement states that this parcel will be development for commercial uses allowed under the B-2 zone, excluding the conditional use that are allowed in the zone. Along with this condition, the permitted uses of Drinking establishments and Billiard parlors, and all of the Conditional Uses set forth in Section 14-183 of the Portland City Code shall not be allowed. The conditional uses listed in B-2 include major and minor auto service stations, car washes, drive-throughs that are adjacent to any residential use or zone, automobile dealerships, printing and publishing establishments, whole sale distribution establishments, research/development and related production establishments, and temporary wind anemometers. The applicant will also provide a forty-five (45') landscaped buffer from Washington Avenue to the proposed building.

D. COMPREHENSIVE PLAN COMPLIANCE

Based on a review of the comprehensive plan, the following statements are relevant to this proposal for the Planning Board's consideration. According to the Future Land Use Map and Growth Areas Map, the site has been designated a growth area in the B-2 Neighborhood Business and R-3 Residential.

- i. Goals and Policies
**COMMUNITY COMMERCIAL POLICES AND LAND USE PLAN -
September 1987-1988**
 - a. **Goal**
 - Accommodate the City's commercial activity within a range of functionally and physically defined commercial centers.
 - Promote preservation and revitalization of its existing commercial centers and maintain a scale within them that is compatible and integrated with other land uses.
 - Maintain and promote a community, which is attractive to both existing and prospective families and homeowners to help support the neighborhood commercial district.
 - Promote new office park development of high quality in outlying areas for development seeking a suburban-style setting.
 - Housing: Sustaining Portland's Future

Policy #5: Portland's Comprehensive Plan encourages a manageable level of growth that will sustain the City as a healthy urban center in which to live and work and to achieve a shared vision for Portland. Portland should

encourage sustainable development patterns and opportunities within the City by promoting efficient land use, conservation of natural resources, and easy access to public transportation, services, and public amenities.

ii. Future Land Use Map – B-2 Community Business

iii. Growth and Rural Areas Map – Growth Area designation

Staff Comment: Due to the site's location, the rezoning of the site to the conditional B-2 would meet the intent of a revitalizing a commercial area and promoting office park development. It also encourages efficient land use and provides employment and services along a major arterial. Any proposed use would require site plan review and meet the performance standards of the zone, (including B-2 Design Standards and Guidelines), which will minimize any impacts to adjoining residential homes.

The conditional rezoning agreement sets the front yard setback at 45 feet. The City Council adopted the new B-2 maximum setback language, on 07.19.2010, which allows the Planning Board or Planning authority to modify the maximum setback.

The proposed 45' setback remains an important site feature to the applicant, in order to maintain a strong landscape buffer in keeping with the original zoning arrangement of the site, while allowing the development to go forward. Thus this is incorporated into the conditional rezoning agreement to set the dimensional standards as part of the zone change.

V. STAFF RECOMMENDATIONS

The Planning staff recommends that the Planning Board make a positive recommendation to the City Council for the adoption of the Conditional Community Business B-2 Zone for 901 Washington Avenue.

VI. PLANNING BOARD RECOMMENDATION AND MOTIONS

On the basis of plans and materials submitted by JB Brown and Sons, the policies and requirements of the B-2 zone, Comprehensive Plan, public comment, the information provided in Planning Board Report #23-10, and/or other findings as follows:

1. That the Planning Board finds that the proposed Conditional Rezoning for JB Brown and Sons at 901 Washington Avenue as described in this Report is or is not] consistent with the Comprehensive Plan of the City of Portland; and
2. That the Planning Board finds that the proposed Conditional Zone Agreement proposed for JB Brown and Sons at 901 Washington Avenue is or is not] in compliance with the standards set out in 14-60-62; and
3. That the Planning Board therefore recommends or does not recommend] the Conditional Rezoning and associated Conditional Zone Agreement for JB Brown and Sons at 901 Washington Avenue to the City Council for its approval.

4-0

Attachments:

Planning Board Report Attachments

1. Conditional Rezone Agreement

Amendment Paragraph #3 to reads as follows:
Paragraph #2 to be revised to:

hasn't developed and believe it will not develop. A good amendment to the site. Goods well w/ Comp Plan
-8-

2. Vin Veroneau email dated 06.14.2010
3. Neighborhood Meeting and Minutes
4. Public Comments

Attachment A: Excerpts of Revised Material, 06.18.2010

- A-1 Application
- A-2 Cover Memorandum from Applicant
- A-3 Site Plan
- A-4 B-2 zoning standards

CONDITIONAL ZONE AGREEMENT
RE:
PROPERTY IN THE VICINITY OF
901 WASHINGTON AVENUE

AGREEMENT made this ___ day of _____, 2010 by **J. B. BROWN & SONS**, a Maine corporation with a principal place of business located at 36 Danforth Street, in Portland, Maine and having a mailing address of P.O. Box 207, Portland, Maine 04112-0207 (hereinafter sometimes referred to as "**DEVELOPER**").

W I T N E S S E T H

WHEREAS, DEVELOPER is the owner of certain land together with the improvements thereon situated at 871-931 Washington Avenue, in the City of Portland, County of Cumberland and State of Maine, and being more particularly described in a certain deed from Prudential Insurance Company of America to Old Port Realty Corp. dated May 9, 1977 and recorded in the Cumberland County Registry of Deeds in **Book 4013, Page 113**, with the **DEVELOPER** being the successor by merger to Old Port Realty Corp. (hereinafter referred to as the "**DEVELOPER'S DEED**"); and

WHEREAS, the property described in the **DEVELOPER'S DEED** consists of approximately 14.5 acres of developed real property and identified in the City of Portland on the Assessor's maps at the following Map, Block and Lot numbers: 170-F-001 and 170-F-002 (hereafter, the foregoing development shall be referred to as "**WASHINGTON PARK**"); and

WHEREAS, the improvements at **WASHINGTON PARK** include two (2) existing buildings, with the first building containing approximately 103,000 square feet and the second building containing approximately 27,600 square feet; together with parking areas and driveways; and

WHEREAS, the currently developed area of **WASHINGTON PARK** (14.5± acres), including a 60± foot wide strip of land dividing the **PROPERTY** (as defined below) running from the developed portion of **WASHINGTON PARK** to Washington Avenue, is located in the B-2 (Community Business) Zone; and

WHEREAS, the **DEVELOPER** seeks to develop a small portion (1.5± acres) of **WASHINGTON PARK**, specifically being the first approximately 163± feet as you enter from Washington Avenue, which property is located in the R-3 (Residential) Zone and also identified in the City of Portland on the Assessor's maps as a portion of the following Map, Block and Lot numbers: 170-F-001 and 170-F-002 (hereinafter referred to as the "**PROPERTY**"), with the exception of the 60± foot wide strip of land strip of land running through the middle from Washington Avenue, which as described above, is located in the B-2 Zone; and

WHEREAS, DEVELOPER seeks to more fully develop the **PROPERTY** consistent with B-2 Zone permitted uses; and

WHEREAS, the R-3 zone does not currently allow non-residential uses as permitted uses and the purpose of this conditional rezoning is to allow the **PROPERTY** to be developed for commercial uses allowed in the B-2 Zone (excluding conditional uses authorized in the B-2 Zone); and

WHEREAS, this rezoning is consistent with the purpose B-2 community business zone, which is to provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses and services; and

WHEREAS, the commercial policies of the **CITY's** Comprehensive Plan calls for promoting and revitalizing existing commercial centers and promoting high quality office park development seeking a more suburban-style setting; and

WHEREAS, the **CITY's** Comprehensive Plan also encourages sustainable development patterns and opportunities within the City by promoting efficient land use, conservation of natural resources and easy access to public transportation, services and public amenities.

WHEREAS, the **CITY'S** Comprehensive Plan designates this area as a growth area and a potential mixed use area within the future land use plan; and

WHEREAS, the existing and permitted uses in the neighborhood include a mix of residential along with commercial uses along Washington Avenue and institutional uses including the Cheverus playing fields and Cedars Nursing Care Center; 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**, subject, however, to certain conditions; and

WHEREAS, the City of Portland (hereinafter sometimes referred to as 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 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 rezoning will not cause 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; and

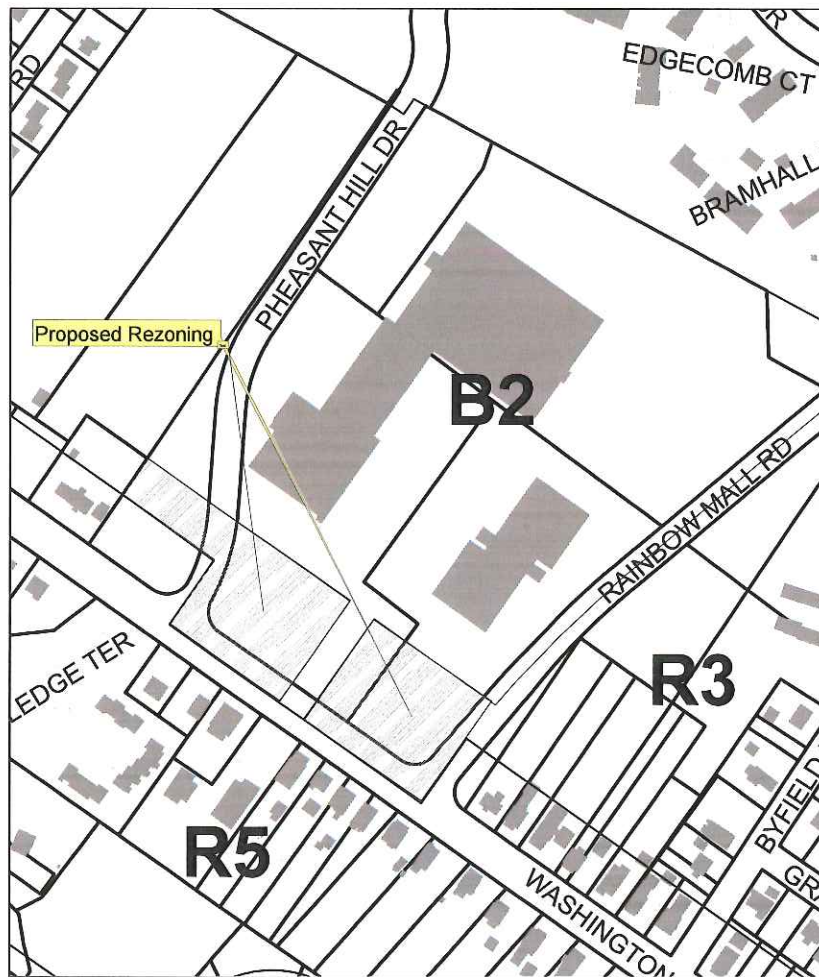
WHEREAS, on _____, 2010, the **CITY** authorized an amendment to its Zoning Map based upon the terms and conditions contained within this Agreement, which terms and

conditions, run with the land (i.e., the **PROPERTY**) and become part of the **CITY**'s zoning requirements.

NOW, THEREFORE, in consideration of the rezoning, **DEVELOPER**, and its successors and assigns covenants and agrees as follows:

1. Effective thirty days from the affirmative vote of the City Council on rezoning the **PROPERTY**, by Council Order No. _____, the **CITY** amends the Zoning Map of the City of Portland, dated December _____, as amended and on file in the Department of Planning and 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, which **PROPERTY** is depicted on the Map below as the two (2) shaded areas abutting Washington Avenue and bisected by the B-2 Zone strip of land extending to Washington Avenue.

Map 1: Proposed Rezoning



New language!

2. ~~The **PROPERTY** shall otherwise conform to the requirements of the B-2 Zone except that the permitted uses of Drinking establishments and Billiard parlors, and all of the Conditional Uses set forth in Section 14-183 of the Portland City Code shall not be allowed on the **PROPERTY**.~~
3. All of the dimensional requirements of the B-2 Zone shall apply, except that the ^(minimum of) setback from Washington Avenue shall be forty-five (45) feet. ^{and throughout} Within this setback, the **DEVELOPER** shall provide a landscape buffer (the content and location of which shall be approved by the Planning Board during site plan review).
4. The **DEVELOPER** shall meet the performance standards of the B-2 Zone for the operation of all permitted uses on the **PROPERTY**, and the future development of the **PROPERTY** shall first be subject to site plan review by the Planning Board of the City of Portland.
5. The above stated provisions are an essential part of the rezoning, shall bind and benefit **DEVELOPER**, its successors and assigns, and the **PROPERTY**, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives.
6. Within 60 days of the rezoning by the City Council, **DEVELOPER** shall file a duplicate original of this Agreement in the Cumberland County Registry of Deeds. The **DEVELOPER** shall provide to the **CITY** the Book and Page number of said recording.
7. If any of the provisions 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.
8. Except as expressly modified herein, the development, use, and occupancy of the **PROPERTY** 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.
9. 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, either the Portland Planning Board on its own initiative, or at the request of the Planning Authority, may make a recommendation to the City Council that the Contract Rezoning be modified or the **PROPERTY** rezoned.

Dated as of the date first above written.

J.B.BROWN & SONS

By: _____
Vincent P. Veroneau,
Its President

STATE OF MAINE
COUNTY OF CUMBERLAND

_____, 2010

Then personally appeared before me the above-named Vincent P. Veroneau, President of J.B. Brown & Sons, and acknowledged the foregoing instrument to be his free act and deed in said capacity, and the free act and deed of J. B. Brown & Sons.

Notary Public/Attorney-at-Law
Print Name: _____
My Commission Expires: _____

Shukria Wiar - RE: 901 Washington Ave

From: "Vin Veroneau" <veroneau@jbbrown.com>
To: BAB@portlandmaine.gov; SHUKRIAW@portlandmaine.gov; veroneau@jbbrown.com
Date: 6/14/2010 11:06 AM
Subject: RE: 901 Washington Ave
CC: jbbcasy@gmail.com; AQJ@portlandmaine.gov

Shukria,

Thank you for taking the time to meet last Friday to discuss some of the questions/concerns regarding our requested zone change from R-3 to B-2 at 901 Washington Avenue. At the meeting we primarily discussed the pros and cons of changing the zone to R-P versus the requested B-2, but that the general concept of a zone change to accommodate an additional building at the property seemed appropriate with the Planning Department.

In summary, below are the potential pros and cons identified during the meeting:

B-2:

Pros: Signage good, allowed uses consistent with current uses, same zone as balance of the property

Cons: Design standards more stringent, setbacks more restrictive

R-P:

Pros: No additional design standards, setbacks not as restrictive

Cons: Allowed uses are more restrictive than currently on-site, signage more restrictive

Having looked further at the B-2 design standards, the signage provisions, and the proposed B-2 zoning changes before the City Council, it seems the B-2 zone is more appropriate to the property than the R-P zone for the following reasons:

1. The signage allowed in the R-P zone, 30sf, is not sufficient to identify the current and future tenants at a property containing in excess of 145,000sf of space. The existing sign exceeds the R-P standard and that would need to be replaced and moved to accommodate the planned expansion.
2. Although the B-2 design standards are more stringent than the R-P zone, many of the B-2 standards will be incorporated in the new building. The one area that would need discussion is the visibility into the ground floor windows standard. We plan to have windows along the Washington Avenue frontage, but the elevation of the lot would likely make it difficult to see straight in to the windows.
3. The allowed uses in the R-P zone are too restrictive as they do not seem to allow general office use or telemarketing, except in the case of a medical user. We currently have Time Warner on the property and could imagine other general office uses in the new building that would not be allowed under the R-P zone.
4. The building setback concern in the B-2 zone given our proposed building setback of 45' should be minimized if the City Council adopts the revised B-2 zoning at their June 21st meeting.

For these reasons, along with the fact that a majority of the site (16+ acres) is currently zoned B-2, the requested change of the remainder of the property (1½ acres) to B-2 seems appropriate. It is our intention, should the Planning Board recommend and the City Council approve the B-2 zone change, to immediately submit a site plan application for an office building consistent with the basic site plan provided as part of the zone change application.

Thank you for your efforts. Please do not hesitate to contact me with any questions or if you would like to discuss our request in greater detail.

Regards,

Vin

Neighborhood Meeting Certification

I, Vincent P. Veroneau, President, J.B. Brown & Sons, hereby certify that a neighborhood meeting was held on July 12, 2010 at 891 Washington Avenue, Portland, Maine at 5:30pm.

I also certify that on July 2, 2010, invitations were mailed to all addresses on the mailing list provided by the Planning Division, including property owners within 500 feet of the proposed development and the residents on the "interested parties" list.

Signed,

 July 13, 2010

Attached to this certification are:

1. Copy of the invitation sent
2. Sign-in sheet
3. Meeting minutes

MEETING SIGN-IN SHEET

Project:	J.B. Brown & Sons – B-3 Conditional Zone Change 901 Washington Avenue, Portland, Maine	Meeting Date:	July 12, 2010 – 5:30PM
Facilitator:	Vincent Veroneau, President, J.B. Brown & Sons	Place/Room:	Martin's Point 891 Washington Avenue Portland, Maine 04103

Name	Address	Phone	E-Mail
Polly Pruneau	@ Pineledge Ter		pollyp@maine-rr.com
Nancy Roberts	8 Cushing Ct.	773-0014	—
JOHN LAPLANTE	15 SHEPHERD LANE	318-0194	
Ann TUCKER	331 Veranda St	791-3712	
Liz Manduca	861 Washington Ave	773-7012	mark@manduca-music.com
PAT TEVAMIN	1 CUSHING	772-2898	
^{Brianna} Mary Anne Wellen	9 Brunswick Ter	774-4096	
Betty Rumery	10 Fieldstone Ct	774-7948	No names ^{Colby}
TED ADAMS	7 GRAYSTONE LN	780-1597	
Bruce A. Campbell	17 GRAYSTONE LN	775-2886	bruce@maine-rr.com
Cheryl Yelmer	37 Savoy Street	773-4161	cal4161@yahoo.com
Suzanne Spence	7 Fieldstone Ct.	773-6621	
Joyce Menges	1 Pine Ledge Ter	828-2096	
Sue Calhoun	7 Pine Ledge Ter	761-4054	calhousu@hotmail.com
Vin Veroneau	40 Caldwell St	774-5908	veroneau@jbbrown.com

MINUTES OF NEIGHBORHOOD MEETING

Application of J.B. Brown & Sons RE: 901 Washington Ave – Zone Change
Date of Meeting: June 12, 2010 @ 891 Washington Avenue

The meeting began promptly at 5:30pm and attached is list of attendees.

Vin Veroneau opened the meeting by providing an overview of the upcoming meetings available for the public comment on the proposed zone change, which include a Planning Board meeting, scheduled for July 27, 2010 and, if the zone change request is recommended by the Planning Board, a yet unscheduled City Council meeting. Mr. Veroneau also explained that if the City Council adopts the zone change, J.B. Brown & Sons will then need to go through the Site Plan Review process for any development on the land, which will provide the opportunity for additional public comment on the project.

Mr. Veroneau then explained that J.B. Brown & Sons was seeking to change approximately 1.5 acres of land along Washington Avenue from an R-3 zone to a B-2 zone with conditions. The reason for the zone change request is to build an office building on the land. The current R-3 zone allows primarily residential development on the lot, which is typically not the type of development currently being undertaken by J.B. Brown & Sons. The conditions on the new B-2 zone land would be to eliminate the Conditional Uses currently contained in the B-2 zone as possible uses on the 1.5 acres. A site plan was made available showing a concept for an 18,000sf building setback approximately 45' from Washington Avenue. Mr. Veroneau explained that building would not be built on spec, but would be leased prior to construction. The meeting was then opened to questions and comments.

1. Question: What is the nature of the proposed tenancy?

1. Response: J.B. Brown & Sons is looking for office type tenant similar to existing companies that occupy the other buildings in the complex.

2. Q: What is the distance of the existing parking lot area to the rear of the proposed building?

2. R: Approximately 45 feet.

3. Q: Rainbow Mall Road is very congested. Many commuters park vehicles on the road, so how many additional parking spaces will be associated with the project?

3. R: Approximately 75 spaces – located on the sides and rear of the property.

4. Q: During the construction of an adjacent property, blasting requirements caused collateral damage to my property. Engineering firm investigated my complaint but they

denied any wrongdoing. I was never compensated for the damage. Do you have plans for blasting on this project?

4. R: At this time, we have not conducted any testing to determine the need for blasting. When 891 Washington was constructed, blasting was not necessary, so we are hopeful it will not be necessary for this building. If blasting is needed, a survey of existing conditions would be conducted as a baseline for determining if new blasting caused any new damage.

5. Comment: When 891 Washington was built, construction crews started working prior to the 6:30am normal starting time. I hope you can provide assurances that construction activity will start at a reasonable hour. I have a concern about snow removal operations conducted during overnight hours. The safety equipment horns cause significant noise levels at night. I asked their crews about dismantling this equipment but they replied that OSHA regulations precluded complying with that request.

6. Q: There are road flooding issues at the base of Pheasant Hill Road and Washington Avenue. I inquired at City Hall about the problem, but it is still a problem. Will this development worsen the problem?

6. R: During the city approval process, there will be an evaluation of environmental issues such as storm water generated by the development.

7. Q: What is the size of the proposed building?

7. R: The building has not been designed yet, but our concept plan shows a 75'x 240' single story building with a 45' buffer along Washington Avenue.

8. Q: Will you construct a wall in front of the property?

8. R: No, but we will look at creating a landscaped berm along Washington Ave.

9. Q: Will you construct a new driveway for access to Washington Avenue?

9. R: No, we plan to utilize the existing entrances.

10. Q: Traffic is very heavy on Washington Avenue. Do you think a traffic light will be needed as a result of your project?

10. R: We do not know at this time, but a traffic study will likely be conducted as part of the city's approval process.

11. Comment: I have a genuine concern regarding the nature of any prospective tenants.

11. R: Our goal is to negotiate with solid office tenants similar to the current users at the complex.

12. Q: What are benefits of this type of development to Portland?

12. R: Increased tax revenues with very little added expenses to Portland's budget along with creating and maintain quality jobs.

13. Q: What types of uses are allowed in a B-2 zone?

13. R: Some, but not all, of the uses include: General business offices, personal services, retail, restaurants, drinking establishments, billiard halls, funeral homes, health clubs.

14. Q: What exclusions have been suggested by JBB with respect to this specific B-2 project?

14. R: No auto service, car washes, auto dealerships, or drive-thru

Comment: Nature of recent construction projects that have occurred, specifically in North Deering, is changing the character of the city in a negative fashion. I believe the city is placing too much emphasis in generating tax revenues at the expense of quality development.

15. Q: Why not promote a better use at this site than office? Perhaps a restaurant, bistro.

15. A: This development is being driven by a potential office requirement, restaurant/small retail is not the risk profile we are interested in pursuing.

16. Q: What is height of the proposed office facility?

16. R: Single story building (12'-15').

17. Q: Has JBB considered concept of green building?

17. R: JBB has adopted a best management practice philosophy with regards to energy efficiency, but we do not feel the soft cost associated with actual LEED certification is not a prudent use of resources. Those dollars are better spent on actual energy saving features.

18. Q: Does JBB plan on developing triangular piece of land abutting Rainbow Mall Road?

18. R: The parcel is not suited for commercial development.

19. Q: Would you consider the triangular piece for parking?

19. R: Probably not feasible for parking since it would be too cost prohibitive to deal with the parcel's topography.

20: Q: Has any consideration been given to adding a second floor to the 891 Washington?

20: R: The nature of construction precludes that option.

21: Q: Do you plan on securing many different types of tenants for the project?

21: R: Facility will be designed to accommodate 1 - 2 office tenants.

22: Q: Does JBB really need an additional 75 spaces for new facility? There appears to be ample parking on the remainder of the facility?

22: R: Typically we would try to supply 5 spaces per 1,000sf. Because of bicycle access and bus service, the ratio on this property is closer to 4.3 spaces per 1,000sf.

23: Q: With bank credit tight, is there a bank that would finance a new building?

23: R: We do not intend to seek financing for this development.

24: Q: How long would it take to building the building?

24: R: Approximately 9-12 months depending on the interior fit-up.

25: Q: The trees on the site act as a buffer and are so nice and mature helping to hide the parking area; are they all eliminated by the proposed development?

25: R: Some of the trees along the edges would remain, but the trees in the center would be removed. We anticipate a heavily landscape area along Washington Avenue. We are equally concerned that any new development provides an inviting image from Washington Avenue.

26: Q: In light of a high office vacancy downtown, why is JBB considering office development at this site?

26: R: Many of the vacant spaces are old and functionally obsolete. The site is strategically located and attractive to the users we are speaking with.

27: Q: What is frontage length between Rainbow Mall Road and Pheasant Hill Road?

27: R: Approximately 770 feet

28: Q: What is length of proposed office building?

28: R: Currently 240 feet

29. Q: With respect to entire office complex, how many tenants are there and what is the square footage occupancy?

29. R: Martin's Point (68,000+/-sf), Maine Medical Center (33,000+/-sf), Time Warner (32,000+/-sf)

30. Q: What is the length of the respective leases?

30. R: 5 to 9 years

31. Q: How many parking spaces are located in the entire complex?

31. R: Approximately 570 spaces.

32. Q: Question for Cheryl Leeman: How does city view this proposed project?

32. R from Cheryl Leeman: The developer has been responsive to concerns addressed by city. They have agreed to provide forty five front buffer bordering Washington Avenue. Markets dictate usage demand for development sites. The tax base must be expanded; otherwise burden is shifted to residential homeowners. A 9 to 5 operation at this location is awesome; it limits impact to neighborhood versus a retail use. Traffic congestion of 75 cars has limited impact to neighborhood and Washington Ave. traffic.

33. C: One or more attendees did not receive notifications; they were alerted by a neighbor about this meeting. It was unclear, but possibly some individuals live outside 500 feet of the proposed project. Councilor Leeman stated that any concerned person can be added to the mailing list for future meetings.

34. C: Several neighbors expressed positive remarks about the evolution of the property during the past fifteen years.

By 6:45pm, there were no more questions and the meeting adjourned.

July 1, 2010

Dear Neighbor,

Please join us for a neighborhood meeting to discuss our proposal to rezone a portion of 891-901 Washington Avenue (Washington Park). The entire site is approximately 17.25 acres and approximately 15.75 acres are currently zoned B-2. We are requesting a zoning amendment to change the remaining 1.5 acres (R-3 zone) to a B-2 zone.

Meeting Location: 891 Washington Avenue

Meeting Date: July 12, 2010

Meeting Time: 5:30pm

The city code requires that property owners within 500 feet of the proposed development and residents on an "interested parties list," be invited to participate in a neighborhood meeting. A sign-in sheet will be circulated and minutes of the meeting will be taken. Both the sign-in sheet and minutes will be submitted to the Planning Board.

If you have any questions, please call 774-5908.

Sincerely,

Vincent Veroneau
J.B. Brown and Sons

Note:

Under Section 14-32(C) of the City Code of Ordinances, an applicant for a major development, subdivision of over five lots/units, or zone change is required to hold a neighborhood meeting at least seven days prior to the Planning Board public hearing on the proposal. Should you wish to offer additional comments on this proposed development, you may contact the Planning Division at 874-8721 or send written correspondence to the Department of Planning and Development, Planning Division 4th Floor, 389 Congress Street Portland, ME 04101 or by e-mail to: bab@portlandmaine.gov.

Shukria Wiar - Re: proposed zoning change for Washington Park

From: Barbara Barhydt
To: Menges, J
Date: 7/13/2010 12:09 PM
Subject: Re: proposed zoning change for Washington Park
CC: Jaegerman, Alex; Wiar, Shukria

Hello:

The Planning Board will hold a public hearing on this proposal on July 27, 2010 in room 209 of City Hall. The public hearing begins at 7:00 p.m. and this is tentatively scheduled as the fourth item that evening. The Planning Board will vote on a recommendation to be forwarded to City Council. The City Council will hold a public hearing on the request and make the final decision. The date of the Council meeting is not yet determined.

We will include your comments below in the Planning report going to the Planning Board. Shukria Wiar is the planner assigned to review this proposal.

Thank you.

Barbara

>>> "J Menges" <menges@maine.rr.com> Tuesday, July 13, 2010 11:34 AM >>>
Greetings:

As invited in correspondence from J B Brown & Sons dated 7/1, I am writing to provide comments regarding the proposed zoning change for Washington Park. While I think the developer is trying to do all the right things, I believe there is a fundamental error in the proposed plan; I believe the change will precipitate a negative impact on our neighborhood and this part of the city.

1. Mowing down the beautiful big trees in favor of another brick building and asphalt parking lot leads us further and further away from the aesthetic original to our city, the Forrest City.
2. Also, I can't imagine why the city needs another office building. A much better use of anyone's resources would be in restoring existing spaces that are left vacant. Surely this could be less expensive and generate just as much new tax revenue.

When will the final decision be made about this petition? Will this happen in a public forum? If so, I would like to attend.

Thanks for your time to consider my comments.

Joyce Ann Menges
1 Pine Ledge Ter
Portland, ME 04103

207-828-2096

Shukria Wiar - 901 Washington Ave

From: Sue C <calhousu@hotmail.com>
To: <shukriaw@portlandmaine.gov>
Date: 6/22/2010 9:41 AM
Subject: 901 Washington Ave

To the Planning board - I live accross the street from 901 Washington Ave., on Pine Ledge Terrace, and I am strongly opposed to this zoning change. That area is a beautiful little park, where I walk my dog every day, and it is full of very old, large trees that provide habitat for birds in the neighborhood. It is also a buffer from the road of the ugly, extensive parking lot of the Rainbow Mall. I also assume that it provides absorbtion from the run-off from the parking lot. I intend to check out the plans in city hall before the public hearing. Please keep me informed.

Thank you,
Susan Calhoun

The New Busy think 9 to 5 is a cute idea. Combine multiple calendars with Hotmail. [Get busy.](#)

From: Manduca Music <manduca@maine.edu>
To: <shukriaw@portlandmaine.gov>
Date: 6/21/2010 7:53 PM
Subject: Rainbow Mall Business Park
Attachments: Part.001

Dear Shukria Wiar,

I am writing concerning the proposed change in zoning from Residential R-3 to Community Business B-2 of 901 Washington Ave.

My first concern is that I just received this postcard which gave me no time to do any research on this plan, nor to change my work schedule to attend the meeting on Tuesday June22 at 3:30.

I am concerned that adding more buildings to this plot of land will further increase traffic and change the residential character of the neighborhood. It is bad enough that we have to contend with the traffic on Washington Ave. The small tree-filled grassy area on Washington Ave provides an excellent buffer for these buildings. To replace it with other buildings will destroy the residential feel.

855 and 861 Washington Ave. received considerable damage due to blasting when the Atrium built buildings, and we also still are contending with water pouring off the road they graded directly into our backyards.

Martin's Point employees park on Rainbow Mall Road, and if you take a look, they leave cigarette butts all over that area. The other day on my walk I had to stamp butts out as people were throwing them out of their windows. Trash is strewn in the woods. People drive very fast out of the parking lot and continually speed around the curve on Rainbow Mall Rd. There have been times I've had to jump up on the green area with my dog as employees have sped out of the parking lot. There are a lot of elderly walkers from Ledgewood and they have complained as well.

We do not wish to see more development in this area. We are still disgusted that the city did nothing to help us with the damage that was caused by the building of the Atrium. It is grossly unfair for those of us who have owned houses here for forty years or more to be surrounded by these buildings. We do not favor this zoning change.

Sincerely, Mark and Elizabeth Manduca 861 Washington

Ave.
Manduca Music
www.manducamusic.com



Zoning Amendment Application

Department of Planning and Development, Planning Division and Planning Board

PROJECT ADDRESS: 901 Washington Avenue

CHART/BLOCK/LOT: 170-F-1, 170-F-2, 174-B-2

CONTACT INFORMATION:

APPLICANT

Name: J.B. Brown & Sons
 Address: 36 Danforth St.
P.O. Box 207
Portland, Maine
 Zip Code: 04112-0207
 Work #: (207) 774-5908
 Cell #: (207) 838-3397
 Fax #: (207) 774-0898
 Home: _____
 E-mail: veroneau@jbbrown.com

PROPERTY OWNER

Name: J.B. Brown & Sons
 Address: 36 Danforth St.
P.O. Box 207
Portland, Maine
 Zip Code: 04112-0207
 Work #: (207) 774-5908
 Cell #: (207) 838-3397
 Fax #: (207) 774-0898
 Home: _____
 E-mail: veroneau@jbbrown.com

BILLING ADDRESS

Name: J.B. Brown & Sons
 Address: 36 Danforth Street
P.O. Box 207
Portland, Maine
 Zip: 04112-0207
 Work #: (207) 774-5908
 Cell #: (207) 838-3397
 Fax #: (207) 774-0898
 Home: _____
 E-mail: jbbrown@jbbrown.com

~As applicable, please include additional contact information on the next page~

AGENT/REPRESENTATIVE

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ARCHITECT

Name: Robert Howe, HKTA
Address: 482 Congress St.
Portland, ME
Zip Code: 04101
Work #: (207) 774-6016
Cell #: _____
Fax #: (207) 774-9128
Home: _____
E-mail: hkta@aol.com

SURVEYOR

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ENGINEER

Name: DeLuca - Hoffman Associates
Address: 778 Main Street
South Portland, Maine
Zip Code: 04106
Work #: (207) 775- 1121
Cell #: _____
Fax #: (207) 879-0896
Home: _____
E-mail: _____

CONSULTANT

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ATTORNEY

Name: David Galgay, Esq., Verrill Dana
Address: One Portland Square
Portland, Maine
Zip Code: 04101
Work #: (207) 774-4000
Cell #: _____
Fax #: _____
Home: _____
E-mail: dgalgay@verrilldana.com

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

Applicant is the owner in fee simple by virtue of a Deed dated 5/9/1977 from Prudential Insurance to Old Port Realty Corp and recorded in the Cumberland County Register of Deeds at Book 4013, Page 113. ~~J.B. Brown & Sons is the Successor in Interest by merger with Old Port Realty Corp.~~

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

Existing Use:

Describe the existing use of the subject property:

Property is currently being used as office space

Current Zoning Designation(s):

Combination of B-2 & R-3, the approximate area of R-3 requested for re-zoning is 63,772 s.f.

Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

Applicant plans to construct an additional office building on land between the existing parking lot and Washington Avenue, which is currently zoned B-2 and R-3. The Developer will remove a portion of existing landscaped area, which will be replaced with a single story office building, associated parking, and new landscaping.

Sketch Plan: On a separate sheet, please provide a sketch plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 100'.) Contract and conditional rezoning applications may require inclusion of site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

PROJECT DATA

The following information is required where applicable, in order complete the application


Total Site Area	751,844	sq. ft.
Proposed Total Disturbed Area of the Site	425,500	sq. ft.
(If the proposed disturbance is greater than one acre, then the applicant shall apply for a Maine Construction General Permit (MCGP) with DEP and a Stormwater Management Permit, Chapter 500, with the City of Portland.)		
<u>Impervious Surface Area</u>		
Proposed Total Paved Area	277,500	sq. ft.
Existing Total Impervious Area	295,000	sq. ft.
Proposed Total Impervious Area	425,500	sq. ft.
Proposed Impervious Net Change	130,000	sq. ft. (18,000 bldg/22,500 parking)
<u>Building Area</u>		
Existing Building Footprint	130,000	sq. ft.
Proposed Building Footprint	148,000	sq. ft.
Proposed Building Footprint Net change	18,000	sq. ft.
Existing Total Building Floor Area	130,000	sq. ft.
Proposed Total Building Floor Area	148,000	sq. ft.
Proposed Building Floor Area Net Change	18,000	sq. ft.
New Building	yes	(yes or no)
<u>Zoning</u>		
Existing	B2 & R-3	
Proposed	B-2	
<u>Land Use</u>		
Existing	Office	
Proposed	Same	
<u>Residential, if applicable</u>		
Proposed Number of Affordable Housing Units	N/A	
Proposed Number of Residential Units to be Demolished	_____	
Existing Number of Residential Units	_____	
Proposed Number of Residential Units	_____	
Subdivision, Proposed Number of Lots	_____	
<u>Parking Spaces</u>		
Existing Number of Parking Spaces	567	
Proposed Number of Parking Spaces	75	
Number of Handicapped Parking Spaces	20	(included in numbers above)
Proposed Total Parking Spaces	642	
<u>Bicycle Parking Spaces</u>		
Existing Number of Bicycle Parking Spaces	21	
Proposed Number of Bicycle Parking Spaces	7	
Total Bicycle Parking Spaces	28	
<u>Estimated Cost of Project</u>	\$2,000,000	

APPLICATION FEE:

Check the type of zoning review that applies. Payment may be made in cash or check to the City of Portland.

<p>Zoning Map Amendment X <u> </u> \$2,000.00 (from <u>R-3</u> zone to <u>B-2</u> zone)</p> <p>Zoning Text Amendment <u> </u> \$2,000.00 (to Section 14- <u> </u>) (For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (<u>example</u>), and language to be added is depicted with underline (<u>example</u>).</p> <p>Conditional or Contract Zone <u> </u> \$1,000.00 (under 5,000 sq. ft.) <u> </u> \$3,000.00 (5,000 sq. ft. and over)</p> <p>(A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)</p>

Signature: The above information is true and accurate to the best of my knowledge.

<p>Signature of Applicant: </p>	<p>Date: 5/17/2010</p>
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Further Information

In the event of withdrawal of the zoning amendment application by the applicant, a refund of two-thirds of the amount of the zone change fee will be made to the applicant as long as the request is submitted to the Planning Division prior to the advertisement being submitted to the news paper.

J. B. BROWN & SONS
36 Danforth Street
P.O. Box 207
Portland, Maine 04112-0207
Phone 207-774-5908
Fax 207-774-0898

May 18, 2010

Barbara Barhydt
Development Review Services Manager
Department of Planning and Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Zone Change – 901 Washington Avenue

Dear Ms. Barhydt:

Enclosed please find seven (7) copies of a zone map amendment application and concept plan regarding J.B. Brown & Sons request to rezone a portion of property the company presently owns at 901 Washington Avenue from R-3 to B-2.

The entire Washington Park site is roughly 17.25 acres; approximately 15.75 acres are currently zoned B-2, and 1.5 acres are zoned R-3. The property was originally rezoned and developed in the 1970's as the Rainbow Mall, a grocery anchored center with an enclosed mall housing a number of smaller retailers. We assume the 1.5 acres of R-3 along Washington Avenue remained a "buffer" to the existing residential uses given the heavy traffic generated by a large retail facility.

The retail concept did not work at the property, and J.B. Brown & Sons purchased the facility in 1977, out of foreclosure, from Prudential Insurance. Over the past 30 years, the company has converted the original 103,000sf retail building to office space and in 2001 constructed a new 27,600sf office building on the property. The property is currently 100% occupied with long-term leases to Martin's Point, Maine Medical Center, and Time Warner. Several of the existing tenants have approached us about the possibility of constructing additional office space on the property.

Because the current B-2 zoned land is currently fully developed and office use is not allowed in the R-3 zone, we are requesting a zoning map amendment to change the R-3 zone to a B-2 zone. Our intent is to construct an additional office building of approximately 15,000 - 18,000sf with associated parking of roughly 75 spaces. A basic concept plan is enclosed to give some idea of the development, but we fully understand that a complete submission will be required should the zone change be endorsed by the Planning Board and approved by the City Council.

Barbara Barhydt
City of Portland
Page 2

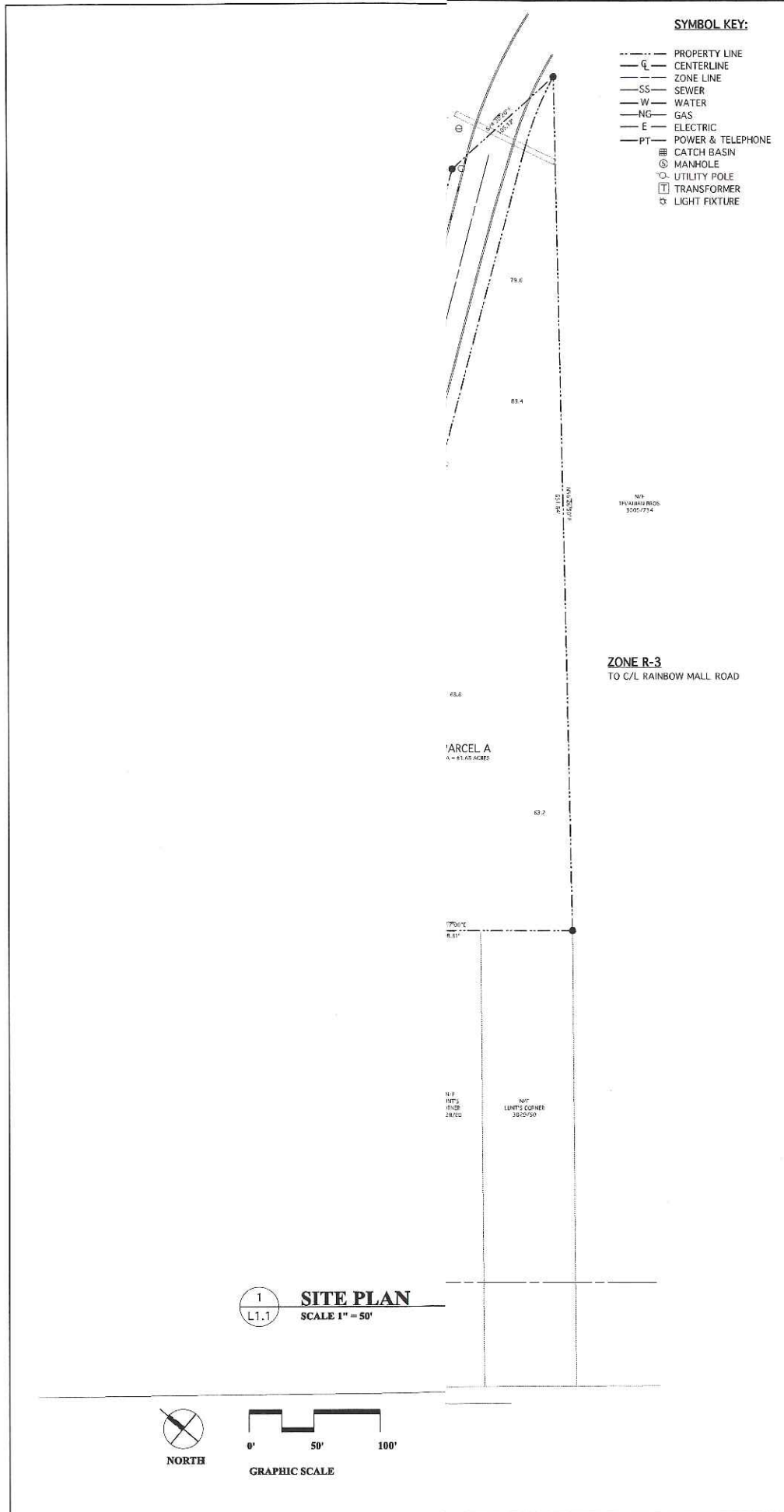
Given that the current office use has significantly less impact on the surrounding area than the originally approved retail mall, the overall changes in the area that have taken place in the last 30 years, and the fact that the area requested for re-zoning is bound by roads on three sides and our existing development on the fourth, we feel the re-zoning request is not out of character for the area or at odds with the City's comprehensive plan.

Thank you for your efforts. Please do not hesitate to contact me with any questions or if you need additional information.

Sincerely,



Vincent P. Veroneau
President



SYMBOL KEY:

- PROPERTY LINE
- C/L CENTERLINE
- ZONE LINE
- SS SEWER
- W WATER
- NG GAS
- E ELECTRIC
- PT POWER & TELEPHONE
- ▣ CATCH BASIN
- ⊙ MANHOLE
- ⊙ UTILITY POLE
- ⊞ TRANSFORMER
- ⊙ LIGHT FIXTURE

DRAWING NO.

SITE PLAN

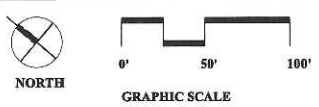
HKTA / architects, inc.
2308 York
Portland, Maine 04101
HKTA / architects
Phone: 207.774.6006
Fax: 207.774.9128
e-mail: hkta@hkta.com

DATE: 05/18/2010
REVISIONS:

© 2010 HKTA / architects, Inc.

WASHINGTON PARK
NEW BUILDING
J. B. Brown & Sons **Portland, Maine**

1
L1.1 **SITE PLAN**
SCALE 1" = 50'



NICHOLAS M. MAVODONES (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DANIEL S. SKOLNIK (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND
IN THE CITY COUNCIL

JOHN R. COYNE (5)
JOHN M. ANTON (A/L)
DORY RICHARDS WAXMAN (A/L)
JILL C. DUSON (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14. LAND USE
ARTICLE III. ZONING
DIVISION. 10 B-2 and B-2 COMMUNITY BUSINESS ZONES

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:

*That sections 14-181, 14-182, 14-185 and 14-526 of the
Portland City Code be hereby amended to read as follows:*

Sec. 14-181. Purpose.

(a) B-2 Community Business Zone

The purpose of the B-2 community business zone is:

- (1) To provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses, housing and services serving the adjoining neighborhoods and the larger community.
- (2) The variety, sites and intensity of the permitted commercial uses in the B-2 zone are intended to be greater than those permitted in the B-1 neighborhood business zone.
- (3) The B-2 zone will provide a broad range of goods and services and general businesses with a mixture of large and small buildings such as grocery stores, shops and services located in major shopping centers and along arterial streets. Such establishments should be readily accessible by automobile, ~~and~~ by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns.

(4) The B-2 and B-2b will provide locations for moderate to high density housing in urban neighborhoods and along arterials.

(b) B-2b Community Business Zone

The B-2b zone is intended to provide neighborhood and community retail, business and service establishments that are oriented to and built close to the street. The B-2b zone is appropriate in areas where a more compact urban development pattern exists such as on-peninsula or in areas off-peninsula where a neighborhood compatible commercial district is established ~~off-peninsula and each area, which~~ exhibits a pedestrian scale and character. Such locations may include the peninsula and other arterials and intersections with an existing urban or neighborhood oriented building pattern. ~~Building additions are encouraged but not required to meet the maximum setbacks of 14-185(c).~~

(c) B-2c Community Business Zone

To protect and enhance the quiet enjoyment of adjoining residential neighborhoods from the impacts of businesses that serve liquor and from other uses that are incompatible with adjoining neighborhoods due to noise.

Sec. 14-182. Permitted uses.

The following uses are permitted in the B-2, B-2b and B-2c zones except that any use involving a drive-through is ~~are~~ prohibited in these zones unless otherwise provided in section 14-183:

(a) Residential:

~~1. Any residential use permitted in the residential zone abutting the lot. If there is no abutting residential zone, the nearest residential zone to the lot. In the case of two (2) or more abutting residential zones, the most restrictive such zone; and~~

1. Attached single-family and two-family dwellings;

2. Multi-family dwellings are permitted, when the nearest residential zone abutting the lot is R-4, R-5, R-6 or R-7. Multi-family dwellings are permitted in any structure with commercial uses in the first floor regardless of the abutting residential zone;

3. Handicapped family units;

4. Combined living/working spaces including, but not limited to, artist residences with studio space; and

~~5.2. In any structure with commercial uses in the first floor, multi-family dwellings are permitted above the first floor.~~

(b) Business:

1. General, business and professional offices, as defined in section 14-47;
2. Personal services, as defined in section 14-47;
3. Offices of building tradesmen;
4. Retail establishments;
5. Restaurants, except that restaurants shall close for all purposes including the service of alcohol no later than 11:00 p.m.;
6. Drinking establishments, except that drinking establishment as defined in section 14-47, and bars as defined in section 14-217.5 (a)(1), shall not be permitted in the B-2c zone;
7. Billiard parlors;
8. Mortuaries or funeral homes;
9. Miscellaneous repair services, excluding motor vehicle repair services;
10. Communication studios or broadcast and receiving facilities;

11. Health clubs and gymnasiums;
12. Veterinary hospitals, but eXcluding outdoor kennels;
13. Theaters and performance halls;
14. Hotels or motels of less than One hundred fifty (150) rooms;
15. Dairies in existence as of November 15, 1999;
16. Bakeries in existence as of November 15, 1999;
17. Bakeries established after November 15, 1999, provided the bakeries include retail sales within the principal structures. Bakeries in the B-2b zone shall be no greater than seven thousand (7,000) square feet in size;
18. Drive-throughs associated with a permitted use in the B-2 zone provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary;
19. Drive-throughs associated with a permitted use in the B-2b zone, when accessory to a principal use located on the same lot, provided that such do not include drive-throughs on any lot adjacent to any residential use or zone. For purposes of this section, only, "adjacent to" shall include uses across a street if within 100 feet of the subject lot boundary.

(c) *Institutional:*

1. Private club or fraternal organization;
2. Long term, extended and intermediate care facility;
3. Clinics, as defined in section 14-47;

- 4. ~~Places of Religious Assembly Churches or other places of worship;~~
- 5. Kindergarten, elementary, middle and secondary schools;
- 6. College, university, trade schools; and
- 7. Municipal buildings and uses.

(d) Other:

- 1. Lodging houses;
- 2. Day care facilities or babysitting services;
- 3. Utility substations, as defined in section 14-47, subject to the requirements of article V (site plan);
- 4. Accessory uses, as provided in section 14-404;
- 5. Bed and breakfast, subject to the standards of article V (site plan). A bed and breakfast may include a meeting facility if the facility meets the following standards:
 - a. The meeting facility shall be limited to the following types of uses:
 - i. Private parties.
 - ii. Business meetings.
 - iii. Weddings.
 - iv. Receptions.
 - v. Seminars.
 - vi. Business and educational conferences.
 - b. The building in which the bed and breakfast and the meeting facility will be located was in existence on March 3, 1997, and was greater than four thousand (4,000) square feet in floor area on that date.

6. Studios for artists and craft people, provided that the area of such studios does not exceed four thousand (4000) square feet for each studio space.

Sec. 14-185. Dimensional requirements.

In addition to the provisions of division 25 (space and bulk regulations and exceptions) of this article, residential uses as permitted under sections 14-182(a) and (b) shall meet the requirements of such abutting or nearest residential zone, and nonresidential uses, where permitted, and newly constructed buildings with residential and non-residential uses shall meet the following requirements:

(1) Residential Uses:

(a) Minimum Lot Size: None.

(b) Minimum Street Frontage: None.

(c) Minimum Yard Dimensions:

1. Front yard: None.

2. Rear yard: Ten (10) feet, except where the lot abuts a residential zone, where twenty (20) feet is required.

a. Accessory structures: Five (5) feet.

b. In cases where the height of a new building exceeds forty-five (45) feet adjacent to a residential zone, the rear yard setback shall increase by two (2) feet for every one (1) foot in height above forty-five (45) feet.

c. In cases where a building that qualifies for the maximum front yard exceptions provided in Section 14-185 (1)(c)(5) below, the rear yard setback shall increase by two (2) feet for every one (1) foot in height above thirty-five (35) feet.

3. Side yard: Five (5) feet, except where the lot abuts a residential zone, where twenty (20) feet is required.

a. Accessory structures: Five (5) feet.

b. In cases where the height of a new building exceeds forty-five (45) feet adjacent to a residential zone, the side yard setback shall increase by two (2) feet for every one (1) foot in height above forty-five (45) feet.

c. In cases where a building that qualifies for the maximum front yard exceptions provided in Section 14-185 (1)(c)(5) below, the side yard setback shall increase by two (2) feet for every one (1) foot in height above thirty-five (35) feet.

4. Side yard on a side street: None.

~~4. Pavement Setback: For lots adjacent to a residential zone, pavement shall be set back a minimum of 7.5 feet from the side and rear property lines adjacent to a residential zone.~~

5. Maximum front yard: In the B-2, B-2b and B-2c zones; as provided for in Section 14-185 (2)(c)(1), except that the maximum front yard setback need not apply in the case of a development meeting one (1) or more of the following standards:

a. The lot has less than forty (40) feet of continuous frontage and the lot has a depth of more than one hundred (100) feet from the nearest street; or

b. The structures on the lot meet the maximum front yard or are within twenty (20) feet of the street and the remainder of the lot has less than forty (40) feet of continuous street frontage.

6. Pavement Setback: For lots adjacent to a residential zone, pavement shall be set back a minimum of ten (10) feet from the side and rear property lines adjacent to the residential zone.

(d) Maximum Impervious Surface Ratio: 90%.

(e) Maximum Residential Density:

1. On-Peninsula Locations, as defined in section 14-47: One thousand (1,000) square feet of land area per dwelling unit. Except that a development may exceed this requirement up to 435 square feet of land area per dwelling provided at least fifty (50) percent of the dwelling units shall have a minimum of two or more bedrooms.

2. Off-Peninsula Locations, as defined in section 14-47:

a. Residential density requirements of the nearest adjacent residential zone shall apply except for multi-family dwellings above the first-floor of commercial uses as provided in (b) below.

b. Multi-family dwellings above first floor commercial uses: One Thousand (1,000) square feet of land area per dwelling unit is required.

(f) Maximum Structure Height:

a. B-2 and B-2c zones: Forty-five (45) feet.

b. B-2b zone: Forty-five (45) feet, except in the case of a building with a commercial first floor and residential upper floors, where fifty (50) feet is allowed.

(2) Business and Other Nonresidential Uses:

(a) Minimum lot size:

1. Intermediate, long-term and extended care facilities: Ten thousand (10,000) square feet.

2. Other Nonresidential uses where permitted:

- a. B-2 zone: Ten thousand (10,000) square feet;
- b. B-2b zone: None;
- c. B-2c zone: Ten thousand (10,000) square feet.

3. Where multiple uses are on one (1) lot, the highest applicable minimum lot size must be met.

~~4. Multi-family dwellings above the first floor commercial uses: 1,000 square feet of land area per dwelling unit in off-peninsula locations, as defined in Section 14-47, and 425 square feet of land area per dwelling unit in on-peninsula locations, as defined in Section 14-47.~~

(b) Minimum street frontage: Fifty (50) feet.

(c) Yard dimensions: (Yard dimensions include setbacks of structures from property lines and setbacks of structures from one another. No structure shall occupy the minimum or maximum yard of another structure.)

Except as provided in subsection (e) below, the following setbacks are required:

1. Front Yard

a. Minimum front yard in B-2, B-2b and B-2c zones: None, ~~except that the front yard setback shall not exceed the average depth of the front yards of the closest developed lots on either side of the lot. A developed lot means a lot on which a principal structure has been erected.~~

b. Maximum front yard in the B-2 and B-2c zones: The maximum front yard setback shall not exceed the average depth of the front yard of the closest developed lots on either side of the lot in question unless the Planning Board or planning authority approves a modified setback pursuant to section 14-526(a)(27)(j). For purposes of this section a developed lot means a lot on

which a principal structure has been erected.

c.b. Maximum front yard in B-2b zone (On-peninsula): The maximum front yard setback shall either be: (i) ten feet; or (ii) in cases where the average depth of the front yard of the nearest developed lots on either side of the lot in question is less than ten feet, the front yard setback of the lot in question shall not exceed such average depth. A "developed lot" means a lot on which a principal structure has been erected.

In the B-2b zone the front yard shall be the yard adjoining the major street as determined by the highest traffic volume.
~~Building additions are not required to meet this maximum setback.~~

d.e. Maximum front yard in B-2b zone (Off-peninsula): None, except that the front yard setback shall not exceed the average depth of the front yards of the closest developed lots on either side of the lot. A developed lot means a lot on which a principal structure has been erected. In the B-2b zone the front yard shall be the yard adjoining the major street as determined by the highest traffic volume.

Where the front yard setback exceeds ten (10) feet, however, a continuous, attractive, and pedestrian scaled edge treatment shall be constructed along the street(s) consisting of street trees spaced at not more than fifteen (15) feet on center, (which otherwise meet the requirements of city arborist) and a combination of the following:

- i. landscaping of no less than four (4) feet in depth; and
- ii. ornamental brick or stone walls; and/or
- iii. ornamental fencing.

The site shall otherwise meet the requirements of article V (Site Plan).

2. Rear yard:

- a. Principal structures: Ten (10) feet. Where a rear yard abuts a residence zone or first floor residential use, twenty (20) feet is required.
- b. Accessory structures: Five (5) feet.

3. Side yard:

- a. Principal and accessory structures: None, except that where a side yard abuts a residential zone or a first floor residential use, ten (10) feet is required.
- b. Accessory structures: Five (5) feet.

c. Side yards on side streets (corner lot): In the B-2 and B-2c zone, a minimum of ten (10) feet. In the B-2b zone a maximum of ten (10) feet except that for any newly constructed building on a lot abutting two (2) or more streets, the maximum side yard shall apply to one street or to the side street that forms a corner with a major street as provided for in the maximum front yard provisions of this section. ~~In the B-2b zone, a maximum of ten (10) feet except that for any new construction on a lot abutting more than two streets, the maximum setback shall not apply beyond the two most major streets. (For purposes of this section, "major street" shall mean that street with the highest traffic volume and the greatest street width in comparison with the remaining streets). This maximum setback shall not apply to building additions.~~

(d) Minimum lot width: None.

(e) Maximum structure height:

a. B-2 and B-2c zones: Forty-five (45) feet, except that on lots in excess of five (5) acres, sixty-five (65) feet is permitted; provided each of the minimum setbacks required under subsection (3) above are increased by one (1) foot in distance for each foot of height above forty-five (45) feet.

b. B-2b zone: Fifty (50) feet.

(f) Maximum impervious surface ratio: Eighty (80) percent in the B-2 and B-2c; Ninety (90) percent in the B-2b.

(3) Building additions: Building additions for residential and non-residential uses are not required to meet the maximum front yard setback or the maximum side yard on side street setback contained in this section.

Sec. 14-526. Standards.

(a) Requirements for approval. The Planning Board or planning authority shall not approve a site plan unless it meets the following criteria:

...

(27) Development located in the B-1, B-1b, B-2, and B-2b zones shall meet the following additional standards. Where noted below, the city encourages adherence to the guidelines contained within the City's Technical and Design Standards and Guidelines, but such adherence is not mandatory in order to meet the standards otherwise set forth herein.

...

j. In general, buildings shall be sited in close proximity to the adjacent streets, but may be set back from streets as necessary to provide appropriate landscaping and pedestrian circulation areas. In cases where internal vehicular circulation patterns needed for safe and efficient ingress and egress are significantly compromised by the maximum building

setback, or the site layout is otherwise unduly compromised with respect to other site plan standards and objectives, the Planning Board or planning authority may modify the maximum setback to accommodate safe and efficient circulation patterns or achieve site layout compliance with applicable site plan standards.

Memorandum
 Department of Planning and Urban Development
 Planning Division



TO: Chair Hall and Members of the Portland Planning Board

FROM: Shukria Wiar, Planner

DATE: June 16, 2010

RE: **Workshop Hearing for 901 Washington Avenue- Request for Zone Change
 JB Brown and Sons, Applicant
 Vin Veroneau, Agent**

I. INTRODUCTION

JB Brown and Sons are requesting a zoning map amendment to change from R3 Residential to B2 Community Business along their Washington Avenue frontage, consisting of parcels shown on the City's Tax Map 170, Block F, Lot 001. The parcel is currently in two zones; approximately 686,070 sq ft (15.75 acres) in B-2 zone and 65,340 sq ft (1.5 acres) in R-3. The applicant is seeking to rezone approximately 65,340 square feet (or 1.5 acres) of a site, which is within the R-3 zone. The B-2 portion of the site was developed as the Rainbow Mall and over time the property has been converted to office uses. The applicant intends to expand the office use by constructing an additional office building of approximately 15,000 to 18,000 sq ft with associated parking of approximately 75 spaces. The proposed project would require major site plan review by the Planning Board if the rezoning is adopted.

II. PROJECT DATA

- A. EXISTING ZONING:** B-2 (COMMUNITY BUSINESS) AND R-3 (RESIDENTIAL)
- B. PROPOSED ZONING:** The R-3 portion of the site is proposed to be B-2 (Community Business)
- C. AREA TO BE REZONED:** 65, 340 SQ. FT. FROM R-3 TO B-2
- D. TOTAL AREA OF THE SITE:** 751, 410 SQ.FT.
- E. USES IN VICINITY:**
 The property is accessed from Washington Ave. The site abuts an established single-family residential neighborhood zoned Residential (R-3). A planned residential development called Ledgewood is located to the north of the site in an R-5 zone. The immediate properties on either side of Washington Avenue are zoned R-5 and contain a variety of single family, two family and multi-family units. Please see **Table 1** below.

Table 1: Adjacent Zoning and Land Uses

Direction	Zone	Use
<i>North</i>	R-5	Residential, Single-Family Homes
<i>South</i>	R-5	Residential
<i>East</i>	R-3	Residential, Single-Family

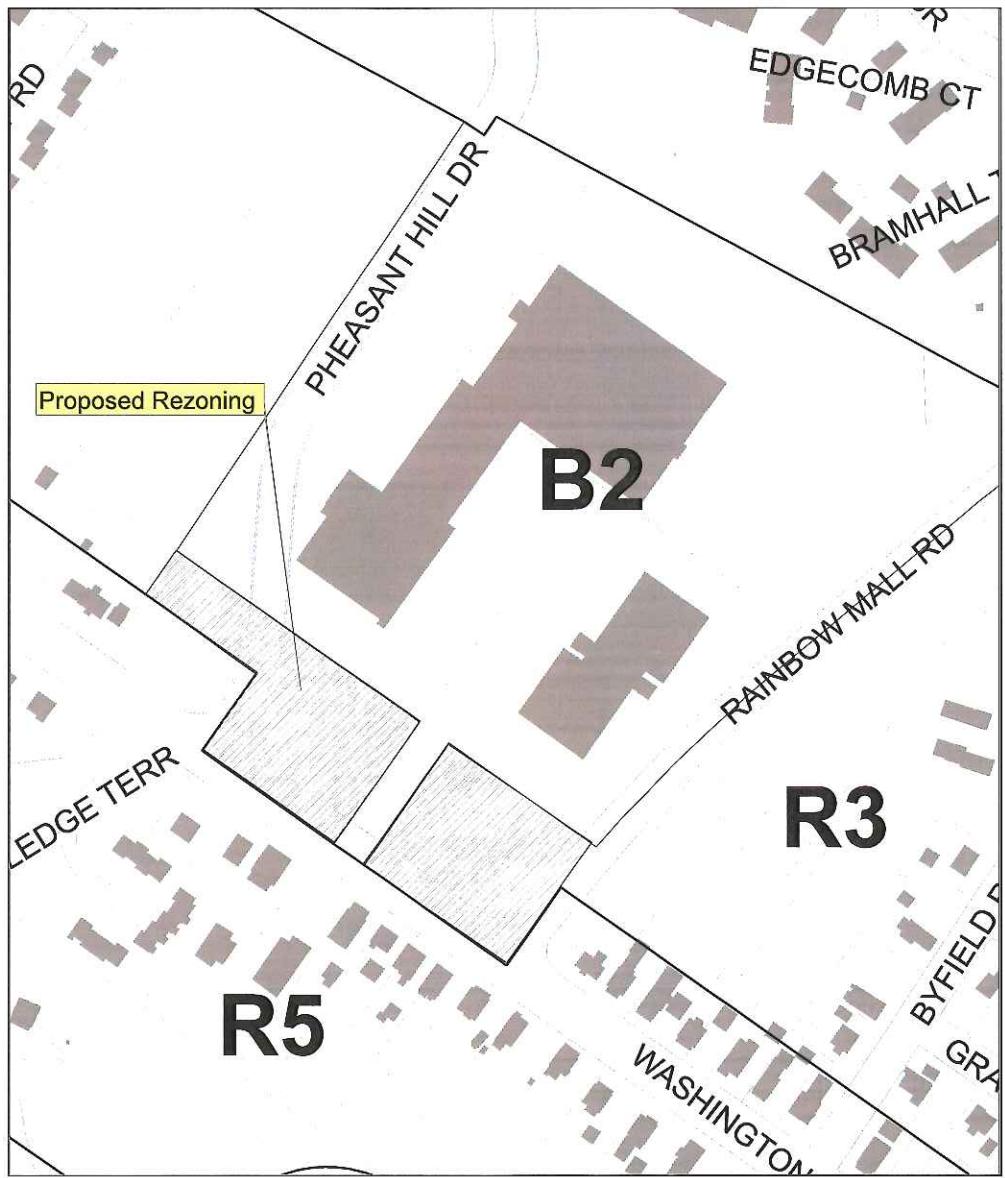
		Homes
<i>West</i>	R-3	Residential, Two-Family Homes

III. ZONING MAP AMENDMENT

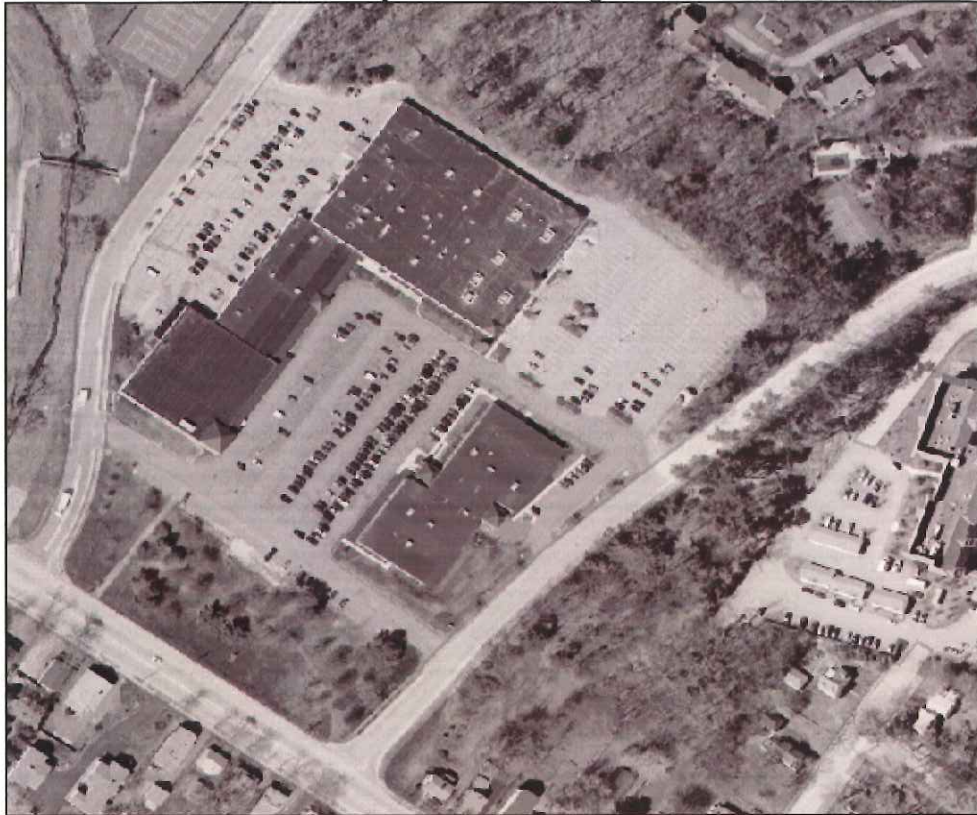
A. PROJECT DESCRIPTION:

The request is to rezone the portion of the property from R-3 to B-2 as the applicant is planning to allow the construction of a 15,000 to 18,000 square foot office building. The site is partially zoned R-3 (65,340 sq. ft.) which does not permit the offices as a permitted use and the B-2 zone permits general, business and professional offices.

Map 1: Proposed Rezoning



Map 3: 2006 Existing Conditions



IV. STAFF REVIEW

A. ZONING ASSESSMENT

According to Marge Schmuckal's analysis, the current office uses and telemarketing services for Time Warner would not be a permitted use in the RP zone, although it may qualify as a conditional use. This would be determined at the time of a conditional use review by the Zoning Board of Appeals.

The proposed change of the R-3 zone to a B-2 zone would allow for the office use expansion. The B-2 zone permits general, business and professional offices.

B. BACKGROUND AND ZONING ANALYSIS

The property was originally rezoned and developed in the 1970's as the Rainbow Mall, a grocery store center with an enclosed mall accommodating a number of smaller retailers. We understand that the original purpose of the 1.5 acres of R-3 along Washington Avenue remained as a visual buffer to the existing surrounding residential uses.

The retail concept was unsuccessful and JB Brown and Sons purchased the facility out of foreclosure in 1977. The original building has since been converted to office space and in 2001 an additional office building was constructed on the property. According to the applicant, the buildings are currently all occupied with long-term leases to Martin's Point, Maine Medical Center and Time Warner. The applicant has been approached by the current tenants to expand and construct an additional office space on the property.

Since the property in the B-2 is fully developed and office use is not allowed in the R-3 zone, the applicant is requesting a zoning map amendment to change the R-3 zone to a B-2 zone. The applicant also seeks to retain the broader range of permitted uses within the B-2 zone, if at some time the owners wish to lease space to a business use. The concept plan shows the building set back from Washington Avenue by 45 feet with a walkway to the public sidewalk. The vehicle circulation would be from within the site and the current driveway entrances. While the 45 foot setback provides green space along the street, it would require an exception from the B-2 design standards that encourage buildings to be built near the street line.

The B-2 text is included as Attachment B and it includes the recommended text amendments that the City Council will be considering at a public hearing on June 21, 2010. The B-2 zone is intended for businesses that serve the adjoining local community as well as the larger community and allows a broad range of office space uses under the category 'General, business and professional offices'.

Alternative Option to B-2

At the pre-application meeting, the option of Residential Professional R-P was discussed with the applicant. The Planning Division staff inquired about the applicability of this zone since the R-P zone serves as a transition or buffer zone between residential and more intensive nonresidential zones. The purpose of the R-P zone is to

[P]rovide appropriate locations for the development and operation of low-intensity business uses, including professional offices on or near major arterials that are compatible in scale, density and use with surrounding and adjacent residential neighborhoods.

The permitted uses in RP include residential uses, professional offices (excluding personal services, retail establishments and veterinarians), business services (excluding copy services), adult day care and funeral homes. In addition, other offices may be considered as a conditional use meeting the criteria of the zone. According to Marge Schmuckal's analysis, the current office uses and telemarketing services for Time Warner would not be a permitted use in the RP zone, although it may qualify as a conditional use.

← At this meeting, the advantages and disadvantages of each proposed zone were discussed. Vin Veroneau of JB Brown and Sons, has summarized this in an email dated 06.14.2010. In his e-mail he notes the setback requirements for the B-2 zone are more stringent than the R-P and that there is more flexibility for signs in the B-2 zone.

Mr. Veroneau explains why they seek to have the parcel zoned Community Business B-2 rather than Residence Professional R-P. An excerpt from the same email:

- 1. The signage allowed in the R-P zone, 30sf, is not sufficient to identify the current and future tenants at a property containing in excess of 145,000sf of space. The existing sign exceeds the R-P standard and that would need to be replaced and moved to accommodate the planned expansion.*
- 2. Although the B-2 design standards are more stringent than the R-P zone, many of the B-2 standards will be incorporated in the new building. The one area that would need discussion is the visibility into the ground floor windows standard.*

- We plan to have windows along the Washington Avenue frontage, but the elevation of the lot would likely make it difficult to see straight in to the windows.*
3. *The allowed uses in the R-P zone are too restrictive as they do not seem to allow general office use or telemarketing, except in the case of a medical user. We currently have Time Warner on the property and could imagine other general office uses in the new building that would not be allowed under the R-P zone.*
 4. *The building setback concern in the B-2 zone given our proposed building setback of 45' should be minimized if the City Council adopts the revised B-2 zoning at their June 21st meeting.*

The following are charts that breakdown the existing zone (R-3) and the two proposed zones (B-2 and R-P)

ZONING COMPARISON – SUMMARY

RESIDENTIAL R-3	BUSINESS B-2	RESIDENCE PROFESSIONAL R-P
PERMITTED USES 1. RESIDENTIAL – SINGLE FAMILY 2. PARKS 3. HOME OCCUPATION 4. MUNICIPAL USES	PERMITTED USES 1. RESIDENTIAL – ALL TYPES 2. BUSINESS – RETAIL, PROFESSIONAL OFFICE, BUSINESS SERVICES, OFFICES OF TRADESMAN BUSINESS USES, RESTAURANTS PROHIBITED: a. – USES NOT ENUMERATED IN SECTION 14-182 AND 14-183 AS EITHER PERMITTED USES OR CONDITIONAL USES ARE PROHIBITED. 3. INSTITUTIONAL – CHURCH, MUNICIPAL OFFICE, SCHOOLS, CLINICS LESS THAN 3,000 SF 4. OTHER – LODGING HOUSES, BED AND BREAKFAST, DAY CARE	PERMITTED USES 1. RESIDENTIAL – ALL TYPES 2. BUSINESS 3. OFFICES 4. FUNERAL HOMES 5. INSTITUTIONAL
CONDITIONAL USES 1. RESIDENTIAL – GROUP HOMES, ACCESSORY UNIT 2. INSTITUTIONAL USES- SCHOOL, EXTENDED CARE, CHURCH, CLUB, HOSPITAL 3. OTHER – PARKING LOT, UTILITY STATION, DAY CARE, TEMPORARY WIND ANEMOMETER TOWERS	CONDITIONAL USES 1. AUTO SERVICE STATIONS 2. DRIVE-THROUGHS 3. AUTO MOBILE DEALERSHIPS	CONDITIONAL USES ANY CONDITIONAL USE IN A RESIDENTIAL ZONE
DIMENSIONAL REQUIREMENTS 1. SETBACK a. FRONT – 25 FT. b. REAR – 25 FT.	DIMENSIONAL REQUIREMENTS 1. SETBACK a. FRONT – NONE b. REAR – 10 FT., 20 FT. (IF ABUTTING RESIDENTIAL)	PERFORMANCE STANDARDS 1. SETBACK d. FRONT – 20 FT., OR AVERAGE e. REAR – 20 FT., OR

<ul style="list-style-type: none"> c. SIDE – 8 FT. (1 & 1.5 STORY STRUCTURE) d. SIDE – 14 FT (2 STORY STRUCTURE) e. SIDE – 16 FT (2.5 STORY STRUCTURE) 	<ul style="list-style-type: none"> c. SIDE – NONE, (IF PRINCIPAL AND ACCESSORY STRUCTURES) OTHER REQUIREMENTS <ul style="list-style-type: none"> a. LANDSCAPING AND SCREENING b. CURBS AND SIDEWALKS c. OFF-STREET PARKING d. FRONT YARD PARKING e. SIGNS f. EXTERIOR STORAGE g. STORAGE OF VEHICLES 	<p>AVERAGE</p> <ul style="list-style-type: none"> f. SIDE – 10 FT. (1 STORY) g. SIDE – 12 FT. (2 STORY) h. SIDE – 14 FT. (3 STORY OR MORE)
	<p>EXTERNAL EFFECTS</p> <ul style="list-style-type: none"> a. ENCLOSED STRUCTURE b. NOISE c. VIBRATION AND HEAT d. GLARE, RADIATION, FUMES e. SMOKE f. MATERIALS OR WASTE 	<p>EXTERNAL EFFECTS</p> <ul style="list-style-type: none"> i. ENCLOSED STRUCTURE ii. NOISE iii. VIBRATION AND HEAT iv. GLARE, RADIATION, FUMES v. SMOKE vi. MATERIALS OR WASTE

C. COMPREHENSIVE PLAN COMPLIANCE

Based on a review of the comprehensive plan, the following statements are relevant to this proposal for the Planning Board’s consideration. According to the Future Land Use Map and Growth Areas Map, the site has been designated a growth area in the B-2 Neighborhood Business and R-3 Residential.

i. Goals and Policies

COMMUNITY COMMERCIAL POLICES AND LAND USE PLAN - September 1987-1988

a. **Goal**

- Accommodate the City's commercial activity within a range of functionally and physically defined commercial centers.
- Promote preservation and revitalization of its existing commercial centers and maintain a scale within them that is compatible and integrated with other land uses.
- Maintain and promote a community, which is attractive to both existing and prospective families and homeowners to help support the neighborhood commercial district.
- Promote new office park development of high quality in outlying areas for development seeking a suburban-style setting.

ii. Future Land Use Map – B-2 Community Business

iii. Growth and Rural Areas Map – Growth Area designation

Staff Comment: Due to the site's location, the rezoning of the site to B-2 would meet the intent of a suitable location at Washington and continue serving a local community. Any proposed use would require site plan review and meet the performance standards of the zone, (including B-2 Design Standards and Guidelines), which will minimize any impacts to adjoining residential homes.

The proposed new B-2 maximum setback language currently before the City Council contains a provision allowing the Planning Board or authority to modify the maximum setback as follows:

- j. In general, buildings shall be sited in close proximity to the adjacent streets, but may be set back from streets as necessary to provide appropriate landscaping and pedestrian circulation areas. In cases where internal vehicular circulation patterns needed for safe and efficient ingress and egress are significantly compromised by the maximum building setback, or the site layout is otherwise unduly compromised with respect to other site plan standards and objectives, the Planning Board or Planning Authority may modify the maximum setback to accommodate safe and efficient circulation patterns or achieve site layout compliance with applicable site plan standards.

The proposed 45' setback remains an important site feature to the applicant, in order to maintain a strong landscape buffer in keeping with the original zoning arrangement of the site, while allowing the development to go forward. To the extent that the feasibility of the proposed development enabled by the requested rezoning depends on the ability to site the building as proposed, the proposed B-2 zoning should be evaluated in consideration of the future ability to achieve the modification of the maximum setback. Staff believes that this is the type of situation where such a modification is warranted to achieve the site layout and landscape buffer as proposed. It would be useful in workshop to have a discussion of the comfort level with the proposal, specifically the building setback, so as to avoid an outcome in which there is a rezoning that results in a future conflict of interpretation under site plan review. If the proposed setback is likely to be problematic, further consideration of an RP alternative might be warranted. If the City Council does not enact the recommended modification language, we will need to reconsider as well.

V. Next Steps

1. Applicant conducts a neighborhood workshop
2. Schedule a public hearing

Attachments:

1. Vin Veroneau email dated 06.14.2010

Applicant's Submittal

- A. Application
- B. B-2 and R-P zoning standards

J. B. BROWN & SONS
36 Danforth Street
P.O. Box 207
Portland, Maine 04112-0207
Phone 207-774-5908
Fax 207-774-0898

May 18, 2010

Barbara Barhydt
Development Review Services Manager
Department of Planning and Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Zone Change – 901 Washington Avenue

Dear Ms. Barhydt:

Enclosed please find seven (7) copies of a zone map amendment application and concept plan regarding J.B. Brown & Sons request to rezone a portion of property the company presently owns at 901 Washington Avenue from R-3 to B-2.

The entire Washington Park site is roughly 17.25 acres; approximately 15.75 acres are currently zoned B-2, and 1.5 acres are zoned R-3. The property was originally rezoned and developed in the 1970's as the Rainbow Mall, a grocery anchored center with an enclosed mall housing a number of smaller retailers. We assume the 1.5 acres of R-3 along Washington Avenue remained a "buffer" to the existing residential uses given the heavy traffic generated by a large retail facility.

The retail concept did not work at the property, and J.B. Brown & Sons purchased the facility in 1977, out of foreclosure, from Prudential Insurance. Over the past 30 years, the company has converted the original 103,000sf retail building to office space and in 2001 constructed a new 27,600sf office building on the property. The property is currently 100% occupied with long-term leases to Martin's Point, Maine Medical Center, and Time Warner. Several of the existing tenants have approached us about the possibility of constructing additional office space on the property.

Because the current B-2 zoned land is currently fully developed and office use is not allowed in the R-3 zone, we are requesting a zoning map amendment to change the R-3 zone to a B-2 zone. Our intent is to construct an additional office building of approximately 15,000 - 18,000sf with associated parking of roughly 75 spaces. A basic concept plan is enclosed to give some idea of the development, but we fully understand that a complete submission will be required should the zone change be endorsed by the Planning Board and approved by the City Council.

Barbara Barhydt
City of Portland
Page 2

Given that the current office use has significantly less impact on the surrounding area than the originally approved retail mall, the overall changes in the area that have taken place in the last 30 years, and the fact that the area requested for re-zoning is bound by roads on three sides and our existing development on the fourth, we feel the re-zoning request is not out of character for the area or at odds with the City's comprehensive plan.

Thank you for your efforts. Please do not hesitate to contact me with any questions or if you need additional information.

Sincerely,



Vincent P. Veroneau
President



A.2

Zoning Amendment Application

Department of Planning and Development, Planning Division and Planning Board

PROJECT ADDRESS: 901 Washington Avenue

CHART/BLOCK/LOT: 170-F-1, 170-F-2, 174-B-2

CONTACT INFORMATION:

APPLICANT

Name: J.B. Brown & Sons
Address: 36 Danforth St.
P.O. Box 207
Portland, Maine
Zip Code: 04112-0207
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Cell #: (207) 838-3397
Fax #: (207) 774-0898
Home: _____
E-mail: veroneau@jbbrown.com

PROPERTY OWNER

Name: J.B. Brown & Sons
Address: 36 Danforth St.
P.O. Box 207
Portland, Maine
Zip Code: 04112-0207
Work #: (207) 774-5908
Cell #: (207) 838-3397
Fax #: (207) 774-0898
Home: _____
E-mail: veroneau@jbbrown.com

BILLING ADDRESS

Name: J.B. Brown & Sons
Address: 36 Danforth Street
P.O. Box 207
Portland, Maine
Zip: 04112-0207
Work #: (207) 774-5908
Cell #: (207) 838-3397
Fax #: (207) 774-0898
Home: _____
E-mail: jbbrown@jbbrown.com

~As applicable, please include additional contact information on the next page~

AGENT/REPRESENTATIVE

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ENGINEER

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South Portland, Maine
Zip Code: 04106
Work #: (207) 775- 1121
Cell #: _____
Fax #: (207) 879-0896
Home: _____
E-mail: _____

ARCHITECT

Name: Robert Howe, HKTA
Address: 482 Congress St.
Portland, ME
Zip Code: 04101
Work #: (207) 774-6016
Cell #: _____
Fax #: (207) 774-9128
Home: _____
E-mail: hkta@aol.com

CONSULTANT

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

SURVEYOR

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ATTORNEY

Name: David Galgay, Esq., Verrill Dana
Address: One Portland Square
Portland, Maine
Zip Code: 04101
Work #: (207) 774-4000
Cell #: _____
Fax #: _____
Home: _____
E-mail: dgalgay@verrilldana.com

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:
Applicant is the owner in fee simple by virtue of a Deed dated 5/9/1977 from Prudential Insurance to Old Port Realty Corp and recorded in the Cumberland County Register of Deeds at Book 4013, Page 113. ~~J.B. Brown & Sons is the Successor in Interest by merger with Old Port Realty Corp.~~

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

Existing Use:

Describe the existing use of the subject property:

Property is currently being used as office space

Current Zoning Designation(s):

Combination of B-2 & R-3, the approximate area of R-3 requested for re-zoning is 63,772 s.f.

Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

Applicant plans to construct an additional office building on land between the existing parking lot and Washington Avenue, which is currently zoned B-2 and R-3. The Developer will remove a portion of existing landscaped area, which will be replaced with a single story office building, associated parking, and new landscaping.

Sketch Plan: On a separate sheet, please provide a sketch plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 100'.) Contract and conditional rezoning applications may require inclusion of site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

PROJECT DATA

The following information is required where applicable, in order complete the application

Total Site Area 751,844 sq. ft.
Proposed Total Disturbed Area of the Site 425,500 sq. ft.
(If the proposed disturbance is greater than one acre, then the applicant shall apply for a Maine Construction General Permit (MCGP) with DEP and a Stormwater Management Permit, Chapter 500, with the City of Portland.)

Impervious Surface Area
Proposed Total Paved Area 277,500 sq. ft.
Existing Total Impervious Area 385,000 sq. ft.
Proposed Total Impervious Area 425,500 sq. ft.
Proposed Impervious Net Change 40,500 sq. ft. (18,000 bldg/22,500 parking)

Building Area
Existing Building Footprint 130,000 sq. ft.
Proposed Building Footprint 148,000 sq. ft.
Proposed Building Footprint Net change 18,000 sq. ft.
Existing Total Building Floor Area 130,000 sq. ft.
Proposed Total Building Floor Area 148,000 sq. ft.
Proposed Building Floor Area Net Change 18,000 sq. ft.
New Building yes (yes or no)

Zoning
Existing B2 & R-3
Proposed B-2

Land Use
Existing Office
Proposed Same

Residential, if applicable
Proposed Number of Affordable Housing Units N/A
Proposed Number of Residential Units to be Demolished _____
Existing Number of Residential Units _____
Proposed Number of Residential Units _____
Subdivision, Proposed Number of Lots _____

Parking Spaces
Existing Number of Parking Spaces 567
Proposed Number of Parking Spaces 75
Number of Handicapped Parking Spaces 20 (included in numbers above)
Proposed Total Parking Spaces 642

Bicycle Parking Spaces
Existing Number of Bicycle Parking Spaces 21
Proposed Number of Bicycle Parking Spaces 7
Total Bicycle Parking Spaces 28

Estimated Cost of Project \$2,000,000

APPLICATION FEE:

Check the type of zoning review that applies. Payment may be made in cash or check to the City of Portland.

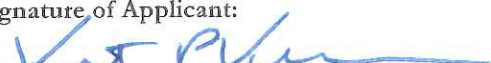
Zoning Map Amendment
 X \$2,000.00 (from R-3 zone to B-2 zone)

Zoning Text Amendment
 \$2,000.00 (to Section 14-)
 (For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).

Conditional or Contract Zone
 \$1,000.00 (under 5,000 sq. ft.)
 \$3,000.00 (5,000 sq. ft. and over)

(A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)

Signature: The above information is true and accurate to the best of my knowledge.

Signature of Applicant: 	Date: 5/17/2010
--	--------------------

Further Information

In the event of withdrawal of the zoning amendment application by the applicant, a refund of two-thirds of the amount of the zone change fee will be made to the applicant as long as the request is submitted to the Planning Division prior to the advertisement being submitted to the news paper.

Applicant's Submittal

From: Manduca Music <manduca@maine.edu>
To: <shukriaw@portlandmaine.gov>
Date: 6/21/2010 7:53 PM
Subject: Rainbow Mall Business Park
Attachments: Part.001

Dear Shukria Wiar,

I am writing concerning the proposed change in zoning from Residential R-3 to Community Business B-2 of 901 Washington Ave.

My first concern is that I just received this postcard which gave me no time to do any research on this plan, nor to change my work schedule to attend the meeting on Tuesday June22 at 3:30.

I am concerned that adding more buildings to this plot of land will further increase traffic and change the residential character of the neighborhood. It is bad enough that we have to contend with the traffic on Washington Ave. The small tree-filled grassy area on Washington Ave provides an excellent buffer for these buildings. To replace it with other buildings will destroy the residential feel.

855 and 861 Washington Ave. received considerable damage due to blasting when the Atrium built buildings, and we also still are contending with water pouring off the road they graded directly into our backyards.

Martin's Point employees park on Rainbow Mall Road, and if you take a look, they leave cigarette butts all over that area. The other day on my walk I had to stamp butts out as people were throwing them out of their windows. Trash is strewn in the woods. People drive very fast out of the parking lot and continually speed around the curve on Rainbow Mall Rd. There have been times I've had to jump up on the green area with my dog as employees have sped out of the parking lot. There are a lot of elderly walkers from Ledgewood and they have complained as well.

We do not wish to see more development in this area. We are still disgusted that the city did nothing to help us with the damage that was caused by the building of the Atrium. It is grossly unfair for those of us who have owned houses here for forty years or more to be surrounded by these buildings. We do not favor this zoning change.

Ave.
Manduca Music
www.manducamusic.com

Sincerely, Mark and Elizabeth Manduca 861 Washington

J. B. BROWN & SONS
36 Danforth Street
P.O. Box 207
Portland, Maine 04112-0207
Phone 207-774-5908
Fax 207-774-0898

May 18, 2010

Barbara Barhydt
Development Review Services Manager
Department of Planning and Development
City of Portland
389 Congress Street
Portland, Maine 04101

Re: Zone Change – 901 Washington Avenue

Dear Ms. Barhydt:

Enclosed please find seven (7) copies of a zone map amendment application and concept plan regarding J.B. Brown & Sons request to rezone a portion of property the company presently owns at 901 Washington Avenue from R-3 to B-2.

The entire Washington Park site is roughly 17.25 acres; approximately 15.75 acres are currently zoned B-2, and 1.5 acres are zoned R-3. The property was originally rezoned and developed in the 1970's as the Rainbow Mall, a grocery anchored center with an enclosed mall housing a number of smaller retailers. We assume the 1.5 acres of R-3 along Washington Avenue remained a "buffer" to the existing residential uses given the heavy traffic generated by a large retail facility.

The retail concept did not work at the property, and J.B. Brown & Sons purchased the facility in 1977, out of foreclosure, from Prudential Insurance. Over the past 30 years, the company has converted the original 103,000sf retail building to office space and in 2001 constructed a new 27,600sf office building on the property. The property is currently 100% occupied with long-term leases to Martin's Point, Maine Medical Center, and Time Warner. Several of the existing tenants have approached us about the possibility of constructing additional office space on the property.

Because the current B-2 zoned land is currently fully developed and office use is not allowed in the R-3 zone, we are requesting a zoning map amendment to change the R-3 zone to a B-2 zone. Our intent is to construct an additional office building of approximately 15,000 - 18,000sf with associated parking of roughly 75 spaces. A basic concept plan is enclosed to give some idea of the development, but we fully understand that a complete submission will be required should the zone change be endorsed by the Planning Board and approved by the City Council.

Barbara Barhydt
City of Portland
Page 2

Given that the current office use has significantly less impact on the surrounding area than the originally approved retail mall, the overall changes in the area that have taken place in the last 30 years, and the fact that the area requested for re-zoning is bound by roads on three sides and our existing development on the fourth, we feel the re-zoning request is not out of character for the area or at odds with the City's comprehensive plan.

Thank you for your efforts. Please do not hesitate to contact me with any questions or if you need additional information.

Sincerely,



Vincent P. Veroneau
President



Zoning Amendment Application

Department of Planning and Development, Planning Division and Planning Board

PROJECT ADDRESS: 901 Washington Avenue

CHART/BLOCK/LOT: 170-F-1, 170-F-2, 174-B-2

CONTACT INFORMATION:

APPLICANT

Name: J.B. Brown & Sons
Address: 36 Danforth St.
P.O. Box 207
Portland, Maine
Zip Code: 04112-0207
Work #: (207) 774-5908
Cell #: (207) 838-3397
Fax #: (207) 774-0898
Home: _____
E-mail: veroneau@jbbrown.com

PROPERTY OWNER

Name: J.B. Brown & Sons
Address: 36 Danforth St.
P.O. Box 207
Portland, Maine
Zip Code: 04112-0207
Work #: (207) 774-5908
Cell #: (207) 838-3397
Fax #: (207) 774-0898
Home: _____
E-mail: veroneau@jbbrown.com

BILLING ADDRESS

Name: J.B. Brown & Sons
Address: 36 Danforth Street
P.O. Box 207
Portland, Maine
Zip: 04112-0207
Work #: (207) 774-5908
Cell #: (207) 838-3397
Fax #: (207) 774-0898
Home: _____
E-mail: jbbrown@jbbrown.com

~As applicable, please include additional contact information on the next page~

AGENT/REPRESENTATIVE

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ARCHITECT

Name: Robert Howe, HKTA
Address: 482 Congress St.
Portland, ME
Zip Code: 04101
Work #: (207) 774-6016
Cell #: _____
Fax #: (207) 774-9128
Home: _____
E-mail: hkta@aol.com

SURVEYOR

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ENGINEER

Name: DeLuca - Hoffman Associates
Address: 778 Main Street
South Portland, Maine
Zip Code: 04106
Work #: (207) 775- 1121
Cell #: _____
Fax #: (207) 879-0896
Home: _____
E-mail: _____

CONSULTANT

Name: _____
Address: _____

Zip Code: _____
Work #: _____
Cell #: _____
Fax #: _____
Home: _____
E-mail: _____

ATTORNEY

Name: David Galgay, Esq., Verrill Dana
Address: One Portland Square
Portland, Maine
Zip Code: 04101
Work #: (207) 774-4000
Cell #: _____
Fax #: _____
Home: _____
E-mail: dgalgay@verrilldana.com

Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

Applicant is the owner in fee simple by virtue of a Deed dated 5/9/1977 from Prudential Insurance to Old Port Realty Corp and recorded in the Cumberland County Registry of Deeds at Book 4013, Page 113. ~~J.B. Brown & Sons is the Successor in Interest by merger with Old Port Realty Corp.~~

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

Existing Use:

Describe the existing use of the subject property:

Property is currently being used as office space

Current Zoning Designation(s):

Combination of B-2 & R-3, the approximate area of R-3 requested for re-zoning is 63,772 s.f.

Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

Applicant plans to construct an additional office building on land between the existing parking lot and Washington Avenue, which is currently zoned B-2 and R-3. The Developer will remove a portion of existing landscaped area, which will be replaced with a single story office building, associated parking, and new landscaping.

Sketch Plan: On a separate sheet, please provide a sketch plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 100'.) Contract and conditional rezoning applications may require inclusion of site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

PROJECT DATA

The following information is required where applicable, in order complete the application

Total Site Area	751,844	sq. ft.
Proposed Total Disturbed Area of the Site	425,500	sq. ft.
(If the proposed disturbance is greater than one acre, then the applicant shall apply for a Maine Construction General Permit (MCGP) with DEP and a Stormwater Management Permit, Chapter 500, with the City of Portland.)		
<u>Impervious Surface Area</u>		
Proposed Total Paved Area	277,500	sq. ft.
Existing Total Impervious Area	295,000	sq. ft.
Proposed Total Impervious Area	425,500	sq. ft.
Proposed Impervious Net Change	148,000	sq. ft. (18,000 bldg/22,500 parking)
<u>Building Area</u>		
Existing Building Footprint	130,000	sq. ft.
Proposed Building Footprint	148,000	sq. ft.
Proposed Building Footprint Net change	18,000	sq. ft.
Existing Total Building Floor Area	130,000	sq. ft.
Proposed Total Building Floor Area	148,000	sq. ft.
Proposed Building Floor Area Net Change	18,000	sq. ft.
New Building	yes	(yes or no)
<u>Zoning</u>		
Existing	B2 & R-3	
Proposed	B-2	
<u>Land Use</u>		
Existing	Office	
Proposed	Same	
<u>Residential, if applicable</u>		
Proposed Number of Affordable Housing Units	N/A	
Proposed Number of Residential Units to be Demolished	_____	
Existing Number of Residential Units	_____	
Proposed Number of Residential Units	_____	
Subdivision, Proposed Number of Lots	_____	
<u>Parking Spaces</u>		
Existing Number of Parking Spaces	567	
Proposed Number of Parking Spaces	75	
Number of Handicapped Parking Spaces	20	(included in numbers above)
Proposed Total Parking Spaces	642	
<u>Bicycle Parking Spaces</u>		
Existing Number of Bicycle Parking Spaces	21	
Proposed Number of Bicycle Parking Spaces	7	
Total Bicycle Parking Spaces	28	
<u>Estimated Cost of Project</u>	\$2,000,000	

APPLICATION FEE:

Check the type of zoning review that applies. Payment may be made in cash or check to the City of Portland.

Zoning Map Amendment

\$2,000.00 (from R-3 zone to B-2 zone)

Zoning Text Amendment

\$2,000.00 (to Section 14- _____)

(For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).


Conditional or Contract Zone

\$1,000.00 (under 5,000 sq. ft.)

\$3,000.00 (5,000 sq. ft. and over)

(A conditional or contract rezoning map be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)

Signature: The above information is true and accurate to the best of my knowledge.

Signature of Applicant: 	Date: 5/17/2010
---	---------------------------

Further Information

In the event of withdrawal of the zoning amendment application by the applicant, a refund of two-thirds of the amount of the zone change fee will be made to the applicant as long as the request is submitted to the Planning Division prior to the advertisement being submitted to the news paper.

SYMBOL KEY:

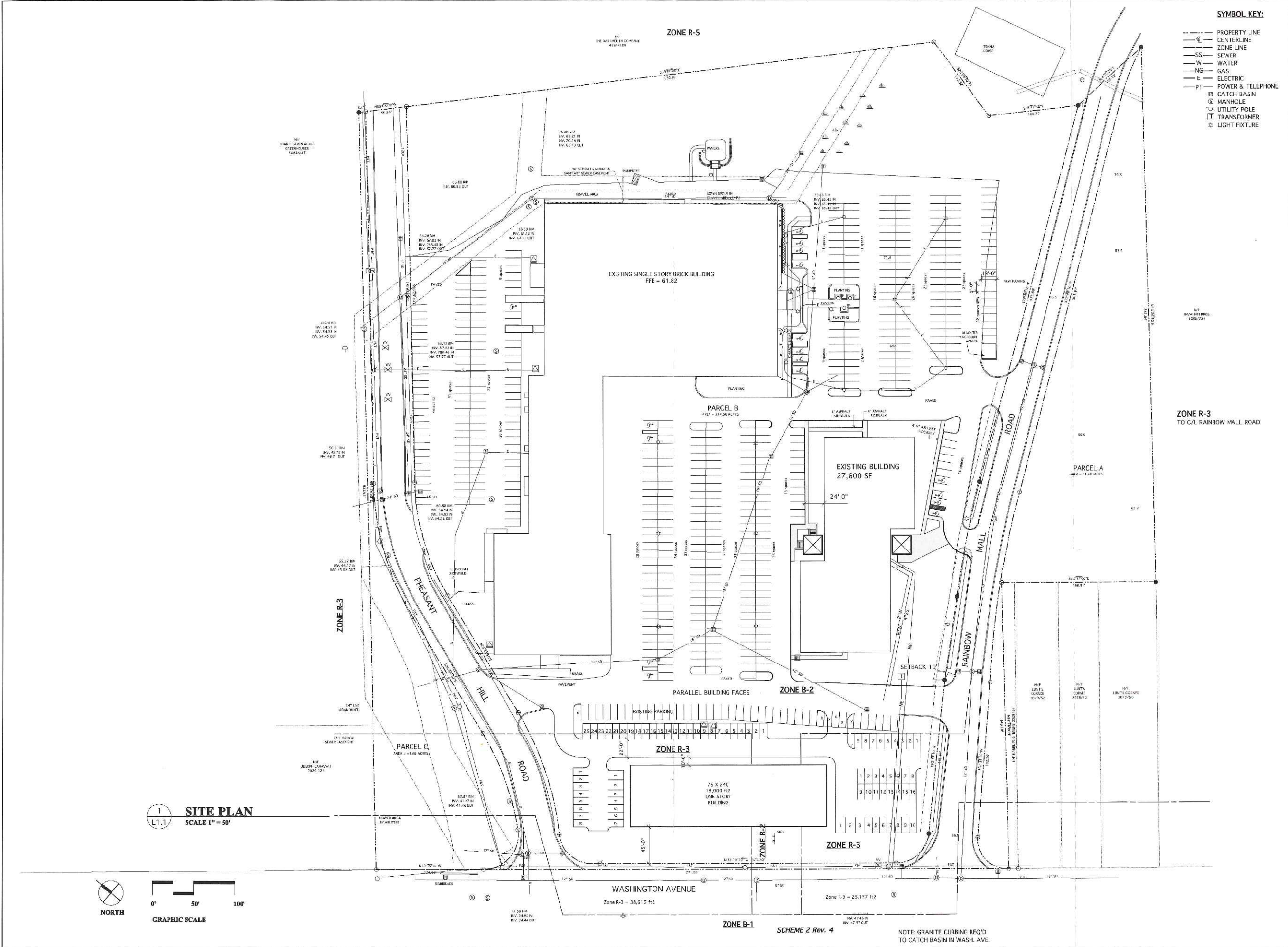
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- CENTERLINE
- ZONE LINE
- SS SEWER
- W WATER
- NG GAS
- E ELECTRIC
- PT POWER & TELEPHONE
- ⊠ CATCH BASIN
- ⊙ MANHOLE
- ⊕ UTILITY POLE
- ⊞ TRANSFORMER
- ⊙ LIGHT FIXTURE

DRAWING NO.
SITE PLAN

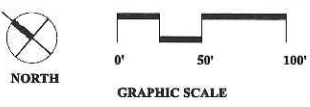
HKTA / architects, inc.
4 Mill Street
Portland, Maine 04101
HKTA / architects
Phone: 207.774.6016
Fax: 207.774.0128
e-mail: hktainc@comcast.com

DATE: 05/18/2010
REVISIONS:
© 2010 HKTA / architects, inc.

WASHINGTON PARK
NEW BUILDING
J. B. Brown & Sons
Portland, Maine



1 SITE PLAN
SCALE 1" = 50'



NOTE: GRANITE CURBING REQ'D TO CATCH BASIN IN WASH. AVE.

SCHEME 2 Rev. 4

901 Washington Ave



1 inch = 173 feet



Map Produced by the City of
Portland's ArcGIS Server
Web Application.

06.10.2010

- SYMBOL KEY:**
- PROPERTY LINE
 - CENTERLINE
 - ZONE LINE
 - SS SEWER
 - W WATER
 - NG GAS
 - E ELECTRIC
 - PT POWER & TELEPHONE
 - ⊞ CATCH BASIN
 - ⊙ MANHOLE
 - ⊕ UTILITY POLE
 - ⊞ TRANSFORMER
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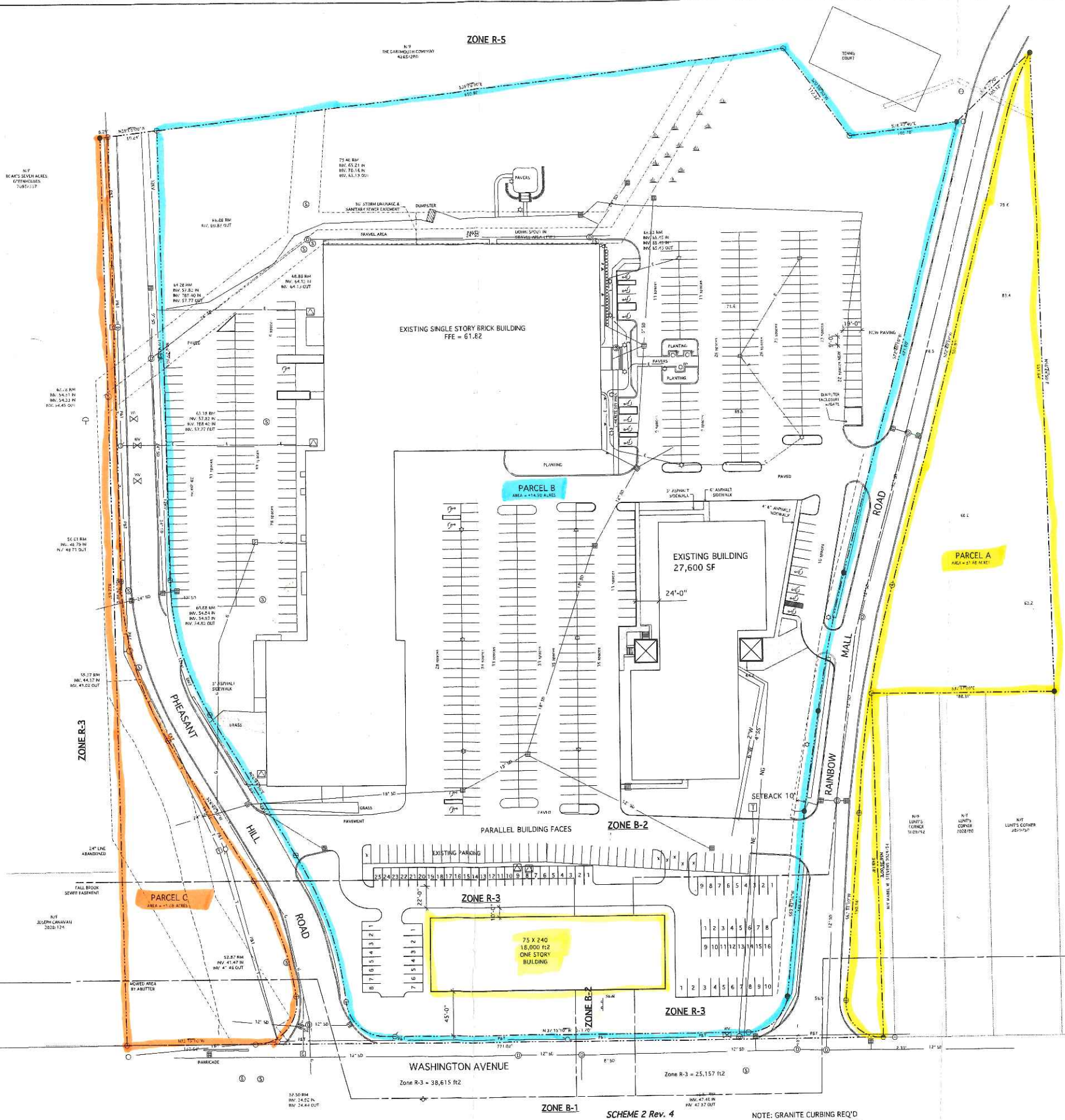
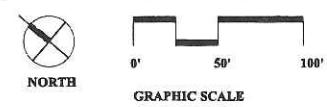
DRAWING NO.
SITE PLAN

HKTA / architects, inc.
4 Mill Street
Portland, Maine 04101
HKTA / architects
phone: 207-734-6016
fax: 207-734-0128
e-mail: hkta@hkta.com

DATE: 05/18/2010
REVISIONS:

© 2010 HKTA / architects, inc.
WASHINGTON PARK
NEW BUILDING
J. B. Brown & Sons
Portland, Maine

1
L1.1
SITE PLAN
SCALE 1" = 50'



SCHEME 2 Rev. 4
NOTE: GRANITE CURBING REQ'D TO CATCH BASIN IN WASH. AVE.

SYMBOL KEY:

- PROPERTY LINE
- CENTERLINE
- ZONE LINE
- SS SEWER
- W WATER
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- ⊛ LIGHT FIXTURE

DRAWING NO.

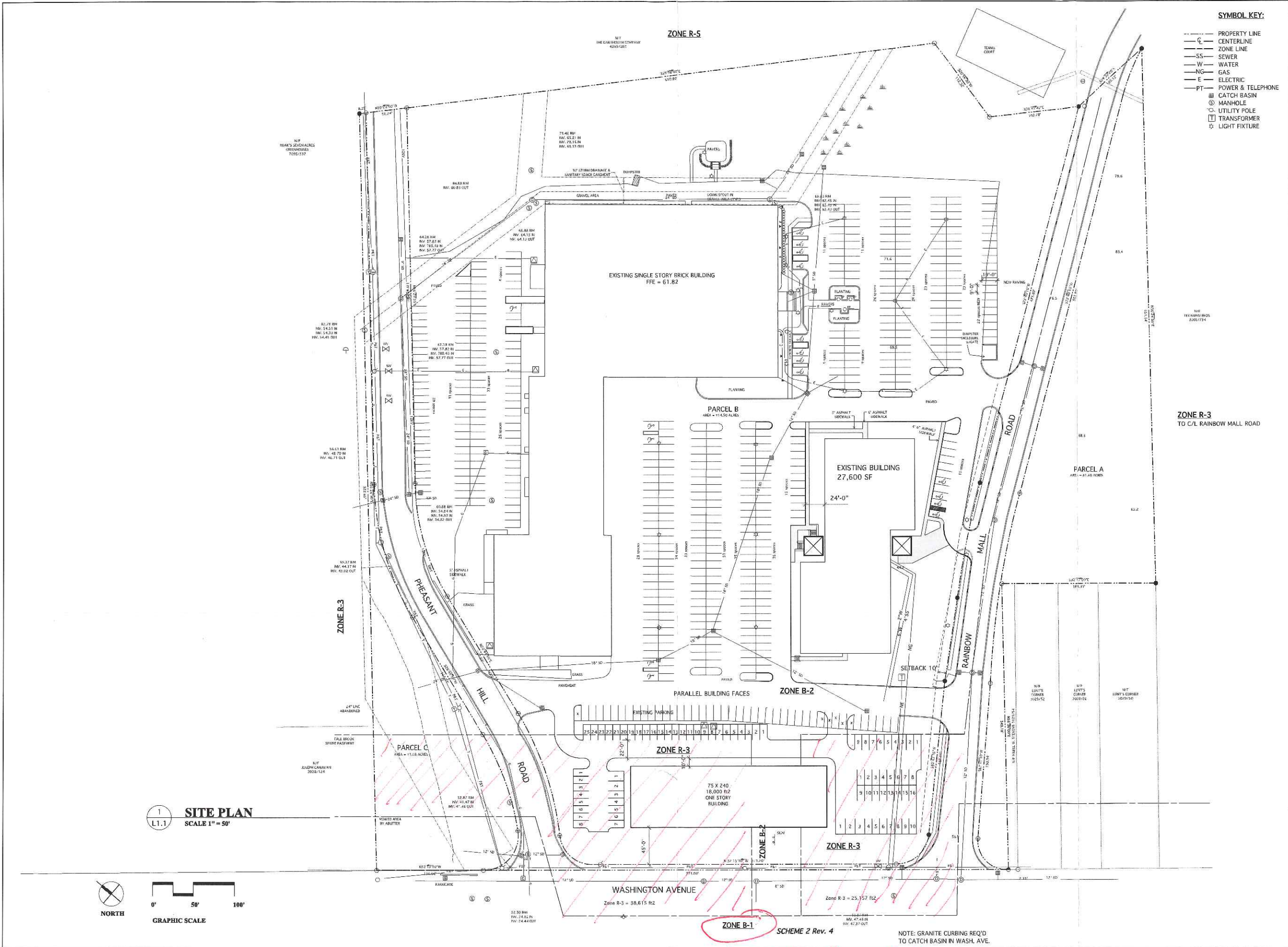
SITE PLAN

HKTA / architects, inc.
 4 Milk Street
 Portland, Maine 04101
HKTA / architects
 phone: 207.774.0016
 fax: 207.774.0128
 e-mail: hkta@hkta.com

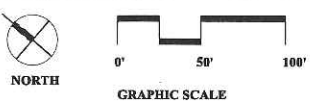
DATE: 05/18/2010
REVISIONS:

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WASHINGTON PARK
 NEW BUILDING
 J. B. Brown & Sons
 Portland, Maine



1 SITE PLAN
L1.1 SCALE 1" = 50'



ZONE B-1 SCHEME 2 Rev. 4

should be Zone R-3

NOTE: GRANITE CURBING REQ'D TO CATCH BASIN IN WASH. AVE.