

EX-100

Inspection Services
P. Samuel Hoffses
Chief



Planning and Urban Development
Joseph E. Gray Jr.
Director

CITY OF PORTLAND

November 28, 1995

James B. Hansen, President
Barrian, Incorporated
1424 Congress Street
P. O. Box 1456
Portland, Maine 04104

RE: 1440 Congress Street
Papaniko's Plaza

Dear Mr. Hansen,

I am in receipt of your letter dated November 24, 1995 outlining your concerns in relation to parking at the above referenced location. My interpretation of the Zoning Ordinance differs considerably from yours.

Section 14-186(4) states: "Front yard parking: There shall be no parking in the front yard between the street line and the required minimum setback line." The final approved site plan shows no parking intrusion within the ten foot front yard setback. I find no violation of the Land Use Ordinance here.

The same section continues to state that "A maximum of ten percent of the total parking provided on the site may be located between the principal structure and the front yard." My interpretation of this section is very straight forward. It is stating that only ten percent of the provided parking be located between the principal structure and the front yard setback. This section does not imply any extension of the building line compared to the front yard. My interpretation is consistent with other project approvals in the same zone. The approved site plan shows 20 spaces provided with only one space (handicap) located between the principal structure and the front yard. I find no violation of the Land Use Ordinance in this instance.

In regards to off street parking requirements, Section 14-332(8) requires that "one parking space for each 200 square feet of first floor area in excess of 2,000 square feet not used for bulk storage.." be used in figuring parking requirements for retail stores. The approved site plan shows 3,200 square feet of retail space. The floor plans, as of yet, do not show any bulk storage. After allowing for the 2,000 square foot reduction, there is a 1,200 square foot remainder to use for calculating parking spaces or six required spaces. I see no violation of the Land Use Ordinance here.

197-B-009

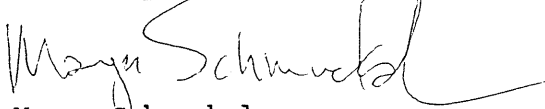
Regarding off street parking for restaurants, Section 14-332(9) requires "one parking space for each 150 square feet or major fraction thereof of floor area not used for bulk storage or food preparation." Based on the attached drawing, I calculate a total of 815.25 square feet and consider the remaining space as part of food preparation and bulk storage. This is consistent with other restaurant approvals for parking. Based on these figures, the required parking would result in 5.43 parking spaces or 5 required spaces. These figures indicate a total of 11 required parking spaces for the entire project. The approved site plan shows twenty. I find no violation of the Land Use Ordinance here.

Parking calculations for the Papaniko's Plaza were approved prior to the public hearing before the Planning Board. However, that approval was discussed at a public hearing before the Planning Board. In addition, the parking layout was approved prior to that same hearing. While there have been some changes in the site plan since that hearing, none have involved a reduction in the number of parking spaces or their location.

As discussed at the Planning Board hearing, appeals based on the decision of the Zoning Administrator must be made to the Board of Appeals rather than the Planning Board. A copy of the section on appeals is enclosed for your information. Please note that an appeal should have been filed within 30 days of the decision made by the Zoning Administrator. You have known about that decision since the Planning Board's August 22, 1995 hearing, well beyond the 30 day period set forth in Section 14-472. This may result in a determination by the Board of Appeals that your appeal be dismissed because it was not filed in a timely manner. However, it is up to you to decide whether you wish to pursue this matter.

Should you have any question regarding this matter, please do not hesitate to contact this office.

Sincerely,



Marge Schmuckal
Asst. Chief, Code Enforcement Division
Zoning Administrator

cc: Robert Ganley, City Manager
Joseph E. Gray, Dir, PUD
P. Samuel Hoffses, C, Code Enf
A. Jaegerman, C, Planning
N. Burns, Corp Counsel
P. Brown, Developer
1 Cate St.
P.O. Box 5215
Portsmouth, NH 03802-5215

CONGRESS STREET

WESTLAND AVENUE

TYPICAL CORNERS MUST BE 7" VERTICAL CURB. DETAILS OF HC RAMP MUST BE APPROVED BY TRAFFIC ENGINEER IN THE FIELD.

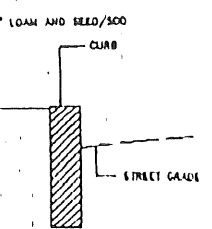
CB RIM 90.5
INV 94.0

VEGETATE DISTURBED L.A. WITH 4" LOAM, TOP QUAL BETWEEN MAY-SEPT 15 I

FIELD VERIFY PRIOR TO CONST.

TYP. 5' PAVEMENT SIDEWALK TO MATCH EXISTING

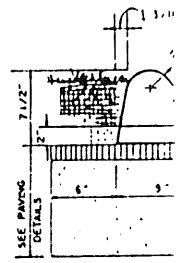
CONNECT TO EXIST. CATCH BASIN



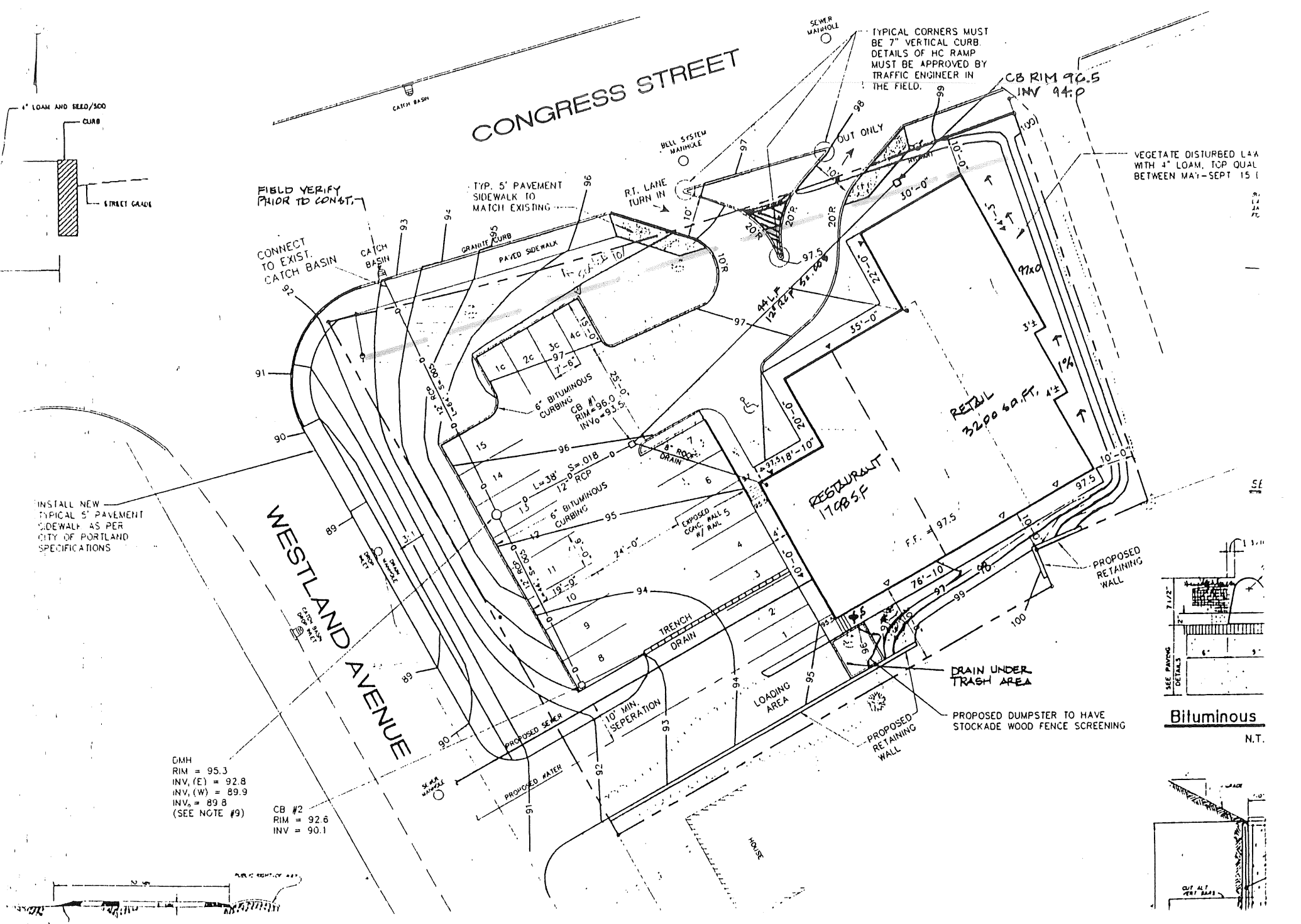
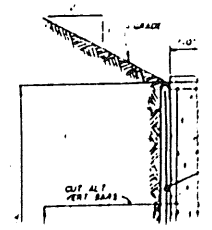
INSTALL NEW TYPICAL 5' PAVEMENT SIDEWALK AS PER CITY OF PORTLAND SPECIFICATIONS

DMH
RIM = 95.3
INV. (E) = 92.8
INV. (W) = 89.9
INV. = 89.8
(SEE NOTE #9)

CB #2
RIM = 92.6
INV = 90.1



Bituminous
N.T.



DIVISION 28. JURISDICTION OF BOARD OF APPEALS*

Sec. 14-471. Jurisdiction and authority.

The board of appeals shall have the following jurisdiction and authority:

- (1) Subject to the provisions of section 14-472, to hear and decide appeals from, and review orders, decisions, determinations or interpretations made by the building authority;
- (2) Subject to the provisions of section 14-473, to hear and grant or deny applications for variances from the terms of this article;
- (3) Subject to the provisions of section 14-474, to hear and grant or deny applications for conditional uses, as specified in this article;
- (4) To initiate changes and amendments to this article.

(Code 1968, § 602.24.A; Ord. No. 437-74, 7-1-74; Ord. No. 354-85, § 5, 1-7-85)

Sec. 14-472. Appeals.

- (a) *Authority.* The board of appeals shall hear and decide appeals from and review orders, decisions, determinations or interpretations or the failure to act of the building authority.
- (b) *Procedure:*
 - (1) *Notice of appeal.* An appeal may be taken to the board of appeals by any person affected by a decision of the building authority. Such appeal shall be taken within thirty (30) days of the action complained of by filing with the building authority a notice of appeal specifying the grounds thereof. A payment of a nonrefundable filing fee, as established from time to time by the city council to cover administrative costs and costs of hearing, shall accompany notice of appeal. The building authority shall forthwith transmit to the board of appeals all of the papers constituting the record upon which the action appealed from was taken.
 - (2) *Public hearing.* A public hearing shall be set, advertised and conducted by the board of appeals in accordance with article VI of this chapter.
 - (3) *Action by the board of appeals.* Within thirty (30) days following the close of the public hearing, the board of appeals shall render a decision on the appeal in the manner and form specified in article VI of this chapter. The failure of the board to act within thirty (30) days shall be deemed an approval of the appeal unless mutually extended in writing by the appellant and the board. Within five (5) days of such decision or failure to act notice thereof shall be mailed by the secretary to each party.

*Cross references—Administration, Ch. 2; boards generally, § 2-31 et seq.; board of appeals, § 14-541 et seq.

- (4) *Right to grant variance in deciding appeals.* In any case where the notice is accompanied by an application for variance in accordance with section 14-473(b)(1), the board of appeals shall have the authority to grant, as part of the relief, a variance, but only in strict compliance with each provision of section 14-473 hereof.
- (5) *Conditions and limitations on rights granted by appeal.* Any right granted by the board of appeals on appeal shall be subject to the same conditions and limitations as if secured without the necessity of an appeal.

(Code 1968, § 602.24.B; Ord. No. 437-74, 7-1-74)

Sec. 14-473. Variances.

(a) *Authority.* Except as otherwise expressly provided in subsection (c)(3), the board of appeals may authorize variances from the provisions of this article as meet the requirements of this division including but not limited to use variance, dwelling unit conversion, space and bulk such as lot size, density and side yard, parking, loading and signs.

(b) *Procedure:*

- (1) *Application.* Application for a variance shall be submitted to the building authority. A payment of a nonrefundable application fee, as established from time to time by the city council to cover administrative costs and costs of a hearing, shall accompany each application. The application shall be in such form as prescribed by the building authority and contain at least the following information and documentation:
 - a. The name and address of the applicant and his or her interest in the subject property;
 - b. The name and address of the owner, if different from the applicant;
 - c. The address or location of the subject property;
 - d. The present use and zoning classification of the subject property;
 - e. Where the site plan approval is required by article V of this chapter, a preliminary or final site plan as defined by article V of this chapter;
 - f. The relief sought from the board of appeals.
- (2) *Public hearing.* A public hearing shall be set, advertised and conducted by the board of appeals in accordance with article VI of this chapter.
- (3) *Action by board of appeals.* Within thirty (30) days following the close of the public hearing, the board of appeals shall render its decision granting or denying the variance, in the manner and form specified by article VI of this chapter. The failure of the board to act within thirty (30) days shall be deemed an approval of the variance unless mutually extended in writing by the applicant and the board. Within seven (7) days of such decision or the expiration of such period, the secretary shall mail notice of such decision or failure to act to the applicant.

(c) *Conditions for variances:*

- (1) *Undue hardship required; defined.* Except as provided in subsection (2) below, a variance may be granted by the board only where strict application of the ordinance, or