

# PLANNING BOARD REPORT PORTLAND, MAINE



Conditional Rezoning: R-3 to Conditional B-2  
194 Auburn Street  
C. N. Brown Co., Applicant  
Project # 2013- 146  
CBL: 374-A-030

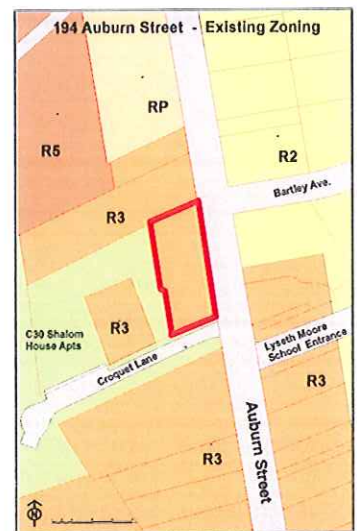
Submitted to: Portland City Council First Reading: November 18, 2013 Second Reading: December 2, 2013	Prepared by: Portland Planning Division Date: November 4, 2013 City Council Report Number: 49-13
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## I. INTRODUCTION

C. N. Brown Co., is requesting conditional rezoning, from R-3 to a conditional B-2 zone, of the property at 194 Auburn Street in order to re-establish the minor gas station use and add a heating oil office within the existing building. The 18,139 sq. ft. site is a vacant minor gas station which closed in the fall of 2011 and lost its non-conforming use status a year later. An excerpt from Portland's zoning map shows the site.

The Conditional Rezoning Agreement, recommended to the City Council by the Planning Board, is included in Attachment 1 (and Plan 2) to this report as well as in the City Council Order. The Planning Board voted four to three (Morrissette, O'Brien and Boepple opposed) to recommend the agreement to the City Council for adoption. The main provisions of the agreement are outlined in full in para VIII (B) and include, but are not limited to:

- Map change to B-2 zone, subject to only permitted use as a minor gas station with two fuel pumps (four fueling positions), plus a heating oil office as an accessory use;
- Property may not be converted to other permitted business uses in the B-2 zone unless the Agreement is amended and approved by the City Council;
- Hours of operation from 6am to 8pm daily (except for emergency oil deliveries);
- Reduced curb cut widths and crosswalk striping of both curb cuts and Croquet Lane, with the southernmost curb cut for right turn out only;
- Limit of three oil trucks on site;
- Retention of trees along the side and rear lot lines with additional planting along the frontage;
- Variations from setback and technical standards; and
- Reversion to R-P (Residence-Professional) Zone if the property ceases to be used as a minor gas station.



## II. PLANNING BOARD RECOMMENDATION

The Planning Board held a public hearing on October 22, 2013, at which time the Board voted 4-3 (Boepple, Morrissette and O'Brien opposed) to recommend to City Council the adoption of the proposed Conditional Rezoning from R-3 to B-2 of the property located at 194 Auburn Street and the associated Conditional Rezoning Agreement.

Those in support of the recommendation for the conditional rezoning agreement found the proposal to be consistent with comprehensive plan goals that support local businesses near residential areas and the proposal maintained a smaller scaled operation appropriate to the neighborhood. The support of the Neighborhood Association was also noted. The members who disagreed with the recommendation found the re-establishment of a non-conforming use to be inconsistent with the comprehensive plan and benefitted the one site. They also questioned whether the oil heating office was accessory to a gas station.

**III. PUBLIC NOTICING AND WORKSHOP SUMMARY**

**Public Noticing and comments**

The noticing for a Conditional Rezoning application is prescribed in the city’s ordinance and State Law (MRSA 30-A Section 4352), including sending legal and postcard notices with a 2-week lead and sending the abutters copies of the proposed rezoning agreement. The notice of the City Council Hearing will be sent to 82 neighbors within 500 feet and interested parties. A legal notice will be published in the *Portland Press Herald* in mid-November.

The applicant held a Neighborhood Meeting on 7.8.2013 and 12 people attended. The notes of the meeting are included in Attachment E. The proposal was supported by the North Deering Neighborhood Association (Attachment 7a) who also spoke in support at the Planning Board Hearing, and the concerns all date from before the final revisions to the Agreement (Attachment 7).

The Portland Public Schools Department (Attachment 18) requested assurances that the proposed use would not present a potential emergency safety issue for entry and exit from the Lyseth-Moore school campus nearby. It is understood that there is another vehicle access to the campus and the Traffic Engineering reviewer does not expect the project to impact the school access/egress movements (Attachment 15).

**IV. PROJECT DATA**

<b>Parcel Area:</b>	18,139 sq ft (.42 acre)
<b>Current Zoning:</b>	R-3
<b>Proposed Zoning:</b>	Conditional B-2 with Zoning agreement
<b>Current/proposed Uses:</b>	Developed as minor gas station; currently not operating

**V. BACKGROUND**

The existing gas station is understood to have existed since the 1960s and been in the ownership of C N Brown Co since 1975. During part of that time it also included an automobile service business in addition to the filling station (Attachment A and 4), but the repair business was phased out in 2011 and the filling station closed soon after.

The applicant sought staff advice regarding ways to reopen the service station after it lost its grandfathered status as a non-conforming use. The site is surrounded by the Residential R-3 zone and a conditionally rezoned parcel for Shalom House apartments. A Residence Professional zone is in the vicinity of the site where medical and general offices are located. The staff explored a potential map amendment to a zone that allows filling stations. The Neighborhood Business Zone (B-1) does not permit gas stations and the Community Business (B-2) zone allows major and minor auto service stations, as defined in the ordinance (see footnote below).<sup>1</sup>

A map change to B-2 would open up the site to a wide range of business and retail uses (see Table on page 5 and in Attachment 6) and the staff identified concerns regarding the intensity of many of the permitted B-2 uses with the compatibility of a straight map amendment with the adjoining residential area and the elementary and middle school campus across the street. Since the site is unusual in that it was developed and functioned as a gas station, the staff suggested a conditional B-2 rezoning agreement that narrowly defines the permitted uses in order to re-establish the historic use on the site might be appropriate for consideration. The applicant’s proposal is to re-establish a minor gas station and add a heating fuel business on this site. It does not include automobile repair services nor a convenience store.

**VI. EXISTING CONDITIONS**

The site has a 200+ foot long frontage along the west side of Auburn Street, with two long curb cuts totaling just over 70 feet and an existing sidewalk where there are no curb cuts. To the south is Croquet Lane, a private drive which leads to the 13 apartments known as Shalom House assisted living apartments which were developed subject to a conditional rezoning to allow higher densities and lower parking. To the south of the lane is a commercial building. To the north the site is bounded by a 2-family dwelling with the driveway a few feet from the parking area associated with the subject site-

<sup>1</sup> **Major auto service station:** A business selling gasoline, diesel or propane fuel, with more than two (2) pump islands or with a capacity to fuel more than eight (8) vehicles simultaneously or providing repair services including, but not limited to, tune-ups, engine repair, brake work, muffler replacement, tire repair or similar activities.

**Minor auto service stations:** A business selling gasoline, diesel or propane fuel with not more than two (2) pump islands, provided that no more than a total of eight (8) vehicles may be fueled simultaneously. Repair services including but not limited to tune-ups, engine repair, brake work, muffler replacement, tire repair or similar activities shall be permitted provided there shall be no more than two (2) services bays. Such business shall not include car washes or vacuums.

see photo below. Across the street are single family homes and a sidewalk. The main pedestrian and vehicular access to Lyseth and Lyman Moore Schools (elementary and middle) is at a recently upgraded intersection about 75-100 feet from the project site.



Looking north towards two-family home



Looking south

**VII. PROPOSED CONDITIONAL REZONING AGREEMENT**

There have been several iterations of the conditional zoning agreement (CZA), with the final revised version in **Attachment 1** (and **Plan 2**) representing substantial content revisions by the applicant to address the Planning Board and staff comments. In particular, the curb cuts have been reduced substantially and the southerly drive is now restricted to egress and right turn only, so that pedestrian safety is improved and the overall plan is acceptable to the Traffic Engineering reviewer Tom Errico (**Attachment 15**).

The table below summarizes proposed conditions of the agreement and lists the revisions (paraphrased) as compared with the draft version considered at the July Workshop. The final Conceptual Plan (**Plan 2**) would be attached to the Agreement and has been revised to confirm and reference the extent of physical improvements that would be confirmed as part of the Conditional Rezoning.

<i>Draft Rezoning Agreement (PB Workshop)</i>	<i>Final Rezoning Agreement (Att. 1)</i>
WHEREAS Clauses	Applicant added one to address Comprehensive Plan policy re encroachment on residential neighborhoods.
Limiting the use to an automobile refueling station, with no automobile service performed on site.	Limiting the use to a minor auto service stations as defined in City Ordinance with no automobile repair services permitted; no more than 2 fuel pumps permitted.
Including the heating oil office permitted as incidental accessory use.	Including the heating oil office permitted as incidental accessory use.
Permitted uses allowed in the proposed conditional B-2 zone would be consistent with the permitted uses in the R-3 zone;	[removed]
Maximum of 2 trucks (associated with oil business) would be permitted to be stored outside;	No more than three peddler trucks may be stored on the site.
The property may not be converted to other permitted business uses in the B-2 zone unless Agreement amended and approved by the City.	The Property may not be converted to other permitted business uses in the B-2 zone unless this Agreement is amended and approved by the City;
Limiting hours of operation to 6:00am to 8:00pm daily (except afterhours use for emergency deliveries by oil trucks);	Limiting hours of operation to 6:00am to 8:00pm daily (except afterhours use for emergency deliveries by oil trucks);
No disturbance to existing vegetation along north, south and west boundaries;	No disturbance to existing vegetation along north, south and west boundaries, with replacement planting if removal is required due to disease or damage. The northerly buffer will be planted in accordance with the ordinance requirements;
Implementation of safety improvements at Croquet Lane, to include crosswalk and tactile warnings;	Implementation of safety improvements at Croquet Lane, to include crosswalk and tactile warnings; in addition, the two driveway crossings will be narrowed and marked with zebra style crosswalks.
If property ceases to be used for the uses permitted by the agreement, conditional rezoning becomes null and void and reverts to R-3.	If property ceases to be used for the uses permitted by the agreement, conditional rezoning becomes null and void and reverts to R-P (Residence-Professional) Zone.
Modifications to the B-2 Regulations: A. Minimum Rear Yard dimension: 14.5 ft.	Modifications to the B-2 Regulations: A. Minimum Rear Yard dimension: 11 ft. B. Minimum pavement setback: 7 ft. along N. property line; as existing elsewhere
[Curb cuts remain as existing eg 37 ft (southerly) and 35 ft (northerly)]	Variation from technical standards: A. Maximum curb cut widths: 28 ft (southerly)* and 31 ft. (northerly) B. Maximum Spacing between driveways • Northerly curb cut to abutter drive – 41 ft. C. Minimum Distance Croquet La. ROW to center of S. drive 43ft.

<i>Draft Rezoning Agreement (PB Workshop)</i>	<i>Final Rezoning Agreement (Att. 1)</i>
	<ul style="list-style-type: none"> <li>• * Southerly site drive will be signed to indicate it is an exit &amp; right turn out only;</li> <li>• The applicant shall obtain Site Plan approval and other approvals as required by Portland City Code, state &amp; federal law for the site improvements;</li> <li>• Existing freestanding sign will remain, and may be modified to include a heating oil office sign and LED price signs;</li> <li>• Existing pole lighting will be upgraded to meet City standards.</li> </ul>

**VIII. STAFF ANALYSIS**

The submitted final Conceptual Plan (Plan 2) is intended to be attached to the Conditional Rezoning Agreement and a clause in the Agreement requires the development to be implemented substantially in accordance with the Conceptual Plan. Therefore staff has reviewed the Conceptual Plan with a focus on those aspects which are fundamental to the layout and use of the property.

**(A) Zoning**

The fueling station was a non-conforming use in the R-3 zone for many years and this rezoning is to allow it to be reactivated in its revised form. The heating oil use is proposed to be added to make use of the building’s capacity and effectively replaces the automobile servicing business that existed previously. Marge Schmuckal, Zoning Administrator, has provided the following comments (Attachment 4):

“The dispensing of gas and working on cars in the repair garage was abandoned years ago. Underground tanks were removed by a permit in 2005. There never was a true retail in the office area like in gas stations today. The Land Use Zoning Ordinance addresses abandon uses as lost and the use to revert to those allowed in the underlying zone (R-3). It should be noted that a conditional contract rezoning should not permit more pumps than those present previously.”

As indicated in the Table below, the B-2 zone includes a number of uses that would not be appropriate within this dense residential and school neighborhood, such as drinking establishments. The B-2 zone also allows retail uses, and a neighbor (Attachment 7d) has noted objections to having a convenience store as part of the gas station use. The language of the Conditional Rezoning Agreement was revised by the City’s Associate Corporation Counsel to limit the permitted use to the two identified uses and define the “minor” scale of the fuel station (Attachment 11). The applicant has proposed that the fueling station use be a permitted use as part of the agreement, rather than a conditional use. The B-2 zone lists the automobile fueling use as a conditional use to be reviewed by the Planning Board (see table next page) and the B-2 ordinance includes the following requirements (see also Table 1 below):

- 14-183a5 Conditional Uses  
 In addition to approval by the Planning Board with respect to the requirements of article V (site plan), sections 14-522 and 14-523 notwithstanding, these uses shall comply with the following conditions and standards in addition to the provisions of section 14-474:
  - a. Signs: Signs shall not adversely affect visibility at intersections or access drives. Such signs shall be constructed, installed and maintained so as to ensure the safety of the public. Such signs shall advertise only services or goods available on the premises.
  - b. Circulation: No ingress and egress driveways shall be located within thirty (30) feet from an intersection. No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public.
- 14-183a6j: A landscaped buffer, no less than five (5) feet wide, shall be located along street frontages (excluding driveways). The buffer shall consist of a variety of plantings in accordance with the City of Portland Technical Manual;
- 14-185(b)3 a iv Dimensional Requirements  
 Where the front yard setback exceeds 10 feet (*and in this case it's at least 16 feet*) “a continuous, attractive, and pedestrian scaled edge treatment shall be constructed along the street consisting of street trees spaced at not more than 15 ft on center ...and... landscaping of no less than 4 feet in depth or ornamental fencing/walls.
- 14-186 Other Requirements  
 All nonresidential uses in the B-2 and B-2b zone shall meet the requirements of division 25 (space and bulk regulations and exceptions) of this article in addition to the following requirements:
  - (a) *Landscaping and screening*: The site shall be suitably landscaped for parking, surrounding uses and accessory site elements, including storage and solid waste receptacles where required by article IV (subdivisions) and article V (site plan).
  - (b) *Curbs and sidewalks*: Curbs and sidewalks as specified in article VI of chapter 25.

The applicant’s latest revisions go further towards addressing these zoning requirements by modifying the circulation (so that southerly curb cut is exit and right turn out only); narrowing the curb cuts; adding crosswalk markings; adding three trees to the 5 foot wide frontage planting; and planting to buffer the neighbor’s driveway.

**TABLE 1: ZONE COMPARISON FOR R-3 and B-2 and PROPOSED REZONING**  
 (see Attachment 6 for a comparison of allowed uses in R-3, B-1, B-2 and R-P Zones)

STANDARD	R-3	B-2	Proposed Conditional B-2 (based on final version Attachment 1)
<u>Purpose</u>	To provide for medium density residential development characterized by single-family homes on individual lots and also to provide for planned residential unit developments on substantially sized parcels. Such development shall respond to the physical qualities of a site and complement the scale, character and style of the surrounding neighborhood.	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, by pedestrians and by bicycle. Development in the B-2 zone should relate to the surrounding neighborhoods by design, orientation, and circulation patterns.	<b>PROPOSED:</b> To allow re-establishment of the historical (since 1960) minor auto service station use, along with (new) accessory heating oil office use
<u>Permitted Uses</u>	<b>Residential:</b> Single family; PRUD; Handicapped family unit; Single-family, multiple-component manufactured housing; Single-family single-component manufactured housing; <b>Other:</b> Parks; Accessory uses; Home occupation; Municipal uses; Wind energy systems	<b>Residential:</b> Attached single-family & two-family dwellings; Multi-family dwellings when nearest zone R4, R5, R6 or R7; Handicapped family units; Combined living/working spaces including, but not limited to, artist residences with studio space. <b>Business:</b> General, business & professional offices; Personal services; Offices of building tradesmen; Retail establishments; Restaurants (must close 11pm); Drinking establishments; Billiard parlors; Mortuaries or funeral homes; Miscellaneous repair services, excluding motor vehicle repair; Communication studios or broadcast and receiving facilities; Health clubs and gymnasiums; Veterinary hospitals; Theaters & performance halls; Hotels; dairies & bakeries (if existing 1999); retail bakeries; drive-throughs associated with a permitted use if not adjacent to residential zone; registered medical marijuana dispensaries. <b>Institutions:</b> Long term, extended and intermediate care facility; Clinics; Places of assembly; Schools; college, university or trade schools; municipal buildings and uses. <b>Other:</b> Lodging houses; Utility substations; Accessory uses; Bed and Breakfast; Hostels; Studios for artists and craftspeople; Hostels; Wind energy systems.	Permitted to be used as a minor auto service station, with an incidental accessory use as a heating oil office. Maximum of 3 Peddler /delivery trucks stored on site when not making deliveries. "The property may not be converted to other permitted business uses in the B-2 zone unless this Agreement is amended and approved by the City." (If use ceases, property reverts to R-P) Hours of operation limited to 6:00AM to 8:00PM daily. After hours use of the property to access heating oil trucks for emergency deliveries also permitted. <hr/> To be developed substantially in accordance with Conceptual Site Plan <hr/> Community contribution: safety improvements at crossing of Croquet Lane, plus the two driveway crossings will be narrowed and marked with zebra-style crosswalks.

STANDARD	R-3	B-2	Proposed Conditional B-2 (based on final version Attachment 1)
Conditional Uses	<p><b>Residential:</b> Sheltered Care group homes; adding one accessory dwelling unit; <b>Institutional:</b> Schools; Long term and extended care facilities; intermediate care facilities; places of assembly; hospital;</p> <p><b>Other:</b> off-street parking; utility substations; day care or home babysitting services; temporary wind anemometer towers; wind energy systems.</p>	<p><b>Business:</b> major and minor auto service stations*; car washes; drive-throughs associated with a permitted use adjacent to residential zones; automobile dealerships.</p> <p><b>Other:</b> Printing and publishing establishments; wholesale distribution establishments; research and developments and related production establishments; temporary wind anemometer towers; wind energy systems.</p> <p><b>*Subject to a signage condition and:</b> (extract) "No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public."</p>	<p>Major and minor auto service stations are conditional uses in B2 zone; the proposed agreement proposes the minor auto service station to be a permitted use.</p> <p>Agreement and Conceptual Plan confirm driveways narrowed, southerly driveway right turn out only; striped crosswalks proposed across driveway entrances.</p>
Street Frontage	50 feet	<p><b>Residential:</b> None</p> <p><b>Business and non-residential uses:</b> 50 feet</p>	209.4 feet
Front Yard (Min)	25 feet	<p><b>Residential:</b> None</p> <p><b>Business and non-residential uses:</b> None</p>	16 ft to overhead canopy; 45 ft to main building front wall
Front yard (Max)	N/A	<p>Must not exceed average depth of the front yards of closest developed lots, unless the planning board or planning authority approves a modified setback. For the purposes of this section a developed lot means a lot on which a principal structure has been erected.</p> <p>Where the front yard exceeds 10 feet a continuous, attractive, and pedestrian scaled edge treatment shall be constructed along the street consisting of street trees spaced at not more than 15 ft on center plus 4 ft of landscaping or ornamental fencing/walls.(Detailed req's in Ord.)</p>	<p>16 feet to overhead canopy over pumps; 45 feet to main building front wall [ave depth on adjacent lots is approx. 30 ft]</p> <p>Conceptual Plan shows low planting and 3 trees in 5 feet wide linear area between the sidewalk and the main service station area.</p> <p>Existing vegetation along northerly, southerly and westerly boundaries to remain undisturbed (if necessary to disturb, shall replace)</p>
Rear Yard	25 feet	<p><b>Residential:</b> 10 feet (20 feet where abuts residential zone); <b>Business and non-residential uses:</b> 10 feet (20 feet where abuts residential zone)</p>	<p>11 feet (variance requested)</p> <p>(14.5 ft from structure base- the 11 ft is from canopy)</p>
Side Yard	20 feet	<p><b>Residential:</b> 5 feet (10 feet where abuts res.zone)</p> <p><b>Business and non-residential uses:</b> none (10 feet where abuts a residential zone/use</p>	52.4 feet
Pavement Setback	N/A	10 feet from side and rear where adjacent to res. zone	7 ft at narrowest point on north boundary (variance requested)
Structure Height	35 feet	45 feet	18 feet
Lot Coverage (max)	35 %	N/A	18%
Maximum impervious surface	N/A	<p><b>Residential:</b> 90%</p> <p><b>Business and non-residential uses:</b> 80%</p>	<p>79% (after planting along street)</p> <p>Building is 1680 sq ft (excl. canopy over pumps)</p>
Parking	No off-street parking in min front yard setback	No off-street parking in front yard	Parking areas are not indicated on Conceptual Plan

**(B) Comments regarding the final Conditional Rezoning Agreement**

The final version of the Conditional Rezoning Agreement is included in Attachment 1; it is as submitted and noticed with some minor staff revisions. The applicant has addressed Planning Board/staff comments, notably by reducing the width of the drives (curb cuts) and introducing the restriction on the southerly drive for it to be exit only and right turn out only. Trees and buffer planting have been added along the frontage and near the neighbor's driveway. Planning Board and staff comments on the substantive provisions in the Agreement (in *italics*) are outlined below:

- A. *Permitted uses: The Property shall be permitted to be used as a minor auto service station as defined in Section 14-47 of the Portland City Code except that no automobile repair services shall be permitted on the site. A heating oil office will also be permitted as an incidental accessory use. Peddler/delivery trucks may be stored on the site when not making deliveries. No more than three peddler trucks may be stored on the site. The Property may not be converted to other permitted business uses in the B-2 zone unless this Agreement is amended and approved by the City Council.*

Comment: The wording of the Agreement has been made more precise regarding what is permitted under the Agreement, with any other uses requiring an amendment through the Planning Board and City Council. As previously noted, the applicant is proposing that the refueling use be listed as "permitted" by the rezoning and thus would not be subject to a conditional use review (based on the conditional use standards in the B-2 zone) at the site plan stage. The Board encouraged the applicant to address the pedestrian safety and landscape/screening objectives outlined by reviewers (and referred to in the conditional use standards of the B-2 zone) and the final proposals are improved in these respects.

- B. *No more than two fuel pumps shall be permitted on the site.*

*The hours of operation of the minor auto service station and heating oil office shall be limited to 6:00 AM to 8:00 PM, daily. After-hours use of the property to access heating oil trucks for emergency deliveries when the heating oil office is not open to the general public is also permitted.*

*The Property shall be developed substantially in accordance with the Conceptual Site Plan by Site Design Associates, Revision B, dated September 16, 2013 (the "Site Plan"). See Attachment 2.*

Comment: These limitations help ensure that the scale of the development remains compatible with the residential zone. The Board did not recommend any limits on the emergency deliveries.

*Modifications to the B-2 Regulations. The Property shall be governed by the dimensional requirements applicable to the B-2 zoning district and other applicable provisions of the City Codes except as follows:*

- A. *Minimum Rear Yard dimension: 11.0 ft.*  
B. *Minimum pavement setback: 7.0 ft. along the northerly property line. To remain as existing in other locations.*

*The existing vegetation along the northerly, southerly, and westerly boundaries of the property shall remain undisturbed. If vegetation needs to be removed due to disease or damage, vegetation of similar species and height shall be planted in the same location as a replacement to maintain the screening function of this vegetation. The northerly buffer will be planted in accordance with the ordinance requirements.*

Comment: The applicant has indicated (Attachment M) that the rear setback has been corrected to take account of the building canopy, and that the northern setback is limited by the need to accommodate large delivery vehicles accessing the site via the curb cut at the north end of the site.

The proposed planting addresses the City Arborist comments in Attachment 3, as confirmed in Attachment 16. The Conceptual Plan includes notes and graphics that correspond to the Agreement in respect of the vegetation and buffers.

- C. *Community Contribution: C.N. Brown will implement safety improvements at the crossing of Croquet Lane, to include a cross walk and tactile warnings. In addition, the two existing driveway crossings will be narrowed and marked with zebra style crosswalks.*

*The existing freestanding sign will remain, and may be modified to include a heating oil office sign and LED price signs.*

*Sign(s) to the satisfaction of the City will be installed at the southerly site drive clearly indicating that it may be used only as a means of egress and that only right-hand turns out of said drive will be permitted.*

*Existing pole lighting will be upgraded to meet the requirements of the Portland City Code and City of Portland Technical Standards.*

*The Property shall comply with the City of Portland Technical Standards except as follows:*

- A. Maximum Curb cut widths: 28 ft (southerly) and 31 ft. (northerly)*
- B. Minimum Spacing between driveways*
  - Northerly curb cut to abutter's drive – 41 ft.*
- C. Minimum Distance from Croquet Lane ROW to center of drive – 43 ft.*

Comment: The proposed site improvements for the curb cut narrowing; crosswalk; sign; lighting and southerly drive restrictions address Board and staff concerns. The Conditional Rezoning Agreement and the Conceptual Plan (Plan 2) now include significant reductions in the curb cut widths as based on analysis of turning templates (Attachments J and K) and discussions with staff. These exceptions (based on the Conceptual Plan proposals as rounded slightly by staff) are included in the Agreement because the curb cut widths and two of the drive way spacings do not comply with the Technical Standards, as noted in the table:

<i>Site feature</i>	<i>Original Proposal</i>	<i>Final Proposal</i>	<i>Technical Standard</i>
Southern curb cut	37 feet	28 feet (max)	24 feet (max)
Northern curb cut	35 feet	31 feet (max)	24 feet (max)
Spacing between south curb cut and Croquet Lane/ intersection	53 feet	43 feet (min)	150 ft (min)
Spacing between the two site curb cuts	91 feet	133 feet (meets standard)	125 ft (min)
Spacing between the north curb cut & neighbor's driveway	14 feet	41 feet* (min)	125 ft (min)

\*Note: change due to corrected measurements and revised curbcut

The Department of Public Services consider the proposal satisfactory in terms of the ROW (Attachment 17) and Tom Errico, Consulting Traffic Engineer, has reviewed the turning templates submitted by the applicant and the scope for revising the Conceptual Plan (Attachments J and K) and considers the reduction in the driveway widths, restricted turn movements and painted crosswalks to be acceptable, and supports waivers for the driveway separation (Attachment 15):

- D. The applicant shall obtain Site Plan approval and any other approvals as required by the Portland City Code and any state and federal law for any improvements or alterations to the site.*

Comment: As worded the Agreement does not require the project to return to the Planning Board for site plan approval. The Board determined that since most site plan issues had been addressed in the agreement that it did not need to return to the Board.

- E. Should the Property cease to be used as a minor auto service station with an accessory heating oil office under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert to R-P, Residence Professional Zone.*

Comment: This provision was discussed in detail at the Workshop, as another option would be to stipulate reversion to the B-1 or R-P zone. While this raised the question of whether any retail uses should be allowed (as would be the case with B-1- see Attachment 6), reversion to something other than R-3 may help ensure redevelopment if the gas station were to cease. The applicant has revised the Agreement to specify reversion to Residence-Professional (R-P) zone, as suggested by staff and supported by the Planning Board.

**IX. LEGAL AUTHORITY for CONDITIONAL REZONING**

Consideration of the request for conditional rezoning is guided by State Statute and City Ordinance; these are attached for reference in Attachments 9 and 10. The City's ordinance (14-60) speaks to the need for "reasons such as the unusual nature or unique location of the development proposed..." to support the rezoning as well as to it being consistent with the Comprehensive Plan. The motion for the Board to consider includes findings in respect of the City's ordinance.



#### **X. CONSISTENCY WITH UNDERLYING ZONE**

The applicant has submitted a narrative addressing the consistency of the requested conditional rezoning with the underlying R-3 zone (Attachments C and O). The R-3 zone allows for municipal and institutional uses (see **Table 1** above, first column, second and third rows) and this is the basis for the consistency. The City's Associate Corporation Counsel Jennifer Thompson has provided a Memorandum (Attachment 12) that provides some case law background on the interpretation of this requirement.

#### **XI. CONSISTENCY WITH COMPREHENSIVE PLAN**

The City's ordinance regarding Conditional Rezoning (quoted above) states that any rezoning must be consistent with the City's Comprehensive Plan. In forming its recommendation to the City Council, the Board made a finding on Comprehensive Plan consistency. The City's Associate Corporation Counsel Jennifer Thompson has provided a Memorandum (Attachment 12) that provides some case law background on the interpretation of this requirement.

The applicant has submitted a narrative outlining how the proposals are consistent with the Comprehensive Plan (Attachment C, updated by Attachment O) which references the supporting policies included in the Residential, Transportation and Economic/Commercial sections of the Plan. A new "WHEREAS" paragraph has been added to address Policy #3: **Neighborhood Stability and Integrity**, from *Housing: Sustaining Portland's Future* November 2002, as recommended by staff at the Workshop. The submitted letter (Attachment O) also addresses the Board's questions as to why this proposal/site is unusual/unique.

Staff consider that if the gas station is operated as limited by the Agreement in terms of scale and hours, with similar limitations on the heating oil business, that it addresses the Comprehensive Plan objectives in terms of respecting the residential neighborhood.

#### **XII. CONCLUSIONS**

The Planning Board held a public hearing on October 22, 2013, at which time the Board voted 4-3 (Boepple, Morrissette and O'Brien opposed) to recommend the approval of the proposed Conditional Rezoning from R-3 to B-2 of the property located at 194 Auburn Street and the associated Conditional Rezoning Agreement.

The Planning Board members in support of the recommendation for the conditional rezoning agreement found the proposal to be consistent with comprehensive plan goals that support local businesses near residential areas and the proposal maintained a smaller scaled operation appropriate to the neighborhood. Those Board members also stated that the vacant gas station is a negative influence in the neighborhood, and that a functioning service station subject to the limitations of the rezoning agreement is preferable to continuing the vacant use until a conforming use is developed, which is not deemed likely in the near term.

The members who disagreed with the recommendation found the re-establishment of this non-conforming use to be inconsistent with the comprehensive plan and benefitted the one site. They also questioned whether the oil heating office was accessory to the gas station. Those Board members believe that a rezone to RP and eventually a suitable RP use would be a preferable outcome, even if the land were to lay fallow in the meantime.

The recommendation from the Board stated:

On the basis of the application, plans, reports and other information submitted by the applicant, the policies and requirements of the R-3 and B-2 zones, the Comprehensive Plan, public comment, staff comments and recommendations contained in Planning Report #43-13, and the testimony presented at the Planning Board Hearing, the Planning Board finds:

- A. That the proposed Conditional Rezoning to permit a minor auto service station with accessory heating oil service at 194 Auburn Street, as described in Report # 43-13, is consistent with the Comprehensive Plan of the City of Portland;
- B. That the proposed Conditional Rezoning is consistent with existing and permitted uses in the underlying zone;
- C. That the proposed Conditional Zone Agreement proposed for 194 Auburn Street [version as noticed, with staff revisions, as in Attachment 1 to this report] is in compliance with the standards set out in 14-60 and 14-62; and
- D. That the Planning Board therefore recommends the Conditional Rezoning and associated Conditional Zone Agreement for 194 Auburn Street [version as noticed, with staff revisions, as in Attachment 1 to this report], to the City Council for its approval.

**Staff Report Attachments**

1. **FINAL CONDITIONAL ZONING AGREEMENT (CZA)**  
(as agreed between applicant & staff 9.30.13 and as recommended by Planning Board on 10.22.2013)
- 2a. Traffic Engineering Reviewer Tom Errico e-mail 7.8.2013
- 2b. Staff Review letter 7.10.2013
3. City Arborist Jeff Tarling e-mail 7.12.2013
4. Zoning Administrator comments 7.17.2013
5. DPS comments (see Att 17)
6. Table comparing R-3, R-P, B-1 and B-2 permitted and conditional uses
7. Public comments:
  - a. Maureen Zemrak, President, North Deering Neighborhood Association 6.19.2013
  - b. Kathy Farrell, neighbor, 6.22.2013
  - c. Robert and Martha Smith, neighbor, 6.23.2013
  - d. Kathy Farrell, neighbor (further comments 6.25.2013
  - e. Ted Sek, neighbor, 7.15.2013
  - f. Casey Johnsen, neighbor, 7.23.2013
8. City Legal comments (track changes) on applicant's initial (superceded) draft agreement 7.23.2013
9. Extract from State Law re Conditional Rezoning
10. Extract from City Ordinance re Conditional Rezoning
11. City Legal comments (track changes) on applicant's 8.7.2013 (superceded) Agreement
12. City Legal Memorandum on interpretation of "consistency" 8.16.2013
13. Traffic Engineering Reviewer Tom Errico e-mail 8.22.2013
14. City Legal and Traffic comments (track changes) on applicant's 9.17.2013 Agreement
15. Traffic Engineering Reviewer Tom Errico e-mail 10.2.2013
16. City Arborist e-mail 10.4.2013
17. DPS comments 9.19.2013
18. Public comment from Portland Public Schools 9.27.2013

**Applicants Submittal**

- A. Cover letter and application 6.13.2013
- B. Draft Conditional Rezoning Agreement (superceded)
- C. Comprehensive Plan- analysis of consistency 7.16.2013
- D. Traffic Assessment 4.9.2013
- E. Neighborhood Meeting Certification 7.11.2013
- F. Response to staff review letter 7.16.2013
- G. Cover letter for final submittal 8.7.2013
- H. Revised Conditional Rezoning Agreement 8.7.2013 (not included in CC Report)
- I. Consistency Comp.Plan & Underlying Zone 8.6.2013(Also in Att O)
- J. Turning analysis for large trucks 8.15.2013
- K. Turning analysis smaller trucks 8.21.2013
- L. Conditional Rezoning Agreement 8.22.2013 (superceded; not included in CC Report)
- M. Cover letter 9.17.2013
- N. Revised Conditional Rezoning Agreement 9.17.2013 (superceded & not included in CC Report; basis for Attachment I)
- O. Consistency Comp. Plan & Underlying Zone 8.6.2013 [Resubmittal of Att I.] (to be read with Att. C. above)

**PLANS**

- Plan 1: Existing conditions  
Plan 2: Final Conceptual Plan 9.17.2013

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

JOHN R. COYNE (5)  
JOHN M. ANTON (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

**AMENDMENT TO CITY CODE**  
**SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)**  
**RE: CONDITIONAL REZONING FOR PROPERTY**  
**IN THE VICINITY OF 194 AUBURN STREET**

**ORDERED**, that the zoning map and text of the City of Portland, dated December 2000, 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 REZONING AGREEMENT**

AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2013 by C.N. Brown Company, a Maine corporation ("CNB") with a place of business in South Paris, Maine, and its successors and assigns.

**W I T N E S S E T H**

**WHEREAS**, CNB is the owner of the property located at 194 Auburn Street, Portland, Maine (the "Property") more particularly described and shown on the Portland Assessors Map at Chart 374, Block A, Lot 030 and in a deed in the Cumberland County Registry of Deeds at Book 3743, Page 103, (the "Property") and intends to use the Property for a fueling station and heating oil office; and

**WHEREAS**, the Property is currently in the R-3 zoning district, and has been located in the R-3 zone since the zone was established; and

**WHEREAS**, CNB has filed a Zone Change Application with the City of Portland (hereinafter "CITY") to rezone the Property to a conditional B-2 zone subject to certain modifications and conditions set forth in this Agreement in order to reestablish the historic minor auto service station use and establish a heating oil office, as an accessory use; and

**WHEREAS**, the Property has been used and operated as a minor auto service station since 1960; and

**WHEREAS**, the Property has been used and operated as a minor auto service station operated by CNB since its acquisition of the property on July 7, 1975; and

**WHEREAS**, the **CITY'S** Comprehensive Plan includes the following stated goals: to promote the economic climate and activity, work with individual neighborhoods to identify suitable locations and approaches to accommodate neighborhood businesses, and encourage orderly growth and development within the **CITY**; and

**WHEREAS**, the **CITY'S** Comprehensive Plan includes the following objective; the **City** should, while accommodating needed services and facilities, protect the stability of Portland's residential neighborhoods from excessive encroachment by inappropriately scaled and obtrusive commercial, institutional, governmental and other non-residential uses, and

**WHEREAS**, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the Property; and

**WHEREAS**, the **CITY**, by and through its City Council, has determined that the proposed commercial use of the property is appropriately scaled to the needs and character of the neighborhood and that the re-introduction of the historic commercial use of this property will not be obtrusive or result in excessive encroachment; and

**WHEREAS**, the **CITY**, by and through its City Council, has determined that the rezoning would assist in revitalizing the Property without altering the historic use of the property or its impact on abutting properties or the neighborhood, generally; and

**WHEREAS**, the **CITY**, by and through its City Council, has determined that the rezoning is appropriate due to the unusual and historic nature and unique location of the development proposed, to allow the continued use of the site based on the historical uses that have taken place on the site, that the uses proposed are consistent with the historic use of the property as well as with the existing and permitted uses within the zone, has determined that the use, as restricted herein, will not have a negative effect on the neighborhood and that the rezoning would be pursuant to and consistent with the City's Comprehensive Plan; and

**WHEREAS**, the Portland City Council, has on \_\_\_\_\_, 2013 approved this Agreement in its entirety, by City Council Order No. \_\_\_\_\_, a true copy of which is attached hereto as Attachment 1 (the "Order"); and

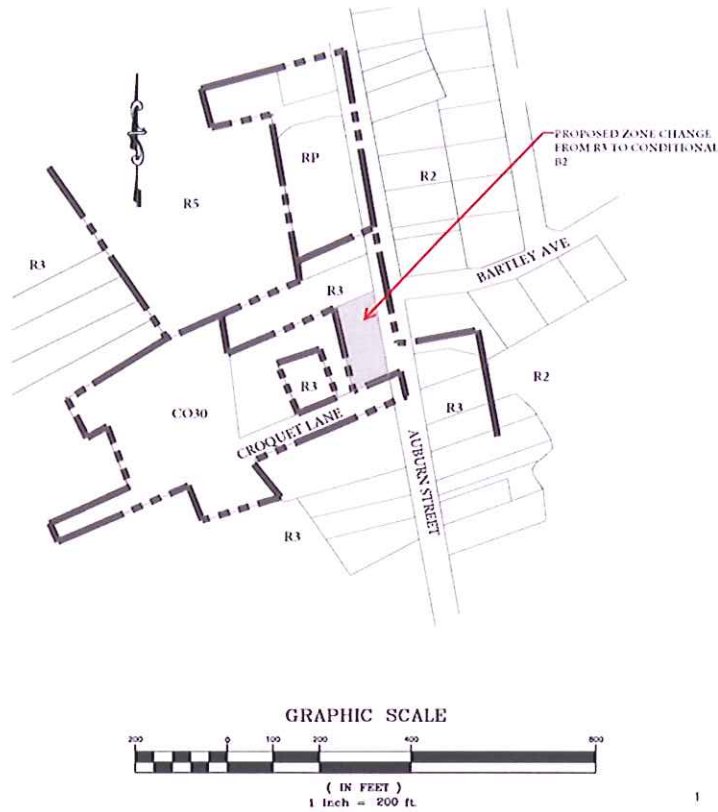
**WHEREAS**, **CNB** has agreed to enter into this Agreement and the Amendment thereto, with its concomitant terms and conditions, which shall hereinafter bind **CNB**, its successors and assigns;

**NOW, THEREFORE**, in consideration of the rezoning of the Property, **CNB** agrees to be bound by the following terms and conditions:

1. Pursuant to the Order, the **CITY** shall amend the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Development and incorporated by reference into Zoning Ordinance by §14-49 of the Portland City Code, by adopting the following map change to zone the property conditional B-2, subject to the conditions contained below.

1c.

10.30.2013 Version to City Council



2. Permitted uses: The Property shall be permitted to be used as a minor auto service station as defined in Section 14-47 of the Portland City Code except that no automobile repair services shall be permitted on the site. A heating oil office will also be permitted as an incidental accessory use. Peddler/delivery trucks may be stored on the site when not making deliveries. No more than three peddler trucks may be stored on the site. The Property may not be converted to other permitted business uses in the B-2 zone unless this Agreement is amended and approved by the City Council.
3. No more than two fuel pumps shall be permitted on the site.
4. The hours of operation of the minor auto service station and heating oil office shall be limited to 6:00 AM to 8:00 PM, daily. After-hours use of the property to access heating oil trucks for emergency deliveries when the heating oil office is not open to the general public is also permitted.
5. The Property shall be developed substantially in accordance with the Conceptual Site Plan by Site Design Associates, Revision B, dated September 16, 2013 (the "Site Plan"). See Attachment 2.

6. Modifications to the B-2 Regulations. The Property shall be governed by the dimensional requirements applicable to the B-2 zoning district and other applicable provisions of the City Codes except as follows:
  - A. Minimum Rear Yard dimension: 11.0 ft.
  - B. Minimum pavement setback: 7.0 ft. along the northerly property line. To remain as existing in other locations.
7. The existing vegetation along the northerly, southerly, and westerly boundaries of the property shall remain undisturbed. If vegetation needs to be removed due to disease or damage, vegetation of similar species and height shall be planted in the same location as a replacement to maintain the screening function of this vegetation. The northerly buffer will be planted in accordance with the ordinance requirements.
8. Community Contribution: C.N. Brown will implement safety improvements at the crossing of Croquet Lane, to include a cross walk and tactile warnings. In addition, the two driveway crossings will be narrowed and marked with zebra style crosswalks.
9. The existing freestanding sign will remain, and may be modified to include a heating oil office sign and LED price signs.
10. Sign(s) to the satisfaction of the City will be installed at the southerly site drive clearly indicating that it may be used only as a means of egress and that only right-hand turns out of said drive will be permitted.
11. Existing pole lighting will be upgraded to meet the requirements of the Portland City Code and City of Portland Technical Standards.
12. The Property shall comply with the City of Portland Technical Standards except as follows:
  - A. Maximum curb cut widths: 28 ft. (southerly) and 31 ft. (northerly)
  - B. Minimum Spacing between driveways
    - Northerly curb cut to abutter's drive – 41 ft.
  - C. Minimum Distance from Croquet Lane ROW to center of southerly drive – 43 ft.
13. The applicant shall obtain Site Plan approval and any other approvals as required by the Portland City Code and any state and federal law for any improvements or alterations to the site.
14. Should the Property cease to be used as a minor auto service station with an accessory heating oil office under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert to R-P, Residence Professional Zone.

le

- 15. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit CNB and any tenant, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. CNB shall file a copy of this Agreement in the Cumberland County Registry of Deeds, within ninety (90) days from approval by the city council.
- 16. CNB shall provide the City with documentation of any tenant of CNB's consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and shall remain subject to the terms and conditions set forth herein.
- 17. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
- 18. 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.
- 19. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that CNB, or any successor violates the terms of this Agreement the resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

WITNESS:

C.N. Brown Company

\_\_\_\_\_

By

\_\_\_\_\_  
Jinger Duryea  
Its President

State of Maine  
Cumberland, ss

Date:

Personally appeared the above-named Jinger Duryea, President of C.N. Brown Company, and acknowledged the foregoing Agreement to be her free act and deed in her said capacity and the free act and deed of C.N. Brown Company.

\_\_\_\_\_  
Notary Public

**Jean Fraser - 194 Auburn Street -- Conditional Rezoning Traffic Comments**

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**From:** Tom Errico <thomas.errico@tylin.com>  
**To:** Jean Fraser <JF@portlandmaine.gov>  
**Date:** 7/8/2013 10:21 AM  
**Subject:** 194 Auburn Street -- Conditional Rezoning Traffic Comments  
**CC:** David Margolis-Pineo <DMP@portlandmaine.gov>, Jeremiah Bartlett <JBartle...>

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Jean – The following presents my preliminary comments as it relates to concerns and issues related to traffic and pedestrian elements.

- The width of the two project driveways exceeds City standards.
- For a roadway with a posted speed limit of 35 mph (I need to verify the regulatory limit) 150 feet of driveway separation is required for the proposed site given that Auburn Street is functionally classified as an arterial street. The two driveways on the property do not meet this standard and the northeasterly driveway does not meet separation standards with the abutting residential property.
- The southwesterly project driveway does not meet corner clearance standards with Croquet Lane.
- In an effort to address access issues the applicant should consider easements to provide egress via Croquet Lane and use of the existing traffic signal.
- In-bound Auburn Street vehicles queues from the Lyman/Moore School signalized driveway extends through the project driveways and complicate traffic movements into and out of the site and may contribute to safety concerns. How traffic is managed on Auburn Street is a factor that will need to be addressed.
- Pedestrian safety, particularly given the location of the project to Lyman/Moore Schools, needs to be an important consideration. In addition to the enhancements noted by the applicant, improvements to the frontage of the property should be a consideration and may include narrowing driveways, eliminating a curb-cut, restricting turn movements, and providing special delineation of the pedestrian path across the driveways.
- It is my preliminary conclusion that this project would not significantly increase traffic as compared to prior uses.

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director  
**TYLIN** INTERNATIONAL  
12 Northbrook Drive  
Falmouth, ME 04105  
207.781.4721 main  
207.347.4354 direct  
207.400.0719 mobile  
207.781.4753 fax  
thomas.errico@tylin.com  
Visit us online at [www.tylin.com](http://www.tylin.com)





# PORTLAND MAINE

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**Planning & Urban Development Department**  
Jeff Levine, AICP, Director

**Planning Division**  
Alexander Jaegerman, FAICP, Director

July 10<sup>th</sup>, 2013

Tom Saucier, PE President  
Site Design Associates  
23 Whitney Way  
Topsham, ME 04086

**RE: C N Brown Company**  
**Conditional Rezoning**  
**194 Auburn Street**  
**Application ID Number: 2013-146**

Dear Mr. Saucier:

Thank you for your cover letter and application for Conditional Rezoning of this site from R-3 to B-2. Further to our e-mail exchange on June 28, 2013, I am writing to let you know the preliminary staff review comments on this project. It is tentatively scheduled for a Planning Board Workshop on July 23, 2013.

### Draft Agreement

The Legal Department is unable to provide comments this week so I am setting out some in-principle comments so that you may prepare a revised Agreement for the Board to consider. Comments:

- Re the seventh and tenth "WHEREAS" clauses, please submit an separate analysis of how the proposal is consistent with the Comprehensive Plan (with reference to particular Comprehensive Plan policies) ie how these proposals further them or are consistent with them. State law 30-A M.R.S.A. Section 4503(9) is referred to in the city's ordinance and consistency with the underlying zone also needs to be addressed.
- Re paragraph 2 first sentence, why is this needed if the site would revert to R3 if the minor gas station use ceases as per the paragraph later in the agreement? There are very few B2 uses that would be acceptable at this site; the rezoning to B-2 was suggested as a possible mechanism to allow the gas station and heating oil office. Please clarify the maximum number of oil trucks that would be parked on the site (regardless of the location of the parking). What will the former auto service bays be used for?
- Please add in a confirmation that the number of pumps will be limited to the number that exist at present and these should be shown clearly and identified on the Conceptual Plan.
- Please add a new paragraph that requires the applicant to obtain site plan approval (and other approvals as may apply) for the site improvements and any off-site improvements (eg re traffic).
- Please add a new paragraph confirming the rear yard setback is 14.5 ft (both the R3 and B2 require more so the agreement needs to confirm variance).
- Please add in a reference to signage.

Conceptual Plan

The Conceptual Plan needs to be generally satisfactory in terms of site plan standards at this stage, with details and fine-tuning to be the subject of a separate site plan review. At this time the Conceptual Plan is not satisfactory and needs to address the following comments:

***Traffic Engineering:***

- The width of the two project driveways exceeds City standards.
- For a roadway with a posted speed limit of 35 mph 150 feet of driveway separation is required for the proposed site given that Auburn Street is functionally classified as an arterial street. The two driveways on the property do not meet this standard and the northeasterly driveway does not meet separation standards with the abutting residential property.
- The southwesterly project driveway does not meet corner clearance standards with Croquet Lane.
- In an effort to address access issues the applicant should consider easements to provide egress via Croquet Lane and use of the existing traffic signal.
- In-bound Auburn Street vehicles queues from the Lyman/Moore School signalized driveway extends through the project driveways and complicate traffic movements into and out of the site and may contribute to safety concerns. How traffic is managed on Auburn Street is a factor that will need to be addressed.
- Pedestrian safety, particularly given the location of the project to Lyman/Moore Schools, needs to be an important consideration. In addition to the enhancements noted by the applicant, improvements to the frontage of the property should be a consideration and may include narrowing driveways, eliminating a curb-cut, restricting turn movements, and providing special delineation of the pedestrian path across the driveways.
- It is our preliminary conclusion that this project would not significantly increase traffic as compared to prior uses.

***Landscape:***

- Please address the Land Use Ordinance (14-526) regarding Site Landscaping including particularly buffer planting to the north, and street trees.
- The pavement setback to the north does not meet the B-2 standard and either should be included as a variance in the Agreement or revised on the Conceptual Plan.

***Other Site Plan issues:***

I would also like to draw your attention to the need for the site to meet current site plan/zoning requirements when it is reviewed in detail. Therefore it is possible that other existing site features, eg the existing sidewalk, lighting, and parking areas, may require upgrading and/ or modifications.

Please contact me if there are any questions; I can be reached on 874 8728 or [jf@portlandmaine.gov](mailto:jf@portlandmaine.gov).

Sincerely,



Jean Fraser,  
Planner

Cc Barbara Barhydt, Development Review Services Manager  
Marge Schmuckal, Zoning Administrator  
David Senus, Woodard & Curran (City consultant engineering reviewer)  
David Margolis-Pineo, Department of Public Services  
Tom Errico, T Y Lin (City consultant traffic reviewer)  
Jeff Tarling, City Arborist

*Attachment 3***Jean Fraser - Auburn Street project**

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**From:** Jeff Tarling  
**To:** Jean Fraser  
**Date:** 7/12/2013 4:28 PM  
**Subject:** Auburn Street project

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Hi Jean -

My landscape review for the proposed CN Brown project on Auburn Street would be to include three street trees along the project frontage on Auburn Street and improve the screening / buffer on the North property line.

The recommended street trees should be upright form such as Ginkgo, Upright Pin Oak, or Armstrong Red Maple. The buffer planting can be 5 evergreen or deciduous shrubs or two small trees. I can offer suggested plant types if needed.

Thanks,

Jeff Tarling  
City Arborist

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MEMORANDUM

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To: FILE

From: Jean Fraser

Subject: Application ID: 2013-146

Date: 7/17/2013

re 194 Auburn Court Rezoning

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**Comments Submitted by: Marge Schmuckal/Zoning on 6/19/2013**

The dispensing of gas and working on cars in the repair garage was abandoned years ago. Underground tanks were removed by a permit in 2005. There never was a true retail in the office area like in gas stations today. The Land Use Zoning Ordinance addresses abandon uses as lost and the use to revert to those allowed in the underlying zone (R-3). It should be noted that a conditional contract rezoning should not permit more pumps than those present previously.

Marge Schmuckal  
Zoning Administrator

**SUMMARY OF PERMITTED USES AND CONDITIONAL USES (Extracts from Ordinances; some detail omitted)**  
**R-3, B-1, B-2 and R-P ZONES**

(AH 5m to AH 17)

Attachment 6.

R-3	B-1	B-2	R-P
<p><b>Residential:</b> Single family; PRUD; Handicapped family unit; Single-family, multiple-component manufactured housing; Single-family single-component manufactured housing;  <b>Other:</b> Parks; Accessory uses; Home occupation; Municipal uses; Wind energy systems</p>	<p><b>Residential:</b> Any residential use permitted in abutting residential zone; multifamily dwellings above first floor commercial uses.  <b>Business (except high traffic generators as defined):</b> Professional offices (except veterinarians); business services (except container redemption); personal services; Offices of building tradesmen; retail establishments (no drive through and closed by 11pm); beverage dealers; studios for artists, photographers and craftspeople.  <b>Institutional:</b> Places of religious assembly; municipal offices; schools; nursery schools and kindergarten; clinics.  <b>Other:</b> Lodging houses; utility substations; day care facilities or babysitting services; Accessory uses; Bed and breakfast; Hostels; neighborhood center; wind energy systems.</p>	<p><b>Residential:</b> Attached single-family and two-family dwellings; Multi-family dwellings when nearest zone R4, R5, R6 or R7; Handicapped family units; Combined living/working spaces including, but not limited to, artist residences with studio space.  <b>Business:</b> General, business and professional offices; Personal services; Offices of building tradesmen; Retail establishments; Restaurants (must close 11pm); Drinking establishments; Billiard parlors; Mortuaries or funeral homes; Miscellaneous repair services, excluding motor vehicle repair; Communication studios or broadcast and receiving facilities; Health clubs and gymnasiums; Veterinary hospitals; Theaters &amp; performance halls; Hotels; dairies and bakeries (if existing 1999); retail bakeries; drive-throughs associated with a permitted use if not adjacent to residential zone; registered medical marijuana dispensaries.  <b>Institutions:</b> Long term, extended and intermediate care facility; Clinics; Places of assembly; Schools; college, university or trade schools; municipal buildings and uses.  <b>Other:</b> Lodging houses; Utility substations; Accessory uses; Bed and Breakfast; Hostels; Studios for artists and craftspeople; Hostels; Wind energy systems.</p>	<p><b>Residential:</b> Any residential use is 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.  <b>Business:</b> Professional offices, including the offices and facilities of health care &amp; related laboratory and pharmacy services and health care administration, but excluding personal services, retail establishments and veterinarians; Business services, as defined in section 14-47, except copy services; Adult day care services; Mortuaries or funeral homes.  <b>Other:</b> Utility substations; Accessory uses; Wind energy systems.</p>
<p><b>Residential:</b> Sheltered Care group homes; adding one accessory dwelling unit; <b>Institutional:</b> Schools; Long term and extended care facilities; intermediate care facilities; places of assembly; hospital;  <b>Other:</b> off-street parking; utility substations; day care or home babysitting services; temporary wind anemometer towers; wind energy systems.</p>	<p><b>Business (except high traffic generators as defined):</b> Restaurants; temporary wind anemometer towers; wind energy systems</p>	<p><b>Business:</b> major and minor auto service stations*; car washes; drive-throughs associated with a permitted use adjacent to residential zones; automobile dealerships.  <b>Other:</b> Printing and publishing establishments; wholesale distribution establishments; research and developments and related production establishments; temporary wind anemometer towers; wind energy systems.  *Subject to a signage condition and: (extract) "No entrance or exit for vehicles shall be in such proximity to a playground, school, church, other places of public assembly, or any residential zone that the nearness poses a threat or potential danger to the safety of the public."</p>	<p><b>Business:</b> Such other offices which have characteristics similar to but no more objectionable than those generally associated with professional offices (Long qualifying section).  <b>Other:</b> any conditional use that is allowed as a conditional use in any residential zone abutting the lot; temporary wind anemometer towers; Daycare facilities or home babysitting services not otherwise permitted as a home occupation under section 14-410, and nursery schools and kindergartens (subject to conditions); wind energy systems.</p>

PERMITTED

CONDITIONAL

**Jean Fraser - Re: Receipt of Application - 194 Auburn Street**Public Comment

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**From:** Maureen Zemrak <mzemrak17@gmail.com>  
**To:** <JF@portlandmaine.gov>  
**Date:** 6/19/2013 9:56 PM  
**Subject:** Re: Receipt of Application - 194 Auburn Street  
**CC:** Maureen Zemrak <mzemrak17@gmail.com>

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Hello Jean -

I am writing to you this evening to inform you on behalf of the North Deering Neighborhood Association, we are in favor of this amendment to rezone 194 Auburn Street. In April we held a special NDNA meeting where we invited our Board, along with neighbors, C.N. Brown and project developer behind the project for a question and answer. We were all very pleased with the thought put behind the newly suggested building. Most neighbors are in agreement that the property is best utilized by being used, not stagnant and stale looking like it is right now.

We appreciate you keeping us informed with the matter and will appreciate it in future mailings.

Thank you and have a great rest of your week,

Maureen Zemrak

President, North Deering Neighborhood Association

On Wed, Jun 19, 2013 at 8:54 PM, <[Phs63@aol.com](mailto:Phs63@aol.com)> wrote:

Maureen,

I would recommend that you write a letter to Jean Fraser on behalf of NDNA letting her and the zoning board know that we support the change to conditional B-2 for CN Brown to open the station and a heating oil office. This would show the board that the neighbors and NDNA do support the change. Especially since our board voted to support CN Board in getting the conditional rezone.

thanks,

Michael

In a message dated 6/19/2013 10:48:58 A.M. Eastern Daylight Time, [mzemrak@kw.com](mailto:mzemrak@kw.com) writes:

----- Forwarded message -----

From: **Lannie Dobson** <[ldobson@portlandmaine.gov](mailto:ldobson@portlandmaine.gov)>

Date: Wed, Jun 19, 2013 at 10:13 AM

Subject: Receipt of Application - 194 Auburn Street

To: Jean Fraser <[JF@portlandmaine.gov](mailto:JF@portlandmaine.gov)>

To residents and property owners: A Zone Change/Text Amendment Application was submitted to the City of Portland Planning Division by C.N. Brown Company for a conditional rezoning agreement to rezone 194 Auburn Street from R-3 to a conditional B-2 zone. The site had a minor gas station, which was closed in the fall of 2011 and lost its non-conforming use status a year later. The applicant is seeking to re-establish the gas station use and to add a heating oil office within the existing building.

In accordance with the Portland Land Use Ordinance, notices of receipt of a conditional rezoning application must be sent to property owners within 500 ft. of the map amendment (or 1,000 feet if the map amendment is located in an Industrial Zone).

You will be notified of future Planning Board meetings by receiving notices from the Planning Division prior to any workshops or public hearings. Plans are available for viewing in the Portland Planning Division, 4th Floor, City Hall. If you have questions or would like to submit comments, please call Jean Fraser, Planner at [207-874-8728](tel:207-874-8728) or at [JF@portlandmaine.gov](mailto:JF@portlandmaine.gov).

Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

--

Maureen Zemrak  
The Zemrak Fontaine Team  
Keller Williams Realty  
50 Sewall Street, 2nd Floor  
Portland, ME 04102  
(207) 272-2202  
*"Your KEY to home sweet home!!"*

[My Office Website](#)  
["Friend Me" on Facebook!](#)

--

The Zemrak Fontaine Team  
Keller Williams Realty  
50 Sewall Street, 2nd Floor  
Portland, ME 04102  
(207) 272-2202  
*"Your KEY to home sweet home!"*  
["Like" me on Facebook!](#)  
[My Website](#)

Attachment 7.b

Public Comment

**From:** <kwfarrell@maine.rr.com>  
**To:** <Jf@portlandmaine.gov>  
**CC:** <Tbfprestige@maine.rr.com>  
**Date:** 6/22/2013 9:40 AM  
**Subject:** Notice regarding 194 Auburn Street zoning changes

We live on Bartley Avenue which is directly across from the above location. With regards to the change notice we received 6/21, we are concerned about the line that states, "...and to add a heating oil office within the existing building." Does that mean that oil trucks will be coming and going from this property or will it just be a business office. The building currently has 2 garage bays for the gas station. Will that service still be offered at the gas station?

Thank you in advance for your clarification on these questions,

Kathy Farrell  
Concerned resident

on nothing hot



Attachment 7.c  
Public Comment

**Jean Fraser - re/ 194 Auburn Street**

---

**From:** Robert Smith <rhsmith01@gmail.com>  
**To:** <JF@portlandmaine.gov>  
**Date:** 6/23/2013 10:47 AM  
**Subject:** re/ 194 Auburn Street

---

...Received notification regarding application for re-establishment of B-2 use...assume applicant is CN Brown. Not an issue for us as neighbors, though we would like to see something done with the property, as it is an eyesore and is being neglected at present. Owners need to clean it up and keep it that way until it is sold for another use or re-opened as a service station. Thanks.

Robert & Martha Smith  
222 Auburn Street

(on nothing list)

Attachment 7.d

Public Comment

**From:** <kwfarrell@maine.rr.com>  
**To:** Jean Fraser <JF@portlandmaine.gov>  
**Date:** 6/25/2013 2:21 PM  
**Subject:** Re: Notice regarding 194 Auburn Street zoning changes

Thank you for the information.

As neighbors in direct proximity to the 194 Auburn Street property, we are very opposed to the requested zoning change. In 1999 CN Brown attempted to convert the existing gas station into a convenience store with a gas station. They requested the change within the confines of the "grandfathered" R3 zone. There were multiple reasons the members of our community were opposed to that change and we fought hard to keep it out. If they were to gain approval for the zone change, they could then easily revise the use of the property as would be allowed in a B2 zone. We do not want/ need commercial property within our small community. We have students grades K-8 directly across the street from this property and many of those children walk to and from school along Auburn street. Safety is our number one concern for children in our area.

I realize that CN Browns request at this time does not include a store, but it is hard to imagine that it will not come up if a zone change is approved. Large oil trucks backing in and out of a tricky location coinciding with crossing guards and school buses does not seem like a safe mix.

Please keep us in the loop. We are gathering a mailing list to inform our neighborhood of the proposed changes.

Sincerely,  
Kathy Farrell

----- Jean Fraser <JF@portlandmaine.gov> wrote:

> Kathy,

>

> Thank you for your comments, which will be included in the PB Memorandum that I am preparing for the Planning Board Workshop that is tentatively scheduled for the afternoon of Tuesday, July 23rd (you will get a notice of the meeting).

>

> I attach the submitted cover letter (which explains that there will be 2 oil delivery trucks and describes the proposals in some detail), the draft conditional zoning agreement and conceptual site plan in case you have any further detailed comments that you would like to send me for inclusion in the PB memo (which I would need by July 16th).

>

> The Board will not be making a final decision on July 23rd; a hearing will be arranged for a date after that where the final decision will be made.

>

> Please do not hesitate to contact me if you have any questions.

>

> thank you

> Jean

>

> Jean Fraser, Planner

> City of Portland

> 874 8728

>

>

> >>> <kwfarrell@maine.rr.com> 6/22/2013 9:39 AM >>>

> We live on Bartley Avenue which is directly across from the above location. With regards to the change notice we received 6/21, we are concerned about the line that states, "...and to add a heating oil office within the existing building." Does that mean that oil trucks will be coming and going from this property or will it just be a business office. The building currently has 2 garage bays for the gas station. Will that

Attachmont T.e

**Jean Fraser - Fwd: Zone Change**

---

**From:** Barbara Barhydt  
**To:** Fraser, Jean  
**Date:** 7/15/2013 8:35 AM  
**Subject:** Fwd: Zone Change

Public Comment

>>> Tedsk2 <tedsk2@gmail.com> Thursday, July 04, 2013 4:21 PM >>>

I am writing to object to a zone change that will allow the property at 194 Auburn St to be reopened as a gas station with accessory heating oil office. This is a residential neighborhood and the city has a responsibility to protect the area from commercial business encroachment. The area is already stressed by traffic congestion and this will exaerbate an already bad situation. Also, rezoning will have a negative impact on surrounding property values that the city is obligated to protect.

Ted Sek  
169 Auburn St  
797-3765

Sent from Samsung tablet

PB Workshop 7-23-2013 + Hearings  
2nd item. 194 Auburn Conditional  
Rezoning.  
Jean Fraser - 194 Auburn st.

Public Comment  
Attachment F.f.

**From:** casey johnsen <cdjcdj43@yahoo.com>  
**To:** "jf@portlandmaine.gov" <jf@portlandmaine.gov>  
**Date:** 7/23/2013 2:48 PM  
**Subject:** 194 Auburn st.

owner of duplex to  
north of the site

Ms. Fraser, as per our conversation, I do have some concerns with them re opening. First would be there hours of operation. Second, were the trucks would be parked. (because of idling & the location of bedrooms) Third, snow plowing. Fourth, is this going to be a repair shop with any kind of sales. (food-cigarettes-beer).

incl. re oiltrucks.

PB workshop 7-23 13 2nd item: 194 Auburn  
+hearings Conditional Rezoning  
Attachment 8.1

City of Portland Legal Department comments 7.22.2013

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

JOHN R. COYNE (5)  
JOHN M. ANTON (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

Legal Department comments  
on applicants draft.

DRAFT

superseded

**AMENDMENT TO CITY CODE**  
**SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)**  
**RE: CONDITIONAL REZONING FOR PROPERTY**  
**IN THE VICINITY OF 194 AUBURN STREET**

**ORDERED**, that the zoning map and text of the City of Portland, dated December 2000, 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 REZONING AGREEMENT**

AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2013 by C.N. Brown Company, a Maine corporation ("CNB") with a place of business in South Paris, Maine, and its successors and assigns.

**W I T N E S S E T H**

**WHEREAS**, CNB is the owner of the property located at 194 Auburn Street, Portland, Maine (the "Property") more particularly described and shown on the Portland Assessors Map at Chart 374, Block A, Lot 030 and in a deed in the Cumberland County Registry of Deeds at Book 3743, Page 103, (the "Property") and intends to use the Property for a fueling station and heating oil office; and

~~**WHEREAS**, CNB has filed a Zone Change Application with the City of Portland (hereinafter "**CITY**") to rezone the Property to a conditional B-2 zone subject to certain modifications and conditions set forth in this Agreement in order to reestablish the historical fueling station use and establish a heating oil office, as an accessory use; and~~

**WHEREAS**, the Property is currently in the R-3 zoning district, and has been located in the R-3 zone since the zone was established; and

**WHEREAS**, CNB has filed a Zone Change Application with the City of Portland (hereinafter "**CITY**") to rezone the Property to a conditional B-2 zone subject to certain modifications and conditions set forth in this Agreement in order to reestablish the historical fueling station use and establish a heating oil office, as an accessory use; and

**WHEREAS**, the Property has been used and operated as a service station since 1960; and

8.2  
superseded

WHEREAS, the Property has been used and operated as a minor auto service station operated by CNB since its acquisition of the property on July 7, 1975; and

WHEREAS, the Property abuts a contract rezone for 180 Auburn Street, and

WHEREAS, the CITY'S Comprehensive Plan ~~seeks to~~ includes the following stated goals: to promote the economic climate and activity, work with individual neighborhoods to identify suitable locations and approaches to accommodate neighborhood businesses, and encourage orderly growth and development within the CITY; and

WHEREAS, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property without altering the historic climate of the property or its impact on abutting properties or the neighborhood, generally; and

WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the Property; and

WHEREAS, the CITY, by and through its City Council, has determined that the rezoning is appropriate due to the unusual and historic nature and unique location of the development proposed, to allow the continued use of the site based on the historical uses that have taken place on the site, that the uses proposed are consistent with the historical use of the property and the existing and permitted uses within the zone, has determined that the use, as restricted herein, will not have a negative effect on the neighborhood and that the rezoning would be pursuant to and consistent with the City's Comprehensive Plan; and

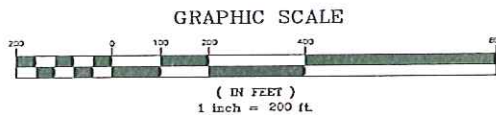
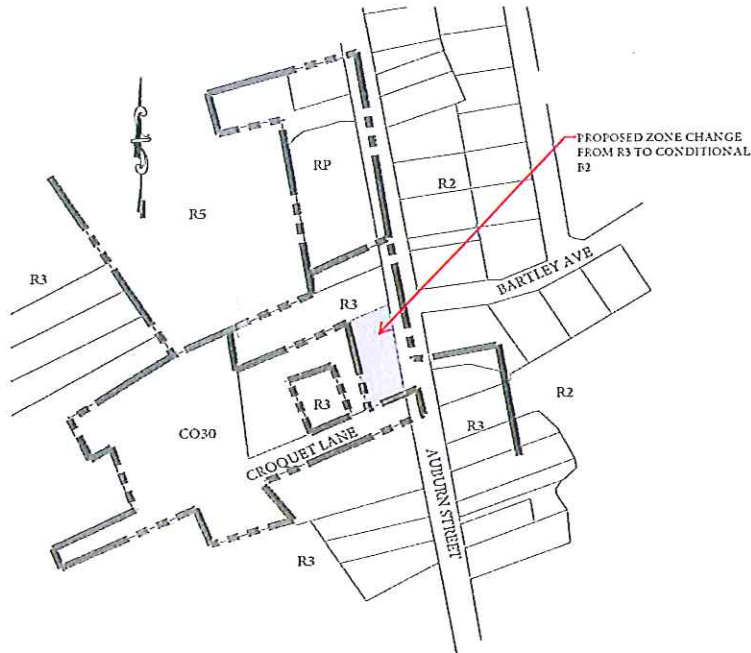
WHEREAS, the Portland city Council, has on \_\_\_\_\_, 2013 approved this Agreement in its entirety, by City Council Order No. \_\_\_\_\_, a true copy of which is attached hereto as Attachment 1 (the "Order"); and

WHEREAS, CNB has agreed to enter into this Agreement and the Amendment thereto, with its concomitant terms and conditions, which shall hereinafter bind CNB, its successors and assigns;

NOW, THEREFORE, in consideration of the rezoning of the Property, CNB agrees to be bound by the following terms and conditions:

1. Pursuant to the Order, the CITY shall amend the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Development and incorporated by reference into Zoning Ordinance by §14-49 of the Portland City Code, by adopting the following map change to zone the property conditional B-2, subject to the conditions contained below.

8.3  
superseded



2. Permitted uses: ~~The permitted uses allowed in the proposed conditional B-2 zone would be consistent with the permitted uses in the R-3 zone. In addition, the~~ The Property shall be permitted to be used as a motor vehicle fueling station, with a heating oil office as an incidental accessory use, ~~as a heating oil office.~~ Peddler/delivery trucks ~~would~~ may be stored on the site when not making deliveries. ~~A maximum of~~ No more than two trucks ~~would be permitted to~~ may be stored outside. No automobile repair service ~~would~~ shall be permitted on the site. The Property may not be converted to other permitted business uses in the B-2 zone unless this Agreement is amended and approved by the City.

2.3. No more than two fuel pumps shall be permitted on the site.

3.4. The hours of operation of the fueling station and heating oil office shall be limited to 6:00 AM to 8:00 PM, daily. After-hours use of the property to access heating oil trucks for emergency deliveries when the heating oil office is not open to the general public is also permitted.

4.5. The Property will remain substantially in accordance with the Conceptual Site Plan by Site Design Associates, dated June 13, 2013 (the "Site Plan"). See Attachment 1.

not attached to this draft

approved

8.4  
Superseded

~~5.6.~~ Modifications to the B-2 Regulations. The Property shall be governed by the ~~regulations~~ dimensional requirements applicable to the B-2 zoning district and other applicable provisions of the City Codes except as follows:

A. ~~Rear Yard— 20 ft required in B-2; 14.5 FT. Existing~~ Minimum Rear Yard dimension: 14.5 ft.

~~6.7.~~ The existing vegetation along the northerly, southerly, and westerly boundaries of the property shall remain undisturbed. If vegetation needs to be removed due to disease or damage, vegetation of similar species and height shall be planted in the same location as a replacement to maintain the screening function of this vegetation.

~~7.8.~~ Community Contribution: C.N. Brown will implement safety improvements at the crossing of Croquet Lane, to include a cross walk and tactile warnings.

~~9.10.~~ Should the Property cease to be used as a refueling station with an accessory heating oil office ~~for a permitted use~~ under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert back to the underlying R-3 zone.

~~11.0.~~ ~~So long as the Property continues to be used as a minor auto service station and heating oil office or any other permitted and approved use under Section 2 above,~~ The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit CNB and any tenant, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. CNB shall file a copy of this Agreement in the Cumberland County Registry of Deeds, within ten (90) days from approval by the city council.

~~12.11.~~ CNB shall provide the City with documentation of any tenant of CNB's consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and shall remain subject to the terms and conditions set forth herein.

~~12.3.~~ If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.

~~13.4.~~ 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.

~~14.5.~~ This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that CNB, or any successor violates the terms of this



85  
rescinded

Agreement the resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

WITNESS:

C.N. Brown Company

\_\_\_\_\_

By \_\_\_\_\_

Jinger Duryea  
Its President

State of Maine  
Cumberland, ss

Date:

Personally appeared the above-named Jinger Duryea, President of C.N. Brown Company, and acknowledged the foregoing Agreement to be her free act and deed in her said capacity and the free act and deed of C.N. Brown Company.

\_\_\_\_\_  
Notary Public

- ☑ [§4352 PDF](#)
- ☑ [§4352WORD/RTF](#)
- ☑ [STATUTE SEARCH](#)
- ☑ [CH. 187 CONTENTS](#)
- ☑ [TITLE 30-A CONTENTS](#)
- ☑ [LIST OF TITLES](#)
- ☑ [DISCLAIMER](#)
- ☑ [MAINE LAW](#)
- ☑ [REVISOR'S OFFICE](#)
- ☑ [MAINE LEGISLATURE](#)

D. The project will result in public benefits beyond the limits of the municipality, including without limitation, access to public waters or publicly owned lands; and [1993, c. 721, Pt. A, §11 (NEW); 1993, c. 721, Pt. H, §1 (AFF).]

E. The project is necessary to protect the public health, welfare or environment. [1993, c. 721, Pt. A, §11 (NEW); 1993, c. 721, Pt. H, §1 (AFF).]

A decision to waive a restriction under this section may be appealed by the municipality or any aggrieved party to Superior Court.

[ 2003, c. 688, Pt. C, §20 (AMD) .]

**7. Petition for rezoning; bond.** Any zoning ordinance may provide that if a person petitions for rezoning of an area for the purpose of development in accordance with an architect's plan the area may not be rezoned unless the petitioner posts a performance bond equal to at least 25% of the estimated cost of the development. The bond shall become payable to the municipality if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one year of the effective date of the rezoning.

[ 1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

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

A. Be consistent with the growth management program adopted under this chapter; [2001, c. 578, §21 (AMD).]

B. Establish rezoned areas that are consistent with the existing and permitted uses within the original zones; and [1991, c. 504, §1 (AMD).]

C. Only include conditions and restrictions that relate to the physical development or operation of the property. [1991, c. 504, §1 (AMD).]

The municipal reviewing authority shall conduct a public hearing before any property is rezoned under this subsection. Notice of this hearing must be posted in the municipal office at least 13 days before the public hearing. Notice must also be published at least 2 times in a newspaper having general circulation in the municipality. The date of the first publication must be at least 7 days before the hearing. Notice must also be sent to the owner or owners of the property to be rezoned and to the owners of all property abutting the property to be rezoned at the owners' last known addresses. Notice also must be sent to a public drinking water supplier if the area to be rezoned is within its source water protection area. This notice must contain a copy of the proposed conditions and restrictions with a map indicating the property to be rezoned.

[ 2001, c. 578, §21 (AMD) .]

**EXTRACT as of July 2013:**

**DIVISION 1.5. CONDITIONAL OR CONTRACT ZONING**

**Sec. 14-60. Authority and purpose.**

Pursuant to 30-A M.R.S.A. Section 4503(9), conditional or contract zoning is hereby authorized for rezoning of property where, for reasons such as the unusual nature or unique location of the development proposed, the city council finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions in order to ensure that the rezoning is consistent with the city's comprehensive plan. Conditional or contract zoning shall be limited to where a rezoning is requested by the owner of the property to be rezoned. Nothing in this division shall authorize either an agreement to change or retain a zone or a rezoning which is inconsistent with the city's comprehensive plan.

(Ord. No. 31-85, 7-15-85; Ord. No. 88-88, 7-19-88; Ord. No. 62-89, 7-17-89)

**Sec. 14-61. Notice and hearing.**

The Planning Board shall conduct a public hearing prior to any property being rezoned under this division. Notice of this hearing shall be posted in the city clerk's office at least fourteen (14) days prior to the public hearing and shall be published in a newspaper of general circulation within the city at least two (2) times, the date of the first publication to be at least seven (7) days prior to the hearing. Notice shall also be sent to the owners of all property abutting the property to be rezoned at their last known address. This notice shall contain a copy of the proposed conditions and restrictions, with a map indicating the property to be rezoned.

(Ord. No. 31-85, 7-15-85)

**Sec. 14-62. Conditions and restrictions.**

Conditions and restrictions imposed under the authority of this division shall relate only to the physical development and operation of the property and may include, by way of example:

- (a) Limitations on the number and types of uses permitted;
- (b) Restrictions on the scale and density of development;
- (c) Specifications for the design and layout of buildings and other improvements;
- (d) Schedules for commencement and completion of construction;
- (e) Performance guarantees securing completion and maintenance of improvements, and guarantees against defects;
- (f) Preservation of open space and buffers, and protection of natural areas and historic sites;
- (g) Contributions toward the provision of municipal services required by the development; and
- (h) Provisions for enforcement and remedies for breach of any condition or restriction.

(Ord. No. 31-85, 7-15-85)

**Sec. 14-63. Amendments.** [not included in extract]

**Sec. 14-65. Enforcement.** [not included in extract]

Attachment 11.1

8.16.2013 City Legal comments on DRAFT from APPLICANT August 8,2013

MICHAEL F. BRENNAN  
(MAYOR) KEVIN J.  
DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

*Superseded*

JOHN R. COYNE (5)  
JOHN M. ANTON (A/L)  
  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES A/L)

**AMENDMENT TO CITY CODE  
SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)  
RE: CONDITIONAL REZONING FOR PROPERTY  
IN THE VICINITY OF 194 AUBURN STREET**

**ORDERED**, that the zoning map and text of the City of Portland, dated December 2000, 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 REZONING AGREEMENT**

AGREEMENT made this \_\_\_ day of \_\_\_\_\_, 2013 by C.N. Brown Company, a Maine corporation ("CNB") with a place of business in South Paris, Maine, and its successors and assigns.

**WITNESSETH**

**WHEREAS**, CNB is the owner of the property located at 194 Auburn Street, Portland, Maine (the "Property") more particularly described and shown on the Portland Assessors Map at Chart 374, Block A, Lot 030 and in a deed in the Cumberland County Registry of Deeds at Book 3743, Page 103, (the "Property") and intends to use the Property for a fueling station and heating oil office; and

**WHEREAS**, the Property is currently in the R-3 zoning district, and has been located in the R-3 zone since the zone was established; and

**WHEREAS**, CNB has filed a Zone Change Application with the City of Portland (hereinafter "CITY") to rezone the Property to a conditional B-2 zone subject to certain modifications and conditions set forth in this Agreement in order to reestablish the historical fueling-minor auto service station use and establish a heating oil office, as an accessory use; and

**WHEREAS**, the Property has been used and operated as a minor auto service station since 1960; and

**WHEREAS**, the Property has been used and operated as a minor auto service station operated by CNB since its acquisition of the property on July 7, 1975; and

~~**WHEREAS**, the Property abuts a contract rezone for 180 Auburn Street, and~~

*Superseded*

WHEREAS, the CITY'S Comprehensive Plan includes the following stated goals: to promote the economic climate and activity, work with individual neighborhoods to identify suitable locations and approaches to accommodate neighborhood businesses, and encourage orderly growth and development within the CITY; and

WHEREAS, the CITY'S Comprehensive Plan includes the following objective: the City should, while accommodating needed services and facilities, protect the stability of Portland's residential neighborhoods from excessive encroachment by inappropriately scaled and obtrusive commercial, institutional, governmental and other non-residential uses; and

~~WHEREAS, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property without altering the historic climate of the property or its impact on abutting properties or the neighborhood, generally; and~~

WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the Property; and

WHEREAS, the CITY, by and through its City Council, has determined that the proposed commercial use of the property is appropriately scaled to the needs and character of the neighborhood and that the re-introduction of the historic commercial use of this property will not be obtrusive or result in excessive encroachment; and

WHEREAS, the CITY, by and through its City Council, has determined that the rezoning would assist in revitalizing the Property without altering the historic use of the property or its impact on abutting properties or the neighborhood, generally; and

WHEREAS, the CITY, by and through its City Council, has determined that the rezoning is appropriate due to the unusual and historic nature and unique location of the development proposed, to allow the continued use of the site based on the historical uses that have taken place on the site, that the uses proposed are consistent with the historical use of the property ~~and as well as with~~ the existing and permitted uses within the zone, has determined that the use, as restricted herein, will not have a negative effect on the neighborhood and that the rezoning would be pursuant to and consistent with the City's Comprehensive Plan; and

WHEREAS, the Portland city Council, has on \_\_\_\_\_, 2013 approved this Agreement in its entirety, by City Council Order No. \_\_\_\_\_, a true copy of which is attached hereto as Attachment 1 (the "Order"); and

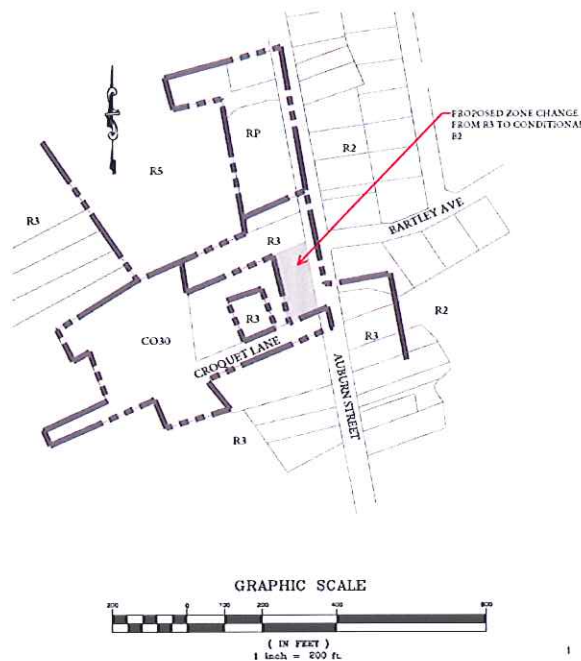
WHEREAS, CNB has agreed to enter into this Agreement and the Amendment thereto, with its concomitant terms and conditions, which shall hereinafter bind CNB, its successors and assigns;

NOW, THEREFORE, in consideration of the rezoning of the Property, CNB agrees to be bound by the following terms and conditions:

1. Pursuant to the Order, the CITY shall amend the Zoning Map of the City of Portland, dated

11.3  
superceded

December 2000, as amended and on file in the Department of Planning and Development and incorporated by reference into Zoning Ordinance by §14-49 of the Portland City Code, by adopting the following map change to zone the property conditional B-2, subject to the conditions contained below.



2. Permitted uses: The Property shall be permitted to be used as a motor vehicle fueling station minor auto service station as defined in Section 14-47 of the Portland City Code except that no automobile repair services shall be permitted on the site. A heating oil office will also be permitted as an incidental accessory use. Peddler/delivery trucks may be stored on the site when not making deliveries. No more than three peddler trucks may be stored on the site. No automobile repair service shall be permitted on the site. The Property may not be converted to other permitted business uses in the B-2 zone unless this Agreement is amended and approved by the City Council.
3. No more than two fuel pumps shall be permitted on the site.
4. The hours of operation of the fueling auto service station and heating oil office shall be limited to 6:00 AM to 8:00 PM, daily. After-hours use of the property to access heating oil trucks for emergency deliveries when the heating oil office is not open to the general public is also permitted.
5. The Property will remain substantially in accordance with the Conceptual Site Plan by Site Design Associates, Revision B, dated August 7, 2013 (the "Site Plan"). See Attachment 1.
6. Modifications to the B-2 Regulations. The Property shall be governed by the dimensional requirements applicable to the B-2 zoning district and other applicable provisions of the City Codes except as follows:

*Superseded*

- A. Minimum Rear Yard dimension: 14.5 ft.
- B. Minimum pavement setback: 4.7 ft.

7. The existing vegetation along the northerly, southerly, and westerly boundaries of the property shall remain undisturbed. If vegetation needs to be removed due to disease or damage, vegetation of similar species and height shall be planted in the same location as a replacement to maintain the screening function of this vegetation. The northerly buffer will be planted in accordance with the ordinance requirements, except width will be maintained as existing.
8. Community Contribution: C.N. Brown will implement safety improvements at the crossing of Croquet Lane, to include a cross walk and tactile warnings. In addition, the two driveway crossings will be marked with zebra style crosswalks.
9. Existing freestanding sign will remain, and may be modified to include a heating oil office sign and LED price signs.
10. The southerly site drive will be signed to indicate this is an exit only.
11. Existing pole lighting will be upgraded to meet ordinance requirements and City of Portland Technical Standards.
12. Variation from technical standards:
  - A. Existing curb cut widths: 37 ft and 35 ft.
  - B. Spacing between curb cuts
    - On site curb cuts – 91 ft.
    - Northerly curb cut to abutter drive – 14 ft.
  - C. Distance from Croquet Lane ROW to center of drive – 53 ft.
13. The applicant shall obtain Site Plan approval (and any other approvals as may apply) for the site improvements.
14. Should the Property cease to be used as a ~~refueling-minor auto service~~ station with an accessory heating oil office under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert back to the underlying R-3 zone.
15. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit CNB and any tenant, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. CNB shall file a copy of this Agreement in the Cumberland County Registry of Deeds, within ten (90) days from approval by the city council.
16. CNB shall provide the City with documentation of any tenant of CNB's consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and shall remain

11.5  
*superceded*

subject to the terms and conditions set forth herein.

- 17. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
- 18. 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.
- 19. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that CNB, or any successor violates the terms of this Agreement the resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

WITNESS:

C.N. Brown Company

By \_\_\_\_\_  
Jinger Duryea  
Its President

State of Maine  
Cumberland, ss

Date:

Personally appeared the above-named Jinger Duryea, President of C.N. Brown Company, and acknowledged the foregoing Agreement to be her free act and deed in her said capacity and the free act and deed of C.N. Brown Company.

\_\_\_\_\_  
Notary Public



# Memo

To: Chair Morrissette and Members of the Portland Planning Board  
From: Jennifer L. Thompson, Associate Corporation Counsel  
Date: August 16, 2013  
Re: C.N. Brown Company Conditional Rezoning Application

---

A question has arisen regarding what is required when a property (like C.N. Brown's property) is proposed to be rezoned through a conditional rezoning agreement ("CZA"). Under both Maine law and the City Code (the "Code") a proposed rezoning has to be *consistent* with the City's comprehensive plan and with existing and permitted uses within the original zone (in this case, the R-3 zone). See 30-A M.R.S.A. § 4352(8); §§ 14-60, 14-62.

The Maine Law Court has interpreted the term *consistent* to mean that the proposed use/agreement must be "in basic harmony with . . ." the City's comprehensive plan (the "Plan") and existing and permitted uses in the original zone. *Consistency* does not mean, however, that a project has to be the "best possible use" for a site/location. See Vella v. Town of Camden, 677 A.2d 1051, 1053 (Me. 1996) (citing LaBonta, et al. v. City of Waterville, 528 A.2d 1262, 1265); see also City of Old Town v. Dimoulas, 2002 ME 133, ¶ 20, 803 A.2d 1018, 1024.

First, as you are aware, the Plan outlines "a compilation of policy directives and goals" for the development of the City. Among other things, the policies outlined in the Plan address the City's infrastructure, commercial/business development, transportation resources, industry, and commerce and residential housing. See City of Portland Comprehensive Plan. Since these goals and policies can sometimes compete and/or conflict with one another, it is the Planning Board's/City Council's task to balance and accommodate the many goals/policies in a way that advances the City's overall best interests. See Adelman v. Town of Baldwin et al., 2000 ME 91, ¶ 24, 750 A.2d 577, 585-586 (citations omitted); see also LaBonta, 528 A.2d at 1265. In fact, such a balancing is exactly the type of flexibility that conditional zoning is meant to facilitate.

It is also important to note that the Maine Superior Court has held that the requirement that a conditional zoning agreement be consistent with existing permitted uses in the original zone "does not prohibit the introduction of new uses in an area. As the court explained in McMillan et al. v. the City of Portland, Maine and Packard Development, LLC, Superior Court, 2005 Me. Super. LEXIS 164 (November 22, 2005) (Crowley, J.), 30-A M.R.S.A. § 4352(8) cannot be construed to prohibit, for example, the rezoning of an I-L zone to a B-2 zone, for such a reading would render the zoning

amendment process superfluous.” (emphasis added). According to the Court, where a use can coexist and show no noteworthy opposing, conflicting, inharmonious, or contradictory qualities or trends, it is appropriately deemed consistent under Maine law. *McMillan*, 2005 Me. Super. LEXIS 164. However, where this standard and a finding of consistency cannot be made, the conditional rezoning agreement will be deemed invalid.

I hope this brief summary of way that Maine courts have interpreted the term “consistent” as it is used in the context of conditional rezoning agreements has been helpful. Please let me know if you have any questions.

Attachment 13.1

**Jean Fraser - 194 Auburn Street -- Final Traffic Comments**

**From:** Tom Errico <thomas.errico@tylin.com>  
**To:** Jean Fraser <JF@portlandmaine.gov>  
**Date:** 8/22/2013 3:19 PM  
**Subject:** 194 Auburn Street -- Final Traffic Comments  
**CC:** David Margolis-Pineo <DMP@portlandmaine.gov>, Jeremiah Bartlett <JBartle...>

*See  
 Att. 15  
 for final  
 comments*

Jean – The following presents my final comments as it relates to concerns and issues related to traffic and pedestrian elements (As a status update of my July 8, 2013 comments).

- The width of the two project driveways exceeds City standards.  
**Status:** Based upon a review of the truck turning templates provided by the applicant it is my recommendation that the driveways be narrowed. It is suggested that the northeasterly driveway be narrowed by 5 feet and the southwesterly driveway be narrowed by between 5 to 10 feet (10 feet at the curb line tapering to about 5-feet at the back of the esplanade). Final plans will need to be provided for review and approval by the City.
- For a roadway with a posted speed limit of 35 mph (I need to verify the regulatory limit) 150 feet of driveway separation is required for the proposed site given that Auburn Street is functionally classified as an arterial street. The two driveways on the property do not meet this standard and the northeasterly driveway does not meet separation standards with the abutting residential property.  
**Status:** Auburn Street has a posted speed limit of 30 mph and thus requires a driveway separation of 125 feet. I support a waiver from the City's standards given the turn restrictions are being proposed at the southwesterly driveway (right-turn egress only), driveway narrowing as specified above, and that low traffic volumes are generated from the abutting residential property.
- The southwesterly project driveway does not meet corner clearance standards with Croquet Lane.  
**Status:** Given the applicants agreement to limit traffic movements from the subject driveway to right-turn egress movements only, I support a waiver from the City's Technical Standards.
- In an effort to address access issues the applicant should consider easements to provide egress via Croquet Lane and use of the existing traffic signal.  
**Status:** The applicant is not pursuing this suggestion.
- In-bound Auburn Street vehicles queues from the Lyman/Moore School signalized driveway extends through the project driveways and complicate traffic movements into and out of the site and may contribute to safety concerns. How traffic is managed on Auburn Street is a factor that will need to be addressed.  
**Status:** The applicant is restricting movements from the driveway closest to the Lyman/Moore School Driveway and therefore I find conditions to be improved.
- Pedestrian safety, particularly given the location of the project to Lyman/Moore Schools, needs to be an important consideration. In addition to the enhancements noted by the applicant, improvements to the frontage of the property should be a consideration and may include narrowing driveways, eliminating a curb-cut, restricting turn movements, and providing special delineation of the pedestrian path across the driveways.

13.2

**Status:** It is recommended that in addition to marking a crosswalk on Croquet Lane, the applicant will also be marking pedestrian crossing areas across both project driveways. In addition, it is suggested that both driveways be narrowed as specified above. I would note that the current plans will need to be revised to illustrate diagonal crosswalk style markings and that they should be placed in the projected path of pedestrians walking along the sidewalk. Plans shall be submitted for final approval by the City (this should also include final signage plans).

- It is my preliminary conclusion that this project would not significantly increase traffic as compared to prior uses.

**Status:** No comment necessary.

If you have any questions, please contact me.

Best regards,

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director  
**TYLIN** INTERNATIONAL  
12 Northbrook Drive  
Falmouth, ME 04105  
207.781.4721 main  
207.347.4354 direct  
207.400.0719 mobile  
207.781.4753 fax  
thomas.errico@tylin.com  
Visit us online at [www.tylin.com](http://www.tylin.com)  
Twitter | Facebook | LinkedIn | YouTube

"One Vision, One Company"

Please consider the environment before printing.

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

JOHN R. COYNE (5)  
JOHN M. ANTON (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

**AMENDMENT TO CITY CODE**  
**SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)**  
**RE: CONDITIONAL REZONING FOR PROPERTY**  
**IN THE VICINITY OF 194 AUBURN STREET**

**ORDERED**, that the zoning map and text of the City of Portland, dated December 2000, 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 REZONING AGREEMENT**

AGREEMENT made this \_\_\_ day of \_\_\_\_\_, 2013 by C.N. Brown Company, a Maine corporation ("CNB") with a place of business in South Paris, Maine, and its successors and assigns.

**W I T N E S S E T H**

**WHEREAS, CNB** is the owner of the property located at 194 Auburn Street, Portland, Maine (the "Property") more particularly described and shown on the Portland Assessors Map at Chart 374, Block A, Lot 030 and in a deed in the Cumberland County Registry of Deeds at Book 3743, Page 103, (the "Property") and intends to use the Property for a fueling station and heating oil office; and

**WHEREAS**, the Property is currently in the R-3 zoning district, and has been located in the R-3 zone since the zone was established; and

**WHEREAS, CNB** has filed a Zone Change Application with the City of Portland (hereinafter "**CITY**") to rezone the Property to a conditional B-2 zone subject to certain modifications and conditions set forth in this Agreement in order to reestablish the historic minor auto service station use and establish a heating oil office, as an accessory use; and

**WHEREAS**, the Property has been used and operated as a minor auto service station since 1960; and

**WHEREAS**, the Property has been used and operated as a minor auto service station operated by **CNB** since its acquisition of the property on July 7, 1975; and

**WHEREAS**, the **CITY'S** Comprehensive Plan includes the following stated goals: to promote the economic climate and activity, work with individual neighborhoods to identify suitable locations and approaches to accommodate neighborhood businesses, and encourage orderly growth and development within the **CITY**; and

**WHEREAS**, the **CITY'S** Comprehensive Plan includes the following objective; the **City** should, while accommodating needed services and facilities, protect the stability of Portland's residential neighborhoods from excessive encroachment by inappropriately scaled and obtrusive commercial, institutional, governmental and other non-residential uses, and

**WHEREAS**, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the Property; and

**WHEREAS**, the **CITY**, by and through its City Council, has determined that the proposed commercial use of the property is appropriately scaled to the needs and character of the neighborhood and that the re-introduction of the historic commercial use of this property will not be obtrusive or result in excessive encroachment; and

**WHEREAS**, the **CITY**, by and through its City Council, has determined that the rezoning would assist in revitalizing the Property without altering the historic use of the property or its impact on abutting properties or the neighborhood, generally; and

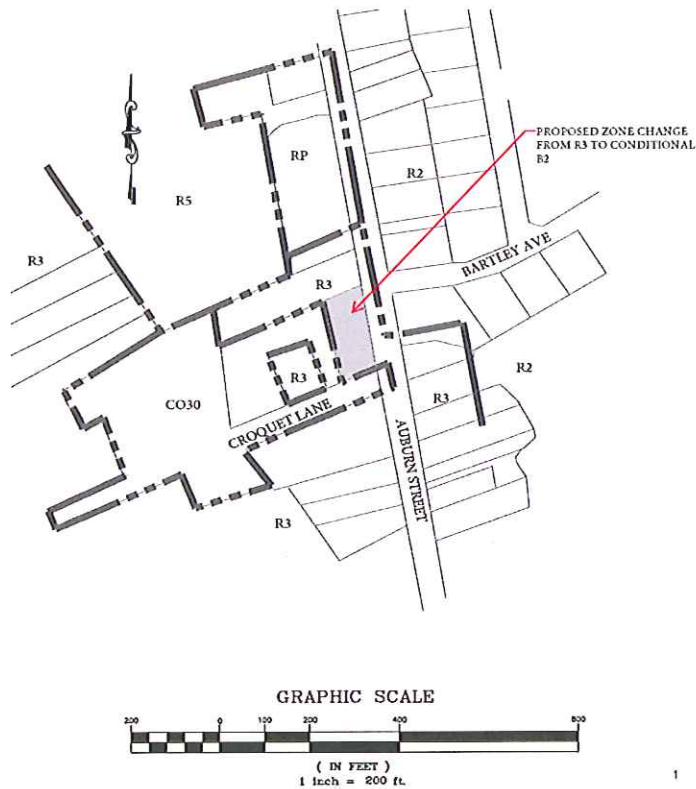
**WHEREAS**, the **CITY**, by and through its City Council, has determined that the rezoning is appropriate due to the unusual and historic nature and unique location of the development proposed, to allow the continued use of the site based on the historical uses that have taken place on the site, that the uses proposed are consistent with the historic use of the property as well as with the existing and permitted uses within the zone, has determined that the use, as restricted herein, will not have a negative effect on the neighborhood and that the rezoning would be pursuant to and consistent with the City's Comprehensive Plan; and

**WHEREAS**, the Portland Ceity Council, has on \_\_\_\_\_, 2013 approved this Agreement in its entirety, by City Council Order No. \_\_\_\_, a true copy of which is attached hereto as Attachment 1 (the "Order"); and

**WHEREAS**, **CNB** has agreed to enter into this Agreement and the Amendment thereto, with its concomitant terms and conditions, which shall hereinafter bind **CNB**, its successors and assigns;

**NOW, THEREFORE**, in consideration of the rezoning of the Property, **CNB** agrees to be bound by the following terms and conditions:

1. Pursuant to the Order, the **CITY** shall amend the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Development and incorporated by reference into Zoning Ordinance by §14-49 of the Portland City Code, by adopting the following map change to zone the property conditional B-2, subject to the conditions contained below.



2. Permitted uses: The Property shall be permitted to be used as a minor auto service station as defined in Section 14-47 of the Portland City Code except that no automobile repair services shall be permitted on the site. A heating oil office will also be permitted as an incidental accessory use. Peddler/delivery trucks may be stored on the site when not making deliveries. No more than three peddler trucks may be stored on the site. The Property may not be converted to other permitted business uses in the B-2 zone unless this Agreement is amended and approved by the City Council.
3. No more than two fuel pumps shall be permitted on the site.
4. The hours of operation of the minor auto service station and heating oil office shall be limited to 6:00 AM to 8:00 PM, daily. After-hours use of the property to access heating oil trucks for emergency deliveries when the heating oil office is not open to the general public is also permitted.
5. The Property shall be developed ~~will remain~~ substantially in accordance with the Conceptual Site Plan by Site Design Associates, Revision B, dated September 16, 2013 (the "Site Plan"). See Attachment 1.
6. Modifications to the B-2 Regulations. The Property shall be governed by the dimensional requirements applicable to the B-2 zoning district and other applicable provisions of the City Codes except as follows:
  - A. Minimum Rear Yard dimension: 11.0 ft.
  - B. Minimum pavement setback: 7.0 ft. along the northerly property line. To remain as existing in other locations.

7. The existing vegetation along the northerly, southerly, and westerly boundaries of the property shall remain undisturbed. If vegetation needs to be removed due to disease or damage, vegetation of similar species and height shall be planted in the same location as a replacement to maintain the screening function of this vegetation. The northerly buffer will be planted in accordance with the ordinance requirements.
8. Community Contribution: C.N. Brown will implement safety improvements at the crossing of Croquet Lane, to include a cross walk and tactile warnings. In addition, the two existing driveway crossings will **be narrowed and** marked with zebra style crosswalks.
9. ~~The~~ existing freestanding sign will remain, and may be modified to include a heating oil office sign and LED price signs.
10. Sign(s) to the satisfaction of the City will be installed at ~~The southerly site drive will be signed to indicate clearly indicating that it may be used only as a means of egress and that only right-hand turns out of said drive will be permitted. this is an exit and right turn only.~~
11. Existing pole lighting will be upgraded to meet ~~ordinance~~ the requirements of the Portland City Code and City of Portland Technical Standards.
12. The Property shall comply with the City of Portland Technical Standards except as follows: ~~Variation from technical standards:~~
  - A. Maximum Curb cut widths: **27.5** 28 ft (southerly) and **30.5** 31 ft. (northerly)
  - B. Minimum Spacing between driveways
    - Northerly curb cut to abutter's drive – **41.5** 41 ft.
  - C. Minimum Distance from Croquet Lane ROW to center of southerly drive – **43.9** 43 ft.
13. The applicant shall obtain Site Plan approval ~~(and any other approvals as may apply as required by the Portland City Code and any state and federal law)~~ for the site improvements any improvements or alterations to the site.
14. Should the Property cease to be used as a minor auto service station with an accessory heating oil office under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert to **R-P, Residence Professional Zone.**
15. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit CNB and any tenant, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. CNB shall file a copy of this Agreement in the Cumberland County Registry of Deeds, within ten (90) days from approval by the city council.



- 16. CNB shall provide the City with documentation of any tenant of CNB's consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and shall remain subject to the terms and conditions set forth herein.
- 17. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
- 18. 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.
- 19. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that CNB, or any successor violates the terms of this Agreement the resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

WITNESS:

C.N. Brown Company

\_\_\_\_\_

By \_\_\_\_\_  
Jinger Duryea  
Its President

State of Maine  
Cumberland, ss

Date:

Personally appeared the above-named Jinger Duryea, President of C.N. Brown Company, and acknowledged the foregoing Agreement to be her free act and deed in her said capacity and the free act and deed of C.N. Brown Company.

\_\_\_\_\_  
Notary Public

**Jean Fraser - RE: 194 Auburn Street**

---

**From:** Tom Errico <thomas.errico@tylin.com>  
**To:** Jean Fraser <JF@portlandmaine.gov>  
**Date:** 10/2/2013 3:51 PM  
**Subject:** RE: 194 Auburn Street

*Final  
comments*

Jean – I do not expect the project to impact the schools access/egress movements.

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director  
T.Y. Lin International  
207.781.4721 main  
207.347.4354 direct  
207.400.0719 mobile

---

**From:** Jean Fraser [mailto:JF@portlandmaine.gov]  
**Sent:** Wednesday, October 02, 2013 3:48 PM  
**To:** Tom Errico  
**Subject:** Re: 194 Auburn Street

Thanks Tom

Did you have a chance to consider Doug Sherwoods comment about whether emergencies associated with the gas station would impact access to the school; I understand there is a secondary access to the school but don't know where.

Jean

>>> Tom Errico <[thomas.errico@tylin.com](mailto:thomas.errico@tylin.com)> 10/2/2013 3:45 PM >>>

Jean – The following presents my final comments as it relates to concerns and issues related to traffic and pedestrian elements (As a status update of my August 22, 2013 comments).

- The width of the two project driveways exceeds City standards.  
August 22, 2013 Status: Based upon a review of the truck turning templates provided by the applicant it is my recommendation that the driveways be narrowed. It is suggested that the northeasterly driveway be narrowed by 5 feet and the southwesterly driveway be narrowed by between 5 to 10 feet (10 feet at the curb line tapering to about 5-feet at the back of the esplanade). Final plans will need to be provided for review and approval by the City.  
**Final Status: The current plans illustrate a reduction of driveway width that I find acceptable. I would note that there may be some minor adjustment to these driveways during site plan review, but they are substantially acceptable.**
- For a roadway with a posted speed limit of 35 mph (I need to verify the regulatory limit) 150 feet of driveway separation is required for the proposed site given that Auburn Street is functionally classified as an arterial street. The two driveways on the property do not meet this standard and the

15.2

northeasterly driveway does not meet separation standards with the abutting residential property.

August 22, 2013 Status: Auburn Street has a posted speed limit of 30 mph and thus requires a driveway separation of 125 feet. I support a waiver from the City's standards given the turn restrictions are being proposed at the southwesterly driveway (right-turn egress only), driveway narrowing as specified above, and that low traffic volumes are generated from the abutting residential property.

**Status: I continue to support a waiver.**

- The southwesterly project driveway does not meet corner clearance standards with Croquet Lane.  
August 22, 2013 Status: Given the applicants agreement to limit traffic movements from the subject driveway to right-turn egress movements only, I support a waiver from the City's Technical Standards.  
**Status: I continue to support a waiver.**
- In an effort to address access issues the applicant should consider easements to provide egress via Croquet Lane and use of the existing traffic signal.  
August 22, 2013 Status: The applicant is not pursuing this suggestion.  
**Status: No comment necessary.**
- In-bound Auburn Street vehicles queues from the Lyman/Moore School signalized driveway extends through the project driveways and complicate traffic movements into and out of the site and may contribute to safety concerns. How traffic is managed on Auburn Street is a factor that will need to be addressed.  
August 22, 2013: The applicant is restricting movements from the driveway closest to the Lyman/Moore School Driveway and therefore I find conditions to be improved.  
**Status: The applicant is restricting movements from the subject to right-turn exit movements only and therefore I find the plan to be acceptable.**
- Pedestrian safety, particularly given the location of the project to Lyman/Moore Schools, needs to be an important consideration. In addition to the enhancements noted by the applicant, improvements to the frontage of the property should be a consideration and may include narrowing driveways, eliminating a curb-cut, restricting turn movements, and providing special delineation of the pedestrian path across the driveways.  
August 22, 2013 Status: It is recommended that in addition to marking a crosswalk on Croquet Lane, the applicant will also be marking pedestrian crossing areas across both project driveways. In addition, it is suggested that both driveways be narrowed as specified above. I would note that the current plans will need to be revised to illustrate diagonal crosswalk style markings and that they should be placed in the projected path of pedestrians walking along the sidewalk. Plans shall be submitted for final approval by the City (this should also include final signage plans).  
**Status: As noted above the driveways have been narrowed and painted crosswalks have been added on the site driveways. Accordingly, I find the plans to be acceptable.**
- It is my preliminary conclusion that this project would not significantly increase traffic as compared to prior uses.  
August 22, 2013 Status: No comment necessary.  
**Status: No comment necessary.**

If you have any questions, please contact me.

Best regards,

15.3

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director  
**TYLIN** INTERNATIONAL T.Y. Lin International

12 Northbrook Drive  
Falmouth, ME 04105  
207.781.4721 main  
207.347.4354 direct  
207.400.0719 mobile  
207.781.4753 fax

[thomas.errico@tylin.com](mailto:thomas.errico@tylin.com)

Visit us online at [www.tylin.com](http://www.tylin.com)

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"One Vision, One Company"

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Notice: Under Maine law, documents - including e-mails - in the possession of public officials or city employees about government business may be classified as public records. There are very few exceptions. As a result, please be advised that what is written in an e-mail could be released to the public and/or the media if requested.

**From:** Jeff Tarling  
**To:** Jean Fraser  
**Date:** 10/3/2013 4:09 PM  
**Subject:** Re: Fwd: final sign off needed 194 Auburn conditional rezoning

Sorry Jean -

Just got back in !

Yes, I have reviewed the plans and they meet our recommendations.

Thanks

Jeff t

>>> Jean Fraser 9/30/2013 12:26 PM >>>  
Jeff

I believe the applicant has addressed your comments but I need your sign off for the Hearing Report.

Please see attached the latest Agreement and Conceptual Plan (as going to Board)

thanks  
Jean

# Attachment 17

**From:** David Margolis-Pineo  
**To:** Errico Thomas; Jean Fraser; Jeff Tarling; Jennifer Thompson; Marge Schmuckal  
**CC:** Alex Jaegerman; Barbara Barhydt; Chris Pirone; DSenus@woodardcurran.com  
**Date:** 9/19/2013 1:27 PM  
**Subject:** Re: 194 Auburn- Cond Rezoning- Final Review

Jean,

I'm fine with what is being proposed. The location of the ADA tactile warning panels at Croquet Lane seem pretty straight forward and shouldn't be an issue.

# Attachment 18

**From:** Douglas Sherwood  
**To:** jf@portlandmaine.gov  
**CC:** Lenore Williams; Peter Eglinton; Stephen Rogers  
**Date:** 9/27/2013 1:50 PM  
**Subject:** Rezoning 194 Auburn Street

Jean

Good day!

The Portland Public Schools have no objection to a similar business returning to this location, but want to be assured that proper protocols are in place for potential emergencies related to this use that would allow us safe entry and exit from the Lyseth-Moore campus.

Best regards,  
Doug

**Site Design Associates**  
**Consulting Engineering and Land Planning**

June 13, 2013

Ms. Barbara Barhydt  
Development Review Services Manager  
Planning Division  
389 Congress St., Fourth Floor  
Portland, ME 04101

**RE: C.N. Brown Company**  
**Application for Conditional Rezoning**  
**194 Auburn Street**

Dear Barbara:

On behalf of C.N. Brown Company (CNB), Site Design Associates (SDA) is pleased to submit one original paper copy and one CD containing the files of the Zoning Map Amendment Application for the referenced project. We have enclosed a check in the amount of \$3,000 for the application fee.

This submission contains the following information:

- Zoning Map Amendment Application
- Letter of Agent Authorization
- Deed
- Vicinity Map
- Draft Conditional Rezoning Agreement
- The following project drawings(one full size and 1 reduced set):
  - C-100 Existing Conditions Plan
  - C-101 Conceptual Site Plan

CNB is applying to conditionally rezone 194 Auburn Street in order to allow reestablishment of the historical minor auto service station use on the property, along with an accessory heating oil office use.

CNB acquired the property in 1975. At that time, it is our understanding the use located there was a minor auto service station, which consisted of a filling station and automobile service business. Records show that the parcel has been used as a service station since at least 1960.



The automobile service portion of the use was phased out prior to the fall 2011 closing of the facility, at which time it was solely an automobile refueling station. The location closed because the dealer ended his contract with CNB, and it was advertised for lease with no success. Because the facility was operating as a non-conforming use in the R-3 zone, where minor auto service stations are not a permitted use, CNB cannot reopen the facility without relief from the current zoning.

After several discussions with you and various city of Portland staff, CNB believes the preferable course of action in order to reestablish the historical use of a minor service station with an accessory heating oil office use at this site, is through a conditional rezoning from the current R-3, to a B-2 zone, where minor auto service stations are a conditional use, and the heating oil office would be a permitted use.

We believe a conditional rezoning will allow CNB to revitalize the property and operate the facility as it historically has been operated, without altering the historic climate of the property and without impacting abutting properties. Abutting properties include Croquet Lane, the Shalom House access to the south, the Shalom House Contract Zone to the west, a two unit residential structure to the north, and two single family residential structures across Auburn Street.

The heating oil office use is a non-intensive permitted use. At the most, two delivery, or peddler trucks would be parked on the site. People would access the site to pay their heating oil bills, but that will not generate significant traffic. In addition to two heating oil delivery drivers, the facility would likely have one additional employee, to both operate the heating oil office and provide "full service" refueling, as opposed to a self serve operation.

We have enclosed a draft of a conditional rezoning agreement which stipulates the conditions under which CNB would agree to operate the facility, including:

- Limiting the use to a automobile refueling station, with no automobile service performed on site, and an accessory heating oil office;
- The property cannot be converted to any other use permitted in the B-2 zone, with out amendment of the proposed conditional rezoning agreement, and approval by the city;
- Limiting hours of operation;
- Establishing a vegetated buffer along the property frontage; and
- Constructing pedestrian safety improvements at the intersection of Croquet Lane and Auburn Street;

If permitted to reopen the facility, CNB would also implement many cosmetic improvements to the building, canopy and pump areas.

There is no physical expansion of the building footprint, number of pumps or fueling positions proposed.

A.3

Page 3 of 3  
6/13/2013

We are in hopes that you can place these applications on the next available Planning Board agenda so that we may introduce the project to the Planning Board.

Please contact me with any questions or comments concerning the submission.

Sincerely,

Site Design Associates

A handwritten signature in black ink, appearing to read "Tom Saucier".

Tom Saucier, P.E.  
President

cc: Kevin Moore, C.N. Brown Co.

A. 4

PROJECT ADDRESS: 194 Auburn Street

CHART/BLOCK/LOT: 374/A/030

**DESCRIPTION OF PROPOSED ZONE CHANGE AND PROJECT:**

Conditional rezoning from R-3 to B-2 (See cover letter)

**CONTACT INFORMATION:**

**Applicant's Contact for electronic plans**  
Name: Site Design Associates, Tom Saucier  
e-mail Address [tsaucier@sitedesignassociates.biz](mailto:tsaucier@sitedesignassociates.biz)  
work # 207-449-4275

**Applicant – must be owner, Lessee or Buyer**  
Name: Kevin Moore  
Business Name, if applicable: C.N. Brown Co.  
Address: P.O. Box 200  
City/State :South Paris, Maine                      Zip Code: 04281

**Applicant Contact Information**  
Work # 207-743-9212  
Home#  
Cell #    Fax#  
e-mail: [kevinm@cnbrown.com](mailto:kevinm@cnbrown.com)

**Owner – (if different from Applicant)**  
Name: same as applicant  
Address:  
City/State :    Zip Code:

**Owner Contact Information**  
Work #  
Home#  
Cell #    Fax#  
e-mail:

**Agent/ Representative**  
Name: Tom Saucier, P.E. Site Design Associates  
Address: 23 Whitney Way  
City/State : Topsham, Maine                      Zip Code: 04086

**Agent/Representative Contact information**  
Work # 207-449-4275  
Cell # 207-756-0068  
e-mail: [tsaucier@sitedesignassociates.biz](mailto:tsaucier@sitedesignassociates.biz)

**Billing Information**  
Name: Bill owner  
Address:  
City/State :    Zip Code:

**Billing Information**  
Work #  
Cell #    Fax#  
e-mail:

**Engineer**  
Name: Same as agent  
Address:  
City/State :    Zip Code:

**Engineer Contact Information**  
Work #  
Cell #    Fax#  
e-mail:



*Taxes OK*  
*(Signature)*

A. 5

<b>Surveyor</b> Name: Colonial Surveying Company Address: 34 Presidential Drive City/State : Gray, Maine                      Zip Code: 04039	<b>Surveyor Contact Information</b> Work # 207-657-3400 Cell #                                      Fax# e-mail:
<b>Architect</b> Name: Address: City/State :                                      Zip Code:	<b>Architect Contact Information</b> Work # Cell #                                      Fax# e-mail:
<b>Attorney</b> Name: Address: City/State :                                      Zip Code:	<b>Attorney Contact Information</b> Work # Cell #                                      Fax# e-mail:

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

**Ownership in fee: See attached deed**

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:

Use when closed In September 2011 was as an automobile service station providing refueling services only, no vehicle maintenance.

**Current Zoning Designation(s):**

R-3

**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.

automobile service station providing refueling services only, no vehicle maintenance and accessory heating oil office.


**Site Plan:** On a separate sheet, please provide a site 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" = 50'.) Contract and conditional rezoning applications may require additional 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.

A.7.

**APPLICATION FEE:**

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

<p><b>Zoning Map Amendment</b>  <input type="checkbox"/> \$2,000.00 (from ___ zone to ___ zone)</p>	<p><b>Fees Paid</b> (office use)  <input type="checkbox"/></p>	<p>The City invoices separately for the following:</p> <ul style="list-style-type: none"> <li>• Notices (\$.75 each)  (notices are sent to neighbors upon receipt of an application, workshop and public hearing meetings for Planning Board and public hearing meeting for City Council)</li> <li>• Legal Ad (% of total Ad)</li> <li>• Planning Review (\$40.00 hour)</li> <li>• Legal Review (\$75.00 hour)</li> </ul> <p>Third party review is assessed separately.</p>
<p><b>Zoning Text Amendment</b>  <input type="checkbox"/> \$2,000.00 (to Section 14- _____)  (For a 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 as underline (<u>example</u>))</p>	<p><input type="checkbox"/></p>	
<p><b>Combination Zoning Text Amendment and Zoning Map Amendment</b>  <input type="checkbox"/> \$3,000.00</p>	<p><input type="checkbox"/></p>	
<p><b>Conditional or Contract Zone</b>  <input checked="" type="checkbox"/> \$3,000.00  (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>	<p><input type="checkbox"/></p>	

<p><b>Signature of Applicant:</b>  </p>	<p><b>Date:</b>  6/13/13</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.



C. N. Brown Company

A.8

1 C. N. Brown Way  
P. O. Box 200  
South Paris, Maine 04281  
Phone: (207) 743-9212  
Fax: (207) 743-8357  
www.cnbrown.com

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*June 10, 2013*

*Mr. Tom Saucier, P.E.  
Site Design Associates  
23 Whitney Way  
Topsham, Maine 04086*

***TO WHOM IT MAY CONCERN;***

*This letter authorizes Tom Saucier to serve as an agent for C.N. Brown Company for the purpose of permitting 194 Auburn Street, Portland Maine.*

*Sincerely,*

***Kevin M. Moore  
Maintenance Supervisor***

20350  
D E E D

103

KNOW ALL MEN BY THESE PRESENTS:

THAT REPROCO, INC., A Delaware corporation with an office in First National Bank Bldg. ~~XXXXXX~~ (no street number), Bartlesville, Oklahoma 74003, hereinafter referred to as Grantor, in consideration of the sum of TEN AND NO/100 - - - - - Dollars (\$10.00), and other valuable considerations, in hand paid, the receipt whereof is hereby acknowledged, Grantor does hereby grant, bargain, sell and convey

unto C. N. BROWN COMPANY, a Maine corporation

with an office at 110 Main Street, P.O. Box 200, South Paris, Maine, 04281, hereinafter referred to as Grantee, Grantee's heirs or successors and assigns, the following described premises and property situated in the County of Cumberland, State of Maine, to-wit:

A certain lot or parcel of land, with the buildings thereon, situated on the westerly side of Auburn Street, in the City of Portland, County of Cumberland and State of Maine, bounded and described as follows:

Beginning at an iron on the westerly side line of Auburn Street at the southeasterly corner of land conveyed by Alexander A. McIntyre, et al, to Joseph M. F. Etheze, et al, by deed dated October 13, 1945, and recorded in Cumberland County Registry of Deeds in Book 1796, Page 156; thence South 6° 04' West by the westerly side line of Auburn Street, two hundred nine and four tenths (209.4) feet to an iron at the northeasterly corner of land designated by the said McIntyre as a proposed street; thence South 80° 03' West by said proposed street, eighty-eight and forty-three hundredths (88.43) feet to an iron; thence North 6° 04' East by land of Richard B. Bowley, et al, two hundred nine and eight tenths (209.8) feet to an iron in the southerly side line of said Etheze land; thence North 80° 18' East by said Etheze land, eighty-eight and thirty-two hundredths (88.32) feet to the point of beginning.

The above described courses are magnetic as of the year 1962.

Being a portion of the premises conveyed by Community Oil Company, Inc. to Richard B. and Ruth J. Bowley by deed dated March 14, 1946 and recorded in said Registry of Deeds, Book 1307, Page 216.

This conveyance is made subject, however, to the rights and privileges conveyed by Richard B. Bowley to Central Maine Power Company and New England Telephone & Telegraph Company by deed dated August 19, 1955 and recorded in said Registry of Deeds, Book 2276, Page 295.

Excepting and reserving, however, to the said Bowleys, their heirs and assigns, a right of way for passing and repassing and for the maintenance of utility services, fifteen (15) feet in width, and being seven and one-half (7½) feet on either side of the following described center line: Beginning on the westerly side line of Auburn Street at a point forty-eight and two tenths (48.2) feet northerly from the southeasterly corner of the premises above described; thence North 83° 56' West, eighty-five (85) feet to land of Richard B. Bowley, et al. Provided, however, that if and at such time as said proposed street above referred to shall have been constructed in such a manner as to allow reasonable access to the said premises of Richard B. Bowley, et al, then the right of way herein reserved shall be terminated; provided further, said right of way as herein reserved shall not terminate, even though said proposed street has been constructed to provide reasonable access as aforesaid, unless said proposed street shall first qualify as a sufficient street access to the remaining land of Grantors as defined and prescribed by the then applicable zoning and other applicable ordinances of the City of Portland.

There is also conveyed hereby the following strip of land five (5) feet in width adjacent to the westerly boundary line of the above described premises in said City of Portland bounded and described as follows: Beginning at the iron situated at the northwesterly corner of the above described premises at land formerly of said Etheze, now of James G. Lamson, et al; thence South 80° 18' West by said land formerly of Etheze five and two tenths (5.2) feet to a stake; thence South 6° 04' West by land of said Richard B. Bowley, et al, one hundred twenty-eight and twenty-nine hundredths (128.29) feet to a stake; thence South 83° 56' East again by said Bowley land five (5) feet to the iron at the southwesterly corner of the above described premises; thence by the westerly boundary line of the above described premises North 6° 04' East one hundred twenty-nine and seven tenths (129.7) feet to the iron at the point of beginning; provided that Grantee, by acceptance of this deed, agrees for itself and its successors and assigns, that it and they shall not cut, remove, damage or destroy the pine trees now growing on said five foot strip of land, except that Grantee, its successors and assigns, may prune and otherwise trim branches and parts of said pine trees to improve the appearance thereof and to prevent such branches or parts of said pine trees from encroaching upon the first above described parcel of land as herein conveyed; said obligation of Grantee, its successors and assigns shall be a covenant to run with and bind said five foot strip of land, provided that only the then owner of said five foot strip of land shall have the obligation for fulfillment of said covenant and the liability for the breach thereof.



same being premises conveyed to Grantor by deed dated January 23,  
1970, of record in the office for recording of deeds in Cumberland County, Maine, in Deed Book 3116  
page 15; and re-recorded with said Registry on July 28, 1970.  
in Book 3136, page 841.

together with all improvements, equipment and personal property thereon  
and the appurtenances thereunto belonging except: Phillips 66 signs  
and indicia and credit card imprinters, if any.

Grantor makes no warranty, covenant or representation of any kind, either express or implied, as to the quality, condition or fitness of the improvements, equipment and personal property covered hereby for any purpose, and Grantee, by its acceptance hereof, so acknowledges and accepts same in their present condition and waives the benefit of any covenant or warranty as may be implied by law.

Tanks and equipment covered hereby may contain flammable liquids and/or gases and may have contained flammable leaded gasoline. Same should not be used, for storage or otherwise, of any substance whatsoever, liquid or otherwise, for human or animal internal consumption or skin contact or any other use that would later involve such consumption or contact or any other use that would be injurious to any person or animal.

TO HAVE AND TO HOLD said premises and property unto Grantee, Grantee's heirs or successors and assigns, forever, and, Grantor does hereby warrant title thereto unto Grantee, Grantee's heirs or successors and assigns, against any person or persons whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise, except and this deed is subject to current taxes and assessments which are assumed by Grantee, such matters as may be disclosed by an accurate survey, rights of way, easements, reservations and restrictions of record, if any, governmental regulations applicable to the premises, rights of way and easements for public utilities, if any, and any streets, roads or highways abutting the premises or within the boundaries of which any portion of the above described premises and property may be located and to the rights of the public therein, and to the following: None

IN WITNESS WHEREOF, Grantor has caused this deed to be signed and attested in its name and behalf and its corporate seal to be hereunto affixed, by its proper corporate officers duly authorized thereunto, the 7<sup>th</sup> day of July, 1957.

Signed, sealed and delivered in the presence of:

REPROCO, INC.

Wynona Rivell, Witness

By B. S. ... Vice President

W. E. ..., Witness

ATTEST: Spencer Kiser ASST, Sec

(MS)

A. 12

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STATE OF OKLAHOMA )  
COUNTY OF WASHINGTON ) SS.

VEDA MICKELS

Before me, \_\_\_\_\_, a Notary Public in and for the state and county aforesaid and residing therein, and duly commissioned, sworn and authorized in said state and in said county to take acknowledgments, on this 7th day of July, 1975, personally appeared BETTY H. DALBYMPLE and HERBERT KISSLE, whose names as Vice President and Secretary, respectively, of REPROCO, INC., a Delaware corporation, are signed to the foregoing instrument and personally known to me and known to me to be such officers and who being by me duly sworn, did say that they are such officers, that their signatures are in their own proper handwriting, that said instrument is executed on behalf of such corporation, that the seal affixed to said instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors and by authority of the bylaws of said corporation and the authorization of said corporation, and said persons, being informed of the contents of said instrument, duly acknowledged the execution of said instrument as such officers as their free and voluntary acts and deeds and the free and voluntary act and deed of such corporation for the uses, purposes and consideration therein stated and declared that the statements therein contained are true; and I do so certify.

Given under my hand and seal of office the day and year



commission expires: \_\_\_\_\_  
1976

Veda Mickels  
Notary Public  
(Seal)

SEP 17 1975

REGISTRY OF DEEDS, CUMBERLAND COUNTY, MAINE

Received at 12 H 32 M and recorded in

BOOK 3743 PAGE 103. Margaret Stebbins Acting Register

4508 6-55  
1-5-55

295

KNOW ALL MEN BY THESE PRESENTS

That Richard B. Bowley, married of Portland  
County of Cumberland

and State of Maine in consideration of One Dollar and other valuable consideration (the sum being less than one hundred dollars) paid by CENTRAL MAINE POWER COMPANY, a Maine corporation and NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY, a New York corporation, the receipt whereof is hereby acknowledged, does hereby give, grant, bargain, sell and convey unto the said Central Maine Power Company and New England Telephone and Telegraph Company, their successors and assigns, the right and easement to construct, erect, rebuild, operate, maintain and remove electric distribution and communication lines for the transmission of electricity and intelligence; together with the necessary poles, wires, cables, cross-arms, braces, anchors, guys and other electrical equipment and appurtenances connected therewith, over, along and across premises owned by the Grantor(s) in the City of Portland, County of Cumberland and State of Maine, along the route as now staked out, extending in a westerly direction from Auburn St to Pole # 18.1

Bowley  
to  
Central  
Maine  
Power  
Co&  
---  
Base

Also the right to cut down, trim and remove such trees, branches and underbrush as in the judgment of the Grantees interfere with or endanger the operation of the lines constructed along the above described location, together with the right to enter upon the Grantor's premises for any or all of the foregoing purposes.

It is understood and agreed that the rights and easements hereby conveyed are to be jointly owned by Central Maine Power Company and New England Telephone and Telegraph Company, their successors and assigns. If either Central Maine Power Company or New England Telephone and Telegraph Company, or the successors or assigns of either, shall relinquish or abandon the rights and easements hereby conveyed, the same shall become the sole property of the remaining company.

TO HAVE AND TO HOLD the above granted rights and easements to the said Central Maine Power Company and New England Telephone and Telegraph Company, their successors or assigns, to their own use and behoof forever.

IN WITNESS WHEREOF, the said Grantor(s) and Ruth J. Bowley  
wife of the said Grantor

joining in this easement as grantor and relinquishing and conveying all her his rights by descent and all other rights in the above described rights and easements have hereunto set their hands and seals this nineteenth day of August, 1955.

Signed, Sealed and Delivered  
in presence of

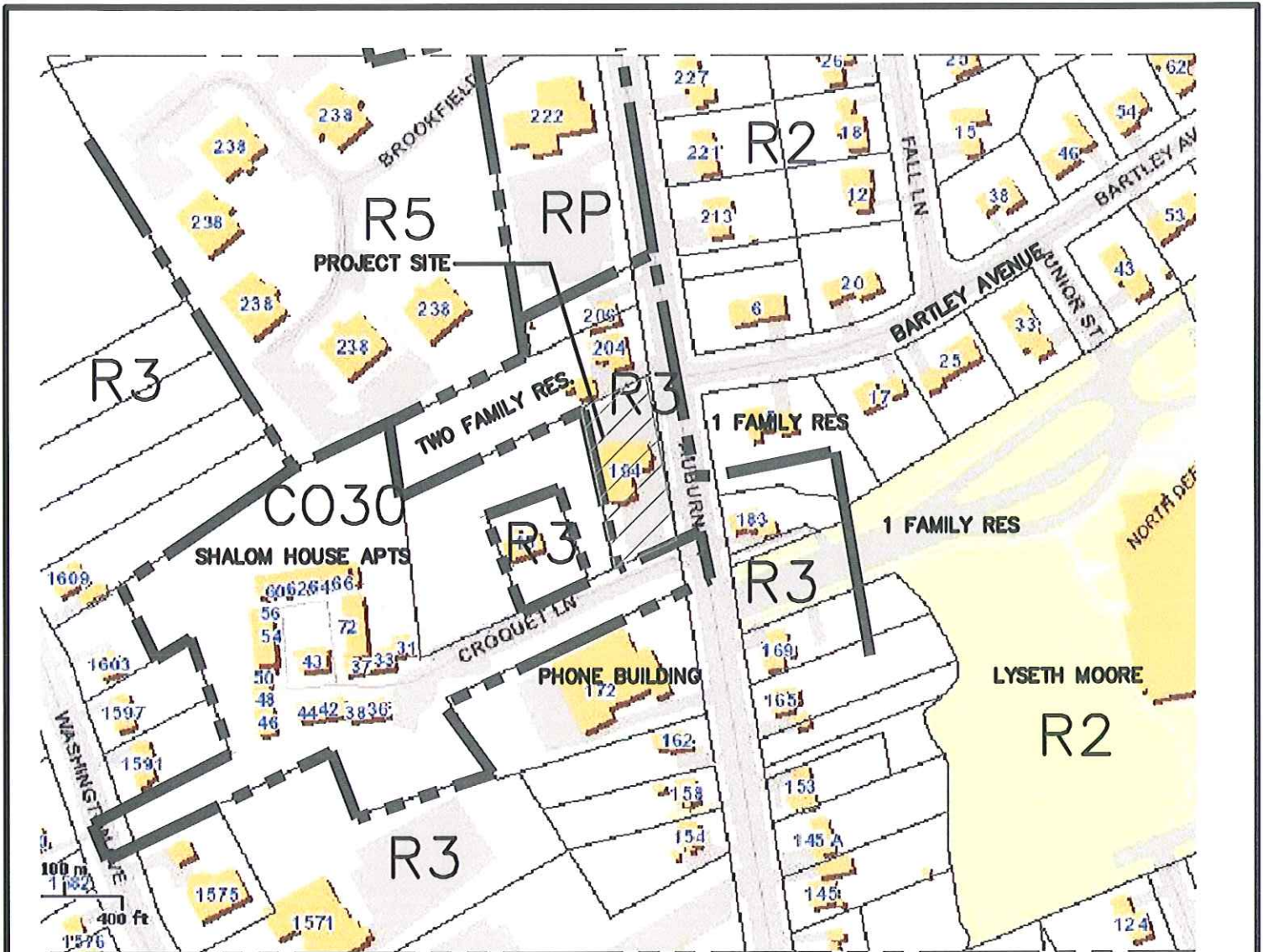
Walter E. Boothby Richard B. Bowley  
Ruth J. Bowley

STATE OF MAINE,  
County of Cumberland August 19 1955

Personally appeared the above named Richard Bowley  
and acknowledged the foregoing instrument to be his free act and deed, before me,

Walter E. Boothby  
Justice of the Peace

CLERK OF DEEDS, CUMBERLAND COUNTY, MAINE  
Received at 9 M. and recorded in  
Book 2276 PAGE 195  
FEB 17 1956  
Registrar



**ABUTTERS**

172 AUBURN STREET  
 NORTHERN NEW ENGLAND TELEPHONE  
 OPERATIONS, LLC  
 PO BOX 1509  
 BANGOR, MAINE 04402

JOSEPH J AND AMIRA F FOURNIER  
 5 BARTLEY AVE  
 PORTLAND, MAINE 04103

CASEY DEAN JOHNSEN  
 204 AUBURN STREET  
 PORTLAND, MAINE 04103

JASON M MACLEOD  
 183 AUBURN STREET  
 PORTLAND, MAINE 04103

184 AUBURN STREET  
 SHALOM APTS INC.  
 PO BOX 560  
 PORTLAND, MAINE 04112

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM SITE DESIGN ASSOCIATES, ANY ALTERATIONS, OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO SITE DESIGN ASSOCIATES.

**Site Design Associates**  
 Consulting Engineering & Land Planning

DESIGN TWS  
 DRAWN Dept.  
 CND TWS

**C.N. BROWN CO.**  
 194 AUBURN STREET, PORTLAND, MAINE

23 Whitney Way Topsham, Maine 04086 Tel: (207) 449-4275

**PROPOSED CONDITIONAL REZONING  
 VICINITY MAP**

**C.N. BROWN CO.**  
 P.O. BOX 200 SOUTH PARIS, ME 04281

DATE JUNE 2013  
 SCALE 1"=200'

PERM. NO.  
 CND. NO.

13-208-01  
 SKC-1

REV. 1

Attachment B.1

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

JOHN R. COYNE (5)  
JOHN M. ANTON (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

*DRAFT  
from Applicant  
6.13.2013*

*Superseded*

**AMENDMENT TO CITY CODE  
SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)  
RE: CONDITIONAL REZONING FOR PROPERTY  
IN THE VICINITY OF 194 AUBURN STREET**

**ORDERED**, that the zoning map and text of the City of Portland, dated December 2000, 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 REZONING AGREEMENT**

AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2013 by C.N. Brown Company, a Maine corporation ("CNB") with a place of business in South Paris, Maine, and its successors and assigns.

**WITNESSETH**

**WHEREAS**, CNB is the owner of the property located at 194 Auburn Street, Portland, Maine (the "Property") more particularly described and shown on the Portland Assessors Map at Chart 374, Block A, Lot 030 and in a deed in the Cumberland County Registry of Deeds at Book 3743, Page 103, (the "Property") and intends to use the Property for a fueling station and heating oil office; and

**WHEREAS**, CNB has filed a Zone Change Application with the City of Portland (hereinafter "CITY") to rezone the Property to a conditional B-2 zone subject to certain modifications and conditions set forth in this Agreement in order to reestablish the historical fueling station use and establish a heating oil office, as an accessory use; and

**WHEREAS**, the Property is currently in the R-3 zoning district, and has been located in the R-3 zone since the zone was established; and

**WHEREAS**, the Property has been used and operated as a service station since 1960; and

**WHEREAS**, the Property has been used and operated as a minor auto service station operated by CNB since its acquisition of the property on July 7, 1975; and

**WHEREAS**, the Property abuts a contract rezone for 180 Auburn Street, and

*6-13-2013*

**WHEREAS**, the **CITY'S** Comprehensive Plan seeks to promote the economic climate and activity, work with individual neighborhoods to identify suitable locations and approaches to accommodate neighborhood businesses, and encourage orderly growth and development within the **CITY**; and

**WHEREAS**, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property without altering the historic climate of the property or its impact on abutting properties or the neighborhood, generally; and

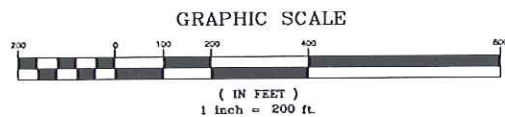
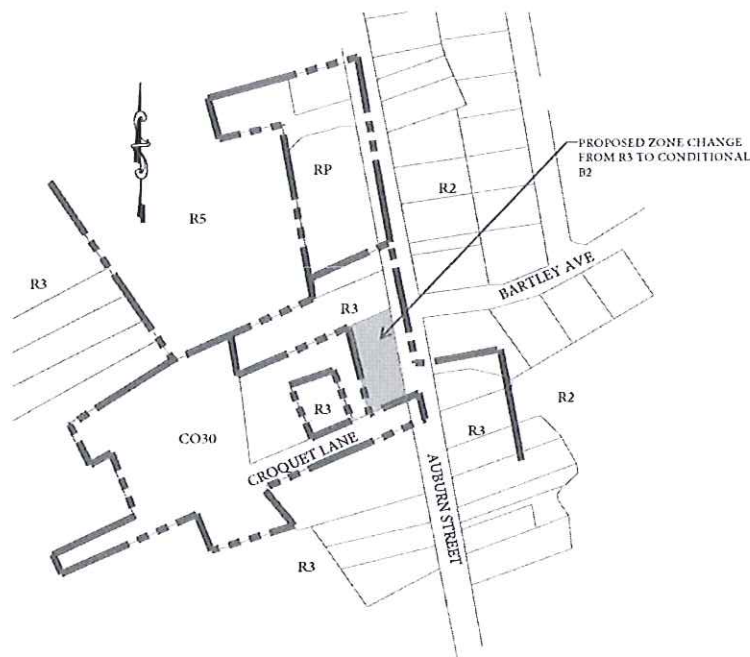
**WHEREAS**, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the Property; and

**WHEREAS**, the **CITY**, by and through its City Council, has determined that the rezoning is appropriate due to the unusual and historic nature and unique location of the development proposed, to allow the continued use of the site based on the historical uses that have taken place on the site, that the uses proposed are consistent with the historical use of the property and the existing and permitted uses within the zone, has determined that the use, as restricted herein, will not have a negative effect on the neighborhood and that the rezoning would be pursuant to and consistent with the City's Comprehensive Plan; and

**WHEREAS**, **CNB** has agreed to enter into this Agreement and the Amendment thereto, with its concomitant terms and conditions, which shall hereinafter bind **CNB**, its successors and assigns;

**NOW, THEREFORE**, in consideration of the rezoning of the Property, **CNB** agrees to be bound by the following terms and conditions:

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Development and incorporated by reference into Zoning Ordinance by §14-49 of the Portland City Code, by adopting the following map change.



2. Permitted uses: The permitted uses allowed in the proposed conditional B-2 zone would be consistent with the permitted uses in the R-3 zone. In addition, the Property shall be permitted to be used as a motor vehicle fueling station, with an incidental accessory use as a heating oil office. Peddler/delivery trucks would be stored on the site when not making deliveries. A maximum of two trucks would be permitted to be stored outside. No automobile repair service would be permitted on the site. The Property may not be converted to other permitted business uses in the B-2 zone unless this Agreement is amended and approved by the City.
3. The hours of operation of the fueling station and heating oil office shall be limited to 6:00 AM to 8:00 PM, daily. After-hours use of the property to access heating oil trucks for emergency deliveries when the heating oil office is not open to the general public is also permitted.
4. The Property will remain substantially in accordance with the Conceptual Site Plan by Site Design Associates, dated June 13, 2013 (the "Site Plan"). See Attachment 1.
5. Modifications to the B-2 Regulations. The Property shall be governed by the regulations applicable to the B-2 zoning district and other applicable provisions of the City Codes except as follows:



## A. Rear Yard – 20 ft required in B-2; 14.5 FT. Existing

6. The existing vegetation along the northerly, southerly, and westerly boundaries of the property shall remain undisturbed. If vegetation needs to be removed due to disease or damage, vegetation of similar species and height shall be planted in the same location as a replacement to maintain the screening function of this vegetation.
7. Community Contribution: C.N. Brown will implement safety improvements at the crossing of Croquet Lane, to include a cross walk and tactile warnings.
10. Should the Property cease to be used for a permitted use under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert back to the underlying R-3 zone.
11. So long as the Property continues to be used as a minor auto service station and heating oil office or any other permitted and approved use under Section 2 above, the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit CNB and any tenant, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. CNB shall file a copy of this Agreement in the Cumberland County Registry of Deeds, within ten (90) days from approval by the city council.
12. CNB shall provide the City with documentation of any tenant of CNB's consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and remain subject to the terms and conditions set forth herein.
13. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
14. 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.
15. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that CNB, or any successor violates the terms of this Agreement the resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

B.5

WITNESS:

C.N. Brown Company

\_\_\_\_\_

By \_\_\_\_\_

Jinger Duryea  
Its President

State of Maine  
Cumberland, ss

Date:

Personally appeared the above-named Jinger Duryea, President of C.N. Brown Company, and acknowledged the foregoing Agreement to be her free act and deed in her said capacity and the free act and deed of C.N. Brown Company.

\_\_\_\_\_  
Notary Public

6-13-2013



Attachment C. 1

Please respond to our Portland office

- James A. Hopkinson
- Richard J. Abbondanza
- Caitlin Fullerton DiMillo
- Gerald B. Schofield, Jr.

July 16, 2013

Thomas W. Saucier, P.E.  
Site Design Associates, LLC  
23 Whitney Way  
Topsham, Maine 04086

Sent via electronic mail to:  
[tsaucier@sytdesign.com](mailto:tsaucier@sytdesign.com)

**Re: C.N. Brown Company  
194 Auburn Street, Portland, Maine  
Conditional Re-zoning Application**

Dear Tom:

In connection with the Conditional Re-Zoning Application submitted by C.N. Brown to the City of Portland regarding the above referenced property, you have asked that I review the proposed Conditional Re-Zoning Agreement to confirm that the proposal is consistent with the City of Portland's Comprehensive Plan and policies. Based upon my review of the City of Portland's comprehensive plan it is my conclusion that the proposed Conditional Re-zoning Agreement is consistent with the Comprehensive Plan for the following reasons:

The Comprehensive Plan provides that the transportation plan guiding principle is to "provide maximum mobility in a balanced transportation system, which encompasses all modes, to support the economic vitality and quality of life of the Portland community." In furtherance of this guiding principle, the transportation policies state that vibrant neighborhoods include "nearby, small scale commercial areas that provide both convenient service and natural meeting places." Vibrant neighborhoods also "provide routine daily services as long as the businesses providing the services are small scale and designed compatibly with residences and fit into the fabric of the neighborhood." The proposed Conditional Re-zoning Agreement addresses a property that has been so historically intertwined with the neighborhood that it is clearly part of the "fabric of the neighborhood." The availability of a local gas station for the purpose of providing fuel for neighborhood automobiles, neighborhood lawn mowers and snow blowers and recreational vehicles and equipment is a convenient service to the neighborhood. Further, the availability of heating oil, locally, provides for immediate service to the neighborhood for both routine and emergency heating oil service and tank filling.

The transportation policies also provide that the City will work with individual neighborhoods to identify suitable locations and approaches to accommodate neighborhood businesses. Again, this

Thomas W. Saucier, P.E.  
Site Design Associates, LLC  
July 16, 2013  
Page 2

is a business location that has been a neighborhood business for a significant period of time and is clearly adapted into and intertwined with the neighborhood as it has existed for some time. Over time, development of the neighborhood has occurred around the property in a way that establishes the property as an appropriate business location.

The Comprehensive Plan community commercial policies and land use plan developmental goals provide for the promotion "preservation and revitalization of existing commercial centers and maintain a scale within them that is compatible and integrated with other land use." As noted, the site in question is an already existing commercial location and the scale of the location is not going to change from its historical use. The premises, physically, has integrated with other land uses in the neighborhood such a fashion that land use has grown around it. Approval of the Conditional Rezoning Agreement will promote, reserve and revitalize the location as an integrated commercial business location.

The community commercial policies and land use plan development goals also include maintaining and promoting "a community which is attractive to both existing and prospective families and homeowners to help support the neighborhood commercial district." The premises has been neglected and allowed to fall into a state of disrepair. Repairs and renovations cannot be made under current zoning restrictions. The Conditional Re-zoning Agreement would support a neighborhood commercial property and insure that the property is attractive to both existing and prospective families and homeowners.

The Comprehensive Plan industry and commerce plan included under State Goal C, specifically recommends revisions to zoning that "recognize that a well managed industry is a good neighbor." The Conditional Re-zoning Agreement and the site plan that will be part of the Conditional Re-zoning Agreement encourages and fosters such a good neighbor policy between the land use that historically existed on the premises with the adjoining neighborhood. Further, the industry and commerce plan provides that the City should "be creative, responsive and work hard to retain existing businesses." If the conditional re-zoning agreement is not approved, an existing business will likely be forever lost.

The industry and commerce plan also provides that the City should strengthen Portland's infrastructure to promote economic development. Commercial uses such as the one proposed under the Conditional Re-zoning Agreement clearly is part of the overall infrastructure of the City, providing for basic heat and transportation and recreational needs.

The Portland neighborhood economic development study goal included in the Comprehensive Plan provides that the City should restructure zoning ordinances to accurately reflect the hierarchy of commercial centers and, with respect to the B-2 Community Business District, to provide several major locations for a variety of retail service and office uses. Because of the historical use of the property in question, the site should be included as part of the several locations providing for such service.

Thomas W. Saucier, P.E.  
Site Design Associates, LLC  
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Page 3

Transportation Resources Neighborhood Issue #1 – Neighborhood Land Use provides that the City has a well established pattern of small-scale service areas. It also provides that a basic concept of “neighborhood” is that it functions as a “unit” in which residents can meet at least some of their basic daily needs within their neighborhoods. The comments also note that many of these services within these neighborhoods were non-conforming uses and thus in jeopardy of being lost if they are temporarily discontinued, as has occurred with this site. The proposal would address neighborhood issue #1 in a positive way by ensuring that the basic daily need of gasoline and heating oil is met and that a non-conforming use providing such need would not be permanently lost.

As you know, contract re-zoning is a tool that allows a municipality to manage the uses and site layout of specific proposed developments that require re-zoning. In so doing, the municipality may craft the contract re-zone to ensure that it satisfies the goals and provisions of the municipality’s comprehensive plan. Based on the foregoing analysis, it is my belief that the Conditional Re-Zoning Application proposed by C.N. Brown Company satisfies the spirit of contract re-zoning generally, and is specifically consistent with the Comprehensive Plan for the City of Portland.

Very truly,



James A. Hopkinson

JAH/mjm

Email: [jhopkinson@hablaw.com](mailto:jhopkinson@hablaw.com)

G:\CLIENTS\CN Brown\194 Auburn Street\SaucierLtr.07162013.doc



**EATON TRAFFIC ENGINEERING**  
67 Winter Street Suite 1 • Topsham • Maine • 04086  
Tel/Fax 207.725.9805 Cell 207.841.4200

To: Thomas Saucier, PE, Site Design Associates  
Fm: William C. Eaton, PE, Eaton Traffic Engineering  
Dt: April 9, 2013  
Re: CN Brown – Auburn Street, Portland, Maine – Traffic Assessment

Per your request I have performed an assessment of traffic operations in the vicinity of the CN Brown facility located at 184 Auburn Street in Portland, Maine. It is my understanding that this facility has served as a full service gasoline service station with 4 fueling positions, and will continue to do so. CN Brown proposes to locate a heating oil office at this site. Because this facility was not operational for over one year, it now requires special permission from the City to resume operations. In the course of obtaining this permission questions have been raised regarding traffic impacts associated with the renewal of this facility.

The CN Brown facility is located on the westerly side of Auburn Street adjacent to and north of Croquet Lane. The intersection of Auburn Street @ Croquet Lane/Lyseth Moore Street is controlled by a fully actuated (for both vehicles and pedestrians) traffic signal. Lyseth Moore Street is the primary access for both a middle and an elementary school. The majority of the traffic flow on Lyseth Moore Street is related to school traffic, which peaks at opening and closing times – generally between 7:30 – 8:30 AM and 2:00 – 3:00 PM. At other times traffic demand on Lyseth Moore Street and Croquet Lane will be minimal, and traffic on Auburn Street should flow freely. A manual traffic count of vehicles and pedestrians was conducted on April 3 (PM) and April 4 (AM), 2013. A summary of these counts is shown on the attached figure, which includes vehicles adjusted for trucks/buses (factored by 2) and pedestrians. In addition to the pedestrian signals, two crossing guards were present during these time periods.

Observation of traffic during these periods indicates that when traffic exiting Lyseth Moore Street (minimal traffic on Croquet Lane limits its significance in this issue) stops traffic on

Auburn Street (due to a signal change), traffic backs up on Auburn Street southbound, and both access points to the CN Brown facility are blocked. The frequency of this occurrence, based upon my observation, is not significant enough to create any major negative impact on either roadway capacity or safety. On average the CN Brown facility may generate 45 -50 customers during the peak hours of traffic on Auburn Street (less than one per minute). A significant number of these trips (42% in the AM peak hour, 58% in the PM peak hour) are pass-by trips (i.e. trips drawn from traffic already passing the site). If the access points to the facility are blocked by traffic in queue on southbound Auburn Street, it seems likely that northbound vehicles will continue on to Falmouth Crossing to re-fuel rather than be delayed.

With regard to safety, accident records maintained by the Maine Department of Transportation for the segment of Auburn Street from Lyseth Moore Street/Croquet Lane to Bartley Avenue were obtained for the 3 year period 2009 through 2011 (during which the CN Brown facility was operational). During this period, 3 accidents occurred at the signalized intersection of Auburn @ Lyseth Moore/Croquet, and no accidents occurred at either Auburn @ Bartley or on Auburn Street from Lyseth Moore/Croquet to Bartley.

Based upon the above summary of my observations and assessment, it is my opinion that reactivation of the CN Brown facility will not result in any significant negative impact on traffic operation or safety in the vicinity of the site. Should you have any questions or concerns regarding this matter, please do not hesitate to contact me.

D.3  
—

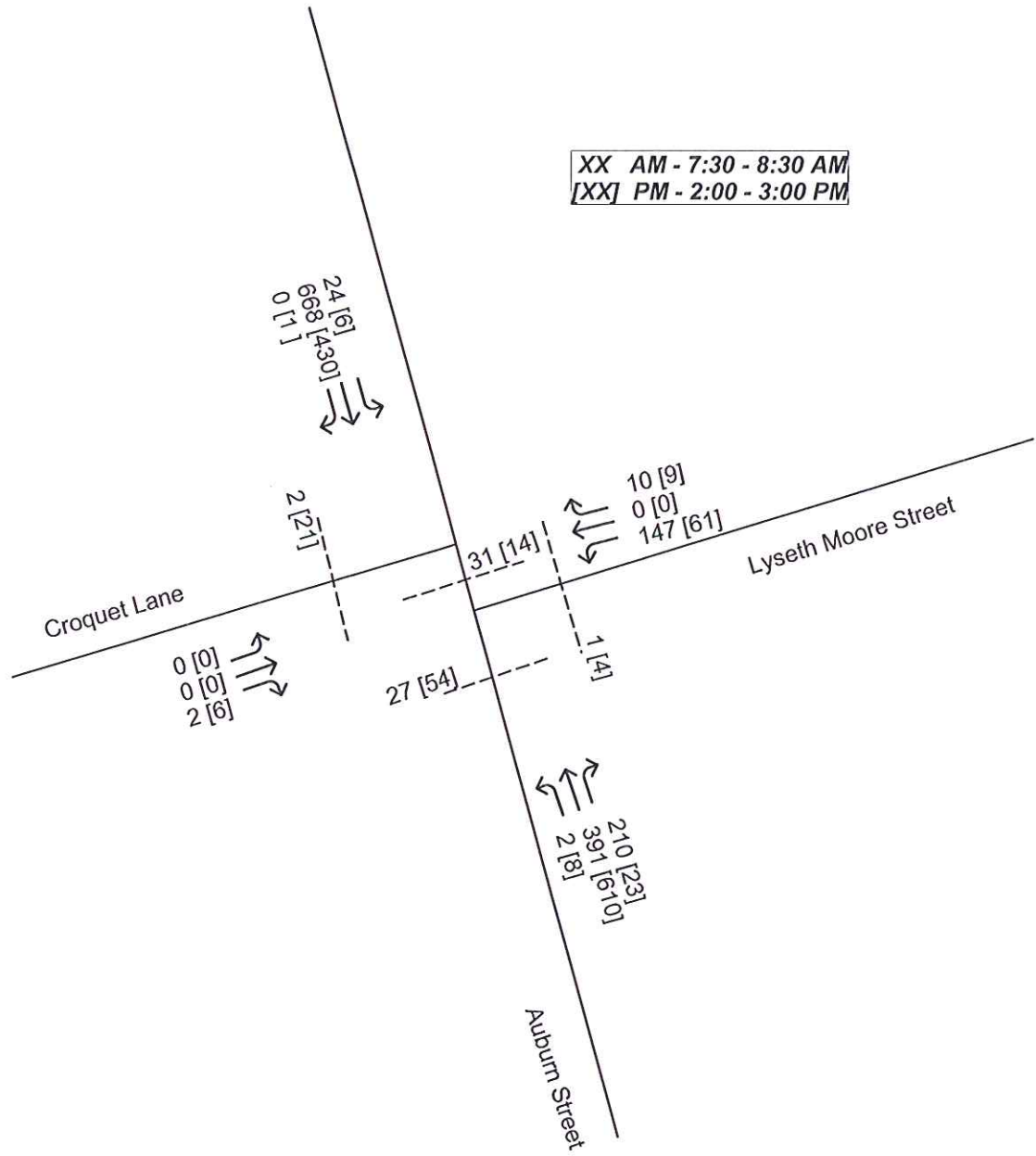


Figure 1  
Traffic/Pedestrian Volumes - April 2013

CN Brown / Auburn Street, Portland, ME



**Neighborhood Meeting Certification**

I, Tom Saucier, Site Design Associates, hereby certify that a neighborhood meeting was held on July 8, 2013 at 1364 Washington Avenue at 7:00 pm.

I also certify that on June 28, 2013, 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 or within 1000 feet of a proposed industrial subdivision or industrial zone change and the residents on the "interested parties" list.

Signed,

  
\_\_\_\_\_

07/11/13 (date)

Attached to this certification are:

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

E.2

**Neighborhood Meeting Invitation**

**Site Design Associates  
23 Whitney Way  
Topsham, Maine 04086**

June 28, 2013

Dear Neighbor:

Please join us for a neighborhood meeting to discuss our plans for reopening the automobile fueling station and adding an accessory heating oil office located at 194 Auburn Street.

Meeting Location: North Deering Congregational Church, 1364 Washington Avenue, Portland  
Meeting Date: July 8, 2013  
Meeting Time: 7:00 pm

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 207-449-4275.

Sincerely,

Site Design Associates  
Tom Saucier  
Applicant's Agent

Note:

Under Section 14-32(C) and 14-525 of the City Code of Ordinances, an applicant for a Level III development, subdivision of over five lots/units, or zone change is required to hold a neighborhood meeting within three weeks of submitting a preliminary application or two weeks of submitting a final site plan application, if a preliminary plans was not submit. The neighborhood meeting must be held 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 Planning and Urban Development Department, Planning Division 4<sup>th</sup> Floor, 389 Congress Street Portland, ME 04101 or by email: to [bab@portlandmaine.gov](mailto:bab@portlandmaine.gov)

<u>NAME</u>	<u>ADDRESS</u>	<u>EMAIL</u>
Chris Woods	59 Bartley Ave	Cawoods@mindspring.c
Sathy Farrell	17 Burtley Ave	Kwfarrell@maine.rr.com
Tracy Sawyer	201 Auburn St	tsawyer68@yahoo.com
Juel Greenlaw	135 Regan	Arel.Greenlaw@gmail.com
Lynette Lee Fair	<del>1000</del> North Deering Gardens	llee@coledog.vicp.org
Brian & Donna Knoblock	60 Stonecrest Drive	BKNOBLOCK@MAINE.RR.COM
Tim St. Hilaire	43 Bartley Ave Portland Me	tsthilaire@maine.rr.com
David Brenerman	32 Overset Rd.	Bren125d@aol.com
Maureen Zemrak	168 Wurts Rd	mzemrak17@gmail.com
Michael Rizzo	88 Christy Rd	PhS63@AOL.COM
Amy Rolfe	20 Cottage Park Road	AMYLROLFE@GMAIL.COM
Wally Gowen	468 ALLEN AVE	WWG-917@AOL.COM

**Site Design Associates**  
**Consulting Engineering and Land Planning**

**Neighborhood Meeting Minutes**

**Project:** C.N. Brown Co. - 194 Auburn Street Conditional Rezoning  
**Project #:** 13-208-01  
**Date:** July 8, 2013, 7:00 pm  
**Location:** 1364 Washington Avenue  
**Subject:** Conditional Rezoning Application

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**Discussion:**

Of 82 people notified, 12 people attended the meeting. A copy of the signup sheet is attached.

The writer presented the conditional rezoning application, and the proposed site plan.

CNB is applying to conditionally rezone 194 Auburn Street in order to allow reestablishment of the historical minor auto service station use on the property, along with an accessory heating oil office use.

CNB acquired the property in 1975. At that time, it is our understanding the use located there was a minor auto service station, which consisted of a filling station and automobile service business. Records show that the parcel has been used as a service station since at least 1960.

The automobile service portion of the use was phased out prior to the fall 2011 closing of the facility, at which time it was solely an automobile refueling station. The location closed because the dealer ended his contract with CNB, and it was advertised for lease with no success. Because the facility was operating as a non-conforming use in the R-3 zone, where minor auto service stations are not a permitted use, CNB cannot reopen the facility without relief from the current zoning.

CNB was advised by city staff that the preferable course of action in order to reestablish the historical use of a minor service station with an accessory heating oil office use at this site, is through a conditional rezoning from the current R-3, to a B-2 zone, where minor auto service stations are a conditional use, and the heating oil office would be a permitted use.

A conditional rezoning will allow CNB to revitalize the property and operate the facility as it historically has been operated, without altering the historic climate of the property and without impacting abutting properties.

The heating oil office use is a non-intensive permitted use. At the most, two (possibly three in winter) delivery, or peddler trucks would be parked on the site. We are exploring

the feasibility of constructing doors on the end of the building and storing one or more trucks inside.

People would access the site to pay their heating oil bills, but that will not generate significant traffic. In addition to two heating oil delivery drivers, the facility would likely have one additional employee, to both operate the heating oil office and provide "full service" refueling, as opposed to a self serve operation.

The writer reviewed the draft conditional rezoning agreement which stipulates the conditions under which CNB would agree to operate the facility, including:

- Limiting the use to a automobile refueling station, with no automobile service performed on site, and an accessory heating oil office;
- The property cannot be converted to any other use permitted in the B-2 zone, with out amendment of the proposed conditional rezoning agreement, and approval by the city;
- Limiting hours of operation to 6:00 am – 8:00 pm;
- Establishing a vegetated buffer along the property frontage; and
- Constructing pedestrian safety improvements at the intersection of Croquet Lane and Auburn Street;

The writer explained that if permitted to reopen the facility, CNB would also implement many cosmetic improvements to the building, canopy and pump areas.

There will be no physical expansion of the building footprint, number of pumps or fueling positions proposed.

**Questions/comments:**

Will any products be sold inside, such as cigarettes, beer, soda, etc.?

**No.**

Fueling will be full service?

**Yes.**

Will the roof fascia and soffits be replaced?

**Yes, those that must be.**

When is opening anticipated?

**Upon receipt of necessary approvals.**

Will there be new lighting and signage?

**No, existing will be retained, and LED price signs will replace internally illuminated signs.**

Why do we think the gasoline business will be successful?

**Gasoline business would be marginal, but this conditional rezoning would also allow C.N. Brown to establish a heating oil presence in the area, to better serve customers.**

Do we anticipate future change in use?

**No, and the draft agreement would not permit this. Any change of use would have to conform to R-3 zoning, or go back through the conditional rezoning process, where we do not believe there would be a good chance of success.**

Will the building have a security system?

**Yes.**

Have we looked at traffic impacts?

**Yes, a report has been prepared which indicates no anticipated impacts due to this project, and no high crash locations in the vicinity of the project.**

**We also reviewed a report prepared by the city and others which shows no evidence of any crashes involving pedestrians from 2001-2010 in the area.**

General comment reflecting a consensus among most attendees, including the only immediate residential abutter, northerly of the property. **It will be great to have a presence in the building again.**

Attachment F.1

**From:** "Tom Saucier" <tsaucier@sitedesignassociates.biz>  
**To:** "Jean Fraser" <JF@portlandmaine.gov>  
**Date:** 7/16/2013 2:54 PM  
**Subject:** C.N. Brown Co. - 194 Auburn Street Conditional Rezoning  
**Attachments:** 13001\_CNBrown\_Mem2.pdf; 13001\_CNBrown.pdf; Neighborhood meeting minutes 070813.pdf; 07-08-13 sign in sheet.pdf; meeting certification.pdf; compplanconsistency.pdf

Jean

Having received this letter after close of business on July 10 (essentially July 11), when originally you thought we would receive it July 3rd, we will not have a redraft of the agreement available for submission today, but have attempted to address your and staff's comments below.

#### Draft Agreement

A discussion of consistency with the Comprehensive Plan prepared by our attorney is attached.

We have forwarded the comments relative to the draft agreement to our attorney. It may be prudent to wait for city attorney comments prior to us preparing and resubmitting a new draft. When do you think the attorney's comments will be available? I suspect the planning board would be interested in those comments, as would we, and we should probably have those in hand prior to the day of the meeting.

Responses to additional comments;

- Two delivery trucks generally on site, but in the winter months it may be up to three
- Two pumps with four fueling positions currently exist on site, and those will remain as existing under the conditional rezoning
- Item five of the the agreement as drafted and submitted to the city includes the rear yard setback
- We will amend the agreement to indicate that existing signage will remain, and the price signs will be replaced with LED signs

This information would be added to the revised agreement.

#### Conceptual Plan

In regards to a separate site plan review, we were told by staff at a meeting on February 7, 2013 that it was not a given that the project would require site plan review if the conditional rezoning was approved. We were told if the project as proposed did not exceed any of the site plan review thresholds, site plan review would not be required.

#### Traffic Engineering

We are aware of the City traffic standards and the fact that this site, which has existed at this location since 1960, does not meet some standards, as the traffic review memo pointed out. The traffic portion of the memo does not indicate that those standards must be met, however your previous comment that the Conceptual Plan needs to be revised to address the comments, appears to indicate you believe we do need to meet the standards.

Over the 53 years a business has operated at this site, including operation when the left turn lane into Lyman Moore existed, we are unaware of any accident problems or issues associated with vehicular/pedestrian conflicts. Given the layout of the existing site, it is not possible to meet the standards cited, and it is not our intent to reconstruct the drives. We question what benefit would be gained by reconstructing the entrances to conform with today's technical standards, when they have operated satisfactorily for several decades.

Further, the City's own study in 2011, indicates no problems with vehicular/pedestrian conflicts in this area of Auburn Street. We reviewed the June 2011 report "Safe Routes to School: School Travel Plan for Lyman Moore

F.2

Middle School and Harrison Lyseth Elementary School Campus", and this area is not identified as a "Hotspot", or problem area, and records for 2001-2010 included in the report indicate that no crashes involving pedestrians occurred in the vicinity of the site. I believe we need to discuss any concerns the traffic review engineer may have in more detail to gain a better understanding of what those concerns may be.

We would be happy to incorporate the required deviations from the standards into the conditional rezoning agreement.

In response to traffic comment 5, what are the safety concerns referenced relative to traffic on Auburn Street? We have retained Eaton Traffic Engineering to review the traffic issues, and he found that reactivation of the C.N. Brown facility will not result in any significant negative impact on traffic operation or safety in the vicinity of the site. A copy of the traffic report and figure is attached.

Although we are aware of no issues relative to conflicts with pedestrians at the drives, we agree that we could provide enhanced pedestrian safety at the drives, and would consider some sort of delineation across the drives. We would need to further discuss this with the city traffic consultant.

The final traffic comment supports the conclusions contained in the attached traffic report; that there will be no significant increase in traffic.

#### Landscape

We have proposed additional landscaping as noted on the conceptual plan previously submitted. The northerly abutter was present at the neighborhood meeting to support the plan. We will discuss with the northerly abutter any preference for plantings they may have, if any.

The pavement setback will be included as a variance in the contract agreement.

In closing, if C.N. Brown is required to strictly comply with the current traffic standards referenced in the memo, and all current site plan standards, the project will not be feasible, which will require that the facility remain closed.

This would be unfortunate and a disappointment to C.N. Brown and to neighbors who voiced their support for the project at the neighborhood meeting as well as in writing to city staff, including the North Deering Neighborhood Association and the only immediate residential abutter in an owner occupied property northerly of the site.

We are in hopes that a compromise can be reached to move this project forward.

thanks  
tom

Tom Saucier, P.E.  
Site Design Associates  
23 Whitney Way  
Topsham, Maine 04086

ph: 207-449-4275  
cell: 207-756-0068  
email: [tsaucier@sitedesignassociates.biz](mailto:tsaucier@sitedesignassociates.biz)



**Site Design Associates**  
**Consulting Engineering and Land Planning**

August 7, 2013

Ms. Jean Fraser  
Planning Division  
389 Congress St., Fourth Floor  
Portland, ME 04101

**RE: C.N. Brown Company**  
**Application for Conditional Rezoning**  
**194 Auburn Street**

Dear Barbara:

On behalf of C.N. Brown Company (CNB), Site Design Associates (SDA) is pleased to submit one original paper copy and one CD containing the files of the following information.

This submission contains the following information:

- Revised Draft Conditional Rezoning Agreement
- Letter from Hopkinson and Abbondanza
- The following project drawings(one full size and 1 reduced set):
  - C-100 Existing Conditions Plan, Rev B.
  - C-101 Conceptual Site Plan, Rev A.

Following up on our meetings with city staff and the planning board in July, we have revised the plans and documents to address various concerns. The Conditional Rezoning Agreement has been revised to incorporate revisions provided by the city attorney on July 22, 2013, and to more specifically address compliance or non compliance with city ordinances and technical requirements.

The revised agreement is provided with our revisions highlighted in yellow. The agreement and plan revisions include:

- Planting of a buffer along the northerly property line
- Addition of crosswalks at the existing site drives
- Southerly site drive designated exit only
- Upgrade of on site pole lighting to meet ordinance requirements and technical standards

G.2

- Addition of the variations from the driveway technical standards with regard to spacing, width, and separation from an intersection
- Additional modification to B2 regulations relative to the pavement setback along the northerly property line.

The variations from the technical standards relative to driveway widths are necessary to permit access by a transport (tractor trailer) which refills the underground tanks. We retained Maine Traffic Resources to undertake a turning analysis for both entering and exiting WB-62 and WB-67 design vehicles. The results indicated that trucks must maneuver precisely to enter and exit the site, and a reduction in the curb cut widths would further restrict those movements.

The letter from Hopkinson and Abbondanza addresses legal questions that were discussed at the planning board meeting including whether the application for conditional rezoning satisfies the purpose and reasons under Section 14-60 of the Land Use Code, whether the application is consistent with the existing and permitted uses within the R-3 zone, and whether the proposal addresses Comprehensive Plan Policy #3, Neighborhood Stability and Integrity. As noted in Mr. Hopkinson's letter, we believe the proposal satisfies each of these concerns.

Please contact me with any questions or comments concerning the submission.

Sincerely,  
Site Design Associates



Tom Saucier, P.E.  
President

cc: Kevin Moore, C.N. Brown Co.

Attachment I. 1



(read w/Att. C)

Please respond to our Portland office

- James A. Hopkinson
- Richard J. Abbondanza
- Caitlin Fullerton DiMillo
- Gerald B. Schofield, Jr.

August 6, 2013

Thomas W. Saucier, P.E.  
Site Design Associates, LLC  
23 Whitney Way  
Topsham, Maine 04086

Sent via electronic mail to:  
tsaucier@sitedesignassociates.biz

**Re: C.N. Brown Company  
194 Auburn Street, Portland, Maine  
Conditional Re-zoning Application**

Dear Tom:

This letter supplements my letter to you of July 16, 2013 regarding the above matter. Specifically, you have asked that I address whether the application satisfies the purpose and reasons under Section 14-60 of the City of Portland Code of Ordinances, whether the application and proposal is consistent with the existing and permitted uses within the existing zone and whether the proposal addresses policy number 3 neighborhood stability and integrity within the housing section of the comprehensive plan. In support of the foregoing, I provide the following comments:

Section 14-60 of the City of Portland Code of Ordinances.

Section 14-60 of the City of Portland Code of Ordinances provides the authority for the City Council to approve requests for contract rezoning when made by the owner of the property to be rezoned. Section 14-60 provides that where reasons exist "such as" the unusual nature or unique location of the development proposed, the City can impose certain conditions or restrictions to ensure that the re-zoning is consistent with the City's comprehensive plan. The phrase "such as" does not limit the City's review to only the unusual nature or unique location of the development but allows reasons such as those to permit the City to enact certain conditions.

The property itself is a parcel of land that has already been fully developed with a building and associated improvements on the property. The building configuration is clearly one that is structured for and anticipates the type of use being proposed by the applicant in its application for contract rezoning. The property and improvements are located on a major roadway with traffic that would anticipate using the services to be provided at the premises. The building style and configuration does not readily lend itself to other uses that are permitted within the zone. For reasons stated in my July 16, 2013 letter, the use proposed by the application does provide

Thomas W. Saucier, P.E.  
Site Design Associates, LLC  
August 6, 2013  
Page 2

services to the neighborhood in which the development is proposed. It is anticipated that conditions and restrictions will be imposed as requested by the applicant to ensure that the rezoning is consistent with the City's comprehensive plan and as such, the proposals satisfies the provisions of Section 14-60 of the City of Portland Code of Ordinances.

Consistency with the Existing and Permitted Uses Within the Original Zone.

Section 4352 of Title 30-A of the Maine Revised Statutes require that any re-zoned area be consistent with the existing and permitted uses within the original zones. The proposed use for the development is to take a vacant building that has historically been used as a gas station, restart that use and also allow use as a heating oil office.

Uses that are permitted within the R-3 Residential Zone include single-family homes, planned residential unit developments and municipal uses. Permitted uses also include various conditional uses including, but not limited to, institutional uses.

This R-3 Residential Zone includes a high traffic road and is in very close proximity to major shopping centers, gas stations, restaurants, offices and the like. Municipal and institutional uses include uses more intense than the proposed use.

The proposed development includes uses that are often found in even the most rural residential areas of the state in order to provide needed services to the neighborhood, generally. Particularly where, as in this proposal, the development is adjacent to a major roadway in which residential uses directly on the major road would not be particularly appropriate. The site is not large enough to allow the development of residential properties well off the road with a private access. It's configuration and the existence of already constructed improvements limits the practical uses of the premises to the type of use proposed by the applicant. The historical use of the property as a gas station commenced at a time where other commercial uses in the area were either non-existent or much smaller.

The proposed use is not inconsistent with the permitted uses and existing uses within the R-3 zone.

Policy No. 3 Neighborhood Stability and Integrity.

The Housing Section of the City of Portland's Comprehensive Plan provides as Policy No. 3 that the City should:

Maintain and enhance the livability of Portland's neighborhoods as the City grows and evolves through careful land use regulation, design and public participation that restricts neighborhood integrity.

Under this policy it is the objective:

I.3

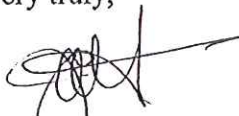
Thomas W. Saucier, P.E.  
Site Design Associates, LLC  
August 6, 2013  
Page 3

While accommodating needed services and facilities, protect the stability of Portland's residential neighborhoods from excessive encroachment by inappropriately scaled and obtrusive commercial, institutional, governmental and other non-residential uses.

The proposed use has been a historical use in the area for quite some time. There is no "creep" or "encroachment" of obtrusive commercial, institutional, governmental or other non-residential uses. Municipal uses are specifically permitted in the R-3 Zone and the proposed use is not inconsistent with municipal uses. The size and scale of the development is limited to the size and scale of the existing improvements on the premises and appropriate restrictions would be imposed, as proposed by the applicant, pursuant to Section 14-60 to ensure that the re-zoning is consistent with the overall comprehensive plan. The use has fit into the neighborhood for years and the continued use of the historical would be a stabilization of the use of the property into the future.

Based upon the foregoing, the applicant's proposal satisfies the foregoing concerns. Please do not hesitate to contact me should you have any further questions.

Very truly,



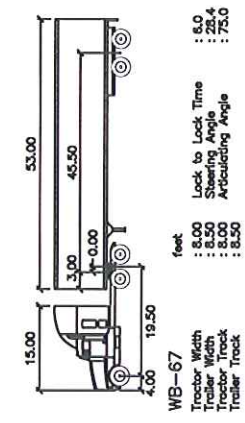
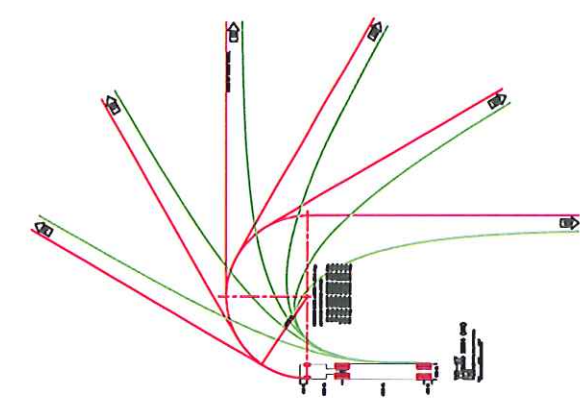
James A. Hopkinson

JAH/mjm

Email: [jhopkinson@hablaw.com](mailto:jhopkinson@hablaw.com)

G:/clients/c/cnbrown/194auburnstreet/SaucierLtr.08062013

# Attachment J.



**Maine Traffic Resources**  
 25 Vine Street  
 Gardiner, ME 04345  
 tel: (207) 582-5252  
 fax: (207) 582-1677

**Auburn Street, Portland**  
**WB-67 at 2 mph**  
**Site Design Associates**

Attachment K.1

**From:** "Tom Saucier" <tsaucier@sitedesignassociates.biz>  
**To:** "Jean Fraser" [JF@portlandmaine.gov](mailto:JF@portlandmaine.gov) **CC:** <thomas.errico@tylin.com>  
**Date:** 8/21/2013 3:02 PM  
**Subject:** RE: RE: 194 Auburn  
**Attachments:** PortlandCNBAutoTurn62Enter.pdf; PortlandCNBAutoTurn62Exit.pdf;  
PortlandCNBAutoTurn50Enter.pdf; PortlandCNBAutoTurn50ExitOpt1.pdf

Hi Jean

Tom E. is copied on this and templates are attached.

Templates for a WB-62 and WB-50 are attached. There really is no standard template for the C.N. Brown transports, which are larger than the WB-50 but smaller than the WB-62. As noted in the sketches, the WB-50 has some room to spare at the entrance and exit, while the WB-62 uses most of both.

I am not sure what you mean by our response re the CZA?

As I indicated to you yesterday, we have received no comments regarding that since our submission on August 8. The submission on August 8 incorporated the comments we received on July 22.

thanks

tom

Tom Saucier, P.E.  
Site Design Associates  
23 Whitney Way  
Topsham, Maine 04086

>>> Tom Errico <thomas.errico@tylin.com> 8/20/2013 8:19 PM >>>

I agree that it would be between the two. I would suggest that you see if "Auto-Turn" can replicate the exact turning dimensions noted. If not please provide a graphic using the WB-62 (I know you have indicated it is similar to the WB-67, I just want to see it with the exact design vehicle).

Thanks

Thomas A. Errico, PE  
Senior Associate  
Traffic Engineering Director  
T.Y. Lin International

**From:** Tom Saucier [mailto:tsaucier@sitedesignassociates.biz]  
**Sent:** Tuesday, August 20, 2013 1:29 PM  
**To:** 'Jean Fraser' **Cc:** Tom Errico  
**Subject:** RE: 194 Auburn

Hi Jean and Tom

The information I received from C.N. Brown is that the front axle to the rear trailer axle is 54.5 ft, with a bumper to bumper length of 62 feet. So it seems this vehicle is larger than a WB-50, but smaller than a WB-62, correct Tom?

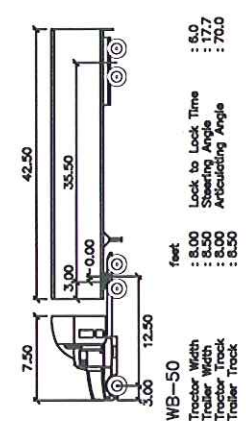
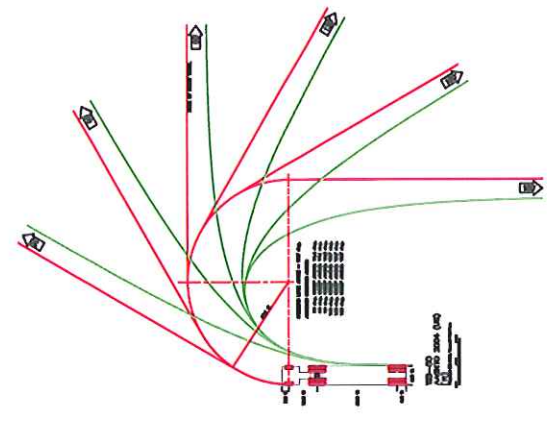
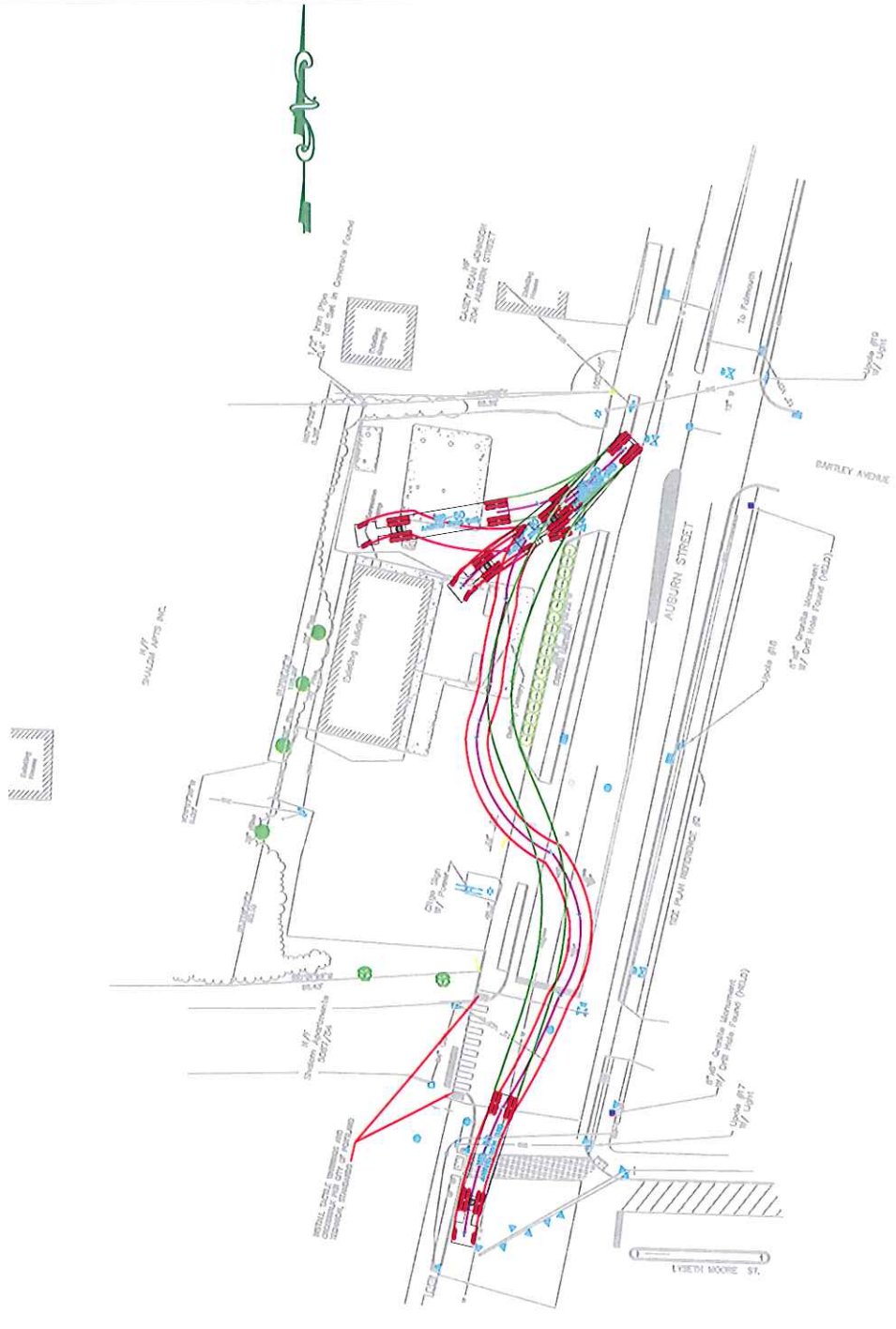
If correct, the design vehicle would be the WB-62, wouldn't it?

thanks

tom

Tom Saucier, P.E.  
Site Design Associates  
23 Whitney Way  
Topsham, Maine 04086

K.2



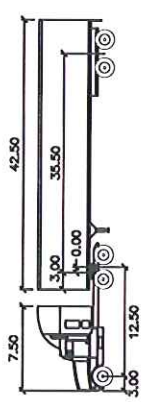
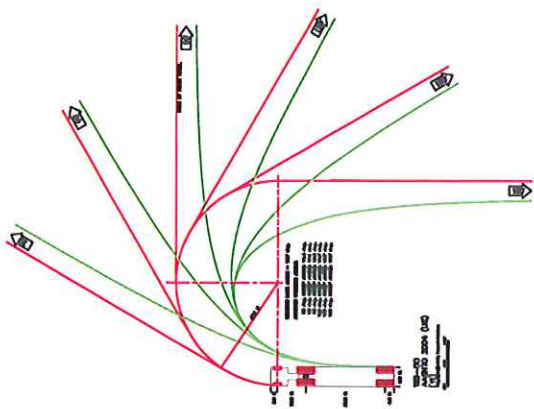
25 Vine Street  
Gardiner, ME  
04345  
tel: (207) 582-5252  
fax: (207) 582-1677



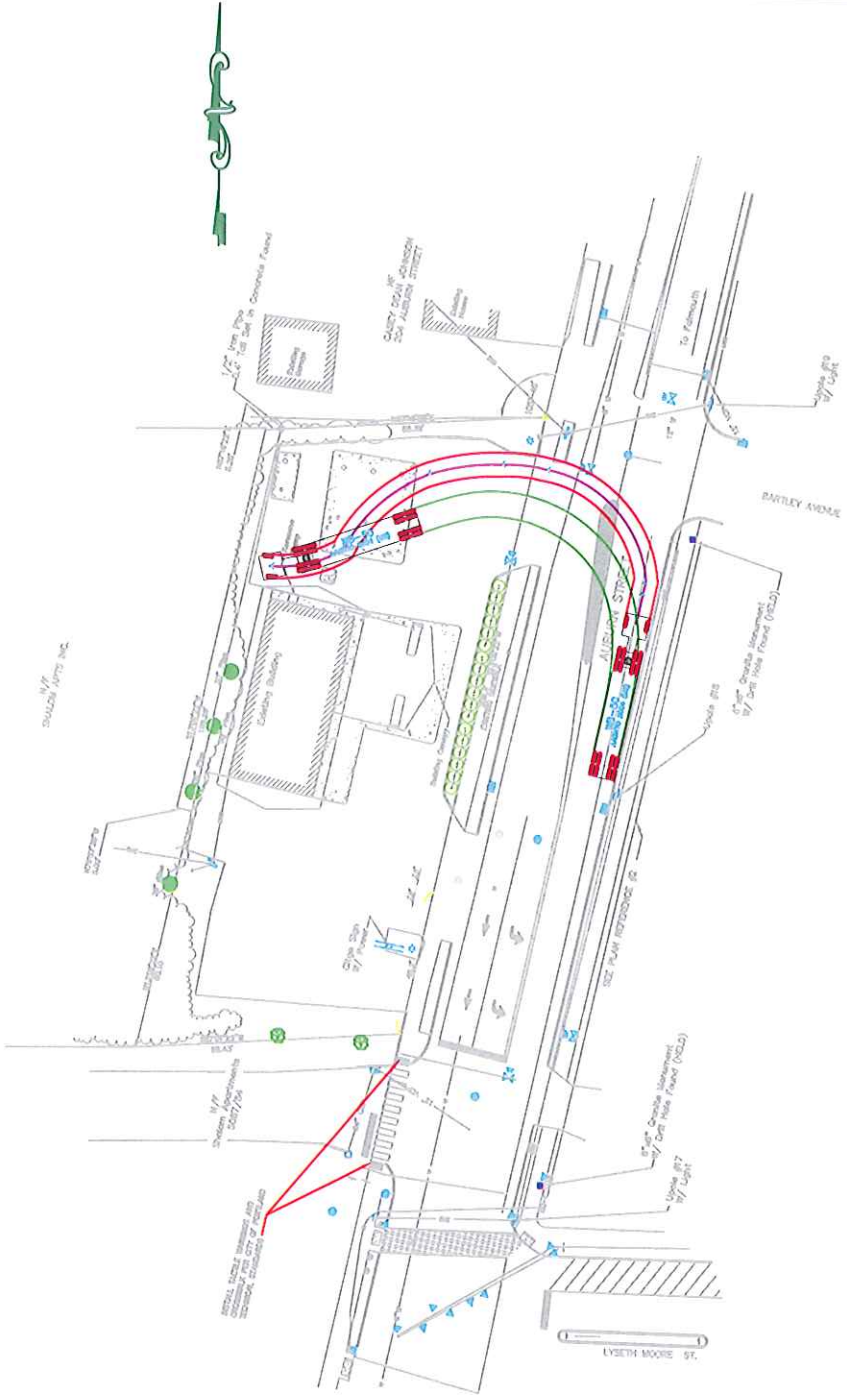
**Auburn Street, Portland**  
**WB-50 at 2 mph**  
**Site Design Associates**



K-3



- WB-50
- feet
- Tractor Width : 8.00
- Trailer Width : 8.50
- Tractor Track : 8.00
- Trailer Track : 8.00
- Lock to Lock Time : 6.0
- Shearling Angle : 17.7
- Articulating Angle : 70.0



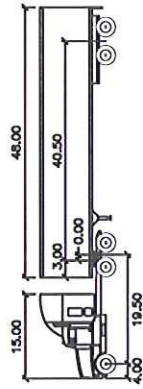
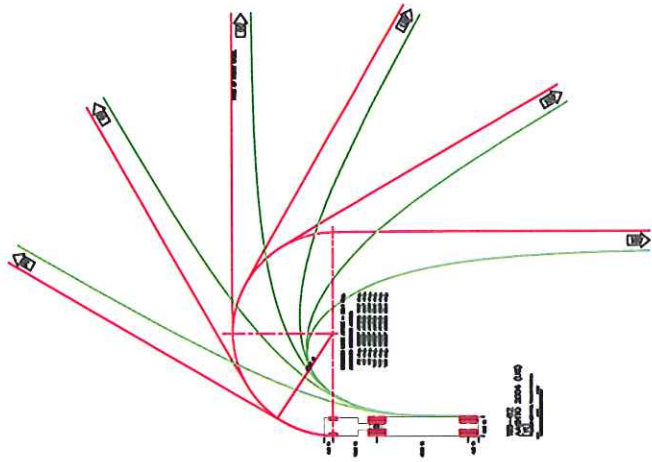
# Auburn Street, Portland

## WB-50 at 5 mph

### Site Design Associates

**Maine Traffic Resources**  
 25 Vine Street  
 Gardiner, ME 04345  
 tel: (207) 582-5252  
 fax: (207) 582-1677

K. A



Tractor	feet	Lock to Lock	feet
Tractor Width	: 4.00	Shear Angle	: 23.4
Tractor Track	: 19.50	Articulating Angle	: 70.0
Trailer Track	: 48.00		

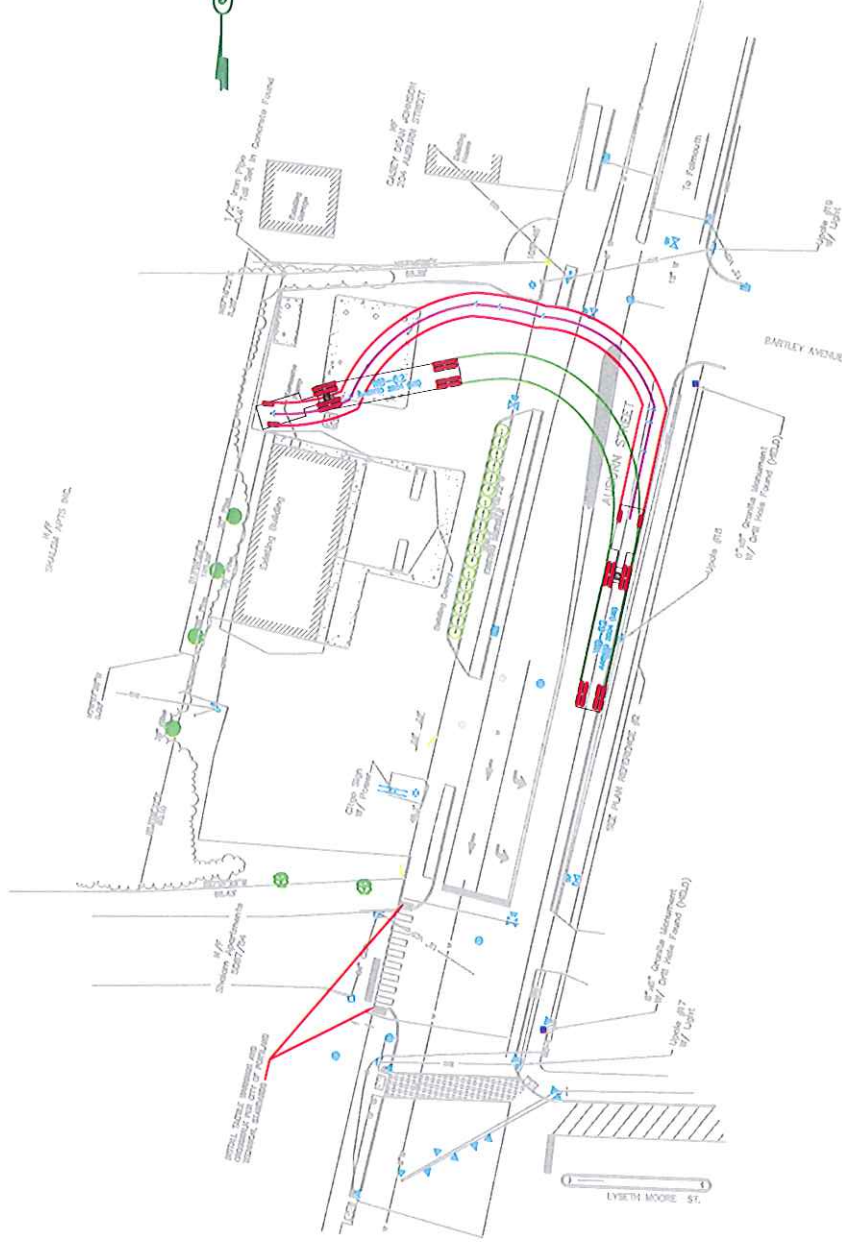
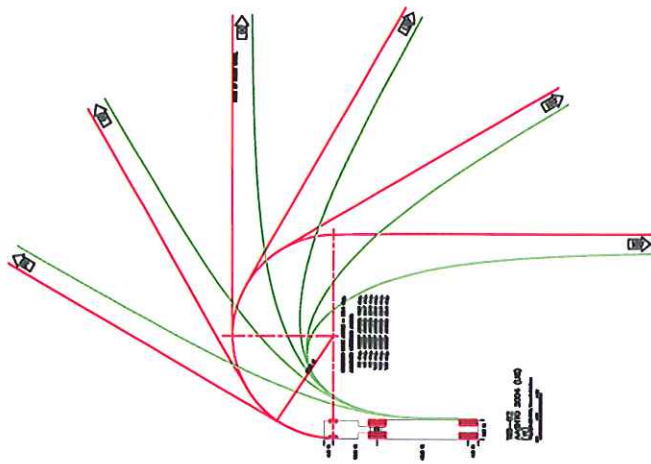


# Auburn Street, Portland WB-62 at 2 mph Site Design Associates

**Maine  
Traffic  
Resources**

25 Vine Street  
Gardiner, ME  
04345  
tel: (207) 582-5252  
fax: (207) 582-1577

K.S



# Auburn Street, Portland

## WB-62 at 5 mph

### Site Design Associates

**Maine Traffic Resources**  
 25 Vine Street  
 Gardiner, ME 04345  
 tel: (207) 582-5252  
 fax: (207) 582-1677

**Site Design Associates**  
**Consulting Engineering and Land Planning**

September 16, 2013

Ms. Jean Fraser  
Planning Division  
389 Congress St., Fourth Floor  
Portland, ME 04101

**RE: C.N. Brown Company**  
**Application for Conditional Rezoning**  
**194 Auburn Street**

Dear Jean:

On behalf of C.N. Brown Company (CNB), Site Design Associates (SDA) is pleased to submit one original paper copy and one CD containing the files of the following information:

- Revised Draft Conditional Rezoning Agreement – (dated 09/16/13)
- Letter from Hopkinson and Abbondanza
- The following project drawings(one full size and 1 reduced set):
  - C-100 Existing Conditions Plan, Rev A.
  - C-101 Conceptual Site Plan, Rev C.

Following up on our meetings with city staff and the planning board in July, we have revised the plans and documents to address various concerns, including proposed conditions of approval included in your August 23, 2013 report to the planning board. The Conditional Rezoning Agreement has been revised to incorporate revisions provided by the city attorney on August 16, 2013, and to more specifically address compliance or non compliance with city ordinances and technical requirements.

The revised agreement is provided with our revisions highlighted in yellow. The agreement and plan revisions include:

- Planting and widening of the existing buffer along the northerly property line
- Addition of crosswalks at the existing site drives
- Southerly site drive designated exit only, and right turn only
- Upgrade of on site pole lighting to meet ordinance requirements and technical standards
- Revisions of the variations from the driveway technical standards with regard to spacing, width, and separation from an intersection. Please note that the spacing between the site driveways now conforms to city requirements.
- Reduction in the width of the existing driveways per Tom Errico's recommendations

rec'd 9-17-13 P.D.

M.2

- Revision to rear yard setback, to be measured from the overhang of the building
- Revision to item 14, which suggests that the property would revert to the R-P Residence Professional Zone, as recommended by city staff

Recall that staff had recommended the existing buffer area be widened to 10 feet at the northerly end of the property. As we indicated in an email to you, this is not possible to do, while still permitting adequate transport access into the site. The curb cut reduction will be on the southerly side of the access. If it were to occur on the northerly side, the transport would not have the space needed to maneuver, given the proximity of the tractor to the building, and the need to use the northerly side of the access for egress purposes. We are also concerned about winter access when perimeter areas may become narrower at times, due to the accumulation of snow. Also, the existing concrete pads are located within the 10 ft buffer area. We cannot alter the layout of the pads. To my knowledge there has been no request from the northerly abutter for the buffer width to be increased, and we believe we have accommodated widening the buffer to the extent practical.

The letter from Hopkinson and Abbondanza addresses legal questions that were discussed at the planning board meeting including whether the application for conditional rezoning satisfies the purpose and reasons under Section 14-60 of the Land Use Code, whether the application is consistent with the existing and permitted uses within the R-3 zone, and whether the proposal addresses Comprehensive Plan Policy #3, Neighborhood Stability and Integrity. As noted in Mr. Hopkinson's letter, we believe the proposal satisfies each of these concerns.

In closing, no neighbors attended the planning board workshop, and to our knowledge none were present at the planning board meeting on August 27 to voice concerns with this proposal. In fact, the president of the North Deering Neighborhood Association was present on August 27th to testify in favor of the proposal. Unfortunately, we felt it was in our best interest to table the proposal at that meeting to address the issues raised in the conditions of approval proposed by staff.

We are in hopes you will find that we made a significant effort to bring the existing site plan into compliance with current standards to the extent practical and to address staff concerns. Please contact me with any questions or comments concerning the submission.

Sincerely,  
Site Design Associates



Tom Saucier, P.E.  
President

cc: Kevin Moore, C.N. Brown Co.

**H & A** Hopkinson & Abbondanza  
ATTORNEYS

Attachment 0.1

(read with Att.C)

Please respond to our Portland office

- James A. Hopkinson
- Richard J. Abbondanza
- Caitlin Fullerton DiMillo
- Gerald B. Schofield, Jr.

August 6, 2013

Thomas W. Saucier, P.E.  
Site Design Associates, LLC  
23 Whitney Way  
Topsham, Maine 04086

Sent via electronic mail to:  
tsaucier@sitedesignassociates.biz

**Re: C.N. Brown Company  
194 Auburn Street, Portland, Maine  
Conditional Re-zoning Application**

Dear Tom:

← in Att.C

This letter supplements my letter to you of July 16, 2013 regarding the above matter. Specifically, you have asked that I address whether the application satisfies the purpose and reasons under Section 14-60 of the City of Portland Code of Ordinances, whether the application and proposal is consistent with the existing and permitted uses within the existing zone and whether the proposal addresses policy number 3 neighborhood stability and integrity within the housing section of the comprehensive plan. In support of the foregoing, I provide the following comments:

Section 14-60 of the City of Portland Code of Ordinances.

Section 14-60 of the City of Portland Code of Ordinances provides the authority for the City Council to approve requests for contract rezoning when made by the owner of the property to be rezoned. Section 14-60 provides that where reasons exist "such as" the unusual nature or unique location of the development proposed, the City can impose certain conditions or restrictions to ensure that the re-zoning is consistent with the City's comprehensive plan. The phrase "such as" does not limit the City's review to only the unusual nature or unique location of the development but allows reasons such as those to permit the City to enact certain conditions.

The property itself is a parcel of land that has already been fully developed with a building and associated improvements on the property. The building configuration is clearly one that is structured for and anticipates the type of use being proposed by the applicant in its application for contract rezoning. The property and improvements are located on a major roadway with traffic that would anticipate using the services to be provided at the premises. The building style and configuration does not readily lend itself to other uses that are permitted within the zone. For reasons stated in my July 16, 2013 letter, the use proposed by the application does provide

Thomas W. Saucier, P.E.  
Site Design Associates, LLC  
August 6, 2013  
Page 2

services to the neighborhood in which the development is proposed. It is anticipated that conditions and restrictions will be imposed as requested by the applicant to ensure that the rezoning is consistent with the City's comprehensive plan and as such, the proposals satisfies the provisions of Section 14-60 of the City of Portland Code of Ordinances.

Consistency with the Existing and Permitted Uses Within the Original Zone.

Section 4352 of Title 30-A of the Maine Revised Statutes require that any re-zoned area be consistent with the existing and permitted uses within the original zones. The proposed use for the development is to take a vacant building that has historically been used as a gas station, restart that use and also allow use as a heating oil office.

Uses that are permitted within the R-3 Residential Zone include single-family homes, planned residential unit developments and municipal uses. Permitted uses also include various conditional uses including, but not limited to, institutional uses.

This R-3 Residential Zone includes a high traffic road and is in very close proximity to major shopping centers, gas stations, restaurants, offices and the like. Municipal and institutional uses include uses more intense than the proposed use.

The proposed development includes uses that are often found in even the most rural residential areas of the state in order to provide needed services to the neighborhood, generally. Particularly where, as in this proposal, the development is adjacent to a major roadway in which residential uses directly on the major road would not be particularly appropriate. The site is not large enough to allow the development of residential properties well off the road with a private access. It's configuration and the existence of already constructed improvements limits the practical uses of the premises to the type of use proposed by the applicant. The historical use of the property as a gas station commenced at a time where other commercial uses in the area were either non-existent or much smaller.

The proposed use is not inconsistent with the permitted uses and existing uses within the R-3 zone.

Policy No. 3 Neighborhood Stability and Integrity.

The Housing Section of the City of Portland's Comprehensive Plan provides as Policy No. 3 that the City should:

Maintain and enhance the livability of Portland's neighborhoods as the City grows and evolves through careful land use regulation, design and public participation that restricts neighborhood integrity.

Under this policy it is the objective:

0.3

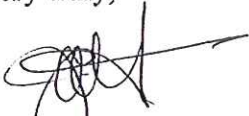
Thomas W. Saucier, P.E.  
Site Design Associates, LLC  
August 6, 2013  
Page 3

While accommodating needed services and facilities, protect the stability of Portland's residential neighborhoods from excessive encroachment by inappropriately scaled and obtrusive commercial, institutional, governmental and other non-residential uses.

The proposed use has been a historical use in the area for quite some time. There is no "creep" or "encroachment" of obtrusive commercial, institutional, governmental or other non-residential uses. Municipal uses are specifically permitted in the R-3 Zone and the proposed use is not inconsistent with municipal uses. The size and scale of the development is limited to the size and scale of the existing improvements on the premises and appropriate restrictions would be imposed, as proposed by the applicant, pursuant to Section 14-60 to ensure that the re-zoning is consistent with the overall comprehensive plan. The use has fit into the neighborhood for years and the continued use of the historical would be a stabilization of the use of the property into the future.

Based upon the foregoing, the applicant's proposal satisfies the foregoing concerns. Please do not hesitate to contact me should you have any further questions.

Very truly,



James A. Hopkinson

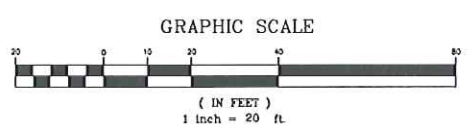
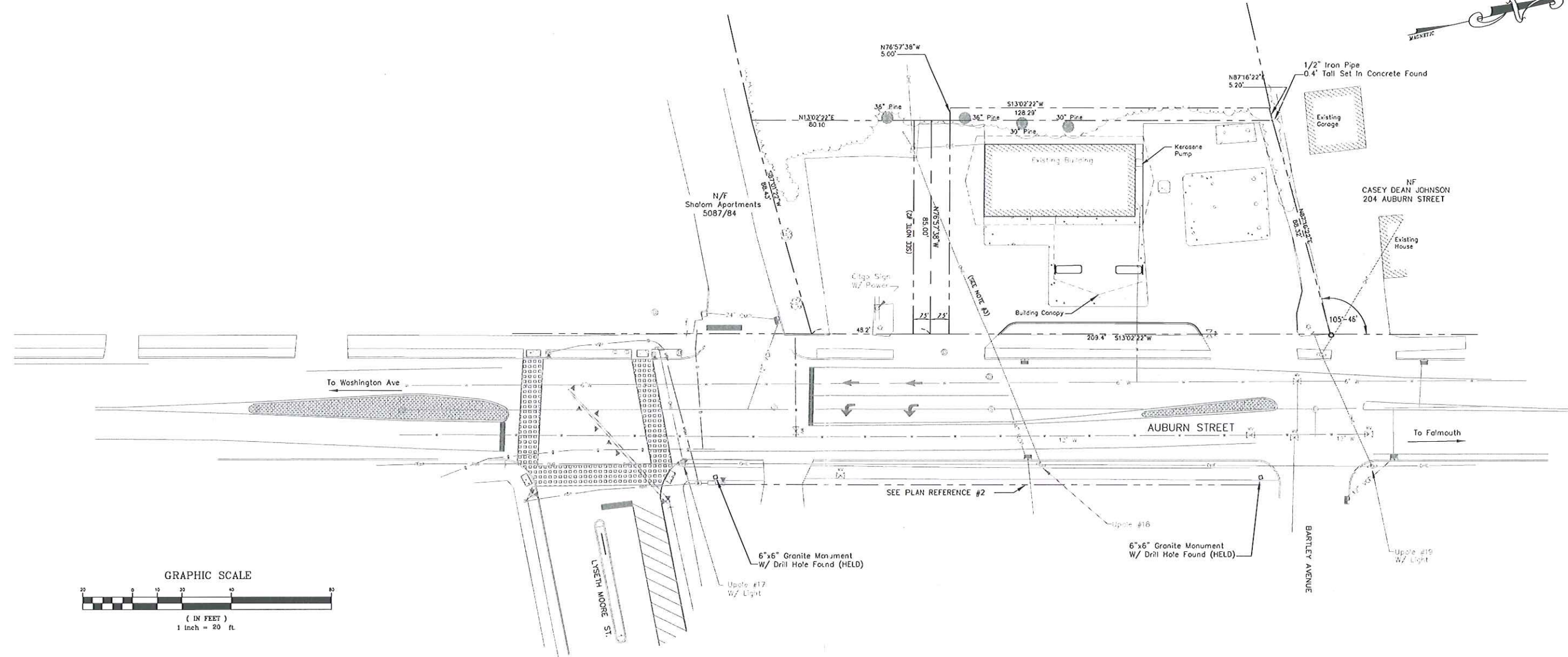
JAH/mjm

Email: [jhopkinson@hablaw.com](mailto:jhopkinson@hablaw.com)

G:/clients/c/cnbrown/194auburnstreet/SaucierLtr.08062013



N/F SHALOM APTS INC.



LEGEND			
	STORM DRAIN MANHOLE		TREELINE
	STORM DRAIN CATCH BASIN		TREE
	STORM DRAIN LINE		FENCE LINE METAL
	STORM DRAIN CULVERT		FENCE LINE WOODEN
	SANITARY SEWER MANHOLE		LIGHT POLE
	SANITARY SEWER LINE		TELEPHONE LINE
	SANITARY FORCE MAIN		TELEPHONE MANHOLE
	WATERLINE		UTILITY POLE
	HYDRANT		BUILDING
	WATER LINE METER PIT		EDGE OF PAVEMENT
	WATER LINE GATE VALVE		EDGE OF GRAVEL
	WATER LINE SHUT-OFF VALVE		EDGE OF CONCRETE
	WATER LINE MANHOLE		BITUMINOUS CURB
	ELECTRIC LINE		SIGN
	ELECTRIC MANHOLE		STONEWALL
	ELECTRIC BOX		PROPERTY LINE
	LIGHT POLE		RIGHT OF WAY LINE
	TRAFFIC PULL BOX		GAS
	CROSS WALK STOP LIGHT		UNDERGROUND UTILITY

GENERAL NOTES:

- 1- SOURCE OF BEARINGS ARE BASED UPON COMPASS OBSERVATION AS OBSERVED ON NOV. 18, 1998
- 2- PROPERTY IS SUBJECT TO 15' EASEMENT AS DESCRIBED IN DEED BOOK 3743 PAGE 103 RECORDED AT THE CUMBERLAND COUNTY REGISTRY OF DEEDS
- 3- PROPERTY IS SUBJECT TO AN EASEMENT TO CENTRAL MAINE POWER AS DESCRIBED IN DEED BOOK 2276 PAGE 295 RECORDED AT CUMBERLAND COUNTY REGISTRY OF DEEDS
- 4- EXISTING CONDITIONS INFORMATION IS BASED UPON A SURVEY BY COLONIAL SURVEYING COMPANY IN MARCH 2013 SUPPLEMENTED WITH INFORMATION TAKEN FROM THE PLAN REFERENCE BELOW.

PLAN REFERENCE:

EXISTING CONDITIONS, PROPOSED BIG APPLE STORE, 194 AUBURN STREET, PORTLAND PREPARED BY SQUAW BAY CORP, DATED DECEMBER 1998.

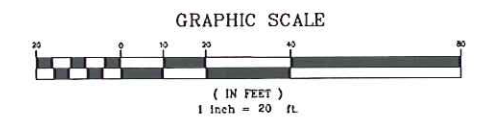
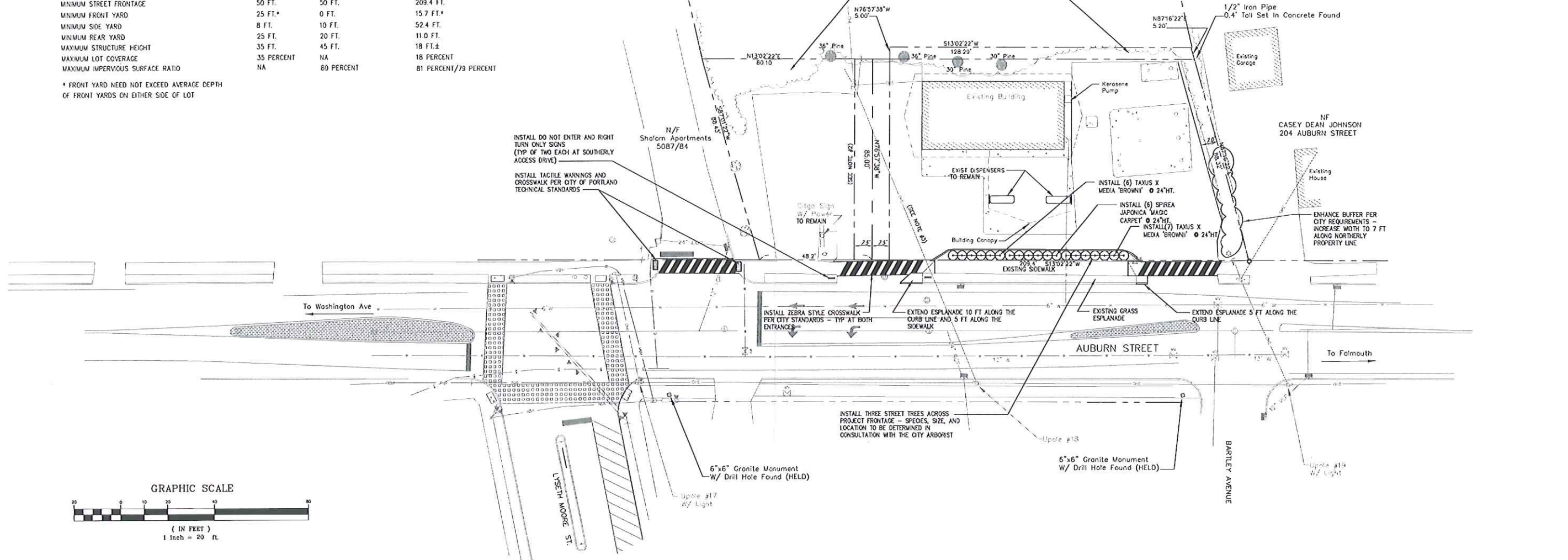
THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM SITE DESIGN ASSOCIATES, ANY ALTERATIONS, OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO SITE DESIGN ASSOCIATES.

<p style="text-align: center;"><b>Site Design Associates</b> Consulting Engineering &amp; Land Planning</p> <p>23 Whitney Way    Topsham, Maine 04086    Tel: (207) 449-4215</p> <p>CLIENT: <b>C.N. BROWN COMPANY</b> P.O. BOX 200, SOUTH PARIS, MAINE 04281</p>										DESIGN: TWS	PROJECT: EXISTING SERVICE STATION																								
										DRAWN: DEPT.	194 AUBURN STREET PORTLAND, MAINE																								
<table border="1"> <thead> <tr> <th>REV</th> <th>DATE</th> <th>STATUS</th> <th>BY</th> <th>CHKD</th> <th>APPD</th> <th>REV</th> <th>DATE</th> <th>STATUS</th> <th>BY</th> <th>CHKD</th> <th>APPD</th> </tr> </thead> <tbody> <tr> <td>A</td> <td>06/13/13</td> <td>SUBMITTED TO CITY OF PORTLAND FOR CONDITIONAL REZONING APPLICATION</td> <td></td> <td>TWS</td> <td>TWS</td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>										REV	DATE	STATUS	BY	CHKD	APPD	REV	DATE	STATUS	BY	CHKD	APPD	A	06/13/13	SUBMITTED TO CITY OF PORTLAND FOR CONDITIONAL REZONING APPLICATION		TWS	TWS							CHKD: TWS	EXISTING CONDITIONS PLAN
										REV	DATE	STATUS	BY	CHKD	APPD	REV	DATE	STATUS	BY	CHKD	APPD														
A	06/13/13	SUBMITTED TO CITY OF PORTLAND FOR CONDITIONAL REZONING APPLICATION		TWS	TWS																														
										DATE: JUNE 2013	PROJ. NO. ---	REV. ---																							
										SCALE: 1"=20'	DWS. NO. ---	A																							

**ZONING SUMMARY:**  
CONDITIONAL REZONING FROM R-3 TO B-2

	R-3	B-2	EXISTING/PROPOSED
1. DIMENSIONAL REQUIREMENTS			
MINIMUM LOT SIZE (NON-RESIDENTIAL USE)	6,500 S.F.	10,000 S.F.	18,130 S.F.
MINIMUM STREET FRONTAGE	50 FT.	50 FT.	209.4 FT.
MINIMUM FRONT YARD	25 FT.*	0 FT.	15.7 FT.*
MINIMUM SIDE YARD	8 FT.	10 FT.	52.4 FT.
MINIMUM REAR YARD	25 FT.	20 FT.	11.0 FT.
MAXIMUM STRUCTURE HEIGHT	35 FT.	45 FT.	18 FT.±
MAXIMUM LOT COVERAGE	35 PERCENT	NA	18 PERCENT
MAXIMUM IMPERVIOUS SURFACE RATIO	NA	80 PERCENT	81 PERCENT/79 PERCENT

\* FRONT YARD NEED NOT EXCEED AVERAGE DEPTH OF FRONT YARDS ON EITHER SIDE OF LOT



**LEGEND**

	STORM DRAIN MANHOLE		TREE
	STORM DRAIN CATCH BASIN		FENCE LINE METAL
	STORM DRAIN LINE		FENCE LINE WOODEN
	STORM DRAIN CULVERT		LIGHT POLE
	SANITARY SEWER MANHOLE		TELEPHONE LINE
	SANITARY SEWER LINE		TELEPHONE MANHOLE
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	TRAFFIC PULL BOX		UNDERGROUND UTILITY
	CROSS WALK STOP LIGHT		
	5/8\"/>		
	EXISTING MONUMENT FOUND		

- GENERAL NOTES:**
- SOURCE OF BEARINGS ARE BASED UPON COMPASS OBSERVATION AS OBSERVED ON NOV. 18, 1998
  - PROPERTY IS SUBJECT TO 15' EASEMENT AS DESCRIBED IN DEED BOOK 3743 PAGE 103 RECORDED AT THE CUMBERLAND COUNTY REGISTRY OF DEEDS
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*9.17.13 final*

- final - for attachment to Attachment 1 CZA

THIS PLAN SHALL NOT BE MODIFIED WITHOUT WRITTEN PERMISSION FROM SITE DESIGN ASSOCIATES, ANY ALTERATIONS, OTHERWISE, SHALL BE AT THE USER'S SOLE RISK AND WITHOUT LIABILITY TO SITE DESIGN ASSOCIATES.

REV	DATE	STATUS	BY	CHKD	APPD	REV	DATE	STATUS	BY	CHKD	APPD
C	09/15/13	REVISED PER ADDITIONAL STAFF COMMENTS AND RESUBMITTED	DEPT	TWS	TWS						
B	08/07/13	REVISED PER STAFF COMMENTS AND RESUBMITTED	DEPT	TWS	TWS						
A	06/13/13	SUBMITTED TO CITY OF PORTLAND FOR CONDITIONAL REZONING APPLICATION	DEPT	TWS	TWS						

<p><b>Site Design Associates</b> Consulting Engineering &amp; Land Planning</p> <p>23 Whitney Way Topsham, Maine 04086 Tel: (207) 449-4275</p>		DESIGN: TWS	PROJECT: EXISTING SERVICE STATION
		DRAWN: DEPT.	194 AUBURN STREET PORTLAND, MAINE
<p>CLIENT: <b>C.N. BROWN COMPANY</b> P.O. BOX 200, SOUTH PARIS, MAINE 04281</p>		CHKD: TWS	CONCEPTUAL SITE PLAN
		DATE: JUNE 2013	PROJ. NO. -
		SCALE: 1"=20'	DWG. NO. -
			REV. C