



Gould Equipment Company

Serving the equipment needs of Northern New England for over 60 years

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South Portland, ME 04106
Tel: (207) 767-2151
ME: (800) 834-6853
NH-VT: (800) 852-0062
Fax: (207) 767-0769

June 2, 1999

CN Brown Company
PO Box 200
South Paris, Me 04281

Attn.: Charlie Sheehan

Dear Charlie,

Reference your Northgate Citgo plans.

As a nearby home owner at 25 Bartley Avenue only a few yards away, I welcome your expansion and upgrade to the new store. I believe you will do real well at this location and will enhance the neighborhood with additional services.

My family has endorsed your petition for support and anything else I can do to help you in the neighborhood I am most willing to do.

If you are anticipating any zoning problems or opposition, please give me a call and I would be happy to speak in support of your plans at a zoning or planning board meeting.

~~Best of luck with your project, and once again if I can be of any assistance please do not~~
hesitate to give me a call.

Kindest personal regards,

Gould Equipment Co.

Richard W. Tuttle
Marketing Manager

cc: J. Duryea
K. Moore

SALES AND SERVICE

Service Station and Petroleum Handling Equipment • Trailers and Truck Tanks • Bulk Storage Facilities

Portland North Dental Associates, P.A.

Robert A. DeRice DMD
9 Sanborn Street
Portland, Maine 04103

Phone (207) 878-3100
Email doctord@maine.rr.com

July 23, 1999

Ms. Shelley Dunn
Burgess Advertising
1290 Congress Street
Portland, Maine 04102

Dear Ms. Dunn:

As president of Portland North Dental Associates, located at 9 Sanborn Street, Portland, Maine, I am in favor of the pending change for the Northgate Citgo, located at 194 Auburn Street. As we had discussed over the phone on 07/22/99, it is my opinion that it would benefit the surrounding North Deering community for the Citgo gas station to become a Big Apple variety store and gas station.

If I may be of any further assistance please let me know.

Sincerely,



Robert A. DeRice DMD
President

CN Brown: Summary of Written Survey – as of August 23, 1999

- 25 Families have no objection to, or have endorsed, the CN Brown plan for a Big Apple store at 194 Auburn Street, based on written surveys.
- The most frequently mentioned items to purchase were:
 1. gasoline (18)
 2. dairy products (milk, cheese, cream, etc.) (16)
 3. snack foods (pretzels, candy, ice cream, etc.) (15)
- As many customers would walk &/or bicycle (19) to the store as would drive (19) there.
- Respondents to the survey live in the neighborhood, on the following streets:

Auburn Street (5)
Washington Avenue (2)
Regan Lane (2)
Skylark (1)
Summit Street (1)
Summit Park Avenue (1)
Northwood (3)
Primrose Lane (1)
Martin Road (1)
Bartley Avenue (3)
Christy Road (2)
Autumn Lane (1)
Rustic Lane (1)
Alpine Road (1)
Total: 25

MEMORANDUM

TO: Kandi Talbot (756-8258)
Penny Littell (874-8497)
Charlie Sheehan (743-6383)
Tom Saucier (829-2231)

FROM: Jan Paradie, Secretary to Jeanne T. Cohn-Connor

DATE: August 30, 1999

RE: C.N. Brown/Contract Zone

Please be aware that there will be a meeting on Tuesday, September 14, 1999 at 2:00 p.m. to discuss C.N. Brown/contract zone. The meeting will be held at the offices of Preti, Flaherty, Beliveau, Pachios & Haley at One City Center, penthouse floor.

If you have any questions, please call

JTCC\E:\BROWN\0914 Meeting memo.doc

Preti, Flaherty, Beliveau, Pachios & Haley, LLC
(207) 791-3000

ROBERT E. DANIELSON, ESQUIRE

ATTORNEY AND COUNSELLOR AT LAW

TWO CITY CENTER, FIFTH FLOOR

(207) 879-1337

PORTLAND, MAINE 04101

TELECOPIER (207) 879-1579

CONFIDENTIAL FAX COVER LETTER

DATE: August 30, 1999

TRANSMISSION TO: **Alexander Jaegerman**

FAX NO: (207) 756-8258

RE: DuraStone

Number of Pages (Including cover page):

Sent by: Deb Reid

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Thank you.

ROBERT E. DANIELSON, ESQUIRE

ATTORNEY AND COUNSELLOR AT LAW

TWO CITY CENTER, FIFTH FLOOR

PORTLAND, MAINE 04101

(207) 879-1337

TELECOPIER (207) 879-1579

August 30, 1999

Via Facsimile No. (207) 874-8497

Penny Littell, Esq.
City of Portland
Corporation Counsel's Office
389 Congress Street
Portland, ME 04101

Re: DuraStone
66 Miliken Street

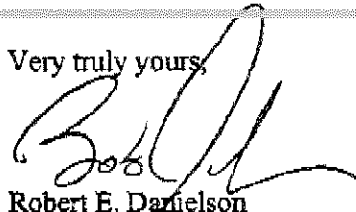
Dear Penny:

Thank you for meeting with representatives of DuraStone last Thursday to discuss the site plan in connection with the captioned matter. Please be advised that DuraStone will submit a site plan containing waste water management detail in accordance with the proposed use of the site on or before September 1, 1999 at 10:00 a.m. Les Berry, engineer for the project, has indicated that, while the plans will be available for submittal on Wednesday, he is requesting that the supporting report be submitted on Thursday, September 2nd, to allow complete review of the plan by him prior to preparation of the report.

We are still intent on appearing at the Planning Board Workshop on September 14 to keep the sale on target and appreciate the Planning Board's staff's cooperation in that regard.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Robert E. Danielson

RED/djr

cc: Mr. James Duhamel
Thimi Mina, Esq.
Mr. John Mitchell
Mr. Lester S. Berry
Mr. Alexander Jaegerman

PRETI, FLAHERTY, BELIVEAU, PACHIOS & HALEY, LLC

ATTORNEYS AT LAW

ONE CITY CENTER
P.O. BOX 9546
PORTLAND, MAINE 04112-9546
(207) 791-3000
TELEFAX (207) 791-3111

TELECOPIER COVER LETTER

Memory No.: _____

Client/Matter No.: _____ / 3325

Date: 10/5/99

Pages (Including Cover): _____

Time: _____ : _____ AM/PM

TO:	<u>NAME</u>	<u>COMPANY/FIRM</u>	<u>FAX</u>
	<u>Penny Littell</u>		<u>874-8497</u>
	<u>Kandi Talbot</u>		<u>756-8258</u>

FROM: Jeanne T. Caha-Corner

COMMENTS: _____

ORIGINAL: MAILED _____ NOT MAILED _____

If you do not receive all of the pages or have other transmission problems, please immediately call back:

Jan at (207) 791-3000, extension 3145

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PRETI, FLAHERTY, BELIVEAU, PACHIOS & HALEY, LLC

ATTORNEYS AT LAW

ONE CITY CENTER, P.O. BOX 9546, PORTLAND, MAINE 04112-9546
 TELEPHONE: (207) 791-3000 -- TELEFAX (207) 791-3111
 INTERNET: WWW.PRETIL.COM -- E-MAIL: ADMIN@PRETI.COM

October 5, 1999

VIA TELECOPY (874-8497)

Penny Littell, Esq.
 Office of Corporation Counsel
 City Hall
 389 Congress Street
 Portland, ME 04101

Re: C.N. Brown/194 Auburn Street

Dear Penny:

I have attached our comments to the most recent draft of the Agreement regarding the rezoning of 194 Auburn Street. I have only attached the changed pages. Most of these changes were already discussed with Kandi Talbot.

Please review these comments and call me if you have any questions.

Sincerely,


 Jeanne T. Cohn-Connor

JTCC/jp
 Enclosure
 cc: Kandi Talbot (via telecopy 756-8258)
 Charlie Sheehan
 Tom Saucier

JTCC\BROWN\1999\Little ltr 100599.doc

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 BRIAN M. CONNELL Y

* Admitted to practice law only in the District of Columbia.
 ** Admitted to practice law only in Ohio and Washington

JOHN J. FLAHERTY
 (1929 - 1995)

45 MEMORIAL CIRCLE P.O. BOX 1858
 AUGUSTA, MAINE 04312-1058
 TELEPHONE: (207) 623-5390 -- TELEFAX: (207) 623-2914

THIRTY FRONT STREET, P.O. BOX 665
 BATH, MAINE 04550-0665
 TELEPHONE: (207) 443-5576 -- TELEFAX: (207) 443-6665

Post-it® Fax Note	7671	Date	9-30-99	# of pages	4
To	Jean Connor	From	Penny Littell		
Co./Dept.	Preti Flaherty	Co.	City of Portland		
Phone #		Phone #	874-8480		
Fax #	791-3111	Fax #	874-8497		

DRAFT - 9/30/99

CNBROWN.AUBURNST.REZ
09.22.99

**AGREEMENT REGARDING THE
REZONING OF 194 AUBURN AVENUE
PORTLAND, MAINE** Street

AGREEMENT made this _____ day of _____, 1999 by **C. N. BROWN COMPANY** of South Paris, Maine (hereinafter "**C. N. BROWN**") and the **CITY OF PORTLAND**, a body corporate and politic, located in Cumberland County and State of Maine (hereinafter the "**CITY**").

WITNESSETH:

WHEREAS, **C. N. BROWN** did request a rezoning of property located at 194 Auburn Street, in Portland, from an R-3 zone to a B-2 zone; and

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

WHEREAS, the **CITY** by and through its City Council has determined that said rezoning would be pursuant to and consistent with the **CITY'S** comprehensive land use plan and consistent with the existing and permitted uses within the original zone; and

WHEREAS, the **CITY** has determined that because of the unusual nature of the development, in that it is a long-standing gasoline station, is situated on a major thorough-fare and also abuts a residential property, it is necessary or appropriate to impose the following conditions or restrictions in order to insure that the rezoning is consistent with the **CITY'S** comprehensive land

CNEBROWN.AUBURNST.REZ
09.22.99

use plan; and

WHEREAS, the **CITY** authorized the contract on _____, 1999;

NOW, THEREFORE, in consideration of the rezoning by the City Council, **C. N. BROWN** covenants and agrees as follows:

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated March 1958, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49 of the Portland City Code, by adopting the map change amendment shown on Attachment 1.
2. ^a At minimum the property shall be developed in accordance with the site plan shown on Attachment 2. The property shall also be subject to full site plan review and approval by the Portland Planning Board according to the standards contained in §14-526 of the Portland City Code.
3. **C. N. BROWN** shall be authorized to establish and maintain a one island gas station with a total of two gasoline pumps, a kerosene pump located on the side of the building, and retail sales in the structure as depicted on Attachment 2 in addition to those uses permitted in the R-3 Residential zone.
4. There shall be no speakers or other outside audible systems used in conjunction with the sale of gasoline or any other activity on the premises, except as necessary solely for safety and emergency purposes.
5. The hours of operation of the gas station with retail sales shall be limited to 6:00 a.m. to 10:00 p.m. Monday through Saturday, and 8:00 a.m. through 8:00 p.m. on Sundays. Hours of delivery for retail items, gas and oil shall be limited to 6:00 a.m. to 10:00 p.m. Monday through Saturday and 8:00 a.m. to 8:00 p.m. on Sundays.
6. Lighting of the property shall be restricted to the front and sides of the building and no lighting shall be located along the rear property line (except for lighting over the rear emergency exit and adjacent to the dumpster depicted on Attachment 2). In no case shall any lighting spill over onto adjacent residential properties.
7. Buffering, in the form of existing natural landscaping and an additional dense natural buffer, as shown on Attachment 2, shall be added to the rear of the property to protect neighboring residential properties from noise, pollution, and lighting.

CNBROWN.AUBURNST.REZ
09.22.99

- 8. Signage shall be limited to one (1) free-standing, sixty-three (63) square foot sign (which sign may be in component parts) and no more than two (2) pump topper advertisement signs of the size and location as presently adorn the gas pumps and one (1) illuminated 3 x 8 foot "Big Apple" sign affixed to the building, all as shown on Attachment 2. similar to
- 9. Outdoor display of merchandise is prohibited except for the display of motor vehicle oil containers sold in conjunction with gasoline sales, and an ice machine.
- 10. A barrier, consisting of a pressure-treated timber guard rail and low shrubs, as depicted on Attachment 2, shall be placed between the existing driveway and the sidewalk which abuts the front of the property in order to protect pedestrians in front of the establishment.
- 11. The project shall require the full review and approval by the Portland Planning Board in accordance with the requirements for a Major Site Plan. In addition, C. N. BROWN shall be required to provide a ~~traffic study~~ to the CITY as part of its site plan review, which ~~study~~ shall be reviewed and approved by the Planning Board. circulation plan plan
- 12. The provisions of this Agreement are intended to be supplemental to the uses and requirements of the underlying R-3 zone.
- 13. The structure(s) on site shall not be expanded beyond the existing footprint nor shall the height of the structure(s) exceed twenty one (21) feet.
- 14. Except as modified herein, the rezoning standards applicable to the B-2 zone shall apply, however, the rear yard setback, as measured from the ² ~~foundation~~ roof overhang to the rear property line, shall be maintained at 11.26 feet. ✓

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the subject premises, shall bind C. N. BROWN, its successors and assigns of said property or any part thereof or interest therein, and any party in possession or occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by the CITY, by and through its duly authorized representatives.

**CITY OF PORTLAND, MAINE
MEMORANDUM**

TO: Chair Carroll and Members of the Portland Planning Board

FROM: Kandice Talbot, Planner

DATE: May 25, 1999

SUBJECT: 194 Auburn Street, R-3 to B-2 Zone Change

Introduction

C. N. Brown is requesting a zone change from R-3 Residential to B-2 Community Business Zone at 194 Auburn Street to allow a Big Apple convenience store and the construction of an attached canopy over the existing gasoline pump island. The R-3 zone does not allow gas stations.

The applicant is proposing to renovate the existing gas station to a convenience store and to eliminate the automobile repair facility. The site is approximately .42 acres and is located at 194 Auburn Street, across from Lyseth Elementary School.

The existing gas station was established approximately 70 years ago. The service station has been a non-conforming use since 1957.

Uses in the area are predominantly residential. Two blocks southerly from this site is a B-2 zone which consists of Shaw's, farm/hardware store, a drive-through gasoline station, restaurants, medical offices and banks. To the north is a variety store located in the R-3 zone.

Development Plan

The applicant is proposing to renovate and convert the existing building to a Big Apple Convenience Store and construction of an attached canopy to the gasoline pump island. There are currently two fuel pumps and this number will remain the same. The applicant has stated that the hours of operation would be from 6:00 a.m. to midnight. There will be more information provided at the workshop pertaining to time of deliveries.

The facade of the existing building will be completely refurbished. The existing automobile repair facility will be eliminated and the two bay doors will be removed. The proposed exterior of the building will consist of brick along the base of the building and vinyl clapboard siding on the remainder of the building to relate to the residential neighborhood. The applicant is also proposing ten (10) windows along the front of the building.

Access to the site is via two curb cuts along Auburn Street. The applicant is proposing to provide additional plantings to screen the residential neighbors from the site.

The applicant would need to provide additional information during the site plan process regarding canopy lighting and site lighting to ensure that the proposed lighting does not exceed the standards.

Policy Considerations

The applicant is requesting this B-2 zone change to allow a gas station at this site. Historically this site has been used for a gas station for at least seventy years. The applicant feels that the proposed zone change will not alter the character of the neighborhood, but will enhance and improve the property from the perspective of the adjacent neighbors. The Transportation Plan states that vibrant neighborhoods include nearby, small scale commercial areas that provide both convenient service and natural meeting places. Also, that routine, daily services should be within walking distance of residents of all neighborhoods, as long as the businesses providing the services are small-scale, are designed compatibly with residences, and fit into the fabric of the neighborhood.

The Board may wish to consider other alternatives, such as a contract zone or conditional rezoning, if they have concerns with hours of operation, delivery times, etc.

Attachments

1. Zone Change Application
2. Letter from Applicant
3. Deed
4. Photos
5. Zoning Map
6. Site Plan
7. Elevation



APPLICATION FOR ZONING AMENDMENT
City of Portland, Maine
Department of Planning and Urban Development
Portland Planning Board

1. Applicant Information:

C. N. Brown Company
Name

P.O. Box 200
Address

So. Paris, Maine 04281

800-442-6330/207-743-8353 (fax)
Phone Fax

2. Subject Property:

194 Auburn Street
Address

Portland, ME

Map 374-A-30
Assessor's Reference (Chart-Block-Lot)

3. Property Owner: Applicant Other

C.N. Brown Company
Name

P.O. Box 200
Address

So Paris, Maine 04281

800-442-6330/207-743-8353 (fax)
Phone Fax

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

Applicant owns the property -- 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.)

5. 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.)

6. Existing Use:

Describe the existing use of the subject property: Service Station, together with automobile repair facility and retail sale of associated parts and supplies.

7. Current Zoning Designation(s): R-3

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

Applicant proposes to improve and upgrade the property. Improvements include the renovation and conversion of the existing building to a Big Apple convenience store. Plans provide for a more attractive front wall and elimination of the garage bay doors. The inside of the building will be improved with removal of interior walls to provide a large open space for grocery items. Overall visual improvements will also include enhancement of the existing landscaping, a new sign and new lighting.

The existing automobile repair facility will be eliminated. Currently there are two fuel pumps at the site and this will remain the same.

9. Sketch Plan: On a separate sheet please provide a sketch plan of the property, showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1"=10' to 1"=100'.)

10. Proposed Zoning: Please check all that apply:

A. Zoning Map Amendment, from R-3 to B-2

B. Zoning Text Amendment to Section 14- _____

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

C. Conditional or Contract Zone

A conditional or contract rezoning may 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 and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

16

11. **Application Fee:** A fee for this application for a zoning amendment must be submitted, by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below). The applicant also agrees to pay all costs of publication (or advertising) of the Public Hearing Notice as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

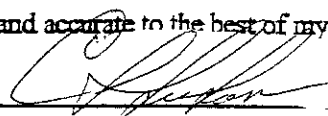
	<u>1-25 Units</u>	<u>26-50 Units</u>	<u>51-75 Units</u>	<u>75 & Over</u>
Residential Zones	\$350.00	\$400.00	\$450.00	\$500.00
Nonresidential Zones	\$350.00	\$400.00	\$450.00	\$500.00
	0-15,000 sq. ft. or 0-5 acres (whichever is less)	15,000-30,000 sq. ft. or 6-10 acres (whichever is less)	30,000-45,000 sq. ft. or 10-15 acres (whichever is less)	45,000-60,000 sq. ft. or 15-20 acres (whichever is less)

- Legal Advertisements (one for workshop and one for public hearing) percent of total bill
- Notices (one for workshop and one for public hearing) 40 cents each
- Text Amendments \$300.00

\$400.00 Amount of Fee

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

May 11, 1999
Date of Filing



Signature of Applicant
Operations Manager
C. N. Brown Co.

Further Information:

Please contact the Planning Office for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board
Portland, Maine

Effective: July 6, 1998

PRETI, FLAHERTY, BELIVEAU, PACHIOS & HALEY, LLC
ATTORNEYS AT LAW

ONE CITY CENTER, P.O. BOX 9546, PORTLAND, MAINE 04112-9546
TELEPHONE: (207) 791-3000 -- TELEFAX (207) 791-3111
INTERNET: WWW.PRETI.COM -- E-MAIL: ADMIN@PRETI.COM

May 11, 1999

MEMBERS:

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BRIAN L. CHAMPION

SENIOR COUNSEL TO THE FIRM:
HON. GEORGE J. MITCHELL

COUNSEL:

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ALBERT J. BELIVEAU, JR.
ROBERT W. SMITH
GREGORY P. HANSEL
NAOMI SAKAMOTO
PETER S. CARLISLE

ASSOCIATE COUNSEL:

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KEVIN J. BEAL
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TRACEY G. BURTON
DONALD J. SIFE
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SHARON G. NEWMAN**

* Admitted to practice law only in the District of Columbia.
** Admitted to practice law only in Ohio.

JOHN J. FLAHERTY
(1929 - 1995)

Kandi Talbot, Planner
City of Portland
Portland City Hall
389 Congress Street
Portland, ME 04101

Re: C.N. Brown Company/Application for Zoning Amendment

Dear Kandi:

I am writing on behalf of the C.N. Brown Company, owner of property at 194 Auburn Street, Portland, Maine for the purpose of submitting an Application for Zoning Amendment. C.N. Brown requests a rezoning of the property from the R-3 Residential Zone to the B-2 Business Zone. This rezoning will be consistent with the comprehensive plan and compatible with the surrounding neighborhood.

In connection with this Application, we would like to provide some additional information concerning the site.

A. Historical Background of the Property

The Applicant purchased the property on July 7, 1975, from REPROCO, Inc. (a copy of the deed is attached). Historically this site has been used as a gas station for at least seventy (70) years. At the time that the gas service station was established, the area was primarily farm land with nearby rural residences. The service station has been a non-conforming use of the property since at least 1957 when the Portland Planning Department changed the zoning codes and adopted the current designations which now provide for this area to be an R-3 zone.

Two blocks southerly from this site is a heavily developed commercial area which has increased in commercial activity in the last two to three decades. The businesses along this stretch of Auburn Street include a full scale shopping center, with Shaw's as the satellite store, a farm/hardware store, a drive-through gasoline station, a dairy freeze store, restaurants, medical offices, and numerous banks. Approximately one-half mile northerly from the site, within the same R-3 zone, is a family type variety store.

PRETI, FLAHERTY, BELIVEAU, PACHIOS & HALEY, LLC

Alex Jaegerman, City Planner

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Adjacent to the property and just behind the site is an eleven unit cluster of apartments associated with a series of half-way houses located throughout the city. In addition, and as we discuss below, there are several large apartment complexes within walking distance to the site.

B. Construction Activity at 194 Auburn Street

The Applicant proposes to improve and upgrade the property and to discontinue the automobile repair facility. These proposed improvements include the renovation and conversion of the existing building to a Big Apple convenience store and the construction of an attached canopy over the gasoline pump island. There are currently two fuel pumps at the service station and this number will remain the same.

The plans provide for a more attractive front wall and elimination of the garage bay doors. The inside of the building will be improved with removal of interior walls to provide a large open space for grocery items. The automobile service bays will also be removed. Overall visual improvements will include enhancement of the existing landscaping, a new sign, and new lighting.

C. Discussion of Application for Zoning Amendment

The proposed rezoning will not alter the character of the neighborhood, but rather will enhance and improve the property from the perspective of adjacent residents. In addition to the single and duplex homes up and down the street from the site location, there are, in very close proximity (less than one-fifth of a mile), four apartment complexes comprising one hundred ~~eighty three (183) units as well as a condominium development.~~

As the Portland Transportation Plan states, it is beneficial to have nearby convenient stores for residential dwellers within walking distance of their homes. The Big Apple convenience store, which would sell an array of grocery items, would provide that.

Specifically, the Transportation Plan provides that:

“Vibrant neighborhoods include nearby, small-scale commercial areas that provide both convenient service and natural meeting places. Routine, daily services should be within walking distance of residents of all neighborhoods, as long as the businesses providing the services are small-scale, are designed compatibly with residences, and fit into the fabric of the neighborhood.”

In this case, the convenience store would also benefit the school children who attend Lyseth and Lyman Moore Middle Schools, which school complex is almost directly across Auburn Street from the site. Children who reside in the apartment complexes would no longer need to walk through the more dangerous and heavily trafficked parking lot of Northgate.

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Alex Jaegerman, City Planner

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School signs, crosswalks and crossing guards already in place would facilitate the foot traffic to the newer, closer store.

In support of this Application, we have attached a number of documents:

- 1. Deed
- 2. Vicinity Map
- 3. Photos of property and surrounding areas
- 4. Plot Plan
- 5. Elevations Plan which shows the proposed renovations

We appreciate the opportunity to present this to the Board at its May 25th workshop and look forward to discussing it with you. In the meantime, please feel free to call me if you would like any further clarification of this Application.

Sincerely,

Jeanne T. Cohn-Connor

JTCC/jp

cc: Mr. Charles Sheehan

\\E:\BROWN\1999\Jaegerman ltr 041599.doc

20350
DEED

KNOW ALL MEN BY THESE PRESENTS:

THAT REPROCO, INC., A Delaware corporation with an office in First National Bank Bldg., ~~XXXXXXXXXXXX~~ 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 1807, 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.

W.E.E.

**CITY OF PORTLAND, MAINE
MEMORANDUM**

TO: Chair Carroll and Members of the Portland Planning Board

FROM: Kandice Talbot, Planner

DATE: August 24, 1999

SUBJECT: 194 Auburn Street, Contract Zone Proposal

Introduction

C. N. Brown is back before the Board with a proposed contract zone for the property located at 194 Auburn Street. This contract zone would allow a Big Apple convenience store and the construction of an attached canopy over the existing gasoline pump island. The site is currently in the R-3 zone, which does not allow gas stations.

The applicant is proposing to renovate the existing gas station to a convenience store and to eliminate the automobile repair facility. The site is approximately .42 acres and is located at 194 Auburn Street, across from Lyseth Elementary School.

The existing gas station was established approximately 70 years ago. The service station has been a non-conforming use since 1957.

Uses in the area are predominantly residential. Two blocks southerly from this site is a B-2 zone which consists of Shaw's, farm/hardware store, a drive-through gasoline station, restaurants, medical offices and banks. To the north is a variety store located in the R-3 zone.

Development Plan

The applicant is proposing to renovate and convert the existing building to a Big Apple Convenience Store and construction of an attached canopy to the gasoline pump island. There are currently two fuel pumps and this number will remain the same. The applicant has stated that the hours of operation would be from 6:00 a.m. to 10:00 p.m., Monday through Saturday and 8:00 a.m. to 8:00 p.m. Sunday.

The facade of the existing building will be completely refurbished. The existing automobile repair facility will be eliminated and the two bay doors will be removed. The proposed exterior of the building will consist of brick along the base of the building and vinyl clapboard siding on the remainder of the building to relate to the residential neighborhood. The applicant is also proposing ten (10) windows along the front of the building.

Access to the site is via two curb cuts along Auburn Street. The applicant is proposing to provide additional plantings to screen the residential neighbors from the site.

Proposed Contract

A draft contract for rezoning is included as Attachment 2. The conditions are listed below:

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated march 1958, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by 14-49 of the Portland City Code, by adopting the map change amendment shown on Attachment 1.
2. The property shall be developed substantially in accordance with the site plan shown on Attachment 2.
3. **C.N. BROWN** shall be authorized to establish and maintain a one island gas station with a total of two gasoline pumps, a kerosene pump located on the side of the building, and retail sales in the structure as depicted on Attachment 2 in addition to those uses permitted in the R-3 Residential Zone.
4. There shall be no speakers or other outside audible systems used in conjunction with the sale of gasoline or any other activity on the premises.
5. The hours of operation of the gas station with retail sales shall be limited to 6:00 a.m. to 10:00 p.m. Monday through Saturday, and 8:00 a.m. through 8:00 p.m. on Sundays. Hours of delivery shall be limited to 6:00 am - 10:00 pm.

(When the Planning Board reviewed the Rite-Aid located on Brighton Avenue, which also abuts residential uses, the Planning Board prohibited deliveries between 9:00 p.m. and 7:00 a.m. The Board may want to consider the same hours in this situation.)

6. Lighting of the property shall be restricted to the front of the building, existing lights on the side of the building, and no lighting located along the rear property line (except for lighting over the rear emergency exit). In no case shall lighting spill over onto adjacent residential properties.
7. Buffering, in the form of natural landscaping, shall be added to the property to protect neighboring residential properties from noise, pollution, and lighting.
8. Signage shall be limited to one (1) free-standing sign on the property and no more than two (2) advertisement signs on the size and location as presently adorn the canopy and one (1) advertisement sign of the size and location as is presently affixed to the building.

9. Outdoor display of merchandise is prohibited except for the display of motor vehicle oil containers sold in conjunction with gasoline sales, and an ice machine.
10. A barrier, such as low shrubs as approved by the City arborist, shall be placed between the existing driveway and the sidewalk which abuts the front of the property in order to protect pedestrians in front of the establishment.
11. The project shall be required to ^{site plan approval} ~~undergo review~~ by the Portland Planning Board in accordance with the requirements for a Major Site Plan. In addition, C.N. BROWN shall be required to provide a traffic study to the CITY as part of its site plan review.
12. The provisions of this Agreement are intended to be supplemental to the uses and requirements of the underlying R-3 zone.

Policy Considerations

The applicant is requesting this contract zone to allow a gas station at this site. Historically this site has been used for a gas station for at least seventy years. The applicant feels that the proposed zone change will not alter the character of the neighborhood, but will enhance and improve the property from the perspective of the adjacent neighbors. The Transportation Plan states that vibrant neighborhoods include nearby, small scale commercial areas that provide both convenient service and natural meeting places. Also, that routine, daily services should be within walking distance of residents of all neighborhoods, as long as the businesses providing the services are small-scale, are designed compatibly with residences, and fit into the fabric of the neighborhood.

Attachments

1. Letter from Applicant
2. Draft Contract
3. Deed
4. Photos
5. Zoning Map
6. Site Plan
7. Elevation
8. Transportation Plan
9. Portland Neighborhood Economic Development Study
10. Letters from Residents

**CITY OF PORTLAND, MAINE
MEMORANDUM**

TO: Chair Carroll and Members of the Portland Planning Board

FROM: Kandice Talbot, Planner

DATE: October 12, 1999

SUBJECT: 194 Auburn Street, Contract Zone Proposal

Introduction

Since the last workshop meeting, the Planning Board requested that the applicant submit a complete site plan for the property located at 194 Auburn Street. The request was made so that the Planning Board could determine whether the conditions of the proposed contract zone would work with the site plan. The Board specifically wanted to look at circulation, signage, buffering, and lighting. Plans are included as Attachment 6.

The proposed contract zone would allow a Big Apple convenience store and the construction of an attached canopy over the existing gasoline pump island. The site is currently in the R-3 zone, which does not allow gas stations.

The applicant is proposing to renovate the existing gas station to a convenience store and to eliminate the automobile repair facility. The site is approximately .42 acres and is located at 194 Auburn Street, across from Lyseth Elementary School.

The existing gas station was established approximately 70 years ago. The service station has been a non-conforming use since 1957.

Uses in the area are predominantly residential. Two blocks southerly from this site is a B-2 zone which consists of Shaw's, farm/hardware store, a drive-through gasoline station, restaurants, medical offices and banks. To the north is a variety store located in the R-3 zone.

Development Plan

The applicant is proposing to renovate and convert the existing building to a Big Apple Convenience Store and construction of an attached canopy to the gasoline pump island. There are currently two fuel pumps and this number will remain the same. The applicant has stated that the hours of operation would be from 6:00 a.m. to 10:00 p.m., Monday through Saturday and 8:00 a.m. to 8:00 p.m. Sunday.

The facade of the existing building will be completely refurbished. The existing automobile repair facility will be eliminated and the two bay doors will be removed. The proposed exterior of the building will consist of brick along the base of the building and vinyl clapboard siding on the remainder of the building to relate to

the residential neighborhood. The applicant is also proposing ten (10) windows along the front of the building.

Access to the site is via two curb cuts along Auburn Street. The applicant has shown proposed stacking of cars for the fuel pumps on the plan. The applicant is proposing 5 parking spaces on the site. Granite curb and sidewalk exist along Auburn Street. Staff recommended that the applicant install a timber guardrail between the sidewalk and the circulation area. With Lyseth/Lyman Moore Schools across the street, this a major school walking route. The applicant has reflected the guardrail on the plan.

The Planning Board addressed their concern regarding buffering of the abutting properties at the last meeting. The site plan has been revised to show a number of plantings around the perimeter of the site. The applicant is proposing five (5) Canadian Hemlock, twenty-one (21) Dark American Arborvitae, fifteen (15) Pyramidal Arborvitae, and four (4) Shadblow along the northerly, westerly, and southerly boundaries of the property. The applicant is also proposing fifteen (15) Junipers along the easterly edge of the property abutting the sidewalk.

The applicant is proposing three (3) 20 ft. high, 250 wmh light poles around the property. Proposed are two (2) 14 ft. high 100 watt wall packs on the sides of the building. A photometrics plan is included as Attachment 11. It appears from the photometrics plan that there may be some spillover onto abutting properties. The canopy will have an average of 20 foot candles, which meets the recommended average foot candles for gas station canopies. It is not clear from the catalogue cuts, (which are included as Attachment 12) if the lights, including the canopy will be true cut-off lights. It appears that some of the fixtures will have lenses projecting out of the fixture. The applicant will need to address these issues.

The sign details are included on Attachment 6. As addressed in the contract conditions below, the applicant is proposing one (1) 61 sq. ft. free-standing sign. This sign is equal to the size of the existing sign, but less than the 100 sq. ft. allowed in the B-2 zone. However, the applicant is proposing a 20 ft. high free-standing sign and the maximum height in the B-2 zone is 18 ft. The applicant is also proposing one (1) 24 sq. ft. building sign. The B-2 zone allows a building sign of 150 sq. ft. The R-3 zone allows either 1 free-standing sign or 1 building sign, and allows 15 sq. ft. and height of 5 feet. The applicant is also proposing pump toppers which will be approximately 6 sq. ft. per pump topper.

Proposed Contract

A draft contract for rezoning is included as Attachment 2. The conditions are listed below:

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated March 1958, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by 14-49 of the Portland City Code, by adopting the map change amendment shown on Attachment 1.
2. At a minimum the property shall be developed in accordance with the site plan shown on Attachment 2. The property shall also be subject to full site plan review and approval by the Portland Planning Board according to the standards contained in 14-526 of the Portland City Code.

3. **C.N. BROWN** shall be authorized to establish and maintain a one island gas station with a total of two gasoline pumps, a kerosene pump located on the side of the building, and retail sales in the structure as depicted on Attachment 2 in addition to those uses permitted in the R-3 Residential Zone.
4. There shall be no speakers or other outside audible systems used in conjunction with the sale of gasoline or any other activity on the premises, except as necessary solely for safety and emergency purposes.
5. The hours of operation of the gas station with retail sales shall be limited to 6:00 a.m. to 10:00 p.m. Monday through Saturday, and 8:00 a.m. through 8:00 p.m. on Sundays. Hours of delivery for retail items, gas and oil shall be limited to 6:00 a.m. to 10:00 p.m. Monday through Saturday and 8:00 a.m. to 8:00 p.m. on Sundays.
6. Lighting of the property shall be restricted to the front and sides of the building, existing lights on the side of the building, and no lighting located along the rear property line (except for lighting over the rear emergency exit and adjacent to the dumpster depicted on Attachment 2). In no case shall any lighting spill over onto adjacent residential properties.
7. Buffering, in the form of existing natural landscaping and an additional dense natural buffer, as shown on Attachment 2, shall be added to the rear of the property to protect neighboring residential properties from noise, pollution, and lighting.
8. Signage shall be limited to one (1) free-standing, sixty-three (63) square foot sign (which signs may be in component parts) and no more than two (2) pump topper advertisement signs of the size and location as presently adorn the gas pumps and one (1) illuminated 3 x 8 foot "Big Apple" sign affixed to the building, all as shown on Attachment 2.
9. Outdoor display of merchandise is prohibited except for the display of motor vehicle oil containers sold in conjunction with gasoline sales, and an ice machine.
10. A barrier, consisting of a pressure-treated timber guard rail and low shrubs, as depicted on Attachment 2, shall be placed between the existing driveway and the sidewalk which abuts the front of the property in order to protect pedestrians in front of the establishment.
11. The project shall require the full review and approval by the Portland Planning Board in accordance with the requirements for a Major Site Plan. In addition, **C. N. BROWN** shall be required to provide a traffic circulation plan to the **CITY** as part of its site plan review, which plan shall be reviewed and approved by the Planning Board.
12. The provisions of this Agreement are intended to be supplemental to the uses and requirements of the underlying R-3 zone.
13. The structure(s) on site shall not be expanded beyond the existing footprint nor shall the height of the structure(s) exceed twenty-one (21) feet.
14. Except as modified herein, the rezoning standards applicable to the B-2 zone shall apply, however, the rear yard setback, as measured from the roof overhang to the rear property line, shall be maintained at 11.26 feet.

Policy Considerations

The applicant is requesting this contract zone to allow a gas station at this site. Historically this site has been used for a gas station for at least seventy years. The applicant feels that the proposed zone change will not alter the character of the neighborhood, but will enhance and improve the property from the perspective of the adjacent neighbors. The Transportation Plan states that vibrant neighborhoods include nearby, small scale commercial areas that provide both convenient service and natural meeting places. Also, that routine, daily services should be within walking distance of residents of all neighborhoods, as long as the businesses providing the services are small-scale, are designed compatibly with residences, and fit into the fabric of the neighborhood.

Attachments

1. Letter from Applicant
 2. Draft Contract
 3. Deed
 4. Photos
 5. Zoning Map
 6. Site Plan
 7. Elevation
 8. Transportation Plan
 9. Portland Neighborhood Economic Development Study
 10. Letters from Residents
 11. Photometric Plan
 12. Catalogue Cuts
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AH. 2

**AGREEMENT REGARDING THE
REZONING OF 194 AUBURN STREET
PORTLAND, MAINE**

AGREEMENT made this _____ day of _____, 1999 by **C. N. BROWN COMPANY** of South Paris, Maine (hereinafter "**C. N. BROWN**") and the **CITY OF PORTLAND**, a body corporate and politic, located in Cumberland County and State of Maine (hereinafter the "**CITY**").

WITNESSETH:

WHEREAS, **C. N. BROWN** did request a rezoning of property located at 194 Auburn Street, in Portland, from an R-3 zone to a B-2 zone ; and

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

WHEREAS, the **CITY** by and through its City Council has determined that said rezoning would be pursuant to and consistent with the **CITY'S** comprehensive land use plan and consistent with the existing and permitted uses within the original zone; and

WHEREAS, the **CITY** has determined that because of the unusual nature of the development, in that it is a long-standing gasoline station, is situated on a major thorough-fare and also abuts a residential property, it is necessary or appropriate to impose the following conditions or restrictions in order to insure that the rezoning is consistent with the **CITY's** comprehensive land

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use plan; and

WHEREAS, the **CITY** authorized the contract on _____, 1999;

NOW, THEREFORE, in consideration of the rezoning by the City Council, **C. N. BROWN**

covenants and agrees as follows:

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated March 1958, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49 of the Portland City Code, by adopting the map change amendment shown on Attachment 1.
2. At a minimum the property shall be developed in accordance with the site plan shown on Attachment 2. The property shall also be subject to full site plan review and approval by the Portland Planning Board according to the standards contained in §14-526 of the Portland City Code.
3. **C. N. BROWN** shall be authorized to establish and maintain a one island gas station with a total of two gasoline pumps, a kerosene pump located on the side of the building, and retail sales in the structure as depicted on Attachment 2 in addition to those uses permitted in the R-3 Residential zone.
4. There shall be no speakers or other outside audible systems used in conjunction with the sale of gasoline or any other activity on the premises except as necessary solely for safety and emergency purposes.
5. The hours of operation of the gas station with retail sales shall be limited to 6:00 a.m. to 10:00 p.m. Monday through Saturday, and 8:00 a.m. through 8:00 p.m. on Sundays. Hours of delivery for retail items, gas and oil shall be limited to 6:00 a.m. to 10:00 p.m. Monday through Saturday and 8:00 a.m. to 8:00 p.m. on Sundays.
6. Lighting of the property shall be restricted to the front and sides of the building and no lighting shall be located along the rear property line (except for lighting over the rear emergency exit and adjacent to the dumpster depicted on Attachment 2). In no case shall any lighting spill over onto adjacent residential properties.
7. Buffering, in the form of existing natural landscaping and an additional dense natural buffer, as shown on Attachment 2, shall be added to the rear of the property to protect neighboring residential properties from noise, pollution, and lighting.

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8. Signage shall be limited to one (1) free-standing, sixty-three (63) square foot sign (which sign may be in component parts) and no more than two (2) pump topper advertisement signs of the size and location as presently adorn the gas pumps and one (1) illuminated 3 x 8 foot "Big Apple" sign affixed to the building, all as shown on Attachment 2.
9. Outdoor display of merchandise is prohibited except for the display of motor vehicle oil containers sold in conjunction with gasoline sales, and an ice machine.
10. A barrier, consisting of a pressure-treated timber guard rail and low shrubs, as depicted on Attachment 2, shall be placed between the existing driveway and the sidewalk which abuts the front of the property in order to protect pedestrians in front of the establishment.
11. The project shall require the full review and approval by the Portland Planning Board in accordance with the requirements for a Major Site Plan. In addition, **C. N. BROWN** shall be required to provide a traffic circulation plan to the **CITY** as part of its site plan review, which plan shall be reviewed and approved by the Planning Board.
12. The provisions of this Agreement are intended to be supplemental to the uses and requirements of the underlying R-3 zone.
13. The structure(s) on site shall not be expanded beyond the existing footprint nor shall the height of the structure(s) exceed twenty one (21) feet.
14. Except as modified herein, the rezoning standards applicable to the B-2 zone shall apply, however, the rear yard setback, as measured from the roof overhang to the rear property line, shall be maintained at 11.26 feet.

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the subject premises, shall bind **C. N. BROWN**, its successors and assigns of said property or any part thereof or interest therein, and any party in possession or occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives.

If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any

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reason held invalid or unconstitutional by any Court of competent jurisdiction, such portion shall be deemed as a separate, distinct and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the B-2 provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event that **C. N. BROWN** or any successor fails to continue to utilize the property in accordance with this Agreement, or in the event of a breach of any condition(s) set forth in this Agreement, the Planning Board shall have the authority, after hearing, to resolve the issue resulting in the breach or the failure to operate. The resolution may include a recommendation to the City Council that the site be rezoned to R-3 or any successor zone.

STATE OF MAINE
CUMBERLAND, ss.

_____, 1999

Personally appeared the above-named _____, authorized agent for **C. N. BROWN**, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of **C. N. BROWN**.

Before me,

Notary Public/Attorney at Law

PBR1

PLANNING BOARD REPORT #28-99

ZONE CHANGE REQUEST

R-3 RESIDENTIAL TO B-2 COMMUNITY BUSINESS

194 AUBURN STREET

Submitted to:

Portland Planning Board
Portland, Maine

July 13, 1999

I. INTRODUCTION

C. N. Brown is requesting a zone change from R-3 Residential to B-2 Community Business at 194 Auburn Street to allow a Big Apple convenience store and the construction of an attached canopy over the existing gasoline pump island. The R-3 zone does not allow retail uses. The present old fashioned service station where car repairs have taken place is grandfathered non-conforming uses allowable in the B-2 zone. While elimination of the gas pumps and conversion to retail could be a less non-conforming use, addition of retail with the gas pumps is not allowed under zoning provisions relating to grandfathered non-conforming uses.

The applicant is proposing to renovate the existing gas station to a convenience store and to eliminate the automobile repair facility. The site is approximately .42 acres and is located at 194 Auburn Street, across from Lyseth Elementary School.

496 notices were sent to area property owners. Two notices of the Public Hearing appeared in the Portland Press Herald. The notice was posted in the City Clerk's office fourteen days prior to the public hearing.

II. FINDINGS

Current Zoning:	R-3 Residential
Proposed Zoning:	B-2 Community Business
Land Area:	0.42 acres
Existing Use:	Gas Station
Proposed Use:	Convenience Store with gasoline pumps

III. BACKGROUND

The existing gas station was established approximately 70 years ago. The service station has been a non-conforming use since 1957. The Zoning Administrator has stated that C.N. Brown could not change the use, because retail uses are not allowed in the R-3 zone.

IV. SURROUNDING USES

The site is located at 194 Auburn Street. Uses in the area are predominantly residential. Two blocks southerly from this site is a B-2 zone which consists of Shaw's, a farm/hardware store, gasoline stations, restaurants, medical offices and banks. To the north is a variety store located in the R-3 zone.

V. DEVELOPMENT PLAN

The applicant is proposing to renovate and convert the existing 1,798 sq. ft. building to a Big Apple Convenience Store and construction of an attached canopy to the gasoline pump island. There are currently two fuel pumps and this number will remain the same. The applicant has stated that the houses of operation would be from 6:00 a.m. - 10:00 p.m., Monday through Saturday, and 8:00 a.m. - 8:00 p.m. on Sunday.

The facade of the existing building will be completely refurbished. The existing automobile repair facility will be eliminated and the two bay doors will be removed. The proposed exterior of the building will consist of brick along the base of the building and vinyl clapboard siding on the remainder of the building to relate to the residential neighborhood. The applicant is proposing ten (10) windows along the front of the building.

Access to the site is via two curb cuts along Auburn Street. The applicant is proposing to provide additional plantings to screen the residential neighbors from the site.

Due to the fact that this building is under 5,000 sq. ft., the change of use would not require site plan approval. However, if the applicant is proposing to demolish a significant amount of the building for the rehab, site plan review would then be required.

VI. ZONING POLICY ANALYSIS

The applicant is requesting this B-2 zone change to allow a gas station at this site. Historically this site has been used for a gas station for at least seventy years. The applicant feels that the proposed zone change will not alter the character of the neighborhood, but will enhance and improve the property from the perspective of the adjacent neighbors. The Transportation Plan states that *"Vibrant neighborhoods include nearby, small-scale commercial areas that provide both convenience service and natural meeting places. Routine, daily services should be within walking distance of residents of all neighborhoods, as long as the businesses providing the services are small-scale, are designed compatibly with residences, and fit into the fabric of the neighborhood."*

The purpose of the B-2 community business zone is to provide appropriate locations in the city for the development and operation of a mixture of commercial uses and services that have a community-wide market such as shopping centers or cluster developments.

In 1982, the Portland Neighborhood Economic Development Study was prepared, which looked at commercial centers in the City. ~~The purpose of this study was to assess the economic health of the~~ commercial centers, their relationship to surrounding residential areas, their potential for growth, and the public issues that were affecting the centers.

One of the commercial centers reviewed was the North Deering area. The study area ran along Washington and Auburn Avenue, from Gertrude Street to Alpine Street. At that time, the Northport Shopping Area was zoned B-1 and the zoning surrounding it was typically as it stands today. One of the recommendations at that time for this area was that *"The present B-1 zone encompassing the two shopping plazas and several adjacent businesses should be changed to the new B-2 (Community Business District) zone. This reflects the center's status as a community center... ..The current boundaries should be retained and except for extremely compelling circumstances should be retained for the foreseeable future to further protect the residential area from encroachment."*

VII. NEIGHBORHOOD ISSUES

A number of residents in the area of 194 Auburn Street have sent in letters stating their concerns regarding this zone change. These letters are included as Attachment 10. Some of the concerns are increased traffic in a school zone, hours of operation, noise pollution, and encroachment into a residential neighborhood.

VIII. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials submitted, the policies of the B-2 Community Business Zone, Comprehensive Plan, the information provided in Planning Board Report #28-99, and/or other findings:

The Board finds that the proposed zone change [is or is not] consistent with the policies of the B-2 Community Business Zone and Comprehensive Plan of the City of Portland. The Planning Board therefore [recommends or does not recommend] to the City Council approval of the proposed rezoning at 194 Auburn Street.

Attachments:

1. Zone Change Application
2. Letter from Applicant
3. Deed
4. Photos
5. Zoning Map
6. Site Plan
7. Elevation
8. Excerpt from Transportation Plan
9. ~~Excerpt from Portland Neighborhood Economic Development Study~~
10. Letters from Residents



APPLICATION FOR ZONING AMENDMENT
City of Portland, Maine
Department of Planning and Urban Development
Portland Planning Board

1. Applicant Information:

C. N. Brown Company

Name

P.O. Box 200

Address

So. Paris, Maine 04281

800-442-6330/207-743-8353 (fax)

Phone

Fax

2. Subject Property:

194 Auburn Street

Address

Portland, ME

Map 374-A-30

Assessor's Reference (Chart-Block-Lot)

3. Property Owner: Applicant Other

C.N. Brown Company

Name

P.O. Box 200

Address

So Paris, Maine 04281

800-442-6330/207-743-8353 (fax)

Phone

Fax

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

Applicant owns the property -- 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.)

5. 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.)

6. Existing Use:

Describe the existing use of the subject property: Service Station, together with automobile repair facility and retail sale of associated parts and supplies.

7. Current Zoning Designation(s): R-3

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

Applicant proposes to improve and upgrade the property. Improvements include the renovation and conversion of the existing building to a Big Apple convenience store. Plans provide for a more attractive front wall and elimination of the garage bay doors. The inside of the building will be improved with removal of interior walls to provide a large open space for grocery items. Overall visual improvements will also include enhancement of the existing landscaping, a new sign and new lighting.

The existing automobile repair facility will be eliminated. Currently there are two fuel pumps at the site and this will remain the same.

9. Sketch Plan: On a separate sheet please provide a sketch plan of the property, showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1"=10' to 1"=100'.)

10. Proposed Zoning: Please check all that apply:

A. Zoning Map Amendment, from R-3 to B-2

B. Zoning Text Amendment to Section 14-_____

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

C. Conditional or Contract Zone

A conditional or contract rezoning may 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 and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

11. **Application Fee:** A fee for this application for a zoning amendment must be submitted, by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below). The applicant also agrees to pay all costs of publication (or advertising) of the Public Hearing Notice as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

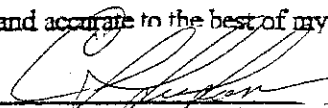
	<u>1-25 Units</u>	<u>26-50 Units</u>	<u>51-75 Units</u>	<u>75 & Over</u>
Residential Zones	\$350.00	\$400.00	\$450.00	\$500.00
Nonresidential Zones	\$350.00	\$400.00	\$450.00	\$500.00
	0-15,000 sq. ft. or 0-5 acres (whichever is less)	15,000-30,000 sq. ft. or 6-10 acres (whichever is less)	30,000-45,000 sq. ft. or 10-15 acres (whichever is less)	45,000-60,000 sq. ft. or 15-20 acres (whichever is less)

- Legal Advertisements (one for workshop and one for public hearing) percent of total bill
- Notices (one for workshop and one for public hearing) 40 cents each
- Text Amendments \$300.00

\$400.00 Amount of Fee

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

May 11, 1999
Date of Filing



Signature of Applicant
Operations Manager
C. N. Brown Co.

Further Information:

Please contact the Planning Office for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board
Portland, Maine

Effective: July 6, 1998

PRETI, FLAHERTY, BELIVEAU, PACHIOS & HALEY, LLC
ATTORNEYS AT LAW

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May 11, 1999

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- BRIAN L. CHAMPION

Kandi Talbot, Planner
City of Portland
Portland City Hall
389 Congress Street
Portland, ME 04101

Re: C.N. Brown Company/Application for Zoning Amendment

Dear Kandi:

I am writing on behalf of the C.N. Brown Company, owner of property at 194 Auburn Street, Portland, Maine for the purpose of submitting an Application for Zoning Amendment. C.N. Brown requests a rezoning of the property from the R-3 Residential Zone to the B-2 Business Zone. This rezoning will be consistent with the comprehensive plan and compatible with the surrounding neighborhood.

In connection with this Application, we would like to provide some additional information concerning the site.

A Historical Background of the Property

The Applicant purchased the property on July 7, 1975, from REPROCO, Inc. (a copy of the deed is attached). Historically this site has been used as a gas station for at least seventy (70) years. At the time that the gas service station was established, the area was primarily farm land with nearby rural residences. The service station has been a non-conforming use of the property since at least 1957 when the Portland Planning Department changed the zoning codes and adopted the current designations which now provide for this area to be an R-3 zone.

Two blocks southerly from this site is a heavily developed commercial area which has increased in commercial activity in the last two to three decades. The businesses along this stretch of Auburn Street include a full scale shopping center, with Shaw's as the satellite store, a farm/hardware store, a drive-through gasoline station, a dairy freeze store, restaurants, medical offices, and numerous banks. Approximately one-half mile northerly from the site, within the same R-3 zone, is a family type variety store.

SENIOR COUNSEL TO THE FIRM:
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COUNSEL:
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** Admitted to practice law only in Ohio.

JOHN J. FLAHERTY
(1929 - 1995)

PRETI, FLAHERTY, BELIVEAU, PACHIOS & HALEY, LLC

Alex Jaegerman, City Planner

May 11, 1999

Page 2

Adjacent to the property and just behind the site is an eleven unit cluster of apartments associated with a series of half-way houses located throughout the city. In addition, and as we discuss below, there are several large apartment complexes within walking distance to the site.

B. Construction Activity at 194 Auburn Street

The Applicant proposes to improve and upgrade the property and to discontinue the automobile repair facility. These proposed improvements include the renovation and conversion of the existing building to a Big Apple convenience store and the construction of an attached canopy over the gasoline pump island. There are currently two fuel pumps at the service station and this number will remain the same.

The plans provide for a more attractive front wall and elimination of the garage bay doors. The inside of the building will be improved with removal of interior walls to provide a large open space for grocery items. The automobile service bays will also be removed. Overall visual improvements will include enhancement of the existing landscaping, a new sign, and new lighting.

C. Discussion of Application for Zoning Amendment

The proposed rezoning will not alter the character of the neighborhood, but rather will enhance and improve the property from the perspective of adjacent residents. In addition to the single and duplex homes up and down the street from the site location, there are, in very close proximity (less than one-fifth of a mile), four apartment complexes comprising one hundred ~~eighty three (183) units as well as a condominium development~~

As the Portland Transportation Plan states, it is beneficial to have nearby convenient stores for residential dwellers within walking distance of their homes. The Big Apple convenience store, which would sell an array of grocery items, would provide that.

Specifically, the Transportation Plan provides that:

“Vibrant neighborhoods include nearby, small-scale commercial areas that provide both convenient service and natural meeting places. Routine, daily services should be within walking distance of residents of all neighborhoods, as long as the businesses providing the services are small-scale, are designed compatibly with residences, and fit into the fabric of the neighborhood.”

In this case, the convenience store would also benefit the school children who attend Lyseth and Lyman Moore Middle Schools, which school complex is almost directly across Auburn Street from the site. Children who reside in the apartment complexes would no longer need to walk through the more dangerous and heavily trafficked parking lot of Northgate.

PRETI, FLAHERTY, BELIVEAU, PACHIOS & HALEY, LLC

Alex Jaegerman, City Planner

May 11, 1999

Page 3

School signs, crosswalks and crossing guards already in place would facilitate the foot traffic to the newer, closer store.

In support of this Application, we have attached a number of documents:

- 1. Deed
- 2. Vicinity Map
- 3. Photos of property and surrounding areas
- 4. Plot Plan
- 5. Elevations Plan which shows the proposed renovations

We appreciate the opportunity to present this to the Board at its May 25th workshop and look forward to discussing it with you. In the meantime, please feel free to call me if you would like any further clarification of this Application.

Sincerely,



Jeanne T. Cohn-Connor

JTCC/jp

cc: Mr. Charles Sheehan

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TELECOPIER COVER LETTER

Client/Matter No.: 3325 Memory No.: _____
Date: 7/8 /99

Pages (including Cover): 3 Time: 4:15 AM/PM

TO:	NAME	COMPANY/FIRM	FAX
	<u>Kandi Talbot</u>		<u>756-8258</u>
	<u>Charlie Sheehan</u>		<u>743-8357</u>

FROM: Jeannette T. O'Connell

COMMENTS: _____

ORIGINAL: MAILED _____ NOT MAILED X

If you do not receive all of the pages or have other transmission problems, please immediately call back:

Jam at (207) 791-3000, extension 3145

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July 8, 1999

VIA TELECOPIER

Kandi Talbot, Planner
City of Portland
Portland City Hall
389 Congress Street
Portland, ME 04101

Re: C.N. Brown Company/Application for Zoning Amendment

Dear Kandi:

As we discussed on the phone the other week, I want to clarify for you the correct hours of operation for the C.N. Brown facility since they are different from those described in the memorandum that you had prepared for the Members of the Portland Planning Board, dated May 25, 1999. The hours of operation will be as follows:

6:00 am to 10:00 pm — Mondays through Saturdays; and
8:00 am to 8:00 pm on Sundays.

Please call me if there is any other information that you need in connection with the upcoming hearing. Thanks.

Sincerely,


Jeanne T. Cohn-Connor

JTCC/jp

cc: Mr. Charles Sheehan
VE:\BROWN\1999\jaegcman ltr 041599.doc

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July 8, 1999

VIA TELECOPIER
Kandi Talbot, Planner
City of Portland
Portland City Hall
389 Congress Street
Portland, ME 04101

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6:00 am to 10:00 pm – Mondays through Saturdays; and
8:00 am to 8:00 pm on Sundays.

Please call me if there is any other information that you need in connection with the upcoming hearing. Thanks

Sincerely,


Jeanne T. Cohn-Connor

JTCC/jp
cc: Mr. Charles Sheehan
\\E:\BROWN\1999\Jaegerman ltr 041599.doc

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(1929 – 1995)

45 MEMORIAL CIRCLE, P.O. BOX 1058
AUGUSTA, MAINE 04332-1058
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BATH, MAINE 04530-0665
TELEPHONE: (207) 443-5576 -- TELEFAX: (207) 443-6665

CHRIS ANNE WOODS
59 BARTLEY AVENUE
PORTLAND, ME 04103

Mr. Joseph E. Gray, Jr.
Director, Planning and Urban Development
City Hall
389 Congress Street
Portland, ME 04101

July 2, 1999

Dear Mr. Gray:

I am writing to express my concerns regarding the zone change from R-3 to B-2 that has been proposed by C.N. Brown for the property at 194 Auburn Street.

My primary concern is one of the increased traffic that would result from a Big Apple convenience store. Auburn Street is a highly traveled route used by many going into the city of Portland. There is almost never a time when I can exit my street and head south on Rt. 100 without having to wait a significant amount of time to exit safely. This is further complicated when another car is leaving the current C.N. Brown property and attempting to head North on Rt. 100.

Given that the proposed zone change is within a school zone on an already highly traveled roadway, I am against any action that would lead to increased traffic and decreased safety of the many school children who cross Auburn Street daily on their way to Lyseth and Lyman Moore schools.

I am also concerned about the precedent that a zone change for this property might set for other proposals in the future. Our location in North Deering is convenient to many types of retail/commercial establishments, while also maintaining the feel of a residential neighborhood. Within a one-mile radius we have numerous convenience type stores and major shopping facilities. Do we really need another?

The proposal I saw stated that the Big Apple would be open until 10pm. But who is to say that won't change to 24 hours in the future? We don't need it – and all of the other things that go along with a 24-hour operation such as robberies, loitering, etc. Last week's robbery at the Morrill's Corner Big Apple is just an example.

I strongly urge you to recommend against the proposed zone change and help stop commercialization of our North Deering neighborhood.

Sincerely,

Chris Anne Woods

Chris Anne Woods

Cc: John H. Carroll, Chair
Portland Planning Board

PLANNING BOARD REPORT #55-99

CONTRACT ZONE CHANGE REQUEST

194 AUBURN STREET

Submitted to:

Portland Planning Board
Portland, Maine

November 9, 1999

A# 1

PRETI, FLAHERTY, BELIVEAU, PACHIOS & HALEY, LLC
ATTORNEYS AT LAW

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August 4, 1999

MEMBERS:
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** Admitted to practice law only in Ohio and Washington

JOHN J. FLAHERTY
(1929 - 1995)

Alex Jaegerman, Chief Planner
City of Portland
Portland City Hall
389 Congress Street
Portland, ME 04101

Re: C.N. Brown Company/Application for Zoning Amendment

Dear Alex:

I am writing on behalf of the C.N. Brown Company, owner of property at 194 Auburn Street, Portland, Maine. As we discussed on the telephone, C.N. Brown would like to revise its Application for Zoning Amendment, dated May 11, 1999, so that the Application reflects a request for a conditional or contact rezoning.

C.N. Brown recognizes that such a rezoning would likely be subject to certain conditions. The conditions may include:

- (1) specific hours of operation,
- (2) submitting to major site plan review so that, among other things, signage and lighting are addressed, and
- (3) substantial conformance to the site plan that was submitted previously.

After you have had a chance to review this, please call me if there is any further information that I can provide. In addition, please advise me once you have placed this matter on the schedule for the Planning Board Workshop.
Thanks.

Sincerely,


Jeanne T. Cohn-Connor

JTCC/jp

cc: Penny Littell, Esq.
Ms. Kandi Talbot
Mr. Charles Sheehan

JTCC\E:\BROWN\1999\Jaegerman ltr 080499.doc

**AGREEMENT REGARDING THE
REZONING OF 194 AUBURN STREET
PORTLAND, MAINE**

AGREEMENT made this _____ day of _____, 1999 by **C. N. BROWN COMPANY** of South Paris, Maine (hereinafter "**C. N. BROWN**") and the **CITY OF PORTLAND**, a body corporate and politic, located in Cumberland County and State of Maine (hereinafter the "**CITY**").

WITNESSETH:

WHEREAS, **C. N. BROWN** did request a rezoning of property located at 194 Auburn Street, in Portland, from an R-3 zone to a B-2 zone ; and

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

WHEREAS, the **CITY** by and through its City Council has determined that said rezoning would be pursuant to and consistent with the **CITY'S** comprehensive land use plan and consistent with the existing and permitted uses within the original zone; and

WHEREAS, the **CITY** has determined that because of the unusual nature of the development, in that it is a long-standing gasoline station, is situated on a major thorough-fare and also abuts a residential property, it is necessary or appropriate to impose the following conditions or restrictions in order to insure that the rezoning is consistent with the **CITY's** comprehensive land use plan; and

WHEREAS, the CITY authorized the contract on _____, 1999;

NOW, THEREFORE, in consideration of the rezoning by the City Council, C. N. BROWN

covenants and agrees as follows:

1. The CITY shall amend the Zoning Map of the City of Portland, dated March 1958, as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49 of the Portland City Code, by adopting the map change amendment shown on Attachment 1.
2. At a minimum, the property shall be developed in accordance with the site plan and elevations shown on Attachment 2. The property shall also be subject to full site plan review and approval by the Portland Planning Board according to the all standards contained in §14-526 of the Portland City Code.
3. C. N. BROWN shall be authorized to establish and maintain a one island gas station with a total of two gasoline pumps, a kerosene pump located on the side of the building, and retail sales in the structure as depicted on Attachment 2 in addition to those uses permitted in the R-3 Residential zone.
4. There shall be no speakers or other outside audible systems used in conjunction with the sale of gasoline or any other activity on the premises, except as necessary solely for safety and emergency purposes.
5. ~~The hours of operation of the gas station with retail sales shall be limited to 6:00 a.m. to 10:00 p.m. Monday through Saturday, and 8:00 a.m. through 8:00 p.m. on Sundays. Hours of delivery for retail items, gas and oil shall be limited to 6:00 a.m. to 10:00 p.m. Monday through Saturday and 8:00 a.m. to 8:00 p.m. on Sundays.~~
6. Lighting of the property shall be restricted to the front and sides of the building and no lighting shall be located along the rear property line (except for lighting over the rear emergency exit and adjacent to the dumpster depicted on Attachment 2). In no case shall any lighting spill over onto adjacent residential properties.
7. Buffering, in the form of existing natural landscaping and an additional dense natural buffer, as shown on Attachment 2, shall be added to the rear of the property to protect neighboring residential properties from noise, pollution, and lighting.

8. Signage shall be limited to one (1) free-standing, sixty-three (63) square foot sign (which sign may be in component parts) and no more than two (2) pump topper advertisement signs of the size and location as presently adorn the gas pumps and one (1) illuminated 3 x 8 foot "Big Apple" sign affixed to the building, all as shown on Attachment 2. Each pump topper shall be no greater than six and one half (6½) square feet in size. All signs shall be front lit only.
9. Outdoor display of merchandise is prohibited except for the display of motor vehicle oil containers sold in conjunction with gasoline sales, and an ice machine.
10. A barrier, consisting of a pressure-treated timber guard rail and low shrubs, as depicted on Attachment 2, shall be placed between the existing driveway and the sidewalk which abuts the front of the property in order to protect pedestrians in front of the establishment.
11. The project shall require the full review and approval by the Portland Planning Board in accordance with the requirements for a Major Site Plan. In addition, **C. N. BROWN** shall be required to provide a traffic circulation plan to the **CITY** as part of its site plan review, which plan shall be reviewed and approved by the Planning Board.
12. The provisions of this Agreement are intended to be supplemental to the uses and requirements of the underlying R-3 zone.
13. The structure(s) on site shall not be expanded beyond the existing footprint nor shall the height of the structure(s) exceed twenty one (21) feet.
14. ~~Except as modified herein, the zoning standards applicable to the B-2 zone shall apply~~ however, the rear yard setback, as measured from the roof overhang to the rear property line, shall be maintained at 11.26 feet.

The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the subject premises, shall bind **C. N. BROWN**, its successors and assigns of said property or any part thereof or interest therein, and any party in possession or occupancy of said property or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives.

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

Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the B-2 provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

In the event that **C. N. BROWN** or any successor fails to continue to utilize the property in accordance with this Agreement, or in the event of a breach of any condition(s) set forth in this Agreement, the Planning Board shall have the authority, after hearing, to resolve the issue resulting in the breach or the failure to operate. The resolution may include a recommendation to the City Council that the site be rezoned to R-3 or any successor zone.

STATE OF MAINE
CUMBERLAND, ss.

_____, 1999

Personally appeared the above-named _____, authorized agent for **C. N. BROWN**, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of **C. N. BROWN**.

Before me,

Notary Public/Attorney at Law

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same being premises conveyed to Grantor by deed dated January 23,
19 70, 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.

[Handwritten notes and signatures]

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 7th day of July, 1975.

Signed, sealed and delivered in the presence of:

REPROCO, INC.

Wynona R. Davelos, Witness

By [Signature] Vice President

[Signature], Witness

ATTEST: [Signature] ASST. Secretary

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(MS)

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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 BENNY H. DALRYMPLE and SPENCER KISSILL

_____ 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 aforesaid.

My commission expires:

MARCH 7, 1976

Veda Mickels
Notary Public

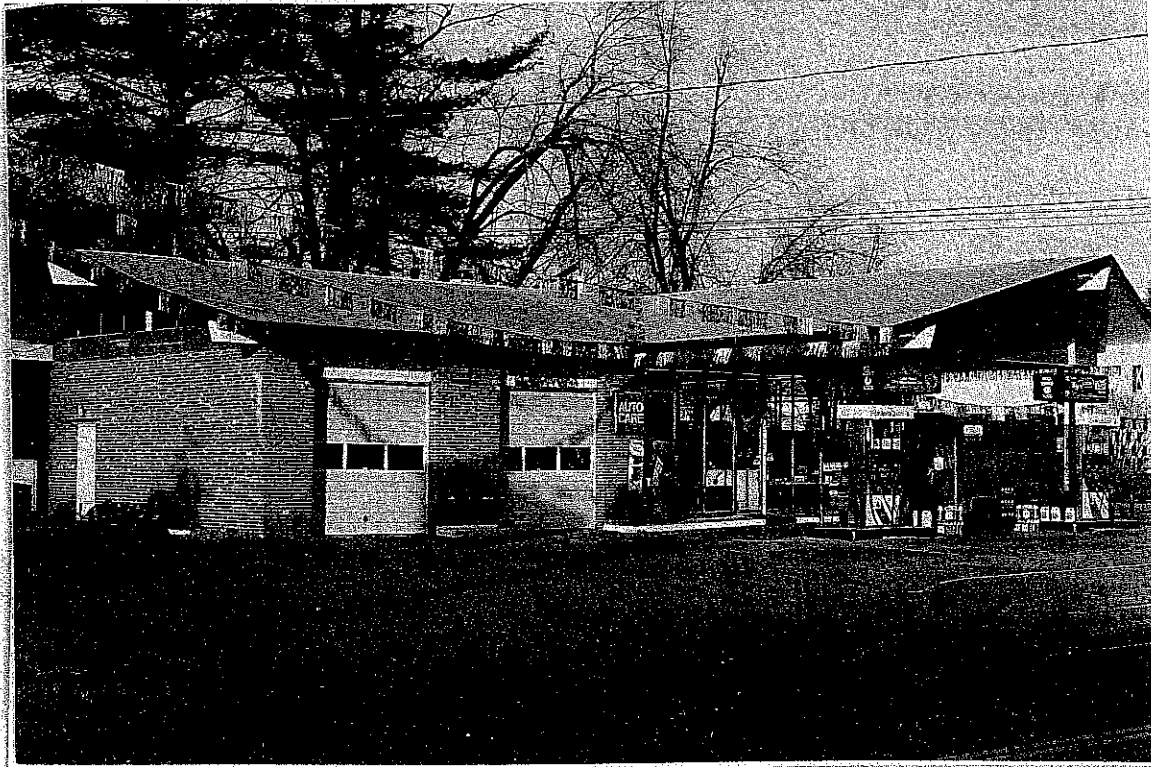
(Seal)

SEP 17 1975

REGISTRY OF DEEDS, CUMBERLAND COUNTY, MAINE

Received at 12 H 32 M P. M. and recorded in

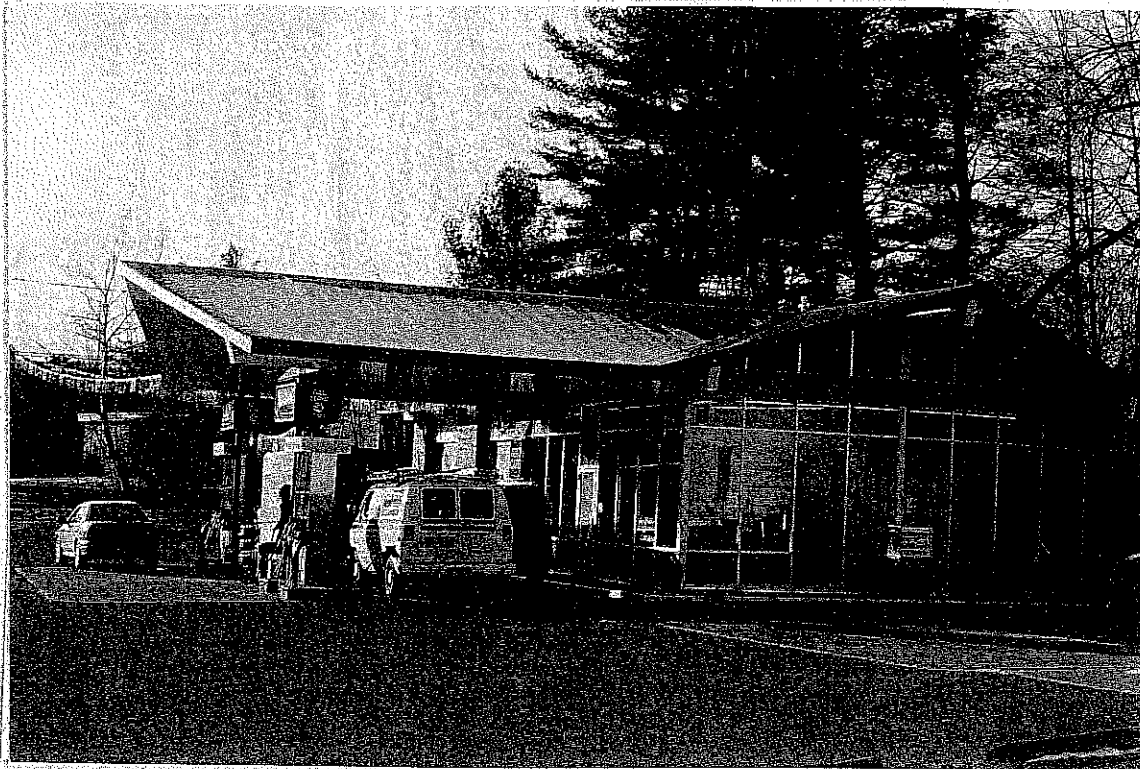
BOOK 3743 PAGE 103. Margaret Stoker Acting Register



C.N. BROWN- 194 Auburn Street

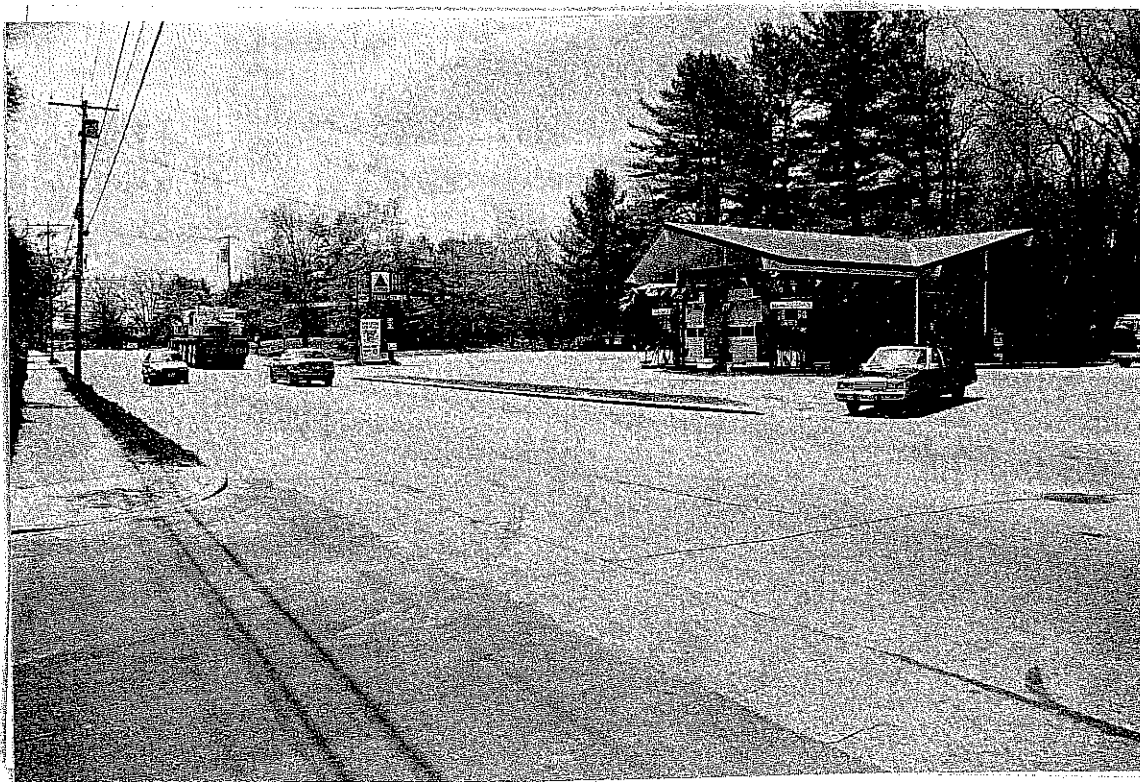
Front View





Side View

View from Side Street





View from School Entrance

View with School Crosswalk

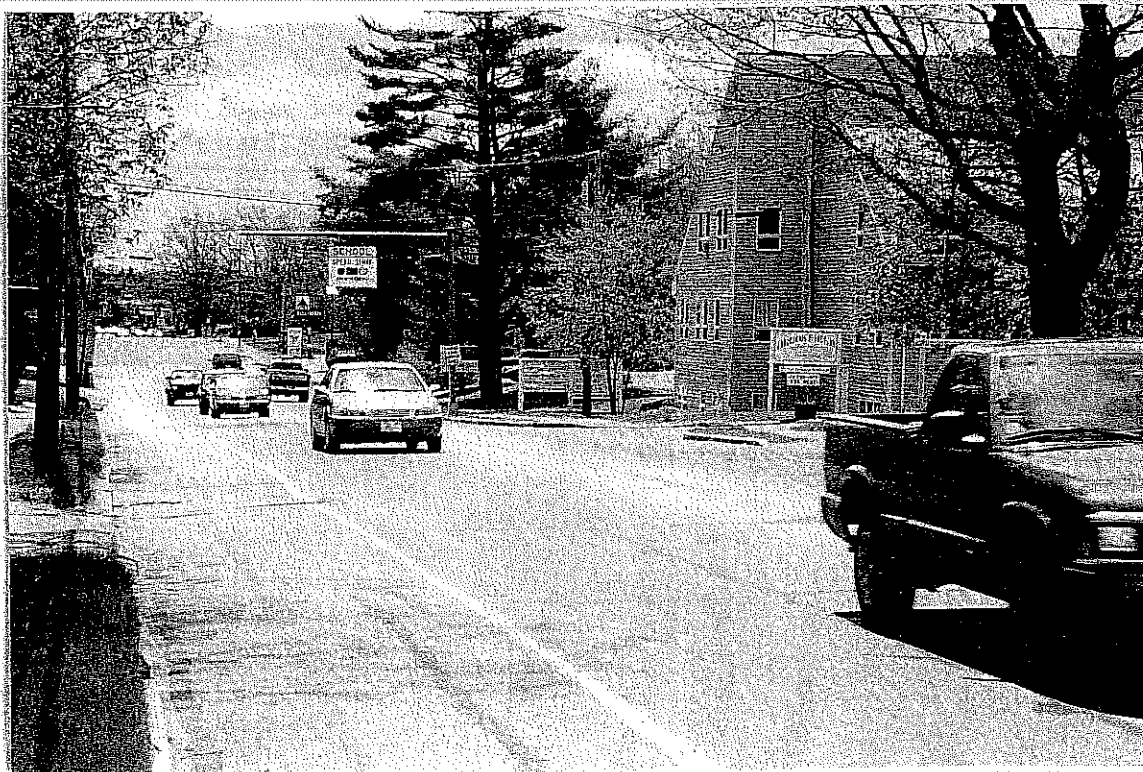


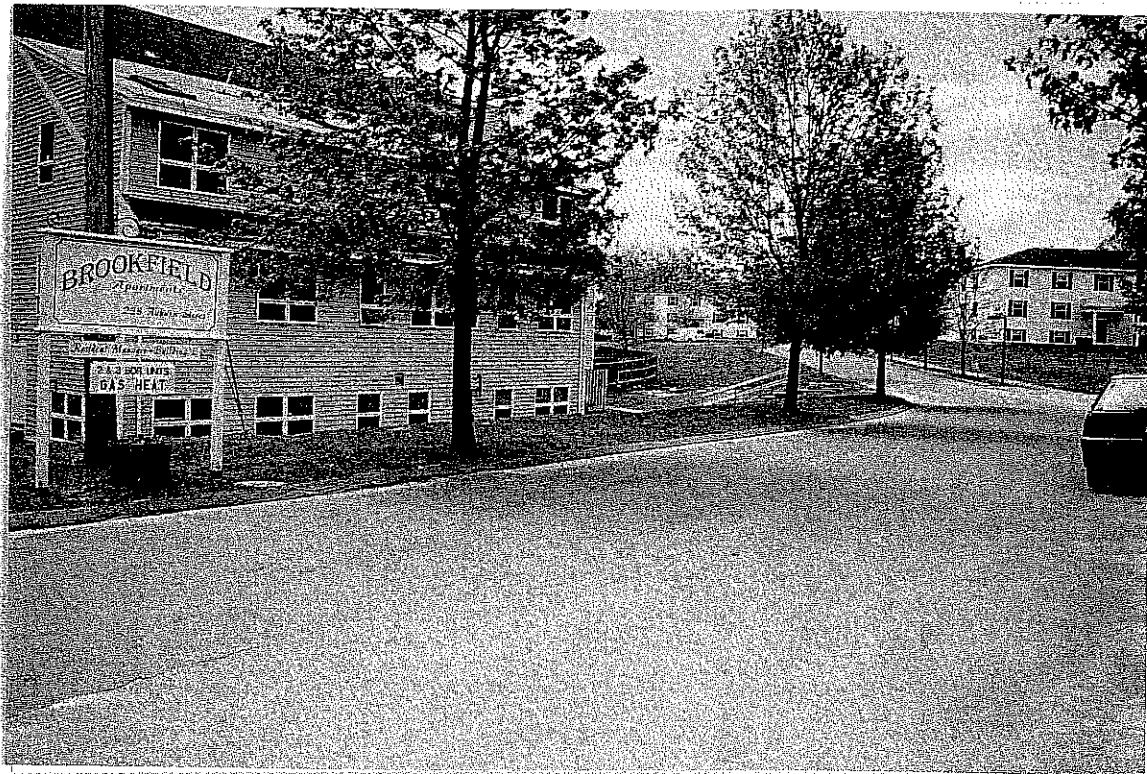
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School Crossing Guard

Up Street View-Brookfield Apartments

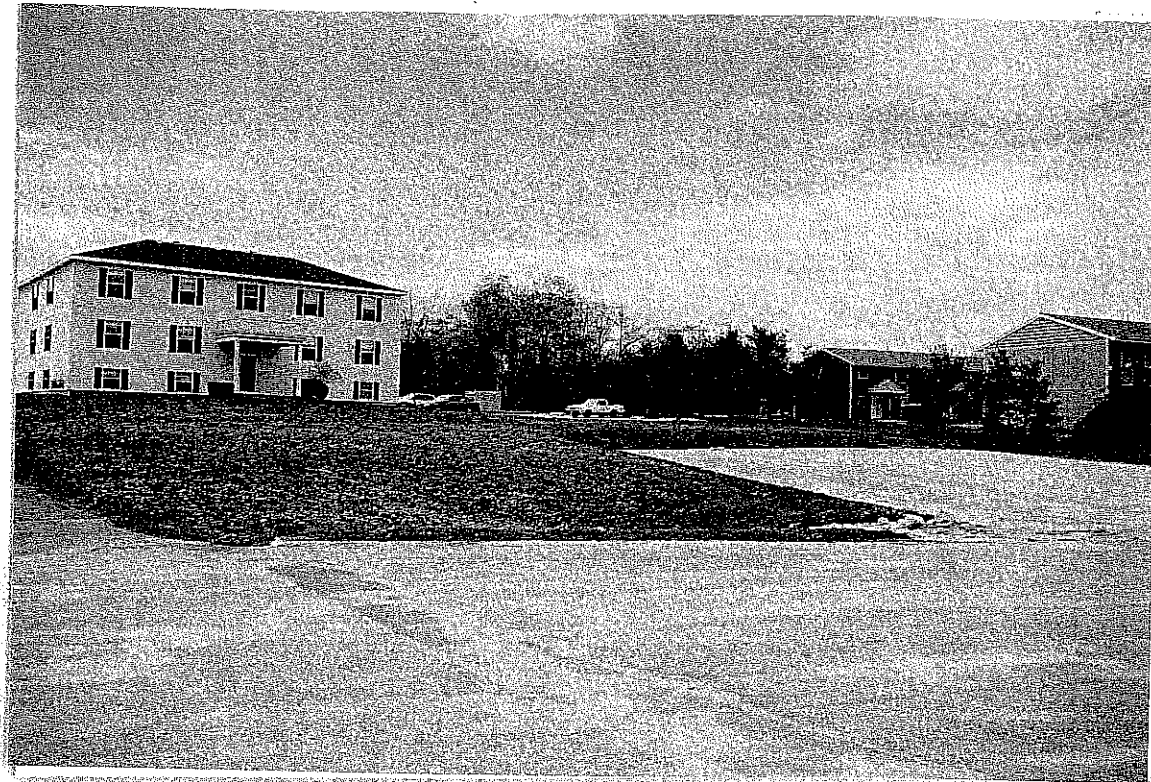




**View of Brookfield Apartments
(60 Units)**

Brookfield Apartments





Brookfield Abutting Auburn Terrace

**Auburn Terrace Apartments
(64 Units)**

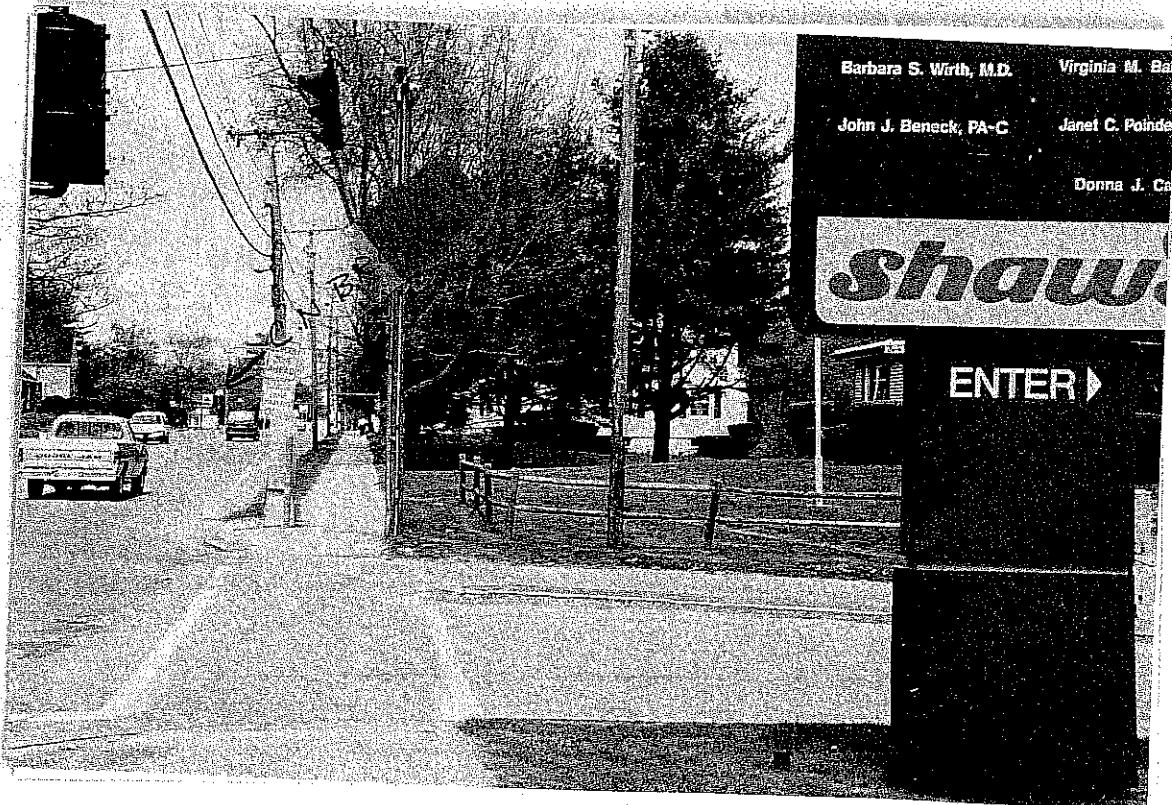


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Auburn Terrace

View of Site from Northgate





Northgate Parking Lot

Northgate/Auburn St. View

