

375-A-24

2011-378

84 Auburn St.

Conditional Rezoning
Pennbrook Properties

on Spreadsheet

- Description of permitted uses, including that it may be converted to other permitted B1 uses;
- Confirmation that the drive-through is permitted for a bank use only;
- Setbacks of up to 26.7 feet;
- Sunday opening (7am to 2pm) and 24 hour availability of the ATM; and
- Revised setback would apply to any building placed on the property.

The final Zoning Administrator comments were not received in time to be included in this Report and will be available for the Hearing.

The Associate Corporation Counsel has pointed out that the first and last bullets above (details in the wording in paras 2, 6 and 11 of the submitted Conditional Rezoning Agreement in Attachment G which was added by the applicant) raises a policy question as to whether or not the agreement should allow the building to be developed as shown on the Conceptual Site Plan, ie set back up to 26.7 feet, if it is not a bank (but a use allowed in the B1 zone).

X. STAFF REVIEW OF CONDITIONS INCLUDED IN THE CONDITONAL ZONE AGREEMENT

Traffic

The proposal for the bank development has been revised to two drive-through lanes and the egress from the two lanes has been relocated to the north to maximize the separation front the neighbors drive, although at 52 feet it does not meet the Technical Standard and a waiver has been requested in Attachment D.2.

The proposal to reduce the curb cuts from two to one depends on a joint access drive with the abutter at 94 Auburn Street and the applicant has submitted a signed Mutual Easement Agreement with Oakpoint LLC (Attachment H.1) which secures this joint access drive for use by 84 Auburn Street.

The para 5 of the Agreement, and the Conceptual Site Plan, both confirm the reduction in curb cuts at 84 Auburn Street (to one egress drive) and the minimum of 52 feet for the drive separation for the egress drive.

The Traffic Engineering Reviewer, Tom Errico, had raised a number of issues in his Workshop comments (Attachment 3) but since then he has reviewed the Traffic Study (Attachment B) and the final revised Conceptual Site Plan (Attachment I) and has confirmed that the 52 feet separation is acceptable and that the submitted materials are acceptable for the rezoning process (Attachment 8). It should be noted that during the site plan review a determination would be made regarding the need for any detailed modifications in Auburn Street, for example adding a left-lane entering the site drive.

Drive-Through

The Conceptual Site plan in Attachment I shows two drive- through lanes, but the Conditional Zoning Agreement contains a provision in paragraph 4 that would allow an additional drive through lane subject to specific conditions. The applicant has explained this in Attachment F.1.

Landscaping and Screening

The proposal as presented at the Workshop would have resulted in the loss of all the mature trees on the site with little space for replanting a buffer or other substantial landscape. The existing trees provide an important screening element - of Auburn Street as viewed from the abutting residential neighborhood and of the rear parking lot as viewed from Auburn Street as well as between the buildings along Auburn Street. The Landscaping and Landscape Preservation standards of the site plan ordinance states that the site shall be designed to incorporate, and limit disturbance to existing trees and that existing trees may be counted toward landscaping requirements. There is also a standard of preserving 30% of trees within required setbacks.

The Planning Board had indicated to the applicant at the Workshop that the trees along the north boundary could be removed to allow the benefit of the shared driveway with 94 Auburn Street, and the Mutual Easement (Attachment H) includes reference to removing these trees.

Regarding the other existing trees, Jeff Tarling, City Arborist, has visited the site and recommends that the applicant seek to preserve the existing mature White Pine Grove along the Westerly (back) side (Attachment 4) and that the

southerly tree line at 84 Auburn Street should be preserved to the extent possible, with the provision that the large Willow tree in poor condition should be removed (Attachment 7). These recommendations reflect the importance of the existing trees in providing a buffer to the neighboring properties, and the draft Conditional Zone Agreement reinforces what is noted in the Conceptual Site Plan with specific wording in para 8.

At the Workshop staff had raised concerns that the increased setback and the extent of pavement would prevent the tree preservation along the rear of the site. The final Conceptual Site Plan (Attachment I) now incorporates fewer drive-through lanes and increased buffers and planted areas so that this is no longer a concern.

Bus shelter

The applicant has addressed the request of the NDNA for a bus shelter by offering an easement for a future bus shelter along the frontage of the site, as shown on the Conceptual Site Plan (Attachment I) and referred to in the Agreement in para 9.

The wording does not require the applicant to provide, install or maintain a bus shelter. Staff recommends that the Board consider:

- a requirement that the future occupier of the bank building be required to enter into a 3-party partnership agreement (with the City and METRO) for the maintenance of any future bus shelter; and
- a requirement for the developer to provide the concrete pad as part of the construction work.

These suggestions stem from the situation that arose at the nearby Bangor Bank (Site Plan review only) where the City and METRO installed and provided a shelter (on a pad provided by the Bank), but the bank were unwilling to enter into a maintenance agreement. In that case the Bank provided the concrete pad as that ensured integration with the bio-retention cell adjacent to the shelter.

At the Workshop staff had noted that the proposal included a new sidewalk along the frontage of the property as would be required under the site plan ordinance and raised the possibility of requesting the applicant to install additional sidewalks to complete the pedestrian network in the vicinity. Based on the Workshop discussion with the Board and the applicant's willingness to provide the easement for a bus shelter, this has not been pursued.

XI. COMPREHENSIVE PLAN

The City's ordinance regarding Conditional Rezoning (quoted above) states that any rezoning must be consistent with the City's Comprehensive Plan. In forming its recommendation to the City Council, the Board will need to make a finding on whether the proposal is consistent with the Comprehensive Plan.

The proposal is stated to be aimed at creating 10+ jobs (Attachment A) and to improve what has been a derelict site within a business and residential area for some while, including the removal of an existing curb cut through joint access arrangements. These objectives relate to two Comprehensive Plan goals and their associated policies (pp 21, 28, 37, and 38 of the Comprehensive Plan):

- *Goal: To promote an economic climate which increase job opportunities and overall economic well-being.*
PORTLAND INDUSTRY AND COMMERCE PLAN – 1994:
 - *Create a variety of job opportunities for the full spectrum of the labor pool*
 - *Enhance the City's ability to attract economic development*
- *Goal: To encourage orderly growth and development in appropriate areas of each community, while protecting the State's rural character, making efficient use of public services and preventing development sprawl.*
COMMUNITY COMMERCIAL POLICIES and LAND USE PLAN - September 1987-1988
 - *Promote preservation and revitalization of its existing commercial centers and maintain a scale within them that is compatible and integrated with other land use.*
 - *Encourage the development of new commercial enterprises within the existing neighborhood centers and CBD.*

XII. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of the application, plans, reports and other information submitted by the applicant, the policies and requirements of the B-1 zone, the Comprehensive Plan, public comment, staff comments and recommendations contained in Planning Report #28-11, and the testimony presented at the Planning Board Hearing, the Planning Board finds:

- A. That the proposed Conditional Rezoning for a bank development at 84 Auburn Street as described in this Report [is or is not] consistent with the Comprehensive Plan of the City of Portland;
- B. That the proposed Conditional Rezoning [is or is not] consistent with existing and permitted uses in the surrounding area;
- C. That the proposed Conditional Zone Agreement proposed for 84 Auburn Street [is or is not] in compliance with the standards set out in 14-60-62; and
- D. That the Planning Board therefore [recommends or does not recommend] the Conditional Rezoning and associated Conditional Zone Agreement for 84 Auburn Street to the City Council for its approval.

ATTACHMENTS

PB Memo attachments

- 1. 2003 Approved Bath Savings Bank Contract Zone (C28) at 40 auburn Street - extract listing contract zone conditions
- 2. Zoning Administrator comments 11.15.2011
- 3. Traffic Engineer Reviewer comments
- 4. City Arborist comments 11.18.2011
- 5. DPS comments – not received at time Memo completed
- 6. Public comments
 - a. Ms Fall (abutter to south)

PB Hearing Report Attachments

- 6. Public Comments, continued
 - b. NDNA Tim St Hilaire 11.22.2011
 - c. NDNA Michael Pizzo 11.22.2011
 - d. Ms Fall 12.7.2011
- 7. Additional City Arborist comments 12.1.2011
- 8. Final Traffic Engineer Review comments 12.8.2011
- 9. Final Zoning comments – not received at time Report was completed

Applicants submittal

- A. Applicants letter and application dated November 4, 2011
- B. Traffic Study received 11.18.2011
- C. Conceptual Site Plan received 11.14.2011 (8X 11 for information)

Applicants submittal since PB Workshop

- D. Letter from Woodard & Curran, response to PB comments 11.28.2011
- E. Zoning Analysis, 11.28.2011
- F. E-mail cover notes from Drew Swenson 11.29.2011 and 12.8.2011
- G. Draft Conditional Zone Agreement as of 12.7.2011
- H. Signed Mutual Easement Agreement regarding joint access with 94 Auburn Street rec'd 12.8.2011
- I. 12.8.2011 Conceptual Site Plan

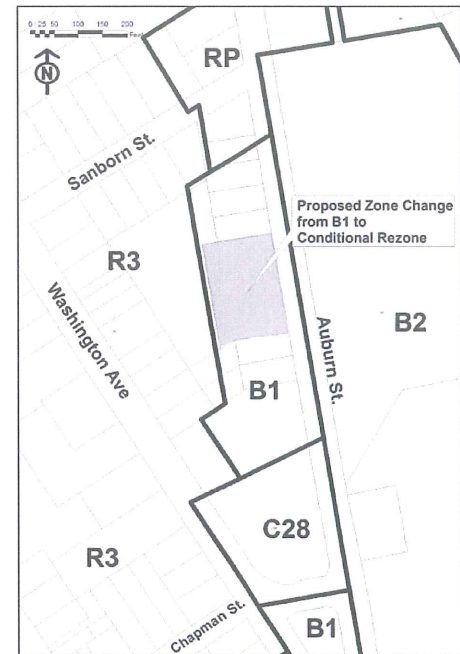
AN IMPORTANT NOTICE FROM THE CITY OF PORTLAND PLANNING DIVISION TO RESIDENTS AND PROPERTY OWNERS IN THE VICINITY OF 84 AUBURN STREET

WHAT: The Portland Planning Board will hold a public hearing to consider a proposal by Pennbrook Properties IV, LLC for a Conditional Rezoning of 84 Auburn Street, which is proposed in order to allow development as a bank with a drive-through consisting of 2 lanes and an ATM. The site was formerly a gas station with 2 curb cuts. Public comments will be taken at this meeting.

The conditions of the conditional zone agreement include, but are not limited to, permitting a branch bank with drive-through teller lanes and drive-up ATM machine; limits on the hours of operation; joint access drive with 94 Auburn Street; one egress curb cut on Auburn Street; retention of trees along the rear lot line; modified front yard setback; and drive-through design standards.

WHEN: Tuesday, December 13th, 2011 *** 4:30 pm
Room 209, 2nd Floor, City Hall

FOR MORE INFORMATION: The conditional zone agreement in its entirety is available for viewing in the City Clerk's Office, 2nd Floor, City Hall, at the Planning Division Reception, 4th Floor, City Hall, and on the City's website at <http://www.portlandmaine.gov/planning/htm>. If you wish to submit written comments, address them to Jean Fraser, Planner, Planning Division, City Hall, 4th Floor, 389 Congress Street, Portland, Maine 04101; by phone at 874-8728 or e-mail at jf@portlandmaine.gov



Proposed Conditional Rezoning from B1
for 84 Auburn Street

375-A-25 and 35 (under 375-A-23 in property lookup) (94 Auburn Street - also includes 92-102)

OAKPOINT LLC

88 ROUND HILL RD # 2

NorthHampton MA 01060

375-A-26 (84 Auburn Street – also includes 76-90)

Alliance Energy Corp.

36 E. Industrial Road

Branford, CT 06405

375-A-30 (72 Auburn Street – also includes 68-74)

Gregory Fall

130 Huston Road

Gorham, ME 04038

“PROPOSED” CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

AGREEMENT made this ____ day of _____, made this ____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company (“PBK”) with a place of business in _____, and its successors and assigns.

WITNESSETH

WHEREAS, PBK ~~has the right and intends to purchase~~ is [will be] the owner of the property located at 84 Auburn Street, Portland, Maine (the “Property”) more particularly described and shown on the Portland Assessors Map at Chart 375, Block A, Lot 026 and in a deed in the Cumberland County Registry of Deeds at Book _____, Page _____, (the “Property”) and intends to use the Property for a bank branch pursuant to a purchase and sale agreement, and lease the Property and any improvement thereon to a bank under the terms of a long-term Ground Lease or Lease between PBK and the bank; and

WHEREAS, PBK has filed a Zone Change Application with the City of Portland (hereinafter “CITY”) to rezone the Property to a conditional B-1 zone subject to certain modifications and conditions set forth in this Agreement in order to accommodate a bank with incidental sales of financial and insurance products and service, a drive-through window and ATM machine; and

WHEREAS, the Property is currently in the _____ zoning district; and

WHEREAS, the Property has been a blighted site for many years; and

WHEREAS, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property; and

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

WHEREAS, the CITY, by and through its City Council, has determined that the rezoning is appropriate due to the unusual nature and unique location of the development proposed, that the uses proposed are consistent with the existing and permitted uses within the zone and that the rezoning would be pursuant to and consistent with the City’s Comprehensive Plan; and

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

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

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

INSERT MAP HERE

2. Permitted uses: Those uses allowed in the B-1 zone. In addition, the Property shall be permitted to be used as a bank with incidental sales of financial and insurance products and services and shall be allowed to include one (1) drive-through teller lane (hereinafter “Teller”) and one (1) drive-up automated teller machine (hereinafter “ATM”). The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply.
3. The hours of operation of the bank and the drive-through teller shall be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein, however, shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the bank is not open to the general public. A drive through is permitted for bank use only and not for any other use.
4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the “Site Plan”). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, an additional drive through lane may be allowed, subject to review and approval by the Planning Authority, as long as the southerly greenspace and landscaping is not substantially reduced and there is not a substantial impact on the southerly egress curb cut.
5. Curb Cuts:
 - a. The northerly curb cut on the Property shall be closed and removed prior to the issuance of a certificate of occupancy by the City. The southerly curb cut shall remain and only be used for egress purposes.
 - b. Access to the Property shall also be provided through the shared ingress and egress with the property located at 94 Auburn Street as more particularly described in the agreement attached hereto in Attachment 2.

- c. The improvements to the southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform with the plans attached hereto in Attachment 1.
 - d. Provided the Property complies with the requirements outlined in subparagraphs a-c, the Technical Standard regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) shall not apply and/or is waived to allow the southerly curb cut (for egress only) to be 59 feet from the adjacent driveway to the south (centerline to centerline).
6. Modifications to the B-1 Regulations. The Property shall be governed by the regulations applicable to the B-1 zoning district and other provisions of the City Codes except as follows:
- a. The maximum front yard setback shall not apply, but any building placed on the Property shall be no further back from Auburn Street than as shown on Attachment 1. ~~If a proposed building is placed further back than as shown on Attachment 1, the maximum front yard setback provisions of the B-1 Zone shall apply to the Property.~~
7. In addition to the Site Plan Standards of the City's Land Use Code (§§ 14-521-14-540), the Planning Board shall review the site plan for this Property and shall be satisfied that the following requirements have been met:
- a. Any drive-through must be accessory to a principal use located on the same site; and
 - b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
 - c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.
 - d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed

necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the City, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and

- e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
8. The existing trees along the westerly (rear) boundary of the property shall remain undisturbed and shall be maintained at least at their present height by PBK and future property owners. If any of these trees need to be removed due to disease or damage, a tree of similar species and of 16 foot height shall be planted in the same location as a replacement to maintain the screening function of this group of trees. The existing trees along the northern boundary may be removed. Those along the southern boundary should be preserved to the extent possible, with the exception of a large willow in poor condition that may be removed subject to final confirmation with the City Arborist on site. Removal of trees along the northern and southern boundaries shall be subject to Site Plan Standards for Landscape Preservation, including the standards for the replacement of large trees that need to be removed.
9. Community Contribution: An easement measuring x by x shall be provided for a bus shelter partially within the site adjacent to the sidewalk near the existing bus stop (or near a relocated bus stop if that is preferred by METRO). The location shall be substantially as shown on Attachment 1. This condition does not require PBK to provide or install a bus shelter, but allows for one to be installed in the future. This requirement is in addition to a smaller pad near the curb/bus stop sign that is for passengers getting off and on the bus.
10. In the event the development described herein is not commenced within two (2) years from the date of this conditional rezoning, or should the Property cease to be used as a bank for a permitted use under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert back to the underlying B-1 zone. If any required approval, including the approval of the conditional rezoning, has been appealed, the aforementioned deadline shall commence from the date of the final disposition of such appeal.
11. So long as the Property continues to be used as a bank or any other permitted use under Section 2 above, the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant-~~bank~~, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and

~~Page locations of the deeds for to the Property, and the memorandum of Lease between PBK and its bank tenant within thirty (30)ten (10) days from its acquisition of the Property, the date of adoption by Portland city Council.~~

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

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

14. Except as expressly modified herein, the development, use, and occupancy of the Property shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

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15. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that PBK, any bank-tenant or any successor of either party, 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 and/or the Court shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____

Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

in
paper
Dec 5th + 6th

**AN IMPORTANT LEGAL NOTICE FROM THE CITY OF PORTLAND PLANNING DIVISION
TO RESIDENTS AND PROPERTY OWNERS IN THE VICINITY OF 84 AUBURN STREET**

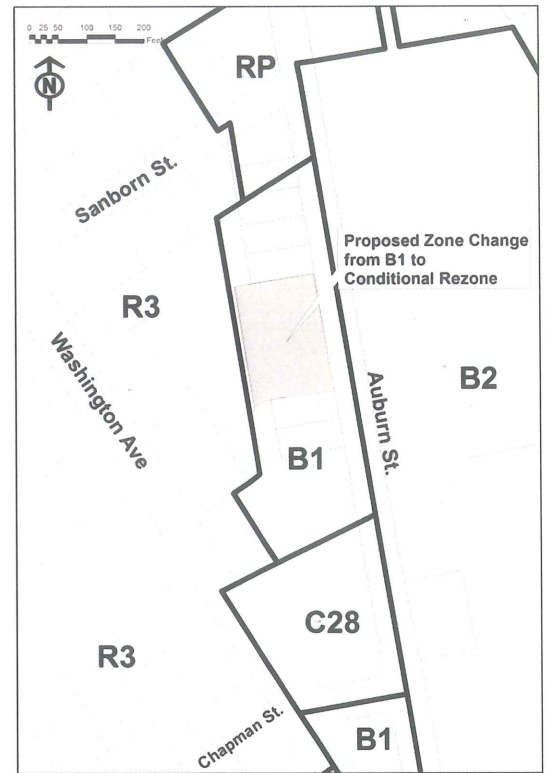
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Public comments will be taken at this meeting.

The conditions of the conditional zone agreement include, but are not limited to, permitting a branch bank with drive-through teller lanes and drive-up ATM machine; limits on the hours of operation; joint access drive with 94 Auburn Street; one egress curb cut on Auburn Street; retention of trees along the rear lot line; modified front yard setback; and drive-through design standards.

WHEN: Tuesday, December 13th, 2011
4:30 pm
Room 209, 2nd Floor, City Hall

FOR MORE INFORMATION: The conditional zone agreement in its entirety is available for viewing in the City Clerk's Office, 2nd Floor, City Hall and at the Planning Division Reception, 4th Floor, City Hall. If you wish to submit written comments, address them to Jean Fraser, Planner, Planner, Planning Division, City Hall, 4th Floor, 389 Congress Street, Portland, Maine 04101; by 'phone at 874-8728 or e-mail at jf@portlandmaine.gov



Proposed Conditional Rezoning from B1
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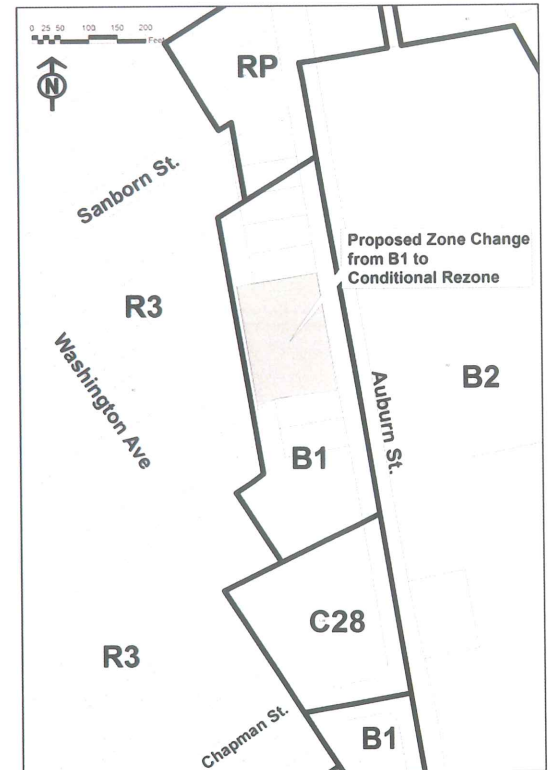
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**Proposed Conditional Rezoning from B1
for 84 Auburn Street**

FOR VIEWING BY THE PUBLIC

Posted 11.29.2011

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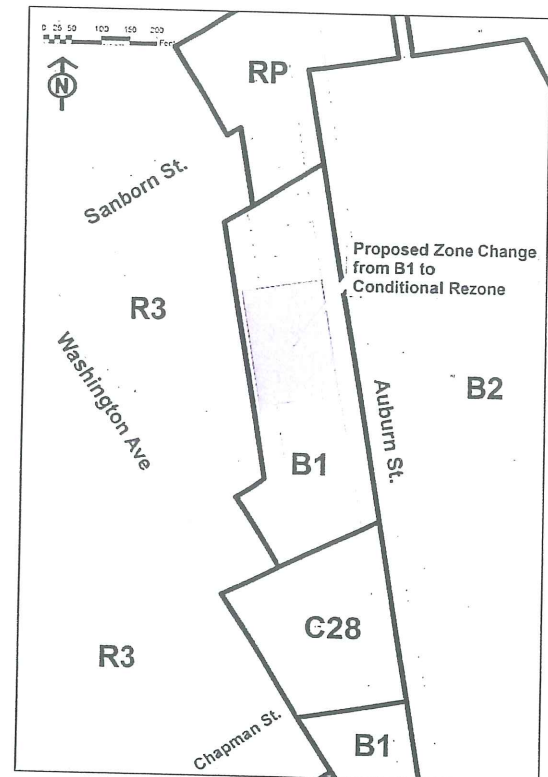
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Proposed Conditional Rezoning from B1
for 84 Auburn Street

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

This conditional rezoning contract is made this _____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company ("PBK").

WHEREAS, PBK holds a purchase and sale agreement and intends to purchase the fee simple interest in the property at 84 Auburn Street, Portland, Maine, and lease such property and any improvement thereon to a Bank under the terms of a long-term Ground Lease or Lease between PBK and Bank; and

WHEREAS, PBK agrees that it is in its best interest to file a Conditional Rezoning Application with the City of Portland ("City") and enters into this Agreement as fee owner of the subject property, for the express purpose of consenting to the terms and conditions of this Conditional Rezoning Agreement; and

WHEREAS, PBK has requested a conditional rezoning of the property at 84 Auburn Street, in the City in order to permit the use of a bank branch with drive-through windows and an ATM machine, and with incidental sales of financial and insurance products and services; and

WHEREAS, the 84 Auburn Street property is more specifically described and shown on the Portland Assessors Map, Parcels: Chart 375, Block A, Lot 026 (the "Property"); and

WHEREAS, the 84 Auburn Street property has been a blighted site for many years and it is in the interest of the City, PBK and the property's neighbors to enter into an agreement that allows the redevelopment thereof; and

WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberations, recommended the conditional rezoning of the Property to allow redevelopment thereof, subject, however, to certain conditions; and

WHEREAS, the City, by and through its City Council, has determined that the conditional rezoning, with conditions and restrictions, would be pursuant to and consistent with the City's comprehensive plan and would not unreasonably interfere with the existing and permitted uses within the underlying B-1 zones; and

WHEREAS, PBK has agreed that it should enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind PBK and any bank and financial services tenants thereon; and

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

1. The City shall amend the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Development

and incorporated by reference into Zoning Ordinance by §14-49 of the Portland City Code, by adopting the following map change.

INSERT MAP HERE

2. The use of the Property shall consist of a bank branch with incidental sales of financial and insurance products and services and which will include one (1) drive-through teller lane (hereinafter "Teller") and one (1) drive-up automated teller machine (hereinafter "ATM"). The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, and should that then allow another drive through teller lane with no substantial reduction to the southerly greenspace and landscaping or cause any southerly movement of the southerly egress curb cut, this agreement shall be amended to allow for such additional drive through lane
3. That the hours of operation of the Bank and the drive-through Teller will be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the Bank is not open to the general public.
4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the "Site Plan"). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process.
5. Only the southerly curb cut of the two currently on the 84 Auburn Street parcel shall be allowed and this shall be for egress only. The northerly curb cut will be closed. The subject property shall also have shared ingress and egress use through a joint access agreement with the property at 94 Auburn Street to allow ingress and egress to the site. The improvement of said southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform to that shown on Attachment 1, incorporated herein by reference. The northerly curb-cut at 84 Auburn Street shall be removed by PBK or its tenant prior to the issuance of a Certificate of Occupancy. Provided the Property complies with the foregoing requirements, the Technical Standards regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) shall not apply.
6. The front yard setback need not comply with the maximum front yard setback requirements contained within the B-1 zone, but shall be no further back from Auburn Street than as shown on Attachment 1. Otherwise, the provisions of §14-161 through 14-167 (the B-1 Zone) of the Portland City Code shall apply to this development. In addition to the Site Plan Standards of the Land Use Code, the Planning Board shall review the site plan for this project and shall be satisfied that the following requirements have been met:

- a. The drive-throughs must be accessory to a principal use located on the same site; and
 - b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
 - c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.
 - d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the City, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and
 - e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
7. The existing trees along the westerly (rear) boundary of the property shall remain undisturbed and shall be maintained at least at their present height by PBK and future property owners. If any of these trees need to be removed due to disease or damage, a tree of similar species and of 16 foot height shall be planted in the same location as a replacement to maintain the screening function of this group of trees.
8. In the event the development described herein is not commenced within two (2) years from the date of this conditional rezoning, or should the Property cease to be used as a bank branch, this contract shall become null and void and the Property shall revert back to the underlying B-1 zone.

So long as the property continues to be used as a bank branch the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant bank, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in

the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the Property, and the memorandum of Lease between PBK and its bank tenant within 30 days from the date of adoption by Portland city Council.

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.

Any bank tenant of PBK shall consent to this Agreement to acknowledge its consent to the zone change and the terms and conditions of this agreement and to acknowledge that the property will be and remain subject to the terms and conditions set forth herein.

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

In the event that PBK, any bank tenant 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. The resolution may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____

Drew E. Swenson
Its Managing Member

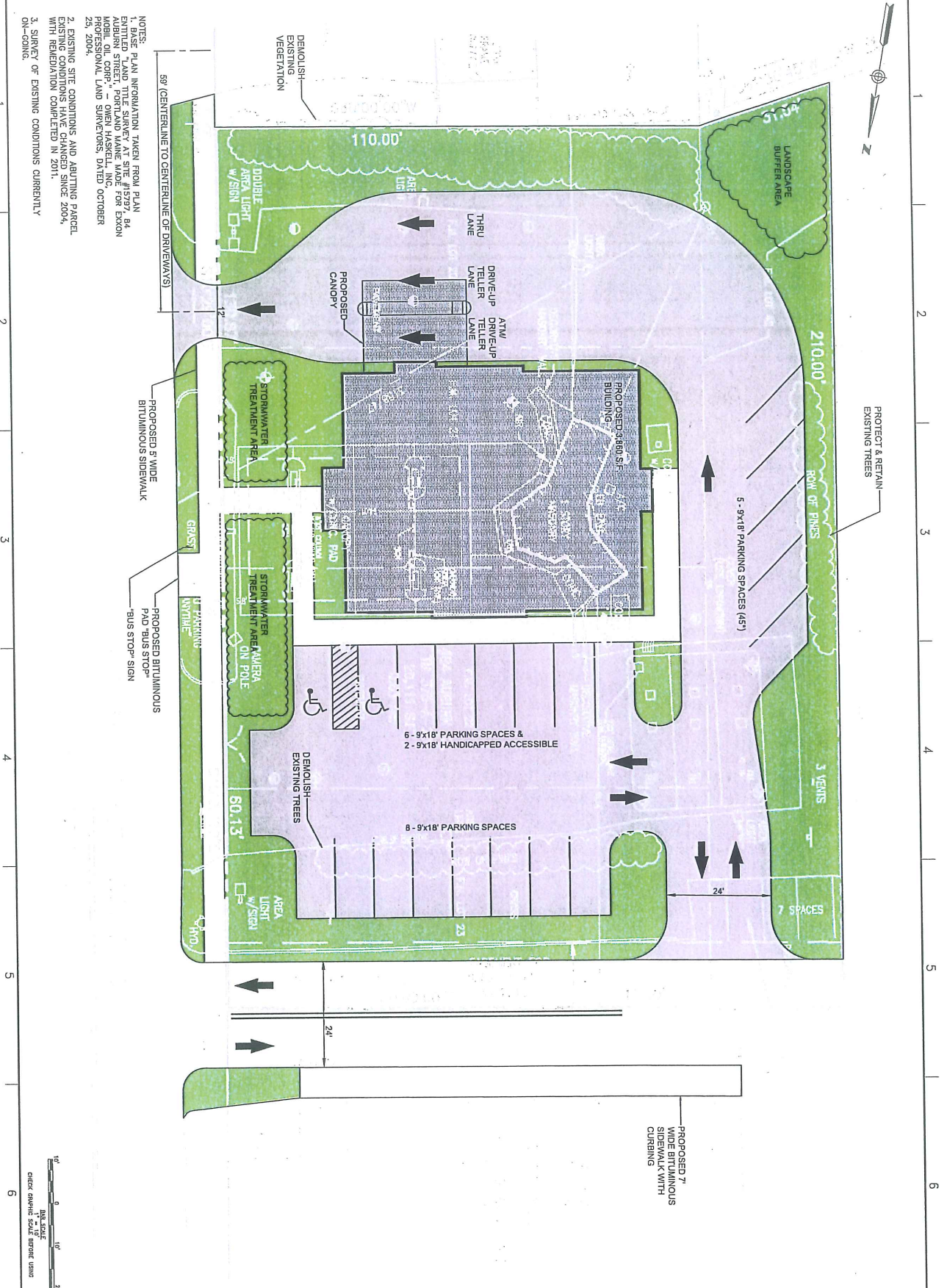
State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

PORTLAND\Projects\225086 Seawall-B4 Auburn St Redo\dwg\01\225086 Concept Site Plan.dwg, Nov 28, 2011 - 12:37pm



NOTES:
 1. BASE PLAN INFORMATION TAKEN FROM PLAN ENTITLED "LAND TITLE SURVEY AT SITE #1977, B4 AUBURN STREET, PORTLAND MAINE MADE FOR EXXON MOBIL OIL CORP. FROM LAND SURVEY DATED OCTOBER 25, 2004."
 2. EXISTING SITE CONDITIONS AND ADJUTING PARCEL WITH REMEDIATION COMPLETED SINCE 2004.
 3. SURVEY OF EXISTING CONDITIONS CURRENTLY ON-GOING.

59' (CENTRELINE TO CENTRELINE OF DRIVEWAYS)

PROPOSED 5' WIDE BITUMINOUS SIDEWALK

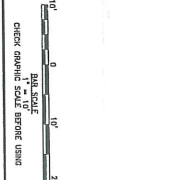
PROPOSED BITUMINOUS PAD BUS STOP
 BUS STOP SIGN

DEMOLISH EXISTING TREES

60.13'

24'

PROPOSED 7' WIDE BITUMINOUS SIDEWALK WITH CURBING



PENNBROOK PROPERTIES IV LLC
 2 MARKET STREET
 PORTLAND, MAINE 04101

84 AUBURN STREET
 PORTLAND, ME

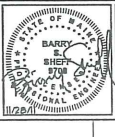
DATE: NOVEMBER 2011
 SCALE: 1" = 10'

C-1

CONCEPTUAL SITE PLAN

NO.	DESCRIPTION	DATE
1	FOR PLANNING BOARD WORKSHOP COMMENTS	11/29/11

DESIGNED BY: ELC
 CHECKED BY: BSS
 DRAWN BY: BSM
 225086 CONCEPT SITE PLAN



WOODARD & CURRAN
 41 Hutchins Drive
 Portland, Maine 04102
 808.626.6262 | www.woodardcurran.com

COMMITMENT & INTEGRITY DRIVE RESULTS

THIS DOCUMENT IS THE PROPERTY OF WOODARD & CURRAN INC. AND ITS CLIENT. REPRODUCTION OR MODIFICATION WITHOUT WRITTEN PERMISSION IS PROHIBITED.

225086 SHEET 1

Jean Fraser - Re: 84 Auburn Street Development

From: Jean Fraser
To: Hilaire, Tim St.
Date: 11/23/2011 2:55 PM
Subject: Re: 84 Auburn Street Development
CC: Cohen, James; Foley, BBQ; Pizzo, Michael; Smith, Pete; Zemrak, Maureen
Attachments: Public comment circ to PB on 11.22.2011.pdf

Tim

Thank you for your comments which were circulated to the Planning Board just before the meeting.

Also thank you to Michael Pizzo who came to the meeting to speak; because the meeting started late (previous item over-ran) Michael had to leave before it started and I suggested he write down some comments that I would pass on to the Board when the meeting actually started.

I had time to make paper copies of his note (copy attached) and circulate it to all of the Planning Board members.

The Board did encourage the applicant to at least provide a place (easement) for a bus shelter but some of the Board members did not feel they could make it a requirement- so I am not sure what they will recommend at the Hearing.

The date of the Hearing is scheduled for Tuesday, December 13th, 2011 where it is anticipated the Board will make a recommendation to the City Council on the terms of the Conditional Rezone Agreement.

Please do not hesitate to call if you have any questions.

Jean

*Jean Fraser, Planner
City of Portland
874 8728*

>>> "Tim St. Hilaire" <tsthilaire@maine.rr.com> 11/22/2011 3:27 PM >>>

Hello Jennifer,

I am writing on behalf of the North Deering Neighborhood Association regarding the development Plans for Property located at 84 Auburn Street. I unfortunately will not be able to attend today's Planning Board Work Shop .

The Neighborhood has advocated and continues to advocate for Metro Bus Shelters to be constructed at development sites

in North Deering area. The 84 Auburn Street Location is a frequently used designated Metro Bus stop and is in need of a shelter. Because of the closeness to the street and the congested traffic it would make sense to protect the Metro Patrons from

the elements. North Deering only presently has two bus shelters in the neighborhood. Given the large geographic area of North Deering , shelters are a necessity in this day of high gas prices. I would be happy to open discussions with you at any time.

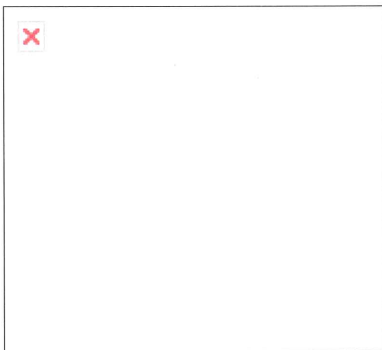
Thank you for your time and consideration. Happy Thanksgiving.

Tim St.Hilaire , President NDNA.

Tim St. Hilaire, Custom Property Services

(h) 207-797-7222 / (c) 207-632-5228

tsthilaire@maine.rr.com



Masonry~Carpentry~Painting~Landscaping~ Home Safety Modifications

Jean Fraser - Re: Auburn Street

From: Jean Fraser
To: Fall, Angela
Date: 11/17/2011 2:56 PM
Subject: Re: Auburn Street

Angela

Could you please confirm what property (ie the street address) that you own?

The parking lot in rear is in R3 (housing) zone.

The applicant here is asking for a contract zone- if approved, they will be making a specific contract with the city in order to get some relief from the B1 zone requirements. If you want to change anything re your site I think you would either have to make your own application or somehow join in with the applicant- this is not a city initiative as we are responding to a request.

If you send comments or speak to this item, you need to comment on the proposal that is before the Board.

Normally I would attach your 2 e-mails to the report to the Planning Board as public comments- do you want me to attach them as sent? My deadline is tomorrow about 10am for attaching public comments.

Thank you
Jean

*Jean Fraser, Planner
City of Portland
874 8728*

>>> "Angela Fall" <afall@gorham.me.us> 11/17/2011 9:56 AM >>>
Jean,

Thank you for the information, Greg & I will be at the meeting, but I have another question I'd like to ask, Greg may have more when we get to the meeting, but..mainly... looking this over.. and realizing that at the time of a new project such as this, it seems the appropriate time to talk and discuss things like a consideration of having an opening on the back into our property.. would that be something Greg could talk to you about.. or are those things that would be brought up in the workshop meeting..

I may not be explaining it correctly, but here, the Fire Departments for emergency entrance/exit take opportunities such as this to look at the direct impact of abutters for things like this.., as this may be the best time to talk about opening up the back of our lot which would possibly help our limited parking for the future as well?

So my question is should my husband 1st call you direct about those concerns?
Angela

Angela T. Fall, Administrative Assistant
Gorham Code Enforcement Office
75 South Street Suite 1
Gorham, ME 04038
(207) 222-1605 ext. 1607

From: "Angela Fall" <afall@gorham.me.us>
To: <JF@portlandmaine.gov>
Date: 11/17/2011 3:07 PM
Subject: Re: Auburn Street

Jean,

Thank you, I understand what you are saying in the sense that the discussion will only be in regards to the permit application on re-zoning at hand. The address is owned under my husband Greg Fall @ 72 Auburn Street- Century 21/All Speed bld.

I simply forwarded this to Greg and will let him contact you of the applicant directly with any questions or concerns he may have.

Thank you,
Angela

Angela T. Fall, Administrative Assistant
Gorham Code Enforcement Office
75 South Street Suite 1
Gorham, ME 04038
(207) 222-1605 ext. 1607

+ 2 re-mails from
Angela as in
PB workshop
packet

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

AGREEMENT made this ____ day of _____, made this ____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company (“PBK”) with a place of business in 2 Market Street, Portland, Maine, and its successors and assigns.

W I T N E S S E T H

WHEREAS, PBK is the owner of the property located at 84 Auburn Street, Portland, Maine (the “Property”) more particularly described and shown on the Portland Assessors Map at Chart 375, Block A, Lot 026 and in a deed in the Cumberland County Registry of Deeds at Book , Page , (the “Property”) and intends to use the Property for a bank branch; and

WHEREAS, PBK has filed a Zone Change Application with the City of Portland (hereinafter “CITY”) to rezone the Property to a conditional B-1 zone subject to certain modifications and conditions set forth in this Agreement in order to accommodate a bank with incidental sales of financial and insurance products and service, a drive-through window and ATM machine; and

WHEREAS, the Property is currently in the B-1 zoning district; and

WHEREAS, the Property has been a blighted site for many years; and

WHEREAS, the CITY’S Comprehensive Plan seeks to promote the economic climate, increase job opportunities and encourage orderly growth and development within the CITY; and

WHEREAS, the CITY’S Comprehensive Plan seeks to promote the economic climate, increase job opportunities and encourage orderly growth and development within the CITY; **and**

WHEREAS, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property; and

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

WHEREAS, the CITY, by and through its City Council, has determined that the rezoning is appropriate due to the unusual nature and unique location of the development proposed, that the uses proposed are consistent with the existing and permitted uses within the zone and that the rezoning would be pursuant to and consistent with the City’s Comprehensive Plan; and

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

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

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

INSERT MAP HERE

2. Permitted uses: Those uses allowed in the B-1 zone. In addition, the Property shall be permitted to be used as a bank with incidental sales of financial and insurance products and services and shall be allowed to include a total of two (2) drive through lanes which shall either consist of one (1) drive-through teller lane (hereinafter “Teller”) and one (1) drive-up automated teller machine (hereinafter “ATM”) or a combination thereof, except as provided for in paragraph 4. The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply; ~~however, no other drive through use shall be allowed.~~ A drive through is permitted for bank use only and not for any other use.

2.3. The hours of operation of the bank and the drive-through teller shall be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein, however, shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the bank is not open to the general public.

3.4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the “Site Plan”). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, an additional drive through lane may be allowed, subject to review and approval by the Planning Authority, as long as the southerly greenspace and landscaping is not substantially reduced and there is not a substantial impact on the southerly egress curb cut.

4.5. Curb Cuts:

- a. The northerly curb cut on the Property shall be closed and removed prior to the issuance of a certificate of occupancy by the City. The southerly curb cut shall remain and only be used for egress purposes.

- b. Access to the Property shall also be provided through the shared ingress and egress with the property located at 94 Auburn Street as more particularly described in the agreement attached hereto in Attachment 2.
- c. The improvements to the southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform with the plans attached hereto in Attachment 1.
- d. Provided the Property complies with the requirements outlined in subparagraphs a-c above, the Technical Standard regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) shall not apply and/or is waived to allow the southerly curb cut (for egress only) to be no less than 52 feet from the adjacent driveway to the south (centerline to centerline).

~~5-6.~~ Modifications to the B-1 Regulations. The Property shall be governed by the regulations applicable to the B-1 zoning district and other provisions of the City Codes except as follows:

- a. The maximum front yard setback in section 14-165(c)(1) shall not apply, but any building placed on the Property shall be no further back from Auburn Street than as shown on Attachment 1.

~~6-7.~~ In addition to the Site Plan Standards of the City's Land Use Code (§§ 14-521-14-540), the Planning Board shall review the site plan for this Property and shall be satisfied that the following requirements have been met:

- a. Any drive-through must be accessory to a principal use located on the same site; and
- b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
- c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.

- d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the City, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and
- e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.

7.8. The existing trees along the westerly (rear) boundary of the property shall remain undisturbed and shall be maintained at least at their present height by PBK and future property owners. If any of these trees need to be removed due to disease or damage, a tree of similar species and of 16 foot height shall be planted in the same location as a replacement to maintain the screening function of this group of trees. The existing trees along the northern boundary may be removed. Those along the southern boundary should be preserved to the extent possible, with the exception of a large willow in poor condition that may be removed subject to final confirmation with the City Arborist on site. Removal of trees along the northern and southern boundaries shall be subject to Site Plan Standards for Landscape Preservation, including the standards for the replacement of large trees that need to be removed.

8.9. Community Contribution: An easement measuring 6 ft. by 12 ft. shall be provided for a bus shelter partially within the site adjacent to the sidewalk near the existing bus stop (or near a relocated bus stop if that is preferred by METRO). The location shall be substantially as shown on Attachment 1, but shall be placed so as to not unreasonably interfere with tenant signage on the site or traffic visibility for ingress and egress to 84 and 94 Auburn Street. This condition does not require PBK to provide, install or maintain a bus shelter, but allows for one to be installed in the future. This requirement is in addition to a smaller pad near the curb/bus stop sign that is for passengers getting off and on the bus.

10. In the event the development described herein is not commenced within three (3) years from the date of this conditional rezoning, or should the Property cease to be used for a permitted use under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert back to the underlying B-1 zone. If any required approval, including the approval of the conditional rezoning, has been appealed, the aforementioned deadline shall commence from the date of the final disposition of such appeal.

11. So long as the Property continues to be used as a bank or any other permitted and approved use under Section 2 above, the above stated restrictions, provisions, and

conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page of the deed to the Property within ten (10) days from its acquisition of the Property.

12. PBK shall provide the City with documentation of any tenant of PBK's consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and remain subject to the terms and conditions set forth herein.
13. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
14. Except as expressly modified herein, the development, use, and occupancy of the Property shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.
15. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that PBK, any tenant or any successor of either party, 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 and/or the Court shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____
Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public



PLANNING BOARD REPORT PORTLAND, MAINE

84 Auburn Street

Conditional Rezoning Application

Pennbrook Properties IV LLC, Applicant
Project ID 2011-378

Submitted to: Portland Planning Board Public Hearing Date: December 13, 2011	Prepared by: Jean Fraser, Planner Date: December 9, 2011 Planning Board Report # 28-11
---	---

I. INTRODUCTION

Pennbrook Properties IV LLC is requesting conditional rezoning of the property at 84 Auburn Street to allow for development of a branch bank with one drive-through teller lane and one drive-through ATM lane. The property is located within the B1 zone which does not allow for the drive through element of the development. The applicant is also requesting relief from the setback requirements and a variation of the hours of operation of the B1 zone.

The existing lot is vacant as the former derelict gas station has been demolished. It measures approximately 200 feet by 140 feet and is located opposite the Northgate Plaza on Auburn Street.

II. PUBLIC NOTICING AND WORKSHOP SUMMARY

This Hearing was noticed to 115 abutters, neighbors and interested parties in accordance with the requirements specified in the ordinance for Conditional Rezoning, including posting of the draft agreements on the web and to abutters and a separate Legal Ad with a map in *Portland Press Herald* in the December 5th and 6th, 2011 Editions.

Public comment has been received from the neighbors to the south (Attachments 6.a and 6.d) who have raised concerns regarding the condition of the trees along that boundary. The North Deering Neighborhood Association (NDNA) advocate for a bus shelter at this location and raise questions regarding the sidewalks and traffic in the vicinity and support the retention of the tree buffer to the rear of the site (Attachment 6.b and 6.c).



84 Auburn Street - Aerial based on City of Portland 2006 Photos

The proposal does not require a formal Neighborhood Meeting but the applicant arranged to attend a meeting with the NDNA and reported on that in Attachment F.1. It is understood a voluntary neighborhood meeting will be held prior to the City Council Hearing.

Based upon the limited changes proposed, the Planning Board generally did not support a substantial community contribution in relation to this conditional rezone request, but the Board suggested that the applicant address the public comment (Attachment 6) for the provision of a bus shelter to serve the existing stop in front of this site. The Board considered that the westerly stand of pines should be retained to provide a buffer from the R3 zone but that the loss of trees for the shared access drive was acceptable. The Board voiced concerns about the extent of pavement and the need for more screening of the drive through lanes.

The applicant has addressed the Board and staff Workshop comments (see [Attachment D](#)) and submitted all of the information as requested at the Workshop eg Zoning Analysis ([Attachment E](#)); Draft Conditional Rezone Agreement ([Attachment G](#)); Revised Conceptual Site Plan ([Attachment I](#)); evidence of agreement for shared access drive ([Attachment H](#)).

III. SUMMARY OF FINDINGS (based on 12.8.2011 Conceptual Site plan in [Attachment I](#))

Zoning:	B-1
Parcel Size:	28,111 sq ft
Footprint of proposed building:	3,860 sq ft
Proposed parking Spaces:	21 spaces
Proposed use:	Bank with two (2) drive through lanes

IV. BACKGROUND

In 2002, the Bath Savings Institution requested a zone change from R-3/B-1 to the B-2 zone for 40 Auburn Street (shown as C28 in the plan), which is located three lots south on Auburn Street. At that time, the neighbors had a number of concerns including traffic and access onto Washington Avenue, preservation of an existing hedge along Washington Avenue and the possibility of other B-2 uses being allowed at this site. The applicant withdrew their request for a B-2 zone and proceeded to request a contract zone. A contract zone (C28) was approved by the City Council in 2003 and the conditions of the contract zone are attached for information in [Attachment 1](#).

V. EXISTING CONDITIONS

The uses along this block of Auburn Street consist primarily of retail and office uses, and this site is bounded on the south by Century 21/All Speed, to the north by 94 Auburn Street (Oakpoint), and to the rear by a large parking lot associated with 94 Auburn Street, accessed via a drive located along the north side of 84 Auburn Street (See submitted aerial photographs in [Attachment A](#)). The former gas station canopy and small service building have recently been demolished, but the mature trees located around the periphery of the site remain. The site has two curb cuts on Auburn Street.

VI. DEVELOPMENT PROPOSAL

The applicant has submitted a revised Conceptual Site Plan, as included in [Attachment I](#) (the version shown at the Workshop is included in [Attachment C](#) for information/comparison). The proposed development comprises a 3,860 sq ft bank building with two drive-through lanes (1 teller window and 1 ATM). The number of drive-through lanes has been reduced from the three lanes included in the Workshop submission to two lanes, to provide the buffer areas for landscaping and to reduce pavement area (see explanation in [Attachment D](#)).

The proposal now includes 21 parking spaces (previously 25) with additional planted buffer areas. The north westerly curb cut would be removed with the remaining curb cut for egress only, with access achieved through a joint access with the abutter at 94 Auburn Street.

The plan shows a setback from Auburn Street of 21.6 - 27.7 feet and the applicant has explained that this is intended to be consistent with the other buildings along this stretch of Auburn Street; a setback analysis of these other buildings is included at the end of [Attachment A](#).

The existing White Pine Grove along the westerly (rear) side of the site is shown to be protected and retained. The trees along the south boundary are shown to be preserved to the extent possible and the trees along the north boundary are proposed to be removed for the development.

VII. LEGAL AUTHORITY for CONDITIONAL REZONING

Consideration of the request for conditional rezoning is guided by State Statute which states:

30-A M.R.S.A. section 4352(8): "A municipal zoning ordinance may provide for any form of zoning consistent with this chapter, subject to the following provisions . . .

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

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

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

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

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

In addition the Conditional Rezoning must accord with the City's ordinance as quoted below:

Sec. 14-60. Authority and purpose.

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

Sec. 14-62. Conditions and restrictions.

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

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

VIII. CONDITIONAL REZONING AGREEMENT

The current zone for the site is B-1 which is a transitional zone intended to provide a buffer for the residential neighborhood. The proposed conditional rezoning conditions should maintain this buffer role (particularly through landscaping and screening). The applicant is requesting this conditional rezoning to allow the drive-throughs associated with the proposed bank use, for relief from the setback requirements of the B1 zone, and for extended days/hours beyond the parameters contained in the B-1 zone.

While the requested modifications to the B-1 are similar to the dimensional standards of B-2, the staff did not recommend a map amendment to B2, as this opens up the site to a range of other uses that are less compatible with the surrounding residential area.

The latest draft (redlined) Agreement from the applicant is included in Attachment G; it would include the Conceptual Site Plan (Attachment I) as an attachment. The proposed Conditional Zone Agreement contains, among other things, the following conditions and restrictions (numbering is from the Agreement):

2. Permitted uses: Those uses allowed in the B-1 zone. In addition, the Property shall be permitted to be used as a bank with incidental sales of financial and insurance products and services and shall be allowed to include one (1) drive-through teller lane (hereinafter "Teller") and one (1) drive-up automated teller machine (hereinafter "ATM").

The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply.

3. The hours of operation of the bank and the drive-through teller shall be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein, however, shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the bank is not open to the general public. A drive through is permitted for bank use only and not for any other use.
4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the "Site Plan"). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, an additional drive through lane may be allowed, subject to review and approval by the Planning Authority, as long as the southerly greenspace and landscaping is not substantially reduced and there is not a substantial impact on the southerly egress curb cut.
5. Curb Cuts:
 - a. The northerly curb cut on the Property shall be closed and removed prior to the issuance of a certificate of occupancy by the City. The southerly curb cut shall remain and only be used for egress purposes.
 - b. Access to the Property shall also be provided through the shared ingress and egress with the property located at 94 Auburn Street as more particularly described in the agreement attached hereto in Attachment 2.
 - c. The improvements to the southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform with the plans attached hereto in Attachment 1.
 - d. Provided the Property complies with the requirements outlined in subparagraphs a-c, the Technical Standard regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) shall not apply and/or is waived to allow the southerly curb cut (for egress only) to be no less than 52 feet from the adjacent driveway to the south (centerline to centerline).
6. Modifications to the B-1 Regulations. The Property shall be governed by the regulations applicable to the B-1 zoning district and other provisions of the City Codes except as follows:
 - a. The maximum front yard setback shall not apply, but any building placed on the Property shall be no further back from Auburn Street than as shown on Attachment 1.
7. In addition to the Site Plan Standards of the City's Land Use Code (§§ 14-521-14-540), the Planning Board shall review the site plan for this Property and shall be satisfied that the following requirements have been met:
 - a. Any drive-through must be accessory to a principal use located on the same site; and
 - b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
 - c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.
 - d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the City, landscape

buffering at the southwest corner of the property, which corner is closest to a residential zone; and

- e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access- ways or otherwise impeding pedestrian access.
8. The existing trees along the westerly (rear) boundary of the property shall remain undisturbed and shall be maintained at least at their present height by PBK and future property owners. If any of these trees need to be removed due to disease or damage, a tree of similar species and of 16 foot height shall be planted in the same location as a replacement to maintain the screening function of this group of trees. The existing trees along the northern boundary may be removed. Those along the southern boundary should be preserved to the extent possible, with the exception of a large willow in poor condition that may be removed subject to final confirmation with the City Arborist on site. Removal of trees along the northern and southern boundaries shall be subject to Site Plan Standards for Landscape Preservation, including the standards for the replacement of large trees that need to be removed.
9. Community Contribution: An easement measuring x by x shall be provided for a bus shelter partially within the site adjacent to the sidewalk near the existing bus stop (or near a relocated bus stop if that is preferred by METRO). The location shall be substantially as shown on Attachment 1, but shall be placed so as to not unreasonably interfere with tenant signage on the site or traffic visibility for ingress and egress to 84 and 94 Auburn Street. This condition does not require PBK to provide, install or maintain a bus shelter, but allows for one to be installed in the future. This requirement is in addition to a smaller pad near the curb/bus stop sign that is for passengers getting off and on the bus.
10. In the event the development described herein is not commenced within two (2) years from the date of this conditional rezoning, or should the Property cease to be used for a permitted use under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert back to the underlying B-1 zone. If any required approval, including the approval of the conditional rezoning, has been appealed, the aforementioned deadline shall commence from the date of the final disposition of such appeal.
11. So long as the Property continues to be used as a bank or any other permitted use under Section 2 above, the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page of the deed to the Property within ten (10) days from its acquisition of the Property.
12. PBK shall provide the City with documentation of any tenant of PBK's consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and remain subject to the terms and conditions set forth herein.

IX. ZONING ANALYSIS

The current zone for the site is B-1 and the site directly abuts the R-3 zone. Where the R3 zone abuts the subject site is mainly a surface parking lot although one corner of the site abuts a residence. In addition, the applicant is requesting a modification of the B-1 maximum front setback requirement of 10 feet to allow a setback of approximately 21-26 feet and is requesting Sunday opening and longer hours of opening as compared with the B1 zoning requirements. Currently the B-1 zone prohibits sales or services between the hours of 11 pm and 6 am. There is also a limit on times of deliveries or services between the hours of 10 pm to 7 am.

Marge Schmuckal, Zoning Administrator, requested a zoning analysis in her earlier comments (Attachment 2) which has been submitted (Attachment E). The earlier comments also confirmed:

The applicant has requested a conditional rezoning of the property located at 84 Auburn Street to allow a drive-thru banking establishment. The property is currently located in a B-1 zone. The B-1 zone does not allow drive-thru service. Other than the obvious setback and drive-thru issues, the applicant should also address the B-1 zone requirements concerning trips generated and hours of operation. Currently the B-1 zone prohibits sales or services between the hours of 11 pm and 6 am. There is also a limit on times of deliveries or services between the hours of 10 pm to 7 am.

The submitted Traffic Study (Attachment B) addresses the issue of trip generation and the draft Conditional Rezoning Agreement includes:

- Description of permitted uses, including that it may be converted to other permitted B1 uses;
- Confirmation that the drive-through is permitted for a bank use only;
- Setbacks of up to 26.7 feet;
- Sunday opening (7am to 2pm) and 24 hour availability of the ATM; and
- Revised setback would apply to any building placed on the property.

The final Zoning Administrator comments were not received in time to be included in this Report and will be available for the Hearing.

The Associate Corporation Counsel has pointed out that the first and last bullets above (details in the wording in paras 2, 6 and 11 of the submitted Conditional Rezoning Agreement in Attachment G which was added by the applicant) raises a policy question as to whether or not the agreement should allow the building to be developed as shown on the Conceptual Site Plan, ie set back up to 26.7 feet, if it is not a bank (but a use allowed in the B1 zone).

X. STAFF REVIEW OF CONDITIONS INCLUDED IN THE CONDITONAL ZONE AGREEMENT

Traffic

The proposal for the bank development has been revised to two drive-through lanes and the egress from the two lanes has been relocated to the north to maximize the separation front the neighbors drive, although at 52 feet it does not meet the Technical Standard and a waiver has been requested in Attachment D.2.

The proposal to reduce the curb cuts from two to one depends on a joint access drive with the abutter at 94 Auburn Street and the applicant has submitted a signed Mutual Easement Agreement with Oakpoint LLC (Attachment H.1) which secures this joint access drive for use by 84 Auburn Street.

The para 5 of the Agreement, and the Conceptual Site Plan, both confirm the reduction in curb cuts at 84 Auburn Street (to one egress drive) and the minimum of 52 feet for the drive separation for the egress drive.

The Traffic Engineering Reviewer, Tom Errico, had raised a number of issues in his Workshop comments (Attachment 3) but since then he has reviewed the Traffic Study (Attachment B) and the final revised Conceptual Site Plan (Attachment I) and has confirmed that the 52 feet separation is acceptable and that the submitted materials are acceptable for the rezoning process (Attachment 8). It should be noted that during the site plan review a determination would be made regarding the need for any detailed modifications in Auburn Street, for example adding a left-lane entering the site drive.

Drive-Through

The Conceptual Site plan in Attachment I shows two drive- through lanes, but the Conditional Zoning Agreement contains a provision in paragraph 4 that would allow an additional drive through lane subject to specific conditions. The applicant has explained this in Attachment F.1.

Landscaping and Screening

The proposal as presented at the Workshop would have resulted in the loss of all the mature trees on the site with little space for replanting a buffer or other substantial landscape. The existing trees provide an important screening element - of Auburn Street as viewed from the abutting residential neighborhood and of the rear parking lot as viewed from Auburn Street as well as between the buildings along Auburn Street. The Landscaping and Landscape Preservation standards of the site plan ordinance states that the site shall be designed to incorporate, and limit disturbance to existing trees and that existing trees may be counted toward landscaping requirements. There is also a standard of preserving 30% of trees within required setbacks.

The Planning Board had indicated to the applicant at the Workshop that the trees along the north boundary could be removed to allow the benefit of the shared driveway with 94 Auburn Street, and the Mutual Easement (Attachment H) includes reference to removing these trees.

Regarding the other existing trees, Jeff Tarling, City Arborist, has visited the site and recommends that the applicant seek to preserve the existing mature White Pine Grove along the Westerly (back) side (Attachment 4) and that the

southerly tree line at 84 Auburn Street should be preserved to the extent possible, with the provision that the large Willow tree in poor condition should be removed (Attachment 7). These recommendations reflect the importance of the existing trees in providing a buffer to the neighboring properties, and the draft Conditional Zone Agreement reinforces what is noted in the Conceptual Site Plan with specific wording in para 8.

At the Workshop staff had raised concerns that the increased setback and the extent of pavement would prevent the tree preservation along the rear of the site. The final Conceptual Site Plan (Attachment I) now incorporates fewer drive-through lanes and increased buffers and planted areas so that this is no longer a concern.

Bus shelter

The applicant has addressed the request of the NDNA for a bus shelter by offering an easement for a future bus shelter along the frontage of the site, as shown on the Conceptual Site Plan (Attachment I) and referred to in the Agreement in para 9.

The wording does not require the applicant to provide, install or maintain a bus shelter. Staff recommends that the Board consider:

- a requirement that the future occupier of the bank building be required to enter into a 3-party partnership agreement (with the City and METRO) for the maintenance of any future bus shelter; and
- a requirement for the developer to provide the concrete pad as part of the construction work.

These suggestions stem from the situation that arose at the nearby Bangor Bank (Site Plan review only) where the City and METRO installed and provided a shelter (on a pad provided by the Bank), but the bank were unwilling to enter into a maintenance agreement. In that case the Bank provided the concrete pad as that ensured integration with the bio-retention cell adjacent to the shelter.

At the Workshop staff had noted that the proposal included a new sidewalk along the frontage of the property as would be required under the site plan ordinance and raised the possibility of requesting the applicant to install additional sidewalks to complete the pedestrian network in the vicinity. Based on the Workshop discussion with the Board and the applicant's willingness to provide the easement for a bus shelter, this has not been pursued.

XI. COMPREHENSIVE PLAN

The City's ordinance regarding Conditional Rezoning (quoted above) states that any rezoning must be consistent with the City's Comprehensive Plan. In forming its recommendation to the City Council, the Board will need to make a finding on whether the proposal is consistent with the Comprehensive Plan.

The proposal is stated to be aimed at creating 10+ jobs (Attachment A) and to improve what has been a derelict site within a business and residential area for some while, including the removal of an existing curb cut through joint access arrangements. These objectives relate to two Comprehensive Plan goals and their associated policies (pp 21, 28, 37, and 38 of the Comprehensive Plan):

- Goal: *To promote an economic climate which increase job opportunities and overall economic well-being.*
PORTLAND INDUSTRY AND COMMERCE PLAN – 1994:
 - *Create a variety of job opportunities for the full spectrum of the labor pool*
 - *Enhance the City's ability to attract economic development*
- Goal: *To encourage orderly growth and development in appropriate areas of each community, while protecting the State's rural character, making efficient use of public services and preventing development sprawl.*
COMMUNITY COMMERCIAL POLICIES and LAND USE PLAN - September 1987-1988
 - *Promote preservation and revitalization of its existing commercial centers and maintain a scale within them that is compatible and integrated with other land use.*
 - *Encourage the development of new commercial enterprises within the existing neighborhood centers and CBD.*

XII. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of the application, plans, reports and other information submitted by the applicant, the policies and requirements of the B-1 zone, the Comprehensive Plan, public comment, staff comments and recommendations contained in Planning Report #28-11, and the testimony presented at the Planning Board Hearing, the Planning Board finds:

- A. That the proposed Conditional Rezoning for a bank development at 84 Auburn Street as described in this Report [is or is not] consistent with the Comprehensive Plan of the City of Portland;
- B. That the proposed Conditional Rezoning [is or is not] consistent with existing and permitted uses in the surrounding area;
- C. That the proposed Conditional Zone Agreement proposed for 84 Auburn Street [is or is not] in compliance with the standards set out in 14-60-62; and
- D. That the Planning Board therefore [recommends or does not recommend] the Conditional Rezoning and associated Conditional Zone Agreement for 84 Auburn Street to the City Council for its approval.

ATTACHMENTS

PB Memo attachments

- 1. 2003 Approved Bath Savings Bank Contract Zone (C28) at 40 auburn Street - extract listing contract zone conditions
- 2. Zoning Administrator comments 11.15.2011
- 3. Traffic Engineer Reviewer comments
- 4. City Arborist comments 11.18.2011
- 5. DPS comments – not received at time Memo completed
- 6. Public comments
 - a. Ms Fall (abutter to south)

PB Hearing Report Attachments

- 6. Public Comments, continued
 - b. NDNA Tim St Hilaire 11.22.2011
 - c. NDNA Michael Pizzo 11.22.2011
 - d. Ms Fall 12.7.2011
- 7. Additional City Arborist comments 12.1.2011
- 8. Final Traffic Engineer Review comments 12.8.2011
- 9. Final Zoning comments – not received at time Report was completed

Applicants submittal

- A. Applicants letter and application dated November 4, 2011
- B. Traffic Study received 11.18.2011
- C. Conceptual Site Plan received 11.14.2011 (8X 11 for information)

Applicants submittal since PB Workshop

- D. Letter from Woodard & Curran, response to PB comments 11.28.2011
- E. Zoning Analysis, 11.28.2011
- F. E-mail cover notes from Drew Swenson 11.29.2011 and 12.8.2011
- G. Draft Conditional Zone Agreement as of 12.7.2011
- H. Signed Mutual Easement Agreement regarding joint access with 94 Auburn Street rec'd 12.8.2011
- I. 12.8.2011 Conceptual Site Plan

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

AGREEMENT made this ____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company (“PBK”) with a place of business in 2 Market Street, Portland, Maine, and its successors and assigns.

W I T N E S S E T H

WHEREAS, PBK is or will be the owner of the property located at 84 Auburn Street, Portland, Maine (the “Property”) more particularly described and shown on the Portland Assessors Map at Chart 375, Block A, Lot 026 and in a deed in the Cumberland County Registry of Deeds at Book , Page , (the “Property”) and intends to use the Property for a bank branch; and

WHEREAS, PBK has filed a Zone Change Application with the City of Portland (hereinafter “CITY”) to rezone the Property to a conditional B-1 zone subject to certain modifications and conditions set forth in this Agreement in order to accommodate a bank with incidental sales of financial and insurance products and services, a drive-through window and ATM machine; and

WHEREAS, the Property is currently in the B-1 zoning district; and

WHEREAS, the Property has been a blighted site for many years; and

WHEREAS, the CITY’S Comprehensive Plan seeks to promote the economic climate, increase job opportunities and encourage orderly growth and development within the CITY; and

WHEREAS, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property; and

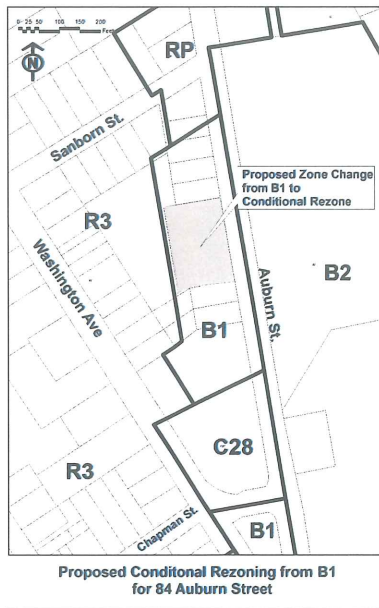
WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the Property; and

WHEREAS, the CITY, by and through its City Council, has determined that the rezoning is appropriate due to the unusual nature and unique location of the development proposed, that the uses proposed are consistent with the existing and permitted uses within the zone and that the rezoning would be pursuant to and consistent with the City’s Comprehensive Plan; and

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

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

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



2. Permitted uses: Those uses allowed in the B-1 zone. In addition, the Property shall be permitted to be used as a bank with incidental sales of financial and insurance products and services and shall be allowed to include a total of two (2) drive through lanes which shall either consist of one (1) drive-through teller lane (hereinafter “Teller”) and one (1) drive-up automated teller machine (hereinafter “ATM”) or a combination thereof, except as provided for in paragraph 4. The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply. A drive through is permitted for bank use only and not for any other use.
3. The hours of operation of the bank and the drive-through teller shall be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein, however, shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the bank is not open to the general public.
4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the “Site Plan”). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, an additional drive through lane may be allowed, subject to review and approval by the Planning Authority, as long as the southerly greenspace and landscaping is not substantially reduced and there is not a substantial impact on the southerly egress curb cut.

5. Curb Cuts:
 - a. The northerly curb cut on the Property shall be closed and removed prior to the issuance of a certificate of occupancy by the City. The southerly curb cut shall remain and only be used for egress purposes.
 - b. Access to the Property shall also be provided through the shared ingress and egress with the property located at 94 Auburn Street as more particularly described in the agreement attached hereto in Attachment 2.
 - c. The improvements to the southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform with the plans attached hereto in Attachment 1.
 - d. Provided the Property complies with the requirements outlined in subparagraphs a-c above, the Technical Standard regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) shall not apply and/or is waived to allow the southerly curb cut (for egress only) to be no less than 52 feet from the adjacent driveway to the south (centerline to centerline).
6. Modifications to the B-1 Regulations. The Property shall be governed by the regulations applicable to the B-1 zoning district and other provisions of the City Codes except as follows:
 - a. The maximum front yard setback in section 14-165(c)(1) shall not apply, but any building placed on the Property shall be no further back from Auburn Street than as shown on Attachment 1.
7. In addition to the Site Plan Standards of the City's Land Use Code (§§ 14-521-14-540), the Planning Board shall review the site plan for this Property and shall be satisfied that the following requirements have been met:
 - a. Any drive-through must be accessory to a principal use located on the same site; and
 - b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
 - c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.

- d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the City, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and
 - e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
8. The existing trees along the westerly (rear) boundary of the property shall remain undisturbed and shall be maintained at least at their present height by PBK and future property owners. If any of these trees need to be removed due to disease or damage, a tree of similar species and of 16 foot height shall be planted in the same location as a replacement to maintain the screening function of this group of trees. The existing trees along the northern boundary may be removed. Those along the southern boundary should be preserved to the extent possible, with the exception of a large willow in poor condition that may be removed subject to final confirmation with the City Arborist on site. Removal of trees along the northern and southern boundaries shall be subject to Site Plan Standards for Landscape Preservation, including the standards for the replacement of large trees that need to be removed.
9. Community Contribution: An easement measuring 6 ft. by 12 ft. shall be provided for a bus shelter partially within the site adjacent to the sidewalk near the existing bus stop (or near a relocated bus stop if that is preferred by METRO). The location shall be substantially as shown on Attachment 1, but shall be placed so as to not unreasonably interfere with tenant signage on the site or traffic visibility for ingress and egress to 84 and 94 Auburn Street. This condition does not require PBK to provide, install or maintain a bus shelter, but allows for one to be installed in the future. This requirement is in addition to a smaller pad near the curb/bus stop sign that is for passengers getting off and on the bus.
10. In the event the development described herein is not commenced within three (3) years from the date of this conditional rezoning, or should the Property cease to be used for a permitted use under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert back to the underlying B-1 zone. If any required approval, including the approval of the conditional rezoning, has been appealed, the aforementioned deadline shall commence from the date of the final disposition of such appeal.
11. So long as the Property continues to be used as a bank or any other permitted and approved use under Section 2 above, the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized

representatives. PBK shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page of the deed to the Property within ten (10) days from its acquisition of the Property.

12. PBK shall provide the City with documentation of any tenant of PBK's consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and remain subject to the terms and conditions set forth herein.
13. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
14. Except as expressly modified herein, the development, use, and occupancy of the Property shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.
15. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that PBK, any tenant or any successor of either party, 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 and/or the Court shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

WITNESS:

PENNBROOK PROPERTIES IV LLC

By

Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

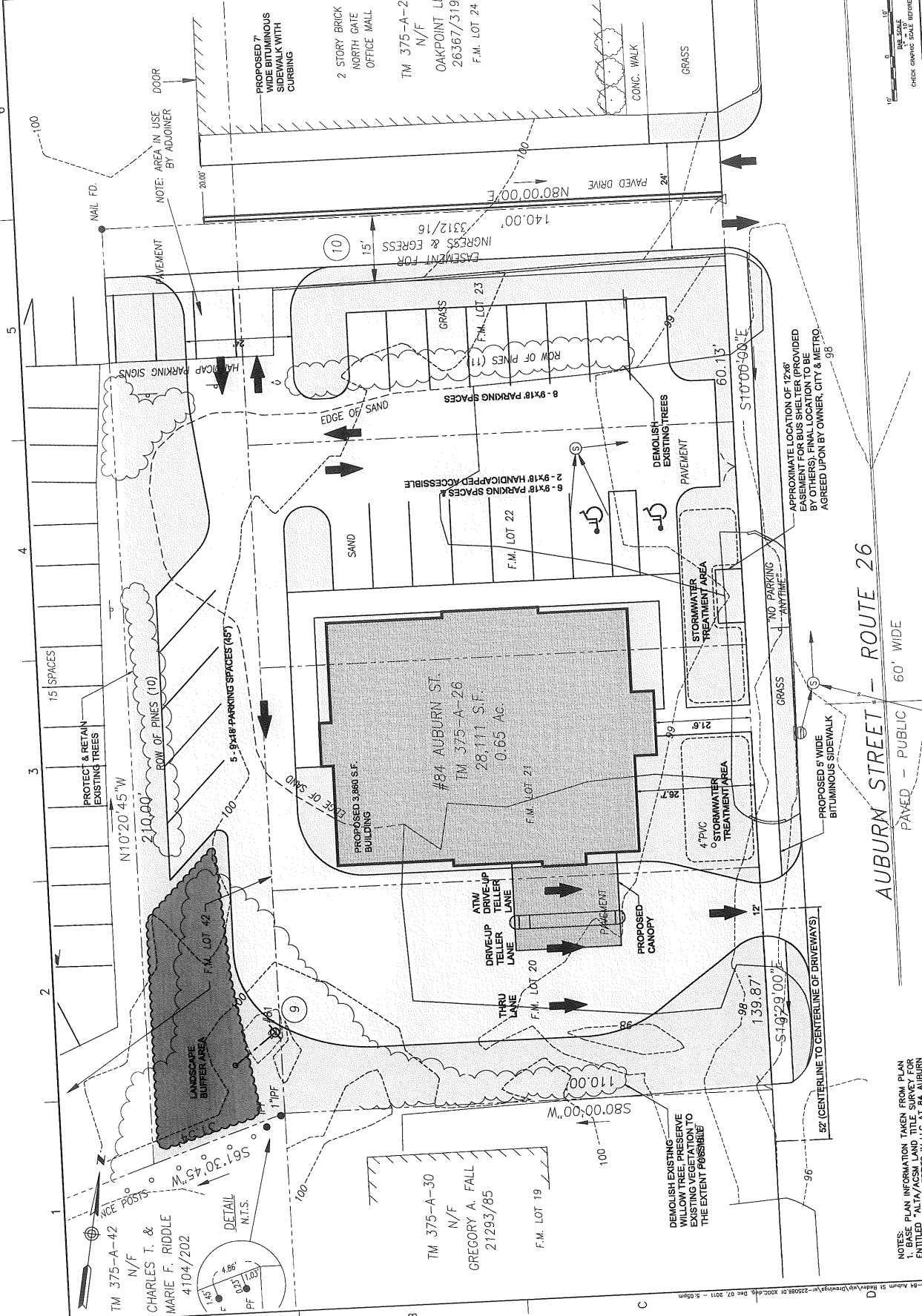
Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

AA-AA-7 Attachment 1 to Agreement

22324 SHEET

COMMITMENT & INTEGRITY DRIVE RESULTS 605.426.4252 www.woodwardcliford.com Portland, Maine 04102		DESIGNED BY: BJS CHECKED BY: BJS DATE: 1/28/17 NEW PLANNING BOARD WORKSHOP COMMENTS: NONE	
CONCEPTUAL SITE PLAN			
84 AUBURN STREET PORTLAND, ME		PENNBROOK PROPERTIES IV LLC 1 MARKET STREET PORTLAND, ME 04101 DATE: 1/28/17 SCALE: 1" = 10' SHEET: 1 OF 1 C-1	



TM 375-A-42 N/F CHARLES T. & MARIE F. RIDDLE 4104/202
 TM 375-A-25 N/F OAKPOINT LLC 26367/319 F.M. LOT 24
 TM 375-A-30 N/F GREGORY A. FALL 21293/85 F.M. LOT 19
 F.M. LOT 23
 F.M. LOT 22
 F.M. LOT 21
 F.M. LOT 20
 F.M. LOT 19

PROPOSED 7' WIDE BITUMINOUS SIDEWALK WITH CURBING
 2 STORY BRICK NORTH GATE OFFICE MALL
 PROPOSED 5' WIDE BITUMINOUS SIDEWALK
 AUBURN STREET - ROUTE 26
 PAVED - PUBLIC 60' WIDE
 DEMOLISH EXISTING WILLOW PRESERVE VEGETATION TO THE EXTENT POSSIBLE
 DEMOLISH EXISTING TREES
 PROPOSED CANOPY
 ATM DRIVE-UP TELLER LANE
 DRIVE-UP TELLER LANE
 THRU LANE
 PROPOSED 8'x18' HANDICAPPED ACCESSIBLE
 2- 9'x18' HANDICAPPED ACCESSIBLE
 8- 9'x18' PARKING SPACES
 5- 9'x18' PARKING SPACES (45')
 ROW OF PINES (10)
 ROW OF PINES (11)
 SAND
 LANDSCAPE BUFFER AREA
 PROTECT & RETAIN EXISTING TREES
 15 SPACES
 N10°20'45"W 210.00'
 S61°19'45"W 561.19'
 110.00'
 139.87'
 159.87'
 52' (CENTERLINE TO CENTERLINE OF DRIVEWAYS)
 82' (CENTERLINE TO CENTERLINE OF DRIVEWAYS)
 60.13'
 60' WIDE
 APPROXIMATE LOCATION OF 1206R EASEMENTS FINAL LOCATION TO BE AGREED UPON BY OWNER, CITY & METRO.

NOTE: PLAN INFORMATION TAKEN FROM PLAN 1. BASED ON DATA/AGSM LAND TITLE SURVEY FOR PENNBROOK PROPERTIES IV LLC AT 84 AUBURN STREET PORTLAND, CUMBERLAND COUNTY, MAINE - OWEN HASKELL, INC. NOVEMBER 30, 2011. SURVEYORS, DATED NOVEMBER 30, 2011.

1 2 3 4 5 6
 A B C D
 SCALE: 1" = 10'
 CHECK GRAPHIC SCALE BEFORE USING

Attachment "AA-1"
City Council Report

Superseded by
Drew Swenson
version
12-19-11

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

AGREEMENT made this ____ day of _____, made this ____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company ("PBK") with a place of business in 2 Market Street, Portland, Maine, and its successors and assigns.

WITNESSETH

WHEREAS, PBK is the owner of the property located at 84 Auburn Street, Portland, Maine (the "Property") more particularly described and shown on the Portland Assessors Map at Chart 375, Block A, Lot 026 and in a deed in the Cumberland County Registry of Deeds at Book , Page , (the "Property") and intends to use the Property for a bank branch; and

WHEREAS, PBK has filed a Zone Change Application with the City of Portland (hereinafter "CITY") to rezone the Property to a conditional B-1 zone subject to certain modifications and conditions set forth in this Agreement in order to accommodate a bank with incidental sales of financial and insurance products and service, a drive-through window and ATM machine; and

WHEREAS, the Property is currently in the B-1 zoning district; and

WHEREAS, the Property has been a blighted site for many years; and

WHEREAS, the CITY'S Comprehensive Plan seeks to promote the economic climate, increase job opportunities and encourage orderly growth and development within the CITY; and

WHEREAS, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property; and

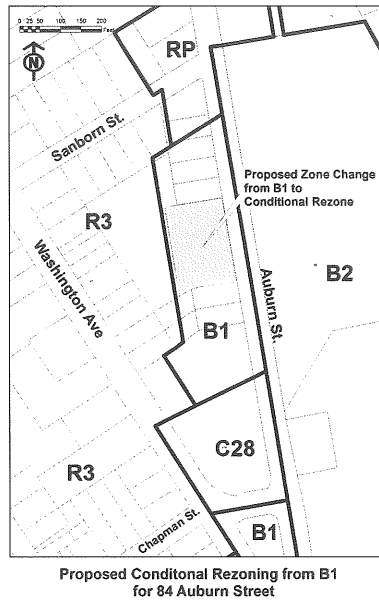
WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the Property; and

WHEREAS, the CITY, by and through its City Council, has determined that the rezoning is appropriate due to the unusual nature and unique location of the development proposed, that the uses proposed are consistent with the existing and permitted uses within the zone and that the rezoning would be pursuant to and consistent with the City's Comprehensive Plan; and

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

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

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



2. Permitted uses: Those uses allowed in the B-1 zone. In addition, the Property shall be permitted to be used as a bank with incidental sales of financial and insurance products and services and shall be allowed to include a total of two (2) drive through lanes which shall either consist of one (1) drive-through teller lane (hereinafter “Teller”) and one (1) drive-up automated teller machine (hereinafter “ATM”) or a combination thereof, except as provided for in paragraph 4. The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply. A drive through is permitted for bank use only and not for any other use.
3. The hours of operation of the bank and the drive-through teller shall be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein, however, shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the bank is not open to the general public.
4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the “Site Plan”). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, an additional drive through lane may be allowed, subject to review and approval by the Planning Authority, as long as the southerly greenspace and landscaping is not substantially reduced and there is not a substantial impact on the southerly egress curb cut.

5. Curb Cuts:
 - a. The northerly curb cut on the Property shall be closed and removed prior to the issuance of a certificate of occupancy by the City. The southerly curb cut shall remain and only be used for egress purposes.
 - b. Access to the Property shall also be provided through the shared ingress and egress with the property located at 94 Auburn Street as more particularly described in the agreement attached hereto in Attachment 2.
 - c. The improvements to the southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform with the plans attached hereto in Attachment 1.
 - d. Provided the Property complies with the requirements outlined in subparagraphs a-c above, the Technical Standard regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) shall not apply and/or is waived to allow the southerly curb cut (for egress only) to be no less than 52 feet from the adjacent driveway to the south (centerline to centerline).
6. Modifications to the B-1 Regulations. The Property shall be governed by the regulations applicable to the B-1 zoning district and other provisions of the City Codes except as follows:
 - a. The maximum front yard setback in section 14-165(c)(1) shall not apply, but any building placed on the Property shall be no further back from Auburn Street than as shown on Attachment 1.
7. In addition to the Site Plan Standards of the City's Land Use Code (§§ 14-521-14-540), the Planning Board shall review the site plan for this Property and shall be satisfied that the following requirements have been met:
 - a. Any drive-through must be accessory to a principal use located on the same site; and
 - b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
 - c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light

trespass and preservation of the pine trees on the westerly border of the property.

- d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the City, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and
 - e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
8. The existing trees along the westerly (rear) boundary of the property shall remain undisturbed and shall be maintained at least at their present height by PBK and future property owners. If any of these trees need to be removed due to disease or damage, a tree of similar species and of 16 foot height shall be planted in the same location as a replacement to maintain the screening function of this group of trees. The existing trees along the northern boundary may be removed. Those along the southern boundary should be preserved to the extent possible, with the exception of a large willow in poor condition that may be removed subject to final confirmation with the City Arborist on site. Removal of trees along the northern and southern boundaries shall be subject to Site Plan Standards for Landscape Preservation, including the standards for the replacement of large trees that need to be removed.
9. Community Contribution: An easement measuring 6 ft. by 12 ft. shall be provided for a bus shelter partially within the site adjacent to the sidewalk near the existing bus stop (or near a relocated bus stop if that is preferred by METRO). The location shall be substantially as shown on Attachment 1, but shall be placed so as to not unreasonably interfere with tenant signage on the site or traffic visibility for ingress and egress to 84 and 94 Auburn Street. This condition does not require PBK to provide, install or maintain a bus shelter, but allows for one to be installed in the future. This requirement is in addition to a smaller pad near the curb/bus stop sign that is for passengers getting off and on the bus.
10. In the event the development described herein is not commenced within three (3) years from the date of this conditional rezoning, or should the Property cease to be used for a permitted use under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert back to the underlying B-1 zone. If any required approval, including the approval of the conditional rezoning, has been appealed, the aforementioned deadline shall commence from the date of the final disposition of such appeal.

11. So long as the Property continues to be used as a bank or any other permitted and approved use under Section 2 above, the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page of the deed to the Property within ten (10) days from its acquisition of the Property.
12. PBK shall provide the City with documentation of any tenant of PBK's consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and remain subject to the terms and conditions set forth herein.
13. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
14. Except as expressly modified herein, the development, use, and occupancy of the Property shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.
15. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that PBK, any tenant or any successor of either party, 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 and/or the Court shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

Att. AA-6

WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____
Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

Per D Swenson
for final OK
on 12-15-11
DWC
12-15-11

for Attachment AA
City Council Report.

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

AGREEMENT made this ____ day of _____, made this ____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company ("PBK") with a place of business in 2 Market Street, Portland, Maine, and its successors and assigns.

WITNESSETH

WHEREAS, PBK is the owner of the property located at 84 Auburn Street, Portland, Maine (the "Property") more particularly described and shown on the Portland Assessors Map at Chart 375, Block A, Lot 026 and in a deed in the Cumberland County Registry of Deeds at Book , Page , (the "Property") and intends to use the Property for a bank branch; and

WHEREAS, PBK has filed a Zone Change Application with the City of Portland (hereinafter "CITY") to rezone the Property to a conditional B-1 zone subject to certain modifications and conditions set forth in this Agreement in order to accommodate a bank with incidental sales of financial and insurance products and service, a drive-through window and ATM machine; and

WHEREAS, the Property is currently in the B-1 zoning district; and

WHEREAS, the Property has been a blighted site for many years; and

WHEREAS, the CITY'S Comprehensive Plan seeks to promote the economic climate, increase job opportunities and encourage orderly growth and development within the CITY; and

WHEREAS, the CITY'S Comprehensive Plan seeks to promote the economic climate, increase job opportunities and encourage orderly growth and development within the CITY; and

WHEREAS, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property; and

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

WHEREAS, the CITY, by and through its City Council, has determined that the rezoning is appropriate due to the unusual nature and unique location of the development proposed, that the uses proposed are consistent with the existing and permitted uses within the zone and that the rezoning would be pursuant to and consistent with the City's Comprehensive Plan; and

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

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

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

INSERT MAP HERE

2. Permitted uses: Those uses allowed in the B-1 zone. In addition, the Property shall be permitted to be used as a bank with incidental sales of financial and insurance products and services and shall be allowed to include a total of two (2) drive through lanes which shall either consist of one (1) drive-through teller lane (hereinafter “Teller”) and one (1) drive-up automated teller machine (hereinafter “ATM”) or a combination thereof, except as provided for in paragraph 4. The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply. A drive through is permitted for bank use only and not for any other use.
3. The hours of operation of the bank and the drive-through teller shall be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein, however, shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the bank is not open to the general public.
4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the “Site Plan”). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, an additional drive through lane may be allowed, subject to review and approval by the Planning Authority, as long as the southerly greenspace and landscaping is not substantially reduced and there is not a substantial impact on the southerly egress curb cut.
5. Curb Cuts:
 - a. The northerly curb cut on the Property shall be closed and removed prior to the issuance of a certificate of occupancy by the City. The southerly curb cut shall remain and only be used for egress purposes.

- b. Access to the Property shall also be provided through the shared ingress and egress with the property located at 94 Auburn Street as more particularly described in the agreement attached hereto in Attachment 2.
 - c. The improvements to the southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform with the plans attached hereto in Attachment 1.
 - d. Provided the Property complies with the requirements outlined in subparagraphs a-c above, the Technical Standard regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) shall not apply and/or is waived to allow the southerly curb cut (for egress only) to be no less than 52 feet from the adjacent driveway to the south (centerline to centerline).
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- a. Any drive-through must be accessory to a principal use located on the same site; and
 - b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
 - c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.

- d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the City, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and
 - e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
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9. Community Contribution: An easement measuring 6 ft. by 12 ft. shall be provided for a bus shelter partially within the site adjacent to the sidewalk near the existing bus stop (or near a relocated bus stop if that is preferred by METRO). The location shall be substantially as shown on Attachment 1, but shall be placed so as to not unreasonably interfere with tenant signage on the site or traffic visibility for ingress and egress to 84 and 94 Auburn Street. This condition does not require PBK to provide, install or maintain a bus shelter, but allows for one to be installed in the future. This requirement is in addition to a smaller pad near the curb/bus stop sign that is for passengers getting off and on the bus.
10. In the event the development described herein is not commenced within three (3) years from the date of this conditional rezoning, or should the Property cease to be used for a permitted use under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert back to the underlying B-1 zone. If any required approval, including the approval of the conditional rezoning, has been appealed, the aforementioned deadline shall commence from the date of the final disposition of such appeal.
11. So long as the Property continues to be used as a bank or any other permitted and approved use under Section 2 above, the above stated restrictions, provisions, and

conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page of the deed to the Property within ten (10) days from its acquisition of the Property.

12. PBK shall provide the City with documentation of any tenant of PBK's consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and remain subject to the terms and conditions set forth herein.
13. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
14. Except as expressly modified herein, the development, use, and occupancy of the Property shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.
15. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that PBK, any tenant or any successor of either party, 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 and/or the Court shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____
Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

from Nathan Smith

Applicant comments 12/6/11 – version 12/6/11

12-6-11

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

AGREEMENT made this ____ day of _____, made this ____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company (“PBK”) with a place of business in _____, and its successors and assigns.

WITNESSETH

WHEREAS, PBK ~~has the right and intends to purchase~~ is [will be] the owner of the property located at 84 Auburn Street, Portland, Maine (the “Property”) more particularly described and shown on the Portland Assessors Map at Chart 375, Block A, Lot 026 and in a deed in the Cumberland County Registry of Deeds at Book _____, Page _____, (the “Property”) and intends to use the Property for a bank branch pursuant to a purchase and sale agreement, and lease the Property and any improvement thereon to a bank under the terms of a long term Ground Lease or Lease between PBK and the bank; and

WHEREAS, PBK has filed a Zone Change Application with the City of Portland (hereinafter “CITY”) to rezone the Property to a conditional B-1 zone subject to certain modifications and conditions set forth in this Agreement in order to accommodate a bank with incidental sales of financial and insurance products and service, a drive-through window and ATM machine; and

WHEREAS, the Property is currently in the _____ zoning district; and

WHEREAS, the Property has been a blighted site for many years; and

WHEREAS, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property; and

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

WHEREAS, the CITY, by and through its City Council, has determined that the rezoning is appropriate due to the unusual nature and unique location of the development proposed, that the uses proposed are consistent with the existing and permitted uses within the zone and that the rezoning would be pursuant to and consistent with the City’s Comprehensive Plan; and

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

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

Applicant comments 12/6/11 – version 12/6/11

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

INSERT MAP HERE

2. Permitted uses: Those uses allowed in the B-1 zone. In addition, the Property shall be permitted to be used as a bank with incidental sales of financial and insurance products and services and shall be allowed to include one (1) drive-through teller lane (hereinafter “Teller”) and one (1) drive-up automated teller machine (hereinafter “ATM”). The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply.
3. The hours of operation of the bank and the drive-through teller shall be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein, however, shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the bank is not open to the general public. A drive through is permitted for bank use only and not for any other use.
4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the “Site Plan”). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, an additional drive through lane may be allowed, subject to review and approval by the Planning Authority, as long as the southerly greenspace and landscaping is not substantially reduced and there is not a substantial impact on the southerly egress curb cut.
5. Curb Cuts:
 - a. The northerly curb cut on the Property shall be closed and removed prior to the issuance of a certificate of occupancy by the City. The southerly curb cut shall remain and only be used for egress purposes.
 - b. Access to the Property shall also be provided through the shared ingress and egress with the property located at 94 Auburn Street as more particularly described in the agreement attached hereto in Attachment 2.

Applicant comments 12/6/11 – version 12/6/11

- c. The improvements to the southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform with the plans attached hereto in Attachment 1.
 - d. Provided the Property complies with the requirements outlined in subparagraphs a-c, the Technical Standard regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) shall not apply and/or is waived to allow the southerly curb cut (for egress only) to be 59 feet from the adjacent driveway to the south (centerline to centerline).
6. Modifications to the B-1 Regulations. The Property shall be governed by the regulations applicable to the B-1 zoning district and other provisions of the City Codes except as follows:
- a. The maximum front yard setback shall not apply, but any building placed on the Property shall be no further back from Auburn Street than as shown on Attachment 1. ~~If a proposed building is placed further back than as shown on Attachment 1, the maximum front yard setback provisions of the B-1 Zone shall apply to the Property.~~
7. In addition to the Site Plan Standards of the City's Land Use Code (§§ 14-521-14-540), the Planning Board shall review the site plan for this Property and shall be satisfied that the following requirements have been met:
- a. Any drive-through must be accessory to a principal use located on the same site; and
 - b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
 - c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.
 - d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed

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necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the City, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and

- e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
8. The existing trees along the westerly (rear) boundary of the property shall remain undisturbed and shall be maintained at least at their present height by PBK and future property owners. If any of these trees need to be removed due to disease or damage, a tree of similar species and of 16 foot height shall be planted in the same location as a replacement to maintain the screening function of this group of trees. The existing trees along the northern boundary may be removed. Those along the southern boundary should be preserved to the extent possible, with the exception of a large willow in poor condition that may be removed subject to final confirmation with the City Arborist on site. Removal of trees along the northern and southern boundaries shall be subject to Site Plan Standards for Landscape Preservation, including the standards for the replacement of large trees that need to be removed.
9. Community Contribution: An easement measuring x by x shall be provided for a bus shelter partially within the site adjacent to the sidewalk near the existing bus stop (or near a relocated bus stop if that is preferred by METRO). The location shall be substantially as shown on Attachment 1. This condition does not require PBK to provide or install a bus shelter, but allows for one to be installed in the future. This requirement is in addition to a smaller pad near the curb/bus stop sign that is for passengers getting off and on the bus.
10. In the event the development described herein is not commenced within two (2) years from the date of this conditional rezoning, or should the Property cease to be used as a bank for a permitted use under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert back to the underlying B-1 zone. If any required approval, including the approval of the conditional rezoning, has been appealed, the aforementioned deadline shall commence from the date of the final disposition of such appeal.
11. So long as the Property continues to be used as a bank or any other permitted use under Section 2 above, the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant ~~bank~~, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page ~~locations~~ of the deeds ~~for to~~ the Property, and the memorandum of Lease

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~~between PBK and its bank tenant~~ within ~~thirty (30)~~ ten (10) days from its acquisition of the Property, the date of adoption by Portland city Council.

12. PBK shall provide the City with documentation of by any bank tenant of PBK's consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and remain subject to the terms and conditions set forth herein.
13. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
14. Except as expressly modified herein, the development, use, and occupancy of the Property shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.
15. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that PBK, any ~~bank~~-tenant or any successor of either party, 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 and/or the Court shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____
Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free

Applicant comments 12/6/11 – version 12/6/11

act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

from Nathan Smith

Applicant comments 12/6/11 – version 12/6/11

12-6-11

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

AGREEMENT made this ____ day of _____, made this ____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company (“PBK”) with a place of business in _____, and its successors and assigns.

WITNESSETH

WHEREAS, PBK ~~has the right and intends to purchase~~ is [will be] the owner of the property located at 84 Auburn Street, Portland, Maine (the “Property”) more particularly described and shown on the Portland Assessors Map at Chart 375, Block A, Lot 026 and in a deed in the Cumberland County Registry of Deeds at Book _____, Page _____, (the “Property”) and intends to use the Property for a bank branch pursuant to a purchase and sale agreement, and lease the Property and any improvement thereon to a bank under the terms of a long term Ground Lease or Lease between PBK and the bank; and

WHEREAS, PBK has filed a Zone Change Application with the City of Portland (hereinafter “CITY”) to rezone the Property to a conditional B-1 zone subject to certain modifications and conditions set forth in this Agreement in order to accommodate a bank with incidental sales of financial and insurance products and service, a drive-through window and ATM machine; and

WHEREAS, the Property is currently in the _____ zoning district; and

WHEREAS, the Property has been a blighted site for many years; and

WHEREAS, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property; and

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

WHEREAS, the CITY, by and through its City Council, has determined that the rezoning is appropriate due to the unusual nature and unique location of the development proposed, that the uses proposed are consistent with the existing and permitted uses within the zone and that the rezoning would be pursuant to and consistent with the City’s Comprehensive Plan; and

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

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

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

INSERT MAP HERE

2. Permitted uses: Those uses allowed in the B-1 zone. In addition, the Property shall be permitted to be used as a bank with incidental sales of financial and insurance products and services and shall be allowed to include one (1) drive-through teller lane (hereinafter “Teller”) and one (1) drive-up automated teller machine (hereinafter “ATM”). The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply.
3. The hours of operation of the bank and the drive-through teller shall be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein, however, shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the bank is not open to the general public. A drive through is permitted for bank use only and not for any other use.
4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the “Site Plan”). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, an additional drive through lane may be allowed, subject to review and approval by the Planning Authority, as long as the southerly greenspace and landscaping is not substantially reduced and there is not a substantial impact on the southerly egress curb cut.
5. Curb Cuts:
 - a. The northerly curb cut on the Property shall be closed and removed prior to the issuance of a certificate of occupancy by the City. The southerly curb cut shall remain and only be used for egress purposes.
 - b. Access to the Property shall also be provided through the shared ingress and egress with the property located at 94 Auburn Street as more particularly described in the agreement attached hereto in Attachment 2.

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- c. The improvements to the southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform with the plans attached hereto in Attachment 1.
 - d. Provided the Property complies with the requirements outlined in subparagraphs a-c, the Technical Standard regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) shall not apply and/or is waived to allow the southerly curb cut (for egress only) to be 59 feet from the adjacent driveway to the south (centerline to centerline).
6. Modifications to the B-1 Regulations. The Property shall be governed by the regulations applicable to the B-1 zoning district and other provisions of the City Codes except as follows:
- a. The maximum front yard setback shall not apply, but any building placed on the Property shall be no further back from Auburn Street than as shown on Attachment 1. ~~If a proposed building is placed further back than as shown on Attachment 1, the maximum front yard setback provisions of the B-1 Zone shall apply to the Property.~~
7. In addition to the Site Plan Standards of the City's Land Use Code (§§ 14-521-14-540), the Planning Board shall review the site plan for this Property and shall be satisfied that the following requirements have been met:
- a. Any drive-through must be accessory to a principal use located on the same site; and
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11. So long as the Property continues to be used as a bank or any other permitted use under Section 2 above, the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant ~~bank~~, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page ~~locations~~ of the deeds for to the Property, and the memorandum of Lease

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~~between PBK and its bank tenant~~ within ~~thirty (30)~~ten (10) days from its acquisition of the Property~~the date of adoption by Portland city Council~~.

12. PBK shall provide the City with documentation of by any bank tenant of PBK's consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and remain subject to the terms and conditions set forth herein.
13. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
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WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____

Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free

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act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

Incorrect one
as _____ as are Tom, David
Danielle, Marge + Jeff
am 12-7-11
Version 12.6.2011 for hearing
NO X

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

AGREEMENT made this ____ day of _____, made this ____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company ("PBK") with a place of business in _____, and its successors and assigns.

WITNESSETH

WHEREAS, PBK has the right and intends to purchase property located at 84 Auburn Street, Portland, Maine (the "Property") more particularly described and shown on the Portland Assessors Map at Chart 375, Block A, Lot 026 and in a deed in the Cumberland County Registry of Deeds at Book _____, Page _____, pursuant to a purchase and sale agreement, and lease the Property and any improvement thereon to a bank under the terms of a long-term Ground Lease or Lease between PBK and the bank; and

WHEREAS, PBK has filed a Zone Change Application with the City of Portland (hereinafter "CITY") to rezone the Property to a conditional B-1 zone subject to certain modifications and conditions set forth in this Agreement in order to accommodate a bank with incidental sales of financial and insurance products and service, a drive-through window and ATM machine; and

WHEREAS, the Property is currently in the _____ zoning district; and

WHEREAS, the Property has been a blighted site for many years; and

WHEREAS, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property; and

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

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

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INSERT MAP HERE

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4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the “Site Plan”). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, an additional drive through lane may be allowed, subject to review and approval by the Planning Authority, as long as the southerly greenspace and landscaping is not substantially reduced and there is not a substantial impact on the southerly egress curb cut.
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properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the City, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and

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12. PBK shall provide the City with documentation of by any bank tenant of PBK's consent to the terms and conditions of this Agreement and acknowledgement that

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the Property will be and remain subject to the terms and conditions set forth herein.

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

14. Except as expressly modified herein, the development, use, and occupancy of the Property shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

15. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that PBK, any bank tenant or any successor of either party, 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 and/or the Court shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____
Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

Jean Fraser - RE: 84 Auburn Street - draft Conditional Rezone Agreement

From: Jean Fraser
To: Swenson, Drew
Date: 12/7/2011 9:34 AM
Subject: RE: 84 Auburn Street - draft Conditional Rezone Agreement

Drew

I requested revisions on Friday and it is the revised plan that we need as it goes with the revised agreement; the requested revisions were to show the front yard setbacks to both front walls of the building; change the note re removing the trees along the south boundary; revise the pad in the esplanade so smaller and not for the bus shelter; add note re the bus shelter easement (this can be an arrow to behind the sidewalk near; I suggest wording of the note be "12X6 ft easement for bus shelter (provided and installed by others) with precise location to be agreed with City and Metro"; extend landscape area at rear to south of angled parking;

These are described in more detail in the e-mail i sent on Friday 12.2.2011 which I have copied below- see last para:

Re content of agreement:

I think the content is basically unchanged except as noted in 4 & 5 below:

1. The provision allowing a second teller seems OK but you will see that our attorney has relocated that provision;
2. We are OK with Sunday opening; not sure if neighbors will have an issue but I suggest it be left in for now;
3. Re 6a, that is what the attorney has added and may need further fine-tuning; we would like the conceptual plan to show the front yard setback dimensions for both planes of the front of the building shown;
4. Para 8 re trees- we didn't want the reference to the rear line of trees to imply that is was OK to remove the rest of the trees on site without replacement as required under the site plan provisions (which requires replacement of large existing trees, but they can be replaced elsewhere on the site). The City Arborist has commented that both the north and south lines of trees should be preserved if at all possible but the Planning Board were OK with losing the trees along the north. Although the owners of the property to the south appear to want the trees removed, there are still several site plan standards that would apply and further discussion will be needed at the site plan stage as to whether fencing, existing/new trees or a mix of these would work best along this side boundary. At this stage we would like the note on the conceptual site plan that refers to the southern line of trees to state " *Preserve existing vegetation to the extent possible*" (rather than demolish etc) and the plan to show the willow to be removed (if its location is known).
5. Para 9- the attorney has termed the bus shelter easement a "community contribution" but in fact this requirement has been made as part of site plans elsewhere and is not really "extra" (actual provision

of/installation of the shelter would be more of a community contribution, but that is not currently part of this). I am waiting for comments on the suggested size & location of the easement (it may not all be on your property - the total pad size would be about 12X6 ft); the location should be added to the final revised conceptual plan. In any case I understand that any shelter would not be on the pad near the curb (as suggested on the current version of the conceptual plan) so that pad probably can be smaller- its just for people getting on and off the bus and is a usual site plan requirement.

Re: Conceptual site plan

- a. The layout is basically OK in terms of the traffic layout, except that the drive lane along the rear (between building and parking) looks like it can be narrowed to leave more room for the retained trees. Reviewers noted that the pavement to the south of the southernmost parking space along the rear boundary didn't seem necessary and it appears to be possible to extend the landscaped buffer area towards the parking (or at least have an island next to the last space, maybe with a tree).
- b. Revise to reflect comments above where underlined ie revised note re southern line of trees, show willow if poss (as removed); add setback dimensions; add bus shelter easement and revise note re bus stop "pad".

thank you
Jean

>>> "Drew Swenson" <dswenson@swensonandco.com> 12/6/2011 3:02 PM >>>

Jean you have the most current conceptual plan that Denise or Barry sent last week to you.

Drew E. Swenson, CPA, LLM
Swenson & Co.
P.O. Box 17536
Portland ME 04112
Tel: 207-775-2464
Cell: 207-415-3829
dswenson@swensonandco.com

From: Jean Fraser [mailto:JF@portlandmaine.gov]
Sent: Tuesday, December 06, 2011 2:25 PM
To: Drew Swenson
Subject: RE: 84 Auburn Street - draft Conditional Rezone Agreement

Thank you- please copy to Barbara too.

Could you also please send asap the revised Conceptual Plan- as the Board requests that they have review comment on what is before the Board, so my intent was to have the final review tomorrow morning so I can have

final comments in time for the Report that goes out Friday noonish.

>>> "Drew Swenson" <dswenson@swensonandco.com> 12/6/2011 1:28 PM >>>

Thanks Jean. I know that Nathan Smith is working on it. I will copy him on this email.

Drew E. Swenson, CPA, LLM
Swenson & Co.
P.O. Box 17536
Portland ME 04112
Tel: 207-775-2464
Cell: 207-415-3829
dswenson@swensonandco.com

From: Jean Fraser [<mailto:JF@portlandmaine.gov>]
Sent: Tuesday, December 06, 2011 1:34 PM
To: Drew Swenson
Subject: 84 Auburn Street - draft Conditional Rezone Agreement

Drew,

This will be the subject of the final staff review tomorrow morning (Wed) and (as mentioned in my e-mail on Friday) we must notice the updated version urgently.

Please send your version of the Agreement asap, and please copy to Barbara as I am out of the office as from 2:30pm today.

Thank you
Jean

*Jean Fraser, Planner
City of Portland
874 8728*

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

AGREEMENT made this _____ day of _____, This conditional rezoning contract is made this _____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company ("PBK") with a place of business in _____, and its successors and assigns.

WITNESSETH

WHEREAS, PBK holds a has the right and intends to purchase property located at 84 Auburn Street, Portland, Maine (the "Property") more particularly described and shown on the Portland Assessors Map at Chart 375, Block A, Lot 026 and in a deed in the Cumberland County Registry of Deeds at Book _____, Page _____, pursuant to a purchase and sale agreement and intends to purchase the fee simple interest in the property at 84 Auburn Street, Portland, Maine, and lease the such P property and any improvement thereon to a bBank under the terms of a long-term Ground Lease or Lease between PBK and the bBank; and

WHEREAS, PBK has filed a Zone Change Application with the City of Portland (hereinafter "CITY") to rezone the Property to a conditional B-1 zone subject to certain modifications and conditions set forth in this Agreement in order to accommodate a bank with incidental sales of financial and insurance products and service, a drive-through window and ATM machine; and

WHEREAS, PBK agrees that it is in its best interest to file a Conditional Rezoning Application with the City of Portland ("City") and enters into this Agreement as fee owner of the subject property, for the express purpose of consenting to the terms and conditions of this Conditional Rezoning Agreement; and

WHEREAS, PBK has requested a conditional rezoning of the property at 84 Auburn Street, in the City in order to permit the use of a bank branch with drive-through windows and an ATM machine, and with incidental sales of financial and insurance products and services; and

WHEREAS, the Property is currently in the _____ zoning district; and the 84 Auburn Street property is more specifically described and shown on the Portland Assessors Map; Parcels: Chart 375, Block A, Lot 026 (the "Property"); and

WHEREAS, the 84 Auburn Street P property has been a blighted site for many years and it is in the interest of the City, PBK and the property's neighbors to enter into an agreement that allows the redevelopment thereof; and

WHEREAS, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property; and

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

WHEREAS, the CITY, by and through its City Council, has determined that the rezoning is appropriate due to the unusual nature and unique location of the development proposed, that the uses proposed are consistent with the existing and permitted uses within the zone and that the rezoning would be pursuant to and consistent with the City's Comprehensive Plan; and

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

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

~~WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberations, recommended the conditional rezoning of the Property to allow redevelopment thereof, subject, however, to certain conditions; and~~

~~WHEREAS, the City, by and through its City Council, has determined that the conditional rezoning, with conditions and restrictions, would be pursuant to and consistent with the City's comprehensive plan and would not unreasonably interfere with the existing and permitted uses within the underlying B-1 zones; and~~

~~WHEREAS, PBK has agreed that it should enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind PBK and any bank and financial services tenants thereon; and~~

~~NOW, THEREFORE, in consideration of the rezoning of the Property, PBK contracts to be bound by the following terms and conditions:~~

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

INSERT MAP HERE

2. Permitted uses: Those uses allowed in the B-1 zone. In addition, t~~The Property shall be permitted to be used as of the Property shall consist of~~ a bank branch with incidental sales of financial and insurance products and services and shall be allowed to ~~which will~~ include one (1) drive-through teller lane (hereinafter "Teller") and one (1) drive-up automated teller machine (hereinafter "ATM"). The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply. ~~Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, and should~~

~~that then allow another drive through teller lane with no substantial reduction to the southerly greenspace and landscaping or cause any southerly movement of the southerly egress curb cut, this agreement shall be amended to allow for such additional drive through lane subject to review and approval by the Planning Authority.~~

~~2.3. That~~ the hours of operation of the ~~b~~Bank and the drive-through ~~t~~eller shall ~~will~~ be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein, however, shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the ~~b~~Bank is not open to the general public.

4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the "Site Plan"). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, an additional drive through lane may be allowed, subject to review and approval by the Planning Authority, as long as the southerly greenspace and landscaping is not substantially reduced and there is not a substantial impact on the southerly egress curb cut.

5. Curb Cuts:

~~5.a. The northerly curb cut on the Property shall be closed and removed prior to the issuance of a certificate of occupancy by the City. Only t~~he southerly curb cut of the two currently on the 84 Auburn Street parcel shall remain be allowed and this shall only be used for egress purposes only.

~~b. Access to the Property shall also be provided through the shared ingress and egress with the property located at 94 Auburn Street as more particularly described in the agreement attached hereto in Attachment 2. The northerly curb cut will be closed. The subject property shall also have shared ingress and egress use through a joint access agreement with the property at 94 Auburn Street to allow ingress and egress to the site.~~

~~c. The improvements to of said the~~ southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform with the plans to that shown on attached hereto in Attachment 1, incorporated herein by reference. The northerly curb cut at 84 Auburn Street shall be removed by PBK or its tenant prior to the issuance of a Certificate of Occupancy.

~~d. Provided the Property complies with the foregoing requirements outlined in subparagraphs a-c, the Technical Standard~~ regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) shall is not apply and/or is waived

to allow the southerly curb cut (for egress only) to be 59 feet from the adjacent driveway to the south (centerline to centerline) Technical Standards shall not apply.

6. Modifications to the B-1 Regulations. The Property shall be governed by the regulations applicable to the B-1 zoning district and other provisions of the City Codes except as follows:

- a. The front yard setback need not comply with the maximum front yard setback shall not apply, but any building placed on the Property requirements contained within the B-1 zone, but shall be no further back from Auburn Street than as shown on Attachment 1. If a proposed building is placed further back than as shown on Attachment 1 Otherwise, the maximum front yard setback provisions of the provisions of §14-161 through 14-167 (the B-1 Zone.) of the Portland City Code shall apply to the Property's development.

7. In addition to the Site Plan Standards of the City's Land Use Code (§§ 14-521-14-540), the Planning Board shall review the site plan for this Property project and shall be satisfied that the following requirements have been met:

- a. AnyThe drive-throughs must be accessory to a principal use located on the same site; and
- b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
- c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.
- d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential

properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the City, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and

- e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.

~~7.8.~~ The existing trees along the westerly (rear) boundary of the property shall remain undisturbed and shall be maintained at least at their present height by PBK and future property owners. If any of these trees need to be removed due to disease or damage, a tree of similar species and of ~~6-8-12~~ foot height shall be planted in the same location as a replacement to maintain the screening function of this group of trees. The existing trees along the northern boundary may be removed. Those along the southern boundary should be preserved to the extent possible, with the exception of a large willow in poor condition that may be removed subject to final confirmation with the City Arborist on site. Removal of trees along the northern and southern boundaries shall be subject to Site Plan Standards for Landscape Preservation, including standards for the replacement of large trees that need to be removed.

16

~~4.9.~~ Community Contribution: An easement measuring x by x shall be provided for a bus shelter within the site adjacent to the sidewalk near the existing bus stop (or near a relocated bus stop if that is preferred by METRO). The location shall be substantially as shown on Attachment 1. This condition does not require PBK to provide or install a bus shelter, but allows for one to be installed in the future. This requirement is in addition to a smaller pad near the curb/bus stop sign that is for passengers getting off and on the bus.

10. In the event the development described herein is not commenced within two (2) years from the date of this conditional rezoning, or should the Property cease to be used as a bank ~~branch~~, this conditional rezoning contract shall become null and void and the Property shall revert back to the underlying B-1 zone. If any required approval, including the approval of the conditional rezoning, has been appealed, the aforementioned deadline shall commence from the date of the final disposition of such appeal.

11. So long as the Property continues to be used as a bank ~~branch~~ the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant bank, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the Property, and the memorandum of Lease between PBK and its bank tenant within thirty (30) days from the date of adoption by Portland city Council.

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

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

14. Except as expressly modified herein, the development, use, and occupancy of the Property shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

15. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that PBK, any bank tenant or any successor of either party, 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 and/or the Court shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____

Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

from Danielle 12-1-11

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

AGREEMENT made this _____ day of _____, This conditional rezoning contract is made this _____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company ("PBK") with a place of business in _____, and its successors and assigns.

WITNESSETH

~~WHEREAS, PBK holds a~~ has the right and intends to purchase property located at 84 Auburn Street, Portland, Maine (the "Property") more particularly described and shown on the Portland Assessors Map at Chart 375, Block A, Lot 026 and in a deed in the Cumberland County Registry of Deeds at Book _____, Page _____, pursuant to a purchase and sale agreement and intends to purchase the fee simple interest in the property at 84 Auburn Street, Portland, Maine, and lease the ~~such~~ Property and any improvement thereon to a bBank under the terms of a long-term Ground Lease or Lease between PBK and the bBank; and

WHEREAS, PBK has filed a Zone Change Application with the City of Portland (hereinafter "CITY") to rezone the Property to a conditional B-1 zone subject to certain modifications and conditions set forth in this Agreement in order to accommodate a bank with incidental sales of financial and insurance products and service, a drive-through window and ATM machine; and

~~WHEREAS, PBK agrees that it is in its best interest to file a Conditional Rezoning Application with the City of Portland ("City") and enters into this Agreement as fee owner of the subject property, for the express purpose of consenting to the terms and conditions of this Conditional Rezoning Agreement; and~~

~~WHEREAS, PBK has requested a conditional rezoning of the property at 84 Auburn Street, in the City in order to permit the use of a bank branch with drive-through windows and an ATM machine, and with incidental sales of financial and insurance products and services; and~~

~~WHEREAS, the Property is currently in the _____ zoning district; and the 84 Auburn Street property is more specifically described and shown on the Portland Assessors Map, Parcels: Chart 375, Block A, Lot 026 (the "Property"); and~~

~~WHEREAS, the 84 Auburn Street P~~ property has been a blighted site for many years and it is in the interest of the City, PBK and the property's neighbors to enter into an agreement that allows the redevelopment thereof; and

WHEREAS, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property; and

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

WHEREAS, the CITY, by and through its City Council, has determined that the rezoning is appropriate due to the unusual nature and unique location of the development proposed, that the uses proposed are consistent with the existing and permitted uses within the zone and that the rezoning would be pursuant to and consistent with the City's Comprehensive Plan; and

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

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

~~WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberations, recommended the conditional rezoning of the Property to allow redevelopment thereof, subject, however, to certain conditions; and~~

~~WHEREAS, the City, by and through its City Council, has determined that the conditional rezoning, with conditions and restrictions, would be pursuant to and consistent with the City's comprehensive plan and would not unreasonably interfere with the existing and permitted uses within the underlying B-1 zones; and~~

~~WHEREAS, PBK has agreed that it should enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind PBK and any bank and financial services tenants thereon; and~~

~~NOW, THEREFORE, in consideration of the rezoning of the Property, PBK contracts to be bound by the following terms and conditions:~~

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

INSERT MAP HERE

2. Permitted uses: Those uses allowed in the B-1 zone. In addition, t~~he Property shall be permitted to be used as of the Property shall consist of~~ a bank branch with incidental sales of financial and insurance products and services and shall be allowed to ~~which will~~ include one (1) drive-through teller lane (hereinafter "Teller") and one (1) drive-up automated teller machine (hereinafter "ATM"). The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply. ~~Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, and should that then allow another drive through teller lane with no substantial reduction to~~

~~the southerly greenspace and landscaping or cause any southerly movement of the southerly egress curb cut, this agreement shall be amended to allow for such additional drive through lane subject to review and approval by the Planning Authority.~~

~~2.3. That~~ the hours of operation of the ~~b~~Bank and the drive-through ~~t~~Feller ~~shall will~~ be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein, however, shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the ~~b~~Bank is not open to the general public.

4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the "Site Plan"). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, an additional drive through lane may be allowed, subject to review and approval by the Planning Authority, as long as the southerly greenspace and landscaping is not substantially reduced and there is not a substantial impact on the southerly egress curb cut.

5. Curb Cuts:

~~5-a. The northerly curb cut on the Property shall be closed and removed prior to the issuance of a certificate of occupancy by the City. Only~~ ~~the southerly curb cut of the two currently on the 84 Auburn Street parcel~~ shall remain be allowed and ~~this shall~~ only be used for egress purposes only.

b. Access to the Property shall also be provided through the shared ingress and egress with the property located at 94 Auburn Street as more particularly described in the agreement attached hereto in Attachment 2. The northerly curb cut will be closed. The subject property shall also have shared ingress and egress use through a joint access agreement with the property at 94 Auburn Street to allow ingress and egress to the site.

c. The improvements to of said the southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform with the plans to that shown on attached hereto in Attachment 1, incorporated herein by reference. The northerly curb cut at 84 Auburn Street shall be removed by PBK or its tenant prior to the issuance of a Certificate of Occupancy.

d. Provided the Property complies with the foregoing requirements outlined in subparagraphs a-c, the Technical Standard regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) shall is not apply and/or is waived to allow the southerly curb cut (for egress only) to be XX feet from the adjacent

driveway to the south (centerline to centerline) ~~Technical Standards shall not apply.~~
[final wording to be finalized with Tom Errico]

6. Modifications to the B-1 Regulations. The Property shall be governed by the regulations applicable to the B-1 zoning district and other provisions of the City Codes except as follows:
- a. The ~~front yard setback need not comply with the~~ maximum front yard setback ~~shall not apply, but any building placed on the Property requirements contained within the B-1 zone, but~~ shall be no further back from Auburn Street than as shown on Attachment 1. If a proposed building is placed further back than as shown on Attachment 1 ~~Otherwise,~~ the maximum front yard setback provisions of the provisions of §14-161 through 14-167 (the B-1 Zone) of the Portland City Code shall apply to the Property's development.
7. In addition to the Site Plan Standards of the City's Land Use Code (§§ 14-521-14-540), the Planning Board shall review the site plan for this Property project and shall be satisfied that the following requirements have been met:
- a. ~~Any~~The drive-throughs must be accessory to a principal use located on the same site; and
 - b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
 - c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.
 - d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts. Such mitigation

may include, as deemed appropriate by the City, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and

- e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.

7.8. The existing trees along the westerly (rear) boundary of the property shall remain undisturbed and shall be maintained at least at their present height by PBK and future property owners. If any of these trees need to be removed due to disease or damage, a tree of similar species and of ~~6-~~ 8-12 foot height shall be planted in the same location as a replacement to maintain the screening function of this group of trees. [may add a sentence re preservation of some trees along southerly side boundary- Jeff visiting site 11.30.2011]

8.9. [added at Dev Rev 11.30.2011] Community Contribution: That in addition to the provision of a A pad near the curb for embarking bus passengers (as shown in Attachment 1), an easement measuring x by x shall be provided for a bus shelter within the site adjacent to the sidewalk near the existing bus stop (or near a relocated bus stop if that is preferred by METRO). The exact location of the bus shelter easement is to be agreed and approved by the City at the site plan stage to allow for discussions with METRO. This condition does not require PRBK to provide or install a bus shelter, but allows for one to be installed in the future.

10. In the event the development described herein is not commenced within two (2) years from the date of this conditional rezoning, or should the Property cease to be used as a bank ~~branch~~, this conditional rezoning contract shall become null and void and the Property shall revert back to the underlying B-1 zone. If any required approval, including the approval of the conditional rezoning, has been appealed, the aforementioned deadline shall commence from the date of the final disposition of such appeal.

11. So long as the Property continues to be used as a bank ~~branch~~ the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant bank, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the Property, and the memorandum of Lease between PBK and its bank tenant within thirty (30) days from the date of adoption by Portland city Council.

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

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

14. Except as expressly modified herein, the development, use, and occupancy of the Property shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

15. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that PBK, any bank tenant or any successor of either party, 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 and/or the Court shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____
Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

*based on Rev Rec
11-30-11 -
awaiting updates
from reviewers incl
Danielle*

This conditional rezoning contract is made this _____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company ("PBK").

WHEREAS, PBK holds a purchase and sale agreement and intends to purchase the fee simple interest in the property at 84 Auburn Street, Portland, Maine, and lease such property and any improvement thereon to a Bank under the terms of a long-term Ground Lease or Lease between PBK and Bank; and

WHEREAS, PBK agrees that it is in its best interest to file a Conditional Rezoning Application with the City of Portland ("City") and enters into this Agreement as fee owner of the subject property, for the express purpose of consenting to the terms and conditions of this Conditional Rezoning Agreement; and

WHEREAS, PBK has requested a conditional rezoning of the property at 84 Auburn Street, in the City in order to permit the use of a bank branch with drive-through windows and an ATM machine, and with incidental sales of financial and insurance products and services; and

WHEREAS, the 84 Auburn Street property is more specifically described and shown on the Portland Assessors Map, Parcels: Chart 375, Block A, Lot 026 (the "Property"); and

WHEREAS, the 84 Auburn Street property has been a blighted site for many years and it is in the interest of the City, PBK and the property's neighbors to enter into an agreement that allows the redevelopment thereof; and

WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberations, recommended the conditional rezoning of the Property to allow redevelopment thereof, subject, however, to certain conditions; and

WHEREAS, the City, by and through its City Council, has determined that the conditional rezoning, with conditions and restrictions, would be pursuant to and consistent with the City's comprehensive plan and would not unreasonably interfere with the existing and permitted uses within the underlying B-1 zones; and

WHEREAS, PBK has agreed that it should enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind PBK and any bank and financial services tenants thereon; and

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

1. The City shall amend the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Development

and incorporated by reference into Zoning Ordinance by §14-49 of the Portland City Code, by adopting the following map change.

INSERT MAP HERE

2. The use of the Property shall consist of a bank branch with incidental sales of financial and insurance products and services and which will include one (1) drive-through teller lane (hereinafter "Teller") and one (1) drive-up automated teller machine (hereinafter "ATM"). The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, and should that then allow another drive through teller lane with no substantial reduction to the southerly greenspace and landscaping or cause any southerly movement of the southerly egress curb cut, this agreement shall ~~be amended to~~ allow for such additional drive through lane subject to review and approval by the Planning Authority.
3. That the hours of operation of the Bank and the drive-through Teller will be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the Bank is not open to the general public.
4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the "Site Plan"). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process.
5. Only the southerly curb cut of the two currently on the 84 Auburn Street parcel shall be allowed and this shall be for egress only. The northerly curb cut will be closed. The subject property shall also have shared ingress and egress use through a joint access agreement with the property at 94 Auburn Street to allow ingress and egress to the site. The improvement of said southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform to that shown on Attachment 1, incorporated herein by reference. The northerly curb-cut at 84 Auburn Street shall be removed by PBK or its tenant prior to the issuance of a Certificate of Occupancy. Provided the Property complies with the foregoing requirements, the Technical Standard regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) is waived to allow the southerly curb cut (for egress only) to be XX feet from the adjacent driveway to the south (centerline to centerline) ~~Technical Standards shall not apply.~~ [final wording to be finalized with Tom Errico]
6. The front yard setback need not comply with the maximum front yard setback requirements contained within the B-1 zone, but shall be no further back from Auburn Street than as shown on Attachment 1. Otherwise, the provisions of §14-

161 through 14-167 (the B-1 Zone) of the Portland City Code shall apply to this development. In addition to the Site Plan Standards of the Land Use Code, the Planning Board shall review the site plan for this project and shall be satisfied that the following requirements have been met:

- a. The drive-throughs must be accessory to a principal use located on the same site; and
 - b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
 - c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.
 - d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the City, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and
 - e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
7. The existing trees along the westerly (rear) boundary of the property shall remain undisturbed and shall be maintained at least at their present height by PBK and future property owners. If any of these trees need to be removed due to disease or damage, a tree of similar species and of ~~6~~ 8-12 foot height shall be planted in the same location as a replacement to maintain the screening function of this group of trees. [may add a sentence re preservation of some trees along southerly side boundary- Jeff visiting site 11.30.2011]
8. [added at Dev Rev 11.30.2011] That in addition to the provision of a pad near the curb for embarking bus passengers (as shown in Attachment 1), an easement measuring x by x shall be provided for a bus shelter within the site adjacent to the sidewalk near the existing bus stop (or near a relocated bus stop if that is preferred

by METRO. The exact location of the bus shelter easement is to be agreed at the site plan stage to allow for discussions with METRO. This condition does not require RBK to provide or install a bus shelter, but allows for one to be installed in the future.

9. In the event the development described herein is not commenced within two (2) years from the date of this conditional rezoning, or should the Property cease to be used as a bank branch, this contract shall become null and void and the Property shall revert back to the underlying B-1 zone.

So long as the property continues to be used as a bank branch the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant bank, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the Property, and the memorandum of Lease between PBK and its bank tenant within 30 days from the date of adoption by Portland city Council.

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.

Any bank tenant of PBK shall consent to this Agreement to acknowledge its consent to the zone change and the terms and conditions of this agreement and to acknowledge that the property will be and remain subject to the terms and conditions set forth herein.

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

In the event that PBK, any bank tenant 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. The resolution may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____

Drew E. Swenson

Development Review, Wednesday, November 30, 2011

December 13, 2011		
<i>Public Hearing</i> 4:30 p.m.	Reconsideration of Drake Appeal	BB
	Conditional Rezoning Agreement – Auburn Street (tentative)	JF
	Election of Planning Board Officers	
January 10, 2012		
<i>Workshop –</i> 3:30 p.m.	The Forefront at Thompson's Point	WN
	(possible workshop on 1884 Forest Avenue)	SW
	Map Amendment – West Commercial Street (tentative)	WN
	possible workshop on 1884 Forest Avenue)	SW
<i>Public Hearing</i> 7:00 p.m.	Appeal of 512 Island Avenue	BB
	Portland Technology Park, City of Portland	JF

PROJECTS FOR ADMINISTRATIVE AND BOARD REVIEW

A. Preliminary Plans

- ✓ 1. 1884 Forest Ave....sw
- 2.
- 3.

B. Final Plans

- ✓ 1. UNE....sw
2. 84 auburn St- cond rezone....jf
- 3.
- 4.

— annotated
site plan + draft agreement
submitted 11-29-11

C. Issues, Administrative Authorizations, Curb Cuts

- ✓ 1. 1120 Westbrook Street....sw
- 2.
- 3.
- 4.

D. Distribution of Plans

- 1.
- 2.
- 3.

11:00 Thompson Pt. regular mtg.

annotated at
Dev Rev 11-30-11
incl. AS.

as rec'd 11-29-11 from
Drew Swenson

Preliminary City questions/comments/suggested wording as of 11.28.201

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

This conditional rezoning contract is made this _____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company ("PBK").

will be holding out neigh into -
highway
North Deering
N.A.

WHEREAS, PBK holds a purchase and sale agreement and intends to purchase the fee simple interest in the property at 84 Auburn Street, Portland, Maine, and lease such property and any improvement thereon to a Bank under the terms of a long-term Ground Lease or Lease between PBK and Bank; and

WHEREAS, PBK agrees that it is in its best interest to file a Conditional Rezoning Application with the City of Portland ("City") and enters into this Agreement as fee owner of the subject property, for the express purpose of consenting to the terms and conditions of this Conditional Rezoning Agreement; and

WHEREAS, PBK has requested a conditional rezoning of the property at 84 Auburn Street, in the City in order to permit the use of a bank branch with drive-through windows and an ATM machine, and with incidental sales of financial and insurance products and services; and

WHEREAS, the 84 Auburn Street property is more specifically described and shown on the Portland Assessors Map, Parcels: Chart 375, Block A, Lot 026 (the "Property"); and

WHEREAS, the 84 Auburn Street property has been a blighted site for many years and it is in the interest of the City, PBK and the property's neighbors to enter into an agreement that allows the redevelopment thereof; and

WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberations, recommended the conditional rezoning of the Property to allow redevelopment thereof, subject, however, to certain conditions; and

WHEREAS, the City, by and through its City Council, has determined that the conditional rezoning, with conditions and restrictions, would be pursuant to and consistent with the City's comprehensive plan and would not unreasonably interfere with the existing and permitted uses within the underlying B-1 zones; and

WHEREAS, PBK has agreed that it should enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind PBK and any bank and financial services tenants thereon; and

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

(*) add condition re bus shelter at time of out of site P
shilwentspad
→ want easement

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

INSERT MAP HERE

2. The use of the Property shall consist of a bank branch with incidental sales of financial and insurance products and services and which will include one (1) drive-through teller lane (hereinafter "Teller") and one (1) drive-up automated teller machine (hereinafter "ATM"). The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, and should that then allow another drive through teller lane with no substantial reduction to the southerly greenspace and landscaping or cause any southerly movement of the southerly egress curb cut, this agreement shall be amended to allow for such additional drive through lane

This agreement shall allow for such additional drive thru lanes subject to review.
back to P.B. have auth site plan.



2.3. That the hours of operation of the Bank and the drive-through Teller will be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday, with no Sunday hours of operation. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the Bank is not open to the general public.

MS touch

3.4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the "Site Plan"). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process.

4.5. Only the southerly curb cut of the two currently on the 84 Auburn Street parcel shall be allowed and this shall be for egress only. The northerly curb cut will be closed. The subject property shall also have shared ingress and egress use through a joint access agreement with the property at 94 Auburn Street to allow ingress and egress to the site. The improvement of said southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform to that shown on Attachment 1, incorporated herein by reference. The northerly curb-cut at 84 Auburn Street shall be removed by PBK or its tenant prior to the issuance of a Certificate of Occupancy. Provided the Property complies with the foregoing requirements, the Technical Standards regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) shall not apply.

more specific to refer to min spacing



refer to S. egress curb cut min -

5.6. The front yard setback need not comply with the maximum front yard setback requirements contained within the B-1 zone, but shall be no further back from



add
dimensions
Att. 1
to

Auburn Street than as shown on Attachment 1. Otherwise, the provisions of §14-161 through 14-167 (the B-1 Zone) of the Portland City Code shall apply to this development. In addition to the Site Plan Standards of the Land Use Code, the Planning Board shall review the site plan for this project and shall be satisfied that the following requirements have been met:

- a. The drive-throughs must be accessory to a principal use located on the same site; and
- b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
- c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.
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- e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.

4.7.—7.—The existing trees along the westerly (rear) boundary of the property shall remain undisturbed and shall be maintained at least at their present height by PBK and future property owners. If any of these trees need to be removed due to disease or damage, a tree of similar species and of 186 footXXX height shall be planted in the same location as a replacement to maintain the screening function of this group of trees.



8-12 ft.

6-8. In the event the development described herein is not commenced within two (2) years from the date of this conditional rezoning, or should the Property cease to be used as a bank branch, this contract shall become null and void and the

Property shall revert back to the underlying B-1 zone.

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WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____

Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

Jean Fraser - 84 Auburn Street Draft Conditional Rezoning Agreement

From: "Drew Swenson" <dswenson@swensonandco.com>
To: <JF@portlandmaine.gov>
Date: 11/29/2011 3:49 PM
Subject: 84 Auburn Street Draft Conditional Rezoning Agreement
CC: "Barry Sheff" <bsheff@woodardcurran.com>, "Thomas Gorrill" <TGorrill@gor...>
Attachments: 84 Auburn St - Draft Cond Rezoning Agreement 11-29-11 redline.doc

Good afternoon Jean:

I am attaching the revised draft of the conditional rezoning agreement with changes consistent with earlier conversations and staff comments.

We have revised paragraph 2 to contain a provision that would allow a restoration of the 2d teller lane if the bank has a much smaller branch. For example, if the branch is only 2,100 square feet rather than 3,800 square feet, the reduction in size would allow for the restoration of a 2d teller lane if desired by the bank without adversely impacting the green space or southerly turning egress lane. Moreover, because trip generation is a function of both teller lanes and square feet, the smaller bank with an added teller lane would still result in fewer trips than originally proposed. If you think this provision will be an issue, we will withdraw that change, but it seems appropriate if we can create a win-win for the bank, us and the city.

In paragraph 3, light of your comment about Sunday bank operations, if the City Staff, Planning Board and City Council would not have an issue with it, we would like to include the potential for Sunday use in the agreement. If you think it will be an issue, we will withdraw that change.

We changed paragraph 5 consistent with your conversation with Denise to make the last sentence less broad.

In paragraph 7, we inserted 16 feet as the replacement tree size.

I trust the changes we made are consistent with the several emails and conversations. We would be happy to discuss and revise this document as needed with you prior to the December 13 meeting.

Thank you for your thoughts and help in this process.

Drew E. Swenson, CPA, LLM
Swenson & Co.
P.O. Box 17536
Portland ME 04112
Tel: 207-775-2464
Cell: 207-415-3829
dswenson@swensonandco.com

Preliminary City questions/comments/suggested wording as of 11.28.201

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

This conditional rezoning contract is made this _____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company (“PBK”).

WHEREAS, PBK holds a purchase and sale agreement and intends to purchase the fee simple interest in the property at 84 Auburn Street, Portland, Maine, and lease such property and any improvement thereon to a Bank under the terms of a long-term Ground Lease or Lease between PBK and Bank; and

WHEREAS, PBK agrees that it is in its best interest to file a Conditional Rezoning Application with the City of Portland (“City”) and enters into this Agreement as fee owner of the subject property, for the express purpose of consenting to the terms and conditions of this Conditional Rezoning Agreement; and

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WHEREAS, the 84 Auburn Street property is more specifically described and shown on the Portland Assessors Map, Parcels: Chart 375, Block A, Lot 026 (the “Property”); and

WHEREAS, the 84 Auburn Street property has been a blighted site for many years and it is in the interest of the City, PBK and the property’s neighbors to enter into an agreement that allows the redevelopment thereof; and

WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberations, recommended the conditional rezoning of the Property to allow redevelopment thereof, subject, however, to certain conditions; and

WHEREAS, the City, by and through its City Council, has determined that the conditional rezoning, with conditions and restrictions, would be pursuant to and consistent with the City’s comprehensive plan and would not unreasonably interfere with the existing and permitted uses within the underlying B-1 zones; and

WHEREAS, PBK has agreed that it should enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind PBK and any bank and financial services tenants thereon; and

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

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

INSERT MAP HERE

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WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____

Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

Jean Fraser - Fwd: Second reply RE: 84 Auburn Street - Draft Conditional Rezoning Agreement

From: Jean Fraser
To: Barhydt, Barbara
Date: 11/28/2011 5:06 PM
Subject: Fwd: Second reply RE: 84 Auburn Street - Draft Conditional Rezoning Agreement
CC: West-Chuhta, Danielle
Attachments: city comments 11.28.11 on 84 Auburn St. - Draft Cond. Rezoning Agreement 11-28-11 -.doc

for info

>>> Jean Fraser 11/28/2011 5:05 PM >>>
Drew,

Re the draft agreement, I have attached an annotated version with preliminary comments ie several questions embedded and a couple of suggested wording changes- plus, we would like (as indicated in the PB Memo) a separate provision relating to the preservation of the existing trees.

Re Provision 5, we are waiting for comments from our Traffic Engineer and I will forward those asap.

These comments are preliminary as we may have additional comments (as a couple of reviewers are not in today) - but I wanted to get you these so that you may be able to send a revised version to us by about 4pm tomorrow so it can be posted for public viewing (it can continue to be revised over the next few days).

Re your last question regarding the agreement with the owners of 94 Auburn about the joint access, Alex Jaegerman and Barbara Barhydt advise:

- That the Planning Board will need to see this agreement and the city council need to see the final (signed) agreement- so it won't be possible to keep it confidential; and
- That in any of the versions you can redact the financial information; and
- Please clarify its status on any version sent to us.

I am in a meeting tomorrow morning until about 11:00 but after that am available if you would like to discuss any of the questions/comments.

Jean

*Jean Fraser, Planner
City of Portland
874 8728*

>>> "Drew Swenson" <dswenson@swensonandco.com> 11/28/2011 2:03 PM >>>
Thank you Jean.

Drew E. Swenson, CPA, LLM
Swenson & Co.
P.O. Box 17536
Portland ME 04112
Tel: 207-775-2464
Cell: 207-415-3829
dswenson@swensonandco.com

From: Jean Fraser [mailto:JF@portlandmaine.gov]
Sent: Monday, November 28, 2011 1:55 PM
To: Drew Swenson
Subject: Re: 84 Auburn Street - Draft Conditional Rezoning Agreement

Drew,
Thank you; I am forwarding the draft agreement to my colleagues and will get back to you.
Re the last question, I am not sure and again will need to get back to you.

thank you
Jean

>>> "Drew Swenson" <dswenson@swensonandco.com> 11/28/2011 12:17 PM >>>
Good afternoon Jean:

Attached is a draft of the conditional rezoning agreement you requested for 84 Auburn Street. It is patterned substantially after the Bath Savings Inst. contract zoning agreement. Please let me know if you have any questions with regard to the attached.

Barry Sheff will be forwarding an updated site plan per your request which includes the concrete pad for bus stand as well as a change to one teller lane and more landscape buffering on the south and southwest of the property lines as requested by the Board.

I am also working on a working draft of the agreement we have with the 94 Auburn Street property owner. We expect to have that signed this week. I would like to keep that agreement confidential if possible. Do you need to see that as part of this additional material?

Drew E. Swenson, CPA, LLM
Swenson & Co.
P.O. Box 17536
Portland ME 04112
Tel: 207-775-2464
Cell: 207-415-3829

Preliminary City questions/comments/suggested wording as of 11.28.201

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

This conditional rezoning contract is made this _____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company (“PBK”).

WHEREAS, PBK holds a purchase and sale agreement and intends to purchase the fee simple interest in the property at 84 Auburn Street, Portland, Maine, and lease such property and any improvement thereon to a Bank under the terms of a long-term Ground Lease or Lease between PBK and Bank; and

WHEREAS, PBK agrees that it is in its best interest to file a Conditional Rezoning Application with the City of Portland (“City”) and enters into this Agreement as fee owner of the subject property, for the express purpose of consenting to the terms and conditions of this Conditional Rezoning Agreement; and

WHEREAS, PBK has requested a conditional rezoning of the property at 84 Auburn Street, in the City in order to permit the use of a bank branch with drive-through windows and an ATM machine, and with incidental sales of financial and insurance products and services; and

WHEREAS, the 84 Auburn Street property is more specifically described and shown on the Portland Assessors Map, Parcels: Chart 375, Block A, Lot 026 (the “Property”); and

WHEREAS, the 84 Auburn Street property has been a blighted site for many years and it is in the interest of the City, PBK and the property’s neighbors to enter into an agreement that allows the redevelopment thereof; and

WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberations, recommended the conditional rezoning of the Property to allow redevelopment thereof, subject, however, to certain conditions; and

WHEREAS, the City, by and through its City Council, has determined that the conditional rezoning, with conditions and restrictions, would be pursuant to and consistent with the City’s comprehensive plan and would not unreasonably interfere with the existing and permitted uses within the underlying B-1 zones; and

WHEREAS, PBK has agreed that it should enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind PBK and any bank and financial services tenants thereon; and

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

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

INSERT MAP HERE

2. The use of the Property shall consist of a bank branch with incidental sales of financial and insurance products and services and which will include one (1) drive-through teller lane (hereinafter “Teller”) and one (1) drive-up automated teller machine (hereinafter “ATM”). The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply. *(in application it refers to 2 (two) drive-through teller lanes plus the ATM; has the proposal changed????)*
3. That the hours of operation of the Bank and the drive-through Teller will be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday, with no Sunday hours of operation. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the Bank is not open to the general public. *(We note that many banks now open on Sundays- so if this is intended in the future, may be best to include it here rather than amend the agreement in future)*
4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the “Site Plan”). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process.
5. *Awaiting Traffic Engineer comments- we have some concerns re this wording, particularly the last sentence* Only the southerly curb cut of the two currently on the 84 Auburn Street parcel shall be allowed and this shall be for egress only. The northerly curb cut will be closed. The subject property shall also have shared ingress and egress use through a joint access agreement with the property at 94 Auburn Street to allow ingress and egress to the site. The improvement of said southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform to that shown on Attachment 1, incorporated herein by reference. The northerly curb-cut at 84 Auburn Street shall be removed by PBK or its tenant prior to the issuance of a Certificate of Occupancy. Provided the Property complies with the foregoing requirements, the Technical Standards otherwise required for driveway standards shall not apply.
6. The front yard setback need not comply with the maximum frontyard setback requirements contained within the B-1 zone but shall be no further back from Auburn Street than as shown ~~substantially comply with the setbacks as shown~~ on

Attachment 1. Otherwise, the provisions of §14-161 through 14-167 (the B-1 Zone) of the Portland City Code shall apply to this development. In addition to the Site Plan Standards of the Land Use Code, the Planning Board shall review the site plan for this project and shall be satisfied that the following requirements have been met:

- a. The drive-throughs must be accessory to a principal use located on the same site; and
- b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
- c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.
- d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the City, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and
- e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.

4.7. — 7. — The existing trees along the westerly (rear) boundary of the property shall remain undisturbed and shall be maintained at least at their present height by PBK and future property owners. If any of these trees need to be removed due to disease or damage, a tree of similar species and of XXX height shall be planted in the same location as a replacement to maintain the screening function of this group of trees.

7.8. In the event the development described herein is not commenced within two (2) years from the date of this conditional rezoning, or should the Property cease to be used as a bank branch, this contract shall become null and void and the

Property shall revert back to the underlying B-1 zone.

So long as the property continues to be used as a bank branch the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant bank, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the Property, and the memorandum of Lease between PBK and its bank tenant within 30 days from the date of adoption by Portland city Council.

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.

Any bank tenant of PBK shall consent to this Agreement to acknowledge its consent to the zone change and the terms and conditions of this agreement and to acknowledge that the property will be and remain subject to the terms and conditions set forth herein.

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

In the event that PBK, any bank tenant 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. The resolution may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____
Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

Barbara Barhydt - Fwd: 84 Auburn Street - Draft Conditional Rezoning Agreement

From: Jean Fraser
To: Barhydt, Barbara
Date: Monday, November 28, 2011 12:36 PM
Subject: Fwd: 84 Auburn Street - Draft Conditional Rezoning Agreement
Attachments: 84 Auburn Street - Draft Conditional Rezoning Agreement 11-28-11.doc

Just received....see his last question please

>>> "Drew Swenson" <dswenson@swensonandco.com> 11/28/2011 12:17 PM >>>
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P.O. Box 17536
Portland ME 04112
Tel: 207-775-2464
Cell: 207-415-3829

- redact financial info
- draft - / mark -
- ~~sto~~ must be final for CC

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7. In the event the development described herein is not commenced within two (2) years from the date of this conditional rezoning, or should the Property cease to be used as a bank branch, this contract shall become null and void and the Property shall revert back to the underlying B-1 zone.

So long as the property continues to be used as a bank branch the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant bank, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the Property, and the memorandum of Lease between PBK and its bank tenant.

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WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____
Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

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3. That the hours of operation of the Bank and the drive-through Teller will be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday, with no Sunday hours of operation. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the Bank is not open to the general public.
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Notary Public

*BB's
comments
on 11-28-11
draft for app.*

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2. The use of the Property shall consist of a bank branch with incidental sales of financial and insurance products and services and which will include one (1) drive-through teller lane (hereinafter "Teller") and one (1) drive-up automated teller machine (hereinafter "ATM"). The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply.
3. That the hours of operation of the Bank and the drive-through Teller will be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday, with no Sunday hours of operation. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the Bank is not open to the general public.
4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the "Site Plan"). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process.

5. Only the southerly curb cut of the two currently on the 84 Auburn Street parcel shall be allowed. The northerly curb cut will be closed. The subject property shall also have shared ingress and egress use through a joint access agreement with the property at 94 Auburn Street to allow ingress and egress to the site. The improvement of said southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform to that shown on Attachment 1, incorporated herein by reference. The northerly curb-cut at 84 Auburn Street shall be removed by PBK or its tenant prior to the issuance of a Certificate of Occupancy. Provided the Property complies with the foregoing requirements, the Technical Standards otherwise required for driveway standards shall not apply.

6. The front yard setback need not comply with the ^{maximum of front yard setback} setback requirements contained within the B-1 zone but shall substantially comply with the setbacks as shown on Attachment 1. Otherwise, the provisions of §14-161 through 14-167 (the B-1 Zone) of the Portland City Code shall apply to this development. In addition to the Site Plan Standards of the Land Use Code, the Planning Board shall review the site plan for this project and shall be satisfied that the following requirements have been met:

- a. The drive-throughs must be accessory to a principal use located on the same site; and

great!

Sunday

- in report
- be clear if
they want
that all
in hours req. in zone agreement

?
Progress
only

I am not
sure I am
comfortable -
I would
rather state
the separation
that must
be met -
what does
I am think?

- no further
back then?
?

- b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
- c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.
- d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the City, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and
- e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.

address issues

*Le mor?
for regular?*

- 7. In the event the development described herein is not commenced within two (2) years from the date of this conditional rezoning, or should the Property cease to be used as a bank branch, this contract shall become null and void and the Property shall revert back to the underlying B-1 zone.

So long as the property continues to be used as a bank branch the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant bank, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the Property, and the memorandum of Lease between PBK and its bank tenant, *within 30 days of from the date of adoption by the*
Portland's City Council

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.

Any bank tenant of PBK shall consent to this Agreement to acknowledge its consent to the zone change and the terms and conditions of this agreement and to acknowledge that the property will be and remain subject to the terms and conditions set forth herein.

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

In the event that PBK, any bank tenant 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. The resolution may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

← expiration date

WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____

Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

*background
Bath Savings nearby*

**40-42 AUBURN STREET
R-3/B-1 CONTRACT ZONE REQUEST
BATH SAVINGS INSTITUTE, APPLICANT**

Submitted to:

Portland Planning Board
Portland, Maine
January 14, 2003

Submitted by:
Kandice Talbot, Planner

I. INTRODUCTION

Bath Savings Institution is requesting a R-3/B-1 contract zone at 40-42 Auburn Street. The purpose of the zone change would allow Bath Savings Institute to redevelop the site with a branch bank with a drive-through window and drive-through ATM. The B-1 zone does not allow drive-through uses.

The applicant is proposing to remove the existing cinderblock structure on the site. Current tenants of the building are Pizza Hut Delivery and Take-Out facility and a cell phone business. The site is approximately 39, 548 sq. ft. and is located at the corner of Auburn Street and Washington Avenue.

160 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 Clerks office 14 days prior to the Public Hearing. A neighborhood meeting was held on December 30, 2002. Sign-in sheet and minutes from the neighborhood meeting are included as Attachment 11.

II. HISTORY

As the Planning Board may recall, the Planning Board held a public hearing on June 11, 2002 for Bath Savings Institution's request for a zone change from R-3/B-1 to the B-2 zone. At that time, the neighbors had a number of concerns including traffic and access onto Washington Avenue, the existing landscaping along Washington Avenue being removed and the possibility of other B-2 uses being allowed at this site. The applicant then withdrew their request for a B-2 zone.

III. FINDINGS

Current Zoning:	R-3 Residential/B-1 Neighborhood Business
Proposed Zoning:	Contract Zone
Land Area:	.90 acres
Existing Use:	Pizza Hut and cell phone business
Proposed Use:	Branch Bank with drive-through
Land Uses in the Vicinity:	Retail, office and residential

IV. EXISTING USES

The uses along Auburn Street consist primarily of retail uses and office business uses, such as Shaw's, Hollywood Video, Mobil Gas Station and Convenience Store, Mr. Bagel, Paris Farmer's Union, Fleet Bank and Boy Scouts of America.

The uses along Washington Avenue, from Auburn Street towards Riverside Street, are primarily single-family residential uses.

V. DEVELOPMENT PLAN

The applicant is proposing a 2,882 sq. ft. branch bank with two drive-through teller lanes and a drive-through ATM. Access to the site will be from Auburn Street. The existing curb cuts would be reduced to one curb cut.

A traffic study has been submitted and is included as Attachment 8. The proposed development is forecast to generate 192 trip ends in the PM peak hour. This level of trip generation will require a traffic permit from the Maine Department of Transportation. As the existing site currently generates traffic, Gorrill-Palmer has determined that the net trip generation for the site will be 147 trip ends. The crash data indicates that there are no high crash locations within the study area and the sight distances at the proposed driveway are acceptable. The Traffic Study states that the island fronting Shaw's should be reconfigured to allow for a short left turn lane into the site. Currently, approximately one car a minute turns left into Shaw's, which delays through traffic. The island should be removed between the Shaw's driveway and the bank driveway to sue this space to stripe a short left turn lane into Shaw's. In addition, this portion of Auburn Street should be striped to provide for two through lanes in each direction.

At the workshop meeting, the Planning Board had concerns with the length of the left turn lane into Shaw's and the circulation of the proposed site. Larry Ash, Traffic Engineer, has reviewed these concerns and feels that with the proposed left turn lane there will be stacking for 2 to 3 vehicles which, with a dedicated left turn lane, will be sufficient for this intersection. The Traffic Engineer is recommending however, that the left turn lanes be "protected-permissive" at this intersection. "Protected-permissive" signalization is when a green arrow is provided for each left turn lane, but when the arrow ends, left-turning vehicles may turn on a green ball when there are gaps in the traffic stream. The Traffic Engineer has also reviewed the proposed circulation at the proposed site and has no concerns. The Traffic Engineer's memo is included as Attachment 10.

VI. CONDITIONS FOR REZONING

The applicant is requesting a contract zone to limit the uses of the site as redeveloped to a branch bank use and to preclude other uses permitted in the B-2 zone such as fast food restaurants that would have a much greater impact upon residential uses in the vicinity. The conditions also address, but are not limited to, the front setback, which the proposed building does not meet for B-1 zoning; landscaping; traffic improvements and conditional standards for drive-throughs. A condition would also require that the Planning Board review the site plan.

This rezoning shall be subject to the following proposed conditions, as outlined in the executed agreement between the City and the applicant.

1. The CITY shall amend the Zoning Map of the City of Portland, dated December 2000 as amended and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by §14-49 of the Portland City Code, by adopting the following map change.
2. The use of the property shall consist of a bank branch with incidental sales of financial and insurance products and services and will include up to two (2) drive-through teller lanes (hereinafter "Teller") and one (1) drive-up automated teller machine (hereinafter "ATM").

3. That the hours of operation of the Bank and the drive-through Teller will be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday and 7:00 a.m. to 2:00 p.m. on Saturday, with no Sunday hours of operation. The ATM shall be available for use twenty-four (24) hours a day, seven (7) days a week. Nothing herein shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the Bank is not open to the general public.
4. The Property will be developed substantially in accordance with the Site Layout Plan by Gorrill-Palmer Consulting Engineers, Inc. dated November 1, 2002 (the "Site Plan").
5. Only one (1) curb cut shall be allowed on Auburn Street side of the property and the placement of said curb cut shall conform to that shown on Attachment 2, incorporated herein by reference. The existing curb cut shall be removed by BSI prior to the issuance of a Certificate of Occupancy. No curb cut shall be permitted on Washington Avenue or the connector between Washington Avenue and Auburn Street.
6. The existing landscaping on the westerly boundary of the property, bordering Washington Avenue shall remain undisturbed and shall be maintained at least at its present height or no less than six (6) feet by BSI and the property owner.
7. BSI, at its expense, shall remove the existing raised island on Auburn Street at the intersection of Auburn Street connector and the entrance to Northgate Plaza; shall install an exclusive left hand turn lane into Northgate Plaza; and shall upgrade the signalization at this intersection (including but not limited to the installation of a vehicle detection loop and upgraded traffic signal) all as approved by the City Traffic Engineer.
8. The front yard setback need not comply with the setback requirements contained within the B-1 zone. Otherwise, the provisions of §14-161 through 14-167 (the B-1 Zone) of the Portland City Code shall apply to this development. In addition, the Planning Board shall review the site plan for this project and shall be satisfied that the following requirements have been met:
 - a. the drive-throughs must be accessory to a principal use located on the same site; and
 - b. the site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
 - c. any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services or fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater; and Drive-through facilities shall be designed so that site and vehicular light sources shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526.
 - d. where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect adjacent residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing

- authority, mitigation measures shall consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts; and
- e. drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
9. In the event the development described herein is not commenced within two (2) years from the date of this contract rezoning, or should the Property cease to be used as a bank branch, this contract shall become null and void and the Property shall revert back to the underlying B-1 and R-3 zones.

VII. POLICY CONSIDERATIONS

The applicant is requesting this contract zone to allow a drive-through. The current zone allows a bank use but does not allow the drive-through. The current zone for the site is B-1 along the easterly portion of the site and R-3 along the westerly portion of the site. It is possible that the zone line was created this way to form a buffer for the residential neighborhood. The contract zone would allow this buffer to remain and also address other concerns by the neighbors. Traffic improvements would be required and access would be limited to Auburn Street. If the bank use were to be discontinued in the future, the property would be reverted back to the B-1 zone.

VIII. STAFF RECOMMENDATION

Staff suggests that the Planning Board recommend the contract rezoning to the City Council. This site is already being used as a commercial use. Auburn Street is an arterial street, which is appropriate for a bank use, particularly in this area. Redevelopment of the site could also provide an opportunity to improve the layout of building and parking. The conditions of the contract address concerns regarding access, traffic, and buffer.

IX. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials submitted by Bath Savings Institution, the policies of the B-2 Community Business Zone, Comprehensive Plan, the information provided in Planning Board Report #44-02, and/or other findings as follows:

- i. The Board finds that the proposed B-1/R-3 Contract Rezoning [is or is not] consistent with the policies of the B-1 Neighborhood Business Zone, R-3 Residential 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 40-42 Auburn Street.

Attachments:

1. Zone Change Application
2. Applicant's Letter dated October 22, 2002
3. Proposed Zone Change Map
4. Proposed Contract
5. Applicant's Letter dated November 19, 2002
6. Signage Information
7. Letters to Utility Companies regarding Capacity
8. Traffic Study Narrative
9. Lighting Catalogue Cuts
10. Traffic Engineer's Memo dated December 16, 2002
11. Neighborhood Meeting Minutes and Sign-In Sheet
12. Letter from the Public
13. Plans
14. Elevations

84 Auburn St. workshop

11-22-2011

1. JF presentation

2. Drew Svenson - also manages 94

removal of eyesore

94 vacant $\frac{1}{3}$ as this site blights it + trees
hiding

Problem of being a small site - closing
curb cut allows dev.

84 has granted an easement to 94
for egress lane.

- 94 wants
- 2000 - 4000 sq ft. brand bank bldg.
 - \$50-70,000 entrance lanes/paving/sidewalk
 - wants trees removed + building moved back so 94 Auburn can be seen.
 - explained dilem
 - will keep trees at rear + add at corner.

3. Barry Sheff -
w+c.

on w prop retain pines
reiterated re trees on North.

comm. contribution - burden of
off site work came as surprise
shared access an improvement
setback - 4 reasons

longer setbacks other
bldgs along this frontage

94 is 2 story, brick, large

- turning movements w/in site
challenging 15-17' car
- push driveway forward to max queuing
- stormwater - w/in Fall Brook
anticipating water qual Hment +
use front area for infiltration
- visibility of adj. properties

Carol M - whats in 94
hair salon
chiro / phys. therapist
ins agents
financial services
Bakers Union
Brokers for Steel Foundry
Gen. Contractor.
2nd floor generally vacant

Tuck - clar. ownerships

Public Comment

Greg Falls -
owns allspeed
& Century 21.

spoken to Jean F + Drew Swenson
Gen supports this + new dw here.
on left side -
bought 7-8 yrs ago.

prop line on edge of his pavement
all trees are in 87 Auburn St side

2-3 maples young.
once get barn cgt bigger + older
some "monsters"

limb fell + went thru roof of barn
would like trees taken out

like Bd. considers req. trim trees so
less likelihood of damage to his prop.

re sidewalk - this parking - Auburn
St. levels higher - consider
elevation change to avoid water
ponding

Othenrose supports

Angela Fall - ? what is distance between Exit
& their entrance

ans - Barry Sheff didnt have exact
figure - SF highlighted
Tom Errisio comments

Qu from Tuck
O'Brien - trip generation re fast food
& bank

Tom Gornell - this less than 100
DD etc 200+

concern re contract zones on small sites
troubled at another

M Patterson - contract makes sense here re other uses
not concerned re setback

David Silk - Bath Swamp Bank - $\frac{1}{3}$ was R3 zone
so more issues

OK re setbacks

wants/likes corner beeked up to
screen lights - good job
not concerned about losing pine trees.
not taking res zone here so not
appropriate to ask ^{for} shelter as its
already bus. zone

(MP - what about accom. bus stop +
opp. for shelter)

elim. one curb cut is a gain
not sure wants to ask off site sidewalk

Bill Hall - alot of parking (25)

met his
initial
concerns

- Bath don't have this

- seek buffering at corner incl
landscaping.

- preserve trees along rear,

- OK re removing trees along shared access

- OK re modest setback

- cond. zone - can live with understands

- Carol M - concerned with parking + pavement ^{extent of}
(sea of parking)
- OK re setbacks for stormwater infiltration
 - good to provide space for shelter
 - pl. re shared access.
 - other concern re traffic - spacing of egress near access for Century 21.
 - not

Mike Patterson - any alt. for left turners

- Joe Lewis - tired of contract zones.
- this is flat side in suburban area
 - CC says no more Contract Zones
 - despise drive-thrus + BI prohibits
 - feels 10 ft. setback approp. (prefers)
 - Plan - staggering re lanes needed
 -
 - Respects intent
 - Seeking more creative solution

- Tuck
- if have to have drive thru, less or fewer
 - PB will be making rec to CC.

Alex - ref cond agreement

- D Silk - like more info re buffering on W side
- important that this covered as will be referred to in the agreement deep up re res. prop sw.

OK to go to Hearing Dec 13th

Carol - would like to see road zone ^{agreement by} mail asap.

84 Auburn workshop presentation

11-22-11

- Request for conditional rezoning to allow drive-thru and increased setbacks similar to request by Bath Savings ²⁰⁰³ approved ^{condo on Apt 1} 40 Auburn St
- Conceptual site plan submitted. Shows one curb cut closed, joint access w/ neighbor at 94, loss of trees
- existing site no buildings + bus stop at front
- Public comments:
 - 1) abuter at 72 Auburn
 - 2) North Deering Neigh. Assoc re bus shelter
 - 3) Michael Pizzo. NDNA

had to left
- Applicants Submission
 - Traffic Study - not been reviewed but Tom Emio has noted that traffic conditions here need improvements
 - Reciprocal agreement for joint access ^{not seen}
 - Understood draft agreement has been prepared
- Key issues - potential conditions of any agreement
 - trees - arguments can be made for retaining all trees - City Abuser + screening of drive thru + future site plan requirements landscaping of plug lot 2 trees / 5 spaces
 - community contribution
 - o street improvements / striping needed now
 - o bus shelter - NDNA + DPS
 - o sidewalk gaps - good to get to one of the adjacent ^{signalled} crossings
- Summary lists info needed

Jean Fraser - Review Comments - 84 Auburn St

From: David Margolis-Pineo
To: DEVELOPMENT REVIEW GROUP ; Jean Fraser
Date: 11/22/2011 3:42 PM
Subject: Review Comments - 84 Auburn St

November 22, 2011

TO: Jean Fraser
Barbara Barhydt
FROM: David Margolis-Pineo
Dept. of Public Services
RE: Review Comments: 84 Auburn Street – Pennbrook Properties

The Department has the following review comments.

1. Stormwater treatment of runoff from this site must be considered. This property is located in an impaired watershed, Fall Brook. A new stormwater collection system is expected to be installed in Auburn St. in front of this lot during the Summer/Fall of 2012. The City will work with the applicant to locate a stormwater lateral to the lot to help facilitate the applicant's needs. A grading and drainage plan is also required.
2. The applicant is required to install granite curbing and asphalt sidewalk as part of this project.
3. There is a Metro bus stop in front of this property. The esplanade in this area will require paving to create a minimum 5' X 8' ADA compliant passenger boarding area. Discussions are ongoing to determine if a bus shelter enclosure is merited at this stop. If so, a possible easement may be requested from the applicant.
4. It is stated on the Conceptual Site Plan that a proposed 7' wide bituminous sidewalk with curbing is proposed on the abutting lot. Is it the applicant's intent to build this? If so, conductivity to Auburn St is proposed
5. A stamped survey plan must be submitted. Elevations shall be base on the City datum on NGVD 1929.
6. Proposed driveway widths and driveway spacing still need to be resolved. The concept of a shared drive is widely received.

We have no further comments at time reserve the right for further comments once plans are received.

Public Comment
workshop item

Page 1 of 2

84 Auburn Street.

Jean Fraser - 84 Auburn Street Development

From: "Tim St. Hilaire" <tsthilaire@maine.rr.com>
To: <jf@portlandmaine.gov>
Date: 11/22/2011 3:27 PM
Subject: 84 Auburn Street Development
CC: Michael Pizzo <phs63@aol.com>, Maureen Zemrak
<mzemrak17@gmail.com>, BBQ...

Hello Jennifer,

I am writing on behalf of the North Deering Neighborhood Association regarding the development Plans for Property located at 84 Auburn Street. I unfortunately will not be able to attend todays Planning Board Work Shop .

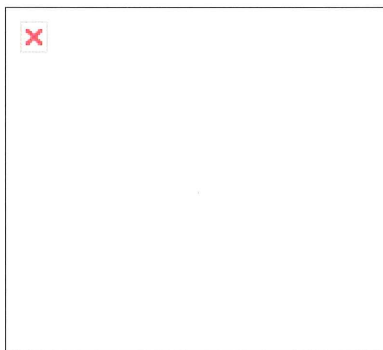
The Neighborhood has advocated and continues to advocate for Metro Bus Shelters to be constructed at development sites in North Deering area. The 84 Auburn Street Location is a frequently used designated Metro Bus stop and is in need of a shelter. Because of the closeness to the street and the congested traffic it would make sense to protect the Metro Patrons from the elements. North Deering only presently has two bus shelters in the neighborhood. Given the large geographic area of North Deering , shelters are a necessity in this day of high gas prices. I would be happy to open discussions with you at any time. Thank you for your time and consideration. Happy Thanksgiving.

Tim St.Hilaire , President NDNA.

Tim St. Hilaire, Custom Property Services

(h) 207-797-7222 / (c) 207-632-5228

tsthilaire@maine.rr.com



Masonry~Carpentry~Painting~Landscaping~ Home Safety Modifications

Jean Fraser - Review Comments - 84 Auburn St

From: David Margolis-Pineo
To: DEVELOPMENT REVIEW GROUP ; Jean Fraser
Date: 11/22/2011 3:42 PM
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November 22, 2011

TO: Jean Fraser
Barbara Barhydt
FROM: David Margolis-Pineo
Dept. of Public Services
RE: Review Comments: 84 Auburn Street – Pennbrook Properties

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2. The applicant is required to install granite curbing and asphalt sidewalk as part of this project.
3. There is a Metro bus stop in front of this property. The esplanade in this area will require paving to create a minimum 5' X 8' ADA compliant passenger boarding area. Discussions are ongoing to determine if a bus shelter enclosure is merited at this stop. If so, a possible easement may be requested from the applicant.
4. It is stated on the Conceptual Site Plan that a proposed 7' wide bituminous sidewalk with curbing is proposed on the abutting lot. Is it the applicant's intent to build this? If so, conductivity to Auburn St is proposed
5. A stamped survey plan must be submitted. Elevations shall be base on the City datum on NGVD 1929.
6. Proposed driveway widths and driveway spacing still need to be resolved. The concept of a shared drive is widely received.

We have no further comments at time reserve the right for further comments once plans are received.

11-22-11

84 Auburn ST Dev.

Public Comment:

Michael Pizzo, North Deering Neighborhood Assoc
Resident: 8 & Christy Rd

Issues for us:

- 1) Bus stop right in front of site - major stop in bank. Would like to see a shelter there.
- 2) Traffic concerns coming out of site and turning left outbound Auburn ST. The West light intersection going into the shopping center has been a problem with accidents because of the street not lined well.
- 3) ^{Trees} Buffer zone for rear of sight.
- 4) Sidewalk only in front of planned site not to enter light. Would like to see further extension of ~~site~~ Sidewalks to light - either East or West.



Memorandum
Department of Planning and Urban Development
Planning Division

To: Chair Lewis and Members of the Portland Planning Board

From: Jean Fraser, Planner

Date: November 18, 2011

Re: **November 22, 2011 Planning Board Workshop**
Conditional Rezoning Application
84 Auburn Street
Pennbrook Properties IV LLC, Applicant

I. Introduction

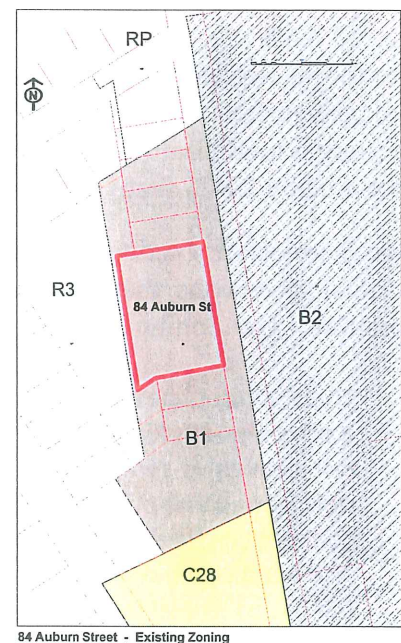
Pennbrook Properties IV LLC is requesting conditional rezoning of the property at 84 Auburn Street to allow for development of a branch bank with two drive-through teller lanes and one drive-through ATM lane. The property is located within the B1 zone which does not allow for the drive through element of the development. The applicant is also requesting relief from the setback requirements of the B1 zone. An excerpt from Portland's zoning map shows the site below.

The existing lot comprises a derelict gas station and measures approximately 200 feet by 140 feet, located opposite the Northgate Plaza on Auburn Street.

II. Background

The applicant has noted that the Bath Savings Bank obtained a contract zone for a similar request for a parcel three lots south on Auburn Street.

In 2002, the Bath Savings Institution requested a zone change from R-3/B-1 to the B-2 zone for 40 Auburn Street (shown as C28 in the plan). At that time, the neighbors had a number of concerns including traffic and access onto Washington Avenue, preservation of an existing hedge along Washington Avenue and the possibility of other B-2 uses being allowed at this site. The applicant withdrew their request for a B-2 zone and proceeded to request a contract zone. A contract zone (C28) was approved by the City Council in 2003 and the conditions of the contract zone are attached for information in [Attachment 1](#).



84 Auburn Street - Existing Zoning

III. Existing Conditions

The uses along this block of Auburn Street consist primarily of retail and office uses, and this site is bounded on the south by Century 21/All Speed, to the north by State Farm Insurance, and to the rear by a large parking

following preliminary comments (Attachment 3):

- The egress driveway width is wide given that it is an exit drive only. I would recommend a narrower driveway.
- The project will not likely meet driveway spacing requirements and therefore the applicant will need to provide documentation supporting a waiver.
- I need to review the shared driveway concept more fully, but I am supportive of the concept.
- Vehicle queue space at the drive-through and ATM lanes is something that I will review as it relates to on-site traffic mobility.
- Traffic conditions on Auburn Street is something that I will be carefully looking at as it relates to safety history and how it will accommodate turns into and out of the project site. The width of Auburn Street is wide and there may be options on how to re-think the lane configurations.
- Traffic signal coordination has been an issue between Allen's Corner and the Lyseth/Lyman Moore Schools. Improving signal coordination through this area may be a suggested requirement.

Lastly, I would note that I have coordinated with Gorrill-Palmer Consulting Engineers, Inc. on the preparation of a traffic impact study for the project. I suspect that study will be provided in the near future. It is my understanding that this project will not require a MaineDOT Traffic Movement Permit. I will need to review the trip generation data, before rendering a final decision.

The proposal depends on a joint access drive with the abutter at 94 Auburn Street and the applicant has stated that they have been working with this abutter. However, a reciprocal agreement has not been submitted with the application.

Landscaping and Screening

The proposed concept results in the loss of all the mature trees on the site with little space for replanting a buffer or other substantial landscape. The existing trees provide an important screening element - of Auburn Street as viewed from the abutting residential neighborhood and of the rear parking lot as viewed from Auburn Street as well as between the buildings along Auburn Street. The Landscaping and Landscape Preservation standards of the site plan ordinance states that the site shall be designed to incorporate, and limit disturbance to existing trees and that existing trees may be counted toward landscaping requirements. There is also a standard of preserving 30% of trees within required setbacks.

Jeff Tarling, City Arborist, has visited the site and recommends that the applicant seek to preserve the existing mature tree buffer. His comments are below (Attachment 4):

I inspected the 84 Auburn Street lot and offer the following comments:

The existing White Pine grove along the Westerly (back) side of the lot and to the North (right) side of the property are important site features and should be preserved.

The White Pine grove near the back of the lot have double duty as they are the only buffer or screening for the other lot on the neighboring property. In addition to the tree-save recommendations, my comments on the concept plan for the lot should reduce pavement and incorporate additional green space along the left side, back corner.

The applicant is seeking a modification from the zoning to allow the building to be set back approximately 20 to 25 feet from the street line. The B-1 zone requires a maximum front yard setback of 10 feet. The applicant seeks to align the building with existing structures along Auburn Street. The staff question the need to modify the setback for this site and note that by bringing the development toward the street there is greater flexibility to preserve the mature stand of trees at the rear of the parcel. Staff also suggest that a condition of the

- be undetectable above the ambient noise level as measured by a noise meter at the property line, whichever is greater; and Drive-through facilities shall be designed so that site and vehicular light sources shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526.
- d. where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect adjacent residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures shall consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts; and
 - e. drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
8. (this provision taken from the contract Zone for Bath Savings Institution) That the hours of operation of the Bank and the drive-through Teller will be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday and 7:00 a.m. to 2:00 p.m. on Saturday, with no Sunday hours of operation. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing herein shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the Bank is not open to the general public.

VII Summary

The applicant is requesting this contract zone to allow the drive-throughs associated with the proposed bank use. The current zone for the site is B-1 which is a transitional zone intended to provide a buffer for the residential neighborhood. The proposed contract zone conditions should maintain this buffer role (particularly through landscaping and screening).

The following information is required before the finalization of detailed conditions:

- Zoning analysis;
- Traffic Information to allow a final recommendation;
- Evidence that the shared drive access is secured;
- Clarification from staff as to sidewalk issues;
- Revised site plan that addresses need for tree preservation and landscape screening;

The applicant has requested an expedited review in order to proceed. The proposed agreement has not been drafted and the staff will work with the applicant based upon the input received at the workshop. The question before the Board is whether to schedule a second workshop or a public hearing on this item.

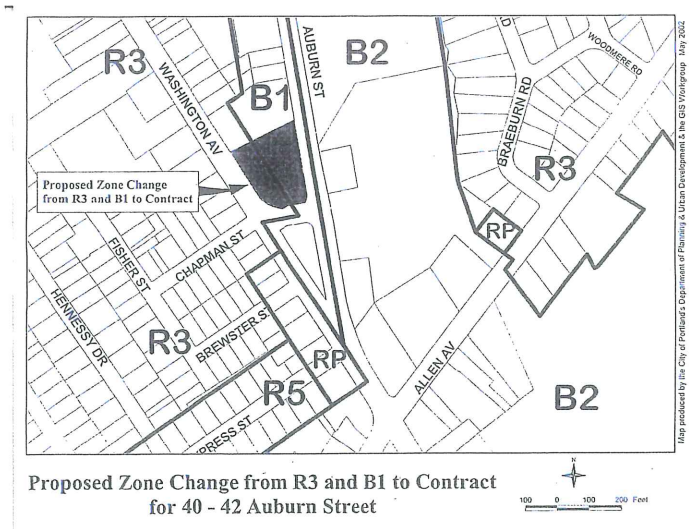
Attachments next page

2003 Approved Bath Savings Bank Contract Zone (C28)
at 40 Auburn Street - extract listing contract zone conditions**VI. CONDITIONS FOR REZONING**

The applicant is requesting a contract zone to limit the uses of the site as redeveloped to a branch bank use and to preclude other uses permitted in the B-2 zone such as fast food restaurants that would have a much greater impact upon residential uses in the vicinity. The conditions also address, but are not limited to, the front setback, which the proposed building does not meet for B-1 zoning; landscaping; traffic improvements and conditional standards for drive-throughs. A condition would also require that the Planning Board review the site plan.

This rezoning shall be subject to the following proposed conditions, as outlined in the executed agreement between the City and the applicant.

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



2. The use of the property shall consist of a bank branch with incidental sales of financial and insurance products and services and will include up to two (2) drive-through teller lanes (hereinafter "Teller") and one (1) drive-up automated teller machine (hereinafter "ATM").
3. That the hours of operation of the Bank and the drive-through Teller will be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday and 7:00 a.m. to 2:00 p.m. on Saturday, with no Sunday hours of operation. The ATM shall be available for use twenty-four (24) hours a day, seven (7) days a week. Nothing herein shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the Bank is not open to the general public.

Jean Fraser - Fwd: 84 Auburn St - Conditional Rezoning

From: Jean Fraser
To: Fraser, Jean
Date: 11/17/2011 11:05 AM
Subject: Fwd: 84 Auburn St - Conditional Rezoning

>>> Marge Schmuckal 11/15/2011 4:34 PM >>>

84 Auburn Street - 375-A-26
#2011-378 - B-1 Zone
11/15/2011

The applicant has requested a conditional rezoning of the property located at 84 Auburn Street to allow a drive-thru banking establishment. The property is currently located in a B-1 zone. The B-1 zone does not allow drive-thru service. The applicant has not included a zoning analysis showing all B-1 zoning deficiencies that prompted their request. Such an analysis will need to be done before a conditional contract can be drawn up. Other than the obvious setback and drive-thru issues, the applicant should also address the B-1 zone requirements concerning trips generated and hours of operation. Currently the B-1 zone prohibits sales or services between the hours of 11 pm and 6 am. There is also a limit on times of deliveries or services between the hours of 10 pm to 7 am.

Marge Schmuckal
Zoning Administrator

Jean Fraser - Fwd: 84 Auburn St Contract Zone

From: Jean Fraser
To: Fraser, Jean
Date: 11/18/2011 9:32 AM
Subject: Fwd: 84 Auburn St Contract Zone

>>> Jeff Tarling 11/18/2011 7:43 AM >>>

Hi Jean -

I inspected the 84 Auburn Street lot and offer the following comments: The existing White Pine grove along the Westerly (back) side of the lot and to the North (right) side of the property are important site features and should be preserved.

The White Pine grove near the back of the lot have double duty as they are the only buffer or screening for the other lot on the neighboring property. In addition to the tree-save recommendations, my comments on the concept plan for the lot

should reduce pavement and incorporate additional green space along the left side, back corner.

Jeff Tarling
City Arborist

From: "Angela Fall" <afall@gorham.me.us>
To: <JF@portlandmaine.gov>
CC: <AQJ@portlandmaine.gov>, <BAB@portlandmaine.gov>
Date: 11/17/2011 9:55 AM
Subject: Re: Auburn Street

Jean,

Thank you for the information, Greg & I will be at the meeting, but I have another question I'd like to ask, Greg may have more when we get to the meeting, but..mainly... looking this over.. and realizing that at the time of a new project such as this, it seems the appropriate time to talk and discuss things like a consideration of having an opening on the back into our property.. would that be something Greg could talk to you about.. or are those things that would be brought up in the workshop meeting..

I may not be explaining it correctly, but here, the Fire Departments for emergency entrance/exit take opportunities such as this to look at the direct impact of abutters for things like this.., as this may be the best time to talk about opening up the back of our lot which would possibly help our limited parking for the future as well?

So my question is should my husband 1st call you direct about those concerns?

Angela

Angela T. Fall, Administrative Assistant
Gorham Code Enforcement Office
75 South Street Suite 1
Gorham, ME 04038
(207) 222-1605 ext. 1607

Drew Swenson

Real Estate Development &
Financial Advisory Services

November 4, 2011

City of Portland
Planning Division
389 Congress Street
Portland ME 04101

Re: 84 Auburn Street Conditional Rezoning Application

Enclosed please find our application and \$3,000 application fee for the conditional rezoning of the property at 84 Auburn Street.

As you may know, this lot across the street from the Northgate Shopping Center has been a vacant and blighted site for years. We plan to complete the clean up the 84 Auburn Street site, develop a bank branch thereon and add upscale landscaping around the site. We have attached a leasing brochure for the site and preliminary site plan. We would like to create 10+/- bank jobs on this site and clean up what has been a derelict eyesore for years, with a new building, new sidewalk, clean grounds and better site lines for the abutting property owners.

Although we want to put a bank branch there, the B1 zone does not currently allow drive through lanes, which is a requirement for a bank branch. Moreover, the B1 also requires no more than a 10 foot setback from Auburn Street, which does not work well on this lot and is not conducive to the visibility of the abutting buildings and their tenants. We would like to set the building back a bit further than 10 feet, consistent with the other buildings along this stretch of 84 Auburn Street, perhaps 20-25 feet. We have attached a setback analysis of all other buildings on this block for your information.

I would note that the Bath Savings Bank building, three lots to the east, obtained a contract zone for just such a request related to setback and drive through lanes in the recent past, so we are anticipating the precedent set there can be applied here in a short period of time.

We are interested in the elimination of the westerly curb cut to 84 Auburn Street and replacing it

PROJECT ADDRESS: 84 Auburn Street, Portland Maine 04103CHART/BLOCK/LOT: 375-A-26**DESCRIPTION OF PROPOSED ZONE CHANGE AND PROJECT:**

Allow a conditional zone in the B-1 zone, with conditions and restrictions, to permit a bank branch with two (2) drive through teller lanes and one (1) drive through ATM lane on this site

CONTACT INFORMATION:

Applicant – must be owner, Lessee or Buyer Name: Pennbrook Properties IV LLC Business Name, if applicable: Address: 2 Market Street, Suite 500 City/State : Portland ME Zip Code: 04101	Applicant Contact Information Work # 207-775-2464 Home# 207-415-3829 Cell # 207-415-3829 Fax# 207-775-4440 e-mail: dswenson@swensonandco.com
Owner – (if different from Applicant) Name: Same as applicant Address: City/State : Zip Code:	Owner Contact Information Work # Same as applicant Home# Cell # Fax# e-mail:
Agent/ Representative Name: Address: City/State : Zip Code:	Agent/Representative Contact information Work # Cell # e-mail:
Billing Information Name: Pennbrook Properties IV LLC Address: PO Box 17536 City/State : Portland ME Zip Code: 04112	Billing Information Work # 207-775-2464 Cell # 207-415-3829 Fax# 207-775-4440 e-mail: dswenson@swensonandco.com
Engineer Name: Barry Sheff, c/o Woodard & Curran Address: 41 Hutchins Drive City/State : Portland ME Zip Code: 04102	Engineer Contact Information Work # 207-774-2112 Cell # 207-749-4171 Fax# 207-774-6635 e-mail: bsheff@woodardcurran.com

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.

The site will be developed with a 3,800+/- square foot bank branch with two (2) drive through teller lanes and one (1) drive through ATM lane. Although the easterly curb cut will remain on the site, the westerly curb cut is intended to be closed and replaced with shared use of the ingress and egress lanes at the abutting 94 Auburn Street. The property will have a new sidewalk installed, upscale landscaping and create new jobs and tax revenues for the city.

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

Schedule D

A.7

MEMORANDUM OF
PURCHASE AND SALE AGREEMENT

Memorandum executed as of this 17th day of October 2011 by and between the owner of certain real property at 84 Auburn Street in Portland, Maine (the "Property"), ALLIANCE ENERGY LLC, a Massachusetts limited liability company with a principal place of business at 404 Wyman Street, Suite 425, Waltham, MA 02451 ("Seller") and PENNBROOK PROPERTIES IV LLC, a Maine limited liability company, with a principal place of business at 2 Market Street, Portland, ME 04101 ("Buyer") of a Purchase and Sale Agreement (the "Purchase Agreement") dated October 17, 2011, for the sale and purchase of the Property. The Purchase Agreement includes the following provisions:

- A. The Property is more particularly described on Exhibit A attached hereto and made a part hereof.
- B. The Purchase Agreement contemplates a closing within approximately 120 days.
- C. Buyer has the right in the Purchase Agreement under certain conditions to extend the closing date for additional time to obtain a Zoning amendment.

Nothing in this Memorandum is intended to or shall modify the terms of the Purchase Agreement.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement as of the day first written above.

WITNESS:

SELLER:
ALLIANCE ENERGY LLC




By: 
Its: ANNA SLIPWA
ANNA SLIPWA

EXHIBIT A

Schedule A

33 Auburn Street
Portland, Maine

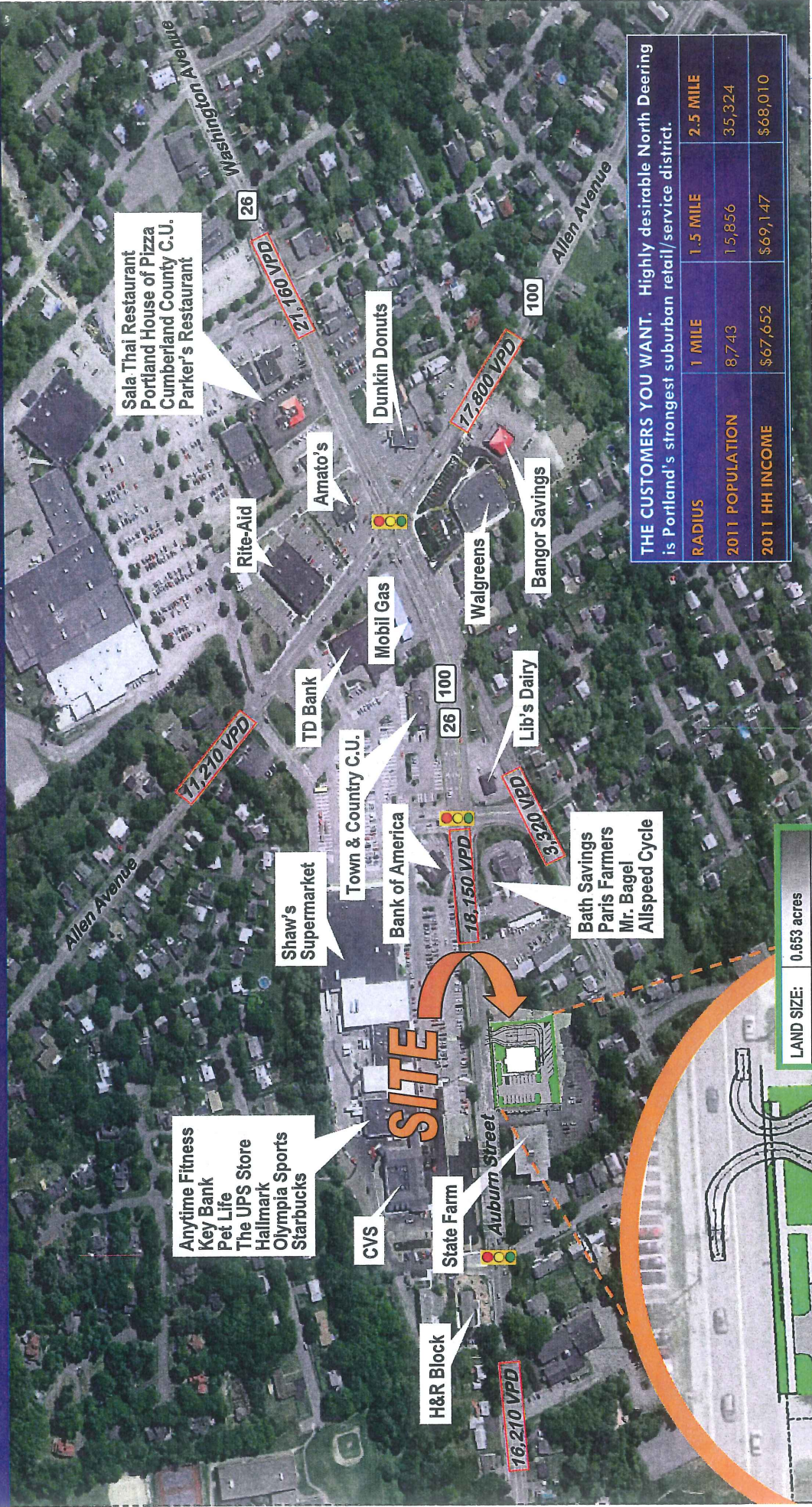
A certain lot or parcel of land with the buildings and improvements thereon, situated in Portland, County of Cumberland, and State of Maine, bounded and described as follows: Beginning on the westerly side of said Auburn Street at the northeasterly corner of Lot 23 as shown on a Plan of Highland Park recorded in the Cumberland County Registry of Deeds in Plan Book 8, page 139; thence westerly by the northerly line of said Lot 23 and its extension westerly by the northerly line of said Lot 23 and its extension westerly, one hundred forty (140) feet to a point; thence southerly by land now or formerly of Canteen Co. of Maine on a course parallel with the westerly or rear lot lines of Lots 23, 22, 21, and 20 as shown on said Plan, and maintaining an uniform distance of thirty (30) feet westerly therefrom, a distance of two hundred ten (210) feet, more or less, to the southerly boundary line of land now or formerly of Canteen Co. of Maine and land now or formerly of Clarence S. Cressey, et al; thence northeasterly and easterly by said Cressey land and the southerly line of Lot 20 on said Plan one hundred forty-five (145) feet, more or less, to Auburn Street; thence northerly by Auburn Street two hundred (200) feet to the point of beginning; being lots 20 through 23 on said Plan and a portion of Lot 42 on said Plan. Being a portion of the premises conveyed by Canal National Bank as executor of the Estate of Augustus G. Hecker to Canteen Company of Portland, Inc. by deed dated July 20, 1962, recorded with the Cumberland County Registry of Deeds at Book 2689, page 108. Also known as and more particularly described as: That parcel of land situated on the westerly side of Auburn Street in the City of Portland, County of Cumberland, State of Maine, bounded and described as follows: Beginning at a nail set at the northeasterly corner of the premises in the westerly sideline of Auburn Street at land now or formerly of Spinelli Co., Inc. thence South $10^{\circ}00'00''$ E by the westerly sideline of Auburn Street a distance of sixty and thirteen hundredths feet (60.13') to a point in the westerly sideline of Auburn Street; thence S $10^{\circ}29'00''$ E by the westerly sideline of Auburn Street a distance of one hundred thirty-nine and eighty-seven hundredths feet (139.87') to a pipe at land now or formerly of John F. LeFebvre; thence S $80^{\circ}00'00''$ W by land now or formerly of John F. LeFebvre a distance of one hundredths ten and no hundredths (110.00') to a point at land now or formerly of Charles T. Riddle; thence S $61^{\circ}30'45''$ W by land now or formerly of Charles T. Riddle a distance of thirty-one and fifty-four hundredths feet (31.54') to a pipe at land now or formerly of Spinelli Co., Inc. thence N $10^{\circ}20'45''$ W by land now or formerly of Spinelli Co., Inc. a distance of two hundred ten and no hundredths feet (210.00) to a nail at land now or formerly of Spinelli Co., Inc.; thence N $80^{\circ}00'00''$ E by land now or formerly of Spinelli Co., Inc. a distance of one hundred forty and no hundredth feet (140.00') to the point beginning.

Being the same premises conveyed to Alliance Energy Corp. by Deed recorded with the Cumberland County Registry of Deeds at Book 22615, Page 274.

PRIME BANK SITE OPPORTUNITY

North Deering - Portland, Maine

Ground Lease or Build-to-Suit



Sala Thai Restaurant
Portland House of Pizza
Cumberland County C.U.
Parker's Restaurant

Rite-Aid

Amato's

Dunkin' Donuts

Mobil Gas

Walgreens

Bangor Savings

TD Bank

Town & Country C.U.

Bank of America

Lib's Dairy

Anytime Fitness
Key Bank
Pet Life
The UPS Store
Hallmark
Olympia Sports
Starbucks

CVS

State Farm

SITE

H&R Block

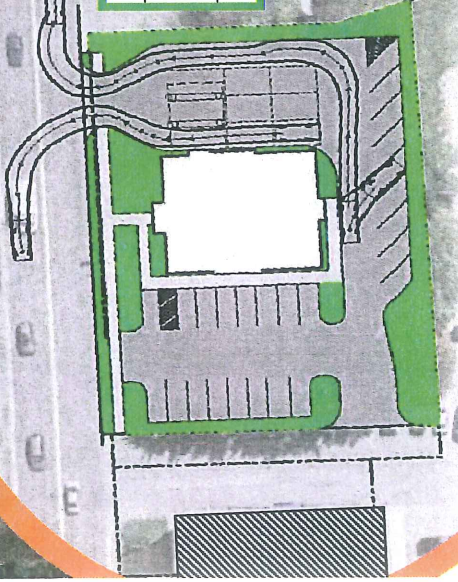
Auburn Street

Bath Savings
Paris Farmers
Mr. Bagel
Allspeed Cycle

THE CUSTOMERS YOU WANT. Highly desirable North Deering is Portland's strongest suburban retail/service district.

RADIUS	1 MILE	1.5 MILE	2.5 MILE
2011 POPULATION	8,743	15,856	35,324
2011 HH INCOME	\$67,652	\$69,147	\$68,010

LAND SIZE:	0.653 acres
BUILDING:	3,900+/- SF; 3 drive-thru lanes
PARKING:	25 cars



A.11

PARAGON
COMMERCIAL REAL ESTATE

207.775.7300

PARAGON COMMERCIAL REAL ESTATE
2 MARKET STREET, 5TH FLOOR - PORTLAND, MAINE 04101

207.775.7300 - www.paragonre.com

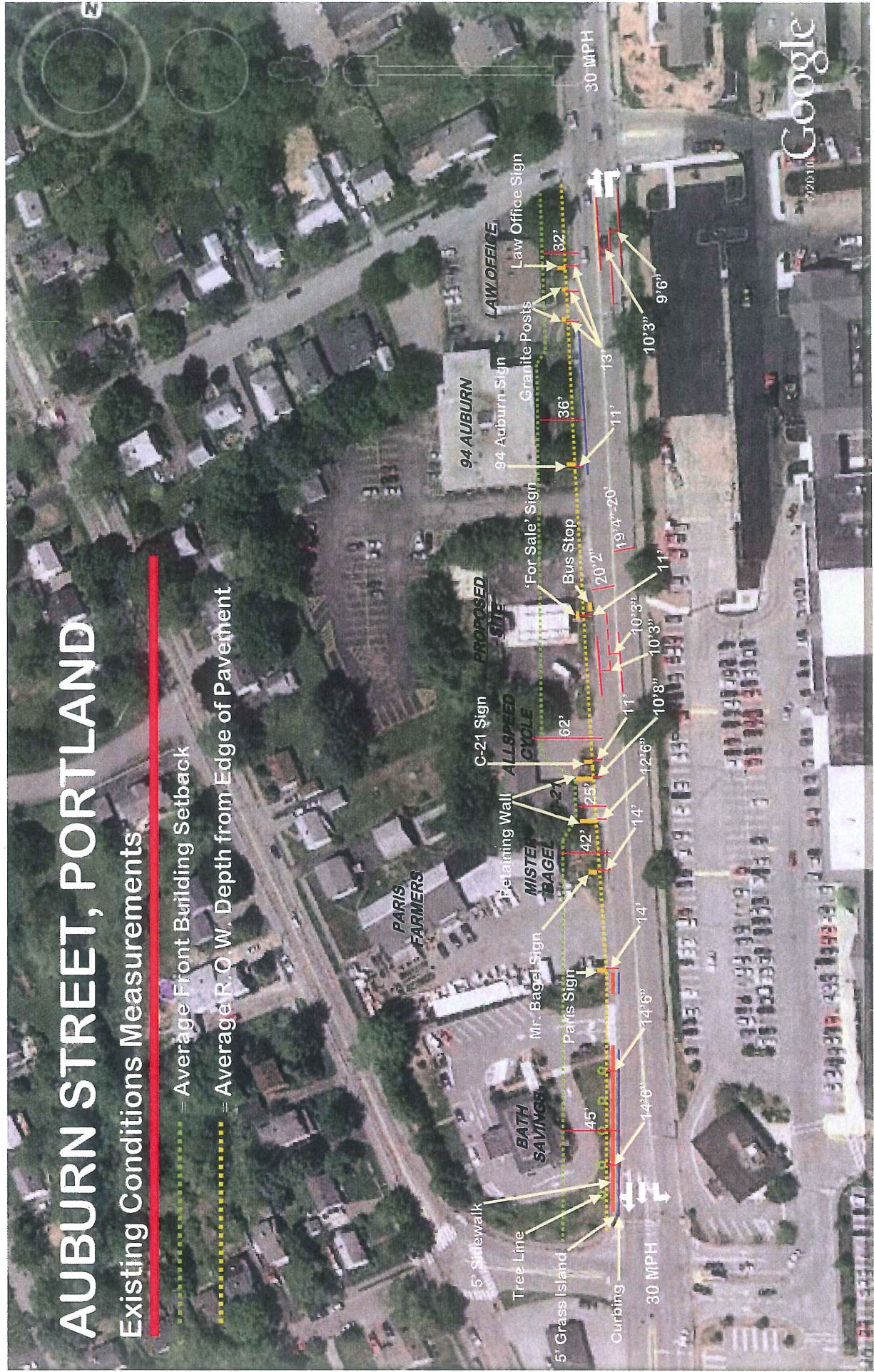
CONTACT: Debra Napolitano - deb@paragonre.com

AUBURN STREET, PORTLAND

Existing Conditions Measurements

..... = Average Front Building Setback

..... = Average R.O.W. Depth from Edge of Pavement



**Traffic Impact Study
Proposed Bank With Drive Thru
Portland, Maine**

Prepared for:

**Swenson & Co.
P.O. Box 17536
Portland, Maine 04112**

November 2011

Prepared by:

A circular professional engineer seal for the State of Maine. The seal contains the text: "STATE OF MAINE", "RANDALL E. DUNTON", "No. 8686", and "LICENSED PROFESSIONAL ENGINEER". A handwritten signature is written over the seal, and the date "Nov. 18, 2011" is written below it.



Gorrill-Palmer Consulting Engineers, Inc.

Traffic and Civil Engineering Services

PO Box 1237
15 Shaker Road
Gray, ME 04039

(207) 657-6910
Fax: (207) 657-6912
E-mail: mailbox@gorrillpalmer.com

Executive Summary

The following Executive Summary is prepared for the reader's convenience, but is not intended to be a substitute for reading the full report.

Gorrill-Palmer Consulting Engineers, Inc. has been retained by Swenson & Co. to prepare this traffic impact study for a bank with drive thru at 84 Auburn Street in Portland, Maine. The site previously included a gas station that has since been removed, with no structures currently on site. The proposed facility will consist of an approximately 3,900 square foot bank with two drive-up tellers and a drive-up ATM. The bank is anticipated to be completed by end of 2012.

The site currently has two full movement accesses onto Auburn Street. The proposed site plan includes a full movement access onto the adjacent access to the State Farm Insurance Company driveway to the north and an exit only driveway directly onto Auburn Street.

The following is a summary of the findings and conclusions of the study:

1. The proposed bank is forecast to generate 67 and 96 trip ends for the weekday AM and PM peak hours of the generator, respectively. (Note: A trip end is either a trip in or out of the site. Therefore a single vehicle making a round trip would equal two trip ends) and 97 trip ends for a Saturday peak hour.
2. The capacity analyses show the site traffic can be accommodated on the adjacent roadway system.
3. Gorrill-Palmer Consulting Engineers, Inc. obtained MaineDOT Crash summaries to determine if there were any high crash locations in the project vicinity. Based on the summaries, there are no HCLs.
4. The sight lines exiting both the site exit only driveway and the existing State Farm Insurance driveway exceed the required available sight distance. Gorrill-Palmer Consulting Engineers, Inc. recommends that all plantings, which will be located within the right-of-way, not exceed two feet in height and be maintained at or below that height. Signage should not interfere with sight lines. In addition, we recommend that during construction, when heavy equipment is entering and exiting into the site, that appropriate measures, such as signage and flag persons, be utilized in accordance with the Manual on Uniform Traffic Control Devices.

Based on these findings, it is the opinion of Gorrill-Palmer Consulting Engineers, Inc. that the adjacent roadway network can accommodate the traffic generated by the site.

Annual Growth

The proposed development is anticipated to be open by end of 2012. To identify how the 2011 volumes should be adjusted for annual growth, the MaineDOT published Annual Average Daily Traffic Volumes (AADT) were reviewed for Auburn Street in the vicinity of the development. Based on that review, it appears that the annual growth in the area has been relatively flat, less than one percent. To be conservative, we applied a one percent growth per year to the 2011 volumes to yield the 2012 adjusted volumes as shown on Figure 3 in Appendix A.

Other Development

Approved projects that are not yet opened as well as projects for which applications have been filed are required to be included in the predevelopment volumes for this project. Based on our understanding of the study area and conversations with the City Planning Staff, there were no projects that needed to be considered that would add significant traffic to Auburn Street in front of the site. It was brought to our attention that the building within the Plaza across the street that used to serve Mercy, was currently vacant. To account for that, we used the assessor's square footage and determined a trip generation using the Institute of Transportation Engineers publication, *Trip Generation*, 7th Edition for a Medical Office building. That trip generation is shown on Figure 4 in Appendix A.

III. 2012 Predevelopment

The 2012 Predevelopment traffic volumes were created by taking the raw traffic volumes (Figure 2), and then seasonally and annually adjusting them (Figure 3) as described previously and then added to the "Other Development" traffic (Figure 4) to yield the 2012 Predevelopment traffic volumes as shown on Figure 5 in Appendix A.

IV. Trip Generation

To determine the trip generation, Gorrill-Palmer Consulting Engineers Inc. utilized the Institute of Transportation Engineers publication, *Trip Generation*, 8th Edition; Drive-In Bank, Land Use Code (LUC) 912. Consistent with typical accepted methodology, the trip generation based on the average between square footage and number of drive thrus.

The trip generation calculations are included in Appendix C and are summarized as follows with description of the trip distribution in the following section:

Trip Generation Peak Hour Summary for Proposed Bank

Use (Land Use Code)	AM Peak Hour Generator	PM Peak Hour Generator	Sat Peak Hour
Drive-In Bank w/ 3 drive-thru lanes (LUC 912)	67	96	97

VIII. *2012 Postdevelopment Traffic*

The 2012 predevelopment traffic shown on Figure 5 of Appendix A has been combined with the traffic forecast for the development shown on Figure 6 of Appendix A to yield the 2012 Postdevelopment traffic shown on Figure 7 of Appendix A for the PM peak hour.

IX. *Study Area*

The study area for this study is based on discussions with the City and City's Traffic Consultant and is consistent with MaineDOT methodology for inclusion in the study area. For the purposes of this study, the study area included the exit only site driveway onto Auburn Street and the adjacent State Farm Insurance driveway to the north. Both are unsignalized intersections.

X. *Capacity Analyses*

Gorrill-Palmer Consulting Engineers, Inc. completed capacity analyses for the two unsignalized intersections listed in Section IX.

The analysis was completed with the Synchro/SimTraffic analysis software. The results represent an average of 5 runs. Levels of service rankings are similar to the academic ranking system where an 'A' represents little control delay and an 'F' represents significant delay.

The following table summarizes the relationship between delay and level of service for an unsignalized intersection:

Level of Service Criteria for Unsignalized Intersections	
Level of Service	Control Delay per Vehicle (sec)
A	Up to 10.0
B	10.1 to 15.0
C	15.1 to 25.0
D	25.1 to 35.0
E	35.1 to 50.0
F	Greater than 50.0

The results of the capacity analyses for pre and postdevelopment are summarized as follows, followed by a discussion of the results. The detailed analyses are included in Appendix B.

Jean Fraser - RE: 84 Auburn Street - draft Conditional Rezone Agreement

From: "Drew Swenson" <dswenson@swensonandco.com>
To: "Jean Fraser" <JF@portlandmaine.gov>
Date: 12/6/2011 1:34 PM
Subject: RE: 84 Auburn Street - draft Conditional Rezone Agreement
CC: <nsmith@bernsteinshur.com>

Thanks Jean. I know that Nathan Smith is working on it. I will copy him on this email.

Drew E. Swenson, CPA, LLM
Swenson & Co.
P.O. Box 17536
Portland ME 04112
Tel: 207-775-2464
Cell: 207-415-3829
dswenson@swensonandco.com

1:50 N. Smith called +
is working on it - said would
get to me within the hour
go over first para as by time
its executed they wd be owners,

From: Jean Fraser [mailto:JF@portlandmaine.gov]
Sent: Tuesday, December 06, 2011 1:34 PM
To: Drew Swenson
Subject: 84 Auburn Street - draft Conditional Rezone Agreement

Drew,

This will be the subject of the final staff review tomorrow morning (Wed) and (as mentioned in my e-mail on Friday) we must notice the updated version urgently.

Please send your version of the Agreement asap, and please copy to Barbara as I am out of the office as from 2:30pm today.

Thank you
Jean

Jean Fraser, Planner
City of Portland
874 8728

Jean Fraser - RE: 84 Auburn Street - Noticing and "Neighborhood meeting"

From: "Drew Swenson" <dswenson@swensonandco.com>
To: "Jean Fraser" <JF@portlandmaine.gov>
Date: 12/2/2011 2:39 PM
Subject: RE: 84 Auburn Street - Noticing and "Neighborhood meeting"

Thank you Jean.

Nathan Smith is looking at the agreement for me. We will be back in touch by Monday.

I have a voluntary meeting set up for this Monday with the NDNA. I will have a formal one when we get the city council. The NDNA folks are doing the notification for this preliminary meeting.

Drew E. Swenson, CPA, LLM
Swenson & Co.
P.O. Box 17536
Portland ME 04112
Tel: 207-775-2464
Cell: 207-415-3829
dswenson@swensonandco.com

From: Jean Fraser [mailto:JF@portlandmaine.gov]
Sent: Friday, December 02, 2011 2:37 PM
To: Drew Swenson
Subject: Re: 84 Auburn Street - Noticing and "Neighborhood meeting"

Drew

Noticing: Legally I think we need to send the abutters to this property a copy of the draft Cond Zone Agreement on Monday- and I would like to send them something that is reasonably up-to-date esp re the trees (in the case of the Falls)- so it would be helpful to know on Monday if you are OK with what I sent earlier today and I could send out a version that includes only what has been agreed (so if there were provisions that were not agreed I would only put in the headings for those).

"Voluntary Neighborhood meeting": I recall you said you planned to have a "voluntary" meeting to include the NDNA. Usually we supply the address labels for such meetings so that all of the property owners within 500 feet get an invitation. As your meeting is not a required meeting its not required that you use our labels, but it is advisable to use the same addresses as have been noticed of the project (which are logged in our system). If you want the labels please contact our Office Manager Jennifer Yeaton; 874 8719 or JMY@portlandmaine.gov

Thank you
Jean

Jean Fraser - RE: 84 Auburn Street

From: Tom Errico <thomas.errico@tylin.com>
To: Jean Fraser <JF@portlandmaine.gov>
Date: 11/30/2011 1:44 PM
Subject: RE: 84 Auburn Street

Jean – I am fine with the wording. Just add 59 feet.....I agree that the project will not have a significant impact to the adjacent street system. I don't know if they will need to do something on Auburn Street (adding a left-lane entering the site drive). That will be determined during site plan review. I'm fine with that approach. I'm ok if you want to add something on the # of drive-thru lanes. The site plan review will define what is allowed from a traffic generation perspective and deviation from that would require review.

Thomas A. Errico, PE
 Senior Associate
 Traffic Engineering Director
TYLIN INTERNATIONAL
 12 Northbrook Drive
 Falmouth, ME 04105
 207.347.4354 direct
 207.400.0719 mobile
 207.781.4753 fax
thomas.errico@tylin.com
 Visit us online at www.tylin.com

"One Vision, One Company"
 Please consider the environment before printing.

From: Jean Fraser [mailto:JF@portlandmaine.gov]
Sent: Wednesday, November 30, 2011 12:12 PM
To: Tom Errico
Subject: Re: 84 Auburn Street

Tom

Could you send me comments re the wording of the cond zone agreement asap and separate from an update to your earlier comments below. (I attach an new interim trackchanged version based on this mornings discussion, plus the same conceptual site plan and Tom Gorrill's letter as sent before).

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thanks
 Jean

>>> Tom Errico <thomas.errico@tylin.com> 11/17/2011 7:54 AM >>>

Jean – I have reviewed the conceptual site plan for the above noted project and from a site plan layout and access perspective I generally find it to be acceptable. A few items to note:

- The egress driveway width is wide given that it is an exit drive only. I would recommend a narrower driveway.
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If you have any questions or comments, please contact me.

Best regards,

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director

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Jean Fraser - Re: Fwd: 84 Auburn Street Additional Documents

From: Jean Fraser
To: Margolis-Pineo, David
Date: 12/1/2011 4:14 PM
Subject: Re: Fwd: 84 Auburn Street Additional Documents
Attachments: 84 Auburn Concept Site Plan11.29.11.pdf

David

As per our discussion with Alex, the attached is the latest version of the Conceptual Site Plan- it is not final (for the Hearing) as we would like the final version to include the desired location for a shelter (presumably at the back of the sidewalk).

Please ensure that METRO understand that the applicant is unlikely (based on the comments from the Planning Board at the Workshop) to be required to provide or install or pay for the shelter- just to provide the space!!!!

thanks
Jean

>>> David Margolis-Pineo (David Margolis-Pineo) 12/1/2011 3:41 PM >>>

I'm not sure where Berry came up with the stormwater comment either. They are showing proposed stormwater treatment and I have indicated that the city intends to install a new storm drain in Auburn Street in the summer of 2012 and will work with the applicant to locate a drain lateral that is convenient for the applicant.

I have talked to Dick Nye at Metro and we have agreed to work together to resolve this issue. Jean, is there any to send the Conceptual plan to Dick as an email attachment?

David Margolis-Pineo
Deputy City Engineer
Department of Public Services
55 Portland St.
Portland, ME 04101
Office 207-874-8850
Fax 207-874-8852
Cell 207-400-6695
dmp@portlandmaine.gov

>>> Jean Fraser 11/30/2011 12:26 PM >>>
David

Thanks for following up.

I think the main question for you was the bus stop/bus pad- it would be helpful if you could send me something in writing about the bus pad and shelter location (since I don't have anything in writing from staff for the Board to back up what was agreed today or back up what I have added to the agreement- see new interim version attached)

I noticed in Barry Sheff's cover letter (second attachment) at the end that he refers to "Since ...workshop, city staff has expressed interest in Pennbrook's intent with regard to stormwater...." I am not sure where that came from but he has addressed that and you might want to see what hes saying. (maybe David Senus mentioned it to Barry based on Dev Rev last week)

You might want to look closely at the conceptual site plan (attached again, 3rd item) and be sure that DPS are OK with it generally (since the clause that states that the development must be substantially in accordance with this plan will constrain the comments at the site plan stage).

thanks
Jean

>>> David Margolis-Pineo (David Margolis-Pineo) 11/30/2011 11:47 AM >>>
Jean,

I think you are all set with comments from me. Correct?

>>> Jean Fraser 11/29/2011 12:48 PM >>>
Hi

This is re the Conditional Rezoning application (NOT site plan application) - going to Hearing on Dec 13th and being advertized (agreement and notice) this week;

The Rezoning Agreement (circulated yesterday to all of you I think) requires that any future site plan be substantially in accordance with the attached plan- so we need to be sure we are happy with the attached plan- for discussion tomorrow at Dev Rev.

This info will also be uploaded into e-plan- there is no project with this address in e-plan yet- so the docs are in 2010-153 (*Molly test level II final w/o preliminary project*)

Note that they have removed one teller drive-through lane;
a bus stop pad has been added but I don't know if thats where we would want a shelter
Jeff- the row of pines they are showing to retain seems considerably shorter than what appears on the aerial.....and they have added landscaped area in corner

Thanks
Jean

>>> "Barry Sheff" <bsheff@woodardcurran.com> 11/28/2011 9:30 PM >>>
Jean,

Attached is response to comments, with accompanying Conceptual Site Plan and Zoning Analysis. Looking forward to meeting with the Board at Public Hearing on Dec 13; please let me know if you have any questions or concerns that you would like addressed.

Tom Gorrill will separately submit additional information regarding traffic, given the changes to the Site Plan.

Best
Barry

Barry Sheff, P.E.
Senior Vice President/Senior Project Manager
(207) 774-2112 ext. 3266 (office)
(207) 749-4171 (cell)
(207) 774-6635 (fax)
bsheff@woodardcurran.com

Woodard & Curran
41 Hutchins Drive
Portland, Maine 04012
www.woodardcurran.com
Commitment & Integrity Drive Results

Jean Fraser - Re: 84 Auburn - cond rezone

From: Jeff Tarling
To: Jean Fraser
Date: 12/1/2011 11:36 AM
Subject: Re: 84 Auburn - cond rezone

Hi Jean -

The Southerly tree line at 84 Auburn Street should be preserved to the extent possible. There is a large Willow tree in poor condition that should be removed. In review, the Southerly tree line at 84 Auburn Street which consists of Red Maple, American Elm should be preserved to the extent possible as this group of trees provide buffer between the neighboring property.

Jeff Tarling
City Arborist

>>> Jean Fraser 12/1/2011 10:24 AM >>>
Jeff

Rick mentioned you had called yesterday and I tried to call you back without success.

I suspect the trees on the south side are not warranting of preservation as you did not mention them in your first memo- but we need to apply the current site plan standards on this and maybe they need to replace some that are being removed along the north side (where there will be joint access).

We need something simple to add to the agreement that specifies numbers, locations and sizes of preservation or replacement planting.

Any project will also be reviewed fully under site plan so the agreement is really to make sure that this is understood and that the conceptual site plan does not imply that they don't need to meet future site plan requirements.

Please let me know asap what you are recommending so I can advise the applicant in time for them to do a revised site plan and draft agreement.

thanks
Jean

Jean Fraser - RE: 84 Auburn Street

From: Tom Errico <thomas.errico@tylin.com>
To: Jean Fraser <JF@portlandmaine.gov>
Date: 11/30/2011 1:44 PM
Subject: RE: 84 Auburn Street

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Jean Fraser - Fwd: 84 Auburn St Contract Zone

From: Jean Fraser
To: Fraser, Jean
Date: 11/18/2011 9:32 AM
Subject: Fwd: 84 Auburn St Contract Zone

>>> Jeff Tarling 11/18/2011 7:43 AM >>>
Hi Jean -

I inspected the 84 Auburn Street lot and offer the following comments: The existing White Pine grove along the Westerly (back) side of the lot and to the North (right) side of the property are important site features and should be preserved. The White Pine grove near the back of the lot have double duty as they are the only buffer or screening for the other lot on the neighboring property. In addition to the tree-save recommendations, my comments on the concept plan for the lot should reduce pavement and incorporate additional green space along the left side, back corner.

Jeff Tarling
City Arborist

Development Review, Wednesday, November 16, 2011

PLANNING BOARD UPCOMING AGENDA		
November 22, 2011		
<i>Workshop - 3:30 p.m.</i>	Site Visit - Zone Change to B-5b - Western Waterfront (3:30- 5:00 - return to City Hall for discussion)	WN
	Conditional Rezoning Agreement - Auburn Street (5-6)	JF
<i>Public Hearing 7:00 p.m.</i>	True Street - Amended Plan	SW
	Congress Street - 8 units - subdivision	SW
	Preble Street Teen Emergency Shelter	JF
	Text Amendment in B-4 Zone	BB
December 13, 2011		
<i>Workshop - 3:30 p.m.</i>	Conditional Rezoning Agreement - Auburn Street	JF
<i>Public Hearing 5:00 p.m.</i>	Reconsideration of Drake Appeal	BB

PROJECTS FOR ADMINISTRATIVE AND BOARD REVIEW

A. Preliminary Plans

1. 772 Stevens Avenue.....sw

B. Final Plans

1. 38 Preble Street- Teen Shelter (Hearing 11.22.11) update....jf
2. 84 Auburn St- conditional rezone (Workshop 11.22.11).....jf
3. True Street....sw
4. 531 Congress Street....sw

C. Issues, Administrative Authorizations, Curb Cuts

1. Proposed driveway widening 53 Garsoe Drivedm-p
2. Mercy banner.....bb/jf/am
3. Proposed driveway cut - 82 Gilman St.....dm-p
4. Thompsons Point...bn
5. West Commercial St zone change....bn

Danielle st present concurs w/ Gary Vogel but will look again

Ch reciprocal easement for joint access Tom Enrico sep w/ drive currently not st no CSO work planned

comm cut? → Central turn lane
→ signal coord.
fill sidewalk gaps
Bill mentioned School travel Plan
? gone to CC
get info Bruce

AJ- if bring forward to 10 ft more room for planting

BB- corner - res - put planting here as lanes don't need to go that far.

Deb Andrews attended - JF read Contract zone Deb commented that United Way banners have been allowed by waiver. Ch Design Ordinance Deb ref clause to comm. banners

11-12 wed slot every week depends on what's submitted,

Jean Fraser - Fwd: 84 Auburn Street Development

From: Jean Fraser
To: Drew Swenson
Date: 11/23/2011 3:36 PM
Subject: Fwd: 84 Auburn Street Development
CC: Barhydt, Barbara
Attachments: Public comment circ to PB on 11.22.2011.pdf

Drew,

This is a brief follow up to the Planning Board Workshop last night and I would like to confirm the timetable on Monday as this is very tight for the scheduled hearing date.

1. I confirm that a neighborhood meeting is not a legal requirement for this project but we would encourage you to have a "voluntary" neighborhood meeting (with as much notice as possible) before the 12-13-2011 PB Hearing;
2. The most urgent item is the draft Conditional Rezone Agreement which must be posted for public viewing in the City Clerk's office on tuesday 11.29.2011- we will post the "latest version" available that day;
3. We strongly recommend the inclusion of an area designated for a future bus shelter ("by others") with an associated easement; this has been done by the Bangor Bank around the corner to the south. In case you did not see it, the North Deering NA comment is below and I attach the note circulated to the Board that amplified their concerns.
4. I suggest the Agreement explicitly clarify re trees to be preserved.
5. The Conceptual Site Plan needs to be revised to address the staff review and Board concerns, particularly to relocate/redesign the egress lane as far north as possible and also narrowing it to maximize the separation from the drive access owned by the Falls; plus revising re trees and landscape as you committed at the Workshop. We would also encourage a review of the area of pavement and determine if all that is really necessary. The revised Conceptual Site Plan is needed asap so it can be attached to the public copy of the Agreement.
6. Please particularly address the Zoning Comments/Requirements next week so it can be reviewed by the Zoning Administrator; the Board will wish to see a confirmation from Marge Schmuckal that all is OK on those points. I confirm that the Traffic Study is currently under review by the traffic engineer.

Also, I wanted to apologize for the very late start of the PB Workshop last night.

Jean

*Jean Fraser, Planner
City of Portland
874 8728*

FROM NDNA AND CIRCULATED TO PB ON 11.22.2011

>>> "Tim St. Hilaire" <tsthilaire@maine.rr.com> 11/22/2011 3:27 PM >>>

Hello Jennifer,

I am writing on behalf of the North Deering Neighborhood Association regarding the development Plans for Property located at 84 Auburn Street. I unfortunately will not be able to attend todays Planning Board Work Shop .

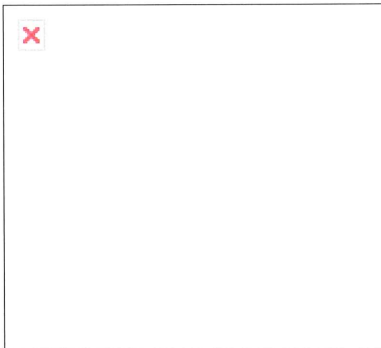
The Neighborhood has advocated and continues to advocate for Metro Bus Shelters to be constructed at development sites in North Deering area. The 84 Auburn Street Location is a frequently used designated Metro Bus stop and is in need of a shelter. Because of the closeness to the street and the congested traffic it would make sense to protect the Metro Patrons from the elements. North Deering only presently has two bus shelters in the neighborhood. Given the large geographic area of North Deering , shelters are a necessity in this day of high gas prices. I would be happy to open discussions with you at any time. Thank you for your time and consideration. Happy Thanksgiving.

Tim St.Hilaire , President NDNA.

Tim St. Hilaire, Custom Property Services

(h) 207-797-7222 / (c) 207-632-5228

tsthilaire@maine.rr.com



Masonry~Carpentry~Painting~Landscaping~ Home Safety Modifications

City of Portland
Development Review Application
Planning Division Transmittal form

Application Number: 2011-378 **Application Date:** 11/7/2011 12:00:00 AM
CBL: 375-A-26
Project Name: Conditional Rezoning
Address: 84 Auburn Street

Project Description: Conditional Zone in the B-1 Zone
Zoning: B-1

Other Reviews Required:
Review Type: Level III Conditional/Contract Rezoning

Distribution List:

<input type="checkbox"/> Planner	Jean Fraser	<input type="checkbox"/> Parking	John Peverada
<input type="checkbox"/> Zoning	Marge Schmuckal	<input type="checkbox"/> Design Review	Alex Jaegerman
<input type="checkbox"/> Traffic Engineer	Tom Errico	<input type="checkbox"/> Corporation Counsel	Danielle West-Chuhta
<input type="checkbox"/> Civil Engineer	David Senus	<input type="checkbox"/> Sanitary Sewer	John Emerson
<input type="checkbox"/> Fire Department	Chris Pirone	<input type="checkbox"/> Inspections	Tammy Munson
<input type="checkbox"/> City Arborist	Jeff Tarling	<input type="checkbox"/> Historic Preservation	Deb Andrews
<input type="checkbox"/> Engineering	David Margolis-Pineo	<input type="checkbox"/> DRC Coordinator	Phil DiPierro
		<input type="checkbox"/> Outside Agency	

Comments needed by (7 days later): Wednesday, November 16, 2011

lic for comments to

not fine

Zoning

Traffic

not D Senus

APS re conditions of agreement

? contribution to filling gaps in sidewalk network

City Arborist

Property -
pass joint access

This page contains a detailed description of the Parcel ID you selected.
Press the **New Search** button at the bottom of the screen to submit a
new query.

Current Owner Information:

CBL	375 A023001
Land Use Type	OFFICE & BUSINESS SERVICE
Property Location	94 AUBURN ST
Owner Information	OAKPOINT LLC 88 ROUND HILL RD # 2 NORTHAMPTON MA 01060
Book and Page	26367/319
Legal Description	375-A-23-24-25-35 AUBURN ST 92-102
	59785 SF
Acres	1.372

Current Assessed Valuation:

TAX ACCT NO.	38444	OWNER OF RECORD AS OF APRIL 2011
LAND VALUE	\$366,400.00	OAKPOINT LLC
BUILDING VALUE	\$1,117,000.00	88 ROUND HILL RD # 2
NET TAXABLE - REAL ESTATE	\$1,483,400.00	NORTHAMPTON MA 01060
TAX AMOUNT	\$27,116.56	

Any information concerning tax payments should be directed to the
Treasury office at 874-8490 or [e-mailed](#).

Building Information:

Card 1 of 1

Year Built 1967
Style/Structure Type OFFICE BUILDING - LOW-RISE
Units 1
Building Num/Name 1 - NORTHGATE OFFICE MLL
Square Feet 22522

[View Sketch](#) [View Map](#)



Exterior/Interior Information:

Card 1

Levels B1/B1
Size 800
Use OFFICE BUILDING
Height 8
Heating ELECTRIC
A/C CENTRAL

Card 1

Levels 01/01
Size 10846
Use OFFICE BUILDING
Height 12
Walls BRK/CONC BLK
Heating ELECTRIC
A/C CENTRAL

Card 1

Levels 02/02
Size 10876
Use OFFICE BUILDING
Height 12
Walls BRK/CONC BLK

Heating ELECTRIC
A/C CENTRAL

Other Features:

Card 1
Structure SPRINKLER - WET
Size 22492X1

Card 1
Structure OPEN AREA - BANK/OFFICE
Size 3X10

Card 1
Structure ELEVATOR - ELEC.
PASSENGER
Size 2500X90

Outbuildings/Yard Improvements:

Card 1
Year Built 1980
Structure FENCE CHAIN
Size 1X1680
Units 1
Grade C
Condition 2

Card 1
Year Built 1967
Size 1X324
Units 1
Grade C
Condition 2

Card 1
Year Built 1967
Structure ASPHALT PARKING
Size 45000
Units 1
Grade C
Condition 2

Sales Information:

Sale Date	Type	Price	Book/Page
9/30/2008	LAND + BUILDING	\$1,800,000.00	26367/319
2/28/2002	LAND + BUILDING	\$1,085,000.00	17371/39
11/19/1993	LAND + BUILDING	\$525,000.00	11107/111
11/18/1993	LAND + BUILDING	\$0.00	11107/101

[New Search!](#)

From: "Drew Swenson" <dswenson@swensonandco.com>
To: "Jean Fraser" <jf@portlandmaine.gov>
CC: <dcameron@woodardcurran.com>, "Barry Sheff" <bsheff@woodardcurran.com>, ...
Date: 12/8/2011 12:55 PM
Subject: RE: 84 Auburn Street - draft Conditional Rezone Agreement
Attachments: executed mutual easement agreement.pdf; Site Plan.pdf; Conditional Rezoning Agreement -- 12-7-11 -- redlined.doc

Hi Jean:

I am attaching the mutual easement and the updated plan we received from Denise.

The NDNA meeting went very well. They are very supportive of the Plan and had no objections. They did mention that they have discussed with the city in the past their desire to see the city install a sidewalk the length of Auburn Street to the school intersection and have the streets restriped. They do not want those costs placed on our project, nor do we; nor can the project afford it, but I thought you would want to know that. My understanding is they have raised this as an issue on each project that has been undertaken in the area.

I would note that the new 52 foot centerline distance between our southerly egress and the abutting property ingress egress is the result of the abutter revising their driveway northward by several feet since the last ALTA survey was done in 2004. I have been informed that their driveway now encroaches onto the 84 Auburn Street property which will need to be rectified.

We also have a couple of minor changes to the draft conditional rezoning agreement which I have also attached.

Thank you for your help Jean.

Drew E. Swenson, CPA, LLM
Swenson & Co.
P.O. Box 17536
Portland ME 04112
Tel: 207-775-2464
Cell: 207-415-3829
dswenson@swensonandco.com

-----Original Message-----

From: Jean Fraser [mailto:jf@portlandmaine.gov]
Sent: Thursday, December 08, 2011 11:49 AM
To: Drew Swenson
Subject: RE: 84 Auburn Street - draft Conditional Rezone Agreement

Drew

The other thing that we need is the agreement with the owner of 94 Auburn re the joint access; as Barbara advised, you can redact the financial info but the Planning Board need to see at least a draft and have some confidence that this will be signed.

Our attorney would like to see it before it goes tot he Board so hopefully you can send that to me today.

Will you be sending me anything to go into the PB Report regarding the NDNA meeting?

thank you
Jean

>>> "Drew Swenson" 12/08/11 11:20 AM >>>
Thank you Jean. I have asked Denise to release the Plan

Drew E. Swenson, CPA, LLM
Swenson & Co.
P.O. Box 17536
Portland ME 04112
Tel: 207-775-2464
Cell: 207-415-3829
dswenson@swensonandco.com

-----Original Message-----

From: Jean Fraser [mailto:jf@portlandmaine.gov]
Sent: Thursday, December 08, 2011 10:33 AM
To: Drew Swenson
Subject: RE: 84 Auburn Street - draft Conditional Rezone Agreement

Drew,

OK & thanks; I have heard from Denise but not yet received the Plan.

We are OK with the drive way spacing going to 52 feet and I was going to change it on the draft agreement too before it goes to the Board.

Jean

>>> "Drew Swenson" 12/07/11 10:53 AM >>>
Hi Jean:

I will work with Woodard & Curran on this ASAP. Thanks

Drew E. Swenson, CPA, LLM
Swenson & Co.
P.O. Box 17536
Portland ME 04112

Tel: 207-775-2464
Cell: 207-415-3829
dswenson@swensonandco.com

From: Jean Fraser [mailto:JF@portlandmaine.gov]
Sent: Wednesday, December 07, 2011 9:35 AM
To: Drew Swenson
Subject: RE: 84 Auburn Street - draft Conditional Rezone Agreement

Drew

I requested revisions on Friday and it is the revised plan that we need as it goes with the revised agreement; the requested revisions were to show the front yard setbacks to both front walls of the building; change the note re removing the trees along the south boundary; revise the pad in the esplanade so smaller and not for the bus shelter; add note re the bus shelter easement (this can be an arrow to behind the sidewalk near; I suggest wording of the note be "12X6 ft easement for bus shelter (provided and installed by others) with precise location to be agreed with City and Metro"; extend landscape area at rear to south of angled parking;

These are described in more detail in the e-mail i sent on Friday 12.2.2011 which I have copied below- see last para:

Re content of agreement:

I think the content is basically unchanged except as noted in 4 & 5 below:

1. The provision allowing a second teller seems OK but you will see that our attorney has relocated that provision;
2. We are OK with Sunday opening; not sure if neighbors will have an issue but I suggest it be left in for now;
3. Re 6a, that is what the attorney has added and may need further fine-tuning; we would like the conceptual plan to show the front yard setback dimensions for both planes of the front of the building shown;
4. Para 8 re trees- we didn't want the reference to the rear line of trees to imply that is was OK to remove the rest of the trees on site without replacement as required under the site plan provisions (which requires replacement of large existing trees, but they can be replaced elsewhere on the site). The City Arborist has commented that both the north and south lines of trees should be preserved if at all possible but the Planning Board were OK with losing the trees along the north. Although the owners of the property to the south appear to want the trees removed, there are still several site plan standards that would apply and further discussion will be needed at the site plan stage as to whether fencing,

existing/new trees or a mix of these would work best along this side boundary. At this stage we would like the note on the conceptual site plan that refers to the southern line of trees to state " Preserve existing vegetation to the extent possible" (rather than demolish etc) and the plan to show the willow to be removed (if its location is known).

5. Para 9- the attorney has termed the bus shelter easement a "community contribution" but in fact this requirement has been made as part of site plans elsewhere and is not really "extra" (actual provision of/installation of the shelter would be more of a community contribution, but that is not currently part of this). I am waiting for comments on the suggested size & location of the easement (it may not all be on your property - the total pad size would be about 12X6 ft); the location should be added to the final revised conceptual plan. In any case I understand that any shelter would not be on the pad near the curb (as suggested on the current version of the conceptual plan) so that pad probably can be smaller- its just for people getting on and off the bus and is a usual site plan requirement.

Re: Conceptual site plan

a. The layout is basically OK in terms of the traffic layout, except that the drive lane along the rear (between building and parking) looks like it can be narrowed to leave more room for the retained trees. Reviewers noted that the pavement to the south of the southernmost parking space along the rear boundary didn't seem necessary and it appears to be possible to extend the landscaped buffer area towards the parking (or at least have an island next to the last space, maybe with a tree).

b. Revise to reflect comments above where underlined ie revised note re southern line of trees, show willow if poss (as removed); add setback dimensions; add bus shelter easement and revise note re bus stop "pad".

thank you

Jean

>>> "Drew Swenson" 12/6/2011 3:02 PM >>>

Jean you have the most current conceptual plan that Denise or Barry sent last week to you.

Drew E. Swenson, CPA, LLM
Swenson & Co.
P.O. Box 17536
Portland ME 04112

Tel: 207-775-2464
Cell: 207-415-3829
dswenson@swensonandco.com

From: Jean Fraser [mailto:JF@portlandmaine.gov]
Sent: Tuesday, December 06, 2011 2:25 PM
To: Drew Swenson
Subject: RE: 84 Auburn Street - draft Conditional Rezone Agreement

Thank you- please copy to Barbara too.

Could you also please send asap the revised Conceptual Plan- as the Board requests that they have review comment on what is before the Board, so my intent was to have the final review tomorrow morning so I can have final comments in time for the Report that goes out Friday noonish.

>>> "Drew Swenson" 12/6/2011 1:28 PM >>>

Thanks Jean. I know that Nathan Smith is working on it. I will copy him on this email.

Drew E. Swenson, CPA, LLM
Swenson & Co.
P.O. Box 17536
Portland ME 04112

Tel: 207-775-2464
Cell: 207-415-3829
dswenson@swensonandco.com

From: Jean Fraser [mailto:JF@portlandmaine.gov]
Sent: Tuesday, December 06, 2011 1:34 PM
To: Drew Swenson
Subject: 84 Auburn Street - draft Conditional Rezone Agreement

Drew,

This will be the subject of the final staff review tomorrow morning (Wed) and (as mentioned in my e-mail on Friday) we must notice the updated version urgently.

Please send your version of the Agreement asap, and please copy to Barbara as I am out of the office as from 2:30pm today.

Thank you

Jean

Jean Fraser, Planner

City of Portland

874 8728



November 29, 2011

Ms. Jean Fraser, Planner
City of Portland
389 Congress Street
Portland, ME 04101

RE: Addendum 1
Drive-In Bank – 84 Auburn Street, Portland, Maine

Dear Jean:

In response to comments received to date, the applicant has revised the site plan for the drive-in bank at 84 Auburn Street in Portland, Maine. The changes include 1) the removal of one of the drive-thru lanes such that there are only two instead of the originally proposed three, and 2) reduction in the exit only driveway width onto Auburn Street such that there is only a single 12 foot wide exit lane compared with the originally proposed two exit lanes. This reduction in width has the benefit of increasing the separation from the driveway to the south. This revision now decreases the total curb cut along this site frontage from the existing approximately 70 feet of full movement access to only 12 feet of exit only.

Because the change in the number of drive-up lanes reduces the trip generation to/from the site and the reduction in the exit only driveway width from two exit lanes to a single exit lane impacts the results of the driveway level of service and queuing, we have revisited these items with a summary of the results below.

In addition to the impacts as a result of site plan changes, we have also considered the comments on the lane usage along the site frontage as well as traffic signal coordination in the area. These items are discussed in more detail below.

Trip Generation:

Because the trip generation is partially based on the number of drive-thru lanes, Gorrill-Palmer has recalculated the trip generation using the same methodology as that in the original Traffic Impact Study, with a summary of the results in the following table and the calculations attached.

<u>Time Period</u>	<u>Previously Prop.</u>	<u>Revised</u>	<u>Net Change</u>
AM Peak Hour of Generator	67	56	-11
PM Peak Hour of Generator	96	81	-15
Saturday Peak Hour	97	82	-15

As can be seen from the results, the revised forecast trip generation is less than what was previously proposed. A revised Figure 6/7 is attached that reflects this decrease in trip generation.

Ms. Jean Fraser
November 29, 2011
Page 2 of 3

Capacity Analysis

Because the exit only driveway onto Auburn Street is being reduced from two lanes to a single lane, Gorrill-Palmer has redone the capacity and queuing analysis, consistent with the methodology in the original Traffic Impact Study, of the exit only site driveway to identify potential impacts. A copy of the computer printouts is attached for your use with a summary of the results as follows:

Auburn Street at Exit Only Site Drive (Unsignalized)

Lane Group	2012 PM Peak Hour - Postdevelopment	
	Previous Analysis	Revised Analysis
	LOS	LOS
Site Drive EB	B	B
Auburn Street NB	A	A
Auburn Street SB	A	A

As can be seen from the results, there was no significant change in level of service by reducing the trip generation and in going from two exit lanes to a single exit lane.

In addition to capacity analysis, Gorrill-Palmer has redone the queue analysis to determine what impacts the reduction in trip generation in combination with the reduction in number of exit lanes has on the forecast queuing. A copy of the computer printouts is attached for your use with a summary of the results as follows:

Queues

Lane Group	2012 PM Peak Hour		
	Postdevelopment		
	Storage Length (ft)	50 th Percentile (ft)	95 th Percentile (ft)
State Farm Drive	85	23	50
Site Exit Drive	65*	17	43

*Inclusive of the vehicles at the drive-thrus

Auburn Street Lane Usage Along Site Frontage

Mr. Errico's comment: *"Traffic conditions on Auburn Street is something that I will be carefully looking at as it relates to safety history and how it will accommodate turns into and out of the project site. The width of Auburn Street is wide and there may be options on how to re-think the lane configurations."*

Response: Auburn Street is relatively wide at the intersection with the State Farm Insurance driveway, where vehicles would be turning to access this site. This width allows for thru vehicles to by-pass left turning vehicles into the site. This was verified during a field visit to the project.

Ms. Jean Fraser
November 29, 2011
Page 3 of 3

As stated previously in the Traffic Impact Study, there are no high crash locations within the study area that would indicate that the current geometrics are not working.

Traffic Signal Coordination

Mr. Errico's comment: *"Traffic signal coordination has been an issue between Allen's Corner and the Lyseth/Lyman Moore Schools. Improving signal coordination through this area may be a suggested requirement."*

Response: We concur that a well coordinated traffic signal system improves the mobility of the corridor. To contribute to improving the mobility of the corridor, this project is reducing two full movement accesses to a single exit only driveway. As the capacity analysis in the Traffic Impact Study indicates for both the exit only site driveway and the State Farm driveway, Auburn Street both directions will operate at levels of service A with this project in place. This project is only forecast to increase the adjacent roadway traffic volume directly in front of the site by approximately 2%. Therefore, it is our opinion that this applicant will have minimal impact on the signals.

As can be seen from the above results, the forecast queues will fit within the available queue.

If you have any questions, please contact our office.

Sincerely,

Gorrill-Palmer Consulting Engineers, Inc.



Thomas L. Gorrill, P.E., PTOE
President

Attachments

C: Tom Errico, T.Y. Lin International

TLG/red/JN2618/Addendum 1

JN: 2618
 Project Description: Bank
 Project Location: Auburn Street, Portland
 Date: 11/28/2011

Gorrill-Palmer Consulting Engineers, Inc.
 P.O. Box 1237
 15 Shaker Road
 Gray, Maine 04039

**Drive-in Bank
 Land Use Code (LUC) 912**

Gross Floor Area (ft²): 3,900

Time Period	ITE Trip Rate	Trip Ends	Directional Split *		Directional Distribution		R^2
			IN	OUT	IN	OUT	
Weekday	T = 148.15 (X)	578	50%	50%	289	289	0.59
AM Peak Adjacent Street	T = 12.35 (X)	48	55%	45%	26	22	---
PM Peak Adjacent Street	T = 25.82 (X)	101	50%	50%	51	50	---
AM Peak Hour of Generator	T = 17.31 (X)	68	50%	50%	34	34	0.51
PM Peak Hour of Generator	T = 26.69 (X)	104	50%	50%	52	52	---
Saturday	T = 86.32 (X)	337	50%	50%	169	168	0.52
Saturday Peak Hour of Gen.	T = 26.53 (X)	103	50%	50%	52	51	---

* Percentages rounded to nearest 5%

Number of Drive-in Lanes: 2

Time Period	ITE Trip Rate	Trip Ends	Directional Split *		Directional Distribution		R^2
			IN	OUT	IN	OUT	
Weekday	T = 139.258 (X)	279	50%	50%	140	139	0.52
AM Peak Adjacent Street	T = 9.44(X)	19	60%	40%	11	8	---
PM Peak Adjacent Street	T = 27.41 (X)	55	50%	50%	28	27	---
AM Peak Hour of Generator	T = 21.64 (X)	43	50%	50%	22	21	---
PM Peak Hour of Generator	T = 29.05 (X)	58	50%	50%	29	29	0.55
Saturday	Not Given	0	50%	50%	0	0	---
Saturday Peak Hour of Gen.	T = 29.88 (X)	60	50%	50%	30	30	---

* Percentages rounded to nearest 5%

AVERAGE

Time Period	Trip Ends	Directional Split *		Directional Distribution	
		IN	OUT	IN	OUT
Weekday	429	50%	50%	214	215
AM Peak Adjacent Street	34	58%	42%	19	15
PM Peak Adjacent Street	78	50%	50%	39	39
AM Peak Hour of Generator	56	50%	50%	28	28
PM Peak Hour of Generator	81	50%	50%	41	40
Saturday Peak Hour of Gen.	82	50%	50%	41	41

Baseline

3: State Farm & Auburn Street Performance by approach

Approach	EB	NB	SB	All
Total Delay (hr)	0.1	0.2	0.1	0.4
Delay / Veh (s)	10.6	0.8	0.4	0.9
Total Stops	35	14	0	49
Travel Dist (mi)	5.5	26.0	68.9	100.4
Travel Time (hr)	0.3	1.1	2.4	3.8
Avg Speed (mph)	18	24	29	27
Fuel Used (gal)	0.2	0.8	2.0	3.0
HC Emissions (g)	1	5	15	20
CO Emissions (g)	25	129	371	525
NOx Emissions (g)	2	17	45	65
Vehicles Entered	35	831	599	1465
Vehicles Exited	35	830	601	1466
Hourly Exit Rate	35	830	601	1466
Input Volume	40	844	606	1490
% of Volume	88	98	99	98
Denied Entry Before	0	0	0	0
Denied Entry After	0	0	0	0

7: Site Exit & Performance by approach

Approach	EB	NB	SB	All
Total Delay (hr)	0.1	0.7	0.0	0.8
Delay / Veh (s)	13.1	2.9	0.1	1.9
Total Stops	22	0	0	22
Travel Dist (mi)	1.8	254.9	19.1	275.8
Travel Time (hr)	0.2	9.3	0.7	10.1
Avg Speed (mph)	12	28	28	28
Fuel Used (gal)	0.1	7.1	0.6	7.8
HC Emissions (g)	0	51	4	55
CO Emissions (g)	6	955	112	1074
NOx Emissions (g)	1	135	15	150
Vehicles Entered	22	820	602	1444
Vehicles Exited	22	821	602	1445
Hourly Exit Rate	22	821	602	1445
Input Volume	22	834	610	1466
% of Volume	100	98	99	99
Denied Entry Before	0	0	0	0
Denied Entry After	0	0	0	0

Baseline

Total Network Performance

Total Delay (hr)	1.5
Delay / Veh (s)	3.7
Total Stops	71
Travel Dist (mi)	684.2
Travel Time (hr)	24.7
Avg Speed (mph)	28
Fuel Used (gal)	20.4
HC Emissions (g)	145
CO Emissions (g)	3314
NOx Emissions (g)	430
Vehicles Entered	1476
Vehicles Exited	1479
Hourly Exit Rate	1479
Input Volume	4458
% of Volume	33
Denied Entry Before	0
Denied Entry After	0

Intersection: 3: State Farm & Auburn Street

Movement	EB	NB	SB
Directions Served	LR	L	TR
Maximum Queue (ft)	61	39	4
Average Queue (ft)	23	11	0
95th Queue (ft)	50	36	3
Link Distance (ft)	829		604
Upstream Blk Time (%)			
Queuing Penalty (veh)			
Storage Bay Dist (ft)		50	
Storage Blk Time (%)		0	
Queuing Penalty (veh)		1	

Intersection: 7: Site Exit &

Movement	EB
Directions Served	LR
Maximum Queue (ft)	47
Average Queue (ft)	17
95th Queue (ft)	43
Link Distance (ft)	430
Upstream Blk Time (%)	
Queuing Penalty (veh)	
Storage Bay Dist (ft)	
Storage Blk Time (%)	
Queuing Penalty (veh)	

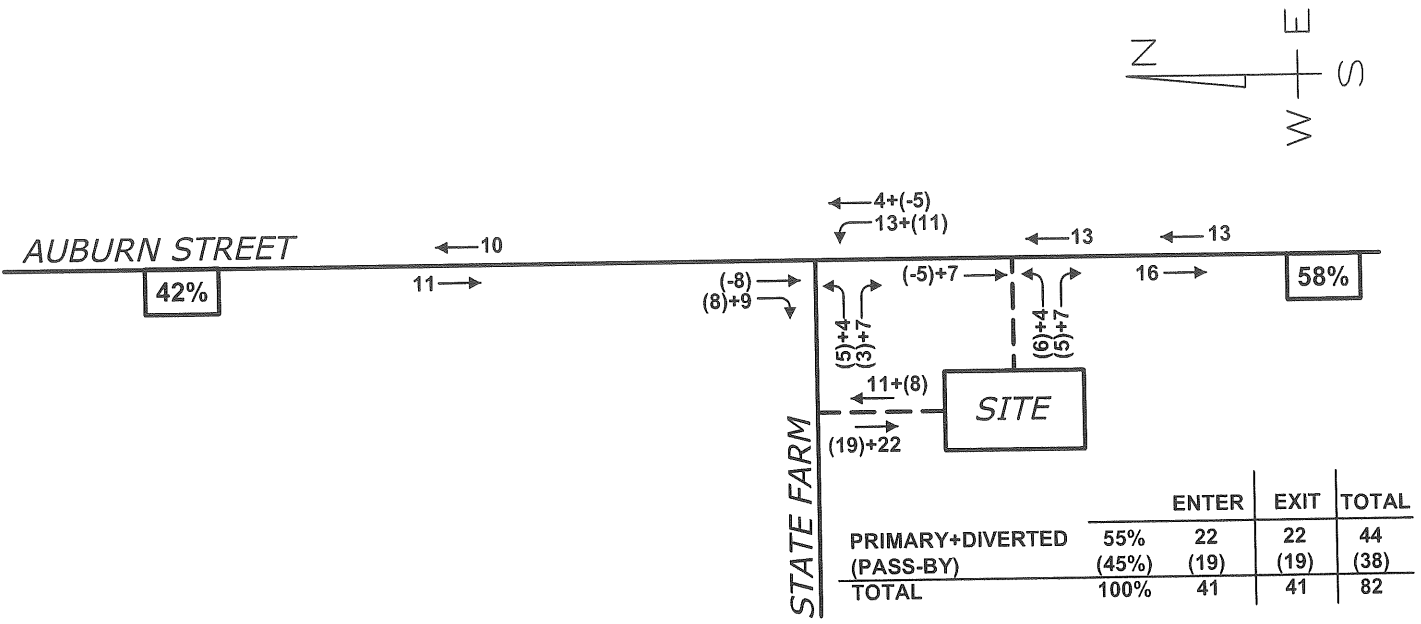
Network Summary

Network wide Queuing Penalty: 1

Trip Distribution and Assignment

Figure No.

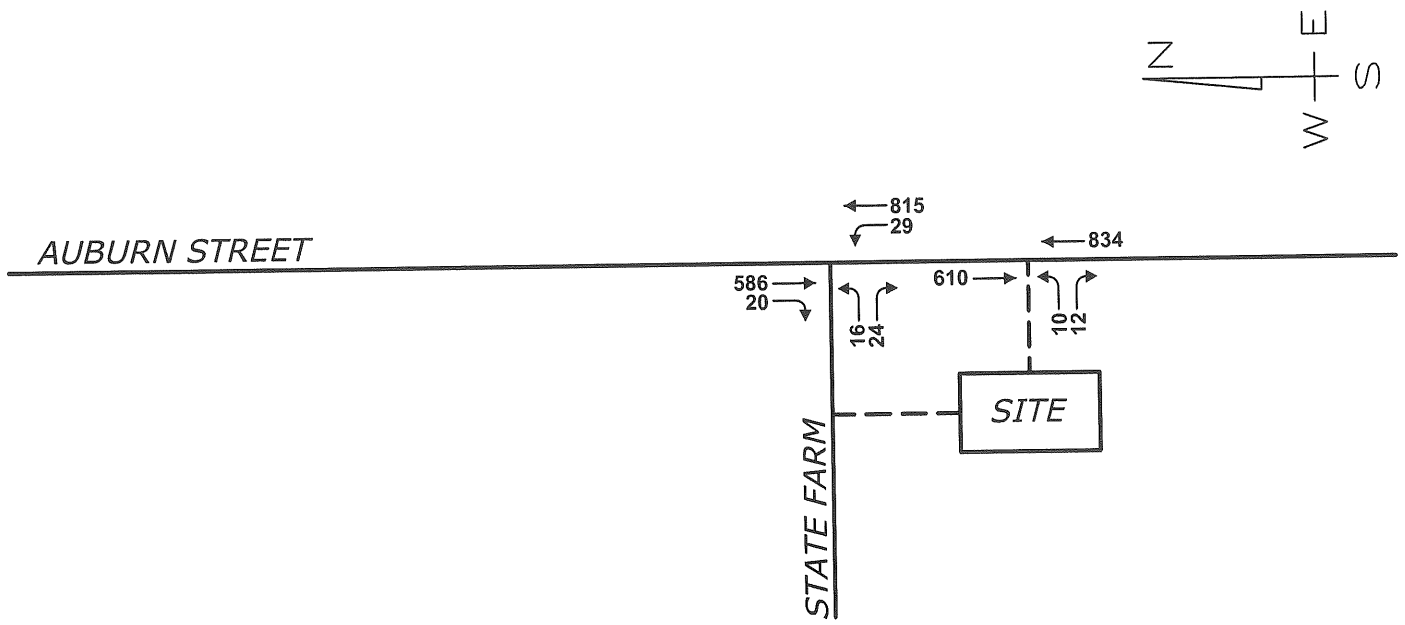
6



2012 Postdevelopment

Figure No.

7



PROPOSED BANK, PORTLAND, MAINE

November 29, 2011

Ms. Jean Fraser, Planner
City of Portland
389 Congress Street
Portland, ME 04101

RE: Addendum 1
Drive-In Bank – 84 Auburn Street, Portland, Maine

Dear Jean:

In response to comments received to date, the applicant has revised the site plan for the drive-in bank at 84 Auburn Street in Portland, Maine. The changes include 1) the removal of one of the drive-thru lanes such that there are only two instead of the originally proposed three, and 2) reduction in the exit only driveway width onto Auburn Street such that there is only a single 12 foot wide exit lane compared with the originally proposed two exit lanes. This reduction in width has the benefit of increasing the separation from the driveway to the south. This revision now decreases the total curb cut along this site frontage from the existing approximately 70 feet of full movement access to only 12 feet of exit only.

Because the change in the number of drive-up lanes reduces the trip generation to/from the site and the reduction in the exit only driveway width from two exit lanes to a single exit lane impacts the results of the driveway level of service and queuing, we have revisited these items with a summary of the results below.

In addition to the impacts as a result of site plan changes, we have also considered the comments on the lane usage along the site frontage as well as traffic signal coordination in the area. These items are discussed in more detail below.

Trip Generation:

Because the trip generation is partially based on the number of drive-thru lanes, Gorrill-Palmer has recalculated the trip generation using the same methodology as that in the original Traffic Impact Study, with a summary of the results in the following table and the calculations attached.

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As can be seen from the results, the revised forecast trip generation is less than what was previously proposed. A revised Figure 6/7 is attached that reflects this decrease in trip generation.

Ms. Jean Fraser
 November 29, 2011
 Page 2 of 3

Capacity Analysis

Because the exit only driveway onto Auburn Street is being reduced from two lanes to a single lane, Gorrill-Palmer has redone the capacity and queuing analysis, consistent with the methodology in the original Traffic Impact Study, of the exit only site driveway to identify potential impacts. A copy of the computer printouts is attached for your use with a summary of the results as follows:

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<i>Lane Group</i>	2012 PM Peak Hour - Postdevelopment	
	<i>Previous Analysis</i>	<i>Revised Analysis</i>
	LOS	LOS
Site Drive EB	B	B
Auburn Street NB	A	A
Auburn Street SB	A	A

As can be seen from the results, there was no significant change in level of service by reducing the trip generation and in going from two exit lanes to a single exit lane.

In addition to capacity analysis, Gorrill-Palmer has redone the queue analysis to determine what impacts the reduction in trip generation in combination with the reduction in number of exit lanes has on the forecast queuing. A copy of the computer printouts is attached for your use with a summary of the results as follows:

Queues			
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	<i>Postdevelopment</i>		
	Storage Length (ft)	50th Percentile (ft)	95th Percentile (ft)
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*Inclusive of the vehicles at the drive-thrus

Auburn Street Lane Usage Along Site Frontage

Mr. Errico's comment: *"Traffic conditions on Auburn Street is something that I will be carefully looking at as it relates to safety history and how it will accommodate turns into and out of the project site. The width of Auburn Street is wide and there may be options on how to re-think the lane configurations."*

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Ms. Jean Fraser
November 29, 2011
Page 3 of 3

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As can be seen from the above results, the forecast queues will fit within the available queue.

If you have any questions, please contact our office.

Sincerely,

Gorrill-Palmer Consulting Engineers, Inc.



Thomas L. Gorrill, P.E., PTOE
President

Attachments

C: Tom Errico, T.Y. Lin International

TLG/red/JN2618/Addendum 1

JN: 2618
 Project Description: Bank
 Project Location: Auburn Street, Portland
 Date: 11/28/2011

Gorrill-Palmer Consulting Engineers, Inc.
 P.O. Box 1237
 15 Shaker Road
 Gray, Maine 04039

**Drive-in Bank
 Land Use Code (LUC) 912**

Gross Floor Area (ft²): 3,900

Time Period	ITE Trip Rate	Trip Ends	Directional Split *		Directional Distribution		R ²
			IN	OUT	IN	OUT	
Weekday	T = 148.15 (X)	578	50%	50%	289	289	0.59
AM Peak Adjacent Street	T = 12.35 (X)	48	55%	45%	26	22	---
PM Peak Adjacent Street	T = 25.82 (X)	101	50%	50%	51	50	---
AM Peak Hour of Generator	T = 17.31 (X)	68	50%	50%	34	34	0.51
PM Peak Hour of Generator	T = 26.69 (X)	104	50%	50%	52	52	---
Saturday	T = 86.32 (X)	337	50%	50%	169	168	0.52
Saturday Peak Hour of Gen.	T = 26.53 (X)	103	50%	50%	52	51	---

* Percentages rounded to nearest 5%

Number of Drive-in Lanes: 2

Time Period	ITE Trip Rate	Trip Ends	Directional Split *		Directional Distribution		R ²
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AM Peak Hour of Generator	T = 21.64 (X)	43	50%	50%	22	21	---
PM Peak Hour of Generator	T = 29.05 (X)	58	50%	50%	29	29	0.55
Saturday	Not Given	0	50%	50%	0	0	---
Saturday Peak Hour of Gen.	T = 29.88 (X)	60	50%	50%	30	30	---

* Percentages rounded to nearest 5%

AVERAGE

Time Period	Trip Ends	Directional Split *		Directional Distribution	
		IN	OUT	IN	OUT
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AM Peak Hour of Generator	56	50%	50%	28	28
PM Peak Hour of Generator	81	50%	50%	41	40
Saturday Peak Hour of Gen.	82	50%	50%	41	41

3: State Farm & Auburn Street Performance by approach

Approach	EB	NB	SB	All
Total Delay (hr)	0.1	0.2	0.1	0.4
Delay / Veh (s)	10.6	0.8	0.4	0.9
Total Stops	35	14	0	49
Travel Dist (mi)	5.5	26.0	68.9	100.4
Travel Time (hr)	0.3	1.1	2.4	3.8
Avg Speed (mph)	18	24	29	27
Fuel Used (gal)	0.2	0.8	2.0	3.0
HC Emissions (g)	1	5	15	20
CO Emissions (g)	25	129	371	525
NOx Emissions (g)	2	17	45	65
Vehicles Entered	35	831	599	1465
Vehicles Exited	35	830	601	1466
Hourly Exit Rate	35	830	601	1466
Input Volume	40	844	606	1490
% of Volume	88	98	99	98
Denied Entry Before	0	0	0	0
Denied Entry After	0	0	0	0

7: Site Exit & Performance by approach

Approach	EB	NB	SB	All
Total Delay (hr)	0.1	0.7	0.0	0.8
Delay / Veh (s)	13.1	2.9	0.1	1.9
Total Stops	22	0	0	22
Travel Dist (mi)	1.8	254.9	19.1	275.8
Travel Time (hr)	0.2	9.3	0.7	10.1
Avg Speed (mph)	12	28	28	28
Fuel Used (gal)	0.1	7.1	0.6	7.8
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Hourly Exit Rate	22	821	602	1445
Input Volume	22	834	610	1466
% of Volume	100	98	99	99
Denied Entry Before	0	0	0	0
Denied Entry After	0	0	0	0

Total Network Performance

Total Delay (hr)	1.5
Delay / Veh (s)	3.7
Total Stops	71
Travel Dist (mi)	684.2
Travel Time (hr)	24.7
Avg Speed (mph)	28
Fuel Used (gal)	20.4
HC Emissions (g)	145
CO Emissions (g)	3314
NOx Emissions (g)	430
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Intersection: 3: State Farm & Auburn Street

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Directions Served	LR	L	TR
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Average Queue (ft)	23	11	0
95th Queue (ft)	50	36	3
Link Distance (ft)	829		604
Upstream Blk Time (%)			
Queuing Penalty (veh)			
Storage Bay Dist (ft)		50	
Storage Blk Time (%)		0	
Queuing Penalty (veh)		1	

Intersection: 7: Site Exit &

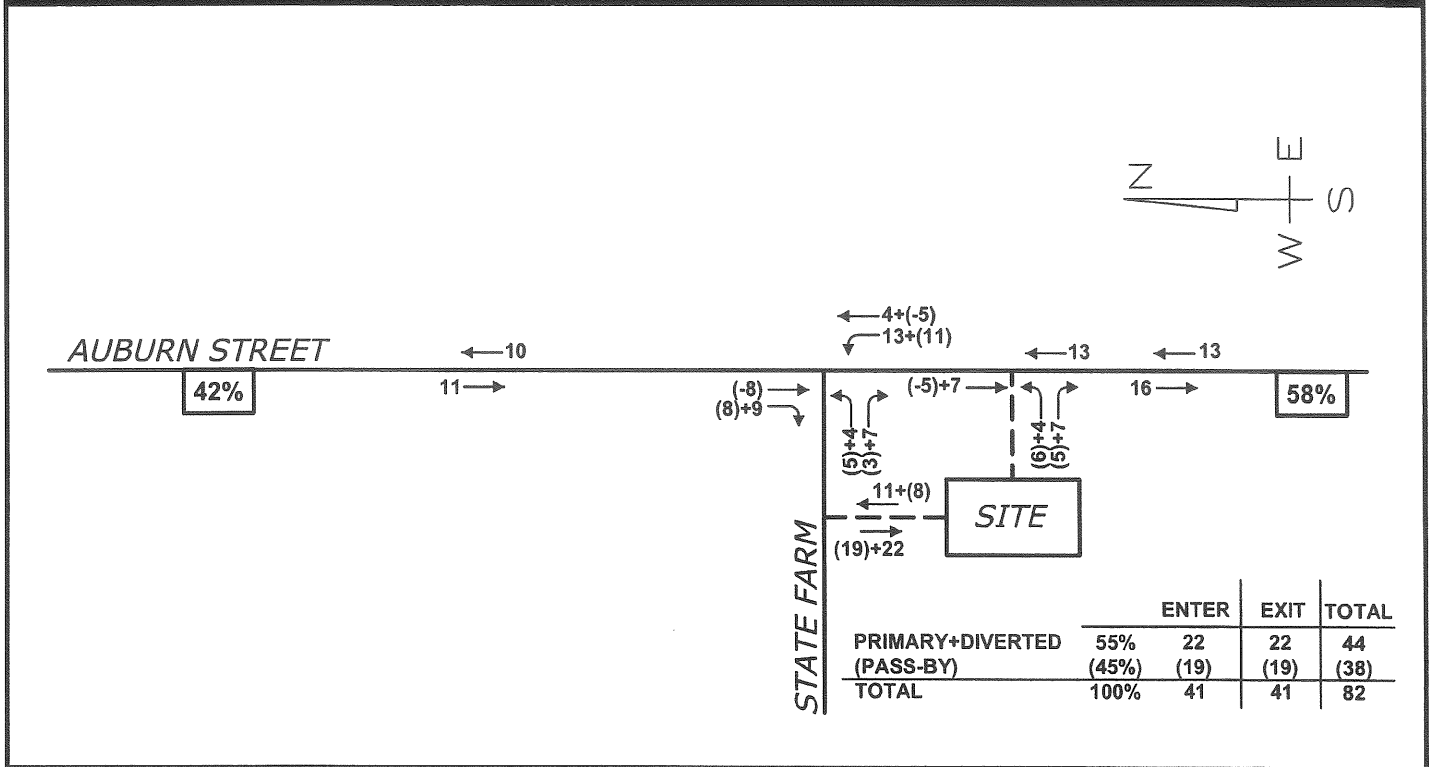
Movement	EB
Directions Served	LR
Maximum Queue (ft)	47
Average Queue (ft)	17
95th Queue (ft)	43
Link Distance (ft)	430
Upstream Blk Time (%)	
Queuing Penalty (veh)	
Storage Bay Dist (ft)	
Storage Blk Time (%)	
Queuing Penalty (veh)	

Network Summary

Network wide Queuing Penalty: 1

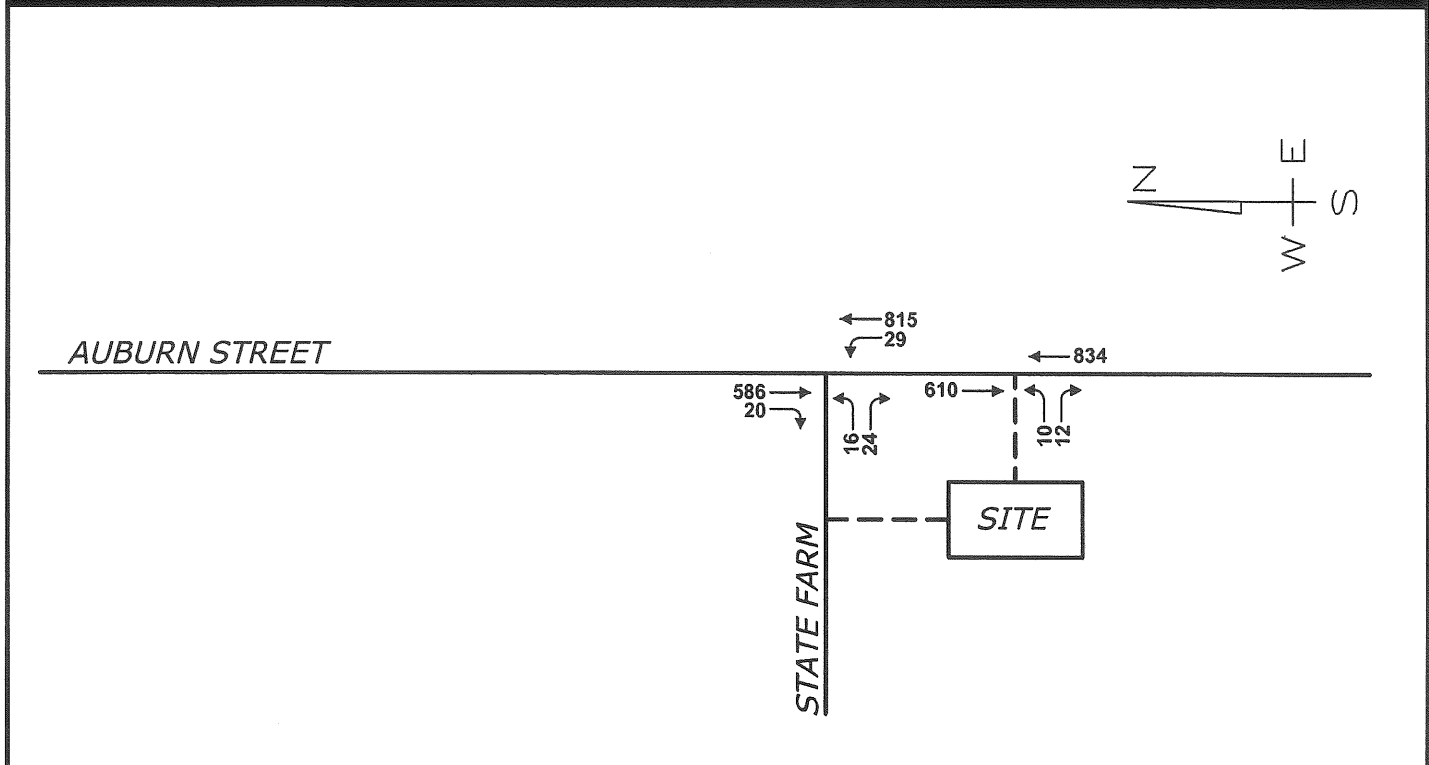
Trip Distribution and Assignment

Figure No. **6**



2012 Postdevelopment

Figure No. **7**



PROPOSED BANK, PORTLAND, MAINE

GP Gorrill-Palmer Consulting Engineers, Inc.
Engineering Excellence Since 1998

Design: RED Scale: NONE
 Draft: DB Date: NOV 29 2011
 Checked: JJB File Name: 2618_TRAFF.dwg

PO Box 1237
 15 Shaker Road
 Gray, ME 04039

207-657-6910
 Fax: 207-657-6912
 mailbox@gorrillpalmer.com
 www.gorrillpalmer.com

City of Portland
 Development Review Application
 Planning Division Transmittal form

Application Number: 2011-378 **Application Date:** 11/7/2011 12:00:00 AM
CBL: 375-A-26
Project Name: Conditional Rezoning
Address: 84 Auburn Street

Project Description: Conditional Zone in the B-1 Zone
Zoning: B-1
Other Reviews Required:
Review Type: Level III Conditional/Contract Rezoning

Distribution List:

<input checked="" type="checkbox"/> Planner	Jean Fraser	<input type="checkbox"/> Parking	John Peverada
<input type="checkbox"/> Zoning	Marge Schmuckal	<input type="checkbox"/> Design Review	Alex Jaegerman
<input type="checkbox"/> Traffic Engineer	Tom Errico	<input type="checkbox"/> Corporation Counsel	Danielle West-Chuhta
<input type="checkbox"/> Civil Engineer	David Sensus	<input type="checkbox"/> Sanitary Sewer	John Emerson
<input type="checkbox"/> Fire Department	Chris Pirone	<input type="checkbox"/> Inspections	Tammy Munson
<input type="checkbox"/> City Arborist	Jeff Tarling	<input type="checkbox"/> Historic Preservation	Deb Andrews
<input type="checkbox"/> Engineering	David Margolis-Pineo	<input type="checkbox"/> DRC Coordinator	Phil DiPierro
		<input type="checkbox"/> Outside Agency	

Comments needed by (7 days later): Wednesday, November 16, 2011

XII. *Crash Data*

Gorrill-Palmer Consulting Engineers, Inc. obtained the crash data from MaineDOT for the period of 2008-2010. Crash information is provided in Appendix C.

In order to evaluate whether a location has a crash problem, MaineDOT uses two criteria to define High Crash Location (HCL). Both criteria must be met in order to be classified as an HCL.

1. A critical rate factor of 1.00 or more for a three-year period. (A Critical Rate Factor {CRF} compares the actual crash rate to the rate for similar intersection in the state. A CRF of less than 1.00 indicates a rate of less than average) **and**:
2. A minimum of eight crashes over a three-year period.

Based on the information provided by MaineDOT, there are no HCLs within the study area.

XIII. *Sight Line Analysis*

The posted speed limit of Auburn Street along the site frontage is 30 mph. Based on that speed limit, the City Ordinance requires an available sight distance of 250 feet. Based on a field review, the available sight distance exceeds the City's required (as well as MaineDOT) sight distance of 250 feet looking in both directions at both the existing State Farm Driveway as well as the proposed site exit only driveway.

Gorrill-Palmer Consulting Engineers, Inc. recommends that all plantings, which will be located within the right-of-way, not exceed two feet in height and be maintained at or below that height. Signage should not interfere with sight lines. In addition, we recommend that during construction, if heavy equipment is entering and exiting into the site, that appropriate measures, such as signage and flag persons, be utilized in accordance with the Manual on Uniform Traffic Control Devices.

XIV. *Pedestrian Provisions*

The proposed bank site plan includes a sidewalk along the site frontage as well as on-site sidewalks to accommodate pedestrian circulation. The sidewalk both on and off-site will be reviewed as part of the City's site plan review process.

XV. *On-Site Circulation*

The site is oriented such that all vehicles enter the site come from the shared driveway with State Farm Insurance to the north. Upon entering, the main parking area (16 spaces) is located directly to the left along the side of the building and in front of the main building entrance. This is the parking area that is anticipated to be used most by the public. If upon entering you continue straight, it turns to a one-way with nine angled parking spaces

Appendix A

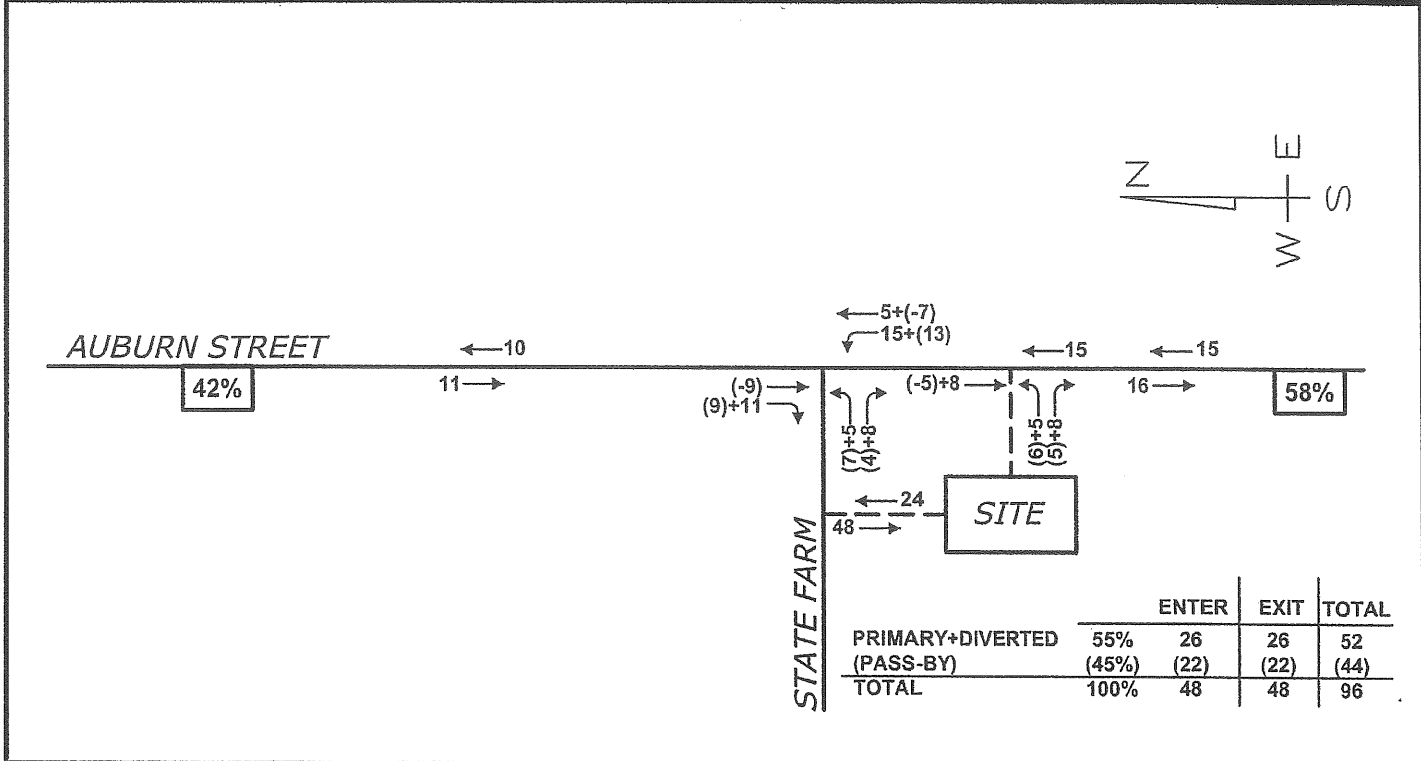
Site Location Map

Turning Movement Diagrams

Trip Distribution and Assignment

Figure No.

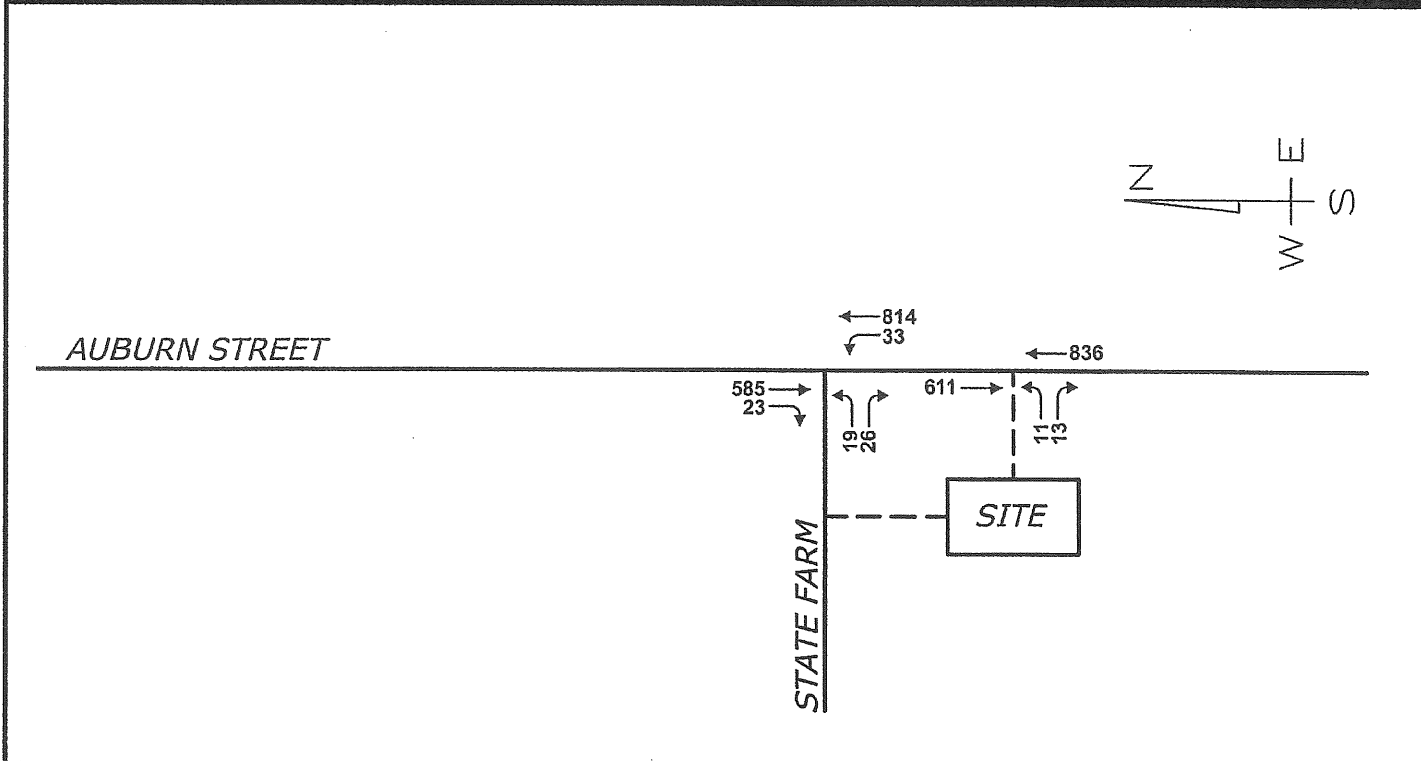
6



2012 Postdevelopment

Figure No.

7



PROPOSED BANK, PORTLAND, MAINE



Gorrill-Palmer Consulting Engineers, Inc.

Engineering Excellence Since 1998

Design: RED Scale: NONE
 Draft: DB Date: NOV 2011
 Checked: JJB File Name: 2618_TRAFF.dwg

PO Box 1237
 15 Shaker Road
 Gray, ME 04039

207-657-6910
 Fax: 207-657-6912
 mailbox@gorrillpalmer.com
 www.gorrillpalmer.com

Att. B.17

Predevelopment

Intersection: 3: State Farm & Auburn Street

Movement	EB	NB
Directions Served	LR	L
Maximum Queue (ft)	39	36
Average Queue (ft)	15	3
95th Queue (ft)	40	18
Link Distance (ft)	825	
Upstream Blk Time (%)		
Queuing Penalty (veh)		
Storage Bay Dist (ft)		50
Storage Blk Time (%)		0
Queuing Penalty (veh)		0

Network Summary

Network wide Queuing Penalty: 0

Att. B.21

Postdevelopment

Att. B.23

Total Network Performance

Total Delay (hr)	1.6
Delay / Veh (s)	3.7
Total Stops	80
Travel Dist (mi)	692.4
Travel Time (hr)	25.1
Avg Speed (mph)	28
Fuel Used (gal)	20.6
HC Emissions (g)	148
CO Emissions (g)	3404
NOx Emissions (g)	442
Vehicles Entered	1497
Vehicles Exited	1496
Hourly Exit Rate	1496
Input Volume	4484
% of Volume	33
Denied Entry Before	0
Denied Entry After	0

Ath. B.25

B.27

Lanes, Volumes, Timings
3: State Farm & Auburn Street

11/16/2011



Lane Group	EBL	EBR	NBL	NBT	SBT	SBR
Lane Configurations	↖		↙	↑	↑↓	
Volume (vph)	19	26	33	814	585	23
Ideal Flow (vphpl)	1900	1900	1900	1900	1900	1900
Lane Width (ft)	16	8	10	10	10	10
Storage Length (ft)	0	0	50			0
Storage Lanes	1	0	1			0
Taper Length (ft)	25	25	25			25
Lane Util. Factor	1.00	1.00	1.00	1.00	0.95	0.95
Frt	0.921				0.994	
Flt Protected	0.980		0.950			
Satd. Flow (prot)	1944	0	1685	1756	3317	0
Flt Permitted	0.980		0.950			
Satd. Flow (perm)	1944	0	1685	1756	3317	0
Link Speed (mph)	30			30	30	
Link Distance (ft)	870			167	640	
Travel Time (s)	19.8			3.8	14.5	
Peak Hour Factor	0.82	0.82	0.94	0.94	0.94	0.94
Heavy Vehicles (%)	0%	0%	0%	1%	1%	0%
Adj. Flow (vph)	23	32	35	866	622	24
Shared Lane Traffic (%)						
Lane Group Flow (vph)	55	0	35	866	646	0
Enter Blocked Intersection	No	No	No	No	No	No
Lane Alignment	Left	Right	Left	Left	Left	Right
Median Width(ft)	16			10	10	
Link Offset(ft)	0			0	0	
Crosswalk Width(ft)	16			16	16	
Two way Left Turn Lane						
Headway Factor	0.85	1.20	1.09	1.09	1.09	1.09
Turning Speed (mph)	15	9	15			9
Sign Control	Stop			Free	Free	

x C

Data

ions

Intersection Summary

Area Type: Other
Control Type: Unsignalized

Maine Department Of Transportation - Traffic Engineering, Crash Records Section

Crash Summary I

Node	Route - MP	Node Description	U/R	Total Crashes	Nodes							Annual M Ent-Veh	Annual M Crash Rate	Critical Rate	CRF
					K	A	B	C	PD	Injury	Percent Injury				
63327	0026X - 4.43	Int of AUBURN ST, RD INV 3201489	9	1	0	0	0	0	0	1	0.0	6,716	0.05	1.05	0.00
17063	0026X - 4.47	Int of AUBURN ST, ENT NORTHGATE S	2	1	0	0	0	0	1	0.0	5,659	0.06	0.33	0.00	
17064	0026X - 4.63	Int of AUBURN ST, ENT NORTHGATE N, SANBORN ST	9	8	0	0	0	3	5	37.5	5,599	0.48	1.09	0.00	
Study Years: 3.00					10	0	0	0	3	7	30.0	17,974	0.19	0.70	0.27

Att. B.29

Crash Summary

Section Details

Start Node	End Node	Element	Offset Begin - End	Route - MP	Total Crashes	Injury Crashes			Crash Report	Crash Date	Crash Mile Point	Injury Degree
						K	A	B				
63327	17063	2651071	0 - 0.04	0026X - 4.43	0	0	0	0	0			
17063	17064	192808	0 - 0.16	0026X - 4.47	1	0	0	0	1	2009-6421	03/03/2009	4.62 PD
Totals:					1	0	0	0	0	1		

Att. B.31

Crash Summary II - Characteristics

Att. B.33

Crashes by Apparent Contributing Factor And Driver

Apparent Contributing Factor	Dr 1	Dr 2	Dr 3	Dr 4	Dr 5	Other	Total
No Improper Action	6	4	0	0	0	0	10
Failure to Yield Right of Way	3	3	0	0	0	0	6
Illegal Unsafe Speed	0	0	0	0	0	0	0
Following Too Close	0	1	0	0	0	0	1
Disregard Traffic Control Device	1	3	0	0	0	0	4
Driving Left of Center Not Passing	0	0	0	0	0	0	0
Improper Passing, Overtaking	0	0	0	0	0	0	0
Improper Unsafe Lane Change	0	0	0	0	0	0	0
Improper Parking Start, Stop	0	0	0	0	0	0	0
Improper Turn	0	0	0	0	0	0	0
Unsafe Backing	0	0	0	0	0	0	0
No Signal or Improper Signal	0	0	0	0	0	0	0
Impeding Traffic	0	0	0	0	0	0	0
Driver Inattention, Distraction	1	0	0	0	0	0	1
Driver Inexperience	0	0	0	0	0	0	0
Pedestrian Violation Error	0	0	0	0	0	0	0
Physical Impairment	0	0	0	0	0	0	0
Vision Obscured, Windshield Glass	0	0	0	0	0	0	0
Vision Obscured, Sun, Headlights	0	0	0	0	0	0	0
Other Vision Obscurement	0	0	0	0	0	0	0
Other Human Violation Factor	0	0	0	0	0	0	0
Hit and Run	0	0	0	0	0	0	0
Defective Brakes	0	0	0	0	0	0	0
Defective Tire, Tire Failure	0	0	0	0	0	0	0
Defective Lights	0	0	0	0	0	0	0
Defective Suspension	0	0	0	0	0	0	0
Defective Steering	0	0	0	0	0	0	0
Other Vehicle Defect or Factor	0	0	0	0	0	0	0
Unknown	0	0	0	0	0	0	0
Total	11	11	0	0	0	0	22

Crashes by Apparent Physical Condition And Driver

Apparent Physical Condition	Dr 1	Dr 2	Dr 3	Dr 4	Dr 5	Other	Total
Normal	11	11	0	0	0	0	22
Under the Influence	0	0	0	0	0	0	0
Had Been Drinking	0	0	0	0	0	0	0
Had Been Using Drugs	0	0	0	0	0	0	0
Asleep	0	0	0	0	0	0	0
Fatigued	0	0	0	0	0	0	0
ill	0	0	0	0	0	0	0
Handicapped	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0
Total	11	11	0	0	0	0	22

Driver Age by Unit Type

Age	Driver	Bicycle	SnowMobile	Pedestrian	ATV	Total
09-Under	0	0	0	0	0	0
10-14	0	0	0	0	0	0
15-19	1	0	0	0	0	1
20-24	3	0	0	0	0	3
25-29	2	0	0	0	0	2
30-39	6	0	0	0	0	6
40-49	2	0	0	0	0	2
50-59	4	0	0	0	0	4
60-69	2	0	0	0	0	2
70-79	2	0	0	0	0	2
80-Over	0	0	0	0	0	0
Unknown	0	0	0	0	0	0
Total	22	0	0	0	0	22

Crash Summary II - Characteristics

Crashes by Crash Type and Type of Location

Crash Type	Straight Road	Curved Road	Three Leg Intersection	Four Leg Intersection	Five Leg Intersection	Driveways	Bridges	Interchanges	Other	Total
Object in Road	0	0	0	0	0	0	0	0	0	0
Rear End / Sideswipe	1	0	0	0	0	1	0	0	0	2
Head-on / Sideswipe	0	0	0	0	0	0	0	0	0	0
Intersection Movement	0	0	1	8	0	0	0	0	0	9
Pedestrians	0	0	0	0	0	0	0	0	0	0
Train	0	0	0	0	0	0	0	0	0	0
Ran Off Road	0	0	0	0	0	0	0	0	0	0
All Other Animal	0	0	0	0	0	0	0	0	0	0
Bike	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0
Jackknife	0	0	0	0	0	0	0	0	0	0
Rollover	0	0	0	0	0	0	0	0	0	0
Fire	0	0	0	0	0	0	0	0	0	0
Submersion	0	0	0	0	0	0	0	0	0	0
Rock Thrown	0	0	0	0	0	0	0	0	0	0
Bear	0	0	0	0	0	0	0	0	0	0
Deer	0	0	0	0	0	0	0	0	0	0
Moose	0	0	0	0	0	0	0	0	0	0
Total	1	0	1	8	0	1	0	0	0	11

AH. B.35

Maine Department Of Transportation - Traffic Engineering, Crash Records Section
Crash Summary II - Characteristics

Crashes by Weather, Light Condition and Road Surface

Weather Light	Debris	Dry	Ice, Packed Snow, Not Sanded	Ice, Packed Snow, Sanded	Muddy	Oily	Other	Snow Slush, Not Sanded	Snow, Slush, Sanded	Wet	Total
Other											
Dark (No Street Lights)	0	0	0	0	0	0	0	0	0	0	0
Dark (Street Lights Off)	0	0	0	0	0	0	0	0	0	0	0
Dark (Street Lights On)	0	0	0	0	0	0	0	0	0	0	0
Dawn (Morning)	0	0	0	0	0	0	0	0	0	0	0
Daylight	0	0	0	0	0	0	0	0	0	0	0
Dusk (Evening)	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0
Rain											
Dark (No Street Lights)	0	0	0	0	0	0	0	0	0	0	0
Dark (Street Lights Off)	0	0	0	0	0	0	0	0	0	0	0
Dark (Street Lights On)	0	0	0	0	0	0	0	0	0	0	0
Dawn (Morning)	0	0	0	0	0	0	0	0	0	0	0
Daylight	0	0	0	0	0	0	0	0	0	1	1
Dusk (Evening)	0	0	0	0	0	0	0	0	0	1	1
Other	0	0	0	0	0	0	0	0	0	0	0
Severe Cross Winds											
Dark (No Street Lights)	0	0	0	0	0	0	0	0	0	0	0
Dark (Street Lights Off)	0	0	0	0	0	0	0	0	0	0	0
Dark (Street Lights On)	0	0	0	0	0	0	0	0	0	0	0
Dawn (Morning)	0	0	0	0	0	0	0	0	0	0	0
Daylight	0	0	0	0	0	0	0	0	0	0	0
Dusk (Evening)	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0
Sleet, Hail, Freezing Rain											
Dark (No Street Lights)	0	0	0	0	0	0	0	0	0	0	0
Dark (Street Lights Off)	0	0	0	0	0	0	0	0	0	0	0
Dark (Street Lights On)	0	0	0	0	0	0	0	0	0	0	0
Dawn (Morning)	0	0	0	0	0	0	0	0	0	0	0
Daylight	0	0	0	0	0	0	0	0	0	0	0
Dusk (Evening)	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0

Att. B.41.

JN: 2618
 Project Description: Bank
 Project Location: Auburn Street, Portland
 Date: November 15, 2011

Gorrill-Palmer Consulting Engineers, Inc.
 P.O. Box 1237
 15 Shaker Road
 Gray, Maine 04039

**Medical/Dental Office Building
 Land Use Code (LUC) 720**

Gross Floor Area (ft²): 10,038

Fitted Curve:

Time Period	ITE Trip Rate	Trip Ends	Directional Split*		Directional Distribution		Sample Size
			IN	OUT	IN	OUT	
Weekday	$T = 40.89 (X) - 214.97$	195	50%	50%	98	97	10
AM Peak Adjacent Street	Not given	-	80%	20%	-	-	21
PM Peak Adjacent Street	$\ln(T) = 0.93 \ln(X) + 1.47$	37	25%	75%	9	28	41
AM Peak of Generator	$T = 3.49 (X) + 5.25$	40	65%	35%	26	14	16
PM Peak of Generator	$T = 4.43 (X) + 0.48$	45	40%	60%	18	27	21
Saturday	Not given	-	50%	50%	-	-	5
Saturday Peak of Generator	Not given	-	60%	40%	-	-	3

* Percentages rounded to nearest 5%

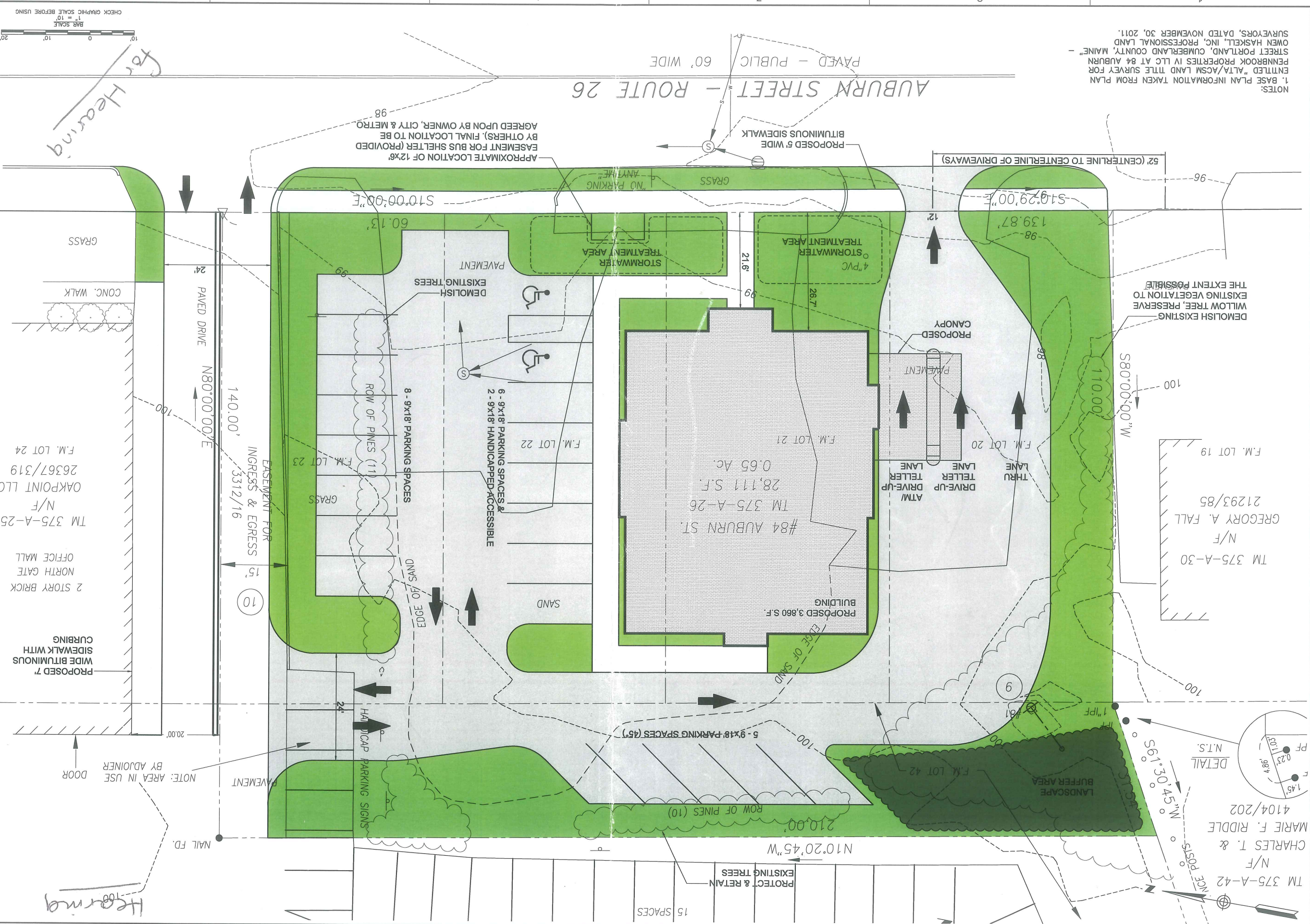
Average Rate:

Time Period	ITE Trip Rate	Trip Ends	Directional Split*		Directional Distribution		Sample Size
			IN	OUT	IN	OUT	
Weekday	$T = 36.13 (X)$	363	50%	50%	182	181	10
AM Peak Adjacent Street	$T = 2.48 (X)$	25	80%	20%	20	5	21
PM Peak Adjacent Street	$T = 3.72 (X)$	37	25%	75%	9	28	41
AM Peak of Generator	$T = 3.62 (X)$	36	65%	35%	23	13	16
PM Peak of Generator	$T = 4.45 (X)$	45	40%	60%	18	27	21
Saturday	$T = 8.96 (X)$	90	50%	50%	45	45	5
Saturday Peak of Generator	$T = 3.63 (X)$	36	60%	40%	22	14	3

* Percentages rounded to nearest 5%

2:\225086 SmartenCo-84 Auburn St Reduc.vbp\Drawings\vr-225086.ctb X00c.dwg, Dec 07, 2011 - 5:05pm

NOTES:
1. BASE PLAN INFORMATION TAKEN FROM PLAN ENTITLED "ALTA/ACSM LAND TITLE SURVEY FOR PENNBROOK PROPERTIES IV LLC AT 84 AUBURN STREET PORTLAND, CUMBERLAND COUNTY, MAINE" - OWEN HASKELL, INC., PROFESSIONAL LAND SURVEYORS, DATED NOVEMBER 30, 2011.



for Hearing

Hearing

Attachment I

C-1

JOB NO.: 225086.01
SCALE: 1"=10'
DATE: DECEMBER 2011
SHEET: 1 OF 1

PENNBROOK PROPERTIES IV LLC
2 MARKET STREET PORTLAND, MAINE 04101

84 AUBURN STREET
PORTLAND, ME

CONCEPTUAL SITE PLAN

REV	DATE	DESCRIPTION
1	11/28/11	PER PLANNING BOARD WORKSHOP COMMENTS

DESIGNED BY: DLG
DRAWN BY: BOV
CHECKED BY: BSS
REV: 225086.01 2012.08

WOODARD & CURRAN
41 Hutchins Drive
Portland, Maine 04102
800.426.4262 | www.woodardcurran.com

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DESIGNED BY: DLG
DRAWN BY: BOV
CHECKED BY: BSS
REV: 225086.01 2012.08

Attachment D.1

**COMMITMENT & INTEGRITY
DRIVE RESULTS**

41 Hutchins Drive
Portland, Maine 04102
www.woodardcurran.com

T 800.426.4262
T 207.774.2112
F 207.774.6635



November 28, 2011

Jean Fraser, Planner
City of Portland
389 Congress Street
Portland ME 04101

RE: Pennbrook Properties IV LLC – 84 Auburn Street Conditional Rezoning Application Materials

Dear Jean:

On behalf of Pennbrook Properties IV LLC (Pennbrook), thank you to City staff and the Planning Board for meeting with our team in workshop on November 22 to discuss our Conditional Rezoning Application for a bank at 84 Auburn Street. Based on the feedback we received during that workshop from the Planning Board and Public, as well as comments received separately from staff and in writing from members of the public, we have modified the Conceptual Site Plan accordingly (see attached). With a goal of assisting staff, Planning Board and public to see the modifications to the Plan, we offer the following summary of comments and how these have been addressed by our team. This summary of comments also includes those cited in the Planning Board Staff Memo dated November 18, 2011.

PLANNING BOARD WORKSHOP COMMENTS

Comment: Three bank teller lanes plus the through lane results in excessive pavement and too narrow buffers from the abutters along the southerly property line.

Response: We have revisited the program with potential bank tenants, and eliminated the second teller lane, thereby reducing the pavement and increasing the buffers.

Comment: Create more green space/increase the buffer in the southwest corner, adjacent to the residential zone.

Response: In addition to eliminating the second teller lane (see above) and proposing to retain the existing white pines along the west property line, we have eliminated four of the nine parking spaces nearest to the southwest property corner. All of these combined, results in an area specifically for landscape buffering from the residential zone.

Comment: Consider reserving space for the bus stop/shelter along Auburn Street.

Response: We added a bituminous pad (to be constructed by Pennbrook) between the proposed sidewalk and Auburn Street. A bus shelter, if desired, would be provided by others in the future.

Comment: Reduce the overall pavement area, including what appears to be excessive parking.

Response: The modifications to the Plan in response to this and other comments received, reduces the pavement area and expands the buffers to the adjacent residential zone.

STAFF MEMO COMMENTS

Zoning Comment: Provide a Zoning Analysis to support the Application.

Response: We have completed the Analysis and offer the attached memorandum, dated November 28, 2011 for consideration.

Traffic Comment: Egress driveway width is wide...recommend narrower driveway.

Response: We have reduced the driveway width from 24' to 12'.

Traffic Comment: Project will not likely meet driveway spacing requirements and therefore applicant will need to provide documentation supporting a waiver.

Response: In eliminating the second teller lane and narrowing the driveway, we were able to realign and adjust the location of the exit driveway to the maximum extent practicable. As a result, we pushed the exit driveway north, to 59' (centerline-centerline) from the All Speed driveway; this revised location provides more separation than the existing curb cut. It is worth noting, the 125' driveway separation for



30MPH (per City Technical Standards) is unachievable in any site configuration, given the dimensions of the subject property (~200' frontage) and the location of existing driveways on both abutting parcels. With this project, we propose to eliminate one of the two existing driveways and utilized a joint access driveway with the abutter (94 Auburn Street) to access the site. Under this proposal and with no alternative, we formally request a waiver from the Technical Standards for driveway separation.

Traffic Comment: I need to review shared driveway concept more fully, but am supportive of the concept.

Response: No response required.

Traffic Comment: Vehicle queue space at the drive-through and ATM lanes is something that I will review as it relates to on-site traffic mobility.

Response: The Plan provides for two vehicles queued at each lane (in addition to the vehicle at each teller), plus five vehicles stacking around the west side of the building without impacting the north-side parking area access. Vehicle queuing and stacking is adequate to ensure on-site mobility is maintained.

Traffic Comment: Traffic conditions on Auburn Street.

Response: Gorrill-Palmer will coordinate with TY Lin and respond as appropriate

Traffic Comment: Traffic signal coordination on Auburn Street.

Response: Gorrill-Palmer will coordinate with TY Lin and respond as appropriate.

Landscaping Comment: Existing white pine groves along the west and northerly property lines are important features and should be preserved. White pine grove near the back of the lot is a buffer/screening for the other lot on the neighboring property.

Response: We have revisited the site program and will retain the existing trees along the west property line, and increase the landscape buffer at the southwest corner of the property to enhance the screen. We are unable to retain the trees along the northerly property line given the program requirements of the project, as well as the need to increase visibility to 94 Auburn Street.

Landscaping Comment: Reduce the pavement and incorporate additional green space along the left side, and back corner.

Response: We have revised the Plan accordingly to accomplish both of these requests.

We understand since our workshop, City staff has expressed interest in Pennbrook's intent with regard to stormwater. We recognize this project is within the urban impaired Fall Brook watershed and consistent with our verbal presentation to the Board on November 22, we propose to utilize a portion of the increased front yard setback for stormwater water quality treatment (as depicted on the Plan). The project will result in a decrease in impervious area from the existing condition; this project provides the opportunity for water quality improvements. We have reserved the area between the bank and the right-of-way for that purpose, and anticipate further discussion on this matter during Site Plan review.

We appreciate the opportunity to have presented the project and Pennbrook's Application for Conditional Rezoning to the Board and look forward to discussing the project at the December 13 Public Hearing. Please let us know if there is additional information that you need from our team.

Very truly yours,

WOODARD & CURRAN INC.

Barry Sheff, P.E.
Senior Vice President

BSS

Attachments

**COMMITMENT & INTEGRITY
DRIVE RESULTS**

41 Hutchins Drive
Portland, Maine 04102
www.woodardcurran.com

T 800.426.4262
T 207.774.2112
F 207.774.6635

MEMORANDUM



TO: Jean Fraser, City of Portland Planner
CC: Marge Schmuckal, City of Portland Zoning Administrator
FROM: Denise Cameron, P.E.
DATE: November 28, 2011
RE: Zoning Analysis – 84 Auburn Street

On behalf of Pennbrook Properties IV LLC, Woodard & Curran has conducted the following zoning analysis to support the Conditional Rezoning Application for the property located at 84 Auburn Street, which is in the B-1 Neighborhood Business Zone. This zoning analysis is in consideration of a proposed bank with drive-thru teller and ATM service, as shown on the plans included in the Conditional Rezoning Application dated November 4, 2011. The following table summarizes the proposed development's conformance with the regulations of the B-1 Zone.

Reference	Requirement Summary	Conformance Summary
Sec. 14-162-2(e)	Permitted Uses: Retail, without drive-thru sales or services	Applicant is requesting a conditional rezoning amendment to allow drive-thru services
Sec. 14-162-2(e)	Permitted Uses: Retail which does not operate between 11 pm and 6 am	Applicant is requesting a conditional rezoning amendment to permit 24-hour ATM services
Sec. 14-162-2(e)	Permitted Uses: Retail uses not accepting deliveries between 10 pm and 7am	Proposed project will conform with this zone requirement
Sec. 14-165(a)	Min. Lot Size for all other nonresidential uses: None	Proposed project will conform with this zone requirement
Sec. 14-165(b)	Min. Street Frontage: 50-feet	Proposed project will conform with this zone requirement
Sec. 14-165(c)1.	Max. Front Yard: 10-feet	Applicant is requesting a conditional rezoning amendment to allow front yard setbacks in excess of 10 feet
Sec. 14-165(c)2.	Min. Rear Yard: 0 if abutting non-residential use, or 20-feet if abutting a residential use	Proposed project will conform with this zone requirement
Sec. 14-165(c)3.	Min. Rear Yard: 0 if abutting non-residential use, or 10-feet if abutting a residential use	Proposed project will conform with this zone requirement
Sec. 14-165(d)	Min. Lot Width: None	Proposed project will conform with this zone requirement
Sec. 14-165(e)	Max. Structure Height for off-peninsula locations: 35-feet	Proposed project will conform with this zone requirement
Sec. 14-165(f)	Max. Impervious Surface Ratio: 90%	Proposed project will conform with this zone requirement



Reference	Requirement Summary	Conformance Summary
Sec. 14-165(g)	Max. First Floor Area: 5,000sf	Proposed project will conform with this zone requirement
Sec. 14-166(a)	Conforms with landscaping and screening requirements	Proposed project will conform with this zone requirement
Sec. 14-166(b)	Curbs and sidewalks conform with article VI of Chapter 25	Proposed project will conform with this zone requirement
Sec. 14-166(c)	Off-street parking and loading conform with Division 20 & 21	Proposed project will conform with this zone requirement
Sec. 14-166(d)	No Front Yard Parking between street line and the maximum building setback line.	Proposed project will conform with this zone requirement
Sec. 14-166(e)	Signs conform with Division 22	Proposed project will conform with this zone requirement
Sec. 14-166(f)	No Exterior Storage	Proposed project will conform with this zone requirement
Sec. 14-166(g)	Storage of vehicles conforms with Section 14-335	Proposed project will conform with this zone requirement
Sec. 14-167(a)	Operations within enclosed structure	Proposed project will conform with this zone requirement
Sec. 14-167(b)	Noise: Not to exceed 55 decibels on the A scale	Proposed project will conform with this zone requirement
Sec. 14-167(c)	Vibration and Heat shall be imperceptible without instruments at lot boundaries	Proposed project will conform with this zone requirement
Sec. 14-167(d)	Glare, Radiation/Fumes: Not to be emitted to an obnoxious/dangerous degree beyond lot boundaries	Proposed project will conform with this zone requirement
Sec. 14-167(e)	Smoke Density: Not to exceed 20% opacity as classified in Method 9 of the USEPAs Opacity Evaluation	Proposed project will conform with this zone requirement
Sec. 14-167(f)	Materials/Wastes: To be in located in enclosed containers	Proposed project will conform with this zone requirement

Please contact us at anytime with questions or concerns. We are looking forward to discussing the project further during the December 13, 2011 planning board meeting.

Jean Fraser - 84 Auburn Street Draft Conditional Rezoning Agreement

From: "Drew Swenson" <dswenson@swensonandco.com>
To: <JF@portlandmaine.gov>
Date: 11/29/2011 3:49 PM
Subject: 84 Auburn Street Draft Conditional Rezoning Agreement
CC: "Barry Sheff" <bsheff@woodardcurran.com>, "Thomas Gorrill"
<TGorrill@gor...>
Attachments: 84 Auburn St - Draft Cond Rezoning Agreement 11-29-11 redline.doc

Good afternoon Jean:

I am attaching the revised draft of the conditional rezoning agreement with changes consistent with earlier conversations and staff comments.

We have revised paragraph 2 to contain a provision that would allow a restoration of the 2d teller lane if the bank has a much smaller branch. For example, if the branch is only 2,100 square feet rather than 3,800 square feet, the reduction in size would allow for the restoration of a 2d teller lane if desired by the bank without adversely impacting the green space or southerly turning egress lane. Moreover, because trip generation is a function of both teller lanes and square feet, the smaller bank with an added teller lane would still result in fewer trips than originally proposed. If you think this provision will be an issue, we will withdraw that change, but it seems appropriate if we can create a win-win for the bank, us and the city.

In paragraph 3, light of your comment about Sunday bank operations, if the City Staff, Planning Board and City Council would not have an issue with it, we would like to include the potential for Sunday use in the agreement. If you think it will be an issue, we will withdraw that change.

We changed paragraph 5 consistent with your conversation with Denise to make the last sentence less broad.

In paragraph 7, we inserted 16 feet as the replacement tree size.

I trust the changes we made are consistent with the several emails and conversations. We would be happy to discuss and revise this document as needed with you prior to the December 13 meeting.

Thank you for your thoughts and help in this process.

Drew E. Swenson, CPA, LLM
Swenson & Co.
P.O. Box 17536
Portland ME 04112
Tel: 207-775-2464
Cell: 207-415-3829
dswenson@swensonandco.com

Att. F. 2

From: "Drew Swenson" <dswenson@swensonandco.com>
To: "Jean Fraser" <jf@portlandmaine.gov>
CC: <dcameron@woodardcurran.com>, "Barry Sheff" <bsheff@woodardcurran.com>, <nsmith@bernsteinshur.com>
Date: 12/8/2011 12:55 PM
Subject: RE: 84 Auburn Street - draft Conditional Rezone Agreement
Attachments: executed mutual easement agreement.pdf; Site Plan.pdf; Conditional Rezoning Agreement -- 12-7-11 -- redlined.doc

Hi Jean:

I am attaching the mutual easement and the updated plan we received from Denise.

The NDNA meeting went very well. They are very supportive of the Plan and had no objections. They did mention that they have discussed with the city in the past their desire to see the city install a sidewalk the length of Auburn Street to the school intersection and have the streets restriped. They do not want those costs placed on our project, nor do we; nor can the project afford it, but I thought you would want to know that. My understanding is they have raised this as an issue on each project that has been undertaken in the area.

I would note that the new 52 foot centerline distance between our southerly egress and the abutting property ingress egress is the result of the abutter revising their driveway northward by several feet since the last ALTA survey was done in 2004. I have been informed that their driveway now encroaches onto the 84 Auburn Street property which will need to be rectified.

We also have a couple of minor changes to the draft conditional rezoning agreement which I have also attached.

Thank you for your help Jean.

Drew E. Swenson, CPA, LLM
Swenson & Co.
P.O. Box 17536
Portland ME 04112
Tel: 207-775-2464
Cell: 207-415-3829
dswenson@swensonandco.com

CONDITIONAL REZONING AGREEMENT

84 Auburn Street, Portland, Maine

AGREEMENT made this ____ day of _____, made this ____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company (“PBK”) with a place of business in 2 Market Street, Portland, Maine, and its successors and assigns.

WITNESSETH

WHEREAS, PBK ~~has the right and intends to purchase~~ is [will be] the owner of the property located at 84 Auburn Street, Portland, Maine (the “Property”) more particularly described and shown on the Portland Assessors Map at Chart 375, Block A, Lot 026 and in a deed in the Cumberland County Registry of Deeds at Book _____, Page _____, (the “Property”) and intends to use the Property for a bank branch pursuant to a purchase and sale agreement, and lease the Property and any improvement thereon to a bank under the terms of a long-term Ground Lease or Lease between PBK and the bank; and

WHEREAS, PBK has filed a Zone Change Application with the City of Portland (hereinafter “CITY”) to rezone the Property to a conditional B-1 zone subject to certain modifications and conditions set forth in this Agreement in order to accommodate a bank with incidental sales of financial and insurance products and service, a drive-through window and ATM machine; and

WHEREAS, the Property is currently in the B-1 zoning district; and

WHEREAS, the Property has been a blighted site for many years; and

WHEREAS, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property; and

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

WHEREAS, the CITY, by and through its City Council, has determined that the rezoning is appropriate due to the unusual nature and unique location of the development proposed, that the uses proposed are consistent with the existing and permitted uses within the zone and that the rezoning would be pursuant to and consistent with the City’s Comprehensive Plan; and

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

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

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

INSERT MAP HERE

2. Permitted uses: Those uses allowed in the B-1 zone. In addition, the Property shall be permitted to be used as a bank with incidental sales of financial and insurance products and services and shall be allowed to include one (1) drive-through teller lane (hereinafter “Teller”) and one (1) drive-up automated teller machine (hereinafter “ATM”). The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply.
3. The hours of operation of the bank and the drive-through teller shall be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein, however, shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the bank is not open to the general public. A drive through is permitted for bank use only and not for any other use.
4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the “Site Plan”). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, an additional drive through lane may be allowed, subject to review and approval by the Planning Authority, as long as the southerly greenspace and landscaping is not substantially reduced and there is not a substantial impact on the southerly egress curb cut.
5. Curb Cuts:
 - a. The northerly curb cut on the Property shall be closed and removed prior to the issuance of a certificate of occupancy by the City. The southerly curb cut shall remain and only be used for egress purposes.
 - b. Access to the Property shall also be provided through the shared ingress and egress with the property located at 94 Auburn Street as more particularly described in the agreement attached hereto in Attachment 2.

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- c. The improvements to the southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform with the plans attached hereto in Attachment 1.
- d. Provided the Property complies with the requirements outlined in subparagraphs a-c, the Technical Standard regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) shall not apply and/or is waived to allow the southerly curb cut (for egress only) to be no less than 529 feet from the adjacent driveway to the south (centerline to centerline).
6. Modifications to the B-1 Regulations. The Property shall be governed by the regulations applicable to the B-1 zoning district and other provisions of the City Codes except as follows:
- a. The maximum front yard setback shall not apply, but any building placed on the Property shall be no further back from Auburn Street than as shown on Attachment 1. ~~If a proposed building is placed further back than as shown on Attachment 1, the maximum front yard setback provisions of the B-1 Zone shall apply to the Property.~~
7. In addition to the Site Plan Standards of the City's Land Use Code (§§ 14-521-14-540), the Planning Board shall review the site plan for this Property and shall be satisfied that the following requirements have been met:
- a. Any drive-through must be accessory to a principal use located on the same site; and
- b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
- c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.
- d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed

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necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the City, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and

- e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
8. The existing trees along the westerly (rear) boundary of the property shall remain undisturbed and shall be maintained at least at their present height by PBK and future property owners. If any of these trees need to be removed due to disease or damage, a tree of similar species and of 16 foot height shall be planted in the same location as a replacement to maintain the screening function of this group of trees. The existing trees along the northern boundary may be removed. Those along the southern boundary should be preserved to the extent possible, with the exception of a large willow in poor condition that may be removed subject to final confirmation with the City Arborist on site. Removal of trees along the northern and southern boundaries shall be subject to Site Plan Standards for Landscape Preservation, including the standards for the replacement of large trees that need to be removed.
9. Community Contribution: An easement measuring ^{6ft x 12ft} x by x shall be provided for a bus shelter partially within the site adjacent to the sidewalk near the existing bus stop (or near a relocated bus stop if that is preferred by METRO). The location shall be substantially as shown on Attachment 1, but shall be placed so as to not unreasonably interfere with tenant signage on the site or traffic visibility for ingress and egress to 84 and 94 Auburn Street. This condition does not require PBK to provide, ~~or~~ install or maintain a bus shelter, but allows for one to be installed in the future. This requirement is in addition to a smaller pad near the curb/bus stop sign that is for passengers getting off and on the bus.
10. In the event the development described herein is not commenced within two (2) years from the date of this conditional rezoning, or should the Property cease to be used as a bank for a permitted use under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert back to the underlying B-1 zone. If any required approval, including the approval of the conditional rezoning, has been appealed, the aforementioned deadline shall commence from the date of the final disposition of such appeal.
11. So long as the Property continues to be used as a bank or any other permitted use under Section 2 above, the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit PBK and any tenant ~~bank~~, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. PBK shall file a copy of this Agreement in the

Cumberland County Registry of Deeds, along with a reference to the Book and Page ~~locations~~ of the deeds ~~for to~~ the Property, ~~and the memorandum of Lease between PBK and its bank tenant~~ within ~~thirty (30)~~ ten (10) days from its acquisition of the Property, the date of adoption by Portland city Council.

- 12. PBK shall provide the City with documentation of ~~by any bank~~ tenant of PBK's consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and remain subject to the terms and conditions set forth herein.
- 13. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
- 14. Except as expressly modified herein, the development, use, and occupancy of the Property shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.
- 15. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City Ordinance. In the event that PBK, any ~~bank~~ tenant or any successor of either party, 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 and/or the Court shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____

Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Att. G. 6.

Applicant comments 12/6/11 – version 12/6/11

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public

MUTUAL EASEMENT AGREEMENT

Agreement made as of this 30th day of November, 2011, by and between OAKPOINT LLC, a Maine limited liability company ("Oakpoint") and/or its assigns, with a place of business at 94 Auburn Street, Portland, Maine, and PENNBROOK PROPERTIES IV LLC, a Maine limited liability company ("Pennbrook") and/or its assigns, with offices at Two Market Street, Portland, Maine, relating to a proposed common access roadway thirty (30) feet+/- in width straddling the property lines between 84 Auburn Street and 94 Auburn Street in Portland, Maine.

For one dollar and other good and valuable consideration, including the mutual promises and agreements contained herein, Pennbrook and Oakpoint hereby agree as follows: Once Pennbrook has closed on its acquisition of 84 Auburn Street from Alliance Energy LLC, Pennbrook and Oakpoint agree to enter into a Mutual Easement Agreement which will include the following provisions:

1. The grant of mutual easements for a common vehicular and pedestrian access way on and over two strips of land, each fifteen (15) feet+/- in width, for a total of thirty (30) feet+/- in width, straddling the common property line between the properties.

2. Pennbrook shall be responsible for all legal fees related to the mutual easement agreements and for all development costs of 84 Auburn Street and for construction of and payment for any improvements to 94 Auburn Street, including the common access way, including grading, regrading, leveling, paving, upgrading any curb cuts, speed limit signage, "stop" signs, "bank parking only" signage, sidewalk and making such other improvements as may be required by the Portland Planning Board or this agreement.

3. Pennbrook agrees as part of the construction of the common access way that it will construct a sidewalk adjacent to Oakpoint's building extending from the sidewalk on the Auburn Street side of the building and running the full length of the building running east to west which will be handicapped accessible at both ends and raised up several inches from the level of the access roadway, and the surface of such sidewalk shall be flush with the entrance to the building.

4. The parties agree that the trees running along the common boundary shall be removed to permit construction of the common access way and development on the 84 Auburn Street site.

5. Two or three of the parking spaces on the south side of the existing ingress and egress lanes which are identified as handicapped parking spaces will be eliminated by the entrance lane to 84 Auburn Street and will be shifted to the south onto the parking spaces that line the rear property line of 84 Auburn Street. Pennbrook will be responsible for moving or installing new handicap parking signage and pavement marking for such spaces.

6. Pennbrook agrees to make all reasonable efforts with the City of Portland to secure a Conditional Zoning Approval for a setback for a new building on the property which approximates the average setback of the buildings in the immediate vicinity so as to not unduly block visibility of the Oakpoint building from Auburn Street and to permit clear sight lines for

traffic flow and business visibility purposes. Oakpoint and Pennbrook shall execute mutually agreeable reciprocal easements upon execution of the City's Conditional Rezoning Agreement, which easements shall be consistent with this Mutual Easement Agreement.

7. This agreement is conditioned on the development of a bank with drive through lanes. Oakpoint is not hereby consenting to any restaurant use whatsoever or any other use with drive through lanes. In the event Pennbrook seeks to develop retail or offices uses without drive through lanes on the 84 Auburn Street parcel, Pennbrook shall first obtain the written consent of Oakpoint, which consent shall not be unreasonably withheld, delayed or conditioned.

8. The Joint Access Agreement will be in the form of a mutual easement which will be permanent. Both parties agree to the extent necessary, to obtain appropriate subordination agreements from any mortgagees on their respective properties. Once the common access way and sidewalk along the southerly edge of Oakpoint's building has been constructed and once a Certificate of Occupancy has been issued for the improvements to be located at 84 Auburn Street, each of Oakpoint and Pennbrook, or their lessees or successors and assigns, shall be responsible for the upkeep and maintenance of any improvements on their respective properties.

9. The parties further agree to use their best efforts to agree on the final form of the Joint Access Agreement by Wednesday, December 7, 2011, a draft of which is attached hereto as Exhibit A.

IN WITNESS WHEREOF, PENNBROOK and OAKPOINT have executed this Agreement as of the date above first written.

WITNESS:

T. K. [Signature]

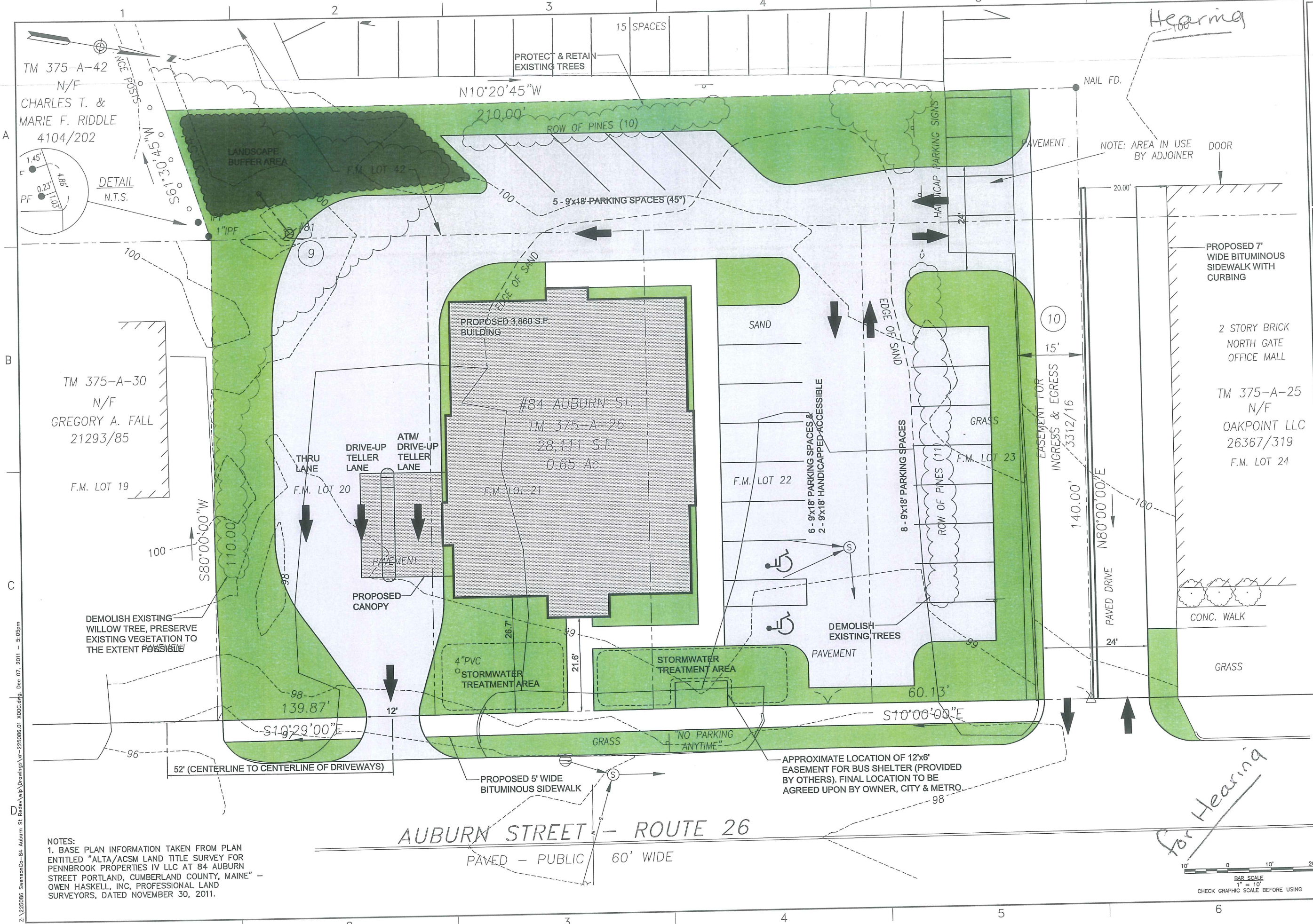
OAKPOINT LLC

By: [Signature]
[Signature] Oakpoint LLC

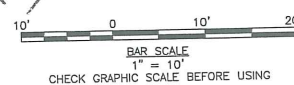
[Signature]

PENNBROOK PROPERTIES IV LLC

By: [Signature]
Drew Swenson, Its Manager



NOTES:
 1. BASE PLAN INFORMATION TAKEN FROM PLAN ENTITLED "ALTA/ACSM LAND TITLE SURVEY FOR PENNBROOK PROPERTIES IV LLC AT 84 AUBURN STREET PORTLAND, CUMBERLAND COUNTY, MAINE" - OWEN HASKELL, INC, PROFESSIONAL LAND SURVEYORS, DATED NOVEMBER 30, 2011.



41 Hutchins Drive
 Portland, Maine 04102
 800.426.4262 | www.woodardcurran.com

WOODARD & CURRAN
 COMMITMENT & INTEGRITY DRIVE RESULTS

STATE OF MAINE
 BARRY SHEPHERD
 9708
 11/28/11

REV	DESCRIPTION	DATE
1	PER PLANNING BOARD WORKSHOP COMMENTS	11/29/11

CHECKED BY: BSS
 DESIGNED BY: DLC
 DRAWN BY: BCM
 PR-225086.01

CONCEPTUAL SITE PLAN

PENNBROOK PROPERTIES IV LLC
 2 MARKET STREET PORTLAND,
 MAINE 04101

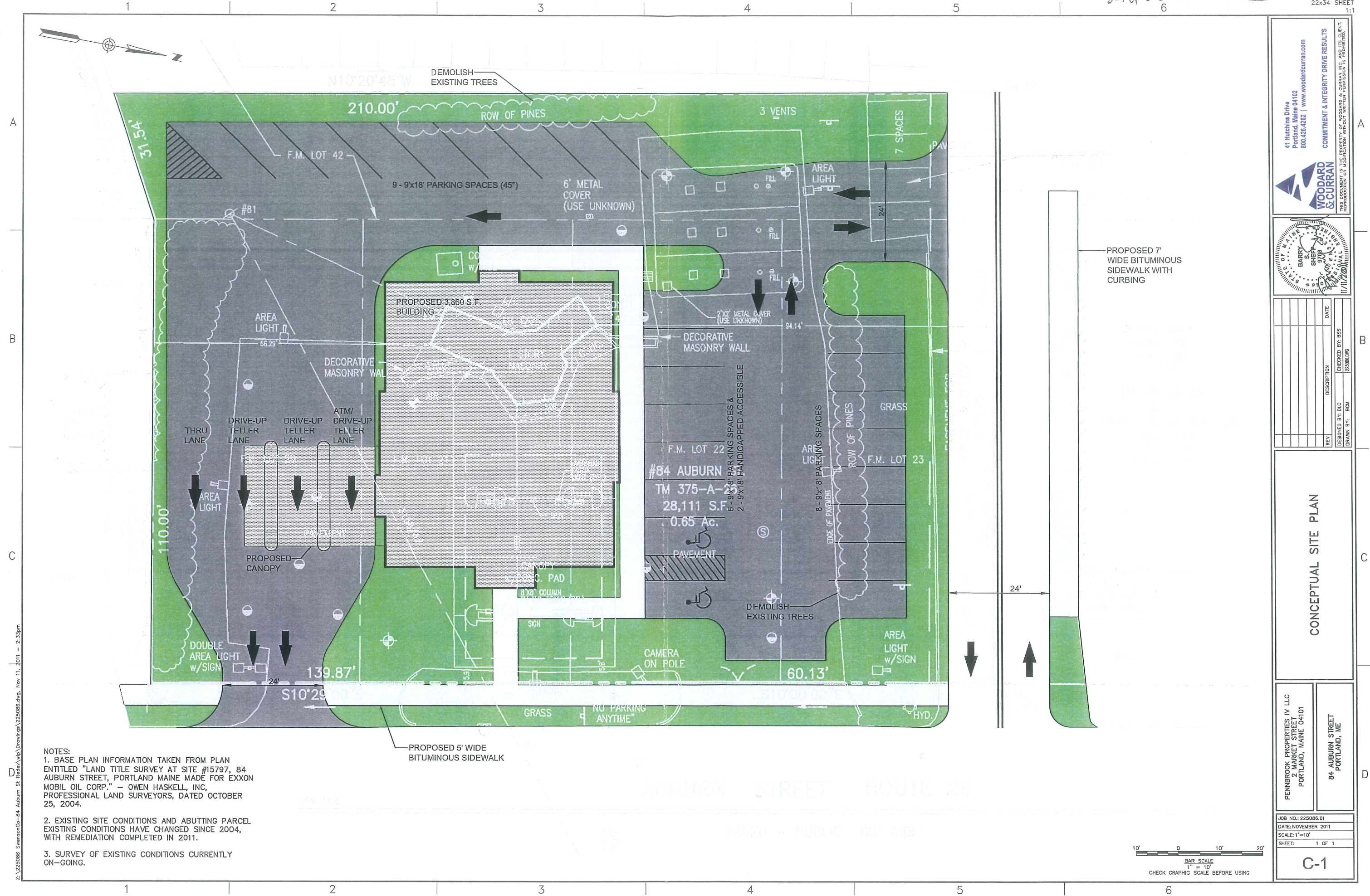
84 AUBURN STREET
 PORTLAND, ME

JOB NO: 225086.01
 DATE: DECEMBER 2011
 SCALE: 1"=10'
 SHEET: 1 OF 1

C-1



Auburn Street - Aerial based on City of Portland 2006 Photos

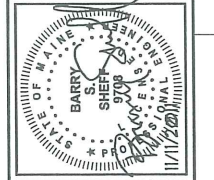


NOTES:
 1. BASE PLAN INFORMATION TAKEN FROM PLAN ENTITLED "LAND TITLE SURVEY AT SITE #15797, 84 AUBURN STREET, PORTLAND MAINE MADE FOR EXXON MOBIL OIL CORP." - OWEN HASKELL, INC, PROFESSIONAL LAND SURVEYORS, DATED OCTOBER 25, 2004.
 2. EXISTING SITE CONDITIONS AND ABUTTING PARCEL EXISTING CONDITIONS HAVE CHANGED SINCE 2004, WITH REMEDIATION COMPLETED IN 2011.
 3. SURVEY OF EXISTING CONDITIONS CURRENTLY ON-GOING.

41 Hutchins Drive
 Portland, Maine 04102
 800.426.4262 | www.woodardcurran.com

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 PROFESSIONAL DESIGN SERVICES
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REV	DESCRIPTION	DATE

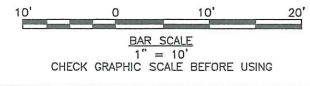
DESIGNED BY: D.L.C.
 DRAWN BY: B.C.M.
 CHECKED BY: B.S.S.
 ZBORING

CONCEPTUAL SITE PLAN

PENNBROOK PROPERTIES IV LLC
 2 MARKET STREET
 PORTLAND, MAINE 04101

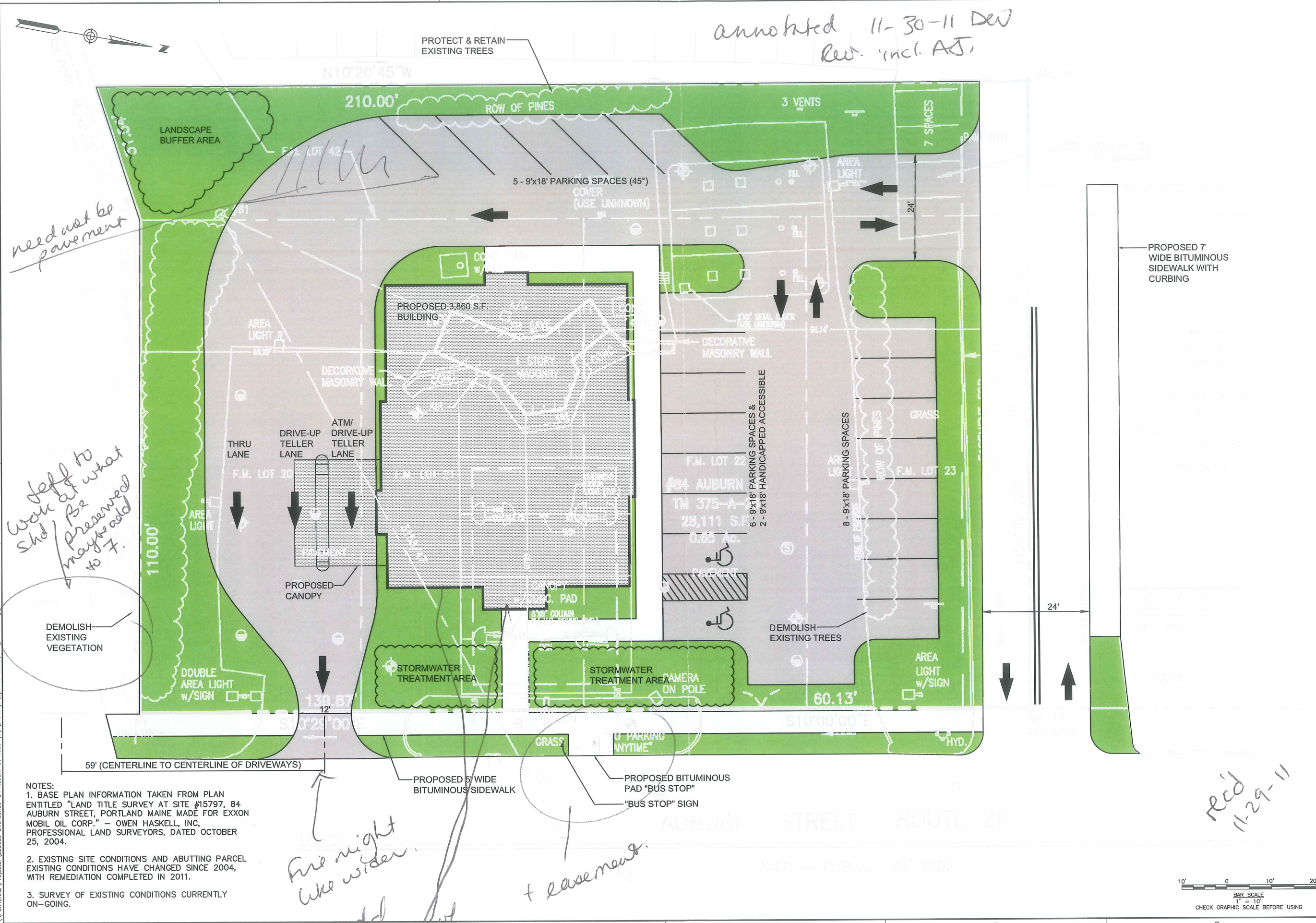
84 AUBURN STREET
 PORTLAND, ME

JOB NO.: 225086.01
 DATE: NOVEMBER 2011
 SCALE: 1"=10'
 SHEET: 1 OF 1



C-1

annotated 11-30-11 Dew
Rev. incl. AJ,



- NOTES:
1. BASE PLAN INFORMATION TAKEN FROM PLAN ENTITLED "LAND TITLE SURVEY AT SITE #15797, 84 AUBURN STREET, PORTLAND MAINE MADE FOR EXXON MOBIL OIL CORP." - OWEN HASKELL, INC. PROFESSIONAL LAND SURVEYORS, DATED OCTOBER 25, 2004.
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 3. SURVEY OF EXISTING CONDITIONS CURRENTLY ON-GOING.

need not be paved

left to work at what shd be preserved maybe add to F.

DEMOLISH EXISTING VEGETATION

59' (CENTERLINE TO CENTERLINE OF DRIVEWAYS)

fine might like wider

add dimensions of both setbacks

+ easements

41 Hutchins Drive
Portland, Maine 04102
800.426.4262 | www.woodardcurran.com

WOODARD & CURRAN

COMMITMENT & INTEGRITY DRIVE RESULTS



REV	DESCRIPTION	DATE
1	PER PLANNING BOARD WORKSHOP COMMENTS	11/28/11

CHECKED BY: BSS
DRAWN BY: BCH

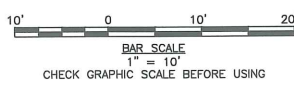
CONCEPTUAL SITE PLAN

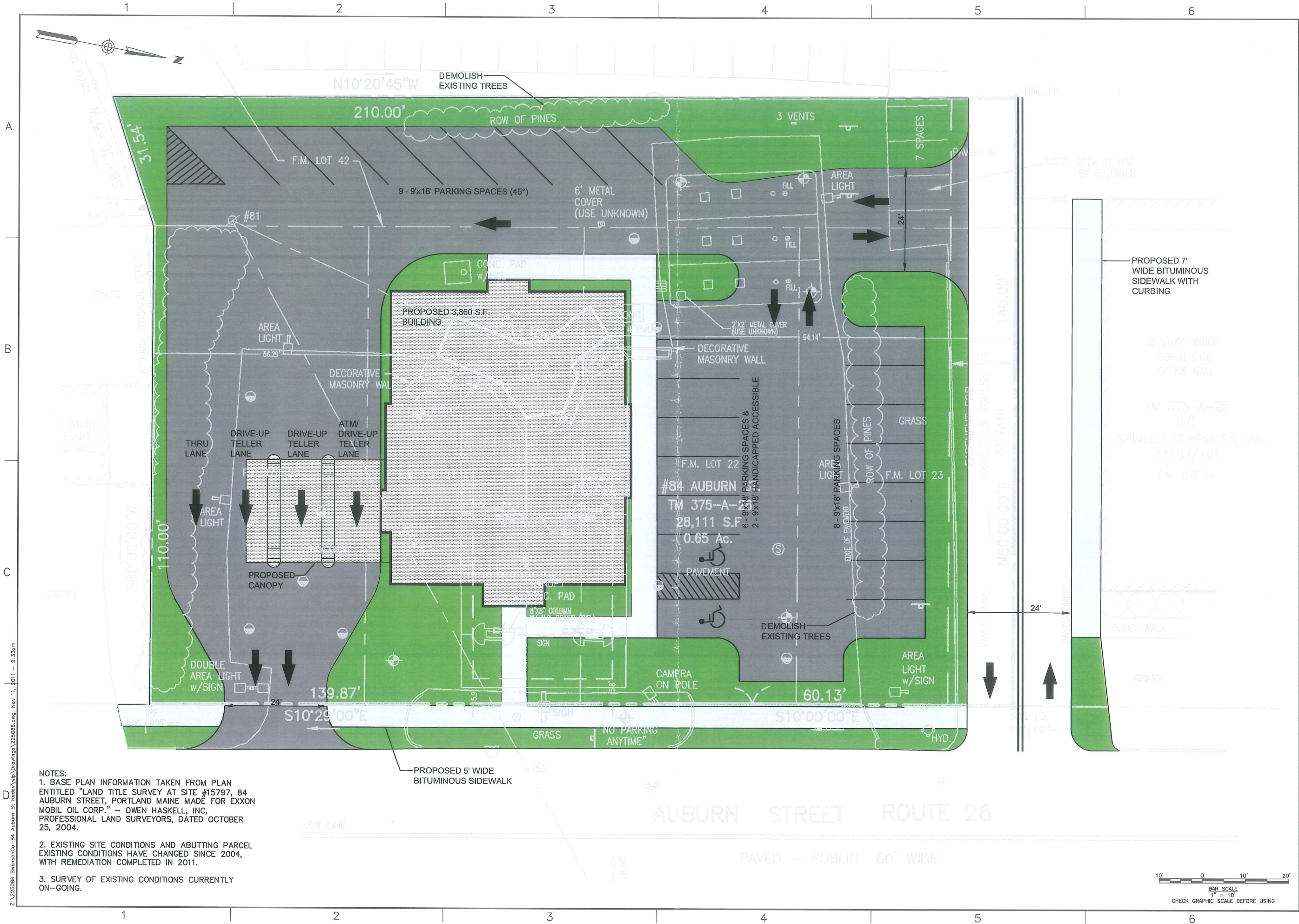
PENNBROOK PROPERTIES IV LLC
2 MARKET STREET
PORTLAND, MAINE 04101

84 AUBURN STREET
PORTLAND, ME

JOB NO.: 225086.01
DATE: NOVEMBER 2011
SCALE: 1" = 10'
SHEET: 1 OF 1

C-1



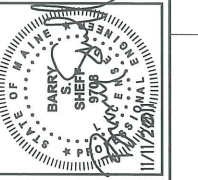


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 1. BASE PLAN INFORMATION TAKEN FROM PLAN ENTITLED "LAND TITLE SURVEY AT SITE #15797, 84 AUBURN STREET, PORTLAND MAINE MADE FOR EXXON MOBIL OIL CORP." - OWEN HASKELL, INC, PROFESSIONAL LAND SURVEYORS, DATED OCTOBER 25, 2004.
 2. EXISTING SITE CONDITIONS AND ABUTTING PARCEL EXISTING CONDITIONS HAVE CHANGED SINCE 2004, WITH REMEDIATION COMPLETED IN 2011.
 3. SURVEY OF EXISTING CONDITIONS CURRENTLY ON-GOING.

41 Hutchins Drive
 Portland, Maine 04102
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REV	DESCRIPTION	DATE

DESIGNED BY: D.L.C.
 CHECKED BY: B.S.S.
 DRAWN BY: B.C.M.
 225086.DWG

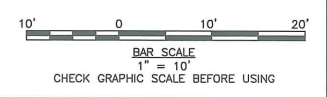
CONCEPTUAL SITE PLAN

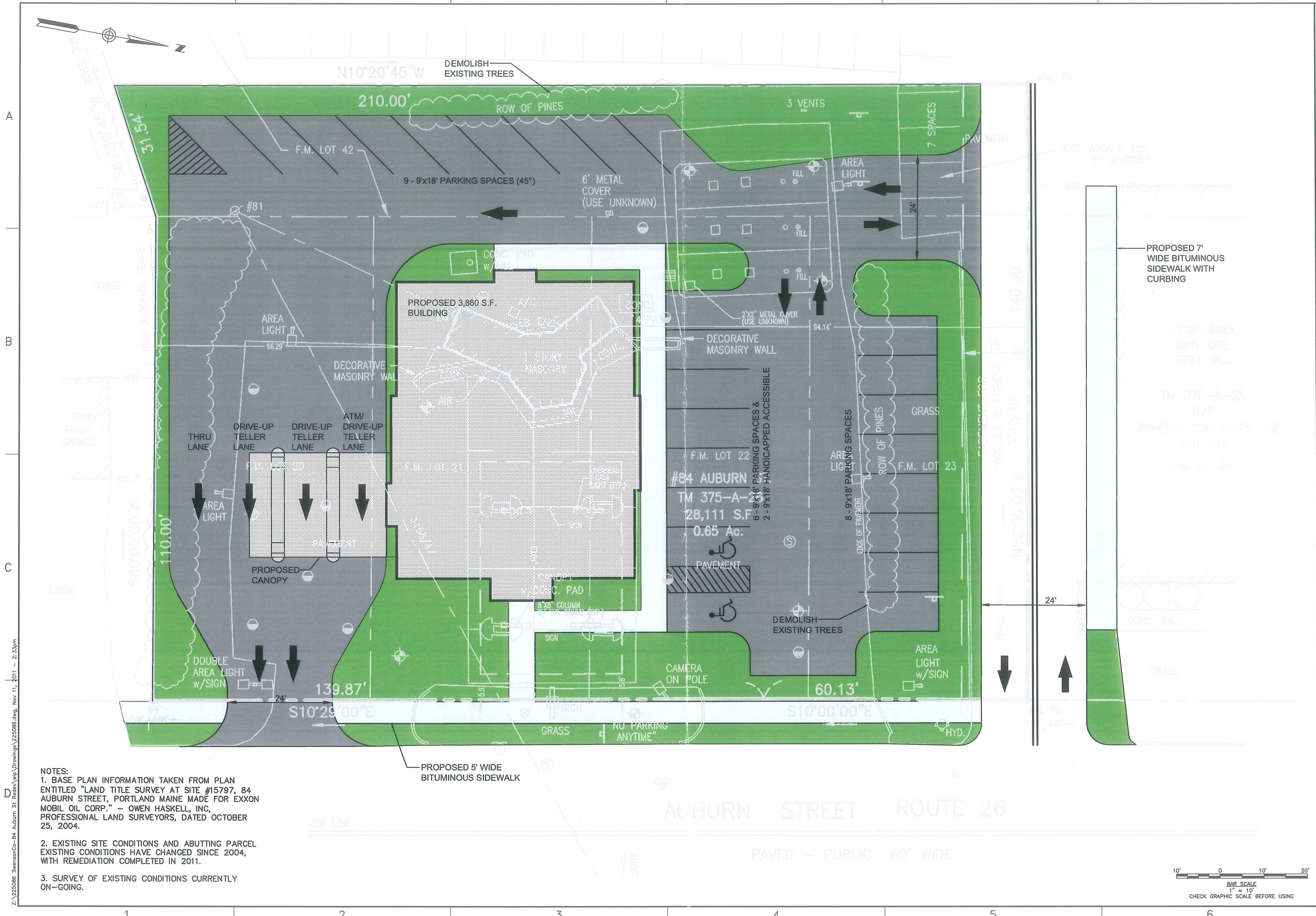
PENNBROOK PROPERTIES IV LLC
 2 MARKET STREET
 PORTLAND, MAINE 04101

84 AUBURN STREET
 PORTLAND, ME

JOB NO.: 225086.01
 DATE: NOVEMBER 2011
 SCALE: 1"=10'
 SHEET: 1 OF 1

C-1



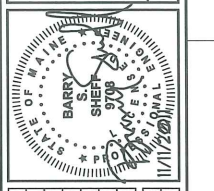


- NOTES:
1. BASE PLAN INFORMATION TAKEN FROM PLAN ENTITLED "LAND TITLE SURVEY AT SITE #15797, 84 AUBURN STREET, PORTLAND MAINE MADE FOR EXXON MOBIL OIL CORP." - OWEN HASKELL, INC, PROFESSIONAL LAND SURVEYORS, DATED OCTOBER 25, 2004.
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REV	DESCRIPTION	DATE

DESIGNED BY: D.L.C. CHECKED BY: B.S.S. 2/25/08.DWG
DRAWN BY: B.O.M.

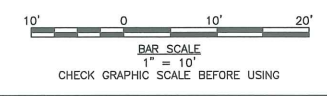
CONCEPTUAL SITE PLAN

PENNBROOK PROPERTIES IV LLC
2 MARKET STREET
PORTLAND, MAINE 04101

84 AUBURN STREET
PORTLAND, ME

JOB NO.: 225096.01
DATE: NOVEMBER 2011
SCALE: 1"=10'
SHEET: 1 OF 1

C-1



Z:\225096 SwansonCo-84 Auburn St Redline\Drawings\225096.dwg, Nov 11, 2011 - 2:33pm