

6/7/05

UD #991

CHESTNUT STREET LOFTS, LLC
1 INDIA STREET ♦ PORTLAND, ME 04101 ♦ 207-772-3225



Richard Bowman
Evan Riebert
Scott Teas
Dana Kamilla

Ferny

June 7, 2005

Portland Planning Board
City Hall
389 Congress Street
Portland, ME 04101

Plan is Active Permit
#027-C-000
BARBARA
change

RE: Site Plan and Subdivision Application, Chestnut Street Lofts

Dear Members of the Planning Board:

We are pleased to submit our initial application for site plan and subdivision approval of our proposed Chestnut Street Lofts, a condominium to be located at the corner of Chestnut Street and Cumberland Avenue. This submission meets the requirements for the first workshop meeting with the Planning Board; our objective is to follow up with the Planning Board in a second workshop on July 26, and go to public hearing on August 23.

Included in this submission are:

- The site and subdivision plan drawings, including
 - the existing conditions and standard boundary plan,
 - a plan showing existing items to be removed from the site,
 - layout and utilities plan
 - grading, drainage, and erosion controls plan
 - landscaping and lighting plan
 - architectural plans
- This written statement, plus the following attachments:
 - evidence of title, right, or interest
 - narrative of existing and proposed management of storm water, prepared by Land Use Consultants
 - estimates of trip generation and parking demand, prepared by John L. Murphy

DEPT. OF BUILDING INSPECTION
CITY OF PORTLAND, ME
JUN 7 2005
RECEIVED

The property is being acquired from the Chestnut Street United Methodist Church, with which Berman Associates, a partner in Chestnut Street Lofts, LLC, has a purchase and sale agreement (copy attached).

This project will include 38 loft-style dwelling units aimed at a "middle" market of first-time home buyers on the peninsula, plus other single-person and "empty nest" households; and, on the ground floor fronting Cumberland Avenue, 3,250 square feet of usable commercial space, which also will be sold as part of the condominium. The total floor area of the new structure will be 50,240 square feet.

Existing Conditions:

The site presently consists of four lots totaling 30,268 square feet (0.69 acre). The Chestnut Street Methodist Church and an adjoining chapel/community building/apartment occupy portions of two of the lots (Parcels A and B on the Existing Conditions Survey), spilling over into a small part of the third lot (Parcel C). The Church is on the National Register of Historic Places. The chapel/community building is not, but discussions with Earle Shettleworth of the Maine Historic Preservation Commission and Deborah Andrews of the City's Historic Preservation Program suggest that the front portion of this structure has an historical context associated with the church that may be important to preserve.

Approximately half of the total land area is occupied by a commercial parking lot (all of Parcel D and parts of Parcels C and B), which is owned by the church and leased to outside users, with a controlled gate. According to church officials, of the total of 46 parking spaces on the lots, 2 are reserved for use by the church and 44 are available for lease to others (see attached e-mail from Raina C. Fish, office administrator, Chestnut Street United Methodist Church).

Parking
←

The site is located next to City Hall and the Merrill Auditorium. Portland High School is across Chestnut Street, and the Boys and Girls Club and residential uses are across Cumberland Avenue. The site is served by all relevant utilities: sewer, water, natural gas, electricity, telephone, and cable.

Zoning:

The property is entirely within the Downtown B-3 District. It is not part of the Pedestrian Activities District overlay. The Downtown Height Overlay Map specifies a maximum height of 85 feet. The Downtown Maximum Street Wall Height and Minimum Stepback Map specifies a maximum street wall height of 65 feet, with a minimum stepback of 15 feet at that point.

Consultation with Neighborhood:

We have met twice with the Bayside Neighborhood Association. The first meeting in November 2004 was to gain input on acceptable uses of the site. Among the favored uses

was market-rate, owned units within a mid-level price range. At a second meeting in May 2005, we presented the concept plan for the Chestnut Street Lofts and received feedback. This feedback was generally favorable and included the need to accommodate off-street parking (which the plan strives to do), suggestions as to amenities in the building (e.g., to accommodate bicycles and workshop space), and ideas for re-use of the Chapel/Church. A third, formal meeting will be scheduled this summer as required by the Planning Board's rules.

Summary of Proposed Development:

The proposed development will be separate from the preservation and re-use of the Chestnut Street United Methodist Church and the adjoining chapel, *which will be the subject of a separate site plan submission in the near future.*

The proposed development will:

- Re-configure the lot lines into 3 lots: one for the church (existing Parcel A, 9,035 square feet), one for the chapel (1,454 square feet), and the remainder for the proposed condominium. The land area in the condominium lot will be 19,779 square feet.
- Remove the back portion of the chapel/community building, retaining the front 3-story portion for later re-use.
- Develop an 8-story mixed use building of 50,240 square feet. The building coverage will be 37% of the lot. The first floor (3,250 square feet of usable area) will be devoted to commercial use. Floors 2 through 8 will contain 38 residential condominium units, including thirty flats on floors 2 through 6 and eight townhouses on floors 7 and 8. The units will average a little more than 1,000 square feet of living area. They will be designed in a "loft" style: that is, in an open configuration with a kitchen-bathroom core, high ceilings, large windows for light, and minimal interior finish for flexible design and cost savings. In addition to the 8 stories of living space, the structure will contain a basement with a small storage space for each of the residential units.
- Be priced at a level to help satisfy the need on the peninsula for first-time homebuyers, as well as demand for urban housing by other single-person and "empty nest" households. The objective is for a majority of the units to be priced within range of eligibility for the Maine State Housing Authority's first-time homebuyer program, which may or may not be utilized by buyers but represents a benchmark for our pricing of a majority of the units.

- Create an active "face" on this segment of Cumberland Avenue between the High School and Merrill Auditorium, with commercial office space fronting on Cumberland Ave.

Parcel A 9,035
Chapel 1,454
38 spaces

- Provide 38 on-site surface parking spaces for the residential units, with ingress/egress onto Chestnut Street.
- Be consistent with standards for development in the B-3 zone, per Sec. 14-526 (16), and the Downtown Urban Design Guidelines. The building is designed in context with a pedestrian environment. The first two floors form the base of the building and follow the front property line along Cumberland Ave., with glass and masonry walls. Floors 3-6 form the middle of the building. They follow a line that begins at the front property line, then veers slightly from Cumberland Ave. en route to a right angle with Chestnut St. Their walls include generous, oversized windows along both Cumberland Ave. and Chestnut St. Floors 7-8, set back from the lower floors, form the building's cap.

Entry to the building is via a colonnade at the corner of Cumberland Ave. and Chestnut St. The building accommodates a row of parking beneath a first floor overhang, which is supported by columns and provides for visibility through the site. The exterior skin is a combination of metal, masonry, and glass. These materials are consistent with the "loft" style of architecture. They blend with but greatly improve upon the façade of the adjacent rear of the Merrill Auditorium, and blend with the masonry of the Portland High School. A narrow part of the surface parking lot and entrance (40 feet) will abut Chestnut Street; the frontage will transition to a landscaped pocket park and then the preserved chapel and church.

The design of the site preserves or opens up views to visual landmarks, including City Hall's bell tower and much of the side of the Church, which has been hidden by the community building for many years but now will be more visible, along with its façade and that of the chapel, to those walking up Chestnut Street.

In designing this building, we have stayed within the height limits of the B-3 district (minimum 35 foot height within 50 feet of street frontage, maximum street wall of 65 feet, maximum overall height of 85 feet provided there is a 15-foot "stepback" after 65 feet), with one exception. This is at the corner of Chestnut Street and Cumberland Avenue, where the colonnade entrance to the building is designed with a "cut-out" of approximately 10 feet by 13 feet. This cut-out does not meet the requirement of the street-wall build-to line (street wall must be within 5 feet of the property line). We consider this small design element very important both to the appearance of our structure, and to the ability to maintain a view across our Cumberland Ave. frontage from the north to the architecture of the Portland High School. Indeed, this design element specifically promotes the purposes of Sec. 14-526 (16), governing relationships of the building to the pedestrian environment and to existing development.

In order to meet the intent of the City's Downtown Design Guidelines, the ordinance empowers the Planning Board to modify the build-to line. There is concern that recent law court cases have restricted the ability of Planning Boards to modify

dimensional standards, concluding that state law allows only boards of appeal to modify dimensional standards through the variance process. These court cases have not specifically addressed Portland's ordinance, however, and in any case they will ~~seen be moot~~: the State Legislature in May passed and the Governor has signed into law LD 991, which restores the authority of municipalities to empower planning boards to modify lot size and setback standards "if the purposes are to allow development to fit more harmoniously into the environment and to promote superior neighborhood development. If such development complies with other parameters of the municipal ordinance, approval is not considered the granting of a variance."

Therefore, we urge the Planning Board to consider this design element on its merits and to modify the build-to line consistent with the intent of the Downtown Urban Design Guidelines.

Easements:

The site presently contains one easement. This does not affect the condominium project, and is not part of the condominium lot. It is located between the Church and City Hall. Under the terms of the easement, this space is shared by the Church and City Hall for access along the sides and to the rear of the respective buildings. The Church, upon making the decision to sell its property, is obligated to give the City the right of first refusal. Our understanding is that this discussion between the Church and the City is ongoing.

As part of the subdivision and site plan, we will provide for maintenance easements running from the Chestnut Street Lofts Condominium to both the church and chapel parcels; and from the church and chapel to each other along their shared property line. We also will provide for an easement from the church parcel to the condominium to accommodate maneuvering space for the condominium's parking lot. The language and locations of these easements will be provided at our second workshop with the Planning Board.

Solid Waste and Evidence of Availability of Off-Site Sewer, Water and Streets:

All solid waste generated will be domestic in nature. Land Use Consultants has requested documentation from the appropriate departments of the availability of public sewer and water lines in Chestnut Street. Traffic engineer John Murphy estimates peak hour generation of 22 (AM) to 25 (PM) trips for the combined residential and office uses. See the attached letter, dated June 6, 2005.

Existing Surface Drainage and Proposed Management

See the attached letter from Land Use Consultants, dated June 6, 2005.

Off-Street Parking:

Because the proposed building is more than 50,000 square feet, the Planning Board establishes the parking requirement “based upon a parking analysis submitted by the applicant....” (Sec. 14-526, subsec. a-2-b)

A. Number of Spaces: We propose:

- 38 on-site parking spaces, or one per residential unit; and
- 8 parking spaces in an alternative off-street location, through a formal arrangement with a nearby parking garage, to serve the office space.

We base the 38 on-site parking spaces on the high likelihood that the average number of automobiles owned will be one per residential unit. Traffic engineer John Murphy (see letter, attached) indicates that the best standard from the statistical studies contained in the Institute of Traffic Engineers’ manual on parking generation for an urban, mid-rise development with relatively small units is about one space per unit. Data from the 2000 U.S. Census indicates that the number of vehicles available per household in the census tracts that make up Portland’s peninsula (CTs 1, 2, 3, 5, 6, 10, 11, 12, and 13) is under 1.00 per household, ranging from .86 per household on the central part of the peninsula, to 0.98 per household on the West End and 1.17 per household on the East End. Owner-occupied households on the peninsula have about 1.3 vehicles available per household, but this includes single-family homes and small multi-family condominiums as well as larger structures. We strongly believe one parking space per residential unit is adequate and appropriate because:

- This standard is compatible with Census and ITE data (while we anticipate that the Chestnut Street Lofts will be primarily owner-occupied, there likely will be a blend of renters and owners);
- The very central location of our development – which is within closer walking distance of jobs, services, and public transportation than the East End or West End – will reduce reliance on automobiles below the peninsula-wide averages;
- The modest average size of the units (just over 1,000 square feet) will attract a large percentage of one-person households; and
- This standard is compatible with the objective of meeting housing demand on the peninsula within a price affordable by first-time homebuyers and other “middle market” consumers.

The number of parking spaces for the proposed office space is consistent with the zoning ordinance’s standard of one space per 400 square feet of leaseable area. Because we will arrange for these spaces in a nearby parking garage, and because these garages are

located more than 100 feet from the site (Sec. 14-334), we request that the Planning Board allow the use of a garage "located a reasonable distance" from the site.

B. Configuration of Spaces: While we are able to meet a standard of one on-site parking space per residential unit, the configuration of the spaces is constrained by the urban nature of the site (this is an "in-fill" site with pre-determined dimensions plus existing buildings to be saved), by the Downtown Urban Design Guidelines that seek to respect downtown's streetscapes and thus limit the amount of parking abutting the streets, and by our desire to incorporate meaningful, landscaped open space as part of the streetscape, as an amenity, and as a complement to the adjacent historic structures. We propose to accommodate all of these objectives through parking spaces with dimensions that range from 7.64' x 17.6' to 9' x 18'. Two handicapped spaces are provided, including one for van access. We believe this configuration satisfies the need for safe, private residential parking in a highly urban setting, and is most compatible with all other design guidelines and objectives.

Environmental Assessment:

A Phase I Environmental Assessment found that the lot closest to Cumberland Avenue (Parcel D) was formerly occupied by a gas station. As a result, a Phase II analysis was conducted by Mainland Consultants. The Phase II report is expected to be completed in mid-to-late June and will be submitted to the Planning Department at that time. Our *preliminary* summary of results, based on oral discussions with the consultants, are that the area of the former gas station, whose buildings, pumps, and storage tanks occupied or affected perhaps 6,000 square feet of the site nearest Cumberland Avenue, contains petroleum-contaminated soil. At this point there is no indication of hazardous wastes (metals other than lead associated with gasoline, solvents, halocarbons, etc.). We are working with the Maine Department of Protection to determine the appropriate strategy to manage these soils under the Voluntary Response Action Program (VRAP).

Federal and State Approvals Required:

Other than approvals from Maine DEP associated with the contaminated soils, to our knowledge no other federal or state approval is required for this project.

Unusual Natural Areas, Habitats, or Archaeological Sites:

No unusual natural areas, habitats, or archaeological sites are associated with this project.

Housing Displacement:

2-168Rm APT

Among the existing uses on the site are two residential rental units, owned and rented out by the Chestnut Street United Methodist Church. According to the Church (personal conversation with Raina Fish, office administrator, June 6, 2005), each is a one-bedroom unit and the monthly rent is \$600. In each case, the rent is subsidized by the Portland Housing Authority or the City of Portland (general assistance).

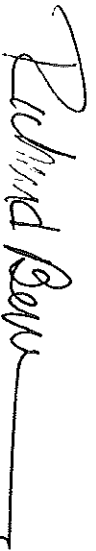
Section 14-483 of Portland's Code of Ordinances addresses the preservation and replacement of housing units. It applies to cases where "three or more lawfully existing dwelling units... are demolished, converted to nonresidential uses, or eliminated through the reduction or consolidation of units within a residential property...." Because the Chestnut Street Lofts Condominium will affect only two units, this section does not apply. (In any case, the project will add 38 units of housing, for a net gain of 36 on the site.)

Alterations to Historic Properties:

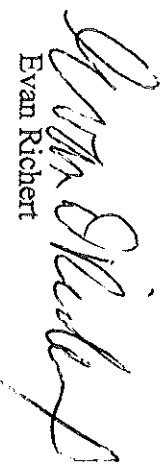
The Church will be unaffected by the proposed development, with the exception that it is connected by a vestibule to a gymnasium behind the Chapel. This vestibule is located at what was originally a side entrance to the Church for direct access to its first floor. When the vestibule is removed along with the gymnasium, it will revert to a side entrance. In addition, an elevator serving the Church is located near its northern corner between the Church and a part of the adjacent structure that will be removed. The elevator may be relocated to a place that does not interfere with the condominium's parking lot.

As noted earlier, the Chapel is not an historic property, but its context with the Church is of historic importance. Thus, the front, 3-story portion of the structure, which houses the chapel, a stage, and upper floor offices, will be retained. When the rear portion of the building is removed, a new rear wall will be constructed to close in the remaining part of the structure.

Sincerely,



Richard Berman



Evan Richert

cc Scott Teas, TFH Architects
David Kamila, Land Use Consultants



Attorneys At Law

December 22, 2004

Adam N. Gonzalez, Esq.
Law Offices of Robert E. Danielson
Two Canal Plaza, Suite 401
P.O. Box 545
Portland, ME 04112-0545

*Re: Chestnut Street United Methodist Church
to Berman Associates*

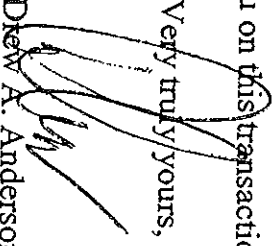
Dear Adam:

This will confirm that Berman Associates is in receipt of a fully executed copy of the Contract between Chestnut Street United Methodist Church and Berman Associates, and that the Contract Date shall be December 21, 2004. You are authorized to insert that date in any copy of the Contract that you have in your files.

This will also confirm that accordingly, the ninety (90) day due diligence period (as set forth in paragraph 5) shall commence as of December 21, 2004.

I look forward to working with you on this transaction.

Very truly yours,


Drew A. Anderson

Email: danderson@mpmlaw.com

DAA/Kgw

Telephone:
207.773.5651

Facsimile:
207.773.8023

E-Mail:
info@mpmlaw.com

WWW:
mpmlaw.com

*Admitted in Massachusetts
Only

REAL ESTATE PURCHASE AND SALE AGREEMENT

THIS AGREEMENT, dated this ____ day of December, 2004 (the "Contract Date"), is by and between CHESTNUT STREET UNITED METHODIST CHURCH, with an address of 17 Chestnut Street, Portland, Maine 04101, or assigns (collectively, "Seller") and BERMAN ASSOCIATES, with an address of One India Street, Portland, Maine 04101, or assigns ("Purchaser").

1. Purchase and Sale of Property.

Subject to the terms and conditions set forth herein, Seller hereby agrees to sell and convey to Purchaser and Purchaser hereby agrees to purchase from Seller and pay for the property owned by Seller in the City of Portland, Maine bounded by Chestnut Street and Cumberland Avenue (collectively, the "Premises"), including those certain lots or parcels of real property known as 17 Chestnut Street, 21 Chestnut Street and 266 Cumberland Avenue, Portland, Maine, and identified on the City of Portland tax records as Map 27, Block C, Lots 1, 10 and 11, as such parcels are outlined on the plan attached as Exhibit A, together with all fixtures and improvements situated thereon owned by Seller, except those items shown on attached Exhibit B, which fixtures and improvements shall be removed within forty-five (45) days after the Closing Date (as hereinafter defined).

2. Purchase Price.

(a) The purchase price for the Premises shall be [REDACTED] and shall be payable as follows:

- (1) Ten Thousand Dollars (\$10,000) upon the receipt by Purchaser of a copy of this Agreement signed by Seller, which amount shall be paid to and held in escrow by Purchaser's attorney, Murray, Plumb & Murray ("Escrow Agent"), as earnest money deposit hereunder and shall be applied as part payment of the purchase price (the "Deposit"); and
- (2) The balance of the Purchase Price, subject to adjustment as provided herein, shall be paid by Purchaser to Seller by certified check at the Closing.

All earnest money will be held in trust by Escrow Agent in a non-interest bearing account subject to the terms of this Agreement and duly accounted for at the time for performance of this Agreement. Except for Escrow Agent's acts of bad faith, Escrow Agent shall have no liability of any kind whatsoever for the performance of any duties imposed upon Escrow Agent under this Agreement.

3. Prorations, Adjustments and Costs.

Seller and Purchaser shall prorate as of the date of Closing (the "Closing Date") charges for heat, oil, sewer, water or any other utility services provided to the Premises, and any rents and charges payable under any lease affecting the Premises.

4. Conveyance: Title.

(a) Seller shall convey the Premises to Purchaser by good and sufficient Quitclaim With Covenant Deed (the "Deed"). ~~Title to the Premises~~ shall be good and marketable and shall be free and clear of all liens, tenancies, leaseholders and encumbrances except (i) zoning restrictions and land use matters; (ii) current taxes and assessments, if any; and (iii) any "Defects of Title" as (defined below) accepted or waived by Purchaser pursuant to Section 4(b).

(b) On or before the Closing Date, Purchaser shall notify Seller of any defects in title that would make Seller unable to give title to the Premises as herein stipulated (any of which is called herein a "Defect of Title"). Seller shall have a period of not more than 30 days after receipt of notice of such defect within which to remedy or cure any such Defect of Title, and the Closing shall be extended to the date that is five (5) business days after the expiration of such 30-day period. If such Defects of Title are not corrected or remedied within such 30-day period, then Purchaser shall elect, by written notice to Seller on or before the Closing Date, as the same may be extended, either (i) to accept title to the Premises subject to the uncured Defects of Title without reduction of the Purchase Price and without any right to damages and without any other liability on the part of Seller, or (ii) to terminate this Agreement, whereupon the Deposit shall be returned to Purchaser and all obligations of the parties hereunder shall cease and neither party shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement.

5. Due Diligence Period, Materials Delivered by Seller, Inspections and Right to Terminate.

(a) Purchaser may, at its option and at its sole risk and expense, retain a person or persons to examine the Premises and prepare structural, architectural, engineering, market feasibility, environmental or other professional studies or physical reports of the Premises. Purchaser and others whom Purchaser may designate shall have the right, at all reasonable times, to enter upon the Premises to examine and make, or cause to be made, the referenced studies or reports. Purchaser shall at its own expense restore the Premises to its present condition, and agrees to hold Seller harmless and indemnify Seller from any loss or liability resulting from the entrance by Purchaser or its agents upon the Premises for the purposes set forth herein.

(b) At any time on or prior to the date that is ninety (90) days after the Contract Date, Purchaser shall have the right to terminate this Agreement if Purchaser determines, in its sole discretion, that it is not satisfied with any of the studies, inspections or reports set forth in subsection (a) above, by giving written notice to Seller on or before the end of such 90-day period. If Purchaser timely gives notice of such dissatisfaction, then the Deposit shall be returned to Purchaser and all obligations of the parties hereunder shall cease and neither party

shall have any claim against the other by reason of this Agreement, except with respect to any provision hereof that expressly survives the termination of this Agreement. If Purchaser fails to give such written notice on or before the end of such 90-day period, Purchaser shall be deemed to have waived its right to terminate this Agreement pursuant to this Section, and the Deposit shall become non-refundable, other than default by Seller under this Agreement or Seller's failure to convey title as required in Paragraph 4.

6. Development Contingency.

Purchaser's obligations under this Agreement are contingent upon Purchaser obtaining all permits and approvals required in connection with Purchaser's intended development and improvement of the Premises (the "Permits and Approvals"). Purchaser shall use its best efforts to obtain the Permits and Approvals, and Purchaser intends to submit a site plan application to the City of Portland Planning Department as soon as possible after execution of this Agreement. If Purchaser's development plans include plans for demolition and removal of the church, Seller shall use good faith efforts in assisting Purchaser in obtaining demolition permits as required. If Purchaser has not obtained the Permits and Approvals on or before the date that is six (6) months from the Contract Date (the "Permit and Approval Contingency Period"), then Purchaser shall have the right to terminate this Agreement by written notice to the Seller prior to the expiration of said six (6) month period, and the Deposit shall be promptly delivered to the Seller (subject to Purchaser's right to have the Deposit returned to Purchaser during the ninety (90) day period described in paragraph 5) and the parties shall be relieved of any further liability or obligation hereunder, except with respect to any provision hereof that expressly survives the termination of this Agreement. Purchaser shall have the right to extend the Permit and Approval Contingency Period for an additional three (3) months by providing Seller with written notice thereof, to be given prior to the expiration of the initial Permit and Approval Contingency Period, and upon deposit, within said six (6) month time period, of an additional Ten Thousand (\$10,000) Dollars to the Escrow Agent as additional earnest money deposit under this Agreement, which Deposit shall be non-refundable, other than default by Seller under this Agreement or Seller's failure to convey title as required in paragraph 4.

7. Closing.

Once the Permits and Approvals have been obtained, the Closing shall take place on the date that is forty-five (45) days after the date upon which all appeal periods have expired with respect to the Permits and Approvals, which in no event shall be later than November 22, 2005, at 10 a.m. at the offices of Purchaser's attorney or at such other place as shall be mutually agreed to by both Purchaser and Seller. Notwithstanding the foregoing, if an appeal is taken with respect to the issuance of any of the Permits and Approvals, then the Closing Date shall be extended for an additional period not to exceed six (6) months.

8. Risk of Loss.

The risk of loss to the Premises prior to the Closing Date shall be on Seller.

9. Brokers.

The parties acknowledge that neither party has employed or engaged any broker or agent in connection with this transaction. The parties agree to indemnify and hold each other harmless from and against any claims made by brokers resulting from the actions of the other party.

10. Default.

(a) If Purchaser fails to perform its obligations as set forth in this Agreement, then Seller shall as its sole remedy be entitled to retain the Deposit as liquidated damages as a result of such failure to perform, and this Agreement shall be deemed terminated. Purchaser and Seller acknowledge that Seller's damages because of Purchaser's failure to perform are difficult to ascertain and agree that the amount of the Deposit represents a reasonable estimate of the amount of Seller's damages as a result thereof.

(b) In the event of a default by Seller, Purchaser's sole remedy shall be to either (i) terminate this Agreement and be entitled to the return of the earnest money deposit or (ii) seek specific performance.

11. Notices.

All notices, demands or other communications made pursuant to this Agreement shall be in writing and shall be either hand delivered or sent by certified or registered mail, return receipt requested. Such notice shall be deemed effective upon the earlier of (a) actual receipt or (b) two days following its deposit in the United States mail, postage prepaid, and addressed to the parties at the addresses set forth in the preamble to this Agreement.

12. Seller's Authority.

Seller represents, covenants and warrants that Seller is the current owner of the Premises and has the legal right, power and authority to enter into this Agreement and to perform all of its obligations hereunder. If Seller requires further consents or approvals to enter into this Agreement and to transfer the Premises to Purchaser as contemplated herein, then Seller agrees to provide evidence that such additional approvals and consents have been obtained within thirty (30) days of the Contract Date.

13. Miscellaneous.

(a) Seller and Purchaser shall each pay their portion of the Maine State Transfer Tax.

(b) Seller hereby certifies that Seller is a resident of the State of Maine. Seller hereby acknowledges Purchaser's requirement to withhold 2½% of the purchase price pursuant to 36 M.R.S.A. §5250-A if Seller is not a resident of the State of Maine, unless Seller presents to Purchaser at closing a Certificate of Exemption or Certificate of Reduction from the State of Maine Bureau of Taxation.

(c) INTENTIONALLY OMITTED.

(d) This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, personal representatives, successors in interest and permitted assigns.

(e) It is understood and agreed that all understandings, agreements, warranties or representations, either oral or in writing, including without limitation any letters of intent or prior agreements, heretofore between the parties hereto are merged in and superseded by this Agreement, which document alone fully and completely expresses the parties' agreement with respect to the transactions covered hereby. This Agreement may not be modified in any manner except by a subsequent instrument in writing signed by Seller and Purchaser.

(f) This Agreement may be simultaneously executed in any number of counterparts, each of which when so executed and delivered shall be an original; but such counterparts shall constitute but one and the same instrument.

(g) If the date for performance of any obligation hereunder, or the giving of any notice hereunder, falls on a Saturday, Sunday or a legal holiday in the State of Maine, the period for such performance, or the giving of any notice hereunder, shall be extended to the next business day.

(h) This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Maine.

IN WITNESS WHEREOF, the parties have executed this Agreement as a sealed instrument as of the date set forth below their respective signatures, to be effective as of the Contract Date.

SELLER:

CHESTNUT STREET UNITED
METHODIST CHURCH

By: *David E. Swenson*
Its: *Chair of Trustees*

PURCHASER:

BERMAN ASSOCIATES

By: *Richard Berman*
Richard Berman, Principal

David E. Swenson
David E. Swenson
District Superintendent
Dec. 14, 2004



Land Use Consultants Inc.

Frederic J. Licht PE
Thomas N. Emery RLA
J. David Haynes RLA

June 6, 2005

4376

*p l a n n e r s
e n g i n e e r s
l a n d s c a p e
a r c h i t e c t s*

Barbara Barhydt, Senior Planner
Department of Planning & Urban Development
Portland City Hall
289 Congress Street
Portland, ME 04101

Site Plan & Subdivision Application, Chestnut Street Lofts, Portland, Maine:

Dear Barbara,

Land Use Consultants, Inc. has reviewed the site at the corner of Chestnut Street and Cumberland Avenue to evaluate the potential impacts which may result from the proposed development improvements. The existing site is entirely paved or impervious. It is assumed that the site has been developed for at least 100 years. There is no evidence of significant erosion or drainage problems as a result of rainfall or runoff in these areas. There is an existing catch basin on the site. The catch basin and paved parking on the site and the existing curb and sidewalk on Chestnut Street are in a state of significant distress and disrepair.

It is not known where the existing catch basin drains to. There are no separated storm drains in the immediate vicinity. All catch basins and drains discharge to a combined sewer in Chestnut Street or Cumberland Avenue. Most of the existing impervious surfaces drain via sheet flow to the existing catch basin on site or to Chestnut Street and Cumberland Avenue prior to discharge into the combined sewer. There are two catch basins located in Chestnut Street near the corner of Cumberland Avenue. Improvements in this area will include construction of a new separated storm drain. The new storm drain will connect to the existing sewer with a temporary connection until such time as the City of Portland separates the sewers beyond the site.

Existing buildings and parking areas will be removed from the site. The proposed amount of impervious surfaces will be less than the existing site and will not result in increased runoff or create erosion problems. The proposed landscaping improvements to this area include the addition of a new vegetated courtyard between the new parking and the existing chapel and Chestnut Street Church. A new mid rise multifamily residential building and parking lot will be constructed. All of these improvements will drain to new catch basins and drains. Essentially all runoff will be collected on site via the new storm drain prior to discharging to the city sewer.


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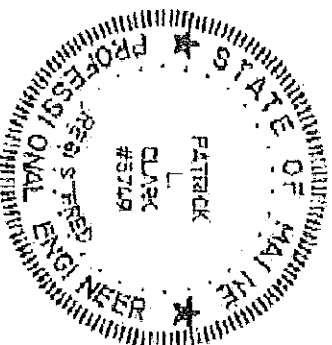
This project results in a net reduction of impervious area and is not subject to the Stormwater Law pursuant to 38 M.R.S.A. § 420 D. Land Use Consultant's has not performed pre and post development runoff calculations in order to evaluate the reduction in peak discharge rates resulting from the proposed project. No stormwater detention is proposed for this project. New storm drains are proposed for on site runoff and a new separated storm sewer is proposed in Chestnut Street. This storm drain will tie into the existing 18 inch Sanitary Sewer in Chestnut Street.

In general, all of the improvements will serve to better control the runoff from the site and prevent erosion. Due to the decrease in impervious area and direct discharge of stormwater to the new storm drain system, it is our opinion that drainage calculations or stormwater management improvements will not be required. The project will significantly improve the drainage characteristics of the site.

Prepared by:



Patrick L. Clark, PE, CPESC



From: Chestnut Street UMC <chestnutstumc@yahoo.com>
To: Evan Richert <erichert@usm.maine.edu>
Date: 5/20/2005 8:44:55 AM
Subject: Re: Parking lot @ Chestnut Street UMC

Hello... Yes, that is correct. 2 spaces are reserved, one for myself and the other for the pastor.
-Raina

Evan Richert <erichert@usm.maine.edu> wrote:
Thanks, Raina. Could you clarify whether any of the spaces are permanently reserved for the church * that is, not available to rent out? I think earlier you told me there were 2 such spaces, but I'd like to confirm. Thanks.

Evan

>>> Chestnut Street UMC 05/19/05 11:31 AM >>>

Good morning,

The parking lot at Chestnut Street United Methodist Church is marked for 46 parking spaces. 2 of the spaces are too small to accommodate a vehicle, so realistically, there are 44 rent-able spaces in the lot. Currently, the lot has only 37 paying tenants. Please let me know if you need any more information,

Sincerely,

Raina C. Fish

Office Administrator, CSUMC

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JOHN L. MURPHY, P.E.

*Civil Engineer
Traffic Engineer*

221 BROWN ROAD
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207-625-8222

June 6, 2005

Eben Richert
21 Karynel Drive
South Portland, Maine 04106

Re: Chestnut Street Lofts project.

Dear Eben:

I have reviewed the proposed project plans and existing conditions. Based upon the Institute of Transportation Engineers' (ITE) publication "Trip Generation", the following is an estimate of peak hour trip generation:

1. Residential Condominium/Townhouse (Use 230) - 38 units
AM Peak hour 7 AM - 9 AM 17 trips/hour
PM Peak hour 4 PM - 6 PM 20 trips/hour
2. General Office Building (Use 710) - 3250 square feet
AM Peak hour 7 AM - 9 AM 5 trips/hour
PM Peak hour 4 PM - 6 PM 5 trips/hour

Thus these two uses are estimated to result in 22 AM peak hour trips and 25 PM peak hour trips. (I assumed office space as it is a type of use in this area.)

The ITE "Trip Generation" data does not fit such small projects. The definitions of the use Residential Condominium/Townhouse (230) refers to much larger projects. There are also uses that define the projects as low rise or high rise and luxury units. The high rise is over 3 stories but the number of units in the studies used as a data base are mostly over 543 units.

I also reviewed data in the ITE publication "Parking Generation", 3rd edition. The use definitions again did not fit your proposed use. The closest land use in the publication was Low/Mid-Rise Apartment (Use 221) for weekday in an urban location. The average size of the study sites was 165 units. The average peak period parking demand was 1.00 per dwelling unit. The range was 0.66 - 1.43 vehicles per dwelling unit with an 85 per-

centile use of 1.17 vehicles per dwelling unit. The average peak period parking demand on Saturday was 1.02 vehicles/dwelling unit with an 85 percentile demand of 1.17 vehicles/dwelling unit. The Saturday range in demand was 0.80 to 1.43 vehicles per dwelling unit.

Conclusions

1. This project will not result in sufficient trip generation to require a traffic study.
2. The best available estimates of parking demand are based upon non-ownership urban apartment projects and are near 1.0 space per unit.
3. The estimated parking demand/unit is much less than the City Ordinance requirement.
4. The remaining church and chapel area is not considered in this letter as the proposed uses are not presently defined.

Sincerely,
