

**PLANNING AND ZONING COMMISSION
MINUTES OF A SPECIAL MEETING & PUBLIC HEARING
JULY 30, 2009
BROWNSTONE INTERMEDIATE SCHOOL AUDITORIUM – 314 MAIN ST.**

Members Present: Don Bascom, Chairman, Mike Woronoff, Bruce Tyler (Alternate), Carl Fitzgibbons, Peder Samuelson (Alternate), Bette Jenak

Members Absent: Peter Clark

Staff: Deanna Rhodes

1. Call Meeting to Order

Don Bascom, Chairman, called the meeting to order at 7:02 p.m.

2. Introduction of Members and Seating of Alternates

Bruce Tyler was seated for Peter Clark. Members introduced themselves.

3. Accept Agenda

MOTION by Ms. Jenak, **SECONDED** by Mr. Samuelson to accept the agenda as read.
VOTE UNANIMOUS. MOTION CARRIED.

Mr. Bascom went over the following concerns:

- Mr. Bascom was not at the July 9 meeting but has listened to the tapes and reviewed all documentation that was submitted.
- It seems the perception of the power and authority of this Commission is more than it really is. The Commission is bound by the Zoning Regulations and the POCD.
- This meeting concerns the MUD regulations that were approved and adopted over one year ago. All of the standards have been addressed in the MUD regulations. We are not here tonight to discuss any changes to the MUD Regulations.
- There is one section in the MUD regulations that Mr. Bascom highlighted (Section 9.17.4). It says that the developer shall consider, and it lists 11 different things, three of them are important to mention now. 1. The developer shall consider the recommendations of the POCD. 3. The developer shall consider historical preservation. 4. The developer shall consider historical materials such as brownstone. You can't ask for more than what our regulations allow us to ask for.
- Tonight this Commission is going to make a decision. They will ask themselves has the developer met all the requirements of the MUD and the

special permit process. Do not ask this Commission to support anything outside of the zoning regulations.

- Stick to details of the plan of the application. If you're going to make a claim or an accusation, please be prepared to substantiate that claim.
- If the public would like to talk, please put your name on the list. Come to the podium and state your name (if it's difficult to spell, please spell it). We're going to try and keep this as brief as possible.
- We will close the public hearing tonight.
- If you've already given testimony in previous meetings, there's no need to stand up repeat it again tonight. All of the information is carried over. If you have something new to say, then please stand up and say what you have to say.

CONTINUED PUBLIC HEARING

4. Application #08-25: Special Permit request for a proposed mixed use development on 14.89 acres (14 properties) to consist of 149,127 square feet of commercial tenant space, 82 residential units and related site improvements to include parking, landscaping, lighting and traffic control measures. The project location is in the vicinity of the intersection of Route 17A/Main Street and Route 66/Marlborough Street. Application of Anthony C. Fonda and Fouad M. Hassan aka Portland Town Center, LLC. Owners, property addresses and assessor's map and lot numbers included in proposed development are as follows: Perry Portland Associates, LLC, 69 Marlborough Street, Map 19 Lot 68; Elmcrest Manor Psych Ins. et al, Main Street, Map 19 Lot 69; 189 Main-Portland LLC, 189 Main Street, Map 19 Lot 70; Elmcrest Manor Psych Ins. et al, 185 Main Street, Map 19 Lot 71; Portland Town Center LLC, 16 Perry Avenue, Map 20 Lot 16; Portland Town Center LLC, 14 Perry Avenue, Map 20 Lot 17; Elmcrest Manor Joint Venture, 12 Perry Avenue, Map 20 Lot 18; Perry Portland Assoc. LLC, Perry Avenue, Map 20 Lot 19; Donald R. Markham, 10 Perry Avenue, Map 20 Lot 20; Elmcrest Manor Joint Venture, 8 Perry Avenue, Map 20 Lot 21; Hollie A. Hassan, 6 Perry Avenue, Map 20 Lot 22; Elmcrest Manor Joint Venture, 4 Perry Avenue, Map 20 Lot 23; Louis B. Fierman and Ameen Lane, 2 Perry Avenue Map 20 Lot 24; Louis B. Fierman and Ameen Lane, Marlborough Street, Map 20 Lot 25. Zones B2 & B3/TCVD Overlay Zone.

- Ralph Wilson, attorney for the project, spoke and introduced Pat Gorman from the LRC Group.
- Pat Gorman said he would sum up some minor revisions to the site plan based on staff comments. They've made some changes to the parking and sidewalks. The bulk of these changes are on the west side of the site. They removed 13 parking spaces, which decreases the amount of impervious as proposed and increases the amount of green space. They are asking for a waiver of the parking requirements. The parking regulations call for this site to have 813 parking spaces, we are proposing 594 parking spaces. The Commission has the ability to do this based on the regulations and town staff

is in support of this reduction. He talked about a parking allocation plan. They would like to “bubble out” parking spaces for each tenant based on the tenant’s needs. On the plan are the tenant requirements, which indicate the number of spaces each tenant wants. Mr. Gorman said that the thing you want to avoid with parking is circling. If people are circling and looking for a parking space, they are looking elsewhere instead of looking for people walking up and down the aisles. It’s important to have an appropriate layout.

- They were asked to comment on a plan that they received this morning from Crosskey Architects. This plan was generated to save the existing historical houses. It accomplishes the goal of saving the houses at the sacrifice of the development itself. This plan scrunches down the parking along the face of the larger tenants. Mr. Bascom interrupted at this point. He said that this is what he doesn’t want to happen. We cannot accept another plan to adopt tonight. The plan is what the applicant put before us. If the people would like to talk to the applicant, and the vote is positive tonight, the applicant could come back and modify their plan, but we are not here to adopt or approve the Crosskey plan. We have a plan in place by the applicant.
- Atty. Wilson said that they were under the impression that the Commission wanted them to comment on the Crosskey plan. They do not want to change their plan. They believe they are responding to a Commission request.
- Pat Gorman responded to Bruce Tyler’s comments. Pavement reduction – there are 2 one way/reduced traffic areas (around the pharmacy and building G) where they were asked to reduce pavement. This pavement width is designed by a program called Auto Turn, which shows the size of the pavement requirement for trucks and the fire department. He submitted an exhibit for the record of the truck turning movement. He can’t reduce the pavement in this area.
- John Matthews, spoke next regarding his changes. He provided several handouts to the Commission:
 - A revised project schedule.
 - Secure staging area for architectural components that will be utilized in the proposal either to move, refurbish or replicate the historic buildings.
 - Cost of moving the Brainerd House. The costs from the different estimates were shown on this document. There was one quote that was submitted by the Historical Society, which he was very suspicious of. He feels he’s being “set up”.
- Mr. Tyler asked about the suspicious bid, which was sent to Mr. Matthews and not cc’d to anyone else. Mr. Matthews feels it’s not a legitimate bid.
- Alan Mess, Traffic Engineer, spoke next. He submitted a memo to the Commission in response to Traffic Engineering Solutions July 22, 2009 memo. He read and discussed his responses that were written on his memo of 7/30/09. He discussed speed, traffic signals, signage, pavement markings, pedestrian crossing, emergency situations, and handicap accessibility.
- Pat Gorman submitted an exhibit for free license parking. Ten spaces will be reserved per the regulations.

Commission Comments:

- Mr. Tyler had several questions regarding topography, which were answered by Mr. Gorman.
 - Town houses – Original grades were 108 to 92. Mr. Gorman said they plan to build on grade. They plan to take the material to the southwest corner of the property, which will increase the grade from 10 – 14’.
 - The parking lot next to the town houses will have a slope of 4 and 5%. This is satisfactory to Rick Kelsey.
 - Retaining walls will be built between buildings H, J, and K. They will be between 6 and 9’ tall. Each building will have handicap parking spaces and ramps. The gazebo has a handicap route to the parking lot. Handicap people will have an additional 5 parking spaces to travel.
 - The sidewalk crossing Marlborough St. is at 5%.
 - West of building H there is a combination of a retaining wall and a screen wall.
 - The main parking lot has a 2% slope directly in front of the grocery store and 3% after that. It’s 4% in front of building E. The catch basins are adequate according to Rick Kelsey.
- Mr. Tyler asked Mr. Matthews about scheduling. It suggests that they will not begin any building for more than 2 ½ years after approval. Mr. Matthews said that this is correct. This is a worse case schedule. Mr. Tyler would like a most likely case schedule.
- Mr. Bascom asked Rick Kelsey if the parking was reviewed by him and Geoff Jacobson. Katie Mercer, who works for Geoff Jacobson, reviewed and counted all the spaces and thought they were sufficient for this use on this property.
- Mr. Bascom commented on the traffic at 5:30 at the intersection of High and Marlborough Streets. He said it backed up two lanes all the way to Pickering Street. He’s concerned about the back up of traffic on Route 66 and Main Street. Mr. Mess said that they used computer-generated data regarding traffic back up. Mr. Mess mentioned possible solutions in a 20-year plan from the State.
- Bruce Hillson from Traffic Engineering Solutions commented on the traffic in this area. He’s concerned about traffic flow from the bridge onto Route 66. From the site driveway the traffic back up will be between 500 and 550’. But, if you have a Pedestrian phase, the back up will be even further. He has spoken or written these comments to the State Traffic Commission (STC), and they will not respond unless the request comes from the applicant. Mr. Hillson suggested to Ms. Rhodes, not as a condition of approval but a recommendation from this Commission and the First Selectwoman that our concerns be forward to the STC, so as they’re reviewing the development application these concerns can be taken into consideration and different alternatives looked at. It is his belief that there is a safety issue regarding vehicles making a continuous right turn on Main Street onto Marlborough Street. Vehicles will try to get from the left lane over to the right lane to get

onto the site. Mr. Bascom agrees but isn't hearing any solutions. One solution is that those right turns come under the control of a traffic signal so the vehicles making a left turn from Main to Marlborough Street won't have to merge with the vehicles coming from the right in order to gain access to the site. This would be a brief period of time so the traffic from the bridge should not back up too much.

- Mr. Bascom asked the applicant how this would be dealt with. Atty. Wilson said the STC would determine whether the ideas from Mr. Hillson, Mr. Mess or another set of plans would be used.
- Ms. Jenak asked if the email from Peter Clark regarding the Ocean House at Watch Hill in Rhode Island was forwarded to the applicant. Mr. Matthews did receive a copy of this email. The Ocean House was demolished and rebuilt and most people don't even realize it.
- Ms. Rhodes talked about the memo from Geoff Jacobson dated 7/24/09. She gave a copy to Mr. Hillson. She asked about the pedestrian crossing from Marlborough St. He's not sure of the impact this would have on the traffic.
- Mr. Hillson responded to the items in his memo. The first two items have been addressed. The third item is in regards to trucks backing into the loading docks. He feels that they may need assistance backing in or have restricted delivery times. Item 5 had a number of suggestions for new/additional signs on the site. He's assuming this could be a condition of approval. Item 6 will incorporate the 1st and last of the bulleted items. He spoke about the bypass lane for vehicles trying to get out of a drive up lane. The next comment deals with excessive pavement width between the pharmacy and building G. He suggests pavement markings to delineate where traffic should travel. He also suggested that this area be one way or at the very least have an additional stop sign along building G. This might be a good location for a three-way stop. Mr. Gorman agreed to put in all necessary signage and pavement stripping.
- Mr. Gorman feels that a bypass lane at the bank isn't necessary because there are two lanes.
- Mr. Bascom asked for a recess, which began at 8:09. The meeting resumed at 8:16.
- Atty. Wilson spoke about the traffic issues. He said that there is an approval process with the State. The project cannot go forward unless the STC approves. He also commented on the scheduling. As an attorney, he directs his clients to give the worst-case scenario timing. If the Commission adopts a schedule that they cannot meet, then there is a problem. They will move as quickly as they can.

Public Comments:

- Susan Bransfield, 16 Covell Hill Road – She thanked the Commissioners for their time. She supports the project. It's important for economic development. This project is expected to double the current value of this property, provide additional shopping, office space and jobs. She spoke about how Mr. Hillson did an excellent job with the traffic issues. Safety and

queuing is of utmost important. The Town will submit the concerns from Mr. Hillson to the STC.

- Frank Magnotta, 395 Main Street – He is a licensed P.E. He would like to have the following concerns addressed:
 - Detailed calculations for parking on the plans. How many for residential and how many for commercial.
 - Landscaping plan – He’s concerned about the size at maturity of the plantings. Wants to know what the plantings will look like.
 - Traffic issues – Need an exclusive right turn lane onto the site. Why is there just a single drive going in and out?
 - Parking – Feels the residents should have reserved parking.
 - Visual impact along Main Street – The elevation will be quite high. The towers will go 50’ above the floor elevation. The rear of the grocery store will have a 600’ long concrete wall, and the trees will be cleared to the property line. What will this look like coming over the bridge?
 - Buildings C and D have no adjacent handicap parking.
- Stephanie Fuss, Landscape Architect, responded to plant maturity. There is a huge assortment of plant materials. The plant list doesn’t show maturity height because there is a range of heights for each species, but she could put the range on the plans. There are some large existing trees that will remain between the gas station and the site. There are shade trees along the rear property line.
- Pat Gorman said the elevation of the self-storage unit is 78’ and the elevation of the new building will be 86’. There is only 10’ of the top of the building that will show. The back of the building will be painted the color of brownstone. Mr. Matthews showed pictures of the rear and the front of the buildings. Mr. Bascom requested that the pull off lane be part of the conversation with the State. Ms. Rhodes said that she spoke with Bruce Hillson regarding the pull off lane.
- Joanne Luppe, 205 Thompson Hill Road – wants all three historic houses saved.
- Bill Frisbie – wants to preserve all 3 houses.
- Suzanne Anderson – thanked Susan Bransfield, the PZC and the developers for their dedication to this project. She asked if there was a better plan. She would like the 3 historic houses saved; more existing notable trees saved; and is concerned about safety and traffic issues.
- Daren Anderson – supports the Portland Town Place. Wants to see cutouts for sidewalks from the parking lots and automatic opening doors for all businesses.
- Don Bascom reminded the public that the only plan before us is the one that the applicant has proposed. We cannot consider any other plan tonight.
- Deborah Ellsworth, 15 Highland Avenue – spoke about the development and feels that all 3 houses should be saved. She has traffic flow concerns.
- Dorian Hill, 65 Maple Road – Spoke about traffic issues. Feels that the 3 historic houses should be saved. Has concerns about the financing and making sure it’s in place before any buildings are destroyed.

- Regina Waltman, East Main Street – Spoke about preserving the historic buildings and the trees.
- Christine Sullivan, 112 Isinglass Rd. – Submitted pictures to Ms. Rhodes of the three houses. She would like the buildings to be documented. Mr. Bascom said this would be up to the applicant. Would like the historic houses and trees saved. Jean D’Aquila spoke on documentation. There are only 2 types of conditions that the PZC is allowed to put on a special permit. The first type is the condition that makes the application conform to the regulations. The second type of condition is one that protects the public health, safety and welfare. A party or individual can register with the Town to receive notification of demolition.
- Bob McDougall, 14 Kristen Dr. – Disappointed that the zoning regulations don’t enforce the POCD. Would like the 3 historic houses saved. He’s concerned about the trees and vegetation on the adjacent properties. Ms. Fuss said the construction should not adversely affect the trees on adjacent properties, but they haven’t evaluated the health of the trees.
- Claire Frisbie, Portland Historical Society – spoke about Ms. Brede’s 3rd grade class and her historical lessons of Portland. A document was submitted to Ms. Rhodes. Ms. Frisbie would like all three historic houses saved.
- Jim Sarbaugh, 47 East Main Street, Greater Middletown Trust (submitted a letter dated 7/30/09) – supports the application but would like all 3 historic buildings saved. They do not support the current plan. He also spoke about available federal tax credits totaling 45% to help save the buildings.
- Joan Gilmette – Is concerned with what this will look like when coming over on the bridge and traffic flow. She would like the historic buildings saved.
- Deanna Rhodes talked about the handicap accessibility. Mr. Hillson said this should be handled by the State. She also discussed the schedule and clarified it with the applicant. The Commission decided that details of the photos do not need to be incorporated as a condition of approval.
- Ms. Rhodes entered a spreadsheet into the record regarding the documents she has received regarding this application. She read each document received from Document No. 105 - 152, the date of each document, who it was from, and the document description into the record.
- Recessed at 9:40. Meeting resumed at 9:45.

MOTION by Mr. Tyler, **SECONDED** by Ms. Jenak to close the public. **VOTE UNANIMOUS. MOTION CARRIED.**

MOTION by Ms. Jenak to approve request for waiver of Zoning Regulation Sections 8.1.2.A.3, 8.1.2.A.4, 8.1.2.A.6 (Buffer); Section 8.2.2 (Minimum Parking); Section 8.2.5.A.2 (Loading Spaces Location); Section 8.2.6.C (Landscaping Between Tiered Parking); Section 8.2.6F (8 Foot Fire Lane); Section 8.2.7.F (Minimum 5 Foot Sidewalks); Section 3.2 (Liquor Separation Distance) for Application #08-25: Special Permit request for a proposed Mixed Use Development. Application of Anthony C. Fonda and Fouad M. Hassan aka Portland Town Center, LLC. Owners, property addresses and assessor's map and lot numbers can be found on the application form submitted. Zones B2 & B3/TCVD Overlay Zone.

Reasons: The applicant has provided information and testimony that the unique design and mixed uses within the development justify the waiving of these sections. The granting of these waivers will not create any adverse impacts on abutting residential uses or residentially zoned properties.

SECONDED by Mr. Tyler. **VOTE UNANIMOUS. MOTION CARRIED.**

MOTION by Mr. Tyler to approve #08-25: Special Permit request for a proposed Mixed Use Development on 14.89 acres (14 properties) to consist of 150,518 square feet of commercial tenant space, 81 residential units and related site improvements to include parking, landscaping, lighting and traffic control measures. The project location is in the vicinity of the intersection of Route 17A/Main Street and Route 66/Marlborough Street. Application of Anthony C. Fonda and Fouad M. Hassan aka Portland Town Center, LLC. Owners, property addresses and assessor's map and lot numbers included in proposed development are as follows: Perry Portland Associates, LLC, 69 Marlborough Street, Map 19 Lot 68; Elmcrest Manor Psych Ins. et al, Main Street, Map 19 Lot 69; 189 Main-Portland LLC, 189 Main Street, Map 19 Lot 70; Elmcrest Manor Psych Ins. et al, 185 Main Street, Map 19 Lot 71; Portland Town Center LLC, 16 Perry Avenue, Map 20 Lot 16; Portland Town Center LLC, 14 Perry Avenue, Map 20 Lot 17; Elmcrest Manor Joint Venture, 12 Perry Avenue, Map 20 Lot 18; Perry Portland Assoc. LLC, Perry Avenue, Map 20 Lot 19; Donald R. Markham, 10 Perry Avenue, Map 20 Lot 20; Elmcrest Manor Joint Venture, 8 Perry Avenue, Map 20 Lot 21; Hollie A. Hassan, 6 Perry Avenue, Map 20 Lot 22; Elmcrest Manor Joint Venture, 4 Perry Avenue, Map 20 Lot 23; Louis B. Fierman and Ameen Lane, 2 Perry Avenue, Map 20 Lot 24; Louis B. Fierman and Ameen Lane, Marlborough Street, Map 20 Lot 25. Zones B2 & B3/TCVD Overlay Zone, as shown on plans submitted 07/08/09, entitled "Portland TownPlace" prepared by the team of LRC Group, John A. Matthews, AIA, Stephanie Fuss, Associates, LLC, and Milone & MacBroom, Inc. dated 01/30/09, revised 05/01/09, and 07/02/09 and based on public hearing testimony and subject to the following instructions and conditions:

1. That this approval will expire in 5 years.
2. That the Certified Letter of Approval be placed on the plan cover sheet and Sheet OP-1.

3. That 10 paper copies of the final site plan be submitted for review.
4. That a mylar of the plan set be filed on the land records within 180 days of the effective date of approval, as per ZR Section 10.5.2.F.2.a
5. That the applicant submit an erosion and sediment control bond, and inspection fee for each phase, as per ZR Section 9.17.5.H, in accordance with ZR Section 11.2. These bonds and fees are to be determined by the Town Engineer and must be submitted prior to initiating any site disturbance activities. The applicant should be aware of the applicable Town Ordinance regarding fees for Mixed Use Developments.
6. That all site improvements are to be completed according to the approved plan prior to the issuance of a Certificate of Zoning Compliance and Certificate of Occupancy, or performance bond(s) will be required in accordance with ZR Section 11.2.2.
7. That E&S controls be installed by the applicant and inspected by Town Staff prior to the issuance of a zoning permit.
8. That the applicant apply for a zoning permit for overall site improvements (which include, but are not limited, to site grading, paving, landscaping, and lighting); and separate zoning permits for each building within the development. Zoning Permits shall be issued after the mylars have been filed on the land records in the Town Clerk's Office and prior to initiating any land disturbance activities associated with this project.
9. That bonds for landscaping and maintenance must be posted as improvements are completed, in accordance with ZR Section 11.2.4.A & 11.2.4.C.
10. That the applicant shall provide certified record drawings for each phase in accordance with ZR Section 9.17.9.
11. That the applicant revise the plans to address the following as per the Town Engineer's Memo, dated 07/24/09, relative to: Storm Drainage on Page 2, Item #11; Erosion & Sediment Control on Pages 3 & 4, Items #2, and #5 thru #10; Site Grading on Page 4, Items #1 & #2; Water Distribution on Page 6 and on pages 8 & 9 of Town Engineer's letter dated 4/28/09; Sanitary Sewer on Page 6 Items #2, #3 & #4 and on pages 9 & 10 of Town Engineer's letter dated 4/28/09; and Miscellaneous Items on Pages 6 & 7, Items #3, #6 & #7.
12. That the applicant revise the plans to address Items #2, #3, #4 & #7 of the Fire Chief's Memo dated 07/24/09.
13. That the applicant revise the plans to address comments and incorporate design recommendations that were noted in both the BSC Group Memo #4, dated 07/20/09; and in an email with the Subject Line "Portland TownPlace – Plaza at Marlborough and Main Streets", dated 07/30/09.
14. That the applicant revise the plans to address Items #2 through #11 of the Fire Marshal's Memo dated 07/17/2009.
15. That the applicant revise the plans to address Item #5 & Bullets 1 and 5 of Item #6 as stated in the Traffic Engineering Solution Memo dated 07/22/09. That Bullets 3 and 4 of Item #6 be addressed with proposed striping and three-way traffic signage located along the west side of Building "G", as recommended by TES/Bruce Hillson testimony on 07/30/09.

16. That truck deliveries to the proposed restaurant (Building "I") occur: In the morning prior to time of opening for the pharmacy and restaurant, or that a individual be responsible for directing traffic while a truck is backing up to ensure the safety of pedestrians and autos.
17. That the applicant comply with ZR Section 9.17.5.M, which requires the development of both commercial/retail and residential elements concurrently, with neither eligible to receive a Certificate of Occupancy while the other element is less than fifty percent (50%) completed.
18. That the applicant provide a free license to the Town for public parking as allowed by Section 9.17.5.T for parking spaces identified in an exhibit, dated 07/30/09, that was presented at the Public Hearing.
19. That all parcels are to be legally merged into a single parcel, and that a declaration committing the property known as 189 Main Street ("Forlini's") in perpetuity to the Mixed Use Development shall occur prior to the filing of the mylars.
20. That the applicant revise the plans to address the following items from the Planning Department memo dated 07/17/09: Items #6, #10, #17 and a, b, c, d and g of Item #18.
21. That the applicant adhere to the "Proposed Project Schedule", prepared by John A. Matthews, AIA, dated 07/28/09, submitted 07/30/09.
22. That the Local Traffic Authority convey to the STC and DOT the concerns of the PZC with regard to traffic back-up, and as noted in Items #1 & #2 of Traffic Engineering Solutions Memo dated 07/22/09.
23. Add size of trees at maturity to the plan.

Reasons: The proposal conforms to requirements of Section 9.17 of the Zoning Regulations.

SECONDED by Mr. Fitzgibbons. **VOTE UNANIMOUS. MOTION CARRIED.**

5. Staff Report:

The following items will be discussed at the next meeting.

- TCVD Reviews
- Public Notice Registry
- Enforcement/Administrative Update
- Bond Reductions/Extension Requests
- Other – The RFQ for the Incentive Housing Zone went out and is due by 8/30/09.

6. Approval of Minutes – July 9, 2009

- To be approved at the August 20, 2009 meeting.

7. Adjourn

MOTION by Mr. Tyler, **SECONDED** by Mr. Fitzgibbons to adjourn the meeting at 10:00 p.m. **VOTE UNANIMOUS. MOTION CARRIED.**

Respectfully Submitted,

Debra D. Pozzetti, Board Clerk

TC, FS, BOS, PZC, Clerk, Planning, ZEO, Book, Library, CC Chair