

Memorandum  
Department of Planning and Development  
Historic Preservation Office

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**To:** Chair Silk and Members of the Planning Board

**From:** Deborah Andrews, Historic Preservation Program Manager

**Date:** January 6, 2008

**Workshop Date:** January 13, 2008

**Re:** Historic Preservation Board Recommendation regarding

- 1) designation of a portion of Congress Street and abutting area as “Congress Street Historic District” and;
- 2) amendments to Article V (Site Plan) and Article IX (Historic Preservation) of the Land Use Code

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## **INTRODUCTION**

A third and final workshop has been scheduled on a proposal initiated by the Historic Preservation Board to 1) designate a portion of Congress Street and its immediate environs as a local historic district; and 2) amend the site plan and historic preservation ordinances of the Land Use Code. The proposed ordinance amendments are intended to clarify the required review process for projects affecting designated landmarks, properties within designated historic districts, or properties immediately adjacent to landmarks or historic district boundaries.

To date, the Planning Board has held two preliminary workshops on this initiative. The first, held on September 23<sup>rd</sup>, focused on the proposed Congress Street Historic District designation. Historic Preservation staff described the background and rationale behind the initiative and provided an illustrated presentation on the scope and range of historic resources within the downtown area. The first workshop also focused on the factors considered in developing boundaries for the proposed district. The second workshop, held on October 28<sup>th</sup>, was devoted to the proposed site plan and historic preservation ordinance amendments.

Board members will recall that preliminary workshops with the Planning Board and Historic Preservation were scheduled in close succession in order to solicit early feedback from the respective boards, address any obvious issues or omissions and hopefully

strengthen the draft proposal as it moved forward. At the conclusion of the October 28<sup>th</sup> workshop, the Planning Board agreed that, having been familiarized with the scope and general content of the proposal, the Board would resume its review only after the Historic Preservation Board had forwarded its formal recommendation on the proposed district designation and ordinance amendments.

On November 19<sup>th</sup>, the Historic Preservation Board concluded its review, following a public hearing and formal deliberations. (The public hearing was preceded by three workshop sessions.) Following deliberations, the Historic Preservation Board voted unanimously to recommend designation of the “Congress Street Historic District” subject to the condition that the draft historic district boundary map be revised to eliminate a number of identified properties at the edge of the district. (The HP Board’s final recommended district boundaries are shown in ATTACHMENT 2.) The Board also voted unanimously to recommend site plan and historic preservation ordinance amendments as drafted in ATTACHMENTS 8 and 9.

The Historic Preservation Board’s formal written recommendation to the Planning Board is enclosed as ATTACHMENT 1. Note that the HP Board’s written statement describes the rationale for the final proposed district boundary changes, as well as the HP Board’s efforts throughout the process to come up with a fair and balanced proposal.

On Tuesday, John Turk, Chairman of the Historic Preservation Board, will present the HP Board’s final recommendation regarding designation of the Congress Street Historic District. He will also present the HP Board’s recommendation on site plan and historic preservation ordinance amendments. As the Planning Board has already held two, fairly detailed workshops on this initiative, Mr. Turk’s presentation will focus on the major map and text changes made since the Planning Board’s last workshop on this topic.

For ease of reference, the balance of this memorandum is organized as follows:

- I. Role of the Planning Board in historic district designations
- II. Components of the district designation proposal
- III. History
  - a. Background, impetus for district study
  - b. Delineation of study area, documentation and analysis
  - c. Public outreach
  - d. Review process to date
- IV. Intent behind district designation
- V. District certification and access to historic tax credits
- VI. Formal recommendation of the HP Board
  - a. designation of Congress Street Historic District
  - b. amendments to site plan ordinance (Article V) and historic preservation ordinance (Article IX)

## **I. PLANNING BOARD ROLE IN HISTORIC DISTRICT DESIGNATIONS**

As prescribed in the historic preservation ordinance (see Division 4. Nomination, Consideration and Designation), the Planning Board's role in proposed historic district designations is to review the recommendation and accompanying report of the Historic Preservation Board regarding designation. The Planning Board must find that the proposed district meets the minimum criteria for designation as set forth in the historic preservation ordinance. (See Sec. 14-610 of HP ordinance, ATTACHMENT 9). Following deliberations, the Planning Board will make a formal recommendation to the City Council. Ultimately, the City Council has the authority to approve or disapprove the proposed designation.

Proposed ordinance amendments follow the same review process.

## **II. COMPONENTS OF THE DISTRICT DESIGNATION PROPOSAL**

As required by the historic preservation ordinance (see Sec. 14-617), any recommendation for historic district designation must be accompanied by a report to the Planning Board and Council that includes the following information:

- (a) Explanation of the significance or lack of significance of the nominated district as it relates to the criteria for designation.
- (b) Explanation of the integrity or lack of integrity of a nominated historic district.
- (c) Relationship of the nominated district to the ongoing effort by the Board to identify and nominate all potential areas, sites, structures and objects that meet the criteria for designation.
- (d) A map showing the boundaries of the nominated district.
- (e) A list, including the address, of every site, structure and object in each nominated historic district indicating their degree of cultural, historic, architectural or archaeological significance by classification.

The enclosed ATTACHMENTS, together with the content of this staff report, address the ordinance requirements for documentation and analysis.

## **III. HISTORY**

### **A. Background, Impetus for Study**

In January 2006, the City's Council's Housing and Community Development Committees held a joint workshop to discuss the current designation status of historic properties on the Portland peninsula and to determine whether there was support among Committee members for expanding Portland's historic preservation program to include additional areas for protection. Staff was asked to provide a status report and to illustrate the areas and properties of historic and/or architectural significance that currently fall outside Portland's preservation program.

Although a number of properties and areas were identified, Council members focused primarily on the Congress Street corridor as warranting further protection. It was noted that although several key historic properties have been individually-designated as Landmarks, many historically and/or architecturally notable buildings in the downtown core are not currently recognized or protected under Portland's ordinance. Councilors also noted that any new infill development adjacent to historic structures had the potential to significantly impact these historic resources. Following the staff presentation and discussion, Council committee members instructed the Historic Preservation Board and staff to begin the documentation and analysis required for designation and to solicit public input from potentially affected property owners.

B. Delineation of Initial Study Area, Documentation and Analysis

In initiating this project, a subcommittee of the Historic Preservation Board was formed to identify potential district boundaries, assess the preservation value of individual properties within the proposed boundaries and advise on the designation report that sets forth the architectural and historic significance of the proposed district and describes its visual character. The subcommittee was comprised of John Turk, Martha Deprez and Cordelia Pitman, together with historic preservation staff Deb Andrews and Scott Hanson.

The first task was to delineate a study area. The subcommittee considered a variety of factors, including the historical development of the downtown area, visual characteristics, obvious physical boundaries (such as the Franklin and Spring Street Arterials), and the current status of individual properties, particularly those at the edges of the study area. The initial study area was drawn quite broadly, with the expectation that the final proposed district boundaries might change once the detailed analysis of the area had been completed. In developing the initial study area (as well as the final proposed boundaries) the subcommittee consulted *Guidelines for Delineating the Edges of Historic Districts*, a publication of the National Trust for Historic Preservation. The subcommittee also consulted with Maine Historic Preservation Commission staff.

A detailed inventory of the properties within the study area was then prepared. Each property was researched and photographed. Historic views of the buildings, where available, were assembled and an architectural description was written for each structure. See ATTACHMENT 7 for sample inventory forms.

As required by ordinance, each building was assigned a designation classification: landmark, contributing or non-contributing. This classification was made on the basis of the research assembled, an assessment of the current integrity of the property (e.g. whether the building's architectural integrity had been lost due to previous alterations) and consideration of the building's age. The subcommittee spent extensive time in the field, evaluating each and every property. Consideration was given to creating an additional designation classification for the Congress Street District to reflect the nature of the building stock, which is more diverse than in existing historic districts. Upon the

advice of the Maine Historic Preservation Commission (MHPC), this classification was eliminated as it would have jeopardized Portland's ability to have the district certified by the National Park Service. (NPS certification is necessary in order for owners of historic structures within the district to take advantage of state and federal historic tax credits when rehabilitating their buildings.)

MHPC also advised that all buildings built within the last 50 years--with the exception of I.M Pei wing of the Portland Museum of Art and the Portland Public Library--be classified as non-contributing. Notwithstanding the architectural quality of some of the newer buildings in the area and the subcommittee's desire to recognize these buildings as positive contributors to the character of the district, it is the position of MHPC and the National Park Service that it is generally not possible to objectively assess the relative significance of newer buildings until a reasonable period (50 years) has elapsed.

Finally, a designation report was drafted that describes the historical development of the Congress Street area, its visual character and its architectural and historical significance.

### C. Public Outreach

In 2006, shortly after the study process got underway, staff made a presentation to the board of Portland's Downtown District (PDD) to describe the purpose of establishing a downtown historic district and to get initial feedback from the group. Staff also met one-on-one with a number of key downtown property owners.

In April of this year, following completion of the study, two public forums were held to present the preliminary proposal. Invitations were mailed to every property owner within the proposed district boundaries and to the Planning Department's interested-parties list. The meetings were also announced in the local press. Approximately 80 people attended one or both of the forums.

In addition to the public forums, staff made a follow-up presentation to PDD's board and membership to review the draft proposal. Staff met with the trustees of the Civic Center as well.

In July, at the request of PDD and the Chamber of Commerce, a focus group was formed to provide for a more detailed discussion of the proposal with representatives of key downtown business groups and cultural organizations. Included in the focus group were three representatives each from PDD, the Chamber and Greater Portland Landmarks. Participants were selected by their respective organizations. Representatives from the Portland Museum of Art and the Portland Society of Architects were also invited to participate.

The focus group met in two working sessions. These discussions were especially valuable as they highlighted the key issues, concerns and goals of the respective organizations. The sessions also provided an opportunity for the HP Board subcommittee

to describe in more detail the rationale behind the proposed district boundaries, the assigned building designations and the ordinance changes.

Please see ATTACHMENT 10 for a summary of public outreach efforts and early public comment.

D. Review Process to Date

As noted in the introduction, the Historic Preservation Board held three preliminary workshops on the draft proposal before scheduling a public hearing and final deliberations. At the second workshop, the HP Board devoted a considerable amount of time discussing several parcels within the proposed district that had been called into question by PDD or individual property owners. These areas were also discussed with the Maine Historic Preservation Commission and are referenced in a letter from MHPC (see ATTACHMENT 12.) These discussions and analysis ultimately informed the final boundary revisions that the HP Board made in their final deliberations on November 17.

Wednesday's workshop will be the third Planning Board workshop on this initiative.

**IV. INTENT BEHIND PROPOSED DISTRICT DESIGNATION**

The goals of the proposed district designation are as follows:

- \* To fulfill a stated objective of the Comprehensive Plan, which calls for the protection of Portland's historic resources through the ongoing identification and designation of eligible landmarks and districts.
- \* To formally recognize the unique history and architecture that defines Congress Street and its immediate environs.
- \* To provide future generations the opportunity to experience the many layers and periods of development represented along Portland's "Main Street."
- \* To ensure that alterations to historic structures within the area are compatible with the buildings' historic character and to prevent the incremental loss of character that can occur through small inappropriate changes over time.
- \* To ensure that new development within the downtown is commensurate in quality and generally compatible in character with the historic structures that define the area.
- \* To stabilize and enhance property values and economic vitality by increasing the attractiveness of the area as a place to live, work and do business.

- \* To increase the attractiveness of the downtown and arts district to tourists, helping to spread tourism dollars from the Old Port to a wider portion of the city.
- \* To provide property owners access to federal and state tax incentives available for the rehabilitation of historic properties.

In older cities throughout the country, the establishment of downtown historic districts has proven to be an effective regulatory tool in ensuring that the traditional building stock and visual characteristics that set one community apart from another are maintained and enhanced. Historic districting is based on the premise that by capitalizing on your unique assets, you can more effectively avoid the kind of homogenization that increasingly characterizes many American cities. As economist Donovan Rypkema puts it: “the strength of a city is its differentiation from anywhere else...More than any other place a city’s downtown with its historic buildings is the concentration of the city’s differentiation.” The 2007 Brookings Institution Report echoed this view, identifying protection of Maine’s unique “quality of place” as one of the highest imperatives if the state is to achieve and sustain economic growth and prosperity. The report specifically named Maine’s historic downtowns, along with its forests and coast, as critical to its “quality of place.”

Although historic preservation regulations do not govern the use of a building or limit the type of tenants that may occupy the storefronts, they can require that the tenants—be they national corporate entities or local entrepreneurs—conform to review standards aimed at avoiding generic design solutions and reinforcing local character. Once controversial, this form of land use regulation has been in widespread use since the 1960’s and is now commonly accepted as a powerful economic development tool.

To date, over 2,300 towns and cities throughout the country have adopted historic district overlay zoning. In many of these communities, all or part of their downtown core is included in a historic district, where façade and storefront renovations, as well as signs and awnings, are subject to review. Many of these local commercial districts host national franchises and chains as well as local businesses. From Charleston, South Carolina to Santa Fe, New Mexico to nearby Portsmouth, New Hampshire, these communities have been successful in using historic preservation standards to achieve architectural and signage solutions that are appropriate to the local context.

What can historic district designation do for Congress Street? Although the upper floors of most of Congress Street’s older buildings remain relatively unaltered, a number of the storefronts have suffered from multiple rounds of renovations which have often altered and detracted from the building’s historic character. As part of the historic preservation review process, applicants proposing storefront alterations are encouraged to revisit the building’s original storefront design or develop a contemporary scheme that better complements the historic structure and surrounding context. (The City’s collection of 1924 tax photos, which document the early appearance of every taxable structure within

the city limits as of that date, is an invaluable tool in guiding applicants toward a successful solution.) In the case of non-contributing buildings that currently detract from the visual character of the downtown, the review process could ensure that any new renovation be architecturally cohesive and exhibit quality materials.

While the current site plan review process and B3 design standards can address large scale projects, particularly new construction, they do not come into play for small scale projects. The visual character and integrity of historic buildings can be fundamentally altered as a result of small renovation projects, particularly in the aggregate. By addressing both incremental exterior changes as well as major renovations and new construction, the historic preservation review process could be a more effective tool than those currently in place in helping the Congress Street area reclaim its visual appeal and hence, its desirability as a major commercial/cultural destination.

## **V. DISTRICT CERTIFICATION/ ACCESS TO HISTORIC TAX CREDITS**

From the outset of this process, the subcommittee's intention was to insure that the proposed district meets the National Park Service's requirements for a "Certified Local Historic District." This is important for two reasons. First, in 2005 Portland achieved the designation of Certified Local Government (CLG) by the National Park Service, signifying that the City's historic preservation ordinance meets federal standards. As a CLG, not only is the City eligible to receive federal funding for its historic preservation program, but it is also guided by National Park Service requirements when designating historic districts.

Second, and perhaps more importantly, the proposed district *must* qualify as a Certified Local Historic District in order for owners of historic properties within the district to take advantage of state and/or federal tax credits when rehabilitating their buildings. With the recent passage of LD 262, the State of Maine has created a significant new tax incentive program to encourage investment in historic structures and traditional downtown centers. The state tax credit program includes a 25% refundable tax credit for rehabilitation expenses. For affordable housing projects, the credit is 30%. The program also includes a "small projects provision" for rehab projects totaling as little as \$50,000. (See ATTACHMENT 13 for more information about the state historic tax credit program.) In addition to the state historic tax credit, there is a 20% federal historic tax credit available as well. Although an owner does not have to be part of a certified district to access these credits, their building would have to meet the eligibility requirements for individual listing in the National Register of Historic Places. The qualification requirements for individual listing are more stringent than for contributing buildings in a district. Some buildings that would qualify as part of the district might not achieve Register eligibility status on their own and would therefore not be able to take advantage of the tax credit.

While access to tax credits was not the driving force behind designation of the Congress Street Historic District—indeed, the revised state tax credit program was announced well after this study was commenced—it would seem imprudent not to ensure that the proposed district meets all the necessary requirements for owners within the designated

area to gain access to this important financial incentive. By staff's calculation, 130 properties within the proposed district would be eligible for historic tax credits.

Historic Preservation staff worked closely with the Maine Historic Preservation Commission throughout the development of this proposal to ensure that the proposal, to the extent possible, meets National Park Service requirements. While the Maine Historic Preservation Commission does not have the authority to certify the district, the National Park Service asks for comment from the Commission in evaluating the City's request for district certification.

A letter from the Maine Historic Preservation Commission is enclosed as ATTACHMENT 12. Note that the few outstanding areas identified in MHPC's letter have been addressed to MHPC's satisfaction in the final district boundary map being recommended by the Historic Preservation Board.

## **VI. FINAL RECOMMENDATION(S) OF THE HISTORIC PRESERVATION BOARD**

### **A. Congress Street Historic District designation**

The Historic Preservation Board's final recommendation reflects input received throughout this initiative's public review process, which began (informally at least) last April. It also reflects guidance from the Maine Historic Preservation Commission, whose role is described above.

The most significant change from the preliminary proposal first presented to property owners last April to the final recommendation now before the Planning Board is the reduction in the size of the district. Through a series of boundary revisions, the district has been contracted to include only the area with the strongest concentration of historic building stock. The final proposed district encompasses an area of approximately 73 acres, as compared to the 99-acre district originally envisioned—a 26% reduction. In the final proposal, 31 properties originally considered for inclusion in the district are now removed from the boundaries. Please refer to ATTACHMENT 4 for a comparison of the original and final proposed district boundaries.

As Board members will recall, the initial boundaries encompassed a number of areas at the edge of the district without significant concentrations of historic structures. Including these areas would have created a buffer zone ensuring that future development immediately adjacent to key historic structures would be reviewed by the Historic Preservation Board. Inclusion of these areas also would have provided a mechanism to protect and reinforce important gateways into the district. Ultimately, the decision was made to take a more conservative approach and contract the district boundaries. (The rationale behind contracting the district is described in more detail in the HP Board's formal written recommendation to the Planning Board—ATTACHMENT 1.)

Final recommended district boundaries are depicted in ATTACHMENTS 2 and 3. The formal designation report is enclosed as ATTACHMENT 5. The inventory of designated properties is enclosed as ATTACHMENT 6.

B. Historic Preservation Ordinance Text Amendments

Board members will recall that few of the proposed amendments to the historic preservation ordinance are driven specifically by the Congress Street Historic District designation. Rather, they are the result of a careful review of the existing ordinance language, which was done in conjunction with the Congress Street study. The amendments are intended primarily to address a number of omissions or ambiguities that have long been identified in the existing text. The amendments do not substantively change the nature or scope of the historic preservation regulations or review process; they only clarify them.

Only one amendment relates specifically to the Congress Street Historic District. A provision was added stating that in the Congress Street Historic District new construction within the B3 zone shall follow the dimensional requirements of the underlying zone--- see Sec. 14-651 (a). While this intent is made clear in the district designation report, members of the business community requested that it be added to the ordinance text itself.

Other than this one revision, historic preservation ordinance text amendments remain essentially unchanged from those presented at the Planning Board's October 28<sup>th</sup> workshop.

See ATTACHMENT 9 for the recommended amendments.

C. Site Plan Ordinance Text Amendments

The proposed site plan ordinance amendments are intended to more clearly define the respective jurisdictions and responsibilities of the planning board and historic preservation board where reviews by both boards are required. Based on concerns expressed by the business community about duplicative design review processes, a new provision has been added-- see Sec. 14-526 (a) 18 a.--that places design review authority with the Historic Preservation Board where there is overlapping jurisdiction. The provision makes clear that developments subject to review under the historic preservation ordinance are exempted from the otherwise applicable design standards within the site plan ordinance, with the exception of a small number of specifically identified standards. These outstanding standards relate to issues not typically reviewed by the Historic Preservation Board, such as wind and shadow impacts, and will remain within the jurisdiction of the Planning Board. Note that this standard has been revised somewhat since the Planning Board's October 28<sup>th</sup> workshop; the drafting change was made to make the exceptions more clear.

The proposed amendments to the existing “not incongruous” standard (Sec. 14-526 (a) 18 b) have not changed since the Planning Board’s last workshop. In the amended text, the “not incongruous” standard will be applied to projects within 100 feet of a landmark or district boundary whether or not the development is separated by a street. The “not incongruous” standard shall be applied by the Planning Board (as it is today). Note also that language has been added to this standard directing the Planning Board to resources that identify key character-defining features of a particular district or landmark. These resources should be helpful to the Planning Board in applying the review standard.

See ATTACHMENT 8 for proposed site plan ordinance amendments.

## **ATTACHMENTS**

1. Formal written recommendation of the Historic Preservation Board
2. Final recommended district boundary map
3. District boundary map with individual building classifications
4. Map showing evolution of district boundaries
5. Designation report
6. List of designated properties
7. Sample entries from district building inventory
8. Proposed site plan ordinance text amendments
9. Historic preservation ordinance text, with proposed amendments
10. Summary of public outreach and notes from early public forums
11. Letters and e-mails
12. Letter from Maine Historic Preservation Commission
13. Information on state historic preservation tax credit program