

## **MEMORANDUM**

**TO:** Jeff Levine, Director, Planning and Urban Development; Christine Grimando, Senior Planner, Planning and Urban Development; Councilor Belinda Ray; The Planning Board

**FROM:** Peter and Lisa Adams, 49 Merrill Street, Portland

**RE:** Munjoy Hill R6 Regulations

We offer our view on the revisions to the R-6 regulations from what is perhaps a unique perspective. Munjoy Hill is both our home and the location of our Mount Joy LLC family-owned business that develops rental properties.

### **EXECUTIVE SUMMARY**

The R-6 zoning regulations should strike a balance between the valid concern about overly-large and contextually inappropriate buildings taking over treasured Munjoy Hill neighborhoods and the city's stated desire for increased density. Thrown into the mix are business considerations related to development and new and existing residents' needs to create and improve homes they want to live in. The 2015 regulations, and perhaps their sometimes inadequate enforcement, have leaned too far in favor of density at the expense of the unique character of Munjoy Hill neighborhoods. The IPOD in an effort to recalibrate the balance has, in some respects, gone too far in the other direction or has created unintended consequences. In an effort to right the balance this memo proposes the following, discussed in detail below:

1. Redefine "Neighborhood" to reflect the fact that the current 2-block radius is often too large. Acknowledge that Munjoy Hill is actually a collection of many distinctive "micro-hoods." Give the Planning Board the power to both increase and decrease the area by which new construction should be judged for contextuality, etc.
2. Stop the "domino effect" in which a new large building in a "micro-hood" of smaller residences justifies the construction of the next large building, which in turn is relied on to construct a third large building, and so on, progressively and permanently changing the nature of that small residence "micro-hood."
3. Protect against the combination of lots in an area of small residence resulting in a very large building in a small residence "micro-hood."
4. Consider whether the IPOD rule that only buildings of 3+ units be 45' high is actually encouraging large tall buildings which have a more negative impact than a smaller 45' building.

5. Examine whether the existing Design Principles & Standards have been adequately enforced and how enforcement might be strengthened, including the possibility of a Design Review Panel.
6. Amend the Statement of Purpose of the R-6 zoning to include the need to protect existing housing stock and the character of neighborhoods not only from professional and commercial buildings, but also from large residential developments.
7. Reflect on the process through which the IPOD was adopted with an eye to whether adequate public notice was given in light of the significant property rights involved, and consider allowing property owners who purchased under the 2015 regulations a limited window of time to proceed under the 2015 regulations, minus the Alternative Design Review and perhaps restricted to empty lots.
8. Within one block of a B-1 zone, where parking is particularly challenging for both business patrons and residents on Munjoy Hill, loosen the restrictions on setbacks and/or garage doors on the front facade that make it difficult to get cars off the street and onto narrow lots. This will help both the businesses and the residents.
9. Revisit the ongoing need for residents to be able to modify nonconforming residences and revise the regulations to allow for additions that do not extend beyond the footprint of the home plus any bay or cantilever or other design element that is in keeping with the design of the building.

## **BACKGROUND**

Our experience with renovating and building in the East End/Munjoy Hill includes the following, totaling five buildings and 17 units:

- A minimal rehab of an 1889 triple decker at 40 Emerson St, now three apartments
- A minimal rehab of an 1875 two-family house at 51 Merrill, now two apartments
- A change in use of a mid-1800's three-story brick building at 98 Washington Avenue from law offices to three apartments and two commercial units
- A "to-the-studs" rescue and renovation of 15-17 Merrill Street, a handsome mansard built in the late 1800's which had declined to a barely habitable condition and is now six safe and attractive apartments
- A 2010 renovation (ultimately a tear-down as the house revealed its structural deficiencies) of a 1 ½ story house at 49 Merrill Street to build our home

Our plans for future projects, both of which were discussed with Planning staff in March of 2017, include:

- Building on a 25' wide vacant lot next to our 15-17 Merrill Street building.
- Improving our own 49 Merrill Street home with a roughly 6' x 8' extension of the second floor to create a master bathroom.

We look at the proposed R-6 changes from the perspectives of a developer, a homeowner in the R-6 and as Munjoy Hill residents wishing the best for our neighborhood and the city as a whole. We offer general comments on the zoning changes and provide two real-world examples showing the impact, and what we believe to be unintended consequences, of the current IPOD on our own projects.

### **PROBLEMS AND PROPOSED SOLUTIONS**

Please note that our proposals are based on a familiarity with the R-6 zoning resulting from our renovation and construction work in the R-6 over the past five years. We believe our suggestions are sound and workable, but recognize that planning experts would certainly need to fine-tune them.

#### 1. What is a Neighborhood?

Within the first two sentences of the Design Principles and Standards, the all-important significance of the term “neighborhood” is made clear:

All developers, no matter how small their project, have a responsibility beyond simply meeting the needs of their end users. They have a public responsibility to *add to and enhance the neighborhoods* in which their projects are built.

New residential construction within Portland’s compact R-6 zones should *relate to the predominant character defining features of the neighborhood.*

According to the existing Design Standards, “unless otherwise indicated, the R-6 Design principles and Standards shall define ‘Neighborhood’ as the buildings within a two block radius of the site.” As one man noted at the City’s first Listening Session on February 26, Munjoy Hill actually includes dozens of much smaller pockets of design, which I call “micro-hoods.”

Our own second block of one and two-family homes on Merrill Street, similar to the third block, is vastly different from the first block that contains many large apartment buildings. We own one of the large apartment buildings, and so with no negative implications, we call this area of Merrill and Cumberland “Apartment Building Land.”



*The first block of Merrill Street looking toward Congress, "Apartment Building Land"*



*Merrill Street and Cumberland Ave intersection, "Apartment Building Land"*



*The second block of Merrill Street*



*The second and third blocks of Merrill Street: small residential, New England character*

If the apartment and condominium buildings in the Merrill/Cumberland blocks are part of the standard by which development is judged on the second and third blocks of Merrill because they are within a two block radius, we will (continue to) lose the much treasured character of small one and two-family homes in our “micro-hood.” If this happens across Munjoy Hill, many culturally and historically significant neighborhoods will be destroyed. It is also important to note that most of the houses pictured above are inhabited by long-term residents and renters. They provide exactly the kind of housing the City wishes to encourage.

It is also important to note that it is the smaller, human scaled, eclectic but cohesive, historic nature of the Munjoy Hill neighborhoods is what makes the East End such a desirable place to live. Both the residents and the City will lose a lot if we don’t protect what makes Munjoy Hill special. And recognizing that a “neighborhood”

cannot be defined by rigid application of a two-block radius is an extremely important first step.

The Design Standards specifically provide for extending the definition of neighborhood:

The Planning Authority may determine the neighborhood to be greater than a two-block radius, due to unique characteristics of a given site. In such case, the Planning Authority shall determine the scope of the neighborhood.

There is nothing, however, about reducing the “neighborhood” below two blocks. Given that it is “Neighborhood” that drives the all-important context for a new building, we must allow for flexibility in the definition of neighborhood, recognizing that in fact, Munjoy Hill is made up of many different size neighborhoods, many of them “micro-hoods” that are well below a two-block radius.

***Proposal: Revise the Design Standards to set the standard for Neighborhood at one block rather than two and give the Planning Authority the ability to both reduce and increase the scope of the Neighborhood. This should not apply only to Alternative Design Review, but for the whole of the Design Standards.***

***Alternative Proposal: create a map of “neighborhoods” in the Munjoy Hill R-6 based on the current buildings in place now. Those of us who live here know well the very different characters of Morning Street and Howard Street. Let us help you identify our “micro-hoods.”***

## 2. How to prevent a big building “Domino Effect” into small building areas?

Again using Merrill Street as an example because it is what we know best, the very large buildings in Apartment Building Land close to Congress Street were used to support the development of a large 6-unit condominium building at 30 Merrill. This is one of the buildings that created the stir in the neighborhood in which the developer used every square inch available under the zoning rules to build a maximum size, minimum cost structure that dominates its next-door neighbor.



*30 Merrill Street project (left)*

The developer and the City relied on the large buildings towards Congress Street as justification for allowing the replacement of a two-family cape with the 6-unit 45' structure. 30 Merrill now creates one side of the "boundary" between the very large-scale buildings towards Congress on Merrill and Cumberland and the small residences along Merrill Street towards Melbourne Street. As shown in the photos and the tax records below, the buildings along Merrill towards Melbourne are modest, mostly traditional, single and two-family homes (There are also two three-family buildings and a two-story artists studio.)



*Merrill Street looking towards Congress from Quebec, north side*



*Merrill Street from Quebec St to Melbourne St, north side*

|                |  |                       |                      |                |  |               |                              |
|----------------|--|-----------------------|----------------------|----------------|--|---------------|------------------------------|
| 014<br>C014006 | BANNER PROPERTIES LLC<br>126 UNDERWOOD RD<br>FALMOUTH ME 04105                     | 30 MERRILL ST CONDO 6 | RESIDENTIAL<br>CONDO | 014<br>E008001 | ADAMS PETER S<br>49 MERRILL ST<br>PORTLAND ME 04101                                  | 49 MERRILL ST | SINGLE FAMILY                |
| 014<br>C012001 | STONE GENE F BLIND<br>34 MERRILL ST<br>PORTLAND ME 04101                           | 34 MERRILL ST         | SINGLE FAMILY        | 014<br>C006001 | GRAVES ELIZABETH S<br>41 SANDY TERR<br>PORTLAND ME 04102                             | 50 MERRILL ST | SINGLE FAMILY                |
| 014<br>E015001 | HUMPHREY BRENDA E<br>1150 BARCLAY TER<br>WINSTON SALEM NC 27106                    | 35 MERRILL ST         | SINGLE FAMILY        | 014<br>E006001 | MOUNT JOY LLC<br>49 MERRILL ST<br>PORTLAND ME 04101                                  | 51 MERRILL ST | TWO FAMILY                   |
| 014<br>E014001 | SUMMERS ROBERT L<br>37 MERRILL ST<br>PORTLAND ME 04101                             | 37 MERRILL ST         | TWO FAMILY           | 014<br>E005001 | ACIN DONNA J & THOMAS R<br>ANDERSON JTS<br>55 MERRILL ST<br>PORTLAND ME 04101        | 55 MERRILL ST | SINGLE FAMILY                |
| 014<br>E013001 | BONNVIE JAMIE L<br>41 MERRILL ST<br>PORTLAND ME 04101                              | 41 MERRILL ST         | SINGLE FAMILY        | 014<br>E001001 | DODGE CHARLES W H JR<br>104 CLARK ST<br>PORTLAND ME 04102                            | 57 MERRILL ST | TWO FAMILY                   |
| 014<br>C010001 | DIBIASE JAMES JR &<br>FRANCESCA P JTS<br>14 LARCHWOOD W<br>SOUTH PORTLAND ME 04106 | 42 MERRILL ST         | VACANT LAND          | 014<br>L021001 | LATTANZI MARY KATHRYN<br>TRUSTEE<br>1069 RIDGE RD<br>BOWDOINHAM ME 04008             | 65 MERRILL ST | TWO FAMILY                   |
| 014<br>E011001 | BLOCK MARTIN & STEPHANIE<br>BLOCK JTS<br>43 MERRILL ST<br>PORTLAND ME 04101        | 43 MERRILL ST         | SINGLE FAMILY        | 014<br>L020001 | MERRILL STREET<br>RESTORATION LLC<br>40 PORTLAND PIER # 11<br>PORTLAND ME 04101      | 67 MERRILL ST | SINGLE FAMILY                |
| 014<br>E010001 | KNOWLTON BRITT<br>45 MERRILL ST<br>PORTLAND ME 04101                               | 45 MERRILL ST         | SINGLE FAMILY        | 014<br>L019001 | DIBIASE JAMES JR &<br>FRANCESCA P JTS<br>14 APPLEWOOD CIR<br>SOUTH PORTLAND ME 04106 | 69 MERRILL ST | THREE FAMILY                 |
| 014<br>C008001 | CLEMENTS TYLER M & LILY K<br>KING JTS<br>48 CENTRAL ST<br>YARMOUTH ME 04096        | 46 MERRILL ST         | VACANT LAND          | 014<br>M002001 | BASS PETER L<br>30 DANFORTH ST # 213<br>PORTLAND ME 04101                            | 70 MERRILL ST | OFFICE & BUSINESS<br>SERVICE |
| 014<br>E008001 | ADAMS PETER S<br>49 MERRILL ST<br>PORTLAND ME 04101                                | 49 MERRILL ST         | SINGLE FAMILY        | 014<br>L018001 | SAMPSON JONATHAN STUART<br>73 MERRILL ST<br>PORTLAND ME 04101                        | 73 MERRILL ST | THREE FAMILY                 |



*City of Portland Tax Assessor Records as of March 20, 2018 for residences from #30 Merrill to the end of the street, #73 Merrill, demonstrating the predominantly single and two-family dwellings context of the Street. As the photos suggest and the tax records confirm most of these homes are from the mid to late 1800s.*

The Merrill Street neighborhood, which includes multiple empty lots and small buildings vulnerable to tear down, very much needs protection against a parade of big buildings “domino-ing” down the street. The Domino Effect, defined as a cumulative effect produced when one event initiates a succession of similar events, in this context means that the construction of #30 Merrill, which relied on the large apartment buildings near Congress to justify its size and design, will in the future likely be used to justify another large building further down the street among the small residences. And that new large building, as well as 30 Merrill, will be used to justify a third large building, and a fourth and so on. The out-of-scale, contextually inappropriate buildings will be like dominoes tumbling down the street, each one relying on the ones before it. Pretty soon, empty lots and torn-down one and two-family homes will be replaced with large buildings that inalterably change the character of our neighborhood. Merrill Street is just one example. Other “micro-hoods” are also at risk that the current structure of the Design Standards creates a loophole in which one mistake leads to another. How can this be prevented?

***Proposal: Add language in the Design Standards that recognizes the Domino Effect and gives the Planning Staff (or design review board if one is instituted) the ability to apply more stringent standards in this situation.***

***One possible approach might be to calculate the average height of structures (perhaps mass, too?) within 100 feet on either side of the boundary between “micro-hoods”, and impose a height (and mass?) restriction on building in the smaller homes “micro-hood” that is the average of the two sides, with the exception that the height restriction can not be less than 35’. A similar, or perhaps even more restrictive, calculation for mass seems important as well.***

### 3. The problem of combining lots to allow larger structures

How can the Planning Department control the combination of small lots on which developers can build very large buildings? Not all combination of lots is bad, but the type of development allowed on them must be carefully examined. The combination of lots is fine where the resulting development is in keeping with the context of the Neighborhood. For example combining lots to put a large building in a “micro-hood” of other large buildings (like the “micro-hood” at the intersection of Cumberland and Merrill). However, by way of example, if the three small lots next to our house shown in the photo below (014-E010, 11 and 12), all with very small homes, were

purchased by a developer, a 6422' sq lot would result, which the formula of 750' sq of lot coverage per unit would allow a developer to build a 45' eight-unit building in place of this:



#41, ##43 and 45 Merrill Street

This would be the end of a charming “micro-hood” in our block of one and two family homes on Merrill between Turner and Quebec and continuing to Melbourne. We know that some developers would say these should all be torn down because they are substandard. They are wrong and we disagree. But if one or more of them were demolished and replaced with contextually appropriate buildings, so be it. But if all three came down, the lots combined and a large apartment or, more likely, condo building went up, that would be a terrible loss for our neighborhood and hopefully a concern to the those in the city who care about the Munjoy Hill neighborhoods.

In contrast, if in the area of the large multi-family buildings at the intersection of Cumberland and Merrill, one or more lots were combined in order to create a new, and possibly larger building in that micro-hood, such as adding #8 Merrill to the larger lot holding multiple apartment buildings, we would not feel concerned. We own a building and a lot in that “micro-hood” and recognize it as an area where large structures are within its context.

How can we address the significant risk of harm from the consolidating of lots in areas of small-scale housing and the construction of an out-of-scale building?

***Proposal: Add language to the zoning regulations that recognizes specifically the potential for harm from the combination of lots in “micro-hoods” of smaller residences. Consider a limitation on the number of lots that can be combined or the total number of combined square feet that can be created in such “micro-hoods.”***

***Proposal: Revise the Design Standards to (1) recognize the potential for inappropriately large buildings in areas of smaller residences as a result of combining lots, and (2) provide additional Standards to address this situation and/or require higher level of meeting the Standards in this situation.***

***Proposal: Apply a building height restriction formula similar the one above related to the domino effect.***

#### 4. The problem of height

Is the City unintentionally encouraging larger buildings on a lot if the only way to get to 45' (which builders and homeowners will almost always want to achieve any available views) is by creating three or more units? Does this encourage developers to go bigger in order to create more space that will make three or more saleable condos? Would we not prefer a smaller building that goes to 45' than a larger one? In walking through the neighborhoods of Munjoy Hill it is almost always the buildings that are both massive and tall that feel the most out of place and harmful to both the streetscape and neighbors.



This four-story building (granted in the B-1 but still relevant) at 121 Congress if not 45' certainly approaches it. However, even though it is quite a bit taller than its neighbors, it does not overwhelm them nor is it imposing to pedestrians. I believe that is largely because at 27' wide it is narrow. It also has good fenestration, articulation, entry design, etc. Under current development practices of building every allowable square inch, had the 121 Congress lot been larger, the building would almost certainly have had a larger footprint and at 45' would have a very different and detrimental impact of the building on the streetscape and neighbors. In short, in certain "micro-hoods" less mass is better when the building is very tall.

***Proposal: Revise the regulations and design standards in such a way as to recognize that in many micro-hoods smaller rather than larger footprint buildings are better suited to rise to 45'.***

5. Has the Planning Department and Planning Board been vigorously applying the Design Standards? Does it have the capacity to do so or do we need a Design Review Board to put teeth into the Design Standards?

In reviewing the Design Standards, it appears that there are already some fairly tough standards that, vigorously applied, could have solved some of the problems in development on the Hill under the 2015 regulations. However, in our experience contesting the design of one of the recent projects on the Hill and looking at several others that have been built, it seems that the staff is perhaps not empowered to strictly enforce what is already in place. The Alternative Design is certainly too liberal, and that may be one of the biggest problems. And it may be that the pressure on the City from developers is just too much for a Planning Department staff overwhelmed with work. Perhaps a professional design review panel is the solution.

Also, the acknowledgment in the December 6, 2017 memo to the Planning Board from Caitlin Cameron and Christin Grimando that developers are making changes to approved plans without applying for amendments or consulting City staff and “in some cases changes are irreversible and sometimes contribute to the lack of contextuality or sensitivity originally intended by the design standards” is disturbing. Although Ms. Grimando and Cameron point out that the city has some leverage, it seems that there is in some cases an apparent inability to hold developers responsible. From the outside looking in, it is hard to imagine not clamping down hard in such instances. Again, put teeth into the requirements.

***Proposal: Tighten up the Design Standards where appropriate. Eliminate or tighten up the Alternative Design process. Give the staff more muscle to push back on developers when their designs do not meet the Standards. Consider adding a professional design review panel to the process. Get tough when developers make post- plan approval changes that don't follow the zoning ordinances or the design standards or any other applicable codes.***

6. Amending the R-6 Statement of Purpose to include controlling residential development.

*At present the introduction to the R-06 states its purpose as:*

14-135 (a) To set aside areas on the peninsula for housing characterized primarily by multifamily dwellings at a high density providing a wide range of housing for differing types of households; and to conserve the existing housing stock and residential character of neighborhoods by controlling the

scale and external impacts of professional offices and other nonresidential uses.

The disturbing development of the past few years has been residential, not professional or nonresidential. And the character of neighborhoods we seek to protect is not just its “residential” character.

***Proposal: The 14-135 (a) statement of purpose should be amended to recognize the potential for the harmful impact that large residential developments can have on the character of a neighborhood. For example, the statement might read “. . . and to conserve the existing housing stock and character of neighborhoods by controlling the scale and external impacts of professional offices, other nonresidential uses, and large residential buildings.”***

#### 7. Adequate Notice and Appearance of Fair Dealing in enactment of the IPOD

A certain number of parcels were purchased in the R-6 between 2015 and 2017 in reliance on the then-current zoning regulations. We recognize that property rights typically are subject to zoning changes. In the present situation, two things feel uncomfortable, however. First, for most of those who purchased under the 2015 regulations the advent of the IPOD came very quickly (and over a particularly busy holiday time of the year), catching many (including us) by surprise. It feels like there was not the kind of notice that one would expect for such a significant change and the time period from start to adoption of the IPOD seems short. Further, there is a potential for an appearance of impropriety in the exception created that allowed individuals who submitted incomplete applications before the effective date of the IPOD to develop under the 2015-17 rules. The policy of the Planning Department has always been that a complete application had to be submitted in order to get “stamped in.” Certainly, had we been aware that this rule had been waived, we, too, could have gotten a pro-forma application in for our projects. There is a perception that only those with significant ongoing contact with the Planning Department managed to get in the door just under the December 4 deadline. This raises a question of fairness and whether it is perceived or real it seems important to point out.

***Proposal: Consider giving owners who purchased during the effective period of the 2015-2017 regulations and who had the intention to develop those spaces, the chance to do so under those regulations. Perhaps limiting this exception to non-tear-down situations would be advisable. Interestingly, it would be a chance, with a very finite number of projects, for the Planning Department to vigorously exercise its full authority to control design using the 2015 rules. The Alternative Design option could be taken off the table. This could be a good learning experience to see what could be accomplished with stricter enforcement of the existing rules minus the Alternative Design Review.***

#### THE IMPACT OF THE R-6 IPOD REGULATIONS ON 2 PROJECTS

The goal of the Planning Department, Planning Board and City Council in revising the R-6 zoning is not to satisfy the needs of individuals, rather to do what is best for a neighborhood as a whole. However, looking at the real life impact on particular projects can provide important insights. We explore below two real examples in which the IPOD regulations would have significant detrimental (and we believe unintended) impact. We hope these examples will help guide the Planning Department, Planning Board and City Council in crafting new R-6 regulations that both protect Munjoy Hill from the contextually insensitive and overly large building that has happened in the past several years while allowing positive growth and improvements to occur.

**EXAMPLE 1: Building on a narrow vacant lot next to 15-17 Merrill will become extremely challenging due to the decreased flexibility in set backs.**

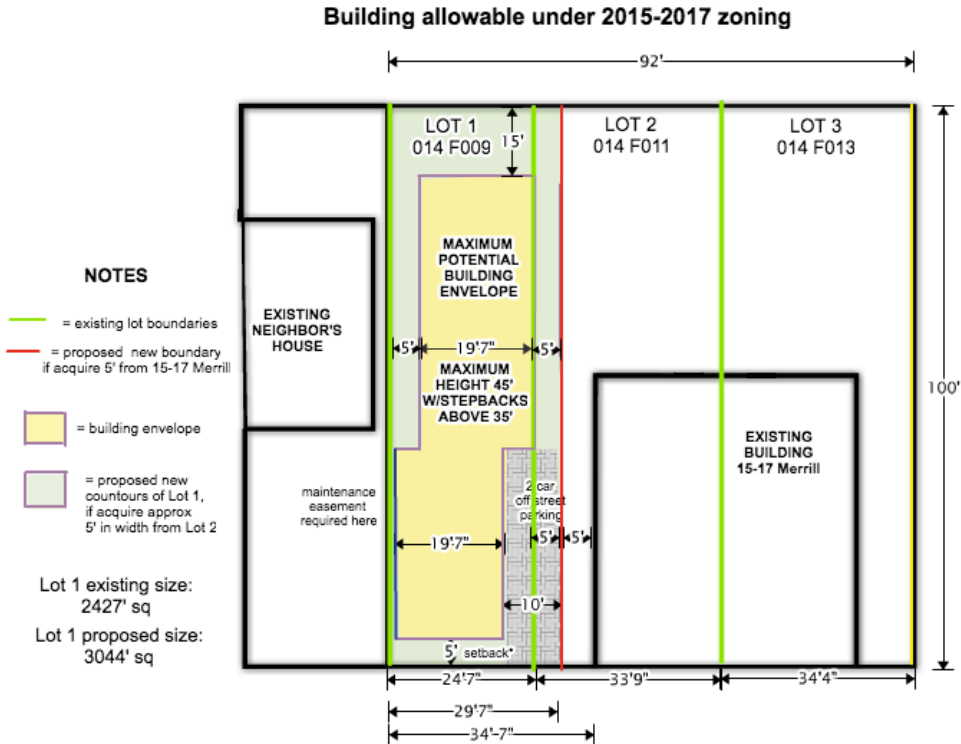
Our lot sits at the intersection of Cumberland Ave and Merrill Street in “Apartment Building Land.” There are 10 or so large old and new apartment and condominium buildings within a few hundred foot radius of the lot. In addition, five new condominium projects under construction/renovation at 9 Merrill, 5 Merrill and 77 Congress are within 100’ of the lot in question. It is among the densest concentration of large apartment buildings and condominiums on the Hill. If there is a “context” where a larger building is not only appropriate but called for on an empty lot, this is it.

The R-6 principles of infill provide:

14-135. The purpose of the R-6 residential zone is: . . . [i]n cases of qualifying small, vacant, underutilized lots located in the urban residential and business zone, *to encourage new housing development* consistent with the compact lot development pattern typically found on the peninsula. (emphasis added)

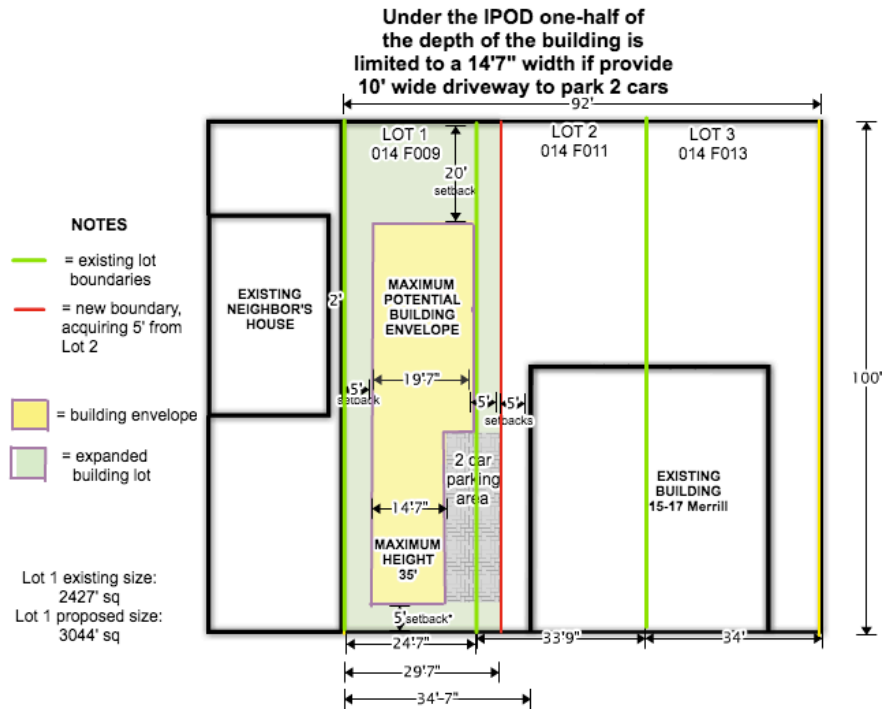
We understand the 14-135 statement of purpose to mean that the City encourages us to develop this narrow lot and we believe that Merrill Street will benefit from a consistent streetscape of housing rather than an empty lot with parked cars. However, at 30’ wide\* the IPOD makes it very difficult to build successfully. (\*Our lot is currently slightly less than 25’ wide, but with the hoped-for addition of 5’ from the 15-17 Merrill lots will be roughly 30’ wide.)

The following is a draft site plan using the hoped-for 30’ width and complying with the 2015 – 2017 R-6 regulations.



Most pertinently, the 2015-2017 regulations allow the shifting of the building to one side to allow for a “tandem” two-car driveway (one car parked behind another). As explained below in the general commentary, it is very important to get cars off the street in this particular block due to the extra pressures on parking from the close-by Congress Street business. Please note that the shifting to the boundary is proposed in a way to allow easy access for life-safety and where it will have a lesser impact on the neighbor to the left.

The following is a draft site plan using the hoped-for 30’ width and complying with what we believe we would be allowed under the IPOD.



Because the IPOD precludes sliding the building to the boundary of the property on one side), in order to provide parking for two cars and prevents providing parking inside the building due to restrictions on garage openings and % of living space at the front of the building we would have to cut into precious building space, leaving only a 14'7" wide buildable area for roughly one half of the depth of the building. This is not a workable width.

The Planning Board Report prepared by Christine Grimando on March 6, 2015 for the Board's March 10 public hearing (p. 9) specifically discussed "the need for flexibility if small lots were to accommodate both a building and a driveway," and states that "[e]xisting residential patterns in the R-6 show a preponderance of houses hugging one property line and a driveway along the other." To facilitate this configuration the 2015 rules allowed reducing a side yard to zero provided that the cumulative side yard setbacks are not less than 10 feet provided a maintenance easements was obtained when side setbacks are reduced. There is nothing about this need to accommodate both a building and driveway that has changed in the neighborhood, except that the need for parking has increased due the growing success of the businesses on Congress Street approximately 200' away. Particularly as one gets closer to Congress Street with its retail shops, restaurants and coffee shops the more difficult it is to find parking and the more important it is to have off street parking. Our lot sits in the first block of Merrill from Congress where cars parked by patrons of the Blue Spoon, Lolita and Rosemont and the half dozen other nearby businesses fill available parking spots. It is not only a challenge for residents, but is detrimental to the businesses if customers find it hard to park within a



reasonable distance of shops, restaurants and retail stores. The reduced street parking supports the idea of flexibility in side setbacks that will allow the continuation of the existing pattern of properties hugging property lines with driveways on the other side of the lot.

IPOD's expanded set back requirement is a response to the problem of overly large and insensitively designed buildings overpowering smaller traditional housing stock, which most everyone agrees is a problem. However, the IPOD's increased set backs makes development quite difficult when the context in fact asks for a larger building on a narrow lot. To eliminate the possibility for reduced setbacks when the surrounding properties can reasonably tolerate it and the narrow lot demands it is to throw the baby (intelligently designed narrow lot buildings) out with the bathwater (poorly designed and contextually inappropriate large structures permitted under the 2015 regulations).

***Proposal: Make off-street parking achievable on lots of 30' or less in width in areas of the R-6 that are within a certain # of feet (or one block) of a B-1 zone by liberalizing the set-backs when needed for a driveway or by allowing a garage door on the façade of the building even if the required % of active living space is not met. Please note that the size of the lot is not the trigger, rather it is the width of the lot. A shallow wide lot is able to include a driveway. A narrow lot of any size cannot.***

**EXAMPLE 2: A roughly 6' x 8' addition to the second story of a single family home to accommodate a master bathroom may no longer be allowed due to the IPOD's inflexible side set backs.**

We have drafted plans to add a master bathroom to our house at 49 Merrill Street by adding a second story area over an existing 1<sup>st</sup> floor pantry. The addition will be on the side of the house that sits on the boundary with the next-door neighbor at 51 Merrill Street, which we own and rent out. I was advised by Planning staff (pre-IPOD) that under the 2015–2017 regulations such an addition would be permissible so long as we obtained an easement. We set the project aside as we finished up the work on 15-17 Merrill. Now, our reading of the IPOD in conjunction with the 14-328 suggests that because our house is now nonconforming because it sits on the boundary (like every house on our block) such an expansion may not be permissible.

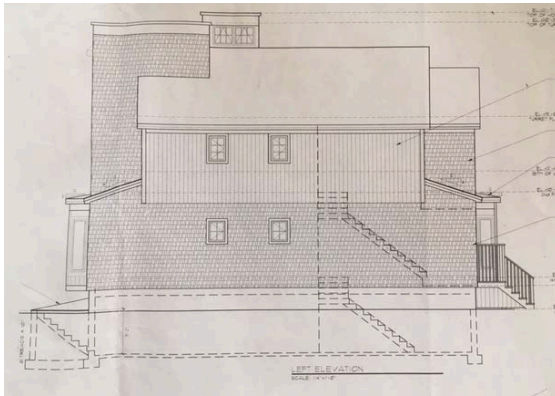
One of the purposes of the 2015 revisions was to provide residents of the R-6 with the opportunity to make improvements to their homes. The March 10, 2015 Planning Board Report (p. 8) explains the significance of the relaxation of some dimensional requirements for current residents:

The changes to lot coverage and setback standards have implications for existing as well as future homeowners and property developers, allowing

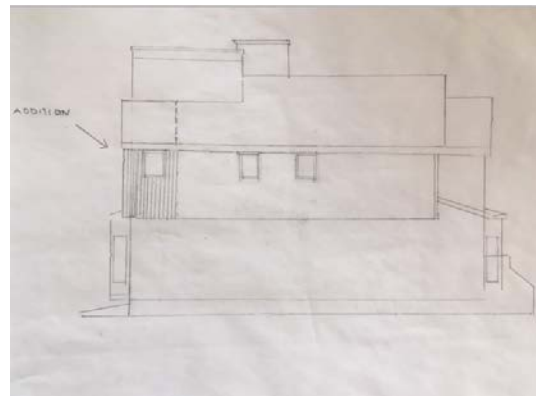
small additions, decks, or accessory structures to be built where they are currently now allowed, allowing greater flexibility for existing properties and also allowing for the possibility of existing neighborhood patterns to be replicated.

To help understand the scope of what we hope to do we offer the following representations of the side of the building, which sits at the boundary, where the expansion would occur:

CURRENT:



PROPOSED:



The side neighbor's house (which we own) is more than 20' away from the proposed expansion. The expansion would fill the space above what is now a shed roof over our laundry/pantry and possibly cantilever into our backyard no further than the existing 3' deep back bay window. The cantilever is in keeping design-wise with both the bay windows on the front and back facades of the 1<sup>st</sup> floor and a cantilevered area on the second floor on the opposite side of the house. Due to the IPOD's rejection of the 0' side setback (previously allowable if the diminished setback footage was made up on the other side of the building), we are concerned that our building has become non-conforming and any addition would arguably increase the non-conformity in violation of 14-382(d):

Alteration, modification or addition may be made to a building which is lawfully nonconforming as to space and bulk or any dimensional requirement where the proposed changes in existing exterior walls and/or roofs would be within the space occupied by the existing shell of the building, and would not create any new City of Portland Land Use Code of Ordinances Chapter 14 Sec. 14-382 Rev.2-4-13 14-602 nonconformity nor increase any existing nonconformity.

In this situation the IPOD, in an understandable effort to prevent large, out of scale buildings from towering over their smaller neighbors and depriving them from light and air, is preventing a small addition that would vastly improve our home and cause zero negative impact on the neighboring property. (As the owners of that

neighboring property we have absolutely no concern about diminishing that property's safety, livability or value.) This kind of improvement is to be encouraged, but we believe may no longer be possible for the "preponderance of houses [in the R-6] hugging one property line . . ." (March 10, 2015 Planning Board Report, p. 9) Surely there is a way to accomplish the dual goals of not letting a 45' building overpower a neighbor due (among other things) to inadequate setbacks and allowing a small addition to a single family home.

***Proposal: For purposes of additions to homes that are nonconforming as to side setbacks, reinstate the 2015 flexibility in set backs that reflects the reality of so many homes on Munjoy Hill that sit on the property line.***

***Alternate Proposal: Provide that expansions of nonconforming buildings will be allowed not only within the shell of the existing building, but in the situation where the architectural design of the building is such that upper stories have non-required setbacks then those upper stories may be expanded to the extent of the perimeter of the footprint of the building plus bays or cantilevers not exceeding 3' in depth if consistent with design elements found elsewhere in the building.***

We apologize for the length of this document and appreciate your taking the time to wade through it. As we have learned in our real estate projects, however, the "devil is in the details!"

Thank you for spearheading a challenging community process to listen, learn and figure out the best path forward to protect, nurture and responsibly develop this precious area we call home.