



## **CITY COUNCIL ACTION**

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Council Meeting Date: February 22, 2021

Item No: 21-097

Responsible Dept: Planning

Action Requested: Ordinance – District Map Change

Map/Lot: R40/006-E

### **Title, Ordinance**

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Amending Chapter 165, Land Development Code, District Map, by changing the Parcel of Land addressed at 1109 Broadway from Shopping & Personal Service District (S&PS) Contract to Shopping & Personal Service (S&PS)

### **Summary**

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This Ordinance would amend the Land Development Code by changing zoning at 1109 Broadway from Shopping and Personal Services District to contract Shopping and Personal Services District. In 1987, Randall and Audrey Gifford entered into a contract zoning agreement with the city to the Commercial 2 zone, now known as Shopping & Personal Service District. The contract agreement included conditions on building setback requirements, rear yard and side yard screening, hours of operation, and, limitations on drive-in businesses.

Since this agreement, properties in the surrounding area have been re-zoned to a mix of S&Ps and General Commercial districts including businesses that utilize drive thrus.

The Gifford's would like to put in a drive-through business, in part, in response to the change in consumer preference for drive-through pick-up of goods during the pandemic. Also, drive-through service for ice cream has become an ordinary and usual amenity for this business type.

### **Committee Action**

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Committee: Planning Board

Meeting Date: March 2, 2021

Action:

For:

Against:

### **Staff Comments & Approvals**

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City Manager

City Solicitor

Finance Director

**Introduced for:** First Reading and Referral



## CITY COUNCIL ORDINANCE

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Date: February 22, 2021

Assigned to Councilor: Fournier

**ORDINANCE**, Amending Chapter 165, Land Development Code, District Map, by changing the Parcel of Land addressed at 1109 Broadway from Shopping & Personal Service District (S&PS) Contract to Shopping & Personal Service (S&PS)

**WHEREAS**, at present, drive-through business is not allowed for the property due to a 1987 contract agreement;

**WHEREAS**, since 1987, there has been significant commercial zoning and property development in the area, including drive-through businesses;

**WHEREAS**, the City has supported businesses modifying their service delivery to maintain safe social distancing during the current pandemic;

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BANGOR AS FOLLOWS, THAT**

Chapter 165 of the Code of the City of Bangor is amended as follows:

The Zoning District Map is hereby amended by changing the Parcel of Land located at 1109 Broadway (Assessors Map R40, Lot 6-E) from Shopping & Personal Service District (S&PS) Contract to Shopping & Personal Service (S&PS). As a result of this action, the associated contract dated April 7, 1987, for this parcel may be eliminated.

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## CONTRACT ZONING AGREEMENT

THIS AGREEMENT is made as of April 7, 1987, by and between the CITY OF BANGOR, a municipal corporation with a place of business located at 73 Harlow Street, in Bangor, County of Penobscot, State of Maine and RANDALL H. GIFFORD, JR. AND AUDREY M. GIFFORD, of Farmington, County of Franklin, State of Maine

## WITNESSETH:

WHEREAS, Randall H. Gifford and Audrey M. Gifford are the owners of record of a certain parcel of land situated in Bangor, County of Penobscot, State of Maine, said land being located at 1147 Broadway and being identified on City of Bangor Assessor's Map No. R-40, as Lot 6-A. Reference may be had to a deed recorded in the Penobscot County Registry of Deeds in Volume 3997, Page 306, for a more particular description of said land; and

WHEREAS, pursuant to 30 M.R.S.A. Section 4962 (2) (I) and Chapter VIII, Article 2, Sec. 8 and Article 21, Sec. 11 of the Laws and Ordinances of the City of Bangor, application was made for a contract zone change, so-called, to reclassify said parcel of land (said parcel hereinafter being referred to as the "subject premises") said parcel comprising a land area of approximately 52,500 sq. ft., all as set forth in Exhibit A attached hereto and incorporated herein by reference, from a Residential Four Zone to a Commercial 2 Zone under the Zoning Ordinance of the City of Bangor, said application proffering certain conditions or restrictions relating to the physical development and/or operation of the subject premises; and

WHEREAS, subsequent to a public hearing on the matter, and after due consideration given to the recommendations of the Planning Board, the Bangor City Council adopted Council Ordinance 87-87 whereby it reclassified the subject premises from Residential Four Zone to Commercial Two Zone under the Zoning Ordinance of the City of Bangor subject to certain restrictions and/or conditions, a copy of said Council Ordinance 87-87 and the restrictions and/or conditions contained therein being attached hereto as Exhibit B and incorporated herein by reference.

NOW, THEREFORE, in consideration of the reclassification of the subject premises from Residential Four Zone to Commercial Two Zone under the Zoning Ordinance of the City of Bangor, the parties hereby agree as follows:

1. Randall H. Gifford and Audrey M. Gifford, their successors and assigns, hereby covenant and agree that the use, occupancy and/or development of the subject premises, in addition to other applicable laws, ordinances, or regulations of the City of Bangor, shall be subject to the following restrictions and/or conditions on the physical development or operation of said property:

- a. Building set back requirements:
- Front set back 50 feet
  - Side yard 20 feet
  - Rear yard 40 feet
- b. Rear yard screening will be a minimum of 20 feet deep and an evergreen nature and be at least 5 feet in height at time of planting so as to provide a dense visual barrier at all times of year.
- c. Screening on the North-West sideline of the property from 160' deep to a depth of 290' will be a minimum of 20' wide and of an evergreen nature and be at least 5 feet in height at time of planting so as to provide a dense visual barrier at all times of year.
- d. The hours of operation will be limited so as to exclude opening to the public from 1:00 a.m. to 6:00 a.m.
- e. The following characteristics of a drive-in-business will be excluded from use:
- 1) Service directly to the customer in a motor vehicle via a service window which eliminates the need for a customer to exit the motor vehicle.
  - 2) Service directly to a motor vehicle either by the customer or by an attendant with one or more of the following: fuel, air, washing, cleaning.

2. The Owners hereby agree that the above-stated restrictions, provisions, conditions, covenants, and agreements are made an essential part of this Agreement, shall run with the subject premises, shall bind the owners, their successors and assigns, to or of said property or any part thereof or any interest therein, and any party in possession or occupancy of said property or any part thereof, and shall inure to the benefit of, and be enforceable by, the City of Bangor, by and through its duly authorized representatives, and the owner or owners of any abutting parcels of land.

3. The Owners hereby agree that if they, or any person claiming under or through them, shall at any time violate or attempt to violate, or shall omit to perform or observe any one or more of the foregoing restrictions, provisions, conditions, covenants, and agreements, the City of Bangor and the abutting landowners(s) shall have the following remedies, which may be exercised by the City of Bangor either jointly or severally:

- a. The City of Bangor shall have the right to prosecute violations of this Agreement in the same manner that it is authorized to prosecute violations under the Zoning Ordinance of the City of Bangor in effect at the time of said violations. For the purposes herein, a violation of this Agreement shall be deemed a violation of said Zoning Ordinance and shall be subject to the penalty provisions of said Ordinance in effect at the time of violation. Each day that a

The Owners further agree that the failure of the City of Bangor or the owner or owners of abutting parcels to object to any violation, however long continued, or to enforce any restrictions, provisions, conditions, covenants, or agreements contained in this Agreement shall in no event be deemed a waiver of the right to do so thereafter as to the same breach or violation or as to any breach or violation occurring prior or subsequent thereof.

4. The City of Bangor and the Owners hereby agree that the provisions of this Agreement shall remain in full force and effect until such time as the same may be modified, amended, repealed, and/or replaced upon their written agreement. It is expressly understood by the parties hereto that any such change shall be in accordance with the laws of the State of Maine and the Zoning Ordinance of the City of Bangor, shall be treated as an amendment to said Ordinance and shall be processed accordingly.

5. The parties hereto hereby agree that nothing in this Agreement shall be construed so as to preclude the future exercise of the Bangor City Council's legislative authority relative to the zoning of the subject premises. In the event that the zoning of said premises is changed by the City Council, any use established under the provisions outlined in paragraph 1, subparagraphs a, b, c, d, and e, above, subject to the restrictions, provisions, conditions, covenants, and agreements contained in this Agreement, shall be allowed to continue as a nonconformity or a nonconforming use, whichever the case may be, in accordance with the provisions of the Zoning Ordinance, as may be in effect at the time of said zone change, governing the same.

6. The parties hereto hereby agree, for themselves, their successors and assigns, to waive any and all rights to challenge the validity of Council Ordinance 87-87 or the terms of this Agreement.

7. The parties hereto hereby agree that if one of the restrictions, provisions, conditions, covenants, and agreements, or portions thereof, contained in this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such determination shall not affect the validity of the remaining portions hereof.

Provided, however, that parties hereto hereby further agree that in the event any of the contracted provisions contained in paragraph 1, subparagraphs a, b, c, d, and e, above, are invalidated or such other provision is invalidated so as to constitute a material change in the restrictions, provisions, conditions, covenants, and agreements negotiated by and between the parties, the City of Bangor or abutting land owners shall have the power to seek a reversion and/or change of the zoning of the subject premises to the current zoning classification as may be in effect at the time of the processing of any such reversion and/or change. Said reversion and/or change may be initiated by a representative of the City of Bangor or an abutting property owner to the subject premises, shall be processed in accordance with the procedure established for an amendment to the Zoning Ordinance in effect at the time, and shall be evaluated in accordance with the criteria established for the review of zone change applications. It being the intent of the parties hereto that the owner shall not be allowed to benefit from the zone change for the subject premises in the event that the City of Bangor or abutting land owners are deprived of the conditions

8. Except as expressly modified herein, the use and occupancy of the subject premises shall be governed by and comply with the provisions of the Zoning Ordinance of the City of Bangor and any applicable amendments thereto or replacement thereof.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

Janice Daniels  
Witness

Randall H. Gifford, Jr.  
Randall H. Gifford, Jr.

Janice Daniels  
Witness

Audrey M. Gifford  
Audrey M. Gifford

John W. Flynn  
Witness

CITY OF BANGOR

BY John W. Flynn  
John W. Flynn  
Its City Manager

STATE OF MAINE ~~Maine~~ Florida

Braceard  
Penobscot, ss.

April 1, 1987

Then personally appeared the above-named Randall H. Gifford and Audrey M. Gifford and acknowledged the foregoing to be their free act and deed.

Before me, Linda A. Wells

x Linda A. Wells  
Printed Name:  
Justice of the Peace  
Notary Public  
Attorney at Law



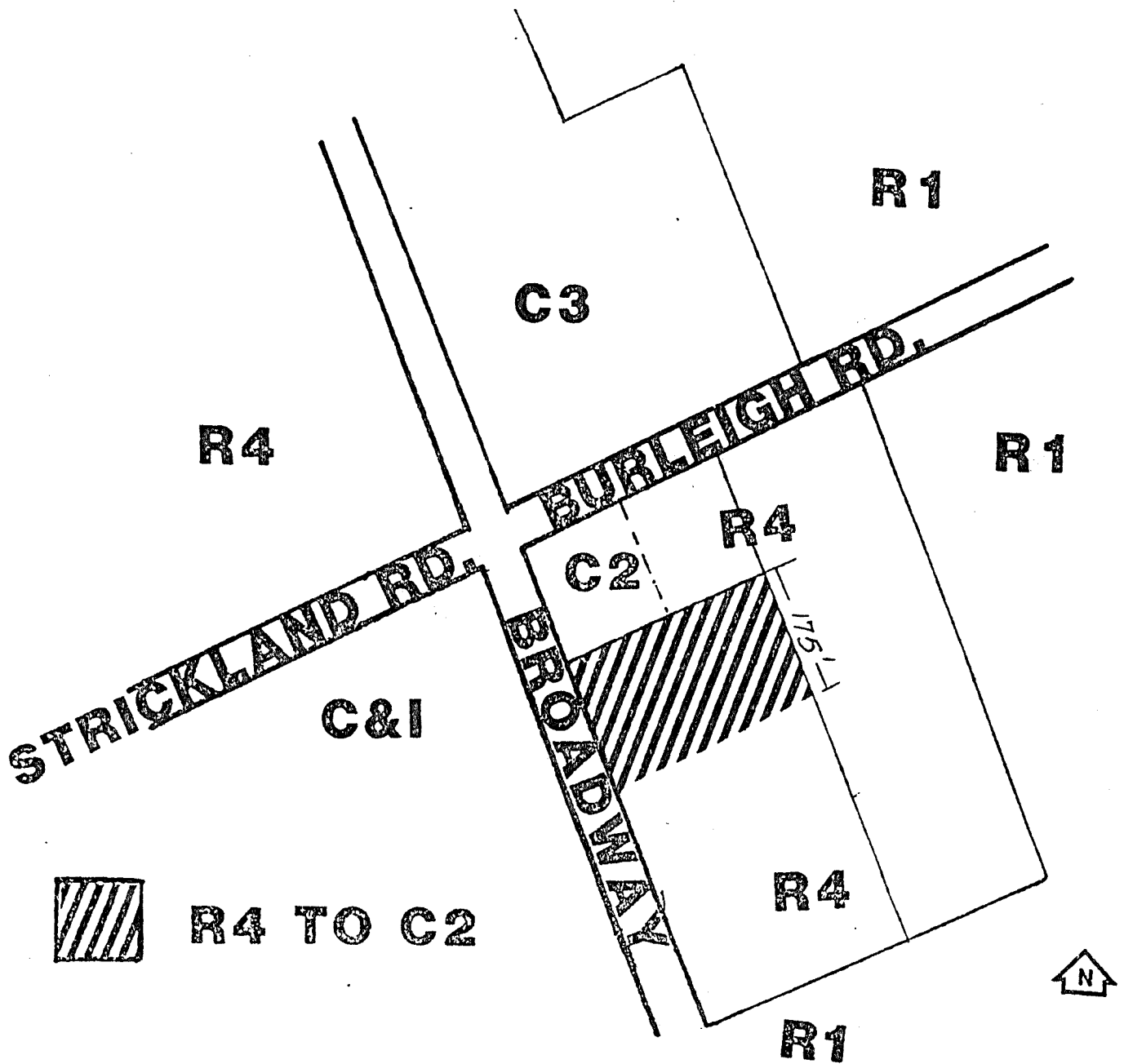
NOTARY PUBLIC STATE OF FLORIDA  
MY COMMISSION EXP. AUG. 7, 1989  
BONDED THRU GENERAL INS. UND.

STATE OF MAINE

Penobscot, ss.

,1987

Then personally appeared the above-named John W. Flynn and acknowledged the foregoing to be his free act and deed in his said capacity as City Manager and the free act and deed of said City of



Introduced by Councilor Frankel, February 23, 1987



# CITY OF BANGOR

(TITLE.) Ordinance, Amending Zoning Ordinance

1147 Broadway

*Be it ordained by the City Council of the City of Bangor, as follows:*

THAT the zoning boundary lines as established by the Zoning Map of the City of Bangor dated September 23, 1974, as amended be hereby further amended as follows:

By changing part of a parcel of land located at 1147 Broadway (Tax Map No. R-40, Part of Parcel No. 6-A) from Residential 4 Zone to Commercial 2 Zone. Said part of a parcel containing approximately 52,500 sq. ft. and being more particularly indicated on the map attached hereto and made a part hereof.

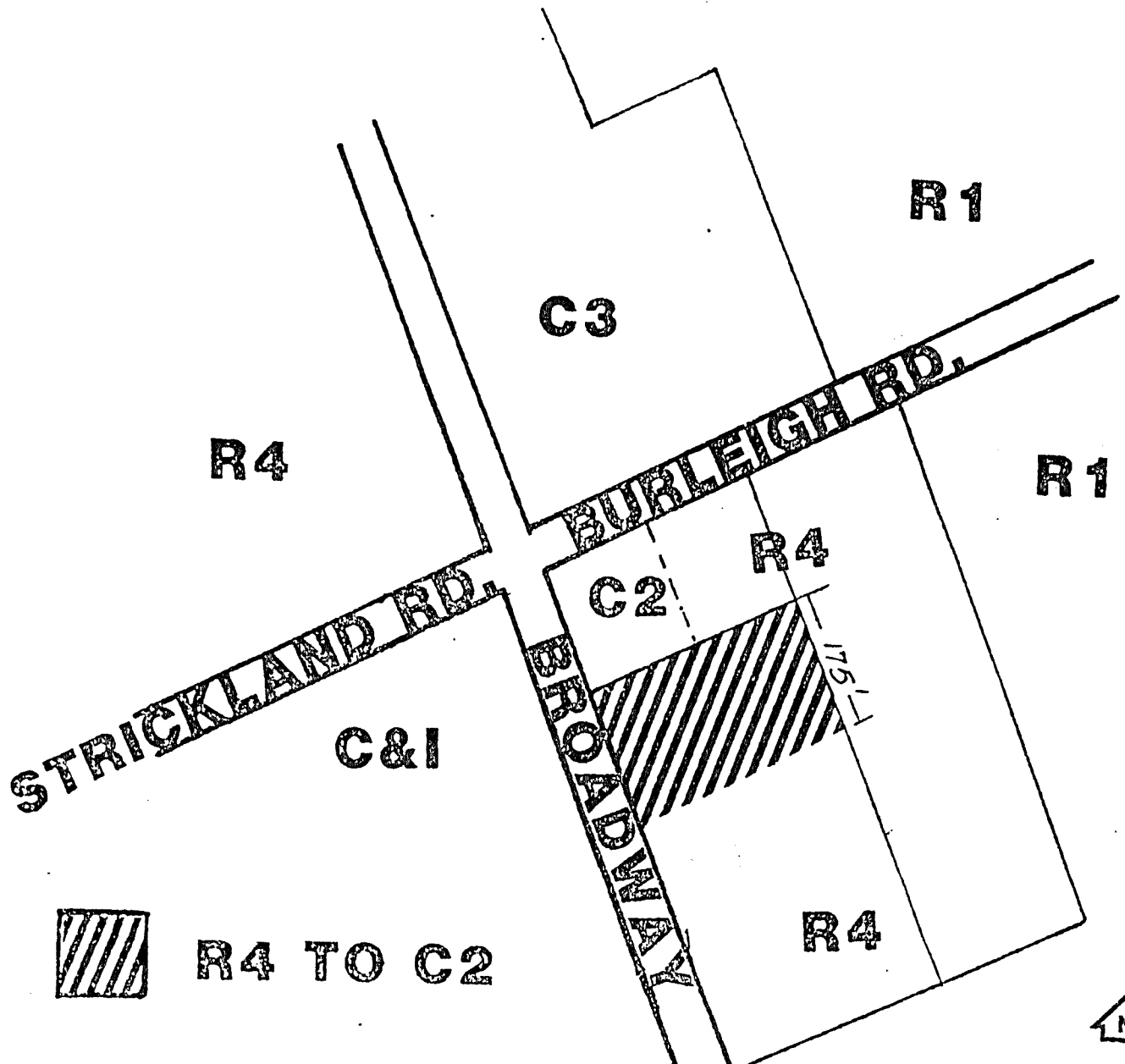
PROVIDED HOWEVER, THAT, in addition to the mandatory conditions imposed by Chapter VIII, Article 21, Section 11.3, Ordinances of the City of Bangor, said change of zone is granted subject to the following conditions:

1. The use and/or operation of the subject premises shall be subject to the following limitations and/or restriction.
  - a. Building set back requirements:
    - Front set back 50 feet
    - Side yard 20 feet
    - Rear Yard 40 feet
  - b. Rear yard screening will be a minimum of 20 feet deep and of an evergreen nature and be at least 5 feet in height at time of planting so as to provide a dense visual barrier at all times of year.
  - c. Screening on the North-West sideline of the property from 160' deep to a depth of 290' will be a minimum of 20' wide and of an evergreen nature and be at least 5 feet in height at time of planting so as to provide a dense visual barrier at all times of year.
  - d. The hours of operation will be limited so as to exclude opening to the public from 1:00 a.m. to 6:00 a.m.



- e. The following characteristics of a drive-in-business will be excluded from use:
- 1) Service directly to the customer in a motor vehicle via a service window which eliminates the need for a customer to exit the motor vehicle.
  - 2) Service directly to a motor vehicle either by the customer or by an attendant with one or more of the following: fuel, air, washing, cleaning.

2. Execution by those parties with an interest in the affected property of an agreement providing for the implementation and enforcement of all the terms and conditions set forth above and the recording of said executed agreement in the Penobscot County Registry of Deeds by the property owners, a copy of said agreement being on file in the Office of the City Clerk and incorporated herein by reference. In the event that said agreement is not so executed and recorded within ninety (90) days from the date of passage hereof, this Ordinance shall become null and void.





**CITY OF BANGOR**  
**Planning Division**

**Memorandum**

To: Honorable Bangor City council  
Cathy Conlow, City Manager

CC: Tanya Emery, Director of Community & Economic Development  
Jeff Wallace, Code Enforcement Officer

From: Anne Krieg AICP, Planning Officer

Date: March 3, 2021

**Regarding: Zone Change – 1109 Broadway – Map-Lot R40-006-E - Contract Shopping & Personal Service (S&PS) District to Shopping & Personal Service District – R. Gifford Family Limited Partnership, applicant**

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Please accept this memorandum as the recording and explanation of the Planning Board action on the above noted item at their requisite public hearing dated March 7, 2021.

Jon Whitten of Haley Ward Engineering Services represented the applicant. Lindsay Skilling of Gifford's was also available on the Zoom call. Whitten presented their intention to create a drive-in service for their business.

Questions arose from the Board regarding queuing space and traffic. The Board noted that another drive in business across the street often queues out on Broadway.

City Engineer John Theriault spoke about the proposed improvements to the area, specifically that there may be a center island that will prevent left hand turns from the site. He also noted that the traffic volumes are likely going to be similar to what they are currently.

Upon answering minor clarifications questions, the Board unanimously passed a motion to recommend to the City Council that the amendment ought to pass. The motion was made by Meagher and seconded by Bazinet.

**IN CITY COUNCIL**

**FEBRUARY 22, 2021**

**COrd 21-097**


**Motion made and seconded for First Reading and Referral to Planning Board Meeting on March 2, 2021**

**Vote: 9 – 0**

**Councilors Voting Yes: Davitt, Dubay, Fournier, Hawes, Nichols, Okafor, Schaefer, Sprague, Tremble**

**Councilors Voting No: None**

**Passed**

  
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**CITY CLERK**

**IN CITY COUNCIL**

**MARCH 8, 2021**

**COrd 21-097**

**Motion made and seconded for Passage**

**Vote: 9 – 0**

**Councilors Voting Yes: Davitt, Dubay, Fournier, Hawes, Nichols, Okafor, Schaefer, Sprague, Tremble**

**Councilors Voting No: None**

**Passed**

  
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**CITY CLERK**