

Order 132- 04/05

Given first reading on 12/20/04

Public hearing, Amended and Passed 1/3/05 8-0 (O'Donnell absent)

JILL C. DUSON (MAYOR)(A/L)

PETER O'DONNELL (A/L)

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CITY OF PORTLAND
IN THE CITY COUNCIL

WILLIAM R. GORHAM (1)

KAREN A. GERAGHTY (2)

DONNA J. CARR (3)

CHERYL A. LEEMAN (4)

JAMES I. COHEN (5)

**ORDER AUTHORIZING AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING MAP AMENDMENT)
RE: CONDITIONAL REZONING FOR PROPERTY
AT 409 CUMBERLAND AVENUE**

ORDERED, that the Zoning Map of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to reflect a conditional rezoning as detailed below:

**Agreement by Waterview Development LLC
409 Cumberland Avenue, Portland, Maine**

This contract made this ____ day of _____, 2004 by **WATERVIEW APARTMENTS LLC**, a Maine Limited Liability Corporation having a place of business at 477 Congress Street, Suite 111, Portland, Maine (hereinafter "Developer").

WHEREAS, DEVELOPER owns the property at 409 Cumberland Avenue and holds a 99 year lease on property located at 71-73 Forest Avenue and 12-14 Mechanic Street, Portland, Maine, both more specifically described and shown on the Portland Assessors Map as parcels 036- H - 018, 19, 20, 21, 23, 24, and 25, respectively (hereinafter the "**SITE**"); and

WHEREAS, DEVELOPER holds an option to purchase property at 380 Cumberland Avenue, Portland, Maine more specifically described and shown on the Portland Assessors Map as parcel 037-B-001; and

WHEREAS, the **SITE** is divided by three zones, namely B-3, B-3c and R-6;

WHEREAS, DEVELOPER filed a Zone Change Application with the City of Portland ("City") to modify the existing B-3, B-3c and R-6 zones at the **SITE** to accommodate a twelve (12) story, 94 unit residential complex, to modify the street wall and building height requirements in the B-3 zone, to modify the setbacks in the R-6 zone and to reduce the number of required parking spaces for new residential construction according to Division 20, Off-Street Parking to one space per unit; and

WHEREAS, the Portland Planning Board determined the rezoning would provide needed housing in the City and would not negatively impact the surrounding residential community; and

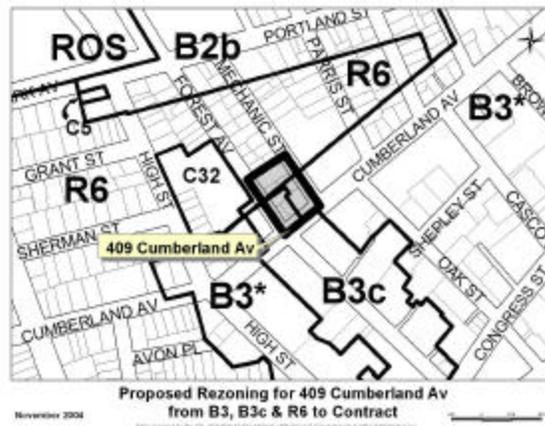
WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. §4352(8), and after notice and hearing and due deliberations, recommended the rezoning of the **SITE** as part of a conditional rezoning, subject, however, to certain conditions; and

WHEREAS, the City, by and through its City Council, has determined that the rezoning, necessary because of the unusual nature of the development, with conditions and restrictions, would be pursuant to and consistent with the City's Comprehensive Plan and would not unreasonably interfere with the existing and permitted uses within the underlying B-3, B-3c and R-6 zones; and

WHEREAS, the **DEVELOPER** has agreed to enter into this Agreement, with its concomitant terms and conditions, which shall hereinafter bind **DEVELOPER**, his successors and assigns; and

NOW, THEREFORE, in consideration of the rezoning of the Property, **DEVELOPER** contracts to be bound by the following terms and conditions:

1. Map. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Development, and incorporated by reference into the Zoning Ordinance by §14-49 of the Portland City Code, by adopting the following map change.



2. Permitted Uses. **DEVELOPER** shall be authorized to establish and maintain the following uses on the **SITE**:

Maximum of ninety-four (94) residential units at 409 Cumberland Avenue consisting of one and two-bedroom units and a community room accessible to the residents of the building.

3. Parking Requirements. A minimum of 119 parking spaces to be provided as follows:

Nine (9) on-site spaces consisting of five handicap spaces and four full size spaces as depicted on the site plan, Exhibit 1. Two of the full-size spaces will be designated for short-term unloading spaces.

Fifty (50) spaces at the Gateway Parking Garage or within 500 feet of the **SITE**.

Sixty (60) spaces at 380 Cumberland Avenue with thirty-four (34) on-grade spaces with access to Casco Street, three (3) on-grade spaces off Cumberland Avenue, and twenty-three (23) spaces on the first floor of the structure as shown on Exhibit 2¹; provided that if the **DEVELOPER** comes into ownership of property, or a lease of property with a term of at least 20 years, located within 500 feet of the **SITE** that is suitable and available for parking and is determined by the Planning Authority as a like kind substitute for the approved parking at 380 Cumberland Avenue, then the **DEVELOPER** may provide the parking at such location in lieu of parking at 380 Cumberland Avenue after site plan review and approval if the same is required. This parking requirement is an integral part of the rezoning and is required to be provided for the duration of this rezoning. If, at any time, an acceptable lease is terminated or otherwise becomes inoperative or ceases to exist, replacement parking will be found and provided in accordance with the requirements of this paragraph, such that there will be no gap in parking provided hereunder.

A ratio of 1.26 parking spaces per dwelling unit is required for the duration of the contract and said parking spaces shall be allocated to each unit.

A restriction shall be placed in the Condominium Documents prohibiting the owners and/or residents at 409 Cumberland Avenue from seeking an on-street residential parking permit from the City of Portland.

4. Other Zoning Requirements on the **SITE**.

- a. Front yard (Cumberland Avenue) setback: None required.
- b. Side yard (Mechanic Street) setback: None required.
- c. Side yard (Forest Avenue) setback: none required.
- d. Rear yard (northerly edge of property) setback: Twenty feet.
- e. The maximum height for the structure shall be 127 feet along Cumberland Avenue and 144 feet (at the rear of the building) along Mechanic Street. The maximum street wall shall be 116 feet to the cornice along Cumberland Ave and 131 feet to the cornice along Mechanic Street.
- f. The maximum density shall be no more than ninety four (94) residential units.
- g. Maximum lot coverage: None required.
- h. The requirements of Article XII, Relocation of Displaced Tenants, shall apply to the entire **SITE** and not only that portion located within the B-3 downtown business zone.

5. Subdivision and Site Plan. The Property will be developed substantially in accordance with the Subdivision and Site Layout Plan (the "Site Plan"), Attachment 1, submitted by Mitchell & Associates, dated July 23, 2004 and revised November 3, 2004, and the elevations (the "Elevations"), Attachment 2, submitted by CWS Architects dated November 22, 2004. The

¹ (The six (6) spaces on the second level surface lot with access from Oak Street are reserved for the office space and mechanical areas located on the structure's second floor.)

Planning Board shall review and approve these Plans according to the site plan and subdivision provisions of the Portland Land Use Code.

6. Replacement Housing: This project, as proposed, is exempt from the Housing Replacement Ordinance as found in 14-483(n).
7. Community Contribution: the community contribution by this project shall be as follows:

DEVELOPER shall donate the residential structure currently located at 10 Mechanic Street to the **CITY**. The cost of moving the structure to a new location, site preparation at the new location, installing a foundation, and placing the structure on the new foundation shall be borne by the **DEVELOPER** up to a maximum of \$100,000.00. This relocation shall be performed on or before 6/1/05 and if not accomplished on or before 6/1/05 then the **DEVELOPER** shall contribute to an escrow account, maintained by the City, the amount of \$100,000.00 to be designated for the following options in Bayside:

- a. the acquisition of land and/or public improvement of public trails/linkage in Bayside
- b. public improvements of/or acquisition of pocket parks in Bayside.
- c. acquisition of public art for pocket parks/spaces in Bayside.

This monetary contribution shall be made at the time of the issuance of a building permit for the **SITE**.

8. This conditional rezoning shall become null and void and the **SITE** shall revert to the existing B-3, B-3c and R-6 zones in the event that **DEVELOPER** fails to commence construction within two years from the date of the Council vote. This two-year period shall be extended up to an additional one year period if:

- a. **DEVELOPER** has applied for all required approvals but has not received all required approvals within the two-year period;
- b. Any other event beyond the control of **DEVELOPER** has occurred which will delay the closing on some or all of the parcels and **DEVELOPER** has notified the **CITY** of such event and the projected time period for resolution of the event which time period shall not exceed two years.

If any required approval, including the approval of the conditional rezoning, has been appealed, then this conditional rezoning shall become null and void and shall revert if **DEVELOPER** fails to commence construction within one (1) year from the final disposition of such appeal.

9. The rezoning, shall run with the Property, shall bind and benefit **DEVELOPER**, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. Within thirty (30) days of the City Council's passing of the Conditional Zone, the **DEVELOPER** shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of

the deeds for the Property. The **DEVELOPER** shall provide to the City the Book and Page number of said recording.

10. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.

11. Except as expressly modified herein, the development, use, and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.

12. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A MRSA 4452) and City Ordinance. No alleged violation of this rezoning Agreement may be prosecuted, however, until the City has delivered written notice of the alleged violation(s) to the owner or operator of the **PROPERTY** and given the owner or operator an opportunity to cure the violation(s) within thirty (30) days of receipt of the notice. Following any determination of a zoning violation by the Court, either the Portland Planning Board on its own initiative, or at the request of the Planning Authority, may make a recommendation to the City Council that the Contract Rezoning be modified or the **PROPERTY** rezoned.

WITNESS:

WATERVIEW DEVELOPMENT LLC

By _____

Its Managing Member

State of Maine

Cumberland, ss.

Date:

Personally appeared the above-named _____, Managing Member of Waterview Development LLC and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Waterview Development LLC.

Notary Public