

Order 55 – 04/05

Given first reading: 9/8/04

Public hearing and passage 7-0 9/20/04 (Cohen abstaining, Geraghty absent)

NATHAN H. SMITH (MAYOR)(3)
WILLIAM R. GORHAM (1)
KAREN A. GERAGHTY (2)
CHERYL A. LEEMAN (4)
JAMES I. COHEN (5)

CITY OF PORTLAND
IN THE CITY COUNCIL

PETER E. O'DONNELL (A/L)
JAMES F. CLOUTIER(A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

**ORDER AUTHORIZING AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING MAP AMENDMENT)
RE: CONDITIONAL REZONING FOR 730 CONGRESS STREET**

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;

BE IT FURTHER ORDERED, that the conditional rezoning amendment authorized herein shall become effective thirty (30) days following this rezoning.

Contract by Maine Workforce Housing LLC
730 Congress Street, Portland, Maine

This contract made this ____ day of _____, 2004 by **MAINE WORKFORCE HOUSING LLC**, a Maine Limited Liability Corporation having a place of business at One Longfellow Square, Portland, Maine (hereinafter "Developer").

WHEREAS, DEVELOPER has entered into a purchase and sale agreement for property at 730 Congress Street, Portland, Maine; and

WHEREAS, the 730 Congress Street property is more specifically described and shown on the Portland Assessors Map, Parcel 55-C-9 (the "Property"); and

WHEREAS, DEVELOPER filed a Zone Change Application with the City of Portland ("City") to modify an existing B2b and R-6 zones to permit the construction of apartments in a denser development pattern than that which would otherwise have been permitted under the R-6 provisions (B2b zone defers to the R-6 standards for multi-family housing); and

WHEREAS, the development patterns of other significant apartment buildings in the vicinity of the Property are at substantially greater density than that permitted by the R-6 zone currently controlling the use of the Property as multi-family housing; and

WHEREAS, the Portland Planning Board determined that the proposed rezoning would provide needed rental housing, both income-restricted and market rate, in the City; and

WHEREAS, the Portland Planning Board determined that the proposed rezoning would effectuate a development which substantially improves the existing site; and

WHEREAS, the Portland Planning Board determined that the proposed rezoning would not produce undue negative impacts on the commercial and residential neighborhood surrounding it; and

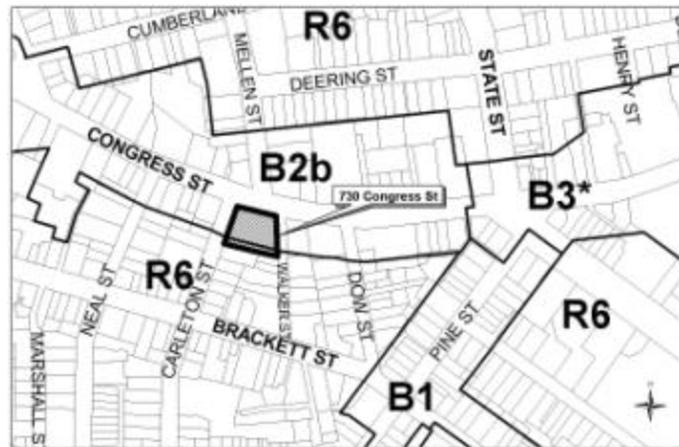
WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. §4352(8), and after all notice and hearing and due deliberations required by law, recommended the rezoning of the Property, subject, however, to certain conditions; and

WHEREAS, the City, by and through its City Council, has determined that because of the unique circumstances of the site, being an infill site on Congress Street, it is necessary and appropriate to have imposed the following conditions and restrictions in order to ensure that the rezoning is consistent with the City's Comprehensive Plan and such rezoning would not unreasonably interfere with the existing and permitted uses within the underlying B2b and R-6 zones; and

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

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

1. 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.



Proposed Rezoning for 730 Congress St. from B2b and R6 to Contract

July 2004

We prepared this for the City of Portland's Department of Planning & Development and the GIS Workgroup.

2. The use of the Property shall consist of a multi-family apartment building with no more than forty (40) units, and no more than six stories, with the sixth story being a mezzanine level, set back from the front edge of the building. An on-premises management office, serving this building only, may be included within the structure.
3. The property (hereinafter the "Development") shall provide a mix of one and two bedroom units, with the smallest unit no less than 550 square feet.
4. The Development shall provide and assign at least one on-site parking space per dwelling unit, the cost of which shall be included in each tenant's rent. One on-site parking space reserved for the exclusive use of building management staff and periodic maintenance service providers shall also be provided.
5. The Property will be developed with at least eighteen (18) of the units being designated for residents whose median income is at or below sixty percent (60%) of the area median income. This restriction shall remain in place for a period of time not to be less than 30 years.
6. The Property will be developed substantially in accordance with the Site Layout Plan (the "Site Plan"), Attachment 1, the elevations (the "Elevations"), Attachment 2, by Archetype, P.A. Architects (dated August 25, 2004 and April 6, 2004, respectively) and the architectural renderings, Attachment 3 (undated). The Planning Board shall review the Development according to the site plan and subdivision provisions of the Portland Land Use Code.
7. The underlying dimensional requirements of a residential structure in the R-6 zone are modified as follows:
 - a. Setbacks:
 - Front Yard (Walker Street): none.
 - Side Yard (Congress): none.
 - Side Yard (southerly lot line parallel to Congress Street): ten (10) feet.
 - Rear Yard (Carlton): none
 - b. Minimum land area per dwelling unit: four hundred and forty (440) square feet.
 - c. Height: Maximum height for the structure shall be fifty-five (55) feet.

- d. Density: Maximum density shall be no more than forty (40) residential units as detailed in paragraph 2. above.
- e. Maximum Lot Coverage: Lot coverage may not exceed sixty-five percent (65%).
- f. Open Space required: none.
- g. Impervious Surface restrictions: none.
- h. Parking: As per section 4. above.

Otherwise, the provisions of §14-139 through 14-140 (the R-6 Zone) of the Portland City Code shall apply to this development.

- 8. The landscaping plan, which includes planters to be installed as shown on Attachment 1, shall be required and shall be required to be maintained with live vegetation during the spring, summer and fall months.
- 9. In addition to installing new brick sidewalks on all the sidewalk space contiguous to the Development, the **DEVELOPER** shall install new brick sidewalk and new granite curbing, to City specifications, on the easterly side of Carleton Street, from Congress Street to Brackett Street. The **DEVELOPER** shall also, as part of the construction of the Development, relocate the fire hydrant now on the easterly side of Carleton St. (near the intersection with Congress Street) to the westerly side of Carlton Street as shown on Attachment 1 to facilitate more on-street parking on Carleton Street.
- 10. Snow removal shall consist of removal from the site any snowfall in excess of three inches and as otherwise needed, so as to maintain a clear sidewalk surrounding the property and the free access to all forty-one (41) parking spaces provided on the site and to avoid snow bank accumulation on site in excess of two feet (measured horizontally or vertically).
- 11. The **DEVELOPER** shall provide a total of twenty (20) street trees, ten (10) of which shall be planted in esplanade surrounding the property and the remaining trees to be planted in locations to be determined by the City arborist in his discretion. In addition, **DEVELOPER** shall install two (2) “Holophane Congress Street Lights” in the esplanade on Congress Street in the vicinity of the site, the location of which will be determined during site plan review.
- 12. In the event the development described herein is not commenced within two (2) years from the date this contract rezoning becomes effective and materially completed within four (4) years from said date, this contract shall

become null and void and the Property shall revert back to the underlying B2b zone.

13. This Agreement shall be irrevocable by the **DEVELOPER** but may be modified upon the **DEVELOPER'S** request to the City Council or pursuant to the terms of paragraph 16.
14. The above stated restrictions, provisions, and conditions are an essential part of 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. **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 no later than thirty (30) days from the date of the City Council action on the rezoning, or from the **DEVELOPER's** purchase of the property, whichever is later, but in no event later than ninety (90) days following City Council adoption of the Conditional Rezoning. The **DEVELOPER** shall provide to the City the Book and Page number of said recording.
15. 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.
16. 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.
17. In the event that **DEVELOPER** or any successor fails to continue to utilize the **PROPERTY** in accordance with this Agreement, or in the event of **DEVELOPER's** breach of any condition(s) set forth in this Agreement which differs from the provisions of Portland's Land Use Code that would otherwise be applicable to property in the R-6 Zone, which use or breach has not been cured after reasonable notice from the **CITY**, the **CITY** may prosecute such violations in accordance with 30-A M.R.S.A. § 4452 or in any other manner available by law. Should **DEVELOPER** be found to have breached this Agreement, the Planning Board, at the request of the Planning Authority, or the City Council, on its own initiative, may propose that the zoning of the **PROPERTY** be modified or that the **PROPERTY** be rezoned.
18. In the case of any issue related to the **PROPERTY** which is specifically addressed by this Agreement, neither **DEVELOPER** nor their successors may seek relief which might otherwise be available to them from Portland's Board

of Appeals by means of a variance, practical difficulty variance, interpretation appeal, miscellaneous appeal or any other relief which the Zoning Board would have jurisdiction to grant, if the effect of such relief would be to alter the terms of this Agreement. In cases that fall outside of the above parameters (i.e., alleged violations of any provisions of Portland's Land Use Code, including, but not limited to, the Site Plan Ordinance, which were neither modified nor superceded by this Agreement), the enforcement provisions of the Land Use Code, including, but not limited to, the right to appeal orders of the Planning Authority, Building Authority and Zoning Administrator shall apply. Nothing herein, however, shall bar the issuance of stop work orders.

WITNESS:

MAINE WORKFORCE HOUSING LLC

Nathan Szanton

By _____

Cumberland, ss.

Personally appeared the above-named Nathan Szanton, Managing Member of Maine Workforce Housing LLC and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Maine Workforce Housing LLC.

Notary Public