

Order 97 – 04/05  
Given first reading: 11/1/04 Postponed on 11/15/04  
Public Hearing & Passage 11/29/04 8-0 (Leeman gone)

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 PROPERTY  
IN THE VICINITY OF  
163 DANFORTH 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.

**AGREEMENT  
BY  
WINTER DANFORTH CORPORATION**

**AGREEMENT** made this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by **WINTER DANFORTH CORPORATION**, a Maine corporation with its principal place of business located at 163 Danforth Street, Portland, Maine 04101 (hereinafter "**WINTER DANFORTH**").

**W I T N E S S E T H:**

**WHEREAS**, since November 1996, 163 Danforth Street has been subject to a contract zone permitting the establishment and operation of a bed and breakfast along with a meeting facility; and

**WHEREAS**, in December 2000, the contract zone was amended to allow for the demolition of a garage and the erection of a "Carriage House" and a limit on the bed and breakfast use to a maximum of nine (9) guest rooms; and

**WHEREAS**, the garage has been demolished but a change in circumstances has caused the Carriage House not to be constructed; and

**WHEREAS**, the Winter Danforth seeks to create a landscaped parking area where the garage existed and also seeks permission to increase the uses at 163 Danforth Street to include a restaurant, limited outside music and an increase in the number, and, on occasion, the number of attendees, at the functions at the bed and breakfast; and

**WHEREAS**, given the previous modifications to the contract zone and in light of the current proposal for uses at 163 Danforth Street, it is appropriate to create a new contract zone which shall supercede the 1996 Contract and the 2000 amendment; and

**WHEREAS**, the **CITY**, by and through its City Council, has determined that said rezoning would be pursuant to and consistent with the **CITY**'s comprehensive land use plan and consistent with the existing and permitted uses within the original zone; and

**WHEREAS**, the **CITY** has determined that because of the unusual nature of the proposed development (namely its unique character as an historic structure and its opportunity to provide limited services to the surrounding community which are compatible with the residential character of the neighborhood) it is necessary or appropriate to impose by agreement the following conditions or restrictions in order to insure that the rezoning is consistent with the **CITY**'s comprehensive land use plan; and

**WHEREAS**, the **CITY** authorized the execution of the rezoning reflected herein on

\_\_\_\_\_;

**NOW, THEREFORE**, in consideration of the zone change made by the **CITY**, **WINTER DANFORTH** agrees as follows:

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 map change amendment shown on Attachment 1 (zoning map).
2. The property shall be developed substantially in accordance with the site plan shown on Attachment 2 (site plan). The property shall be subject to historic preservation review and approval.
3. **WINTER DANFORTH** shall only be authorized to establish and maintain the following uses or any combination of the uses on the Property, provided that such

operations are limited to the areas shown on Attachment 3 (inside room layout) and further provided that such operations meet the standards set forth in this Agreement.

a. WINTER DANFORTH shall be authorized to maintain a bed and breakfast establishment in the building currently existing on the site. For purposes of this Agreement, a bed and breakfast shall be defined as an establishment that provides overnight accommodations to transient guests whose actual occupancy is limited to no more than thirty (30) days out of any sixty (60) day period. No cooking facilities shall be permitted in any of the guestrooms. The bed and breakfast use shall be limited to a maximum of nine (9) guestrooms. Neither the **WINTER DANFORTH**, or any of its owners, operators, directors, employees, shareholders, partners, corporate officers or agents may, for direct or indirect economic remuneration, arrange for or provide any housing accommodation including but not limited to long term, short term or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel or tourist home.

b. WINTER DANFORTH shall be authorized to maintain a meeting facility in the building and on the grounds as shown on Attachment 4 (side yard grounds). The meeting facility shall be limited to the following types of uses:

1. Private parties;
2. Business meetings;
3. Weddings;
4. Receptions;
5. Seminars; and
6. Business and educational conferences.

c. WINTER DANFORTH shall be authorized to maintain a restaurant within the site. The restaurant may offer meals to guests of the bed and breakfast and to the general public as well as food service to functions taking place at the Danforth. Food service shall be limited to on-site activities and any off site catering business is prohibited. Maximum seating for the

restaurant shall be limited to no more than thirty-four (34) people at any one time. Dinner hours shall begin no earlier than 5:30 p.m. with a last seating no later than 9:30 pm daily. Sunday brunch shall run between 10:00 am. and 2:00 pm. Restaurant dining areas and dining for functions shall be limited to the dining room, formal parlor and the peach porch, all as shown on Attachment 3. No private functions shall be held at THE DANFORTH when the restaurant is in operation. No signage for the restaurant shall be permitted.

4. The maximum number of attendees of functions at the meeting facility shall be thirty-four (34), except that the meeting facility may host up to fifty (50) people during no more than thirty (30) function per year. Parking must be provided for the actual number of attendees, as required by paragraph 5 of this Agreement.

No live or recorded music shall be played outside.

Tents may be placed on the site on a temporary basis for individual events, provided that the tents and their installation receive all necessary approvals prior to installation and that they are taken down immediately after the end of the event for which they are erected. Tents shall not be erected for a period of greater than seventy-two (72) hours.

Entertainment associated with functions held in the meeting facility shall end at 11:00 p.m., except on New Year's Eve.

5. Parking for the bed and breakfast, the meeting facility and the restaurant shall be provided as follows: six (6) parking spaces shall be provided for the bed and breakfast use on the site as shown on Attachment 2. One (1) parking space shall be provided for every two (2) people attending permitted functions at the meeting facility. One (1) parking space will be provided for every five (5) restaurant guests. These numbers shall be cumulative. WINTER DANFORTH shall provide documentation for and shall maintain the required parking spaces for the number of persons attending functions and dining at the facility. Such documentation shall specify the number of parking spaces provided, the location of the parking spaces, and the times at which such parking is available by function attendees and restaurant diners.
6. The lot existing at the time of this contract, as shown on Attachment 2, shall not be reduced in size. Any alterations to the site shall comply with the requirements of the R-6 zone, in addition to all other applicable codes and regulations.
7. The WINTER DANFORTH shall maintain a list of:
  - a. The names and addresses of all persons renting sleeping space from THE DANFORTH as required by state law; and
  - b. The organizers of, and the number of attendees at, any function utilizing the services of The Danforth; and

c. The number of diners dining at the restaurant each evening.

Such lists shall be available to, and open to inspection by, the CITY at all reasonable times.

8. This contract rezoning shall be limited to the applicant for the rezoning. The contract rezoning shall only be transferable by sale or by lease if the Planning Authority determines that a subsequent user of the property shall comply with all of the requirements of this contract rezoning.
9. The provisions of this contract apply only to property located at 163 Danforth Street. Any land use violations which may occur with respect to the property, including any claim that the uses to which the property is put are in violation of the terms of this Agreement, may be enforced by the City in the same manner, by the same mechanisms and to the same extent as other land use violations under the City's Code of Ordinances and state law.

The above stated restrictions, provisions and conditions are an essential part of the rezoning shall bind WINTER DANFORTH and any approved successors and assigns, 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, by and through its duly authorized representatives.

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.

Except as expressly modified herein, the 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.

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. In addition, if an enforcement action should result in a finding that the terms of the conditional zone have been violated, then the City may act to modify or rescind the conditional zone and to rezone the property.

WITNESS:

WINTER DANFORTH CORPORATION

\_\_\_\_\_

By: \_\_\_\_\_  
Barbara Hathaway  
Its: President

STATE OF MAINE  
CUMBERLAND, ss.

October\_\_\_\_, 2004

Personally appeared the above-named Barbara Hathaway, in her said capacity, and acknowledged the foregoing instrument to be her free act and deed and the free act and deed of Winter Danforth Corporation.

Before me,

\_\_\_\_\_  
Notary-Public/Attorney-at-Law