

Order 114-05/06
Given first reading on 11/7/05
Passage: 11/21/05 8-0 (O'Donnell gone)

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

**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)

**AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING MAP AMENDMENT)
RE: CONDITIONAL REZONING FOR 250 - 258 BRACKETT STREET AND 63
CARLETON STREET**

ORDERED, that the Zoning Map of the City of Portland adopted January 17, 2001 and made effective February 17, 2001, as amended and on file in the Department of Planning and Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the City of Portland Code of Ordinances, is hereby amended to reflect a conditional zone as detailed below;

BE IT FURTHER ORDERED, that the conditional zone amendment authorized herein shall become effective thirty (30) days following this rezoning or the date upon which the Conditional Rezoning Agreement is executed by the Ronald McDonald House of Portland, Maine, Inc., a Maine non-profit corporation, but in no event later than six (6) months following Council approval.

**CONDITIONAL REZONING AGREEMENT BY RONALD MCDONALD
HOUSE OF PORTLAND, MAINE, INC.
250 - 258 BRACKETT STREET AND 63 CARLETON STREET, PORTLAND,
MAINE 04102**

This Agreement made this ____ day of _____, 2005 by **Ronald McDonald House of Portland, Maine, Inc.**, a Maine non-profit corporation having a place of business at 250 Brackett Street, Portland, Maine 04102 (hereinafter "Ronald McDonald House" or "Developer").

WHEREAS, Ronald McDonald House owns a parcel of land located at the corner of Brackett and Carleton Streets in Portland, Maine containing approximately 12,500 square feet and consisting of lots 7, 8, 9, and 47 on City of Portland Tax Map 55, Block B, and more particularly described in four separate deeds recorded in the

Cumberland County Registry of Deeds at Book 11190, Pages 177-182 (the “Property”); and

WHEREAS, Ronald McDonald House is a Maine non-profit corporation that provides affordable temporary lodging in a homelike environment for families of children with serious medical conditions requiring protracted medical care and treatment at Maine Medical Center, Mercy Hospital, and other local specialized treatment centers; and

WHEREAS, in response to an increased demand for services and in anticipation of the expansion of pediatric care facilities at the major hospitals located within the City of Portland, **Ronald McDonald House** has proposed an expansion, restoration, and renovation of its facilities located at the Property to accommodate additional families; and

WHEREAS, the Property is situated in an R-6 zone and **Ronald McDonald House** has filed a Zone Change Application with the City of Portland to modify certain setback, coverage, and dimensional requirements to accommodate the proposed expansion, restoration, and renovation; and

WHEREAS, the City of Portland Planning Board has, pursuant to 30-A M.R.S.A. § 4352(8) and City of Portland Code of Ordinances §§ 14-61 and 62, after notice, public hearing, and due deliberation, recommended the rezoning of the Property subject to certain restrictions; and

WHEREAS, the City of Portland Historic Preservation Board has reviewed the renovation and restoration project proposed by **Ronald McDonald House** and has determined that the proposed project plan is appropriate under the Historic Preservation standards of the City of Portland Land Use Code; and

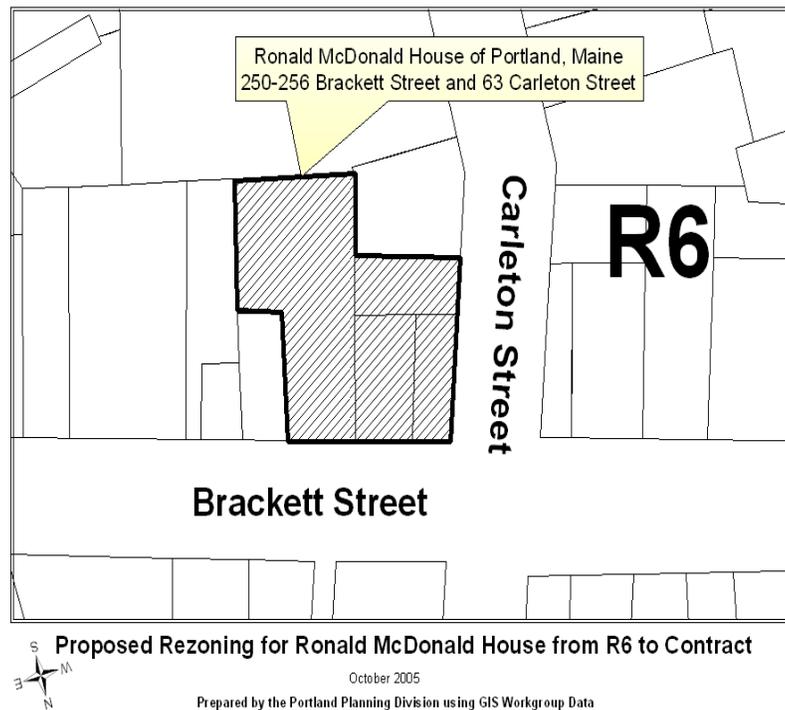
WHEREAS, the **City of Portland** (“City”), by and through its City Council has determined that rezoning of the Property is necessary and proper given the unusual nature and location of the Property and that such rezoning would be consistent with the existing and permitted uses in the R-6 zone and consistent with the City’s comprehensive plan; and

WHEREAS, the City takes note of the valuable services provided by the **Ronald McDonald House** and further takes note of the streetscape improvements and historic restoration that will result from the proposed expansion, restoration, and renovation project; and

WHEREAS, Ronald McDonald House has agreed to enter into this Agreement with its conditions and restrictions understanding that it will be bound thereby.

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 adopted January 17, 2001 and made effective February 17, 2001, 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 City of Portland Code of Ordinances, by adopting the following map change:



2. The Property will be developed substantially in accordance with the Site Layout Plan (the “Site Plan”), prepared by Scott Simons Architects dated September 27, 2005 and attached hereto. The Planning Authority shall review and approve the Site Plan according to the site plan provisions of the City of Portland Land Use Code.
3. Consistent with its current permitted use, the use of the Property by the Developer shall consist of lodging facilities and related amenities, including a house manager’s quarters, administrative offices, kitchen and dining facilities, and common areas, to be used in connection with the Developer’s services to families of seriously ill children receiving extended medical care and treatment at nearby hospitals and

medical facilities. Any future use of the Property by the Developer or its successors or assigns shall be solely for a use as may be allowed in the underlying R-6 zone and in accordance with the City of Portland Land Use Code.

4. The underlying zoning requirements of the R-6 zone are modified as follows:
 - a. As the existing structures on the Property are built to the lot lines, there shall be no setback requirements, provided, however, the sideyard setback from 63 Carlton Street shall be no less than three (3) feet.
 - b. Maximum lot coverage shall be seventy-five percent (75%); and
 - c. The open space ratio shall be fifteen percent (15%).

In all other respects, the development shall comply with the zoning requirements for an R-6 Zone, as set forth sections 14-135 *et seq.* of the City of Portland Land Use Code.

5. In the event the development described herein is not commenced within two (2) years from the date of this conditional rezoning and is not completed within four (4) years from the date of this conditional rezoning, this Agreement shall become null and void and the Property shall revert back to the underlying R-6 zone.
6. 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 10, below.
7. 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 Conditional Rezoning 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.
8. 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.
9. 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.

10. 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 an uncured breach of any condition(s) set forth in this Agreement, the Planning Board shall have the authority, after hearing and notice to the Developer, to resolve the issue resulting in the breach. The resolution may include a recommendation to the City Council that the Agreement be terminated, requiring cessation of the use of the development authorized herein.

WITNESS:

**RONALD MCDONALD HOUSE OF
PORTLAND, MAINE, INC.**

By: _____

Printed Name: _____

Its: _____

STATE OF MAINE
CUMBERLAND, SS.

Date: _____

Personally appeared the above-named _____, _____ of Ronald McDonald House of Portland, Maine, Inc. and acknowledged the foregoing Agreement to be his/her free act and deed in his/her said capacity and the free act and deed of Ronald McDonald House of Portland, Maine, Inc.

Notary Public/Attorney-at-Law