

Order 107-07/08  
Given first reading on 12/3/07  
Passage: 12-17-07 8-0 (Leeman absent)

EDWARD J. SUSLOVIC (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
DANIEL S. SKOLNIK (3)  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

JAMES I. COHEN (5)  
JOHN M. ANTON (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  
DANFORTH AND HIGH 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.

**CONDITIONAL ZONE AGREEMENT  
RANDOM ORBIT, INC.**

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ by **RANDOM ORBIT, INC.** a Maine corporation with an office in Portland, Maine (hereinafter "**RANDOM ORBIT**").

WITNESSETH:

**WHEREAS, RANDOM ORBIT** has entered into a contract to purchase a parcel of land from the City of Portland consisting of approximately 7,655 square feet located at 81-85 Danforth Street in Portland, being a parcel shown on City of Portland Tax Map 40, Block A, Lot 16, and more particularly described in a deed recorded in Cumberland County Registry of Deeds in Book 3304, Page 289 (collectively the "Property"); and

**WHEREAS, RANDOM ORBIT** proposes to construct upon the Property a maximum of 26 condominium units in one building, which are designed to contribute innovative, pedestrian oriented and affordable housing to the peninsula housing stock, to enhance alternative transportation options, and to provide a unique residential living experience compatible with the established urban neighborhood; and

**WHEREAS,** the proposed development is consistent with the purposes of the R-7 Compact Urban Residential Overlay Zone as it is on the peninsula; in a location characterized by moderate to high density multi-family housing; within walking distance of downtown or other work places, shopping and community facilities; will have access to public transit service; and

will provide opportunities for compact in-city living for owners, and possibly renters, representing a variety of income levels in small households;

**WHEREAS, RANDOM ORBIT** has requested the rezoning of the site from R-6 to R-7 Compact Urban Residential Overlay Zone with a conditional zone as further outlined below; and

**WHEREAS,** the Planning Board of the **CITY OF PORTLAND** (hereinafter “**CITY**”), pursuant to 30-A M.R.S.A. § 4352(8) and §§ 14-60 to 14-62 and 14-127 of the Code, after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid, subject, however, to certain conditions; and

**WHEREAS,** the **CITY,** by and through its City Council has determined that because the innovative concept and design of the proposed development:

- Contributes a desirable, unique type of housing to the peninsula stock;
- Provides affordable home ownership opportunities for traditionally underserved groups;
- Promotes reuse of an underutilized lot to provide new housing development consistent with the compact urban residential development pattern typically found on the peninsula; and
- Encourages pedestrian, public transit, bicycle, and alternative private vehicle transportation options;

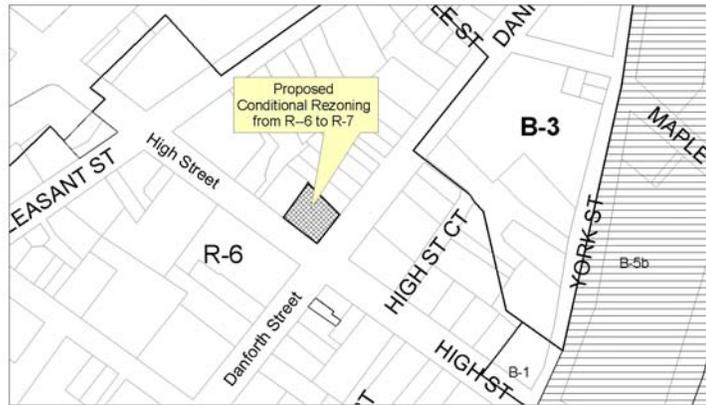
it is necessary and appropriate to impose, by agreement, the conditions and restrictions set forth herein, in order to insure that said rezoning is consistent with the **CITY’S** comprehensive land use plan; and

**WHEREAS,** the City Council of the **CITY** authorized the execution of this Agreement on \_\_\_\_\_ by City Council Order No. \_\_\_\_\_, a true copy of which is attached hereto as Attachment 1; and

**WHEREAS, RANDOM ORBIT** has agreed to enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind **RANDOM ORBIT,** its successors or assigns;

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

1. The **CITY** hereby amends the Zoning Map of the City of Portland dated December 2000, as amended from time to time and on file in the Department of Planning and Development, and incorporated by reference into the Zoning Ordinance by Section 14-49 of the Code, by adopting the map change amendment shown below (rezoning to R-7 Compact Urban Residential Overlay Zone with contract zone). If this Agreement is not recorded within thirty (30) days of the City Counsel’s approval of said rezoning, then the rezoning shall become null and void and the zoning of the Property shall revert to the pre-existing R-6 zone.



**Proposed Conditional Rezoning from R-6 to IR-7**  
**81-85 Danforth and 51 High Street**  
**October, 2007**



Prepared by Department of Planning and Development based on GIS Workgroup Data

2. **RANDOM ORBIT** is authorized to establish and maintain the following uses on the Property:

- a. Residential units: Up to 26 residential units located in one building, which shall be developed and sold and/or rented as condominium units; and
- b. Related amenities: to be located within the building, namely, a shared guestroom with private bath; shared lounge for residents and guests; shared laundry facilities; bicycle storage areas with a minimum capacity for 26 bicycles; shared workshop; and storage areas to be used by individuals or in common
- c. Parking:
  - 1) shall be provided on-site in an amount of not less than a total of 14 spaces,
  - 2) 2 of said 14 parking spaces shall be used and occupied by two shared vehicles owned or controlled by **RANDOM ORBIT** and/or the condominium association.
  - 3) **RANDOM ORBIT** and/or the condominium association shall be obligated at all times to possess and make available to residents of the 26 units two shared vehicles, subject to rules and regulations governing shared use. No certificate of occupancy shall be issued to any unit unless and until the two commonly shared vehicles have been purchased, are present

on the site, and are available for use by the building occupants.

- 4) At the time of site plan/ subdivision application, **RANDOM ORBIT** shall provide, for Planning Board review and/or, modification and approval, a shared vehicle management plan for the two commonly shared vehicles, which plan shall include: a.) specific information on the capitalization and ongoing financial plan for the purchase, maintenance and replacement of said shared vehicles, b.) the initial proposed budget for the shared vehicle program, and c.) drafts of the provisions pertaining to the shared vehicle program which will be contained in the initial condominium documents, including the declaration, bylaws and rules and regulations. To provide the necessary incentive to use these shared vehicles and to forego ownership of private cars, as a zoning requirement, the condominium documents shall include the requirement that: a.) on an annual basis at least 20% of the total projected shared vehicle program expenses (including but not limited to operating expenses and reserves for vehicle replacement but specifically excluding gasoline or other fuel expenses which will be paid exclusively by user fees) shall be divided equally between the 26 unit owners; b.) should revenues from user fees and other sources fail to cover the remaining shared vehicle program expenses, any shortfall between expenses and revenues shall be assessed to all 26 unit owners equally; and c.) the condominium owner's association shall submit a shared vehicle program report to the Planning Authority by January 31 of each year reporting total hours of vehicle usage, program revenues, and program expenses for the most recently completed fiscal year, and the projected program budget for the then-current fiscal year.

This provision, 2(c) Parking., shall not foreclose the Planning Board, during site plan or subdivision review, to require a greater contribution from all 26 unit owners to the total projected shared vehicle program expenses.

- 5) 12 parking spaces may be sold to or otherwise assigned to individual unit owners or occupants; provided, however, that not more than one parking space shall be sold or assigned to any one unit.
- 6) **RANDOM ORBIT** agrees that it, its successors and assigns shall require purchasers and/or renters of the residential units, or any guests thereof, to accept the restriction that they shall

be prohibited from seeking an on-street residential parking permit from the City of Portland and this covenant and restriction shall be contained in the Condominium Declaration as well as in any deed or lease of the residential units.

3. The Property will be developed substantially in accordance with the Site Plan and Subdivision Plan, elevations and floor plans prepared by Archetype, P.A., Architects on October 23 and November 7, 2007 respectively, attached hereto as Exhibits \_\_\_\_\_, subject to such subsequent modifications as may be required by the Planning Board during site plan and subdivision review and such subsequent modifications as may be required by the Portland Historic Preservation Committee during its review and approval.

4. Dimensional Requirements: The following shall be the dimensional requirements which shall be applied in subsequent review and shall be met by the proposed development:

Rear yard minimum setback:	4 feet
Rear yard minimum distance between buildings:	20 feet
Side minimum setback, not abutting street:	4 feet
Side minimum setback, abutting street:	0 feet
Side minimum distance between buildings:	12 feet
Minimum land area per dwelling unit:	Two hundred ninety (290) square feet per dwelling unit
Maximum units allowed:	26
Minimum parking spaces per unit:	.53 spaces/unit (14 for 26 units, 2 of which shall be for common or association use)

To the extent that the dimensional, density and related standards are not otherwise specified herein to the contrary, the dimensional requirements of the R-7 Compact Urban Residential Overlay Zone shall apply.

5. The condominium association documents shall reflect an obligation of the association to maintain the planter along Danforth Street with appropriate seasonal flowers, plants or decoration, which shall not include plastic flowers or plants.

6. The Planning Board shall review and approve this development according to the subdivision and site plan provisions of the Portland Land Use Code.

7. Any change in ownership to an owner other than **RANDOM ORBIT** shall be brought to the Planning Board for its review and approval, but this requirement shall not apply to the granting of mortgages by **RANDOM ORBIT** or any successor in interest, or to the enforcement by the mortgagees of their rights under such mortgages, or to the assignment or conveyance of the ownership to an entity in which **RANDOM ORBIT** and/or Peter Bass holds at least a 30% interest, nor shall this requirement apply to the conveyance of individual condominium units or to the granting of mortgages upon individual condominium units.

8. The above stated restrictions, provisions and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit **RANDOM ORBIT**, its successors and assigns, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit and be enforceable by the **CITY**, by and through its duly authorized representatives.

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 portions shall be deemed as a separate, distinct and independent provision and such determinations shall not affect the validity of the remaining portions thereof.

9. In the event of a breach by **RANDOM ORBIT** or its successors or assigns of the zoning provisions contained herein (whether the Zoning Administrator, the Zoning Board of Appeals or a court determines such breach), the Planning Board, after notice and hearing, may recommend to the City Council that the Conditional Zone and this Agreement be amended, or be rescinded, such rescission to result in the termination of this Agreement and a reversion of the Property to the R-6 zone in place before the execution of this Agreement.

10. In the event that **RANDOM ORBIT** does not close upon the purchase of the Property from the City pursuant to the Purchase and Sale Agreement, as amended, by December 31, 2008, then the zoning for the Property shall automatically revert to the R-6 zone.

11. **RANDOM ORBIT** shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

12. Except as expressly modified herein, the development, use and occupancy of the Property shall be governed by and comply with the applicable provisions of the Portland City Code and any applicable amendments thereto or replacements thereof.

WITNESS:

**RANDOM ORBIT, INC.**

\_\_\_\_\_

By: \_\_\_\_\_  
Peter L. Bass  
Its President

STATE OF MAINE  
CUMBERLAND, SS.

\_\_\_\_\_, 200\_

Then personally appeared the above-named Peter L. Bass, President of RANDOM ORBIT, INC. as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said corporation.

Before me,

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

Printed name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

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