Order 50-07/08
Given first reading: 9/5/07
Public Hearing & Passage 9/17/07 9-0

NICHOLAS M. MAVODONES (MAYOR)(A/L)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
DONNA J. CARR (3)
CHERYL A. LEEMAN (4)

CITY OF PORTLAND

IN THE CITY COUNCIL

JAMES I. COHEN (5)
EDWARD J. SUSLOVIC (A/L)
JAMES F. CLOUTIER (A/L)
JILL C. DUSON (A/L)

ORDER AUTHORIZING AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING MAP AMENDMENT)
RE: CONDITIONAL REZONING FOR PROPERTY
IN THE VICINITY OF
VALLEY AND ST. JOHN 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

AVESTA FLORENCE HOUSE LP, FLORENCE HOUSE HOUSING CORPORATION AND FLORENCE HOUSE CONDOMINIUM ASSOCIATION

AGREEMENT made this ____ day of _____, 2007 by AVESTA FLORENCE HOUSE LP, a Maine limited partnership with a place of business in Portland, Maine ("Florence House"), FLORENCE HOUSE HOUSING CORPORATION, a Maine nonprofit corporation with a place of business in Portland, Maine, and each of their successors and assigns ("FHHC") and FLORENCE HOUSE CONDOMINIUM ASSOCIATION, a Maine nonprofit corporation (the "Association;" the Association, FHHC and Florence House are sometimes collectively called "Owner")

W I T N E S S E T H

WHEREAS, Owner has acquired land and buildings located at 190 Valley Street in Portland, consisting of parcels shown on City of Portland Tax Map 64, Block F, Lot 20 and Tax Map 68, Block A, Lot 11, and more particularly described in a deed from C & D Associates dated _____, 2007 and recorded in the Cumberland County Registry of Deeds in Book _____, Page _____ (collectively the "Property"); and

WHEREAS, Owner intends to create a condominium within the proposed building to be built on the Property, which will consist of two units, as more particularly described in this Agreement, and the Association will be responsible for certain maintenance obligations as set forth in this Agreement; and

WHEREAS, Owner has requested a rezoning of the Property in order to permit the development of the project described in this Agreement within each unit of the condominium to be created by Owner; and

WHEREAS, Owner's funding sources require that each of the two condominium units be held in separate ownership; and

WHEREAS, the Portland City Council has determined the rezoning and proposed development would provide needed housing in the City for low income individuals as is consistent with the housing component of the Comprehensive Plan, and would not negatively impact the surrounding business and residential community; and

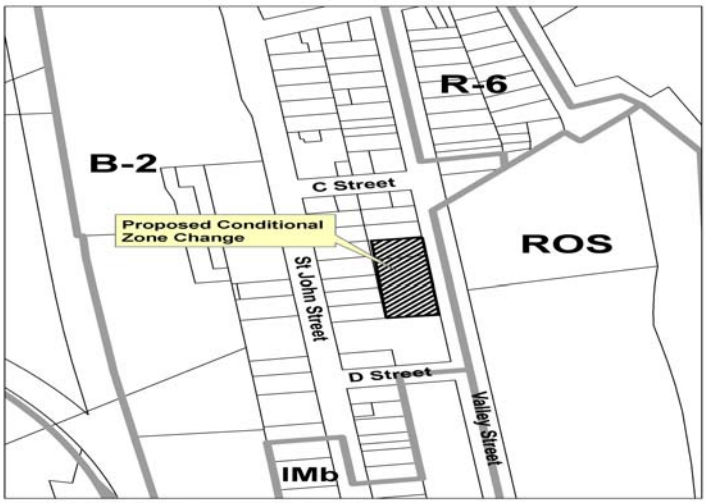
WHEREAS, the Portland City Council, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Land Use Code (the "Code") §§ 14-60 to 14-62, and after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid, subject, however, to the conditions set forth in this Agreement; and

WHEREAS, the City Council (the "City") has determined that because of the unusual nature and unique location of the proposed development it is necessary and appropriate to impose by agreement the following conditions and restrictions in order to ensure that the rezoning is consistent with the City's comprehensive land use plan; and

WHEREAS, the City Council has on _____, 2007 approved this Agreement in its entirety, by City Council Order No. _____, a true copy of which is attached hereto as Attachment 1 (the "Order");

NOW, THEREFORE, in consideration of the rezoning, Owner covenants and agrees as follows:

Pursuant to the Order, the City shall amend the Zoning Map of the City of Portland, dated _____, 200____ (as amended from time to time and on file in the Department of Planning and Urban Development, and incorporated by reference into the Zoning Ordinance by § 14-49 of the Code) by adopting the map change amendment shown below. If this Agreement is not recorded within sixty days after the date of the approval of the Order, then the conditional rezoning shall become null and void and the zoning of the Property shall revert to the pre-existing B-2 zone.



Florence House, 190 Valley Street
Proposed Rezoning: B-2 to Conditional Zone

The building to be built on the Property is being developed as a two-unit condominium, to be called Florence House Condominium (the "Condominium").

a. Unit 1 of the Condominium shall consist of the following uses which are permitted under and subject to this Agreement:

i. On the first floor of the building:

1. maximum capacity of 40 beds (up to 25 emergency shelter beds and 15 safe haven beds) for women only. For purposes of this Agreement, the term "emergency shelter" has the meaning given to it in Section 14-47 of the Code, and the term "safe haven" means a facility or space providing semi-private accommodations with shared washroom facilities, with meals provided, for individuals with special needs (such as but not limited to individuals who are or were formerly homeless and/or are suffering from mental illness, substance abuse or other disability), with appropriate levels of social services provided to the residents of the safe haven.;

2. laundry, kitchen and pantry as labeled; and

3. three offices

all as shown on the floor plans attached hereto as Attachment 3.

ii. On the basement level of the building, two offices, a conference room, an employee lounge, an open office area, three storage and three mechanical/maintenance rooms and a bicycle storage closet, all as shown on the floor plans attached hereto as Attachment 2. The facilities in the basement of the

building shall be used for providing services to the residents of Units 1 and 2 but not to the general public. Any residential use within the basement of the building is strictly prohibited.

b. Unit 2 of the Condominium shall consist of the following uses which are permitted under and subject to this Agreement:

i. Up to twenty-five affordable rental efficiency apartments (twelve on floor 2 and thirteen on floor 3) for women only on the second and third floors of the building ("Unit 2") as shown on the floor plans attached hereto as Attachments 4 and 5.

ii. One office, a community room and a community kitchen on the second floor, all as shown on the floor plans attached hereto as Attachment 4. All uses described in this subsection (ii) shall be for providing services to the residents of Units 1 and 2 but not to the general public.

iii. One office, a laundry and a storage area on the third floor, all as shown on the floor plans attached hereto as Attachment 5. All uses described in this subsection (iii) shall be for providing services to the residents of Units 1 and 2 but not to the general public.

Unit 1 shall be owned by FHHC or an entity wholly owned by or affiliated with Avesta Housing Development Corporation, a Maine nonprofit corporation ("Avesta"), and Unit 2 shall be owned by Avesta Florence House LP. The Association shall have and fulfill the responsibilities set forth in the Maine Condominium Act, 33, M.R.S.A. Section 1601-101 et seq. Each of FHHC and Florence House shall retain sole discretion as to what level of social services to provide to the residents of Units 1 and 2, respectively. At minimum, however, there shall be adequate, on-site, awake staff, consisting of not less than three persons, providing security for and supervision of residents of both Units 1 and 2 twenty four hours a day, seven days a week.

Except as limited in Section 12 of this Agreement, execution of this Agreement binds FHHC, Florence House and the Association and their respective successors and assigns to the terms of this Agreement.

Any change in ownership of either Unit 1 or Unit 2 shall be brought to the Planning Board for its review and approval, but this requirement shall not apply (i) with respect to Unit 1 so long as the transfer is to an entity that is either affiliated with or wholly owned by Avesta, provided notice of any such change is provided to the Planning Department in advance of such change, or (ii) to the granting of mortgages or other security interest by Owner or to the enforcement by the mortgagees of their rights under such mortgages.

5. The Association shall be responsible for ongoing maintenance of the Property, including snowplowing, salting, sanding, sweeping, lighting, trash pickup (at

least weekly) by a private contractor, mowing, etc. If the Association fails to satisfy its obligations under this Section, after written notice and a reasonable opportunity to cure, then FHHC and Florence House and their respective successors and assigns shall be jointly and severally liable for performance of the obligations set forth in this Section.

6. A Management Plan, containing, at minimum the following specific categories of control (Responsibilities, Staffing, Access Restrictions, Surveillance including functional surveillance cameras, Safety measures, Control of behaviors, Control of noise levels, and Monitoring reports) shall be submitted to the City for review and approval prior to site plan approval. Thereafter the Management Plan shall be implemented and enforced by the Association. Compliance review with respect to the Management Plan shall be performed by the City on a quarterly basis during the first year after issuance of a certificate of occupancy and at least annually thereafter, or as otherwise requested by the City, to ensure the effectiveness of such plan to protect the health, safety and welfare of the residents and the City as a whole. This Management Plan is subject to periodic updating, upon demand by the City, should it be determined by the City that the Management Plan in place is ineffective or as otherwise reasonably necessary to achieve its purposes. By virtue of this Agreement, the Association agrees to and shall be bound to amend, fund and implement the Management Plan. Should the Association fail to fulfill this obligation, FHHC and Florence House and their respective successors and assigns shall be responsible for the amendment, funding and implementing of such plan.

7. The Property will be developed substantially in accordance with the Site Plan, including but not limited to elevations, floor plans, roof plans and height depictions, shown on Attachments 2 through 9 submitted by Mitchell and Associates dated _____, 2007.

8. The Planning Board shall review and approve the development of the building according to the site plan and subdivision provisions of the Code.

9. Space and Bulk Requirements. The following space and bulk requirements shall apply to the Property**:**

B-2:

a. Occupancy and Density: Maximum occupancy (not including staff) and density shall be no more than 40 beds for women only on the first floor including up to 25 emergency shelter beds and 15 safe haven beds ; and up to twenty five affordable rental efficiency apartments on the second and third floors, with associated ancillary service space as detailed in paragraph 2. above.

b. Minimum rear yard: 11 feet as follows:

   i. 11 foot setback for basement and first floor for a distance of 50 feet as shown on Attachment 10:

ii. 11 foot setback for second and third floors for a distance of 21 feet as shown on Attachment 10:
iii. 14 foot setback for second and third floors for a distance of 8 feet as shown on Attachment 10:
iv. 47 foot setback for remaining portion of the building as shown on Attachment 10.

c. Minimum side yard on northerly property line: 5 feet
d. Maximum lot coverage: 40%

e. Parking requirements:

Unit 1: 9 parking spaces.
Unit 2: 7 parking spaces.

R-6:

a. Density: Maximum density shall be no more than 40 beds for women only on the first floor including up to 25 emergency shelter beds and 15 safe haven beds; and up to twenty five affordable rental efficiency apartments for women only on the second and third floors, with associated ancillary service space as detailed in paragraph 2. above.

b. Minimum rear yard:

i. 11 foot setback for basement and first floor for a distance of 50 feet as shown on Attachment 10:
ii. 11 foot setback for second and third floors for a distance of 21 feet as shown on Attachment 10:
iii. 14 foot setback for second and third floors for a distance of 8 feet as shown on Attachment 10:
iv. 47 foot setback for remaining portion of the building as shown on Attachment 10.

c. Minimum side yard on northerly property line: 5 feet
d. Maximum lot coverage: 40%
e. Minimum front yard: none required
f. Open space ratio: 26 %.
g. Parking requirements:

Unit 1: 9 parking spaces.
Unit 2: 7 parking spaces.

The measurement of building height per code is the vertical measurement from grade to the highest point on the roof beams in a flat roof. The average grade of the site, post construction, is 46.81 feet, The building height proposed here, taking into account the average grade, complies in all respects with the building height permitted in the B-2 (45 feet) and R-6 (45 feet) zones and need not be altered herein.

To the extent not otherwise altered herein, the zoning requirements for the underlying B-2 zone (and the R-6 by reference therein) shall apply to this site.

10. Florence House agrees to maintain, for a term of 90 years, the rent levels and income requirements for the efficiency affordable rental apartments in Unit 2 as follows:

60% of units at 50% of Area Median Income

40% of units at 60% of Area Median Income

11. The provisions of this Agreement, including the permitted uses listed in paragraph 2, are intended to supersede the uses and requirements of the underlying B-2 zone. To the extent not otherwise altered herein, the limitations and requirements for the underlying B-2(and the R-6 by reference therein) zone shall apply to this site.

12. In the event of a breach by Owner 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 B-2 zone in place before the execution of this Agreement.

In the event that either Florence House or FHHC, or their approved successors and assigns, defaults in its respective obligations hereunder and fails to remedy said default within a reasonable period of time after written notice from the City, this Amended and Restated Conditional Zone Agreement shall remain in full force and effect with respect to the portion of the Property occupied by the non-defaulting party. Neither Florence House nor FHHC shall have any obligation to operate an emergency shelter or a safe haven or associated social services otherwise permitted in this Agreement, but FHHC and Florence House shall have the obligation to fulfill the requirements of Section 5 and 6 above as detailed therein Each party shall have the right (but not the obligation) to cure any default or violation of the defaulting party under this Agreement.

13. The above stated restrictions, provisions, and conditions are an essential part of this Conditional Rezoning Agreement, shall run with the Property, shall bind and benefit Owner, any entity affiliated with Owner that takes title to the Property, their 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. Owner shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

14. 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.

15. 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 Portland City Code and any applicable amendments thereto or replacement thereof.

WITNESS:	AVESTA FLORENCE HOUSE LP
_____	_____ BY: Pinetree Housing Development LLC, its General Partner
_____	_____ By: Avesta Housing Development Corporation, its Sole Member
_____	_____ By: Dana Totman, its President
	FLORENCE HOUSE HOUSING CORPORATION
_____	_____ By: Dana Totman, its President
	FLORENCE HOUSE CONDOMINIUM ASSOCIATION
_____	_____ By: Dana Totman, its President

STATE OF MAINE
CUMBERLAND, ss.
_____, 2007

Personally appeared before me the above-named Dana Totman, in his capacity as President of Avesta Housing Development Corporation, Sole Member of Pinetree Housing Development LLC, General Partner of Avesta Florence House LP, as President of Florence House Housing Corporation, and as President of Florence House Condominium Association, 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 corporations, limited liability company and limited partnership.

Before me,

_____
Notary Public/Attorney at Law

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LIST OF ATTACHMENTS

Attachment no:	Description:
1.	City Council Order
2.	A100 Basement Plan
3.	A101 First Floor Plan
4.	A102 Second Floor Plan
5.	A103 Third Floor Plan
6.	A106 Roof Plans
7.	A401 Elevations
8.	A402 Elevations
9.	Site Plan
10.	Building setback plan