

Order 99-09/10

Given first reading on 11/2/09; Postponed on 11/16/09

Amended and Passed 12/7/09 9-0

NICHOLAS M. MAVODONES (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
DANIEL S. SKOLNIK (3)  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**  
IN THE CITY COUNCIL

JOHN R. COYNE (5)  
JOHN M. ANTON (A/L)  
DORY RICHARDS WAXMAN (A/L)  
JILL C. DUSON (A/L)

**AMENDMENT TO CITY CODE  
SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)  
RE: CONDITIONAL REZONING FOR PROPERTY  
IN THE VICINITY OF KENSINGTON STREET**

**ORDERED**, that the zoning map and text 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**

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2009 by **MAINE YACHT CENTER, LLC**, a Maine limited liability company formerly known as Yacht Haven LLC, with a principal place of business in Portland, Maine (hereinafter "Maine Yacht Center").

**WITNESSETH:**

WHEREAS, Maine Yacht Center owns real property located at 45-81 Kensington Street fronting on Casco Bay in the City of Portland, consisting of parcels shown on the City's Tax Map 429, Block G, Lots 1 to 7 and on Tax Map 430, Block E, Lots 1, 2, 3 and 4, Block B Lots 13, 15 and X-1, being more particularly described in a deed recorded in Cumberland County Registry of Deeds in Book 15720, Page 73 (collectively the "Property"); and

WHEREAS, Maine Yacht Center proposes to improve its existing commercial marine facility in order to allow for the outdoor storage of boats, masts and stands, seasonal minor repair and maintenance of boats, masts, stands and accessory marine equipment, and to construct stormwater control facilities in accordance with Chapter 32 of the City's Code of Ordinances on a portion of the Property designated as Tax Map 429, Block G, Lots 1-7 and also on Tax Map 430, Block E, Lots 1 to 4 (the "Affected Property");

WHEREAS, on other portions of its Property presently zoned I-L Industrial, Maine Yacht Center made a substantial investment in its 400 feet of water front property to create an attractive full service marina and boatyard including a 990 foot long, 650 ton floating concrete breakwater, a marina basin with 80 boat slips, a newly dredged 8 foot deep fairway channel, and a new 300' x 140' building which incorporates 35,000 sq ft of boat storage and workshop space, offices, bathrooms, shower, laundry, customer lounge and store, with modern stormwater and utility services complying with the environmental standards and with the Maine Department of Environmental Protection's Clean Marinas & Boatyards Program and most

recently is constructing a 80 ton travel lift and bottom washing containment area facility, and desires to use the Affected Property in order to support its existing facilities;

WHEREAS, the Affected Property is surrounded by Kensington Street, Interstate 295 and the former Canadian National railroad corridor now owned by the State of Maine Department of Transportation (See Cumberland County Registry of Deeds Book 10924, Page 91);

WHEREAS, the Affected Property is currently zoned “R-3” Residential;

WHEREAS, the Property has been previously used as a petroleum storage and heating oil distribution facility (now removed, remediated and discontinued);

WHEREAS, the other portions of the Maine Yacht Center’s Property is presently zoned “I-L” Industrial;

WHEREAS, the State of Maine has a 400 year tradition of boat building and repair;

WHEREAS, the City’s Comprehensive Plan, indicates that the I-L zone is intended to provide areas in which low impact industrial uses will be compatible with adjacent residential units and provide a buffer between residential neighborhoods and the I-M industrial zone; and

WHEREAS the City’s Comprehensive Plan finds that the City is a “waterfront city” with one of the finest harbors on the east coast, and calls for the City to encourage private and public sector waterfront investments and to create waterfront centered economic development; and

WHEREAS, the Comprehensive Plan indicates that it is a goal of the City to facilitate public access along shore areas; and

WHEREAS, due to the Affected Property’s location on the shore and between an established residential neighborhood and moderate industrial use, this rezoning will provide a buffer between the residential neighborhood and the I-M zone and facilitate public access along the shore; and

WHEREAS, the Planning Board, after notice and hearing and due deliberation thereon, recommended the rezoning of the Affected Property as aforesaid, subject, however, to certain conditions contained in this Agreement; and

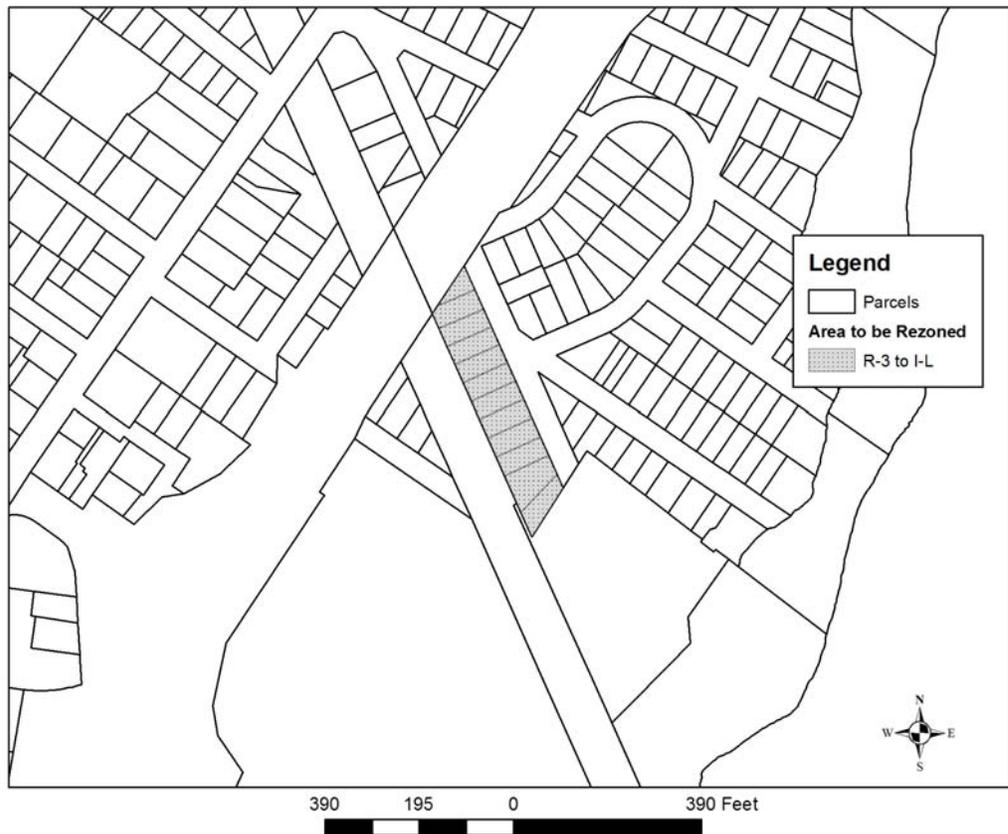
WHEREAS, the Portland City Council, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Land Use Code (the “Code”) §§ 14-60 to 14-62, after notice, hearing and due deliberation thereon, has determined that because of the unusual nature and unique location of the proposed development, and its minimal impact on and compatibility with the surrounding community, it is necessary and appropriate to recommend the rezoning of the Affected Property as aforesaid, with the following conditions and restrictions set forth in this Agreement; and

WHEREAS, the Portland City Council has on December 7, 2009 approved this Agreement in its entirety, by City Council Order No. 99-09/10, a true copy of which is attached hereto as Exhibit A (the “Order”);

NOW, THEREFORE, in consideration of the rezoning, Maine Yacht Center covenants and agrees as follows:

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, namely a rezoning to conditional I-L Industrial of the Affected Property subject to the terms and conditions of this Agreement. If this Agreement is not recorded within sixty (60) days of the effective date of the City Council’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-3 zone.

**Figure 1: Maine Yacht Center Rezone R-3 to I-L**



2. Maine Yacht Center is authorized to establish and maintain only the following uses on the Affected Property in accordance with the Preliminary Site Plan attached hereto as Exhibit B:

- a. a commercial marine facility for the open air/outdoor storage of boats (less than 90 ft. in height from the top of the mast to the waterline and/or less than 30 ft. in height from the keel to the top of a boat without a mast) on trailers or stands (vertical stacking of boats is prohibited), and seasonal maintenance and minor repair of boats, trailers, masts and stands, which shall be limited to buffing and waxing, sanding, varnishing and painting, installing and removing winter covers and frames, fitting of new zincs and the removal and installation of propellers and other minor repairs all of which shall be in connection with the routine seasonal winterizing and commissioning of boats, but with no major or structural repairs, major engine repairs, sandblasting, bottom high pressure washing or overnight lodging permitted;
- b. Eighteen (18) motor vehicle parking spaces for use by customers, employees and visitors to the Property as designated on the attached Plan; and
- c. stormwater and erosion control facilities and landscape buffer areas as designated on the attached Plan;
- d. the trail easement granted to the City of Portland and recorded in the Cumberland County Registry of Deeds in Book 20400, Page 277 as accepted by City Council Order #55-03/04 the terms of which are incorporated by reference (the "Trail Easement").

(collectively the "Permitted Uses").

All work done on the Affected Property shall be performed in accordance with the requirements and standards of the Maine Department of Environmental Protection's Best Management Practices for Maine's Boatyards and Marinas as well as the State of Maine Clean Boatyards and Marinas program, or any similar standards subsequently adopted by the Maine Department of Environmental Protection.

Boat owners working on their own boats must follow the policies outlined in the MYC Best Management Practices for outside storage customers, a copy of which is attached as Exhibit C.

3. The use of the Affected Property, by virtue of this contract rezoning, shall be limited to the aforementioned Permitted Uses, and such uses shall be the only uses allowed on the Affected Property and shall supersede any other permitted uses contained within the I-L industrial zone as specified in the Portland Land Use Ordinance.

4. No temporary or permanent structures (including, but not limited to, buildings, tents, enclosures and sheds) other than covers directly attached to boats shall be used, constructed, erected or placed upon the Affected Property.

5. The Affected Property will be developed substantially in accordance with the Preliminary Site Plans submitted by Blais Civil Engineers attached hereto as Exhibit B (the "Improvements"), with the details of landscape buffering, fence and gate design being subject to Planning Board approval as set forth below.

6. After receiving site plan approval from the Planning Board and obtaining all applicable city permits (including, but not limited to a demolition permit), and before constructing any additional improvements on the Affected Property, Maine Yacht Center shall demolish the existing 3,150 square foot office building located on the Affected Property.

In addition, as part of the site plan review process, Maine Yacht Center shall submit a landscape plan that provides adequate buffering along Kensington Street, which may include shrubs, trees, fence and gate in locations approved by the Planning Board with input from the City Arborist. The planted landscape buffering along Kensington Street shall be installed and permanently maintained by Maine Yacht Center. Such planted landscape buffering, fence and gate shall also remain in perpetuity and shall not be eliminated by Maine Yacht Center or its successors, provided that, to the extent applicable, the planted landscape buffering may be maintained according to standards contained within the *National Arborist Association, Inc. Standards for Tree Care Operations*.

7. The proposed improvements of the Affected Property as depicted on Exhibit B shall be subject to site plan review under the provisions of the Portland Land Use Code and this Agreement.

8. For the Affected Property, the underlying dimensional requirements of the I-L zone shall apply and are modified as follows:

(a) Maximum impervious surface ratio of sixty-five percent is hereby amended to permit a 85% ratio in accordance with the "Proposed Gravel Area" and the storm water system and "Crushed Stone Channel" surfaces as shown on the Preliminary Site Plan;

(b) Minimum side yard setback of twenty-five feet generally and forty feet if the side property line abuts a residential zone are hereby amended as follows:

i. a zero (0) foot setback from the Property boundary for the "Proposed Gravel Area" and for any and all boats, masts, stands and ancillary equipment as shown on Exhibit B; but

ii. a five (5) foot setback from a portion of the Trail Easement located along the northerly property line as shown on Exhibit B for any and all boats, masts, stands and trailers placed on the "Proposed Gravel Area." Boats, masts, stands and trailers shall not be allowed to intrude or overhang into said five (5) foot setback area or the Trail Easement.

(c) Minimum rear yard setback of twenty-five feet generally and forty feet if the rear property line abuts a residential zone are hereby amended as follows:

i. a zero (0) foot setback from the Property Line and from the Trail Easement, as long as it remains in effect, for the “Proposed Gravel Area” as shown on Exhibit B. Boats, masts, stands and trailers shall not be allowed to intrude or overhang into the Trail Easement.

(d) Minimum front yard setback of twenty-five feet generally is hereby amended as follows:

i. a zero (0) foot setback from the Property Line for the landscape buffer, fence, gate and stormwater improvements as generally shown on Exhibit B and as more particularly modified by the Site Plan approval process; and

ii. a fifteen (15) foot setback from Kensington Street for the “Proposed Gravel Area” and for any and all boats, masts, stands and trailers on the “Proposed Gravel Area.” Boats, masts, stands and trailers shall not be allowed to intrude or overhang into the landscape buffer or stormwater improvements as generally shown on Exhibit B and as the particulars may be modified by the Site Plan approval process.

(e) Pavement setback from lot boundary of Fifteen (15) feet for driveways, parking lots and other paved circulation areas is hereby amended as follows:

i. a zero (0) foot setback for the “Proposed Gravel Area” and pavement to be used for boat storage and maneuvering as shown on Exhibit B.

9. Maine Yacht Center shall install a sidewalk(s) and resurface the existing sidewalk on the east side of Kensington Street running from the Interstate highway overpass to Winsor Terrace. Maine Yacht Center shall also contribute \$2,500.00 to the City for trail improvements in the vicinity of the Affected Property with preference given to the Trail Easement area, to be utilized within five (5) years of the date of the Planning Board’s approval of the site plan for the Affected Property or returned to Maine Yacht Center.

10. No lighting has been proposed on the Affected Property. If any such lighting shall be requested in the future, Maine Yacht Center shall seek and receive approval from the Planning Authority for said lighting.

11. Maine Yacht Center and its customers (i.e. persons using its facilities to store and maintain their boats, masts, stands or related marine equipment) shall not engage in maintenance activities on their boats, masts, stands or related marine equipment between the hours of 6:00 pm and 8:00 am except during a hurricane or tropical storm warning or watch as declared by a governmental authority.

12. Maine Yacht Center shall require that its customers (i.e. persons using its facilities to store and maintain their boats, masts, stands or trailers) comply with the rules and regulations of the Maine Yacht Center, attached hereto as Exhibit C.

13. Maine Yacht Center shall be responsible for ongoing maintenance of the Affected Property, including snowplowing, sanding, sweeping, lighting, trash pickup (at least weekly), etc. and shall operate the facility in accordance with the requirements of the Maine Department of Environmental Protection's Best Management Practices Manual for Maine's Boatyards and Marinas.

14. Maine Yacht Center shall annually submit to the Planning Authority evidence of certification under the State of Maine Clean Boatyards and Marinas program, and comply with all standards of said program.

15. The provisions of this Agreement are intended to replace and/or supersede the requirements of the underlying I-L zone. As stated above, to the extent not otherwise altered herein, the zoning requirements for the I-L zone (including, but not limited to, sections 14-235 and 14-236) shall apply to the Affected Property.

16. As a condition of this rezoning, the Planning Board shall be substituted for the Planning Authority for purposes of evaluating and approving Maine Yacht Center's initial site plan for the Affected Property.

17. In the event of a breach by Maine Yacht Center 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, reasonable opportunity to cure 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 Affected Property to the R-3 zone requirements in place before the execution of this Agreement.

18. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit Maine Yacht Center, any entity affiliated with Maine Yacht Center that takes title to the Affected Property, its successors and assigns, and any party in possession or occupancy of said Affected Property or any part thereof, and shall inure to the benefit of and be enforceable by the City of Portland, by and through its duly authorized representatives. Maine Yacht Center shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

19. This Agreement shall be enforced pursuant to the land use enforcement provisions of state law including, but not limited to, 30-A MRSA § 4452 and the Portland City Code.

20. 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.

21. Except as expressly modified herein, the development shall be governed by and comply with the provisions of the Portland City Code and any applicable amendments thereto or replacement thereof.

Witness its hand and seal on the date set forth above.

**MAINE YACHT CENTER, LLC**

\_\_\_\_\_  
Witness

by: \_\_\_\_\_  
\_\_\_\_\_, its Manager

State of Maine  
County of \_\_\_\_\_, ss \_\_\_\_\_, 2009

Then personally appeared before me the above named \_\_\_\_\_ in his said capacity and acknowledged the foregoing to be his free act and deed and the free act and deed of said limited liability company.

Before Me,

\_\_\_\_\_  
Notary public  
Name: \_\_\_\_\_

EXHIBIT A  
City Council Order

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# EXHIBIT B

Note: configuration of final landscape buffer, fence and gate is subject to Planning Board approval

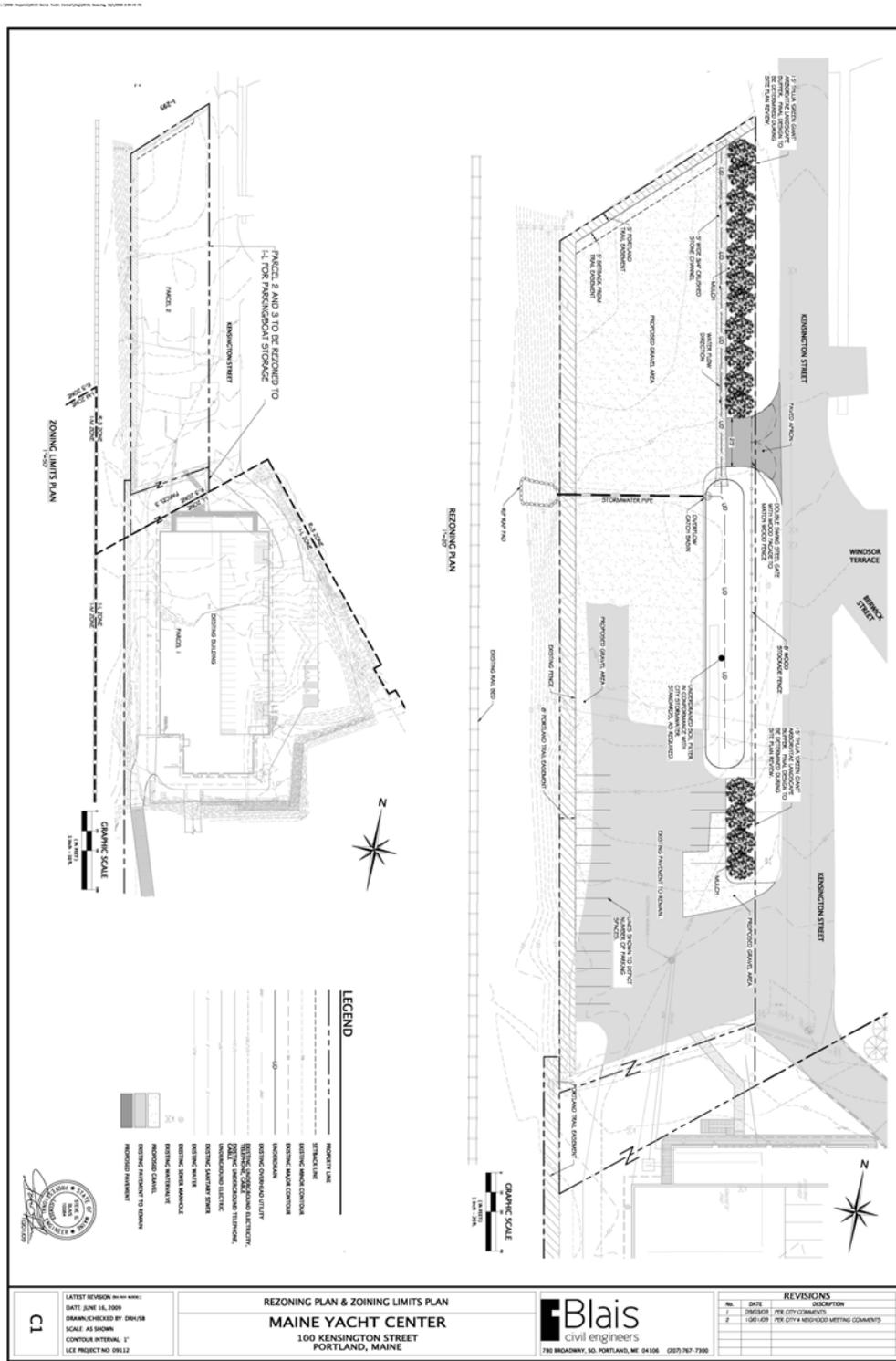


Exhibit C  
Rules and regulations of the Maine Yacht Center