

Order 118-10/11

Given first reading on 12/20/10

Passage: 1-3-11 (Anton, Suslovic out)

NICHOLAS M. MAVODONES (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (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)

**ORDER APPROVING AMENDMENTS TO CONDITIONAL ZONING  
AGREEMENT WITH HOME START FOR PROPERTY LOCATED ON  
LUTHER STREET ON PEAKS ISLAND**

**ORDERED,** that the Conditional Zoning Agreement with Home Start approved on July 19, 2010, is hereby amended in substantially the same form as shown on Attachment 1 hereto.

**CONDITIONAL ZONE AGREEMENT**

**RE:  
Home Start**

AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 2010 by Home Start , a 501 c 3 Non-profit corporation with a place of business in Portland, Maine (“Developer”), and its successors and assigns.

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

WHEREAS, the Developer has acquired land and buildings located at 18 Luther Street, consisting of parcels shown on City of Portland Tax Map 87 Block Z, Lots 15, 16, and 17, and more particularly described in a deed from dated and recorded in the Cumberland County Registry of Deeds in Book 14020, Page 231 (the “Property”); and

WHEREAS, the existing building located on the Property is currently used to house a single family affordable residence; and

WHEREAS, the remaining portion of the Property remains undeveloped; and

WHEREAS, the homes on the Property will be constructed to be energy efficient;

WHEREAS, there is available public water and sewer to service the Property;

WHEREAS, the Developer intends to develop two (2) affordable single family homes on the remaining undeveloped land, which shall be sold or leased as affordable to buyers with household incomes one hundred and twenty (120%) percent or less of the U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland County Maine; and

WHEREAS, if Maine State Housing funds are available for such purposes, the Developer intends to rehabilitate or replace the existing house located on Property, which shall be owned by the Developer or an appropriate designee and leased as affordable to tenants with household incomes less than one hundred and twenty percent (120%) of the U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland County Maine; and

WHEREAS, if the Maine State Housing funds are unavailable, the Developer intends to sell the existing house located on the Property as affordable to buyers with household incomes less than one hundred and twenty percent (120%) of the U.S. Department of Housing and Urban Development moderate-income figure for metropolitan Cumberland County Maine; and

WHEREAS, the Developer intends to maintain the character of the Property and complement the adjacent residential neighborhood; and

WHEREAS, the existing zoning is IR-2 which requires 20,000 square feet of land area per unit, and which results in a limitation of one (1) unit upon the Property; and

WHEREAS, the Developer has requested a rezoning of the Property in order to permit the proposed redevelopment and reuse of the property from a single family residence to three (3) single family residential units; and

WHEREAS, the Portland Planning Board has determined the rezoning and proposed development would provide needed affordable housing on Peaks Island as is consistent with the housing component of the Comprehensive Plan; and

WHEREAS, the Planning Board, after notice and hearing and due deliberation thereon, recommended the rezoning of the 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 Property as aforesaid, with the following conditions and restrictions set forth in this Agreement; and

WHEREAS, the Portland City Council has on \_\_\_\_\_, 2010 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, the Developer covenants and agrees as follows:

1. Pursuant to the Order, the City shall amend the Zoning Map of the City of Portland, dated September, 2000 (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 to zone the property IR-2, subject to the conditions contained below.



16-18 Luther Street  
Proposed Conditional Rezoning

If this Agreement is not recorded within sixty (60) days after the effective date of the City Council’s 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 IR – 2 zone.

2. The use of the Property shall be for a maximum of three (3) affordable single-family residential homes (1 existing unit and 2 new units). No additional units shall be developed, and the two (2) new units shall be developed substantially as delineated and depicted on the Site Plan, attached hereto as Attachment 2, entitled “Site Plan – conditional zone 18 Luther Street, Peaks Island, Portland Maine” for Home Start Prepared by Walsh Engineering Associates, Inc. dated \_\_\_\_\_, 2010.

3. The underlying dimensional requirements of the IR-2 zone shall apply and are modified as follows:

a.	Minimum Lot Area	5,300 Sq. ft.
b.	Min Street Frontage	49 ft
c.	Min. Front Yard Setback (Lots 15&16)	10 ft
d.	Min. Front Yard Setback (Lot 17)	1 ft*
e.	Min. Rear Yard Setback	25 ft
f.	Min. Side Yard Setback (Lots 15&16)	8 ft
g.	Min. Side Yard Setback (Lot 17)	6.5 ft.**
h.	Max. Building Height	35 ft
i.	Min. Lot Width	49 ft
j.	Max. Lot Coverage	28% of Lot

\* Existing house on Lot 17 currently has a 1-foot front yard setback. If the house is reconstructed, it will be required to meet the 10-foot front yard setback requirement.

\*\* Existing house on Lot 17 currently has a 6.5-foot side yard setback. If the house is reconstructed, it will be required to meet the 8-foot side yard setback requirement.

4. The Developer or its designee agrees to maintain the following affordability controls on the proposed development on the Property:

- a. The two (2) new single family units shall be initially developed, marketed and sold and or leased to individuals with household incomes at 120% or less of the U.S. Department of Housing and Urban Development moderate-income income figure for metropolitan Cumberland County Maine, as calculated for the year in which the sale takes place (a “Qualified Purchaser”), and shall be priced to be affordable to a Qualified Purchaser. Each of the Qualified Purchasers of these two (2) single family units shall occupy the units as their principal residences, except that a Qualified Purchaser may rent a unit for a period not to exceed twelve (12) months in any thirty-six (36) month period, to enable the Qualified Purchaser to address matters such as divorce, transfer of employment, economic hardship and the like. Transient rentals shall not be permitted. Affordability shall be preserved in perpetuity through a deed restriction and legal documentation. Any such additional affordability restrictions or controls shall be reviewed and approved by the City of Portland corporation counsel’s office. In the event that the purchase price for either of these two (2) single family units is subsidized as a result of public or private funds made available to make the purchase of such unit more affordable, a junior mortgage shall be placed upon such unit, representing the amount of the subsidy received. In the event that an initial Qualified Purchaser sells one of these two (2) units to another Qualified Purchaser, the junior mortgage shall not be repaid, but shall be assumed by the subsequent Qualified Purchaser, who shall own and hold these housing units subject to a junior mortgage in the same manner as an initial Qualified Purchaser.
- b. The existing unit shall be developed, marketed, sold and resold and/or leased as long as the Property remains a residential unit, to Qualified Purchasers or Tenants with household incomes at one hundred and twenty percent (120%) of the U.S. Department of Housing and Urban Development moderate-income income figure for metropolitan Cumberland County Maine, as calculated for the year in which the sale takes place. The Qualified Purchasers/Tenants of this single family unit shall occupy the unit as their principal residence, except that a Qualified Purchaser may rent a unit for a period not to exceed twelve

(12) months in any thirty-six (36) month period, to enable the Qualified Purchaser to address matters such as divorce, transfer of employment, economic hardship and the like. Transient rentals shall not be permitted. A junior mortgage may be placed upon such housing unit, to further secure the continued affordability covenants contained in the Declaration of Affordability Covenants for Rental Property Owned by Home Start.

- c. All of these affordability restrictions shall be stated in and secured by a Declaration of Affordable Housing Covenants and Restrictions for the purchased and leased property, other deed restriction(s) and/or condition(s) in any deed(s) conveyed out by the Developer, shall be stated in the housing documents, shall be identified on the approved Site Plan for the Property, and shall be reviewed and approved by the City of Portland corporation counsel's office. The affordability covenants contained in the Declaration of Affordable Housing Covenants for the purchased and leased property shall be enforceable by Home Start and the City of Portland, or their designees.

5. The Qualified Purchasers/Tenants shall be responsible for ongoing maintenance of the Property, including snowplowing, salting, sanding, sweeping, lighting, trash pickup (at least weekly), mowing, etc. Qualified Purchasers will be required to take a home education course offered through MaineHousing to ensure that these responsibilities are fully outlined.

6. The provisions of this Agreement are intended to replace and/or supersede the requirements of the underlying IR-2 zone. As stated above, to the extent not otherwise altered herein, the zoning requirements for the IR-2 zone shall otherwise apply to the Property.

7. In the event of a breach by the Developer or its successors or assigns (including, but not limited to, any homeowners association) 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 IR-2 zone requirements in place before the execution of this Agreement.

8. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit the Developer, any entity affiliated with the Developer that takes title to the Property, its successors and assigns (including, but not limited to, any homeowners association), 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 of Portland, by and through its duly authorized representatives. The Developer shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

Without limiting the generality of the forgoing, and notwithstanding any other provision of this Agreement, the rights and obligations hereunder of Home Start, with respect to one, two or all of the three lots described herein, may be assigned to Community Housing of Maine (or a like organization) provided that such lots are in fact conveyed to said entity.

9. This conditional rezoning shall become null and void and the Property shall revert to the existing I-R2 zone in the event that the Developer fails to commence construction within three (3) years from the date of the Council approval of this rezoning. This three (3) year period shall be extended up to an additional one (1) year period if:

a. The Developer has applied for all required approvals but has not received all required approvals within the aforementioned three (3) year period; or

b. Any other event beyond the control of the Developer has occurred which will delay the closing on some or all of the parcels and Developer has notified the City of such event.

If any required approval, including the Council's approval of this conditional rezoning, has been appealed, then this rezoning shall become null and void and shall revert if the Developer fails to commence construction within one (1) year from the final disposition of such appeal.

10. This conditional rezoning 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.

11. 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.

12. 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: \_\_\_\_\_

| Home Start

Deleted: HOMESTART

\_\_\_\_\_  
BY:

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 2010

Personally appeared before me the above-named \_\_\_\_\_, in his/her capacity as \_\_\_\_\_ of Home Start, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said corporation.

Before me,

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