

Order 30-10/111

Given first reading on 8/16/10

Public Hearing and Passage: 9/13/10 8-0 (Donoghue absent)

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 901 WASHINGTON AVENUE**

**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**

**J.B. BROWN & SONS**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2010 by **J. B. BROWN & SONS**, a Maine corporation with a principal place of business located at 36 Danforth Street, in Portland, Maine and having a mailing address of P.O. Box 207, Portland, Maine 04112-0207 (hereinafter sometimes referred to as “**DEVELOPER**”).

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

**WHEREAS, DEVELOPER** is the owner of certain land together with the improvements thereon situated at 871-931 Washington Avenue, in the City of Portland, County of Cumberland and State of Maine, and being more particularly described in a certain deed from Prudential Insurance Company of America to Old Port Realty Corp. dated May 9, 1977 and recorded in the Cumberland County Registry of Deeds in **Book 4013, Page 113**, with the **DEVELOPER** being the successor by merger to Old Port Realty Corp. (hereinafter referred to as the “**DEVELOPER’S DEED**”); and

**WHEREAS**, the property described in the **DEVELOPER’S DEED** consists of approximately 14.5 acres of developed real property and identified in the City of Portland on the Assessor’s maps at the following Map, Block and Lot numbers: 170-F-001 and 170-F-002 (hereafter, the foregoing development shall be referred to as “**WASHINGTON PARK**”); and

**WHEREAS**, the improvements at **WASHINGTON PARK** include two (2) existing buildings, with the first building containing approximately 103,000 square feet and the second building containing approximately 27,600 square feet; together with parking areas and driveways; and

**WHEREAS**, the currently developed area of **WASHINGTON PARK** (14.5± acres), including a 60± foot wide strip of land dividing the **PROPERTY** (as defined below) running from the developed portion of **WASHINGTON PARK** to Washington Avenue, is located in the B-2 (Community Business) Zone; and

**WHEREAS**, the **DEVELOPER** seeks to develop a small portion (1.5± acres) of **WASHINGTON PARK**, specifically being the first approximately 163± feet as you enter from Washington Avenue, which property is located in the R-3 (Residential) Zone and also identified in the City of Portland on the Assessor's maps as a portion of the following Map, Block and Lot numbers: 170-F-001 and 170-F-002 (hereinafter referred to as the "**PROPERTY**"), with the exception of the 60± foot wide strip of land strip of land running through the middle from Washington Avenue, which as described above, is located in the B-2 Zone; and

**WHEREAS, DEVELOPER** seeks to more fully develop the **PROPERTY** consistent with B-2 Zone permitted uses; and

**WHEREAS**, the R-3 zone does not currently allow non-residential uses as permitted uses and the purpose of this conditional rezoning is to allow the **PROPERTY** to be developed for commercial uses allowed in the B-2 Zone (excluding conditional uses authorized in the B-2 Zone); and

**WHEREAS**, this rezoning is consistent with the purpose B-2 community business zone, which is to provide appropriate locations for the development and operation of community centers offering a mixture of commercial uses and services; and

**WHEREAS**, this rezoning is consistent with the commercial policies of the **CITY's** Comprehensive Plan which calls for promoting and revitalizing existing commercial centers and promoting high quality office park development seeking a more suburban-style setting; and

**WHEREAS**, this rezoning is consistent with the **CITY's** Comprehensive Plan which also encourages sustainable development patterns and opportunities within the City by promoting efficient land use, conservation of natural resources and easy access to public transportation, services and public amenities.

**WHEREAS**, the **CITY'S** Comprehensive Plan designates this area as a growth area and a potential mixed use area within the future land use plan; and

**WHEREAS**, the existing and permitted uses in the neighborhood include a mix of residential along commercial uses along Washington Avenue and institutional uses including the Cheverus playing fields and Cedars Nursing Care Center; and

**WHEREAS**, the Planning Board of the City of Portland, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Code §§ 14-60 to 14-62, and after notice and hearing and due deliberation thereon, recommended the rezoning of the **PROPERTY**, subject, however, to certain conditions; and

**WHEREAS**, the City of Portland (hereinafter sometimes referred to as the “**CITY**”) by and through its City Council has determined that said rezoning would be and is pursuant to and consistent with the **CITY**’s comprehensive plan and will establish uses that are consistent with the uses in the original zones and the surrounding areas; and

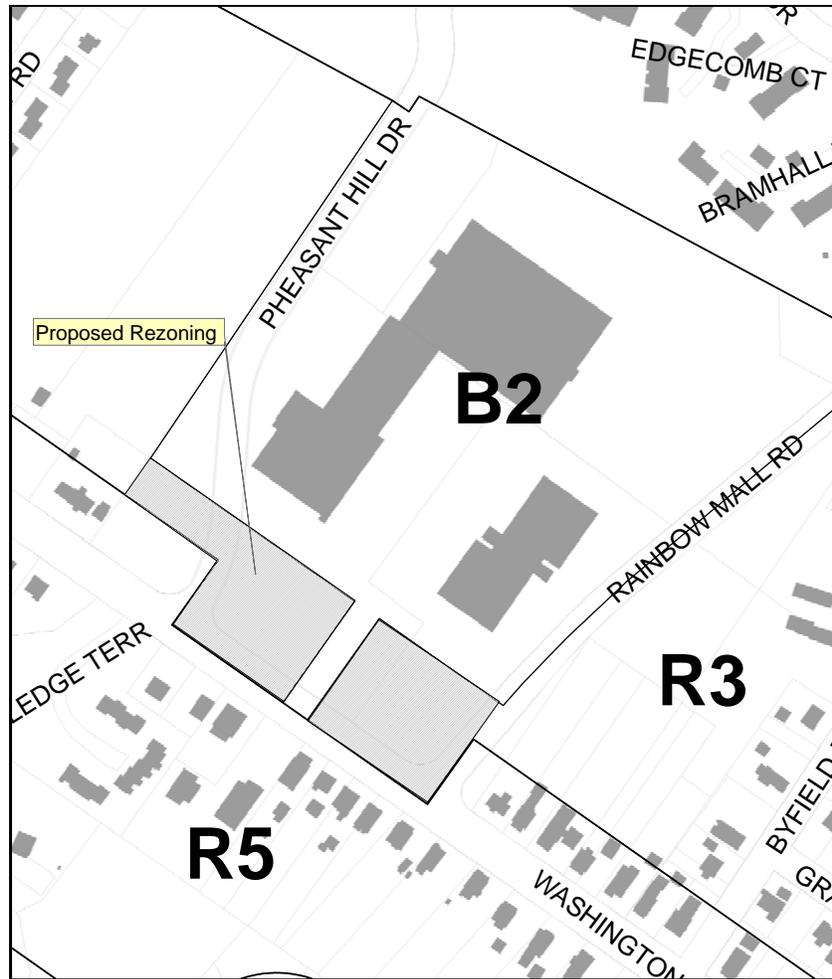
**WHEREAS**, the **CITY** has determined that the proposed rezoning will not cause undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents; and

**WHEREAS**, on \_\_\_\_\_, 2010, the **CITY** authorized an amendment to its Zoning Map based upon the terms and conditions contained within this Agreement, which terms and conditions, run with the land (i.e., the **PROPERTY**) and become part of the **CITY**’s zoning requirements.

**NOW, THEREFORE**, in consideration of the rezoning, **DEVELOPER**, and its successors and assigns covenants and agrees as follows:

1. Effective thirty days from the affirmative vote of the City Council on rezoning the **PROPERTY**, by Council Order No. \_\_\_\_\_, the **CITY** amends the Zoning Map of the City of Portland, dated December \_\_\_\_\_, 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 Portland City Code, by adopting the map change amendment for the **PROPERTY** shown herein, which **PROPERTY** is depicted on the Map below as the two (2) shaded areas abutting Washington Avenue and bisected by the B-2 Zone strip of land extending to Washington Avenue.

### **Map 1: Proposed Rezoning**



2. The **PROPERTY** shall otherwise conform to the requirements of the B-2 Zone except that the permitted uses of Drinking establishments, Billiard parlors and drive-throughs, and any and all of the Conditional Uses set forth in Section 14-183 of the Portland City Code shall not be allowed on the **PROPERTY**.
3. All of the dimensional requirements of the B-2 zone shall apply to the **PROPERTY**, except that the minimum setback from Washington Avenue shall be at least forty-five (45) feet. Within and throughout this minimum setback from Washington Avenue on the **PROPERTY** there shall be no development (other than pedestrian walkways or other amenities approved by the Planning Board) and the **DEVELOPER** shall provide a landscape buffer (which shall include, but not be limited to, sufficient trees, bushes or vegetation). The exact location and content of the landscape buffer shall be reviewed and approved by the Planning Board during site plan review.
4. The **DEVELOPER** shall meet the performance standards of the B-2 Zone for the operation of all permitted uses on the **PROPERTY**, and the future

development of the **PROPERTY** shall first be subject to site plan review by the Planning Board of the City of Portland.

5. The above stated provisions are an essential part of the rezoning, shall bind and benefit **DEVELOPER**, its successors and assigns, and the **PROPERTY**, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives.
6. Within 60 days of the rezoning by the City Council, **DEVELOPER** shall file a duplicate original of this Agreement in the Cumberland County Registry of Deeds. The **DEVELOPER** shall provide to the **CITY** the Book and Page number of said recording.
7. If any of the provisions 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.
8. Except as expressly modified herein, the development, use, and occupancy of the **PROPERTY** 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.
9. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law (including 30-A M.R.S.A. § 4452) and City's Code of Ordinances. Following any determination of a breach (after written notice and a reasonable opportunity to cure) by the **DEVELOPER** or its successors or assigns of the provisions contained herein (whether the Zoning Administrator, the Zoning Board of Appeals, Planning Board or a Court determines such breach) , either the Portland Planning Board on its own initiative, or at the request of the Planning Authority, may make a recommendation to the City Council (which the City Council can thereafter act upon) that the Contract Rezoning be modified, this Agreement rescinded, the **PROPERTY** be rezoned, or the **PROPERTY** revert back to the underlying R-3 zone or its equivalent in effect at the time of a breach.
10. 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** or its successors and assigns, and shall inure to the benefit of and be enforceable by the City of Portland, by and through its duly authorized representatives.

Dated: \_\_\_\_\_

J.B.BROWN & SONS

By: \_\_\_\_\_

Vincent P. Veroneau,  
Its President

STATE OF MAINE  
COUNTY OF CUMBERLAND

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

Then personally appeared before me the above-named Vincent P. Veroneau, President of J.B. Brown & Sons, and acknowledged the foregoing instrument to be his free act and deed in said capacity, and the free act and deed of J. B. Brown & Sons.

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

Print Name: \_\_\_\_\_

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