

Order 98-11/12

Given first reading 1/4/12

Public Hearing and Passage 1/18/12 8-1 (Donoghue)

MICHAEL F. BRENNAN (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)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)
RE: CONDITIONAL REZONING FOR PROPERTY
IN THE VICINITY OF 84 AUBURN 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 REZONING AGREEMENT

AGREEMENT made this ____ day of _____, 2012 by PENNBROOK PROPERTIES IV LLC, a Maine limited liability company (“PBK”) with a place of business in 2 Market Street, Portland, Maine, and its successors and assigns.

W I T N E S S E T H

WHEREAS, PBK is or will be the owner of the property located at 84 Auburn Street, Portland, Maine (the “Property”) more particularly described and shown on the Portland Assessors Map at Chart 375, Block A, Lot 026 and in a deed in the Cumberland County Registry of Deeds at Book , Page , (the “Property”) and intends to use the Property for a bank branch; and

WHEREAS, PBK has filed a Zone Change Application with the City of Portland (hereinafter “CITY”) to rezone the Property to a conditional B-1 zone subject to certain modifications and conditions set forth in this Agreement in order to accommodate a bank with incidental sales of financial and insurance products and services, a drive-through window and ATM machine; and

WHEREAS, the Property is currently in the B-1 zoning district; and

WHEREAS, the Property has been a blighted site for many years; and

WHEREAS, the CITY’S Comprehensive Plan seeks to promote the economic climate, increase job opportunities and encourage orderly growth and development within the CITY; and

WHEREAS, the Portland Planning Board has determined that the rezoning would assist in revitalizing the Property; and

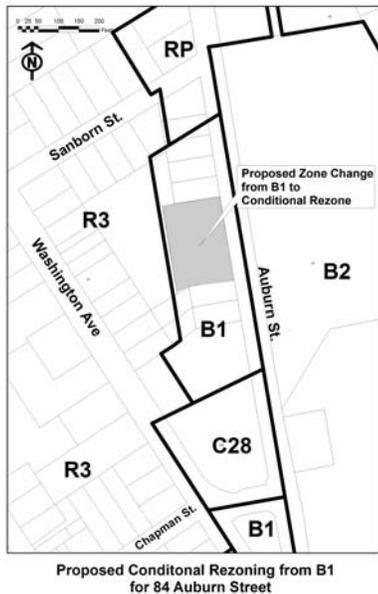
WHEREAS, the Portland Planning Board, pursuant to 30-A M.R.S.A. § 4352(8), and after notice and hearing and due deliberation, recommended rezoning the Property; and

WHEREAS, the **CITY**, by and through its City Council, has determined that the rezoning is appropriate due to the unusual nature and unique location of the development proposed, that the uses proposed are consistent with the existing and permitted uses within the zone and that the rezoning would be pursuant to and consistent with the City's Comprehensive Plan; and

WHEREAS, **PBK** has agreed to enter into this Agreement and the Amendment thereto, with its concomitant terms and conditions, which shall hereinafter bind PBK, its successors and assigns;

NOW, THEREFORE, in consideration of the rezoning of the Property, PBK agrees to be bound by the following terms and conditions:

1. The City shall amend the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Development and incorporated by reference into Zoning Ordinance by §14-49 of the Portland City Code, by adopting the following map change.



2. Permitted uses: Those uses allowed in the B-1 zone. In addition, the Property shall be permitted to be used as a bank with incidental sales of financial and insurance products and services and shall be allowed to include a total of two (2) drive through lanes which shall either consist of one (1) drive-through teller lane (hereinafter "Teller") and one (1) drive-up automated teller machine (hereinafter

- “ATM”) or a combination thereof, except as provided for in paragraph 4. The Property may be converted to other permitted business uses in the B-1 zone after review by the Portland Planning Authority and pursuant to applicable provisions that may apply. A drive through is permitted for bank use only and not for any other use.
3. The hours of operation of the bank and the drive-through teller shall be limited to 7:00 AM to 6:00 PM, Monday through Friday and 7:00 AM to 2:00 PM on Saturday and Sunday. The ATM shall be available for use twenty four (24) hours a day, seven (7) days a week. Nothing contained herein, however, shall prohibit the after-hours use of the property for staff meetings and other banking-related meetings when the bank is not open to the general public.
 4. The Property will be developed substantially in accordance with the Site Layout Plan by Woodard and Curran, Inc. dated _____ 2012 (the “Site Plan”). See Attachment 1. The Site Layout Plan may be amended, modified or altered by the Portland Planning Authority in connection with the site plan review process. Should the final building design and Site Plan approved by the City be smaller than that contained in Attachment 1, an additional drive through lane may be allowed, subject to review and approval by the Planning Authority, as long as the southerly greenspace and landscaping is not substantially reduced and there is not a substantial impact on the southerly egress curb cut.
 5. Curb Cuts:
 - a. The northerly curb cut on the Property shall be closed and removed prior to the issuance of a certificate of occupancy by the City. The southerly curb cut shall remain and only be used for egress purposes.
 - b. Access to the Property shall also be provided through the shared ingress and egress with the property located at 94 Auburn Street as more particularly described in the agreement attached hereto in Attachment 2.
 - c. The improvements to the southerly curb-cut and shared curb cut at 94 Auburn Street shall substantially conform with the plans attached hereto in Attachment 1.
 - d. Provided the Property complies with the requirements outlined in subparagraphs a-c above, the Technical Standard regarding Location and Spacing of Driveways (Technical Manual Section 1.7.2.7) shall not apply and/or is waived to allow the southerly curb cut (for egress only) to be no less than 52 feet from the adjacent driveway to the south (centerline to centerline).
 6. Modifications to the B-1 Regulations. The Property shall be governed by the regulations applicable to the B-1 zoning district and other provisions of the City Codes except as follows:

- a. The maximum front yard setback in section 14-165(c)(1) shall not apply, but any building placed on the Property shall be no further back from Auburn Street than as shown on Attachment 1.
7. In addition to the Site Plan Standards of the City's Land Use Code (§§ 14-521-14-540), the Planning Board shall review the site plan for this Property and shall be satisfied that the following requirements have been met:
 - a. Any drive-through must be accessory to a principal use located on the same site; and
 - b. The site must have adequate stacking capacity for vehicles waiting to use the drive-up service features without impeding vehicular circulation or creating hazards to vehicular circulation on adjoining streets; and
 - c. Any speakers, intercom systems, or other audible means of communication shall not play prerecorded messages. Any speakers, intercom systems, audible signals, computer prompts, or other noises generated by the drive-through services of fixtures shall not exceed 55 dB or shall be undetectable above the ambient noise level and measured by a noise meter at the property line, whichever is greater; and drive-through facilities shall be designed so that site and vehicular light courses shall not unreasonably spill over or be directed onto adjacent residential properties and shall otherwise conform to the lighting standards set forth in 14-526, which design shall include an appropriate landscape buffer in the southwest corner of the property acceptable to the City to limit such light trespass and preservation of the pine trees on the westerly border of the property.
 - d. Where automobiles may queue, waiting for drive-through services, their impacts must be substantially mitigated to protect nearby residential properties from headlight glare, exhaust fumes, noise, etc. As deemed necessary by the reviewing authority, mitigation measures may consist of installation of solid fencing with landscaping along any residential property line which is exposed to the drive-through or the enclosure of the drive-through fixtures and lanes so as to buffer abutting residential properties and to further contain all associated impacts. Such mitigation may include, as deemed appropriate by the **CITY**, landscape buffering at the southwest corner of the property, which corner is closest to a residential zone; and
 - e. Drive-through lanes shall be designed and placed to minimize crossing principal pedestrian access-ways or otherwise impeding pedestrian access.
8. The existing trees along the westerly (rear) boundary of the property shall remain undisturbed and shall be maintained at least at their present height by **PBK** and

future property owners. If any of these trees need to be removed due to disease or damage, a tree of similar species and of 16 foot height shall be planted in the same location as a replacement to maintain the screening function of this group of trees. The existing trees along the northern boundary may be removed. Those along the southern boundary should be preserved to the extent possible, with the exception of a large willow in poor condition that may be removed subject to final confirmation with the City Arborist on site. Removal of trees along the northern and southern boundaries shall be subject to Site Plan Standards for Landscape Preservation, including the standards for the replacement of large trees that need to be removed.

9. Community Contribution: An easement measuring 6 ft. by 12 ft. shall be provided for a bus shelter partially within the site adjacent to the sidewalk near the existing bus stop (or near a relocated bus stop if that is preferred by METRO). The location shall be substantially as shown on Attachment 1, but shall be placed so as to not unreasonably interfere with tenant signage on the site or traffic visibility for ingress and egress to 84 and 94 Auburn Street. This condition does not require **PBK** to provide, install or maintain a bus shelter, but allows for one to be installed in the future. This requirement is in addition to a smaller pad near the curb/bus stop sign that is for passengers getting off and on the bus.
10. In the event the development described herein is not commenced within three (3) years from the date of this conditional rezoning, or should the Property cease to be used for a permitted use under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert back to the underlying B-1 zone. If any required approval, including the approval of the conditional rezoning, has been appealed, the aforementioned deadline shall commence from the date of the final disposition of such appeal.
11. So long as the Property continues to be used as a bank or any other permitted and approved use under Section 2 above, the above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit **PBK** and any tenant, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. **PBK** shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page of the deed to the Property within ten (10) days from its acquisition of the Property.
12. **PBK** shall provide the City with documentation of any tenant of **PBK's** consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and remain subject to the terms and conditions set forth herein.
13. 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.

14. 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.
15. 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 Ordinance. In the event that **PBK**, any tenant or any successor of either party, fails to continue to utilize the Property in accordance with this Agreement, or in the event of a breach of any condition(s) set forth in this Agreement, the Planning Board and/or the Court shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution by the Planning Board may include a recommendation to the City Council that the Agreement be terminated requiring cessation of the use of the addition authorized herein.

WITNESS:

PENNBROOK PROPERTIES IV LLC

By _____

Drew E. Swenson
Its Managing Member

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Drew E. Swenson, Managing Member of Pennbrook Properties IV LLC, and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Pennbrook Properties IV LLC.

Notary Public