

Order 111-13/14
Passage 8-0 (Hinck absent) on 12/16/2013

Effective 1/15/2014

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)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L).

**AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)
RE: CONDITIONAL REZONING FOR PROPERTY
IN THE VICINITY OF 194 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 _____, 2013 by C.N. Brown Company, a Maine corporation (“CNB”) with a place of business in South Paris, Maine, and its successors and assigns.

W I T N E S S E T H

WHEREAS, CNB is the owner of the property located at 194 Auburn Street, Portland, Maine (the “Property”) more particularly described and shown on the Portland Assessors Map at Chart 374, Block A, Lot 030 and in a deed in the Cumberland County Registry of Deeds at Book 3743, Page 103, (the “Property”) and intends to use the Property for a fueling station and heating oil office; and

WHEREAS, the Property is currently in the R-3 zoning district, and has been located in the R-3 zone since the zone was established; and

WHEREAS, CNB has filed a Zone Change Application with the City of Portland (hereinafter “CITY”) to rezone the Property to a conditional B-2 zone subject to certain modifications and conditions set forth in this Agreement in order to reestablish the historic minor auto service station use and establish a heating oil office, as an accessory use; and

WHEREAS, the Property has been used and operated as a minor auto service station since 1960; and

WHEREAS, the Property has been used and operated as a minor auto service station operated by **CNB** since its acquisition of the property on July 7, 1975; and

WHEREAS, the **CITY'S** Comprehensive Plan includes the following stated goals: to promote the economic climate and activity, work with individual neighborhoods to identify suitable locations and approaches to accommodate neighborhood businesses, and encourage orderly growth and development within the **CITY**; and

WHEREAS, the **CITY'S** Comprehensive Plan includes the following objective; the **City** should, while accommodating needed services and facilities, protect the stability of Portland's residential neighborhoods from excessive encroachment by inappropriately scaled and obtrusive commercial, institutional, governmental and other non-residential uses, 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 proposed commercial use of the property is appropriately scaled to the needs and character of the neighborhood and that the re-introduction of the historic commercial use of this property will not be obtrusive or result in excessive encroachment; and

WHEREAS, the **CITY**, by and through its City Council, has determined that the rezoning would assist in revitalizing the Property without altering the historic use of the property or its impact on abutting properties or the neighborhood, generally; and

WHEREAS, the **CITY**, by and through its City Council, has determined that the rezoning is appropriate due to the unusual and historic nature and unique location of the development proposed, to allow the continued use of the site based on the historical uses that have taken place on the site, that the uses proposed are consistent with the historic use of the property as well as with the existing and permitted uses within the zone, has determined that the use, as restricted herein, will not have a negative effect on the neighborhood and that the rezoning would be pursuant to and consistent with the City's Comprehensive Plan; and

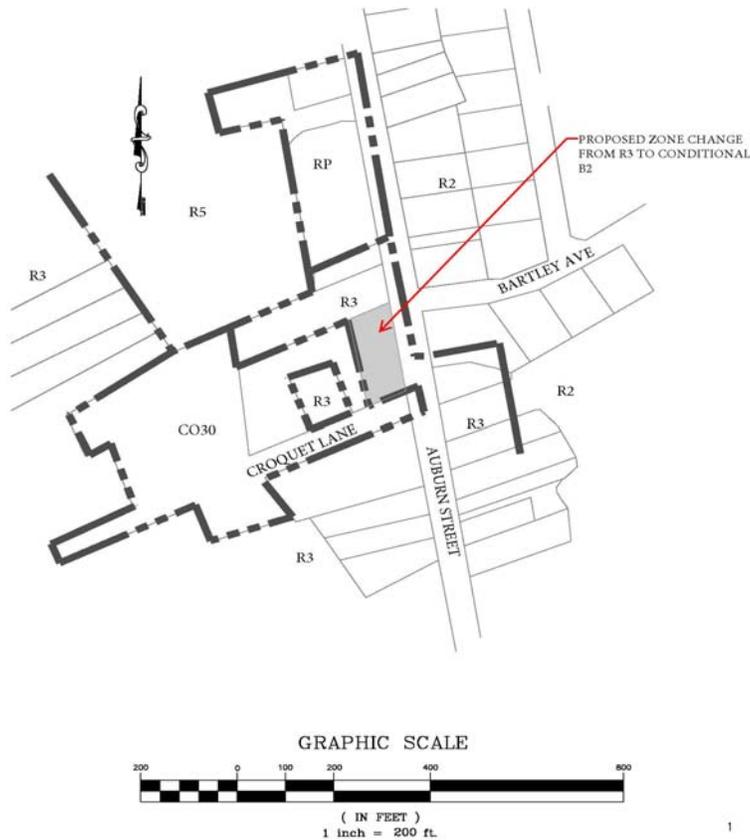
WHEREAS, the Portland City Council, has on _____, 2013 approved this Agreement in its entirety, by City Council Order No. _____, a true copy of which is attached hereto as Attachment 1 (the "Order"); and

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

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

1. Pursuant to the Order, 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 to zone the property conditional B-2, subject to the conditions contained below.



2. Permitted uses: The Property shall be permitted to be used as a minor auto service station as defined in Section 14-47 of the Portland City Code except that no automobile repair services shall be permitted on the site. A heating oil office will also be permitted as an incidental accessory use. Peddler/delivery trucks may be stored on the site when not making deliveries. No more than three peddler trucks may be stored on the site. The Property may not be converted to other permitted business uses in the B-2 zone unless this Agreement is amended and approved by the City Council.
3. No more than two fuel pumps shall be permitted on the site.
4. The hours of operation of the minor auto service station and heating oil office shall be limited to 6:00 AM to 8:00 PM, daily. After-hours use of the property to access heating oil trucks for emergency deliveries when the heating oil office is not open to the general public is also permitted.
5. The Property shall be developed substantially in accordance with the Conceptual Site Plan by Site Design Associates, Revision B, dated September 16, 2013 (the "Site Plan"). See Attachment 2.

6. Modifications to the B-2 Regulations. The Property shall be governed by the dimensional requirements applicable to the B-2 zoning district and other applicable provisions of the City Codes except as follows:
 - A. Minimum Rear Yard dimension: 11.0 ft.
 - B. Minimum pavement setback: 7.0 ft. along the northerly property line. To remain as existing in other locations.
7. The existing vegetation along the northerly, southerly, and westerly boundaries of the property shall remain undisturbed. If vegetation needs to be removed due to disease or damage, vegetation of similar species and height shall be planted in the same location as a replacement to maintain the screening function of this vegetation. The northerly buffer will be planted in accordance with the ordinance requirements.
8. Community Contribution: C.N. Brown will implement safety improvements at the crossing of Croquet Lane, to include a cross walk and tactile warnings. In addition, the two driveway crossings will be narrowed and marked with zebra style crosswalks.
9. The existing freestanding sign will remain, and may be modified to include a heating oil office sign and LED price signs.
10. Sign(s) to the satisfaction of the City will be installed at the southerly site drive clearly indicating that it may be used only as a means of egress and that only right-hand turns out of said drive will be permitted.
11. Existing pole lighting will be upgraded to meet the requirements of the Portland City Code and City of Portland Technical Standards.
12. The Property shall comply with the City of Portland Technical Standards except as follows:
 - A. Maximum curb cut widths: 28 ft. (southerly) and 31 ft. (northerly)
 - B. Minimum Spacing between driveways
 - Northerly curb cut to abutter's drive – 41 ft.
 - C. Minimum Distance from Croquet Lane ROW to center of southerly drive – 43 ft.
13. The applicant shall obtain Site Plan approval and any other approvals as required by the Portland City Code and any state and federal law for any improvements or alterations to the site.
14. Should the Property cease to be used as a minor auto service station with an accessory heating oil office under Section 2 above, this conditional rezoning shall become null and void and the Property shall revert to R-P, Residence Professional Zone.

15. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit CNB 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. CNB shall file a copy of this Agreement in the Cumberland County Registry of Deeds, within ninety (90) days from approval by the city council.
16. CNB shall provide the City with documentation of any tenant of CNB's consent to the terms and conditions of this Agreement and acknowledgement that the Property will be and shall remain subject to the terms and conditions set forth herein.
17. 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.
18. 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.
19. 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 CNB, or any successor violates the terms of this Agreement 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:

C.N. Brown Company

By _____

Jinger Duryea
Its President

State of Maine
Cumberland, ss

Date:

Personally appeared the above-named Jinger Duryea, President of C.N. Brown Company, and acknowledged the foregoing Agreement to be her free act and deed in her said capacity and the free act and deed of C.N. Brown Company.

Notary Public

