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VIA EMAIL AND U.S. MAIL

April 5, 2016

Jennifer Thompson, Esq.
Corporation Counsel's Office
389 Congress Street
Portland, Maine 04101

Re: Portland Norwich Group, LLC Site Plan Application-Fore Street/Hancock Street/Thames Street

Dear Jen:

I am writing to follow up on our meeting with Jeff Levine and Ara Aftandilian concerning Portland Norwich Group, LLC's pending site plan application to construct a hotel on Fore, Hancock and Thames Streets. As you know, the site was previously zoned B-6 Eastern Waterfront Mixed Zone but was included in the recent rezoning of the area to the India Street Form-Based Code Zone (ISFBC). The subject property is located in the Urban Transitional (UT) subdistrict. There are two specific issues that you asked me to address:

1. **Hancock Street Frontage.** Section 14-275.7(b) establishes the siting standards for the UT subdistrict. The application for the proposed hotel building does not meet the frontage standard established for that district. However, under the provisions of 1 M.R.S.A. § 302, any action or proceeding that is pending at the time of the passage of an amendment to an ordinance is not affected by that amendment if it has received a substantive review. The statute defines a "substantive review" as a review of an application "to determine whether it complies with the review criteria and other applicable requirements of law." (There is an exception for amendments that contain express language making them applicable to certain pending proceedings, as discussed in *City of Portland v. Fisherman's Wharf Associates II*, 541 A.2d 160, 164 (Me. 1988), but no such language was included in the adoption of the ISFBC.)

Because the application was submitted to the City and received a substantive review from the Planning Authority prior to the adoption of the ISFBC, the applicant is entitled to proceed with the application without having to revise it to meet the new ISFBC provisions. Compliance with the frontage requirement of the ISFBC would require a significant re-design of the building,

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as well as extensive changes to the interior of the building. In particular, the partitions required for additional building length create a difficult challenge for the hotel use. These changes would be adverse to Portland Norwich Group's pending application.

2. Increase of number of hotel rooms. Under the prior B-6 zoning, the number of hotel rooms was limited to 150 rooms (Section 14-269(a)(3)). The original application for the project was for 150 hotel rooms and 16 condominium dwelling units. There is no limitation on the allowed number of hotel rooms in the ISFBC, and dwelling units are also permitted. The application is being revised to provide 180 hotel rooms with no dwelling units. As a matter of zoning analysis on conformity, this revision is, essentially, changing the use of a portion of the project from one conforming use to another. This change is not adverse to the applicant's rights under its pending application and is therefore allowed under the Land Use Ordinance.

As we discussed at the recent meeting, except for the Hancock Street frontage issue discussed above, the revised proposal complies in all respects with the requirements of the ISFBC. Because Portland Norwich Group is entitled to use the B-6 Eastern Waterfront Mixed Use zone to protect it from application of the "frontage" standard, it is our opinion that the revised application is consistent and in conformity with the Land Use Ordinance and Maine law respecting pending proceedings.

I would be happy to discuss any questions or clarification on the matters discussed in this letter if that would be helpful.

Sincerely,



Natalie L. Burns

cc: Ara Aftandilian (via email)
Jeff Levine (via email)
Leslie E. Lowry, Esq.