

*Order 169-03/04  
Tab 15 3-1-04*

NATHAN H. SMITH (MAYOR)(3)  
WILLIAM R. GORHAM (1)  
KAREN A. GERAGHTY (2)  
CHERYL A. LEBMAN (4)  
JAMES I. COHEN (5)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

PETER E. O'DONNELL (A/L)  
JAMES F. CLOUTIER(A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

**ORDER AUTHORIZING AMENDMENT TO  
CITY CODE §14-49 (ZONING MAP)  
RE: CONDITIONAL REZONING ON END OF CUSTOM HOUSE WHARF**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,  
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

That 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 the Zoning Ordinance by §14-49, be and hereby is amended by the conditional rezoning at the end of Custom House Wharf as described in the Conditional Zone Agreement with the Proprietors of Custom House Wharf (Attachment 1) which Agreement is hereby approved, said conditional rezoning to be limited to the footprint of the building existing as of the date of passage of this amendment, all as shown on the map attached hereto as Exhibit A.

*3-15-04 mtg note - need PB members from majority*

**CITY OF PORTLAND, MAINE  
CITY COUNCIL AGENDA REQUEST FORM**

**TO:** Linda Cohen, City Clerk  
**FROM:** Alexander Jaegerman, Director of Planning Division  
**DATE:** February 18, 2004  
**SUBJECT:** Agenda Request

- 1) Council Meeting at which action is requested (Date):  
First Reading, March 1, 2004  
Council Action, March 15, 2004
- 2) Can action be taken at a later date?  YES  NO

**I. SUMMARY OF ISSUE**

The Proprietors of Custom House Wharf request a conditional rezoning of a portion of Custom House Wharf. Custom House Wharf is located in the Waterfront Central Zone (WCZ.) The rezoning is proposed for a recently built structure located at the southerly end of the wharf to allow certain non-marine uses (such as commercial/professional office) on the upper two floors of a three-story building.

**II. REASON FOR SUBMISSION (What issue/problem will this address?)**

In 1999 the Planning Board approved the construction of a 21,000 square foot, three-story marine facility at the southerly terminus of the wharf. The building replaced a two-story structure that had deteriorated to the point of being a hazard and had been condemned by the City. Given that the new structure was built on a larger footprint than the original and added an additional story, no "grandfathered" rights from the original building were extended to the new building and the current zoning text applied to all elements of the new construction. Accordingly, the site plan review of the project was predicated on using the building entirely for marine use, as required for new construction in the Waterfront Central Zone.

The Proprietors propose the conditional rezoning having been unable to rent the upper floor space in the building to marine related tenants. At this point, the building is unoccupied and the required site work (pier deck and parking areas approved in 1999)

remains unfinished.

III. **INTENDED RESULT** (How does it resolve the issue/problem?)

The proposed rezoning would allow the use of the upper floors of the building to be used by general office and light industrial tenants. The waterfront location and design of the building would presumably attract high paying tenants and would facilitate the completion of required site improvement and occupancy of the structure.

IV. **FINANCIAL IMPACT**

The conditional rezoning would presumably increase the taxable value of the property.

V. **STAFF ANALYSIS & RECOMMENDATION**

The majority of Planning Board members voted not to recommend the rezoning to the City Council. The vote was 2 votes for recommendation (Malone and Tevanian), 3 against (Beal, Lowry, and Patterson), 1 abstention (Delogu) with Mr. Caron absent.

Board members voting against the rezoning expressed concern that the proposal did not satisfy the standards for conditional rezoning in the WCZ and that non-marine parking impacts could result in an impermissible adverse impact on future marine development opportunities.

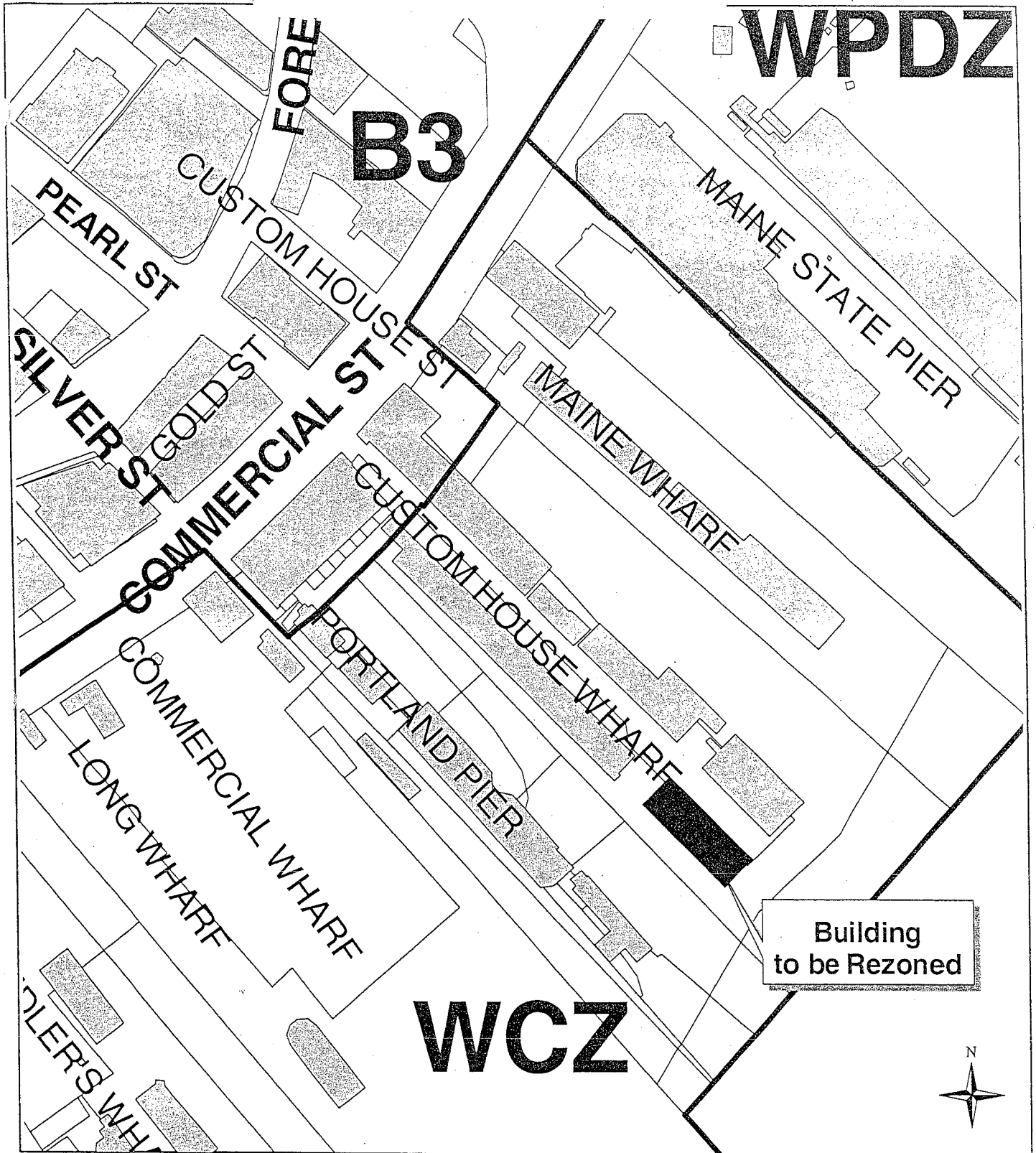
Board members voting for the project expressed opinions that the non-marine uses would support the first floor marine uses and that the non-marine parking impacts could be managed.

The Board approved two motions to amend the proposed conditional rezoning agreement language. The Board amendments include (1) a provision that the limits of the rezoning be drawn to the footprint of the existing building (as shown on the revised map) and (2) that the project return to the Planning Board for re-approval of the site plan. The re-approval is in part necessitated by the need to review all parking for the non-marine uses as conditional uses in the WCZ.

A complete discussion of Waterfront Central Zone policies and the proposed conditions for rezoning are included in the attached City Council Report.

**Attachments:**

1. Conditions Agreement for Rezoning (as amended by Planning Board)
2. Proposed Zoning Map Change (as suggested by Planning Board)
3. City Council Report #5-04 (to be provided)



**PROPOSED CONDITIONAL REZONING  
at End of Custom House Wharf**

50 0 50 100 150 Feet

**February 2004**

Map prepared by the City of Portland's Department of Planning & Development and the GIS Workgroup



**CONDITIONAL ZONE AGREEMENT**

**THE PROPRIETORS OF CUSTOM HOUSE WHARF**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between the **CITY OF PORTLAND**, a body corporate and politic, located in Cumberland County and State of Maine (the "**CITY**") and **THE PROPRIETORS OF CUSTOM HOUSE WHARF**, a Maine corporation with a principal place of business located in the City of Portland, County of Cumberland and State of Maine, its successors and assigns (the "**PROPRIETORS**").

**WITNESSETH:**

**WHEREAS**, the **PROPRIETORS** have restored dilapidated pilings and wharf decking, and made certain improvements to Custom House Wharf, including the construction of a building thereon, which building is located in Portland at Map 030, Block A, Lot 1, which building and surrounding property is more particularly described on **Attachment 1** (the "**PROPERTY**");

**WHEREAS**, the **PROPRIETORS** have requested a rezoning of the **PROPERTY** in order to permit the **PROPRIETORS** to maintain certain non-marine uses limited to those floors above the ground level of said **PROPERTY**; and

**WHEREAS**, the **CITY** by and through its Planning Board, pursuant to 30-A M.R.S.A. §4352(8) and Portland City Code §14-60, *et seq.*, and §14-315.3, after notice and hearing and due deliberation thereon, voted not to recommend the rezoning of the **PROPERTY** as aforesaid, while approving two amendments to the proposed conditional zoning Agreement ~~subject, however, to certain conditions more specifically set forth~~ below; and

**WHEREAS**, the **CITY** has determined that the proposed rezoning would be pursuant to and consistent with the standards and requirements set forth in Portland City Code §14 -313.5 and §14-315.3 for conditional rezoning within the WCZ; and

**WHEREAS**, the **CITY** has determined because of the unusual location of the **PROPERTY** it is necessary and appropriate to have imposed by the **PROPRIETORS** the following conditions and restrictions in order to ensure that the rezoning is consistent with the City's Comprehensive Plan; and

**WHEREAS**, the **CITY** through its Planning Board and City Council have determined that said rezoning would be consistent with the 1992 Waterfront Alliance Report which report recognized in part that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth; and

**WHEREAS**, the **CITY** authorized the execution of this Agreement on \_\_\_\_\_, 2004;

**NOW THEREFORE**, in consideration of the rezoning the **PROPRIETORS** covenant and agree as follows:

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 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 Portland City Code §14-49, by adopting the map change amendment as Waterfront Central Zone, as shown in Exhibit A, and limited to the footprint of the building existing thereon as of the date of passage of Council Order # \_\_\_\_\_, herein.

~~INSERT MAP as limited to the footprint of the existing building~~

2. The **PROPERTY** and site improvements shall be developed and operated in accordance with the site plan shown on **Attachment 2**, provided however, that Note 1 contained thereon shall not apply.

3. No occupancy of the building shall be permitted unless and until all site plan conditions of approval (excluding the condition related to uses) have been satisfied.

4. The **PROPERTY** shall be developed substantially in conformance with the conditions of approval contained within the October 5, 1999 approved site plan. The project shall be returned to the Planning Board for site plan review and approval prior to the issuance of any building permits.

5. The **PROPRIETORS** shall be authorized to establish and maintain on the upper two floors of the **PROPERTY**, (regardless of floor area) all those uses set forth in Portland City Code §14-314 (b),(c) & (d), in addition to those uses that are otherwise authorized within the WCZ as it may hereafter be amended. The provisions of this Agreement, including the permitted uses set forth above, are intended to replace the uses, restrictions and requirements of the underlying WCZ zone.

6. The **PROPRIETORS** shall manage the on site parking associated with the Building, in accordance with the Parking Management and Circulation Plan attached hereto as **Attachment 3**. Adherence to the Parking Management and Circulation Plan shall be made a condition of all leases of space with in the **PROPERTY**, and shall be attached as an exhibit to all such leases.

7. No changes to the Parking Management and Circulation Plan shall be made by the **PROPRIETORS** without prior review and approval of the City of Portland Planning Authority.

8. The **PROPRIETORS** shall provide to the **CITY** a performance guarantee covering the site improvements described in Paragraph 2.

The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit the **PROPRIETORS**, any entity affiliated with the **PROPRIETORS** that takes title to the **PROPERTY**, their successors and assigns, and any party in possession or occupancy of the **PROPERTY** or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. The **PROPRIETORS** shall record a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the book and page of the deeds to the property underlying said **PROPERTY**.

If any restriction, provision, condition, or portion 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 and shall not affect the validity of the remaining portions hereof.

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, including all provisions of the WCZ and all corresponding performance standards, and any applicable amendments thereto or replacements thereof.

In the event that the **PROPRIETORS** or any successor fails to continue to utilize the **PROPERTY** in accordance with this Agreement, or in the event of the **PROPRIETOR'S** breach of any condition(s) set forth in this Agreement which differs from the provisions of Portland's Land Use Code that would otherwise be applicable to property in the WCZ Zone (whether such breach is determined to have occurred by the Planning Authority, Zoning Administrator, the Zoning Board of Appeals or a Court), the Planning Board shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution may include a recommendation to the City Council that the Council take no action, modify the Agreement or terminate the Agreement rezoning the **PROPERTY** to Waterfront Central Zone.

In the case of any issue related to the Property which is governed by this section, neither the Proprietors nor their successors may seek relief which might otherwise be available to them from Portland's Board of Appeals by means of a variance, practical difficulty variance, interpretation appeal, miscellaneous appeal or any other relief which the Board would have jurisdiction to grant.

In cases that fall outside of the above parameters (i.e., alleged violations of any provisions of Portland's Land Use Code, including, but not limited to, the Site Plan Ordinance, which were neither modified nor superceded by this Agreement), the enforcement provisions of the Land Use Code, including, but not limited to, the right to appeal orders of the Planning Authority, Building Authority and Zoning Administrator shall apply. Nothing herein, however, shall bar the issuance of stop work orders.

**WITNESS**

**CITY OF PORTLAND**

\_\_\_\_\_

\_\_\_\_\_  
By:  
Its: City Manager

**WITNESS**

**THE PROPRIETORS OF CUSTOM  
HOUSE WHARF**

\_\_\_\_\_

\_\_\_\_\_  
By: Kenneth Macgowan  
Its: General Manager

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2004

Personally appeared before me the above-named \_\_\_\_\_, in his capacity as City Manager of the City of Portland, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the City of Portland.

Before me,

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

STATE OF MAINE  
CUMBERLAND, ss.

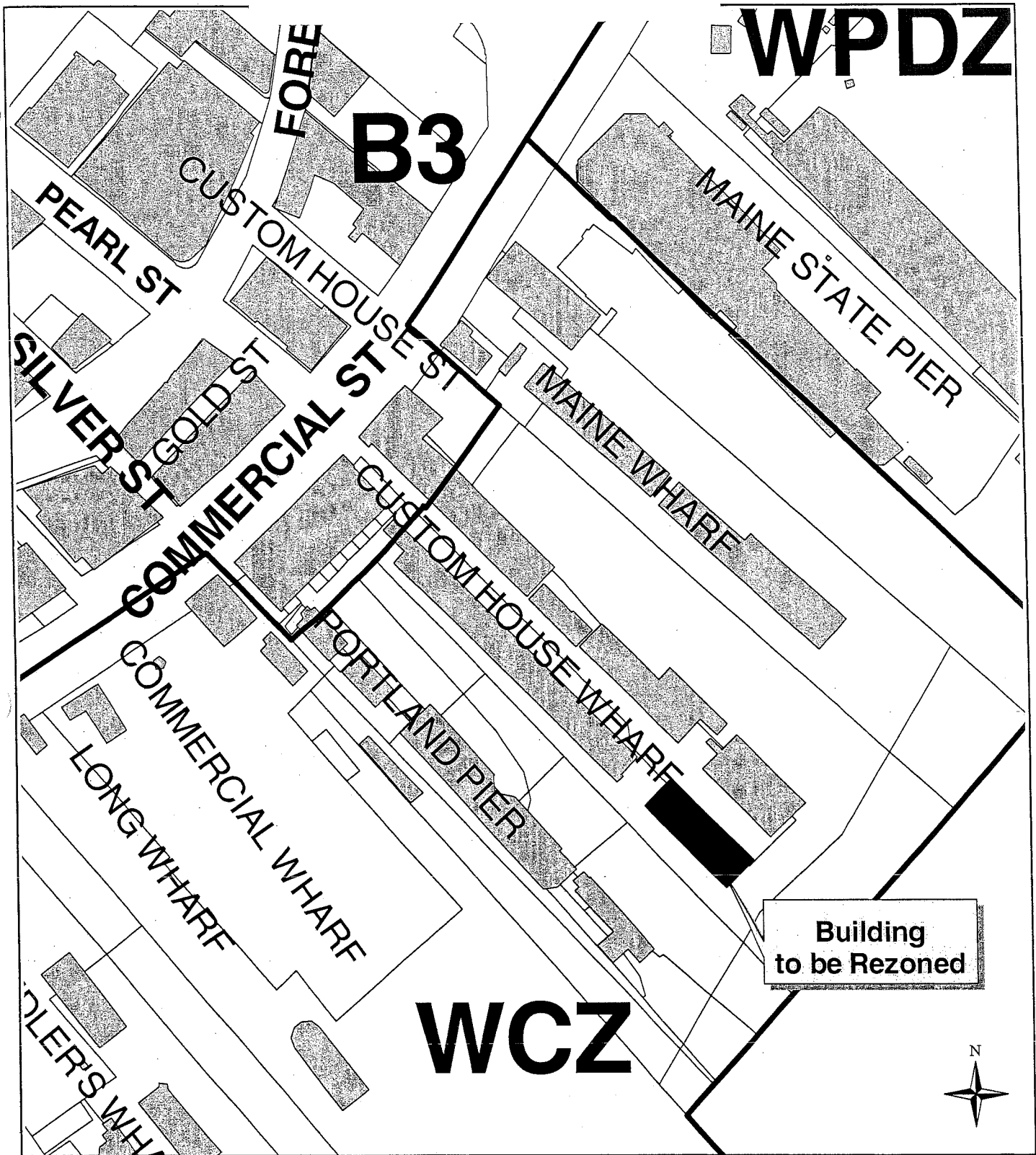
Date: \_\_\_\_\_, 2004

Personally appeared before me the above-named **Kenneth Macgowan**, in his capacity as Director and General Manager of the Proprietors of Custom House Wharf, and acknowledged the foregoing instrument to be his free act and deed in his said capacities and the free act and deed of the Proprietors of Custom House Wharf.

Before me,

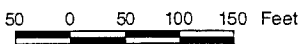
\_\_\_\_\_  
Notary Public/Attorney at Law

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**PROPOSED CONDITIONAL REZONING  
at End of Custom House Wharf**

**February 2004**



**CITY COUNCIL REPORT #5-04**

**CONDITIONAL RE-ZONING  
VICINITY OF CUSTOM HOUSE WHARF  
PROPRIETORS OF CUSTOM HOUSE WHARF, APPLICANT**

Submitted to:  
Portland City Council  
Portland, Maine

February 18, 2004

Submitted by:  
City of Portland Planning Board  
Orlando Delogu, Chair



## 1. Introduction:

The Proprietors of Custom House Wharf request Council Action on a potential conditional rezoning of a portion of Custom House Wharf. The rezoning is proposed for a new structure located at the southerly end of the wharf to allow certain non-marine uses (such as commercial/professional office) on the upper two floors of a three-story building. The Proprietors propose the conditional rezoning having been unable to rent the upper floor space in the building. A final draft contract is included in Attachment 3. The conditions of the rezoning are further described with staff comments in Section 3 below. Sections 5 thru 7 provide background and a development history of the site and policy information regarding the Waterfront Central Zone. A summary of the Planning Board's recommendation is provided in Section 8.

## 2. Policies for Non-marine Uses and Contract and Conditional Rezoning in the WCZ:

The proposed conditional rezoning needs to demonstrate consistency with the current Comprehensive Plan. Portland's waterfront zones are unique in that the zoning text itself was adopted in January of 1993 as part of the Comprehensive Plan following the recommendations of the 1992 Waterfront Alliance report. The full text of the WCZ zone is included in attachment 1.

The WCZ provisions with the greatest bearing on this application are the *No Adverse Impacts* clause and the *Standards for Conditional and Contract Rezoning* as discussed below. These two code sections provide specific standards that apply to the proposed rezoning. For reference, the Waterfront Alliance Report is included in attachment 11 and is otherwise summarized in Section 7 of this report.

### No Adverse Impacts

All uses in the WCZ, even marine related uses (as distinct from *water-dependent* uses) need to adhere to the provisions of the "no adverse impact" clause. The intent of the clause is to provide a framework to evaluate how the priority of uses established in the purpose is applied. Provision (c) below has the greatest application to the subject rezoning.

The complete text of the no adverse impact clause is included below.

### **Sec. 14-313.5. No adverse impact on marine uses.**

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

Given the odor, hours of operation and noise associated with a working pier, the introduction of 14,000 square feet of office use on a confined pier raises concerns with regards to provision (c) above. While no existing marine uses will be displaced through the proposed rezoning, one needs to consider the general compatibility of office use on this particular pier. The Council may wish to explore with the applicant how these issues would be addressed in the management of the pier.

#### Conditional Rezoning in the WCZ

In addition to the No Adverse Impact clause described above and Comprehensive Plan elements described below in Section 7 of this report, the proposal needs to comply with the WCZ Contract or Conditional Rezoning standards outlined below. These standards apply specifically to the type of application before the Council today. Interestingly, in the 10 years that the current zoning has been in place, no other applicant has proposed upper floor non-marine use under the provisions outlined below. Several Board members expressed concern with the precedent established by this application.

The standards for contract and conditional rezoning in the WCZ are included below. In the applicant's written statement, each of these standards is specifically addressed. Please see Attachment 4. Staff comments, as provided to the Planning Board, are provided below in *italics*.

#### **Sec. 14-315.3. Contract or conditional rezoning.**

Except as authorized in section 14-314(d) {permitted uses,} an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the

standards of section 14-313.5 (No Adverse Impact) and all of the following standards:

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).

*This provision is the basis of the proposed uses.*

- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.

*The applicant proposes all marine use of the first floor. The applicant also proposes that 6 parking spaces are allowed within the structure – presumably for marine use. Even if the parking spaces are marine use, these spaces degrade the utility of the first floor space for marine industry. Please see the Parking discussion below.*

- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.

*The zoning for this area is a part of the comprehensive plan. The policy document underlying the zoning is the 1992 Waterfront Alliance Report. The findings of the Waterfront Alliance report are well summarized in the purpose section of the WCZ zone (see below). The full Waterfront Alliance report is included as attachment 11.*

*The applicant was asked to provide a marketing history for the project to demonstrate that marine use tenants were not available to support the structure as originally permitted. No such history has been provided. The applicant has provided a realtor's letter describing difficulties finding marine use tenants for an abutting pier. Please see attachment 12.*

- (d) Any physical or legal impediments which preclude functional access from the site of the proposed development to the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.

*The parking located adjacent to the pier perimeter, if not actively managed, has the potential to preclude functional access to the water's edge. Please see the Parking section below.*

- (e) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits protection of existing

water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or off-site) and visual and physical access to the waterfront for the general public.

*The project has rebuilt a failed section of industrial pier that will now be available for commercial use. The substantial rental income generated by the upper floor uses would offset these costs if the negative impacts of the non-marine uses can be managed.*

- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.

*None known.*

- (g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.

*As stated at the previous workshop, Staff is unclear as to how this standard applies to an existing building that was permitted under the site plan standards alone. A new (not yet existing) building proposed under this standard would probably have responded with lower roof under this standard given the view impacts to the residents of Portland Pier. Please see the note below*

- (h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.

*The project site is not impacted by the Waterfront Public Access Guidelines.*

- (i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent use is not abandoned after the project is developed.

(Ord. No. 168-93, § 2, 1-4-93)

*The project is largely developed and the building is designed to accommodate marine use. The rezoning would not change the underlying zone language requiring marine use on the ground floor.*

Note: When originally approved, the project did not need to meet standard (g), *View Impacts*, as a project predicated on permitted uses. The subject building was lawfully constructed in anticipation of marine use. The Planning Board addressed the view impacts during the course of their review under the *Bulk and Height Site Plan Standard*

and found that the project met the standard. The ZBA upheld the manner in which the building height was calculated and the Superior Court upheld the decisions of both municipal boards. The extent to which standard (g) above now applies to an existing structure is an issue that the Board will need to consider.

### **3. Proposed Conditions for Rezoning:**

As stated in the introduction, the updated contract language is included in Attachment 3. The intent of the language is to allow the same uses that are currently allowed for upper floors of existing buildings (structures existing prior to 1993) to be allowed on the upper floors of the subject building (new construction.)

The specific conditions of the rezoning are included below. The full text of the rezoning language is found in Attachment 3. Staff comments are provided below in *italics*.

#### **Proposed Rezoning conditions:**

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 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 Portland City Code §14-49, by adopting the map change amendment as Waterfront Central Zone, as shown herein. INSERT MAP

*Note: The applicant has provided a proposed rezone line around the building and the associated parking. Please see attachment 7. Given that the proposed non-marine uses are limited to the building, the Board recommends limiting the rezoning to the existing building as shown in attachment 7.2. The recommended map provides clarity that the non-marine uses are limited to the existing building.*

2. The **PROPERTY** and site improvements shall be developed and operated in accordance with the site plan shown on **Attachment 2**, provided however, that Note 1 contained thereon shall not apply.

*Please see attachment 5.15. Note 1 on the approved site plan limits uses of the building to permitted and conditional uses within the WCZ and would be voided by this rezoning.*

3. No occupancy of the building shall be permitted unless and until all site plan conditions of approval (excluding the condition related to uses) have been satisfied.

4. The **PROPERTY** shall be developed substantially in conformance with the conditions of approval contained within the October 5, 1999 approved site plan. The project shall be returned to the Planning Board for site plan review and approval prior to the issuance of any building permits.

*Please see the 1999 Planning Board approval letter included as attachment 2. By having the project return to the Board for re-approval, the Board will review the pedestrian circulation from off-site parking localities as well the proposed non-marine parking for conformance with the conditional use provisions of the WCZ.*

5. The **PROPRIETORS** shall be authorized to establish and maintain on the upper two floors of the **PROPERTY**, (regardless of floor area) all those uses set forth in Portland City Code §14-314 (b),(c) & (d), in addition to those uses that are otherwise authorized within the WCZ as it may hereafter be amended. The provisions of this Agreement, including the permitted uses set forth above, are intended to replace the uses, restrictions and requirements of the underlying WCZ zone.

*This provision is consistent with the WCZ conditional rezoning standard (a) listed above.*

6. The **PROPRIETORS** shall manage the on site parking associated with the Building, in accordance with the Parking Management and Circulation Plan attached hereto as **Attachment 3**. (*Attachment 8 of this report*) Adherence to the Parking Management and Circulation Plan shall be made a condition of all leases of space with in the **PROPERTY**, and shall be attached as an exhibit to all such leases.

*The parking and circulation management of the proposal is discussed below in Section 4. below.*

7. No changes to the Parking Management and Circulation Plan shall be made by the **PROPRIETORS** without prior review and approval of the City of Portland Planning Authority.

8. The **PROPRIETORS** shall provide to the **CITY** a performance guarantee covering the site improvements described in Paragraph 2.

#### **4. Parking and Circulation**

As stated in the "No Adverse Impacts" discussion above, parking remains one of the more problematic issues involving non-marine uses on constrained working piers. The applicant has included a provision within the proposed contract that would bind the upper floor uses to a parking management plan that would be subject to the review and approval of the Planning Authority. Additionally, if the rezoning is approved, the non-marine parking will need to be reviewed by the Planning Board for conformance with the conditional use standards of the WCZ.

The applicant has engaged traffic engineer, Bill Eaton, to draft a parking plan for the project. In summary, the plan states the projected parking demand of the building is

37.5 spaces for the non-marine uses and 7.5 spaces for the first floor marine uses. Applying a 50% reduction to the marine use demand (consistent with City waterfront parking policy) the total demand for the building is estimated at 41.25 spaces.

As described in the parking plan, the applicant proposes that 37.5 space non-marine parking demand would utilize the following parking spaces:

17 spaces located adjacent to the northerly abutting structure. These spaces are currently used by the lobster fishing tenants of the pier. The lobstermen and their employees would be relocated to the 15 stacked spaces directly adjacent to the north end of the subject building that are proposed to be constructed when the site plan is completed.

4 spaces stacked two wide and located across from the subject building.

3 spaces located at the far end of the pier and directly adjacent to the pier perimeter.

13 spaces located off-site in the Boone's Restaurant parking lot (also under ownership by the applicant)

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37 spaces total

The marine use parking demand is between 3 and 7 spaces and is proposed to be satisfied by the 6 spaces in the interior of the building.

The Planning Staff provided the following comments for the Board's consideration.

- There appear to be more spaces allocated to marine use than there is demonstrated demand. The assumption is that non-marine uses will use empty spaces (as described by phone to staff by Mr. Eaton).
- Parking located at the pier edge can be a barrier to water access. The Board should evaluate the plan's provisions for demonstrating quality access to the working pier perimeter for the transfer of goods, equipment and people between berthed vessels and the working deck.
- The spaces located in the interior of the building degrade the marine potential of the first floor.
- Pedestrian access between the Boone's lot and the subject building is difficult for general population use (the elderly, people in office foot wear) due to degraded conditions. These conditions are not generally a problem for workers accustomed to work on industrial piers, but may be a disincentive for office workers to use the Boone's lot.
- The plan lacks specificity and may be very difficult to enforce over a long period of time.

**The following sections provide development history of the subject building and policy background for the rezoning.**

## **5. Custom House Wharf Description:**

Located across from the intersection of Pearl Street and Commercial Street, Custom House Wharf is one of Portland's oldest and most diverse piers. Current use of the pier includes lobster wholesaling, fish retail and wholesale, restaurant and nightclub, upper floor general office and environmental services. The pier is home to well known establishments such as Harbor Fish Market, Boone's Restaurant, and the Port Hole Restaurant. Historically, the wharf was home to the Casco Bay Lines Ferry terminal. Berthing use along the pier is generally commercial fishing with additional use by excursion charters and a small number of non-commercial vessels.

Constructed with a rubble and granite crib spine that carries the central roadway, the lateral pile-supported sides of the pier carry many of Portland's oldest working pier structures. The condition of the pier and the historic structures is generally poor.

## **6. Recent Development History:**

As described at the previous workshop, in 1999 the Planning Board approved the construction of a 21,000 square foot, three-story marine facility at the southerly terminus of the wharf. The building replaced a two-story structure that had deteriorated to the point of being a hazard and had been condemned by the City. Given that the new structure was built on a larger footprint than the original and added an additional story, no "grandfathered" rights from the original building were extended to the new building and the current zoning text applied to all elements of the new construction. Accordingly, the site plan review of the project was predicated on using the building entirely for marine use, as required for new construction in the Waterfront Central Zone.

The project required reconstruction of the pile-supported pier in the area adjacent to the building and the regrading and paving of the central earthen portion of the pier. Planning Board approval was subject to several conditions, including that the parking areas drain into a stormwater treatment tank, and that a parking management plan and a sedimentation and erosion control plan be provided for administrative review and approval.

Approval for the project was appealed by property owners on the adjacent Portland Pier due to the loss of water views caused by the new construction. The building height calculation determination and parking calculation (by Zoning Administrator, Marge Schmuckal) were appealed to the Zoning Board of Appeals and the both Site Plan and Zoning approvals were appealed to Superior Court. All approvals were upheld under appeal.

After the appeal process, the applicant satisfied the conditions of approval and construction commenced in 2001. After completing the shell of the building and



installation of the stormwater treatment device, construction on the project stopped. The applicant has indicated to staff that having been unable to find marine use tenants for the structure, the financing to complete the pier and site work ran out and the project fell into limbo. A description of the applicant's efforts to lease the building to marine tenants can be found in Attachment 4.4

## **7. Waterfront Central Zone Policy:**

The applicant is requesting this conditional rezoning to allow non-marine uses on the upper floors of a new structure. The as stated above, the Council will need to find that the proposal is compatible with the current Comprehensive Plan as well as the *No Adverse Impact* and *Conditional and Contract Rezoning* provisions of the Waterfront Central Zone as discussed above.

### **Comprehensive Plan: *Waterfront Alliance Recommendations and Current Zoning***

In April of 1992, the Waterfront Alliance produced a policy document titled "Waterfront Alliance Recommendations to the City of Portland." This report outlines the position that properties with direct water access should be limited to water dependent and marine related uses, but that other portions of the waterfront (upper stories, and areas well away from water access) can and should accommodate "marine compatible" uses to help support the maintenance of pier infrastructure. As stated in the report's preamble,

*"Water-dependent users are the lifeblood of Portland's waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth."*

The City Council used this document as the policy basis for the current waterfront zoning, as enacted on January 4, 1993. Simultaneously adopting the Council Zoning Report as part of the Comprehensive Plan in Council Order 168-93, the 1993 zoning amendments followed the Waterfront Alliance report by putting a priority on the preservation of berthing and working pier deck space for existing and potential marine uses. The Purpose and No Adverse Impact sections of the WCZ text, included below, fully express the intent of the zone and the underlying policy.

#### Waterfront Central Purpose

The following text is excerpted from the WCZ language. A copy of the full WCZ text is attached to this report.

#### **Sec. 14-313. Purpose.**

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.  
(Ord. No. 168-93, § 2, 1-4-93)

## **8. Public Hearing Comments**

A number of members of the public spoke at the Planning Board hearing representing a range of opinions on the rezoning. Four members of the lobstering community spoke on behalf of the rezoning, three of whom were tenants of Custom House wharf. These lobster fishing representatives related their opinions regarding Mr. McGowen's commitment to the working waterfront and their opinion that the new construction and rental income would benefit the continued use of the pier for marine use.

Three members of the public spoke against the rezoning. Reasons expressed for opposing the rezoning included a demonstrated need for more marine use space on the waterfront, the potential for non-marine uses to interfere with water dependent uses, and the opinion that the applicant had not demonstrated a clear public benefit as required under the WCZ standards for rezoning.

## 9. Planning Board Recommendations

The Planning Staff provided the following recommendation as part of the Planning Board Report:

*Staff recognizes the difficulties in justifying investment in marine infrastructure given the low expectations for economic return from marine uses. The City's waterfront policies and Comprehensive Plan also recognize that non-marine uses should be encouraged where there is a clear demonstration that marine utility is not compromised due to the impacts of non-marine uses. Staff cannot find such a demonstration in the materials supplied by the applicant: specifically regarding parking. Were the applicant to take a more proactive approach to lessening the impact of parking at the pier perimeter and within the building, a Staff recommendation could be further considered.*

The majority of Planning Board members voted not to recommend the rezoning to the City Council. The vote was 2 votes for recommendation (Malone and Tevanian), 3 against (Beal, Lowry, and Patterson), 1 abstention (Delogu) with Mr. Caron absent.

Board members voting against the rezoning expressed concern that the proposal did not satisfy the standards for conditional rezoning in the WCZ and that non-marine parking impacts could result in an impermissible adverse impact on future marine development opportunities.

Board members voting for the project expressed opinions that the non-marine uses would support the first floor marine uses and that the non-marine parking impacts could be managed.

The Board approved two motions to amend the proposed conditional rezoning agreement language. The Board amendments include (1) a provision that the limits of the rezoning be drawn to the footprint of the existing building (as shown on the revised map) and (2) that the project return to the Planning Board for re-approval of the site plan. The re-approval is in part necessitated by the need to review all parking for the non-marine uses as conditional uses in the WCZ. The language included with this rezoning includes the approved Planning Board amendments.

### **Attachments:**

1. WCZ Zone Language
2. 1999 Approval Letter
3. Proposed Conditional Rezone language (with Planning Board amendments)
4. Applicant's Written Statement with update
5. Rezone Application and Background Information
6. Current Zoning Map of Portland Harbor
7. Proposed Area for Conditional Rezoning

## DIVISION 18. WATERFRONT CENTRAL ZONE\*

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**\*Editor's note**--Ord. No. 168-93, § 2, adopted Jan. 4, 1993, repealed former Divs. 18, 18.5 and 18.7, §§ 14-306--14-320.2, which pertained to waterfront zones, and enacted new provisions as Divs. 18, 18.5 and 18.7 to read as herein set out. Formerly, such provisions derived from Ord. No. 426-83, § 1, adopted Apr. 25, 1983; Ord. No. 427-83, § 1, adopted Apr. 25, 1983; Ord. No. 355-85, § 1, adopted Jan. 7, 1985; Ord. No. 438-86, § 1, adopted Apr. 7, 1986; Ord. No. 189-87, § 3, adopted Feb. 7, 1987; Ord. No. 174-87, 's; 1, 2, adopted Mar. 4, 1987; Ref. of May 5, 1987; Ord. No. 385-87, adopted Apr. 6, 1987; Ord. No. 36-89, §§ 1, 2, adopted June 28, 1989; and Ord. No. 15-92, §§ 22, 23, adopted June 15, 1992.  
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**Sec. 14-313. Purpose.**

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

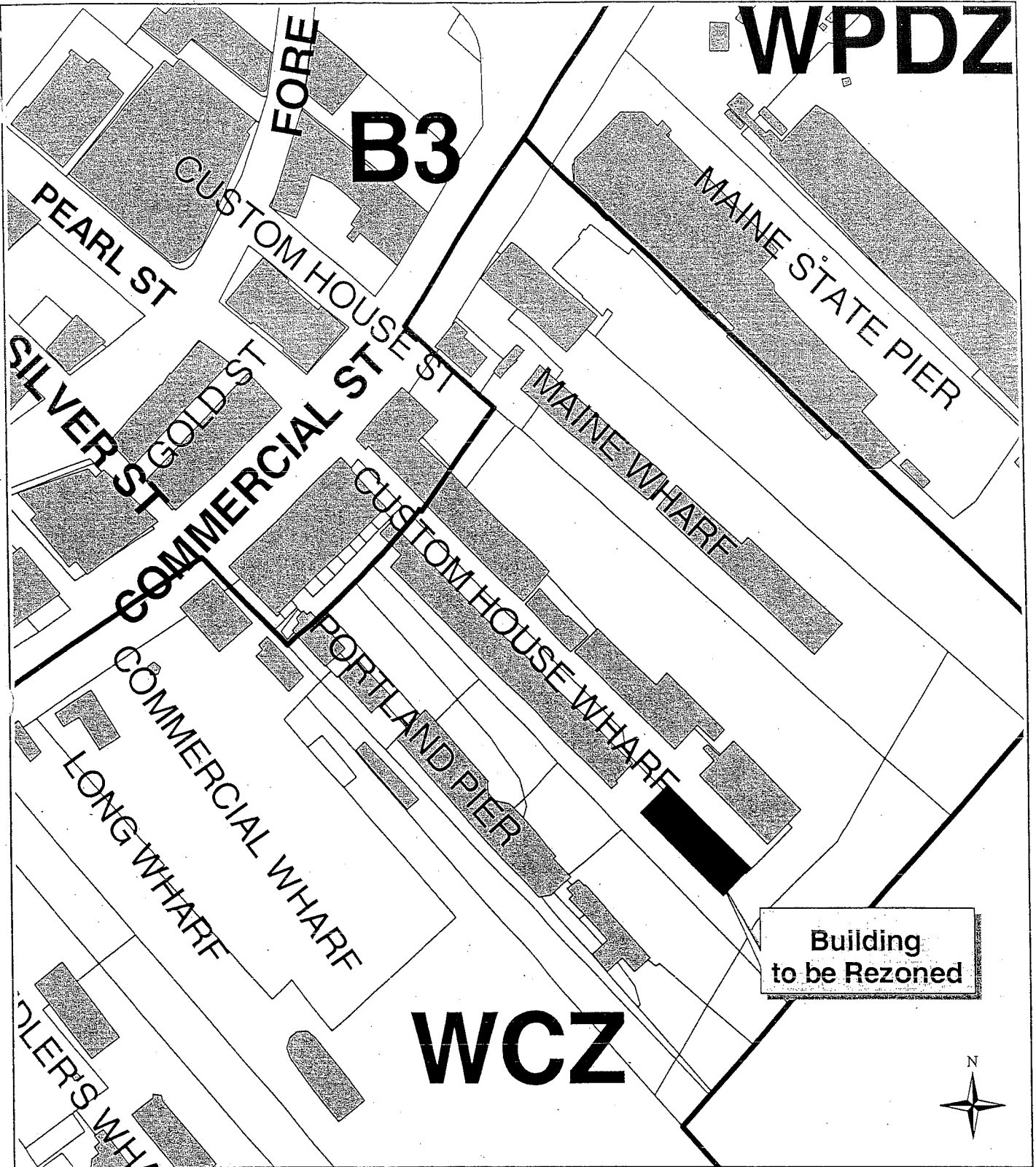
- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall

AH 7.2

**WPDZ**

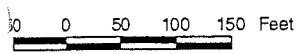
**B3**



Building  
to be Rezoned

**WCZ**

**PROPOSED CONDITIONAL REZONING  
at End of Custom House Wharf**



February 2004

Map prepared by the City of Portland's Department of Planning & Development and the GIS Workgroup

accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

**Sec. 14-313.5. No adverse impact on marine uses.**

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

(Ord. No. 168-93, § 2, 1-4-93)

**Sec. 14-314. Permitted uses.**

Subject to a determination that the proposed use meets the standards of section 14-313.5 (no adverse impact on marine uses), the following uses are permitted in the waterfront central zone:

- (a) *Marine:*
  - 1. Marine products, wholesaling, distribution and retailing;
  - 2. Marine repair services and machine shops;
  - 3. Tugboat, fireboat, pilot boat and similar services;
  - 4. Harbor and marine supplies and services, chandleries, and ship supply such as fueling and bunkering of vessels;

5. Marine industrial welding and fabricating;
6. Shipbuilding and facilities for construction, maintenance and repair of vessels;
7. Commercial marine transport and excursion services, including ferries, captained charter services, sport fishing and water taxis;
8. Cargo handling facilities, including docking, loading and related storage;
9. Boat repair yards;
10. Boat storage facilities, excluding rack storage facilities;
11. Seafood processing;
12. Seafood packing and packaging;
13. Seafood loading and seafood distribution;
14. Fabrication, storage and repair of fishing equipment;
15. Ice-making services;
16. Facilities for marine construction and salvage;
17. Facilities for marine pollution control, oil spill cleanup, and servicing of marine sanitation devices;
18. Fabrication of marine-related goods;
19. Fishing and commercial vessel berthing;
20. Noncommercial berthing of less than fifty (50) linear feet per pier;
21. Marine office, including but not limited to offices of owners of wharves or their agents, and naval architects, and seafood brokers;
22. Public landings;
23. Marine research, education, and laboratory facilities.

- (b) *Commercial uses above the ground floor level in buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only

above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

1. Professional, business, and general offices;
2. Business service establishments;
3. Cabinet and carpentry shops and accessory retail sales of only those products that are produced on the premises;
4. Intermodal transportation facilities;
5. Cold storage facilities.

(c) *Industrial uses above the ground floor level of buildings in existence on January 4, 1993:* Subject to sections 14-314(f)1 and 14-315(a), the following uses shall be permitted above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building:

1. Warehousing and wholesaling;
2. Industrial uses which meet the performance standards of the I-2 zone.

(d) *Public:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

1. Utility substations, including sewage collection and pumping stations, water pumping stations, transformer stations, telephone electronic equipment enclosures and other similar structures, provided that such structures are located more than one hundred (100) feet from the water;
2. Landscaped pedestrian parks, plazas and other similar outdoor pedestrian spaces, including without limitation pedestrian bicycle trails;
3. Municipal office uses located above the ground floor level, provided that the total floor area of the building used for all uses permitted only above the ground floor area does not exceed fifty (50) percent of the total floor area of the building unless approved pursuant to section 14-315. Other municipal uses which need to be located on the ground floor level because of operational necessity may be so located on city-owned property.



(e) *Commercial uses in any area of a building existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993, and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier:* Subject to section 14-314(f)1 and 14-315(a), the following uses shall be permitted:

1. Professional, business, and general offices;
2. Retail and service establishments, including craft and specialty shops. Convenience stores with gas pumps shall not be permitted under this section;
3. Restaurants, provided that food service and consumption shall be the primary function of the restaurant;
4. Banking services;
5. Laundry and dry cleaning services;
6. Cabinet and carpentry shops and accessory retail sales of products produced on the premises;
7. Intermodal transportation facilities;
8. Cold storage facilities;
9. Museums and art galleries.

(f) *Other:* Accessory uses:

1. Notwithstanding sections 14-331, 14-334, 14-404 or any other provision of this Code, parking for uses other than those set forth in section 14-314(a) shall not be considered a permitted accessory use on-site and shall be subject to the provisions of section 14-315(a).
2. Except as provided in subsection a. above, accessory uses customarily incidental and subordinate to the location, function and operation of permitted uses. Food service establishments, newsstands and other similar retail and service support uses shall only be permitted as accessory uses if they are part of and located within the lot lines of a use set forth in section 14-314(a)1, 7, or 22; that such uses do not exceed two thousand (2,000) square feet in total floor area of the building, or twenty-five (25) percent of the total floor area of the building, whichever is less, and that each

individual use does not exceed one thousand (1,000) square feet in total floor area of the building; and further provided that such accessory uses provide goods or services that are supportive of the principal use and its clientele.

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 131-01/02, § 1, 1-23-02)

#### **Sec. 14-315. Conditional uses.**

The following uses shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the planning board shall be substituted for the board of appeals as the reviewing authority, and further provided that in addition to the provisions of section 14-474(c)(2), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

- i. The proposed use shall be compatible with existing and potential marine uses in the vicinity;
  - ii. The proposed use shall not impede access to the water by existing or potential marine uses; and
  - iii. For conditional uses that propose or require twenty (20) or more parking spaces, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development, specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1). For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.
- (a) Parking: Notwithstanding sections 14-317(g), 14-331, 14-334 and article V of this chapter, no parking shall be allowed in this zone for conditional uses and uses permitted only above the ground floor level, unless the applicant can demonstrate that the number of parking spaces on-site exceeds the number of parking spaces required for marine uses that are required by section 14-314(a). The remainder of parking required for such uses shall be provided off-site and in other zones where parking is a permitted use.
  - (b) Marine:

- (1) Noncommercial vessel berthing of fifty (50) linear feet or greater per pier along the edges of piers existing on January 4, 1993, provided that:
  - a. Such use does not decrease the amount of, nor diminish the quality of, existing on-site berthing space, as measured along the pier, float or wharf edge, which could be used for commercial vessels in its current condition. In assessing the impact on quality of berthing space, the planning board shall consider the following: cost, access, maneuverability, depth for various-sized vessels, loading/unloading areas, lease terms, availability of utilities, parking and safety.

- (2) Fish by-products processing, provided that:

- a. Any fish by-products processing facility has a valid rendering facility license under chapter 12; and
- b. The processing of other material wastes or by-products shall not be deemed a lawful accessory use under any other provision of this article.

- (3) Boat rack storage facilities, provided that:

Parking shall be provided for one hundred (100) percent of the demand generated by the use, and such parking shall be provided off-site, in another zone permitting such use.

- (c) Expansion of a non-water dependent, non-marine related use permitted under 14-314(e) (Commercial uses in buildings existing on January 4, 1993 or having a valid, unexpired site plan on January 4, 1993 and located within thirty-five feet of the southerly edge of Commercial Street between Maine Wharf and the city fish pier.) into contiguous and newly created building space of no more than 2000 sq. ft., total, shall be allowed only as follows:

- (1) the use may occupy ground floor area provided the contiguous and newly created building space in which the non-water dependent, non-marine related use is located within 35 feet of the southerly sideline of Commercial Street; and/or
- (2) the use may occupy a ground floor area of no more than 1250 square feet beyond 35 feet from the southerly sideline of Commercial Street; and

- (3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
- (4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.
- (d) Residential: The "primary" owner of a marine related business may occupy space within the upper story of a building in existence on January 4, 1993, provided the following conditions are met:
- (1) the residential living space shall not exceed one thousand (1,000) square feet;
  - (2) the occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;
  - (3) the residential use shall be limited to one unit per wharf;
  - (4) the residential use shall be year round use only, and shall not be used on a seasonal basis; and
  - (5) upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.

For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns fifty percent (50%) or more of the marine related business.

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00; Ord. No. 73-01/02, § 1, 10-15-01, Ord. No. 131-01/02, § 2, 1-23-02)

**Sec. 14-315.3. Contract or conditional rezoning.**

Except as authorized in section 14-314(d), an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning

shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 and all of the following standards:

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).
- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.
- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.
- (d) Any physical or legal impediments which preclude functional access from the site of the proposed development to the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.
- (e) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or off-site) and visual and physical access to the waterfront for the general public.
- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.
- (g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.
- (h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.
- (i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent use is not abandoned after the project is developed.

(Ord. No. 168-93, § 2, 1-4-93)

**Sec. 14-315.5. Prohibited uses.**

Uses which are not enumerated in either section 14-314 or 14-315 as permitted or conditional uses are prohibited. Those uses that are prohibited shall include, without limitation:

- a. Except as provided in section 14-315, residential uses (not in existence on May 5, 1987).
- b. Hotels, motels or boatels.
- c. Auditoriums, civic centers, convention centers or other meeting facilities.
- d. Drinking establishments.

(Ord. No. 168-93, § 2, 1-4-93; Ord. No. 73-01/02, § 2, 10-15-01)

**Sec. 14-316. Dimensional requirements.**

In addition to the provisions of article III, division 25, of this Code, lots in the waterfront central zone shall be subject to the following requirements:

- (a) *Minimum lot size:* None.
- (b) *Minimum frontage:* None.
- (c) *Minimum yard dimensions:*

Front setback: None.

Side setback: None.

Rear setback: None

Setback from pier line: Notwithstanding the above requirements, a minimum setback of five (5) feet from the edge of any pier, wharf or bulkhead shall be required for any structure. The setback area may be utilized for activities related to the principal uses carried on in the structure, subject to the provisions of sections 14-313 and 14-314, but shall not be utilized for off-street parking. The edge of any pier, wharf or bulkhead shall include any attached apron(s).

- (d) *Maximum lot coverage:* One hundred (100) percent.

- (e) *Maximum building height:* Thirty-five (35) feet.

(Ord. No. 168-93, § 2, 1-4-93)

**Sec. 14-317. Performance standards.**

All uses in the waterfront central zone shall comply with the following standards:

- (a) *Outdoor storage of materials:* Outdoor storage of commodities and materials accessory to normal conduct of business, except pilings and/or cranes, shall be permitted to a maximum height of forty-five (45) feet, and such materials shall be entirely contained, including runoff contaminants and residual material, within a designated area within the lot boundaries.
- (b) *Noise:* The level of sound, measured by a sound level meter with frequency weighting network (manufactured according to standards prescribed by the American National Standards Institute, Inc.), inherently and recurrently generated within the waterfront central zone shall not exceed seventy-five (75) decibels on the A scale at the boundaries of any lot, except for sound from construction activities, sound from traffic on public streets, sound from temporary activities such as festivals, and sound created as a result of, or relating to, an emergency, including sound from emergency warning signal devices. In measuring sound levels under this section, sounds with a continuous duration of less than sixty (60) seconds shall be measured by the maximum reading on a sound level meter set to the A weighted scale and the fast meter response (L maxfast). Sounds with a continuous duration of sixty (60) seconds or more shall be measured on the basis of the energy average sound level over a period of sixty (60) seconds (LEQ<sub>1</sub>).
- (c) *Vibration:* Vibration inherently and recurrently generated shall be imperceptible without instruments at lot boundaries. This shall not apply to vibration resulting from activities aboard a vessel or from railroad vehicle activities, or from activities on a pile supported pier.
- (d) *Federal and state environmental regulations:* All uses shall comply with federal and state environmental statutes and regulations regarding emissions into the air, except where provisions of this Code are more stringent.
- (e) *Discharges into harbor areas:* No discharge into harbor water areas shall be permitted, unless permitted by the Maine Department of Environmental Protection under a waste discharge license and as approved by the department of parks and public works in accordance with chapter 24, article III of this Code. All private sewage disposal or private wastewater treatment facilities shall comply with the provisions of chapter 24, article II of this Code and federal and state environmental statutes and regulations regarding wastewater discharges.

- (f) *Storage of vehicles:* Storage of any unregistered automotive vehicle on the premises for more than sixty (60) days shall not be permitted.
- (g) *Landfill of docking and berthing areas:* Landfill of docking and berthing areas shall be governed by 38 M.R.S.A. Sections 471 through 478, and permitted only if the landfill does not reduce the amount of linear berthing areas or space, or berthing capacity. If approved, construction shall be undertaken using methods approved by the department of parks and public works and shall be accomplished in accordance with the provisions of division 25 of this article and in a manner so as to ensure that a stable and impermeable wall of acceptable materials will completely contain the fill material and will not permit any fill material to leach into docking areas or navigable waters.
- (h) *Off-street parking:* Except as provided in section 14-315 or as required pursuant to article V (site plan), off-street parking is required at fifty (50) percent of the required number of parking spaces for specified uses as otherwise provided in division 20 of this article.
- (i) *Off-street loading:* Off-street loading is required as provided in division 21 of this article.
- (j) *Shoreland and flood plain management regulations:* Any lot or portion of a lot located in a shoreland zone as identified on the city shoreland zoning map or in a flood hazard zone shall be subject to the requirements of division 26 and/or division 26.5.
- (k) *Lighting:* All lighting on the site shall be shielded such that direct light sources shall not unreasonably interfere with vessels transiting the harbor nor have an unreasonable adverse impact on adjacent residential zones.
- (l) *Signs:* Signs shall be permitted as set forth in division 22 of this article.
- (m) *Storage of pollutants and oily wastes:* On-premises storage of pollutants and oily wastes shall not be permitted for more than forty-five (45) days.
- (n) *Compatibility of nonmarine uses with marine uses:* Nonmarine uses, structures and activities, including but not limited to access, circulation, parking, dumpsters, exterior storage and loading facilities or other structures shall neither unreasonably interfere with the existence or operation of marine uses nor significantly impede access to vessel berthing or other access to the water by existing or potential marine uses as set forth in section 14-314(a). Siting of a use not set forth in section 14-314(a) shall not substantially reduce or inhibit existing public access to marine or tidal waters.



- (o) *Construction of new structures located within thirty-five feet of the southerly edge of Commercial Street:* Construction of new structures located within thirty-five (35) feet of the southerly edge of Commercial Street shall conform to the guidelines set forth in the Downtown Urban Design Guidelines, unless such structures are also located within one hundred (100) feet of the water. Such structures that are also located within one hundred (100) feet of the water shall conform to the extent practicable to the Downtown Urban Design Guidelines.

(Ord. No. 168-93, § 2, 1-4-93)

CITY OF PORTLAND, MAINE  
PLANNING BOARD

John H. Carroll, Chair  
Janey Caron, Vice Chair  
Kenneth M. Cole III  
Cynus Y. Haggie  
Deborah Kichels  
Erin Rodriguez  
Mark Malone

October 5, 1999

Jay Meyer  
Thompson, Bull, Furey, Bass and MacColl  
120 Exchange Street, 6th Floor  
P.O. Box 447  
Portland, Maine 04112-7600

RE: 47 Custom House Wharf

Dear Mr. Meyer:

On September 28, 1999 the Portland Planning Board voted 5-0 (Rodriguez and Caron absent) to approve your client's application to build a three story general marine and marine office facility at the southerly end of Custom House Wharf. The Board found that the application met the standards of the Site Plan, Shoreland, and Flood Plain ordinances of the Land Use code.

The approval was granted for the project with the following conditions:

1. That the deck surface not exceed 8% grade.
2. That the three spaces along the interior side of the building be eliminated for proper fire access, and a management plan for stacked parking spaces be provided for planning authority review and approval.
3. That the plan be revised to show stormwater collection and treatment, and a detail of the treatment device be submitted for planning authority review and approval.
4. That a revised lighting plan showing reduced light spill over into the harbor be submitted for planning authority review and approval.
5. That letters of adequate financial capacity be submitted for planning authority review and approval.
6. That letters of adequate utility capacity be submitted for planning authority review and approval.
7. That alternative roof configurations can be reviewed administratively.
8. That a fully detailed erosion and sedimentation control plan be submitted for planning authority review and approval, in compliance with Best Management practices.

The approval is based on the submitted site plan and the findings related to site plan review standards as contained in Planning Report #42-99, which is attached.

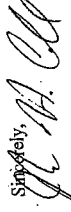
Please note the following provisions and requirements for all site plan approvals:

1. A performance guarantee covering the site improvements as well as an inspection fee payment of 1.7% of the guarantee amount and 7 final sets of plans must be submitted to and approved by the Planning Division and Public Works prior to the release of the building permit. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.

2. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the expiration date.
3. A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
4. Prior to construction, a preconstruction meeting shall be held at the project site with the contractor, development review coordinator, Public Works representative and owner to review the construction schedule and critical aspects of the site work. At that time, the site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the preconstruction meeting.
5. If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8628. (Only excavators licensed by the City of Portland are eligible.)

The Development Review Coordinator (874-8300 ext. 8722) must be notified five (5) working days prior to date required for final site inspection. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact the Planning Staff.

Sincerely,  
  
John H. Carroll, Chair  
Portland Planning Board

- cc: Joseph E. Gray, Jr., Director of Planning and Urban Development  
Alexander Jaegerman, Chief Planner  
William Needelman, Senior Planner  
P. Samuel Hoffes, Building Inspector  
Marge Schmuuckal, Zoning Administrator  
Tony Lombardo, Project Engineer  
Development Review Coordinator  
William Bray, Director of Public Works  
Jeff Turling, City Arborist  
Penny Littell, Associate Corporation Counsel  
Lt. Gaylen McDougall, Fire Prevention  
Inspection Department  
Kathleen Brown, Director of Economic Development  
Don Hall, Appraiser, Assessor's Office  
Susan Doughty, Assessor's Office

Approval Letter File

AH 2

**CONDITIONAL ZONE AGREEMENT**

**THE PROPRIETORS OF CUSTOM HOUSE WHARF**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2004, by and between the **CITY OF PORTLAND**, a body corporate and politic, located in Cumberland County and State of Maine (the "**CITY**") and **THE PROPRIETORS OF CUSTOM HOUSE WHARF**, a Maine corporation with a principal place of business located in the City of Portland, County of Cumberland and State of Maine, its successors and assigns (the "**PROPRIETORS**").

**WITNESSETH:**

**WHEREAS**, the **PROPRIETORS** have restored dilapidated pilings and wharf decking, and made certain improvements to Custom House Wharf, including the construction of a building thereon, which building is located in Portland at Map 030, Block A, Lot 1, which building and surrounding property is more particularly described on **Attachment 1** (the "**PROPERTY**");

**WHEREAS**, the **PROPRIETORS** have requested a rezoning of the **PROPERTY** in order to permit the **PROPRIETORS** to maintain certain non-marine uses limited to those floors above the ground level of said **PROPERTY**; and

~~**WHEREAS**, the **CITY** by and through its Planning Board, pursuant to 30-A M.R.S.A. §4352(8) and Portland City Code §14-60, *et seq.*, and §14-315.3, after notice and hearing and due deliberation thereon, recommended the rezoning of the **PROPERTY** as aforesaid, subject, however, to certain conditions more specifically set forth below; and~~

AH 3.2

WHEREAS, the CITY has determined that the proposed rezoning would be pursuant to and consistent with the standards and requirements set forth in Portland City Code §14 -313.5 and §14-315.3 for conditional rezoning within the WCZ; and

WHEREAS, the CITY has determined because of the unusual location of the PROPERTY it is necessary and appropriate to have imposed by the PROPRIETORS the following conditions and restrictions in order to ensure that the rezoning is consistent with the City's Comprehensive Plan; and

WHEREAS, the CITY through its ~~Planning Board and~~ City Council have determined that said rezoning would be consistent with the 1992 Waterfront Alliance Report which report recognized in part that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth; and

WHEREAS, the CITY authorized the execution of this Agreement on \_\_\_\_\_, 2004;

NOW THEREFORE, in consideration of the rezoning the PROPRIETORS covenant and agree as follows:

1. The CITY shall amend the Zoning Map of the City of Portland, dated December 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 Portland City Code §14-49, by adopting the map change amendment as Waterfront Central Zone, as shown herein.

INSERT MAP as limited to the footprint of the existing building

2. The PROPERTY and site improvements shall be developed and operated in accordance with the site plan shown on Attachment 2, provided however, that Note 1 contained thereon shall not apply.

3. No occupancy of the building shall be permitted unless and until all site plan conditions of approval (excluding the condition related to uses) have been satisfied.

4. The **PROPERTY** shall be developed substantially in conformance with the conditions of approval contained within the October 5, 1999 approved site plan. The project shall be returned to the Planning Board for site plan review and approval prior to the issuance of any building permits.

5.

6.5. The **PROPRIETORS** shall be authorized to establish and maintain on the upper two floors of the **PROPERTY**, (regardless of floor area) all those uses set forth in Portland City Code §14-314 (b),(c) & (d), in addition to those uses that are otherwise authorized within the WCZ as it may hereafter be amended. The provisions of this Agreement, including the permitted uses set forth above, are intended to replace the uses, restrictions and requirements of the underlying WCZ zone.

7.6. The **PROPRIETORS** shall manage the on site parking associated with the Building, in accordance with the Parking Management and Circulation Plan attached hereto as **Attachment 3**. Adherence to the Parking Management and Circulation Plan shall be made a condition of all leases of space with in the **PROPERTY**, and shall be attached as an exhibit to all such leases.

8.7. No changes to the Parking Management and Circulation Plan shall be made by the **PROPRIETORS** without prior review and approval of the City of Portland Planning Authority.

9.8. The **PROPRIETORS** shall provide to the **CITY** a performance guarantee covering the site improvements described in Paragraph 2.

The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit the **PROPRIETORS**, any entity affiliated with the **PROPRIETORS** that takes title to the **PROPERTY**, their successors and assigns, and any party in possession or occupancy of the **PROPERTY** or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. The **PROPRIETORS** shall record a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the book and page of the deeds to the property underlying said **PROPERTY**.

If any restriction, provision, condition, or portion 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.

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, including all provisions of the WCZ and all corresponding performance standards, and any applicable amendments thereto or replacements thereof.

In the event that the **PROPRIETORS** or any successor fails to continue to utilize the **PROPERTY** in accordance with this Agreement, or in the event of the **PROPRIETOR'S** breach of any condition(s) set forth in this Agreement which differs from the provisions of Portland's Land Use Code that would otherwise be applicable to property in the WCZ Zone (whether such breach is determined to have occurred by the Planning Authority, Zoning Administrator, the Zoning Board of Appeals or a Court), the Planning Board shall have the authority, after hearing, to resolve the issue resulting in the breach. The resolution may include a recommendation to the City Council that the Council take no action, modify the Agreement or terminate the Agreement rezoning the **PROPERTY** to \_\_\_\_ Zone.

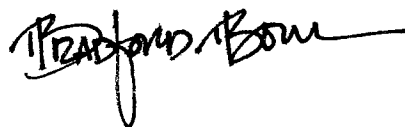
In the case of any issue related to the Property which is governed by this section, neither the Proprietors nor their successors may seek relief which might otherwise be available to them from Portland's Board of Appeals by means of a variance, practical difficulty variance, interpretation appeal, miscellaneous appeal or any other relief which the Board would have jurisdiction to grant.

Att 4-6

know if there are any additional materials or documents that will assist the Department with this process.

Please do not hesitate to contact me with any questions.

Sincerely,

A handwritten signature in black ink that reads "Bradford R. Bowman". The signature is written in a cursive style with a long horizontal line extending to the right.

Bradford R. Bowman

Encl.

Cc: Mr. Kenneth Macgowan (w/out encl.)

A# 4.7

PLANNING REPORT #42 -99

**SITE PLAN REVIEW**  
**47 CUSTOM HOUSE WHARF**  
**GENERAL MARINE AND MARINE OFFICE FACILITY**  
**THE PROPRIETORS OF CUSTOM HOUSE WHARF**

Submitted to:

Portland Planning Board  
Portland, Maine

September 28, 1999

**EXHIBIT A**



**I. INTRODUCTION**

A public hearing has been scheduled to consider a proposal by the Proprietors of Custom House Wharf to build a three story general marine and marine office facility at the southerly end of Custom House Wharf. The building is to be located in the general location of a previous two story building which has been demolished after years of decay.

346 notices were sent to area property owners.

**II. FINDINGS**

Zoning: WCZ, Flood Plain A2, Shoreland

Proposed Building Footprint: 7,350 sq. ft.  
3 Stories x 3

Gross sq. ft. 22,050 sq. ft.

Proposed Parking Spaces: 31 (6 with in the facility)

Adjacent Uses: Other uses on Custom House Wharf include general marine warehousing and fish processing, retail seafood, restaurants and entertainment. The adjacent piers in this part of the waterfront contain similar uses in addition to commercial office and residential condominiums.

Proposed Uses:

The applicant proposes that the first floor will be used for non-retail general marine space with the top two stories used for marine related business offices. Under Portland Code 14-314, the proposed uses are permitted in the WCZ as long as "... The proposed non water dependent use, structure, or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures will..." [not] "... unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water dependent uses;..." (14-313.5(3)) See Portland Code, Waterfront Central Zone 14-313, Attachment 1.

There is not direct displacement of berthing or marine uses, nor is there any apparent conflict with adjacent marine use operations. The Zoning Administrator has determined that the parking and accessory uses anticipated from the top stories (which are marine related but not necessarily water dependent) will not unreasonably interfere with water dependent uses.

As no specific tenants have been indicated for the structure, questions have been raised as to how uses will be controlled in the facility to comply with zoning. City Zoning compliance will be reviewed and confirmed as future fit-ups for the office spaces will have to undergo zoning scrutiny as part of the normal building permit and occupancy permit process, and the use issues can be addressed as tenants modify their space. This issue is no different here than in any zone in the City in which use requirements must be adhered to.

Building Elevations:

The proposed building elevations show split rib concrete walls for the first story and cedar clapboard siding for the top stories. The roof is a 4.5 in 12 full gable. The water side elevation is adorned with three dormers at the eaves and decks on the second and third stories. See Attachment 2, sheets 1 and 3.

**III. STAFF REVIEW**

This development has been reviewed by staff for conformance with the standards of the site plan, floodplain, and shoreland ordinances.

Site Plan Review

1. Traffic

The tight space constraints of the wharf are typical for any development on Portland's piers. City traffic does not see this project as presenting a hazard to the occupants of the pier or to Commercial Street.

Flood proofing the project has involved the regrading of the pier deck up to 12' of elevation at the building, to meet the requirement of first floor being 2 feet above the 100 year flood level. This results in steep grades on the loading dock side of the building. The regrading may interfere with the safe operation of vehicle loading and material handling. Planning staff recommends that the deck surface not exceed 8% grade. The applicant design interior ramps to access the building without a step up from the exterior deck or can utilize an elevated loading dock. See Potential Conditions of Approval.

Pedestrian Circulation

Pedestrian circulation around the building is provided by an 8' to 10' perimeter work deck on the water sides of the building

2. Parking

20 spaces are required by zoning and the applicant proposes 31. See Zoning Memo, Attachment 3. Three spaces along the interior side of the building must be removed by request of City Fire staff, leaving a total of 28 spaces. Six of the remaining spaces are intended to be in the interior of the first floor of the building.

The largest bulk of the parking, 15 spaces, are located on the northerly end of the building in a stacked lot of five rows, three spaces deep. Planning staff has asked the applicant to produce a parking management plan to guarantee that the proposed stacked scheme will function as desired. An additional 4 spaces are stacked two spaces deep between the buildings across the wharf, and 3 spaces occupy the southerly end of the pier.

Due to the amount of square footage and dock frontage required, the proposed parking plan presents some potential for interference with water-dependent uses associated with this proposal, however with removal of the three spaces, circulation patterns should be adequate for pier users.

3. Bulk, location, height of proposed structure, health and safety problems

There are no known health or safety problems associated with this project.

4. Bulk, location, height of proposed structures minimizes substantial diminution in the value or utility to surrounding structures

Zoning Officer, Marge Schmuckal, has produced a memo indicating that the building is in compliance with the 35 foot height limit of the WCZ. See Attachment 3. As measured from the new deck elevation, the building is 30.5 to 31.25 feet tall to the average elevation of the gable roof. As stated above, flood proofing the building resulted in the raising of the deck elevation. The above stated roof height figures are based on calculations from the proposed deck elevation.

Height and bulk concerns from commercial residents of a neighboring pier have been expressed to Planning staff as the additional floor of the proposed building will result in a diminution of down harbor views, thereby allegedly decreasing neighboring property values. Agents for the concerned neighbors have provided a memorandum describing their position on this project. Issues addressed are building height, blocking of private views, parking, and proposed use. See Attachment 4. Pursuant to their concerns, the opponents to this project have filed an appeal with the Zoning Board of Appeals to address the findings of the zoning officer. The applicant has been informed that if the appeal is successful, their plans would have to be revised accordingly. See Attachment 6.

As a means of minimizing the roof height, opponents of this project have expressed a desire that the building have a flat roof as did the previous structure. The applicant has indicated that the proposed pitched roof is needed due to the normal settling which can occur on wharf structures which results in ponding on flat roofs.

5. Sewers, storm drains, water, utility capacity

The previous building on this site had been served by all utilities and the applicant proposes to use the existing sewer and electrical connections. The applicant has requested a letter of capacity from City Public Works for sanitary service. Capacity in the Commercial Street system is not anticipated to be an issue.

Stormwater in the pre-existing condition flowed into the harbor by sheet flow and through a catch basin located at the northerly end of the building. Planning has asked that as part of the re-grading of the site, the proposed parking areas be designed to drain into the catch basin and that a storm water treatment tank be installed to alleviate auto related pollution runoff. See also *Environmental Impact*, below.

6/7. Landscaping

Not applicable.

8. Soil and drainage

See 5.

9. Lighting

A lighting plan has been submitted indicating the proposed fixtures and photometrics. See Attachment 2, sheet 5 for photometrics and Attachment 7 for fixtures. The Fore River, southerly, end of the building and the northerly end of the building each have a single wall mounted shoe box cut off fixture with a 250 watt bulb; Fixture "A". The westerly side of the building has three wall mounted, non-cutoff decorative fixtures with 100 watt bulbs; Fixture "B". The easterly, interior side of the building has three "A" fixtures and two "B" fixtures.

The photometric contour plan shows low light spill over at the westerly side of the building with the other buildings on Custom House Wharf containing the light on the northerly and easterly sides. The "A" fixture on the southerly end of the building spills light into the harbor, but these levels are hard to evaluate as they will most directly impact the view from the harbor, which will be observed from water level, not the deck. Planning staff recommends that the single "A" fixture on the southerly end of the pier be replaced with a lower wattage lamp or two smaller cutoff fixtures as a means to reduce the potential for glare on the water. See potential conditions of approval.

10. Fire

The Fire Department has reviewed the plan and finds it acceptable except that the three parking spaces along the easterly side of the build need to be removed for fire access.

The building is to be fully sprinklered.

11. Infrastructure

The proposal is consistent with off-premises infrastructure.

12. Industrial Impact

Environmental impacts from this development will be discussed below. Industrial impacts from a marine use facility will be consistent with similar permitted uses in the WCZ.

13-18. N/A

19. View Corridors.

The proposed development will not be blocking public views as identified in the Urban Design Guidelines. The building will block the views from the neighbors at Portland Pier. The diminution of value to those neighbors has been addressed under Standard 4, and is the subject of the letter from Attorney Vaniotis, Attachment 4.

20-21. Environmental Impact

The greatest anticipated environmental impact of this development will be from the proposed parking. As stated above in the Stormwater review, Planning is requiring the applicant to install stormwater treatment for the parking areas. Planning staff conversations with Bay Keeper, Joe Payne indicate that Friends of Casco Bay consider run off pollution a significant problem for the bay and the economic viability of the Portland waterfront. The treatment method proposed for this site is similar to the stormwater systems typically required for larger parking areas. Given that this site discharges into the harbor, the requirement for treatment is reasonable under the shoreland and site plan standards. The applicant has agreed to provide the requested treatment system for stormwater. A suggested condition of approval is that the plan be revised to show stormwater collection and treatment, and a detail of the treatment device be submitted for planning authority review and approval.

22. Signs  
No signage is proposed at this time.

23. N/A

24. N/A

Shoreland Zone Review

This development has been reviewed under the standards for Shoreland Zone as well as site plan review.

1. Safe and Healthful Conditions

There are no unusual health or safety concerns about this site, assuming appropriate OSHA and other regulations are appropriately complied with.

2. Pollution, Erosion, Sedimentation: Notes 11 and 16 (see attachment 5 for full size version) address this issue. A fully detailed erosion and sedimentation control plan should be submitted for planning authority review and approval, in compliance with best management practices.
3. Wastewater: (Addressed under site plan standards.)
4. Wildlife Habitat: The project is not expected to have an adverse impact on wildlife habitat. The stormwater treatment system proposed as a condition of site plan review should minimize to the extent practicable the pollution of the harbor from the parking and driveway areas.
5. *The proposal will conserve shore cover and visual, as well as actual points of access to inland and coastal waters:* The project will not block any public views of the harbor, nor will it block existing points of public access. Some neighbors have expressed concerns about view impact, and have submitted a visual assessment as part of attachment 4. This issue was discussed previously under site plan standard number 4. The Planning Board will need to consider the evidence submitted and determine whether this standard is met by the proposal. Typically view corridors to the waterfront are oriented parallel with and between the piers and wharves, and "down harbor" views enjoyed by the public are provided from publicly accessible vantage points such as the end of Maine State Pier, and Portland Pier. Down harbor views from buildings on piers are frequently impacted by buildings on adjacent piers.
6. Archaeological and historic resources: There are no known impacts of the proposed development on such resources.
7. Commercial fishing and maritime activities: See introductory discussion. The proposal is for specified and unspecified marine uses. The use and associated accessory functions will not significantly impede water dependent activities, as discussed previously in the paragraph addressing the WCZ standards.
8. Flood Plain Development: The first floor elevation will be 2 feet above the 100 year flood, as required under flood plain management regulations.
9. Other Standards: The project has been reviewed under site plan and shoreland review standards. Except as noted in the various sections above and addressed in the proposed conditions of approval, the proposal meets the standards. As an urban waterfront site, the issues of tree clearance and vegetation management do not apply.

Flood Plain Review

Structural flood proofing of the structure is not needed as the proposed finished floor elevation is to be above 12 feet of elevation.

**IV. MOTIONS FOR THE BOARD TO CONSIDER**

On the basis of plans and material submitted by the applicant and on the basis of information provided in Planning Report # 42 -99, the Planning Board finds:

- A. That the plan is in conformance with the Site Plan Ordinance of the Land Use Code.

Subject to the following conditions:

1. That the deck surface not exceed 8% grade.
2. That the three spaces along the interior side of the building be eliminated for proper fire access, and a management plan for stacked parking spaces be provided for planning authority review and approval.
3. That the plan be revised to show stormwater collection and treatment, and a detail of the treatment device be submitted for planning authority review and approval.
4. That a revised lighting plan showing reduced light spill over into the harbor be submitted for planning authority review and approval.

- B. That the plan is in conformance with shoreland zoning requirements, subject to the following conditions of approval:

1. That a fully detailed erosion and sedimentation control plan be submitted for planning authority review and approval, in compliance with best management practices.

- C. That the plan is in conformance with Flood Plain Management Regulations.

Attachments:

1. Excerpt, Section 14-313, Zoning, Waterfront Central Zone, Permitted Uses
2. 11 x 17 Plan reduction set, five sheets.
3. Memo from Marge Schmuckal, Zoning Administrator
4. Letter, dated 9/9/99 from Attorney Chris Vaniotis
5. General Notes from the plans, (full size copy)
6. Zoning Appeal
7. Lighting Fixtures

Zoning Division  
Marge Schmuckal  
Zoning Administrator



Department of Urban Development  
Joseph B. Gray, Jr.  
Director

## CITY OF PORTLAND

TO: Bill Needleman, Planning Dept.  
FROM: Marge Schmuckal, Zoning Administrator  
SUBJECT: 47 Custom House Wharf, 30-A-1 - WCZ zone  
DATE: August 30, 1999

As requested, I have reviewed the plans submitted for this project for new construction. I have determined that the height requirements have been met. Section 14-316 requires a maximum building height of 35 feet in this zone. The definitions provide guidance for how to measure building height. For pitched roofs or hip roofs, the vertical measurement is from grade (in this case the top of the pier deck) to "a level midway between the level of the eaves and highest point of the roof (or ridge)." There is no different definition for how to measure dormers. Separate measurement of the dormers using the same technique as for any other pitched roof, would not put a further impact on this project. The dormers are lower than the midway level described for measurement. Using the given definition, the measurement for height is 30.5 feet on this project. It is well under the maximum required of 35 feet.

Their proposed parking meets the requirements of the Zoning Ordinance. The WCZ zone only requires parking at 50% of what is normally required for the proposed use groups. 20 parking spaces is required. They are providing 28 spaces. Please note that originally 31 spaces were provided but the Fire Department required that the three spaces shown along the side of the building by the overhead doors need to be removed so that there is room for fire equipment access.

Please note that because this memo documents several determinations, the district City Councilor will be notified so that any concerned constituents can have 30 day right to appeal my decision.

CC: George Campbell, City Councilor  
Robert Ganley, City Manager  
Joseph Gray, Jr., Director of Planning & Urban Dev.  
Mark Adelson, Housing & Neighborhood Services  
Alex Jagerman, Chief Planner  
Penny Littell, Corporation Counsel  
File



Zoning Division  
Marge Schmuckal  
Zoning Administrator



#43  
ATT 4.15  
Department of Urban Development  
Joseph E. Gray, Jr.  
Director

## CITY OF PORTLAND

TO: ZONING BOARD OF APPEALS  
FROM: MARGE SCHMUCKAL, ZONING ADMINISTRATOR  
SUBJECT: 47 CUSTOM HOUSE WHARF - 30-A-1 WCZ ZONE  
DATE: OCTOBER 7, 1999

I have recalculated the proposed building height using the same technique I always used per the definitions given in the Zoning Ordinance. It comes out to 32' 6 1/2" which is below the maximum height allowed of 35 feet. I have enclosed a copy of the design of the long side of the structure. The structure only has one side with three small dormers. The dormers are not a major component for the entire roof structure.

In reference to parking and the proposed uses: It is not uncommon for speculation buildings to be built within Portland. It is more the rule. Most developers do not have complete tenant fit-ups prior to City site plan review. This particular structure is proposed for marine industrial uses on the first floor, such as fish processing. Certainly the overhead doors give credence to this proposal. The two upper floors are proposed as marine related offices. There is always a condition of approval on these types of buildings that separate tenant fit-up building permits be applied for prior to any interior work. At that time the zoning uses will be reviewed, along with Building Codes and Fire Codes. If the property owner can not meet the ordinances, a permit will not be issued. If the property owner later claims that they can not fill the building with allowable uses, they may be back to the Board of Appeals on a Use Variance appeal, which is not an easy appeal to be granted.

When figuring parking, it is a common practice to look at each use and determine the number of spaces per each use and add them up. The parking spaces for this building has been determined in this manner. At this time for the office space, there has been no deduction for halls, stairways, or bulk storage areas. The number of required spaces is at the maximum.

The reason that the Waterfront Central Zone allows for only 50% of the normal required parking spaces is that the waterfront is considered very valuable property. Parking and parking lots are a waste of this valuable, prime property. The thought is to encourage the development of the waterfront with working, active (mostly marine related) uses, not just parking lots.

cc: Charlie Lane, Corporation Counsel



APPLICATION FOR ZONING AMENDMENT
City of Portland, Maine
Department of Planning and Development
Portland Planning Board

1. Applicant Information:

The Proprietors of Custom House Wharf
Name
c/o Bradford R. Bowman, Esq.
Thompson, Bull, Furey, Bass & MacColl,
Address LLC, P.A.
120 Exchange St., P.O. Box 447
Portland, ME 04112-0447

774-7600 Phone 772-1039 Fax

2. Subject Property:

(Please see attached plans)
86 Commercial St. (47 Custom House Wharf)
Address

Portland, ME

CBL 030 A001001
Assessor's Reference (Chart-Block-Lot)

3. Property Owner: [X] Applicant [ ] Other

Name
The Proprietors of Custom House Wharf
Kenneth MacGowen, General Manager
Address

86 Commercial St. (47 Custom House Wharf)
Portland, ME

253-5252 Phone Fax

4. Right, Title, or Interest: Please identify the status of the applicant's right, title, or interest in the subject property:

Fee Simple Ownership - Please see attached deeds

Provide documentary evidence, attached to this application, of applicant's right, title, or interest in the subject property. (For example, a deed, option or contract to purchase or lease the subject property.)

5. Vicinity Map: Attach a map showing the subject parcel and abutting parcels, labeled as to ownership and/or current use. (Applicant may utilize the City Zoning Map or Parcel Map as a source.)

Att 5.2

6. Existing Use:

Describe the existing use of the subject property:

Vacant - Building now nearing completion pursuant to Permit No. 01-1076

7. Current Zoning Designation(s): Waterfront Central Zone (WCZ)

8. Proposed Use of Property: Please describe the proposed use of the subject property. If construction or development is proposed, please describe any changes to the physical condition of the property.

The Proprietors propose to lease the upper two stories of the building at  
issue for those uses enumerated in Section 14-314(b), (c) or (d),  
including general commercial office spaces.

**Sketch Plan:** On a separate sheet please provide a sketch plan of the property, showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1"=10' to 1"=100'.)

10. Proposed Zoning: Please check all that apply:

A. \_\_\_\_\_ Zoning Map Amendment, from \_\_\_\_\_ to \_\_\_\_\_

B. \_\_\_\_\_ Zoning Text Amendment to Section 14-\_\_\_\_\_

For Zoning Text Amendment, attach on a separate sheet the exact language being proposed, including existing relevant text, in which language to be deleted is depicted as crossed out (example), and language to be added is depicted with underline (example).

C.  Conditional or Contract Zone

A conditional or contract rezoning may be requested by an applicant in cases where limitations, conditions, or special assurances related to the physical development and operation of the property are needed to ensure that the rezoning and subsequent development are consistent with the comprehensive plan and compatible with the surrounding neighborhood. (Please refer to Division 1.5, Sections 14-60 to 62)

A# 5.3

11. **Application Fee:** A fee for must be submitted by check payable to the City of Portland in accordance with Section 14-54 of the Municipal Code (see below). The applicant also agrees to pay all costs of publication (or advertising) of the Workshop and Public Hearing Notices as required for this application. Such amount will be billed to the applicant following the appearance of the advertisement.

\_\_\_\_\_ Zoning Map Amendment (\$500.00)  
 \_\_\_\_\_ Zoning Text Amendment (\$500.00)  
 X  Contract/Conditional Rezoning (\$750.00)

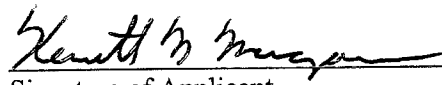
Legal Advertisements percent of total bill

Notices 40 cents each  
 (workshop and public hearing)

NOTE: Legal notices placed in the newspaper are required by State Statue and local ordinance. Applicants are billed directly by the newspaper for these notices.

12. **Signature:** The above information is true and accurate to the best of my knowledge.

\_\_\_\_\_ June , 2003  
 Date of Filing

  
 \_\_\_\_\_  
 Signature of Applicant

Mr. Kenneth MacGowan  
 General Manager  
 The Proprietors of Custom House Wharf

**Further Information:**

Please contact the Planning Office for further information regarding the rezoning process. Applicants are encouraged to make an appointment to discuss their rezoning requests before filing the application.

Applicants are encouraged to include a letter or narrative to accompany the rezoning application which can provide additional background or context information, and describe the proposed rezoning and reasons for the request in a manner that best suits the situation.

In the event of withdrawal of the zoning amendment application by the applicant in writing prior to the submission of the advertisement copy to the newspaper to announce the public hearing, a refund of two-thirds of the amount of the zone change fee will be made to the applicant by the City of Portland.

Portland Planning Board  
 Portland, Maine

Effective: July 6, 1998

Att 5.4

**THOMPSON, BULL, FUREY, BASS & MACCOLL, LLC, P.A.**  
COUNSELORS AT LAW

NICHOLAS BULL  
MARK G. FUREY \*  
JOHN R. BASS, II  
EDWARD S. MacCOLL  
BRADFORD R. BOWMAN

\* ALSO ADMITTED IN MA

OF COUNSEL

PETER P. MICHAUD

120 EXCHANGE STREET  
6<sup>th</sup> Floor  
P.O. BOX 447  
PORTLAND, MAINE 04112-0447

TELEPHONE (207) 774-7600

FACSIMILE (207) 772-1039

E-MAIL info@thomport.com

BENJAMIN THOMPSON  
(1857-1918)  
NATHAN W. THOMPSON  
(1895-1969)  
BENJAMIN THOMPSON  
(1921-2002)

June 10, 2003

Sarah Greene Hopkins  
Dept. of Planning & Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

**Re: Application for Contract Rezoning  
The Proprietors of Custom House Wharf  
86 Commercial Street (43 Custom House Wharf)  
CBL 030 A001001**

Dear Ms. Hopkins:

Thank you for taking the time to meet with me and Mr. Ken Macgowan, last Thursday. Consistent with our conversations during that meeting, I am writing on behalf of the Proprietors of Custom House Wharf to submit an Application for Contract Rezoning. Enclosed herewith, please find the following materials:

1. Application for Zoning Amendment;
2. Authorization for Representation, dated June 10, 2003, and signed by the Ken Macgowan, Real Estate Manager of the Proprietors of Custom House Wharf;
3. \$750 filing fee;
4. 1857 Acts & Resolves of Maine, Chapter 69;
5. Deed of John Lynch, Matthew Blanchard, William Evans and William Thomas, dated May 11, 1857, recorded in the Cumberland County Registry of Deeds in Book 278, Page 374;
6. Deed from Elizabeth Dyer to the Proprietors of Custom House Wharf, dated May 11, 1857, recorded in the Cumberland County Registry of Deeds in Book 286, Page 159;
7. General site plan, Plan C-200, showing the building at issue in this application;
8. Floor plans, Plan A-200R2, showing the general floor plans for the building; and
9. Vicinity Map, City of Portland Tax Map 030, on which the building at issue has been highlighted.

Att 5.5

I look forward to working with you, and the other members of the Planning Division to move through this process as smoothly and expeditiously as possible. Should the Planning Division require any additional information for this initial application, please let me know.

Thank you for your assistance with this matter. Please do not hesitate to contact me with any questions.

Sincerely,



Bradford R. Bowman

Encl.

Cc: Mr. Kenneth Macgowan

Att 5.6

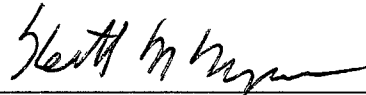
**THE PROPRIETORS OF CUSTOM HOUSE WHARF**

**AUTHORIZATION FOR REPRESENTATION**

I, **KENNETH MACGOWAN**, Real Estate Manager of the **PROPRIETORS OF CUSTOM HOUSE WHARF** (the "Proprietors"), a Maine corporation with a principal place of business in Portland, County of Cumberland and State of Maine, do hereby authorize the law firm of Thompson, Bull, Furey, Bass & MacColl, LLC, L.P., to represent the Proprietors in connection with its Application for Contract Rezoning with respect to a portion of its land located at 86 Commercial Street (also referred to as 47 Custom House Wharf), and identified as CBL 030 A001001.

**DATED** at Portland, Maine, this \_\_\_\_ day of June, 2003

**THE PROPRIETORS OF CUSTOM  
HOUSE WHARF**



---

Kenneth Macgowan, Director and Real  
Estate Manager

**Chapter 68.**

An act to set off Joshua E. Jenks, Augustus Perley and Lyman Bradstreet from Bridgton Centre Village Fire Corporation.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

SECT. 1. Joshua E. Jenks, Augustus Perley and Lyman Bradstreet are hereby set off with their estates from the Bridgton Centre Village Fire Corporation, and shall hereafter be subject to none of its by-laws or regulations; reserving to said corporation all its rights to collect all taxes legally assessed upon said Jenks, Perley and Bradstreet, prior to the passage of this act.

SECT. 2. This act shall take effect on and after its approval by the governor.

[Approved April 6, 1857.]

SECT. 4. The corporate property of said company shall be taxed as real estate, but the shares of the members respectively shall not be subject to taxation, and shall be considered as personal property for all other purposes.

First meeting, how called.

SECT. 5. Any two of the persons named in this act, may call the first meeting of said corporation at such time and place as they may see fit, by giving notice of the same, for one week, in some newspaper published in Portland, for the purpose of organizing said company.

SECT. 6. This act shall take effect from and after the day of its approval by the governor.

[Approved April 6, 1857.]

**Chapter 69.**

An act to incorporate The Proprietors of Custom House Wharf, in Portland.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

SECT. 1. Nathaniel Blanchard, John Lynch, William Evans, Joseph W. Dyer, William W. Thomas and Charles Q. Clapp, with their associates, successors and assigns, are hereby created a body politic and corporate, by the name of The Proprietors of Custom House Wharf, with power to sue and be sued, to have a common seal, and to make all rules and by-laws necessary for the convenient management and regulation of their real and personal estate, and of their common concerns, not repugnant to the laws of this state; and to have and enjoy all the powers and privileges of similar corporate bodies in this state.

SECT. 2. The said corporation may purchase and hold real and personal estate to an amount not exceeding at any time the sum of one hundred thousand dollars, with full power to manage and dispose of the same.

SECT. 3. Said corporation is hereby authorized to purchase the real estate, wharf and flats in Portland, in the county of Cumberland, commonly known as the "Custom House wharf," and the docks thereto appertaining, and to hold, improve and enjoy the same as said corporation may deem expedient, down to the harbor line, as established by law.

Certain persons set off, &c.

Right to collect taxes.

Corporations.

Corporate name.

By-laws.

Powers, privileges, &c.

May hold real and personal estate not exceeding \$100,000.

Authorized to purchase certain real estate.

**Chapter 70.**

An act authorizing the extending of a wharf into tide waters at Thomaston.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

Authorized to extend wharf.

SECT. 1. Chas. E. Ranlett, O. W. Jordan, John W. Small, and their associates, are hereby authorized and empowered to build and extend a wharf into tide waters of Georges river at Thomaston, in the county of Lincoln, fifty feet from low water mark, in a northerly or westerly direction from land owned by them on the southerly and westerly side of said river.

SECT. 2. This act shall take effect from and after its approval by the governor.

[Approved April 8, 1857.]

**Chapter 71.**

An act additional relating to tolls on Lewiston Bridge.

*Be it enacted by the Senate and House of Representatives in Legislature assembled, as follows:*

Toll authorized.

SECT. 1. The proprietors of Lewiston Bridge are hereby authorized to take and receive for each single horse and chaise, chair, sulky, buggy and wagon, ten cents, and for each coach, chariot, and other pleasure carriage drawn by two horses, fifteen cents.

Att 5.7



Cumberland Co. April 23<sup>rd</sup> 1857. Personally ap-  
 peared the above named Timothy A. Skillings, administrator  
 and acknowledged the above instrument to be his free act  
 and deed.

Before me, Hugh C. McCallan Justice of the Peace  
 Recorded according to the original, Received May 11. 1857 at  
 12h. 15m. P.M.

Attest. William C. Mitchell Register

Know all men by these presents,  
 that we John Lynch of Portland, in the County of Cumber-  
 land, being the owner of Twenty one, sixty fourths  $\frac{21}{64}$ <sup>ths</sup> parts  
 in common and undivided of the premises hereinafter  
 conveyed, Nathaniel Blanchard of said Portland, being  
 the owner of Twenty six, fourths parts,  $\frac{26}{64}$ <sup>ths</sup> in common  
 and undivided of said premises, William Evans of said  
 Portland, being the owner of Eight, sixty fourths  $\frac{8}{64}$ <sup>ths</sup>  
 parts in common and undivided of said premises and  
 William W. Thomas of said Portland, being the owner  
 in common and undivided of Four Sixty fourths parts,  
 $\frac{4}{64}$ <sup>ths</sup> of said premises for and in consideration of Twenty  
 one thousand Two hundred dollars - paid by the Propri-  
 etors of Custom House Wharf, of said Portland, according  
 to our respective proportions of said premises, the receipt  
 whereof we do hereby acknowledge, do hereby give, grant,  
 bargain, sell and convey, unto said Proprietors of said  
 Custom House Wharf, and their assigns forever, our  
 respective interests and proportions, as aforesaid, in com-  
 mon in and to, all that portions of the Wharf and  
 Flatts, commonly known as Pitcombs, or Customs House  
 wharf and Flatts in said Portland, and bounded  
 on the North West, by a line drawn One hundred  
 feet from the South Easterly side of Commercial  
 Street, and parallel therewith; and South Westerly, by the  
 line established between the said premises and the  
 Proprietors of Portland Pier, by the curved and determi-  
 nation of Peter Shepley, and North Easterly by Flatts  
 of Tyler and Tyler, and in the continuation of the North-  
 east side line, of the most Easterly lot conveyed to John Lynch  
 by said Nathaniel Blanchard and others, and South

In case  
 of  
 the  
 wharf  
 1857

Att 5.9

Easterly by the low water mark, together with all our right title and interests, in and to any portion of the Wharf and Flatts, below low water mark, and within said Extension side lines, fronted to the Channel - Also the fee of the passage way, leading from the above described estate to Commercial Street, between lots of Thomas and Oyer, which passage way is to be forever kept open, of the width of thirty feet, and is subject to the right of way therein, already granted to the owners of the stone lots fronting on Commercial Street - Also a right in common, in a twenty foot passage way, in the rear of the four stone lots Westerly of the thirty foot passage way above mentioned subject to the rights of the owners of said Stone lots in said Twenty foot passage way -

To have and to hold the above granted premises, with all the privileges and appurtenances thereto belonging, to the said Proprietors of said Custom House Wharf, and their assigns to their use and behoof forever -

And we the said John Lynch, for himself his heirs, executors and administrators, and for the estate right and title of twenty one, sixty fourths  $\frac{21}{64}$  in common and undivided of said premises, and the said Nathaniel Planchard, for himself, his heirs, executors and administrators, and for the estate, right, title and interest of Twenty Sixty fourths  $\frac{26}{64}$  in common and undivided of said premises and the said William Evans for himself, his heirs, executors and administrators and for the estate, right, title and interest of eight sixty fourths and the said William W. Thomas for himself, his heirs, executors and administrators, and for the Estate, right, title and interest of four Sixty fourths  $\frac{4}{64}$  in common and undivided of said premises, do, and every one of them doth, severally and not jointly, covenant with said Proprietors of said Custom House Wharf and their assigns, that he is lawfully seized in fee of his several part and proportion as aforesaid of the aforesaid premises, that they are free of all incumbrances, that they have a good right to sell

and convey the same to the said Proprietors of said Custom House Wharf as aforesaid and that each of them, severally and not jointly, and for their respective parts and proportions, will and their heirs, executors and administrators shall warrant and defend the respective parts and proportions of said premises by each conveyed as aforesaid to the said Proprietors of said Custom House Wharf and their assigns forever, against the lawful claims and demands of all persons—

In witness whereof, we the said John Lynch Nathaniel Planchard, William Evans and William W. Thomas, with our wives Ellen C. Lynch, Phoebe Planchard, Sarah P. Evans and E. W. J. Thomas, in token of their relinquishment of their right of Dower in the premises above described, have hereunto set our hands and seals this the Eleventh day of May A. D. 1857—

Edw. Dix

In presence of,

David W. Planchard—

|                   |     |
|-------------------|-----|
| John Lynch        | {S} |
| Ellen C. Lynch    | {S} |
| Nath. Planchard   | {S} |
| Phoebe Planchard  | {S} |
| Wm. Evans         | {S} |
| Sarah P. Evans    | {S} |
| William W. Thomas | {S} |
| E. W. J. Thomas   | {S} |

Edward Dix to  
Edw. Dix to

Cumberland Co. May 11. 1857. Personally appeared Nath. Planchard, John Lynch and Wm. Evans and acknowledged the within instrument as their free act and deed  
Before me, Edward Dix, Justice—

Cumberland Co. May 12. 1857. Personally appeared Wm. W. Thomas and acknowledged the within instrument as his free act and deed—

Before me, Edward Dix, Jus. Peace—

Recorded according to the original, Received May 12. 1857 at 4 h. 25 m. P. M.

Attest William C. Mitchell

Register

by the same, and all my right to the premises therein as Administrator or as aforesaid, with the right to recover the same for his own use and his own expense -

Witness my hand and seal this Twenty second day of March A.D. 1858 -

Signed, sealed and delivered }  
 in presence of }  
 J. D. Webb } L. O. Korman - Administrator  
 of the estate of E. E. Cannon



Cumberland Co. March 23<sup>d</sup>. 1858 Personally appeared Lorenzo O. Korman above named, and acknowledged the foregoing deed to be the free act and deed of him in his said capacity of Administrator

Before me Nathaniel Webb - Justice of the Peace -  
 Recorded according to the original, Received March 23<sup>d</sup>. 1858 at 11h. 40 m. P.M. the same being endorsed in Mortgage deed recorded in Book 222 page 466.

Witness my hand - Augustus P. Gerrish Register

Know all men by these presents, that we, Elizabeth Dyer, widow of Lemuel Dyer, late of Portland deceased, Henry Dyer of said Portland, Ezekiel Dyer of Cape Elizabeth, Joseph W. Dyer of said Portland, Amos S. Dyer, Augustus S. Dyer, Elizabeth W. Fuller, in her own right, and Augustus P. Fuller, her husband in right of said Elizabeth W., William W. Dyer, Harriet W. Wilson, in her own right, and Benjamin S. Wilson, her husband in right of said Harriet W. both of Boston, Massachusetts, Almira S. Turner, in her own right, and Joseph E. Turner her husband in right of said Almira S. and Lemuel Dyer of Portland aforesaid, being the owners in common and undivided of Ebera sixty fourth 1/4 part of the premises hereinafter described, for and in consideration of Fifty five hundred dollars, paid by the Proprietors of Custom House Wharf, of said Portland, the receipt whereof we do hereby acknowledge, do hereby give, grant, bargain, sell and convey unto said Proprietors of said Custom House Wharf, and their assigns forever, seven sixty fourth parts 1/4 in common of all that portion of the Wharf and Flats commonly known as "Pitcomb's" or Custom House Wharf and Flats in said Portland, and bounded on the North West by a line drawn One hundred feet from the South Easterly side of Commercial Street and parallel therewith, and South Westerly by the line established

Dyer  
 6  
 Proprietors of Custom House Wharf

between the said frontiers and also and the Proprietors of Portland Pier by the award and determination of Elmer Shepley, and North Easterly by flats of Joseph W. Dyer and Tyler, and in the continuation of the North East side line, of the most Easterly lot conveyed to John Lynch by Nathl. Blanchard and others, and South Easterly by the low water mark, together with right, title and interests, in and to any portion of the Wharf and flats, below low water mark, and within said exterior side line, fronted to the channel; also the fee of the passage way leading from the above described estate to Commercial Street between lots of W. W. Thomas and Joseph W. Dyer, which passage way is to be forever kept open of the width of thirty feet, and is subject to the right of way therein, already granted, to the owners of the stone lots fronting on Commercial Street, Also a right in common in a twenty foot passage way, in the rear of the four stone lots, Westward of the thirty foot passage way above mentioned, subject to the rights of the owners of said stone lots, in said twenty foot passage way.

To have and to hold the above granted premises, with all the privileges and appurtenances thereto belonging, to the said Proprietors of said Custom House Wharf, and their assigns, to their use and behoof forever.

And we the above mentioned grantors, do covenant with the Proprietors of said Custom House Wharf, and their assigns that we are lawfully seized in fee of the aforesaid premises; that they are free of all incumbrances; that we have a good right to sell and convey the same to the said Proprietors of said Custom House Wharf as aforesaid; and that we will, and our heirs, executors and administrators shall warrant and defend the same to the said Proprietors of said Custom House Wharf - and their assigns forever, against the lawful claims and demands of all persons.

In witness whereof, we the above named grantors, and our wives Elizabeth P., Kennet, Catherine F., and Mary B. and Mary C. Dyer, in token of their relinquishment of their right of Dower, in the above described premises, have hereunto set our hands and seals this Eleventh day of May A.D. 1857.

Signed, read and delivered in presence of

|  |                |
|--|----------------|
| Isabella S. Dyer                       | Elizabeth Dyer |
| J. H. Dyer                             | Kennet Dyer    |
| J. C. Dyer                             | E. P. Dyer     |
| A. Merrill                             | Ezekiel Dyer   |
| J. Frank Dyer                          | Kennet Dyer    |
| Frederick Rip, witness to the signing, | Joseph W. Dyer |
| of J. W. Dyer.                         |                |



Isabella S. Oyer

Katharine S. Oyer

David S. Oyer, by himself, J. Oyer

Augustus S. Oyer by his

Atty. J. W. Oyer

J. Frank Oyer

Mary E. Oyer

Elizabeth W. Fuller

Aug. P. Fuller

Wallis J. Chase

Kerriek W. Wilson

Wallis J. Chase

R. D. Wilson

Isabella S. Oyer

William W. Oyer

Isabella S. Oyer

Almira A. Turner

Joseph E. Turner

Isabella S. Oyer

Samuel Oyer

Isabella S. Oyer

Mary E. Oyer

Cumberland Co. March 26<sup>th</sup> 1858. Then personally appeared Joseph W. Oyer and acknowledged the foregoing instrument by him signed to be his free act and deed.

Before me, Frederick Fox - Justice of the Peace - Recorded according to the original, Received March 26. 1858 at 11 o'clock A.M.

Attest - Augustus S. Gerrish Register

In consideration of the regard and affection I bear John P. Carroll of the City of Portland, County of Cumberland, State of Maine, be it known, I do hereby assign, the within Indenture of Mortgage, and the title accompanying the same, and all my right, title and interest, in and to the same, and I do authorize the said John P. Carroll, in my name in other wise, but at his own cost and charges, to collect and obtain payment of the same and I do covenant with the said Carroll that I am lawfully the owner thereof, and have good right to dispose of the same as above.

Assignment of Charles D. Clapp to Carroll

In witness whereof, I have hereunto set my hand and seal this Twenty third day - November, A.D. Eighteen hundred and fifty five at Portland, Maine.

Wm. S. S. S.

Charles D. Clapp

Portland Nov. 23<sup>rd</sup> 1855

Personally appeared the above named Charles D. Clapp and acknowledged the above transfer to be his free act and deed.

Before me Albert J. Cole - Justice of the Peace

AH 8.1



2 Miranda Street · Brunswick ME 04011 · Tel 207.725.9805 · Fax 207.725.0847 · ate@suscom-maine.net

To: Kenneth N. Macgowan, Business Manager, Proprietors of Custom House Wharf  
Bradford R. Bowman, Thompson Bull

Fm: William C. Eaton, Eaton Traffic Engineering

WCE

Dt: February 6, 2004

Re: Assessment of Parking Demand and Supply for Marine Use Facility

The Marine Use Facility is a three story building located at the end of Custom House Wharf, with total gross floor area of 22,500 square feet. On the first floor of the building approximately 2,500 square feet of the total 7,500 square feet is to be used for vehicle storage, thus the net usable floor area at this level is 5000 square feet.

Parking demand was estimated assuming that the first floor of the building would be occupied by a marine use, and the two upper floors occupied by general office uses. A review of parking demand literature did not turn up any specific information for "marine uses", but the publication Parking<sup>1</sup> contained demand estimates for "Storage, wholesale or utility" land uses. The suggested minimum parking requirement was 0.5 spaces per 1000 square feet plus required spaces for any office or sales areas. For the 5000 net square feet on the first floor, this would indicate the need for 2.5 parking spaces.

At this point it is uncertain what portion of the first floor area would be used for office purposes (retail seems unlikely). Assuming no more than 25 percent, this can be estimated at 1,250 square feet. To estimate office parking demand the publication Parking Generation<sup>2</sup> was utilized. For office buildings of less than 50,000 square feet, the average parking rate was 2.6 spaces per 1000 square feet (with range of 0.75 to 4.7 spaces per 1000 square feet). This data was based upon 36

<sup>1</sup> Robert A. Weant and Herbert S. Levinson, Eno Foundation for Transportation, 1990

<sup>2</sup> Institute of Transportation Engineers, 1985

AH 8.2

studies that included CBD, urban and suburban locations. Typically CBD and urban rates are lower than suburban locations, thus in this case the 2.6 spaces per 1000 square feet may be high.

Using the 2.6 space rate for the second and third floors, plus the office estimate for the first floor (total 16,250 square feet) the parking demand is estimated at 42.25 spaces. Combining this with the demand for the marine use on the first floor yields a total demand of 44.75 spaces – essentially 45 spaces.

The City of Portland has recognized the unique nature of the Old Port area of the City and provides for a 50 percent reduction in parking requirements. In this case, City Planning Staff have indicated that this 50 percent reduction would apply only to the marine related uses on the first floor. The “base” parking demand for the second and third floors is estimated at 37.5 spaces (15000 square feet at 2.6 spaces per 1000 square feet). The “base” first floor demand is 7.5 spaces. Applying the 50 percent reduction to only the first floor the new total demand for parking is calculated at 41.25 spaces.

The proposed parking supply for the Marine Use Facility is graphically presented on the attached “Schematic Layout of Parking”. Parking supply is summarized as follows:

- 3 spaces at the end of the Wharf
- 15 stacked spaces on a deck to be constructed on the north side of the facility
- 4 stacked spaces in an alley between the two buildings east of the facility
- 6 spaces inside the facility

The above yields total of 28 spaces. The issue of stacked parking spaces for this type of use is somewhat problematic. To address this, the Proprietors of Custom House Wharf propose the following. The existing 90-degree parking located along the length of the building located just north of the Marine Use Facility is used by lobstermen and sternmen. Typically these individuals arrive and leave Custom House Wharf at the same time each day. The parked vehicles are not moved while the individuals are on their boats. Because there is no “turnover” of this parking, these individuals can utilize the stacked parking on the deck with minimal



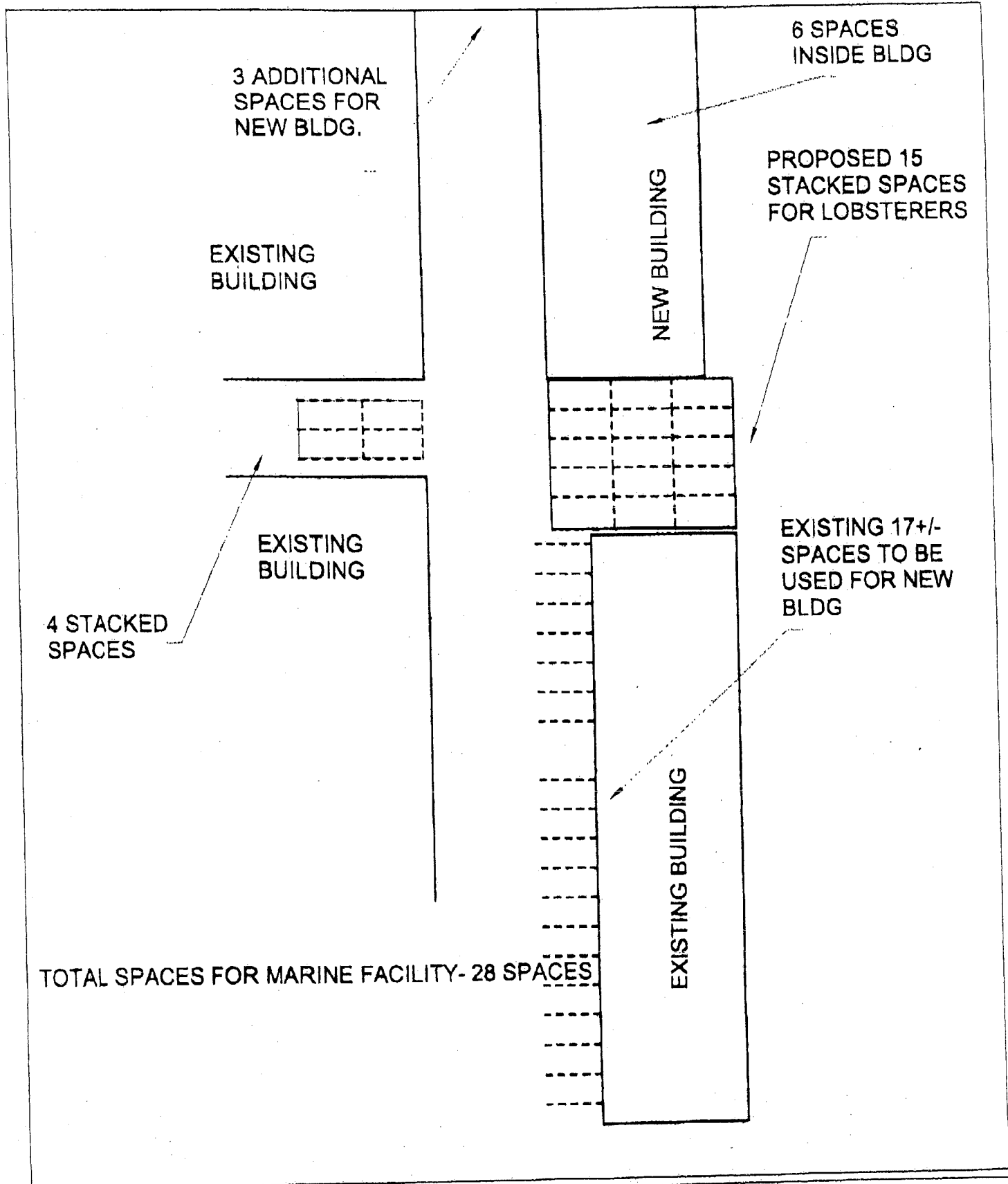
AH 8.3

inconvenience. The Proprietors of Custom House Wharf will work with the lobstermen to arrange for their use of the stacked parking on the deck, thus freeing up approximately 17 parking spaces, which can be used to service the Marine Use Facility.

As noted earlier, Custom House Wharf itself provides for a total of 28 parking spaces, leaving a net unmet demand of 13.25 spaces. To address this demand, the Proprietors of Custom House Wharf will provide 13 additional spaces at 92 Commercial Street for use by the occupants of the second and third floor of the Marine Use Facility.

An additional issue raised by Planning Staff was maintenance of access to the wharf for transfer goods and people to boats using the wharf. The end of the roadway (on the wharf) will always be open, plus the area where the lobstermen will be parked will be available to them. Access is also available at the beginning of the wharf and through Boone's parking lot. Finally, all of the water dependent tenants have access through the buildings, as the all have shop and storage space.

AH 8.4



TOTAL SPACES FOR MARINE FACILITY - 28 SPACES



2 Miranda Bl. - Buxton, Maine  
(207) 725-0805 Fax (207) 728-0847

Schematic Layout of Parking - Marine Use Facility

Proprietors of Custom House Wharf - Portland, Maine

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## Notice of Neighborhood Meeting

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The PROPRIETORS OF CUSTOM HOUSE WHARF will be hosting a Neighborhood Meeting to discuss their application, now pending before the Portland Planning Board, to establish a Conditional Zone. The proposed Conditional Zone would allow the Proprietors to maintain limited non-marine uses on the upper two floors of a newly constructed building located on the Wharf.

You are invited to attend the Neighborhood Meeting, which will be held in the public conference room at the **Casco Bay Lines**, located at 56 Commercial Street in Portland, Maine, on **Thursday, December 18, 2003** from **6:00 p.m. to 7:00 p.m.**

For further information concerning the meeting, please contact Bradford R. Bowman, Esq. at 774-7600. For directions to the meeting location, please visit <http://www.cascobaylines.com> or contact the Casco Bay Lines directly at 774-7871.

Att 9.2

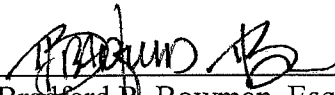
**Minutes of Neighborhood Meeting  
Conducted by  
The Proprietors of Custom House Wharf**

On Thursday, December 18, 2003 from 6:00 p.m. to 7:00 p.m., the Proprietors of Custom House Wharf conducted a neighborhood meeting for the purpose of inviting comment on their application for a contract zone now pending before the City of Portland. The meeting was hosted by the applicant's attorney, Bradford Bowman, and its General Manager, Kenneth Macgowan. The meeting was held in the public conference room of the Casco Bay Lines ferry terminal, located at 56 Commercial Street in Portland, Maine.

A Notice of the meeting was mailed by first class mail to those addressees provided by the City's planning staff, a copy of which Notice is attached hereto as **Exhibit A**.

There being no attendees, the meeting was adjourned at 7:00pm.

**DATED:** January 26, 2004.

  
\_\_\_\_\_  
Bradford R. Bowman, Esq.  
Attorney for the Proprietors of Custom  
House Wharf

Att 10.1

FEB. 4, 2004

KEITH LANE  
73 WATERVILLE ST.  
PORTLAND, ME. 04101

Bill Needelman, Senior Planner  
Planning Division, 4<sup>TH</sup> Floor  
PORTLAND CITY HALL  
PORTLAND, ME. 04101

Dear Mr. Needelman,

My name is Keith Lane. I am a Portland resident, longtime Commercial fisherman, & 30 year tenant on Custom House wharf.

Fishermen as a group are realists, and one of the realities of the modern Portland waterfront is few marine businesses need upper floor space. Ground floor & water access are crucial for water borne commerce.

Much non-marine encroachment has occurred on water side of Commercial St. in recent years.

By keeping remaining ground floor space and water access restricted to Commercial marine use and allowing flexibility with upper floor rentals you ensure wharf owners, such as Proprietors of Custom House whf, will be able to pay their bills & keep our port in business.

AA 10.2

Thank you for your attention to this  
matter.

Sincerely,

Keith Lane  
(207) 828-8018

AA 10.3

RICHARD L. INGALLS  
301 FRONT STREET  
SOUTH PORTLAND, MAINE 04106

January 7, 2004

Orlando D. Delogu, Chairman  
and Members of the Planning Board  
City of Portland, Maine  
389 Congress Street  
Portland, ME 04101

Re: Contract Zone; Proprietors of Custom House Wharf.

Chairman Delogu and Members of the Board:

I regret that I am unable to appear before you for your hearing on the above referred request. I am in San Diego attending a Port Authority Seminar as a member of the Board of the Maine Port Authority.

I write to urge you to pass favorably on the request for a Contract Zone allowing mixed use of the upper floors of the Proprietors Of Custom House Wharf building.

While serving as a co-chair for the Waterfront Alliance in 1990, we were asked by Esther Clenott to undertake the preparation of a prospective ordinance for a Waterfront Zone to replace the Zoning Overlay passed by referendum in 1987 and scheduled to expire early in 1992. The Alliance was chosen because the membership consisted of members of all groups with interest in the waterfront including Karen Sanford, a founder of the Keep the Port in Portland group. Eighteen months later the Alliance presented such a document to the City Manager. It had been reached with 100 percent consensus of all members participating in the effort. That prospective ordinance did *not* contain the language requiring upper floors to be for marine related occupancy only in new construction. The submitted plan was work-shopped by the planning board and members of the Alliance and submitted to the council for passage. After that submittal, the marine related use for upper floors requirement along with other amendments were added.

It has been my pleasure to have served as a member of your Harbor Commission for the past eleven years, ten of them as its chairman. Among the responsibilities of the Commission is the permitting of all construction in Portland Harbor below mean high water. The Commission is also charged with the regulation of navigation and commerce within its jurisdiction. During this period I led the five year successful effort to have Portland Harbor dredged by the U.S. Army Corps of Engineers.

I do not represent the two forenamed organizations with this writing nor do I have any personal financial interest in the outcome of the matter now before you, but present to you my observations as to the well being of the Port of Portland to all of its users.

The geophysical properties of the Portland side of the Harbor, with foundation depths exceeding 150 feet, present extremely expensive building options to the owners of Portland's private piers. The costs to rebuild the sagging piers of a large portion of the harbor cannot be borne solely by the fishing fleet or other "marine related" entities. The upper floors should be inhabited by non marine related businesses that are co-habitable in use terms with our traditional marine users and thus subsidize the perimeter of the piers and ground floor use.

I realize that there have been misunderstandings between the parties of this hearing. I pray that you set these misunderstandings aside and by what ever process necessary, allow this building to join the commerce necessary to spur the resurgence of the Portland "working waterfront" in the new century.

Sincerely,

  
Richard L. Ingalls

AH. 11.1

**Waterfront Alliance Recommendations**  
**to the City of Portland**

Prepared by the  
Greater Portland Council of Governments

April 14, 1992





11.2

# WATERFRONT ALLIANCE

• PORT OF PORTLAND •

P.O. Box 587 • Portland • Maine • 04112 • 207/874-PORT (7678)

April 14, 1992

The Honorable Thomas H. Allen, Mayor  
and the Portland City Council  
389 Congress Street  
Portland, ME 04101

RE: Report of the Waterfront Alliance  
Review and recommendations in regard to current  
waterfront zoning and economic issues.

Dear Mayor Allen and City Council:

On January 31, 1991, Esther Clenott, Chairwoman of the Community Development Committee, wrote to the Alliance accepting our offer to assist the City with a review of current waterfront zoning. Councilor Clenott requested that the report be submitted by mid-summer of 1991. Since receiving the letter, the process was lengthened by instructions to consider economic factors along with zoning recommendations.

The Alliance proceeded with the review. Work continued on a two meeting a month basis until January of this year when we started meeting weekly. The preparation of this report has included participation of people with interests and viewpoints of all levels of concern for our waterfront. The review included several tours of the waterfront and the assistance of the Planning Staff. The Alliance Board list is attached for your review.

While none of the following recommendations are in-depth or completed studies, we feel that they will provide you with the material needed to go forward with a zoning plan that will be acceptable to virtually every interested party.

## ZONING

On February 27, 1991, the Alliance submitted recommendations for the Industrial Zones. A copy of that report is attached. Continuing discussion since the submittal of that report has resulted in changes which are included in the following:

## PREAMBLE

Our recommendations are based on the recognition that as a working waterfront, Portland Harbor should be a regional economic force that supports local economies through jobs and tax revenues.

Water-dependent users are the lifeblood of Portland's waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long-term growth. Measures to promote diversity include zoning, as well as economic assistance and partnerships between private and public interests.

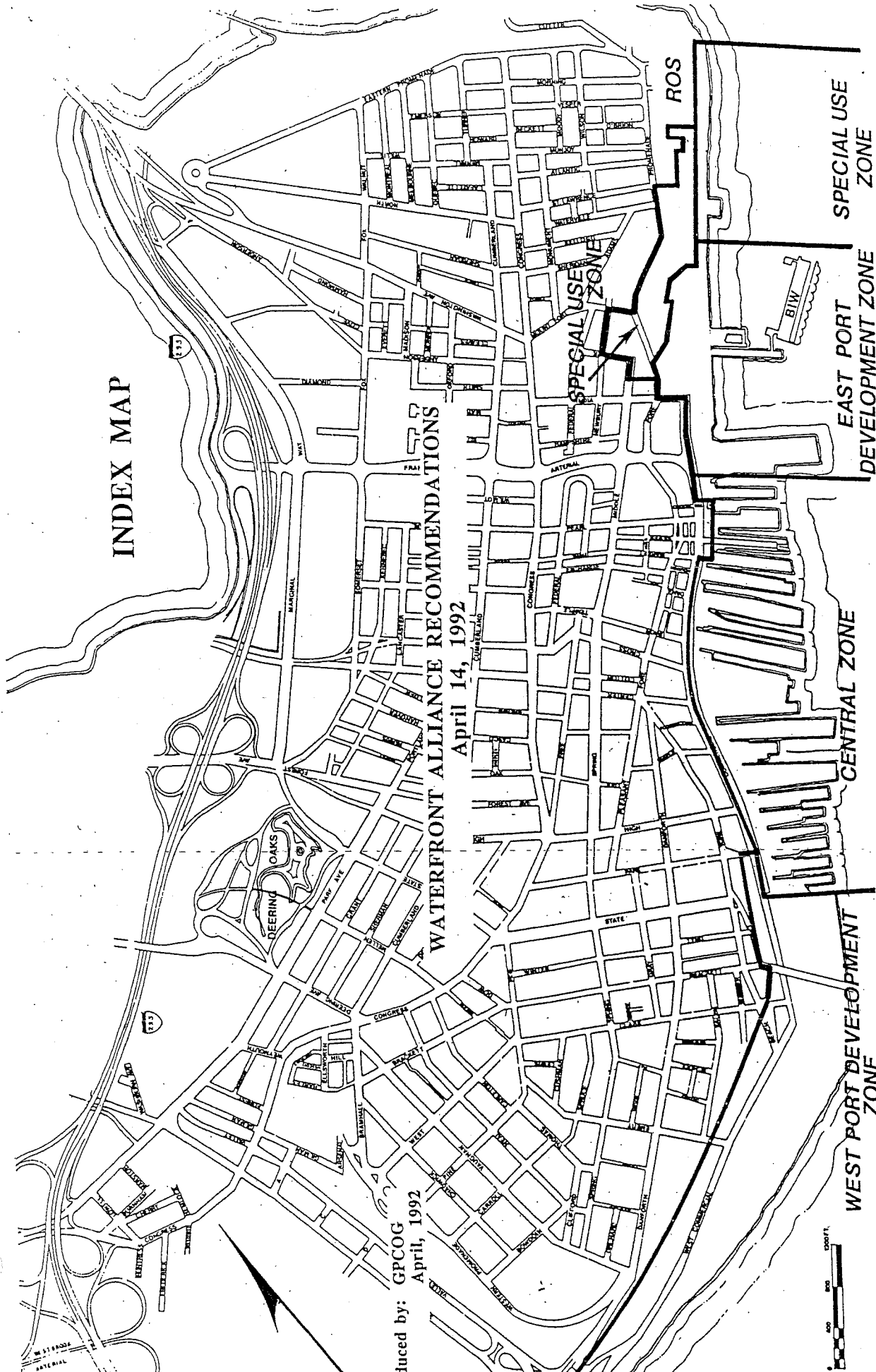
In order to maintain and expand the Port as a working waterfront for the enjoyment and economic benefit of all, the Waterfront Alliance recommends the following measures be taken:

1. Preserve the entire perimeter of the Harbor from Tukey's Bridge to the Veteran's Memorial Bridge for berthing.
2. Recognize that property with direct water access is limited and should be reserved exclusively for marine use.
3. Allow marine compatible use of other property that does not interfere in any way with the activities of water-dependent users.
4. Divide the waterfront into four zones that reflect the type of berthing or land use that each zone can accommodate.
5. The Alliance believes that the City should renew its commitment to promoting public access to the Port for the benefit and enjoyment of its citizens and continue to insure ecological safety through the promotion of environmentally sound practices.

INDEX MAP

WATERFRONT ALLIANCE RECOMMENDATIONS  
April 14, 1992

Produced by: GPCOG  
April, 1992



**DEFINITIONS**

- Water Dependent - those uses requiring direct waterside or water access for berthing and space - are priority one.
- Marine Related Support Uses - those in support of but not interfering with water dependent - are priority two.
- Marine compatible - those uses that are not either water dependent, marine related support and do not interfere with or are not incompatible with the above - are encouraged.

### SPECIAL USE ZONE

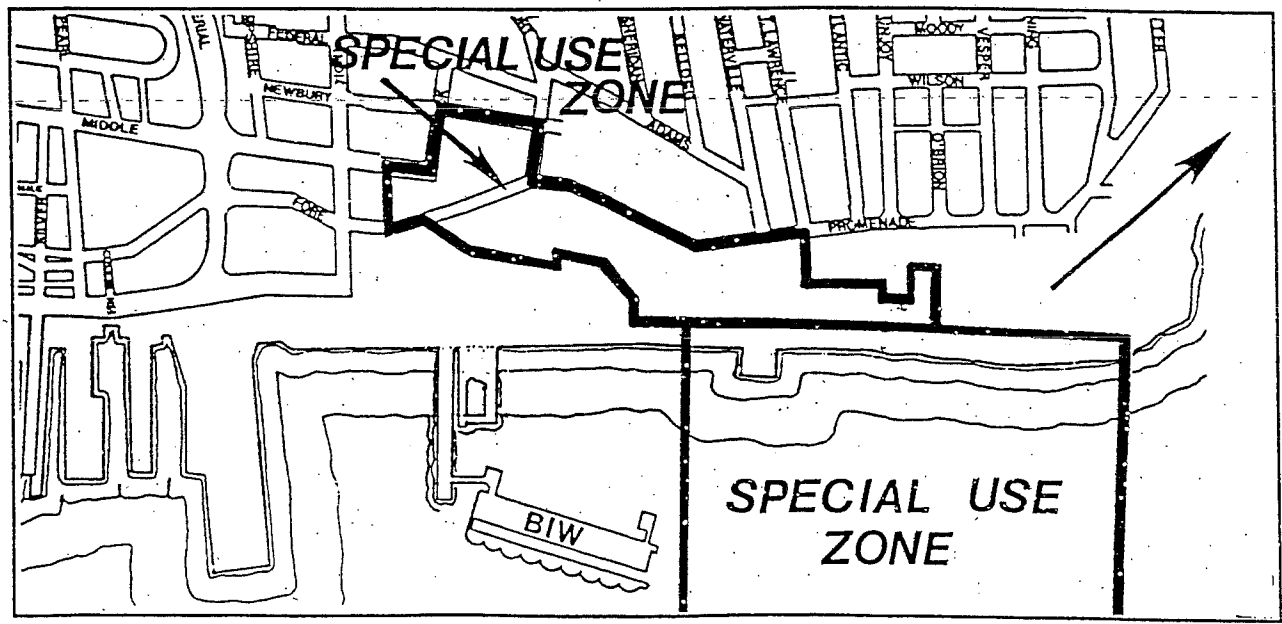
#### SPECIAL USE ZONE GEOGRAPHIC DESCRIPTION (SUZ):

This area is a mixture of the original sloping river bank and filled land along the water's edge. Major development of this area has included a rail head and terminal for Grand Trunk Railroad, a locomotive foundry as well as a steel foundry and other heavy industrial uses. Until the 1950's, this was Canada's winter port. The area now has a mix of 19th Century factory buildings that are largely vacant or underutilized, and more modern light industrial buildings with a mix of uses as tenants. There is little vacant land.

Recommendations are:

1. to provide an area where Marine Industrial and Marine Compatible Uses can operate;
2. to allow Marine Compatible Uses to occupy existing vacant facilities that are not directly water related;
3. to provide a plan which directs new non-marine development (new construction/substantial rehabilitation) to contribute to the maintenance and improvement of the infrastructure along the water's edge as a condition of use;
4. to promote the use of the land along the water's edge be used by water dependent uses;
5. to encourage public access to the waterfront;
6. to promote uses that do not harm abutting neighborhoods and are environmentally sound.

The geography of this new zone is generally the eastern end of the Portland Engineering property north of the Grand Trunk Railroad r-o-w and moving along the r-o-w and on parcel lines Northwestery crossing a point on Eastern Promenade at the Old Cosby Laughlin site and including that property, then Easterly back along Eastern Promenade and then south following the line of Portland Engineering property to the r-o-w. Further included is all land south-of the r-o-w from a point just East of the BIW Dry Dock easterly to the current abutting ROS zone.



The Waterfront Alliance concept for this area is to develop viability while maintaining compatibility with the Port Development Zone (PDZ), ROS and residential zones that abut. The Waterfront Alliance sees this area as the potential gateway to the region.

### PORT DEVELOPMENT ZONE

#### Port Development Zone Purpose Statement:

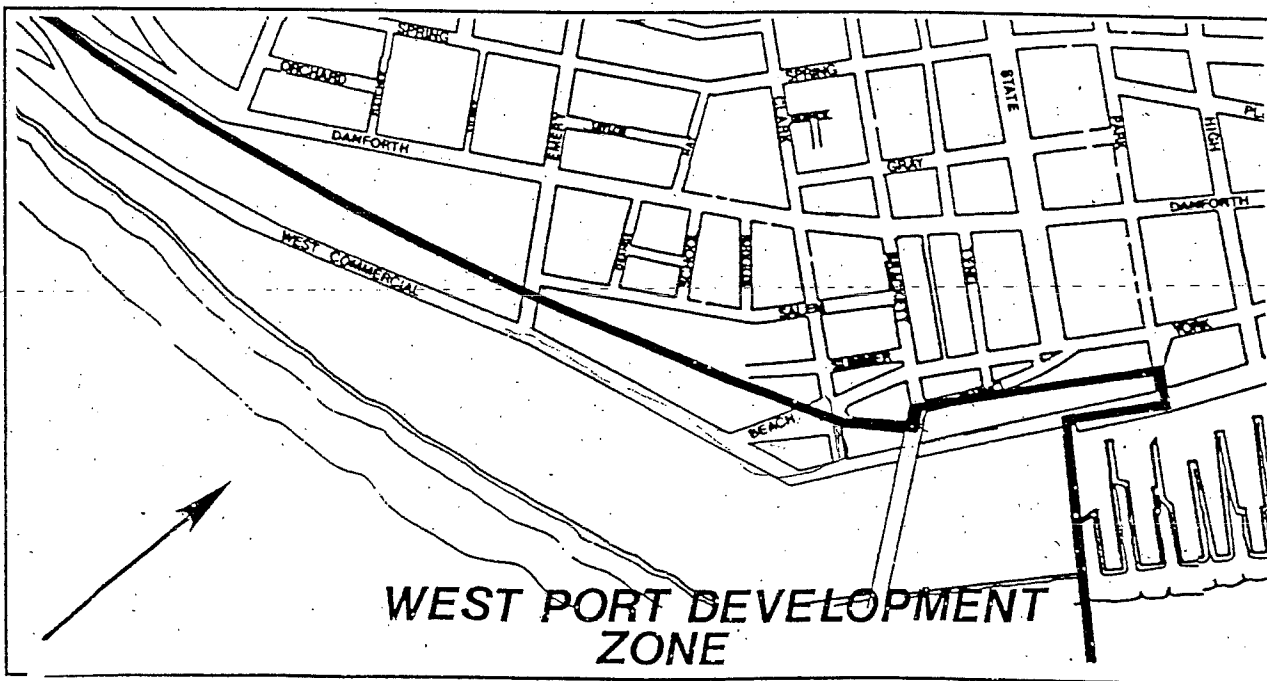
Transport of goods by water to and from Portland is an important component of both the local and regional economy. This commerce is dependent upon land with direct access to the dredged deep water channel of the Fore River.

Waterfront land with direct deep water access shall be restricted to uses which contribute to port activity. This zone exists, therefore, to insure the continued viability of the Port of Portland, ME. Uses in the Port Development Zone, while governed by the same performance standards as other industrial zones, are limited to those which are dependent upon access to deep water and contribute to port activity.

Non-marine industrial activity may be allowed only on a temporary basis and only to the extent it will not preclude or impede any future water dependent development.

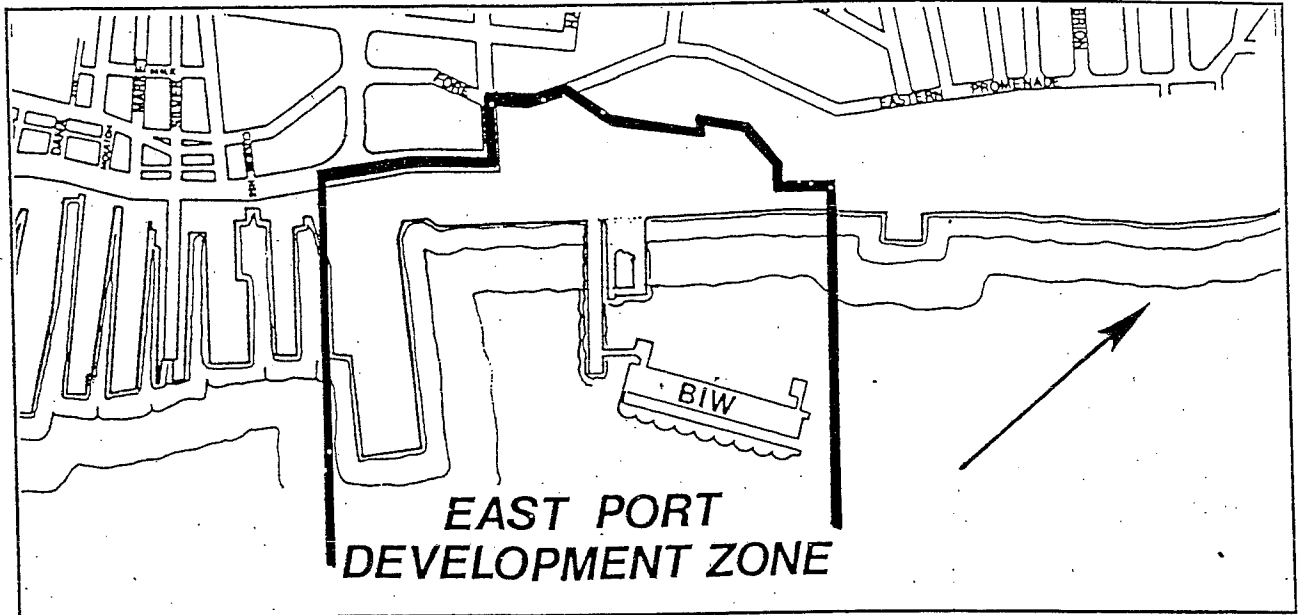
(See the Pringle Amendment attached for clarification.)

**PORT DEVELOPMENT WEST ZONE GEOGRAPHIC DESCRIPTION:** Generally the land east of Veterans Memorial Bridge to the south side of State Street Wharf and all land west of the Million Dollar Bridge.



### PORT DEVELOPMENT EAST ZONE GEOGRAPHIC DESCRIPTION:

The area from the east side of the Maine Wharf to the easterly end of the current W-1, all areas south of the Grand Trunk Railroad r-o-w and including the r-o-w (part of old IM2).



### USES NOT ALLOWED IN PORT DEVELOPMENT ZONE:

- New residential
- Hotels
- New Retail Complex
- New Office Buildings
- Boatels
- Aquariums (see SUZ recommendations)
- Auditoriums (see SUZ recommendations)
- Civic Centers
- Institutional
- Marine incompatible

**Land Use Description:** The purpose of the zone is to accommodate intermodal transportation of goods to and from Portland and the region. The description recognizes the importance of the zone to the regional economy. It recognizes that links with rail, turnpike and waterborne mechanisms are at the crux of this zone's protection of the marine dependent uses (marine only access).

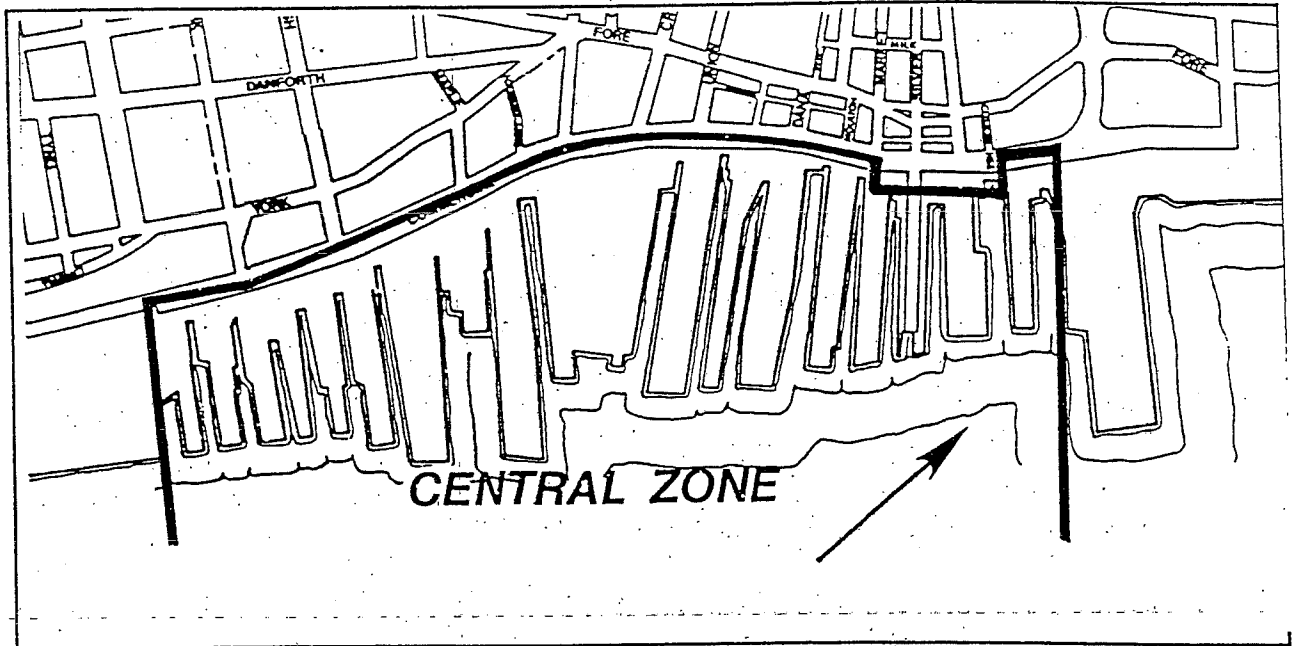
The zone's existence is designed to ensure the continued viability of the port. Its uses, while governed by the same performance standards as other industrial zones, are limited to those which are dependent upon access to deep water, and/or contribute to Port Development Activity.

**NON-MARINE ACTIVITIES IN SUPPORT OF PORT DEVELOPMENT** goals may be allowed in areas that are in the PDZ. We recommend a mechanism be developed to allow some flexibility in the "non-marine but supports port development uses" to ensure retention of the waters edge on the one hand while allowing enough economic activity to retain the area's economic viability.

The Waterfront Alliance recommends the development of Performance Standards or Contract Zone Concept to be applied to projects that must commit to an understanding of the needs of the marine dependent in noise, traffic control, odors, parking, traffic, TDM, hours of business and so forth.

### THE CENTRAL ZONE

**THE CENTRAL ZONE GEOGRAPHIC DESCRIPTION:** The geography of the central zone is generally described as the area from the east side of the State Street Wharf to the Centerline between the Maine Wharf and the Casco Bay Island Terminal. The zone also includes the areas to the north of Commercial Street currently zoned as W1-W2 on City zoning maps.





## ECONOMIC PLAN

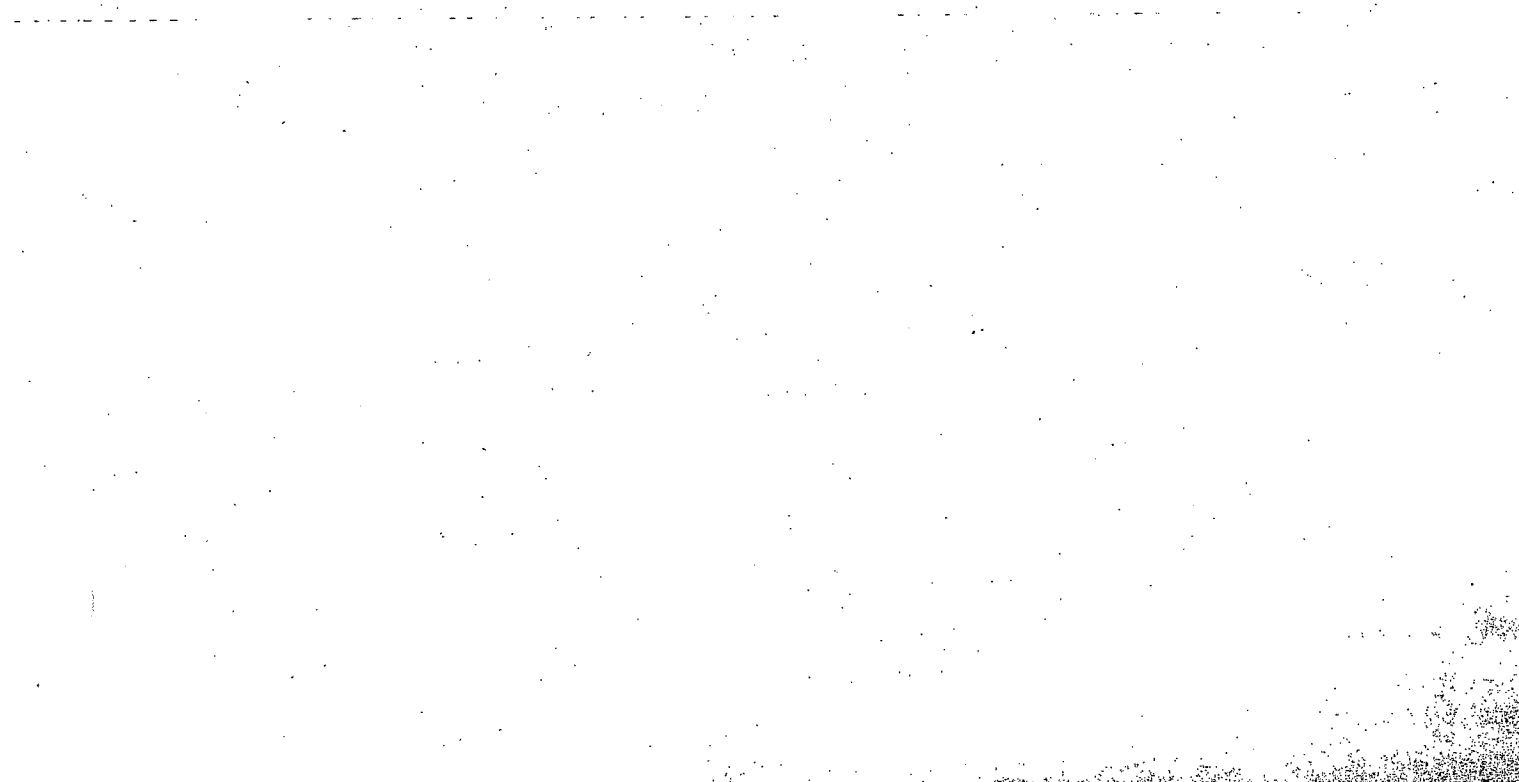
The Alliance has established an Economic Development subcommittee which is now working on economic issues and at this point recommends that these zoning recommendations be seen as only one part of a larger scheme for the maintenance and development of the waterfront.

The Alliance feels that zoning is not the only "tool" available to stimulate growth and development of waterfront resource. In fact, probably no land uses could generate sufficient revenue to maintain and fully develop the waterfront infrastructure to its full potential.

If the working waterfront mandate is to be carried out for the sake of the long-term community interest, then the public and private interests must start to work together in critical areas such as harbor management and development. The Alliance has outlined for your consideration, the following general action plan:

1. Harbor Management
  - a. Port Authority/Commission
  - b. Marketing
  - c. Policy
  - d. Harbor dredging
  - e. Streamline permitting process
  - f. Improved interest in the port by all citizens
  - g. Cooperative effort by both cities harbor issues
2. Long Term Economic Development
  - a. Tax incentives
  - b. Low cost loans
  - c. Grants (Government)
  - d. Revolving loan programs
3. State level activity
  - a. Legislative changes favoring Port of Portland
  - b. Economic impact
  - c. Lack of political influence
4. Economic Development Strategies should include:
  - a. Business Retention
  - b. Financial Assistance
  - c. Marketing/Promotions
  - d. Business Recruitment
5. Industries on the Waterfront-Market That Need Review:
  - a. Dry Cargo
  - b. Oil Shipping
  - c. Fishing
  - d. Recreational Boating
  - e. Passenger/Cruise Ships
  - f. Retail/Tourism
  - g. Transportation (Intermodal)
  - h. Tourism
  - i. Ship Repair
  - j. Coast Guard

# APPENDICES



APPENDICES

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| IM1 & IM2 Zone - Description and History                 | 15   |
| Pringle Amendment  | 19   |
| Waterfront Alliance Subcommittee on Economic Development | 20   |

**NOTE:** This section includes the Waterfront Alliance Issues Committee Report on Waterfront Industrial Zones already submitted.

Over the past six months, the Issues Committee of the Waterfront Alliance has been looking at the Industrial Zones along Portland's waterfront. All of Portland's Industrial Zones are slated to be revised in the coming year, and as stated in our Mission Statement, we have first concentrated our efforts on these zones and have come up with the following recommendations.

1. The Committee recommends that because the Industrial Zones that are adjacent to the navigable waterfront are unique, they should be treated separately from the other upland Industrial Zones. For the purposes of this report, these zones are going to be classified as follows: the properties bounded by the Million Dollar Bridge, the cliffs below Danforth Street, the Veterans Bridge and the water will be called the Industrial Marine 1 Zone (IM1). The properties bounded by Portland House, Fore Street, BIW and the water will be called the Industrial Marine 2 Zone (IM2).
2. Because of the substantial difference - topography, access, historical use, present uses, among others - between the two zones (IM1 and IM2), the zoning regulations should be tailored for each zone. What is appropriate for one zone may not be for the other and vice versa.

With these recommendations, the following purposes have been put forth for these Industrial Marine Zones.

## Industrial Marine 1 Zone Description and History

This area is largely level filled land that is approximately 33 acres. It was originally filled and developed as a rail yard and terminal for bulk cargoes such as clay and coal by Maine Central Railroad. The land is largely vacant with the notable exception of Merrill's Marine Terminal, and a few light industrial uses clustered around West Commercial Street and along the north side of Commercial Street by the Million Dollar Bridge. Northern Utilities also operates a gas plant in the zone.

The purpose of the IM1 Zone is:

1. to encourage commerce which requires use of water, rail and highway transportation networks;
2. to encourage a compatible mixture of industrial transportation related uses, while giving priority to water dependent uses to the waterfront area;
3. to encourage Marine Industrial Uses that utilize the transportation infrastructure;
4. to provide an area where Marine Industrial and Marine Compatible Uses can operate;
5. to provide a plan that directs new nonmarine development (new construction/substantial rehabilitation) to contribute to maintenance and improvement of the infrastructure along the water's edge as a condition of use;
6. to promote the use of the land along the waters edge to be used by water-dependent uses;
7. to promote uses that do not harm abutting neighborhoods and are environmentally sound.

## Industrial Marine 2 Zone Description and History

This area is a mixture of the original sloping river bank and filled land along the water's edge. Major development of this area has included a rail head and terminal for Grand Truck Railroad, a locomotive foundry as well as a steel foundry and other heavy industrial uses. Until the 1950's, this was Canada's winter port. The area now has a mix of 19th Century factory buildings that are largely vacant or underutilized, and more modern light industrial buildings with a mix of uses as tenants. There is little vacant land.

The purpose of the IM2 Zone is:

1. to provide an area where Marine Industrial and Marine Compatible Uses can operate;
2. to allow Marine Compatible Uses to occupy existing vacant facilities that are not directly water related;
3. to provide a plan which directs new nonmarine development (new construction/substantial rehabilitation) to contribute to the maintenance and improvement of the infrastructure along the water's edge as a condition of use;
4. to promote the use of the land along the water's edge be used by water-dependent uses;
5. to encourage public access to the waterfront;
6. to promote uses that do not harm abutting neighborhoods and are environmentally sound.



EATON  
TRAFFIC  
ENGINEERING

---

FAX COVER SHEET

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DATE: February 8, 2004

TIME: 11:37 AM

NUMBER OF PAGES: 5 (INCL. COVER SHEET)

FROM: Bill Eaton PROJECT #: 03087  
Eaton Traffic Engineering

TO: FAX #: 756.8258  
ATTN: Bill Needelman, Planning

---

COMMENTS: Attached is Memo and Graphic re: Marine Use Facility on Custom House Wharf

---

*If material received is not legible, please contact us ASAP*

TEL: 207/725-9805

FAX: 207/725-0847

2 Miranda Street • Brunswick, Maine • 04011



THE DUNHAM GROUP

COMMERCIAL, REAL ESTATE SERVICES, WORLDWIDE.

AH 12



10 Dana Street, Suite 400  
Portland, ME 04101

207773-7100

FAX 207773-5480

EMAIL [dunham@dunham-group.com](mailto:dunham@dunham-group.com)

URL <http://www.dunham-group.com>

July 30, 2003

Mr. Kenneth McGowen  
18 Custom House Wharf  
Portland, Maine 04101

Dear Ken:

In regards to your new building on Custom House Wharf it is my opinion that the chances of leasing the building to marine related businesses are very remote. I base my opinion on my experience marketing the Maine Wharf for the past three years. The issue with fish processing is the functional obsolesce of the wharfs themselves. They preclude access for trailer trucks therefore it is impractical to move product. This has been the biggest obstacle I have encountered in attracting this particular use to the Maine Wharf. As for marine related office users, there simply is no demand. We have been sitting on vacant office and industrial space for the past three years at the Maine Wharf. I do believe that the ground level bays in your building have a decent chance to attract marine related use due to there small size a resulting affordability. If you have any questions please call.

Sincerely,

Frank O'Connor CCIM, STOR

In over 300 Markets Worldwide: *NAI America* *NAI Asia Pacific* *NAI Canada* *NAI Europe* *NAI Latin America*

INDIVIDUAL MEMBER OF





**Memorandum**  
**Department of Planning and Development**  
**Planning Division**

---



**To:** Chair Caron and Members of the Portland Planning Board

**From:** Bill Needelman, Senior Planner

**Date:** September 10, 2004

**Re:** September 14, 2004 Workshop  
Custom House Wharf Contract Zone  
Proprietors of Custom House Wharf, Applicants

---

**1. Introduction:**

The Proprietors of Custom House Wharf request a workshop to discuss a potential conditional rezoning of a portion of Custom House Wharf. The rezoning is proposed for a new structure located at the southerly end of the wharf to allow certain non-marine uses (such as commercial/professional office) on an upper 1 and 1/2 floors of a three story building. The Proprietors propose the conditional rezoning having been unable to rent the upper floor space in the building. A draft contract is included in Attachment 1.

**2. Background:**

As most Board members will remember, this item was recently reviewed by the City Council after receiving a negative recommendation from the Planning Board. The Board split in its recommendation with a majority of members having concerns over the precedent of the rezoning and potential parking impacts of the non-marine uses.

The February 18, 2004 City Council Report is included with this memo to provide background and policy analysis for this workshop.

**3. Current Proposal:**

The applicant's latest proposal includes edits responding to Council suggestions and brings the proposal further in alignment with the conditions for contract rezoning in the WCZ. Furthermore, the revised Parking Management Plan, Attachment 2, removes all parking from the interior of the building and removes all non-marine parking from the pier. As proposed, 26 non-marine spaces would be provided at the Boone's Restaurant

lot at Commercial Street (located in the B-3 zone where commercial parking is a permitted use.

Staff asks the Board to review the latest submission and the policy discussion in the Council report.

The applicant hopes that this item can return to Public Hearing for the October 12<sup>th</sup> meeting.

Attachments:

1. Revised Conditional Rezone agreement
2. Revised parking management plan
3. Council Report #5-04, Text Only
4. Zone Map Change
5. Approved Site Plan

AA 1.1

[DRAFT REVISED]

**CONDITIONAL ZONE AGREEMENT**

**THE PROPRIETORS OF CUSTOM HOUSE WHARF**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2004, by **THE PROPRIETORS OF CUSTOM HOUSE WHARF**, a Maine corporation with a principal place of business located in the City of Portland, County of Cumberland and State of Maine, its successors and assigns (the "**PROPRIETORS**").

**WITNESSETH:**

**WHEREAS**, the **PROPRIETORS** have restored dilapidated pilings and wharf decking, and made certain improvements to Custom House Wharf, including the construction of a building thereon, which building is located in Portland at Map 030, Block A, Lot 1, which building and surrounding property is more particularly described on Attachment 1 (the "**PROPERTY**");

**WHEREAS**, the **PROPRIETORS** have requested a rezoning of the **PROPERTY** in order to permit the **PROPRIETORS** to maintain certain non-marine uses limited to those floors above the ground level of said **PROPERTY**;

**WHEREAS**, the **CITY** by and through its Planning Board, pursuant to 30-A M.R.S.A. §4352(8) and Portland City Code §14-60, *et seq.*, and §14-315.3, after notice and hearing and due deliberation thereon, recommended the rezoning of the **PROPERTY** as aforesaid, subject, however, to certain conditions more specifically set forth below;

AH 1.12

WHEREAS, the CITY has determined that the proposed rezoning would be pursuant to and consistent with the standards and requirements set forth in Portland City Code §14 -313.5 and §14 -315.3 for conditional rezoning within the WCZ;

WHEREAS, the CITY has determined because of the unusual location of the PROPERTY it is necessary and appropriate to have imposed by the PROPRIETORS the following conditions and restrictions in order to ensure that the rezoning is consistent with the City's Comprehensive Plan;

WHEREAS, the CITY through its Planning Board and City Council have determined that said rezoning would be consistent with the 1992 Waterfront Alliance Report which report recognized in part that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth;

WHEREAS, the CITY though its Planning Board and City Council have recognized that there is an economic need to subsidize marine uses with the WCZ by allowing a mixture of marine and non-marine uses within the Waterfront Central Zone.

WHEREAS, the CITY authorized the execution of this Agreement on \_\_\_\_\_, 2004;

NOW THEREFORE, in consideration of the rezoning the PROPRIETORS covenant and agree as follows:

1. The CITY shall amend the Zoning Map of the City of Portland, dated December 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 Portland City Code §14-49, by adopting the map change amendment as shown below and limited to the footprint of the building existing at \_\_\_(address)\_\_\_ as of the date of passage of Council Order # \_\_\_\_\_.

INSERT MAP

2. The **PROPERTY** and site improvements shall be developed and operated in accordance with the approved 10-5-99 site plan shown on **Attachment 2**, provided however, that Note 1 contained thereon shall not apply.

3. No occupancy of the building shall be permitted unless and until all site plan conditions of approval (excluding the condition related to uses) have been satisfied.

4. In addition to those uses that are, or may become, otherwise authorized within the WCZ, as it may hereafter be amended, repealed, or replaced, the **PROPRIETORS** shall be authorized to establish and maintain non-marine uses on the upper two floors of the **PROPERTY** in accordance with Portland City Code §14-314(b) and (c), as though the building located on the **PROPERTY** had been in existence on January 4, 1993. The provisions of this Agreement, including the permitted uses set forth above, are intended to replace the uses, restrictions and requirements of the underlying WCZ zone. This paragraph shall be effective only to the extent of the footprint of the building located on the **PROPERTY**, as shown in Paragraph 1.

5. Leases, rentals or other usage fees charged for space within the **PROPERTY** or the Associated Berthing Space (as more particularly defined in Paragraph 8 below) to marine related and water dependant tenants, shall be made at rates comparable to those charged for similar privately owned space leased by or rented to marine related and water dependant uses within the WCZ, taking into to consideration the comparative condition and quality of such other marine related space.

6. The **PROPRIETORS** shall manage the on site parking associated with the Property in accordance with the Parking Management and Circulation Plan attached hereto as **Attachment 3**. Adherence to the Parking Management and Circulation Plan shall be made a condition of all leases of space within the **PROPERTY**, and shall be attached as an exhibit to all such leases. No vehicle parking shall be allowed within the 1<sup>st</sup> floor of the building.

7. No changes to the Parking Management and Circulation Plan shall be made by the **PROPRIETORS** without prior review and approval of the City of Portland Planning Authority.

8. The berthing space immediately adjacent to the **PROPERTY** (the "Associated Berthing Space") shall be reserved exclusively for commercial marine vessels.

9. The **PROPRIETORS** shall reserve eighty percent (80%) of the total berthing space available on Custom House Wharf for use by commercial marine vessels.

10. The **PROPRIETORS** shall maintain adequate water depths to ensure that commercial marine vessels are able to access the Associated Berthing Space, provided that such maintenance may be conducted in accordance with all relevant municipal, State and Federal laws.

11. The **PROPRIETORS** shall maintain and ensure access to the edge of the pier sufficient to provide functional land/water transfer of goods, catch, materials and supplies.

The above restrictions, provisions and conditions are an essential part of the rezoning, shall run with the **PROPERTY**, shall bind and benefit the **PROPRIETORS**, any entity affiliated with the **PROPRIETORS** that takes title to the **PROPERTY**, their successors and assigns, and any party in possession or occupancy of the **PROPERTY** or any part thereof, and shall inure to the benefit of and be enforceable by the **CITY**, by and through its duly authorized representatives. The **PROPRIETORS** shall record a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the book and page of the deeds to the property underlying said **PROPERTY**, providing to the City a copy of such recorded document.

If any restriction, provision, condition, or portion 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 and shall not affect the validity of the remaining portions hereof.

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, including all provisions of the WCZ and all corresponding performance standards, and any applicable amendments thereto or replacements thereof.

In the event that **PROPRIETORS** or any successor fails to continue to utilize the **PROPERTY** in accordance with this Agreement, or in the event of **PROPRIETORS'** breach of any condition(s) set forth in this Agreement which differs from the provisions of Portland's Land Use Code that would otherwise be applicable to property in the WCZ zone, the **CITY** may prosecute such violations in accordance with

AH1.5

30-A M.R.S.A. § 4452 or in any other manner available by law. Should **PROPRIETORS** be found to have breached this Agreement, the Planning Board, at the request of the Planning Authority, or the City Council, on its own initiative, may propose that the zoning of the **PROPERTY** be modified or that the **PROPERTY** be rezoned.

WITNESS

**THE PROPRIETORS OF CUSTOM  
HOUSE WHARF**

\_\_\_\_\_

By: Kenneth Macgowan  
Its: General Manager

STATE OF MAINE  
CUMBERLAND, ss.

Date: \_\_\_\_\_, 2004

Personally appeared before me the above-named **Kenneth Macgowan**, in his capacity as Director and General Manager of the Proprietors of Custom House Wharf, and acknowledged the foregoing instrument to be his free act and deed in his said capacities and the free act and deed of the Proprietors of Custom House Wharf.

Before me,

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



AA 2.1

2 Miranda Street · Brunswick ME 04011 · Tel 207.725.9805 · Fax 207.725.0847 · ete@suscom-maine.net

To: Kenneth N. Macgowan, Business Manager, Proprietors of Custom House Wharf  
Bradford R. Bowman, Thompson Bull

Fm: William C. Eaton, Eaton Traffic Engineering

Dt: June 29, 2004

Re: Revised Assessment of Parking Demand and Supply for Marine Use Facility

The Marine Use Facility is a three story building located at the end of Custom House Wharf, with total gross floor area of 22,500 square feet. On the first floor of the building approximately 2,500 square feet of the total 7,500 square feet is to be used for vehicle storage/loading, thus the net usable floor area at this level is 5000 square feet (net usable overall – 20,000 square feet).

Parking demand was estimated assuming that one half of the floor area of the building would be occupied by a marine use, and the other half by general office uses. A review of parking demand literature did not turn up any specific information for “marine uses”, but the publication Parking<sup>1</sup> contained demand estimates for “Storage, wholesale or utility” land uses. The suggested minimum parking requirement was 0.5 spaces per 1000 square feet plus required spaces for any office or sales areas. For the 10,000 net square feet to be utilized by marine uses, this would indicate the need for 5 parking spaces.

To estimate general office parking demand the publication Parking Generation<sup>2</sup> was utilized. For office buildings of less than 50,000 square feet, the average parking rate was 2.6 spaces per 1000 square feet (with range of 0.75 to 4.7 spaces per 1000 square feet). This data was based upon 36 studies that included CBD, urban and suburban locations. Typically CBD and urban rates are lower than suburban locations, thus in this case the 2.6 spaces per 1000 square feet may be high.

<sup>1</sup> Robert A. Weant and Herbert S. Levinson, Eno Foundation for Transportation, 1990

<sup>2</sup> Institute of Transportation Engineers, 1985



Using the 2.6 space rate for the 10,000 square feet allocated to general office use, the parking demand is estimated at 26 spaces. Combining this with the demand for the marine use yields a total demand of 31 spaces.

The proposed parking supply for the Marine Use Facility is graphically presented on the attached "Schematic Layout of Parking". Parking supply is summarized as follows:

1. 3 spaces at the end of the Wharf
2. a deck adjacent to the building which can park up to 15 vehicles in a "stacked" configuration

The above yields total of 18 spaces. The Proprietors of Custom House Wharf propose that the spaces on the wharf itself be limited to the marine uses in the building. The non-marine use parking demand (26 spaces) will be provided at 92 Commercial Street.

AH 3.1

CITY COUNCIL REPORT #5-04

**CONDITIONAL RE-ZONING**  
**VICINITY OF CUSTOM HOUSE WHARF**  
**PROPRIETORS OF CUSTOM HOUSE WHARF, APPLICANT**

Submitted to:  
Portland City Council  
Portland, Maine

February 18, 2004

Submitted by:  
City of Portland Planning Board  
Orlando Delogu, Chair

## 1. Introduction:

The Proprietors of Custom House Wharf request Council Action on a potential conditional rezoning of a portion of Custom House Wharf. The rezoning is proposed for a new structure located at the southerly end of the wharf to allow certain non-marine uses (such as commercial/professional office) on the upper two floors of a three-story building. The Proprietors propose the conditional rezoning having been unable to rent the upper floor space in the building. A final draft contract is included in Attachment 3. The conditions of the rezoning are further described with staff comments in Section 3 below. Sections 5 thru 7 provide background and a development history of the site and policy information regarding the Waterfront Central Zone. A summary of the Planning Board's recommendation is provided in Section 8.

## 2. Policies for Non-marine Uses and Contract and Conditional Rezoning in the WCZ:

The proposed conditional rezoning needs to demonstrate consistency with the current Comprehensive Plan. Portland's waterfront zones are unique in that the zoning text itself was adopted in January of 1993 as part of the Comprehensive Plan following the recommendations of the 1992 Waterfront Alliance report. The full text of the WCZ zone is included in attachment 1.

The WCZ provisions with the greatest bearing on this application are the *No Adverse Impacts* clause and the *Standards for Conditional and Contract Rezoning* as discussed below. These two code sections provide specific standards that apply to the proposed rezoning. For reference, the Waterfront Alliance Report is included in attachment 11 and is otherwise summarized in Section 7 of this report.

### No Adverse Impacts

All uses in the WCZ, even marine related uses (as distinct from *water-dependent* uses) need to adhere to the provisions of the "no adverse impact" clause. The intent of the clause is to provide a framework to evaluate how the priority of uses established in the purpose is applied. Provision (c) below has the greatest application to the subject rezoning.

The complete text of the no adverse impact clause is included below.

#### **Sec. 14-313.5. No adverse impact on marine uses.**

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

Given the odor, hours of operation and noise associated with a working pier, the introduction of 14,000 square feet of office use on a confined pier raises concerns with regards to provision (c) above. While no existing marine uses will be displaced through the proposed rezoning, one needs to consider the general compatibility of office use on this particular pier. The Council may wish to explore with the applicant how these issues would be addressed in the management of the pier.

Conditional Rezoning in the WCZ

In addition to the No Adverse Impact clause described above and Comprehensive Plan elements described below in Section 7 of this report, the proposal needs to comply with the WCZ Contract or Conditional Rezoning standards outlined below. These standards apply specifically to the type of application before the Council today. Interestingly, in the 10 years that the current zoning has been in place, no other applicant has proposed upper floor non-marine use under the provisions outlined below. Several Board members expressed concern with the precedent established by this application.

The standards for contract and conditional rezoning in the WCZ are included below. In the applicant's written statement, each of these standards is specifically addressed. Please see Attachment 4. Staff comments, as provided to the Planning Board, are provided below in *italics*.

**Sec. 14-315.3. Contract or conditional rezoning.**

Except as authorized in section 14-314(d) {permitted uses;} an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the

standards of section 14-313.5 (No Adverse Impact) and all of the following standards:

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).

*This provision is the basis of the proposed uses.*

- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.

*The applicant proposes all marine use of the first floor. The applicant also proposes that 6 parking spaces are allowed within the structure – presumably for marine use. Even if the parking spaces are marine use, these spaces degrade the utility of the first floor space for marine industry. Please see the Parking discussion below.*

- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.

*The zoning for this area is a part of the comprehensive plan. The policy document underlying the zoning is the 1992 Waterfront Alliance Report. The findings of the Waterfront Alliance report are well summarized in the purpose section of the WCZ zone (see below). The full Waterfront Alliance report is included as attachment 11.*

*The applicant was asked to provide a marketing history for the project to demonstrate that marine use tenants were not available to support the structure as originally permitted. No such history has been provided. The applicant has provided a realtor's letter describing difficulties finding marine use tenants for an abutting pier. Please see attachment 12.*

- (d) Any physical or legal impediments which preclude functional access from the site of the proposed development to the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.

*The parking located adjacent to the pier perimeter, if not actively managed, has the potential to preclude functional access to the water's edge. Please see the Parking section below.*

- (e) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits protection of existing

water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or off-site) and visual and physical access to the waterfront for the general public.

*The project has rebuilt a failed section of industrial pier that will now be available for commercial use. The substantial rental income generated by the upper floor uses would offset these costs if the negative impacts of the non-marine uses can be managed.*

- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.

*None known.*

- (g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.

*As stated at the previous workshop, Staff is unclear as to how this standard applies to an existing building that was permitted under the site plan standards alone. A new (not yet existing) building proposed under this standard would probably have responded with lower roof under this standard given the view impacts to the residents of Portland Pier. Please see the note below*

- (h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.

*The project site is not impacted by the Waterfront Public Access Guidelines.*

- (i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent use is not abandoned after the project is developed.

(Ord. No. 168-93, § 2, 1-4-93)

*The project is largely developed and the building is designed to accommodate marine use. The rezoning would not change the underlying zone language requiring marine use on the ground floor.*

Note: When originally approved, the project did not need to meet standard (g), *View Impacts*, as a project predicated on permitted uses. The subject building was lawfully constructed in anticipation of marine use. The Planning Board addressed the view impacts during the course of their review under the *Bulk and Height Site Plan Standard*

and found that the project met the standard. The ZBA upheld the manner in which the building height was calculated and the Superior Court upheld the decisions of both municipal boards. The extent to which standard (g) above now applies to an existing structure is an issue that the Board will need to consider.

### 3. Proposed Conditions for Rezoning:

As stated in the introduction, the updated contract language is included in Attachment 3. The intent of the language is to allow the same uses that are currently allowed for upper floors of existing buildings (structures existing prior to 1993) to be allowed on the upper floors of the subject building (new construction.)

The specific conditions of the rezoning are included below. The full text of the rezoning language is found in Attachment 3. Staff comments are provided below in *italics*.

#### Proposed Rezoning conditions:

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 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 Portland City Code §14-49, by adopting the map change amendment as Waterfront Central Zone, as shown herein. INSERT MAP

*Note: The applicant has provided a proposed rezone line around the building and the associated parking. Please see attachment 7. Given that the proposed non-marine uses are limited to the building, the Board recommends limiting the rezoning to the existing building as shown in attachment 7.2. The recommended map provides clarity that the non-marine uses are limited to the existing building.*

2. The **PROPERTY** and site improvements shall be developed and operated in accordance with the site plan shown on **Attachment 2**, provided however, that Note 1 contained thereon shall not apply.

*Please see attachment 5.15. Note 1 on the approved site plan limits uses of the building to permitted and conditional uses within the WCZ and would be voided by this rezoning.*

3. No occupancy of the building shall be permitted unless and until all site plan conditions of approval (excluding the condition related to uses) have been satisfied.
4. The **PROPERTY** shall be developed substantially in conformance with the conditions of approval contained within the October 5, 1999 approved site plan. The project shall be returned to the Planning Board for site plan review and approval prior to the issuance of any building permits.

AH3.7

*Please see the 1999 Planning Board approval letter included as attachment 2. By having the project return to the Board for re-approval, the Board will review the pedestrian circulation from off-site parking localities as well the proposed non-marine parking for conformance with the conditional use provisions of the WCZ.*

5. The **PROPRIETORS** shall be authorized to establish and maintain on the upper two floors of the **PROPERTY**, (regardless of floor area) all those uses set forth in Portland City Code §14-314 (b),(c) & (d), in addition to those uses that are otherwise authorized within the WCZ as it may hereafter be amended. The provisions of this Agreement, including the permitted uses set forth above, are intended to replace the uses, restrictions and requirements of the underlying WCZ zone.

*This provision is consistent with the WCZ conditional rezoning standard (a) listed above.*

6. The **PROPRIETORS** shall manage the on site parking associated with the Building, in accordance with the Parking Management and Circulation Plan attached hereto as **Attachment 3**. (*Attachment 8 of this report*) Adherence to the Parking Management and Circulation Plan shall be made a condition of all leases of space within the **PROPERTY**, and shall be attached as an exhibit to all such leases.

*The parking and circulation management of the proposal is discussed below in Section 4. below.*

7. No changes to the Parking Management and Circulation Plan shall be made by the **PROPRIETORS** without prior review and approval of the City of Portland Planning Authority.

8. The **PROPRIETORS** shall provide to the **CITY** a performance guarantee covering the site improvements described in Paragraph 2.

#### **4. Parking and Circulation**

As stated in the "No Adverse Impacts" discussion above, parking remains one of the more problematic issues involving non-marine uses on constrained working piers. The applicant has included a provision within the proposed contract that would bind the upper floor uses to a parking management plan that would be subject to the review and approval of the Planning Authority. Additionally, if the rezoning is approved, the non-marine parking will need to be reviewed by the Planning Board for conformance with the conditional use standards of the WCZ.

The applicant has engaged traffic engineer, Bill Eaton, to draft a parking plan for the project. In summary, the plan states the projected parking demand of the building is



37.5 spaces for the non-marine uses and 7.5 spaces for the first floor marine uses. Applying a 50% reduction to the marine use demand (consistent with City waterfront parking policy) the total demand for the building is estimated at 41.25 spaces.

As described in the parking plan, the applicant proposes that 37.5 space non-marine parking demand would utilize the following parking spaces:

17 spaces located adjacent to the northerly abutting structure. These spaces are currently used by the lobster fishing tenants of the pier. The lobstermen and their employees would be relocated to the 15 stacked spaces directly adjacent to the north end of the subject building that are proposed to be constructed when the site plan is completed.

4 spaces stacked two wide and located across from the subject building.

3 spaces located at the far end of the pier and directly adjacent to the pier perimeter.

13 spaces located off-site in the Boone's Restaurant parking lot (also under ownership by the applicant)

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37 spaces total

The marine use parking demand is between 3 and 7 spaces and is proposed to be satisfied by the 6 spaces in the interior of the building.

The Planning Staff provided the following comments for the Board's consideration.

- There appear to be more spaces allocated to marine use than there is demonstrated demand. The assumption is that non-marine uses will use empty spaces (as described by phone to staff by Mr. Eaton).
- Parking located at the pier edge can be a barrier to water access. The Board should evaluate the plan's provisions for demonstrating quality access to the working pier perimeter for the transfer of goods, equipment and people between berthed vessels and the working deck.
- The spaces located in the interior of the building degrade the marine potential of the first floor.
- Pedestrian access between the Boone's lot and the subject building is difficult for general population use (the elderly, people in office foot wear) due to degraded conditions. These conditions are not generally a problem for workers accustomed to work on industrial piers, but may be a disincentive for office workers to use the Boone's lot.
- The plan lacks specificity and may be very difficult to enforce over a long period of time.

**The following sections provide development history of the subject building and policy background for the rezoning.**

AH 3.5

**5. Custom House Wharf Description:**

Located across from the intersection of Pearl Street and Commercial Street, Custom House Wharf is one of Portland's oldest and most diverse piers. Current use of the pier includes lobster wholesaling, fish retail and wholesale, restaurant and nightclub, upper floor general office and environmental services. The pier is home to well known establishments such as Harbor Fish Market, Boone's Restaurant, and the Port Hole Restaurant. Historically, the wharf was home to the Casco Bay Lines Ferry terminal. Berthing use along the pier is generally commercial fishing with additional use by excursion charters and a small number of non-commercial vessels.

Constructed with a rubble and granite crib spine that carries the central roadway, the lateral pile-supported sides of the pier carry many of Portland's oldest working pier structures. The condition of the pier and the historic structures is generally poor.

**6. Recent Development History:**

As described at the previous workshop, in 1999 the Planning Board approved the construction of a 21,000 square foot, three-story marine facility at the southerly terminus of the wharf. The building replaced a two-story structure that had deteriorated to the point of being a hazard and had been condemned by the City. Given that the new structure was built on a larger footprint than the original and added an additional story, no "grandfathered" rights from the original building were extended to the new building and the current zoning text applied to all elements of the new construction. Accordingly, the site plan review of the project was predicated on using the building entirely for marine use, as required for new construction in the Waterfront Central Zone.

The project required reconstruction of the pile-supported pier in the area adjacent to the building and the regrading and paving of the central earthen portion of the pier. Planning Board approval was subject to several conditions, including that the parking areas drain into a stormwater treatment tank, and that a parking management plan and a sedimentation and erosion control plan be provided for administrative review and approval.

Approval for the project was appealed by property owners on the adjacent Portland Pier due to the loss of water views caused by the new construction. The building height calculation determination and parking calculation (by Zoning Administrator, Marge Schmuckal) were appealed to the Zoning Board of Appeals and the both Site Plan and Zoning approvals were appealed to Superior Court. All approvals were upheld under appeal.

After the appeal process, the applicant satisfied the conditions of approval and construction commenced in 2001. After completing the shell of the building and

installation of the stormwater treatment device, construction on the project stopped. The applicant has indicated to staff that having been unable to find marine use tenants for the structure, the financing to complete the pier and site work ran out and the project fell into limbo. A description of the applicant's efforts to lease the building to marine tenants can be found in Attachment 4.4

#### 7. Waterfront Central Zone Policy:

The applicant is requesting this conditional rezoning to allow non-marine uses on the upper floors of a new structure. The as stated above, the Council will need to find that the proposal is compatible with the current Comprehensive Plan as well as the *No Adverse Impact* and *Conditional and Contract Rezoning* provisions of the Waterfront Central Zone as discussed above.

#### Comprehensive Plan: *Waterfront Alliance Recommendations* and Current Zoning

In April of 1992, the Waterfront Alliance produced a policy document titled "Waterfront Alliance Recommendations to the City of Portland." This report outlines the position that properties with direct water access should be limited to water dependent and marine related uses, but that other portions of the waterfront (upper stories, and areas well away from water access) can and should accommodate "marine compatible" uses to help support the maintenance of pier infrastructure. As stated in the report's preamble,

*"Water-dependent users are the lifeblood of Portland's waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth."*

The City Council used this document as the policy basis for the current waterfront zoning, as enacted on January 4, 1993. Simultaneously adopting the Council Zoning Report as part of the Comprehensive Plan in Council Order 168-93, the 1993 zoning amendments followed the Waterfront Alliance report by putting a priority on the preservation of berthing and working pier deck space for existing and potential marine uses. The Purpose and No Adverse Impact sections of the WCZ text, included below, fully express the intent of the zone and the underlying policy.

#### Waterfront Central Purpose

The following text is excerpted from the WCZ language. A copy of the full WCZ text is attached to this report.

#### **Sec. 14-313. Purpose.**

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

A#3.11

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

## **8. Public Hearing Comments**

A number of members of the public spoke at the Planning Board hearing representing a range of opinions on the rezoning. Four members of the lobstering community spoke on behalf of the rezoning, three of whom were tenants of Custom House wharf. These lobster fishing representatives related their opinions regarding Mr. McGowen's commitment to the working waterfront and their opinion that the new construction and rental income would benefit the continued use of the pier for marine use.

Three members of the public spoke against the rezoning. Reasons expressed for opposing the rezoning included a demonstrated need for more marine use space on the waterfront, the potential for non-marine uses to interfere with water dependent uses, and the opinion that the applicant had not demonstrated a clear public benefit as required under the WCZ standards for rezoning.

04/3.12

## 9. Planning Board Recommendations

The Planning Staff provided the following recommendation as part of the Planning Board Report:

*Staff recognizes the difficulties in justifying investment in marine infrastructure given the low expectations for economic return from marine uses. The City's waterfront policies and Comprehensive Plan also recognize that non-marine uses should be encouraged where there is a clear demonstration that marine utility is not compromised due to the impacts of non-marine uses. Staff cannot find such a demonstration in the materials supplied by the applicant: specifically regarding parking. Were the applicant to take a more proactive approach to lessening the impact of parking at the pier perimeter and within the building, a Staff recommendation could be further considered.*

The majority of Planning Board members voted not to recommend the rezoning to the City Council. The vote was 2 votes for recommendation (Malone and Tevanian), 3 against (Beal, Lowry, and Patterson), 1 abstention (Delogu) with Mr. Caron absent.

Board members voting against the rezoning expressed concern that the proposal did not satisfy the standards for conditional rezoning in the WCZ and that non-marine parking impacts could result in an impermissible adverse impact on future marine development opportunities.

Board members voting for the project expressed opinions that the non-marine uses would support the first floor marine uses and that the non-marine parking impacts could be managed.

The Board approved two motions to amend the proposed conditional rezoning agreement language. The Board amendments include (1) a provision that the limits of the rezoning be drawn to the footprint of the existing building (as shown on the revised map) and (2) that the project return to the Planning Board for re-approval of the site plan. The re-approval is in part necessitated by the need to review all parking for the non-marine uses as conditional uses in the WCZ. The language included with this rezoning includes the approved Planning Board amendments.

### **Attachments:**

1. WCZ Zone Language
2. 1999 Approval Letter
3. Proposed Conditional Rezone language (with Planning Board amendments)
4. Applicant's Written Statement with update
5. Rezone Application and Background Information
6. Current Zoning Map of Portland Harbor
7. Proposed Area for Conditional Rezoning

*original*

**PLANNING BOARD REPORT #46-04**

**CONDITIONAL RE-ZONING  
VICINITY OF CUSTOM HOUSE WHARF  
PROPRIETORS OF CUSTOM HOUSE WHARF, APPLICANT**

Submitted to:  
Portland City Planning Board  
Portland, Maine

October 8, 2004  
For the  
October 12, 2004 Public Hearing

Submitted by:  
Bill Needelman, Senior Planner

## **1. Introduction:**

The Proprietors of Custom House Wharf request a public hearing on a potential conditional rezoning of a portion of Custom House Wharf. This is the second public hearing on this proposal. The Board had previously provided a negative recommendation to the City Council and the Council subsequently tabled the issue and referred the proposal back to the Board for further refinement.

The rezoning is proposed for a new structure located at the southerly end of the wharf to allow certain non-marine uses (such as commercial/professional office) on the upper two floors of a three-story building. The Proprietors propose the conditional rezoning having been unable to rent the upper floor space in the building. A final draft contract is included in the Applicant's written statement in Attachment 4. The conditions of the rezoning are further described with staff comments in below.

Staff has included the text of the City Council Report #5-04 as Attachment 1 of this report. This report includes project background and Comprehensive Plan analysis for the proposal. Please refer to Attachment 4 for the Applicant's updated written statement. The revised written statement provides the Applicant's own analysis of the policy and comprehensive plan requirements for the proposal.

## **2. City Council Comments from the February Public Hearing**

At the September 14<sup>th</sup> workshop, Board members requested a summary of the comments generated at the City Council Public Hearing. The following text reflects the substance of Council comments, specifically comments entered into the record by Councilor Geraghty.

### Council Notes on Custom House Wharf:

The following comments were suggested as possible amendments to the Contract Zone Agreement:

1. The proposed zone change is limited to the footprint of the now-existing building (so non-marine uses could not spill over to the outside of the building – like outdoor seating).
2. The applicant must return to the Planning Board for site plan re-approval, with particular review of all parking for the non-marine uses as conditional uses in the WCZ.
3. That only 50% of the total square footage of the structure may be used for non-marine uses (He is asking for 100% of the 2nd and 3rd floors or 66% of the total square footage of the structure; structures in existence in 1991 are only allowed 50% of the total square footage).

4. That the applicant reserves the entire pier edge adjacent to the structure in question for commercial fishing vessel berthing (or upon the demonstrated absence of a demand for commercial fishing vessel berthing space, for non-recreational vessel berthing) with rental rates and included services comparable to prevailing rates in other piers in the WCZ for commercial fishing vessel berthing.
5. That the applicant demonstrate to the satisfaction of the Planning Board that the pier circulation, the provisions for water/land transfer of catch, goods, product and/or supplies, the storage, the parking, and the functional access to the pier edge do not adversely affect existing or potential future marine uses.
6. That the applicant not be permitted to use any part of the interior of the structure for parking, regardless of whether it is parking for a marine or non-marine use.
7. That the applicant demonstrate to the satisfaction of the Planning Board that it has a well-designed, realistic and enforceable parking and traffic management plan that accommodates all parking for upper story non-marine uses off-site and off-pier and that restricts of the types of non-marine uses which may be accommodated in the rezoned structure to categories of office and light industrial which are less likely to generate high volumes of traffic. (e.g., no doctors' offices or offices for other high traffic occupations).
8. That the applicant be required to commit to providing ongoing maintenance of the pier, apron, and other marine infrastructure immediately adjacent to the building to be rezoned and ongoing maintenance dredging of the channel adjacent to the surrounding pier edge.

The above comments are largely reflected the revised conditional rezone language provided below. One area where the new language does not agree with Council suggestions is that the upper floor uses allowed do not prohibit "high volume" traffic generators. If the Board is concerned with this, specific uses such as medical office could be prohibited.

### **3. Proposed Conditions for Rezoning:**

As stated in the introduction, the updated contract language is included in Attachment 4. The intent of the language is to treat the structure as though it were in existence in 1993. This would allow specific non-marine uses on the upper floors, totaling no more than 50% of the total floor area of the structure.



Several other of the conditions have been added or amended to reflect council concerns.

**Proposed Rezoning conditions:**

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 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 Portland City Code §14-49, by adopting the map change amendment as shown below and limited to the footprint of the building existing at \_\_\_(address)\_\_\_ as of the date of passage of Council Order # \_\_\_\_\_.  
INSERT MAP
2. The **PROPERTY** and site improvements shall be developed and operated in accordance with the approved 10-5-99 site plan shown on **Attachment 2**, provided however, that Note 1 contained thereon shall not apply.
3. No occupancy of the building shall be permitted unless and until all site plan conditions of approval (excluding the condition related to uses) have been satisfied.
4. In addition to those uses that are, or may become, otherwise authorized within the WCZ, as it may hereafter be amended, repealed, or replaced, the **PROPRIETORS** shall be authorized to establish and maintain non-marine uses on the upper two floors of the **PROPERTY** in accordance with Portland City Code §14-314(b) and (c), as though the building located on the **PROPERTY** had been in existence on January 4, 1993. The provisions of this Agreement, including the permitted uses set forth above, are intended to replace the uses, restrictions and requirements of the underlying WCZ zone. This paragraph shall be effective only to the extent of the footprint of the building located on the **PROPERTY**, as shown in Paragraph 1.
5. Notwithstanding paragraph 4 above, and for so long marine related uses are required within the WCZ on the upper floors of buildings constructed after January 4, 1993, when leasing the upper floors of the **PROPERTY**, the **PROPRIETORS** shall give preference in tenant selection to marine related uses.
6. Leases, rentals or other usage fees charged for space within the **PROPERTY** or the Associated Berthing Space (as more particularly defined in Paragraph 9 below) to marine related and water dependant tenants, shall be made at rates comparable to those charged for similar privately owned space leased by or rented to marine related and water dependant uses within the WCZ, taking into to consideration the comparative condition and quality of such other marine related space.

7. The **PROPRIETORS** shall manage the on site parking associated with the Property in accordance with the Parking Management and Circulation Plan attached hereto as **Attachment 3**. Adherence to the Parking Management and Circulation Plan shall be made a condition of all leases of space within the **PROPERTY**, and shall be attached as an exhibit to all such leases. No vehicle parking shall be allowed within the 1<sup>st</sup> floor of the building.
8. No changes to the Parking Management and Circulation Plan shall be made by the **PROPRIETORS** without prior review and approval of the City of Portland Planning Authority.
9. The berthing space immediately adjacent to the **PROPERTY** (the “Associated Berthing Space”) shall be reserved exclusively for commercial marine vessels.
10. The **PROPRIETORS** shall reserve eighty percent (80%) of the total berthing space available on Custom House Wharf for use by commercial marine vessels.
11. The **PROPRIETORS** shall maintain adequate water depths to ensure that commercial marine vessels are able to access the Associated Berthing Space, provided that such maintenance may be conducted in accordance with all relevant municipal, State and Federal laws.
12. The **PROPRIETORS** shall maintain and ensure access to the edge of the pier sufficient to provide functional land/water transfer of goods, catch, materials and supplies.

The full conditional rezone agreement is included in Attachment 4.C. in the updated written statement.

#### **4. Parking and Circulation**

As stated in the “No Adverse Impacts” discussion in Attachment 1, parking remains one of the more problematic issues involving non-marine uses on constrained working piers. The applicant has included a provision within the proposed contract that would bind the upper floor uses to a parking management plan that would be subject to the review and approval of the Planning Authority. Additionally, if the rezoning is approved, the non-marine parking will need to be reviewed by the Planning Board for conformance with the conditional use standards of the WCZ.

The applicant has engaged traffic engineer, Bill Eaton, to draft a parking plan for the project. In summary, the plan states the projected non-marine parking demand of the building is 26 spaces. The marine uses will require far fewer spaces with 7.5 spaces estimated for the marine uses. Applying a 50% reduction to the marine use demand (consistent with City waterfront parking policy) the total demand for the building is estimated at approximately 30 spaces.

As described in the parking plan (Attachment 4C at the end of the conditional rezone agreement text), the applicant proposes that 26 space non-marine parking demand would be located as follows:

22 spaces located at the Boone's Parking lot at Commercial Street.  
4 spaces adjacent to the northerly abutting structure. The lobster fishing tenants of the pier currently use these spaces. The lobstermen and their employees would be relocated to the 15 stacked spaces directly adjacent to the north end of the subject building that are proposed to be constructed when the site plan is completed.

The marine use parking demand would utilize the remaining parking spaces provided by the new site plan improvements (18 spaces available.)

The proposed arrangement would require the applicant to return to the Board for conditional use review of the four non-marine spaces proposed on the pier.

Staff suggests a condition of the recommendation that the applicant either return to the Board for conditional use review for non-marine parking, or that the applicant provide evidence of 4 leased spaces in a zone where parking is a permitted use for Planning Staff review and approval before issuance of a building permit for upper-floor tenant build out.

Please refer to Attachment 8 showing an aerial photo with the subject building, the Boone's parking lot, and the available walking route for non-marine users.

## **9. Motions**

On the basis of Planning Report #46-04 (and other findings specified, if any), the Planning Board finds that the proposed conditional rezoning in the vicinity of Custom House Wharf consistent with the Comprehensive Plan, [**meets/does not meet**] the standards of Section 14-313.5 a, b, and c (no adverse impact on Marine Uses), and [**meets/does not meet**] the standards of 14-315.3 a through i. (conditionalRezoning), and, therefore, recommends to the Portland City Council that they [**enact/do not enact**] the proposed contract rezoning.

**Potential Condition:**

The Board's recommendation is conditioned on the following:

That the applicant either return to the Board for conditional use review for non-marine parking, or that the applicant provide evidence of 4 leased spaces, in a zone where parking is a permitted use and at a reasonable distance from the subject building, for Planning Staff review and approval before issuance of a building permit for upper-floor tenant fit up.

**Attachments:**

1. Council Report #5-04
2. Waterfront Alliance 1992 Report
3. WCZ Zone Language
4. Applicant's Written Statement with updates
  - A. 1999 Planning Board Report
  - B. 1999 Approval Letter
  - C. Conditional Rezoning Agreement with revised Parking Management Plan
  - D-H. Letters of Support
5. Letter of Concern
6. Proposed Area for Conditional Rezoning
7. Approved Site Plan
8. Area map showing parking

Att. 1.  
City Council Report #5-04  
Text Only

**CITY COUNCIL REPORT #5-04**

**CONDITIONAL RE-ZONING**  
**VICINITY OF CUSTOM HOUSE WHARF**  
**PROPRIETORS OF CUSTOM HOUSE WHARF, APPLICANT**

Submitted to:  
Portland City Council  
Portland, Maine

February 18, 2004

Submitted by:  
City of Portland Planning Board

Orlando Delogu, Chair

**1. Introduction:**

The Proprietors of Custom House Wharf request Council Action on a potential conditional rezoning of a portion of Custom House Wharf. The rezoning is proposed for a new structure located at the southerly end of the wharf to allow certain non-marine uses (such as commercial/professional office) on the upper two floors of a three-story building. The Proprietors propose the conditional rezoning having been unable to rent the upper floor space in the building. A final draft contract is included in Attachment 3. The conditions of the rezoning are further described with staff comments in Section 3 below. Sections 5 thru 7 provide background and a development history of the site and policy information regarding the Waterfront Central Zone. A summary of the Planning Board's recommendation is provided in Section 8.

**2. Policies for Non-marine Uses and Contract and Conditional Rezoning in the WCZ:**

The proposed conditional rezoning needs to demonstrate consistency with the current Comprehensive Plan. Portland's waterfront zones are unique in that the zoning text itself was adopted in January of 1993 as part of the Comprehensive Plan following the recommendations of the 1992 Waterfront Alliance report. The full text of the WCZ zone is included in attachment 1.

The WCZ provisions with the greatest bearing on this application are the *No Adverse Impacts* clause and the *Standards for Conditional and Contract Rezoning* as discussed below. These two code sections provide specific standards that apply to the proposed rezoning. For reference, the Waterfront Alliance Report is included in attachment 11 and is otherwise summarized in Section 7 of this report.

No Adverse Impacts

All uses in the WCZ, even marine related uses (as distinct from *water-dependent* uses) need to adhere to the provisions of the "no adverse impact" clause. The intent of the clause is to provide a framework to evaluate how the priority of uses established in the purpose is applied. Provision (c) below has the greatest application to the subject rezoning.

The complete text of the no adverse impact clause is included below.

**Sec. 14-313.5. No adverse impact on marine uses.**

No use shall be permitted, approved or established in this zone if it will have an impermissible adverse impact on future marine development opportunities. A

proposed development will have an impermissible adverse impact if it will result in any one (1) or more of the following:

- (a) The proposed nonwater-dependent use will displace an existing water-dependent use;
- (b) The proposed use will reduce existing commercial vessel berthing space;
- (c) The proposed nonwater-dependent use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water-dependent uses; or
- (d) The siting of a proposed nonwater-dependent use will substantially reduce or inhibit existing public access to marine or tidal waters.

Given the odor, hours of operation and noise associated with a working pier, the introduction of 14,000 square feet of office use on a confined pier raises concerns with regards to provision (c) above. While no existing marine uses will be displaced through the proposed rezoning, one needs to consider the general compatibility of office use on this particular pier. The Council may wish to explore with the applicant how these issues would be addressed in the management of the pier.

#### Conditional Rezoning in the WCZ

In addition to the No Adverse Impact clause described above and Comprehensive Plan elements described below in Section 7 of this report, the proposal needs to comply with the WCZ Contract or Conditional Rezoning standards outlined below. These standards apply specifically to the type of application before the Council today. Interestingly, in the 10 years that the current zoning has been in place, no other applicant has proposed upper floor non-marine use under the provisions outlined below. Several Board members expressed concern with the precedent established by this application.

The standards for contract and conditional rezoning in the WCZ are included below. In the applicant's written statement, each of these standards is specifically addressed. Please see Attachment 4. Staff comments, as provided to the Planning Board, are provided below in *italics*.

#### **Sec. 14-315.3. Contract or conditional rezoning.**

Except as authorized in section 14-314(d) {permitted uses,} an applicant may only locate a nonmarine use in a structure which was not in existence on January 4, 1993, if a rezoning is approved pursuant to division 1.5 of this article. A

conditional or contract rezoning shall only be approved if, after public hearing and opportunity for public comment, the reviewing body finds that the applicant has carried the burden of proof to show that the proposed development meets the standards of section 14-313.5 (No Adverse Impact) and all of the following standards:

- (a) Each proposed upper story nonmarine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).

*This provision is the basis of the proposed uses.*

- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.

*The applicant proposes all marine use of the first floor. The applicant also proposes that 6 parking spaces are allowed within the structure – presumably for marine use. Even if the parking spaces are marine use, these spaces degrade the utility of the first floor space for marine industry. Please see the Parking discussion below.*

- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependent use.

*The zoning for this area is a part of the comprehensive plan. The policy document underlying the zoning is the 1992 Waterfront Alliance Report. The findings of the Waterfront Alliance report are well summarized in the purpose section of the WCZ zone (see below). The full Waterfront Alliance report is included as attachment 11.*

*The applicant was asked to provide a marketing history for the project to demonstrate that marine use tenants were not available to support the structure as originally permitted. No such history has been provided. The applicant has provided a realtor's letter describing difficulties finding marine use tenants for an abutting pier. Please see attachment 12.*

- (d) Any physical or legal impediments which preclude functional access from the site of the proposed development to the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any prior owner after January 4, 1993.



*The parking located adjacent to the pier perimeter, if not actively managed, has the potential to preclude functional access to the water's edge. Please see the Parking section below.*

- (e) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits protection of existing water-dependent uses, preservation of future water-dependent use development opportunities, contribution to the development of and/or on-going maintenance of the marine infrastructure for commercial vessels (either on-site or off-site) and visual and physical access to the waterfront for the general public.

*The project has rebuilt a failed section of industrial pier that will now be available for commercial use. The substantial rental income generated by the upper floor uses would offset these costs if the negative impacts of the non-marine uses can be managed.*

- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.

*None known.*

- (g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climatic effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.

*As stated at the previous workshop, Staff is unclear as to how this standard applies to an existing building that was permitted under the site plan standards alone. A new (not yet existing) building proposed under this standard would probably have responded with lower roof under this standard given the view impacts to the residents of Portland Pier. Please see the note below*

- (h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.

*The project site is not impacted by the Waterfront Public Access Guidelines.*

- (i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependent use is not abandoned after the project is developed.

(Ord. No. 168-93, § 2, 1-4-93)

*The project is largely developed and the building is designed to accommodate marine use. The rezoning would not change the underlying zone language requiring marine use on the ground floor.*

Note: When originally approved, the project did not need to meet standard (g), *View Impacts*, as a project predicated on permitted uses. The subject building was lawfully constructed in anticipation of marine use. The Planning Board addressed the view impacts during the course of their review under the *Bulk and Height Site Plan Standard* and found that the project met the standard. The ZBA upheld the manner in which the building height was calculated and the Superior Court upheld the decisions of both municipal boards. The extent to which standard (g) above now applies to an existing structure is an issue that the Board will need to consider.

### **3. Proposed Conditions for Rezoning:**

As stated in the introduction, the updated contract language is included in Attachment 3. The intent of the language is to allow the same uses that are currently allowed for upper floors of existing buildings (structures existing prior to 1993) to be allowed on the upper floors of the subject building (new construction.)

The specific conditions of the rezoning are included below. The full text of the rezoning language is found in Attachment 3. Staff comments are provided below in *italics*.

#### **Proposed Rezoning conditions:**

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 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 Portland City Code §14-49, by adopting the map change amendment as Waterfront Central Zone, as shown herein. INSERT MAP

*Note: The applicant has provided a proposed rezone line around the building and the associated parking. Please see attachment 7. Given that the proposed non-marine uses are limited to the building, the Board recommends limiting the rezoning to the existing building as shown in attachment 7.2. The recommended map provides clarity that the non-marine uses are limited to the existing building.*

2. The **PROPERTY** and site improvements shall be developed and operated in accordance with the site plan shown on **Attachment 2**, provided however, that Note 1 contained thereon shall not apply.

*Please see attachment 5.15. Note 1 on the approved site plan limits uses of the building to permitted and conditional uses within the WCZ and would be voided by this rezoning.*

3. No occupancy of the building shall be permitted unless and until all site plan conditions of approval (excluding the condition related to uses) have been satisfied.

4. The **PROPERTY** shall be developed substantially in conformance with the conditions of approval contained within the October 5, 1999 approved site plan. The project shall be returned to the Planning Board for site plan review and approval prior to the issuance of any building permits.

*Please see the 1999 Planning Board approval letter included as attachment 2. By having the project return to the Board for re-approval, the Board will review the pedestrian circulation from off-site parking localities as well the proposed non-marine parking for conformance with the conditional use provisions of the WCZ.*

5. The **PROPRIETORS** shall be authorized to establish and maintain on the upper two floors of the **PROPERTY**, (regardless of floor area) all those uses set forth in Portland City Code §14-314 (b),(c) & (d), in addition to those uses that are otherwise authorized within the WCZ as it may hereafter be amended. The provisions of this Agreement, including the permitted uses set forth above, are intended to replace the uses, restrictions and requirements of the underlying WCZ zone.

*This provision is consistent with the WCZ conditional rezoning standard (a) listed above.*

6. The **PROPRIETORS** shall manage the on site parking associated with the Building, in accordance with the Parking Management and Circulation Plan attached hereto as **Attachment 3**. (*Attachment 8 of this report*) Adherence to the Parking Management and Circulation Plan shall be made a condition of all leases of space within the **PROPERTY**, and shall be attached as an exhibit to all such leases.

*The parking and circulation management of the proposal is discussed below in Section 4. below.*

7. No changes to the Parking Management and Circulation Plan shall be made by the **PROPRIETORS** without prior review and approval of the City of Portland Planning Authority.

8. The **PROPRIETORS** shall provide to the **CITY** a performance guarantee covering the site improvements described in Paragraph 2.

#### 4. **Parking and Circulation**

As stated in the “No Adverse Impacts” discussion above, parking remains one of the more problematic issues involving non-marine uses on constrained working piers. The applicant has included a provision within the proposed contract that would bind the upper floor uses to a parking management plan that would be subject to the review and approval of the Planning Authority. Additionally, if the rezoning is approved, the non-marine parking will need to be reviewed by the Planning Board for conformance with the conditional use standards of the WCZ.

The applicant has engaged traffic engineer, Bill Eaton, to draft a parking plan for the project. In summary, the plan states the projected parking demand of the building is 37.5 spaces for the non-marine uses and 7.5 spaces for the first floor marine uses. Applying a 50% reduction to the marine use demand (consistent with City waterfront parking policy) the total demand for the building is estimated at 41.25 spaces.

As described in the parking plan, the applicant proposes that 37.5 space non-marine parking demand would utilize the following parking spaces:

17 spaces located adjacent to the northerly abutting structure. These spaces are currently used by the lobster fishing tenants of the pier. The lobstermen and their employees would be relocated to the 15 stacked spaces directly adjacent to the north end of the subject building that are proposed to be constructed when the site plan is completed.

4 spaces stacked two wide and located across from the subject building.

3 spaces located at the far end of the pier and directly adjacent to the pier perimeter.

13 spaces located off-site in the Boone’s Restaurant parking lot (also under ownership by the applicant)

---

37 spaces total

The marine use parking demand is between 3 and 7 spaces and is proposed to be satisfied by the 6 spaces in the interior of the building.

The Planning Staff provided the following comments for the Board’s consideration.

- There appear to be more spaces allocated to marine use than there is demonstrated demand. The assumption is that non-marine uses will use empty spaces (as described by phone to staff by Mr. Eaton).
- Parking located at the pier edge can be a barrier to water access. The Board should evaluate the plan’s provisions for demonstrating quality access to the working pier perimeter for the transfer of goods, equipment and people between berthed vessels and the working deck.

- The spaces located in the interior of the building degrade the marine potential of the first floor.
- Pedestrian access between the Boone's lot and the subject building is difficult for general population use (the elderly, people in office foot wear) due to degraded conditions. These conditions are not generally a problem for workers accustomed to work on industrial piers, but may be a disincentive for office workers to use the Boone's lot.
- The plan lacks specificity and may be very difficult to enforce over a long period of time.

**The following sections provide development history of the subject building and policy background for the rezoning.**

**5. Custom House Wharf Description:**

Located across from the intersection of Pearl Street and Commercial Street, Custom House Wharf is one of Portland's oldest and most diverse piers. Current use of the pier includes lobster wholesaling, fish retail and wholesale, restaurant and nightclub, upper floor general office and environmental services. The pier is home to well known establishments such as Harbor Fish Market, Boone's Restaurant, and the Port Hole Restaurant. Historically, the wharf was home to the Casco Bay Lines Ferry terminal. Berthing use along the pier is generally commercial fishing with additional use by excursion charters and a small number of non-commercial vessels.

Constructed with a rubble and granite crib spine that carries the central roadway, the lateral pile-supported sides of the pier carry many of Portland's oldest working pier structures. The condition of the pier and the historic structures is generally poor.

**6. Recent Development History:**

As described at the previous workshop, in 1999 the Planning Board approved the construction of a 21,000 square foot, three-story marine facility at the southerly terminus of the wharf. The building replaced a two-story structure that had deteriorated to the point of being a hazard and had been condemned by the City. Given that the new structure was built on a larger footprint than the original and added an additional story, no "grandfathered" rights from the original building were extended to the new building and the current zoning text applied to all elements of the new construction. Accordingly, the site plan review of the project was predicated on using the building entirely for marine use, as required for new construction in the Waterfront Central Zone.

The project required reconstruction of the pile-supported pier in the area adjacent to the building and the regrading and paving of the central earthen portion of the pier. Planning Board approval was subject to several conditions, including that the parking areas drain

into a stormwater treatment tank, and that a parking management plan and a sedimentation and erosion control plan be provided for administrative review and approval.

Approval for the project was appealed by property owners on the adjacent Portland Pier due to the loss of water views caused by the new construction. The building height calculation determination and parking calculation (by Zoning Administrator, Marge Schmuckal) were appealed to the Zoning Board of Appeals and the both Site Plan and Zoning approvals were appealed to Superior Court. All approvals were upheld under appeal.

After the appeal process, the applicant satisfied the conditions of approval and construction commenced in 2001. After completing the shell of the building and installation of the stormwater treatment device, construction on the project stopped. The applicant has indicated to staff that having been unable to find marine use tenants for the structure, the financing to complete the pier and site work ran out and the project fell into limbo. A description of the applicant's efforts to lease the building to marine tenants can be found in Attachment 4.4

#### **7. Waterfront Central Zone Policy:**

The applicant is requesting this conditional rezoning to allow non-marine uses on the upper floors of a new structure. The as stated above, the Council will need to find that the proposal is compatible with the current Comprehensive Plan as well as the *No Adverse Impact* and *Conditional and Contract Rezoning* provisions of the Waterfront Central Zone as discussed above.

#### **Comprehensive Plan: *Waterfront Alliance Recommendations* and Current Zoning**

In April of 1992, the Waterfront Alliance produced a policy document titled "Waterfront Alliance Recommendations to the City of Portland." This report outlines the position that properties with direct water access should be limited to water dependent and marine related uses, but that other portions of the waterfront (upper stories, and areas well away from water access) can and should accommodate "marine compatible" uses to help support the maintenance of pier infrastructure. As stated in the report's preamble,

*"Water-dependent users are the lifeblood of Portland's waterfront and their interests must be protected above all others. We further recognize that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth."*

The City Council used this document as the policy basis for the current waterfront zoning, as enacted on January 4, 1993. Simultaneously adopting the Council Zoning Report as part of the Comprehensive Plan in Council Order 168-93, the 1993 zoning amendments followed the Waterfront Alliance report by putting a priority on the

preservation of berthing and working pier deck space for existing and potential marine uses. The Purpose and No Adverse Impact sections of the WCZ text, included below, fully express the intent of the zone and the underlying policy.

Waterfront Central Purpose

The following text is excerpted from the WCZ language. A copy of the full WCZ text is attached to this report.

**Sec. 14-313. Purpose.**

The waterfront central zone was created to protect and nurture water-dependent and marine-related support uses so that they may grow and prosper in an environment and area dedicated to this purpose. The following priority of uses is recognized:

- (a) The first priority of this zone is to protect and nurture existing and potential water-dependent uses;
- (b) The second priority is to encourage other marine and marine-related support uses so long as they do not interfere with water-dependent uses, either directly by displacement or indirectly by placing incompatible demands on the zone's infrastructure;
- (c) Other specified uses are encouraged only if they do not interfere with and are not incompatible with first and second priority uses.

Other specified uses are beneficial to the waterfront economy because they provide the financial return to property owners necessary for the maintenance and improvement of the marine infrastructure. However, water-dependent and marine-related support uses by their nature have activities and operational needs that are unique to this area and are not shared by other commercial and industrial uses in the city. These first and second priority uses and related activities may result in noise, odor, dust, hours of operation, parking and traffic patterns and traffic control needs that are necessary for the convenient and successful conduct of such uses. Other uses may not be compatible with these types of effects. Other specified uses are permitted under certain circumstances in the waterfront central zone, provided that they do not significantly interfere with the activities and operation of water-dependent and marine-related support uses. Such uses must be, and are assumed to be, aware of the impacts associated with marine uses and therefore must accept and be tolerant of them. Other specified uses in the zone shall accommodate to those patterns and needs of the higher priority uses so long as those higher priority uses do not have a substantially adverse effect on public health and safety and the higher priority activities are conducted in accordance with sound practices or practices customary in the trade.

(Ord. No. 168-93, § 2, 1-4-93)

## 8. Public Hearing Comments

A number of members of the public spoke at the Planning Board hearing representing a range of opinions on the rezoning. Four members of the lobstering community spoke on behalf of the rezoning, three of whom were tenants of Custom House wharf. These lobster fishing representatives related their opinions regarding Mr. McGowen's commitment to the working waterfront and their opinion that the new construction and rental income would benefit the continued use of the pier for marine use.

Three members of the public spoke against the rezoning. Reasons expressed for opposing the rezoning included a demonstrated need for more marine use space on the waterfront, the potential for non-marine uses to interfere with water dependent uses, and the opinion that the applicant had not demonstrated a clear public benefit as required under the WCZ standards for rezoning.

## 9. Planning Board Recommendations

The Planning Staff provided the following recommendation as part of the Planning Board Report:

*Staff recognizes the difficulties in justifying investment in marine infrastructure given the low expectations for economic return from marine uses. The City's waterfront policies and Comprehensive Plan also recognize that non-marine uses should be encouraged where there is a clear demonstration that marine utility is not compromised due to the impacts of non-marine uses. Staff cannot find such a demonstration in the materials supplied by the applicant: specifically regarding parking. Were the applicant to take a more proactive approach to lessening the impact of parking at the pier perimeter and within the building, a Staff recommendation could be further considered.*

The majority of Planning Board members voted not to recommend the rezoning to the City Council. The vote was 2 votes for recommendation (Malone and Tevanian), 3 against (Beal, Lowry, and Patterson), 1 abstention (Delogu) with Mr. Caron absent.

Board members voting against the rezoning expressed concern that the proposal did not satisfy the standards for conditional rezoning in the WCZ and that non-marine parking impacts could result in an impermissible adverse impact on future marine development opportunities.

Board members voting for the project expressed opinions that the non-marine uses would support the first floor marine uses and that the non-marine parking impacts could be managed.



The Board approved two motions to amend the proposed conditional rezoning agreement language. The Board amendments include (1) a provision that the limits of the rezoning be drawn to the footprint of the existing building (as shown on the revised map) and (2) that the project return to the Planning Board for re-approval of the site plan. The re-approval is in part necessitated by the need to review all parking for the non-marine uses as conditional uses in the WCZ. The language included with this rezoning includes the approved Planning Board amendments.

**Attachments:**

1. WCZ Zone Language
2. 1999 Approval Letter
3. Proposed Conditional Rezone language (with Planning Board amendments)
4. Applicant's Written Statement with update
5. Rezone Application and Background Information
6. Current Zoning Map of Portland Harbor
7. Proposed Area for Conditional Rezoning

Att 9.1

**THOMPSON, BULL, FUREY, BASS & MACCOLL, LLC, P.A.**

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October 7, 2004

Mr. William Needleman  
Dept. of Planning & Development  
City of Portland  
389 Congress Street  
Portland, Maine 04101

**Re: Conditional Rezoning  
The Proprietors of Custom House Wharf  
86 Commercial Street (43 Custom House Wharf)  
CBL 030 A001001**

Dear Mr. Needleman:

I have enclosed a revised copy of the Conditional Zoning Agreement and attached Parking Management Plan, addressing various issues raised at the September 28, 2004, workshop as discussed below. I would appreciate it if you would submit this letter and its supporting attachments to the Planning Board for their review prior to the public hearing, and include it within the record.

**Background**

The Proprietors of Custom House Wharf (the "Proprietors" or the "Wharf") have continuously shown a dedication to marine related uses in Portland Harbor since their incorporation by the Maine legislature in 1857. The Wharf currently houses several water dependant and marine related tenants, including Harbor Fish Market, Coastal Bait, Inc., Casco Bay Fish Co., Inc., Custom House Seafoods, Inc., the Casablanca excursion boat, several local lobsterman, two long standing seafood restaurants, and others. The Wharf intends to continue its long established tradition of providing a home to these uses.

The requested rezoning relates to a recently reconstructed three story building situated at the end of the Wharf (the "Building"), and located within the Waterfront Central Zone ("WCZ"). The Building was originally constructed in the mid to late 1800s, but by the 1970s was largely abandoned and served only as rudimentary storage space for lobsterman. In 1998, the Portland Fire Department ordered that the building be renovated or demolished.

The Proprietors elected to restore the structure, and submitted an application for site plan review at the end of 1998. In September of 1999, the Planning Board voted unanimously to approve the site plan and construction began shortly thereafter. A copy of the Site Plan Review report and the Planning Board's approval of that plan are attached hereto as **Exhibit A** and **Exhibit B**.

Although the Building was completed in 2002, the upper floors remain vacant, awaiting fit-up for an incoming tenant. In an effort to continue their longstanding commitment to marine related uses in Portland Harbor, the Proprietors have sought, throughout the building's construction and since, for a marine related tenant to occupy the upper floors of the Building. However, as more fully described below, those efforts have been unsuccessful.

The restoration of the Building and the surrounding decking add 22,500 square feet of new floor space to the Waterfront Central Zone ("WCZ") and approximately 300 linear feet of new berthing space. At least 15 new parking spaces have been created to be reserved exclusively for marine uses on the Wharf independent of the new demand generated by the Building. These additions have great public value. The construction and maintenance of wharves, however, comes at a correspondingly great cost. Repairing wharf infrastructure such as pilings, and rebuilding wharf decking is extremely expensive.

Unable to find marine related tenants for its upper floors, the Wharf has been driven to seek non-marine related tenants for the upper floors of the Building. The WCZ restricts buildings constructed after January 4, 1993 to marine related uses only, but the ordinance was drafted with an escape hatch, allowing non-marine uses to be situated within the zone in under certain conditions. The Proprietors submit that it is financially necessary for them to subsidize the cost of providing marine uses for Portland with income generated from limited non-marine uses located on the upper floors of the Building. The Wharf further submits that the Conditional Zoning Agreement (the "Agreement") now before the Planning Board fulfills all of the requirements to allow limited non-marine uses within the Building. The Proprietors believe that the Building is the only new construction within the WCZ with significant upper floor space that is subject to the stricter requirements of that zone.

**The Conditional Zoning Agreement**

A copy of a revised Conditional Zoning Agreement (the "Agreement") and its attached Parking Management Plan is attached hereto as **Exhibit C**. The Agreement treats the Building as though it was "in existence" as of January 4, 1993, thereby allowing it to maintain non-marine uses on half of its total floors space on the upper floors of the Building. Under the Agreement, those non-marine uses must be one of the specific uses enumerated in section 14-314 (b), (c) and (e) of the land use ordinance. The Agreement, in return, exacts several promises from the Wharf, many or all of which obligations are not otherwise applicable to other landowners in the WCZ, including:

4.3

- That the Wharf will charge reasonable rates for the marine uses and berthing comparable to those offered by other private wharf owners in the WCZ. [See Agreement at ¶ 6].
- That the Proprietors shall give preference in *all* tenant selection to marine uses. [See Agreement at ¶ 5].
- That the berthing adjacent to the Building shall be used exclusively for commercial marine vessels, and that 80% of the total berthing of the Wharf shall be reserved for such use. [See Agreement at ¶¶ 9, 10].
- That the Wharf will maintain access to its berthing for commercial vessels, and that is also maintain access to those vessels from the land. [See Agreement at ¶¶ 11, 12].
- That parking for all tenants of the Building be controlled by means of management plan. [See Agreement at ¶ 7, 8].

**The Project Does Not Have An Impermissible Adverse Impact on Marine Use**

As an initial matter, pursuant to section 14-313.5 of the land use ordinance, no use may be sited within the WCZ that has an impermissible adverse impact on marine use. Such an impact is one that would result in any of the following conditions discussed individually below:

- (a) The proposed non-water dependant use will displace an existing water dependant use;

To the contrary, construction of the Building created new floor space and berthing for the protected uses where none previously existed. Additionally, measures have been taken to minimize the impacts on adjacent existing marine uses, primarily by locating substantially all non-marine use parking off site, and guarantying access to the commercial berthing space. The proposal also creates at least 15 new parking spaces, to be used for marine related uses generally.

- (b) The proposed use will reduce existing commercial vessel berthing space;

Again, rather than reducing commercial berthing space, this project adds new commercial berthing space to the Harbor. Additionally, the Agreement requires the Wharf to reserve the berthing space adjacent to the Building exclusively for commercial vessels, and to further reserve eighty percent (80%) of the entirety of the Wharf's berthing space be reserved for commercial marine uses only. The Agreement also requires that the fees charged for the new berthing shall be reasonable and comparable to those charged by other private wharf owners. [See Agreement at ¶¶ 5, 8, 9.]

- (c) The proposed non-water dependant use, structure or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures, will unreasonable interfere with the activities and



operation of existing water dependant uses or significantly impede access to vessel berthing or access to the water by water dependant uses;

The Proprietors submit that the project will not unreasonably interfere with existing marine uses in any way. Careful attention has been paid to maintaining easy access for all existing and new water dependant uses. Substantially all the non-marine parking is located off site, while several new parking spaces are given over to marine uses. Primary access to the water for first floor marine uses located in the Building is through the Building itself. The Agreement also contains a pledge that the Proprietors shall maintain access to the newly constructed berthing space both from land and water. [See Agreement at ¶¶ 10, 11.]

- (d) The siting of the proposed non-water dependant use will substantially reduce or inhibit existing public access to marine or tidal waters.

This condition is not implicated by the Building as the Wharf does not, and is not required to, provide public access to the water.

For the foregoing reasons, the Proprietors submit, that the Building, as governed by the Agreement, does not place an impermissible adverse impact on marine related uses at the Wharf or in the Harbor as a whole. Rather, the Building and its related construction has had a tangible positive impact on marine related use both at the Wharf and for the Harbor as a whole.

**The Project Meets the Conditional Requirements for a Contract Zone**

Non-marine uses may be located on the upper floors of new buildings in the WCZ only where the standards of section 14-315.3 of the land use ordinance are met. These standards are discussed in turn below.

- (a) Each proposed upper story non-marine use is a use which would be permitted above the ground floor level in a structure existing on January 4, 1993, pursuant to section 14-314(b), (c) or (d).

This standard is satisfied by the terms of the Conditional Zoning Agreement itself, which allows the Proprietors only those non-marine uses allowable under section 14-314.

- (b) The ground floor of the proposed structure consists entirely of one (1) or more marine uses as set forth in section 14-314.

This standard is also satisfied by the terms of the Agreement, which specifies that the first floor shall be given over only to marine uses.

- (c) The proposed development is consistent with the comprehensive plan and, without the proposed development, the site could not otherwise support an economically viable water-dependant use.

Within the WCZ, the comprehensive plan is the language of the WCZ ordinance itself. Accordingly to the extent that the Wharf's requested relief satisfies the conditions for a contract zone, its proposal is consistent with the comprehensive plan. Moreover, the Building has been reviewed under site plan and shoreland review standards and found to meet those standards in all respects. [See Exhibit A, p. 6.]

As the Proprietors have explained throughout this process, it is not difficult to find marine related tenants for first floor space within the WCZ. Rather, the economic reality driving the Wharf's proposal is that it is not economically viable to maintain exclusively marine related uses on the *upper* floors of the Building. In other words, the Wharf submits that it is a matter of financial necessity that the upper floors be mixed use, in order to subsidize the costs of the constructing the Building and its adjacent berthing.

The Wharf has diligently sought marine related tenants to occupy the upper floors of the Building. Additionally, the Proprietors have retained the services of Frank O'Connor, of the Dunham Group, who sought out marine related tenants for nearly two years, and did so entirely without success. Mr. O'Connor, who has much experience marketing real estate for wharves, including those located within Portland's WCZ, concluded that it was not feasible to market upper floor space to marine related uses. Mr. O'Connor's statement to that effect is set forth in the attached **Exhibits D, E and F**. This sentiment has been echoed again and again both by other land owners in the WCZ and their tenants. A collection of letters submitted by wharf owners and marine use tenants is attached hereto as **Exhibit G**. Former Harbor Commissioner Richard Ingalls wrote a particularly compelling letter on behalf of the Wharf, noting the extremely high costs of wharf maintenance and the impossibility of meeting those expenses solely with rents generated from marine uses. Mr. Ingalls' letter is attached hereto as **Exhibit H**.

The Proprietors pay in excess of \$26,000 per a month to satisfy the mortgage payments associated with the construction of the Building. Even if the Proprietors were to find marine related tenants for all of the upper floor space, it is unlikely that the tenant would be willing or capable of paying a rental amount that is sufficiently capable of satisfying the monthly mortgage payments and other costs associated with the Building and its adjacent berthing. The prevailing wisdom is that a landowner on the Portland waterfront can expect to receive \$8.00/ft<sup>2</sup> in annual lease payments for marine-related uses without dockage, and \$10/ft<sup>2</sup> for marine related uses with dockage. Non-marine uses, on the other hand, will likely yield \$13/ft<sup>2</sup> to \$15/ft<sup>2</sup>. As the Proprietors' experience have shown, it is not economically viable to lease the upper floors of the Building entirely to marine related tenants.

- (d) Any physical or legal impediments which preclude functional access from the site of the proposed development to the water's edge are not the result of action taken by the current owner, the applicant for rezoning, or any other prior owner after January 4, 1993.

As set forth in the attached Planning Report, the Building does not block existing points of access. See Exhibit A, page 7. Indeed, the additional dockage created with the Building has instead increased functional access to the water's edge. As mentioned previously, interference with waterfront access is minimized by the location of substantially all non-marine parking offsite, and the terms of the Agreement requiring the Proprietors to maintain access to berthing from land and water.

- (e) The project's public benefits outweigh its potential negative impacts, taking into consideration as public benefits protection of existing water-dependant uses, preservation of future water-dependant use development opportunities, contribution to the development of and/or on-going maintenance of the marine

infrastructure for commercial vessels (either on-site or off-site) and visual and physical access to the waterfront for the general public.

The Proprietors have replaced an abandoned, unsightly structure with a new functional building. In doing so, they increased commercial marine berthing, and added at least 11,000 square feet of new floor space available to marine related tenants. These are valuable public assets. The Proprietors respectfully submit that these positive benefits are not offset by any negative impacts to existing marine related uses.

- (f) The proposed development responds to any unique physical conditions and development opportunities along the shoreline.

It is not clear that this standard has any application to the Wharf's proposal, and, indeed, it has not been discussed by the planning staff in its various reports to the Board. It is important to note, nonetheless, that the Building's site plane was scrutinized and approved by the Planning Board during.

- (g) The proposed development does not significantly restrict air, light, or water views of other structures located in the vicinity, and does not create significant adverse local climate effects such as increased winds, shadowing, or less efficient traffic, parking or circulation patterns.

As described in the attached Planning Report, the Building does not restrict any public viewing corridors. [See Exhibit C, pp. 6, 7.] An abutter's challenge to the approval of the Building by the City, on the grounds that it violated parking and view restriction requirements was flatly denied by the Zoning Board of Appeals. That determination was then unequivocally upheld on appeal by the Superior Court.

Additionally, the parking management plan is designed to minimize the impacts of the non-marine related parking demand on existing marine related use by locating substantially all such parking off-site.

- (h) The proposed development is consistent with the Portland Waterfront Public Access Design Guidelines, a copy of which is on file in the department of planning and urban development.

The Portland Waterfront Public Access Design Guidelines are inapplicable to the Building.

- (i) The proposed rezoning contains adequate provisions and/or conditions to ensure that the water-dependant use is not abandoned after the project is developed.

There are no current water dependant uses to be abandoned at the Building. Nonetheless, the Conditional Zoning Agreement, contains several provisions designed to ensure the long term use of the Building and its associated berthing by marine uses. The Agreement's provisions related to access and the reasonableness of fees leases and usage fees, as discussed above, evidence this clearly. [See Agreement at ¶ 5].



## Offsite Parking for the Non-Marine Uses.

4.6

The location of the non-marine parking associated with the Building will not displace parking now reserved for other property either by site plan or lease. The lot is now used by various tenants of the Wharf, including the customers of Boone's Restaurant and Gilbert's Chowder House. The Wharf's only obligation, in accordance with a lease provision, is provide five spaces to Gilbert's Chowder House.

The lot has the capacity to hold 27 cars. This 22 of the 26 parking spaces for the Buildings non-marine uses shall be located in the off site lot. The remaining spaces are located parallel to an existing building on the Wharf. What little impact these spaces have is minimized by the creation of over 15 new marine use only spaces on the Wharf. It is expected, in any event, that the peak parking demands of the restaurants and the Building will occur at different times, with the restaurants requiring parking at night and on weekends, and the non-marine offices to require it during the day on weekdays. The parking management plan has been amended to include a schematic more specifically defining it's location. [See Exhibit A].

### Conclusion

In crafting this version of the Conditional Zoning Agreement, the Proprietors have responded in every feasible way to the concerns raised both by the Planning Board and the City Council. Based on the foregoing discussion, the Proprietors submit that this proposal meets all of the required condition for allowing limited non-marine uses on upper floors of the Building. Indeed, given the nature of the conditions contained in the Agreement, and the financial realities facing the Wharf, the Proprietors suggest that to find otherwise could possibly render the contract zoning provisions of the WCZ without meaning.

Should you have any questions, or wish to visit the Wharf to view the site at issue, please do not hesitate to contact me.

Sincerely,



Bradford R. Bowman

Encl.

Cc: Mr. Kenneth McGowan



4A.1

PLANNING REPORT #42 -99

4A.1

**SITE PLAN REVIEW**  
**47 CUSTOM HOUSE WHARF**  
**GENERAL MARINE AND MARINE OFFICE FACILITY**  
**THE PROPRIETORS OF CUSTOM HOUSE WHARF**

Submitted to:

Portland Planning Board  
Portland, Maine

September 28, 1999



4A.2

**I. INTRODUCTION**

A public hearing has been scheduled to consider a proposal by the Proprietors of Custom House Wharf to build a three story general marine and marine office facility at the southerly end of Custom House Wharf. The building is to be located in the general location of a previous two story building which has been demolished after years of decay.

346 notices were sent to area property owners.

**II. FINDINGS**

Zoning: WCZ, Flood Plain A2, Shoreland

Proposed Building Footprint: 7,350 sq. ft.  
3 Stories x 3

Gross sq. ft. 22,050 sq. ft.

Proposed Parking Spaces: 31 (6 with in the facility)

Adjacent Uses: Other uses on Custom House Wharf include general marine warehousing and fish processing, retail seafood, restaurants and entertainment. The adjacent piers in this part of the waterfront contain similar uses in addition to commercial office and residential condominiums.

Proposed Uses:

The applicant proposes that the first floor will be used for non-retail general marine space with the top two stories used for marine related business offices. Under Portland Code 14-314, the proposed uses are permitted in the WCZ as long as "... The proposed non water dependent use, structure, or activities, including but not limited to access, circulation, parking, dumpsters, exterior storage or loading facilities, and other structures will..." [not] "... unreasonably interfere with the activities and operation of existing water-dependent uses or significantly impede access to vessel berthing or other access to the water by water dependent uses;..." (14-313.5(3)) See Portland Code, Waterfront Central Zone 14-313, Attachment 1.

There is not direct displacement of berthing or marine uses, nor is there any apparent conflict with adjacent marine use operations. The Zoning Administrator has determined that the parking and accessory uses anticipated from the top stories (which are marine related but not necessarily water dependent) will not unreasonably interfere with water dependent uses.

As no specific tenants have been indicated for the structure, questions have been raised as to how uses will be controlled in the facility to comply with zoning. City Zoning compliance will be reviewed and confirmed as future fit-ups for the office spaces will have to undergo zoning scrutiny as part of the normal building permit and occupancy permit process, and the use issues can be addressed as tenants modify their space. This issue is no different here than in any zone in the City in which use requirements must be adhered to.

4A.3

#### Building Elevations:

The proposed building elevations show split rib concrete walls for the first story and cedar clapboard siding for the top stories. The roof is a 4.5 in 12 full gable. The water side elevation is adorned with three dormers at the eaves and decks on the second and third stories. See Attachment 2, sheets 1 and 3.

### III. STAFF REVIEW

This development has been reviewed by staff for conformance with the standards of the site plan, floodplain, and shoreland ordinances.

#### Site Plan Review

##### 1. Traffic

The tight space constraints of the wharf are typical for any development on Portland's piers. City traffic does not see this project as presenting a hazard to the occupants of the pier or to Commercial Street.

Flood proofing the project has involved the regrading of the pier deck up to 12' of elevation at the building, to meet the requirement of first floor being 2 feet above the 100 year flood level. This results in steep grades on the loading dock side of the building. The regrading may interfere with the safe operation of vehicle loading and material handling. Planning staff recommends that the deck surface not exceed 8% grade. The applicant design interior ramps to access the building without a step up from the exterior deck or can utilize an elevated loading dock. See Potential Conditions of Approval.

##### Pedestrian Circulation

Pedestrian circulation around the building is provided by an 8' to 10' perimeter work deck on the water sides of the building

##### 2. Parking

20 spaces are required by zoning and the applicant proposes 31. See Zoning Memo, Attachment 3. Three spaces along the interior side of the building must be removed by request of City Fire staff, leaving a total of 28 spaces. Six of the remaining spaces are intended to be in the interior of the first floor of the building.

The largest bulk of the parking, 15 spaces, are located on the northerly end of the building in a stacked lot of five rows, three spaces deep. Planning staff has asked the applicant to produce a parking management plan to guarantee that the proposed stacked scheme will function as desired. An additional 4 spaces are stacked two spaces deep between the buildings across the wharf, and 3 spaces occupy the southerly end of the pier.

4A.4

Due to the amount of square footage and dock frontage required, the proposed parking plan presents some potential for interference with water-dependent uses associated with this proposal, however with removal of the three spaces, circulation patterns should be adequate for pier users.

3. Bulk, location, height of proposed structure, health and safety problems

There are no known health or safety problems associated with this project.

4. Bulk, location, height of proposed structures minimizes substantial diminution in the value or utility to surrounding structures

Zoning Officer, Marge Schmuckal, has produced a memo indicating that the building is in compliance with the 35 foot height limit of the WCZ. See Attachment 3. As measured from the new deck elevation, the building is 30.5 to 31.25 feet tall to the average elevation of the gable roof. As stated above, flood proofing the building resulted in the raising of the deck elevation. The above stated roof height figures are based on calculations from the proposed deck elevation.

Height and bulk concerns from commercial residents of a neighboring pier have been expressed to Planning staff as the additional floor of the proposed building will result in a diminution of down harbor views, thereby allegedly decreasing neighboring property values. Agents for the concerned neighbors have provided a memorandum describing their position on this project. Issues addressed are building height, blocking of private views, parking, and proposed use. See Attachment 4. Pursuant to their concerns, the opponents to this project have filed an appeal with the Zoning Board of Appeals to address the findings of the zoning officer. The applicant has been informed that if the appeal is successful, their plans would have to be revised accordingly. See Attachment 6.

As a means of minimizing the roof height, opponents of this project have expressed a desire that the building have a flat roof as did the previous structure. The applicant has indicated that the proposed pitched roof is needed due to the normal settling which can occur on wharf structures which results in ponding on flat roofs.

5. Sewers, storm drains, water, utility capacity

The previous building on this site had been served by all utilities and the applicant proposes to use the existing sewer and electrical connections. The applicant has requested a letter of capacity from City Public Works for sanitary service. Capacity in the Commercial Street system is not anticipated to be an issue.



4A.5

Stormwater in the pre-existing condition flowed into the harbor by sheet flow and through a catch basin located at the northerly end of the building. Planning has asked that as part of the re-grading of the site, the proposed parking areas be designed to drain into the catch basin and that a storm water treatment tank be installed to alleviate auto related pollution runoff. See also *Environmental Impact*, below.

6/7. Landscaping

Not applicable.

8. Soil and drainage

See 5.

9. Lighting

A lighting plan has been submitted indicating the proposed fixtures and photometrics. See Attachment 2, sheet 5 for photometrics and Attachment 7 for fixtures. The Fore River, southerly, end of the building and the northerly end of the building each have a single wall mounted shoe box cut off fixture with a 250 watt bulb; Fixture "A". The westerly side of the building has three wall mounted, non-cutoff decorative fixtures with 100 watt bulbs; Fixture "B". The easterly, interior side of the building has three "A" fixtures and two "B" fixtures.

The photometric contour plan shows low light spill over at the westerly side of the building with the other buildings on Custom House Wharf containing the light on the northerly and easterly sides. The "A" fixture on the southerly end of the building spills light into the harbor, but these levels are hard to evaluate as they will most directly impact the view from the harbor, which will be observed from water level, not the deck. Planning staff recommends that the single "A" fixture on the southerly end of the pier be replaced with a lower wattage lamp or two smaller cutoff fixtures as a means to reduce the potential for glare on the water. See potential conditions of approval.

10. Fire

The Fire Department has reviewed the plan and finds it acceptable except that the three parking spaces along the easterly side of the build need to be removed for fire access.

The building is to be fully sprinklered.

11. Infrastructure

The proposal is consistent with off-premises infrastructure.

12. Industrial Impact

Environmental impacts from this development will be discussed below. Industrial impacts from a marine use facility will be consistent with similar permitted uses in the WCZ.

13-18. N/A

19. View Corridors.

The proposed development will not be blocking public views as identified in the Urban Design Guidelines. The building will block the views from the neighbors at Portland Pier. The diminution of value to those neighbors has been addressed under Standard 4, and is the subject of the letter from Attorney Vaniotis, Attachment 4.

## 20-21. Environmental Impact

The greatest anticipated environmental impact of this development will be from the proposed parking. As stated above in the Stormwater review, Planning is requiring the applicant to install stormwater treatment for the parking areas. Planning staff conversations with Bay Keeper, Joe Payne indicate that Friends of Casco Bay consider run off pollution a significant problem for the bay and the economic viability of the Portland waterfront. The treatment method proposed for this site is similar to the stormwater systems typically required for larger parking areas. Given that this site discharges into the harbor, the requirement for treatment is reasonable under the shoreland and site plan standards. The applicant has agreed to provide the requested treatment system for stormwater. A suggested condition of approval is that the plan be revised to show stormwater collection and treatment, and a detail of the treatment device be submitted for planning authority review and approval.

22. Signs  
No signage is proposed at this time.

23. N/A

24. N/A

Shoreland Zone Review

This development has been reviewed under the standards for Shoreland Zone as well as site plan review.

1. Safe and Healthful Conditions

There are no unusual health or safety concerns about this site, assuming appropriate OSHA and other regulations are appropriately complied with.

2. Pollution, Erosion, Sedimentation: Notes 11 and 16 (see attachment 5 for full size version) address this issue. A fully detailed erosion and sedimentation control plan should be submitted for planning authority review and approval, in compliance with best management practices.
3. Wastewater: (Addressed under site plan standards.)
4. Wildlife Habitat: The project is not expected to have an adverse impact on wildlife habitat. The stormwater treatment system proposed as a condition of site plan review should minimize to the extent practicable the pollution of the harbor from the parking and driveway areas.
5. *The proposal will conserve shore cover and visual, as well as actual points of access to inland and coastal waters:* The project will not block any public views of the harbor, nor will it block existing points of public access. Some neighbors have expressed concerns about view impact, and have submitted a visual assessment as part of attachment 4. This issue was discussed previously under site plan standard number 4. The Planning Board will need to consider the evidence submitted and determine whether this standard is met by the proposal. Typically view corridors to the waterfront are oriented parallel with and between the piers and wharves, and "down harbor" views enjoyed by the public are provided from publicly accessible vantage points such as the end of Maine State Pier, and Portland Pier. Down harbor views from buildings on piers are frequently impacted by buildings on adjacent piers.
6. Archaeological and historic resources: There are no known impacts of the proposed development on such resources.
7. Commercial fishing and maritime activities: See introductory discussion. The proposal is for specified and unspecified marine uses. The use and associated accessory functions will not significantly impede water dependent activities, as discussed previously in the paragraph addressing the WCZ standards.
8. Flood Plain Development: The first floor elevation will be 2 feet above the 100 year flood, as required under flood plain management regulations.
9. Other Standards: The project has been reviewed under site plan and shoreland review standards. Except as noted in the various sections above and addressed in the proposed conditions of approval, the proposal meets the standards. As an urban waterfront site, the issues of tree clearance and vegetation management do not apply.

#### Flood Plain Review

Structural flood proofing of the structure is not needed as the proposed finished floor elevation is to be above 12 feet of elevation.

#### IV. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and material submitted by the applicant and on the basis of information provided in Planning Report # 42 -99, the Planning Board finds:

- A. That the plan is in conformance with the Site Plan Ordinance of the Land Use Code.

Subject to the following conditions:

1. That the deck surface not exceed 8% grade.
2. That the three spaces along the interior side of the building be eliminated for proper fire access, and a management plan for stacked parking spaces be provided for planning authority review and approval.
3. That the plan be revised to show stormwater collection and treatment, and a detail of the treatment device be submitted for planning authority review and approval.
4. That a revised lighting plan showing reduced light spill over into the harbor be submitted for planning authority review and approval.

- B. That the plan is in conformance with shoreland zoning requirements, subject to the following conditions of approval:

1. That a fully detailed erosion and sedimentation control plan be submitted for planning authority review and approval, in compliance with best management practices.

- C. That the plan is in conformance with Flood Plain Management Regulations.

#### Attachments:

1. Excerpt, Section 14-313, Zoning, Waterfront Central Zone, Permitted Uses
2. 11 x 17 Plan reduction set, five sheets.
3. Memo from Marge Schmuckal, Zoning Administrator
4. Letter, dated 9/9/99 from Attorney Chris Vaniotis
5. General Notes from the plans, (full size copy)
6. Zoning Appeal
7. Lighting Fixtures



CITY OF PORTLAND, MAINE  
PLANNING BOARD

4B.1

John H. Carroll, Chair  
Jaimey Caron, Vice Chair  
Kenneth M. Cole III  
Cyrus Y. Hagge  
Deborah Krichels  
Erin Rodriguez  
Mark Malone

October 5, 1999

OCT 14 1999

Jay Meyer  
Thompson, Bull, Furey, Bass and MacColl  
120 Exchange Street, 6th Floor  
P.O. Box 447  
Portland, Maine 04112-7600

RE: 47 Custom House Wharf

Dear Mr. Meyer:

On September 28, 1999 the Portland Planning Board voted 5-0 (Rodriguez and Caron absent) to approve your client's application to build a three story general marine and marine office facility at the southerly end of Custom House Wharf. The Board found that the application met the standards of the Site Plan, Shoreland, and Flood Plain ordinances of the Land Use code.

The approval was granted for the project with the following conditions:

1. That the deck surface not exceed 8% grade.
2. That the three spaces along the interior side of the building be eliminated for proper fire access, and a management plan for stacked parking spaces be provided for planning authority review and approval.
3. That the plan be revised to show stormwater collection and treatment, and a detail of the treatment device be submitted for planning authority review and approval.
4. That a revised lighting plan showing reduced light spill over into the harbor be submitted for planning authority review and approval.
5. That letters of adequate financial capacity be submitted for planning authority review and approval.
6. That letters of adequate utility capacity be submitted for planning authority review and approval.
7. That alternative roof configurations can be reviewed administratively.
8. That a fully detailed erosion and sedimentation control plan be submitted for planning authority review and approval, in compliance with Best Management practices.

The approval is based on the submitted site plan and the findings related to site plan review standards as contained in Planning Report #42-99, which is attached.

Please note the following provisions and requirements for all site plan approvals:

1. A performance guarantee covering the site improvements as well as an inspection fee payment of 1.7% of the guarantee amount and 7 final sets of plans must be submitted to and approved by the Planning Division and Public Works prior to the release of the building permit. If you need to make any modifications to the approved site plan, you must submit a revised site plan for staff review and approval.



- 2. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the expiration date.
- 3. A defect guarantee, consisting of 10% of the performance guarantee, must be posted before the performance guarantee will be released.
- 4. Prior to construction, a preconstruction meeting shall be held at the project site with the contractor, development review coordinator, Public Work's representative and owner to review the construction schedule and critical aspects of the site work. At that time, the site/building contractor shall provide three (3) copies of a detailed construction schedule to the attending City representatives. It shall be the contractor's responsibility to arrange a mutually agreeable time for the preconstruction meeting.
- 5. If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

The Development Review Coordinator (874-8300 ext. 8722) must be notified five (5) working days prior to date required for final site inspection. Please make allowances for completion of site plan requirements determined to be incomplete or defective during the inspection. This is essential as all site plan requirements must be completed and approved by the Development Review Coordinator prior to issuance of a Certificate of Occupancy. Please schedule any property closing with these requirements in mind.

If there are any questions, please contact the Planning Staff.

Sincerely,  


John H. Carroll, Chair  
 Portland Planning Board

- cc: Joseph E. Gray, Jr., Director of Planning and Urban Development  
 Alexander Jaegerman, Chief Planner  
 William Needelman, Senior Planner  
 P. Samuel Hoffses, Building Inspector  
 Marge Schmuckal, Zoning Administrator  
 Tony Lombardo, Project Engineer  
 Development Review Coordinator  
 William Bray, Director of Public Works  
 Jeff Tarling, City Arborist  
 Penny Littell, Associate Corporation Counsel  
 Lt. Gaylen McDougall, Fire Prevention  
 Inspection Department  
 Kathleen Brown, Director of Economic Development  
 Don Hall, Appraiser, Assessor's Office  
 Susan Doughty, Assessor's Office  
 Approval Letter File

40.1

**CONDITIONAL ZONE AGREEMENT**

**THE PROPRIETORS OF CUSTOM HOUSE WHARF**

**AGREEMENT** made this \_\_\_\_ day of \_\_\_\_\_, 2004, by **THE PROPRIETORS OF CUSTOM HOUSE WHARF**, a Maine corporation with a principal place of business located in the City of Portland, County of Cumberland and State of Maine, its successors and assigns (the "**PROPRIETORS**").

**WITNESSETH:**

**WHEREAS**, the **PROPRIETORS** have restored dilapidated pilings and wharf decking, and made certain improvements to Custom House Wharf, including the construction of a building thereon, which building is located in Portland at Map 030, Block A, Lot 1, which building and surrounding property is more particularly described on Attachment 1 (the "**PROPERTY**");

**WHEREAS**, the **PROPRIETORS** have requested a rezoning of the **PROPERTY** in order to permit the **PROPRIETORS** to maintain certain non-marine uses limited to those floors above the ground level of said **PROPERTY**;

**WHEREAS**, the **CITY** by and through its Planning Board, pursuant to 30-A M.R.S.A. §4352(8) and Portland City Code §14-60, *et seq.*, and §14-315.3, after notice and hearing and due deliberation thereon, recommended the rezoning of the **PROPERTY** as aforesaid, subject, however, to certain conditions more specifically set forth below;



4C.2

**WHEREAS**, the **CITY** has determined that the proposed rezoning would be pursuant to and consistent with the standards and requirements set forth in Portland City Code §14 -313.5 and §14 -315.3 for conditional rezoning within the WCZ;

**WHEREAS**, the **CITY** has determined because of the unusual location of the **PROPERTY** it is necessary and appropriate to have imposed by the **PROPRIETORS** the following conditions and restrictions in order to ensure that the rezoning is consistent with the City's Comprehensive Plan;

**WHEREAS**, the **CITY** through its Planning Board and City Council have determined that said rezoning would be consistent with the 1992 Waterfront Alliance Report which report recognized in part that diversity is the key to the economic stability of the working waterfront, the proper maintenance of its infrastructure and its long term growth;

**WHEREAS**, the **CITY** though its Planning Board and City Council have recognized that there is an economic need to subsidize marine uses with the WCZ by allowing a mixture of marine and non-marine uses within the Waterfront Central Zone.

**WHEREAS**, the **CITY** authorized the execution of this Agreement on \_\_\_\_\_, 2004;

**NOW THEREFORE**, in consideration of the rezoning the **PROPRIETORS** covenant and agree as follows:

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 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 Portland City Code §14-49, by adopting the map change amendment as shown below and limited to the footprint of the building existing at \_\_\_ (address)\_\_\_ as of the date of passage of Council Order # \_\_\_\_\_.

INSERT MAP

2. The **PROPERTY** and site improvements shall be developed and operated in accordance with the approved 10-5-99 site plan shown on **Attachment 2**, provided however, that Note 1 contained thereon shall not apply.

3. No occupancy of the building shall be permitted unless and until all site plan conditions of approval (excluding the condition related to uses) have been satisfied.

4. In addition to those uses that are, or may become, otherwise authorized within the WCZ, as it may hereafter be amended, repealed, or replaced, the **PROPRIETORS** shall be authorized to establish and maintain non-marine uses on the upper two floors of the **PROPERTY** in accordance with Portland City Code §14-314(b) and (c), as though the building located on the **PROPERTY** had been in existence on January 4, 1993. The provisions of this Agreement, including the permitted uses set forth above, are intended to replace the uses, restrictions and requirements of the underlying WCZ zone. This paragraph shall be effective only to the extent of the footprint of the building located on the **PROPERTY**, as shown in Paragraph 1.

5. Notwithstanding paragraph 4 above, and for so long marine related uses are required within the WCZ on the upper floors of buildings constructed after January 4, 1993, when leasing the upper floors of the **PROPERTY**, the **PROPRIETORS** shall give preference in tenant selection to marine related uses.

6. Leases, rentals or other usage fees charged for space within the **PROPERTY** or the Associated Berthing Space (as more particularly defined in Paragraph 8 below) to marine related and water dependant tenants, shall be made at rates comparable to those charged for similar privately owned space leased by or rented to marine related and water dependant uses within the WCZ, taking into to consideration the comparative condition and quality of such other marine related space.

7. The **PROPRIETORS** shall manage the on site parking associated with the Property in accordance with the Parking Management and Circulation Plan attached hereto as **Attachment 3**. Adherence to the Parking Management and Circulation Plan shall be made a condition of all leases of space within the **PROPERTY**, and shall be attached as an exhibit to all such leases. No vehicle parking shall be allowed within the 1<sup>st</sup> floor of the building.

8. No changes to the Parking Management and Circulation Plan shall be made by the **PROPRIETORS** without prior review and approval of the City of Portland Planning Authority.

9. The berthing space immediately adjacent to the **PROPERTY** (the "Associated Berthing Space") shall be reserved exclusively for commercial marine vessels.

10. The **PROPRIETORS** shall reserve eighty percent (80%) of the total berthing space available on Custom House Wharf for use by commercial marine vessels.