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*Penny St. Louis Littell- Director of Planning and Urban Development  
Marge Schmuckal, Zoning Administrator*

September 17, 2009

Kevin Gough  
Archetype Architects  
48 Union Wharf  
Portland, ME 04101

RE: 53 Danforth Street – 40-A-13 & 25 (the “Property”) – Conditional/Contract Zone  
#C-51

Dear Mr. Gough,

I am in receipt of your request for a determination regarding the Property.

The Property is located within a Conditional/Contract Zone identified as C-51. I have reviewed the submitted as-built survey plans from Owen Haskell, Inc with a date of August 31, 2009 for Job No. 2007-257P. The plans are unstamped and unsigned. Based on the as-built survey and the originally submitted survey, the Property located at 53 Danforth Street complies with all setback requirements set forth in the Contract by Maine Workforce Housing LLC, 53 Danforth Street, Portland, Maine dated July 2, 2008.

To the best of my knowledge as of September 17, 2009, the City of Portland, Maine has no pending or contemplated building code or zoning enforcement actions against the Property located at 53 Danforth Street, Portland, Maine. Nor are there any threatened actions against the Property located at 53 Danforth Street, Portland, Maine.

If there are any questions regarding this matter, please feel free to contact me at 207-874-8695.

Very truly yours,

A handwritten signature in black ink that reads "Marge Schmuckal".

Marge Schmuckal  
Zoning Administrator

Cc: file

**Kevin Gough**

**From:** Ted Kelleher [TKelleher@dwmlaw.com]  
**Sent:** Wednesday, September 16, 2009 3:19 PM  
**To:** 'Kevin Gough'  
**Cc:** Daina Nathanson; John Kaminski; Alice Grant  
**Subject:** 53 Danforth

40-A-12 525

Hi Kevin:

We want to get Marge Schmuckal to confirm two things for us:

1. As of September 16, 2009, the City of Portland, Maine has no pending building code or zoning enforcement actions against the project located at 53 Danforth Street, Portland, Maine nor are there any threatened against the project located at 53 Danforth Street, Portland, Maine.
2. The project located at 53 Danforth Street complies with all setback requirements set forth in the Contract by Maine Workforce Housing LLC, 53 Danforth Street, Portland Maine dated July 2, 2008.

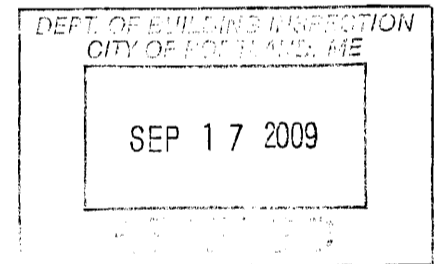
Obviously we need to get these confirmations in writing – getting her Marge to countersign a letter on Archetype letterhead would be the ideal.

Call me with questions.

60AL 43 dwelling unit  
perm # 08-094

KEVIN GOUGH, ARCHITECT

ARCHETYPE ARCHITECTS  
48 UNION WHARF  
PORTLAND, ME 04101  
PHONE 207.772.6022  
CELL 207.232.3858  
FAX 207.772.4056  
E-MAIL gough@archetypepa.com  
www.archetype-architects.com



C-51

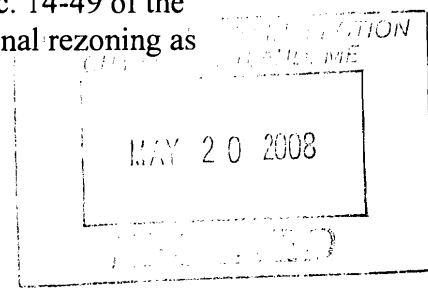
EDWARD J. SUSLOVIC (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
DANIEL S. SKOLNIK (3)  
CHERYL A. LEEMAN (4)

CITY OF PORTLAND  
IN THE CITY COUNCIL

JAMES I. COHEN (5)  
JOHN M. ANTON (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

**ORDER AUTHORIZING AMENDMENT TO CITY CODE  
SEC. 14-49 (ZONING MAP AMENDMENT)  
RE: CONDITIONAL REZONING FOR PROPERTY  
IN THE VICINITY OF  
53 DANFORTH STREET**

**ORDERED,** that the Zoning Map of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, is hereby amended to reflect a conditional rezoning as detailed below.



**Contract by Maine Workforce Housing LLC  
53 Danforth Street, Portland, Maine**

**This contract** made this 2 day of July, 2008 by 53 DANFORTH STREET, LP **MAINE WORKFORCE HOUSING LLC**, a Maine Limited Partnership Liability Corporation having a place of business at One City Center, 4<sup>th</sup> Floor, Portland, Maine (hereinafter "Developer").

**WHEREAS,** Developer has entered into a purchase and sale agreement for property at 53 Danforth Street, Portland, Maine, Portland Assessors Map CBL: 40-A-13 and 40-A-25 (the "Property"); and

**WHEREAS,** Developer filed a Zone Change Application with the City of Portland ("City") to modify an existing R-6 zone to permit the construction of apartments in a denser development pattern than that which would otherwise have been permitted under the R-6 or R-7 provisions; and

**WHEREAS,** Portland's Comprehensive Plan, adopted November, 2002, calls for the City to maximize development where public infrastructure and amenities, such as schools, parks, public/alternative transportation, sewer lines and roads exist, or may be expanded at minimal costs; to allow development along transit corridors and near community commercial centers to evolve at a density sufficient to make public transit, walking, and biking viable options; and to encourage higher density housing for both rental and homeownership opportunities, particularly located near services, such as schools, businesses, institutions, employers, and public transportation; and

**WHEREAS**, the Portland Planning Board determined that the proposed rezoning would provide needed rental housing, both income-restricted and market rate, in the City; and

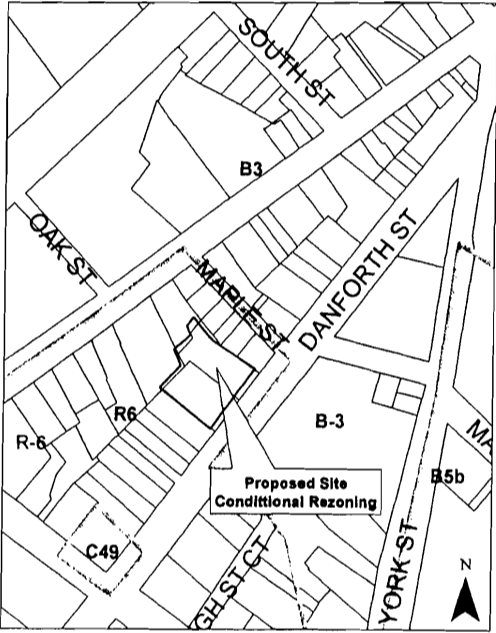
**WHEREAS**, the Portland Planning Board, pursuant to 30-A M.R.S.A. §4352(8), and after all notice and hearing and due deliberations required by law, recommended the rezoning of the Property, subject, however, to certain conditions; and

**WHEREAS**, the City, by and through its City Council, has determined that because of the unique circumstances of the site, being an infill site, it is necessary and proper to impose the following conditions and restrictions in order to ensure that the rezoning is consistent with the City's Comprehensive Plan and such rezoning would not unreasonably interfere with the existing and permitted uses within the existing R-6 zone or the R-7 zone; and

**WHEREAS**, the Developer has agreed to enter into this contract, with its concomitant terms and conditions, which shall hereinafter bind Developer; and

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

1. The **CITY** shall amend the Zoning Map of the City of Portland, dated December 2000, as amended and on file in the Department of Planning and Development, and incorporated by reference into the Zoning Ordinance by §14-49 of the Portland City Code, changing the underlying R-6 zone to R-7 and imposing the terms of this Agreement on the R-7 zone, all as shown on the following map change, which is herein adopted.



51-59 Danforth Street  
 Proposed Conditional Rezoning:  
 Residential R-6 to R-7

2. The use of the Property shall consist of a multi-family rental apartment building with no more than forty-three (43) units, and no more than five stories. An on-premises management office, serving this building only, may be included within the structure.
3. The property (hereinafter the "Development") shall provide thirty five (35) one bedroom units and eight (8) two bedroom units, with the smallest unit no less than 550 square feet.
4. The Development shall provide at least thirty-eight (38) off-street parking spaces of which thirteen (13) may be compact spaces, on the site. The cost of a space shall be included in each tenant's rent. However, in view of having as many as five fewer parking spaces than apartments at the Development, the Developer shall provide an incentive to persons without private vehicles to live at the Development by offering a reduction in rent of not less than \$40 per month for persons who do not own a vehicle.
5. Residents of all units, through the terms of the lease thereto, shall accept the restriction that they shall be prohibited from seeking an on-street residential parking permit from the City of Portland.
6. Thirty (30) of the apartments at the Development will be designated for residents whose income is at or below sixty percent (60%) of the area median income at initial occupancy, as required by the Federal Low-Income Housing Tax Credit program administered by the Maine State Housing Authority. This restriction shall remain in place for a period of time not to be less than 99 years.
7. The Property will be developed substantially in accordance with the Site Layout Plan (the "Site Plan"), Attachment 1, the elevations (the "Elevations"), Attachment 2, by Archetype, P.A. Architects (dated \_\_\_\_\_, 2008 and \_\_\_\_\_, 2008, respectively) and the architectural renderings, Attachment 3 (undated). The Planning Board shall review the Development according to the site plan and subdivision provisions of the Portland Land Use Code.
8. The underlying dimensional requirements of a residential structure in the R-7 zone are modified as follows:
  - a. Setbacks:

Side Yard: On the west side setback, no less than 9' to 11'; on the east side, no less than 13' to 19'.
  - b. Minimum land area per dwelling unit: three hundred and eighty (380) square feet.

- c. Height: Maximum height for the structure shall be fifty-four feet eight inches (54' 8").
- d. Density: Maximum density shall be no more than forty-three (43) residential units as detailed in paragraph 2 above.
- e. Maximum Lot Coverage: Lot coverage may not exceed sixty percent (60%).
- f. Open Space required: only the six foot (6') strip between the sidewalk on Danforth Street and the front of the building, to be landscaped with plantings.
- g. Impervious Surface restrictions: none.
- h. Parking: There shall be a total of thirty-eight (38) parking spaces, with a ratio of .88 spaces per dwelling unit.

Otherwise, the provisions of §14-141 through 14-143 (the R-7 Zone) of the Portland City Code shall apply to this development.

- 9. The landscaping plan, which includes shrubbery to be installed as shown on Attachment 1, shall be required and shall be required to be maintained with live vegetation during the spring, summer and fall months. The Planning Board shall not be authorized, during Subdivision and Site Plan review, to waive the street tree requirement of 86 in number, or a monetary contribution to the City's tree fund computed at no less than \$200 per required tree.
- 10. Snow removal shall consist of removal from the site, and on any sidewalks adjacent to the site, any snowfall as needed to maintain a clear sidewalk surrounding the property and the free access to all parking spaces provided on the site and to avoid snow bank accumulation on site in excess of two feet (measured horizontally or vertically).
- 11. In the event the development described herein is not commenced within two (2) years from the date this contract rezoning becomes effective and materially completed within four (4) years from said date, this contract shall become null and void and the Property shall revert back to the underlying R-7 zone.
- 12. This Agreement shall be irrevocable by the Developer but may be modified upon the Developer's request to the City Council or pursuant to the terms of paragraph 15.

13. The community contribution under this Agreement shall be \$20,000.00, to be dedicated to improvements at the Pleasant Street playground (as determined appropriate by Portland Parks Department) and \$5,000.00 dedicated to traffic improvements at the Commercial/ High Street intersection. The community contribution under this Agreement is independent of any conditions which the Planning Board may lawfully require under site plan review or subdivision review. The community contribution shall be made prior to the issuance of a certificate of occupancy.
14. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit Developer, and any of its successors and assigns, and shall inure to the benefit of and be enforceable by the City, by and through its duly authorized representatives. Developer shall file a copy of this Agreement in the Cumberland County Registry of Deeds, along with a reference to the Book and Page locations of the deeds for the Property no later than thirty (30) days from the date of the City Council action on the rezoning, or from the Developer's purchase of the property, whichever is later, but in no event later than ninety (90) days following City Council adoption of the Conditional Rezoning. The Developer shall provide to the City the Book and Page number of said recording.
15. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.
16. Except as expressly modified herein, the development, use, and occupancy of the subject premises shall be governed by and comply with the provisions of the Land Use Code of the City of Portland and any applicable amendments thereto or replacement thereof.
17. In the event that Developer or any successor fails to continue to utilize the **PROPERTY** in accordance with this Agreement, or in the event of Developer'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 R-7 Zone, which use or breach has not been cured after reasonable notice from the **CITY**, the **CITY** may prosecute such violations in accordance with 30-A M.R.S.A. § 4452 or in any other manner available by law. Should Developer 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.
18. In the case of any issue related to the **PROPERTY** which is specifically addressed by this Agreement, neither Developer 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 Zoning Board would have jurisdiction to grant, if the effect of such relief would be to alter the terms of this Agreement.

**WITNESS:**

**MAINE WORKFORCE HOUSING LLC**

\_\_\_\_\_

By \_\_\_\_\_  
Nathan S. Szanton

Cumberland, ss.

Date:

Personally appeared the above-named Nathan S. Szanton, Managing Member of Maine Workforce Housing LLC and acknowledged the foregoing Agreement to be his free act and deed in his said capacity and the free act and deed of Maine Workforce Housing LLC.

\_\_\_\_\_  
Notary Public

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53 DANFORTH ST LP

Applicant: MAME WORK FORCE HOUSING LLC Date: 6/11/08

Address: 53 DANFORTH ST

C-B-L: 040-A-013

CHECK-LIST AGAINST ZONING ORDINANCE

EOZ 5

Date -

modified R-7 zone permit # 08-0941

Zone Location - Contract Zone (C-51) recognized as replacement housing for the YWCA

Interior of corner lot -

Proposed Use/Work - To construct a new residential structure for 43 dwelling units - 35-1 BDRMS & 8-2 BDRMS

Sewage Disposal - City Rental Housing, both income-restricted & market rate

Lot Street Frontage -

Front Yard - 6' between bldg & sidewalk to be landscaped  
Rear Yard - None noted - Reg. R-7 states that a rear setback is only req. if abutting residential - NOT THAT

Side Yard - West side: no less than 9' to 11' - 9' 6 3/8" at the closest  
East side: no less than 13' to 19' - 14' at closest

Projections - 46.5' + 45.1' + 45.1' + 49' + 49.4' + 48' + 43' = 326.4' - 7' = 46.63' grade all

Width of Lot - showing exactly 54' 8"

Height - 5 stories per the conditional contract & not more than 54.8'

Lot Area - 16,470 sq ft of Land Area (9982 sq ft max) lot cov: 60% max showing 9156 sq ft no impervious footprint

Lot Coverage/Impervious Surface -  
Area per D.U. 380 sq ft min Land Area = 16,340 sq ft min

Area per Family - shall be no more than 43 D.U. with an on-premises management office serving this building only

Off-street Parking - At least 38 parking spaces (13 which may be compact spaces)

Loading Bays - N/A

Site Plan - #2008-0061

Shoreland Zoning/Stream Protection - N/A

Flood Plains - Panel 13 - Zone C

D.U. shall be no smaller than 550 sq ft - 587 sq ft is the minimum apt size shown



# Certificate of Occupancy

LOCATION 53 DANFORTH ST CBL 040 A013001

Issued to 53 Danforth Street Lp /Wright Ryan Construction, Inc Date of Issue 08/18/2009

**This is to certify** that the building, premises, or part thereof, at the above location, built — altered — changed as to use under Building Permit No. 08-0941, has had final inspection, has been found to conform substantially to requirements of Zoning Ordinance and Building Code of the City, and is hereby approved for occupancy or use, limited or otherwise, as indicated below.

PORTION OF BUILDING OR PREMISES

Entire

APPROVED OCCUPANCY

43 Units of Workforce Housing  
Use Group R2/S2  
Type 5A/1B  
IBC 2003

Limiting Conditions: none

This certificate supersedes certificate issued

Approved:

08/18/09  
(Date)

[Signature]  
Inspector

[Signature]  
Inspector of Buildings

Notice: This certificate identifies lawful use of building or premises, and ought to be transferred from owner to owner when property changes hands. Copy will be furnished to owner or lessee for one dollar.



**CITY OF PORTLAND, MAINE**

Department of Building Inspections

**Original Receipt**

9-17 2009

Received from Arch-type FE.

Location of Work 3 Danforth

Cost of Construction \$ \_\_\_\_\_ Building Fee: \_\_\_\_\_

Permit Fee \$ \_\_\_\_\_ Site Fee: \_\_\_\_\_

Certificate of Occupancy Fee: \_\_\_\_\_

Total: 150

Building (I1) \_\_\_\_\_ Plumbing (I5) \_\_\_\_\_ Electrical (I2) \_\_\_\_\_ Site Plan (U2) \_\_\_\_\_

Other Zoning Determination

CBL: \_\_\_\_\_

Check #: 10878 Total Collected \$ 150

**No work is to be started until permit issued.  
Please keep original receipt for your records.**

Taken by: J. J.

WHITE - Applicant's Copy  
YELLOW - Office Copy  
PINK - Permit Copy