

PROJECT ADDRESS: 26-32 Thomas Street, Portland ME

CHART/BLOCK/LOT: Chart 62 Block E Lot 5

DESCRIPTION OF PROPOSED ZONE CHANGE AND PROJECT:

The proposed zone change is to a conditional R-4 Residential zone to allow for a possible accessory unit, or additional dwelling units in the parish house, as well as office space on the first floor of the parish house. In addition, the conditional zone would allow for use of the sanctuary as a community hall.

CONTACT INFORMATION:	Applicant's Contact for electronic plans Name: Matthew Winch, Architect e-mail Address matthewwinch@earthlink.net work # (207) 450-0750
Applicant – must be owner, Lessee or Buyer Name: Professor Frank Monsour Business Name, if applicable: 32 Thomas Street LLC c/o Majella Global Tech. Address: : 477 Congress Street, Suite 601 City/State: Portland, ME Zip Code: 04101	Applicant Contact Information Work # Home# Cell # Fax# e-mail:
Owner – (if different from Applicant) Name: Address: City/State: Zip Code:	Owner Contact Information Work # Home# Cell # Fax# e-mail:
Agent/ Representative Name: Matthew Winch, Architect Address: 41 Edgewood Avenue City/State: Portland, ME Zip Code: 04103	Agent/Representative Contact information Work # (207) 450-0750 Cell # e-mail: matthewwinch@earthlink.net
Billing Information Name: 32 Thomas St. LLC c/o Majella Global Technologies Address: 477 Congress Street, Suite 601 City/State: Portland ME Zip Code: 04101	Billing Information Work # Cell # Fax# e-mail:
Engineer Name: Address: City/State : Zip Code:	Engineer Contact Information Work # Cell # Fax# e-mail:

Surveyor Name: Northeast Civil Solutions Address: 153 US Route 1 City/State: Scarborough, ME Zip Code: 04074	Surveyor Contact Information Work # (207) 883-1000 Cell # Fax# (207) 883-1001 e-mail: jim.fisher@northeastcivilsolutions.com
Architect Name: Matthew Winch, Architect Address: 41 Edgewood Avenue City/State: Portland, ME Zip Code: 04103	Architect Contact Information Work # (207) 450-0750 Cell # Fax# e-mail: matthewwinch@earthlink.net
Attorney Name: Mary Costigan Address: 100 Middle Street City/State: Portland, ME Zip Code: 04101	Attorney Contact Information Work # (207) 774-1200 Cell # Fax# (207) 774-1227 e-mail: mcostigan@bernsteinshur.com

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

Applicant is the current property owner. See attached filing memo and deed for property recorded at the Cumberland County Registry of 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.)

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.)

Existing Use: Describe the existing use of the subject property:

Prior to being sold to the applicant, the property was used as a place of assembly for religious worship a daycare, community programs and spaces associated with the support and day-to-day management of those programs.

Current Zoning Designation(s):

R4

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 Owner of the building proposes to renovate interior portions of the Parish House and Sanctuary. Renovations in the Parish house would generally include a residence on the second and third floor, a caretaker's living quarters on the first floor and in addition to the residence a small business would be co-located on the first floor.

Renovations to the Sanctuary would be modest so as to continue use of the space as a community hall with some interior work to create smaller performance / practice space and offices to support the community hall use.

Exterior work would include but not be limited to repairs / restoration to roof, exterior masonry, stained glass. Site improvements around the building including fence repairs, plantings and adding 3-4 parking spaces at the courtyard.

See attached Conditional Rezoning Agreement for further details.

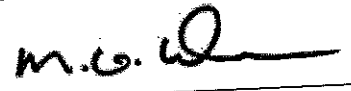
Site Plan: On a separate sheet, please provide a site plan of the property showing existing and proposed improvements, including such features as buildings, parking, driveways, walkways, landscape and property boundaries. This may be a professionally drawn plan, or a carefully drawn plan, to scale, by the applicant. (Scale to suit, range from 1" = 10' to 1" = 50'.) Contract and conditional rezoning applications may require additional site plans and written material that address physical development and operation of the property to ensure that the rezoning and subsequent development are consistent with the comprehensive plan, meet applicable land use regulations, and compatible with the surrounding neighborhood.

See attached site plan showing existing conditions.

APPLICATION FEE:

Check the type of zoning review that applies. Payment may be made in cash or check payable to the City of Portland.

	Fees Paid (office use)	The City invoices separately for the following:
Zoning Map Amendment ___ \$2,000.00 (from ___ zone to ___ zone)	—	<ul style="list-style-type: none"> • Notices (\$.75 each)
Zoning Text Amendment ___ \$2,000.00 (to Section 14- _____) (For a 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 (<i>example</i>) and language to be added is depicted as underline (<i>example</i>))	—	<ul style="list-style-type: none"> (notices are sent to neighbors upon receipt of an application, workshop and public hearing meetings for Planning Board and public hearing meeting for City Council) • Legal Ad (% of total Ad) • Planning Review (\$40.00 hour) • Legal Review (\$75.00 hour) Third party review is assessed separately.
Combination Zoning Text Amendment and Zoning Map Amendment ___ \$3,000.00	—	
Conditional or Contract Zone <input checked="" type="checkbox"/> \$3,000.00 (A conditional or contract rezoning map 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, meet applicable land use regulations, and compatible with the surrounding neighborhood. Please refer to Division 1.5, Sections 14-60 to 62.)	—	

Signature of Applicant:	Date: January 17, 2012
	

Further Information

In the event of withdrawal of the zoning amendment application by the applicant, a refund of two-thirds of the amount of the zone change fee will be made to the applicant as long as the request is submitted to the Planning Division prior to the advertisement being submitted to the news paper.

32 THOMAS STREET: SUMMARY OF PROPOSAL as of 2/28/12

- 1) Residential uses in parish house.
 - a. Creation of 2-3 dwelling units: main residence on 2nd and 3rd floors, caretaker residence on 1st floor and possible separate residence on 2nd floor for overnight guests. *accessory unit*
 - b. Can be created under existing zoning as conditional use.
 - c. Current land area is clarified under conditional rezoning agreement as being sufficient for all uses on the lot: residential, professional office and community hall.

- 2) Professional office use in parish house:
 - a. Consistent with the R-6 zone across the street, excludes personal services, retail services and veterinarians.
 - b. Limited to 2,800 sq. ft.
 - c. Limited to maximum of 14 non-resident employees.
 - d. The business utilizing the office space must be owned or operated by a resident of one of the dwelling units located within the building.
 - e. Owner of the business must provide one off-street parking space for each non-resident employee.

- 3) Community Hall use - the following controls are offered to limit the impact on the neighborhood:
 - a. Occupancy at any one time shall not exceed 250;
 - b. Evening performances beginning after 6:00 shall be held no more than twice per month on weekends or holidays (this applies to performances, not rehearsals or meetings);
 - c. No events will last beyond midnight;
 - d. No more than 5 organizations can have regular use of the facility at any one time; and
 - e. All uses shall be consistent with the community hall definition: social, recreational, artistic, civic or educational community functions.

- 4) Renovation - Owner has committed to a renovation schedule as follows:
 - a. Sanctuary roof, gutters and downspouts in accordance with proposal from the Heritage Co.; rehab of courtyard; and replacement of parish house door by Dec. 31, 2013.
 - b. Additional preservation work at discretion of owner, such as parish house roof, decorative metal trim, rooftop ventilator, parish house skylight, masonry, woodwork, stained glass, iron fence, wood sash windows, sanctuary door, granite stairs, storm windows.

drafted by applicants

Jean Fraser - 32 Thomas Street

From: Jean Fraser
To: matthewwinch@earthlink.net
Date: 1/25/2012 2:02 PM
Subject: 32 Thomas Street

Matthew

I have touched base with Barbara and we found the pdf of the entire application and I have uploaded it into our e-plan system- so the detailed review is in hand. Apologies for the mis-communication.

If and when you send us additional information please send as pdf (or bring as a CD) to me and I will ensure circulation at our end.

I will get back to you on Friday regarding a meeting as we discussed.

thank you
Jean

*Jean Fraser, Planner
City of Portland
874 8728*



MEMO
Planning and Urban Development
Planning Division

To: Councilor Marshall
From: Barbara Barhydt, Development Review Services Manager
Date: January 23, 2012
Re: 26-32 Thomas Street –Williston West Church

Professor Frank Monsour of 32 Thomas Street LLC, c/o Magella Global Tech at 577 Congress Street, Suite 601, has submitted a conditional zone change application for 26-32 Thomas Street. The proposed conditional R-4 Residential zone amendment would allow office space on the first floor of the parish hall, a residential unit on the upper floors of the parish hall with a possible accessory unit on the first floor, and allow the sanctuary to be used as a community hall. Matthew Winch, Architect, is the applicant representative and he is preparing the plans for the reuse of this structure. The Church is a landmark building within the West End Historic District. If you have questions, please let me know.

Thank you.

as read out by SOBnon at beginning of mtg.

XI. MOTIONS FOR THE BOARD TO CONSIDER (as presented in Report 23-12)

On the basis of the application, plans, reports and other information submitted by the applicant, the policies and requirements of the R-4 zone, the Comprehensive Plan, public comment, staff comments and recommendations contained in Planning Report #23-12, and the testimony presented at the Planning Board Hearing, the Planning Board finds:

as amended CZA
DS + JL
opposed
rest approved.

- A. That the proposed Conditional Rezoning the reuse (including for professional offices) and rehabilitation of 32 Thomas Street as described in this Report [is or is not] consistent with the Comprehensive Plan of the City of Portland;
- B. That the proposed Conditional Rezoning [is or is not] consistent with existing and permitted uses in the surrounding area;
- C. That the proposed Conditional Zone Agreement proposed for 32 Thomas Street [is or is not] in compliance with the standards set out in 14-60-62; and
- D. That the Planning Board therefore [recommends or does not recommend] the Conditional Rezoning and associated Conditional Zone Agreement for 32 Thomas Street to the City Council for its approval.

Procedural Note:

The Planning Board shall forward a recommendation to the City Council on the conditional rezoning as proposed by the applicant;

The Planning Board may also forward a recommendation to the City Council on the proposed conditional rezoning as modified by the Planning Board, if and as appropriate.

If the Planning Board includes alternate language with which the applicant is in concurrence, it is possible to forward a consolidated recommendation to the City Council.

Another motion for Applicant's

- A
- B
- C
- D

Vote: 4 in favor CM, TD, PV, SOB.
3 opposed BH, DS+JL

PLANNING BOARD HEARING 5.22.2012
Conditional Rezoning Williston West Church and Parish Hall

Planners Presentation:

1. Review: Professor Monsour of 32 Thomas Street LLC is requesting conditional rezoning to allow 2800 sq ft of office space on the first floor of the Parish Hall. The other uses he has proposed for the Parish Hall and the Church building are allowed in the R-4 zone and do not require conditional rezoning: 2-3 dwellings in the Parish Hall and the use of the Church itself as a community hall. The proposals are embodied in the Conditional Rezoning Agreement along with a requirement to complete within 2 years substantial rehabilitation work and a number of other restrictions- a paper copy of what was included in the packet at Attachment J has been circulated to the Board for reference.
2. The ordinance allows for conditional rezoning in Section 14-60 to 14-65 of the Land Use code and this provision highlights the requirement for the conditional rezoning agreement to be consistent with the City's Comprehensive Plan and allows for conditions and restrictions as listed on page 6 of the Memo.
3. The City's Associate Corporation Counsel has prepared a memo (Attachment 8) to amplify on the case law regarding interpretation of the requirement for consistency with the Comprehensive Plan. Both the applicant and staff have provided extensive analysis of the Comprehensive Plan policies as may relate to the proposal, including those relating to historic preservation, neighborhood livability and protection, cultural and economic development.
4. Public comments:
 - a. The applicant held a neighborhood meeting on Feb 1, 2012 and there have been further local meetings with the applicant and his representatives. There have been two Planning Board Workshops (3.13.2012 and 4.24.2012) on the proposal and this Hearing was noticed to 239 neighbors and interested parties;
 - b. Since the Hearing report was printed and circulated last week, a further 15 letters have been received bringing the total to 89 written public comments received by the Planning Division. This represents approximately 33 people supporting the project and 36 people opposing the project. In addition, a petition expressing opposition was signed by 140 people and submitted by Charles Rimmel; staff have heard from 3 of those who signed this petition asking for their name to be removed as they now support the proposal.
 - c. Charles Rimmel (9.71), Anne Pringle (9.72), Orlando Delogu (9.73) and the Greater Portland Landmarks Hilary Bassett (9.81) have submitted detailed comments on the wording of the final Agreement.
5. Letter circulated: The Planning Division has also received and circulated a letter from a Portland developer, Jonathan Culley of Redfern Properties, who was requested by the applicant's team to share the reasons for his decision not to purchase the Williston West site for residential conversion.
6. The staff analysis of the Agreement starts on page 8 of the Report and staff broadly recommend its approval based on the fact that: *quality this is summary.*
 - The variance from the R-4 zoning is for relatively small scale professional offices of 14 people at any one time in a unique and currently non-residential building, to be provided with off site parking. As proposed this use would not be subject to any further review.
 - This identified office use is proposed to be balanced by the substantial rehabilitation of the building complex to achieve soundness and integrity of the envelope and structural elements within 2 years;

1) Alex rec'd comment
2) copy of Judy Delogu
Comments

15
more

- Deb Andrews, the Historic Preservation manager has provided a Memo (Att 7d) confirming that residential reuse of the sanctuary, as suggested by some neighbors, would be difficult to achieve and meet historic preservation objectives; she will be at the meeting later on to answer any questions;
- The rehabilitation schedule has been the subject of many staff meetings with the applicant to understand the technical aspects of proposals and the options for preserving the stained glass windows which are understood to be in good condition. Staff, including Deb Andrews, have concluded that the final version of the schedule represents the essential work required to ensure the soundness and integrity of the complex and also note the applicants intention regarding the preservation of the stained glass windows as set out in Attachment J.8
- The community hall use is a permitted conditional use in the R-4 zone and no rezoning is required for this use; the applicant has added in a number of additional restrictions that would apply when the conditional use review takes place;
- The applicant has removed the 6 month period after the occupancy of the offices for posting the performance guarantee for work not completed or under binding contract at the time the offices are occupied. Staff consider the binding contract to be a strong security, as a new provision has been added that allows the Agreement to be revoked if the binding contract should lapse;
- The proposal does not include a "sunset" clause limiting the terms of the agreement to the present owner, but this is not usual for rezoning agreements and in this case could impede ongoing preservation and maintenance;
- There appear to be a number of policies that support the proposal and consistency with the Comprehensive Plan taken as a whole; the Report also notes that under Housing there is a policy "*to protect the stability of Portland's residential neighborhoods from excessive encroachment by inappropriately scaled and obtrusive commercial, institutional, governmental or other non-residential uses*" and the Board may wish to consider whether the proposed scale of office use is decidedly at odds with this policy.

WORKSHEET RE WILLISTON WEST CONDITIONAL ZONING AGREEMENT

①

*Index of public comments as they relate to the applicant's submitted Conditional Zoning Agreement ("final" as submitted for the PB Hearing)
Prepared by staff 5.29.2012 to assist the Planning Board and staff in locating relevant comments*

<i>Language in the applicants final CZA</i>	<i>Public comment (not quoted)</i>	<i># of comment / who</i>	<i>NOTES</i>
<p>WHEREAS, the building complex significantly contributes to the architectural fabric of the neighborhood and distinctive sense of place that defines Portland and therefore requires special consideration with regard to its rehabilitation and preservation; and</p> <p>WHEREAS, offices in residential zones, particularly in the R-4 zone, have been limited and any allowance of an office use in the R-4 zone should only be considered for large, unique, and historically significant structures which have not previously been in residential use, and must be carefully considered and controlled to achieve an appropriate balance between policies supporting neighborhood preservation and policies supporting economic development and preservation of the City's architectural and historic heritage; and</p> <p>2. Permitted uses:</p> <p>a. All uses allowed in the R-4 zone.</p> <p>b. Professional offices, including computer software programming and marketing, and excluding personal services, retail services and veterinarians, subject to the following limitations:</p> <p>(1) Professional offices shall be located on the first floor of the parish house and shall occupy no more than 2,800 square feet of floor area.</p> <p>(2) The total number of individuals working in the professional offices shall not exceed fourteen (14) non-resident employees regularly scheduled to occupy the premises at any one time.</p> <p>(3) The business utilizing the office space shall be a single tenant office user owned by or affiliated with the owner of the building complex.</p> <p>(4) The office use shall not generate frequent daily visitation by clients, customers, or the general</p>	<ul style="list-style-type: none"> • Support "Whereas" clauses in version submitted to Board on 5.22.2012 (highlighted key statements, including those listed at left) • Set of alternative "Whereas" clauses listed which would lead to denying offices • Revised the second of these clauses and many others; also added reference to comp plan goals to preserve and enhance the quality and vitality of neighborhoods (reasons noted) • Add clause recognizing constraints on sanctuary use (suggested wording) • Allow more residential units in Parish Hall instead of offices • There's an 11 hr time difference between Brisbane Australia and Portland Maine- will employees be coming and going at all odd hours of the morning? • 2a: to be just for owner occupied housing (not employees; not sublet) and single unit caretaker apartment on ground floor • 2b(2): Change 14 to 4 • 2b(3): add may not be sublet • 2b(5): delete "who commutes to the office by his or her automobile." • Add: if office use discontinued or abandoned for 1 yr or more, office use shall terminate and area may be converted to other permitted use • Add: permitted office use shall terminate upon sale/change of control of property • Plus request for definition of some terms 	<p>9.81 G.P. Landmarks</p> <p>9.73; 9.92 Orlando Delogu</p> <p>9.72 second att A.Pringie (in pers. cap)</p> <p>9.4 Charles Remmel</p> <p>9.91 Judy Delogu & 9.95 Anne Pringle</p> <p>9.86 John & Betty Gundersdorf</p> <p>9.72 second att Anne Pringle (in personal capacity)</p>	

(5) The owner or operator of the business shall public.
 secure and provide to its employees one (1) off street parking space for each non-resident employee who commutes to the office by his or her automobile.

3. Use of the sanctuary as a community hall shall be reviewed as a conditional use by the Planning Board, which may place limitations on the use of the sanctuary as a community hall, in addition to the requirements for community halls set forth in section 14-103(b)(2)(e). Said limitations may include, but are not limited to the following:

- Occupancy load;
- Hours and days of operation;
- Record keeping and reporting;
- Number of organizations that may be entitled to regular use of the community hall at any one time;
- Noise level as the property line; and
- Service of alcohol.

<ul style="list-style-type: none"> Employees unlikely to use off street and off site parking in bad weather 	9.80 Edward and Judi Mansing	
<ul style="list-style-type: none"> Monsour should consider shutting employees from some appropriate parking lot? 	9.90 Audrey Tanner	
<ul style="list-style-type: none"> 2a: Specifically state that one residential unit shall be for owner's use and can not be sublet; If any "auxiliary residential unit", should be restricted ie use by an occupant subject to continuous occupation of greater than 90 days by that occupant 2b: Replace "professional" with "commercial" 2b(2); Remove "non-resident" 2b(2): limit to 4 executives and 2 support staff 2b(5): delete "who commutes to the office by his or her automobile" 2b(5): Replace with new language that requires documentation to city re employees, make of vehicle, license numbers and off street parking space- updated and provided annually (failure to comply constitutes breach of CZA) Suggests allowing more parking for residential uses of parish hall in courtyard and keep issue open for the site plan review 	9.71 Charles Rimmel (also 9.60)	
<ul style="list-style-type: none"> Insist on documentation of the parking leases as well as annual re-certification. 	9.22 Roland Ware	
<ul style="list-style-type: none"> Discuss sanctuary at some level of detail now 	9.83 Jerry West	
<ul style="list-style-type: none"> Postpone PB decision of any/all sanctuary use until restorative work is complete 	9.73 and 9.92 Orlando Delogu	
<ul style="list-style-type: none"> Add in detailed limitations, including 2/mo evening performances; specific times; specific noise levels; others as in an earlier version of CZA 	9.72 2nd att A.Pringle (in personal capacity)	
<ul style="list-style-type: none"> Add in detailed limitations, including 2/mo evening uses; specific times; specific noise levels; specific liquor prohibitions 	9.71 Charles Rimmel	

Language in the applicants final CZA	Public comment (not quoted)	# of comment / who	NOTES
<p>6. Subject to receiving all necessary regulatory approvals, the Developer shall rehabilitate the Property in accordance with the Rehabilitation Schedule and related elevation drawings A-1 through A-8, attached hereto as <u>Exhibit B</u>, in keeping with the standards of Article IX, Historic Preservation, of the Portland City Code and as shall be reviewed and approved by the Historic Preservation Board or staff under the terms of this Article. Such rehabilitation shall commence within six (6) months of [date of enactment] and shall be completed within 24 months of [date of enactment]. Any rehabilitation improvements required by this AGREEMENT not completed or under binding contract before the issuance of the certificate of occupancy for the office use shall be secured by a performance guarantee in the form of an escrow account, letter of credit, or equivalent surety approved by the Corporation Counsel of the City of Portland, in an amount equal to the estimated cost of completion of such improvements. Such binding contracts for required improvements shall include a provision to notify the City of any lapse in agreement, failure to pay, or other impediment to completion, and any such lapse may be cause for the City to revoke this AGREEMENT. Such performance guarantee shall be reduced by the City upon completion of improvement phases, but shall not be reduced to less than the estimated cost of any incomplete required improvements. In the event that the owner/developer fails to execute the required improvements by the time specified herein, unless granted an extension in writing from the Planning Authority of the time to complete for good cause and not to exceed an additional twenty-four (24) months, then the City of Portland or its designee shall have the right to utilize the proceeds of the performance guarantee to hire a competent contractor to complete such improvements. In such event, the owner/developer shall have the right to review and approve the work scope consistency with the required improvements of <u>Exhibit B</u>, the specifications and methods of such work items, and contractor qualifications. Such approval shall not be unreasonably withheld.</p>	<ul style="list-style-type: none"> Strengthen requirement for completion of items on rehabilitation schedule through required performance guarantee Urge adoption of changes proposed by Anne Pringle and WPNNA and Greater Portland Landmarks to strike the language "or under binding contract" and require a stronger performance guaranty Remove "or under binding contract" from 3rd sentence Reduce extension time to 12 mos Penultimate sentence: Replace "owner/developer" with Planning Authority Add " under binding contract" to second sentence. Remove "or under binding contract" from 3rd sentence as new provision does not assure work will get done Performance bond is essential Reduce extension time to 12 mos Remove last 2 sentences Don't accept contract agreement (supports Anne Pringle's suggested conditions) Enable City to call performance bond if work not done within timelines Guaranty specify "performance Bond" or unconditional letter of credit instead of performance guaranty Delete last 2 sentences. CO granted only if required work is completed 	<p>9.96 Sally Oldham</p> <p>9.93 Vilean Taggersell</p> <p>9.81 Greater Portland Landmarks</p> <p>9.72 Anne Pringle (in personal capacity)</p> <p>9.73 9.92 Orlando Delogu</p> <p>9.71 Charles Remmel</p>	
<p>9. In the event of a breach by the Developer or its successors or assigns of the zoning provisions contained herein (whether the Zoning Administrator, the Zoning Board of Appeals or a court determines such breach), the Planning Board, after</p>	<p>Replace with suggested language: allows City to terminate CZA after giving 30 days for a breach to be corrected; applicant can appeal through PB/CC; adds bankruptcy/insolvency of applicant,</p>	<p>9.71 Charles Remmel</p>	

<p>notice and hearing, may recommend to the City Council that the conditional zone and this Agreement be amended, or be rescinded, such rescission to result in the termination of this Agreement and a reversion of the Property to the R-4 zone requirements in place before the execution of this Agreement.</p>	<p>abandonment, and violation of conditions imposed on use of sanctuary, as breach of CZA</p> <p>Ensure mechanism is in place to return the property to R-4 zone at any time if any of the provisions of the contract are not met.</p>	<p>(also 9.60)</p> <p>9.14 John Whipple</p>	
<p>10. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit the Developer, any entity affiliated with the Developer that takes title to the Property, its successors and assigns, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the City of Portland, by and through its duly authorized representatives. The Developer shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.</p>	<p>Zoning should revert to R-4 if applicant sells it</p> <p>Include condition that revokes CZA (restores R-4) if restorative work abandoned or halted for any significant period of time (6mos or year), or if developer attempts to subdivide or sell prior to completion of all restorative work</p> <ul style="list-style-type: none"> Delete "" affiliated with the Developer" Add clause to provision 2 that permitted office use shall terminate upon sale or change of control of property 	<p>9.88 Newell Augur</p> <p>9.73 Orlando Delogu</p> <p>9.72 second att. Anne Pringle (in personal capacity)</p>	
<p>11. The Planning Authority shall be notified of any potential and/or pending sale of the Property (which most likely will be evidenced by a Purchase & Sales Agreement or its equivalent), and prior to closing the sale of the Property shall meet with the buyer and verify that he/she/it has read, understood and agrees to be bound by the terms, conditions, limitations and provisions of this AGREEMENT, and said buyer shall so state in a signed affidavit to be kept on file with the Planning Authority.</p>	<ul style="list-style-type: none"> Add "at least 3 weeks" before "prior" <p>Add: Clause requiring continued maintenance (eg City's historic preservation ordinance 14-690 (a) Preservation of Protected Structures)</p> <p>Add: Require developer to provide written annual report to City documenting compliance with requirements of CZA</p> <p>Add: Condition that enables any owner residing within 500 feet of the property to enforce any/all conditions of CZA</p> <p>Delete "or under binding contract" (2nd para)</p>	<p>9.81 Greater Portland Landmarks</p> <p>9.96 Sally Oldham and 9.81 G.P. Landmarks</p> <p>9.73 Orlando Delogu</p> <p>9.81 G.P. Landmarks</p>	<p>→ NO</p>
<p>Rehabilitation Schedule</p>	<p>Carefully itemize work and time lines for completion</p>	<p>9.73 Orlando Delogu</p>	



PLANNING BOARD REPORT PORTLAND, MAINE

26-32 Thomas Street (Williston West Church complex)

Conditional Rezoning Application

32 Thomas Street LLC c/o Majella Global Technologies, Applicant

Project ID 2012-414

Submitted to: Portland Planning Board Public Hearing Date: May 22, 2012	Prepared by: Jean Fraser, Planner Date: May 18, 2012 Planning Board Report # 23-12
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I. INTRODUCTION

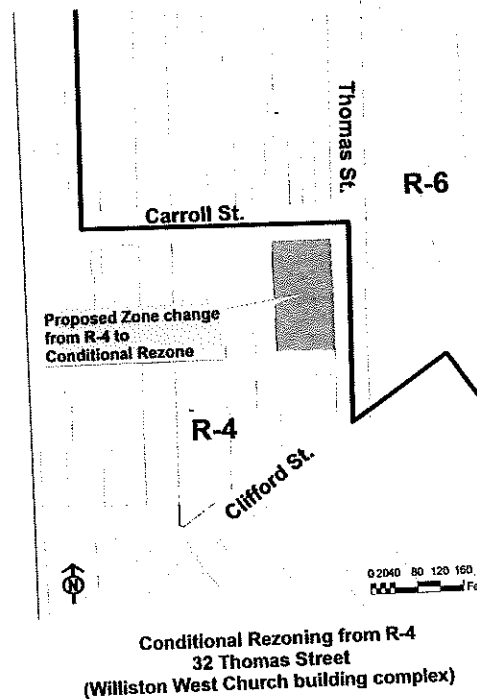
Professor Frank Monsour of 32 Thomas Street LLC has requested conditional rezoning of the building complex at 26-32 Thomas Street to allow 2800 sq ft of office space on the first floor of the Parish Hall. The building complex is located within the R-4 Residential zone which does not allow for any office use except in a very limited way under home occupation. The proposal also includes extensive rehabilitation of the building complex, primarily the sanctuary of the Williston West Church.

Professor Monsour recently purchased both buildings from the Williston West United Church of Christ. The building complex comprises two existing historic non-residential landmark buildings (Church and Parish Hall) that are linked, with a courtyard area between the linking section and Thomas Street (see aerial in [Attachment 5](#)). The total site is 17,998 sq ft. and located at the corner of Thomas Street and Carroll Street in the R-4 zone with R-6 opposite.

The Planning Board is reviewing the request under the Land Use Ordinance Division 1.5 *Conditional or Contract Zoning* (14-60 to 14-65), which reflects the requirements of State Statutes *Title 30-A M.R.S.A. Sections 4503(9) and 4352*. The Board has held two Workshops to consider the requested rezoning and this report contains a potential recommendation to the City Council, who are scheduled to make the final decision on the proposed rezoning and its associated Conditional (Re) Zoning Agreement (CZA) in June 2012.

The proposal includes other uses that are currently allowed in the R-4 zone: an accessory dwelling unit on the first floor of the Parish Hall, a family residence and possibly one other dwelling on the second and third floors of the Parish Hall, and the use of the Williston West Church sanctuary as a community hall. These uses are conditional uses under the R-4 zone and would require further review by the Zoning Board of Appeals in the case of the creation of dwellings, and by the Planning Board in the case of the community hall.

The applicant is also requesting relief from several of the dimensional requirements of the R-4 zone because the existing buildings predate the current land use ordinance. These dimensions may be grandfathered, but the proposed provisions would give the building complex the status of conformance with dimensional requirements, with restrictions on any building expansion.



The Church bell tower and sanctuary is understood to be in substandard condition (see applicant's *Building Conditions Assessment* in Attachment J.3), primarily due to water penetration from the deterioration to the roof and some areas of masonry. An underlying objective of the Conditional Zoning Agreement is that the currently prohibited office use would be allowed on the first floor of the Parish Hall (with restrictions) to help fund identified rehabilitation work to the church sanctuary to ensure the integrity of the structure and envelope of the building complex over the long term.

II. PUBLIC NOTICING AND WORKSHOP SUMMARY

The proposed conditional rezoning and the associated Planning Board meetings, including this hearing, have been noticed to 239 neighbors and interested parties in accordance with the requirements specified in the ordinance for Conditional Rezoning, including posting of the draft agreements on the web and to abutters and a separate Legal Ad with a map in *Portland Press Herald* in the May 14th and 15th 2012 Editions.

The applicant held a Neighborhood Meeting on February 1, 2012 which was attended by 42 people. The Neighborhood Meeting certificate is attached in Attachment E and includes detailed notes of the meeting. A summary of further discussions with neighbors prior to the first Workshop was submitted by the applicant on 3.7.2012 (Attachment F) and staff are aware that the applicant has met with many groups and neighbors since then.

Since the Neighborhood Meeting the Planning Division has received 74 written comments (as of the date of preparing this report, 5.17.2012) which represents approximately 30 people in support and 33 people opposed (Attachment 9). The written comments include one petition opposing the proposed rezoning with 140 signatures (Attachment 9.64); Greater Portland Landmarks comments (Attachments 9.30 and 9.63); and two alternative versions of the CZA (Attachments 9.72 and 9.73). In addition the Planning Board Workshops were well-attended, with some 35 different members of the public presenting comments at the meetings.

Supporters generally suggest the proposed limited office use and significant rehabilitation work offers a balanced approach to securing these unique and important buildings for the future and the neighborhood, with little real adverse impacts. For those who oppose the project, the most common concern is the introduction of a commercial use and its associated impacts (eg parking) within a close neighborhood. The potential impacts from the community hall use are also a concern, with several comments suggesting that monitoring of impacts be incorporated. Below is a summary of the issues raised:

- Issues related to the implications of rezoning, such as whether this rezoning would set a precedent for allowing other inappropriate uses in the R-4 zone and reduce resident's confidence to invest in their property; whether its consistent with the Comprehensive Plan; whether it's an acceptable minor variation for a unique building that contributes to urban "vibrancy";
- Issues related to the potential adverse impacts, such as whether 14 employees (as restricted) and their parking requirements would be more intrusive than the previous inconveniences of the church operation;
- Issues related to the wording of the conditional rezoning agreement, such as whether the office use should be limited to the applicant rather than run with the property; whether the unique status of the complex is adequately recognized; whether monitoring and enforcement as adequately covered; whether the nature and scale of the rehabilitation proposals is adequate; whether the confirmed dimensional maximums allow for an increase in volume or footprint; whether the basis on which the agreement could be revoked are clear enough; whether the restrictions on any future use of the sanctuary as a community hall should be specified as part of the rezoning or be deferred until the rehabilitation work is completed;
- Issues related to the need to invest in this unique building complex as it is a community landmark and whether the proposals are preferable to it continuing to deteriorate and possibly remain vacant;
- Issues related to the constraints of the building (eg stained glass windows) for different types of adaptive reuse; different views from neighbors as to viability/potential impacts of residential vs community hall adaptive reuse of the sanctuary;
- Recognition that rehabilitation needed for these historic buildings, but different views as to whether the rehabilitation justifies introduction of the office use and whether the applicant has shown the need for the offices to fund the rehabilitation.

The applicant has revised the Conditional Rezoning Agreement to address some of these points. The applicant was also

concerned at comments made at the 4.24.2012 Planning Board Workshop regarding the sale negotiations with the Williston West Church Board of Trustees and has submitted a clarifying letter from the Williston West Church Board of Trustees (Attachment J.7).

III. PROJECT DATA

	Church	Parish Hall	Building complex
Total Area of Lot:			17,798 sq ft
Footprint of building (excl linking structure)	6366 sq ft (Assessors info)	4417 sq ft (Assessors info) (3 floors plus basement)	
Existing Floor space	Approx 6000 sq ft	Approx 10,800 sq ft	Approx 16,800 sq ft
Existing (lawful) uses	Place of Assembly/community hall	Childrens Day Care	
Proposed uses	5,800 sq ft for Place of Assembly/community hall	2,800 sq ft Offices (max 14 full time employees or equivalent) Approx 6,600 sq ft residential (2-3 dwelling units)	
Existing Parking			Paved area for approx. 2 cars in courtyard

IV. BACKGROUND

Consideration of the Conditional Rezoning is framed by policy issues involving the historic importance of the buildings and the policies and history of the R-4 zoning in the West End of Portland. These are briefly outlined below.

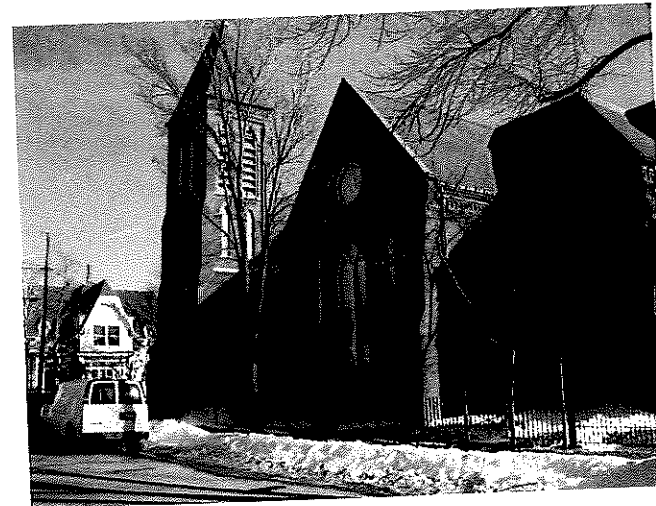
Historic Information

The Williston West Church complex is both a national and local landmark and the "description of significant features" is included in Attachment 4.

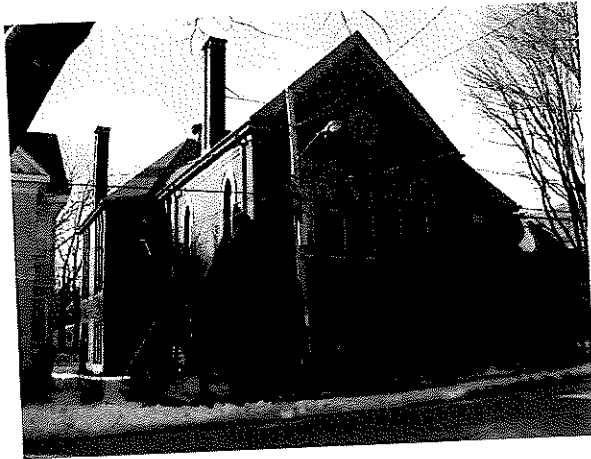
The Church (by Francis Fassett in 1877) and Parish Hall (by John Calvin Stevens in 1905) are located within the West End Historic District and both are listed in the National Register of Historic Places, recognizing both the architectural and historical significance of the buildings. Additionally, both structures are historically designated by the City of Portland under its historic preservation ordinance.

The sanctuary was designed by Portland's leading architect in the 1870's (Francis Fassett) in the High Victorian Gothic Style with a three story bell tower. It originally had a slate roof which was replaced with asphalt shingles in 1957. Some of the stained glass windows have been created by well known artists and alterations by John Calvin Stevens were made in the late 1920's.

The Parish Hall was added by John Calvin Stevens in 1905 including a wing to connect to the church. Its architecture (see Attachment 4) harmonizes with the church, and the Parish Hall is notable for the stained glass windows on the upper floors. It also has historic interest as the meeting place of the Young People's Society of Christian Endeavor (a national organization that led to the Sunday School movement) which started there in 1881. The 3.7.2012 and 4.18.2012 letters from the applicant (Attachments F and J.6) provides further historic details and description of the key features.



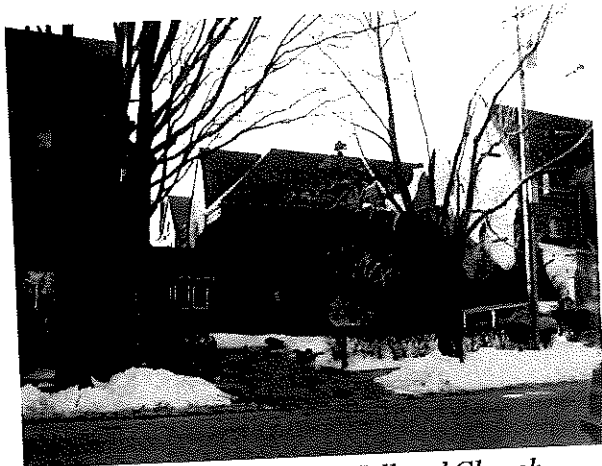
Sanctuary as viewed from Carroll Street



Parish Hall as facing Thomas St



The building complex, viewed from Thomas St



Courtyard between Parish Hall and Church



Sanctuary adjacent McLellan House parking lot

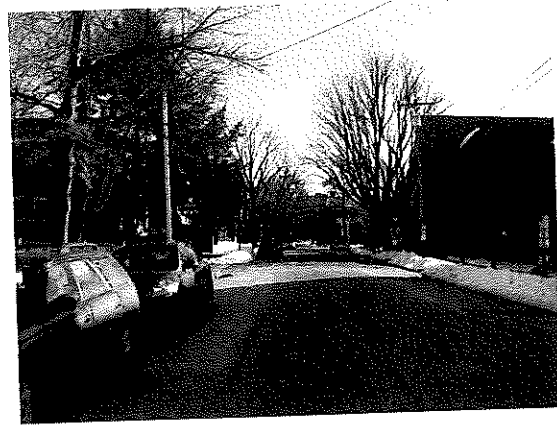
R-4 Zoning

The Board will recall from reviews of projects associated with *Maine Medical* and *Waynflete School* that the R-4 zone prohibition on offices of any kind was incorporated in response to neighbor concerns over the institutional "creep", associated impacts of offices (particularly professional or medical offices that served members of the public), and loss of residential uses in the West End neighborhood. The zone does allow home occupation (see Attachments 2 and 3) which restricts the number of non-residential employees to one and the "office" area to 500 sq ft. The applicant has pointed out (Attachment J.1) that the R-4 zone does allow some commercial uses.

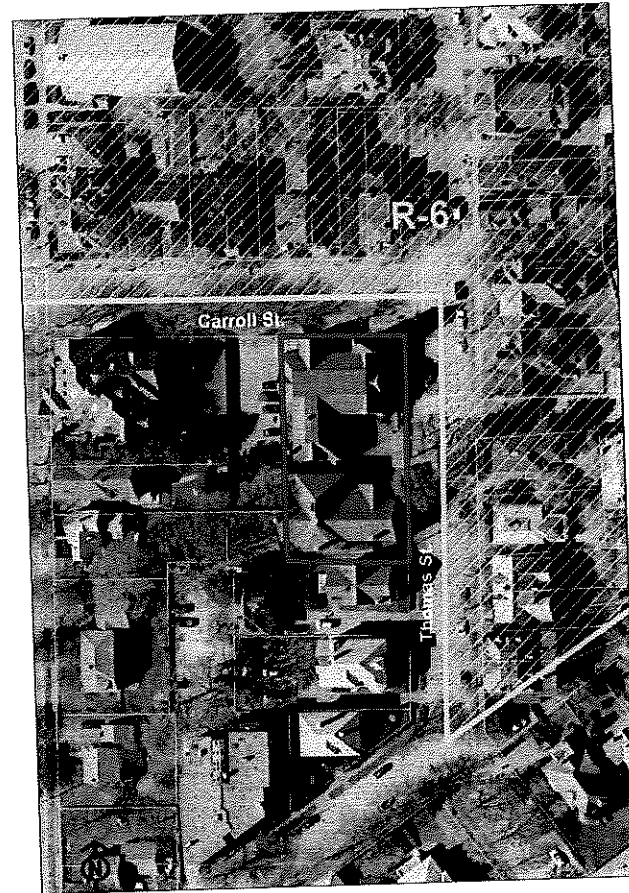
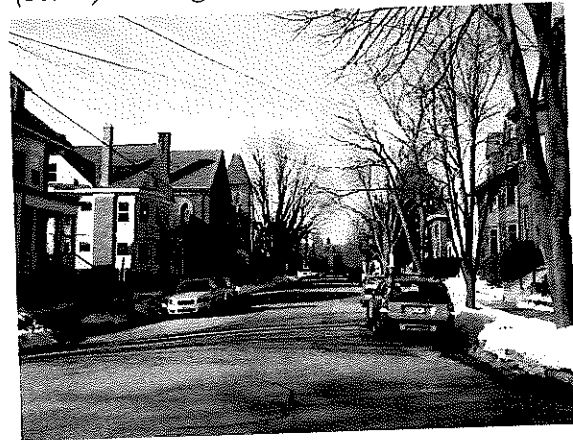
The R-6 zone across the street (other side of Thomas Street) allows offices as a conditional use under certain conditions (maximum of 4 full time/equivalent employees, although such restrictions do not apply to nonresidential structures) in addition to home occupation. The relevant text from the R-4 and R-6 zoning ordinances are included in Attachment 1. The comparable standards of the R-6 zone have been included for reference purposes.

V. EXISTING CONDITIONS

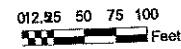
The building complex at 32 Thomas Street was primarily operating as a church until its sale to the applicant, although it was also used for a variety of community events as illustrated in the submitted records from 2009 to 2011 showing the dates and times of activities and events (Attachment H.5). The Parish Hall is currently used as a day care center. The aerial photograph below (larger version in Attachment 5) and the submitted Survey (Attachment K) illustrates that the existing buildings are very close to the lot boundaries and there is little space for buffers between any proposed uses and residential neighbors, with the courtyard the only open area. The parking lot to the west of the church is owned by the abutter and serves the adjacent condominiums.



(above) Looking south on Thomas Street
(below) Looking north on Thomas Street



Vicinity 32 Thomas St.



VI. PROPOSED CONDITIONAL REZONING

The applicant proposes a conditional R-4 rezoning of the property in order to allow for the introduction of 2,800 sq ft of offices on the first floor of the Parish Hall, which are not allowed in the R-4 zone. The board has seen four versions of the proposed Conditional (Re)zoning Agreement (CZA) (Attachments B, C, G.1 and H.3). The most recent version of the submitted Agreement is attached at Attachment J.2 and a single sided paper copy of the clean "final" version will be available for the Board members at the hearing. Large scale copies of the floor plans and elevations included in the Agreement are in Attachments L and M.

The most recent version (Attachment J.2) was submitted May 9, 2012 in response to the second Planning Board Workshop public and staff comments. It addresses several of the public comments; it also addresses most of the staff comments circulated at the second Planning Board Workshop (Attachment 7.c) which suggested additional "Whereas" paragraphs, more detailed Community Hall restrictions, removal of the 6 month period between the issuance of the CO for the offices and the requirement for a performance guarantee/binding contract, and additional items regarding mortar repair and window protection included in the Rehabilitation Schedule.

The proposed provisions include the following substantive elements (in summary):

- Numerous "Whereas" clauses that address many of the issues raised during Workshop discussions;
- Allowance of 2,800 sq ft of professional offices (excluding personal services, retail services and veterinarians) as permitted uses, subject to restrictions, on the first floor of Parish Hall (up to 14 non resident employees regularly scheduled to occupy the premises at any one time);
- Modification of dimensional requirements of the R-4 zone to accommodate the existing buildings and their use as a place of assembly, with a new provision prohibiting any increase in volume or footprint;

- Statement confirming that the sanctuary as a community hall would be reviewed by the Planning Board under future Conditional Use Review (as this use allowed under R-4 as a conditional use), including a list of potential limitations (such as hours; noise levels etc) that the Board may impose;
- Rehabilitation of the property in accordance with a rehabilitation schedule listing priority items to be commenced within 6 months of the date of the Agreement being enacted and completed within 2 years;
- Rehabilitation improvements not completed or under binding contract at the time a certificate of occupancy is issued for the offices shall be secured by a performance guarantee; any lapse of a binding contract may be cause for the City to revoke the agreement;
- Provisions run with the property, but if property is sold the Planning Authority to be notified of any potential and/or pending sale and prior to closing the sale of the Property shall meet with the buyer and verify that he/she/it has read, understood and agrees to be bound by the terms, conditions, limitations and provisions of the Agreement.

VII. STAFF ANALYSIS OF CONDITIONAL REZONING REQUEST

Zoning

Consideration of the request for conditional rezoning is guided by State Statute (Title 30-A Section 4352) which requires that all conditional or contract zoning must:

- Be consistent with the growth management program adopted under this chapter;
- Establish rezoned areas that are consistent with the existing and permitted uses within the original zones; and
- Only include conditions and restrictions that relate to the physical development or operation of the property.

The City's Associate Corporation Counsel has prepared a memo clarifying how the first requirement has been interpreted in court cases (Attachment 8). In particular, the Maine Law Court has interpreted the term *consistent* to mean that the proposed use/agreement must be "in basic harmony with..." the City's Comprehensive Plan but that this does not mean it has to be the "best possible use".

In addition the Conditional Rezoning must accord with the City's ordinance as quoted below:

Sec. 14-60. Authority and purpose.

Pursuant to 30-A M.R.S.A. Section 4503(9), conditional or contract zoning is hereby authorized for rezoning of property where, for reasons such as the unusual nature or unique location of the development proposed, the city council finds it necessary or appropriate to impose, by agreement with the property owner or otherwise, certain conditions or restrictions in order to ensure that the rezoning is consistent with the city's comprehensive plan. Conditional or contract zoning shall be limited to where a rezoning is requested by the owner of the property to be rezoned. Nothing in this division shall authorize either an agreement to change or retain a zone or a rezoning which is inconsistent with the city's comprehensive plan.

Sec. 14-62. Conditions and restrictions.

Conditions and restrictions imposed under the authority of this division shall relate only to the physical development and operation of the property and may include, by way of example:

- Limitations on the number and types of uses permitted;*
- Restrictions on the scale and density of development;*
- Specifications for the design and layout of buildings and other improvements;*
- Schedules for commencement and completion of construction;*
- Performance guarantees securing completion and maintenance of improvements, and guarantees against defects;*
- Preservation of open space and buffers, and protection of natural areas and historic sites;*
- Contributions toward the provision of municipal services required by the development; and*
- Provisions for enforcement and remedies for breach of any condition or restriction.*

The applicant is requesting this conditional rezoning primarily to allow the (otherwise prohibited) office use to be introduced into the existing Parish Hall. The chart below summarizes the applicable zoning requirements for the R-4

zone as compared to the project requirements identified by the applicant in their proposal. In summary the project addresses the current requirements of the R-4 zone as follows:

Proposed use of property	What allowed by current R-4 zoning	What varied by the Conditional Rezoning Agreement
2,800 sq ft offices and maximum of equivalent of 14 full time employees	One non-resident employee (and maximum floor area of 500 sq ft) per dwelling under provisions relating to home occupation <i>(Note: The applicant sought clarification regarding the "home occupation" provisions and the Zoning Administrator concluded that the proposal did not appear to meet the "home occupation" criteria (Attachment 3).</i>	Professional Offices (excluding personal services, retail services and veterinarians) a permitted use, with limitations specified in the agreement
Creation of 2-3 dwelling units in the Parish Hall	<u>Up to 5 dwelling units could be created in total</u> , subject to conditional use review (ZBA) (Multiplex provision does not apply)	Agreement clarifies the residential density provisions for alterations of non-residential structures that would apply to this building complex.
Sanctuary to be used as a Community Hall,	Allowed as a conditional use under Places of Assembly if operated by a not-for-profit entity in accordance with a parking management plan; would need Planning Board review under site plan and conditional use; Maximum of 4500 sq ft floor area allowed under places of assembly dimensional requirements	Allows community hall use (Place of Assembly) to exceed dimensional requirement by 1500 sq ft (to 6000 sq ft); Confirms PB review as conditional use and adds seven potential limitations that the Board may impose
Retention of existing structures		Varied setbacks, heights and lot coverage to accommodate existing structures, with prohibition on increase in the volume or footprint

Staff comments

The current draft of the Conditional Rezoning Agreement (Attachment J.2) includes the following changes from the version presented at the second Planning Board Workshop (see redlined version in Attachment J.2).

- Additional "Whereas" clauses that address staff (Attachment 7.c) and Greater Portland Landmark (Attachment 9.63) comments;
- Allows the professional office use as a permitted use subject to restrictions as previously included;
- Redefines the maximum of 14 employees (using the offices) as "regularly scheduled to occupy the premises at any one time";
- Confirms the community hall use would be reviewed by the Planning Board as a conditional use, listing seven potential types of restrictions that the Planning Board could place on the use;
- Clarifies that the modified dimensional requirements would not allow any increase in the volume or footprint of either building;
- Removes the 6-month period between the issuance of the certificate of occupancy for the office and the requirement to be under contract for the rehabilitation work or post a performance guarantee;
- Introduces a requirement for any lapse in a binding contract to be informed to the City and that such lapse may be cause for the City to revoke the Agreement;

- Expanded the Rehabilitation Schedule to include additional masonry at the sanctuary, repair or replacement of downspouts on the Parish Hall; installation of one storm window where missing on a stained glass window; and clarification regarding Historic Preservation review.

These revisions address most of the staff suggestions presented at the April Workshop (Attachment 7.c), the main exception being the staff request for additional/replacement storm windows to be installed on both buildings as a protective measure. Further discussions with Professor Monsour and his architects indicated that the windows are basically in good shape and have protective coverings at present, and that replacement of the existing storms as part of the required rehabilitation work is problematic. The reasoning here is that, while our intent in requiring new storms was to repair the exterior wood trim and install a weather protective cover, the ultimate rehabilitation of the windows will likely require a complete dismantling of the window casings, and the initial storm window installation is not an efficient construction sequence. (See further discussion below)

Staff note that one previous provision has been removed relating to a requirement for general maintenance, and the agreement does not include the staff suggestion regarding the need for site plan and historic preservation review of courtyard with a limit of 2 parking spaces.

The following is a staff analysis of all of the key provisions as currently proposed (wording from CZA in Attachment J.2 indented and in **bold**):

WHEREAS CLAUSES

Staff comment: The final version of the rezoning agreement contains explanatory "whereas" clauses that articulate the circumstances and policies that are relevant to the rezone, much like a purpose statement. These clauses have been amended in each version and now include the suggested language from staff and from Portland Landmarks at the second Workshop that add some qualifications to the earlier versions.

2. Permitted uses:

a. All uses allowed in the R-4 zone.

b. Professional offices, including computer software programming and marketing, and excluding personal services, retail services and veterinarians, subject to the following limitations:

- (1) Professional offices shall be located on the first floor of the parish house and shall occupy no more than 2,800 square feet of floor area.
- (2) The total number of individuals working in the professional offices shall not exceed fourteen (14) non-resident employees regularly scheduled to occupy the premises at any one time.
- (3) The business utilizing the office space shall be a single tenant office user owned by or affiliated with the owner of the building complex.
- (4) The office use shall not generate frequent daily visitation by clients, customers, or the general public.
- (5) The owner or operator of the business shall secure and provide to its employees one (1) off street parking space for each non-resident employee who commutes to the office by his or her automobile.

Staff comment: This provision is the central objective of the rezoning agreement as the applicant seeks to headquarter his company in the proposed offices on the first floor of the Parish Hall. The applicant has revised the previous "full time equivalent" description of the employees to adopt the staff suggestion that this be "regularly scheduled to occupy the premises at any one time".

Public comments on the introduction of the office use were divided, with some objecting to any incursion of "commercial" into the R-4 zone and others suggesting it was benign and possibly preferable to residential because it would require less parking at night.

The applicant has now identified substantial improvements to the building complex that would be completed within two

years which staff consider would meet the stated objective to “ensure the soundness and integrity of the building envelope and structural elements” (Attachment J.2, Schedule B). The board will need to determine if this scale of rehabilitation balances the variance of the R-4 zoning requirements to allow the scale of offices proposed.

Some neighbors have suggested that there may be other adaptive reuse options, eg residential, for one or both of these buildings (Charles Rimmel has submitted relevant research information in Attachment 9.3 and Anne Pringle recently added to this information (Attachment 9.72). The applicant has submitted a letter (Attachment J.7) outlining the reasons why high density residential conversion would not be appropriate for the church and Deb Andrews, the City's Historic Preservation Program Manager has also noted the potential issues associated with re-use (Attachment 7.d). Others have suggested that the building complex could wait for another owner who would not require rezoning for offices, but other neighbors are concerned that the building should not be left to further deteriorate and possibly remain vacant for some unknown time.

3. **Use of the sanctuary as a community hall shall be reviewed as a conditional use by the Planning Board, which may place limitations on the use of the sanctuary as a community hall, in addition to the requirements for community halls set forth in section 14-103(b)(2)(e). Said limitations may include, but are not limited to the following:**
 - a. **Occupancy load;**
 - b. **Hours and days of operation;**
 - c. **Record keeping and reporting;**
 - d. **Number of organizations that may be entitled to regular use of the community hall at any one time;**
 - e. **Noise level as the property line; and**
 - f. **Service of alcohol.**

Staff comment: The community hall use is a permitted conditional use in the R-4 zone would be subject to a conditional use and site plan review by the Planning Board. Provision #3 above replaces the two earlier provisions: #5 Attachment G.1 which included a list of specific limitations on the use of the community hall; and #4 Attachment H.3 which removed all references to limitations except 14-474 (d) of the Land Use Code which allows the Board to “impose such reasonable conditions upon the premises benefited by a conditional use as may be necessary to prevent or minimize adverse effects therefrom upon other property in the neighborhood. Such conditions shall be expressly set forth in the resolution authorizing the conditional use permit and in the permit. Violation of such conditions shall be a violation of this article.”

The earlier list of detailed restrictions were offered by Dr Monsour to address neighborhood concerns, but the wide range of neighbor, staff and board views (outlined in the 3.13.2012 PB memo and at the meeting) indicated that resolution of these issues would require considerable further discussion. The final version incorporates an approach suggested by staff that increases and identifies the types of restrictions that the Planning Board could place on this use at the time of the Conditional Use review. Such conditional use review would likely take place after the sanctuary roof work is complete, possibly a year or two in the future.

As explained in the cover letter from the applicant dated 4.18.2012 (Attachment H.1), any conditional use review would be unlikely to take place until after the rehabilitation work is completed in 2 years, and the applicant proposes to clarify the community hall use while the rehabilitation work is proceeding. This course appears justified because the community hall use will be better understood when an operational entity exists and a community input process has taken place. The cover letter (but not the agreement) alludes to the process of clarifying the operation of the community hall with the involvement of neighbors.

The applicant has also obtained records of the uses and activities held in the building complex over the three years 2009-2011 (Attachment H.5) and this will inform the discussion of future uses.

The parking management plan is a conditional use requirement under the existing zoning and would be produced once there is agreement on the number and nature of activities allowable in the community hall.

4. The underlying dimensional requirements of the R-4 zone shall apply and are modified as follows:
- a. Minimum Lot Size for place of assembly and professional office uses combined: 17,500 square feet.
 - b. Minimum Yard Dimensions:
 1. Front yard: 3 feet.
 2. Rear Yard: 3 feet.
 3. Side Yard: 4 feet
 4. Side Yard on Side Streets: 8 feet.
 - c. Maximum Lot Coverage: 90%.
 - d. Maximum Structure Height (Sanctuary): 37 feet.
 - e. Maximum Structure Height (Parish House): 46 feet.
 - f. Maximum Structure Height (Bell Tower): 70 feet.
 - g. Maximum Floor Area for Places of Assembly: 6,000 sq. ft.
 - h. Residential dwellings within the existing structures shall be governed by the provisions of Section 14-103(a)(2) of the underlying R-4 zone. Density calculations for residential use shall be based on the lot size of the parcel without land area deductions for other non-residential uses on the site.
5. Any increase in the volume or footprint of either the parish house or the sanctuary shall be prohibited.

Staff comment: These two provisions are included to bring the existing buildings into "conformity" in respect of key dimensions and to clarify the basis for calculations of potential new uses as the R-4 zoning language could be open to other interpretations. Provision #5 was added in response to public comments at the second Workshop (Attachments 9.50 and 9.62) that the "maximums" in Provision #4 could be interpreted as allowing increases in the volumes through additions, dormers etc.

6. Subject to receiving all necessary regulatory approvals, the Developer shall rehabilitate the Property in accordance with the Rehabilitation Schedule and related elevation drawings A-1 through A-8, attached hereto as Exhibit B, in keeping with the standards of Article IX, Historic Preservation, of the Portland City Code and as shall be reviewed and approved by the Historic Preservation Board or staff under the terms of this Article. Such rehabilitation shall commence within six (6) months of [date of enactment] and shall be completed within 24 months of [date of enactment]. Any rehabilitation improvements required by this AGREEMENT not completed or under binding contract before the issuance of the certificate of occupancy for the office use shall be secured by a performance guarantee in the form of an escrow account, letter of credit, or equivalent surety approved by the Corporation Counsel of the City of Portland, in an amount equal to the estimated cost of completion of such improvements. Such binding contracts for required improvements shall include a provision to notify the City of any lapse in agreement, failure to pay, or other impediment to completion, and any such lapse may be cause for the City to revoke this AGREEMENT. Such performance guarantee shall be reduced by the City upon completion of improvement phases, but shall not be reduced to less than the estimated cost of any incomplete required improvements. In the event that the owner/developer fails to execute the required improvements by the time specified herein, unless granted an extension in writing from the Planning Authority of the time to complete for good cause and not to exceed an additional twenty-four (24) months, then the City of Portland or its designee shall have the right to utilize the proceeds of the performance guarantee to hire a competent contractor to complete such improvements. In such event, the owner/developer shall have the right to review and approve the

work scope consistency with the required improvements of Exhibit B, the specifications and methods of such work items, and contractor qualifications. Such approval shall not be unreasonably withheld.

Staff comment: This provision seeks to ensure that the rehabilitation work as outlined in the schedule is actually completed. Schedule B is included in the latest Agreement and is based on the *Building Conditions Assessment Report* included as Attachment J.3). The text has been revised from that presented to the first Workshop to increase the potential extension from 12 months to 24 months. The applicant intends to accomplish the required improvements within two years, however staff encouraged provision of an extension mechanism to address delays and unforeseen circumstances.

Schedule B Rehabilitation Schedule

The Rehabilitation Schedule is based on the *Buildings Condition Assessment Report* included in Attachment J.3 as undertaken and circulated in late March 2012. Considerable discussion between staff and the applicant has focused on the extent of required improvements to include in the agreement. In determining the level of the required improvements, a balance needs to be struck between addressing the policy of preserving and protecting historic resources as against the compromising of established policy against office uses in the R-4 zone. Staff suggests that if such a compromise is to be considered, the rehabilitation work needs to achieve the useful life and integrity of the structures and building envelope for an additional fifty (50) plus years.

The *Assessment Report* identifies priority 1 improvements that would be required, and priority 2 and 3 improvements that would not be required. The applicant's view is that the priority one improvements would achieve the soundness and integrity of the building complex.

In early April, 2012 Planning staff (including the Historic Preservation Program Manager, Deb Andrews) recommended that the improvements in Schedule B be expanded to include most "priority 2" improvements, specifically some critical masonry repair and repointing, window improvements, and repair of Parish Hall gutters and downspouts since these items contributed to the soundness and integrity of the building complex envelope and structural elements, which had been a stated goal from the outset.

The applicant's representatives met with this department staff on 4.11.2012 to explain why this request was unreasonable from the applicant's view point. At the meeting it was agreed that Deb Andrews and John Turk (applicant's historic preservation specialist architect and author of the Building Condition Assessment Report) would develop a schedule of additional work based on a few of the priority 2 items, mainly additional repointing/masonry repairs and installation of storm windows where needed. Additional masonry repair was considered essential as it would prevent further water infiltration, and storm windows were identified for locations where there are currently no storm windows or poor quality storms in order to prevent further deterioration to the stained glass windows and their surrounds. Deb Andrews and John Turk subsequently agreed on a narrowed list of specific work (which Mr. Turk would mark on elevations of the buildings), for potential inclusion in Schedule B along with the priority 1 proposals, subject to the agreement of Dr. Monsour.

On 4.18.2012 staff learned that Schedule B remained as originally drafted, with none of the specified and relatively small scale priority 2 items added. According to Mary Costigan, Dr Monsour requested that the priority 1 items remain as the required items for the agreement.

In response staff outlined the key areas of priority 2 work which they considered should be included in the Schedule B to achieve the soundness and integrity of the building complex envelope for the foreseeable future - and this was circulated to the Planning Board at the Workshop on 4.24.2012 (Attachment 7.c).

Following further discussions, the applicant has now agreed to add in all of the staff suggestions except for the replacement of storm windows on the stained glass windows. The question of the stained glass window protection was explored in detail and the applicant and his architects presented a strong case that protection of the windows would not be served by installing new storm windows at this time. A letter clarifying the technical reasons for this and confirming Professor Monsour's intentions for the window restoration s is included at Attachment J.8. Staff (including Deb Andrews, the Historic Preservation Program Manager) now consider that the Rehabilitation Schedule satisfies the objective to achieve the soundness and integrity of the building envelope and structural elements (Attachment 7.d).

Performance Guarantee

The 3.5.2012 "City Comments" in Attachment 7.a introduced a performance guarantee mechanism to ensure that the agreed rehabilitation works were completed to the agreed timetable. Staff suggested that a performance guarantee be posted prior to the Certificate of Occupancy for the offices for all rehabilitation work that was not completed or under contract. In the earlier versions of the CZA the applicant had incorporated this principle but included a 6 month period from the issuance of the Certificate of Occupancy for the offices to complete the work/obtain contracts/post a performance guarantee. This final version removes the 6 month period so that the wording is as staff originally suggested so that the rehabilitation improvements are secured.

A further revision has strengthened the wording so that if a binding contract should lapse, the City may revoke the agreement on that basis.

It is understood that the buildings are eligible for historic tax credits but it is not known whether the applicant is pursuing this possibility.

7. If any required approval, including the City Council's approval of this conditional rezoning, has been appealed or becomes the subject of litigation, then the required performance time frames contained in this AGREEMENT shall be measured from the final disposition of any such appeal or litigation. Failure, however, to commence the rehabilitation improvements or post the performance guarantee within the timeframes stipulated in this paragraph and/or paragraph 13 shall result in the reversion of the subject property to the underlying R-4 zone and this AGREEMENT shall be null and void.
8. The provisions of this AGREEMENT are intended to replace and/or supersede the associated provisions of the underlying R-4 zone. As stated above, to the extent not otherwise altered herein, the zoning requirements for the R-4 zone shall otherwise apply to the Property.
9. In the event of a breach by the Developer or its successors or assigns of the zoning provisions contained herein (whether the Zoning Administrator, the Zoning Board of Appeals or a court determines such breach), the Planning Board, after notice and hearing, may recommend to the City Council that the conditional zone and this Agreement be amended, or be rescinded, such rescission to result in the termination of this Agreement and a reversion of the Property to the R-4 zone requirements in place before the execution of this Agreement.
10. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit the Developer, any entity affiliated with the Developer that takes title to the Property, its successors and assigns, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the City of Portland, by and through its duly authorized representatives. The Developer shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.
11. The Planning Authority shall be notified of any potential and/or pending sale of the Property (which most likely will be evidenced by a Purchase & Sales Agreement or its equivalent), and prior to closing the sale of the Property shall meet with the buyer and verify that he/she/it has read, understood and agrees to be bound by the terms, conditions, limitations and provisions of this AGREEMENT, and said buyer shall so state in a signed affidavit to be kept on file with the Planning Authority.

Staff comment: Provisions 7-11 have not changed from the most recent versions of the CZA. Staff consider that these would ensure that any future buyer would have to honor the agreement. Several of the public comments suggest that the office use "sunset" with Professor Monsour should he sell the property. The applicant asserts that such a provision would prevent Professor Monsour from recouping his investment in the rehabilitation of the complex and probably inhibit his ability to borrow for continuing improvements. Staff has no specific recommendation on this matter. In prior

conditional rezonings, the provisions are normally transferable to successors and assigns, and binding upon them. Our view is that if the policy is acceptable for the applicant owner, it would be equally so for successors. The proponents of a sunset argue that this request is and should be uniquely tied to this owner.

XI. COMPREHENSIVE PLAN

As part of conditional rezoning review and approval, the applicant is required to demonstrate that the proposal is in accordance with the Comprehensive Plan. The City's Associate Corporation Counsel has prepared a memo clarifying how this requirement has been interpreted in court cases (Attachment 8). In particular, the Maine Law Court has interpreted the term *consistent* to mean that the proposed use/agreement must be "*in basic harmony with...*" the City's Comprehensive Plan but that this does not mean it has to be the "best possible use".

The applicant submitted a Comprehensive Plan analysis on 3.13.2012 and 4.18.2012, as resubmitted and amplified in Attachments J.4 and J.5). There are additional Comprehensive Plan goals and policies that may have a bearing; the following documents, goals and policies relating to historic preservation, neighborhood livability and economic development appear most relevant to the proposed development (*quotes are in italics*):

Historic Preservation

HISTORIC PRESERVATION ORDINANCE, AN HISTORIC RESOURCE ELEMENT TO THE COMPREHENSIVE PLAN AND AN ORDINANCE PROTECTING HISTORIC RESOURCES IN THE CITY OF PORTLAND -1989

Goal: *Preserve Portland's Architectural and Historic Heritage*

- *Some of America's most appealing cities are those which possess a distinct or unique flavor or appearance. An important element in a city's distinctiveness is its historic areas and architectural landmarks.*

Goal: *Promote the educational, cultural, economic and general welfare of the City of Portland*

- *Protect and enhance neighborhood character;*
- *Stabilize and improve the values of designated properties and areas;*
- *Foster and encourage preservation, restoration, and rehabilitation that respects the historic, cultural, architectural and archeological significance of distinctive areas, sites, structures and objects.*

The Historic Preservation Ordinance is a component of the Comprehensive Plan. The Williston West Church and Parish Hall are historic landmarks and are subject to the provisions of Portland's Historic Preservation Ordinance. The Historic Preservation Program Director is aware of the pending conditional rezoning application and proposed rehabilitation and reuse of the property and has provided comments in Attachment 7.4.

Neighborhood Livability

HOUSING: SUSTAINING PORTLAND'S FUTURE – November 18, 2002

Shaping a Community Vision for Portland

I. Build a Vibrant Small City – Future directions for Portland

- *Build upon the distinctive fabric of Portland's built environment by rehabilitating historic resources and by developing new buildings that respect the scale and character of a traditional development patterns. New development shall be pedestrian oriented and accessible.*
- *Strive for innovation and bold initiatives that increase the livability and quality of life in Portland.*
- *Promote, support and celebrate the arts and cultural community that enriches the lives of our citizens.*
- *Capitalize on Portland's economic assets and develop a strong economy based upon traditional industries, a strong retail and office center, and emergent opportunities in industry, business and coastal commerce.*

II. Provide High Quality Leadership

- *Incorporate environmental, economic and neighborhood considerations in municipal decision-making.*
- *Take the lead in developing clear standards and rules and ensure adherence thereto.*

Policy #2: Maintain, rehabilitate, and restore the existing housing stock as a safe and important physical, economic and architectural resource for the community.

- Target vacant buildings for maintenance, rehabilitation and reuse
 - Reuse: Seek creative and architecturally compatible reuse of buildings for housing or mixed-use projects with housing using financial incentives and partnerships

Policy #3: Maintain and enhance the livability of Portland's neighborhoods as the city grows and evolves through careful land use regulation, design and public participation that respects neighborhood integrity.

- While accommodating needed services and facilities, protect the stability of Portland's residential neighborhoods from excessive encroachment by inappropriately scaled and obtrusive commercial, institutional, governmental, and other non-residential uses.
 - Compatible Development: encourage well-planned developments and uses to enhance compatibility between residential and non-residential uses.
- Support Portland's livable neighborhoods by encouraging a mix of uses that provide needed goods and services, within walking distance of most residents.
 - Neighborhood Livability: Promote through city policies a mix of housing types, retail and service businesses, community services, and open space/recreation opportunities of appropriate size, scale and type within neighborhoods.
 - Uphold Zoning: Enforce approved density regulations in the Zoning Ordinance.
- Ensure the integrity and economic value of Portland's neighborhoods.
 - Redevelopment: Work to find productive uses for vacant and underutilized lots.

Policy #5: Portland's Comprehensive Plan encourages a manageable level of growth that will sustain the city as a healthy urban center in which to live and work and to achieve a shared vision for Portland. Portland should encourage sustainable development patterns and opportunities within the city by promoting efficient land use, conservation of natural resources, and easy access to public transportation, services, and public amenities.

- Encourage neighborhood business centers throughout the city to reduce dependence on the car and to make neighborhood life without a car more practical.

CELEBRATING COMMUNITY: A CULTURAL PLAN FOR PORTLAND MAINE – 1998

Goal: Strengthen neighborhood identity through cultural programming and create connections between neighborhoods and the Arts District

- Create city-wide approach where both neighborhoods and the Arts District are venues for heritage, performing, visual and public art projects.

Economic Development

PORTLAND INDUSTRY AND COMMERCE PLAN - 1994

- Strengthen and Diversify the Economic Base
 - create a variety of job opportunities for the full spectrum of the labor pool which:
 - are appropriate to our current and potential skills
 - provide good pay and benefits - a living wage
 - are rewarding/satisfying
 - strengthen and diversify the tax base
- Improve the Quality of Life
 - recognize that jobs and prosperity improve the standard of living for residents
 - preserve, protect, and strengthen neighborhoods
 - compatible development
 - confidence/peace of mind regarding our industrial neighbors
 - reduce tax burden on residential property owners
 - make Portland attractive to new residents and businesses
- Target Specific Opportunities

- maximize connections to Boston and the maritime provinces
- capitalize on location/telecommunications/transportation infrastructure, port, airport, highways, etc.
- *Revise Zoning*
 - protect neighboring residential zones
 - adopt clear, predictable, and enforceable regulations
 - consider limitations on hours of operation
 - create thoughtful flexibility for emerging industries
 - create a process that provides a quick response on development permitting
- *Create Financial Incentives*
 - be creative, responsive, and work hard to retain existing business
 - enhance the City's ability to attract economic development
 - level the playing field between Portland and surrounding communities
 - garner resources from Federal, State, and private sources
 - simplify programs and minimize red tape

A TIME OF CHANGE: PORTLAND TRANSPORTATION PLAN – July, 1993

Transportation Policies

- *Vibrant neighborhoods include nearby, small-scale commercial areas that provide both convenient service and natural meeting places. Provide routine, daily services within walking distance of residents of all neighborhoods, as long as the businesses providing the services are small-scale, are designed compatibly with residences, and fit into the fabric of the neighborhood.*
- *Work with individual neighborhoods to identify suitable locations and approaches to accommodate neighborhood businesses.*

Staff Summary

The goals and policies in the Comprehensive Plan that relate to preservation of historic resources and promotion of economic development broadly support the proposed rezoning. The policies that relate to neighborhood livability and identity are more mixed, particularly as it includes the reference to “*protect the stability of Portland’s residential neighborhoods from excessive encroachment by inappropriately scaled and obtrusive commercial, institutional, governmental, and other non-residential uses.*” This reference raises the question as to whether the proposed conditional rezoning is decidedly at odds with this neighborhood protection policy.

XII. STAFF RECOMMENDATION

Staff recommends that the Planning Board recommend the submitted final conditional rezoning agreement to the City Council for approval. This recommendation is based on the fact that the rezoning agreement achieves the comprehensive plan objectives of the historic preservation policy and adequately controls the small scale office use proposed within a non-residential building in the R-4 zone.

The proposed uses result in minimal alterations to the character-defining features of these two unique buildings, and the rehabilitation schedule contains the essential improvements to ensure the future soundness and integrity of the building complex.

The revised agreement has incorporated virtually all of the staff suggestions; the few that have not been incorporated are considered minor issues. In addition, the applicant has addressed many of the concerns raised by members of the public.

In respect of the community hall, staff suggest that the written assurances received from the applicant are adequate. The existing zoning, as modified by the rezoning agreement, would ensure that community hall use is considered in a similar manner as any other place of assembly building in the residential zones would be.

Staff have concluded, based on the technical information recently provided to the city, that the stained glass windows are not at substantial risk and their current condition does not impact the integrity of the rest of the structure and envelope.

With the scope of the required improvements contained in the agreement and Schedule B, and the applicants stated intent to rehabilitate the storm windows on a voluntary basis, their inclusion in the required Rehabilitation Schedule is not essential to the stated preservation objective.

While we make this recommendation, we acknowledge that there is a significant counter argument that the hard-fought policies of the comprehensive plan that lean toward protection of the R-4 neighborhood from intrusion of commercial uses should be given greater weight and consideration than the historic resource protection policies. While these policies, neighborhood protection and historic preservation, are not in themselves conflicting, in the present case the pursuit of one implies compromise of the other. The Planning Board and ultimately the City Council will have to judge the weight and merit of both arguments and judge consistency with the comprehensive plan taken as a whole. In the motion below, the critical factor is clause A, consistency with the comprehensive plan. The Board is encouraged to cite which considerations lead to the conclusion of consistency or lack of consistency, based on the materials available from staff, the applicant, and the large volume of public commentary.

XIII. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of the application, plans, reports and other information submitted by the applicant, the policies and requirements of the R-4 zone, the Comprehensive Plan, public comment, staff comments and recommendations contained in Planning Report #23-12, and the testimony presented at the Planning Board Hearing, the Planning Board finds:

- A. That the proposed Conditional Rezoning the reuse (including for professional offices) and rehabilitation of 32 Thomas Street as described in this Report [is or is not] consistent with the Comprehensive Plan of the City of Portland;
- B. That the proposed Conditional Rezoning [is or is not] consistent with existing and permitted uses in the surrounding area;
- C. That the proposed Conditional Zone Agreement proposed for 32 Thomas Street [is or is not] in compliance with the standards set out in 14-60-62; and
- D. That the Planning Board therefore [recommends or does not recommend] the Conditional Rezoning and associated Conditional Zone Agreement for 32 Thomas Street to the City Council for its approval.

ATTACHMENTS

Attachments to staff PB Report

1. Table comparing current R-4 and R-6 zoning requirements
2. Extract from zoning ordinance re Home Occupation
3. Zoning comments re applicability of Home Occupation ordinance
4. Historic Building Designation Reports
5. Aerial photograph
6. Traffic Engineering review comments 2.20.2012
7. Planning Division comments
 - a. 3.5.2012 comments on applicant's 2.17.2012 draft CZA
 - b. 4.5.2012 comments on 3.7.2012 draft CZA based on applicants wish to remove reference to community hall
 - c. 4.24.2012 comments on CZA as circulated to the second Workshop
 - d. 5.28.2012 Memo from Deb Andrews, Historic Preservation Program Manager
8. Associate Corporation Counsel Memo on interpretation of "Consistency with Comprehensive Plan" 4.3.2012
9. Public comments (separately stapled)

Applicants submittal

- A. Application for conditional rezoning including right, title and interest
- B. First draft of the Conditional Zoning Agreement (CZA) as submitted with appl.(superceded by Att G)
- C. Second draft of the CZA (2.17.2012) (superceded by Att G)- basis for staff comment (Att 7)
- D. Bernstein Shur letter regarding Charles Rimmel 2.22.2012 letter (see Att 10)

- E. Neighborhood Meeting certification documents
- F. Bernstein Shur cover letter 3.7.2011 with further information
- G. Submissions for 3.13.2012 PB workshop
 - 1. Draft Conditional Zoning Agreement 3.7.2012 as considered at first PB Workshop
 - 2. Letter and attachments dated 3.13.2012 including Comprehensive plan analysis, Photos and Tax Credit information
- H. Submissions for 4.24.2012 PB workshop as received 4.18.2012
 - 1. Cover letter
 - 2. Att A- Monsour letters
 - 3. Att B- 4.18.2012 version Conditional Rezoning Agreement including Exhibit B Rehabilitation Schedule
 - 4. Condition Assessment & Recommendations
 - 5. Att C- Conditional zoning analysis with supporting information
 - 6. Att D- Letter addressing suggestions for residential reuse of the church
- I. Circulated/presented by applicant at 4.24.2012 PB workshop
- J. Submissions for 5.22.2012 PB Hearing
 - 1. Cover letter dated May 9, 2012
 - 2. Att A- Final Conditional Zone Agreement (clean) including floor plans (large copies in Att. L), Exhibit B Rehabilitation Schedule including Elevations showing areas of work (11X17 copies of these are in Att. L) and The Heritage Co Bid, plus redlined version of Conditional Zoning Agreement and Exhibit B text
 - 3. Att B -Conditions Assessment and Recommendations (same as submitted for 4.24.2012 PB Workshop)
 - 4. Att C - Conditional zoning analysis with supporting information (same as submitted for 4.24.2012 PB Workshop)
 - 5. Att D - Comprehensive Plan Analysis (Section 4 addresses Comprehensive Plan)
 - 6. Att E - Letter addressing suggestions for residential reuse of the church (4.18.2012, as submitted for 4.24.2012 PB Workshop)
 - 7. Att F - letter from Williston West Church Board of Trustees
 - 8. Letter re restoration of stained glass windows
- K. Survey
- L. Large scale copies of the Floor Plans included in Attachment J.2 (final CZA)
- M. Large scale copies of annotated Elevations Plans attached to Exhibit B (Rehabilitation Schedule) of final CZA in Att. J.2

Attach ment 1.1

Standard Purpose	R-4 Residential	R-6 Residential
<p>Permitted uses (as relevant to Williston Church project)</p>	<p>Single family homes New construction 2-family dwellings Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses, subject to the provisions of section 14-404 (accessory use) of this article; Home occupations subject to the provisions of section 14-410 (home occupation) of this article;</p>	<p>(a) To set aside areas on the peninsula for housing characterized primarily by multifamily dwellings at a high density providing a wide range of housing for differing types of households; and to conserve the existing housing stock and residential character of neighborhoods by controlling the scale and external impacts of professional offices and other nonresidential uses. (b) In cases of qualifying small, vacant, underutilized lots located in the urban residential and business zone, to encourage new housing development consistent with the compact lot development pattern typically found on the peninsula.</p>
<p>Conditional use conditions regarding residential reuse</p>	<p>Alteration of an existing structure to accommodate one (1) or more dwelling units provided that: a. No additional dwelling unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic; b. No open outside stairways or fire escapes above the ground floor shall be or have been constructed in the immediately preceding five (5) years; c. The alteration will not result in a total cubic volume increase of more than ten (10) percent within the immediately preceding five (5) years d. A lower level dwelling unit shall have a minimum of one-half of its floor-to-ceiling height above the average adjoining ground level; e. No existing dwelling unit shall be decreased to less than one thousand (1,000) square feet of floor area; f. Three thousand (3,000) square feet of land area per dwelling unit shall be required; g. The project shall be subject to article V (site plan) of this chapter for site plan review and approval. h. Parking shall be provided as required in division 20 of this article. [Accessory uses include letting of rooms, subject to: The letting of rooms within an existing dwelling unit in any residential zone, provided that: 1. There shall be no more than two (2) persons occupying such room or rooms; 2. There shall be not more than two (2) rooms per dwelling unit occupied for such use; and 3. There shall be no increase in the bathroom and/or kitchen facilities in the dwelling, and no such facility shall have been constructed in the immediately preceding two (2) years.]</p>	<p>Single and two-family dwellings Multi-family dwellings, lodging houses; independent living units; Hostels (10 guests) subject to conditions; Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses, subject to the provisions of section 14-404 (accessory use) of this article; Home occupations subject to the provisions of section 14-410 (home occupation) of this article; Sheltered care group homes; subject to conditions; Long-term and extended care facilities; subject to conditions; Intermediate care facilities; subject to conditions; Hostels (20 guests)</p>
<p>Minimum land area per dwelling unit</p>	<p>Three thousand (3,000) square feet, except as provided for a multiplex. This requirement may be reduced by up to twenty (20) percent for a special needs independent living unit.</p>	<p>Minimum area per dwelling unit: One thousand (1,000) square feet per dwelling unit; and in the case of building additions and new construction, one thousand two hundred (1,200) square feet for each dwelling unit after the first three (3) units. This requirement may be reduced by up to twenty (20) percent for a special needs independent living unit. [others given for lodging houses and intermediate care facilities]</p>

Standard use conditions regarding commercial use	R-4 Residential	R-6 Residential																								
	<p>Home occupations subject to the provisions of section 14-410 (home occupation) of this article;</p> <p>Day care facilities or home babysitting services not permitted as a home occupation under section 14-410, and nursery schools and kindergartens, subject conditions....:</p>	<p>Home occupations subject to the provisions of section 14-410 (home occupation) of this article;</p> <p>Professional offices of a member of a recognized profession maintained for the conduct of that profession. Professional office uses exclude personal services, retail services, and veterinarians.</p> <p>The illustrative examples that follow indicate the type of professional offices permitted: health care practitioner, attorney, social worker, engineer, architect, accountant, real estate agent, insurance agent.</p> <p>Professional office uses shall meet the following standards in addition to provisions of section 14-474, except that subsections a., b., c. and d. of this section 14-137(C)2 shall not apply to the use of any building not designed or constructed for residential use, which was not in actual use as a residence on April 18, 1984, or thereafter.</p> <ol style="list-style-type: none"> A professional office shall not be located within five hundred (500) feet of another as measured along the street line to the respective property lines. A building with one (1) or more professional offices shall have at least fifty (50) percent of the total floor area of the building devoted to residential uses. The total number of individuals working in a building of professional offices shall not exceed the equivalent of four (4) full-time employees. Any additions or exterior alterations shall be compatible with the architecture of the building and maintain the residential appearance of the building. Construction of a new building shall be compatible with the architectural character of the surrounding area. The scale and surface area of parking, driveways, and paved areas shall be arranged and landscaped to be compatible in size and scale with neighboring properties in the area and to properly screen vehicles from adjacent properties and streets. Off-street parking is required as provided in division 20 (off-street parking) of this article. 																								
<p>Conditional use conditions regarding community hall use</p>	<p>Places of assembly subject to 14-474 and no loss of res uses and other conditions; including</p> <ol style="list-style-type: none"> Community halls: <ol style="list-style-type: none"> The structure was in existence as of January 4, 2010; The structure was built for institutional or other non-residential uses; The structure is operated by, or operated subject to the control of, a not-for-profit entity in accordance with its not-for-profit purposes; and A parking management plan is submitted for review and approval by the planning board; and 	<p>Places of assembly; subject to conditions;</p> <p>College, university, trade school; subject to conditions;</p> <p>Places of assembly subject to 14-474 and no loss of res uses and other conditions; including</p> <ol style="list-style-type: none"> Community halls: <ol style="list-style-type: none"> The structure was in existence as of January 4, 2010; The structure was built for institutional or other non-residential uses; The structure is operated by, or operated subject to the control of, a not-for-profit entity in accordance with its not-for-profit purposes; and A parking management plan is submitted for review and approval by the planning board; and Nursery school and kindergarten. Day care facilities or home babysitting services not permitted as a home occupation under section 14-410, and nursery schools and kindergartens, subject conditions.....: 																								
<p>Maximum Floor Area</p>	<p>Maximum floor area for places of assembly on a collector or arterial road:</p> <table border="1" data-bbox="1187 1375 1276 1722"> <tr><td>Large</td><td>Not limited</td></tr> <tr><td>Medium</td><td>4,500 sq. ft.</td></tr> <tr><td>Small</td><td>2,250 sq. ft.</td></tr> </table> <p>Maximum floor area for places of assembly not on a collector or arterial road:</p> <table border="1" data-bbox="1305 1375 1394 1722"> <tr><td>Large</td><td>4,500 sq. ft.</td></tr> <tr><td>Medium</td><td>2,250 sq. ft.</td></tr> <tr><td>Small</td><td>1,125 sq. ft.</td></tr> </table>	Large	Not limited	Medium	4,500 sq. ft.	Small	2,250 sq. ft.	Large	4,500 sq. ft.	Medium	2,250 sq. ft.	Small	1,125 sq. ft.	<p>Maximum floor area for places of assembly on a collector or arterial road:</p> <table border="1" data-bbox="1187 577 1276 924"> <tr><td>Large</td><td>Not limited</td></tr> <tr><td>Medium</td><td>4,500 sq. ft.</td></tr> <tr><td>Small</td><td>2,250 sq. ft.</td></tr> </table> <p>Maximum floor area for places of assembly not on a collector or arterial road:</p> <table border="1" data-bbox="1305 577 1394 924"> <tr><td>Large</td><td>4,500 sq. ft.</td></tr> <tr><td>Medium</td><td>2,250 sq. ft.</td></tr> <tr><td>Small</td><td>1,125 sq. ft.</td></tr> </table>	Large	Not limited	Medium	4,500 sq. ft.	Small	2,250 sq. ft.	Large	4,500 sq. ft.	Medium	2,250 sq. ft.	Small	1,125 sq. ft.
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	R-4 Residential	R-6 Residential												
Standard lot size	<p>Residential: Six thousand (6,000) square feet except as provided for lots of record in section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article.</p> <p>Multiplex: Nine thousand (9,000) square feet.</p> <p>Places of assembly (no min where in some cases eg if existed on June 1, 1983 or an expansion):</p> <table border="1"> <tr> <td>Large</td> <td>30,000 sq. ft.</td> </tr> <tr> <td>Medium</td> <td>15,000 sq. ft.</td> </tr> <tr> <td>Small</td> <td>7,500 sq. ft.</td> </tr> </table>	Large	30,000 sq. ft.	Medium	15,000 sq. ft.	Small	7,500 sq. ft.	<p>Residential: Forty-five hundred (4,500) square feet, except as provided for lots of record in section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article.</p> <p>Long-term and extended care facilities: Ten thousand (10,000) square feet for the first nine (9) residents plus seven hundred fifty (750) square feet for each additional resident, up to a total of two (2) acres; Intermediate care facility: One (1) acre.</p> <p>Places of assembly:</p> <table border="1"> <tr> <td>Large</td> <td>30,000 sq. ft.</td> </tr> <tr> <td>Medium</td> <td>15,000 sq. ft.</td> </tr> <tr> <td>Small</td> <td>7,500 sq. ft.</td> </tr> </table>	Large	30,000 sq. ft.	Medium	15,000 sq. ft.	Small	7,500 sq. ft.
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Front yard setback	<p>25 ft; A front yard need not exceed the average depth of front yards on either side of the lot. A lot of record existing as of June 5, 1957, and less than one hundred (100) feet deep need not be deeper than twenty (20) percent of the depth of the lot.</p>	<p>10 ft; A front yard need not exceed the average depth of front yards on either side of the lot. A lot of record existing as of June 5, 1957, and less than one hundred (100) feet deep need not be deeper than twenty (20) percent of the depth of the lot.</p>												
Rear yard setback	<p>a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty-five (25) feet. b. Accessory detached structures with a ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.</p>	<p>a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet: Twenty (20) feet. b. Accessory detached structures with a ground coverage of one hundred and forty-four (144) square feet or less: Five (5) feet.</p>												
Side yard setback	<p>a. Principal or accessory structures with ground coverage greater than one hundred (100) square feet: [10-16 ft depending on height of structure; 2 1/2 stories is highest and requires 16 feet]</p> <p>The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than ten (10) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots, the required side yard may be reduced in order to provide a buildable width of up to twenty-four (24) feet, but in no case shall the resulting side yards be less than ten (10) feet. Side yard on side streets: Principal or accessory structures: Twenty (20) feet. A side yard on a side street need not exceed the average depth of front setback directly abutting the lot.</p>	<p>Principal or accessory structures with ground coverage greater than one hundred (100) square feet: [10-15 ft depending on height of structure; 5 stories is highest at 15 feet]</p> <p>The width of one (1) side yard may be reduced one (1) foot for every foot that the other side yard is correspondingly increased, but no side yard shall be less than ten (10) feet. In the case of a lot of record existing as of June 5, 1957, and held under separate and distinct ownership from adjacent lots, the required side yard may be reduced in order to provide a buildable width of up to twenty-four (24) feet, but in no case shall the resulting side yards be less than ten (10) feet. Side yard on side streets: Principal or accessory structures: Ten (10) feet.</p>												
Maximum Lot Coverage	30 %	40% of lot area (20 or more dwellings); 50% if fewer than 20												
Minimum street frontage	Fifty (50) feet.	40 feet												
Minimum Lot Width	60 ft	40 ft												
Maximum Structure Height	35 ft	45 ft												
Off street parking	Required as provided in division 20 (off-street parking) of this article. HP states:	1 space per 125 sf of assembly area or major fraction thereof												
Open Space Ratio	N/A	20%												

Attachment 2.1

Sec. 14-410. Home occupation.

Purpose. The purpose of home occupations is to allow the secondary and incidental use of a residence for the conduct of appropriate occupations whose external activity levels and impacts are so limited as to be compatible with the residential character of the neighborhood.

(a) In connection with the operation of a home occupation, within a dwelling unit, the following requirements shall be met:

1. A home occupation shall not occupy more than five hundred (500) square feet of floor area or more than twenty-five (25) percent of the total floor area of such a dwelling unit, whichever is less, or in the case of licensed family day care homes, or home babysitting services, to accommodate not more than six (6) children plus two (2) children after school and having no nonresidential employees;
2. There shall be no outside storage of goods and materials nor shall there be exterior displays, or display of goods visible from the outside;
3. Storage of materials related to the home occupation shall count as a part of the occupancy limitations in subsection (a)1 above, but shall not constitute a dominant part of such occupancy provided, however, storage of such materials or products in garages or other accessory structures is prohibited;
4. Exterior signs shall be limited to one (1) nonilluminated sign not exceeding a total area of two (2) square feet, affixed to the building and not projecting more than one (1) foot beyond the building;
5. Any exterior alterations to the residence shall be compatible with the architecture of the building and maintain the residential appearance by virtue of exterior materials, lighting, and signs;
6. *Off-street parking:* Off-street parking is

required as provided in division 20 (off-street parking) of this article;

7. The home occupation shall not produce offensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare or other objectionable effects;
 8. There shall be no more than one (1) nonresident employed in the home occupation, provided, however, family day care or home babysitting services shall have no nonresident employees;
 9. No traffic shall be generated by the home occupation in greater volumes than would normally be expected in a residential neighborhood;
 10. No motor vehicle exceeding a gross vehicle weight of six thousand (6,000) pounds shall be stored on the property in connection with the home occupation.
- (b) No residence shall be occupied, altered or used for any home occupation except the following:
1. Accountants and auditors;
 2. Answering services (telephone);
 3. Architects;
 4. Artists and sculptors;
 5. Authors and composers;
 6. Computer programming;
 7. Custodial services;
 8. Custom furniture repair and upholstery;
 9. Dentists, doctors, therapists, and health care practitioners;
 10. Direct mail services;
 11. Dressmakers, seamstresses and tailors;

12. Engineers;
13. Family planning services;
14. Hairdressers (limited to no more than two (2) hair dryers);
15. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, weaving, ceramics;
16. Interior decorators;
17. Lawyers, justices of the peace and notary publics;
18. Licensed family day care home or babysitting services;
19. Musicians or music teachers, including group instruction not to exceed six (6) students at any time but not including performances or band rehearsals, which shall meet the following requirements in addition to those set forth in subsection (a) of this section:
 - a. Electronic amplification is prohibited;
 - b. The applicant shall demonstrate that noise attenuation is provided which minimizes perception of sound at property lines at all times during the use. Noise attenuation measures may include, but are not limited to, insulation, double-pane windows, air conditioners or any combination of these or similar noise attenuation measures;
 - c. Hours of operation shall be limited to 8:30 a.m. to 9:30 p.m.
20. Office facility of a minister, rabbi, or priest;
21. Photographic studios;
22. Professional counseling and consulting services;
23. Professional research services;

24. Sales persons provided that no retail or wholesale transactions are made on the premises;
25. Small appliance repair;
26. Snow plowing provided that only one (1) snow plow vehicle is stored on or generated from the site;
27. Special tutoring or instruction (not to exceed three (3) pupils at any given time);
28. Stenographic and other clerical services.

(c) A home occupation that is not listed in paragraph (b) of this section but is similar to and no more objectionable than those home occupations listed in that paragraph, shall be permitted as a conditional use subject to the requirements of paragraph (a) of this section and section 14-474 (conditional use) of this article. This provision shall not include veterinarians, kennels, animal raising, funeral homes, retail uses including antique shops, restaurants, dancing studios, towing services, repair and painting of automobiles as home occupations.

(Code 1968, § 602.18.I; Ord. No. 277-77, 11-7-77; Ord. No. 548-85, § 1, 5-6-85; Ord. No. 76-85, § 1, 7-1-85; Ord. No. 66-87, § 2, 11-2-87; Ord. No. 329-90, 5-7-90; Ord. No. 240-09/10, 6-21-10)

Attachment 3

>>> Marge Schmuckal 1/9/2012 5:14 PM >>>

Hi Greg,
The Home Occupation allowances are for uses within a dwelling unit. There are listed uses within the Home Occupation guidelines and then there are criteria for those allowable uses.

What was described to me in our meeting with Dr. Monsour on 1/5/2010 for the need of offices for his American headquarters did not appear to meet the criteria of a home occupation. I have listed the criteria below. However, if the home occupation avenue was a route that Dr. Monsour would like to pursue, I would be glad to entertain an application with all the required documentation. I do think that the conditional contract zoning route will better serve his needs in the long run.

1. A home occupation shall not occupy more than five hundred (500) square feet of floor area or more than twenty-five (25) percent of the total floor area of such a dwelling unit, whichever is less;
2. there shall be no outside storage of goods and materials nor shall there be exterior displays, or display of goods visible from the outside;
3. Storage of materials related to the home occupation shall count as part of the occupancy limitations in subsection (a)1 above, but shall not constitute a dominant part of such occupancy provided, however, storage of such materials or products in garages or other accessory structures is prohibited;
4. Exterior signs shall be limited to one (1) nonilluminated sign not exceeding a total area of two (2) square feet, affixed to the building and not projecting more than one (1) foot beyond the building;
5. Any exterior alterations to the residence shall be compatible with the architecture of the building and maintain the residential appearance by virtue of exterior materials, lighting, and signs;
6. Any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard;
7. The home occupation shall not produce offensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare or other objectionable effects;
8. There shall be no more than one (1) nonresident employed in the home occupation, provided, however, family day care or home babysitting services shall have no nonresident employees;
9. No traffic shall be generated by the home occupation in greater volumes than would normally be expected in a residential neighborhood;
10. No motor vehicle exceeding a gross vehicle weight or six thousand (6,000) pounds shall be stored on the property in connection with the home occupation.

Let me know if I can be of any further help.

Marge Schmuckal

Portland Historic Resources Inventory

(Church)

Property Address: 32 Thomas Street

Inventory #: HP-238

Assessor's C/B/L: 62-E-5

District: Western Promenade Map #: 238

Rating:

Local Code: LANDMARK

National Register: Ind. Listing N/A District Western Promenade

Date of Placement: Local 08/01/1990 National 02/16/1984

Description of Significant Features and Subsequent Alterations:

The Williston Church was designed by Francis H. Fassett in 1877 as an offshoot of the Second Parish Church. Fassett was Portland's leading architect in the 1870's and received choice commissions. In 1874 he completed the Maine General Hospital, and in 1876 built a double house for himself and his nephew at 117-119 Pine Street which provides a focal terminus at the end of Thomas Street.

The Hospital, his own house, and the Williston Church are all designed in the High Victorian Gothic style, though the Church, naturally, emphasizes ecclesiastical motifs and lancet arches appropriate to a religious building. The plan of the Church is influenced by the emerging Queen Anne aesthetic which turned away from symmetry and emphasized complex spatial arrangements and a variety of ornament and materials. The Williston Church creates a strong corner presence on Carroll and Thomas Streets through the placement of its three story picturesque tower. The sculptural massing is augmented by the pavilion in the center of the Thomas Street elevation that rises in a pedimented gable above the roofline, as well as the buttresses that surround the building.

Fassett's best work is distinguished by a polychromed surface achieved through the use of various stones, here used as window surrounds and sills. The surface of the building is animated by denticulated cornices, dog-tooth brick stringcourses, and cruciform corbeling.

The north elevation is dominated by a projecting wing with a pair of lancet shaped windows flanking a paired stained glass window below a stained glass oculus window. On the rear elevation, facing west, there is a large stained glass circular window.

In 1905, Fassett's former partner, John Calvin Stevens, was commissioned to add a parish house and a wing connecting the church to the Sunday school. At that time he removed some of the ornamentation on the tower and added an enclosed one story porch along the width of the Thomas Street facade. (For a discussion of the parish house see the separate form on it.) The slate sheathed roof, which added both to the polychromy and texture of the building, was replaced in 1957 with asphalt shingles.

City Review of Certificates:

Date	Action	Type	Summary of Work
------	--------	------	-----------------

4.2

Property Name: Williston Church
Property Name(Other):
Street Address: 32 Thomas Street
Town: Portland County: Cumberland
Date Surveyed: 03/1991 Surveyor: Rick Redion
Updated: (date) by (surveyor)
by
by

Owner Name: Trustees of Williston Church
Owner Address:

Primary Use (Present): RELIGIOUS

Condition: GOOD

ARCHITECTURAL DATA

Primary Stylistic Category: HIGH VIC GOTHIC

Other Stylistic Category:

Height: 1 STORY

Primary Facade Width (Main Block; Use Ground Floor): 4 Bay

Appendages: SIDE ELL FRONT PORCH
TOWER

Porch: ATTACHED ONE STORY FULL WIDTH

Plan: SIDE HALL

Primary Structural System: BRICK

Chimney Placement:

Roof Configuration: GABLE SIDE

Roof Material: ASPHALT

Exterior Wall Materials: BRICK

Foundation Material: GRANITE

Outbuildings/Features:

HISTORICAL DATA

Documentated Date of Construction: 1877
Estimate Date of Construction:

Date of Last Addition/Alteration:

4.3

Altered by John Calvin Stevens in 1905

Architect: Francis H. Fassett

Contractor:

Original Owner: Williston Church

Subsequent Signific. Owner:

Dates:

Cultural/Ethnic Affiliation:

Historic Context(s): RELIGION

Comments:

PHRI 1976; 1924 Tax Assessor's Report; 1967 Survey Form; Pancoast
File; 1882 Reevaluation Map; National Register Nomination; Richard's
1914 Atlas; Portland, GPL, pp. 195-197

OUTBUILDINGS/FEATURES: Parish House

Historical Drawings Exist N

Location:

ENVIRONMENTAL DATA

Site Integrity: Original Y Moved N Date Moved

4.4

Street Thomas Carroll (Ex. 9) No. 88-88
 Block 62-8 Lot 5-7
 Use of Bldg. _____ Name _____
 Tenants and Rooms _____
 Rentals _____
 Age _____
 Condition of Repair Good

Class	Exterior	Plumbing
Bungalow	Clapboards	Common
Single House	Siding	Individual
Two family	Shingles	Open
Three family	Stucco	Set tubs
Apartment	Paper	
Store Building	Tapestry Brick	Finish
Office	Com. Brick	Plain
Factory	Galv. Iron	Hardwood
Storage	Stone	Halls
Stables	Terra Cotta	Wood
Garage, private	Concrete	Terrazzo
Garage, public		Marble
Theatre	Heating	Roof - Roofing
Club House	Stove	Shingle
Cottage	Furnace	Slate
Foundation	Hot Water	Gravel
Brick	Steam	Prepared
Stone	Light	Asbestos
Concrete	Oil	Flat
Pile	Gas	Hip
Basement	Electric	Cable
Full		Dormers
Cement Floor	Floor	Windows
Waterproof	Common	Plain Glass
Construction	Hardwood	Wire Glass
Frame	Re-Concrete	Shutters
Brick	Concrete Slab	Miscellaneous
Tile	Waterproof	Elevator
Blocks	Ceiling	Sprinkler
Stucco	Plaster	Fire Escape
Re-Concrete	Metal	Refrigerator
Mill	Panelled	Vacuum Cleaner
Steel Frame	Rough	Safes and Vaults
		Telephone Equip.

Ground Area 1.0, 36.1 Height _____
 Cubic Feet _____ Unit _____
 Utility Dep. _____
 Dep. _____ Per cent.
 - Sound Value, \$ _____

Land 13000 Corner _____ Interior _____ Alley _____
 Front _____ Depth _____ = _____ ft.

COMPUTATION
10000 x 0.075 = 750
10000 x 0.09 = 900
750 + 900 = 1650

Area	Multiplier	Coefficient
Year	Unit	Coefficient
19		Land Value
		# 9635

Personal Property Value
 Animals _____ No. _____ \$ _____
 " _____ " _____
 " _____ " _____
 Dogs, Male _____ Female _____
 Auto _____ Year _____
 " _____ " _____
 Furniture _____ Good _____
 Common _____
 Musical Inst. _____ Good _____
 Common _____
 Carriages _____ Good _____ No. _____
 Common _____
 Other Personal Property _____

Surveyed by _____

4.5



Autumn 1990.

4.6

Portland Historic Resources Inventory

(Parish Hall)

Property Address: 32 Rear Thomas Street

Inventory #: WP-238

Assessor's C/B/L: 62-E-5

District: Western Promenade Map #: 238

Rating:

Local Code: CONTRIBUTING

National Register: Ind. Listing N/A District Western Promenade

Date of Placement: Local 08/01/1990 National 02/16/1984

Description of Significant Features and Subsequent Alterations:

In 1905, John Calvin Stevens constructed an addition to the Williston Church that his former partner Francis H. Fassett built in 1877. The parish hall is significant, not only as a compatible architectural addition, but as the location of the meetings of the Young People's Society of Christian Endeavor which was formed at the church in 1881. This national organization was the springboard for the Sunday School movement.

Stevens' building is connected to the church by an ell that harmonizes stylistically with the original High Victorian Gothic church. The siting of the brick and stone parish hall at a perpendicular angle to the rear ell creates a courtyard. Stevens acknowledges the High Victorian Gothic polychromy through the use of a granite foundation, and light colored bricks which are used to contrast against the warm red brick as a raking cornice, and a corbeled beltcourse with cruciform shapes that refer to Fassett's details. In a modified form, Stevens also used buttresses, but without the stone caps. Overlooking the courtyard and in the porch addition to the church, Stevens employed the same small lancet arched windows that Fassett used. Stained glass is used on all of the upper openings of the parish hall; on the first floor are 9/9 sash windows.

An alteration has occurred to the entrance vestibule tucked into the corner of the intersecting masses. Originally, the rear portion was enclosed and the front section was an open porch, as seen by the brick corner post. The porch has been enclosed with the addition of a window and door and an attractive carved bracket with two trefoil windows that is attached to the wall of the parish house.

City Review of Certificates:

Date	Action	Type	Summary of Work
------	--------	------	-----------------

Property Name: Williston Church Parish House

Property Name(Other):

Street Address: 32 Rear Thomas Street

Town: Portland County: Cumberland

Date Surveyed: 03/1991 Surveyor: Rick Redlon

Updated: (date) by (surveyor)

4.7

by

Owner Name: Williston Church
Owner Address:

Primary Use (Present): RELIGIOUS

Condition: GOOD

ARCHITECTURAL DATA

Primary Stylistic Category: HIGH VIC GOTHIC

Other Stylistic Category:

Haight: 2 1/2 STORY

Primary Facade Width (Main Block; Use Ground Floor): 5 Bay

Appendages: SIDE ELL PORCH

Porch: ATTACHED ONE STORY LESS FULL WIDTH

Plan: BACK HALL

Primary Structural System: BRICK

Chimney Placement:

Roof Configuration: CROSS GABLE

Roof Material: ASPHALT

Exterior Wall Materials: BRICK

Foundation Material: GRANITE

Outbuildings/Features: LANDSCAPE/PLANT

HISTORICAL DATA

Documentated Date of Construction: 1905
Estimate Date of Construction:

Date Major Additions/Alterations:

Architect: John Calvin Stevens and John Howard Stevens

Contractor:

Original Owner: Williston Church
Subsequent Signific. Owner:

Dates:

Cultural/Ethnic Affiliation:

4.8

Historic Context(s): RELIGION

Comments:

PHRI 1976; 1924 Tax Assessor's Report; Richard's 1914 Atlas

Historical Drawings Exist N

Location:

ENVIRONMENTAL DATA

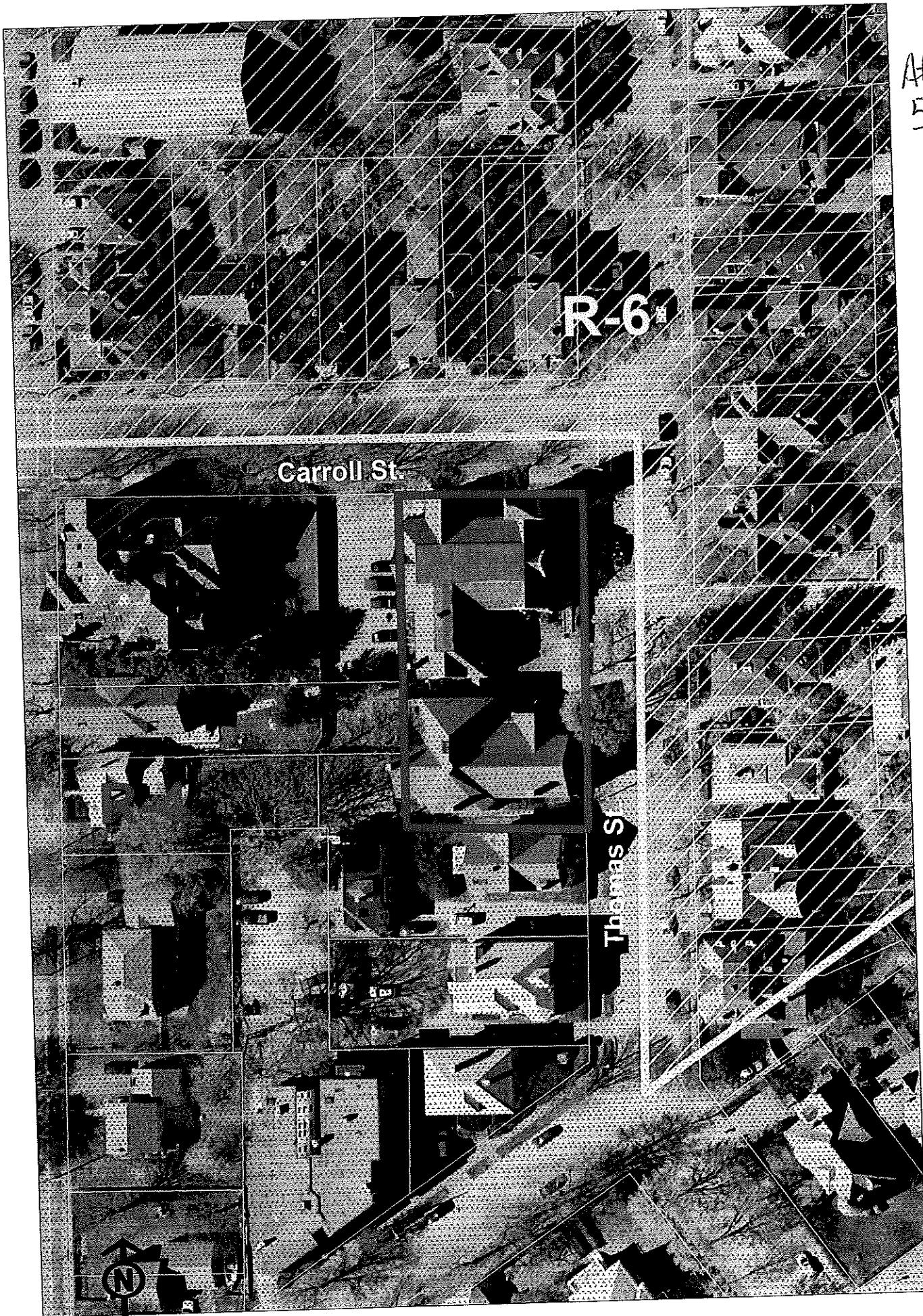
Site Integrity: Original Y Moved N Date Moved

4.9

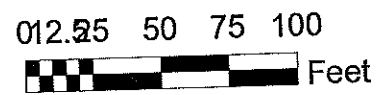


Autumn 1990

Att.
5.



Vicinity 32 Thomas St.



Attachment 6

**Jean Fraser - Fwd: RE: Williston Church Conditional Rezone Agreement
Take 2**

From: Jean Fraser
To: Fraser, Jean
Date: 3/9/2012 3:24 PM
Subject: Fwd: RE: Williston Church Conditional Rezone Agreement Take 2

>>> Tom Errico <thomas.errico@tylin.com> 2/20/2012 4:27 PM >>>

Jean – I find the agreement to be acceptable. It requires the provision of off-street parking for office employees and submission and approval of a parking management plan for events. If you have any questions, please let me know.

Thanks

Thomas A. Errico, PE
Senior Associate
Traffic Engineering Director
TYLININTERNATIONAL
12 Northbrook Drive
Falmouth, ME 04105
207.347.4354 direct
207.400.0719 mobile
207.781.4753 fax
thomas.errico@tylin.com
Visit us online at www.tylin.com

"One Vision, One Company"
Please consider the environment before printing.

CONDITIONAL ZONE AGREEMENT

**RE:
WILLISTON-WEST CHURCH**

AGREEMENT made this ____ day of _____, 2012 by 32 Thomas Street, LLC, 477 Congress St., Suite 601, Portland, Maine ("Developer"), and its successors and assigns.

WITNESSETH

WHEREAS, the Developer owns real property located at 32 Thomas Street, consisting of the parcel shown on the City's Tax Map 62, Block E, Lot 5, being more particularly described in a deed recorded in Cumberland County Registry of Deeds in Book 29217, Page 171 (collectively the "Property"); and

WHEREAS, the existing building complex located on the Property was formerly used as the Williston-West Church; and

WHEREAS, the Property, located within the West End Historic District, is currently zoned R-4 Residential; and

WHEREAS, the properties on the other sides of Thomas and Carroll Streets, directly across from the Property, are zoned R-6 Residential; and

WHEREAS, the building complex located on the Property is ~~an historic landmark as defined by Article IX of the Portland City Code, and has comprised of two principal portions, the sanctuary and the parish house;~~ and

WHEREAS, the building complex is listed in the National Register of Historic Places and is a designated local landmark as defined by Article IX of the Portland City Code and the parish house is a contributing structure within the West End Historic District under Article IX; and

WHEREAS, the building complex located on the Property is falling into a state of disrepair; and

WHEREAS, historically appropriate and neighborhood compatible adaptive re-use of historic religious structures is often challenging, and reasonable use flexibility is justified to enable economically viable rehabilitation and productive use of such buildings for their long term preservation; and

WHEREAS, the City's comprehensive plan provides that it is a goal of the City to preserve Portland's architectural and historic heritage and to preserve and enhance the quality and vitality of neighborhoods within and adjacent to the Downtown; and

7.2

City comments 3.5.2012

WHEREAS, it is difficult to adapt historic buildings to appropriate modern uses which have minimal effects on the historic features and materials of the building as required by historic rehabilitation standards; and

WHEREAS, the Developer proposes and intends to ~~rehabilitate~~ restore and renovate the parish house to provide for a family residence on the second and third floors, and a caretaker residence and office space on the first floor, as illustrated in Exhibit A attached hereto; and

WHEREAS, the Developer proposes and intends to ~~rehabilitate~~ restore, renovate and preserve the sanctuary and to use the building as a community hall for limited community uses; and

WHEREAS, the Developer intends to maintain the historic character of the structure and Property and will commit to a rehabilitation schedule of improvements to the building complex to ensure the soundness and integrity of the building envelope and structural elements to prolong its useful life for an extended time period approaching fifty (50) years or longer; and

WHEREAS, the existing zoning is R-4 which has dimensional and use requirements that the existing ~~building complex~~ structure and the proposed development scheme does not meet, but is lawfully nonconforming; and

WHEREAS, the proposed use of the building complex by the owner/Developer includes an office component that is a necessary economic value and program element for the feasibility of the productive use of the building complex and the associated rehabilitation investments; and

WHEREAS, the Developer has requested a rezoning of the Property in order to permit the proposed development of the Property which is necessary to fund comprehensive restoration, maintenance and preservation ~~restoration~~ rehabilitation of the historic structure; and

WHEREAS, the proposed uses of the Property are consistent with the existing and permitted uses in the neighborhood, which include a mix of residential, commercial and institutional uses; and

WHEREAS, the Planning Board, after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid, subject, however, to certain conditions contained in this ~~Agreement~~ AGREEMENT; and

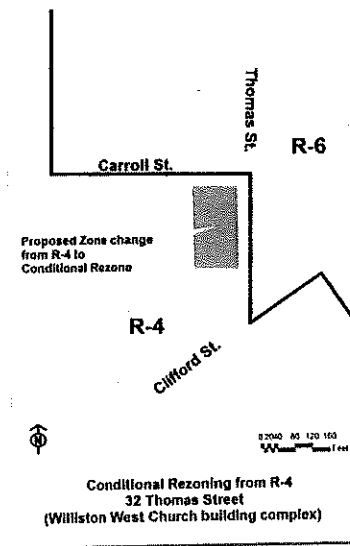
WHEREAS, the Portland City Council, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Land Use Code (the "Code") §§ 14-60 to 14-62, after notice, hearing and due deliberation thereon, has determined that because of the unusual nature and unique location of the proposed development, and its minimal impact on and compatibility with

the surrounding community, it is necessary and appropriate to recommend the rezoning of the Property as aforesaid, with the following conditions and restrictions set forth in this Agreement AGREEMENT; and

WHEREAS, the Portland City Council has on _____, 2012 approved this Agreement in its entirety, by City Council Order No. _____, a true copy of which is attached hereto as Attachment 1 (the "Order");

NOW, THEREFORE, in consideration of the rezoning, the Developer covenants and agrees as follows:

1. Pursuant to the Order, the City shall amend the Zoning Map of the City of Portland, dated September, 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 § 14-49 of the Code) by adopting the map change amendment shown below to zone the property conditional R-4, subject to the conditions contained below.



If this Agreement is not recorded within sixty (60) days after the effective date of the City Council's approval of the Order, then the conditional rezoning shall become null and void and the zoning of the Property shall revert to the pre-existing R-4 zone.

2. Permitted uses:

- a. All uses allowed in the R-4 zone;
Place of assembly/community hall; and

3. Conditional Uses, in addition to conditional uses allowed in the R-4 zone, the following conditional use is allowed subject to review by the Planning Board:

- a. Professional offices, excluding personal services, retail services and veterinarians, subject to the following limitations:

- i. Professional offices shall be located on the first floor of the parish house and shall occupy no more than 2,800 square feet of floor area.
- ii. The total number of individuals working in the professional offices shall not exceed the equivalent of fourteen (14) full-time non-resident employees.
- iii. The business utilizing the office space shall be operated by a single tenant office user owned by or affiliated with the owner of the building complex.
- iv. The office use shall not generate daily or frequent visitation by clients, customers, or the general public.
- v. If such office use by an affiliated entity is discontinued or abandoned for a period of time exceeding one (1) year by the owner/developer, then the professional office use shall terminate and the area so occupied may be converted to any other uses allowed in the underlying R-4 zone.
- vi. The owner or operator of the business shall secure and provide to its employees one (1) off street parking space for each nonresidential employee.

43. The underlying dimensional requirements of the R-4 zone shall apply and are modified as follows:

- a. Minimum Lot Size for place of assembly, ~~and professional office and residential-uses combined~~: 17,500 square feet.
- b. Minimum Yard Dimensions:
 1. Front yard: 3 feet.
 2. Rear Yard: 3 feet.
 3. Side Yard: 4 feet
 4. Side Yard on Side Streets: 8 feet.
- c. Maximum Lot Coverage: 90%.
- d. Maximum Structure Height (Sanctuary): 37 feet.
- e. Maximum Structure Height (Parish House): 46 feet.
- f. Maximum Structure Height (Bell Tower): 70 feet.
- g. Maximum Floor Area for Places of Assembly: 6,000 sq. ft.
- h. Residential dwellings within the existing structures shall be governed by the provisions of Section 14-103(a)(2) of the underlying R-4 zone. Density calculations for residential use shall be based on the lot size of the

parcel without land area deductions for other non-residential uses on the site.

~~4. Professional offices shall be located on the first floor of the parish house and shall occupy no more than 2,800 square feet of floor area.~~

~~5. The total number of individuals working in the professional offices shall not exceed the equivalent of fourteen (14) full-time non-residential employees.~~

~~6. The business utilizing the office space shall be owned or operated by a resident of one of the dwelling units located within the building. single tenant office user owned by or affiliated with the owner of the building complex.~~

~~7. If such office use by an affiliated entity as provided for in paragraph 6 of this AGREEMENT is discontinued or abandoned by the owner/developer, then the professional office use shall terminate and the area so occupied may be converted to any other residential or other uses as allowed in the underlying R-4 zone.~~

~~87. The owner or operator of the business shall secure and provide to its employees one (1) off-street parking space for each nonresidential employee.~~

~~59. No more than two (2) parking spaces shall be permitted in the courtyard area of the building complex.~~

~~86. Notwithstanding section 14-137(b)(6)(e)(iii), the sanctuary shall be considered and be operated as a place of assembly/community hall.~~

~~79. The use of the sanctuary as a community hall shall be limited as follows:~~

~~a. Occupancy of the sanctuary at any one time shall not exceed 250 people.~~

~~b. Evening performances at the sanctuary which begin after 6:00 pm shall be held no more than eighttwo (28) days per month and shall occur only on Friday or Saturday evenings, or on the eve of a nationally recognized holiday. Said limitation shall apply to performances before an audience only and not to rehearsals.~~

~~c. No events or rehearsals at the sanctuary shall continue past 12:00 midnight, 10:30 on weeknights, and 12:00 midnight on Friday or Saturday evenings or on the eve of a nationally recognized holiday.~~

~~d. No more than five (5) organizations shall have long term agreements with the Property owner for regular use of the sanctuary at any one time.~~

e. All uses of the sanctuary shall be consistent with the definition of "community hall" as set forth in Section 14-47 of the Portland Land Use Code.

e.f. Noise levels generated by music or other activities within the community hall shall be limited to the extent that sound levels shall not exceed 55 dB during the hours of 7:00 AM to 9:00 PM, and 50 dB at all other hours, as measured at the property line utilizing the methodology consistent with the sound measurement specifications of the IL zone.

g. The operator of the Community Hall shall not seek or obtain any class of liquor license for the building complex.

h. The above listed limitations shall not apply to private events held by the owner of the property not open to the general public.

810. The Developer shall submit a parking management plan for the community hall during the site plan and conditional use process for review and approval by the Planning Board in a form substantially in accordance with Exhibit B attached hereto as a starting point subject to Planning Board and applicant modification during Site Plan and conditional use Review.

911. Subject to receiving all necessary regulatory approvals, the Developer shall renovate-rehabilitate the Property in accordance with the Renovation-Rehabilitation Schedule, attached hereto as Exhibit C, in keeping with the standards of Article IX, Historic Preservation, of the Portland City Code and as shall be approved by the Historic Preservation Board under the terms of this Article. Such rehabilitation shall commence within four (4) months of [date of enactment] and shall be completed within 24 months of [date of enactment]. Any rehabilitation improvements required by this AGREEMENT not completed or under binding contract by the time of the certificate of occupancy for the office use shall be secured by a performance guarantee in the form of an escrow account, letter of credit, or equivalent surety approved by the Corporation Counsel of the City of Portland, in an amount equal to the estimated cost of completion of such improvements. Such performance guarantee shall be reduced by the City upon completion of improvement phases, but shall not be reduced to less than the estimated cost of any incomplete required improvements. In the event that the owner/developer fails to execute the required improvements by the time specified herein, unless granted an extension in writing from the Planning Authority of the time to complete for good cause and not to exceed an additional twelve (12) months, then the City of Portland or its designee shall have the right to utilize the proceeds of the performance guarantee to hire a competent contractor to complete such improvements. In such event, the owner/developer shall have the right to review and approve the work scope consistency with the required improvements of Exhibit C, the specifications and methods of such work items, and contractor qualifications. Such approval shall not be unreasonably withheld.

102. This conditional rezoning shall become null and void and the Property shall revert to the existing R-4 zone in the event that the Developer fails to complete items one (1) through three (3) of the Renovation Schedule. The Renovation Schedule shall be extended up to an additional one (1) year period if:

a. The Developer has applied for all required approvals but has not received all required approvals within the period necessary to complete the renovations in accordance with the Renovation Schedule; or

b. Any other event beyond the control of the Developer has occurred which will delay the renovation and Developer has notified the City of such event.

If any required approval, including the City Council's approval of this conditional rezoning, has been appealed or becomes the subject of litigation, then this rezoning shall become null and void and shall revert if the Developer fails to commence renovations within one (1) year the required performance time frames contained in this AGREEMENT shall be measured from the final disposition of any such appeal or litigation. Failure, however, to commence the rehabilitation improvements or post the performance guarantee within the timeframes stipulated in this paragraph and/or paragraph 13 shall result in the reversion of the subject property to the underlying R-4 zone and this AGREEMENT shall be null and void.

113. The provisions of this Agreement AGREEMENT are intended to replace and/or supersede the associated requirements provisions of the underlying R-4 zone. As stated above, to the extent not otherwise altered herein, the zoning requirements for the R-4 zone shall otherwise apply to the Property.

124. The owner of the Property shall be responsible for ongoing maintenance of the Property, including snowplowing, salting, sanding, sweeping, lighting, trash pickup (at least weekly), mowing, etc.

135. In the event of a breach by the Developer or its successors or assigns of the zoning provisions contained herein (whether the Zoning Administrator, the Zoning Board of Appeals or a court determines such breach), the Planning Board, after notice and hearing, may recommend to the City Council that the conditional zone and this Agreement be amended, or be rescinded, such rescission to result in the termination of this Agreement and a reversion of the Property to the R-4 zone requirements in place before the execution of this Agreement.

146. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit the Developer, any entity affiliated with the Developer that takes title to the Property, its successors and assigns, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the City of Portland, by and through its duly authorized representatives. The Developer shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

7.8

City comments 3.5.2012

15. The Planning Authority shall be notified of any potential and/or pending sale of the Property (which most likely will be evidenced by a Purchase & Sales Agreement or its equivalent), and prior to closing the sale of the Property shall meet with the buyer and verify that he/she/it has read, understood and agrees to be bound by the terms, conditions, limitations and provisions of this AGREEMENT, and said buyer shall so state in a signed affidavit to be kept on file with the Planning Authority.

16. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law including, but not limited to, 30-A MRSA § 4452 and the Portland City Code.

17. If any of the restrictions, provisions, conditions, or portions thereof set forth herein is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision and such determination shall not affect the validity of the remaining portions hereof.

18. Except as expressly modified herein, the development shall be governed by and comply with the provisions of the Portland City Code and any applicable amendments thereto or replacement thereof.

WITNESS: _____

32 THOMAS STREET, LLC

BY:

STATE OF MAINE
CUMBERLAND, ss.

_____, 2012

Personally appeared before me the above-named _____, in his/her capacity as _____ of 32 THOMAS STREET, LLC, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said corporation.

Before me,

Notary Public/Attorney at Law

Attachment 7b: 1

4-5-12 City comments
on
3/7/12 Submission to Planning Board

CONDITIONAL ZONE AGREEMENT

**RE:
WILLISTON-WEST CHURCH**

AGREEMENT made this ____ day of _____, 2012 by 32 Thomas Street, LLC, 477 Congress St., Suite 601, Portland, Maine ("Developer"), and its successors and assigns.

WITNESSETH

WHEREAS, the Developer owns real property located at 32 Thomas Street, consisting of the parcel shown on the City's Tax Map 62, Block E, Lot 5, being more particularly described in a deed recorded in Cumberland County Registry of Deeds in Book 29217, Page 171 (collectively the "Property"); and

WHEREAS, the existing building complex located on the Property was formerly used as the Williston-West Church; and

WHEREAS, the Property, located within the West End Historic District, is currently zoned R-4 Residential; and

WHEREAS, the properties on the other sides of Thomas and Carroll Streets, directly across from the Property, are zoned R-6 Residential; and

WHEREAS, the building complex located on the Property is comprised of two principal portions, the sanctuary and the parish house; and

WHEREAS, the building complex is listed in the National Register of Historic Places, the sanctuary is a designated local landmark as defined by Article IX of the Portland City Code and the parish house is a contributing structure within the West End Historic District under Article IX; and

WHEREAS, the building complex located on the Property is falling into a state of disrepair; and

WHEREAS, historically appropriate and neighborhood compatible adaptive re-use of historic religious structures is often challenging, and reasonable use flexibility is justified to enable economically viable rehabilitation and productive use of such buildings for their long term preservation; and

WHEREAS, the City's comprehensive plan provides that it is a goal of the City to preserve Portland's architectural and historic heritage and to preserve and enhance the quality and vitality of neighborhoods within and adjacent to the Downtown; and

4.5.12
Sent by DW-C to MC
reflecting staff comments proposed
in response to applicants' proposal
to remove ref. to historic dist.

76.2

4.5.12
city comments on
3/7/12 Submission to Planning Board

WHEREAS, the Developer proposes and intends to rehabilitate the parish house to provide for a family residence on the second and third floors, and a caretaker residence and office space on the first floor, as illustrated in Exhibit A attached hereto; and

WHEREAS, the Developer proposes and intends to rehabilitate and preserve the sanctuary and to use the building as a community hall for limited community uses; and

WHEREAS, the Developer intends to maintain the historic character of the structure and Property and will commit to a rehabilitation schedule of improvements to the building complex to address immediate needs to ensure the soundness and integrity of the building envelope and structural elements, and intends to perform additional improvements to the building complex to prolong its useful life and preserve the historic character, all with the goal of extending the useful life of the building complex for a time period approaching fifty (50) years or longer; and

WHEREAS, the existing zoning is R-4 which has dimensional requirements that the existing building complex does not meet, but is lawfully nonconforming; and

WHEREAS, the proposed use of the building complex by the owner/Developer includes an office component that is a necessary economic value and program element for the feasibility of the productive use of the building complex and the associated rehabilitation investments; and

WHEREAS, the Developer has requested a rezoning of the Property in order to permit the proposed development of the Property which is necessary to fund comprehensive rehabilitation of the historic structure; and

WHEREAS, the proposed uses of the Property are consistent with the existing and permitted uses in the neighborhood, which include a mix of residential, commercial and institutional uses; and

WHEREAS, the Planning Board, after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid, subject, however, to certain conditions contained in this AGREEMENT; and

WHEREAS, the Portland City Council, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Land Use Code (the "Code") §§ 14-60 to 14-62, after notice, hearing and due deliberation thereon, has determined that because of the unusual nature and unique location of the proposed development, and its minimal impact on and compatibility with the surrounding community, it is necessary and appropriate to recommend the rezoning of the Property as aforesaid, with the following conditions and restrictions set forth in this AGREEMENT; and

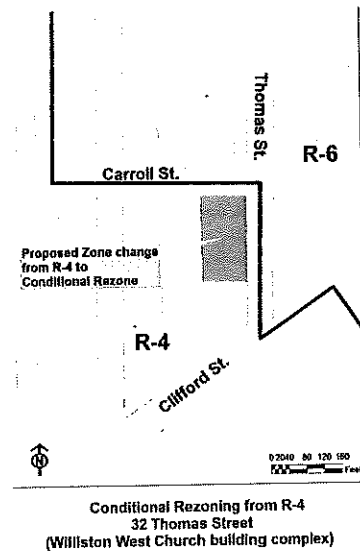
WHEREAS, the Portland City Council has on _____, 2012 approved this Agreement in its entirety, by City Council Order No. _____, a true copy of which is attached hereto as Attachment 1 (the "Order");

7b.3

4.5.12 City Comments on
3/7/12 Submission to Planning Board

NOW, THEREFORE, in consideration of the rezoning, the Developer covenants and agrees as follows:

1. Pursuant to the Order, the City shall amend the Zoning Map of the City of Portland, dated September, 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 § 14-49 of the Code) by adopting the map change amendment shown below to zone the property conditional R-4, subject to the conditions contained below.



If this Agreement is not recorded within sixty (60) days after the effective date of the City Council's approval of the Order, then the conditional rezoning shall become null and void and the zoning of the Property shall revert to the pre-existing R-4 zone.

2. Permitted uses: All uses allowed in the R-4 zone.

3. Conditional Uses:

A. In addition to the requirements for community halls contained in § 14-103(b)(2)(e), the following items, among other things, shall be considered by the Planning Board during its review:

- a. occupancy load of the community hall/sanctuary;
- b. hours/days of operation for performances in the community hall/sanctuary;
- c. Record keeping and reporting requirements for the events held in the community hall;

- d. the number of organizations that shall be entitled to regular use of the community hall/sanctuary at any one time;
- e. noise levels generated by the activities within the community hall/sanctuary;
- f. the liquor license of the operator of the community hall/sanctuary; and
- g. whether or not the limitations on the community hall/sanctuary apply to both public and private events.

B. Professional offices, excluding personal services, retail services and veterinarians shall be allowed as a conditional use, in addition to conditional uses allowed in the R-4 zone, the following conditional use is allowed subject to review by the Planning Board and the following limitations:

~~Professional offices, excluding personal services, retail services and veterinarians, subject to the following limitations:~~

- a. Professional offices shall be located on the first floor of the parish house and shall occupy no more than 2,800 square feet of floor area.
- b. The total number of individuals working in the professional offices shall not exceed the equivalent of fourteen (14) ~~full-time-non-resident employees at any one time.~~
- c. The business utilizing the office space shall be operated by a single tenant office user owned by or affiliated with the owner of the building complex.
- d. The office use shall not generate frequent daily visitation by clients, customers, or the general public.
- e. The owner or operator of the business shall secure and provide to its employees one (1) off street parking space for each nonresidential employee.

4. The underlying dimensional requirements of the R-4 zone shall apply and are modified as follows:

- a. Minimum Lot Size for place of assembly and professional office uses combined: 17,500 square feet.
- b. Minimum Yard Dimensions:
 - 1. Front yard: 3 feet.
 - 2. Rear Yard: 3 feet.
 - 3. Side Yard: 4 feet

76.5

4.5.12 City Comments on
3/7/12 Submission to Planning Board

4. Side Yard on Side Streets: 8 feet.
- c. Maximum Lot Coverage: 90%.
- d. Maximum Structure Height (Sanctuary): 37 feet.
- e. Maximum Structure Height (Parish House): 46 feet.
- f. Maximum Structure Height (Bell Tower): 70 feet.
- g. Maximum Floor Area for Places of Assembly: 6,000 sq. ft.
- h. Residential dwellings within the existing structures shall be governed by the provisions of Section 14-103(a)(2) of the underlying R-4 zone. Density calculations for residential use shall be based on the lot size of the parcel without land area deductions for other non-residential uses on the site.

5. The design of the courtyard within the building complex shall be reviewed and approved as part of a separate site plan review process and shall also require Historic Preservation review and approval. The parking allowed in said courtyard shall be limited to two (2) spaces.

6. While the roof restoration work is being conducted, the Developer shall create and seek input from a community group consisting of representatives of the Western Promenade Association, the public and neighborhood and other business and residential members to address and discuss the community hall use.

~~5. The use of the sanctuary as a community hall shall be limited as follows:~~

~~Occupancy of the sanctuary at any one time shall not exceed 250 people.~~

~~Evening performances at the sanctuary which begin after 6:00 pm shall be held no more than eight (8) days per month. Said limitation shall apply to performances before an audience only and not to rehearsals.~~

~~No events or rehearsals at the sanctuary shall continue past 10:30 on weeknights, and 12:00 midnight on Friday or Saturday evenings or on the eve of a nationally recognized holiday.~~

~~No more than five (5) organizations shall have long term agreements with the Property owner for regular use of the sanctuary at any one time.~~

~~All uses of the sanctuary shall be consistent with the definition of "community hall" as set forth in section 14.47 of the Portland Land Use Code.~~

Noise levels generated by music or other activities within the community hall shall be limited to the extent that sound levels shall not exceed 55 dB during the hours of 7:00 AM to 9:00 PM, and 50 dB at all other hours, as measured at the property line utilizing the methodology consistent with the sound measurement specifications of the IL zone.

The operator of the Community Hall shall not seek or obtain any class of liquor license for the building complex.

The above listed limitations shall not apply to private events held by the owner of the Property not open to the general public.

6. The Developer shall submit a parking management plan for the community hall during the site plan and conditional use process for review and approval by the Planning Board in a form substantially in accordance with Exhibit B attached hereto as a starting point subject to Planning Board and applicant modification during Site Plan and conditional use Review.

7. Subject to receiving all necessary regulatory approvals, the Developer shall rehabilitate the Property in accordance with the Rehabilitation Schedule, attached hereto as Exhibit C, in keeping with the standards of Article IX, Historic Preservation, of the Portland City Code and as shall be approved by the Historic Preservation Board under the terms of this Article. Such rehabilitation shall commence within six (6) months of [date of enactment] and shall be completed within 24 months of [date of enactment]. Any rehabilitation improvements required by this AGREEMENT not completed or under binding contract within six months from the issuance of the certificate of occupancy for the office use shall be secured by a performance guarantee in the form of an escrow account, letter of credit, or equivalent surety approved by the Corporation Counsel of the City of Portland, in an amount equal to the estimated cost of completion of such improvements. Such performance guarantee shall be reduced by the City upon completion of improvement phases, but shall not be reduced to less than the estimated cost of any incomplete required improvements. In the event that the owner/developer fails to execute the required improvements by the time specified herein, unless granted an extension in writing from the Planning Authority of the time to complete for good cause and not to exceed an additional twelve (12) months, then the City of Portland or its designee shall have the right to utilize the proceeds of the performance guarantee to hire a competent contractor to complete such improvements. In such event, the owner/developer shall have the right to review and approve the work scope consistency with the required improvements of Exhibit C, the specifications and methods of such work items, and contractor qualifications. Such approval shall not be unreasonably withheld.

8. If any required approval, including the City Council's approval of this conditional rezoning, has been appealed or becomes the subject of litigation, then the required performance time frames contained in this AGREEMENT shall be measured from the final disposition of any such appeal or litigation. Failure, however, to commence the rehabilitation improvements or post the performance guarantee within the timeframes stipulated in this paragraph and/or paragraph 13 shall result in the reversion

7b.7

4.5.12 CUM Commission
3/7/12 Submission to Planning Board

of the subject property to the underlying R-4 zone and this AGREEMENT shall be null and void.

9. The provisions of this AGREEMENT are intended to replace and/or supersede the associated provisions of the underlying R-4 zone. As stated above, to the extent not otherwise altered herein, the zoning requirements for the R-4 zone shall otherwise apply to the Property.

10. The owner of the Property shall be responsible for ongoing maintenance of the Property, including snowplowing, salting, sanding, sweeping, lighting, trash pickup (at least weekly), mowing, etc.

11. In the event of a breach by the Developer or its successors or assigns of the zoning provisions contained herein (whether the Zoning Administrator, the Zoning Board of Appeals or a court determines such breach), the Planning Board, after notice and hearing, may recommend to the City Council that the conditional zone and this Agreement be amended, or be rescinded, such rescission to result in the termination of this Agreement and a reversion of the Property to the R-4 zone requirements in place before the execution of this Agreement.

12. The above stated restrictions, provisions, and conditions are an essential part of the rezoning, shall run with the Property, shall bind and benefit the Developer, any entity affiliated with the Developer that takes title to the Property, its successors and assigns, and any party in possession or occupancy of said Property or any part thereof, and shall inure to the benefit of and be enforceable by the City of Portland, by and through its duly authorized representatives. The Developer shall file a counterpart original of this Agreement in the Cumberland County Registry of Deeds.

13. The Planning Authority shall be notified of any potential and/or pending sale of the Property (which most likely will be evidenced by a Purchase & Sale Agreement or its equivalent), and prior to closing the sale of the Property shall meet with the buyer and verify that he/she/it has read, understood and agrees to be bound by the terms, conditions, limitations and provisions of this AGREEMENT, and said buyer shall so state in a signed affidavit to be kept on file with the Planning Authority.

14. This conditional rezoning agreement shall be enforced pursuant to the land use enforcement provisions of state law including, but not limited to, 30-A MRSA § 4452 and the Portland City Code.

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.

76.8

4.5.12 LLC comments on
3/7/12 Submission to Planning Board

16. Except as expressly modified herein, the development shall be governed by and comply with the provisions of the Portland City Code and any applicable amendments thereto or replacement thereof.

WITNESS: _____

32 THOMAS STREET, LLC

BY: _____

STATE OF MAINE
CUMBERLAND, ss.

_____, 2012

Personally appeared before me the above-named _____, in his/her capacity as _____ of 32 THOMAS STREET, LLC, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity and the free act and deed of said corporation.

Before me,

Notary Public/Attorney at Law

4.24.2012
WILLISTON WEST CHURCH
CONDITIONAL REZONING APPLICATION

Summary of alternative language (underlined/~~struck-out~~) as suggested by staff for discussion and direction; includes suggestions on pages 15 and 16 of the PB Memo plus several additional suggestions:

Additional "WHEREAS" Paragraphs:

1. (place after 5th WHEREAS in applicants draft CZA 4.18.12):

Whereas, the accommodation of institutional uses in residential zones must be carefully managed to avoid displacement of residences and undue operational impacts on neighborhood residents; and

2. (place after 10th WHEREAS in applicants draft CZA 4.18.12)

Whereas, offices in residential zones, particularly in the R-4 zone, have been strictly limited and any allowance of office use must be carefully considered and controlled to achieve an appropriate balance between policies supporting neighborhood preservation and policies supporting preservation and adaptive reuse of historic structures;

Defintion of number of employees in the professional offices:

3. (relates to para 3 in applicants draft CZA 4.18.12)

3. Conditional Uses: in addition to conditional uses allowed in the R-4 zone, the following conditional use is allowed subject to review by the Planning Board:

Professional offices, excluding personal services, retail services and veterinarians, subject to the following limitations:

- a. Professional offices shall be located on the first floor of the parish house and shall occupy no more than 2,800 square feet of floor area.
- b. The total number of individuals working in the professional offices shall not exceed ~~the equivalent of~~ fourteen (14) ~~full-time non-resident employees regularly scheduled to occupy the premises at one time.~~
- c. The business utilizing the office space shall be a single tenant office user owned by or affiliated with the owner of the building complex.
- d. The office use shall not generate frequent daily visitation by clients, customers, or the general public.
- e. The owner or operator of the business shall secure and provide to its employees one (1) off street parking space for each nonresident employee who commutes to the office by his or her automobile.

Community Hall Use (2 options)

4. A (relates to para 4 in applicants draft CZA 4.18.12)

4. The use of the sanctuary as a community hall shall be limited as follows:

- a. Occupancy of the sanctuary at any one time shall not exceed 250 people.
- b. Evening performances at the sanctuary which begin after 6:00 pm shall be held no more than (X) [2 or 6 or 8 or number to be determined By Planning Board] days per month. Said limitation shall apply to performances before an audience only and not to rehearsals.

A4.7.c.2

- c. No events or rehearsals at the sanctuary shall continue past 9:30 [or time to be determined by Planning Board] on weeknights, and 10:30 [or time to be determined by Planning Board] on Friday or Saturday evenings or on the eve of a nationally recognized holiday.
- d. No more than five (5) organizations shall have long term agreements with the Property owner for regular use of the sanctuary at any one time.
- e. All uses of the sanctuary shall be consistent with the definition of "community hall" as set forth in section 14-47 of the Portland Land Use Code.
- f. Noise levels generated by music or other activities within the community hall shall be limited to the extent that sound levels shall not exceed 55 dB during the hours of 7:00 AM to 9:00 PM, and 50 dB at all other hours, as measured at the property line utilizing the methodology consistent with the sound measurement specifications of the IL zone.
- g. The operator of the Community Hall shall not seek or obtain any class of liquor license for the building complex.
- h. The above listed limitations shall not apply to private events held by the owner of the Property not open to the general public.
- i. The owner/operator of the community hall shall maintain records of all events held in the hall after 6:00 PM, including but not limited to the start time and end time of each event, and shall provide such records to the Planning Authority upon request.

4. B (relates to para 4 in applicants draft CZA 4.18.12)

4. In addition to the requirements for community halls contained in section 14-103(b)(2)(e), the community hall use shall be reviewed as a conditional use by the Planning Board, which may place limitations on the use of the sanctuary as a community hall. Said limitations may include, but are not limited to the following:

- a. Occupancy load;
- b. Hours and days of operation;
- c. Record keeping and reporting;
- d. Number of organizations that may be entitled to regular use of the community hall at any one time;
- e. Noise levels at the property line; and
- f. Service of alcohol.

Performance Guarantee timing

5. (relates to para 6 in applicants draft CZA 4.18.12)

6. Subject to receiving all necessary regulatory approvals, the Developer shall rehabilitate the Property in accordance with the Rehabilitation Schedule, attached hereto as *Exhibit B*, in keeping with the standards of Article IX, Historic Preservation, of the Portland City Code and as shall be approved by the Historic Preservation Board under the terms of this Article. Such rehabilitation shall commence within six (6) months of [date of enactment] and shall be completed within 24 months of [date of enactment]. Any rehabilitation improvements required by this AGREEMENT not completed or under binding contract ~~within six months from~~ by the issuance of the certificate of occupancy for the office use shall be secured by a performance guarantee in the form of an escrow account, letter of credit, or equivalent surety approved by the Corporation Counsel of the City of Portland, in an amount equal to the estimated cost of completion of such improvements....

703

Rehabilitation Schedule

6. (relates to List in Schedule B in applicants draft CZA 4.18.12) (add 6-9; see attached elevation drawings by staff)

LIST:





1. Replace entire roof system at Church, as per scope of work submitted by The Heritage Co. dated January 24, 2012 (see Attachment C.18- C.20 of Applicant's submittal). Replace all metal flashings, gutters and downspouts to original historic appearance. Original metal trim pieces are at the end of their useful life and should be replicated. Replace membrane at flat roof section.
2. Perform structural repair at all three floor levels of the Bell Tower including new wood framing and restoration of damaged brick bearing pockets.
3. Disassemble and rebuild damaged masonry area, roughly 50 square feet in size, at the southwest corner of the Church. Brickwork should match the surrounding area in every respect including dimension, color, surface, texture, and mortar type
4. Remove severely damaged brick and tooth in restoration brick using appropriate restoration mortar. This work is minimal amounting to approximately 20 bricks at the Parish House and 10 bricks at the Church.
5. Re-design and re-grade the courtyard to create positive drainage away from the building.
6. Install new storm windows over most sanctuary windows and selected Parish Hall windows, as identified on the elevation drawings (referenced- see attached). Repair surrounding wood trim (brick moulds and sills) where deteriorated.
7. In addition to items 3 and 4 above, repoint masonry where visibly deteriorated/missing, including areas around failed gutters/downspouts and at buttresses/amortizements, and other locations, as identified on the elevation drawings (referenced- see attached).
8. Replace/repair all missing/leaking gutters and downspouts on Parish Hall.
9. Reset granite steps and reset section of collapsed brick landing at bottom of Carroll Street granite stairs, as identified on the elevation drawings (referenced- see attached).

Courtyard

7. (New provision, for adding to applicants draft CZA 4.18.12)

The design of the courtyard within the building complex may be reviewed and approved as part of a separate site plan review process and shall require Historic Preservation review and approval. The parking allowed in said courtyard shall be limited to Two (2) spaces.

7.c.4

-  INSTALL NEW STORM
-  REPAIR DETERIORATED WOOD SURROUND
-  RE-SET STEPS / LANDING
-  REPAIR MASONRY

- PRIORITY ONE - RECOMMENDED TREATMENTS
- (1A) RE-GRADE THE COURTYARD TO CREATE POSITIVE DRAINAGE AWAY FROM THE BUILDINGS.
 - (1B) REPLACE ENTIRE ROOF SYSTEM AT CHURCH INCLUDING METAL FLASHINGS, SHINGLES, GUTTERS, DOWNSPOUTS AND MEMBRANE.
 - (1C) PERFORM STRUCTURAL REPAIR AT THE INTERIOR OF ALL THREE FLOOR LEVELS OF THE BELL TOWER INCLUDING NEW WOOD FRAMING AND MASONRY REPAIR.
 - (1D) DISASSEMBLE AND REBUILD APPROX. 50 SQUARE FEET OF DAMAGED MASONRY AT CHURCH. MATCH EXISTING ORNAMENTAL CORBELLED PATTERN.
 - (1E) REMOVE SEVERELY DAMAGED BRICK AND TOOTH IN RESTORATION BRICK.

tl-architects, llc
 28 DANFORTH STREET
 SUITE 213
 PORTLAND, MAINE 04101
 TEL. 207.761.9562
 FAX. 207.761.9596



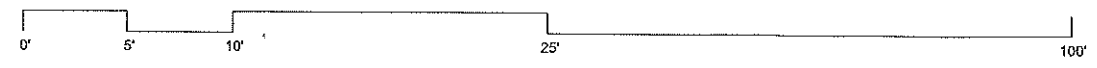
Exterior Conditions Assessment & Treatment Plan
 32 Thomas Street, LLC
 32 Thomas Street
 Portland, Maine

Date: 17 April 2012
 Scale: As Shown
 Revisions:




Title:
 Parish House
 East Elevation

Sheet No: A-1

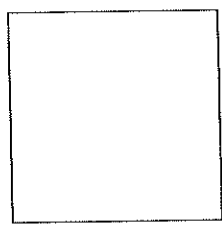
1 PARISH HOUSE - EAST ELEVATION
 A-1 1/4" = 1'-0"
 (FACES THOMAS ST.)



7.c.6

-  INSTALL NEW STERN
-  REPAIR DETERIORATED WOOD SURROUND
-  REPAIR MASONRY

tll-architects, llc
 28 DANFORTH STREET
 SUITE 213
 PORTLAND, MAINE 04101
 TEL. 207.751.9552
 FAX. 207.751.9556



Exterior Conditions Assessment & Treatment Plan
32 Thomas Street, LLC
 32 Thomas Street
 Portland, Maine

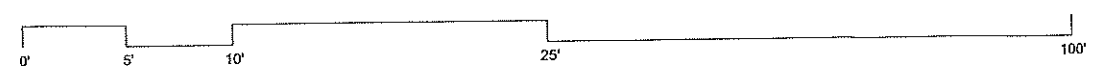
Date: 17 April 2012
 Scale: As Shown
 Revisions:

Title:
 Parish House
 West Elevation
 Sheet No: **A-3**

- PRIORITY ONE - RECOMMENDED TREATMENTS
- 1A RE-GRADE THE COURTYARD TO CREATE POSITIVE DRAINAGE AWAY FROM THE BUILDINGS.
 - 1B REPLACE ENTIRE ROOF SYSTEM AT CHURCH INCLUDING METAL FLASHINGS, SHINGLES, GUTTERS, DOWNSPOUTS AND MEMBRANE.
 - 1C PERFORM STRUCTURAL REPAIR AT THE INTERIOR OF ALL THREE FLOOR LEVELS OF THE BELL TOWER INCLUDING NEW WOOD FRAMING AND MASONRY REPAIR.
 - 1D DISASSEMBLE AND REBUILD APPROX. 50 SQUARE FEET OF DAMAGED MASONRY AT CHURCH. MATCH EXISTING ORNAMENTAL CORBELLING PATTERN.
 - 1E REMOVE SEVERELY DAMAGED BRICK AND TOOTH IN RESTORATION BRICK.



1 PARISH HOUSE - WEST ELEVATION
 A-3 1/4" = 1'-0"
 (REAR - FACES PARKING LOT)

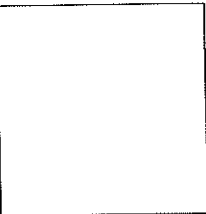


REPAIR DETERIORATED WOOD
SUPPORT
REPAIR MASONRY

- PRIORITY ONE - RECOMMENDED TREATMENTS
- 1A RE-GRADE THE COURTYARD TO CREATE POSITIVE DRAINAGE AWAY FROM THE BUILDINGS.
 - 1B REPLACE ENTIRE ROOF SYSTEM AT CHURCH INCLUDING METAL FLASHINGS, SHINGLES, GUTTERS, DOWNSPOUTS AND MEMBRANE.
 - 1C PERFORM STRUCTURAL REPAIR AT THE INTERIOR OF ALL THREE FLOOR LEVELS OF THE BELL TOWER INCLUDING NEW WOOD FRAMING AND MASONRY REPAIR.
 - 1D DISASSEMBLE AND REBUILD APPROX. 50 SQUARE FEET OF DAMAGED MASONRY AT CHURCH. MATCH EXISTING ORNAMENTAL CORBELLING PATTERN.
 - 1E REMOVE SEVERELY DAMAGED BRICK AND TOOTH IN RESTORATION BRICK.



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Exterior Conditions Assessment & Treatment Plan
32 Thomas Street, LLC
 32 Thomas Street
 Portland, Maine

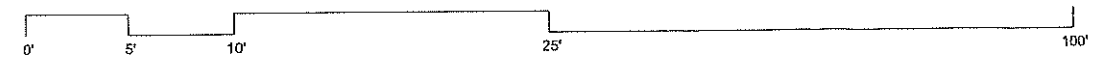
Date: 17 April 2012
 Scale: As Shown
 Revisions:





Title:
 Parish House
 South Elevation

Sheet No: **A-4**

1 PARISH HOUSE - SOUTH ELEVATION
 A-4 1/4" = 1'-0"

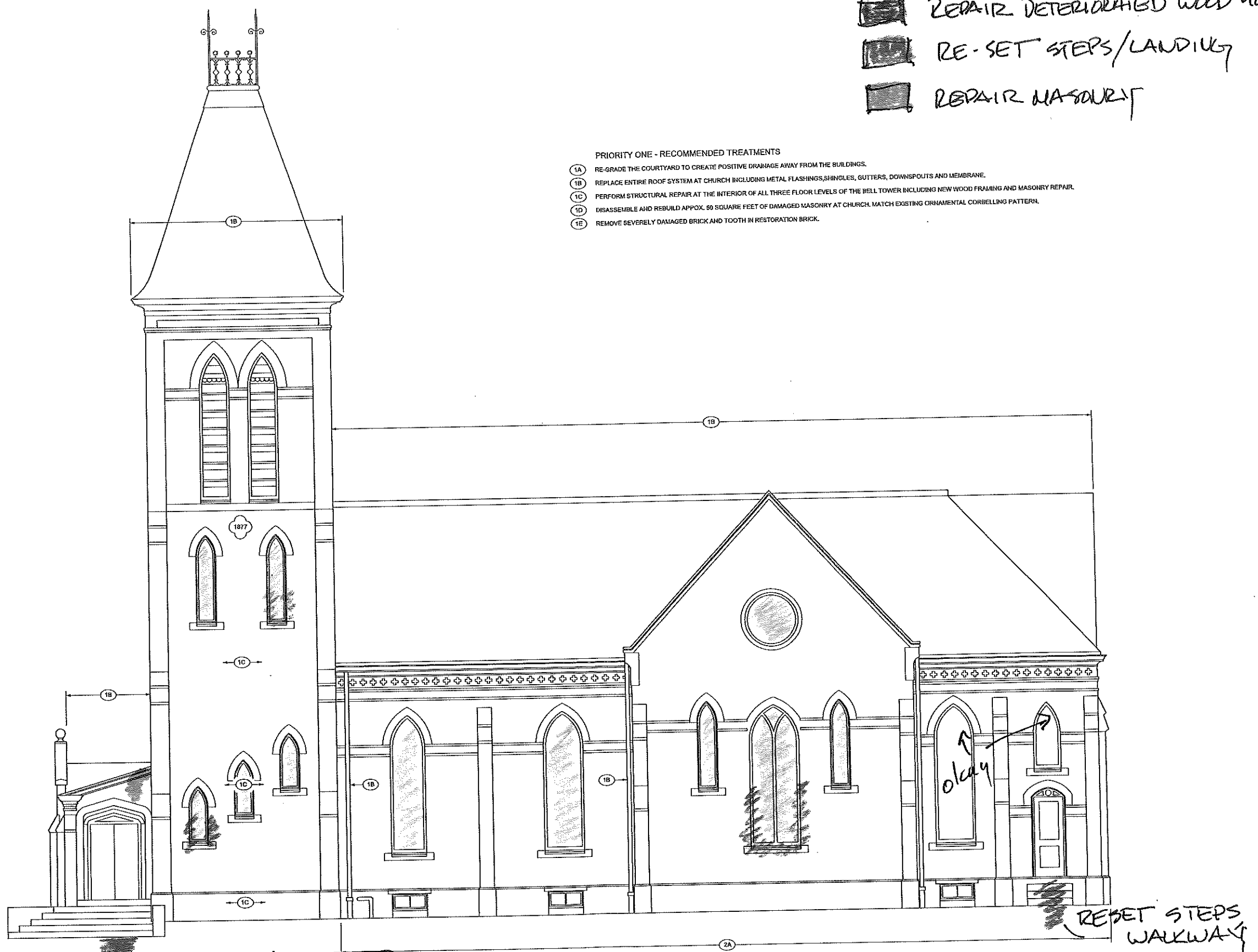
(FACES ABUTTING RESIDENCE)



-  INSTALL NEW STORM
-  REPAIR DETERIORATED WOOD MOLDING
-  RE-SET STEPS/LANDING
-  REPAIR MASONRY

tfl-architects, llc
 28 DANFORTH STREET
 SUITE 213
 PORTLAND, MAINE 04101
 TEL. 207.761.9662
 FAX. 207.761.9699

- PRIORITY ONE - RECOMMENDED TREATMENTS
- 1A RE-GRADE THE COURTYARD TO CREATE POSITIVE DRAINAGE AWAY FROM THE BUILDINGS.
 - 1B REPLACE ENTIRE ROOF SYSTEM AT CHURCH INCLUDING METAL FLASHINGS, SHINGLES, GUTTERS, DOWNSPOUTS AND MEMBRANE.
 - 1C PERFORM STRUCTURAL REPAIR AT THE INTERIOR OF ALL THREE FLOOR LEVELS OF THE BELL TOWER INCLUDING NEW WOOD FRAMING AND MASONRY REPAIR.
 - 1D DISASSEMBLE AND REBUILD APPROX. 90 SQUARE FEET OF DAMAGED MASONRY AT CHURCH. MATCH EXISTING ORNAMENTAL CORSELLING PATTERN.
 - 1E REMOVE SEVERELY DAMAGED BRICK AND TOOTH IN RESTORATION BRICK.



Exterior Conditions Assessment & Treatment Plan
 32 Thomas Street, LLC
 32 Thomas Street
 Portland, Maine





Date: 17 April 2012
 Scale: As Shown
 Revisions:

Title:
 Sanctuary
 North Elevation

Sheet No: A-6

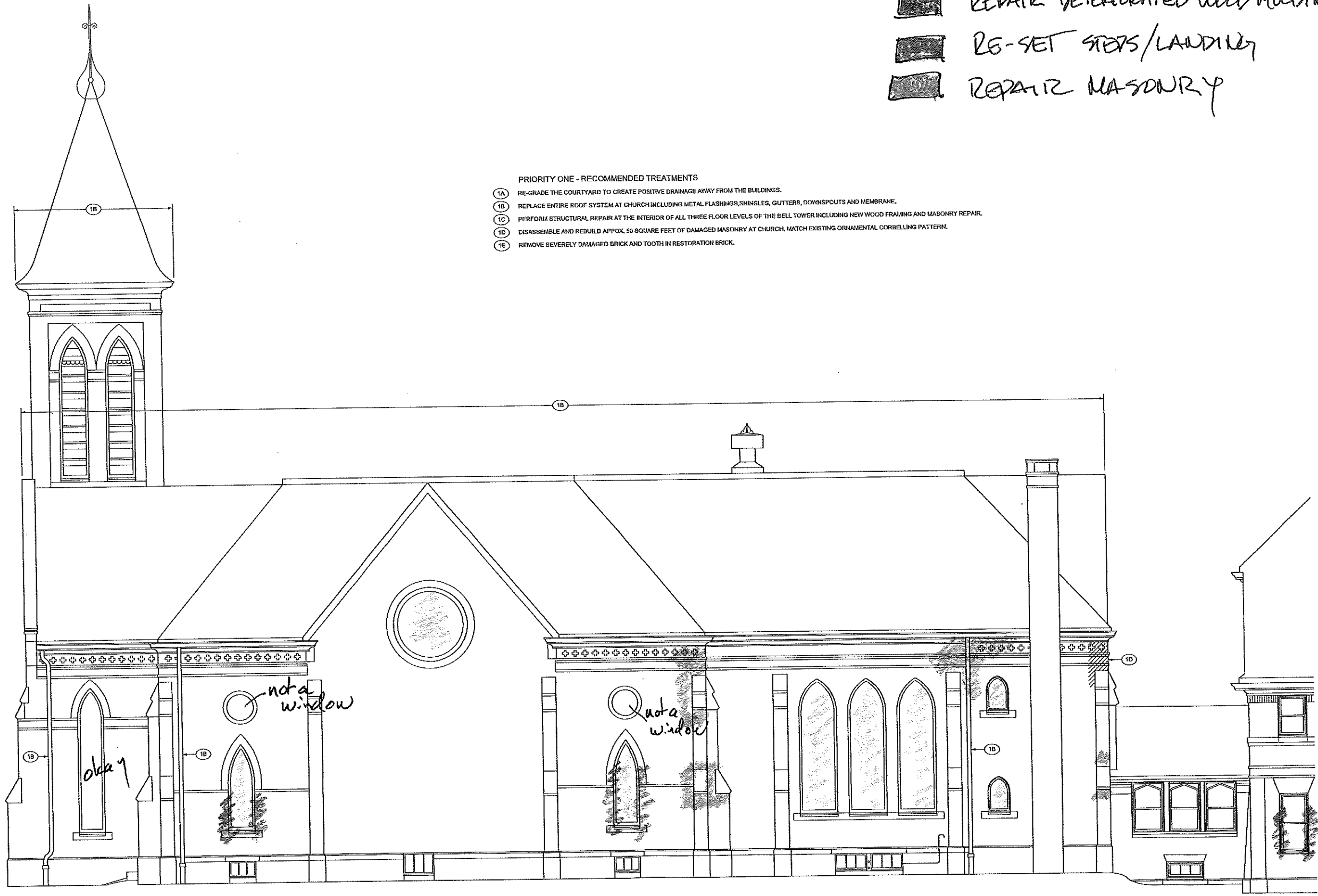
1 SANCTUARY - NORTH ELEVATION
 A-6 1/4" = 1'-0"
 (FACES CARROLL)



-  INSTALL NEW STORM
-  REPAIR DETERIORATED WOOD HOLDINGS
-  RE-SET STEPS/LANDING
-  REPAIR MASONRY

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- PRIORITY ONE - RECOMMENDED TREATMENTS
- 1A RE-GRADE THE COURTYARD TO CREATE POSITIVE DRAINAGE AWAY FROM THE BUILDINGS.
 - 1B REPLACE ENTIRE ROOF SYSTEM AT CHURCH INCLUDING METAL FLASHINGS, SHINGLES, GUTTERS, DOWNSPOUTS AND MEMBRANE.
 - 1C PERFORM STRUCTURAL REPAIR AT THE INTERIOR OF ALL THREE FLOOR LEVELS OF THE BELL TOWER INCLUDING NEW WOOD FRAMING AND MASONRY REPAIR.
 - 1D DISASSEMBLE AND REBUILD APPROX. 50 SQUARE FEET OF DAMAGED MASONRY AT CHURCH, MATCH EXISTING ORNAMENTAL CORBELLED PATTERN.
 - 1E REMOVE SEVERELY DAMAGED BRICK AND TOOTH IN RESTORATION BRICK.



Exterior Conditions Assessment & Treatment Plan
32 Thomas Street, LLC
 32 Thomas Street
 Portland, Maine





Date: 17 April 2012
 Scale: As Shown
 Revisions:

Title:
 Sanctuary
 West Elevation
 Sheet No: **A-7**

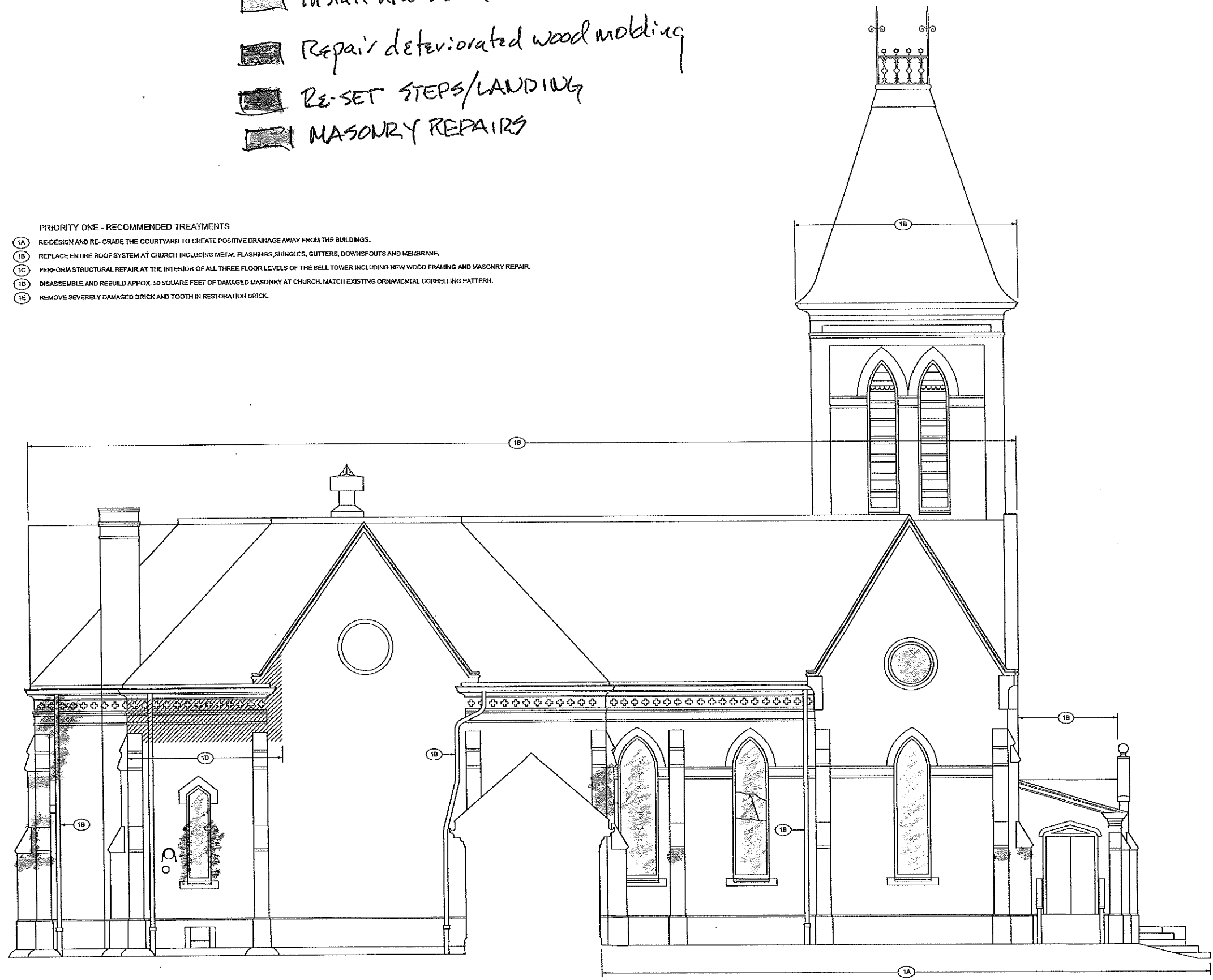
1 SANCTUARY - WEST ELEVATION
 A-7 1/4" = 1'-0"

(READ-FACES PARKING LOT)

7.C.11

-  Install new storm
-  Repair deteriorated wood molding
-  Re-SET STEPS/LANDING
-  MASONRY REPAIRS

- PRIORITY ONE - RECOMMENDED TREATMENTS**
- 1A RE-DESIGN AND RE-GRADE THE COURTYARD TO CREATE POSITIVE DRAINAGE AWAY FROM THE BUILDINGS.
 - 1B REPLACE ENTIRE ROOF SYSTEM AT CHURCH INCLUDING METAL FLASHINGS, SHINGLES, GUTTERS, DOWNSPOUTS AND MEMBRANE.
 - 1C PERFORM STRUCTURAL REPAIR AT THE INTERIOR OF ALL THREE FLOOR LEVELS OF THE BELL TOWER INCLUDING NEW WOOD FRAMING AND MASONRY REPAIR.
 - 1D DISASSEMBLE AND REBUILD APPROX. 50 SQUARE FEET OF DAMAGED MASONRY AT CHURCH. MATCH EXISTING ORNAMENTAL CORBELLING PATTERN.
 - 1E REMOVE SEVERELY DAMAGED BRICK AND TOOTH IN RESTORATION BRICK.



1 SANCTUARY - SOUTH ELEVATION
 A-8 1/4" = 1'-0"
 (FACES COURTYARD)

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Date: 17 April 2012
 Scale: As Shown
 Revisions:

Title:
 Sanctuary
 South Elevation

Sheet No: A-8