

Order 214-11/12

Given first reading on 6/4/12

Passage as amended: 6-3 (Coyne, Anton, Leeman) 6-18-12

MICHAEL F. BRENNAN (MAYOR)  
KEVIN J. DONOGHUE (1)  
DAVID A. MARSHALL (2)  
EDWARD J. SUSLOVIC (3)  
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND**  
**IN THE CITY COUNCIL**

JOHN R. COYNE (5)  
JOHN M. ANTON (A/L)  
JILL C. DUSON (A/L)  
NICHOLAS M. MAVODONES (A/L)

**AMENDMENT TO CITY CODE**  
**SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)**  
**RE: Conditional Zoning Agreement**  
**Williston-West Church**

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

**CONDITIONAL 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.

**W I T N E S S E T H**

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 opposite 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 sanctuary and the parish hall are important, unique, large-scale, non-residential historic structures that were designed by noted architects Francis Fassett and John Calvin Stevens respectively; and

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

WHEREAS, the standards of review for alterations of historic structures set forth in Portland City Land Use Code (the "Code") §14-650 include the following: (a) Every reasonable effort shall be made to provide a compatible use for a property which requires minimal alteration to the character-defining features of the structure, object or site and its environment or to use a property for its originally intended purpose; and (b) The distinguishing original qualities or character of a structure, object or site and its environment shall not be destroyed. The removal or alteration of any historic material or distinctive architectural features should be avoided when possible.

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 may enable economically viable rehabilitation and productive use of such buildings for their long term preservation; and

WHEREAS, the City's comprehensive plan includes the following stated goals: to preserve Portland's architectural and historic heritage; to promote an economic climate which increases job opportunities and overall economic well-being; and to preserve and enhance the quality and vitality of neighborhoods within and adjacent to the Downtown; and

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

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, preserve and maintain 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 structures 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 will facilitate funding the comprehensive rehabilitation and long-term maintenance of the historic structures; 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

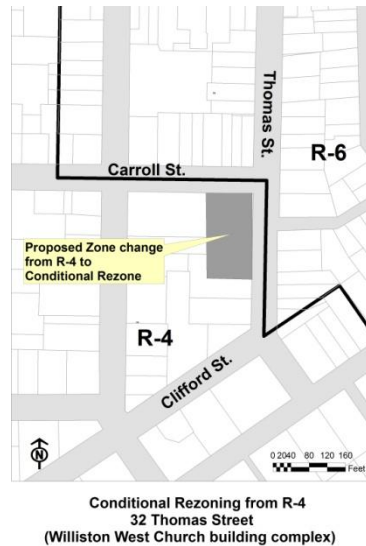
WHEREAS, the Planning Board, after notice and hearing and due deliberation thereon, recommended the rezoning of the Property as aforesaid, subject, however, to certain conditions contained in this AGREEMENT; and

WHEREAS, the Portland City Council, pursuant to 30-A M.R.S.A. § 4352(8) and §§ 14-60 to 14-62 of the Code, 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");

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.
- 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 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:

- 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.

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.
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. Rehabilitation shall commence within six (6) months of [date of enactment] and shall be completed within twenty-four (24) months of [date of enactment]. Any rehabilitation improvements required by this AGREEMENT not completed 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 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 Planning Authority 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.
7. If any required approval, including the City Council's approval of this AGREEMENT, 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. For a period of five (5) years from [date of enactment], Developer shall submit an annual report to the Planning Authority which shall include the number of employees working at the premises, the location and number of secured off street parking spaces, and other items pertaining to compliance with provisions of this AGREEMENT as required by the Planning Authority. Thereafter, to the extent the Planning Authority requires additional information/report(s) the Developer shall provide the Authority with any such additional information/report(s).

10. The Developer shall replace and/or repair the sidewalk and all other public property surrounding the entire Property if said sidewalk or other public property is damaged as a result of construction on the Property including, but not limited to, construction of the residential and office uses described in this AGREEMENT.

11. Under no circumstances shall the Developer be permitted to convert any residential property in the R-4 zone to an institutional use.

1240. In the event of a breach by the Developer or its successors or assigns of the 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 review the circumstances of the breach and recommend to the City Council that this AGREEMENT be amended or be rescinded and determine that such rescission should 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.

1344. This AGREEMENT may also 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.

1442. 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.

1543. 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.

1644. 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.

1745. Except as expressly modified herein, the development shall be governed by and comply with the provisions of the Portland City Code, including but not limited to, the maintenance requirements for historic structures set forth in section 14-690 of the Code, and any applicable amendments thereto or replacement thereof.

**[Signatures to Follow on Next Page]**

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