

Order 101-14/15

Passage: 9-0 on 12/15/2014

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

**CITY OF PORTLAND
IN THE CITY COUNCIL**

Effective 1/14/2015

DAVID H. BRENERMAN (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING TEXT AND MAP AMENDMENT)
RE: FIRST AMENDMENT TO THE
CONDITIONAL REZONING AGREEMENT
FOR PROPERTY IN THE VICINITY OF
ST. LAWRENCE ARTS/CONGRESS STREET**

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.

**AMENDMENT TO CITY CODE
SEC. 14-49 (ZONING MAP AMENDMENT)
RE: FIRST AMENDMENT TO THE CONDITIONAL REZONING FOR
PROPERTY
IN VICINITY OF ST. LAWRENCE ARTS ~~CENTER~~/CONGRESS STREET**

ORDERED, that the Zoning Map of the City of Portland, dated December 2000 as amended and on file in the Department of Planning & Development, and incorporated by reference into the Zoning Ordinance by Sec. 14-49 of the Portland City Code, which was amended by a Conditional Zone Agreement dated November 4, 2010 and recorded in the Cumberland County Registry of Deeds in Book 28250, Page 201, is hereby further amended to reflect an amended conditional rezoning as detailed below:

**AMENDED CONDITIONAL ZONE AGREEMENT
RE:
ST. LAWRENCE CHURCH**

AGREEMENT made this ____ day of _____, 201~~40~~ by Friends of the St. Lawrence Church, 76 Congress Street, Portland, Maine (“Developer”), and its successors and assigns.

WITNESSETH

WHEREAS, the Developer owns land located at 76 Congress Street, and more particularly described in a deed from Deirdre E. Nice dated September 12, 1997 and recorded in the Cumberland County Registry of Deeds in Book 13333, Page 9 (the “Property”); and

WHEREAS, the existing building and a previously dismantled portion of the building -located on the Property were formerly used as the St. Lawrence Congregational Church until 1986; and

WHEREAS, in 1996, the St. Lawrence Arts Center was founded; and

WHEREAS, in 2001, the building located on the Property had two principal portions, the sanctuary and the parish hall; and

WHEREAS, in 2001, the parish hall portion of the building was renovated to house a one hundred and ten (110) seat theater, green room, art studio workshops and staff offices; and

WHEREAS, in 2008, the sanctuary portion of the building was dismantled due to structural failure; and

WHEREAS, a conditional rezoning was approved in 2010 which was based upon a reconstruction of the dismantled sanctuary, but that reconstruction proved to be economically infeasible, so the Developer is seeking an amendment to the 2010 conditional rezoning which retains the same programmatic functions as proposed and approved in 2010 but contains them in a new rather than a reconstructed structure; and

WHEREAS, the Developer, as in 2010, proposes and intends to renovate the parish hall theater in order to increase its seating capacity to one hundred and twenty (120) seats substantially in accordance with the plans submitted as Exhibit A attached hereto; and

WHEREAS, the Developer proposes and intends to ~~reconstruct~~ a performance arts hall on the site of the former sanctuary to provide a full basement for “back of house” green rooms, ADA toilets and storage; a lobby that serves both the auditorium and theater space, a top floor “promenade room”/additional lobby, and a new four hundred and one(40~~10~~) seat auditorium substantially in accordance with the plans submitted as Exhibit A attached hereto; and

WHEREAS, the Developer proposes and intends to develop the building on the Property as an energy efficient ~~and LEED-certified~~ facility; and

WHEREAS, the Developer intends to maintain the character of the original parish house, and construct a new structure which will respect the character-defining features of the historic ~~and~~ Property and complement the adjacent residential neighborhood; and

WHEREAS, the ~~existing underlying~~ zoning is R-6 which has dimensional requirements that the existing structure on the site does not meet; and

WHEREAS, the Developer has requested an amended rezoning of the Property in order to permit the proposed development of the Property; and

WHEREAS, the proposed community hall use of the Property is consistent with the Comprehensive Plan and existing and permitted uses in the underlying zone and neighborhood, which include a mix of residential, commercial and institutional uses including churches places of assembly, schools, the Portland Observatory Museum and the Portland Company Marine Complex; and

WHEREAS, the City's Comprehensive Plan calls for strengthening neighborhood identity through cultural programming and creating connections between neighborhoods and the Arts District; and

WHEREAS, the City's Comprehensive Plan calls for the preservation of the Downtown's Portland's unique identity and historic fabric through the re-use of existing structures and the development of new construction that is respectful of the built and natural surroundings; and

WHEREAS, the City's Comprehensive Plan promotes the enhancement of Portland's cultural community and creative economy through retaining and encouraging arts and cultural organizations and retaining and expanding performance and exhibition space, studio space and office/support space for artists, institutions and organizations; 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

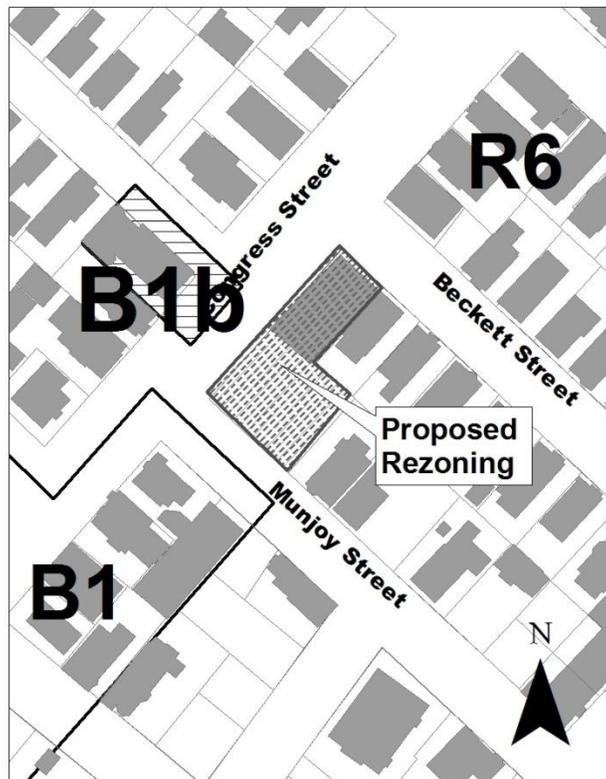
WHEREAS, the Portland City Council, pursuant to 30-A M.R.S.A. § 4352(8) and Portland City Land Use Code (the "Code") §§ 14-60 to 14-62, after notice, hearing and due deliberation thereon, has determined that because of the unusual nature and unique location of the proposed development, and its minimal impact on and compatibility with the surrounding community, it is necessary and appropriate to recommend the amended 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 _____, 20140 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-6, subject to the conditions contained below.

Image 1: Proposed Rezoning



Prepared by Department of Planning and Development based on GIS Workgroup Data

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 first amendment to the conditional rezoning shall become null and void and the zoning of the Property shall revert to the pre-existing R-6 zone or the equivalent zone in effect at the time of reversion.

2. Notwithstanding section 14-137(b)(6)(e)(i), the use of the Property shall be considered and be operated as a place of assembly/community hall.

3. The underlying dimensional requirements of the R-6 zone shall apply and are modified as follows:

- a. Minimum lot Size: 10,500 square feet.
- b. Minimum Yard Dimensions:
 - 1. Front yard: 0 feet.
 - 2. Rear Yard: 0 feet.
 - 3. Side Yard on Side Streets: 0 feet.
- c. Maximum Lot Coverage: ~~90~~5%.
- d. Maximum Tower Height: ~~90 feet~~ NA.
- e. Maximum Sanctuary Structure Height: ~~54~~65 feet.
- f. Open Space Ratio: 0%.

g. Minimum Lot Width: 50 feet

h. The following plans and documents are attached hereto and incorporated into this agreement by reference. The Property will be developed substantially in accordance with these plans and documents, provided, however, that the development of the Property shall be subject to site plan review by the Planning Board and to review by the Historic Preservation Board. Any site plan or historic preservation review applications shall fully comply with the application requirements in the City's Land Use Code. The Planning Board and Historic Preservation Board may require modifications to these documents during their review: subject to such subsequent modifications as may be required by the Planning Board during site plan review and by the Historic Preservation Board during its review and approval: Site Plan A0.01 dated October 15, 2014, Floor Plans A1.00 through A1.04 dated January 16, 2014, and Elevations A2.00 through A2.03, dated September 10, 2014, St. Lawrence Arts Addition for Friends of the St. Lawrence Church by Archetype Architects..

4. The proposed theater in the parish hall shall have no more than one hundred and twenty (120) seats, and the proposed auditorium ~~on~~ in the ~~former~~ former sanctuary site shall have no more than four hundred and ~~forty~~ fiveone (4015) seats. The Developer and its successors and assigns shall not be permitted to hold separate audience events in the parish hall and the sanctuary auditorium at the same time. The Developer shall be permitted to hold a separate event in the Promenade Room when another concurrent event is being held in the parish hall or the sanctuary auditorium. This does not preclude the Developer from using the parish hall, the Promenade Room and/or the

sanctuary auditorium for one (1) single event with the total number of attendees of said event not to exceed four hundred and eighty five (485) people. Under no circumstances may more than 485 attendees of any single event or combination of events be present on the Property at the same time.

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

6. Prior to the issuance of a Certificate of Occupancy, the Developer shall install, according to City specifications, new brick sidewalk ~~a~~ along the Munjoy Street, Beckett Street and Congress Street property frontages and shall reset, as necessary, the existing pink granite curbing. If, at the time of site plan review, the Public Services Department determines that the curbing is in poor condition, the applicant shall replace it, as necessary.

7. Prior to the issuance of a Certificate of Occupancy, the Developer shall provide two (2) trees along each of the Munjoy Street, Beckett Street and Congress Street property frontages. If healthy street trees are already in place along any of these frontages, they may be counted towards this requirement. The size and type of trees to be planted shall be approved by the Portland City Arborist or their designee. If, due to site constraints, the Developer is unable to provide the two (2) required trees per street frontage, they shall contribute \$200.00 per tree or, if the required contribution is greater at the time of the application, that amount, to the City of Portland's Tree Fund. This contribution, if necessary, is independent of any conditions which the Planning Board may lawfully require under site plan review. The Planning Board shall not be authorized, however, to waive this requirement.

8. Prior to the issuance of a Certificate of Occupancy, the Developer shall, at its own expense, install a minimum of two (2) municipal street lights along the Congress Street frontage of the property that meet the specifications and color designated for the Downtown Lighting District, as detailed in the Municipal Street Lighting Standards of the City of Portland Technical Manual, or of a type as may be specified by the City Lighting Plan at the time of the application or by the Planning Division.

~~9. Prior to the issuance of a Certificate of Occupancy, the Developer shall construct any remaining sidewalk connections and sidewalk ramps meeting City technical standards at the intersection of Congress Street and Eastern Promenade on both sides of the street and at the intersection of Moody Street and Eastern Promenade on both sides of the street, unless these improvements are already in place at the time of the application. This may include walkway connections to the Cutter Street parking lots as described in the Eastern Promenade Master Plan (2004).~~

9. Prior to the issuance of a Certificate of Occupancy, the developer shall install any remaining crosswalks, ADA-compliant sidewalk ramps, and other pedestrian improvements meeting City technical standards at the intersections of Congress Street

and Beckett Street or Howard Street and Congress Street and Munjoy Street, unless these improvements are already in place at the time of application.

10 The Developer shall submit a transportation demand management (“TDM”) plan during site plan and conditional use review 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 Review (the terms of the attached TDM are incorporated by reference herein). The requirement of TDM plan shall supersede any and all parking requirements under the Land Use Code for the Property. During the site plan review process, the Planning Board shall provide a communication to the City Council that may include recommendations, if the Board deems it necessary, for additional on-street parking regulations in the vicinity of the project site. These may include but shall not be limited to two (2) hour parking limits and/or a residential parking program.

The TDM plan shall include provisions for the contribution of \$70,000 annually to the city’s Sustainable Transportation Fund, with the initial contribution due at the time of Certificate of Occupancy. This funding shall be designated at the city’s sole discretion consistent with the provisions of Section 14-346.2 for improvements intended to enhance transportation choice, promote transit, and/or promote non-automotive transportation to and from Munjoy Hill, and shall initially be used for improvements to Greater Portland Transit District’s #1 Line, which serves Congress Street and Munjoy Hill. If, following monitoring of the TDM plan, the Planning Board or Planning Authority deem other transportation demand management strategies to be more effective in meeting the benchmarks of the TDM plan, the Planning Board or Planning Authority may recommend redesignation of those funds toward such strategies.

The TDM plan shall include monitoring provisions to periodically review the efficacy of the plan over time. The efficacy of the TDM plan shall be reviewed by the TDM plan administrator within three (3) months from the issuance of the certificate of occupancy. The results shall be promptly provided to the City for evaluation upon completion of the review. From that time forward, the TDM plan administrator shall review the TDM plan and report results to the City for evaluation ~~on, at a minimum, an annual basis or in~~ accordance with the TDM monitoring schedule outlined in the TDM plan. Changes to the TDM plan as a product of monitoring shall be reviewed and approved by the Planning Authority.

If at the time of review (and/or at any time thereafter) the City and/or the Developer has received ~~any five (5) or more~~ complaints within a one (1) year period about traffic/parking generated by the use of the facility, the Developer shall report that information to will be required to institute a review process, working in concert with the Planning Authority as part of the annual review process, in accordance with ~~sub-paragraph F of~~ the attached TDM plan.

11. The Developer shall be responsible for ensuring that tour buses, vans and trucks affiliated with performances and events at the Property unload and then relocate to a remote, off street parking location away from the venue for the duration of the event.

12. The provisions of this Agreement are intended to replace and/or supersede the requirements of the underlying R-6 zone and the requirements of the 2010 conditional rezoning. As stated above, to the extent not otherwise altered herein, the zoning requirements for the R-6 zone shall otherwise apply to the Property.

13. In the event of a breach by the Developer or its successors or assigns of the zoning provisions and conditions contained herein (whether the Zoning Administrator, the Planning Authority, 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 Amended Agreement and a reversion of the Property to the underlying R-6 zone requirements ~~in place before the execution of this Agreement or~~ its equivalent in effect at the time of the reversion.

14. 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.

15. This amended conditional rezoning shall become null and void and the Property shall revert to the pre-existing R-6 zone or its equivalent in effect at the time of the reversion in the event that the Developer fails to commence construction within ten (10) years from the date of the Council approval of this amended rezoning agreement. This ten (10) year period 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 aforementioned ten (10) year period; or
- b. Any other event beyond the control of the Developer has occurred which will delay the closing on some or all of the parcels and Developer has notified the City of such event.

If any required approval, including the Council's approval of this amended conditional rezoning, has been appealed, then this rezoning shall become null and void and shall revert to the underlying R-6 zoning or its equivalent in effect at the time of the reversion if the Developer fails to commence construction within one (1) year from the final disposition of such appeal or the above mentioned ten (10) year period, whichever occurs last.

16. This amended 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: _____

FRIENDS OF THE ST. LAWRENCE CHURCH

_____ BY: _____

STATE OF MAINE
CUMBERLAND, ss.
20104

_____;

Personally appeared before me the above-named _____, in his/her capacity as _____ of FRIENDS OF THE ST. LAWRENCE CHURCH, 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