

Order 191-20/21
Passage: 9-0 on 4/12/2021

Effective 5/12/2021

KATE SNYDER (MAYOR)
BELINDA S. RAY (1)
SPENCER R. THIBODEAU (2)
TAE Y. CHONG (3)
ANDREW ZARRO (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

MARK DION (5)
APRIL D. FOURNIER(A/L)
PIOUS ALI (A/L)
NICHOLAS M. MAVODONES, JR (A/L)

**AMENDMENT TO CITY CODE CHAPTER 14
SEC. 5.2 (ZONING MAP AMENDMENT)
AND TO C-61 CONDITIONAL ZONE AGREEMENT
RE: 32 THOMAS 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 Chapter 14, Sec. 5.2 of the Portland City Code, is hereby amended to reflect a conditional rezoning as detailed below.

**AMENDED AND RESTATED
CONDITIONAL ZONE AGREEMENT
RE: 32 THOMAS STREET**

THIS AMENDED AND RESTATED CONDITIONAL ZONE AGREEMENT is made this _____ day of _____, 2021 by 32 Thomas Street, LLC, a Maine limited liability company, having an address of _____, Portland, Maine (“Developer”), and its successors and assigns. This Amended and Restated Conditional Zone Agreement (“Agreement”) amends and replaces in its entirety an existing Conditional Zone Agreement dated July 13, 2012, and recorded in the Cumberland County Registry of Deeds, Book 29784, Page 123 (the “Original CZA”).

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

WHEREAS, the Property, located within the West End Historic District, is currently zoned R-4 Residential; 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 17 of the Portland City Code and the Parish house is a contributing structure within the West End Historic District under Article 17; and

WHEREAS, the former sanctuary and the former parish hall are important large-scale non-residential historic structures that were designed by noted architects Francis Fasset 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, 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 Property is currently improved with 5 residential units in the former parish hall, and Developer proposes to create up to an additional 6 units in the building complex and make other improvements and modifications as contemplated in this Agreement; and

WHEREAS to create this additional number of units the current R-4 zoning requirement of 3,000 square feet of land area per dwelling unit needs to be modified pursuant to and using this Agreement to 1,500 square feet per dwelling unit; and

WHEREAS, the Portland City Council previously re-zoned the Property pursuant to the “Original CZA” or C-61 by Order 214-11/12 approved on June 18, 2012; and

WHEREAS, the underlying R-4 zoning and the Original CZA have dimensional requirements that the existing building complex does not meet, but is lawfully nonconforming, and may require additional setback modifications to accommodate minor exterior modifications; and

WHEREAS, the Developer has requested a rezoning in the form of an Amended and Restated Conditional Zone Agreement for the Property in order to permit the proposed residential development of the Property which will facilitate funding the comprehensive rehabilitation and long-term maintenance of the historic structures; and

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

WHEREAS, the City, by and through the Portland City Council, pursuant to 30-A M.R.S.A. § 4352(8) and §§5.3-4 of the Code, after notice, hearing and due deliberation thereon, has determined that because of the unique and historical nature of the Property, the proposed development:

- Contributes a desirable, unique type of housing to the peninsula stock;
- Promotes sustainability by allowing for rehabilitation of an existing historic building to provide new housing development consistent with the medium and high density urban residential development pattern typically found on the peninsula;
- Makes improvements to below-grade infrastructure, including parking, to accommodate new growth;
- Accommodates well-designed density, which is integral to healthy, walkable city neighborhoods; and therefore it is necessary and appropriate to impose, by agreement, the conditions and restrictions set forth herein, in order to insure that said rezoning is consistent with the City's comprehensive land use plan; and

WHEREAS, the Portland City Council has on April 12, 2021 approved this Agreement in its entirety, by City Council Order 191-20/21, a true copy of which is attached hereto as an 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 §1.2 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 underlying R-4 zone, but shall remain subject to and with the benefit of the Original CZA.

2. Permitted uses:
 - a. All uses allowed in the R-4 Zone, as adjusted, modified or limited herein.

- b. Modifications and limitations: The existing land area requirement of 3,000 square feet per dwelling unit shall be reduced for the Property to a minimum of
 - i. One thousand five hundred (1,500) square feet of land area per dwelling unit;
 - ii. On-site parking shall be required as specified in Article 19 (off-street parking) of the Land Use Code, for the combined uses of the site;
 - iii. The project shall be subject to Article 14 (site plan) of the Land Use Code for site plan review and approval and the following additional standards:
 - 1. Any addition or exterior alterations such as façade materials, building form, and roof pitch shall be designed to be compatible with the architectural style of the existing structures;
 - 2. The scale and surface area of parking, driveways, car lifts, mechanical car parking systems, or car parking structures, and paved areas shall be arranged and landscaped to be compatible in size and scale with the neighboring properties in the area and where feasible to properly screen vehicles from adjacent properties and streets; and
 - 3. Pre-existing dimensions of the structure existing as of January 1, 1984 shall be considered conforming. Existing setbacks may be further reduced by up to three (3) feet, or 50%, whichever is less, to accommodate minor exterior modifications.
 - iv. Use of the former sanctuary as a community hall as set forth in § Table 6-A of the Code is prohibited;
 - v. No part of the Property shall be used as a bed and breakfast, hotel, treatment facility, congregate care facility, office, or commercial or business enterprise, excepting a home occupation as currently permitted in §Table 6-A.
3. Any increase in the volume or footprint of either the parish house or the sanctuary shall be prohibited, except as necessary to accommodate any improvements, such as ramps or stairs, required in order for the Property to comply with the American With Disabilities Act, Maine Human Rights Act, or similar laws, ordinances or regulations governing access for the disabled.
4. The provisions of this Agreement are intended to replace and/or supersede the associated provisions of the underlying R-4 zone and the Original CZA. As stated above, to the extent not otherwise altered or limited herein, the zoning requirements for the R-4 zone shall otherwise apply to the Property.

5. Under no circumstances shall the Developer be permitted to convert the residential dwellings as may be allowed by this Agreement to an institutional or business use.

6. This AGREEMENT may also be enforced pursuant to the land use enforcement provisions of state law including, but not limited to, 30-A M.R.S.A §4452 and the Portland City Code.

7. 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 or their 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.

8. 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.

9. Except as expressly modified herein, the Property shall be governed by and comply with the provisions of the Portland City Code, including but not limited to, the maintenance requirements of historic structures set forth in section Article 17 of the Code, and any applicable amendments thereto or replacement thereof.

WITNESS: _____

32 THOMAS STREET, LLC

BY:

STATE OF MAINE
CUMBERLAND, ss.

_____, 2021

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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