

Order 13-19/20

Passage: 7-0 (Batson and Costa absent) on 8/12/2019

Effective 9/11/2019

ETHAN K. STRIMLING (MAYOR)  
BELINDA S. RAY (1)  
SPENCER R. THIBODEAU (2)  
BRIAN E. BATSON (3)  
JUSTIN COSTA (4)

**CITY OF PORTLAND  
IN THE CITY COUNCIL**

KIMBERLY COOK (5)  
JILL C. DUSON (A/L)  
PIOUS ALI (A/L)  
NICHOLAS M. MAVODONES, JR (A/L)

**ORDER APPROVING THE SECOND AMENDMENT TO CONDITIONAL ZONING  
AGREEMENT C-55  
RE: LUTHER STREET PROPERTY ON PEAKS ISLAND**

**WHEREAS**, on July 19, 2010, by Order 273-09/10, the Portland City Council approved a Conditional Zoning Agreement governing certain property located on Luther Street on Peaks Island (the “CZA”); and

**WHEREAS**, the CZA was amended by the Portland City Council on January 5, 2011, by Order 118-10/11; and

**WHEREAS**, Home Start owns the land and an existing building located at 18 Luther Street, shown on City of Portland Tax Map 87, Block Z, Lot 17, and more particularly described in a deed recorded in the Cumberland County Registry of Deeds in Book 14020, Page 231 (the “Home Start Property”); and

**WHEREAS**, Volunteers of America Northern New England, Inc. owns the land and an existing buildings located at 22 Luther Street, shown on City of Portland Tax Map 87, Block Z, Lot 16, and 26 Luther Street, shown on City of Portland Tax Map 87, Block Z, Lot 15, and more particularly described in a deed recorded in the Cumberland County Registry of Deeds in Book 29781, Page 23 (the “Volunteers of America Property”); and

**WHEREAS**, the Home Start Property and the Volunteers of America Property are subject to the CZA, as amended, which limits the use of the three parcels to three (3) single family residential units; and

**WHEREAS**, each of the parcels subject to the CZA contain a single-family residential unit s; and

**WHEREAS**, Home Start and Volunteers of America both desire to add one accessory dwelling unit (“ADU”) to each of the buildings they each respectively own and which are subject to the CZA as amended, which ADUs which shall be leased as affordable to households earning one hundred and twenty percent (120%) or less of the U.S. Department of Housing and Urban Development Area Median Income for Cumberland County, Maine; and

**WHEREAS**, ADUs are consistent with the single family affordable residences in the area; and

**WHEREAS**, ADUs are a conditional use in the surrounding and underlying Island Residential Zone (IR-2) and are therefore consistent with the permitted uses in the area; and

**WHEREAS**, Home Start and Volunteers of America each agree to maintain the single-family appearance of their respective properties and complement the adjacent residential neighborhood; and

**WHEREAS**, the ADUs proposed by Home Start and Volunteers of America would provide needed affordable housing on Peaks Island and is consistent with the housing component of the Comprehensive Plan;

**WHEREAS**, on June 11, 2019, the Portland Planning Board recommended the approval of the amendment to the CZA in order to allow the addition of one ADU for each of the three (3) existing single-family residences subject to the CZA; and

**WHEREAS**, the City Council hereby finds and declares that said amendment to the CZA as amended is pursuant to and consistent with the City's Comprehensive Plan as well as with existing and permitted uses in the underlying zone;

**NOW THEREFORE, BE IT ORDAINED** by the City Council of the City of Portland, Maine, in the Council assembled, that the amendment to the CZA in substantially the form attached hereto is hereby approved.

## AMENDMENT TO CONDITIONAL ZONE

### AGREEMENT RE: C-55

THIS AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by Home Start, a 501(c)(3) non-profit corporation with a place of business in Portland, Maine (individually, "Home Start") and Volunteers of America Northern New England, a 501(c)(3) non-profit corporation with a place of business in Brunswick, Maine (individually, "Volunteers of America") (collectively, "Developers"), and their successors and assigns.

### WITNESSETH

WHEREAS, the Home Start owns land and an existing building located at 18 Luther Street, shown on City of Portland Tax Map 87, Block Z, Lot 17, and more particularly described as Parcel 1 in a deed recorded in the Cumberland County Registry of Deeds in Book 14020, Page 231 (the "Home Start Property"); and

WHEREAS, Volunteers of America owns the land and existing buildings located at 22 Luther Street, shown on City of Portland Tax Map 87, Block Z, Lot 16, and 26 Luther Street, shown on City of Portland Tax Map 87, Block Z, Lot 15, and more particularly described in a deed recorded in the Cumberland County Registry of Deeds in Book 29781, Page 23 (the "Volunteers of America Property"); and

WHEREAS, the Home Start Property and the Volunteers of America Property comprise the three parcels subject to an existing Conditional Zone Agreement, dated January 5, 2011, ("Existing CZA") which limits the use of the three parcels to three (3) single family residential units; and

WHEREAS, the existing building located on the Home Start Property is currently used to house one single family affordable residence and the two parcels comprising the Volunteers of America Property are currently used to house one single family residence on each parcel for a total of three (3) single family residential units subject to the CZA; and

WHEREAS, Home Start intends to add one (1) accessory dwelling unit ("ADU") to the Home Start Property and the Volunteers of America intend to add two (2) accessory dwelling units (one on each parcel of land comprising the Volunteers of America Property) (the "Proposed Developments"), each of which shall be leased as affordable to households earning one hundred and twenty percent (120%) or less of the U.S. Department of Housing and Urban Development (HUD) Area Median Income (AMI) for Cumberland County, Maine; and

WHEREAS, ADUs are a conditional use in the surrounding and underlying Island Residential Zone (IR-2); and

WHEREAS, the Developers intend and agree to maintain the single-family appearance of their respective properties and complement the adjacent residential neighborhood; and

WHEREAS, the Proposed Developments would provide needed affordable housing on Peaks Island and are consistent with the housing component of the Comprehensive Plan;

NOW, THEREFORE, in consideration of this Amendment, the Developers, individually, covenant and agree as follows:

1. Except as expressly modified herein, the requirements of the Existing CZA shall continue to apply and are modified to allow an addition of one (1) ADU on the Home Start Property and two (2) ADUs (one on each parcel) on the Volunteers of America Property.

2. The ADUs shall be a minimum of four hundred (400) square feet and subject to the applicable dimensional requirements of the Existing CZA, which are restated below:

- |                                     |               |
|-------------------------------------|---------------|
| a. Minimum Lot Area                 | 5,300 sq. ft. |
| b. Min. Street Frontage             | 49 ft         |
| c. Min. Front Yard Setback (Lot 17) | 1 ft          |
| d. Min. Rear Yard Setback           | 25 ft         |
| e. Min. Side Yard Setback (Lot 17)  | 6.5 ft        |
| f. Maximum Building Height          | 35 ft         |
| g. Min. Lot Width                   | 49 ft         |
| h. Maximum Lot Coverage             | 28% of Lot    |

3. The Developers or their respective designees agree to maintain the following affordability controls on their respective properties:

- a. The ADU shall be leased on an annual basis to households earning no more than 120% of the HUD AMI for Cumberland County, Maine.
- b. If the entire Property is sold, it shall be sold to a household earning no more than 120% of the HUD AMI for Cumberland County, Maine per the Existing CZA and the maximum sale price shall be calculated per the City of Portland's "Inclusionary Zoning Implementation Guidelines for Developers of Homeownership Housing" (the "Inclusionary Guidelines"). The potential rental income of the ADU shall not be included in determining the buyer's eligibility as a household earning 120% AMI or less, however, in calculating the maximum sale price per the Inclusionary Guidelines, the ADU shall be considered a 1-person household in addition to the 3-person household size of the existing 3-bedroom single family residence. In the event the Inclusionary Guidelines are no longer in effect at the time of sale, the maximum allowable purchase price shall be based on calculating the present value of a 30 year fixed rate mortgage with a 5% down payment, an interest rate based on the average national mortgage rate over the past thirteen years as determined by the Freddie Mac Primary Mortgage Market Survey, and a monthly mortgage payment based on 30% of the gross monthly income for a 4-person household earning 120% AMI minus other monthly housing expenses such as real estate taxes, mortgage

insurance, and insurance. Any future owner of the Property shall be required to rent the ADU on an annual basis to households earning no more than 120% AMI for Cumberland County, Maine per 3(a) above.

- c. The above affordability restrictions shall be stated in and secured by a Declaration of Affordable Housing Covenants and Restrictions for the Property, which shall be enforceable by Home Start and the City of Portland, or their designees and shall be recorded in the Cumberland County Registry of Deeds along with an original of this Agreement.

4. The Developers shall each maintain the single-family appearance of their respective Property and ensure that any ADUs constructed pursuant to this Agreement shall complement the adjacent residential neighborhood.

In the event of a breach by Home Start or Volunteers of America or their respective 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 IR-2 zone requirements in place before execution of this Agreement. However, any action by one owner shall not be determined to be a breach by the other of this Agreement. Home Start, its successors and assigns is responsible for compliance with the CZA, as amended in 2011 and by this Agreement, only with respect to the Home Start Property. Volunteers of America, its successors and assigns, is responsible for compliance with the CZA, as amended in 2011 and by this Agreement, only with respect to the Volunteers of America Property.

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

6. 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.

7. 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.

[SIGNATURES ON FOLLOWING PAGE]

WITNESS:

HOME START

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
By:  
Its:

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 2019

Personally appeared before me the above-named \_\_\_\_\_, in her capacity as President of Home Start, and acknowledged the foregoing instrument to be her free act and deed in her said capacity and the free act and deed of said corporation.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law

WITNESS:  
NORTHERN

VOLUNTEERS OF AMERICA  
NEW ENGLAND

\_\_\_\_\_  
Print Name:

\_\_\_\_\_  
By:  
Its:

STATE OF MAINE  
CUMBERLAND, ss.

\_\_\_\_\_, 2019

Personally appeared before me the above-named \_\_\_\_\_, in her/his capacity as \_\_\_\_\_ of Volunteers of America Northern New England, and acknowledged the foregoing instrument to be her/his free act and deed in her/his said capacity and the free act and deed of said corporation.

Before me,

\_\_\_\_\_  
Notary Public/Attorney at Law