

Section 20. ONE ALFRED ROAD CONTRACT ZONE

CONTRACT ZONING AGREEMENT
BETWEEN ONE ALFRED ROAD ASSOCIATES, L.L.C.
and THE TOWN OF KENNEBUNK

This Contract Agreement is made this 4th day of February, 2005 by and between the Town Of Kennebunk, a body corporate and politic located in the County of York and State of Maine (hereinafter the "Town") and One Alfred Road Associates, L.L.C., a Maine corporation located at 1293 Main St., Sanford, Maine.

WHEREAS, One Alfred Road Associates, L.L.C. is the owner of a parcel of real estate located at Alfred Road in Kennebunk, Maine which is shown on Tax Map 20, Lot 2 (hereinafter the "Property") and is shown on Exhibit A attached hereto and incorporated herewith.

WHEREAS, the Property is currently located in the Industrial Zone under the Kennebunk Zoning Ordinance.

WHEREAS, the property is improved with a structure and land that One Alfred Road Associates, L.L.C. and the Town wish to promote with multiple business uses as a Business Park to the exclusion or addition of those listed in the Industrial Zone.

WHEREAS, One Alfred Road Associates, L.L.C. has encountered difficulties in developing the Property because the uses allowed in the Industrial Zone prohibit such uses as business and professional offices, business services, daycare centers, and low volume retail sales.

WHEREAS, the existing building on the site would limit the number of industrial uses that could be created on the site.

WHEREAS, One Alfred Road Associates, L.L.C. and the Town believe that other appropriate uses compatible with the neighborhood are possible for the property, including a number of the uses which are allowed in the Suburban Commercial Zone or Business Park Zone.

WHEREAS, One Alfred Road Associates, L.L.C. and the Town wish to create a new zone to be known as the One Alfred Road Contract Zone which will permit some of the uses allowed in the Industrial Zone, the Suburban Commercial Zone and Business Park Zone to exist on the Property.

WHEREAS, the Town has the authority to enter into a contract re-zoning for the Property pursuant to 30-A M.R.S.A. §4352 and Article 13(2) of the Kennebunk Zoning Ordinance.

WHEREAS, after notice, public hearing and due deliberation on the re-zoning phase, the Kennebunk Planning Board recommended re-zoning of the Property.

The scale, compatibility of design and materials proposed for other site features, (i.e. signage, canopies, lighting, and landscaping).

Modifications to the Approved Site Plan that involve the deletion of buildings and their associated parking as shown on Exhibits C-1, C-2 or C-3 will not require Planning Board approval or amendment of this Contract Zoning Agreement. Any other changes to the design of the site or additions of buildings or other impervious surfaces not shown on Exhibits C-1, C-2 or C-3 will require Planning Board subdivision and/or site plan approval. In the event that a gas station with retail sales is added to the site, the Planning Board will, in addition, review such project under the design standards established in this Exhibit B. Any changes in use or changes in tenants that will result in an increase in traffic of one hundred (100) or more peak hour trips will require site plan review and approval by the Planning Board. Such other changes will not require an amendment to this Contract Zoning Agreement if they are for uses permitted under this Agreement and meet all applicable dimensional requirements.

The project shall be developed in accordance with the proposed uses shown on the Approved Site Plan except that other uses that are not similar to those shown on the Approved Site Plan may be permitted, on the condition that the Planning Board shall review and approve the requested change in use.

Loading docks are not permitted in areas other than as shown on the Approved Site Plan unless the Approved Site Plan is amended, reviewed, and approved by the Planning Board. No modifications will be allowed which would encroach into the 30 foot Green Perimeter Strip abutting residential properties on Alfred Road.

Impervious areas are not permitted within the buffer areas at Alewife Road and Alfred Road, except for pedestrian sidewalks oriented perpendicular to the buffer strips or as otherwise approved by the Planning Board during subdivision or site plan review.

F. Public Street Design Standards

Any public streets proposed as part of the One Alfred Road Business Park shall be designed to Collector Street Standards for Growth Areas, except that a sidewalk shall not be required and the maximum travel way may be 24 feet with curbing on one side of the street. In recognition of the intention to extend the dead end street proposed for public dedication at some date in the future, a temporary easement may be dedicated to the Town for the proposed turnaround area at the end of the proposed public street, which may be outside the right-of-way. The conveyance to the Town for the public street shall extend completely to the edge boundary of the property.

portions shall be deemed as separate, distinct and independent provisions and such determination shall not affect the validity of the remaining portions hereof.

- 9. Except as expressly modified herein, the use and occupancy of the Property shall be governed by and comply with the provisions of the Town of Kennebunk Zoning Ordinance.
- 10. The property under this Agreement received a certification of completion of a Voluntary Response Action Plan by the Commissioner of the Maine Department of Environmental Protection dated September 23, 2003 and recorded in the York County Registry of Deeds on September 25, 2003, Book 13512, Page 231.
- 11. If the applicant fails to begin construction in a substantial manner and in accordance with an approved plan within 5 years of the effective date of the rezoning, the Planning Board may initiate rezoning to the original zoning classification.
- 12. In the event that One Alfred Road Associates, L.L.C. or its successors or assigns fails to develop or operate the project in accordance with this Agreement or in the event of any other breach of any conditions set forth in this Agreement, the Board of Selectmen of the Town shall have the authority, after written notice to One Alfred Road Associates, L.L.C., and reasonable opportunity to cure, to terminate this Agreement or to recommend to the Town Meeting to re-zone the Property to Industrial or any successor zone. In the event of such a re-zoning, the Property shall then be used for only such uses or otherwise allowed by law. The Town shall also have the ability to enforce any breach of this Agreement or any other violation of the Zoning Ordinance through the provisions of 30-A M.R.S.A. § 4452.

NOW THEREFORE, this agreement is hereby made official by the signatures below:

TOWN OF KENNEBUNK

Donna Harmon
Witness

[Signature]
Barry Tibbets
Its Town Manager

ONE ALFRED ROAD ASSOCIATES, LLC

[Signature]
Witness

Thomas P. McDowell

Thomas P. McDowell
Print Name

Its Designated Member

STATE OF MAINE
YORK, ss.

Personally appeared the above-named Barry Tibbetts in his capacity as Town Manager for the Town of Kennebunk and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of the Town of Kennebunk.

Before me,

Ethelyn S. Martha
Notary Public/Attorney at Law
Printed Name ETHELYN S. MARTHA
Commission Expires: MY COMMISSION EXPIRES MARCH 25, 2006
NOTARY PUBLIC, MAINE

Personally appeared the above-named Thomas P. McDowell as member for One Alfred Road Associates, 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 One Alfred Road Associates, LLC.

Before me,

Wendy S. Stiles
Notary Public/Attorney at Law
Printed Name Wendy S. Stiles
Commission Expires: October 5, 2011

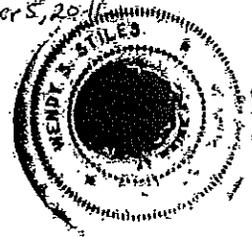


EXHIBIT A

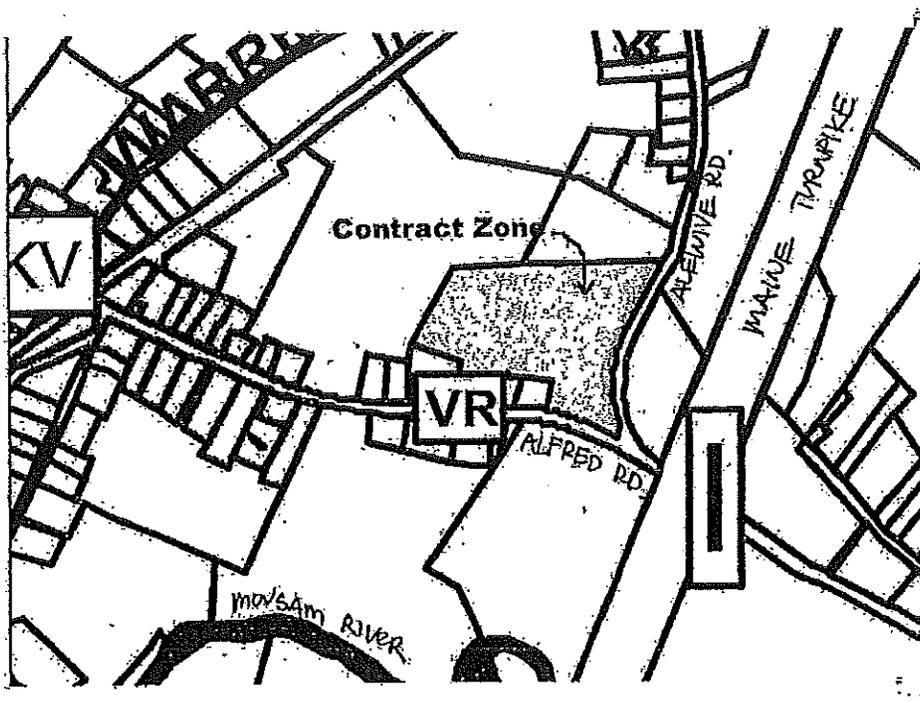


EXHIBIT B
ONE ALFRED ROAD ASSOCIATES, L.L.C.
CONTRACT ZONING AGREEMENT

A. Purpose

To create a new zone to be known as the One Alfred Road Contract Zone which will permit some of the uses allowed in the Industrial Zone, the Suburban Commercial Zone and Business Park Zone to exist on the Property.

All references within Exhibit B pertaining to permitted land uses, definitions, space and bulk standards, Planning Board Review, street standards and other language refer to the Town of Kennebunk Zoning Ordinance.

B. Permitted Land Uses

Accessory Buildings and Uses; Auto Repair Garages; Banks; Boat Building; Business and Professional Offices; Business Services; Commercial Schools; Day Care Centers; Bating Places, provided that no service is furnished directly to customers in their motor vehicles; Essential Services; Gas Stations with Retail Sales space not to exceed 10,000 square feet, not subject to "Low Volume Retail"; Health Service Facilities; Hotels and Motels; Inns; Manufacturing; Marine Sales and Service; Municipal Uses; Personal Services; Public and Private Schools; Public Utilities; Fully enclosed places of Recreation; Rental of Equipment; Research and Development; Retail Sales, provided that any retail use which exceeds 2,000 square feet shall meet the definition of "Low Volume Retail" (See Definition of Retail Sales); Studios of Artisans; Telecommunications Facilities, as long as any tower or antenna is no taller than 125 feet; Testing Facilities; Tradesmen's Shops; Veterinary Clinics; Warehouses; and Wholesale Sales.

C. Standards

(1) Space and Bulk Standards

The following space and bulk standards shall apply in the One Alfred Road Contract Zone:

Minimum Lot Area: 40,000 sq. ft.

Minimum Lot Width: 200 ft.

Minimum Setbacks

Front Yard: 20 feet, except where the front yard abuts Alwaye and/or Alfred Road, in which case it shall be 50 feet.

Side/Rear Yard: 15 feet, except where the yard abuts a residential zone or use, it shall be 50 feet.

Max. Height: 40 feet

Max. Lot Coverage: The total area of all structures, parking lots, roads, driveways and other non-revegetated surfaces shall not exceed seventy-five (75) percent.

(2) Performance Standards

Uses within the One Alfred Road Contract Zone shall conform to the performance standards of the Industrial zoning district and those listed in Part B listed above and to all applicable performance standards in Article 10 of this Ordinance.

D. Building Architectural Guidelines

The buildings to be constructed within the area subject to this Agreement shall conform to the Building Architectural Guidelines outlined below:

Buildings A & B

Sides visible from Alfred Road and Alewife Road	Metal siding	Not more than 5 % to be used as an accent
	Exterior Insulation and Finish Systems (EIFS) siding	40 % to 60 %
	Masonry siding, defined as architectural block and/or brick	20 % to 90 %
	Clapboard - or wood material siding	20 % to 60 % to be used as an accent only
	Flat Planes	No more than a 40' section of wall without a change in planes of 4" or more
	Windows and Storefront Glass	Minimum of 10% of total square footage of walls
	Drive-in overhead doors	Not allowed
Sides not visible from Alfred Road and Alewife Road	Metal siding	Up to 100 % can be used
	Windows and Storefront Glass	No minimum
	Drive-in overhead doors	Allowed

Buildings C & D

All Sides	Metal siding	50 % to 90 %
	EIFS siding	25 % to 50 %
	Masonry siding	20 % to 100 %
	Windows and Storefront Glass	No minimum
	Drive-in overhead doors	Allowed

Building E

All Sides	Metal siding	50 % to 90 %
	EIFS siding	5 % to 50 %
	Masonry siding	5 % to 100 %
	Windows and Storefront Glass	No minimum
	Drive-in overhead doors	Allowed

E. Planning Board Review

Except as otherwise modified by the Contract Zoning Agreement, including its attachments, development of the site shall be subject to the performance standards in Article 10. Upon approval of the Contract Zone by Town Meeting, the project will be reviewed and approved by the Planning Board per the applicable Subdivision/Site Review standards. The Approved Site Plan/ Subdivision Plat/ Condominium Plat shall be signed by the Planning Board, recorded at the York County Registry of Deeds (YCRD) within thirty days of approval, and a reproducible copy of the plan shall be submitted to the Town Planner.

Development of the site will be reviewed by the Planning Board in accordance with the Standards and Guidelines established herein. In addition, the Planning Board shall review Buildings A and B, any construction of a gas station with retail sales and any building additions to such buildings under the following standards:

The design shall be of a traditional New England style and not of an industrialized and modern look common to gas and convenient store chains,

The proposed building scale, façade and roof treatment, roof pitch and design, material colors and textures, visible from public streets,

Adequacy of pedestrian circulation and safety,

Landscaping, buffering and screening along residential areas, within parking lots, and along street frontages, and

WHEREAS, the Planning Board and the Board of Selectmen have determined that the re-zoning will be pursuant to and consistent with the Town's Comprehensive Plan.

WHEREAS, the re-zoning has been authorized at Town Meeting.

NOW THEREFORE, in consideration of the mutual promises made to each other, the parties covenant and agree as follows:

1. The Town will amend the Zoning Ordinance and Zoning Map of the Town of Kennebunk to create and make reference to the One Alfred Road Contract Zone, as shown on *Exhibit A*, attached hereto and hereby incorporated by reference.
2. Subject to final Kennebunk Planning Board approval upon receipt of other required permits, One Alfred Road Associates, L.L.C. will be authorized to develop the Property with any of the uses set forth in the description of the zone attached hereto as *Exhibit B* and incorporated herewith. The site shall be developed substantially in accordance with the plan attached hereto as *Exhibits C-1, C-2 and C-3*. Changes to *Exhibits C-1, C-2 or C-3* that comply with the space and bulk standards, performance standards and building architectural guidelines established herein are permitted after prior review and approval by the Planning Board during subdivision or site plan review of the project or any portion thereof, including the construction of one or more new structures that are not shown on *Exhibits C-1, C-2 or C-3*, provided that such new structures are for uses permitted in *Exhibit B*. It is agreed between the parties that the table of uses and the building footprints shown on *Exhibit C-2*, as illustrated, may be modified or changed during subdivision or site plan review in accordance with the requirements of *Exhibit B*.
3. Any proposed modification to the approved Final plan shall conform to the standards set for *One Alfred Road Contract Zone*, attached hereto as *Exhibit B* and incorporated herewith.
4. One Alfred Road Associates, L.L.C. shall record the Contract Zoning Amendment in the York County Registry of Deeds and shall submit proof of recording to the Town's Code Enforcement/Planning Office. No site work may be undertaken nor any building permits issued prior to Planning Board approval of site plans under the standards established by this Agreement.
6. The provisions of this Contract Zoning Amendment shall be deemed restrictions on the use of the Property and shall be amended only upon further written agreement of the Town and One Alfred Road Associates, L.L.C. or its successors in interest to the Property.
7. The above restrictions, provisions and conditions are an essential part of the re-zoning, shall run with the Property, and shall bind One Alfred Road Associates, L.L.C., its successors in interest and any assigns of the Property or any party in possession or occupancy of the Property or any part thereof and shall inure to the benefit of and be enforceable by the Town.
8. If any of the restrictions, provisions, conditions or portions of this Agreement are for any reason held invalid or unconstitutional by any Court of competent jurisdiction, such

EXHIBIT C
ONE ALFRED ROAD ASSOCIATES, L.L.C.
CONTRACT ZONING AGREEMENT

Exhibit C consists of three (3) drawings prepared by Sebago Technics, Inc. dated 12/28/04,
named as follows:

C-1 Property Survey Plan

C-2 Contract Zone Summary Plan

C-3 Site Plan

The information depicted on these drawings is hereby incorporated as part of the One Alfred
Road Contract Zoning Agreement.