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COUSENS SCHOOL CONTRACT ZONE

CONTRACT ZONING AGREEMENT
AVESTA COUSENS HOUSING LP and THE TOWN OF KENNEBUNK

This Contract Agreement is made this 21 day of NOV, 2006 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 **AVESTA HOUSING DEVELOPMENT CORPORATION**, a Maine non-profit corporation with a mailing address and principal place of business at 307 Cumberland Avenue, Portland, Maine 04101 (hereinafter "Avesta").

WITNESSETH:

WHEREAS, Avesta has entered into a Purchase and Sale Agreement to purchase a certain parcel of real estate together with the improvements and structures thereon, located at Day and Hoyey Streets in Kennebunk, Maine and known as the former "Cousens School", together with an adjacent lot thereto, which are shown on Town of Kennebunk Tax Map 54 as Lots 140 and 156 respectively (hereinafter collectively the "Property"), and as more particularly shown on Exhibit A-1 attached hereto and incorporated herein; and

WHEREAS, Avesta wishes to redevelop the Property into a 28-unit affordable rental housing community by, among other things, renovating the original school building, removing an addition thereto constructed in the 1950's, and adding a two-story, 24-unit building (collectively the "Project"); and

WHEREAS, pursuant to the Town of Kennebunk Zoning Ordinance (the "Ordinance"), the Property is located in the Village Residential and York Street Mixed Residential and Commercial Use District, which zones permit the use of the Project as proposed, but do not expressly permit certain space and bulk measurements necessary for the successful completion and operation of the Project; and

WHEREAS, Avesta and the Town agree that the Project shall be of benefit to the Town, shall create long term affordable housing opportunities for families and individuals in the Town, and is essential to the health and well-being of the Town, all in accordance with the Town's Comprehensive Plan; and

WHEREAS, Avesta and the Town wish to create a separate zone known as the "Cousens School Contract Zone", which zone shall provide for bulk and space requirements that will allow for the development and the successful operation of the Project; and

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; and

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

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

WHEREAS, Avesta expects that it will cause the Property to be acquired by, and will cause the Project to be developed by, Avesta Cousens Housing, LP, a Maine limited partnership (the "Partnership"), whose sole general partner is a wholly-owned subsidiary of Avesta's;

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

1. The Town does hereby amend the Zoning Ordinance and official zoning map to create and make reference to the Cousens School Contract Zone as identified and depicted on Exhibits A-1 through A-4, consisting of Lots 140 and 156 on Map 54:
2. Subject to final Planning Board subdivision approval, Avesta will be authorized to develop the Project with any of the uses set forth in the description of the Cousens School Contract Zone attached hereto as Exhibit B and incorporated herewith.
3. In reviewing any redevelopment of the Property, the Planning Board will apply the standards set forth in the Ordinance except as modified by the description of the Cousens School Contract Zone attached hereto as Exhibit B and incorporated herewith. The matters described in Exhibit B may be adjusted as part of the subdivision review process.
4. The Property shall be redeveloped in a manner that retains and respects the historic quality of the existing building exterior with any change in the existing building, together with the new addition, being compatible with the current architecture.
5. Avesta shall record this Agreement in the York County Registry of Deeds and shall submit proof of recording to the Town's Code Enforcement Officer and Planner before any site work is undertaken or any building permits are issued.
6. The provisions of this Contract Zoning Agreement shall be deemed restrictions on the use of the Property and shall be amended only upon further written agreement of the Town and Avesta or its successors in interest to the Property, including without limitation the Partnership. Changes to the approved subdivision plan must also be approved as provided in the Ordinance.
7. The above restrictions, provisions and conditions are an essential part of the re-zoning, shall run with the Property and shall bind Avesta and its successors in interest, including the Partnership, 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 is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such 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 hereby, the use and occupancy of the Property shall be governed by and comply with the provisions of the Ordinance.

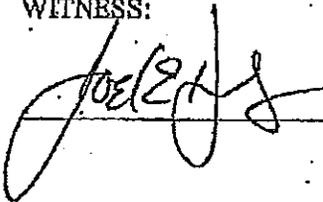
10. In the event that Avesta or its successors or assigns fail to develop or operate the Project in accordance with this Agreement or in the event of any other breach of any conditions set forth in this Agreement, the Board of Selectmen of the Town shall have the authority, after written notice to Avesta and reasonable opportunity to cure, to terminate this Agreement or to recommend to the Town a re-zoning of the Property to any predecessor or successor zone. In the event of such re-zoning, the Property shall then be used for only such uses as permitted in such zone 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.

11. In the conveyance to the Partnership, the Town shall reserve a 44-foot wide easement, that will have a paved width of 24 feet, running from Hovey Street to Day Street. The easement shall be used by emergency vehicles, vehicles involved in winter maintenance, whether owned by the Town or a contractor conducting winter maintenance operations for the Town, and vehicles utilized for municipal recycling and waste disposal operations, whether owned by the Town or a contractor conducting such operations on behalf of the Town.

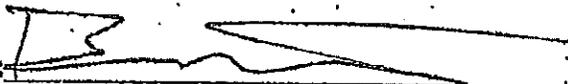
12. This Agreement may be executed in any number of counterparts, each of which shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

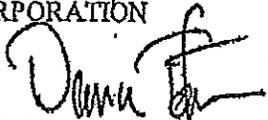
WITNESS:



TOWN OF KENNEBUNK

By: 
Barry A. Tibbetts, its Town Manager
Thereunto duly authorized

AVESTA HOUSING DEVELOPMENT CORPORATION

By: 
Dana Totman, its President

Edouard

STATE OF MAINE
YORK, ss

12/4, 2006

PERSONALLY APPEARED the above-named Town Manager of the Town of Kennebunk as aforesaid, and acknowledged the foregoing instrument to be his free act and deed

In his said capacity and the free act and deed of said Town of Kennebunk.

Before me,

KATHLEEN NOLETTE
NOTARY PUBLIC, MAINE
MY COMMISSION EXPIRES 4/22/13

Kathleen Nolette
Notary Public/Attorney at Law
Print name: _____
My commission expires: _____

STATE OF MAINE
CUMBERLAND, ss

NOV 21, 2006

PERSONALLY APPEARED the above-named Dana Totman, President of Avesta Housing Development Corporation as aforesaid, and acknowledged the foregoing instrument to be his free act and deed in his said capacity and the free act and deed of said nonprofit corporation.

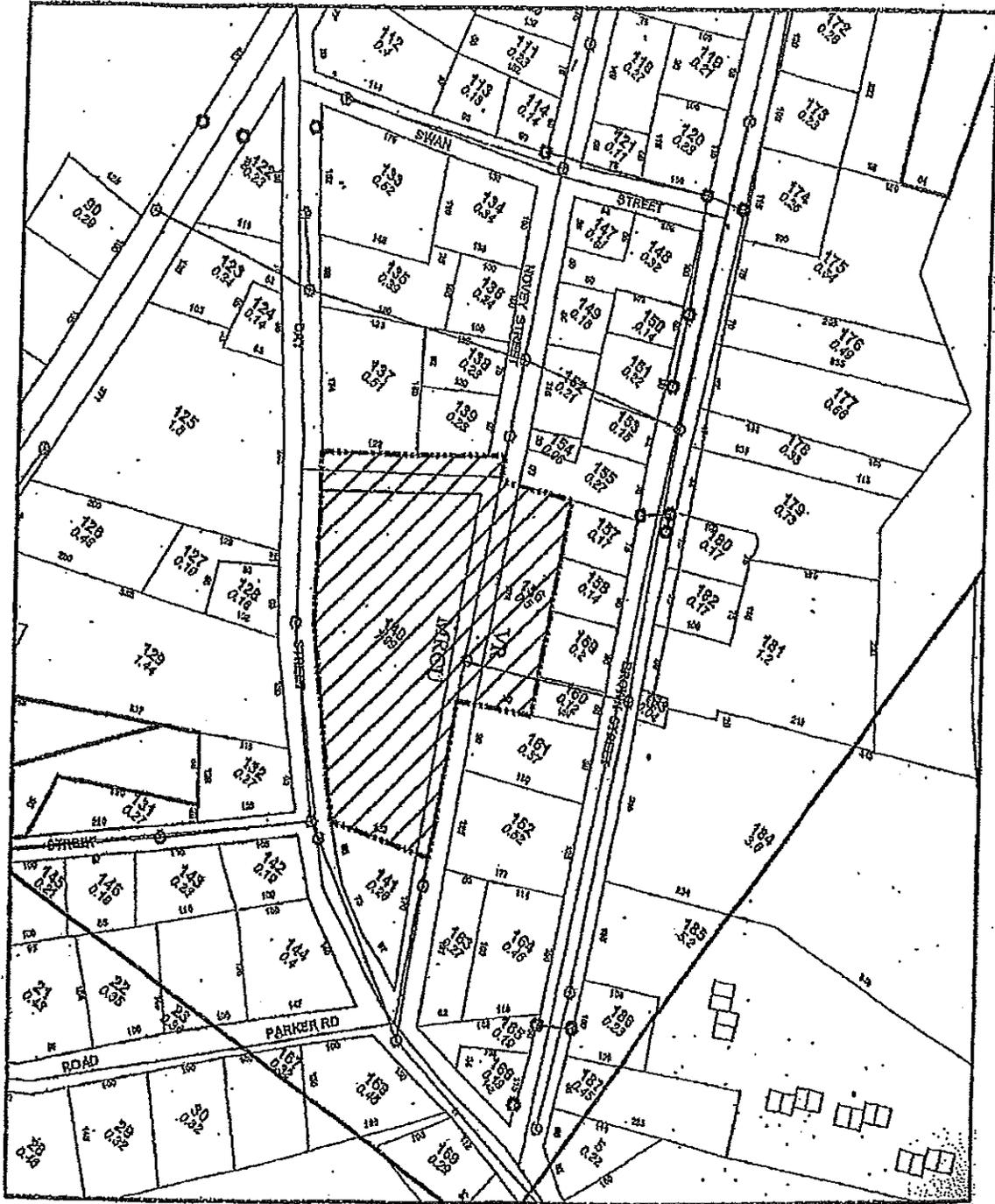
Before me,

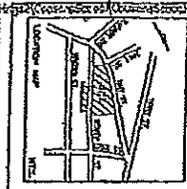
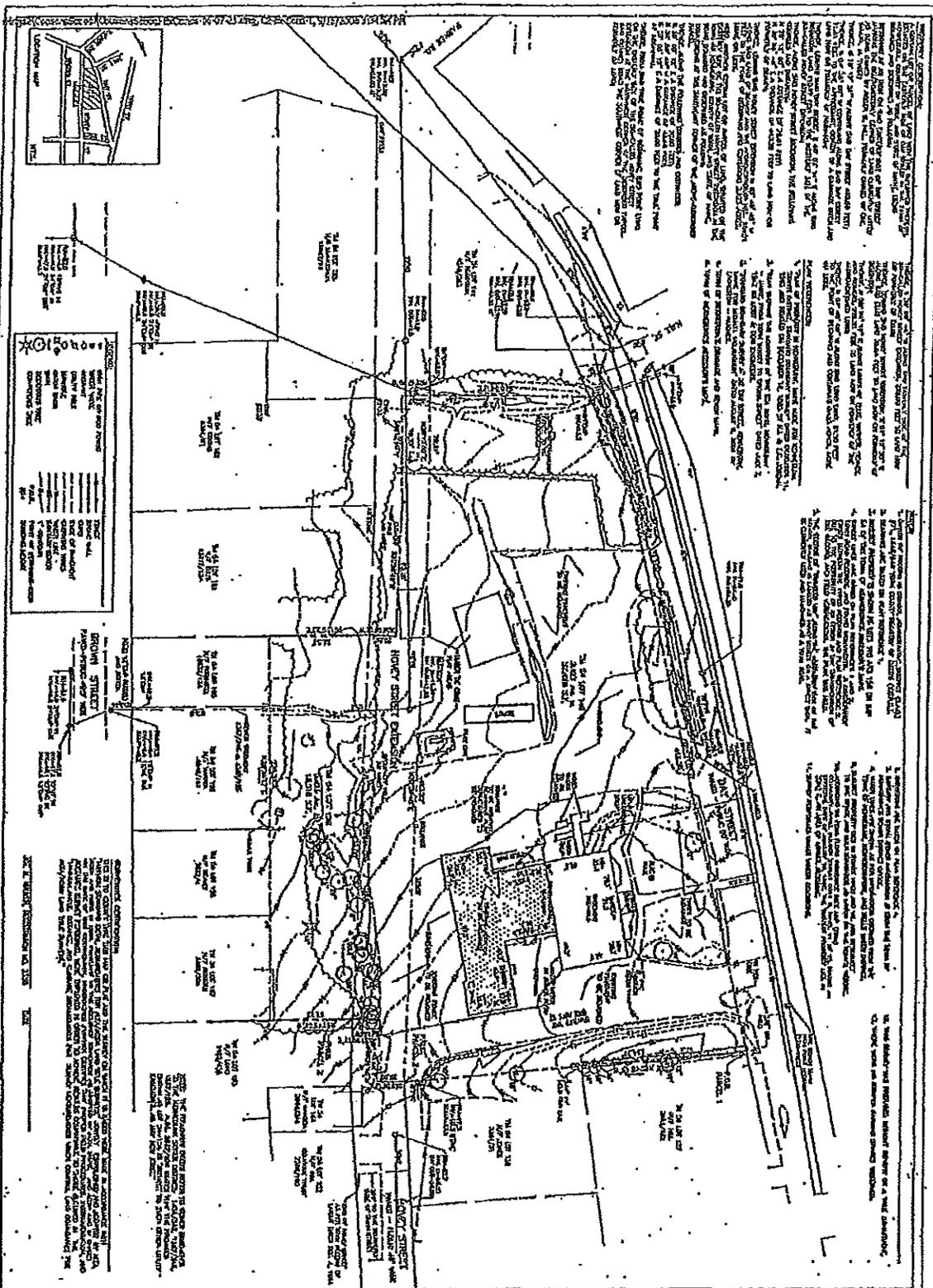
DEBORA KELLER
Notary Public, Maine
My Commission Expires October 17, 2009

Deborah Keller
Notary Public/Attorney at Law
Print name: _____
My commission expires: _____



EXHIBIT A-1
(Tax Map 54)





LEGEND

Symbol	Description
---	Proposed Apartment Building
---	Proposed Parking
---	Proposed Driveway
---	Proposed Walkway
---	Proposed Utility
---	Proposed Fencing
---	Proposed Landscaping
---	Proposed Retaining Wall
---	Proposed Storm Drain
---	Proposed Sewer
---	Proposed Water
---	Proposed Gas
---	Proposed Electrical
---	Proposed Telephone
---	Proposed Cable
---	Proposed Fire Hydrant
---	Proposed Fire Alarm
---	Proposed Fire Extinguisher
---	Proposed Fire Escape
---	Proposed Fire Exit
---	Proposed Fire Stair
---	Proposed Fire Lift
---	Proposed Fire Alarm Control Panel
---	Proposed Fire Alarm Sounder
---	Proposed Fire Alarm Bell
---	Proposed Fire Alarm Horn
---	Proposed Fire Alarm Siren
---	Proposed Fire Alarm Whistle
---	Proposed Fire Alarm Gong
---	Proposed Fire Alarm Chime
---	Proposed Fire Alarm Buzzer
---	Proposed Fire Alarm Bell
---	Proposed Fire Alarm Horn
---	Proposed Fire Alarm Siren
---	Proposed Fire Alarm Whistle
---	Proposed Fire Alarm Gong
---	Proposed Fire Alarm Chime
---	Proposed Fire Alarm Buzzer

NOTES

1. All dimensions are in feet and inches.
2. All measurements are to the center of the line.
3. All measurements are to the center of the lot.
4. All measurements are to the center of the street.
5. All measurements are to the center of the building.
6. All measurements are to the center of the parking.
7. All measurements are to the center of the driveway.
8. All measurements are to the center of the walkway.
9. All measurements are to the center of the utility.
10. All measurements are to the center of the fencing.
11. All measurements are to the center of the landscaping.
12. All measurements are to the center of the retaining wall.
13. All measurements are to the center of the storm drain.
14. All measurements are to the center of the sewer.
15. All measurements are to the center of the water.
16. All measurements are to the center of the gas.
17. All measurements are to the center of the electrical.
18. All measurements are to the center of the telephone.
19. All measurements are to the center of the cable.
20. All measurements are to the center of the fire hydrant.
21. All measurements are to the center of the fire alarm.
22. All measurements are to the center of the fire extinguisher.
23. All measurements are to the center of the fire escape.
24. All measurements are to the center of the fire exit.
25. All measurements are to the center of the fire stair.
26. All measurements are to the center of the fire lift.
27. All measurements are to the center of the fire alarm control panel.
28. All measurements are to the center of the fire alarm sounder.
29. All measurements are to the center of the fire alarm bell.
30. All measurements are to the center of the fire alarm horn.
31. All measurements are to the center of the fire alarm siren.
32. All measurements are to the center of the fire alarm whistle.
33. All measurements are to the center of the fire alarm gong.
34. All measurements are to the center of the fire alarm chime.
35. All measurements are to the center of the fire alarm buzzer.

GENERAL NOTES

1. The proposed apartment building is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
2. The proposed parking is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
3. The proposed driveway is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
4. The proposed walkway is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
5. The proposed utility is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
6. The proposed fencing is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
7. The proposed landscaping is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
8. The proposed retaining wall is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
9. The proposed storm drain is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
10. The proposed sewer is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
11. The proposed water is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
12. The proposed gas is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
13. The proposed electrical is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
14. The proposed telephone is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
15. The proposed cable is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
16. The proposed fire hydrant is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
17. The proposed fire alarm is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
18. The proposed fire extinguisher is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
19. The proposed fire escape is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
20. The proposed fire exit is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
21. The proposed fire stair is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
22. The proposed fire lift is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
23. The proposed fire alarm control panel is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
24. The proposed fire alarm sounder is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
25. The proposed fire alarm bell is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
26. The proposed fire alarm horn is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
27. The proposed fire alarm siren is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
28. The proposed fire alarm whistle is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
29. The proposed fire alarm gong is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
30. The proposed fire alarm chime is to be constructed in accordance with the City of Malibu Ordinance No. 1138.
31. The proposed fire alarm buzzer is to be constructed in accordance with the City of Malibu Ordinance No. 1138.



THE ENGINEER'S CERTIFICATE AND EXHIBIT

EXHIBIT A-2

COUSENS SCHOOL APARTMENTS
 Day & Hovey Street
 Kernabunk, Malibu

Approved By: _____
 Prepared By: _____
 Date: _____

COUSENS SCHOOL CONTRACT ZONE

A. Purpose

The purpose of the Cousens School Contract Zone is to provide for certain bulk and space standards which are necessary for the development and successful operation of a 28 unit affordable rental housing project known as Cousens School, which project is consistent with the Comprehensive Plan of the Town of Kennebunk.

B. Permitted Uses

The following uses are permitted in the Cousens School Contract Zone:

Multifamily dwellings and accessory buildings and uses, and home occupations otherwise allowed under the Ordinance.

C. Standards

(1) Space and Bulk Standards

The following space and bulk standards shall apply in the Cousens School Contract Zone:

Minimum Lot area for Multi-Family dwellings	3,800 S.F.
Minimum lot width	485 L.F.
Minimum setbacks:	Front Yard: 40 FT Side Yard: 40 FT Rear Yard: 25 FT
Maximum Height	35 FT
Maximum Lot Coverage	25%
Total Impervious	55%
Minimum Width of Green Perimeter Strip	As shown on Exhibit A-2

Internal Roads and Driveways and Parking	As shown on Exhibit A-2
Maximum number of dwelling units	28

(2) Performance Standards

Uses within the Cousens School Contract Zone shall conform to all applicable performance standards of this Ordinance, including but not limited to the following, except to the extent expressly modified in this Agreement:

- (a) Soils - Article 10, Section 2;
- (b) Private Outdoor Lighting - Article 10, Section 6;
- (c) Signs - Article 10, Section 7;
- (d) Multi-Family Dwellings - Article 10, Section 10;
- (e) Affordable Housing - Article 10, Section 12;
- (f) Home Occupations - Article 10, Section 14.