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Planning and Development Department
Lee D. Urban, Director

Planning Division
Alexander Jaegerman, Director

February 5, 2008

Bruce A McGlaulin
Petruccelli, Martin & Haddow, LLP
50 Monument Square
Post Office Box 17555
Portland, Maine 04112-8555

RE: Casco Bay Ventures, 130 Promenade East

Dear Mr. McGlaulin:

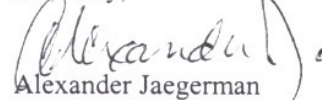
Molly Casto, Planner with Portland's Department of Planning and Development, received your letter dated February 1, 2008 regarding Ms. Marge Schmuckal's (Zoning Administrator) determination that the above project meets the open space requirement of the R-6 zone. In the letter, you argue that the plan does not meet the applicable open space ratio.

You request that this item be sent back to the Planning Board at their next meeting to reconsider their approval of this project. The Planning Board does not have the authority to review the Zoning Administrator's determination, so this item will not be included on their upcoming agenda. I will include a copy of this correspondence as a communication in the packet, but please be advised that there will be no discussion by the Board and no comments taken from the public.

You may seek an interpretation of the zoning decision from the Zoning Board of Appeals within thirty (30) days of the Zoning Administrator's determination. Any inquiries you may have should be directed to Marge Schmuckal, Zoning Administrator.

Thank you for your attention to this matter.

Sincerely,


Alexander Jaegerman
Planning Division Director

cc: Barbara Barhydt, Development Review Services Manager
Molly Casto, Planner
Marge Schmuckal, Zoning Administrator
Penny Littell, Associate Corporation Counsel

PETRUCCELLI, MARTIN & HADDOW, LLP

Attorneys at Law

50 Monument Square
Post Office Box 17555
Portland, Maine 04112-8555

BRUCE A. MCGLAUFLIN
bmcglauflin@petrucellimartin.com

Via Hand Delivery

February 1, 2008

Ms. Molly Casto
Planning and Inspections Department
City of Portland
389 Congress St.
Portland, Maine 04101

RE: Casco Bay Ventures, 130 Promenade East

Dear Molly:

Thank you for providing a copy of the attached site plan showing green shaded sections representing what Casco Bay Ventures considers to be "open space." I understand that this document was submitted by Casco Bay Ventures to Ms. Schmuckal for purposes of satisfying the open space requirements of the Land Use Ordinance. I note that the document is not full size and does not explain how the square footage of the area was measured. I had the area measured using a computer assisted design software program at 1,485.26 square feet, which is only 18.8% of the site area. See the enclosed computer print-out. This is clearly insufficient to satisfy the open space requirement found in §14-139(1)(h).

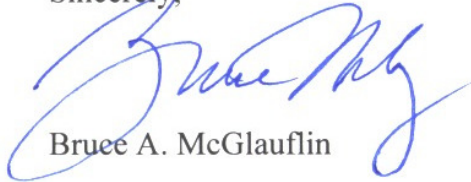
Even if the applicant can demonstrate that their 20.48% measurement is reliable, it should be found insufficient. First, it should be reduced because it includes the trash bin area. Second, it should be rejected because it relies on skinny strips of area that cannot possibly be considered either "open" or "space" in any meaningful or functional sense of those words. When the 20% rule for the R-6 Zone is read together with the site plan standards for open space, it is clear that the concept of "open space" has a functional component to it that cannot be satisfied by a collection of meaningless strips that have no function or use. Section 14-526(a)(15)(a)(1)(b)(3) states that open space "shall be integrated into the development site . . . shall be designed to compliment and enhance the building form and development proposed on the site. Open space functions may include,

Ms. Molly Casto
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but are not limited to, buffers and screening from streets and neighboring property, yard space, etc." These strips have not been meaningfully integrated into the site plan design. They are scraps leftover from the design of a massive structure that is clearly oversized for the site.

For these reasons, Casco Bay Ventures' site plan does not meet the open space condition placed on the Planning Board's approval and should be sent back to the Planning Board for denial. Please bring this letter to the attention of the Planning Board and the Zoning Administrator. We request that the Planning Board schedule the matter for its next workshop. Thank you for your assistance.


Sincerely,

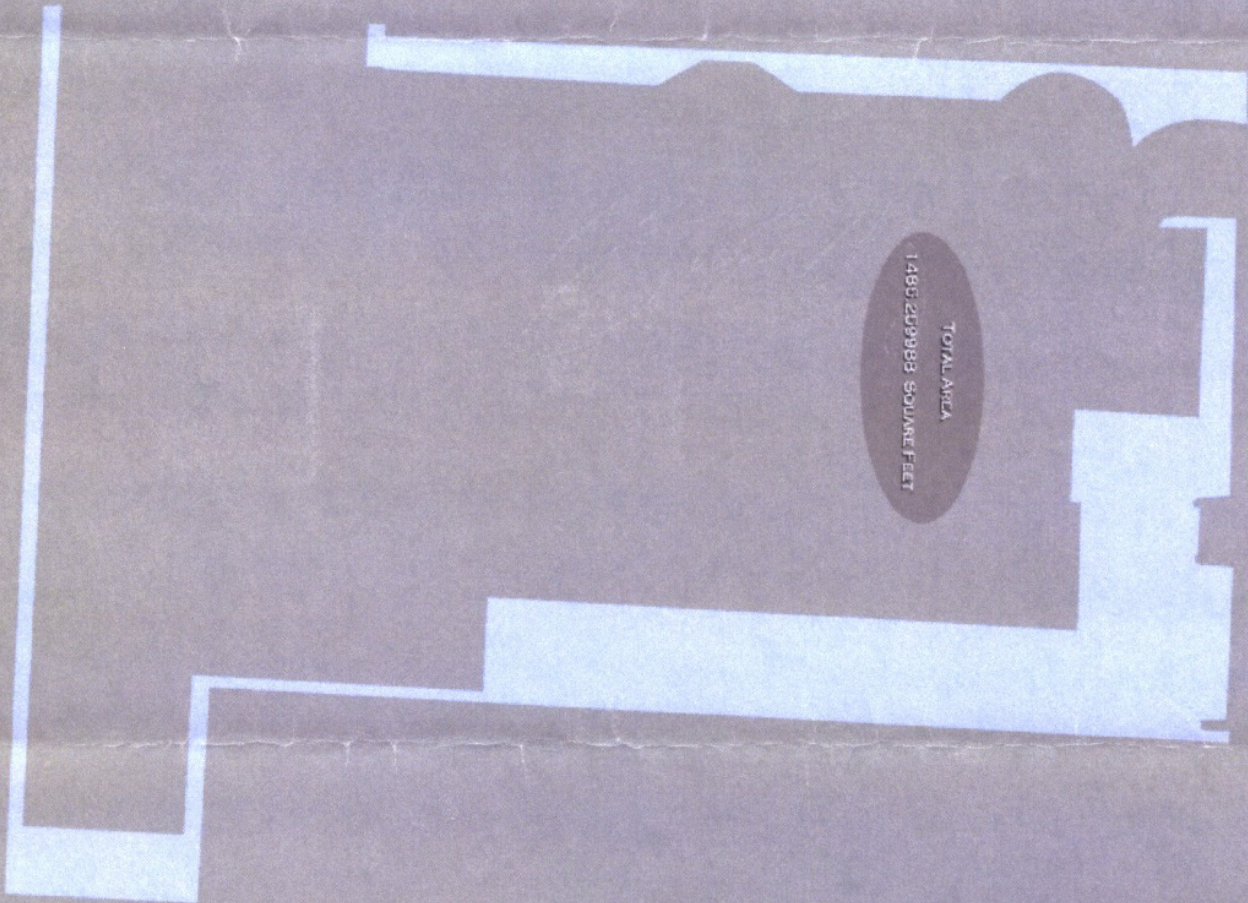


Bruce A. McGlaulin

BMcG/d

cc: Mr. & Mrs. Nicolino Ciccomancini
Terry N. Snow, Esquire

tabbles®
EXHIBIT




TOTAL AREA
1,480,209,988 SQUARE FEET

MEMORANDUM

To: FILE

From: Marge Schmuckal

Dept: Zoning

Subject: Application ID: 2007-0123

Date: 2/1/2008

I have received a copy of the calculations for the open space ratio for this project. The project is meeting the minimum requirements for open space in the R-6 zone.

All the R-6 zone requirements are being met in regard to this project.

Marge Schmuckal
Zoning Administrator