

# PETRUCELLI, MARTIN & HADDOW, LLP

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BRUCE A. MCGLAUFLIN  
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*Hand Delivered*

January 8, 2008

Michael J. Patterson, Chair  
Portland Planning Board  
c/o Molly Casto -- City of Portland  
389 Congress Street  
Portland, Maine 04101

RE: 130 Promenade East

Dear Mr. Patterson:

Please find enclosed a copy of my letter of this same date to Marge Schmuckal requesting that she issue a zoning determination as to the compliance of Casco Bay Venture's current proposal with Section 14-382(d) of the Land Use Code. As you know from my previous submissions to the Planning Board, it is my contention that the Planning Board has an independent obligation to make a determination on Casco Bay's compliance with Section 14-382(d) and that it would be in everyone's best interest for the Planning Board to make that determination as a threshold matter before proceeding to a public hearing. Because the Planning Board's attorney has advised the Planning Board not to make an independent determination on Section 14-382-(d), I have sent the enclosed letter to Ms. Schmuckal.

Nevertheless, I reiterate my request for a threshold determination from the Planning Board and that the Public Hearing on this matter be postponed until that threshold determination can be made. If the Planning Board declines to make that

Michael J. Patterson, Chair  
Portland Planning Board  
January 7, 2008  
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determination, I nevertheless reiterate my request that the Public Hearing be postponed pending the outcome of a determination by the Zoning Administrator, and, if necessary, the Zoning Board of Appeals.

Thank you for your consideration.

Sincerely,



Bruce A. McGlaufflin

BMcG/d  
Enclosure

cc: Mr. & Mrs. Nicolino Ciccomancini  
Dr. & Mrs. Robert Tanner  
Marge Schmuckal (hand deliver)  
Penny Littel, Esquire (hand deliver)  
James R. Adolf, Esquire (hand deliver)  
Wally Geyer, Casco Bay Ventures

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***Hand Delivered***

January 7, 2008

Marge Schmuckal, Zoning Administrator  
City of Portland  
389 Congress Street  
Portland, Maine 04112-8555

RE: 130 Eastern Promenade

Dear Ms. Schmuckal:

This firm represents Nicolino and Patricia Ciccomancini and Robert and Lucy Tanner, owners of 14 Wilson Street and 126 Eastern Promenade. These properties directly abut 130 Eastern Promenade, which is owned by Casco Bay Ventures and which is the subject of Casco Bay's site plan/subdivision application for an addition at 130 Eastern Promenade. The purpose of this letter is to request that you issue a zoning determination as to whether Casco Bay's *current* proposal as shown on Land Consulting Engineers, P.A. plan dated November 19, 2007, complies with Section 14-382(d) of the Land Use Code. It is our contention that the proposal cannot satisfy Section 14-382(d) because it involves proposed changes in exterior walls and roofs that are not confined within the space occupied by the existing shell of the building.

As you may recall, I presented this issue to you once before on behalf of the Ciccomancinis with respect to a *different* set of plans that involved nine residential units instead of the current seven. I also objected to those plans based on a violation of Section 14-388. You issued a determination dated September 26, 2007, in which you rejected Casco Bay's first plan based on a violation of Section 14-388, but not Section 14-382(d). The Ciccomancinis did not appeal that determination because they were not aggrieved by your determination that the proposal could not proceed.

On December 7, 2007, I addressed a letter to Penny Littell, Esquire, and copied it to you by fax. Enclosed is a copy of the letter and the fax cover sheet. In that letter, I

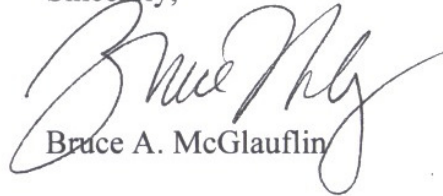
Marge Schmuckal, Zoning Administrator  
City of Portland  
January 7, 2008  
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requested that you make another determination on the *new* Casco Bay proposal. Because this letter was not addressed to you (although the fax cover sheet was addressed to you), it is understandable that it may not have been brought to your attention. That December 7<sup>th</sup> request for a zoning determination was made on behalf of the Ciccomancinis and I reiterate it here.

At the time of the December 7<sup>th</sup> letter, I did not represent the Tanners. Today's request for a zoning determination is made on behalf of the Tanners as well as the Ciccomancinis. The Tanners were not party to the request made on Casco Bay's first proposal and they had no notice of your September 26<sup>th</sup> determination on that proposal.

Thank you for your assistance. I look forward to your response.

Sincerely,



Bruce A. McGlaulin

BMcG/d  
Enclosure

cc: Mr. & Mrs. Nicolino Ciccomancini  
Dr. & Mrs. Robert Tanner  
Penny Littel, Esquire (hand delivered)  
James R. Adolf, Esquire (hand delivered)  
Wally Geyer, Casco Bay Ventures

COPY

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BRUCE A. MCGLAUFLIN  
[bmcglauflin@petrucellimartin.com](mailto:bmcglauflin@petrucellimartin.com)

December 7, 2007

***Via Fax***

Penny Littell, Esq., Associate Corporation Counsel  
389 Congress Street  
Portland, Maine 04112-8555

Re: 130 Eastern Promenade

Dear Penny:

This letter is in response to your letter of December 07, 2007 in which you indicate that the Planning Board is not the appropriate body to address zoning issues and that my argument relating to the interpretation of §14-382 (d) should not be considered by the Board in its review of Casco Bay's site plan application. I respectfully disagree with your interpretation of the Planning Board's jurisdiction. Under site plan review, the Planning Board must make a determination that the applicant's proposal meets all of the criteria set forth in 14-526 in including the criterion that the applicant "has submitted all information required by this article and that the development complies with all applicable provisions of this Code" §14-526 (a)(17). Thus, the Planning Board is required to make a determination as to whether or not the proposal satisfies §14-382 (d) of the Code.

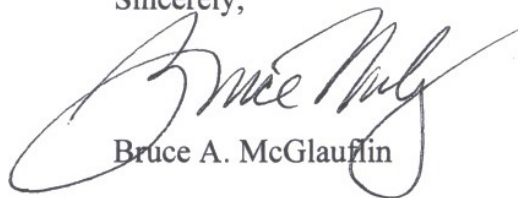
I understand that the Planning Board may rely on a preliminary determination by the Zoning Administrator with respect to such zoning requirements. For that reason, I requested that Ms. Casto send a copy of my December 6th letter to Ms. Schmuckal as well as the Planning Board. By copying *this* letter to Ms. Schmuckal and her counsel James Adolf, Esq., I request that a preliminary determination be made on the application of section 14-382 (d) to the new proposal. I did not appeal Ms. Schmuckal's previous determination (in her September 26, 2007 letter) because the then pending application was denied on alternative grounds. There was no reason nor basis for an appeal since my client was not aggrieved, the application was withdrawn, and any appeal would have been moot.

Penny Littell, Esq.  
December 7, 2007  
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It would be in the interest of all the parties to have this zoning issue addressed and decided before the Planning Board expends any time and energy on Casco Bay's new proposal.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce A. McGlauffin". The signature is written in dark ink and is positioned above the printed name.

Bruce A. McGlauffin

BMcG/ed

cc: Molly Casto  
Marge Schmuckal  
James R. Adolf, Esq.  
Nicolino Ciccomancini (via U.S. postal service)

MEMORY TRANSMISSION REPORT

TIME : 12-07-2007 04:49PM  
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FILE NUMBER : 786  
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FAX COVER SHEET

TO: Penny Littell, James R. Adolf, Marge Schmuckal and Molly Casto  
FAX: 874-8497  
FROM: Bruce A. McGlaulin, Esq.  
DATE: December 7, 2007  
RE: 130 Eastern Promenade  
PAGES: 5 (Including this page)  
NOTES: Please call with any questions or concerns.

\_\_\_ WHEN CHECKED, HARD COPY TO FOLLOW VIA U. S. MAIL

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