



Helen Donaldson <hcd@portlandmaine.gov>

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## Portland Norwich Group, LLC

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**Jennifer Thompson** <jlt@portlandmaine.gov>  
To: Helen Donaldson <hcd@portlandmaine.gov>

Thu, Apr 14, 2016 at 2:47 PM

Hi Nell - I have reviewed the opinion letter submitted by Natalie Burns, attorney for the applicant and I concur with her determination relating to the applicability of the India Street Form-Based Code.

When the Council adopted the India Street Form-Based Code in November of last year, it included in its order language that made the ISFBC applicable to applications that had been submitted prior to the Council's adoption of the ISFBC - even if they had not yet been approved or substantively reviewed. My understanding is that this application was originally submitted in September of 2015, well before the Council's adoption of the ISFBC. Therefore, I agree with Attorney Burns that this application is not automatically subject to the ISFBC.

The frontage requirements in the new ISFBC are broader than those that existed under the pre-existing zoning. However, because the Council expressly authorized a "grandfathering" of projects that had previously submitted applications, this applicant can elect to take advantage of the prior zoning and develop the property under the prior zoning and it may therefore be considered a lawfully nonconforming structure.

Further, although this applicant could similarly take advantage of the pre-existing requirements relating to land use and develop the property as a lawfully non-conforming use, it is not required to do so. Rather, because one of the objectives of zoning is to phase out nonconformity, the preference (though not always the requirement) is that properties conform to newer zoning provisions. Here, because the ISFBC now permits an unlimited number of hotel rooms, this applicant is entitled to utilize its property consistent with that newly permitted use. Doing so is entirely consistent with the zoning and, thus, with the policy directive of the Planning Board and City Council and increases the conformity of the project with the current zoning.

Accordingly, it appears to me that the proposed dimensions of the structure are permissible under the lawfully nonconforming provisions of the Code and that the use of the building as a hotel with more than 150 rooms complies with the current ISFBC provisions.

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