



**CITY OF PORTLAND**

January 9, 2003

Edward S. MacColl, Esq.  
C/o Thompson, Bull, Furey, Bass & MacColl, LLC, P.A.  
120 Exchange Street  
P.O. Box 447  
Portland, ME 04112-0447

RE: 86 Commercial Street (also called 47 Custom House Wharf) – 030-A-001 – WCZ zone

Dear Attorney MacColl,

I am in receipt of your permit application for a tenant fit-up of the second floor of the new building located at 47 Custom House Wharf. Your permit application is denied. The proposed use is a non-marine related office use which is not an allowable use within the WCZ zone (section 14-314). You verbally represented to me that the specific office use would be for a lawyer's office.

This property is located within the Waterfront Central Zone (WCZ). The WCZ zone is very restrictive as to allowable uses. This building was considered new construction under all the required reviews, including the Planning Board and Zoning Board. Testimony is well documented from both review boards concerning the allowable uses for all floors concerning this building. This includes the owner, Ken Macgowan's testimony.

On July 29, 1999 William Needleman addressed a letter to the representing attorney at that time, F. Jay Meyer of Thompson, McNaboe, Ashley & Bull, LLC, P.A. This letter specifically requested, "Planning staff asks that a note be added to the plan describing the permitted uses in the WCZ Zone. Prospective tenant should be made aware of the permitted uses of this facility. We ask for this addition due to the attractive nature of the design for non-marine related office use". On August 17, 1999, the architect, David D. Leasure, responded by letter stating, "A note has been added to Drawing C-200 (note #1) that addresses the planning staff's issue with respect to permitted uses in the Waterfront Central Zone (WCZ)".

I have also determined that this is not considered an "existing" building. This has always been considered a new building. The new building is not an exact replacement either in location, square footage, nor height. In a letter from Attorney F. Jay Meyer to William Needleman dated February 25, 1999, it is stated that the, "...actual location of the proposed building is likely to be slightly north (i.e., closer to Commercial Street of the location depicted on the enclosed survey)".

The previous building was approximately 14,000 sq. ft. of floor area and 2 ½ stories tall and the new structure is approximately 22,050 sq. ft. and 3 stories tall. This is not an exact, replacement building. It is a new building. This new building did not exist as of January 4, 1993. It may not use the allowances permitted for existing buildings existing as of January 4, 1993.

As a summary, this permit application to use the second floor of the new building located at 86 Commercial Street/ 47 Custom House Wharf for non-marine related offices is denied.

Let me also note, that if there are any changes to the approved, recorded site plan, including required notes, the site plan shall be subject to planning authority approvals prior to the issuance of any building permits.

You have the right to appeal my decision concerning use. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

Sincerely,

Marge Schmuckal  
Zoning Administrator

CC: Proprietors of Custom House Wharf, Kenneth Macgowan, 5 Eastern Promenade, 04101  
William Needleman, Planning Division  
Lee Urban, Director of Planning & Development  
Mark Adelson, Housing & Neighborhood Services Division Director  
Legal  
File