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*Penny St. Louis Littell- Director of Planning and Urban Development
Marge Schmuckal, Zoning Administrator*

February 27, 2009

James F. Cloutier
Cloutier, Barrett, Cloutier & Conley
465 Congress Street
Portland, Maine 04101-3528

RE: Boone's Restaurant/Harbor's Edge – 030-A-001 – WCZ Waterfront Central Zone
Known as 6 Custom House Wharf

Dear Attorney Cloutier,

I am in receipt of additional documentation concerning the site of the former Boone's Restaurant on Custom House Wharf in Portland. This supplementary information assists me in revising my original determination letter to you dated August 15, 2008.

The additional documentation includes a lease between the proprietors of Custom House Wharf (Kenneth N. Macgowan, Its Treasurer) and Harbors Edge, LLC (Stormy Keithly, Its President) dated November 1, 2005. Supporting documentation includes two affidavits and dated deposit slips signed by Kenneth Magowan. Such affidavits clearly state, "...my consistent understanding has been that this property was grandfathered for restaurant use and the renewed use of the property was to be for restaurant use." He also states, "I, on behalf of the landlord have never consented to anyone seeking a change of use, and my discussions with Mr. Keithly have always been that he intended and sought to use the property for its grandfathered uses."

An affidavit of Oliver Keithly was also submitted at this time. That affidavit states, "My intention is and has been to operate the space formerly used by Boone's Restaurant as an additional area of my restaurant. This includes using the space as a dining area open to the public for walk-in table service when it is open. I expect it will likely have more limited hours in the winter months and to use it most heavily during the seasonal months of May through October."

In regard to the kitchen, Mr. Kenneth Magowan also states, "In addition, however, from the start, Mr. Keithly and I have agreed that the Harbor's Edge must continue to have all of the necessary installations for a free standing bar and kitchen, in case service logistics make that necessary, and in the case of the interest of the Proprietors, in the case that some future user needs to return the space to a separate and fully enclosed facility. The renovations as completed, therefore, include all of the fire and safety and other code requirements to install a kitchen within it..."

Based upon this supplementary evidence, I have reversed my decision stated in my original determination letter dated August 15, 2008. I have now determined that under section 14-387 there was no abandonment of use nor intent to discontinue the grandfathered restaurant use. The lease indicates that less than one year passed from the expiration of the City's restaurant/liquor license on June 12, 2005 and the signed lease between Mr. Magownan and Mr. Keithly on November 1, 2005.

The kitchen plumbing and electrical has remained prepped for the required kitchen equipment installation. It is expected that the kitchen will be restored as outlined in the submitted affidavits. The use of the Harbor's Edge during the seasonal months of May through October mimics the traditional use of Boone's Restaurant which was open the months of March through December.

In conclusion, the location of the Harbor's Edge within the prior Boone's Restaurant, including a 17' x 78' exterior deck (as denoted within the executed lease) is considered to be a continued nonconforming restaurant use within the Waterfront Central Zone.

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.

Very truly yours,

Marge Schmuckal
Zoning Administrator

Cc: Joseph Gray, City Manager
Penny St. Louis Littell, Director of Planning and Development
Gary Wood, Corporation Counsel
Alex Jaegerman, Planning Division Head
William Needleman, Planner
Chris Hanson, Code Enforcement Officer
Alexandra Murphy, City Clerk's Office