

36-B-4

600 Portland Pier

Conditional Use

M^cAleney's New Meadow
Lobster

on Spreadsheet

PLANNING BOARD REPORT #40-02

**60 PORTLAND PIER
McALENEY'S NEW MEADOWS LOBSTER POUND
RESIDENTIAL OWNER'S UNIT
SITE PLAN AND CONDITIONAL USE APPEAL, WATERFRONT CENTRAL ZONE
PETER AND KATHLEEN McALANEY, APPLICANTS**

Submitted to:

Portland Planning Board
Portland, Maine
May 28, 2002

I. INTRODUCTION

Peter and Kathleen McAleney, proprietors of New Meadows Lobster Pound request a Public Hearing to discuss a proposal to establish a residential unit on the second floor of their business at 60 Portland Pier. The applicants wish to create a living quarter above the business to provide security for the premises and to be able to monitor the lobster pound equipment on a 24-hour basis.

The Board held a February 26th workshop on this application where the Board determined that the Applicant had not met the dimensional requirements of the conditional use language. The Applicant has redesigned the project significantly for this submission.

II. BACKGROUND

Zoning for the property is Waterfront Central. Residential units (not in existence as of May 5, 1987) are specifically prohibited from the WCZ; but, the City Council has recently enacted an amendment to the WCZ language allowing owners of marine related businesses to establish owner's units on the upper floors of buildings in existence on January 4, 1993. The construction of an owner's unit is a conditional use and is reviewable by the Planning Board. Please see conditional use language 14-315 (d), Attachment 4.

No site improvements or changes are proposed with this application.

Project Description

The applicant proposes to convert 1000 sq ft of office and storage space into a residential unit on the second floor of the property. Currently, much of the space is vacant with a bath, kitchenette and two 4' 8" X 10' exterior decks. The applicant proposes to expand the existing bath, construct an additional bath, add a kitchen, convert space to bedroom use, and expand the exterior deck to encompass the entire southwesterly end to the building. Please see the attached Plans, Attachment 7.

II. FINDINGS

Zoning:	WCZ
Existing Building gross sq. ft:	4400+/- sq. ft.
Proposed Building Footprint:	Unchanged
Permitted conversion to residential owners unit under zoning:	1000 sq. ft. total
Adjacent Uses:	Existing office use, non-marine residential, public waterfront access, and commercial berthing.
Parking:	No change required
Notice:	235 neighbors and interested parties were noticed for this hearing.

III. STAFF REVIEW

The proposal has been reviewed for compliance with the WCZ Zone, Conditional Use Standards, and Site Plan Standards of the Land Use Code.

IV. CONDITIONAL USE REVIEW, WCZ: 14-315

The conditions specified under Waterfront Central Zone Conditional Use section 14-315 (d) are as follows:

- (1) *The residential living space shall not exceed one thousand (1000) square feet.*

Previously, Zoning Administrator, Marge Schmuckal had determined that the plan submitted for the February 26th workshop exceeded the 1000 square foot maximum allowed under the conditional use provision. The revised plan shows a separation of improvements where the residential living space is separate from office space and that all internal circulation between the uses occurs through a shared foyer and stair landing. Previously, portions of the office use were only accessible by walking through the residential use. In the current plan, the uses are reasonably separate.

Additionally, regarding the previous submission, Ms. Schmuckal had determined that the new deck space should be counted as residential use, and therefore was not allowed under the conditional use provisions. The Applicant has provided a letter explaining that the deck is part of the marine use of the facility. The letter states the deck is proposed as a security measure and is the easiest way to monitor the pier space and commercial

berthing at night. While the applicants indicate that they will certainly use the deck for daytime residential use, they would not propose to construct a new deck if not for the security needs of the marine use. Ms. Schmuckal has provided an opinion that supports counting the deck as a permitted marine use expansion of the existing lobster pound. Please see Attachment 3.

- (2) *The occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family, or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy other than the primary owner of the marine related business.*

Exhibit A of the 2001 Annual Report of the McAleney's New Meadows Lobster Pound lists the Applicants as the sole shareholders of the business. Please see the Applicants revised written statement included in Attachment 1.

- (3) *The residential use shall be limited to one unit per wharf.*

There are no other marine related residential units proposed for Portland Pier. The pier contains a complex of residential condominiums that were constructed prior to the current zoning and exist as legal non-conforming uses.

- (4) *The residential use shall be year round use only, and shall not be used on a seasonal basis.*

The Applicants indicate the business is a year-round use and that they will adhere to the year-round occupation requirement of the conditional use code.

- (5) *Upon the vacancy in access of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.*

Should the residential use terminate, the Applicant will need to return to the Board with a new application for this use.

3. WCZ Conditional Use Standards

The following general standards apply for conditional uses in the WCZ

- a. *The proposed use shall be compatible with existing and potential marine uses in the vicinity.*

Commercial berthing existing along the Portland Pier perimeter in this area will not be interrupted by the proposed use.

b. *Access to the water*

Portland Pier is part of the Shoreway Access Trail system and public access is allowed to the end of the pier from sun up to sundown. There have been instances where access has been limited by the location of an unscreened dumpster located in front of the pedestrian gate to the pier end. Staff requests that the applicant ensure pedestrian access to the pier as required and that the dumpster be relocated to an area that does not interrupt use of the existing pedestrian gate. A condition of approval is included in the motions.

c. *Conditional uses requiring 20 or more parking spaces.*

N/A

4. **The following standards apply for all conditional uses: Section 14-474(2)**

i. *There are unique or distinctive characteristics or effects associated with the proposed conditional use.*

There are *no* known unique or distinctive characteristics associated with the proposed use.

ii. *There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area; and*

It does not appear that there will be any adverse impacts with the proposed project.

iii. *Such impact differs substantially from the impact which would normally occur from such a use in that zone.*

The impacts of this proposed expansion are similar to those normally associated from the residential uses existing on Portland Pier.

V. **SITE PLAN REVIEW**

This project will result in no changes to the traffic circulation, drainage patterns, or public or private utility infrastructure, which currently exists on site.

1/2. Traffic/Parking

There are no anticipated traffic impacts from the expansion.

3/4. Building Impact

The proposed second floor deck expansion will not unduly impact adjacent structures.

5. Utility Capacity

The expansion requires no additional utility connections or significant increases in utility use.

6. Landscaping

No landscape changes are proposed.

7. Drainage

No additional impervious surface will be added as result of this development and no drainage problems are apparent.

8. Lighting

The Applicant's updated written statement includes a narrative describing the installation of a number of exterior light fixtures. Details and fixture cuts have not been provided.

Staff has provided a suggested condition of approval that all new exterior lighting fixture specifications, locations, and photometrics be submitted to the Planning Office for staff review and approval.

9. Fire

City Fire Safety has approved this proposal

10. Off Premises Infrastructure

The proposal is consistent with off premises infrastructure

11. Environmental Impact

None anticipated

VI. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials submitted by the applicant and on the basis of information provided in Planning Board Report #40-02 relevant to standards for conditional use and site plan review, the Board finds:

- i. That the proposed improvements **are/are not** in conformance with the Conditional Use Standards for Waterfront Central Zone and Section 14-474 of the Land Use Code; and,

Subject to the following Condition of approval:

- a. That the dumpster be relocated to a location that does not block the existing Shoreway Access pedestrian gate and that the dumpster be screened by four-side opaque fencing.
- ii. That the proposed improvements **meet/fail to meet** the Site Plan Standards of the City Land Use Code;

Subject to the following Condition of approval:

- a. That all new exterior lighting, including fixture specifications, locations, and photometrics be submitted to the Planning Office for staff review and approval.

Attachments:

- 1. Applicant's updated Written Statement
- 2. Mortgage deed for property
- 3. May 21, 2002 Updated zoning memo
- 4. City Code 14-315 (d) Conditional Use for owner's residence on pier
- 5. Feb 22, 2002 Zoning Determination Letter
- 6. Photos
- 7. Updated Plans, Existing and Proposed



McAleney's New Meadows Lobster

MAINE SEAFOOD DEALER



AH 1.1

Wholesale - Retail Sales: Lobster, Lobster Meat, Steamers and other Seafood Products

60 Portland Pier • Portland, Maine 04101
Tel. (207) 775-1612, 1-800-668-1612 • Fax (207) 874-2456
www.newmeadowslobster.com

City of Portland
Marge Schmuckal, Zoning Administrator
Planning Department
Room 315 389 Congress Street
Portland, ME 04101

May 10, 2002

Dear Ms. Schmuckal:

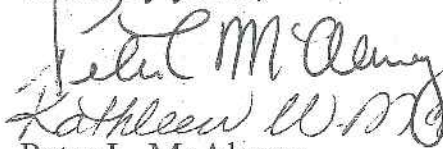

Thank you for returning my call yesterday. In my excitement over meeting each one of the five (5) criteria listed in the memorandum, I failed to discuss the porches.

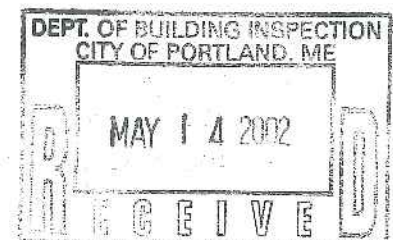
I designed the wrap around porches to have visual access to each corner of the pier. My husband and I were inspired to move up over the business to curb break-ins and vandalism. The porches will optimize our surveillance of the berthing on both sides of the building. We have berthing for 12 lobster boats. Each boat is valued at \$60,000 to \$150,000. The tank house will also be visible from either end of the porch. Our tank house will hold upward to 40,000 lb. of lobster equivalent to \$250,000 +.

The lobstermen that berth their boats with us also have equipment and traps that they store on our pier. The best way to keep an eye on this is to have a "birds eye view". If there were illegal dealings on the pier; I would rather be on the upper level porch calling the police than on the pier level face to face with what ever might be happening.

If you have any other questions or if you need more information that is not already supplied, please do not hesitate to call us.

Sincerely yours,



Peter L. McAleney
Kathleen W. McAleney





McAleney's New Meadows Lobster
MAINE SEAFOOD DEALER



Att. 1.2

Wholesale - Retail Sales: Lobster, Lobster Meat, Steamers and other Seafood Products

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City of Portland
Marge Schmuckal, Zoning Administrator
Planning Department
Room 315
389 Congress Street
Portland, Maine 04101

May 1, 2002

Dear Ms. Schmuckal:

Please find enclosed four (4) copies of the blue prints for the renovation of 60 Portland Pier. After working long and hard on the project, I think we have a workable plan that comes in **under** the one thousand (1,000) square feet of living space.

We have explained how we plan to meet each one of the five (5) criteria listed in the memorandum dated February 26, 2002, as well as addressed the right of way issues and the lighting of the exterior.

If you have any questions or if you need more information that is not already supplied, please do not hesitate to call us.

Sincerely yours,

Peter L. McAleney
Kathleen W. McAleney

Peter L. McAleney
Kathleen W. McAleney
McAleney's New Meadows Lobster Co.



Enclosures:
Four (4) blueprints
List of specific criteria

CITY OF PORTLAND, MAINE

AH1.3

The five specific criteria are discussed below for McAleney's New Meadows Lobster Co. at 60 Portland Pier, Portland, Maine

- (1) *The residential living space shall not exceed one thousand (1,000) square feet.*

On this revised plan (see attached), that I submit to you today, the square footage of the residential living space is 995.41 square feet.

As per my conversation with Marge Schmuckal on April 22, 2002, I have included the laundry room in the business portion of the building. As I explained to Ms Schmuckal because of the nature of the lobster business, at the end of the day Peter's clothes have a fowl working waterfront smell. By having the laundry outside of the small resident, Peter can shower and change before leaving the office portion of the building.

I also talked to Marge Schmuckal in the same conversation about using French doors on both sides of the joint foyer. Because the foyer has no windows, it is a dark area in the middle of the building. When I spoke to Ms Schmuckal about this, she suggested that I put in writing the reasons for wanting the French doors. If the city will approve the use French doors on both sides of the foyer, it will allow natural lighting to flood into the area.

- (2) *The occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family, or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy other than the primary owner of the marine related business.*

Peter L. and Kathleen W. McAleney will be the residents of the unit. For verification that the McAleney's do own the business please find attached the Articles of Incorporation Report and our 2002 Annual Report.

- (3) *The residential use shall be limited to one unit per wharf.*

"There are no other marine related business owner residential units proposed for Portland Pier. The pier contains a complex of residential condominiums that were constructed prior to the current zoning and exist as legal non-



conforming uses." This quote was taken from the memorandum dated February 26, 2002 from William B. Needelman, Senior Planner.

AH 1.4

(4) The residential use shall be year round use only, and shall not be used on a seasonal basis.

Peter and Kathleen McAleney do plan to occupy the space over the business year round.

(5) Upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.

Right of Way Issues

Portland Pier is part of the Shoreway Access Trail system and public access is allowed to the end of the pier from sun up to sundown. There will be no problem with pier access. With the McAleney's living on the pier it will be very easy to comply with the sun up to sundown rule.

Lighting

Please note the exterior lighting proposed as part of this project. There will be five (5) wall pack lights total. One 150 watt light at the corner of the company bathroom, two 150 watt lights at the office outside corners, one 100 watt light at the kitchen corner at the front of the building, and one 100 watt light at the other front corner of the building. There will also be outdoor decorative lighting outside the door leading from the office onto the deck.





File No. 19991617-D Pages 3
Fee Paid \$ 105
DCN 1990651B00049 ARTI
FILED
01-MAR-99

AH 15

Julie R. Dyna
Deputy Secretary of State

A True Copy When Attested By Signature

Julie R. Dyna
Deputy Secretary of State

Pursuant to 13-A MRSA §403, the undersigned, acting as incorporator(s) of a corporation, adopt(s) the following Articles of Incorporation:

FIRST: The name of the corporation is McAleney's New Meadows Lobster
and its principal business location in Maine is 60 Portland Pier, Portland, Maine 04101
(physical location - street (not P.O. Box), city, state and zip code)

SECOND: The name of its Clerk, who must be a Maine resident, and the registered office shall be:

Charles R. Bean

(name)

170 Ocean Street, South Portland, Maine 04106

(physical location - street (not P.O. Box), city, state and zip code)

P.O. Box 2267, South Portland, Maine 04116-2267

(mailing address if different from above)

THIS FORM MUST BE ACCOMPANIED BY FORM MBCA-18A (Acceptance of Appointment as Clerk §304.2-A.).

THIRD: ("X" one box only)

☐ A. 1. The number of directors constituting the initial board of directors of the corporation is _____ (See §703.1.A.)

2. If the initial directors have been selected, the names and addresses of the persons who are to serve as directors until the first annual meeting of the shareholders or until their successors are elected and shall qualify are:

NAME

ADDRESS

NAME	ADDRESS
_____	_____
_____	_____
_____	_____

3. The board of directors ☐ is ☐ is not authorized to increase or decrease the number of directors.

4. If the board is so authorized, the minimum number, if any, shall be _____ directors. (See §703.1.A.) and the maximum number, if any, shall be _____ directors.

☒ B. There shall be no directors initially; the shares of the corporation will not be sold to more than twenty (20) persons; the business of the corporation will be managed by the shareholders. (See §701.2.)

DEPT. OF BUILDING INSPECTION
CITY OF PORTLAND, ME

MAY



Filing Fee: \$60.00
Must Accompany Report

Make check payable to:
Secretary of State

Please file by
APRIL 1, 2002

STATE OF MAINE
2002 ANNUAL REPORT
FOR BUSINESS CORPORATIONS ON FILE AS OF
DECEMBER 31, 2001

Pursuant to 13-A MRSA §1301.2, the information on the
report must be current as of the date signed.

Filing by April 1, 2002 will allow us
to provide better service. The legal
filing deadline is still June 1,
2002. A \$25 late filing fee will be
assessed if the report is late

DCN Number:

2020428040300

Charter Number:

19991617

D

MCALENEY'S NEW MEADOWS LOBSTER
CHARLES R. BEAN, CLERK
P.O. BOX 2267
SOUTH PORTLAND, ME 04116-2267

DO NOT CHANGE the preprinted information on this form. If the information is incorrect, you must contact the Corporate Examining Section at (207) 624-7740. Other questions should be directed to the Reporting & Information Section at (207) 624-7752. Many report forms are rejected because they are incomplete. **Before submitting your report form together with the proper filing fee, REVIEW IT CAREFULLY to be sure you have provided all the information requested.** * PLEASE SEE REVERSE SIDE FOR FILING INSTRUCTIONS. →→→

1. A brief statement of the character of the business in which the corporation is actually engaged in the State of Maine; if none, so indicate: (13-A MRSA §1301.1 C)
see attached Exhibit A

2. Name of each officer. (13-A MRSA §1301.1 D)

Street address of each officer (not P.O. Box):
(physical location (not P.O. Box) - street or rural route number, town/city, zip)

Pres: see attached Exhibit A

Treas: _____

3. Name of all Shareholders
(13-A MRSA §1301.1 D & §701.2A)

Street address of each (not P.O. Box):
(physical location (not P.O. Box) - street or rural route number, town/city, zip)

see attached Exhibit A

THIS PREPRINTED FORM MUST BE USED. However if more space is needed, please attach additional pages, using one side only. All attachments must contain the name and charter number of the corporation across the top of the page. Each page should be numbered consecutively. List number of pages attached:

Dated: 4/22/02

(AUTHORIZED SIGNATURE)

Charles R. Bean, Clerk

(TYPE OR PRINT NAME AND CAPACITY)
(13-A MRSA §1301.3 Penalty for untrue or omitted material facts - 13-A MRSA §1304)

DEPT. OF BUILDING & CONSTRUCTION
OFFICE OF PORTLAND, ME

RETURN TO: Reporting Section, Bureau of Corporations, Elections and Commissions, 101 State House Station, Augusta, Maine 04333-0101
FORM NO MECA-13

EXHIBIT A
State of Maine
Annual Report

MCALENEY'S NEW MEADOWS LOBSTER

DCN NUMBER: 2020428040300
Charter Number: 19991617 D

1. *A brief statement of the character of the business* in which the corporation is actually engaged in the State of Maine; if none, so indicate: (113-A MRSA §1301.C)

Activities as are lawful and appropriate.

2. *Name of each officer:* (13-A MRSA § 1301.D) *Street address of each office (not P.O. Box):*
(physical location (not P.O. Box) - street or rural route number, town/city, zip)
- | | |
|---------------------------------|--|
| Pres: <u>Peter McAleney</u> | <u>60 Portland Pier, Portland, Maine 04102</u> |
| Treas: <u>Kathleen McAleney</u> | <u>60 Portland Pier, Portland, Maine 04102</u> |
3. *Name of 1 to 20 Shareholders:* *Street address of each (not P.O. Box):*
(physical location (not P.O. Box) - street or rural route number, town/city, zip)
- | | |
|--------------------------|--|
| <u>Peter McAleney</u> | <u>60 Portland Pier, Portland, Maine 04102</u> |
| <u>Kathleen McAleney</u> | <u>60 Portland Pier, Portland, Maine 04102</u> |

DEPT. OF BUILDING INSPECTION
CITY OF PORTLAND, ME



McAleney's New Meadows Lobster
MAINE SEAFOOD DEALER



AH 1.1

Wholesale - Retail Sales: Lobster, Lobster Meat, Steamers and other Seafood Products

60 Portland Pier • Portland, Maine 04101
Tel. (207) 775-1612, 1-800-668-1612 • Fax (207) 874-2456
www.newmeadowslobster.com

February 12, 2002

City of Portland
Zoning Board

I have been at 60 Portland Pier for 25 years and have seen many changes on the waterfront, both good and bad. My wife and I have been married for 32 years and have a grown son who has decided to come into the business with us. We are a working family on the working waterfront.

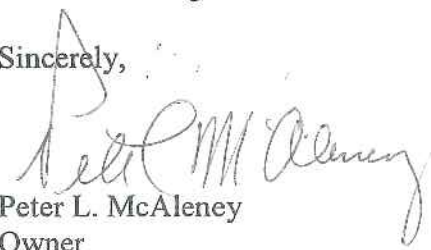
The lobster business is a very complex business. I'm dealing with a live commodity that needs constant attention. At the present time my wife and I live in South Portland. When I leave the business at the end of the workday I am returning once or twice before the next business day to check the gate, load and unload trucks, answer an alarm, or check the pumps; (when the pumps shut down, the lobsters die).

McAleney's New Meadows Lobster sells over 2 million pounds of lobsters a year. We employ 10 people year round. We provide berthing for 12 lobster boats, and we are responsible for 42 boats that sell lobsters to us.

Security is a huge problem on the waterfront. The security systems we have along with police patrols have not been enough to take care of the problems.

In most lobster buying stations around the state the owner lives at the business. We would like to live at the 60 Portland Pier address to protect our family business. As I have said before, "*Where does the chicken farmer live? ... On the chicken farm not across the bridge in South Portland*".

Sincerely,



Peter L. McAleney
Owner

MORTGAGE DEED

AH2.1

With Insurance Clause

KNOW ALL MEN BY THESE PRESENTS,

THAT, It, McALENEY'S NEW MEADOWS LOBSTER, a Maine corporation, in consideration of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00) and other valuable consideration, paid by RONALD C. BROOKS, whose mailing address is 206 South Street, Gorham, Maine 04038, the receipt of which is hereby acknowledged, does hereby give, grant, bargain, sell and convey unto the said RONALD C. BROOKS, his heirs and assigns forever, a certain lot or parcel of land, situated in Portland, Cumberland County, Maine, being more particularly bounded and described as follows:

For the subject property see the attached Schedule A.

This conveyance is made subject to all encumbrances of record.

TO HAVE AND TO HOLD the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said RONALD C. BROOKS, his heirs and assigns, to their use and behoof forever.

AND It does covenant with the said Grantee, his heirs and assigns, that it is lawfully seized in fee of the premises; that they are free of all encumbrances, except as aforesaid; that it has good right to sell and convey to the said Grantee to hold as aforesaid; and that it and its successors, shall and will warrant and defend the same to the said RONALD C. BROOKS, his heirs and assigns forever, against the lawful claims and demands of all persons.

PROVIDED NEVERTHELESS, that if the said McALENEY'S NEW MEADOW LOBSTER, its successors or assigns pays to the said RONALD C. BROOKS, his heirs, executors, administrators, or assigns, the sum of \$250,000.00 five years from the date hereof, payable annually, and until such payment shall pay all taxes and assessments on the granted premises, to whomsoever laid or assessed, and shall keep the buildings thereon insured against fire in the sum not less than the value of improvements, for the benefit of the said RONALD C. BROOKS, his heirs, executors, administrators or assigns, in such form and at such insurance offices as he shall approve, and shall not commit nor suffer any strip or waste of the granted premises, nor commit any breach of any covenant herein contained, then this Deed, as also a certain Note bearing even date with these presents given by the said McALENEY'S NEW MEADOW LOBSTER, to the said RONALD C. BROOKS to pay the sum at the time aforesaid, shall both be void, otherwise shall remain in full force.

Provided also that in case of any default in the payment of any amount of interest or principal herein provided for when due, or any default in the terms or conditions of any prior mortgage, or failure to keep the buildings on said premises in proper repair and insured as provided herein, or failure to pay any taxes constituting a lien on the above described premises within eight months after they are laid, or if title to said premises shall pass from the mortgagor herein either voluntarily or involuntarily, then the whole amount of said mortgage shall become due and payable.

IN WITNESS WHEREOF, It, the said McALENEY'S NEW MEADOW LOBSTER, has caused this instrument to be signed by Peter L. McAleney, its president, duly authorized thereunto this 31 day of the month of March 1999.

SIGNED, SEALED AND DELIVERED

in presence of

Witness

McALENEY'S NEW MEADOW LOBSTER

BY: Peter L. McAleney

Peter L. McAleney, Its President

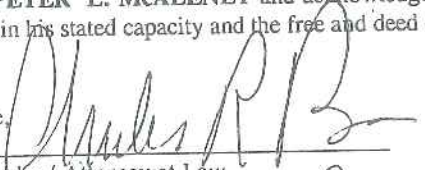
AH 2.2

STATE OF MAINE
CUMBERLAND, SS.

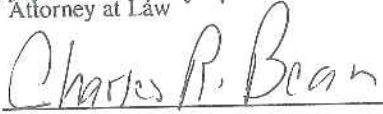
April 1,
March, 1999

Personally appeared the above named **PETER L. McALENEY** and acknowledged the foregoing instrument to be his free act and deed in his stated capacity and the free and deed of the said corporation.

Before me,


Notary Public / Attorney at Law

Printed Name:


Charles P. Bean

SCHEDULE "A"

Beginning at a point situated on the westerly side line of Portland Pier distant on the westerly side line of Portland Pier on a course of S 28° 35' E, a distance of 521.53 feet from the intersection of said Portland Pier side line with the southerly side line of Commercial Street;

Thence by the westerly side line of Portland Pier on a course of S 28° 35' E, a distance of 148.47 feet to a point and land conveyed to the City of Portland by Harbor Realty Company by deed dated July 23, 1948 and recorded in the Cumberland County Registry of Deeds in Book 1924, Page 189;

Thence by land of the City of Portland on the following described courses:

S 18° 35' E 25.00 feet to a point;

Thence S 4° 25' W 26.00 feet to a point;

Thence S 61° 23' 40" W 3.03 feet to the northeasterly side line of the dock between Commercial Wharf and Portland Pier extended southeasterly;

Thence along the said extended and northeasterly side line of the dock between Commercial Wharf and Portland Pier on the following described courses:

N 28° 36' 20" W 124.39 feet to a point;

Thence N 28° 08' 50" W 70.61 feet to a point;

Thence by other land now or formerly of the grantor on a course of N 61° 25' E a distance of 21.04 feet to the point of beginning.

Said above described courses are magnetic and of the date 1887.

Said above described parcel contains 3,882 square feet.

Together with all easement and/or leasehold rights which grantor may have under the Submerged Land Act, i.e. 12 M.R.S.A. §558 (1981).

Together with such dock riparian and littoral rights appurtenant to the premises herein conveyed as this grantor can convey and whatever rights of way and easements in common with grantor and others on and over the Public Road on Portland Pier.

Subject to all existing conditions, easements, restrictions and other matters of record, and all Federal, State and local governmental laws, statutes, ordinances and regulations governing the ownership and use of piers and tidal waters.

AT 2-4

Also conveying

A certain lot or parcel of land, together with buildings and improvements thereon, as well as all other interests thereon, situated in Portland, in the County of Cumberland and State of Maine and being more particularly bounded and described as follows:

The land, flats, wharf buildings on the southerly portion of Portland Pier, in the City of Portland, County of Cumberland and State of Maine, the same being situated southerly of Commercial Street and described as follows:

Beginning at a point in the easterly sideline of a public way or street as laid out by the County Commissioners June 6, 1887, distant southerly along the easterly sideline Five Hundred Forty-Four (544) feet, more or less, from its intersection with the southerly sideline of Commercial Street; thence by the southerly face of another building now or formerly owned by Harbor Realty Company, easterly and about at right angles to said street One Hundred Five (105) feet, more or less, to the westerly sideline of property of Custom House Wharf; thence by said Custom House Wharf property line southeasterly Thirty (30) feet, more or less, to the northerly property line of property conveyed by said Harbor Realty Company to this Grantor by deed dated December 2, 1955, and recorded in the Cumberland County Registry of Deeds in Book 2253, at Page 304; thence by said Grantor's other property aforesaid westerly One Hundred Five (105) feet, more or less, to street; thence by said street northwesterly Thirty(30) feet, more or less, to the point of beginning.

Excepting and reserving, however, an easement in the Harbor Realty Company, its successors and assigns, for the overhang of the eaves of the Harbor Realty Company's building, forming the northerly boundary line of the premises herein described and for the dripping of water and other precipitation from said eaves upon the premises herein described.

Also excepting and reserving the right and easement in Harbor Realty Company, its successors and assigns, to enter upon the most northerly two (2) foot strip of the premises herein described for the purpose of repairing and maintaining the southerly exterior of its building abutting the above described premises on the northerly side thereof.

Also conveying herewith all of the Grantor's right, title and interest in and to the land, flats, wharf and buildings in the southerly portion of Portland Pier, in said Portland, the same being situated southerly of Commercial Street and extending into Portland Pier, and described as follows:

Beginning at a point in the easterly sideline of a public way or street as laid out by the County Commissioners, June 6, 1887, distant southerly along easterly sideline Five Hundred Seventy-Four and Forty-five hundredths (574.45) feet, more or less, from its intersection with the southerly sideline of Commercial Street; thence in a general southerly direction along said

AH 2.5

easterly sideline of said public way or street a distance of Ninety-Three and Thirty-Five hundredths (93.35) feet, more or less, to property purchased by the City of Portland July 23, 1948, from Harbor Realty Company, by deed recorded in the Cumberland County Registry of Deeds in Book 1924, at Page 189; thence along the easterly courses of said City of Portland's property in a southerly direction over the end of said Portland Pier to the Harbor Commissioner's line; thence northeasterly along the Harbor Commissioner's line to a point, said point being approximately in the southwesterly sideline of the dock between Custom House Wharf and said Portland Pier; thence by and along the westerly sideline of said last mentioned dock in a general northerly direction to a point which is on a line which intersects the point of beginning at right angles to the aforementioned public way; thence in a westerly direction across said pier to the street or public way and the point of beginning.

This conveyance is made subject to whatever rights, title and easements the County of Cumberland and the City of Portland have in the public way or street leading southerly from said Commercial Street over and across said pier to the southerly end thereof, and also subject to whatever right, title and easements the City of Portland acquired by deed from Harbor Realty Company, said deed being recorded in Book 1924, Page 189, at the Cumberland County Registry of Deeds.

This conveyance is made subject to the mortgage given by Ronald C. Brooks and Janet Brooks to the Administrator of the Small Business Administration, dated June 7, 1978 and recorded in the Cumberland County Registry of Deeds in Book 4238, at Page 133.

This conveyance is made subject to the interest of the State of Maine in any submerged lands included in the premises described above.

c:\clients\brooks\schibits.doc

RECEIVED
RECORDED REGISTRY OF DEEDS

1999 APR 14 PM 12:26

CUMBERLAND COUNTY

John B O'Brien

AH 3

From: Marge Schmuckal
To: William Needleman
Date: Tue, May 21, 2002 4:06 PM
Subject: 60 Portland Pier - McAleney's New Meadows Lobster

Bill,

I have reviewed the most recent submittals for the proposed marine related residential unit in the Waterfront Central Zone (WCZ) under section 14-315(d).

The proposed changes now appear to meet the given criteria. I am convinced that the decks would not be counted towards the square footage of the interior residential unit. The owners have given evidence that these decks are primarily for business security.

However, I understand that the final approval on all the given criteria is with the Planning Board under the Conditional Use appeal standards.

Marge Schmuckal
Zoning Administrator
5/21/02

CC: MARK ADELSON; PENNY LITTELL; Sarah Hopkins

AH 4

- (3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
 - (4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.
- (d) Residential: The "primary" owner of a marine related business may occupy space within the upper story of a building in existence on January 4, 1993, provided the following conditions are met:
- (1) the residential living space shall not exceed one thousand (1,000) square feet;
 - (2) the occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;
 - (3) the residential use shall be limited to one unit per wharf;
 - (4) the residential use shall be year round use only, and shall not be used on a seasonal basis; and
 - (5) upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.

For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns fifty percent (50%) or more of the marine related business.

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00; Ord. No. 73-01/02, § 1, 10-15-01; Ord. No. 131-01/02, § 2, 1-23-02)

Sec. 14-315.3. Contract or conditional rezoning.



CITY OF PORTLAND

February 22, 2002

Peter L. McAleney
C/o McAleney's New Meadows Lobster
60 Portland Pier
Portland, ME 04101

RE: 60 Portland Pier – 030-B-004 – W-C Zone -

Dear Mr. McAleney,

I am in receipt of your permit application to add a living space on the second floor of your building at 60 Portland Pier. As you are aware, this is a conditional use appeal that is reviewed and approved by the Planning Board. By ordinance, there are specific conditions that must be met before the Board can approve your proposal. As the Zoning Administrator, I have been reviewing the square footage restrictions for the Planning Board.

Section 14-315(d) limits the square footage of this business related residential unit to no more than 1,000 square feet of area. My analysis of your proposal shows that there would actually be 1,646 square feet of area devoted to your residential use. This is over the allowance provided within the ordinance. Within my calculations I have included an area that has been labeled "unheated archival storage" and the closet space adjoining it. This space is only accessed first thru the residential "bedroom suite" and then thru the "master bath". As presently designed, I can only consider it as part of the residential area and not part of the office area. I have also included the "new covered deck" within total square footage calculation. This deck is only accessible from the residential unit and not the office area. In determining lot coverage and setbacks for single family dwellings, I have consistently considered decks as part of the use and structure. I am continuing that principal here.

You have the right to appeal my determination concerning the dimensional requirements to the Zoning Board of Appeals. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to apply. I have included the necessary paperwork that you would need to apply for such an appeal. Please note that this variance and/or interpretation appeal is separate and distinct from the conditional use appeal that you have presently applied for before the Planning Board.

During my analysis of your proposal I have notice other discrepancies with the listed conditions for this use. Our records show a building permit for a new addition that was constructed in 1997. This is the addition in which half of your proposed residential unit is located. The ordinance restricts a residential use to the "upper story of a building in existence on January 4, 1993". This section of the building was not in existence at that time.

Your submittal also indicates that you would like to build a new covered deck around most of the outside of the structure. The current wording of this ordinance states that this residential use may only "occupy space within the upper story of a building". This new, covered deck is clearly on the exterior of the existing building.

If you have any questions regarding this matter, please do not hesitate to call

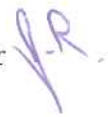
Very truly yours,



Marge Schmuckal
Zoning Administrator

Cc: Portland City Councilors
Lee Urban, Economic and Development Dept.
Mark Adelson, Housing and Neighborhood Services
Alex Jaegerman, Planning
Sarah Hopkins, Planning
William Needleman, Planning
Penny Littell, Corporation Counsel

TO: Inspections

FROM: Jay Reynolds, Development Review Coordinator 

DATE: June 5, 2003

RE: C. of O. for #60 Portland Pier, McAleney's new meadows lobster pound
Lead CBL (030B004); Id# ()

After visiting #60 Portland Pier, I have the following comments:

Conditions of approval met.

At this time, **I recommend issuing a permanent Certificate of Occupancy.**

Please contact me if you have any questions or comments.
Thank You.

Cc: Sarah Hopkins, Development Review Services Manager
Mike Nugent, Inspection Services Manager
file

File: O:\drc\Portlandpier60a.doc

CITY OF PORTLAND, MAINE
PLANNING BOARD

Jaimey Caron, Chair
Deborah Krichels, Vice Chair
Mark Malone
Orlando E. Delogu
Sarah Luck
Kevin Beal
Lee Lowry III

May 31, 2002

Mr. Peter L. McAleney
McAleney's New Meadows Lobster Pound
60 Portland Pier
Portland, ME 04101

RE: Conditional Use and Site Plan Approval for 60 Portland Pier.

CBL: 030-B-004

Dear Mr. McAleney:

On May 28, 2002, the Portland Planning Board voted 4-0 (Delogue, Malone, and Krichels absent) to approve a conditional use for introduction of an owners living unit on the second floor of 60 Portland Pier. The approval was granted for the project with the following conditions:

- i. That the dumpster be relocated to a location that does not block the existing Shoreway Access pedestrian gate and that the dumpster be screened by four-side opaque fencing.
- ii. That if access to the pedestrian gate and the end of the pier are not maintained, the applicant shall be returned to the Planning Board by staff for reconsideration of the conditional use approval.

Additionally, the Portland Planning Board voted 4-0 (Delogue, Malone, and Krichels absent) to approve the site plan for the owner's living unit and the expansion of a second floor deck. The approval was granted for the project with the following condition:

- i. That all new exterior lighting, including fixture specifications, locations, and photometrics be submitted to the Planning Office for staff review and approval.

The approval is based on the submitted site plan and the findings related to site plan review

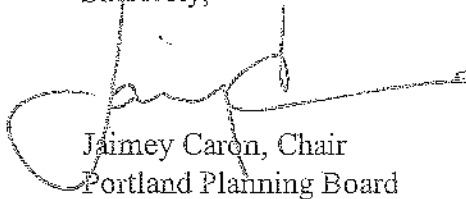
standards as contained in Planning Report #40-02, which is attached.

This project will require a building permit from the City Inspections office and please note the following provisions and requirements for all site plan approvals:

1. The site plan approval will be deemed to have expired unless work in the development has commenced within one (1) year of the approval or within a time period agreed upon in writing by the City and the applicant. Requests to extend approvals must be received before the expiration date.
2. If work will occur within the public right-of-way such as utilities, curb, sidewalk and driveway construction, a street opening permit(s) is required for your site. Please contact Carol Merritt at 874-8300, ext. 8828. (Only excavators licensed by the City of Portland are eligible.)

If there are any questions, please contact William B. Needelman, Senior Planner at 874-8722

Sincerely,



Jaimey Caren, Chair
Portland Planning Board

cc: Lee D. Urban, Planning and Development Department Director
Alexander Jaegerman, Planning Division Director
Sarah Hopkins, Development Review Program Manager
William B. Needelman, Senior Planner
Jay Reynolds, Development Review Coordinator
Marge Schmuckal, Zoning Administrator
Jodine Adams, Inspections
William Bray, Director of Public Works
Larry Ash, Traffic Engineer
Tony Lombardo, Project Engineer
Eric Labelle, City Engineer
Jeff Tarling, City Arborist
Penny Littell, Associate Corporation Counsel
Lt. Gaylen McDougall, Fire Prevention
Don Hall, Appraiser, Assessor's Office
Susan Doughty, Assessor's Office
Approval Letter File
Correspondence File

**CITY OF PORTLAND, MAINE
MEMORANDUM**

TO: Chair Caron and Members of the Portland Planning Board

FROM: William B. Needelman, Senior Planner

DATE: February 26, 2002

SUBJECT: McAleney New Meadows Lobster Pound,
Conditional Use for a Residential Owner's Unit

Introduction

Peter McAleney, proprietor of New Meadows Lobster Pound requests a workshop to discuss a proposal to establish a residential unit on the second floor of his business at 60 Portland Pier. Mr. McAleney wishes to create a living quarter above the business to provide security for the premises and to be able to monitor the lobster pound equipment on a 24-hour basis.

Zoning for the property is Waterfront Central. Residential units (not in existence as of May 5, 1987) are specifically prohibited from the WCZ; but, the City Council has recently enacted an amendment to the WCZ language allowing owners of marine related businesses to establish owner's units on the upper floors of buildings in existence on January 4, 1993. The construction of an owner's unit is a conditional use and is reviewable by the Planning Board. Please see conditional use language 14-315 (d), Attachment 4.

No site improvements or changes are proposed with this application.

Project Description

The applicant proposes to convert 1000 sq ft of office and storage space into a residential unit on the second floor of the property. Currently, much of the space is vacant with a bath, kitchenette and two 4' 8" X 10' exterior decks. The applicant proposes to expand the existing bath, construct an additional bath, add a kitchen, convert space to bedroom use, and expand the exterior deck to encompass the entire southwesterly end to the building. Please see the attached Plans, Attachment 7.

Conditional Use Criteria

This is the first application for occupation of space for residential use under the recent WCZ amendment, 14-315(d.) The amendment states that the "primary" owner of a marine related business may occupy space within the upper story of a building in existence on January 4, 1993, under certain conditions (see below.)

Zoning administrator, Marge Schmuckal has written her Zoning Determination where she has indicates a number of apparent conflicts with the code criteria. Please see Ms. Schmuckal's February 22, 2002 letter, Attachment 5.

At the time the apartment was designed, the applicant was not aware that residential use was limited to building space in existence on January 1993. The plans included here show a

significant portion of the unit occupying area constructed as an addition in 1997; apparently in conflict with the language of the amendment. The applicant indicates that revised drawings will be provided prior to the workshop showing the entire residential use occupying space within the original structure.

The five specific criteria are discussed below.

- (1) *The residential living space shall not exceed one thousand (1000) square feet.*

As drawn, the unit occupies a greater amount of space than permitted. Please see the attached zoning letter. In determining her estimate of proposed residential area, Ms. Schmuckal has counted (1) all space that is only accessible through the residential space, and (2) the proposed exterior deck space. The applicant has been made aware of Ms. Schmuckal's opinion and is aware that he has the option of appealing the area determination to the Zoning Board of Appeals. Ms. Schmuckal will make a new determination based on the revised plans.

- (2) *The occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family, or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy other than the primary owner of the marine related business.*

Mr. McAleney indicates that he and his wife will be the residents of the unit. The amendment requires at least fifty percent (50%) ownership to take advantage of the residential use. While Mr. McAleney is shown on company letterhead and the mortgage deed as the owner of the company, Staff requests some verification that he satisfies this requirement of the amendment.

- (3) *The residential use shall be limited to one unit per wharf.*

There are no other marine related business owner residential units proposed for Portland Pier. The pier contains a complex of residential condominiums that were constructed prior to the current zoning and exist as legal non-conforming uses.

- (4) *The residential use shall be year round use only, and shall not be used on a seasonal basis.*

Mr. McAleney has not indicated whether his occupation will be seasonal or year round.

- (5) *Upon the vacancy in access of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.*

Right of Way Issues

Portland Pier is part of the Shoreway Access Trail system and public access is allowed to the end of the pier from sun up to sundown. There have been instances where access has been limited by the location of an unscreened dumpster located in front of the pedestrian gate to the pier end. Staff requests that the applicant ensure pedestrian access to the pier as required.

Lighting

No additional exterior lighting is proposed as part of this project. All proposed exterior lights should be submitted for review by the Board.

Attachments:

1. Applicant's Written Statement and Application
2. Mortgage deed for property
3. 1997 Building Permit
4. City Code 14-315 (d) Conditional Use for owner's residence on pier
5. Feb 22, 2002 Zoning Determination Letter
6. Photos
7. Plans, Existing and Proposed

Location of Construction: 56 - 60 Portland Pier		Owner: Ronald Brooks		Phone:		Permit No: 970177
Owner Address: 60 Portland Pier		Lease/Buyer's Name:		Business Name:		
Contractor Name: CRM Construction Services, Inc.		Address: P.O. Box 2418 Lewiston, ME 04240		Phone: 784-0287/Robert		Permit Issued: PERMIT ISSUED MAR - 6 1997
Past Use: Seafood Processing/Office		Proposed Use: Same		COST OF WORK: \$ 30,000.00		
Proposed Project Description: Construct Addition Demo portion of existing building		FIRE DEPT. <input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied INSPECTION: Use Group: <i>B</i> Type: <i>200A-90</i> Signature: <i>[Signature]</i>		PERMIT FEE: \$ 170.00		Zoning Approval: Special Zone or Reviews: <input checked="" type="checkbox"/> Shoreland <i>yes</i> <input type="checkbox"/> Wetland <input checked="" type="checkbox"/> Flood Zone <i>yes A-2, etc</i> <input type="checkbox"/> Subdivision <input checked="" type="checkbox"/> Site Plan <i>major</i> <input type="checkbox"/> minor <input type="checkbox"/> mm
Permit Taken By: Mary Gresik		Date Applied For: 18 December 1996		Zoning Appeal: <input type="checkbox"/> Variance <input type="checkbox"/> Miscellaneous <input type="checkbox"/> Conditional Use <input type="checkbox"/> Interpretation <input type="checkbox"/> Approved <input type="checkbox"/> Denied		

PERMIT ISSUED WITH LETTER

1. This permit application doesn't preclude the Applicant(s) from meeting applicable State and Federal rules.
 2. Building permits do not include plumbing, septic or electrical work.
 3. Building permits are void if work is not started within six (6) months of the date of issuance. False information may invalidate a building permit and stop all work..

Call when permit is ready 784-0287

30-3518/15361

CERTIFICATION

I hereby certify that I am the owner of record of the named property, or that the proposed work is authorized by the owner of record and that I have been authorized by the owner to make this application as his authorized agent and I agree to conform to all applicable laws of this jurisdiction. In addition, if a permit for work described in the application issued, I certify that the code official's authorized representative shall have the authority to enter all areas covered by such permit at any reasonable hour to enforce the provisions of the code(s) applicable to such permit

SIGNATURE OF APPLICANT *Robert Morin*
 Robert Morin

ADDRESS:
 18 December 1996

DATE:

RESPONSIBLE PERSON IN CHARGE OF WORK, TITLE

White-Permit Desk Green-Assessor's Canary-D.P.W. Pink-Public File Ivory Card-Inspector

Action:
☐ Approved
☐ Approved with Conditions
☐ Denied

Historic Preservation
☒ Not in District or Landmark
☐ Does Not Require Review
☐ Requires Review

Date: *2/26/97*
Kandi Salvo
Deb Andrews

CEO DISTRICT *2*
A. Rose

CITY OF PORTLAND, MAINE

BOARD OF APPEALS



CONDITIONAL USE APPEAL APPLICATION

Applicant's name and address: Peter L. McAleney

60 Portland Pier, Portland
Applicant's interest in property (e.g., owner, purchaser, etc.):

New Meadows lobster - owner of wholesale buying and distribution station (lobster tank house)

Owner's name and address (if different): _____

Address of property and Assessor's chart, block and lot number:

030-B-004

Zone: _____

Present use: office - storage

Type of conditional use proposed: owner residence - 2nd floor +

Conditional use authorized by: office - storage
Section 14- _____

NOTE: If site plan approval is required, attached preliminary or final site plan.

The undersigned hereby makes application for a conditional use permit as above described, and certifies that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

Date: 02-11-02

Peter McAleney
signature of Applicant

DRAFT

KAREN A. GERAGHTY (MAYOR) (2)
PETER E. O'DONNELL (1)
NATHAN H. SMITH (3)
CHERYL A. LEEMAN (4)
JAY M. HIBBARD (5)

CITY OF PORTLAND
IN THE CITY COUNCIL

JAMES F. CLOUTIER (A/L)
PHILIP J. DAWSON (A/L)
JILL C. DUSON (A/L)
NICHOLAS M. MAVODONES (A/L)

AMENDMENT TO PORTLAND CITY CODE
CHAPTER 14, section 315 (Conditional Uses in Waterfront Central Zone)

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PORTLAND,
MAINE IN CITY COUNCIL ASSEMBLED AS FOLLOWS:**

1. That Chapter 14 Article III, section 315 (Conditional Uses) be
amended as follows:

Sec. 14-315. Conditional uses.

The following uses shall be permitted as conditional uses in the waterfront central zone, provided that, notwithstanding section 14-471(c), section 14-474(a), or any other provision of this Code, the planning board shall be substituted for the board of appeals as the reviewing authority, and further provided that in addition to the provisions of section 14-474(c)(2), section 14-313.5, and any other conditions specified under the particular use below, they shall also meet the following conditions:

- i. The proposed use shall be compatible with existing and potential marine uses in the vicinity;
- ii. The proposed use shall not impede access to the water by existing or potential marine uses; and
- iii. For conditional uses that propose or require twenty (20) or more parking spaces, the proposed conditional use, when considered in conjunction with past, present and reasonably foreseeable future development,

specifically including but not limited to development and uses occurring in this district in structures within thirty-five (35) feet of the southerly edge of Commercial Street, shall meet the standards of section 14-526(a)(1). For purposes of application of this standard only, in evaluating congestion, any private way or access road serving as the primary means of land access to a pier or wharf shall be deemed to be included within the term "street" at the intersection of such private way or access road with Commercial Street.

...

- (d) Residential: The "primary" owner of a marine related business may occupy space within the upper story of a building in existence on January 4, ~~1993~~ July 1, 1998, provided the following conditions are met:

(1) the residential living space shall not exceed ~~one~~ two thousand five hundred (2,500~~1,000~~) square feet;

(2) the occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;

(3) the residential use shall be limited to one unit per wharf;

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(5) upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall

automatically terminate and shall not be continued without new conditional use approval under this subsection.

For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns fifty percent (50%) or more of the marine related business.

O:\OFFICE\PENNY\AMEND\zoning\wazo'donnell.mcalaney.doc

From: Penny Littell
To: Don Hall
Date: Wed, Mar 13, 2002 9:29 AM
Subject: 30-B-4

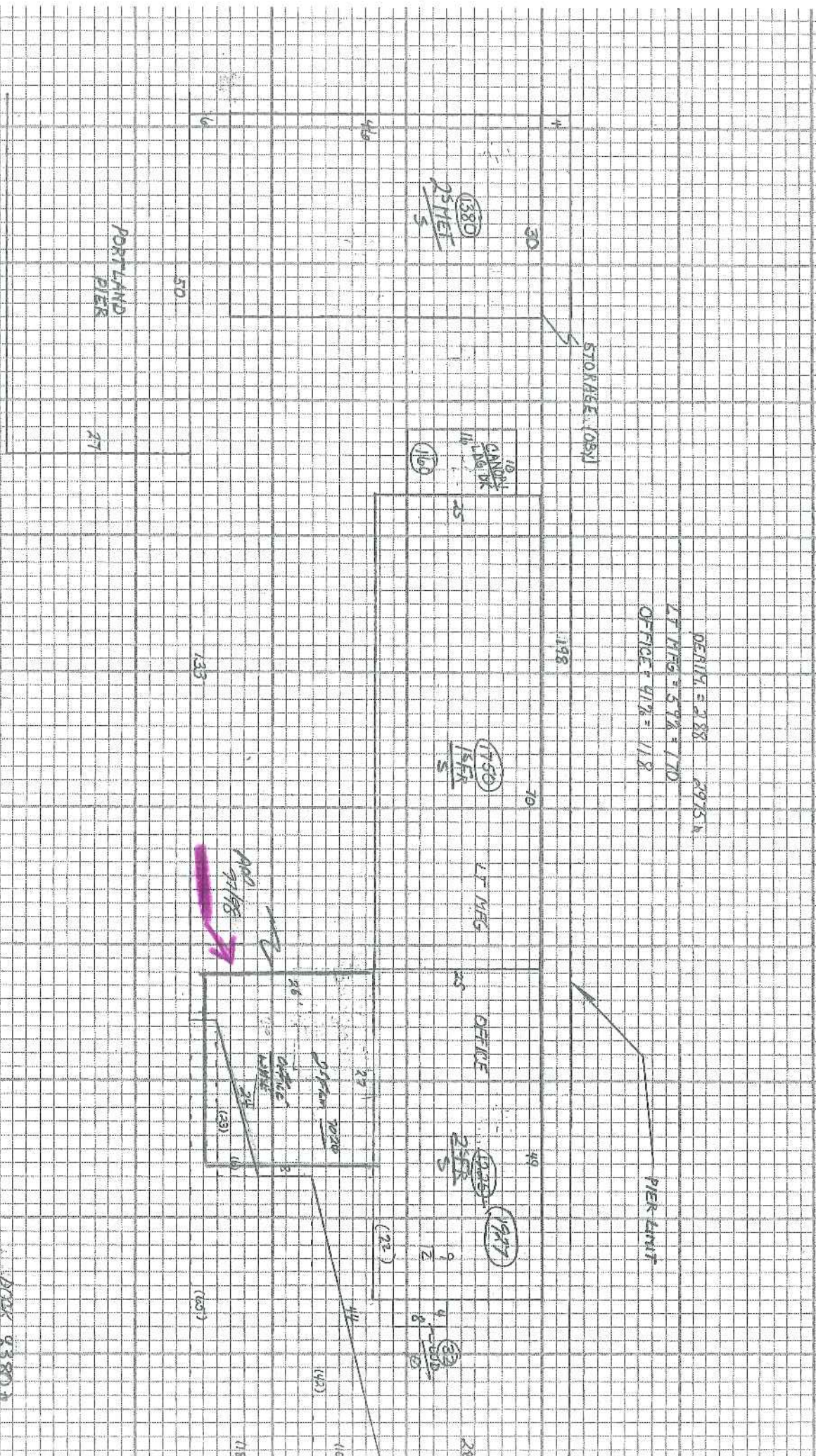
Can you tell me when we started taxing this property for an addition they placed on the building some time in 1997 or 1998? That would be very helpful to me. Thanks.

CC: Marge Schmuckal; William Needleman

3D-B-4 (9)

NEW MEADOWS LOBSTER

PORTLAND PIER 510-100



BOOK 93804

30-B-4 (7)

NEW MEMPHIS ROOSTER

PORTLAND PIER 50-60



CITY OF PORTLAND, MAINE

PLANNING BOARD

Jaimey Caron, Chair
Deborah Krichels, Vice Chair
Kenneth M. Cole III
Cyrus Y. Hagge
Erin Rodriguez
Mark Maione
Orlando E. Delogu

WORKSHOP AGENDA

TUESDAY, FEBRUARY 26, 2002, AT 4:30 P.M.
ROOM 209, CITY HALL, PORTLAND, MAINE 04101

1. ROLL CALL
2. WORKSHOP ITEMS

THE PLANNING BOARD WILL CONDUCT A SITE VISIT AT 937 OCEAN AVE. AT 3:00 P.M.

- i. R-5 46 Unit PRUD; Vicinity of 1818 FOREST AVENUE; Adam Development Corp., Applicant.
- ii. Conditional Use Expansion and Renovation; Vicinity of 400 DEERING AVENUE; Temple Beth-El, Applicant.
- iii. New Meadows Lobster Living Unit; Vicinity of 60 PORTLAND PIER; Peter McAlency, Applicant.

**CITY OF PORTLAND, MAINE
MEMORANDUM**

TO: Chair Caron and Members of the Portland Planning Board

FROM: William B. Needelman, Senior Planner

DATE: February 26, 2002

SUBJECT: McAleney New Meadows Lobster Pound,
Conditional Use for a Residential Owner's Unit

Introduction

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No site improvements or changes are proposed with this application.

Project Description

The applicant proposes to convert 1000 sq ft of office and storage space into a residential unit on the second floor of the property. Currently, much of the space is vacant with a bath, kitchenette and two 4' 8" X 10' exterior decks. The applicant proposes to expand the existing bath, construct an additional bath, add a kitchen, convert space to bedroom use, and expand the exterior deck to encompass the entire southwesterly end to the building. Please see the attached Plans, Attachment 7.

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As drawn, the unit occupies a greater amount of space than permitted. Please see the attached zoning letter. In determining her estimate of proposed residential area, Ms. Schmuckal has counted (1) all space that is only accessible through the residential space, and (2) the proposed exterior deck space. The applicant has been made aware of Ms. Schmuckal's opinion and is aware that he has the option of appealing the area determination to the Zoning Board of Appeals. Ms. Schmuckal will make a new determination based on the revised plans.

- (2) *The occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family, or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy other than the primary owner of the marine related business.*

Mr. McAleney indicates that he and his wife will be the residents of the unit. The amendment requires at least fifty percent (50%) ownership to take advantage of the residential use. While Mr. McAleney is shown on company letterhead and the mortgage deed as the owner of the company, Staff requests some verification that he satisfies this requirement of the amendment.

- (3) *The residential use shall be limited to one unit per wharf.*

There are no other marine related business owner residential units proposed for Portland Pier. The pier contains a complex of residential condominiums that were constructed prior to the current zoning and exist as legal non-conforming uses.

- (4) *The residential use shall be year round use only, and shall not be used on a seasonal basis.*

Mr. McAleney has not indicated whether his occupation will be seasonal or year round.

- (5) *Upon the vacancy in access of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.*

Right of Way Issues

Portland Pier is part of the Shoreway Access Trail system and public access is allowed to the end of the pier from sun up to sundown. There have been instances where access has been limited by the location of an unscreened dumpster located in front of the pedestrian gate to the pier end. Staff requests that the applicant ensure pedestrian access to the pier as required.

Lighting

No additional exterior lighting is proposed as part of this project. All proposed exterior lights should be submitted for review by the Board.

Attachments:

1. Applicant's Written Statement and Application
2. Mortgage deed for property
3. 1997 Building Permit
4. City Code 14-315 (d) Conditional Use for owner's residence on pier
5. Feb 22, 2002 Zoning Determination Letter
6. Photos
7. Plans, Existing and Proposed

BAC N
Zoning Division
Marge Schmuckal
Zoning Administrator

Department of Urban Development



CITY OF PORTLAND

February 22, 2002

Peter L. McAleney
C/o McAleney's New Meadows Lobster
60 Portland Pier
Portland, ME 04101

RE: 60 Portland Pier – 030-B-004 – W-C Zone -

Dear Mr. McAleney,

I am in receipt of your permit application to add a living space on the second floor of your building at 60 Portland Pier. As you are aware, this is a conditional use appeal that is reviewed and approved by the Planning Board. By ordinance, there are specific conditions that must be met before the Board can approve your proposal. As the Zoning Administrator, I have been reviewing the square footage restrictions for the Planning Board.

Section 14-315(d) limits the square footage of this business related residential unit to no more than 1,000 square feet of area. My analysis of your proposal shows that there would actually be 1,646 square feet of area devoted to your residential use. This is over the allowance provided within the ordinance. Within my calculations I have included an area that has been labeled "unheated archival storage" and the closet space adjoining it. This space is only accessed first thru the residential "bedroom suite" and then thru the "master bath". As presently designed, I can only consider it as part of the residential area and not part of the office area. I have also included the "new covered deck" within total square footage calculation. This deck is only accessible from the residential unit and not the office area. In determining lot coverage and setbacks for single family dwellings, I have consistently considered decks as part of the use and structure. I am continuing that principal here.

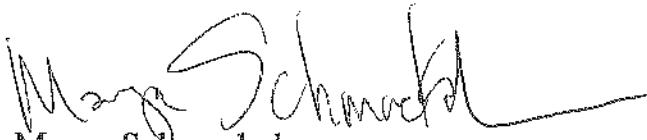
You have the right to appeal my determination concerning the dimensional requirements to the Zoning Board of Appeals. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to apply. I have included the necessary paperwork that you would need to apply for such an appeal. Please note that this variance and/or interpretation appeal is separate and distinct from the conditional use appeal that you have presently applied for before the Planning Board.

During my analysis of your proposal I have notice other discrepancies with the listed conditions for this use. Our records show a building permit for a new addition that was constructed in 1997. This is the addition in which half of your proposed residential unit is located. The ordinance restricts a residential use to the "upper story of a building in existence on January 4, 1993". This section of the building was not in existence at that time.

Your submittal also indicates that you would like to build a new covered deck around most of the outside of the structure. The current wording of this ordinance states that this residential use may only "occupy space within the upper story of a building". This new, covered deck is clearly on the exterior of the existing building.

If you have any questions regarding this matter, please do not hesitate to call

Very truly yours,

A handwritten signature in black ink, appearing to read "Marge Schmuckal", with a long horizontal flourish extending to the right.

Marge Schmuckal
Zoning Administrator

Cc: Portland City Councilors
Lee Urban, Economic and Development Dept.
Mark Adelson, Housing and Neighborhood Services
Alex Jaegerman, Planning
Sarah Hopkins, Planning
William Needleman, Planning
Penny Littell, Corporation Counsel

MORTGAGE DEED

With Insurance Clause

KNOW ALL MEN BY THESE PRESENTS,

THAT, It, McALENEY'S NEW MEADOWS LOBSTER, a Maine corporation, in consideration of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00) and other valuable consideration, paid by RONALD C. BROOKS, whose mailing address is 206 South Street, Gorham, Maine 04038, the receipt of which is hereby acknowledged, does hereby *give, grant, bargain, sell and convey* unto the said RONALD C. BROOKS, his heirs and assigns forever, a certain lot or parcel of land, situated in Portland, Cumberland County, Maine, being more particularly bounded and described as follows:

For the subject property see the attached Schedule A.

This conveyance is made subject to all encumbrances of record.

TO HAVE AND TO HOLD the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said RONALD C. BROOKS, his heirs and assigns, to their use and behoof forever.

AND It does *covenant* with the said Grantee, his heirs and assigns, that it is lawfully seized in fee of the premises; that they are free of all encumbrances, except as aforesaid; that it has good right to sell and convey to the said Grantee to hold as aforesaid; and that it and its successors, shall and will *warrant and defend* the same to the said RONALD C. BROOKS, his heirs and assigns forever, against the lawful claims and demands of all persons.

PROVIDED NEVERTHELESS, that if the said McALENEY'S NEW MEADOW LOBSTER, its successors or assigns pays to the said RONALD C. BROOKS, his heirs, executors, administrators, or assigns, the sum of \$250,000.00 five years from the date hereof, payable annually, and until such payment shall pay all taxes and assessments on the granted premises, to whomsoever laid or assessed, and shall keep the buildings thereon insured against fire in the sum not less than the value of improvements, for the benefit of the said RONALD C. BROOKS, his heirs, executors, administrators or assigns, in such form and at such insurance offices as he shall approve, and shall not commit nor suffer any strip or waste of the granted premises, nor commit any breach of any covenant herein contained, then this Deed, as also a certain Note bearing even date with these presents given by the said McALENEY'S NEW MEADOW LOBSTER, to the said RONALD C. BROOKS to pay the sum at the time aforesaid, shall both be void, otherwise shall remain in full force.

Provided also that in case of any default in the payment of any amount of interest or principal herein provided for when due, or any default in the terms or conditions of any prior mortgage, or failure to keep the buildings on said premises in proper repair and insured as provided herein, or failure to pay any taxes constituting a lien on the above described premises within eight months after they are laid, or if title to said premises shall pass from the mortgagor herein either voluntarily or involuntarily, then the whole amount of said mortgage shall become due and payable.

IN WITNESS WHEREOF, It, the said McALENEY'S NEW MEADOW LOBSTER, has caused this instrument to be signed by Peter L. McAleney, its president, duly authorized thereunto this 15th day of the month of March, 1999.

SIGNED, SEALED AND DELIVERED

in presence of

Witness

McALENEY'S NEW MEADOW LOBSTER

BY:

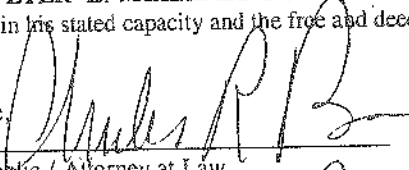
Peter L. McAleney, Its President

STATE OF MAINE
CUMBERLAND, SS.

April /
~~March~~, 1999

Personally appeared the above named PETER L. McALENEY and acknowledged the foregoing instrument to be his free act and deed in his stated capacity and the free and deed of the said corporation.

Before me,


Notary Public / Attorney at Law

Printed Name:

Charles R. Bean

SCHEDULE "A"

Beginning at a point situated on the westerly side line of Portland Pier distant on the westerly side line of Portland Pier on a course of S 28° 35' E, a distance of 521.53 feet from the intersection of said Portland Pier side line with the southerly side line of Commercial Street.

Thence by the westerly side line of Portland Pier on a course of S 28° 35' E, a distance of 148.47 feet to a point and land conveyed to the City of Portland by Harbor Realty Company by deed dated July 23, 1948 and recorded in the Cumberland County Registry of Deeds in Book 1924, Page 189:

Thence by land of the City of Portland on the following described courses:

S 18° 35' E 25.00 feet to a point;

Thence S 4° 25' W 26.00 feet to a point;

Thence S 61° 23' 40" W 3.03 feet to the northeasterly side line of the dock between Commercial Wharf and Portland Pier extended southeasterly;

Thence along the said extended and northeasterly side line of the dock between Commercial Wharf and Portland Pier on the following described courses:

N 28° 36' 20" W 124.39 feet to a point;

Thence N 28° 08' 50" W 70.61 feet to a point;

Thence by other land now or formerly of the grantor on a course of N 61° 25' E a distance of 21.04 feet to the point of beginning.

Said above described courses are magnetic and of the date 1887.

Said above described parcel contains 3,882 square feet.

Together with all easement and/or leasehold rights which grantor may have under the Submerged Land Act, i.e. 12 M.R.S.A. §558 (1981).

Together with such dock riparian and littoral rights appurtenant to the premises herein conveyed as this grantor can convey and whatever rights of way and easements in common with grantor and others on and over the Public Road on Portland Pier.

Subject to all existing conditions, easements, restrictions and other matters of record, and all Federal, State and local governmental laws, statutes, ordinances and regulations governing the ownership and use of piers and tidal waters.

Also conveying

A certain lot or parcel of land, together with buildings and improvements thereon, as well as all other interests thereon, situated in Portland, in the County of Cumberland and State of Maine and being more particularly bounded and described as follows:

The land, flats, wharf buildings on the southerly portion of Portland Pier, in the City of Portland, County of Cumberland and State of Maine, the same being situated southerly of Commercial Street and described as follows:

Beginning at a point in the easterly sideline of a public way or street as laid out by the County Commissioners June 6, 1887, distant southerly along the easterly sideline Five Hundred Forty-Four (544) feet, more or less, from its intersection with the southerly sideline of Commercial Street; thence by the southerly face of another building now or formerly owned by Harbor Realty Company, easterly and about at right angles to said street One Hundred Five (105) feet, more or less, to the westerly sideline of property of Custom House Wharf; thence by said Custom House Wharf property line southeasterly Thirty (30) feet, more or less, to the northerly property line of property conveyed by said Harbor Realty Company to this Grantor by deed dated December 2, 1955, and recorded in the Cumberland County Registry of Deeds in Book 2253, at Page 304; thence by said Grantor's other property aforesaid westerly One Hundred Five (105) feet, more or less, to street; thence by said street northwesterly Thirty(30) feet, more or less, to the point of beginning.

Excepting and reserving, however, an easement in the Harbor Realty Company, its successors and assigns, for the overhang of the eaves of the Harbor Realty Company's building, forming the northerly boundary line of the premises herein described and for the dripping of water and other precipitation from said eaves upon the premises herein described.

Also excepting and reserving the right and easement in Harbor Realty Company, its successors and assigns, to enter upon the most northerly two (2) foot strip of the premises herein described for the purpose of repairing and maintaining the southerly exterior of its building abutting the above described premises on the northerly side thereof.

Also conveying herewith all of the Grantor's right, title and interest in and to the land, flats, wharf and buildings in the southerly portion of Portland Pier, in said Portland, the same being situated southerly of Commercial Street and extending into Portland Pier, and described as follows:

Beginning at a point in the easterly sideline of a public way or street as laid out by the County Commissioners, June 6, 1887, distant southerly along easterly sideline Five Hundred Seventy-Four and Forty-five hundredths (574.45) feet, more or less, from its intersection with the southerly sideline of Commercial Street; thence in a general southerly direction along said

at: Lioria Brooks Exhibits.doc

easterly sideline of said public way or street a distance of Ninety-Three and Thirty-Five hundredths (93.35) feet, more or less, to property purchased by the City of Portland July 23, 1948, from Harbor Realty Company, by deed recorded in the Cumberland County Registry of Deeds in Book 1924, at Page 189; thence along the easterly courses of said City of Portland's property in a southerly direction over the end of said Portland Pier to the Harbor Commissioner's line; thence northeasterly along the Harbor Commissioner's line to a point, said point being approximately in the southwesterly sideline of the dock between Custom House Wharf and said Portland Pier; thence by and along the westerly sideline of said last mentioned dock in a general northerly direction to a point which is on a line which intersects the point of beginning at right angles to the aforementioned public way; thence in a westerly direction across said pier to the street or public way and the point of beginning.

This conveyance is made subject to whatever rights, title and easements the County of Cumberland and the City of Portland have in the public way or street leading southerly from said Commercial Street over and across said pier to the southerly end thereof, and also subject to whatever right, title and easements the City of Portland acquired by deed from Harbor Realty Company, said deed being recorded in Book 1924, Page 189, at the Cumberland County Registry of Deeds.

This conveyance is made subject to the mortgage given by Ronald C. Brooks and Janet Brooks to the Administrator of the Small Business Administration, dated June 7, 1978 and recorded in the Cumberland County Registry of Deeds in Book 4238, at Page 133.

This conveyance is made subject to the interest of the State of Maine in any submerged lands included in the premises described above.

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RECEIVED
RECORDED REGISTRY OF DEEDS

1999 APR 14 PM 12: 26

CUMBERLAND COUNTY

John B O'Brien



McAleney's New Meadows Lobster

MAINE SEAFOOD DEALER



Wholesale - Retail Sales: Lobster, Lobster Meat, Steamers and other Seafood Products

60 Portland Pier • Portland, Maine 04101
Tel. (207) 775-1612, 1-800-668-1612 • Fax (207) 874-2456
www.newmeadowslobster.com

City of Portland
Zoning Board

I have been at 60 Portland Pier for 25 years and have seen many changes on the waterfront, both good and bad. My wife and I have been married for 32 years and have a grown son who has decided to come into the business with us. We are a working family on the working waterfront.

The lobster business is a very complex business. I'm dealing with a live commodity that needs constant attention. At the present time my wife and I live in South Portland. When I leave the business at the end of the workday I am returning once or twice before the next business day to check the gate, load and unload trucks, answer an alarm, or check the pumps; (when the pumps shut down, the lobsters die).

McAleney's New Meadows Lobster sells over 2 million pounds of lobsters a year. We employ 10 people year round. We provide berthing for 12 lobster boats, and we are responsible for 42 boats that sell lobsters to us.

Security is a huge problem on the waterfront. The security systems we have along with police patrols have not been enough to take care of the problems.

In most lobster buying stations around the state the owner lives at the business. We would like to live at the 60 Portland Pier address to protect our family business. As I have said before, *"Where does the chicken farmer live? On the chicken farm not across the bridge in South Portland"*.

Sincerely,

Peter L. McAleney
Owner

CITY OF PORTLAND, MAINE

BOARD OF APPEALS



CONDITIONAL USE APPEAL APPLICATION

Applicant's name and address: Peter L. McAleeny
60 Portland Pier, Portland
Applicant's interest in property (e.g., owner, purchaser, etc.):

New Meadows lobster - owner of wholesale buying
and distribution station (lobster tank house)

Owner's name and address (if different): _____

Address of property and Assessor's chart, block and lot number:

030-B-004

Zone: _____

Present use: office - storage

Type of conditional use proposed: owner residence - 2nd floor +

Conditional use authorized by: office - storage
Section 14- _____

NOTE: If site plan approval is required, attached preliminary or final site plan.

The undersigned hereby makes application for a conditional use permit as above described, and certifies that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

Date: 02-11-02

Peter McAleeny
Signature of Applicant

SCHEDULE "A"

Beginning at a point situated on the westerly side line of Portland Pier distant on the westerly side line of Portland Pier on a course of S 28° 35' E, a distance of 521.53 feet from the intersection of said Portland Pier side line with the southerly side line of Commercial Street:

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Thence along the said extended and northeasterly side line of the dock between Commercial Wharf and Portland Pier on the following described courses:

N 28° 36' 20" W 124.39 feet to a point;

Thence N 28° 08' 50" W 70.61 feet to a point;

Thence by other land now or formerly of the grantor on a course of N 61° 25' E a distance of 21.04 feet to the point of beginning.

Said above described courses are magnetic and of the date 1887.

Said above described parcel contains 3,882 square feet.

Together with all easement and/or leasehold rights which grantor may have under the Submerged Land Act, i.e. 12 M.R.S.A. §558 (1981).

Together with such dock riparian and littoral rights appurtenant to the premises herein conveyed as this grantor can convey and whatever rights of way and easements in common with grantor and others on and over the Public Road on Portland Pier.

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Excepting and reserving, however, an easement in the Harbor Realty Company, its successors and assigns, for the overhang of the eaves of the Harbor Realty Company's building, forming the northerly boundary line of the premises herein described and for the dripping of water and other precipitation from said eaves upon the premises herein described.

Also excepting and reserving the right and easement in Harbor Realty Company, its successors and assigns, to enter upon the most northerly two (2) foot strip of the premises herein described for the purpose of repairing and maintaining the southerly exterior of its building abutting the above described premises on the northerly side thereof.

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MORTGAGE DEED

With Insurance Clause

KNOW ALL MEN BY THESE PRESENTS,

THAT, **McALENEY'S NEW MEADOWS LOBSTER**, a Maine corporation, in consideration of **TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00)** and other valuable consideration, paid by **RONALD C. BROOKS**, whose mailing address is 206 South Street, Gorham, Maine 04038, the receipt of which is hereby acknowledged, does hereby *give, grant, bargain, sell and convey* unto the said **RONALD C. BROOKS**, his heirs and assigns forever, a certain lot or parcel of land, situated in Portland, Cumberland County, Maine, being more particularly bounded and described as follows:

For the subject property see the attached Schedule A.

This conveyance is made subject to all encumbrances of record.

TO HAVE AND TO HOLD the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said **RONALD C. BROOKS**, his heirs and assigns, to their use and behoof forever.

AND It does *covenant* with the said Grantee, his heirs and assigns, that it is lawfully seized in fee of the premises; that they are free of all encumbrances, except as aforesaid; that it has good right to sell and convey to the said Grantee to hold as aforesaid; and that it and its successors, shall and will *warrant and defend* the same to the said **RONALD C. BROOKS**, his heirs and assigns forever, against the lawful claims and demands of all persons.

PROVIDED NEVERTHELESS, that if the said **McALENEY'S NEW MEADOW LOBSTER**, its successors or assigns pays to the said **RONALD C. BROOKS**, his heirs, executors, administrators, or assigns, the sum of \$250,000.00 five years from the date hereof, payable annually, and until such payment shall pay all taxes and assessments on the granted premises, to whomsoever laid or assessed, and shall keep the buildings thereon insured against fire in the sum not less than the value of improvements, for the benefit of the said **RONALD C. BROOKS**, his heirs, executors, administrators or assigns, in such form and at such insurance offices as he shall approve, and shall not commit nor suffer any strip or waste of the granted premises, nor commit any breach of any covenant herein contained, then this Deed, as also a certain Note bearing even date with these presents given by the said **McALENEY'S NEW MEADOW LOBSTER**, to the said **RONALD C. BROOKS** to pay the sum at the time aforesaid, shall both be void, otherwise shall remain in full force.

Provided also that in case of any default in the payment of any amount of interest or principal herein provided for when due, or any default in the terms or conditions of any prior mortgage, or failure to keep the buildings on said premises in proper repair and insured as provided herein, or failure to pay any taxes constituting a lien on the above described premises within eight months after they are laid, or if title to said premises shall pass from the mortgagor herein either voluntarily or involuntarily, then the whole amount of said mortgage shall become due and payable.

IN WITNESS WHEREOF, It, the said **McALENEY'S NEW MEADOW LOBSTER**, has caused this instrument to be signed by Peter L. McAleney, its president, duly authorized thereunto this 15th day of the month of March, 1999.

SIGNED, SEALED AND DELIVERED

in presence of

Witness

McALENEY'S NEW MEADOW LOBSTER

BY: Peter L. McAleney

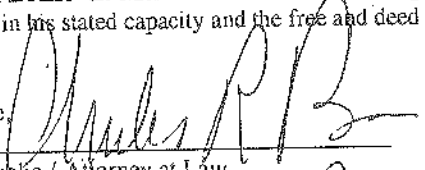
Peter L. McAleney, Its President

STATE OF MAINE
CUMBERLAND, SS.

April 1, 1999
~~March~~

Personally appeared the above named **PETER L. McALENEY** and acknowledged the foregoing instrument to be his free act and deed in his stated capacity and the free and deed of the said corporation.

Before me,


Notary Public / Attorney at Law

Printed Name:

Charles R. Bean



McAleney's New Meadows Lobster
MAINE SEAFOOD DEALER



Wholesale - Retail Sales: Lobster, Lobster Meat, Steamers and other Seafood Products

60 Portland Pier • Portland, Maine 04101
Tel. (207) 775-1612, 1-800-668-1612 • Fax (207) 874-2456
www.newmeadowslobster.com

February 12, 2002

City of Portland
Zoning Board

I have been at 60 Portland Pier for 25 years and have seen many changes on the waterfront, both good and bad. My wife and I have been married for 32 years and have a grown son who has decided to come into the business with us. We are a working family on the working waterfront.

The lobster business is a very complex business. I'm dealing with a live commodity that needs constant attention. At the present time my wife and I live in South Portland. When I leave the business at the end of the workday I am returning once or twice before the next business day to check the gate, load and unload trucks, answer an alarm, or check the pumps; (when the pumps shut down, the lobsters die).

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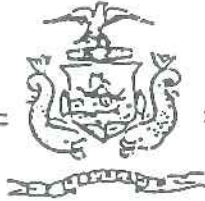
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Sincerely,

Peter L. McAleney
Owner

CITY OF PORTLAND, MAINE

BOARD OF APPEALS



CONDITIONAL USE APPEAL APPLICATION

Applicant's name and address: Peter L. McAleeny

60 Portland Pier, Portland

Applicant's interest in property (e.g., owner, purchaser, etc.):

New Meadows Lobster - owner of wholesale buying and distribution station (lobster tank house)

Owner's name and address (if different):

030-B-004

Address of property and Assessor's chart, block and lot number:

Zone: Present use: office - storage

Type of conditional use proposed: owner residence - 2nd floor +

Conditional use authorized by: office - storage
Section 14-

NOTE: If site plan approval is required, attached preliminary or final site plan.

The undersigned hereby makes application for a conditional use permit as above described, and certifies that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

Date: 02-11-02

Peter McAleeny
Signature of Applicant

MORTGAGE DEED

With Insurance Clause

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This conveyance is made subject to all encumbrances of record.

TO HAVE AND TO HOLD the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said **RONALD C. BROOKS**, his heirs and assigns, to their use and behoof forever.

AND It does *covenant* with the said Grantee, his heirs and assigns, that it is lawfully seized in fee of the premises; that they are free of all encumbrances, except as aforesaid; that it has good right to sell and convey to the said Grantee to hold as aforesaid; and that it and its successors, shall and will *warrant and defend* the same to the said **RONALD C. BROOKS**, his heirs and assigns forever, against the lawful claims and demands of all persons.

PROVIDED NEVERTHELESS, that if the said **McALENEY'S NEW MEADOW LOBSTER**, its successors or assigns pays to the said **RONALD C. BROOKS**, his heirs, executors, administrators, or assigns, the sum of \$250,000.00 five years from the date hereof, payable annually, and until such payment shall pay all taxes and assessments on the granted premises, to whomsoever laid or assessed, and shall keep the buildings thereon insured against fire in the sum not less than the value of improvements, for the benefit of the said **RONALD C. BROOKS**, his heirs, executors, administrators or assigns, in such form and at such insurance offices as he shall approve, and shall not commit nor suffer any strip or waste of the granted premises, nor commit any breach of any covenant herein contained, then this Deed, as also a certain Note bearing even date with these presents given by the said **McALENEY'S NEW MEADOW LOBSTER**, to the said **RONALD C. BROOKS** to pay the sum at the time aforesaid, shall both be void, otherwise shall remain in full force.

Provided also that in case of any default in the payment of any amount of interest or principal herein provided for when due, or any default in the terms or conditions of any prior mortgage, or failure to keep the buildings on said premises in proper repair and insured as provided herein, or failure to pay any taxes constituting a lien on the above described premises within eight months after they are laid, or if title to said premises shall pass from the mortgagor herein either voluntarily or involuntarily, then the whole amount of said mortgage shall become due and payable.

IN WITNESS WHEREOF, It, the said **McALENEY'S NEW MEADOW LOBSTER**, has caused this instrument to be signed by Peter L. McAleney, its president, duly authorized thereunto this 27 day of the month of March 1999.

SIGNED, SEALED AND DELIVERED

in presence of

Witness

McALENEY'S NEW MEADOW LOBSTER

BY: Peter L. McAleney

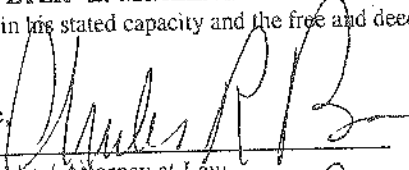
Peter L. McAleney, its President

STATE OF MAINE
CUMBERLAND, SS.

April 1, 1999
~~March~~

Personally appeared the above named **PETER L. McALENEY** and acknowledged the foregoing instrument to be his free act and deed in his stated capacity and the free and deed of the said corporation.

Before me,


Notary Public / Attorney at Law

Printed Name:

Charles P. Bean

MORTGAGE DEED

With Insurance Clause

KNOW ALL MEN BY THESE PRESENTS,

THAT, It, McALENEY'S NEW MEADOWS LOBSTER, a Maine corporation, in consideration of **TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00)** and other valuable consideration, paid by **RONALD C. BROOKS**, whose mailing address is 206 South Street, Gorham, Maine 04038, the receipt of which is hereby acknowledged, does hereby *give, grant, bargain, sell and convey* unto the said **RONALD C. BROOKS**, his heirs and assigns forever, a certain lot or parcel of land, situated in Portland, Cumberland County, Maine, being more particularly bounded and described as follows:

For the subject property see the attached Schedule A.

This conveyance is made subject to all encumbrances of record.

TO HAVE AND TO HOLD the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said **RONALD C. BROOKS**, his heirs and assigns, to their use and behoof forever.

AND It does *covenant* with the said Grantee, his heirs and assigns, that it is lawfully seized in fee of the premises; that they are free of all encumbrances, except as aforesaid; that it has good right to sell and convey to the said Grantee to hold as aforesaid; and that it and its successors, shall and will *warrant and defend* the same to the said **RONALD C. BROOKS**, his heirs and assigns forever, against the lawful claims and demands of all persons.

PROVIDED NEVERTHELESS, that if the said **McALENEY'S NEW MEADOW LOBSTER**, its successors or assigns pays to the said **RONALD C. BROOKS**, his heirs, executors, administrators, or assigns, the sum of \$250,000.00 five years from the date hereof, payable annually, and until such payment shall pay all taxes and assessments on the granted premises, to whomsoever laid or assessed, and shall keep the buildings thereon insured against fire in the sum not less than the value of improvements, for the benefit of the said **RONALD C. BROOKS**, his heirs, executors, administrators or assigns, in such form and at such insurance offices as he shall approve, and shall not commit nor suffer any strip or waste of the granted premises, nor commit any breach of any covenant herein contained, then this Deed, as also a certain Note bearing even date with **these presents** given by the said **McALENEY'S NEW MEADOW LOBSTER**, to the said **RONALD C. BROOKS** to pay the sum at the time aforesaid, shall both be void, otherwise shall remain in full force.

Provided also that in case of any default in the payment of any amount of interest or principal herein provided for when due, or any default in the terms or conditions of any prior mortgage, or failure to keep the buildings on said premises in proper repair and insured as provided herein, or failure to pay any taxes constituting a lien on the above described premises within eight months after they are laid, or if title to said premises shall pass from the mortgagor herein either voluntarily or involuntarily, then the whole amount of said mortgage shall become due and payable.

IN WITNESS WHEREOF, It, the said **McALENEY'S NEW MEADOW LOBSTER**, has caused this instrument to be signed by Peter L. McAleney, its president, duly authorized thereunto this 15 day of the month of March 1999.

SIGNED, SEALED AND DELIVERED

in presence of

Witness

McALENEY'S NEW MEADOW LOBSTERBY: Peter L. McAleney

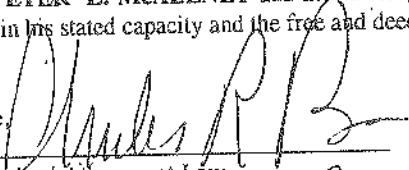
Peter L. McAleney, Its President

STATE OF MAINE
CUMBERLAND, SS.

~~March~~ 11, 1999

Personally appeared the above named **PETER L. McALENEY** and acknowledged the foregoing instrument to be his free act and deed in his stated capacity and the free and deed of the said corporation.

Before me,


Notary Public / Attorney at Law

Printed Name:

Charles P. Bean

SCHEDULE "A"

Beginning at a point situated on the westerly side line of Portland Pier distant on the westerly side line of Portland Pier on a course of S 28° 35' E, a distance of 521.53 feet from the intersection of said Portland Pier side line with the southerly side line of Commercial Street:

Thence by the westerly side line of Portland Pier on a course of S 28° 35' E, a distance of 148.47 feet to a point and land conveyed to the City of Portland by Harbor Realty Company by deed dated July 23, 1948 and recorded in the Cumberland County Registry of Deeds in Book 1924, Page 189;

Thence by land of the City of Portland on the following described courses:

S 18° 35' E 25.00 feet to a point;

Thence S 4° 25' W 26.00 feet to a point;

Thence S 61° 23' 40" W 3.03 feet to the northeasterly side line of the dock between Commercial Wharf and Portland Pier extended southeasterly;

Thence along the said extended and northeasterly side line of the dock between Commercial Wharf and Portland Pier on the following described courses:

N 28° 36' 20" W 124.39 feet to a point;

Thence N 28° 08' 50" W 70.61 feet to a point;

Thence by other land now or formerly of the grantor on a course of N 61° 25' E a distance of 21.04 feet to the point of beginning.

Said above described courses are magnetic and of the date 1887.

Said above described parcel contains 3,882 square feet.

Together with all easement and/or leasehold rights which grantor may have under the Submerged Land Act, i.e. 12 M.R.S.A. §558 (1981).

Together with such dock riparian and littoral rights appurtenant to the premises herein conveyed as this grantor can convey and whatever rights of way and easements in common with grantor and others on and over the Public Road on Portland Pier.

Subject to all existing conditions, easements, restrictions and other matters of record, and all Federal, State and local governmental laws, statutes, ordinances and regulations governing the ownership and use of piers and tidal waters.

Also conveying

A certain lot or parcel of land, together with buildings and improvements thereon, as well as all other interests thereon, situated in Portland, in the County of Cumberland and State of Maine and being more particularly bounded and described as follows:

The land, flats, wharf buildings on the southerly portion of Portland Pier, in the City of Portland, County of Cumberland and State of Maine, the same being situated southerly of Commercial Street and described as follows:

Beginning at a point in the easterly sideline of a public way or street as laid out by the County Commissioners June 6, 1887, distant southerly along the easterly sideline Five Hundred Forty-Four (544) feet, more or less, from its intersection with the southerly sideline of Commercial Street; thence by the southerly face of another building now or formerly owned by Harbor Realty Company, easterly and about at right angles to said street One Hundred Five (105) feet, more or less, to the westerly sideline of property of Custom House Wharf; thence by said Custom House Wharf property line southeasterly Thirty (30) feet, more or less, to the northerly property line of property conveyed by said Harbor Realty Company to this Grantor by deed dated December 2, 1955, and recorded in the Cumberland County Registry of Deeds in Book 2253, at Page 304; thence by said Grantor's other property aforesaid westerly One Hundred Five (105) feet, more or less, to street; thence by said street northwesterly Thirty(30) feet, more or less, to the point of beginning.

Excepting and reserving, however, an easement in the Harbor Realty Company, its successors and assigns, for the overhang of the eaves of the Harbor Realty Company's building, forming the northerly boundary line of the premises herein described and for the dripping of water and other precipitation from said eaves upon the premises herein described.

Also excepting and reserving the right and easement in Harbor Realty Company, its successors and assigns, to enter upon the most northerly two (2) foot strip of the premises herein described for the purpose of repairing and maintaining the southerly exterior of its building abutting the above described premises on the northerly side thereof.

Also conveying herewith all of the Grantor's right, title and interest in and to the land, flats, wharf and buildings in the southerly portion of Portland Pier, in said Portland, the same being situated southerly of Commercial Street and extending into Portland Pier, and described as follows:

Beginning at a point in the easterly sideline of a public way or street as laid out by the County Commissioners, June 6, 1887, distant southerly along easterly sideline Five Hundred Seventy-Four and Forty-five hundredths (574.45) feet, more or less, from its intersection with the southerly sideline of Commercial Street; thence in a general southerly direction along said

easterly sideline of said public way or street a distance of Ninety-Three and Thirty-Five hundredths (93.35) feet, more or less, to property purchased by the City of Portland July 23, 1948, from Harbor Realty Company, by deed recorded in the Cumberland County Registry of Deeds in Book 1924, at Page 189; thence along the easterly courses of said City of Portland's property in a southerly direction over the end of said Portland Pier to the Harbor Commissioner's line; thence northeasterly along the Harbor Commissioner's line to a point, said point being approximately in the southwesterly sideline of the dock between Custom House Wharf and said Portland Pier; thence by and along the westerly sideline of said last mentioned dock in a general northerly direction to a point which is on a line which intersects the point of beginning at right angles to the aforementioned public way; thence in a westerly direction across said pier to the street or public way and the point of beginning.

This conveyance is made subject to whatever rights, title and easements the County of Cumberland and the City of Portland have in the public way or street leading southerly from said Commercial Street over and across said pier to the southerly end thereof, and also subject to whatever right, title and easements the City of Portland acquired by deed from Harbor Realty Company, said deed being recorded in Book 1924, Page 189, at the Cumberland County Registry of Deeds.

This conveyance is made subject to the mortgage given by Ronald C. Brooks and Janet Brooks to the Administrator of the Small Business Administration, dated June 7, 1978 and recorded in the Cumberland County Registry of Deeds in Book 4238, at Page 133.

This conveyance is made subject to the interest of the State of Maine in any submerged lands included in the premises described above.

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RECEIVED
RECORDED REGISTRY OF DEEDS

1999 APR 14 PM 12:26

CUMBERLAND COUNTY

John B O'Brien



McAleney's New Meadows Lobster

MAINE SEAFOOD DEALER



Wholesale - Retail Sales: Lobster, Lobster Meat, Steamers and other Seafood Products

60 Portland Pier • Portland, Maine 04101
Tel. (207) 775-1612, 1-800-668-1612 • Fax (207) 874-2456
www.newmeadowslobster.com

February 12, 2002

City of Portland
Zoning Board

I have been at 60 Portland Pier for 25 years and have seen many changes on the waterfront, both good and bad. My wife and I have been married for 32 years and have a grown son who has decided to come into the business with us. We are a working family on the working waterfront.

The lobster business is a very complex business. I'm dealing with a live commodity that needs constant attention. At the present time my wife and I live in South Portland. When I leave the business at the end of the workday I am returning once or twice before the next business day to check the gate, load and unload trucks, answer an alarm, or check the pumps; (when the pumps shut down, the lobsters die).

McAleney's New Meadows Lobster sells over 2 million pounds of lobsters a year. We employ 10 people year round. We provide berthing for 12 lobster boats, and we are responsible for 42 boats that sell lobsters to us.

Security is a huge problem on the waterfront. The security systems we have along with police patrols have not been enough to take care of the problems.

In most lobster buying stations around the state the owner lives at the business. We would like to live at the 60 Portland Pier address to protect our family business. As I have said before, *"Where does the chicken farmer live? ... On the chicken farm not across the bridge in South Portland"*.

Sincerely,

Peter L. McAleney
Owner

PLANNING BOARD REPORT #40-02

**60 PORTLAND PIER
McALENEY'S NEW MEADOWS LOBSTER POUND
RESIDENTIAL OWNER'S UNIT
SITE PLAN AND CONDITIONAL USE APPEAL, WATERFRONT CENTRAL ZONE
PETER AND KATHLEEN McALANEY, APPLICANTS**

Submitted to:

Portland Planning Board
Portland, Maine
May 28, 2002

I. INTRODUCTION

Peter and Kathleen McAleney, proprietors of New Meadows Lobster Pound request a Public Hearing to discuss a proposal to establish a residential unit on the second floor of their business at 60 Portland Pier. The applicants wish to create a living quarter above the business to provide security for the premises and to be able to monitor the lobster pound equipment on a 24-hour basis.

The Board held a February 26th workshop on this application where the Board determined that the Applicant had not met the dimensional requirements of the conditional use language. The Applicant has redesigned the project significantly for this submission.

II. BACKGROUND

Zoning for the property is Waterfront Central. Residential units (not in existence as of May 5, 1987) are specifically prohibited from the WCZ; but, the City Council has recently enacted an amendment to the WCZ language allowing owners of marine related businesses to establish owner's units on the upper floors of buildings in existence on January 4, 1993. The construction of an owner's unit is a conditional use and is reviewable by the Planning Board. Please see conditional use language 14-315 (d), Attachment 4.

No site improvements or changes are proposed with this application.

Project Description

The applicant proposes to convert 1000 sq ft of office and storage space into a residential unit on the second floor of the property. Currently, much of the space is vacant with a bath, kitchenette and two 4' 8" X 10' exterior decks. The applicant proposes to expand the existing bath, construct an additional bath, add a kitchen, convert space to bedroom use, and expand the exterior deck to encompass the entire southwesterly end to the building. Please see the attached Plans, Attachment 7.

II. FINDINGS

Zoning:	WCZ
Existing Building gross sq. ft:	4400+/- sq. ft.
Proposed Building Footprint:	Unchanged
Permitted conversion to residential owners unit under zoning:	1000 sq. ft. total
Adjacent Uses:	Existing office use, non-marine residential, public waterfront access, and commercial berthing.
Parking:	No change required
Notice:	235 neighbors and interested parties were noticed for this hearing.

III. STAFF REVIEW

The proposal has been reviewed for compliance with the WCZ Zone, Conditional Use Standards, and Site Plan Standards of the Land Use Code.

IV. CONDITIONAL USE REVIEW, WCZ: 14-315

The conditions specified under Waterfront Central Zone Conditional Use section 14-315 (d) are as follows:

- (1) *The residential living space shall not exceed one thousand (1000) square feet.*

Previously, Zoning Administrator, Marge Schmuckal had determined that the plan submitted for the February 26th workshop exceeded the 1000 square foot maximum allowed under the conditional use provision. The revised plan shows a separation of improvements where the residential living space is separate from office space and that all internal circulation between the uses occurs through a shared foyer and stair landing. Previously, portions of the office use were only accessible by walking through the residential use. In the current plan, the uses are reasonably separate.

Additionally, regarding the previous submission, Ms. Schmuckal had determined that the new deck space should be counted as residential use, and therefore was not allowed under the conditional use provisions. The Applicant has provided a letter explaining that the deck is part of the marine use of the facility. The letter states the deck is proposed as a security measure and is the easiest way to monitor the pier space and commercial

berthing at night. While the applicants indicate that they will certainly use the deck for daytime residential use, they would not propose to construct a new deck if not for the security needs of the marine use. Ms. Schmuckal has provided an opinion that supports counting the deck as a permitted marine use expansion of the existing lobster pound. Please see Attachment 3.

- (2) *The occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family, or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy other than the primary owner of the marine related business.*

Exhibit A of the 2001 Annual Report of the McAleney's New Meadows Lobster Pound lists the Applicants as the sole shareholders of the business. Please see the Applicants revised written statement included in Attachment 1.

- (3) *The residential use shall be limited to one unit per wharf.*

There are no other marine related residential units proposed for Portland Pier. The pier contains a complex of residential condominiums that were constructed prior to the current zoning and exist as legal non-conforming uses.

- (4) *The residential use shall be year round use only, and shall not be used on a seasonal basis.*

The Applicants indicate the business is a year-round use and that they will adhere to the year-round occupation requirement of the conditional use code.

- (5) *Upon the vacancy in access of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.*

Should the residential use terminate, the Applicant will need to return to the Board with a new application for this use.

3. WCZ Conditional Use Standards

The following general standards apply for conditional uses in the WCZ

- a. *The proposed use shall be compatible with existing and potential marine uses in the vicinity.*

Commercial berthing existing along the Portland Pier perimeter in this area will not be interrupted by the proposed use.

b. *Access to the water*

Portland Pier is part of the Shoreway Access Trail system and public access is allowed to the end of the pier from sun up to sundown. There have been instances where access has been limited by the location of an unscreened dumpster located in front of the pedestrian gate to the pier end. Staff requests that the applicant ensure pedestrian access to the pier as required and that the dumpster be relocated to an area that does not interrupt use of the existing pedestrian gate. A condition of approval is included in the motions.

c. *Conditional uses requiring 20 or more parking spaces.*

N/A

4. **The following standards apply for all conditional uses: Section 14-474(2)**

i. *There are unique or distinctive characteristics or effects associated with the proposed conditional use.*

There are *no* known unique or distinctive characteristics associated with the proposed use.

ii. *There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area; and*

It does not appear that there will be any adverse impacts with the proposed project.

iii. *Such impact differs substantially from the impact which would normally occur from such a use in that zone.*

The impacts of this proposed expansion are similar to those normally associated from the residential uses existing on Portland Pier.

V. **SITE PLAN REVIEW**

This project will result in no changes to the traffic circulation, drainage patterns, or public or private utility infrastructure, which currently exists on site.

1/2. Traffic/Parking

There are no anticipated traffic impacts from the expansion.

3/4. Building Impact

The proposed second floor deck expansion will not unduly impact adjacent structures.

5. Utility Capacity

The expansion requires no additional utility connections or significant increases in utility use.

6. Landscaping

No landscape changes are proposed.

7. Drainage

No additional impervious surface will be added as result of this development and no drainage problems are apparent.

8. Lighting

The Applicant's updated written statement includes a narrative describing the installation of a number of exterior light fixtures. Details and fixture cuts have not been provided.

Staff has provided a suggested condition of approval that all new exterior lighting fixture specifications, locations, and photometrics be submitted to the Planning Office for staff review and approval.

9. Fire

City Fire Safety has approved this proposal

10. Off Premises Infrastructure

The proposal is consistent with off premises infrastructure

11. Environmental Impact

None anticipated

VI. MOTIONS FOR THE BOARD TO CONSIDER

On the basis of plans and materials submitted by the applicant and on the basis of information provided in Planning Board Report #40-02 relevant to standards for conditional use and site plan review, the Board finds:

- i. That the proposed improvements **are/are not** in conformance with the Conditional Use Standards for Waterfront Central Zone and Section 14-474 of the Land Use Code; and,

Subject to the following Condition of approval:

- a. That the dumpster be relocated to a location that does not block the existing Shoreway Access pedestrian gate and that the dumpster be screened by four-side opaque fencing.
- ii. That the proposed improvements **meet/fail to meet** the Site Plan Standards of the City Land Use Code;

Subject to the following Condition of approval:

- a. That all new exterior lighting, including fixture specifications, locations, and photometrics be submitted to the Planning Office for staff review and approval.

Attachments:

1. Applicant's updated Written Statement
2. Mortgage deed for property
3. May 21, 2002 Updated zoning memo
4. City Code 14-315 (d) Conditional Use for owner's residence on pier
5. Feb 22, 2002 Zoning Determination Letter
6. Photos
7. Updated Plans, Existing and Proposed



McAleney's New Meadows Lobster

MAINE SEAFOOD DEALER



AH 1.1

Wholesale - Retail Sales: Lobster, Lobster Meat, Steamers and other Seafood Products

60 Portland Pier • Portland, Maine 04101

Tel. (207) 775-1612, 1-800-668-1612 • Fax (207) 874-2456

www.newmeadowslobster.com

City of Portland

Marge Schmuckal, Zoning Administrator

Planning Department

Room 315 389 Congress Street

Portland, ME 04101

May 10, 2002

Dear Ms. Schmuckal:

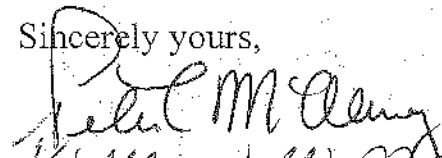
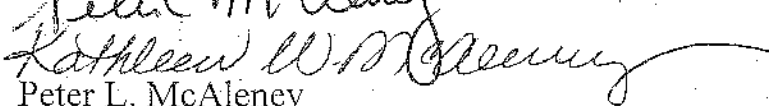
Thank you for returning my call yesterday. In my excitement over meeting each one of the five (5) criteria listed in the memorandum, I failed to discuss the porches.

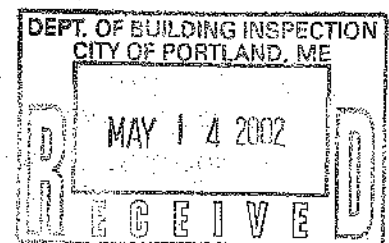
I designed the wrap around porches to have visual access to each corner of the pier. My husband and I were inspired to move up over the business to curb break-ins and vandalism. The porches will optimize our surveillance of the berthing on both sides of the building. We have berthing for 12 lobster boats. Each boat is valued at \$60,000 to \$150,000. The tank house will also be visible from either end of the porch. Our tank house will hold upward to 40,000 lb. of lobster equivalent to \$250,000 +.

The lobstermen that berth their boats with us also have equipment and traps that they store on our pier. The best way to keep an eye on this is to have a "birds eye view". If there were illegal dealings on the pier; I would rather be on the upper level porch calling the police than on the pier level face to face with what ever might be happening.

If you have any other questions or if you need more information that is not already supplied, please do not hesitate to call us.

Sincerely yours,



Peter L. McAleney
Kathleen W. McAleney





McAleney's New Meadows Lobster
MAINE SEAFOOD DEALER



Att: Z

Wholesale - Retail Sales: Lobster, Lobster Meat, Steamers and other Seafood Products

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Tel. (207) 775-1612, 1-800-668-1612 • Fax (207) 874-2456
www.newmeadowslobster.com

City of Portland
Marge Schmuckal, Zoning Administrator
Planning Department
Room 315
389 Congress Street
Portland, Maine 04101

May 1, 2002

Dear Ms. Schmuckal:

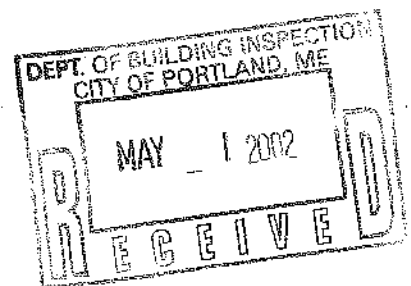
Please find enclosed four (4) copies of the blue prints for the renovation of 60 Portland Pier. After working long and hard on the project, I think we have a workable plan that comes in **under** the one thousand (1,000) square feet of living space.

We have explained how we plan to meet each one of the five (5) criteria listed in the memorandum dated February 26, 2002, as well as addressed the right of way issues and the lighting of the exterior.

If you have any questions or if you need more information that is not already supplied, please do not hesitate to call us.

Sincerely yours,

Peter L. McAleney
Kathleen W. McAleney
McAleney's New Meadows Lobster Co.



Enclosures:
Four (4) blueprints
List of specific criteria

CITY OF PORTLAND, MAINE

A#13

The five specific criteria are discussed below for McAleney's New Meadows Lobster Co. at 60 Portland Pier, Portland, Maine

- (1) *The residential living space shall not exceed one thousand (1,000) square feet.*

On this revised plan (see attached), that I submit to you today, the square footage of the residential living space is 995.41 square feet.

As per my conversation with Marge Schmuckal on April 22, 2002, I have included the laundry room in the business portion of the building. As I explained to Ms Schmuckal because of the nature of the lobster business, at the end of the day Peter's clothes have a fowl working waterfront smell. By having the laundry outside of the small resident, Peter can shower and change before leaving the office portion of the building.

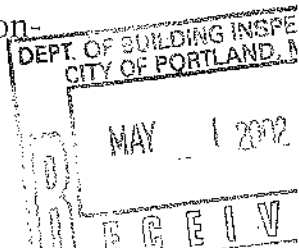
I also talked to Marge Schmuckal in the same conversation about using French doors on both sides of the joint foyer. Because the foyer has no windows, it is a dark area in the middle of the building. When I spoke to Ms Schmuckal about this, she suggested that I put in writing the reasons for wanting the French doors. If the city will approve the use French doors on both sides of the foyer, it will allow natural lighting to flood into the area.

- (2) *The occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family, or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy other than the primary owner of the marine related business.*

Peter L. and Kathleen W. McAleney will be the residents of the unit. For verification that the McAleney's do own the business please find attached the Articles of Incorporation Report and our 2002 Annual Report.

- (3) *The residential use shall be limited to one unit per wharf.*

"There are no other marine related business owner residential units proposed for Portland Pier. The pier contains a complex of residential condominiums that were constructed prior to the current zoning and exist as legal non-



conforming uses." This quote was taken from the memorandum dated February 26, 2002 from William B. Needelman, Senior Planner.

AH 1.4

(4) The residential use shall be year round use only, and shall not be used on a seasonal basis.

Peter and Kathleen McAleney do plan to occupy the space over the business year round.

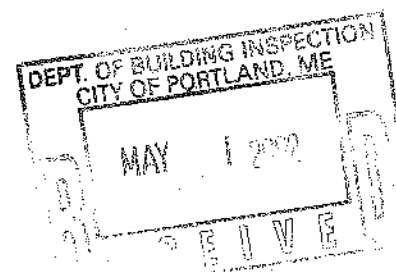
(5) Upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.

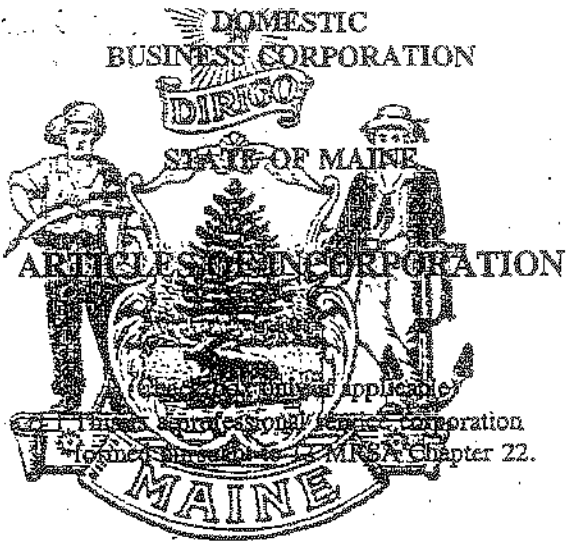
Right of Way Issues

Portland Pier is part of the Shoreway Access Trail system and public access is allowed to the end of the pier from sun up to sundown. There will be no problem with pier access. With the McAleney's living on the pier it will be very easy to comply with the sun up to sundown rule.

Lighting

Please note the exterior lighting proposed as part of this project. There will be five (5) wall pack lights total. One 150 watt light at the corner of the company bathroom, two 150 watt lights at the office outside corners, one 100 watt light at the kitchen corner at the front of the building, and one 100 watt light at the other front corner of the building. There will also be outdoor decorative lighting outside the door leading from the office onto the deck.





File No. 19991617-D Pages 3
Fee Paid \$ 105
DCH 1990651800049 ARTI
FILED
01-MAR-99

Att 15

Julie R. Flynn
Deputy Secretary of State

A True Copy When Attested By Signature

Julie R. Flynn
Deputy Secretary of State

Pursuant to 13-A MRSA §403, the undersigned, acting as incorporator(s) of a corporation, adopt(s) the following Articles of Incorporation:

FIRST: The name of the corporation is McAleney's New Meadows Lobster

and its principal business location in Maine is 60 Portland Pier, Portland, Maine 04101

(physical location - street (not P.O. Box), city, state and zip code)

SECOND: The name of its Clerk, who must be a Maine resident, and the registered office shall be:

Charles R. Bean

(name)

170 Ocean Street, South Portland, Maine 04106

(physical location - street (not P.O. Box), city, state and zip code)

P.O. Box 2267, South Portland, Maine 04116-2267

(mailing address if different from above)

THIS FORM MUST BE ACCOMPANIED BY FORM MBCA-18A (Acceptance of Appointment as Clerk §304.2-A.).

THIRD: ("X" one box only)

☐ A. 1. The number of directors constituting the initial board of directors of the corporation is _____ (See §703.1.A.)

2. If the initial directors have been selected, the names and addresses of the persons who are to serve as directors until the first annual meeting of the shareholders or until their successors are elected and shall qualify are:

NAME

ADDRESS

NAME	ADDRESS
_____	_____
_____	_____
_____	_____

3. The board of directors ☐ is ☐ is not authorized to increase or decrease the number of directors.

4. If the board is so authorized, the minimum number, if any, shall be _____ directors. (See §703.1.A.) and the maximum number, if any, shall be _____ directors.

☒ B. There shall be no directors initially; the shares of the corporation will not be sold to more than twenty (20) persons, the business of the corporation will be managed by the shareholders. (See §701.2.)

DEPT. OF BUILDING INST
CITY OF PORTLAND
MAY

☒ There shall be only one class of shares (title of class) common

AH 1.6

Par value of each share (if none, so state) none Number of shares authorized 3000

☐ There shall be two or more classes of shares. The information required by §403 concerning each such class is set out in Exhibit attached hereto and made a part hereof.

SUMMARY

The aggregate par value of all authorized shares (of all classes) having a par value is \$ zero

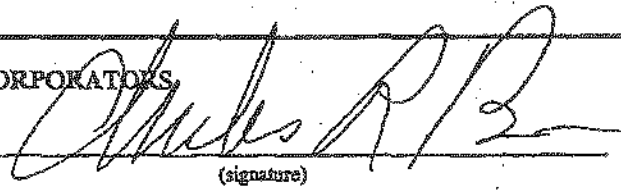
The total number of authorized shares (of all classes) without par value is 3000 shares

FIFTH: ("X" one box only) Meetings of the shareholders ☒ may ☐ may not be held outside of the State of Maine.

SIXTH: ("X" if applicable) ☐ There are no preemptive rights.

SEVENTH: Other provisions of these articles, if any, including provisions for the regulation of the internal affairs of the corporation, are set out in Exhibit attached hereto and made a part hereof.

INCORPORATORS



(signature)

Charles R. Bean

(type or print name)

DATED February 26, 1999

Street 48 Clinton Street

(residence address)

South Portland, Maine 04106

(city, state and zip code)

Street _____

(residence address)

Street _____

(residence address)

For Corporate Incorporators*

Name of Corporate Incorporator _____

By _____

(signature of officer)

Street _____

(principal business location)

(type or print name and capacity)

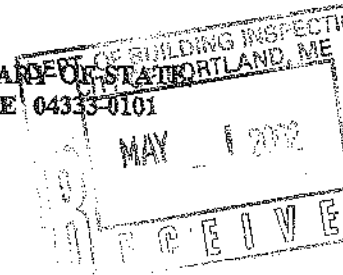
(city, state and zip code)

*Articles are to be executed as follows:

If a corporation is an incorporator (§402), the name of the corporation should be typed and signed on its behalf by an officer of the corporation. The articles of incorporation must be accompanied by a certificate of an appropriate officer of the corporation, not the person signing the articles, certifying that the person executing the articles on behalf of the corporation was duly authorized to do so.

SUBMIT COMPLETED FORMS TO: CORPORATE EXAMINING SECTION, SECRETARY OF STATE, 101 STATE HOUSE STATION, AUGUSTA, ME 04333-0101
TEL. (207) 287-4195

FORM NO. MBCA-6 Rev. 9/97



Filing Fee: \$60.00
Must Accompany Report

Make check payable to:
Secretary of State

Please file by
APRIL 1, 2002

STATE OF MAINE
2002 ANNUAL REPORT
FOR BUSINESS CORPORATIONS ON FILE AS OF
DECEMBER 31, 2001

Pursuant to 13-A MRSA §1301.2, the information on the
report must be current as of the date signed.

Filing by April 1, 2002 will allow us
to provide better service. The legal
filing deadline is still June 1,
2002. A \$25 late filing fee will be
assessed if the report is late.

DCN Number: **AH17**
2020428040300

Charter Number:
19991617 D

MCALENEY'S NEW MEADOWS LOBSTER
CHARLES R. BEAN, CLERK
P.O. BOX 2267
SOUTH PORTLAND, ME 04116-2267

DO NOT CHANGE the preprinted information on this form. If the information is incorrect, you must contact the Corporate Examining Section at (207) 624-7740. Other questions should be directed to the Reporting & Information Section at (207) 624-7752. Many report forms are rejected because they are incomplete. **Before submitting your report form together with the proper filing fee, REVIEW IT CAREFULLY to be sure you have provided all the information requested. * PLEASE SEE REVERSE SIDE FOR FILING INSTRUCTIONS.**

1. A brief statement of the character of the business in which the corporation is actually engaged in the State of Maine; if none, so indicate: (13-A MRSA §1301.1 C)
see attached Exhibit A

2. Name of each officer. (13-A MRSA §1301.1 D) Street address of each officer (not P.O. Box):
(physical location (not P.O. Box) - street or rural route number, town/city, zip)

Pres: see attached Exhibit A

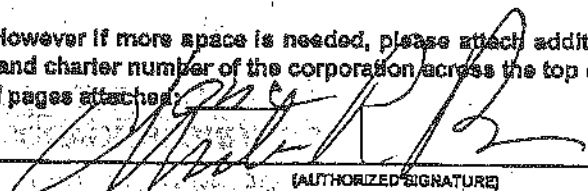
Treas: _____

3. Name of all Shareholders (13-A MRSA §1301.1 D & §701.2 A) Street address of each (not P.O. Box):
(physical location (not P.O. Box) - street or rural route number, town/city, zip)

see attached Exhibit A

THIS PREPRINTED FORM MUST BE USED. However if more space is needed, please attach additional pages, using one side only. All attachments must contain the name and charter number of the corporation across the top of the page. Each page should be numbered consecutively. List number of pages attached:

Dated: 4/22/02


(AUTHORIZED SIGNATURE)

Charles R. Bean, Clerk

RETURN TO: Reporting Section, Bureau of Corporations, Elections and Commissions, 101 State House Station, Augusta, Maine 04333-0101
FORM NO. MBCA-13

(TYPE OR PRINT NAME AND CAPACITY) DEPT. OF BUILDINGS & CONSTRUCTION
(13-A MRSA §1301.3 Penalty for untrue or omitted material facts - 13-A MRSA §1304) OFFICE OF PORTLAND, ME
MAY 1 2002
FIVE

State of Maine
Annual Report

AH 1.8

DCN NUMBER: 2020428040300

1. *A brief statement of the character of the business* in which the corporation is actually engaged in the State of Maine; if none, so indicate: (113-A MRSA §1301.C)

2. *Name of each officer:* (13-A MRSA § 1301.D)

Street address of each office (not P.O. Box):
(physical location (not P.O. Box) - street or rural route number, town/city, zip)

Pres: Peter McAleney

60 Portland Pier, Portland, Maine 04102

Treas: Kathleen McAleney

60 Portland Pier, Portland, Maine 04102

3. *Name of 1 to 20 Shareholders:*

Street address of each (not P.O. Box):
(physical location (not P.O. Box) - street or rural route number, town/city, zip)

Peter McAiney

60 Portland Pier, Portland, Maine 04102

Kathleen McAleney

60 Portland Pier, Portland, Maine 04102



55

R I V E



McAleney's New Meadows Lobster

MAINE SEAFOOD DEALER



A#1.1

Wholesale - Retail Sales: Lobster, Lobster Meat, Steamers and other Seafood Products

60 Portland Pier • Portland, Maine 04101
Tel. (207) 775-1612, 1-800-668-1612 • Fax (207) 874-2456
www.newmeadowslobster.com

February 12, 2002

City of Portland
Zoning Board

I have been at 60 Portland Pier for 25 years and have seen many changes on the waterfront, both good and bad. My wife and I have been married for 32 years and have a grown son who has decided to come into the business with us. We are a working family on the working waterfront.

The lobster business is a very complex business. I'm dealing with a live commodity that needs constant attention. At the present time my wife and I live in South Portland. When I leave the business at the end of the workday I am returning once or twice before the next business day to check the gate, load and unload trucks, answer an alarm, or check the pumps; (when the pumps shut down, the lobsters die).

McAleney's New Meadows Lobster sells over 2 million pounds of lobsters a year. We employ 10 people year round. We provide berthing for 12 lobster boats, and we are responsible for 42 boats that sell lobsters to us.

Security is a huge problem on the waterfront. The security systems we have along with police patrols have not been enough to take care of the problems.

In most lobster buying stations around the state the owner lives at the business. We would like to live at the 60 Portland Pier address to protect our family business. As I have said before, *"Where does the chicken farmer live? ... On the chicken farm not across the bridge in South Portland"*.

Sincerely,

Peter L. McAleney
Owner

MORTGAGE DEED

AH2.1

With Insurance Clause

KNOW ALL MEN BY THESE PRESENTS,

THAT, It, McALENEY'S NEW MEADOWS LOBSTER, a Maine corporation, in consideration of TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00) and other valuable consideration, paid by RONALD C. BROOKS, whose mailing address is 206 South Street, Gorham, Maine 04038, the receipt of which is hereby acknowledged, does hereby give, grant, bargain, sell and convey unto the said RONALD C. BROOKS, his heirs and assigns forever, a certain lot or parcel of land, situated in Portland, Cumberland County, Maine, being more particularly bounded and described as follows:

For the subject property see the attached Schedule A.

This conveyance is made subject to all encumbrances of record.

TO HAVE AND TO HOLD the aforegranted and bargained premises, with all the privileges and appurtenances thereof, to the said RONALD C. BROOKS, his heirs and assigns, to their use and behoof forever.

AND It does covenant with the said Grantee, his heirs and assigns, that it is lawfully seized in fee of the premises; that they are free of all encumbrances, except as aforesaid; that it has good right to sell and convey to the said Grantee to hold as aforesaid; and that it and its successors, shall and will warrant and defend the same to the said RONALD C. BROOKS, his heirs and assigns forever, against the lawful claims and demands of all persons.

PROVIDED NEVERTHELESS, that if the said McALENEY'S NEW MEADOW LOBSTER, its successors or assigns pays to the said RONALD C. BROOKS, his heirs, executors, administrators, or assigns, the sum of \$250,000.00 five years from the date hereof, payable annually, and until such payment shall pay all taxes and assessments on the granted premises, to whomsoever laid or assessed, and shall keep the buildings thereon insured against fire in the sum not less than the value of improvements, for the benefit of the said RONALD C. BROOKS, his heirs, executors, administrators or assigns, in such form and at such insurance offices as he shall approve, and shall not commit nor suffer any strip or waste of the granted premises, nor commit any breach of any covenant herein contained, then this Deed, as also a certain Note bearing even date with these presents given by the said McALENEY'S NEW MEADOW LOBSTER, to the said RONALD C. BROOKS to pay the sum at the time aforesaid, shall both be void, otherwise shall remain in full force.

Provided also that in case of any default in the payment of any amount of interest or principal herein provided for when due, or any default in the terms or conditions of any prior mortgage, or failure to keep the buildings on said premises in proper repair and insured as provided herein, or failure to pay any taxes constituting a lien on the above described premises within eight months after they are laid, or if title to said premises shall pass from the mortgagor herein either voluntarily or involuntarily, then the whole amount of said mortgage shall become due and payable.

IN WITNESS WHEREOF, It, the said McALENEY'S NEW MEADOW LOBSTER, has caused this instrument to be signed by Peter L. McAlency, its president, duly authorized thereunto this 15th day of the month of March, 1999.

SIGNED, SEALED AND DELIVERED

in presence of

Witness

McALENEY'S NEW MEADOW LOBSTER

BY: Peter L. McAlency

Peter L. McAleney, Its President

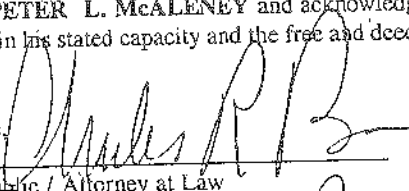
AH 2-2

STATE OF MAINE
CUMBERLAND, SS.

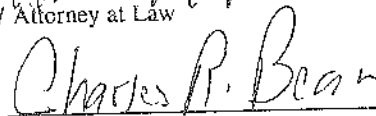
April 1,
March, 1999

Personally appeared the above named **PETER L. McALENEY** and acknowledged the foregoing instrument to be his free act and deed in his stated capacity and the free and deed of the said corporation.

Before me,


Notary Public / Attorney at Law

Printed Name:


Charles P. Bean

SCHEDULE "A"

Beginning at a point situated on the westerly side line of Portland Pier distant on the westerly side line of Portland Pier on a course of S 28° 35' E, a distance of 521.53 feet from the intersection of said Portland Pier side line with the southerly side line of Commercial Street;

Thence by the westerly side line of Portland Pier on a course of S 28° 35' E, a distance of 148.47 feet to a point and land conveyed to the City of Portland by Harbor Realty Company by deed dated July 23, 1948 and recorded in the Cumberland County Registry of Deeds in Book 1924, Page 189;

Thence by land of the City of Portland on the following described courses:

S 18° 35' E 25.00 feet to a point;

Thence S 4° 25' W 26.00 feet to a point;

Thence S 61° 23' 40" W 3.03 feet to the northeasterly side line of the dock between Commercial Wharf and Portland Pier extended southeasterly;

Thence along the said extended and northeasterly side line of the dock between Commercial Wharf and Portland Pier on the following described courses:

N 28° 36' 20" W 124.39 feet to a point;

Thence N 28° 08' 50" W 70.61 feet to a point;

Thence by other land now or formerly of the grantor on a course of N 61° 25' E a distance of 21.04 feet to the point of beginning.

Said above described courses are magnetic and of the date 1887.

Said above described parcel contains 3,882 square feet.

Together with all easement and/or leasehold rights which grantor may have under the Submerged Land Act, i.e. 12 M.R.S.A. §558 (1981).

Together with such dock riparian and littoral rights appurtenant to the premises herein conveyed as this grantor can convey and whatever rights of way and easements in common with grantor and others on and over the Public Road on Portland Pier.

Subject to all existing conditions, easements, restrictions and other matters of record, and all Federal, State and local governmental laws, statutes, ordinances and regulations governing the ownership and use of piers and tidal waters.

AT 2.4

Also conveying

A certain lot or parcel of land, together with buildings and improvements thereon, as well as all other interests thereon, situated in Portland, in the County of Cumberland and State of Maine and being more particularly bounded and described as follows:

The land, flats, wharf buildings on the southerly portion of Portland Pier, in the City of Portland, County of Cumberland and State of Maine, the same being situated southerly of Commercial Street and described as follows:

Beginning at a point in the easterly sideline of a public way or street as laid out by the County Commissioners June 6, 1887, distant southerly along the easterly sideline Five Hundred Forty-Four (544) feet, more or less, from its intersection with the southerly sideline of Commercial Street; thence by the southerly face of another building now or formerly owned by Harbor Realty Company, easterly and about at right angles to said street One Hundred Five (105) feet, more or less, to the westerly sideline of property of Custom House Wharf; thence by said Custom House Wharf property line southeasterly Thirty (30) feet, more or less, to the northerly property line of property conveyed by said Harbor Realty Company to this Grantor by deed dated December 2, 1955, and recorded in the Cumberland County Registry of Deeds in Book 2253, at Page 304; thence by said Grantor's other property aforesaid westerly One Hundred Five (105) feet, more or less, to street; thence by said street northwesterly Thirty(30) feet, more or less, to the point of beginning.

Excepting and reserving, however, an easement in the Harbor Realty Company, its successors and assigns, for the overhang of the eaves of the Harbor Realty Company's building, forming the northerly boundary line of the premises herein described and for the dripping of water and other precipitation from said eaves upon the premises herein described.

Also excepting and reserving the right and easement in Harbor Realty Company, its successors and assigns, to enter upon the most northerly two (2) foot strip of the premises herein described for the purpose of repairing and maintaining the southerly exterior of its building abutting the above described premises on the northerly side thereof.

Also conveying herewith all of the Grantor's right, title and interest in and to the land, flats, wharf and buildings in the southerly portion of Portland Pier, in said Portland, the same being situated southerly of Commercial Street and extending into Portland Pier, and described as follows:

Beginning at a point in the easterly sideline of a public way or street as laid out by the County Commissioners, June 6, 1887, distant southerly along easterly sideline Five Hundred Seventy-Four and Forty-five hundredths (574.45) feet, more or less, from its intersection with the southerly sideline of Commercial Street; thence in a general southerly direction along said

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easterly sideline of said public way or street a distance of Ninety-Three and Thirty-Five hundredths (93.35) feet, more or less, to property purchased by the City of Portland July 23, 1948, from Harbor Realty Company, by deed recorded in the Cumberland County Registry of Deeds in Book 1924, at Page 189; thence along the easterly courses of said City of Portland's property in a southerly direction over the end of said Portland Pier to the Harbor Commissioner's line; thence northeasterly along the Harbor Commissioner's line to a point, said point being approximately in the southwesterly sideline of the dock between Custom House Wharf and said Portland Pier; thence by and along the westerly sideline of said last mentioned dock in a general northerly direction to a point which is on a line which intersects the point of beginning at right angles to the aforementioned public way; thence in a westerly direction across said pier to the street or public way and the point of beginning.

This conveyance is made subject to whatever rights, title and easements the County of Cumberland and the City of Portland have in the public way or street leading southerly from said Commercial Street over and across said pier to the southerly end thereof, and also subject to whatever right, title and easements the City of Portland acquired by deed from Harbor Realty Company, said deed being recorded in Book 1924, Page 189, at the Cumberland County Registry of Deeds.

This conveyance is made subject to the mortgage given by Ronald C. Brooks and Janet Brooks to the Administrator of the Small Business Administration, dated June 7, 1978 and recorded in the Cumberland County Registry of Deeds in Book 4238, at Page 133.

This conveyance is made subject to the interest of the State of Maine in any submerged lands included in the premises described above.

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RECEIVED
RECORDED REGISTRY OF DEEDS

1999 APR 14 PM 12:26

CUMBERLAND COUNTY

John B O'Brien

AH 3

From: Marge Schmuckal
To: William Needleman
Date: Tue, May 21, 2002 4:06 PM
Subject: 60 Portland Pier - McAleney's New Meadows Lobster

Bill,

I have reviewed the most recent submittals for the proposed marine related residential unit in the Waterfront Central Zone (WCZ) under section 14-315(d).

The proposed changes now appear to meet the given criteria. I am convinced that the decks would not be counted towards the square footage of the interior residential unit. The owners have given evidence that these decks are primarily for business security.

However, I understand that the final approval on all the given criteria is with the Planning Board under the Conditional Use appeal standards.

Marge Schmuckal
Zoning Administrator
5/21/02

CC: MARK ADELSON; PENNY LITTELL; Sarah Hopkins

- (3) as of September 7, 2000, an existing building that qualifies for a non-water dependent, non-marine related use under 14-314 shall be no less than 500 square feet; and
- (4) The expansion of the use shall be reviewed by the Planning Board under the Site Plan standards and shall otherwise meet the requirements of the Waterfront Central Zone and this Code.
- (d) Residential: The "primary" owner of a marine related business may occupy space within the upper story of a building in existence on January 4, 1993, provided the following conditions are met:
- (1) the residential living space shall not exceed one thousand (1,000) square feet;
 - (2) the occupancy of said space shall be limited to the primary owner of the marine related business. The residential use is not transferable to friends, family or anyone other than the primary business owner. No such residential space shall be leased out by or allowed to be used for occupancy by other than the primary owner of the marine related business;
 - (3) the residential use shall be limited to one unit per wharf;
 - (4) the residential use shall be year round use only, and shall not be used on a seasonal basis; and
 - (5) upon the vacancy in excess of three (3) months of the residential living space by the primary owner of the marine related business, the residential use shall automatically terminate and shall not be continued without new conditional use approval under this subsection.

For purposes of this subsection, "primary owner of the marine related business" shall mean a person who legally owns fifty percent (50%) or more of the marine related business.

(Ord. No. 168-93, § 2, 1-4-93; Substitute Ord. No. 00-42, 8-7-00; Ord. No. 73-01/02, § 1, 10-15-01; Ord. No. 131-01/02, § 2, 1-23-02)

Sec. 14-315.3. Contract or conditional rezoning



CITY OF PORTLAND

February 22, 2002

Peter L. McAleney
C/o McAleney's New Meadows Lobster
60 Portland Pier
Portland, ME 04101

RE: 60 Portland Pier -- 030-B-004 -- W-C Zone -

Dear Mr. McAleney,

I am in receipt of your permit application to add a living space on the second floor of your building at 60 Portland Pier. As you are aware, this is a conditional use appeal that is reviewed and approved by the Planning Board. By ordinance, there are specific conditions that must be met before the Board can approve your proposal. As the Zoning Administrator, I have been reviewing the square footage restrictions for the Planning Board.

Section 14-315(d) limits the square footage of this business related residential unit to no more than 1,000 square feet of area. My analysis of your proposal shows that there would actually be 1,646 square feet of area devoted to your residential use. This is over the allowance provided within the ordinance. Within my calculations I have included an area that has been labeled "unheated archival storage" and the closet space adjoining it. This space is only accessed first thru the residential "bedroom suite" and then thru the "master bath". As presently designed, I can only consider it as part of the residential area and not part of the office area. I have also included the "new covered deck" within total square footage calculation. This deck is only accessible from the residential unit and not the office area. In determining lot coverage and setbacks for single family dwellings, I have consistently considered decks as part of the use and structure. I am continuing that principal here.

You have the right to appeal my determination concerning the dimensional requirements to the Zoning Board of Appeals. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to apply. I have included the necessary paperwork that you would need to apply for such an appeal. Please note that this variance and/or interpretation appeal is separate and distinct from the conditional use appeal that you have presently applied for before the Planning Board.

During my analysis of your proposal I have notice other discrepancies with the listed conditions for this use. Our records show a building permit for a new addition that was constructed in 1997. This is the addition in which half of your proposed residential unit is located. The ordinance restricts a residential use to the "upper story of a building in existence on January 4, 1993". This section of the building was not in existence at that time.

Your submittal also indicates that you would like to build a new covered deck around most of the outside of the structure. The current wording of this ordinance states that this residential use may only "occupy space within the upper story of a building". This new, covered deck is clearly on the exterior of the existing building.

If you have any questions regarding this matter, please do not hesitate to call

Very truly yours,



Marge Schmuckal
Zoning Administrator

Cc: Portland City Councilors
Lee Urban, Economic and Development Dept.
Mark Adelson, Housing and Neighborhood Services
Alex Jaegerman, Planning
Sarah Hopkins, Planning
William Needleman, Planning
Penny Littell, Corporation Counsel



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION
AUGUSTA, ME 04333

DEPARTMENT ORDER

IN THE MATTER OF

PETER AND KATHLEEN MCALENEY
Portland, Cumberland County
PIER IMPROVEMENTS
L-004614-4P-B-N (approval)

) NATURAL RESOURCES PROTECTION
) COASTAL WETLAND ALTERATION
) WATER QUALITY CERTIFICATION
) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection has considered the application of PETER AND KATHLEEN MCALENEY with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicants propose to replace a 2,000-square foot section of an existing timber pier and an existing 1,346-square foot building that is used for commercial fishing operations.

The pier will be raised by approximately four feet in order to achieve ground floor clearance with the mapped Federal Emergency Management Association (FEMA) base flood elevation. In order to replace this section of the pier, the applicants propose to reconstruct the pier in the same footprint with 45 plumb timber piles arranged in a grid pattern to support a reinforced concrete slab. Lateral pile support for the new pier will be accomplished through the use of cross bracing and batter piles. The applicants propose to place five timber fender piles at the edge of the pier to maintain the existing fendering system.

The existing 1,346-square foot building will be replaced in the same footprint with exterior stair access within the footprint of the pier. The stair access is associated with the four foot elevation difference as a result of the new section of pier and the existing pier section that will remain in the same elevation. The project is shown on a set of plans, the first of which is entitled, "Site Plan," prepared by Baker Design Consultants, Inc. and dated October 5, 2009, with a last revision date on any of the sheets of December 24, 2009. The project will take place over the intertidal zone of the coastal wetland which is populated with lobster, barnacles, and periwinkles. During construction, the site will be accessed by water and by land. The project site is located on Portland Pier in the City of Portland.

B. Current Use of the Site: The site of the proposed project contains a commercial fishing operation.

2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

In accordance with Chapter 315, Assessing and Mitigating Impacts to Scenic and Aesthetic Uses, the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicants also submitted several photographs of the proposed project site. Department staff visited the project site on October 10, 2009.

The proposed project is located in Portland Harbor, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. The surrounding area is developed with commercial structures on piers, including the site of the proposed project. The proposed project will not change the building footprint or volume and will be compatible with existing character of the shoreline in the project vicinity.

The proposed project was evaluated using the Department's Visual Impact Assessment Matrix and was found to have an acceptable potential visual impact rating. Based on the information submitted in the application, the visual impact rating, and the site visit, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

The Department of Marine Resources (DMR) did not identify any issues involving existing recreational and navigational uses.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the protected natural resource.

3. SOIL EROSION:

The applicants stated that impacts associated with the proposed project will be limited to the placement of new piles within the existing pier footprint. The applicants do not propose any grading, bulldozing, digging, or uncontrolled filling associated with the demolition of and replacement of the existing pier section and building. Disturbance is limited to that associated with piling removal and driving operations. The applicants considered the use of a floating silt curtain; however, this was not pursued because of the impracticality of maintaining a curtain in position during fluctuations in the tide level and current flow.

The Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

4. HABITAT CONSIDERATIONS:

The proposed project is located in an area described as working waterfront developed with numerous piers and wharves. The project will be located in the intertidal and subtidal transitional area that is exposed during extreme low tides. The area consists of sand, gravel, and rock with harbor debris. The applicants characterized the presence of barnacles, periwinkles, and lobster as occasional. According to the Department's Geographic Information System (GIS) database, there is no significant wildlife habitats associated with the project site.

DMR stated that the proposed project should not cause any significant adverse impact to marine resources, navigation or recreation. DMR further commented that it would be preferable if pile driving occurred between November 1 and March 31 to minimize any potential adverse impacts from noise to marine resources provided it does not result in a burden to the applicants or contractor. In addition, DMR commented that it would be beneficial if debris under the pier, such as discarded fishing gear and timber, were removed from the area. The applicants responded that the project is located in an area that is heavily developed and that has been altered for more than 100 years. There is continual noise year-round that is associated with vessel movement and pier activities. DMR responded that the removal of debris from under and around the pier could help compensate for potential impacts from pile driving outside of the November 1 to March 31 work window. The applicants agreed to the removal of the debris.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) did not identify any concerns with the proposed project.

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life provided that debris is removed from under and around the pier during construction.

5. WATER QUALITY CONSIDERATIONS:

The applicants propose to use lumber treated with chromated copper arsenate (CCA) to construct the pier. To protect water quality, all CCA treated lumber must be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction. Provided the CCA treated lumber is cured as described above, the Department finds that the proposed project will not violate any state water quality law.

The Department does not anticipate that the proposed project will violate any state water quality law, including those governing the classification of the State's waters.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicants propose to alter 50 square feet of coastal wetland to replace a portion of an existing pier.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, require that the applicant meet the following standards:

A. Avoidance. No activity may be permitted if there is a practicable alternative to the project that would be less damaging to the environment. Each application for a Natural Resources Protection Act (NRPA) permit must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist. The applicants submitted an alternatives analysis for the proposed project completed by Barney Baker Design Consultants, Inc. and dated December 31, 2009. The applicants considered repairing the existing piers but this option was rejected due to the considerable increase in cost and longer disruption to pier activities associated with a longer construction window. The applicants determined that there was no practical alternative to the demolition and replacement of the existing pier and building in the project location.

B. Minimal Alteration. The amount of coastal wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicants are not

proposing to change the building volume or footprint, which could potentially increase the direct impact to the coastal wetland.

C. Compensation. In accordance with Chapter 310 Section 5(C)(6)(b), compensation is not required to achieve the goal of no net loss of coastal wetland functions and values since the project will not result in over 500 square feet of fill in the resource, which is the threshold over which compensation is generally required. Further, the proposed project will not have an adverse impact on marine resources or wildlife habitat as determined by DMR and MDIFW. For these reasons, the Department determined that compensation is not required.

The Department finds that the applicants have avoided and minimized coastal wetland impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

7. OTHER CONSIDERATIONS:

The Department did not identify any other issues involving existing scenic, aesthetic, or navigational uses, soil erosion, habitat or fisheries, the natural transfer of soil, natural flow of water, water quality, or flooding.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life.
- E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.
- F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters provided that CCA treated lumber is cured as described in Finding 5.
- G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.
- H. The proposed activity is not on or adjacent to a sand dune.
- I. The proposed activity is not on an outstanding river segment as noted in Title 38 M.R.S.A. Section 480-P.

THEREFORE, the Department APPROVES the above noted application of PETER & KATHLEEN MCALENEY to replace a portion of an existing pier and reconstruct a two-story building as described above, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. Standard Conditions of Approval, a copy attached.
2. The applicant shall take all necessary measures to ensure that their activities or those of their agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. All CCA treated lumber shall be cured on dry land in a manner that exposes all surfaces to the air for 21 days prior to the start of construction.
5. The applicants shall remove debris from under and around the pier during construction.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DEPARTMENT OF ENVIRONMENTAL PROTECTION



This permit has been digitally signed by Andrew C. Fisk on behalf of Commissioner David P. Littell. It is digitally signed pursuant to authority under 10 M.R.S.A. § 9418. It has been filed with the Board of Environmental Protection as of the signature date, 2010.05.13 12:06:01 -04'00'

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES...

lv/l0046144pbn/71256



Natural Resource Protection Act (NRPA) Standard Conditions

THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCE PROTECTION ACT, TITLE 38, M.R.S.A. SECTION 480-A ET. SEQ. UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

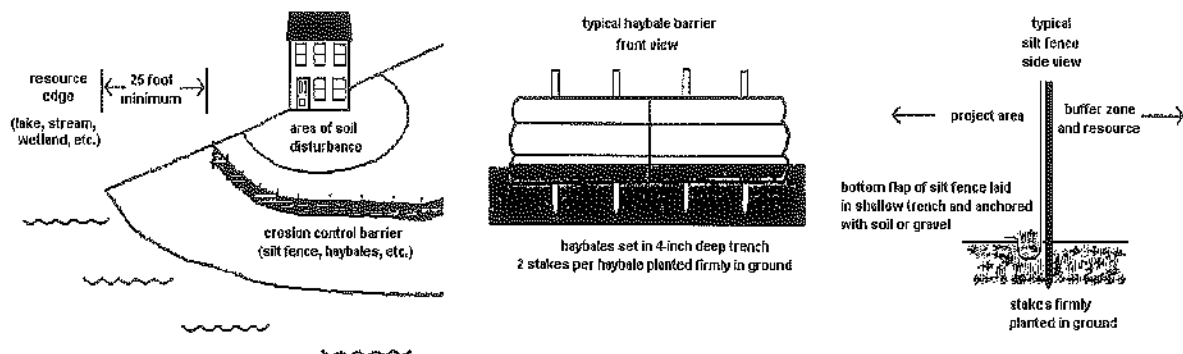
- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Initiation of Activity Within Two Years. If construction or operation of the activity is not begun within two years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits shall state the reasons why the applicant will be able to begin the activity within two years form the granting of a new permit, if so granted. Reapplications for permits may include information submitted in the initial application by reference.
- F. Reexamination After Five Years. If the approved activity is not completed within five years from the date of the granting of a permit, the Board may reexamine its permit approval and impose additional terms or conditions to respond to significant changes in circumstances which may have occurred during the five-year period.
- G. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- H. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- I. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Erosion Control for Homeowners

Before Construction

1. If you have hired a contractor, make sure you discuss your permit-by-rule with them. Talk about what measures they plan to take to control erosion. Everybody involved should understand what the resource is, and where it is located. Most people can identify the edge of a lake or river. However, the edges of wetlands are often not so obvious. Your contractor may be the person actually pushing dirt around, but you are both responsible for complying with the permit-by-rule.
2. Call around to find where erosion control materials are available. Chances are your contractor has these materials already on hand. You probably will need silt fence, hay bales, wooden stakes, grass seed (or conservation mix), and perhaps filter fabric. Places to check for these items include farm & feed supply stores, garden & lawn suppliers, and landscaping companies. It is not always easy to find hay or straw during late winter and early spring. It also may be more expensive during those times of year. Plan ahead -- buy a supply early and keep it under a tarp.
3. Before any soil is disturbed, make sure an erosion control barrier has been installed. The barrier can be either a silt fence, a row of staked hay bales, or both. Use the drawings below as a guide for correct installation and placement. The barrier should be placed as close as possible to the soil-disturbance activity.
4. If a contractor is installing the erosion control barrier, double check it as a precaution. Erosion control barriers should be installed "on the contour", meaning at the same level or elevation across the land slope, whenever possible. This keeps stormwater from flowing to the lowest point along the barrier where it can build up and overflow or destroy the barrier.



During Construction

1. Use lots of hay or straw mulch on disturbed soil. The idea behind mulch is to prevent rain from striking the soil directly. It is the force of raindrops hitting the bare ground that makes the soil begin to move downslope with the runoff water, and cause erosion. More than 90% of erosion is prevented by keeping the soil covered.
2. Inspect your erosion control barriers frequently. This is especially important after a rainfall. If there is muddy water leaving the project site, then your erosion controls are not working as intended. You or your contractor then need to figure out what can be done to prevent more soil from getting past the barrier.
3. Keep your erosion control barrier up and maintained until you get a good and healthy growth of grass and the area is permanently stabilized.



DEP INFORMATION SHEET

Appealing a Commissioner's Licensing Decision

Dated: May 2004

Contact: (207) 287-2811

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner: (1) in an administrative process before the Board of Environmental Protection (Board); or (2) in a judicial process before Maine's Superior Court. This INFORMATION SHEET, in conjunction with consulting statutory and regulatory provisions referred to herein, can help aggrieved persons with understanding their rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

DEP's General Laws, 38 M.R.S.A. § 341-D (4), and its Rules Concerning the Processing of Applications and Other Administrative Matters (Chapter 2), 06-096 CMR 2.24 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written notice of appeal within 30 calendar days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner and the applicant a copy of the documents. All the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

The materials constituting an appeal must contain the following information at the time submitted:

1. *Aggrieved Status.* Standing to maintain an appeal requires the appellant to show they are particularly injured by the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.

5. *All the matters to be contested.* The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.

6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.

7. *New or additional evidence to be offered.* The Board may allow new or additional evidence as part of an appeal only when the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or show that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2, Section 24(B) (5)

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license file is public information made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials.

There is a charge for copies or copying services.

2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.

3. *The filing of an appeal does not operate as a stay to any decision.* An applicant proceeding with a project pending the outcome of an appeal runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge initiation of the appeals procedure, including the name of the DEP project manager assigned to the specific appeal, within 15 days of receiving a timely filing. The notice of appeal, all materials accepted by the Board Chair as additional evidence, and any materials submitted in response to the appeal will be sent to Board members along with a briefing and recommendation from DEP staff. Parties filing appeals and interested persons are notified in advance of the final date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision. The Board will notify parties to an appeal and interested persons of its decision.

II APPEALS TO MAINE SUPERIOR COURT

Maine law allows aggrieved persons to appeal final Commissioner licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2.26; 5 M.R.S.A. § 11001; & MRCivP 80C. Parties to the licensing decision must file a petition for review within 30 days after receipt of notice of the Commissioner's written decision. A petition for review by any other person aggrieved must be filed within 40-days from the date the written decision is rendered. The laws cited in this paragraph and other legal procedures govern the contents and processing of a Superior Court appeal.

ADDITIONAL INFORMATION: If you have questions or need additional information on the appeal process, contact the DEP's Director of Procedures and Enforcement at (207) 287-2811.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.