



Planning &amp; Urban Development Department

Jeff Levine, AICP, Director  
Marge Schmuckal, Zoning Administrator  
June 27, 2014

Natalie L. Burns, Esq.  
c/o Jensen-Baird Garner-Henry  
Ten Free Street  
P.O. Box 4510  
Portland, Maine 04112-4510

RE: 20 Marginal Way - 113-A-025 – Northern Pride Auto Wash (the “Property”) – B-7 Zone

Dear Natalie:

I am in receipt of your request of a determination letter concerning the Property.

The Property is an approved car wash considered to be a legal nonconforming use. My research shows that the B-7 Mixed Use Development District Zone was placed on the Property (along with other properties along the Marginal Way corridor) when it was created and approved by City Council on April 19, 2006. The B-7 Zone does not list car washes in either the permitted uses or conditional uses. It is noted that under 14-295(e)1 accessory uses are described and prohibit all drive-up services for all retail or drive-up repair facilities except for bank drive-up services, where permitted. Bank drive-up services are considered a conditional use to the Planning Board in the B-7 Zone.

Section 14-384, Change of nonconforming use, does state that “A lawful nonconforming use in a structure not designed for a use permitted in the zone in which it is located shall not be changed to any use other than to a use permitted in the zone in which the use is located *or* to any use other than a nonconforming use of a more restricted zone, as set forth in the following schedule, *provided* that in no such case shall any structural alterations be made in any building except those required by law, ordinance or other regulations:” You have outlined that you believe that the change of use circumstances of the car wash to a Dunkin’ donuts drive through falls under (a) of the listed schedule: “In a business zone, from any use permitted in an industrial zone to any use permitted in a business zone”. It is true that the Property is located in a business zone (B-7). However, I disagree with the assertion that the car wash is an allowed use in an industrial zone. You have stated that the car wash use would fall under an allowable use in the I-M zone using 14-248, “Performance based uses”. I disagree that a car wash could be considered an allowable use under the Performance based uses. I do not agree that a car wash would be consistent with the purposes of the I-M zone. It is clearly not a light or moderate impact industry use. You have not given any supporting evidence defending your assertion that a car wash use meets the I-M zone purpose statement. Since the car wash is not a use permitted in an industrial zone, 14-384(a) cannot be used as a vehicle to allow a change of nonconforming car wash use to a Dunkin’ Donuts drive-thru. Furthermore, none of the other exception (b) through (d) can be used to allow a Dunkin’ Donuts drive-thru. Therefore, any change of the nonconforming use must be changed to a use that is permitted in the B-7 Zone as required under 14-384.



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You also request an opinion of whether a bank with a drive-through could be created on the site. Based solely on allowable use, yes, a bank with a drive-through (drive-up) is allowed as a conditional use to the Planning Board under section 14-296(a)1c. However, the B-7 zone, as you know, contains other dimensional requirements, such as minimum building height and minimum floor area. I understand that the site may be challenging. When developing a lot in any zone, *all* the requirements of the underlying zone must be met.

Your request goes on to state that the reconstruction of the existing nonconforming structure would be allowed under 14-385(f). I think that you have misstated the appropriate section number for the allowance to rebuild. 14-385(f) relates to nonconforming buildings located in the R-6 zone. I think that you may be referring to section 14-385(b) which states: "Where the restoration or reconstruction will occur entirely within the existing footprint and previous shell of the building and will not create a new nonconformity;" 14-385(c) goes on to state that the reconstruction must happen within one (1) year. I have not been able to follow your argument concerning the allowance to do alterations and modifications of a building. I do not believe the section number has been correctly stated. I can cite 14-382(b) which states: "A building whose use is wholly nonconforming shall not be altered so as to increase the cubical content or the degree of nonconformity." Certainly the current building use is wholly nonconforming. Therefore, I believe this section would apply to the Property. Because section 14-382(b) concerns the nonconforming use of the structure, I believe it would prevail over section 14-382(d) which only speaks to nonconformity of space and bulk requirements and not to the nonconformity of building use.

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

Very truly yours,

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

Marge Schmuckal  
Zoning Administrator  
City of Portland, Maine