



Planning &amp; Urban Development Department

*Jeff Levine, AICP, Director**Marge Schmuckal, Zoning Administrator*

November 12, 2014

Blais Civil Engineers  
780 Broadway  
South Portland, Maine 04106  
Attn.: Steve Blais, PE, President

RE: 102 Hutchings Drive – 240-A-2 &amp; 3 (the "Property") - I-M Zone

Dear Mr. Blais,

I am in receipt of your request for a determination letter in regards to the Property. The Property is located entirely within the I-M Moderate Industrial Zone.

Your determination request concerns the change of use of the Property to allow the Eastpoint Christian Church as an allowable use in the I-M Zone. Your first request is to determine that the Eastpoint Christian Church be considered an incidental accessory use to the fourteen uses you have listed as apparently the principal uses. You have claimed that all the listed uses are allowable in the I-M zone. I disagree that all the listed uses are allowable uses in the I-M zone. I find that at least nine of the uses are not listed as permitted uses under 14-247. The following are not permitted listed uses: Children & teen mentoring, Community Services: Blood drives and medical screening, Addiction, recovery and counselling center, Family and marital counselling, Education; both spiritual and academic, After school tutoring, Summer day camp, Mothers of preschoolers events, and Secondary trauma help group, etc. The argument continues using percentages of floor space to bolster the argument of what is a principal use compared to an incidental accessory use. The Land Use Zoning Ordinance does not employ percentages of floor area or percentages of profits in order to determine the principal uses and accessory uses. It simply is not a methodology employed by the Ordinance to determine uses..

I disagree with your first request for a determination that a church is an incidental accessory use. I have determined that a church is considered a principal use. By definition, the Eastpoint Christian Church is a "Place of religious assembly" as defined under 14-47 and thereby is also encompassed by definition as a "Place of Assembly" (14-47). Places of Assembly are listed principal uses in all the residential zones under conditional uses and further categorized under "Institutional Uses". Most of all the business zones also allow Places of Assembly either as a permitted use or as a conditional Use. The only reason why the 14 listed uses from your letter would exist is that they are accessory to the church and it's mission. It is the church that is the principal use with all the other uses accessory, not the other way around

Your second request is to determine that the proposed principal use of a "Place of Assembly" meets the conditions of 14-248, Performance Based Uses. If a use in the I-M zone is not a listed permitted use, and places of Assembly is not a listed permitted use as in other zones, and it is not expressly prohibited, which it is not, then the use may be permitted if the use meets the given conditions and standards:



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- (a) The proposed development is consistent with the purposes of this zone.
- (b) The proposed development is designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odor, and any other potential negative impacts of the proposal.

Because this section states that the listed conditions and standards must be met, it is understood that both (a) and (b) listings must be met in order to be permitted.

Like every other zone in the Land Use Ordinance, there is a listed "purpose" statement. The applicant has not provided any evidence or arguments concerning the actual purpose statement (14-246):

"The moderate impact industrial zones are intended to provide zones in areas of the City in which light and moderate impact industries and transportation-related uses will coexist.

The moderate impact industrial (I-M and I-Ma) zones are located on arterials or collectors. The I-Mb zones are similarly located on the peninsula. These locations provide for direct access onto arterials, thereby protecting residential neighborhoods from drive-through traffic.

The I-M, I-Ma and I-Mb industrial zones are intended to provide for larger industrial buildings and for the limited or controlled use of areas outside of structures for storage of materials and machinery. These facilities often require large volumes of imported materials and products which result in large volumes of shipping and receiving. Often uses may be highway-oriented and transportation-related, thus relying on citywide and regional transportation infrastructure.

Industrial uses in the moderate impact industrial zones may require separation from higher impact uses, which should be directed to the high impact industrial zone."

It is important to note that the purpose statement emphasizes *industrial* uses, not institutional uses. Industrial uses and institutional uses are separate and distinct categories listed throughout the Land Use Ordinance. They are both terms of art used throughout the Ordinance. The purpose statement also defines transportation uses as highway-orientated and transportation-related. Just driving passenger cars to and from the church does not constitute a highway-orientated and/or a transportation-related use. Industrial use examples revolve around manufacturing and processing goods along with storing and transporting those goods to markets. On the other hand, institutional uses (not specifically defined in the Ordinance) is recognized as non-profit in nature, providing a public service, such as churches,



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synagogues, mosques, public or private schools, public agencies and utilities, federal, state or local government agencies and public and private schools.

The applicant did not and cannot show how the Eastpoint Christian Church (an institutional use) is consistent with the purposes (industrial uses) of the I-M zone as allowed under the Performance based uses. I have determined that the Eastpoint Christian Church does not meet the conditions and standards of 14-248, and therefore is not permitted to be located in an I-M moderate industrial zone.

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 the zoning office for the necessary paperwork that is required to file an appeal.

Very truly yours,

A handwritten signature in black ink that reads "Marge Schmuckal". The signature is fluid and cursive, with a long horizontal line extending to the right.

Marge Schmuckal  
Zoning Administrator  
City of Portland, Maine