



Planning & Urban Development Department

*Jeff Levine, AICP, Director**Ann Machado, Zoning Administrator*

December 22, 2015

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120 Exchange Street, Suite 202
Portland, Maine 04101

RE: 1035 Ocean Avenue – 415-B-003 – (the "Property") – I-M Zone

I am in receipt of your request for a determination letter concerning the Property and the request to allow a retail outlet selling lobster, lobster meat and prepared lobster products. The Property is located in the I-M Industrial Zone.

In your letter you mention that the Property is subject to a determination letter dated 5/23/14 written by the previous Zoning Administrator, Marge Schmuckal and a building permit, #2015-01217 that was issued by the Inspections Division on 6/23/2015. In the May 23, 2014 determination letter, it was determined that a 8' x 20' temporary lobster retail stand was not allowed, but that the retail trade of lobsters as an ancillary use within the current building might be allowed if it was considered ancillary under § 14-249(b). Subsequently, permit #2015-01217 was issued for interior renovations to add a retail space. Under § 14-249(b), this retail space is considered ancillary to the permitted use of wholesale and lobster processing that was established under permit #2013-01157 and the certificate of occupancy that was issued on 5/26/2015. As an ancillary use to the permitted use, lobsters and processed lobster meat can be sold in the permitted retail space. It is noted that permit 2015-01217 was issued on May 23, 2015 but there have been no inspections to date for the work and until final inspections are approved, the ancillary retail use is not legal.

You also mention in your letter that the owner plans to add a catering kitchen to the building. You state that the catering kitchen would be allowed under the use listed in § 14-247(m) which allows "Food and seafood processing for human consumption". Later in your letter you state that the catering business would be supported by a commercial kitchen. § 14-247(k) allows "Commercial kitchens or other food preparation, provided that the food is not prepared for service on the premises". Food and seafood processing is different from food prepared in a commercial kitchen for a catering business. Under § 14-247(k) a commercial kitchen for a catering business could be added to the Property as a permitted use through the usual permitting process.

You go onto argue that the retail outlet would be ancillary not only to the existing lobster processing and wholesale operation but also to the catering kitchen. Chapter 14 of the City Code does not define ancillary, but § 14-47 does define accessory use as "Uses which are customarily incidental and



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subordinate to the location, function and operation of permitted uses". Under this definition, the previously permitted retail space could also offer party platters of cooked lobsters, lobster salad, lobster rolls etc. as ancillary to the permitted use as a commercial kitchen. These could be preordered for pick up or as take out to be purchased and consumed off premises.

In conclusion, the determining factor here is that the retail space needs to remain ancillary to the permitted uses of wholesale and lobster processing and a commercial kitchen. As ancillary, the retail space should only occupy a small area of the entire building, and account for only a minor percentage of the overall revenues of the business. Permit #29015-01217 has been issued to create the ancillary retail space for the sale of lobsters and processed lobster meat but it cannot open for business until the final inspections have been approved. The sale of prepared food made from the processed lobster meat in the retail space will only be allowed once the principal use of the commercial kitchen has been established through a change of use permit and certificate of occupancy.

If you have any questions regarding this matter, please do not hesitate to contact me.

Yours truly,


Ann B. Machado

Zoning Administrator

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