



Planning & Urban Development Department

Jeff Levine, AICP, Director
Marge Schmuckal, Zoning Administrator
May23, 2014

Nicholas H. Walsh
Attorney At Law
120 Exchange Street, suite 202
Portland, Maine 04101

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

Dear Attorney Walsh,

I am in receipt of your request for a determination letter concerning the Property and the request to allow a temporary 8' x 20' exterior stand for the retail sale of lobster. The Property is located within the I-M, Moderate Industrial Zone. It is noted that there is an issued permit on record #2013-01157 for lobster processing and wholesaling as allowed under 14-247(m) and (d). If the work is complete, the final stage of this permit, a certificate of occupancy, should be requested and the permit finalized.

Your first argument regards section 14-248, Performance Based Uses. It is my reading of the Land Use Ordinance that 14-247, 14-248 and 14-249 are concerning *principal* uses, as to whether they are allowed by right, allowed by performance base criteria or prohibited. The selling of lobsters or retail in the I-M is specifically listed as a prohibited principal use. Therefore, I do not agree with your argument that the temporary lobster stand is allowed under 14-248 as a principal use.

Section 14-407(a), Temporary Stands, offers me other guidance concerning your proposed temporary lobster retail stand. The section reads: "No premises shall be used for business purposes consisting of temporary stands, booths, platforms, or vehicles intended for the sale of merchandise or other mercantile purposes, if any part of such stand, booth, platform or vehicle is proposed to be located nearer than one hundred twenty-five (125) feet to any residence zone, except that stands for the sale of agricultural products shall be permitted as specified in division 2 of this article." The City's Zoning map shows that the R-3 residential zone line falls midway of Ocean Avenue. Using your sketch and the City's GIS maps, the proposed temporary stand is well within the one-hundred twenty-five (125) feet of a residential zone. Therefore, the temporary lobster retail stand would be in violation of 14-407(a) and is prohibited by Ordinance.

Although you have not asked specifically in your request, I will offer that since the use of lobster processing and wholesaling is established as a legal use on the property, I would entertain the retail trade of lobsters as an ancillary use [as allowed under 14-249(b)] *within* the current building. I would want assurances, with a permit, that the retail trade of lobster within the building is actually ancillary. Floor plans showing how and where the retail trade would be located would be essential to my review of the ancillary use.



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In conclusion, I have determined that the 8' x 20' temporary lobster retail stand as proposed is not allowed and would be in violation of the Land Use Zoning Ordinance.

You have the right to appeal my decision concerning this matter. If you wish to exercise your right to appeal, you have 30 days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal. If you have any questions concerning this matter, please do not hesitate to contact me at (207) 874-8695.

Very truly yours,

A handwritten signature in black ink, appearing to read "Marge Schmuckal", is written over a horizontal line.

Marge Schmuckal
Zoning Administrator
City of Portland, Maine