



Planning & Urban Development Department

Jeff Levine, AICP, Director

Ann Machado, Zoning Administrator

December 16, 2015

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

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 wholesale operation but also to the catering kitchen. I do not agree with this argument. § 14-257(k) only allows the food prepared in commercial kitchens to be served off site. § 14-249(b) prohibits "Retail trade

Portland, Maine



Yes. Life's good here.

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that is not ancillary to a permitted use". Since the permitted use of a commercial kitchen only allows the prepared food to be served off the premises, the prepared food could not be sold in the retail space on the Property. In conclusion, the retail space to be fit out under permit 2015-01217 is for the retail sale of lobsters and processed lobster meat. The retail sale of prepared food is not permitted.

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

Yours truly,

A handwritten signature in black ink, appearing to read "Ann B. Machado", with a long, sweeping horizontal line extending to the right.

Ann B. Machado

Zoning Administrator

City of Portland, Maine

amachado@portlandmaine.gov

207.874.8709