

Permitting and Inspections Department
Michael A. Russell, MS, Director

Ann Machado, Zoning Administrator

August 10, 2016

Paul Bulger, Esq.
Jewell & Bulger, P.A.
477 Congress Street, Suite 1104
Portland, ME 04101-3453

RE: 100 Kensington Street (65 Kensington), Portland, ME
CBL: 429-G-001 thru 007, 430-B-013 & 015, 430-E-001 thru 004 & 430-X-001

Dear Attorney Bulger:

I am in receipt of your request for a zoning interpretation regarding the above-captioned property (the "Property"). Specifically, you are inquiring whether a use proposed by your client, Navigator Publishing, constitutes a permitted use in the I-L (low impact) Industrial Zone and in an area that is also subject to the Shoreland overlay regulations. After a review of the information provided in your letter and applicable provisions in the City's Code, I have determined that your client's proposed use constitutes an "office use" rather than a "back office" or "printing and publishing" use and is therefore not permitted. Here is my reasoning:

You have explained that your client's business requires 1,500 to 2,000 square feet to operate efficiently. You have further explained that Navigator Publishing's offices are used for "pre-print publication services, research, writing, advertising sales, set-up, desktop formatting" and the like. Although you indicated that your client "warehouses" or stores prior publications for research and support, that use only requires 550 square feet, or roughly a quarter, of the space required for its business. Significantly, you have also explained that no printing is performed on site. Rather, your client contracts with another business to provide that service.

You have suggested that Navigator's business constitutes a "back office" use such that it is permitted in the IL zone pursuant to Section 14-232 of the City's Code of Ordinance. Under Section 14-47 of the Code, "back office" use is defined to mean:

An office-related use providing support services to a primary or headquarter use, with minimal public visitation and no direct in-person sales or services to the general public. Back office uses may include data processing, or other clerical uses relying heavily on a telecommunications infrastructure and may also include support services to educational institutions or social service agencies as long as no direct in-person services to the general public are provided.

Under that definition, a designation as a "back office" is limited to those uses that "provide support services to a primary or headquarter use." Here, based on the information provided, the office use is itself the primary use and the "warehousing" or storage use is the use that plays the supportive role in terms of aiding the research, writing, etc. of Navigator's publications. It therefore does not meet the definition of a "back office" use.

Further, I do not find that Navigation's use constitutes a "printing and publishing" use as suggested in your letter. As you explain, no printing occurs on the property. "Printing" is part and parcel of the "printing and publishing" use and is a key component to the distinction between a truly industrial use and a traditional office use. Here, in the absence of printing services, Navigation's focus on research, writing, and layout is indistinguishable from many other office uses throughout the City in terms of character and impact. One of the purposes of the IL zone and its express prohibition on office uses [section 14-233(dd)] is to provide a designated area for uses that are truly low impact industrial and to reserve other designated spaces in other zones for office and other lower impact uses.

Because Navigation's proposed business activities do not constitute a "printing and publishing" business nor do they constitute a "back office" use, they are not permitted, as currently constituted, in the IL zone.

I trust that this sufficiently satisfies your needs. If, however, you have any questions or concerns, please do not hesitate to contact me at (207)874-8709. This interpretation is based on the information provided and available at the time, and the current City of Portland Code of Ordinances. It is not binding on the City of Portland in any future decision. For a final determination, you may apply for a change of use permit.

Very truly yours,

A handwritten signature in black ink, appearing to read 'ABL', followed by a long horizontal flourish.

Ann B. Machado
Zoning Administrator
Permitting and Inspections Department
City of Portland, Maine
207. 874.8709
amachado@portlandmaine.gov