

**Civil  
Site Planning  
Environmental  
Engineering**

133 Court Street  
Portsmouth, NH  
03801-4413

February 13, 2023

Mr. DeCarlo Brown  
Land Use Planner  
Town of York  
186 York Street  
York, Maine 03909

**Re: Additional Waiver Request  
Preliminary/Final Submission  
Site Plan Amendment  
Southern Maine Lobster Company  
Tax Map 134, Lot 103  
1021 U.S. Route 1  
Altus Project No. 5395**

Dear Mr. Brown,

Pursuant to comments from Chris DiMatteo received via email on February 6, 2023, we respectfully submit the following supplemental information.

1. Per the Zoning Ordinance, “lobster pound” is not a defined use and therefore potentially problematic from a permitting standpoint. The concepts of an Accessory Use or Store for Retail Sale of Merchandise have been analyzed and discarded for the reasons outlined by Mr. DiMatteo in his letter dated January 19, 2023. In this case, we still see two viable options: 1) that SMLC is an Artisanal Food and/or Beverage Facility; or 2) that it is a Wholesale Business.

As defined, an Artisanal Food and/or Beverage Facility as envisioned in Option 1 allows for “small-scale wholesale distribution of products produced on site” in addition to retail sales. As SMLC’s wholesale reach can hardly be considered expansive and it does have a retail component, this may allow the Planning Board to determine that the use is in conformance with the ordinance.

As for Option 2, the Board may determine that SMLC is a Wholesale Business and therefore not permitted in the Route 1 - 4 district. However, it would be grandfathered as it has been operational in this location for nearly twelve years. Per 17.1.6 of the Ordinance, “a non-conforming use of land or a structure in which a non-conforming use occurs, may continue to exist and may expand within the lot boundaries...provided the use or structure meets the setback requirements...” In the case of this project, there are no proposed encroachments on any building setbacks and no expansion of parking areas or driveways. This simple building addition would be permissible under this scenario.

In either case, it is our opinion that the Planning Board has a clear path to approving this project as presented.

2. In regard to the minimum required bufferyards, per Section 6.3.9.3 it is up to the Planning Board to determine “if the proposed use or structure can satisfy the minimum bufferyard requirement, and the lesser amount of bufferyard that is acceptable” in situations such as this where the structure was constructed prior to November 5, 1996. In this particular case, the existing site provides code-


compliant buffers on the left (northeast) and rear (southeast) sides of the property. The right (southwest) side along Rogers Road is screened with existing trees along most of the frontage. The site is also somewhat above the roadway from the front to the approximate middle of the site which provides additional screening along the side road by presenting the visual appearance of a berm. While technically less than the 20' minimum width, these features do serve as a suitable screen. On Route 1, adequate buffering is provided for over half the frontage. The only area notably deficient is directly in front of the SMLC building and parking lot where strict application of the 35' required buffer would render the parking and access useless. This would also eliminate desired visibility of the business from the road. However, machinery, exterior storage and other potentially unsightly elements are currently hidden from Route 1 by a stockade fence on both sides of the existing building. It is important to note that no new bufferyard encroachments are proposed and that the current bufferyards are as approved on the prior site plan in 2015. In light of this, it is our opinion that the site is as compliant as it can be and that no additional landscape or screening elements are necessary.

3. We have amended the plan notes to simply indicate "parking stalls" and removed references to "conceptual" or "for planning purposes only." The sole intent here is to show that the site has enough parking to meet what we feel to be the required minimum number of spaces. While there are undoubtedly additional areas that could be called out as formal parking, the plan shows more than enough spaces and we have therefore opted to not modify it any further.
4. We have adjusted the traffic analysis to include potential traffic from the previously approved food truck. Trip generated by the school bus depot and landscaping company have also been added using data obtained from the 2015 traffic assessment prepared by Eaton Traffic Engineering. As shown, our initial finding that traffic will not change between the existing and proposed conditions remains valid and that no DOT permit is required.
5. We have added an engineer's stamp to the stormwater memorandum.
6. The food truck location has been adjusted as suggested.

Please do not hesitate to contact us if you have any questions or need additional information. Thank you for your time and consideration.

Sincerely,

**ALTUS ENGINEERING**



Erik B. Saari  
Vice President

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Enclosures

cc: Bruce Larson, Southern Maine Lobster Company