

COMPLIANCE
REVIEW LETTER

February 17, 2021

York Planning Board
DeCarlo Brown, Land Use Planner
Town of York
186 York Street
York, Maine 03909

Application: Southern Maine Lobster Company — New Building Addition
1021 US Route 1 (Tax Map 30-A Lot 30)

Amended Site Plan Review

Review Status: Revised Application

Board members and Mr. Brown,

The following information has been provided for preliminary and final plan review:

1. Application form dated 12/7/2022 and lessee and owner authorization letters dated 11/30/2022.
2. Submission entitled *Site Plan Amendment for Southern Maine Lobster Company, 1021 US Route 1, York, Maine, Tax Map 134 Lot 103, December 5, 2022...*, includes cover letter, Project Data Summary and Project Description narrative, traffic memo, correspondences, site and building plans, and etc., prepared by Altus Engineering, Inc.
3. Plan entitled: *Site Plan, Southern Maine Lobster Company, 1021 US Route 1, York, Maine, Tax Map 134 Lot 103...* prepared by Altus Engineering, Inc. Issue date December 5, 2022.
4. Previously Approved Plan Entitled: *Site Plan Amendment #1 Bus Parking Facility, 1021 U.S. Route 1, York Maine.* Prepared by Attar Engineers rev. date 12/15/2015.
5. *Response to Comments: Preliminary/Final Submission, Site Plan Amendment for Southern Maine Lobster Company, Tax Map 134 Lot 103, 1021 US Route 1, York, Maine.* Prepared by Altus Engineering, Inc, dated 2/2/2023.
6. *Supplemental Information: Additional Waiver Request, Preliminary/Final Submission, Site Plan Amendment for Southern Maine Lobster Company, Tax Map 134 Lot 103, 1021 US Route 1, York, Maine.* Prepared by Altus Engineering, Inc, dated 2/13/2023.

7. Traffic Information: *Traffic Assessment, Preliminary/Final Submission, Site Plan Amendment for Southern Maine Lobster Company, Tax Map 134 Lot 103, 1021 US Route 1, York, Maine.* Prepared by Altus Engineering, Inc, dated 2/13/2023.
8. Supplemental Information: *Stormwater Assessment, Preliminary/Final Submission, Site Plan Amendment for Southern Maine Lobster Company, Tax Map 134 Lot 103, 1021 US Route 1, York, Maine.* Prepared by Altus Engineering, Inc, dated 2/6/2023.
9. Plan entitled: *Amended Site Plan, Southern Maine Lobster Company, 1021 US Route 1, York, Maine, Tax Map 134 Lot 103...* prepared by Altus Engineering, Inc. Issue date January 25, 2023.

With review of the above information and the Town's Zoning Ordinance and the Site Plan and Subdivision regulations, I offer the following comments on compliance with the Town's land use and development provisions.

PROJECT DESCRIPTION

The applicant is seeking approval to construct a 2,088 ± square-foot addition at the rear of the existing premises where Southern Maine Lobster Company maintains a seafood business along US Rout 1, in the Route One-4 zoning district. The existing parking/loading area is to be used to accommodate the addition. This is a second amendment to the previously approved 2015 plan, the most recent amendment being the addition of a food truck in 2021.

REVIEW SUMMARY/HIGHLIGHTS

The application is before the Planning Board as required by the York Zoning Ordinance (YZO) (Sec. 18.15.B.1.D) for review of any change that amends a site plan previously approved by the Planning Board. The following is a summary of the review comments:

1. The proposed addition does not appear to trigger site plan review (Sec. 18.15.B.1.A YZO) with greater than 5,000 SF gross floor area.... It is clear the application is subject to a Route One Use Permit per Sec. 18.1 of the YZO.
2. The existing use is described as a *Lobster Pound*; however, such a use is not defined in the ordinance and the proposed use for the expansion is described as *wholesale market* which is expressly prohibited in the RT 1-4 zoning district under Industrial Use Category. **Code Enforcement has found the existing use to be legally nonconforming.**
3. Though the application is for a limited scope of development, it appears there are several some outstanding application submittal items such as signoff from the Fire Chief. There are, however, several waiver requests that need to be reviewed prior to accepting the application. **With consideration of the waiver requests, the application appears to be complete.**
4. Elaboration on the proposed and existing use is needed to demonstrate that the proposed addition conforms to Article Four and that there is sufficient required parking available. Parking calculations have not been provided. **Additional information has been provided and Code Enforcement has found the existing use to be legally nonconforming.**

5. As subject to a Route One Use Permit, information should be provided to address related performance standards (Sec. 6.3 YZO).
6. It is not clear if the food truck that was approved as an accessory use to Southern Maine Lobster Company is still active. **The plan has been revised to include the approved accessory structure.**
7. Review by Pertinent Town Departments: Along with Code Enforcement, the Fire Department and Public Works should provide their comments prior to the Board's final decision. **Comments have been received. The Board should review the comments and determine if it concurs and the ordinances have been met.**

COMPLETENESS REVIEW

The application is before the Planning Board as required by sections 18.15.B.1.D of the Zoning Ordinance and 5.5.6 of the Site Plan and Subdivision Regulations, included below:

Since this is a plan amendment that has a narrow scope as it relates to site work, not all the submittal requirements are applicable, however, the Board may identify pertinent requirements that I have not listed below and can discuss with the applicant at the meeting.

The following are submittal requirements that appear to be pertinent to this amendment and their status: **With consideration of the waivers, the application appears to be complete.**

1. 6.3.26 A letter from the Fire Chief is required. A letter *from, not to*, as what is included in the applicant's check list, is required. **No waiver requested. A letter from the Fire Chief has been submitted.**
2. 6.4.5 Contact DPW, Police and Fire. Departments have been contacted for comments, a copy of a 11/25/22 letter has been submitted.
3. 6.4.7 A plan showing the location and dimensions of all proposed development improvements and alterations. The previously amended Site Plan and a proposed Site Plan with the amendment has been submitted.
4. 6.4.27 Findings of Fact, Conclusions of Law, and Decisions. A draft has been prepared.

It is assumed that the water and sewer districts are not required to sign off at site plan since there is no new access to mains only existing service.

COMPLIANCE WITH THE TOWN'S ORDINANCES

ZONING ORDINANCE

1. Article 4 Use Regulations, Section 4.1.4. The applicant describes the current use a *Lobster Pound*, however, such a use is not defined in the ordinance and the proposed use for the expansion is described as a *wholesale market* which is expressly prohibited in the RT 1-4 zoning district under Industrial Use Category.
 - a. The *Miscellaneous Use Category* for RT 1-4, *Accessory Uses to Permitted Uses* and *Structures Accessory to Permitted Uses*, allowed for the food truck that was approved in

2021 to prepare and sell lobster rolls. The additional non-retail space that is proposed as part of this amendment, however, appears to increase the proportion of non-retail to retail space in the building, which is not anticipated by the Commercial Use Category for RT 1-4 nor the definition of accessory use in the ordinance.

- b. The commercial use category *Store for retail sale of Merchandise*, assuming this is what the current use is regulated under, allows for production space as long as it is not larger than the retail space, which may be the current condition. The definition *On-site manufacturing* under Article Two also supports this scenario. The proposed development is not permitted under this scenario, however, since it would make the principal retail use subordinate to the processing/non-retail use which supposed to be accessory, which is expressly prohibited.
 - c. The other scenario is that this is a manufacturing use that is grandfathered and is regulated under the ordinance's *Non-conforming situations* provisions, Article 17 of the YZO. The proposed expansion is permitted under this situation if it is in conformance to Sec.17.1.6 *Non-conforming use of land or structures in all base zones* and approved by the Planning Board.
 - d. Prior to the Board providing a final decision on the application, it would be prudent for the Code Enforcement Office to provide an opinion on if the current use is a legally non-conforming use or not. It is not clear how in the past the use has been regulated which should inform the status of the building and its principal use. In addition, the applicant should provide additional information as to the understanding of the current and proposed use. **The Code Enforcement Office has reviewed the application and provided an opinion that the manufacturing use is legally nonconforming. (see attached email). This provides an opportunity for the Board to consider the expansion of use under Sec. 17.1.6 of the York Zoning Ordinance.**
2. Route One Use Permit. As required by Sec. 4.1.4, a Route One Use permit is required. Due to the limited scale of the non-residential use, not all the performance standards under Sec. 6.3 may be applicable. The applicant, however, should demonstrate in writing that this is the case. It appears from the waiver requests that the standards have been reviewed at some level. Parking, lighting, water run-off, erosion control, bufferyards, and net buildable site acreage calculations are some standards that should be addressed. Demonstrate conformance or request a waiver per Sec. 6.3.28. **The applicant has addressed the items raised. The parking shown on the plan behind the addition has been revised so that it is not located in the bufferyard. This includes removing that portion of the existing gravel parking within the bufferyard as well.**
 3. Article 15 Parking. In the same manner as with the above comment, the applicant should provide an effort to, in writing, demonstrate the required parking standards will be met with proposed addition. What are the number of employees that work at the premises? Are there

additional employees planned? What does the total number of employees incur as to the total number of parking spaces required under Sec. 15.1.1.2? This information should be on the final plan. **The Plan has been revised (see plan note #18) to include parking calculations. While the information is helpful, the Town in the past has typically used square footage of the retail space to determine required parking spaces for the portion of the use. The applicant should provide the information, or the Board may want to accept what has been calculated has what is appropriate for a lobster pound since this activity is not listed under Sec. 15.1.1.2 off-street parking requirements.**

SITE PLAN AND SUBDIVISION REGULATIONS

4. The proposed development incurs limited new site work, so it does not appear that review of all these regulations may be applicable. The applicant, however, has included a checklist of both Sec. 6.3 and 6.4 submittal items and has requested some waivers. Staff has some reservation on some of the requests, see below. **The applicant has submitted information requested that has addressed Staff's concerns.**
5. The proposed plan should be titled 'Amended Site Plan'. **The plan has been revised.**

WAIVER REQUESTS

The applicant has requested the following waivers (see applicant's cover letter for rationale):

Site Plan and Subdivision Regulations.

1. Section 6.3.3.A.4 - Vegetation in general, specifically noting any trees larger than 24" in diameter at breast height.
2. Section 6.3.7 - A grading and landscape design plan which meets the requirements of §7.3.
3. Section 6.3.32 - A high intensity soil survey signed and sealed by a Maine Certified Soil Scientist.
4. Section 6.4.6 - A landscaping plan meeting the standards of Section 7.17 as well as all of the Ordinances of the Town of York shall be submitted. This submission shall include identification of species to be used, the size of the planting to be used, and the plan spacing being proposed. On wooded sites, the Plan shall indicate the area where clearing for lawns and structures shall be permitted.
5. ~~Section 6.4.15—Soil Erosion and Sedimentation Control Plan. A soil erosion and sedimentation control plan meeting the standards in Section 9.10, and which is suitable and specific to the site and the development proposed must be submitted, and must include the following items:~~
Though the scope is limited erosion control measures should be included in the plan set, along with defining the area of disturbance. Staff does not support this waiver. The plans have been revised to include this information.
6. Section 6.4.16 - Stormwater Management Plan - The developer shall submit a plan and design for the collection and disposal of surface drainage waters prepared by a Registered Engineer, and which meets all the requirements of Sections 9.8 and 9.9. **Staff recommends the**

engineer of record provide a memo certifying that the proposed development will not change the current drainage pattern and will otherwise conform to the town’s stormwater regulations, for the Board to consider this waiver. A stamped stormwater assessment memo has been submitted.

~~7. Section 6.4.28 – Financial Capacity. The applicant shall provide documentation from a bank or other established financial institution acceptable to the Planning Board with an evaluation as to the applicant’s financial capacity to successfully undertaken and complete the proposed project~~
A letter from a financial institution has been submitted.

Zoning Ordinance.

8. Section 6.3.13.4 – All new construction shall have an exterior that is either wood clapboard, wood shingle, stone or brick; and 6.3.13.4.1.b & c – Submission of samples, specifications and safety data.

CONCLUSION

The application submitted to amend the previously approved plan appears to be in order with consideration of the comments above and other comments and questions from Board members and the applicant and public testimony.

Feel free to contact me with questions.

Best regards,


Christopher Di Matteo

Subject: FW: 1021 US Route 1 - Southern Maine Lobster Company
Date: Wednesday, February 15, 2023 at 1:19:52 PM Eastern Standard Time
From: DeCarlo Brown <dbrown@yorkmaine.org>
To: Christopher DiMatteo <cdimatteo@longmeadowpla.com>

DeCarlo Brown
Land Use Planner
Town of York
186 York Street
York, Maine 03909
207 363-9847

From: Heather Ross <hross@yorkmaine.org>
Sent: Wednesday, February 15, 2023 1:17 PM
To: Bruce Larson <blprop1021@gmail.com>; DeCarlo Brown <dbrown@yorkmaine.org>
Subject: 1021 US Route 1 - Southern Maine Lobster Company

DeCarlo and Bruce,
I have verified that wholesale, retail and lobster processing has been occurring in this location and the lobster processing is an existing non-conforming use.
Sincerely,
Heather

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Subject: FW: 1021 US Route 1 - Southern Maine Lobster Company
Date: Thursday, February 16, 2023 at 9:50:33 AM Eastern Standard Time
From: DeCarlo Brown <dbrown@yorkmaine.org>
To: Christopher DiMatteo <cdimatteo@longmeadowpla.com>
Attachments: image002.jpg, image003.png, 5395.08-Traffic-021623.pdf

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From: Dean Lessard <dlessard@yorkmaine.org>
Sent: Thursday, February 16, 2023 9:28 AM
To: DeCarlo Brown <dbrown@yorkmaine.org>
Cc: Erik Saari <esaari@altus-eng.com>; Bruce Larson <blprop1021@gmail.com>
Subject: 1021 US Route 1 - Southern Maine Lobster Company

Hi DeCarlo,

Thank you for the opportunity to comment on the proposed Southern Maine Lobster building expansion at 1021 US Route 1. I have reviewed the traffic assessment provided by Erik B. Saari of Altus Engineering for the building expansion. I concur with Erik's trip generation assumptions, Land use codes (860 Wholesale Market), (926 Food Cart Pod), (Bus Depot) & (Landscape Business) and his associated calculations. The trip generation for the proposed development is more than 35 trips in the peak hour. Based on the ITE trip generation criteria, the newly proposed use does generate enough traffic to require additional traffic study. However due to all the recent studies done in this area no additional traffic analysis is required. Please let me know if you need anything else from me.

Thanks again
Dean

Dean A. Lessard, P.E.

Director of Public Works

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yorkpublicworks.org



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From: Erik Saari <esaari@altus-eng.com>
Sent: Thursday, February 16, 2023 9:15 AM
To: Dean Lessard <dlessard@yorkmaine.org>; Bruce Larson <blprop1021@gmail.com>
Cc: DeCarlo Brown <dbrown@yorkmaine.org>
Subject: RE:

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Dean,

Here you go.

Thank you,
Erik

Erik Saari
Vice President



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