

McCall
Larson
Avery
Kallafunes
Zamboni

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

B-2b Community Business Zone
Conditional Use Appeal

DECISION

Date of public hearing: December 7, 2017
Name and address of Appellant: Scot Herrigel
34 Oliver Street
Bath, Maine 04530
Location of property under appeal: 38 Portland Street
CBL 33 J011001

For the Record:

Names and addresses of witnesses (proponents, opponents and others):

John Herrigel
o/b/o Scot Herrigel
38 Portland St.
Portland, Me.

George Rheault (Opposition)
28 Hanover St.
Portland.
Concern about transients -
Concern about air BNB for second
floor, believe it will effect rental
of 1st floor making it harder to
to rent to someone who can
be the eyes & ears of neighbor-
hood.
Concern property is well
taken care of.
Not commensal investment
will take place.
Concerned about
Community.

Exhibits admitted (e.g. renderings, reports, etc.):

Application & Exhibits

Findings of Fact and Conclusions of Law:

The applicant is seeking a conditional use to legalize a non-conforming dwelling unit in a building that has an existing retail store on the first floor and storage space on the second floor. The Zoning Administrator determined that the dwelling unit met the criteria for legalization, but lacked authority to approve the legalization due to an objection by a noticed party.

The Board of Appeals shall treat an application for legalization as a conditional use, applying the standards applicable to conditional uses as well as the requirements of § 14-391. § 14-391(g).

Findings:

1. The proposed use, at the size and intensity contemplated at the proposed location, will not have substantially greater negative impacts than would normally occur from surrounding uses or other allowable uses in the same zoning district. This standard is satisfied if all of the following are met. § 14-474(c).

a. The volume and type of vehicle traffic to be generated, hours of operation, expanse of pavement, and the number of parking spaces required are not substantially greater than would normally occur at surrounding uses or other allowable uses in the same zone.

Satisfied Not Satisfied

Reason and supporting facts:

Residential use of 1 unit. Minor passenger vehicle traffic. neighborhood has a 24 hour/day activity level.

b. The proposed use will not create unsanitary or harmful conditions by reason of noise, glare, dust, sewage disposal, emissions to the air, odor, lighting, or litter.

Satisfied Not Satisfied

Reason and supporting facts:

*residential use, residential zone.
apartment exists now -
no increase in those conditions*

- c. The design and operation of the proposed use, including but not limited to landscaping, screening, signs, loading, deliveries, trash or waste generation, arrangement of structures, and materials storage will not have a substantially greater effect/impact on surrounding properties than those associated with surrounding uses or other allowable uses in the zone.

Satisfied Not Satisfied

Reason and supporting facts:

Residential ~~zone~~ use in urban part of City. Typical of surrounding neighborhood. Little impact on surrounding Properties.

2. The nonconforming dwelling unit was either in existence April 1, 1995, or the structure in which they are located was originally designed to accommodate more than the number of such units presently in use. § 14-391(c)(1) satisfied

Affidavits indicate building exists. Opposition indicates affidavits aren't convincing.

Affidavits could be more detailed, but majority of Board (McCall) believe they are adequate.

McCall
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✓ Satisfied

3. The applicant neither constructed nor established the non-conforming dwelling unit. § 14-391(c)(2)

~~App~~
no evidence Applicant
constructed apartment.

✓ Satisfied

4. The nonconforming dwelling unit complies with or can be made to comply with current standards of the National Fire Protection Association Life Safety Code and the National Fire Protection Association 1: Fire Prevention Code. § 14-391(c)(3)

Inspection form in
application indicate all
items can be completed area

✓ Satisfied

5. The nonconforming dwelling unit complies with provisions of the City's Housing Code or can be made to conform with, as amended, including, but not limited to, the requirements of § 6-110, Minimum Standards for Space and Occupancy, § 6-111, Minimum Plumbing Standards, and § 6-112 Minimum Ventilation Standards. § 14-391(c)(4)

Nothing in records suggests
unit can not comply with
these standards, Property
can be made to conform.
To get a Cop O, it will need
to comply.

✓ Satisfied

6. The structure containing the nonconforming dwelling unit is located in the R-3, R-4, R-5, R-6 or R-7 Zones; or the B-1, B-1(b), B-2, B-2(b) or B-3 Zones. § 14-391(c)(5)

Property in B-2-B zone

