

Portland, Maine



Yes. Life's good here.

Planning & Urban Development Department

*Jeff Levine, AICP, Director*

*Ann Machado, Zoning Administrator*

May 8, 2015

Lorna M. Leo  
Kiddie Garden, LLC  
223 Brackett Street  
Portland, Maine 04102

Re: 237-239 Spring Street – 056-G-040 – R-6 Residential Zone

Dear Ms. Leo,

At the May 7, 2015 meeting, the Zoning Board of Appeals voted 4-0 to grant the Conditional Use Appeal to operate a daycare for up to 12 children on the first floor of the building. I am enclosing a copy of the Board's decision and the Change of Use Permit Application.

You have six months from the date of the meeting, May 7, 2015, to apply for a building permit for the Change of Use, referenced under section 14-474(f), and start work, or your Zoning Board approval will expire.

Appeals from decisions of the Board may be filed in Superior Court in accordance with Rule 80B of the Maine Rules of Civil Procedure.

Should you have any questions please feel free to contact me at 207-874-8709.

Yours truly,

A handwritten signature in black ink that reads "Doreen M. Christ".

Doreen M. Christ  
Inspections Office Assistant

Cc File

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

### ZONING BOARD APPEAL DECISIONS

To: City Clerk

From: Ann Machado, Zoning Administrator

Date: May 8, 2015

RE: Action taken by the Zoning Board of Appeals on May 7, 2015

**Members Present:** Donna Katsiaficas (acting secretary), Eric Larsson, Kent Avery (acting chair), and Chip Gavin.

**Members Absent:** Sara Moppin, Gordon Smith, and William Getz.

#### 1. New Business:

##### A. Practical Difficulty Variance Appeal:

14 Orkney Street, Laurie & Mark Brooks, owners, Tax Map 132, Block E, Lot 007, R-5 Residential Zone: The applicants would like to move their existing twenty foot by twenty foot garage closer to the rear property line. The appellants are requesting a variance for the required rear setback from the required twenty feet to five feet [section 14-120(a)(4)(b)]. Representing the appeal are the owners. *The Board of Appeals voted 4-0 to deny the appeal to relocate the garage closer than 20 feet from the rear property line.*

##### B. Conditional Use Appeal:

237-239 Spring Street, Lorna Leo, lessee, Tax Map 056, Block G, Lot 040, R-6 Residential Zone: The applicant is seeking a Conditional Use Appeal under section 14-137(c)(6) to operate a daycare for up to twelve (12) children on the first floor of the building. Representing the appeal is the lessee, Lorna Leo. *The Board of Appeals voted 4-0 to grant the appeal to operate a daycare for up to 12 children on the first floor of the building.*

##### C. Conditional Use Appeal:

1342-1348 Congress Street, Jewish Community Alliance of Southern Maine, buyer, Tax Map 191, Block B, Lots 016 & 017, R-5 Residential Zone: The applicant is seeking a Conditional Use Appeal under section 14-118(c)(3) to operate a daycare/preschool for up to 68 students and an afterschool program for up to 20 students in part of the proposed building. Representing the appeal is Steve Brinn from the Jewish Community Alliance of Southern Maine. *This item was postponed until the next regularly scheduled Board of Appeals meeting, which is Thursday, May 21, 2015.*

#### 2. Adjournment

##### Enclosure:

Decision for Agenda from May 7, 2015

One DVD

CC: Michael Sauschuck, Acting City Manager

Jeff Levine, AICP, Director Planning & Urban Development

Alex Jaegerman, Planning Division

Mary Davis, Housing and Neighborhood Services Division

Gavia  
Karlsson  
Avery  
Karlsson

CITY OF PORTLAND, MAINE  
ZONING BOARD OF APPEALS

R-6 Residential Zone Day Care Facility:

Conditional Use Appeal

DECISION

Date of public hearing: May 7, 2015;

Name and address of applicant: Lorna M. Leo and Kiddie Garden, LLC  
223 Brackett St.  
Portland, ME 04102

Location of property under appeal: 237-239 Spring St.

For the Record:

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

~~Laura + Mark Brooks, 14-16 Orchard St.~~ Lorna Leo, James  
Leo

223 Brackett Street

Robert Hains

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

None other than application

Findings of Fact and Conclusions of Law:

The applicant, Kiddie Garden, LLC, is seeking approval of conditional use for a day care pursuant to § 14-137(c)(6) for up to (12) children on the first floor of a multi-use building at 237-239 Spring Street. The space is a vacant storefront located in a residential building in an R-6 Residential Zone.

A. Conditional Use Standards pursuant to Portland City Code §14-137(c)(6):

Day care facilities or home babysitting services not authorized as a home occupation under section 14-410, are permitted as conditional uses, provided that:

1. The facility is located in a structure in which there is one (1) or more occupied residential units;

Satisfied  Not Satisfied

Reason and supporting facts:

Testimony that there are at least 3 occupied units, 4 are allowed

2. The maximum capacity of the proposed Day Care Facility is twelve (12) children;

Satisfied  Not Satisfied

Reason and supporting facts:

Testimony that 12 children maximum + application

3. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts;

Satisfied  Not Satisfied

Reason and supporting facts:

Reiche school playground + Taylor Street playground, no play area on site

4. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides;

Satisfied  Not Satisfied

Reason and supporting facts:

waste will be collected during business hours, in closed containers, not in street

B. Conditional Use Standards pursuant to Portland City Code §14-474(c)(2):  
The Board shall not authorize issuance of a conditional use permit unless there has been a showing that 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. Accordingly, the Board shall only grant approval if each of the following is satisfied:

1. 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:

School + Community Center across St.  
side was Security / Convenience store  
multiple drop off spots in street

2. 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:

Day care use won't generate glare/dust  
etc. mentioned in standards  
noise of children playing won't be  
offensive ~~and~~ - school is  
across St.

3. 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:

*no changes to building / landscaping  
contemplated  
no greater impact than other uses in  
neighborhood*

**Conclusion:** (check one)

Option 1: The Board finds that all of the standards (1 through 4) described in section A above have been satisfied and that all of the standards (1 through 3) described in section B above have been satisfied, and therefore GRANTS the application.

Option 2: The Board finds that while all of the standards (1 through 4) described in section A above have been satisfied, and that while all standards (1 through 3) described in section B above are satisfied, certain additional conditions must be imposed to minimize adverse effects on other property in the neighborhood, and therefore GRANTS the application SUBJECT TO THE FOLLOWING CONDITIONS:

Option 3: The Board finds that not all of the standards (1 through 4) described in section A above have been satisfied and/or that not all of the standards (1 through 3) described in section B have been satisfied, and therefore DENIES the application.

Dated: 5-7-2015



Board Chair

SECRETARY,  
ACTING CHAIR