

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

R-5 Residential Zone:

Conditional Use Appeal

DECISION

Date of public hearing: January 7, 2016

Name and address of applicant: Emily Hickey
5 Greenway Dr.
Falmouth, ME 04105

Location of property under appeal: 14 Alba St.
Portland, ME 04103

For the Record:

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

Proponent

*Paul Berger
477 Congress St.
suite 1104
Portland, Me.
04101*

*Christopher
Hickey
5 Greenway Dr.
Falmouth, me.
04105*

opponent

*Carel Pike
39 Alba St.*

*Portland
they own 35 Alba St.
Concerned about
parking, width of
street is very
narrow, not enough
room on the lot
to have extra cars.
concerned about
the management of
the property.*

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

*Application and Exhibits
letter dated Dec. 29, 2015
from Tyler Norod to
Board*

*James Pike
39 Alba St.
main concern is
parking situation -
very congested
area. very narrow
street. concern to
have more cars on
street*

Findings of Fact and Conclusions of Law:

The applicant, Emily Hickey, is seeking a Conditional Use in the R-5 Residential Zone under § 14-118(a)(5) to add two units to an existing two-unit building to make it a four-unit building.

The project is subject to article V site plan review and approval that i) any additions or exterior alterations such as façade materials, building form and roof pitch shall be designed to be compatible with the architectural style of the building; and ii) the scale and surface area of parking, driveways and paved areas shall be arranged and landscaped to properly screen vehicles from adjacent properties and streets.

A. Conditional Use Standards pursuant to Portland City Code §14-118(a)(5)

Use of the existing space to accommodate additional dwelling units may be permitted as a conditional use if:

1. The space existed as of September 3, 2008;

Satisfied Not Satisfied

Reason and supporting facts:

Space existed prior to 2008 per testimony + application

2. There will be no more than four dwelling units on a lot and no more than two units will be added beyond the number of units otherwise permitted;

Satisfied Not Satisfied

Reason and supporting facts:

2 units exist, 2 units can be allowed under 14-118(a)(5)(a) per zoning administrator. Not currently allowed for legal use of 2 units. Ordinance provides for up to 2 units where 2 units are permitted.
See also Sawyer Environmental Case cited in application

3. Units created as part of the conditional use will not be sold as condominium units or otherwise separated from the ownership of at least one of the pre-existing units on the site;

Satisfied Not Satisfied

Reason and supporting facts:

application + testimony indicate no sale as condominium or otherwise separated. This is a condition of issuance of the permit.

4. Units created as part of the conditional use will be affordable to households earning up to 80% of AMI.¹

Satisfied Not Satisfied

Reason and supporting facts:

per testimony + application, this condition will be satisfied. Covenant will be recorded in registry to guarantee. See also letter of Dec. 29, 2015 from Tyler Ward

¹ Such units shall be subject to income verification as further outlined in implementing regulations.

5. The additional units shall have a minimum floor area of four hundred (400) square feet and may not involve removing more than ten percent of the gross floor area² of an existing dwelling unit into a new dwelling unit;

Satisfied Not Satisfied

Reason and supporting facts:

units have floor area of approximately 1000 sq feet, not using floor area from existing units.

6. Modifications to existing structures will be minimal, and be limited to new doors, windows and other openings.

Satisfied Not Satisfied

Reason and supporting facts:

testimony no modifications other than items cited in standards

² Gross floor area excludes any floor area that has less than two-thirds of its floor-to-ceiling height above the average adjoining ground level and may include the attic if such space is habitable.

7. A minimum of one (1) additional parking space is provided for the additional unit, or there exists a minimum of three (3) parking spaces for the present units, ^{Four (4)}

Satisfied Not Satisfied

Reason and supporting facts:

Plan + testimony + written material shows 4 parking spaces for present units, 2 of which are in use.

8. There are no open, outside stairways or fire escapes above the ground floor.

Satisfied Not Satisfied

Reason and supporting facts:

per plan and testimony, no plan to have stairways or fire escapes

9. Any additions or exterior alterations such as façade materials, building form and roof pitch shall be designed to be compatible with the architectural style of the building

Satisfied Not Satisfied

Reason and supporting facts:

No changes to the exterior or facade.

10. The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped to properly screen vehicles from adjacent properties and streets.

Satisfied Not Satisfied

* Mr. Pike wants
in record 2 spaces
but cars will need
to be moved to
opt out.

Reason and supporting facts:

4 spaces in existing driveway
Scale of parking area not being
altered. arrangement not being
altered

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:

residential use & traffic in residential
zone
scale is similar to other multi-units
in the zone. parking is exactly what is
required under the ordinance.

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:

residential use in a residential
area

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:

Residential use in residential neighborhood. Nuisance conditions are really applicable to that. 4 units in a multi-unit neighborhood. No public testimony addressing this standard as concerns.

Conclusion: (check one)

Rasson, Gavin

Gavin thanked Avery & public for coming & to voice concerns. We are constrained by the ordinance

Option 1: The Board finds that all of the standards (1 through 10) 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 10) 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 10) 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:

1-7-16

[Signature]

Board Chair

Portland, Maine



Yes, Life's good here.

Planning & Urban Development Department

December 29, 2015

Zoning Board of Appeals
389 Congress Street
Portland, Maine 04101

Chair Avery & Board Members,

On October 19, 2015, the City Council voted 7-2 to approve revisions to the R-5 zone allowing Accessory Dwelling Units (ADU's) to be built on non-conforming lots provided they meet certain criteria. The criteria included an affordability restriction that would make the units affordable to households earning up to 80% of the area median income (AMI). This letter is intended to clarify the enforcement process related to the prescribed affordability levels of the two proposed ADU's at 14 Alba Street. Prior to releasing a building permit the City and the Proponent will enter into an Affordable Housing Agreement (AHA) that will detail the terms by which the ADU's will be restricted. The AHA will be a legally binding document that is registered with the Cumberland County Registry of Deeds and attached to the property's deed. Among other things, the AHA will delineate how to determine maximum allowable rents, household eligibility, the length of the restriction, and certification process for potential tenants. The Housing & Community Development Division within the Planning & Urban Development Department will be responsible for overseeing and enforcing the provisions of the AHA.

If you have any specific questions or concerns please do not hesitate to contact me directly.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Norod".

Tyler Norod
Housing Planner
Housing & Community Development Division
Planning & Urban Development Department
City of Portland