

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

R5 – Residential Zone
Conditional Use Appeal

DECISION

Date of public hearing: September 21, 2017
Name and address of applicant: EZ Spanish Immersions, LLC
P.O. Box 64
South Freeport, Maine 04078
Location of subject property : 79 Clinton Street
CBL 136 B004001

For the Record:

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

Erik + Christy Zavasnik, EZ Spanish Immersion

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

*Submitted materials
Oral Testimony*

*/s/ Joseph Zamboni
Sec Pro Temp*

Findings of Fact and Conclusions of Law:

The applicants are seeking an after-the-fact conditional use permit pursuant to § 14-118(a)(5) of the City of Portland Code of Ordinances to add a third unit with the conversion of existing third floor dormer into an additional unit. The Board has authority to consider a conditional use permit application pursuant to § 14-474(a).

Findings:

The use of an existing space as of September 3, 2008 to accommodate an additional dwelling unit is permitted if it meets all of the requirements of § 14-118(a)(5)(a) – (h).

1. The space to be used to accommodate the additional dwelling unit has been in existence as of September 3, 2008. § 14-118(a)(5).

Satisfied 4 Not Satisfied 1

Reason and supporting facts:

Evidence suggest additional dwelling that unit was in existence before 2008. A dormer was also built to suggest that additional dwelling built.

2. With the additional unit, there will be no more than four dwelling units on the lot and no more than two additional dwelling units on the lot above what would otherwise be permitted. § 14-118(a)(5)(a).

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

Evidence suggests that there will only be 3 units in building.

3. The unit created under this section will not be sold as condominium unit or otherwise separated from the ownership of at least one of the pre-existing units on the site. § 14-118(a)(5)(b).

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

No evidence to show this will be sold as a condominium.

4. The unit created under this section will be affordable to households earning up to 80% of AMI and subject to income verification as further outlined in implementing regulations. § 14-118(a)(5)(c).

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

Testimony suggest that unit is already rented below market rate.

5. The additional unit will have a minimum floor area of four hundred (400) square feet and will not involve removing more than ten percent of the gross floor area of an existing dwelling unit into a new dwelling unit. Gross floor area shall exclude 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. § 14-118(a)(5)(d).

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

Materials and testimony indicate it is at least 400 sq feet.

6. Modifications to the existing structure will be minimal, and will be limited to new doors, windows and other openings. § 14-118(a)(5)(e).

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

No new modifications are planned.

7. Parking shall be provided as required by Chapter 14, Division 20. § 14-118(a)(5)(f).

Division 20 provides that, for alterations or changes of use in existing structures, which create new or additional dwelling units in such structures . . . one (1) additional parking spaces for each such unit. Existing parking spaces shall not be used to meet the parking requirements of this paragraph, unless the existing parking spaces exceed one (1) space for each dwelling unit. § 14-332(a)(2).

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

Board finds standard satisfied.
This is an alteration creating a new unit and providing 3 spaces in total.
3rd parking space was previously unused so this is an addition.

8. There shall be no open, outside stairways or fire escapes above the ground floor. § 14-118(a)(5)(g).

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

No evidence to suggest outside stairs or fire escapes.

9. The project shall be subject to Chapter 14, Article V site plan review and approval, with the following additional standards: i) Any additions or exterior alterations such as façade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the single family appearance of the building; and ii) the scale and surface area of parking, driveways and paved areas shall be arranged and landscaped properly to screen vehicles from adjacent properties and streets. § 14-118(a)(5)(h).

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

No exterior alterations being suggested. Will be subject to site plan review

10. 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 5 Not Satisfied 0

Reason and supporting facts:

Residential use in residential zone.

- 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 5 Not Satisfied 0

Reason and supporting facts:

Residential use in residential zone.

- 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 5 Not Satisfied 0

Reason and supporting facts:

Residential use in resident zone. Consistent in appearance.

Conclusions:

Option 1: The Board finds that all of the standards described above have been satisfied, and therefore GRANTS the conditional use permit.

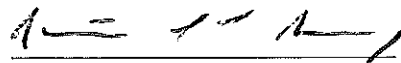
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Option 2: Pursuant to § 14-474(d), the Board has the authority to impose conditions on conditional use permits. The Board finds that all of the standards described above have been satisfied, however, certain reasonable conditions must be imposed to 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 all of the standards described above have not been satisfied, and therefore DENIES the application.

Dated:

9/21/2017



Board Chair