



PLANNING BOARD REPORT PORTLAND, MAINE

PORTLAND MASJID AND ISLAMIC CENTER
978 WASHINGTON AVENUE
CONDITIONAL USE
PROJECT ID #97900001
ZACHARY HEIDEN, ESQ. MAINE CIVIL LIBERTIES UNION, APPLICANT

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| Submitted to: Portland Planning Board Public Hearing Date: JULY 27, 2010 | Prepared by: Molly Casto, Senior Planner Date: July 15, 2010 |
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1. INTRODUCTION

Mr. Zachary Heiden of the Maine Civil Liberties Union Foundation (MCLU), on behalf of the property owner, Mrs. Sadri Shir, requests the Planning Boards review and approval of a proposed change of use from a repair shop to place of assembly for Mrs. Shir's property located at 978 Washington Avenue. The applicant does not propose any development or alteration to the site at this time. The project is being reviewed as a conditional use in the R-5 zone. The City has determined that the application is not subject to site plan review (see attached memorandum from Corporation Counsel – Attachment 2). The property does not meet the square footage threshold for site plan review of interior site alteration and the site is not proposed to be altered from its existing condition.

219 notices were sent to area residents and interested parties. Notice also appeared in the July 12th and July 19th, 2010 editions of the *Portland Press Herald*.

2. PROJECT DATA

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| Total Area of Lot: | 14,400 sq. ft. (.331 acres) |
| Zone: | R-5 Residential |
| Existing Uses: | Television Repair (currently vacant) and Residential (2 nd floor apartment) |
| Proposed Use: | Place of Assembly (small) and Residential (retain existing 2 nd floor apartment). |
| Bldg. Square Footage: | 3,465 sf (1,155 sf footprint) |
| Total Area for Proposed Change of Use: | 665 sf |

Existing Parking: Gravel Lot (Approx. 7 spaces)
Proposed Parking: 7 spaces

3. PROPOSED DEVELOPMENT

The property encompasses a 14,400 s.f. parcel on Washington Avenue near the corner of Fall Brook Street. The property is in an R-5 Residential Zone, which permits places of assembly as a conditional use, to be reviewed and approved by the Planning Board. Places of Assembly became a permitted conditional use in the R-5 zone and in the other R-zones on January 4, 2010 as a result of ordinance amendments approved by the Planning Board and City Council. The total square footage of the building is 3,465 sf. The applicant proposes to change the use of approx. 665 s.f. of the first floor, the most recent use of which was for television repair and sales, to a mosque (place of assembly). The remaining 490 sf of first floor area has been and will remain as storage space. The second floor will remain as a residential apartment.



VICINITY OF PROJECT SITE

The proposed assembly area measures 20'4" x 35". The applicant proposes to retain 7 existing parking spaces on an existing gravel parking area, defined by large logs placed on the ground (see Feb 11, 2010 sketch plan in the application packet – Attachment 1). The remainder of the site is grassed. There is a dense vegetated buffer along the rear (southerly) property boundary. There is one existing exterior light on the easterly wall of the building to illuminate the parking area. This light appears not to be functional at this time. There are two existing curb cuts accessing the site from Washington Avenue and an existing brick sidewalk and granite curbing along the Washington Avenue frontage. The site is abutted on three sides by single-family residential homes.

4. BACKGROUND AND SCOPE OF REVIEW

The owner illegally paved and expanded the existing gravel parking area without approval from the City. Ultimately, the City and the property owner reached an agreement in December, 2009 where the owners removed all pavement and gravel that had been installed, filled a drainage course that had been created to divert water, re-graded the property to a flat contour and restored the area outside what had been existing gravel parking with loam and seed. The lot has been returned to its original condition (Attachment 3 – Agreement between Sadri Shir, Nawad Shir and Portland Masjid and Islamic Center and City of Portland).

The proposed new use as a place of assembly is subject to the conditional use provisions of the Land Use Code. The proposal is not subject to City site plan requirements because the lot was returned to its original configuration, thus it is no longer subject to the site plan threshold concerning construction of a parking lot. In addition, the site plan ordinance includes exemptions for alterations inside a structure due to a change of use if those changes impact less than 5,000 sf. As previously noted, the proposed change of use is limited to 665 sf. of the first floor. Gary Wood, Corporation Counsel has provided the Board with a memorandum detailing this determination (Attachment 2).

5. RIGHT, TITLE OR INTEREST

The applicant has submitted a Warranty Deed, dated November, 2005 confirming Mrs. Sadri Shir as owner of the property at 978 Washington Avenue (Attachment 1).

6. STAFF REVIEW

The proposed development has been reviewed by staff for conformance with applicable conditional use standards of the Land Use Code. These include Section 14-118, the Conditional Use Standards of the R-5 zone, and Section 14-474, Conditional Use Standards. The proposal is also subject to applicable standards of Division 20, Off-Street Parking.

A. Zoning Assessment

Marge Schmuckal, Zoning Administrator submitted the following review comments on June 3, 2010. She has no additional comments for the Planning Board since the workshop:

This property is located in an R-5 Residential Zone which allows Places of Assembly as a Conditional Use before the Planning Board. This is a change of use from a TV service repair and sales on the first floor and a single family on the second floor, to a Place of Assembly on the first floor and a single family dwelling on the second floor. This is considered to be a "Small" Place of Assembly which requires a minimum lot size of 10, 890 square feet. The current lot size is 14, 400 square feet. The required minimum lot size for the Place of Assembly use is being met.

The exterior and interior of the building was inspected on February 11, 2010. Under the parking requirements for Places of Assembly, one (1) parking space for each one hundred and twenty five (125) square feet of floor area used for assembly area not including bathrooms, bulk storage, stairways, closets or other non-assembly areas, it was determined that six parking spaces are required for the Place of Assembly use plus one parking space for the existing dwelling unit is required for a total of seven (7) parking spaces. Seven parking spaces are being shown on the submitted plot plan and meets the minimum requirements.

Section 14-337 requires parking for more than six vehicles to be no closer than 25 feet to any residential structure on an adjoining lot. The scaled drawings show the parking area to be at least 30 feet away from the closest residential structure.

During a building permit review and approval, the application will be conditioned with compliance with Section 14-338 which states that "Where off-street parking shall abut a lot in residential use or an un occupied lot which is located in a residence zone, a fence no less than forty-eight (48) inches shall be provided and maintained between such off-street parking and that part of the lot line involved."

Also during the building permit review and approval, the application will be conditioned with compliance with Section 14-340 which states, "where artificial lighting is provided, it shall be shaded or screened so that no light source shall be visible from outside the area and its access driveways.

B. Conditional Use Standards

The Board is asked to review the proposal for conformance with the following relevant Conditional Use standards. The standards, along with Planning staff discussion, are provided below:

DIVISION 6. R-5 RESIDENTIAL ZONE

Sec. 14-118 (b) 3: Conditional uses for places of assembly.

(a) In the case of expansion of existing such uses onto land other than the lot on which the principal use is located, it shall be demonstrated that the proposed use cannot reasonably be accommodated on the existing site through more efficient utilization of land or buildings, and will not cause significant physical encroachment into established residential areas.

The proposed use is confined to the existing site and does not propose to expand onto land other than the lot in which the principal use is located.

(b) The proposed use will not cause significant displacement or conversion of residential uses existing as of June 1, 1983, or thereafter.

The use is proposed in a former television repair and retail shop, thus it is not displacing a residential use. The existing residential apartment on the second floor will remain residential.

(c) In the case of a use or use expansion which constitutes a combination of the above listed uses [elementary, middle, and secondary school; long-term and extended care facilities; Intermediate care facility for thirteen (13) or more persons; Places of assembly; Hospital; College, university, trade school] with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative.

The proposal does not constitute a combination of the uses listed in Section 14-118 and above.

(d) In the case of places of assembly (including places of religious assembly, community halls and private club or fraternal organizations) the proposed use shall be subject to the requirements of article V (site plan) of this chapter.

The City has determined, in this case, that the proposed change of use is not subject to site plan review because it does not meet the site plan review thresholds and, after previously being modified, the site has since been brought back to its previously existing, original condition (see Attachment 2 – memorandum from Corporation Counsel).

At the June workshop, the Planning Board questioned Corporation Counsel's interpretation of Section 14-118(b). Corporation Counsel was present at the workshop and responded that the language of Section 14-118(b) 3 (d) would need to be amended to that that Places of Assembly are subject to the requirements of Article V notwithstanding exceptions listed in Section 14-523. Planning Board member, Lee Lowry asked that Corporation Counsel initiate such an amendment to this section. Gary Wood, Corporation Counsel agreed but noted the importance of carefully reviewing the type and scale of uses that would be subject to this provision to be sure that costs associated with site plan review would not be onerous for smaller applications.

DIVISION 28. JURISDICTION OF BOARD OF APPEALS

Sec. 14-474. Conditional uses.

(2) Standards. Upon a showing that a proposed use is a conditional use under this article, a conditional use permit shall be granted unless the board determines that:

(a) There are unique or distinctive characteristics or effects associated with the proposed conditional use;

The proposed use as a place of assembly would not result in unique or distinctive characteristics. There are no changes proposed to the exterior of the building or the site. The mosque remains open during the day but sees the majority of the congregation for Friday services at noon. These typically last for ½ hour. The number of cars arriving at the mosque for these Friday serves has traditionally not exceeded ten. The site accommodates the majority of these vehicles and there is on-street parking available on adjacent side streets.

(b) There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area;

It does not appear that there will be any adverse impacts associated with the proposed project. The proposed use will be limited to worship and study.

(c) Such impact differs substantially from the impact which would normally occur from such a use in that zone.

The impacts of this site will not differ from those normally expected from such a use in the R-5 Residential zone.

(d) Conditions on conditional use permits. The board of appeals may impose such reasonable conditions upon the premises benefited by a conditional use as may be necessary to prevent or minimize adverse effects therefrom upon other property in the neighborhood. Such conditions shall be expressly set forth in the resolution authorizing the conditional use permit and in the permit. Violation of such conditions shall be a violation of this article.

7. STAFF RECOMMENDATION

Planning staff recommends that the Planning Board approve the applicant's conditional use application with a condition of approval requiring the applicant to obtain all necessary building permits for change of use and to comply with corresponding building permit standards of Section 14-338 and 14-340 addressing screening of the parking area and exterior lighting.

8. MOTIONS

Conditional Use:

On the basis of the application, plans, reports and other information submitted by the applicant, findings and recommendations contained in the Planning Board Report for application #979 000 01 relevant to Portland's Conditional Use Standards and other regulations, and the testimony presented at the Planning Board hearing:

The Planning Board finds the proposed conditional use for a Place of Assembly in the R-6 Zone (**does or does not**) meet the standards of Sections 14-474 and 14-118, subject to the following conditions of approval:

- (1) The applicant shall obtain all necessary building permits for the change of use. As part of the building permit review process, the applicant shall comply with applicable requirements for fencing to screen off street parking and shading of exterior light fixtures, as described in Section 14-338 and 14-340 of the Land Use Code.

9. ATTACHMENTS

(1) Application

- a. Cover Letter from Zachary L. Heiden, Counsel for Plaintiffs
- b. Conditional Use Application
- c. Warranty Deed
- d. Tax Map
- e. Site Plan sketch
- f. Floor Plan sketch
- g. Aerial photo
- h. Site photos
- i. Wastewater flow calculations
- j. Assessor's database information

(2) Memorandum from Gary Wood, Corporation Counsel, June 10, 2010

(3) Copy of December, 2009 agreement between Portland Masjid and Islamic Center and the City of Portland.