

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

*McCall
Harrison
Avery
Kassafian
Zamboni*

R-5 – Residential Zone
Conditional Use Appeal

DECISION

Date of public hearing: November 2, 2017

Name and address of applicant: James P. Guidi o/b/o Sylvia Guidi
319 Main Street
Cumberland, Maine 04021

Location of subject property : 240 Brighton Avenue
CBL 186A F009001
186A F022001

For the Record:

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

*James Guidi
319 Main St.
Cumberland ME
6*

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

Application and Exhibits

Findings of Fact and Conclusions of Law:

The applicant is seeking an after-the-fact conditional use permit pursuant to § 14-118(a)(5) of the City of Portland Code of Ordinances to convert an existing two-family residential to a three-^{FOUR} family residential. 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 units has been in existence as of September 3, 2008. § 14-118(a)(5).

Satisfied Not Satisfied - with respect to both units

Reason and supporting facts:

Applicant indicates units have been in existence at least 10 years.
Building constructed 1910-1920

2. With the additional units, 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 Not Satisfied

Reason and supporting facts:

Extremely - addition of units would lead to 4 units on the lot - 2 more than permitted
satisfied as to both units.

3. The units created under this section 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. § 14-118(a)(5)(b).

Satisfied Not Satisfied

Reason and supporting facts:

written application indicates
won't be sold as condos.

~~Satisfied~~ Satisfied as to both units

4. The units 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 Not Satisfied

Reason and supporting facts:

Satisfied as to both units
application confirms it will be
less than
set needed @ 80% AMI

5. The additional units 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 *for attic unit* Not Satisfied *Basement unit*

Reason and supporting facts:

*Attic unit > 400 sq feet. unit remove more 10%
entire gross floor area of basement unit is < 2/3 floor to ceiling height above average ground. no floor area above grade.*

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 Not Satisfied

Reason and supporting facts:

*no modifications needed
Satisfied as to both Attic & Basement units.*

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 Not Satisfied

Reason and supporting facts:

Application indicates 9 parking spaces on premises - 2 per unit proposed.

Satisfied as to both Attic + Basement unit

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

Satisfied Not Satisfied

Reason and supporting facts:

Application indicates there are none.

Satisfied as to both units.

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 Not Satisfied

Reason and supporting facts:

no proposed additions or exterior alterations to building
no change to parking area proposed
no testimony from public
Satisfied as to both units

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 Not Satisfied

Reason and supporting facts:

Residential use, residential zone. no testimony that traffic volume would increase over what would normally occur

Satisfied as to both units.

- 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.
no evidence it would create
any of these conditions

Satisfied as to both units

- 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 use / residential zone
no changes in landscaping
no public comment on these
conditions.

Satisfied as to both

Conclusions:

AS to Attic unit:

McCauley, Larsson

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

~~*AS to Basement*~~

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:

AS to Basement unit:

*Larsson
Katsipour*

Option 3: The Board finds that all of the standards described above have not been satisfied, and therefore DENIES the application.

Dated: *11-02-17*

[Signature]
Board Chair