

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

R-3 Residential Zone  
**Conditional Use Appeal**

### DECISION

Date of public hearing: April 5, 2018

Name and address of applicant: Sarah Rubin  
28 Harvey Street  
Portland, Maine 04102

Location of property under appeal: 28 Harvey Street  
224A C003001

### For the Record:

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

*Sarah Rubin, petitioner*

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

*Submitted materials*  
*Testimony*

*Sec Pro Tem 4/0*  
*Joseph Zamboni*

Findings of Fact and Conclusions of Law:

The applicant requests a conditional use permit pursuant to § 14-88(a)(2) to alter a detached single-family dwelling to accommodate one additional dwelling unit. The applicant is requesting that the approval be valid for two years from the date of issue.

Findings:

A. Conditional Use Standards pursuant to Portland City Code § 14-88(a)(2)

Alteration or construction of a detached single-family dwelling to accommodate one additional dwelling unit for the benefit of homeowners or tenants, is permitted provided that:

1. The accessory unit shall be no more than thirty (30) percent of the gross floor area of principal building and shall have a minimum floor area four hundred (400) square feet. 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; gross floor area may include attic space if such space shall be included as habitable space within either dwelling unit.

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

*Testimony indicates meets the minimum at 477 sqft.*

2. There shall be no open outside stairways or fire escapes above the ground floor.

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

*Written materials indicate no outside stairways or fire escapes.*

3. Any building additions or exterior alterations such as facade materials, building form, or roof pitch shall be designed to be compatible with the architectural style and to maintain the single-family appearance of the dwelling.

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

Construction of additional dwelling with have "seamless appearance". This is corroborated by drawings in written materials.

4. A minimum lot size of six thousand five hundred (6,500) square feet of land area shall be required.

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

Minimum lot is met. Current lot is 12,000 sq ft.

5. No dwelling unit shall be reduced in size to less than one thousand (1,000) square feet of floor area, exclusive of common areas and storage in basement or attic.

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

Materials indicate that construction will increase, not reduce, size.

6. Parking shall be provided as required by Chapter 14, Article III, Division 20. For accessory units pursuant to § 14-88, one 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 space for each dwelling unit.

Satisfied   ✓   Not Satisfied   ✗  

Reason and supporting facts:

*Testimony indicates that driveway will expand one additional space and total will be five units.*

7. Either the accessory unit or principal unit shall be occupied by the lot owner, except for bona fide temporary absences.

Satisfied   ✓   Not Satisfied   ✗  

Reason and supporting facts:

*Application states petitioner will remain in the home.*

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 4 Not Satisfied 0

Reason and supporting facts:

*Residential use in a residential area.  
Would not be substantially greater.*

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 4 Not Satisfied 0

Reason and supporting facts:

*Proposed use is residential and should  
not be more than other residential uses.*

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 4 Not Satisfied 0

Reason and supporting facts:

*Residential use in a residential zone.  
Not a commercial use.*

C. An increased time to commence the conditional use or begin construction is appropriate. § 14-474(f).

Satisfied 4 Not Satisfied 0

Time granted: 2 years

Reason and supporting facts:

*applicant was asked for two years for conditional use. This is not unreasonable for other building timelines.*

**Conclusion:** (check one)

Option 1: The Board finds that all of the standards (1 through 8) 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. The conditional use permit shall be effective for 2 years pursuant to §14-474(f). 4-0

Option 2: The Board finds that while all of the standards (1 through 8) 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 with the following conditions:

Option 3: The Board finds that not all of the standards (1 through 8) 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: 4/5/2018

Donna M. Katz  
Atty Board Chair