

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

### R-2 Residential Zone Conditional Use Appeal Decision

Date of public hearing: April 5, 2018

Name and address of Appellant: Gregory Gould  
168 Milton Street  
Portland, Maine 04103

Location of property under appeal: 168 Milton Street  
CBL 333 E041001

### FOR THE RECORD

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

*Gregory Gould, Petitioner*

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

*Submitted Materials*

*Testimony*

*Adding 1 document "Section 14-410(b)"*

*See Pro Tem 4/10  
Joseph Zamboni*

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is a conditional use application for a home occupation, engaging in providing light food manufacturing.

Home occupations are permitted uses in the R-2 Zone, subject to the requirements of § 14-410, which lists types of home occupations that are specifically allowed. § 14-77(b)(5). Where a home occupation is not listed in § 14-410, it may be allowed as a conditional use where it is similar to, and no more objectionable than, listed home occupations; meets the additional criteria of § 14-410(a); and also meets the criteria of § 14-474.

1. The proposed home occupation is not specifically permitted by § 14-410, but it is similar to, and no more objectionable than the listed home occupations. A list of permitted home occupations is attached.

Satisfied   H   Not Satisfied   Ø  

Reason and Supporting Facts:

*Under, 14-410(b) it appears that this occupation is no more objectionable than other home occupations listed. This appears to have very low impact to the neighborhood.*

2. The home occupation does not occupy more than 500 sq. ft. of floor area, or more than 25% of the total floor area of the dwelling unit, whichever is less. § 14-410(a)(1). The storage of materials related to the home occupation shall count as a part of the occupancy limitations. § 14-410(a)(3).

Satisfied   Y   Not Satisfied   Ø  

Reason and Supporting Facts:

*Application indicates 18% of area will be used.*

3. There will be no outside storage of goods or materials, nor shall there be exterior displays, or the display of goods visible from the outside. § 14-410(a)(2).

Satisfied Y Not Satisfied Ø

Reason and Supporting Facts:

*Application states no external changes.*

4. The storage of materials related to the home occupation shall not constitute a dominant part of the occupancy provided, and there shall be no storage of such materials or products in garages or other accessory structures. § 14-410(a)(3).

Satisfied Y Not Satisfied Ø

Reason and Supporting Facts:

*The entire area is smaller than required*

5. Exterior signs will be limited to one (1) nonilluminated sign not exceeding a total area of two (2) square feet, affixed to the building and not projecting more than one (1) foot beyond the building. § 14-410(a)(4).

Satisfied Y Not Satisfied Ø

Reason and Supporting Facts:

*The applicant states there will be no exterior signage.*

6. Any exterior alterations to the residence will be compatible with the architecture of the building and maintain the residential appearance by virtue of exterior materials, lighting, and signs. § 14-410(a)(5).

Satisfied 4 Not Satisfied P

Reason and Supporting Facts:

*Application indicates there will be no external modifications.*

7. Off-street parking is required as provided in Chapter 14, Art. III, Division 20. § 14-410(a)(6). Any need for parking generated by the conduct of a home occupation shall be met off the street and other than in a required front yard. § 14-332.2(a).

Satisfied 4 Not Satisfied P

Reason and Supporting Facts:

*Applicant states he has a 6 car driveway and expects no more than 1-2 cars at any time.*

8. The home occupation will not produce offensive noise, vibration, smoke, dust or other particulate matter, odorous matter, heat, humidity, glare or other objectionable effects. § 14-410(a)(7).

Satisfied 4 Not Satisfied P

Reason and Supporting Facts:

*Testimony is that applicant will use small stove operated by magnets. No testimony against.*

9. There will be no more than one nonresident employed in the home occupation. § 14-410(a)(8).

Satisfied 4 Not Satisfied 0

Reason and Supporting Facts:

*Testimony was that there is no plans for an employee at this time.*

10. No traffic will be generated by the home occupation in greater volumes than would normally be expected in a residential neighborhood. § 14-410(a)(9).

Satisfied 4 Not Satisfied 0

Reason and Supporting Facts:

*Testimony would be at most 2 people at one time. This is not intended as a retail space.*

11. No motor vehicle exceeding a gross vehicle weight of 6,000 pounds will be stored on the property in connection with the home occupation. § 14-410(a)(10).

Satisfied 4 Not Satisfied 0

Reason and Supporting Facts:

*Testimony indicates no vehicles near 6,000 lbs would be necessary.*

12. 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. § 14-474(c)(2). This standard is satisfied if all of the following are met:

- 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 4 Not Satisfied 0

Reason and Supporting Facts:

*at most 1 or 2 wholesale pickups, during normal hours.*

- 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 4 Not Satisfied 0

Reason and Supporting Facts:

*Testimony indicate one additional trash bag at most.*

- 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 4 Not Satisfied 0

Reason and Supporting Facts:

*All operations and storage are within the unit. There will be no signs, and deliveries and pickups will not be impactful.*

**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:

04/05/2018

Acting Danna M. Katsifora  
Board Chair

Section 14-410(b). No residence shall be occupied, altered or used for any home occupation except the following:

1. Accountants and auditors;
2. Answering services (telephone);
3. Architects;
4. Artists and sculptors;
5. Authors and composers;
6. Computer programming;
7. Custodial services;
8. Custom furniture repair and upholstery;
9. Dentists, doctors, therapists, and health care practitioners;
10. Direct mail services;
11. Dressmakers, seamstresses and tailors;
12. Engineers;
13. Family planning services;
14. Hairdressers (limited to no more than two (2) hair dryers);
15. Home crafts, such as model making, rug weaving, lapidary work, cabinet making, weaving, ceramics;
16. Interior decorators;
17. Lawyers, justices of the peace and notary publics;
18. Licensed family day care home or babysitting services;
19. Musicians or music teachers, including group instruction not to exceed six (6) students at any time but not including performances or band rehearsals, which shall meet the following requirements in addition to those set forth in subsection (a) of this section:
  - a. Electronic amplification is prohibited;
  - b. The applicant shall demonstrate that noise attenuation is provided which minimizes perception of sound at property lines at all times during the use. Noise attenuation measures may include, but are not limited to, insulation, double-pane windows, air conditioners or any combination of these or similar noise attenuation measures;
  - c. Hours of operation shall be limited to 8:30 a.m. to 9:30 p.m.
20. Office facility of a minister, rabbi, or priest;
21. Photographic studios;
22. Professional counseling and consulting services;
23. Professional research services;
24. Sales persons provided that no retail or wholesale transactions are made on the premises;
25. Small appliance repair;
26. Snow plowing provided that only one (1) snow plow vehicle is stored on or generated from the site;
27. Special tutoring or instruction (not to exceed three (3) pupils at any given time);
28. Stenographic and other clerical services