

# CITY OF PORTLAND, MAINE

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## ZONING BOARD OF APPEALS

R-3 Residential Zone  
Conditional Use Appeal

### DECISION

Date of public hearing: September 21, 2017

Name and address of applicant: Developers Collaborative Predevelopment, LLC  
100 Commercial Street, Suite 414  
Portland, Maine 04101

Location of property under appeal: 19 Libby Street  
CBL 338 K004001  
CBL 340 A046001  
CBL 340 A047001  
CBL 340 A048001  
CBL 340 A049001  
CBL 340 A050001  
CBL 340 A055001

### For the Record:

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

*Mike Lyne, Senior Project Manager*  
*Mark Johnson, 50 Wall Street*  
*George Rowe, West Bayside*  
*Elise Gala, 100 Lexington Ave*  
*Craig DeRay, Lexington Ave.*

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

*Submitted materials*  
*Oral Testimony*

Findings of Fact and Conclusions of Law:

The applicant is seeking a conditional use permit pursuant to § 14-88(d)(3) and § 14-474 to permit a private pre-K facility.

Findings:

A nursery school is permitted if it meets all of the requirements of Portland City Code §§ 14-88(d)(3) and § 14-474.

A. Nursery schools must meet the following requirements pursuant to § 14-88:

1. The facility shall be located in a structure in which there is one (1) or more occupied residential units or in an existing accessory structure, unless the facility is located in a principal structure that has not been used as a residence in whole or in part within the five (5) years immediately preceding the application for a day care use, home babysitting use, nursery school or kindergarten, or in a nonresidential structure accessory to the principal nonresidential use.

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

*Not has been used a residence  
in last 5 years.*

2. Where the facility is located in a principal structure that has not been used as a residence in whole or in part within the five (5) years immediately preceding the application, there shall be no maximum limit on the number of children. However, the structure shall be subject to review under Ch. 14, Art. V of the City Code.

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

*Will be subject to site plan  
review.*

3. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

There is a large amount of green space and trees around property. Plan shows a privacy fence, and chain link fence.

4. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.

Satisfied 5 Not Satisfied 0

Reason and supporting facts:

Containers ~~were~~ are likely to left inside.

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 5 Not Satisfied 0

Reason and supporting facts:

*Residential neighborhood, but building previously housed a school. Hours of operations are daytime. Does not appear 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 5 Not Satisfied 0

Reason and supporting facts:

*Proposed pre-school but not an industrial use. There doesn't appear to be harmful conditions than previous 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 5                      Not Satisfied 0

Reason and supporting facts:

*Proposed use will be likely less impact than previous uses.*

**Conclusion:** (check one)

Option 1: The Board finds that all of the standards (1 through 4) 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 18 MONTHS pursuant to §14-474(f).

*5-0*

Option 2: The board of appeals may impose conditions upon a conditional use permit. § 14-474(d). The Board finds that while all of the standards above have been 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 4) 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:

*9/21/2017*

*[Signature]*  
Board Chair