

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

Peter Coyne
Philip Saucier-sec
Peter Thornton
Kate Knox
Jill E. Hunter
David Dore, chair
Gordan Smith

July 20, 2007

Ray & Michele Clayton
Takes a Village Daycare
1171 Washington Ave.
Portland, ME 04103

RE: 58 Deering Run Drive
CBL: 353 E005
ZONE: R2

Dear Mrs. & Mr. Clayton:

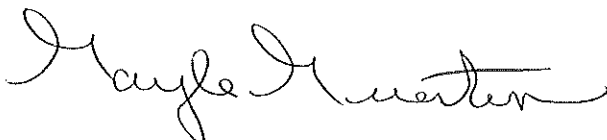
As you know, at its July 19, 2007, meeting, the board voted 4-0 and granted the Conditional Use Appeal.

Enclosed please find a copy of the board's decision.

The Zoning Administrator will be moving forward on your building application; the inspections office will call you as soon as the permit is ready for pick up.

Should you have any questions please feel free to contact me at 207-874-8701.

Sincerely,



Gayle Guertin
Office Assistant

COPY

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

APPEAL AGENDA

The Board of Appeals will hold a public hearing on Thursday, July 19, 2007 at 6:30 p.m. on the second floor, Room 209, City Hall, 389 Congress Street, Portland, Maine to hear the following appeals:

To: City Clerk

From: Marge Schmuckal, Zoning Administrator

Date: July 20, 2007

RE: Action taken by the Zoning Board of Appeals on July 19, 2007.

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The meeting was called to order at 6:35pm.

Roll call as follows:

Members Present: David Dore (for 1st appeal), Jill Hunter, Peter Coyne, Kate Knox (acting secretary) and Philip Saucier (acting chair).

Members Absent: Peter Thornton and Gordan Smith.

1. **Old Business:**

A. Practical Difficulty Variance Appeal:

745 Forest Avenue, Stephen E. Mardigan, owner, Tax Map # 130 Block K Lot #001, in the B2 Business Zone. The appellant is seeking a Practical Difficulty Variance Appeal under section 14-185 (c) 2 of the City of Portland Zoning Ordinance. Appellant is requesting a one foot (1') rear setback instead of the required ten foot (10') rear set back. Representing the appeal is Robert Greenlaw, surveyor of Back Bay Boundary, Inc. **Continued from the meeting of June 21, 2007 and July 19, 2007 to the next available meeting (due to a lack of quorum).**

2. **New Business:**

A. Conditional Use Appeal:

58 Deering Run Drive, Ray and Michele Clayton, owners Tax Map #353 Block E Lot #005 in the R2 Residential Zone. The Appellant is seeking a Conditional Use Appeal under section 14-78 (C) (3) of the City of Portland Zoning Ordinance. Appellant is requesting a Change of Use from a single family home to a daycare and preschool facility. Appellant is proposing a 24' x 15' attached addition for the capacity of six to twelve children. Representing the Appeal are the owners. **Board voted 4-0 and granted the Conditional Use Appeal.**

B. Practical Difficulty Variance Appeal:

14 Sewall Street, Karen True, owner Tax Map #189 Block A Lot #002 and 001 in the B2 Community Business Zone is seeking a Practical Difficulty Variance Appeal under section 14-185 (a) (2) of the City of Portland Zoning Ordinance. Appellant is requesting a variance for the 4,500 square foot lot which is less than 10,000 square foot lot size required for a change of use from single family home to an office use. Representing the Appeal is the owner. **Board voted 4-0 and granted the Practical Difficulty Appeal.**

C. Conditional Use Appeal:

19-21 Lawn Avenue, Gretchen Grufman, owner, Tax Map #122 Block I Lot #003 in the R5 Residential Zone. The appellant is seeking a Conditional Use Appeal under section 14-391 (f) of

the City of Portland Zoning Ordinance. The Appellant has requested a permit to legalize one nonconforming dwelling unit for a total of three (3) dwelling units within the building. During the permit process zoning received two letters of objection; therefore the final approval for the legalization is given to the Zoning Appeals Board. Representing the appeal is the owner. **Board voted 4-0 and granted the Conditional Use Appeal.**

D. Conditional Use Appeal:

182 Ocean Avenue, Owen Pickus owner, Tax Map # 140 Block C Lot #012 in the B1 Neighborhood Business Zone. The Appellant is seeking a Conditional Use Appeal under section 14-163 of the City of Portland Zoning Ordinance. Appellant is requesting a change of use from a deli / ice cream shop to a bakery / restaurant and retail outlet. Representing the Appeal is the applicant Jim Amaral. **Board voted 4-0 and granted the Conditional Use Appeal.**

3. Other Business: None

4. Adjournment: 8:15pm

Enclosure:

Agenda of July 19, 2007
Copy of Board's Decision
CC: Joseph Gray, City Manager
Alex Jaegerman, Planning Department
Lee Urban, Planning & Development Director
T.J Martzial, Housing & Neighborhood Services

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

R-2 Residential Zone Child Care Facility:

Conditional Use Appeal

DECISION

COPY

Date of public hearing:

~~7/2~~ 7.19.07

Name and address of applicant:

RAY AND MICHELLE CLAYTON

Location of property under appeal:

58 DEERING RUN DRIVE

For the Record:

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

1. RAY CLAYTON
58 DEERING RUN DR
2. MICHELLE CLAYTON
58 DEERING RUN DR.

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

1. LETTER DATED 6/24/07 EXPLAINING CRITERIA
2. APPLICATION
3. 4 PHOTOGRAPHS OF PROPERTY
4. ASSESSORS PLAN
5. QUITCLAIM DEED FOR 58 DEERING RUN DR.
6. PLOT PLAN OF PROPERTY
7. FIRST FLOOR ADDITION PLAN
8. SECOND FLOOR ADDITION PLAN
9. EMAIL FROM 7/19/07, JEANNETTE & LOUIS ROSSI
1 (50 DEERING RUN DR.)

Findings of Fact and Conclusions of Law:

A. Conditional Use Standards pursuant to Portland City Code §14-78(c)(3):

1. The day care facility or home babysitting service would not be permitted as a home occupation under section 14-410 (because it will accommodate more than 6 children plus 2 children after school or will have any nonresidential employees).

Satisfied ✓ (4-0) Not Satisfied _____

Reason: *• license is for 12 children
• no nonresidential employees*

2. 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 or home babysitting use or in a nonresidential structure accessory to the principal nonresidential use.

Satisfied ✓ (4-0) Not Satisfied _____

Reason: *• residential use w/in the last 5 years
as evidenced by testimony*

3. The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection (e) (v) are met. There shall be no maximum limit on the number of children in a facility 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 or home babysitting use, nursery school or kindergarten, or in a nonresidential structure accessory thereto, provided that any such structure that serves more than twelve (12) children shall be subject to review under article V of this chapter.

Satisfied ✓ Not Satisfied _____

Reason: *(4-0)*

*• license is for 12 as evidenced
by testimony.*

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

Satisfied Not Satisfied

Reason: (4-0)

• Photos and testimony evidenced adequate buffering.

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

Satisfied Not Satisfied

Reason: (4-0)

• Testimony about covered container w/ a shute.

6. Day care facilities, home babysitting uses, nursery schools or kindergartens located either in structures that have been in residential use within the past five (5) years or in existing accessory structures and that serve between thirteen (13) and twenty-four (24) children shall meet the following additional standards of 14-78 (c)(3)(e):

N/A

↓ than 12 children

i. The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child;

ii. The play area shall be located in the side and rear yards only and shall not be located in front yards;

iii. Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height;

iv. A ten-foot wide landscaped buffer shall be required outside of the fenced play area, and shall be established in accordance with the landscaping standards of the City's Technical Standards and Guidelines;

v. The minimum lot size for a day care facility, home babysitting use, nursery school or kindergarten located in a residential or existing accessory structure and serving more than twelve (12) children shall be twenty thousand (20,000) square feet;

vi. Off-street parking shall be provided on the site for all staff of the facility. Parking for the facility shall not interfere with access to or use of play areas. Parking spaces may be stacked or placed side by side in order to lessen

their impact on the residential character of the lot and the neighborhood, and shall not be located closer than five (5) feet from the property line of any abutting residential use or residentially zoned site;

vii. The maximum number of children in a day care facility, home babysitting service, nursery school or kindergarten located in a residential or existing accessory structure shall be twenty-four (24); and

viii. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the residential appearance of the building.

Satisfied Not Satisfied

Reason: *N/A because less than 12 kids.*

B. Conditional Use Standards pursuant to Portland City Code §14-474(c)(2):

1. There are unique or distinctive characteristics or effects associated with the proposed conditional use.

Yes No

Reason:

• Standard daycare setup, nothing unusual.

2. There will be an adverse impact upon the health, safety, or welfare of the public or the surrounding area.

Yes No

Reason:

*• hours 7-5³⁰
• 4 cars in driveway
• attached structure w/ residential*

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

Yes

No

Reason:

no differing impacts.

Conclusion: (check one)

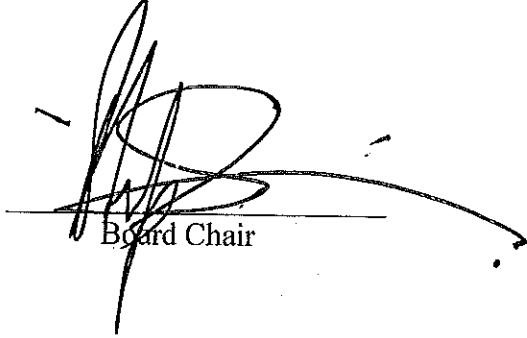
Option 1: The Board finds that all of the standards (1 through 6) described in section A above have been satisfied and that not all of the conditions (1 through 3) described in section B above are present, and therefore GRANTS the application.

Option 2: The Board finds that all of the standards (1 through 6) described in section A above have been satisfied, and that while not all of the conditions (1 through 3) described in section B above are present, certain additional 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 not all of the standards (1 through 6) described in section A above have been satisfied and/or that all of the conditions (1 through 3) described in section B above are present, and therefore DENIES the application.

Dated:

7/19/07


Board Chair