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Jeff Levine, AICP, Director
Marge Schmuckal, Zoning Administrator

TO: CHAIR AND MEMBERS OF THE ZONING BOARD OF APPEALS
FROM: ANN MACHADO, ZONING SPECIALIST *AM*
SUBJECT: 5 BRAMBLEWOOD DRIVE, 377 E006 - R-3 RESIDENTIAL ZONE
DATE: NOVEMBER 29, 2012

Gina Kostopoulos applied for a permit (#2012-10-5099) to add a daycare as a home occupation to the use of her property as a single family home. Part of the application included floor plans for both floors of her house. The floor plans showed a kitchen located on the main floor of the house and a kitchen located in the lower level in the proposed area for the daycare. I spoke to Ms. Kostopoulos on October 2, 2012 asking her about the second kitchen. She told me that a previous owner had put it in and that it had been used as part of a daycare that had been operated in the house previously. I informed Ms. Kostopoulos that two kitchens were not allowed in a single family home.

I researched our files on the property. I found two permits. On February 27, 1991 a permit (#912355) was issued to "construct a one-family dwelling w attached 2-car garage". The certificate of occupancy was issued on May 4, 1991 for a "Single-family dwelling". On October 27 1994, a permit (#941178) was issued to "change use from single family to single family w/daycare". The floor plan with the permit only showed one floor of the house. I did not find a specific permit to build a second kitchen for the daycare.

On October 9, 2012, I signed off on the permit for zoning to add the daycare as a home occupation with the condition that the second kitchen be removed before the certificate of occupancy for the home occupation could be issued.

I wrote a letter on October 11, 2012 explaining why the second kitchen needed to be removed. Section 14-47 of the ordinance defines a dwelling unit as "one (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained unit". The floor plans show that the lower level has a living room, dining area, bedroom, kitchen facilities and a private bath. The property is located in the R-3 residential zone. Section 14-86 states that the purpose of the zone is "to provide for medium-density residential development characterized by single family homes on individual lots". When a second kitchen is added to a single family home, by definition a second unit is created. By having one kitchen in a building it guarantees that the use will remain a single family home and not allow for an illegal dwelling unit to be created. There is a process to allow an accessory dwelling unit as a conditional use appeal.



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Jeff Levine, AICP, Director
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October 11, 2012

Gina Kostopoulos
5 Bramblewood Drive
Portland, ME 04103

Re: 5 Bramblewood Drive – 377 E006 – R-3 Residential Zone – Permit #2012-10-5099
–daycare as home occupation

Dear Ms. Kostopoulos,

In reviewing your application to add a daycare as a home occupation, I noticed on your floor plans that there are two kitchens in the home, one on the main floor and one on the lower level. Our records show the legal use of the property as a single family home or a single dwelling unit. Section 14-47 defines a dwelling unit as “one (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit”. In other words a dwelling unit has one kitchen. A second kitchen in a building changes the use of the building from one dwelling unit to two dwelling units. I have researched our records, and there is no record of a second kitchen being added to the building. Since the use of the building is one dwelling unit, the second kitchen is illegal and needs to be removed.

In our telephone conversations about the second kitchen, you have stated that the kitchen was there when you purchased the property, and your intention is to use it for the daycare you have applied for under a home occupation. Section 14-410 of the ordinance states “the purpose of a home occupation is to allow the secondary and incidental use of a residence for the conduct of appropriate occupations whose external activity levels and impacts are so limited as to be compatible with the residential character of the neighborhood”. The key word here is that a home occupation is a secondary use of a residence. A residence is a dwelling unit that has one kitchen. You cannot have a second kitchen for the home occupation because it is not a primary use.

Your application meets all the other criteria for a daycare as a home occupation for six children plus two children after school. I am signing off on the permit for zoning with the condition that the second kitchen needs to be removed before the certificate of occupancy is issued for you to operate a daycare as a home occupation. Section 14-47 of the

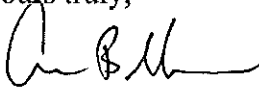
ordinance defines kitchen facilities as “facilities used for the preparation of meals, including refrigerators and devices used for the cooking and preparation of food”. In one of our telephone conversations you said that there was a full sized refrigerator and a stove in the lower level. These would have to be removed along with any sink and other device used for cooking and preparation of food.

The permit will now be moved forward in the review process to a plan reviewer who looks at the use under building code requirements. They may also contact you if they have any questions.

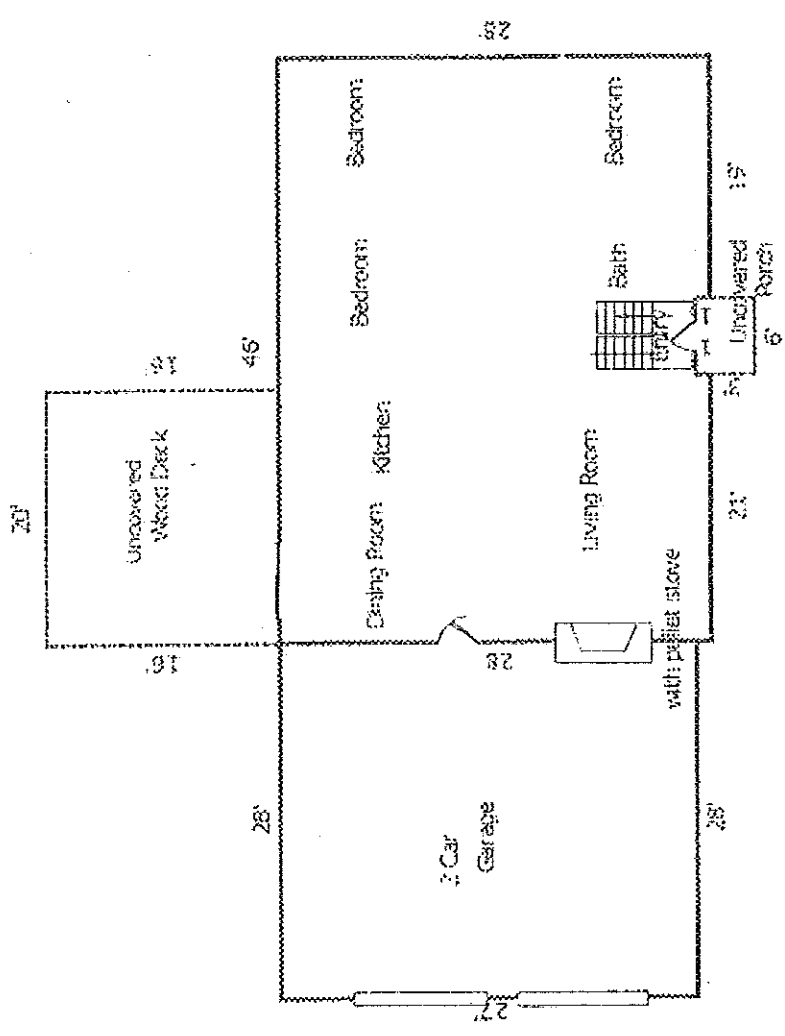
You have the right to appeal my decision regarding the second kitchen. If you wish to exercise your right to appeal, you have thirty (30) days from the date of this letter in which to appeal. If you should fail to do so, my decision is binding and not subject to appeal. Please contact this office for the necessary paperwork that is required to file an appeal.

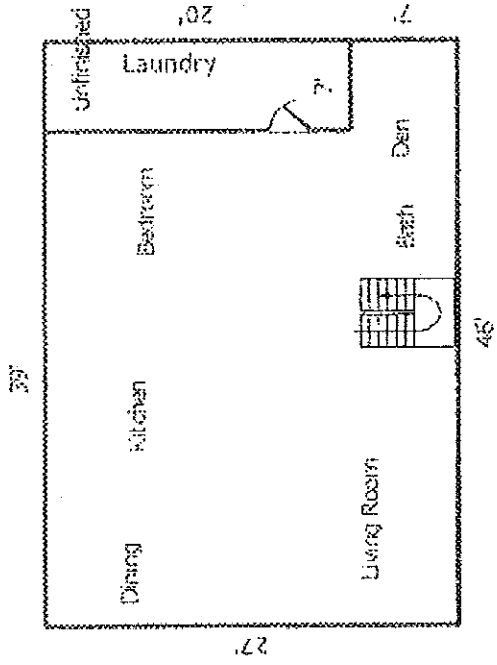
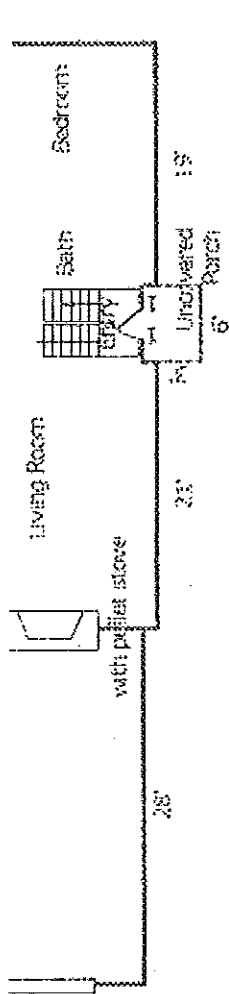
Please feel free to call me at 874-8709 if you have any questions.

Yours truly,



Ann B. Machado
Zoning Specialist
(207) 874-8709





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