

**CITY OF PORTLAND, MAINE**  
**ZONING BOARD OF APPEALS**

R-2 and R-3 - Residential Zones  
Conditional Use Appeal

**DECISION**

Date of public hearing: March 2, 2017  
Name and address of applicant: David DiPietro  
221 Virginia Street  
Portland, Maine 04103  
Location of subject property : 8 Lambert Street  
CBL 384 A006001

*Attendance:*  
*Kent Avery - Chair*  
*Brandon Morer*  
*Eric Larsson*  
*Joseph Zamboni - Sec. Temp*

For the Record:

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

*David DiPietro - 221 Virginia Street, Portland*

*No other witnesses*

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

Findings of Fact and Conclusions of Law:

The applicant is seeking a conditional use permit pursuant to §§ 14-78(a)(2) and 14-88(a)(2) of the City of Portland Code of Ordinances to add an accessory dwelling unit to a single-family residence that is currently under construction. The Board has authority to consider a conditional use permit application pursuant to § 14-474(a).

An additional dwelling unit is permitted in a detached, single-family dwelling if it is within the building, clearly subordinate to the principal dwelling, for the benefit of the homeowners or tenants, and if it meets all of the requirements of §§ 14-78(a)(2)(a) - (g), 14-88(a)(2)(a) - (j) (excepting the omitted (e) and (f)), and 14-474(c).

Section 14-51 provides that "Where one (1) section of this Code imposes a greater restriction upon the use of land, buildings or structures than another section, the provisions of the stricter section shall control." Section 14-51 allows that:

Where a zone boundary line divides a lot in single or joint ownership of record at the time such line is established, the provisions of this article for the less restricted portion of such lot shall extend not more than thirty (30) feet into the more restricted portion, provided that the lot has at least twenty (20) feet of street frontage in the less restricted zone when taken together with adjacent premises which are under the same or equivalent ownership or control . . . This section shall not apply to differing dimensional requirements, including height, within a zoning district.

Findings:

1. The alteration is of a detached single-family dwelling, will accommodate only one additional dwelling unit, and the dwelling unit will be for the benefit of the homeowners or tenants. §§ 14-78(a)(2), 14-88(a)(2).

Satisfied 4                      Not Satisfied 0

Reason and supporting facts:

*The proposal is for a single accessory unit over the garage for family members.*

2. The alteration is of a detached single-family dwelling and the accessory unit is within and clearly subordinate to the principal dwelling. § 14-78(a)(2).

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

*Testimony indicates alteration of single family home with attached apartment for family over garage.*

3. The accessory unit shall be no more than 30% of the gross floor area of the 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, but may include attic space if such space shall be included as habitable space within either dwelling unit. §§ 14-78(a)(2)(a), 14-88(a)(2)(a).

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

*Plans + Testimony indicates that total new construction is 3,700 (about) and unit is 600 (about) above the required 400 sq ft.*

4. The lot size is a minimum of ten thousand (10,000) square feet for a single-family dwelling constructed after May 1, 1984. § 14-78(a)(2)(b).

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

*Testimony indicates that lot size is greater than 10,000 sq ft.  
Submitted materials indicate 10,001 sq ft.*

5. There will be no open outside stairways or fire escapes above the ground floor. §§ 14-78(a)(2)(c), 14-88(a)(2)(b).

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

*Testimony indicates no outside of dwelling other than ground floor steps*

6. Any building additions or exterior alterations shall be designed to be compatible with the architectural style and to maintain the single-family appearance of the dwelling. §§ 14-78(a)(2)(d), 14-88(a)(2)(c).

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

*Testimony indicates that this may not apply. Seems to maintain single family appearance according to petitioner.*

7. No dwelling unit will 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. § 14-88(a)(2)(g).

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

*Testimony indicates that dwelling unit will remain at around 3,000 sq ft. ✓ primary*

8. Parking shall be provided as required by Chapter 14, Division 20. §§ 14-78(a)(2)(g), 14-88(a)(2)(h).

Division 20 provides that, for accessory units pursuant to § 14-78 and § 14-88, one additional parking spaces for each such unit shall be required. 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. § 14-332(a)(2).

Satisfied 4 Not Satisfied 0

Reason and supporting facts:

*Testimony and materials indicate that that 3 parking spaces will be on site. (2 in garage and 1 in driveway).*

9. The project shall be subject to site plan review and approval, including the following additional standards: i) Any additions or exterior alterations such as facade materials, building form and roof pitch shall be designed to be compatible with the architectural style of the building; and ii) The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped to properly screen vehicles from adjacent properties and streets. § 14-78(a)(2)(e) and § 14-88(a)(2)(i).

Satisfied 4 Not Satisfied 0

To be made a condition of the permit \_\_\_\_\_

Reason and supporting facts:

*Testimony and materials indicate that alterations and surface area will be compatible and proportion with the area.  
It will also be subject to site plan review.*

10. Either the accessory unit or principal unit will be occupied by the lot owner, except for bona fide temporary absences. § 14-78(a)(2)(f) and § 14-88(a)(2)(j).

Satisfied   4   Not Satisfied   0  

Reason and supporting facts:

*Materials indicate property will be occupied by owner and family.*

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

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:

*Materials and testimony indicate that this will be a residential use in residential zone.*

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:

*Materials + written materials indicate that this will be a residential use. No concerns presented by community.*

- 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:

*Materials and testimony indicate this is designed as residential use and will be subject to site plan review.*

Conclusions:

4 Option 1: The Board finds that all of the standards described above have been satisfied, and therefore GRANTS the conditional use permit.

*Eric Larsson Motioned / Sue Zamboni 2nd*

     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:

     The project must obtain site plan review and approval, including the following additional standards: i) Any additions or exterior alterations such as facade materials, building form and roof pitch shall be designed to be compatible with the architectural style of the building; and ii) The scale and surface area of parking, driveways and paved areas shall be arranged and landscaped to properly screen vehicles from adjacent properties and streets.

     Option 3: The Board finds that all of the standards described above have not been satisfied, and therefore DENIES the application.

Dated:

*3/2/2017*

*[Signature]*  
Board Chair