

CITY OF PORTLAND, MAINE

ZONING BOARD OF APPEALS

R-2 Residential Zone Accessory Structure
Conditional Use Appeal

DECISION

Board Members Present:

Kent Avery
William Getz
Sarah Moppin
Mark Bower
Chip Gavin

Date of public hearing: August 1, 2013

Name and address of applicant: Frederick A. Witt ✓
93 Mast Road
Falmouth, ME 04105

Location of property under appeal: Lot #2 Morningstar Lane
Bower - disclosure of relationship to firm
Moppin - abutter status disclosure
For the Record: Avery - disclosure of AG relationship

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

Steve Rowe - 514 Summit St. - Concerns

Concerns: 14-474 sec. D - Reasonable restrictions

- 1) 8' extension toward rear that encroaches on rear setback
- 2) 10 car parking and
- 3) accessory unit beyond the building

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

Sit plan
Tax map
Floor plan
Parking Layout

Ron Dowlar - Developer - in favor
(Dowlar) 1) Review of storm water run off
2) Review of buffer & screening
3) Other review by city officials

Findings of Fact and Conclusions of Law:

Applicant is proposing to add an accessory dwelling unit to a new single family home (the plan is to renovate a timber framed barn which currently exists on the property). The accessory dwelling will be used as an in-law unit. The gross floor area of the principal building will be 2512sq. ft. The proposed accessory unit would be 700 sq. ft. The lot area is 13,196 sq. ft.

A. Conditional Use Standards pursuant to Portland City Code §14-78(a)(2):

1. The accessory dwelling unit is within the building and clearly subordinate to the principal dwelling and is for the benefit of homeowners or tenants.

Satisfied ✓5 Not Satisfied 0

Reason: *Deliberation that accessory unit is subordinate*

*Concerns: Lot access for subordinate use
in-law apartment to include rental unit language*

2. The accessory unit shall be no more than thirty (30) percent of the gross floor area of 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; gross floor area may include attic space if such space shall be included as habitable space within either dwelling unit.

Satisfied 5 Not Satisfied

Reason: *Review of math and statistics shows compliance*

Concern: Proposed unit is close to 30%: If primary use building is smaller, then the 30% would reduce the size of the accessory unit

3. Lot area shall be eight thousand (8,000) square feet for single-family dwellings in existence as of May 1, 1984, and lot area shall be ten thousand (10,000) square feet for single-family dwellings constructed after May 1, 1984.

Satisfied ✓ Not Satisfied

Reason: *Per testimony and site plan.*

4. There shall be no open outside stairways or fire escapes above the ground floor.

Satisfied Not Satisfied

Reason: Per plan drawings and testimony

5. Any building additions or exterior alterations such as facade materials, building form, or roof pitch shall be designed to be compatible with the architectural style and to maintain the single-family appearance of the dwelling.

Satisfied Not Satisfied

Reason: Per 3D renderings and testimony

6. 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.

Satisfied Not Satisfied

Reason: Per testimony from developer, Mr. Witt has arrangements with landscaper to provide screening. Goal is to develop a ^{robust vegetative screening} ~~continuous hedge~~. Mr. Doran, has a landscape requirement for the development. Mr. Witt gave testimony of infill planting.

Condition: Subject to condition: discussed with consultation of city arborist

Concern: Arrangement of large parking area that would be difficult to screen. Possible condition would be to consult with ³ city arborist.

(2) No details submitted

7. Either the accessory unit or principal unit shall be occupied by the lot owner, except for bona fide temporary absences.

Satisfied 5 Not Satisfied

Reason: *per testimony that principle residence will be owner occupied*

8. Parking shall be provided as required by division 20 of this article: One (1) additional off-street parking space for each new unit (14-332(a)(2)). Existing parking spaces shall not be used to meet the parking requirements of this paragraph, unless the existing parking spaces exceed one (1) space for each dwelling unit.

Satisfied ✓5 Not Satisfied

Reason: *significant parking per plan*

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 4 No 1

Reason and supporting facts:

- ① *Accessory unit is incorporated into the building that appears as a single family home*
 - ② *Impact will be consistent with regard to traffic and use. Concerns use of property as business use and home occupations - satisfied*
- Unique situation of 2 parking areas - low probability*

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

Yes ___

No 5

Reason and supporting facts:

*Storm water mitigation has been addressed by site plan.
No anticipated adverse impact as related to the
accessory unit. Accessory use consistent with
typical use for a unit of the proposed size.*

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

Yes ___

No 5

Reason and supporting facts:

*Per testimony the proposed impact would
be consistent with an accessory residential unit.*

Conclusion: (check one)

Option 1: The Board finds that all of the standards (1 through 8) 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 while all of the standards (1 through 8) described in section A above have been satisfied, and 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:

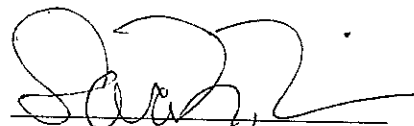
Per applicant testimony and ~~that the~~ In consultation with the City Arborist, the applicant shall arrange + landscape the property to screen ~~the~~ ^{properly} vehicles ~~property~~ from adjacent properties and streets.

Option 3: The Board finds that not all of the standards (1 through 8) 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.

as allowed by the practical limitations of the properties features, such as drainage easements.

Please note that, pursuant to Portland City Code 14-78(a)(2)(e), if approved the project shall be subject to article V (site plan) of this chapter for site plan review and approval.

Dated: Aug 1, 2013


Board Chair

Note: 2 year approval - approved 5-0