

~~From~~ McCall  
Harrison  
Avery  
Katschfries  
Bartels

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

R3 – Residential Zone  
**Conditional Use Appeal**

**DECISION**

Date of public hearing: August 17, 2017  
Name and address of applicant: Sholeh Misaghian  
11 Gertrude Avenue  
Portland, Maine 04103  
Location of subject property : 11 Gertrude Avenue  
CBL 402 B020001

For the Record:

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

Sholeh Misaghian  
Sholeh Sabeti  
11 Gertrude Ave.

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

Application w/ exhibits

Findings of Fact and Conclusions of Law:

The applicants are seeking a conditional use permit pursuant to § 14-88(d)(3) of the City of Portland Code of Ordinances to operate a home daycare for up to twelve children in her single-family residence. Daycare facilities not permitted as a home occupation are allowed, subject to the conditions in § 14-88(d)(3) and § 14-474. § 14-88. The Board has authority to consider a conditional use permit application pursuant to § 14-474(a).

Findings:

1. The facility will 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. § 14-88(d)(3)(a).

Satisfied  Not Satisfied

Reason and supporting facts:

*in a single family home in residential unit.*

2. The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto. § 14-88(d)(3)(b).

Satisfied  Not Satisfied

Reason and supporting facts:

*applicant indicates daycare will have up to 12 children*

3. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts. § 14-88(d)(3)(c).

Satisfied  Not Satisfied

Reason and supporting facts:

*fence is around playground area  
Vegetative buffer as well  
no one is opposing application*

4. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides. § 14-88(d)(3)(d).

Satisfied  Not Satisfied

Reason and supporting facts:

*Waste will be stored in trash bins  
and in recycling containers.  
screened from surrounding by house  
& playground & fence.*

5. 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  Not Satisfied

Reason and supporting facts:

*No new expanse of pavement  
no public comment regarding  
any concerns for increasing  
traffic. Drop off and pick ups  
vary depending on parent schedules.  
Church parking lot is available*

- 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  Not Satisfied

Reason and supporting facts:

*no unsanitary or harmful conditions anticipated  
no public comment*

- 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  Not Satisfied

Reason and supporting facts:

*no evidence that it will have increased effect. It is presently a daycare and has been since 2012.  
no public comment*

Conclusions:


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

*McCall, Larson*

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:

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

Dated: 8-17-17

  
Board Chair