

120-124 Dartmouth Street
C. Lerman
Conditional Use

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS



MERRILL S. SELTZER
Chairman

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EUGENE S. MARTIN
PAULETTE P. PARKER
MICHAEL E. WESTORT

120-124 Dartmouth Street

October 7, 1985

Mrs. Connie Lerman
122 Dartmouth Street
Portland, ME 04103

Dear Mrs. Lerman:

At the October 3rd meeting of the Board of Appeals, the Board voted by a unanimous vote of five yeas to grant your application for a conditional use for a day care facility at 120-124 Dartmouth Street under the provisions of Section 14-88.1.b. of the Zoning Ordinance.

A change of use can now be issued for this day care facility on payment of the \$25 fee.

Sincerely,

Warren J. Turner
Zoning Specialist

WJT/kat
Enclosure

cc: Merrill S. Seltzer, Chairman, Board of Appeals
Joseph E. Gray, Jr., Director, Planning/Urban Development
Alexander Jaegerman, Chief Planner
P. Samuel Hoffses, Chief of Inspection Services



CITY OF PORTLAND

CONDITIONAL USE APPEAL

DECISION

For the Record

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

John Bannon - atty for Mrs Lerman / Philip Skiller - ^{105 Oakdale} objections
 Bernard Kaiman - neighbor - in favor / Anne Shea
 Corrie Lerman
 Richard Lerman

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

Letters, photos, sketch plan

Findings of Fact

1. The proposed conditional use is is not (circle one) permitted under Section 14-_____ of the Zoning Ordinance, for the following reason(s): _____

5-0

2. The proposed conditional use does does not (circle one) meet all special standards, conditions or requirements, if any, applicable thereto, for the following reason(s): _____

5-0

3-A. There are are not (circle one) unique or distinctive characteristics or effects associated with the proposed conditional use, for the following reason(s): _____

5-0

3-B. There will will not (circle one) be an adverse impact on the health, safety or welfare of the public or the surrounding area, for the following reason(s): _____

5-0

Lack of substantial testimony to the contrary

1
3-C. The impact does (does not) (circle one) differ substantially from the impact which would normally occur from such a use in that zone, for the following reason(s): _____

~~10-3~~ 5-0

Conclusion*

After public hearing on 10-3, 1985, and for the reasons above-stated, the accompanying application is hereby (check one)

5-0 granted.

_____ granted subject to the following condition(s):

_____ denied.

Dated: 10-3, 1985

Jaqueline Cohn
Secretary of the Board

* The application may be denied only if EITHER the finding for #1 or 2 above is in the negative OR the findings for #'s 3-A, 3-B and 3-C above are each in the affirmative.

Approved
Jaqueline Cohn
Michael E. ...
Robert J. ...
Merrill A. ...
Eugene ...

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120-124 Dartmouth Street
Cor. 87-89 Oakdale Street

September 5, 1985

Murray, Plumb & Murray
Attention: John C. Bannon
30 Exchange Street
Portland, ME 04101

cc: Connie E. Lerman
120 Dartmouth Street
Portland, ME 04103

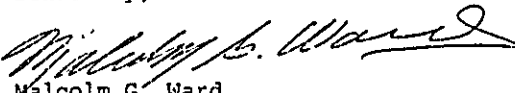
Dear Mr. Bannon:

Building permit and certificate of occupancy to change the use of the dwelling at the above-named location to dwelling with day care facilities for 12 children are not issuable under the Zoning Ordinance because the proposed use is not allowed in the R-5 Residential Zone in which this property is located unless authorized by the Board of Appeals under the provisions of Section 14-118.c.

We understand that you would like to exercise your appeal rights in this matter. Accordingly, you or your authorized representative should come to this office, Room 315, City Hall, to file the appeal on forms which are available here.

A fee of \$50 for a Conditional Use Appeal shall be paid at this office at the time the appeal is filed. If fee has been paid and appeal filed prior to this letter, then consider this letter as a matter of formality. Section 14-474.

Sincerely,


Malcolm G. Ward
Zoning Enforcement Officer

MGW/kat

MURRAY, PLUMB & MURRAY

ATTORNEYS AT LAW
30 EXCHANGE STREET
PORTLAND, MAINE 04101
207 773 5051

PETER L. MURRAY
E. STEPHEN MURRAY
PETER S. PLUMB
JOHN C. LIGHTBODY
ELLYN C. BALLOU

THOMAS C. NEWMAN
CAROL G. WARREN
JOHN C. BANNON
JANE B. HARTWELL
DAVID E. CURRIER

CHARLTON S. SMITH
COUNSEL

August 20, 1985

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SEP - 4 1985

DEPT. OF BUILDING REGULATIONS
CITY OF PORTLAND

Zoning Board of Appeals
City of Portland
Zoning Office, Room 315
City Hall
389 Congress Street
Portland, ME 04101

RE: CONDITIONAL USE APPLICATION OF CONNIE E. LERMAN

Dear Members of the Zoning Board of Appeals:

Enclosed you will find an Application for Conditional Use Permit to allow Connie E. Lerman to operate a family day care home in her residence. Ms. Lerman's residence is located at 120 Dartmouth Street, Portland, Maine. The residence falls within the R-5 residential zone. In that zone, day care facilities for fewer than 7 children are expressly permitted as home occupations, and day care homes serving 7 or more children are permitted as conditional uses. See Sections 14-117 and 14-118 of the Land Use Code.

Under Section 14-474 of the Land Use Code, Ms. Lerman is entitled to a conditional use permit unless it is shown that three circumstances exist: First, that there are unique or distinctive characteristics or effects associated with the proposed day care home; Second, that the day care will cause an adverse impact upon the health, safety, or welfare of the public or the surrounding; and Third, that such impact differs substantially from the impact a home day care would normally cause in the zone. No such effects exist in this case.

Ms. Lerman's residence is a three-story, three-family structure situated amongst similar buildings in an area off Forest Avenue. The day care is operated on the first level of the dwelling, and Ms. Lerman and her family occupy the second and third floors. Situated on the corner of Dartmouth and Oakdale Streets, the property has the advantage of being a corner

Zoning Board of Appeals
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August 27, 1985

lot with extra room for the children to play. Separating the children's play area from the streets are the road curbing, a grassy area, a sidewalk, and then a large chain-link fence.

As the attached letters of recommendation indicate, Ms. Lerman's day care home is of exemplary quality and serves the needs of many mothers who are compelled to work outside the home in order to support their families. Ms. Lerman endeavors not only to serve her clients well, but also to be a "good neighbor" to the surrounding property owners.

We are confident you will find that Ms. Lerman is entitled to her conditional use permit. In order to assist you with your deliberations, we enclose the following documents:

1. A completed application form.
2. A section of the Portland City Map showing the location of Ms. Lerman's home day care.
3. A "site plan" showing the relationship of Ms. Lerman's day care to the neighboring houses and streets.
4. A "floor plan" depicting the interior of Ms. Lerman's residence.
5. Photographs of the interior of the home day care.
6. Photographs of the exterior of Ms. Lerman's residence, including the children's play area.
7. Photographs of the neighborhood.
8. Letters of recommendation from Ms. Lerman's clients.

I would appreciate it if you would schedule this matter for the first available hearing date after September 20, 1985.

Thank you for your attention to this matter. We look forward to appearing before you.

Sincerely,


John C. Bannon

JCB/kla
Enclosures



CITY OF PORTLAND

CONDITIONAL USE APPEAL

APPLICATION

Applicant's name and address: Connie E. Lerman

Applicant's interest in property (e.g., owner, purchaser, etc.):
Owner

Owner's name and address (if different): (same as applicant)

Address of property (or Assessor's chart, block and lot number):
120 Dartmouth Street

Zone: R-5 Present use: Residence and day-care

Type of conditional use proposed: day care home for 12 children

Conditional use authorized by: Section 14- 118(3)(c)

NOTE: If site plan approval is required, attach preliminary or final site plan.

The undersigned hereby makes application for a conditional use permit as above-described, and certifies that all information herein supplied by him is true and correct to the best of his knowledge and belief.

Dated: August 27, 1985

John C. Bannor
Signature of Applicant
Attorney for Applicant

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DEPT OF BUILDING INSPECTIONS
CITY OF PORTLAND

CITY OF PORTLAND, MAINE

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All persons interested either for or against this Conditional Use Appeal will be heard at a public hearing in Room 209, City Hall, Portland, Maine on Thursday, October 3, 1985 at 3:30 p.m. This notice of required public hearing has been sent to the owners of property within 500 feet of the property in question as required by Ordinance.

Connie E. Lerman, owner of the property located at 120-124 Dartmouth Street, under the provisions of Section 14-474 of the Zoning Ordinance of the City of Portland, hereby respectfully petitions the Board of Appeals to permit change of use of the dwelling at this location to a dwelling with day care facilities for 12 children, not allowed in the R-5 Residential Zone in which this property is located unless authorized by the Board of Appeals under the provisions of Section 14-118.c.

LEGAL BASIS OF APPEAL: Such permit may be granted only if the Board of Appeals finds that the conditions imposed by Section 14-474 of the Zoning Ordinance have been met.

Jacqueline Cohen
Secretary

kat
9/20/85