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January 10, 2014

Marge Schmuckal, Zoning Administrator
City of Portland
389 Congress Street
Portland, Maine 04101

Re: 9-13 (usually just called 11-13) Grant Street, Portland, 36-D-16

Dear Marge:

Please accept this letter together with the Application for Legalization of Nonconforming Dwelling Units for the above property. A check for \$600.00 is enclosed.

This property is currently approved for nine residential units pursuant to a variety of filings in your office. All documents referenced in this letter are attached in the order they are mentioned.

My client, Mid-Town Properties, LLC, acquired this apartment building on April 27, 2007 by deed recorded in the Cumberland County Registry of Deeds in Book 25073, Page 52, from William Simpson. Mr. Simpson is the principal owner of Mid-Town Properties, LLC, and he obtained the property from D.A.J., Inc. in 1999. The building has been used as 11 units during that entire time span.

We are enclosing the plot plan and floor plans. Please note that apartments 6, 7, and 8, on the second floor are identical to the other apartments and are not shown on the floor plans.

A letter From William Giroux dated November 3, 1989 to the then owner Carleton Investment Associates noted that there were 11 units in existence by only nine of them were considered lawfully conforming. Despite the issuance of that letter, and others, it appears that the number of units was never reduced and there remain 11 units to this day.

Of course the important date is April 1, 1995 for the purposes of this Application so we focused our research on that date. I found a letter from Inspection Services dated September 18, 1996. Although on the first page, the letter indicates "DU: 9", in the attached list of violations, two are listed at "Apt #11."

Marge Schmuckal issued a Verification of Legal Number of Units on March 11, 1996 which stated that there were eleven Units in existence, though only nine of them were legal.

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The closest date in the Assessor records was April 27, 1990, which clearly indicated 11 units at the premises.

Finally, in terms of documentation, I include the 1995 Portland Directory listing for 13 Grant Street, showing eleven units.

There were eleven units as of April 1, 1995:

Pursuant to the Portland Land Use Ordinance, Sec. 14-391(c)(1), the first question to be addressed is the use of the property as of April 1, 1995.

We submit that there is clear “objective” evidence, itemized above, that eleven units existed at this premises as of April 1, 1995, which should allow the Zoning Administrator to grant the requested relief unless neighborhood objections are filed.

The Applicant did not create the illegal unit:

As noted above, the record shows that the sixth unit at this property has been in existence from at least the late 1980’s. The Applicant, did not acquire the property until 2007, and the principal of the Applicant did not obtain the property until 1999.

The eleven units have been in continuous existence since April 1, 1995:

We submit that in order to be entitled to relief under Sec. 14-391, the applicant need only demonstrate how many units were in existence at the building as of April 1, 1995. That Ordinance does not require the applicant to show that the property has been continuously so operated from 1995 to date. We understand that the Zoning Administrator has suggested that a showing of continuous use is required, and while we do not agree with that analysis, we are submitting evidence to meet that burden. We also are aware that building permits have been issued to the Applicant showing nine units. But that information was simply an affirmation that only nine legal units were then recognized. Mr. Simpson states that despite that statement on the permit applications, in fact the property was always being used as eleven residential units.

Sec. 14-391 should stand on its own, and the Applicant should not have the burden of proving continuous use of the illegal unit from 1995 to date. Such a requirement would largely negate the ameliorative affect the City Council intended when it adopted Sec. 14-391 of the Portland Land Use Ordinance that was clearly intended to allow illegal units to become lawfully nonconforming and add to the housing stock of this City.

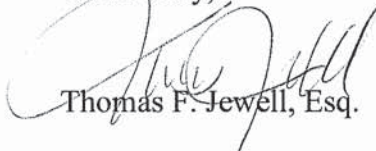
Conclusion:

The Applicant has meet all of the requirements of Sec. 14-391, and the Zoning Administrator should grant the relief requested, unless objections are timely filed under the Ordinance, thus necessitating review by the Board of Appeals.

Marge Schmuckal, Zoning Administrator
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Thank you for your consideration of this matter.

Yours truly,



Thomas F. Jewell, Esq.

TFJ/t
Enclosures