

Marge Schmuckal  
City of Portland  
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sleep in, as they would in a lodging house. The kitchen facilities, living rooms, bathrooms, laundry room, library, rooftop patio, porch and yard of 40 Deering are all common spaces shared among the residences, and for which the residents share responsibility for upkeep.

This "housekeeping unit" concept is the primary difference between the definitions of lodging house and single-family dwelling. Practically speaking, one who rents a rooming unit in a lodging house need not interact with fellow lodgers. He or she can simply rent a room with a bed and avoid participation in "housekeeping." This is in stark contrast to how residents of 40 Deering behave. The residents of 40 Deering, just like residents in other single-family dwellings, must share responsibility for allocating essential housekeeping functions for the entire dwelling unit among themselves.

The proposed fit-up of the unimproved basement at 40 Deering into two bedrooms and some common area does not alter the use of the entire premises as a single-family dwelling. The basement will not constitute a separate dwelling unit. It will not have kitchen facilities nor operate as a self-contained unit. Common areas in the basement will remain common to all residents, and existing common areas on the upper floors will remain shared among all residents of 40 Deering.

Finally, you asked yesterday what, if any, public notification might be appropriate of your determination that 40 Deering remains a single-family dwelling. I understand you will consult with Corporation Counsel, but I think the law is clear that in confirming the single-family dwelling use, you are not making any appealable determination for which extraordinary public notification is appropriate. The original determination that 40 Deering constitutes a single family dwelling use under the Ordinance was appealable by others, whenever it was first made. But the Law Court has made clear that one objecting to a use determination or permit cannot revive long-expired rights of appeal by simply asking the municipal enforcement officer to reexamine an established use or prior issuance of a permit.

Of course, when a building permit for the improvements to 40 Deering is issued, that permit itself will be appealable (though not as a change of use). But I would argue strongly that in issuing that permit the City cannot treat my clients any differently than it would any other single family dwelling owner. Foundation House and the Babcocks have been open and honest in all of their dealings with the City. In turn, they have found your decisions (and those of the Zoning Board of Appeals) fair and impartial. However, I believe that the recent opposition to their lawful activities has been fueled in part by a misdirected bias, born of a lack of familiarity with Foundation House's activities and the residents of its properties. Given that context, I think it doubly important that the City continue to demonstrate its exemplary behavior by treating 40 Deering exactly as it would any other property. That might discourage those would wish the City to act upon unreasoning bias rather than the law.

Yours Truly



Richard N. Bryant

cc: Patrick & Danika Babcock (via email)  
Danielle West-Chuhta (via email: DWChuhta@portlandmainelgov)