

CITY OF PORTLAND, MAINE
ZONING BOARD OF APPEALS

Zamboni
Cully
Avery
Katsopoulos
Larson

INTERPRETATION APPEAL DECISION

Date of public hearing: July 21, 2016
Name and address of Appellant: Kenneth Thomas
481 Danforth Street
Portland, Maine 04102
Location of property under appeal: 481 Danforth Street
CBL 071 A001001
Zone: R-4 Residential Zone

FOR THE RECORD

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

Paul Bulger
Jewel 7 Bulger, representing Kevin Thomas
481 Danforth St.

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

Application and exhibits
Zoning Administrator material (memo and attachments)
Rathkopf's Law of Zoning + Planning re:
Short term rentals - 1 page

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Board derives authority to review orders, decisions, determinations and interpretation of the building authority pursuant to §§ 14-471, 14-472 of the City of Portland Code of Ordinances.

The Appellant appeals from the determination of the Zoning Administrator that the use of residential dwelling units for transient guests is not permitted in the R-4 Residential Zone.

Findings

1. Appellant has demonstrated that the interpretation of the Zoning Administrator that the use of residential dwelling units for transient guests is not permitted in the R-4 Residential Zone was incorrect or improper because such use is an accessory use to a permitted use.

Satisfied _____ Not Satisfied _____

Relevant Ordinance Provisions:

§ 14-47 Definitions.

The following words shall be defined as set forth below for use in this article. Definitions set forth in the building code of the city shall apply to words not herein defined:

Accessory uses: Uses which are customarily incidental and subordinate to the location, function and operation of permitted uses.

...

Dwelling: A building or portion thereof used exclusively for residential occupancy, including single-family, two-family and multifamily dwellings, but not including hotels, lodging houses, sheltered care group homes or tourist homes.

...

Dwelling unit: One (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit.

...

Family: Not more than sixteen (16) individuals living together in a dwelling unit as a single nonprofit housekeeping unit. A group occupying a hotel, fraternity house or sorority house shall not be considered as a family. The family may include necessary servants.

...

Transient guest: A person who occupies a facility offering accommodations on an overnight basis for compensation and whose actual occupancy is limited to no more than fifteen (15) days out of any sixty-day period.

§ 14-102 Permitted uses.
[Enumerating permitted uses.]

§ 14-103 Conditional uses.
[Enumerating conditional uses.]

§ 14-104. Prohibited uses.
Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

§ 14-404. Accessory use.
The term “accessory use” shall include only the following:

(a) A subordinate use of land or building which is customarily incidental to the main building or to the principal use of the land and which is located on the same lot with the principal building or use. . .

...

(e) The letting of rooms within an existing dwelling unit in any residential zone, provided that:

1. There shall be no more than two (2) persons occupying such room or rooms;
2. There shall be not more than two (2) rooms per dwelling unit occupied for such use; and
3. There shall be no increase in the bathroom and/or kitchen facilities in the dwelling, and no such facility shall have been constructed in the immediately preceding two (2) years.

Reason and Supporting Facts:

2. Appellant has demonstrated that the interpretation of the Zoning Administrator that the use of residential dwelling units for transient guests is not permitted in the R-4 Residential Zone was incorrect or improper because such use is not specifically prohibited by the City of Portland Code of Ordinances.

Satisfied _____ Not Satisfied _____

Relevant Ordinance Provisions:

§ 14-102 Permitted uses.

[Enumerating permitted uses.]

§ 14-103 Conditional uses.

[Enumerating conditional uses.]

§ 14-104. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

Reason and Supporting Facts:

3. Appellant has demonstrated that the interpretation of the Zoning Administrator that the use of residential dwelling units for transient guests is not permitted in the R-4 Residential Zone was incorrect or improper because the Zoning Administrator failed to consider a property owner's common-law right to rent his property.

Satisfied ____ Not Satisfied ____

Relevant Ordinance Provisions:

§ 14-102 Permitted uses.

[Enumerating permitted uses.]

§ 14-103 Conditional uses.

[Enumerating conditional uses.]

§ 14-104. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.

Reason and Supporting Facts:

4. Appellant has demonstrated that the Zoning Administrator's enforcement letter was arbitrary and capricious.

Satisfied _____ Not Satisfied _____

Relevant Ordinance Provisions:

§ 14-57. Violations.

Any person being the owner or occupant of, having control of or the use of any building or premises or part thereof, who violates any of the provisions of this article, shall be guilty of an offense.

Reason and Supporting Facts:

Conclusions

___ Option 1: The Board finds that the Appellant has satisfactorily demonstrated that the Interpretation of the Zoning Administrator that the use of residential dwelling units for transient guests is not permitted in the R-4 Residential Zone was incorrect or improper.

___ Option 2: The Board finds that the Appellant has NOT satisfactorily demonstrated that the Interpretation of the City's Zoning Administrator that the use of residential dwelling units for transient guests is not permitted in the R-4 Residential Zone was incorrect or improper.

Dated:

7-21-16

Board Chair

Motion to Table (4-1) passes. Tabled

until Feb 2, 2017

CHAIR

7-27-10

Interpretation Appeal -
481 Danforth St.

Applicant's attorney - Paul Budger -
representing Kevin Thomas

no complaint to City, found by Mr. Wood
online who found property listed on Zillow
as a short term ~~term~~ rental
opportunity -

requests we table to allow City Council
to take the issue up & define/clarity
~~the~~ situation better in the Ordinance -
Housing Committee is reviewing to
make regulations, Report has issued from
Housing Committee

Applicant wants B2B zone - at
Lower Danforth St.

Property owned by 481, LLC - ownership
is in litigation
Applicant is leasing the property -

Applicant has applied for a
zone change -

Attorney Budger's argument: short term
rentals are not banned in Portland.

14-404(e) allows letting of 2 rooms in

dwelling units

transient guests - many people in City use short term rentals & rent to transient guests in City -

Air BnB supplements income - those using it to rent their property have no idea that it violates the ordinance.

argues clearly accessory use - accessory uses allowed in R-4 district - under 14102 -

There needs to be clarity in statute - until it is clarified, shouldn't take away owners property rights -

Mr. Thomas turned to air BnB to reach larger audience & derive greater revenue - he has had transient guests using air BnB as a platform

Mr. Thomas living in 1 unit - he is leasing 2 other units

accessory use of leasing 2 units is accessory to principal use of the 1 unit that ~~the~~ Mr. Thomas lives in -

Corp. Counsel asked what is the use accessory too - Mr. Budget repeated above answer. Went on to say code hasn't caught up with the use - ordinance isn't clear - law is a problem because Air BnB is successful.

Mr. Cely - asked when landlord/tenant relationship begins - questions what happens in Airbnb - -

Mr. Thomas - people can be denied rentals - went on to explain Airbnb process and how reservations are made

Mr. Thomas does not provide breakfast for ~~the~~ his guests -

Mrs. Machado - said there is no timetable to enact ordinances -

Discussion of process for zone change -

Mr. Bulger - motion to table

Moved by Mr. Larsson to table -
2nd by Ms. Katsiopoulos

Motion → legislative body should address this - policy matter -

Beyond what zoning board should be resolving -

any violation that exists → at risk of applicant - as to whether staff enforces

Request to table

21-1 Motion to table Caries (Zamboni
opposed)
1st Thursday of February 2, 2017