



**City of Portland, Maine
 Department of Planning and Urban Development
 Zoning Board of Appeals
 Interpretation Appeal Application**

Applicant Information:

Kenneth Thomas
 Name

481, LLC
 Business Name

481 Danforth Street
 Address

Portland, Maine 04102

c/o Paul Bulger, Esq. (207) 774-6665
 Telephone Fax

Subject Property Information:

481 Danforth Street
 Property Address

Assessor's Reference (Chart-Block-Lot)

Property Owner (if different):

481, LLC
 Name

481 Danforth Street
 Address

Portland, Maine 04102

Telephone Fax

Applicant's Right, Title or Interest in Subject Property

Long Term Leasee of Building and Developer
 (e.g. owner, purchaser, etc.): (lease attached)

Current Zoning Designation: R-4

Existing Use of Property:

3-Unit Residential Property

Disputed Provisions from Section 14 - _____

Order, decision, determination, or interpretation under dispute: Enforcement Letter RE:

Unauthorized Rental, dated May 25, 2016

Type of Relief Requested:

Interpretation Appeal

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

The undersigned hereby makes application for the relief above described, and certified that all information herein supplied by his/her is true and correct to the best of his/her knowledge and belief.

Kenneth Thomas
 Signature of Applicant

6-22-16
 Date

Paul S. Bulger
 Attorney for Applicant

Amended Attachment to Interpretation Appeal Application

RE: 481 Danforth Street Tax Map 71-A Lot 1

Background

Attached is a copy of a zoning violation letter from the Zoning Administrator. The letter asserts that the property Zoning Administrator has "received complaints" that the owner is renting to transient guests in violation of the zoning ordinance. On inquiry by the applicant, the Zoning Administrator acknowledged that there have been no complaints about renting to transient guests.

The owner, 481, LLC, did list the property for sale through his agent, David Marsden of the Bean Group, earlier this year. The listing created by the broker did market the property as "an overnight rental opportunity." The marketing campaign by the owner was an effort to draw attention to the property. The property has since been de-listed.

Argument

The Zoning Administrator is entitled to enforce the ordinance by its terms, provided that the standard of the ordinance is not unconstitutionally vague, and provided the ordinance bears a reasonable relationship to public health, safety, morals, or general welfare. Further, the enforcement action must not be unreasonable or arbitrary or discriminatory based upon reasonable future development of the community. See LaBay v. Town of Paris, 659 A. 2d. 263 (1995).

The enforcement action must not be exercised in an arbitrary manner. See F.S. Plummer v. Town of Cape Elizabeth, 612 A. 2d. 856 (1992).

As stated in the Zoning Administrator's letter, the term "family" is a defined term and the term "transient guest" is a defined term in the ordinance.

However, the term "residence" or "residential" is not a defined term in the definitions section of the ordinance, nor is "residential" a defined term in the R-4 zone in which the subject property is located.

In fact, the R-4 zone in the West End is characterized by many multi-unit structures, and bed and breakfast operations, that include accessory uses "customarily, incidental, and subordinate to the location function and operation of principle uses," as set forth in the R-4, Sec. 14-102 (6)(3) attached.

The Applicant resides at 481 Danforth Street. 481 Danforth street is his "residence." The rental of rooms or units to guests is incidental to that primary purpose. The Applicant submits that in the absence of an express prohibition of the rental of rooms. The occasional rental of rooms or units incidental to that use is expressly allowed.

The Applicant admits that he has rented a unit or rooms within that unit using the AirBnB platform and that he has supplemented his income by renting rooms using the AirBnB platform. He is one of 100 or so individuals who own property in residential zones in Portland and who have marketed room(s) available on the AirBnB platform, incidental to home ownership according to data available on AirDNA.

The City Housing Committee has acknowledged that the zoning ordinance contains a number of provisions and definitions that touch on the rental of rooms and short-term rentals, but that a comprehensive new reform of the ordinance is needed to address definitional problems in the law. See the attached committee minutes dated October 9, 2015.

The Applicant disagrees with the Zoning Administrator that his rental using AirBnB is not allowed in the zone as incidental to his residential use in the R-4 zone.

The Applicant further submits that the enforcement action against an occupant renting rooms, for which there is no demonstration of a complaint, or particular injury amounts to selective enforcement and is therefore arbitrary and capricious. See F.S. Plummer v. Town of Cape Elizabeth, 612 A. 2d. 856 (1992).

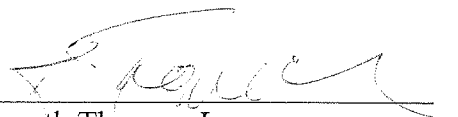
Rules of statutory construction are clearly established under Maine law. In construing ordinances and statutes, the Code Officer must apply the definition and the rules as objectively manifested. See Natale v. Kennebunk Board of Zoning Appeals, 363 A.2d at pg. 1374. In other words, where the definitions are unambiguous, you must look to the words themselves contained in the ordinance as to what they say, and not look for some subjective meaning, something that the reader might wish that they say.

In the instant case, it seems clear to the Applicant that the Zoning Administrator recognizes that there exists a potential issue for owner occupied residences to become short-term rental properties through AirBnB, and that renting a room or unit in an owner occupied property through AirBnB is ancillary and subordinate to the primary use.

AUTHORIZATION

I, Kenneth Thomas, Lessee at property located at 481 Danforth Street, Portland, Maine, hereby authorize my attorney, Paul S. Bulger, Esq., of Jewell & Bulger, P.A., 477 Congress Street, Suite 1104, Portland, Maine, to make an Interpretation Application Appeal on my behalf, and to represent me in all respects related to this matter.

Dated: June 23, 2016



Kenneth Thomas, Lessee



Jeff Levine, AICP
Director, Planning & Urban Development Department

TO: Councilor Donoghue, Chair
Members of the Housing and Community Development Committee

FROM: Jeff Levine, Director
Planning and Urban Development
Tyler Norod, Housing Planner
Housing and Community Development Division

DATE: October 9, 2015

SUBJECT: Consideration of potential regulation reform of short term rentals (STR's) for regulating lodging sites such as AirBnB, HomeAway, Flipkey, VRBO, Craigslist, and others.

I. SUMMARY OF ISSUE

Cities across the country have been struggling to adapt to new market forces brought about by the rise of the "sharing economy". Companies like Uber and Airbnb are often cited as being at the forefront of this web based movement revolutionizing commuting, shopping, and lodging. But these new models are also being scrutinized for their unintended consequences on existing businesses and communities. To date, governments have struggled to reign in these ever evolving markets to provide certainty, safety, and fairness. Given their quick ascension to prominence there has not been sufficient time for public entities to develop and evaluate best practices for how to effectively regulate these industries.

Short term rentals (STR's), such as AirBnB, have garnered significant attention in Portland and elsewhere for both their positive economic impact as well as concerns related to their effects on already tight local housing markets. Critics assert that STR's take apartments and homes out of the market limiting the supply of long term housing for local residents and in doing so increase the cost of housing. Unfortunately, it is a challenge to accurately substantiate these claims. It is difficult to understand how many units are actually being rented out and for how long. Recent surveys of online STR websites conducted during the peak tourist season such as have shown more than 250 STR's within Portland. These STR's offer an average price per night of about \$150. Each website offers its own listings but many STR units are listed on multiple sites making an accurate total count problematic.



Jeff Lavine, AICP
Director, Planning & Urban Development Department

There is clear financial incentive for property owners to prefer STR's over traditional long term tenants or to even not sell a property as they move out of their owner occupied unit to another property. If each of these units were rented out 30 days a month the average unit would generate approximately \$4,500 per month. This figure is greatly in excess of the average monthly rent for the surrounding residential market. It is unclear whether or not the limited number of STR's in Portland have a significant impact on the overall housing stock and market. According to the STR research firm AirDnA, Portland has approximately 32,700 housing units. Given the more than 250 STR's being advertised approximately less than 1% of the City's housing stock is being offered as a STR. However, most of the units offered as STR's are limited to the Peninsula which may have a disproportionate impact on those neighborhoods.

Review of STR market trends shows that the majority of hosts are likely using these units part time to generate additional income to support a variety of expenses ranging from home repair, student loans, medical bills, taxes, child expenses, or simply additional discretionary income. In Portland, these may be long term residents who utilize STR's to enable them to stay in their homes and further participate in the local economy.

Unfortunately, some STR hosts have taken advantage of the market to buy up existing housing stock for the sole purpose of using it as an STR. These units effectively operate as unlicensed hotels or bed & breakfasts. Not only do these types of practices remove long term housing options from the City's supply but they also can increase the perceived value of real estate. Traditional buyers may now have to compete with individuals or companies who assume greater revenue capacity with STR's over long term rentals. Although difficult to confirm exact figures, recent reviews of online STR sites have shown at least four individuals or companies who have multiple properties apparently used exclusively as STR's.

II. REASON FOR SUBMISSION

The Committee requested that staff research STR's in Portland and examine what regulations currently exist that STR's may fall within and where these uses may be allowed.



Jeff Levine, AICP

Director, Planning & Urban Development Department

III. INTENDED RESULT

The intended result is to determine the best policy approach for Portland that balances the pros and cons of STR's with the housing and economic goals of the City.

IV. COMMITTEE GOAL/COUNCIL GOAL ADDRESSED

The potential regulation of STR's is in line with the Committee and Council's goals of providing additional housing options that are affordable to a variety of Portland residents. Potential regulation may also impact economic development goals of the City as they related to tourism.

V. FINANCIAL IMPACT

Depending on policy recommendations by the Committee there is the possibility that STR regulation could result in additional registration and penalty fees to the City. Potential regulation could also result in additional lodging tax revenue for the State although that would be difficult to achieve and may not happen for a significant period after regulations are put in place. Cooperation from the various STR enabling websites would be necessary to effectively recover these tax revenues. Potential regulations may also effect tourism related revenue in the City. Potential regulation efforts could inhibit, support, or not have any effect on tourism depending on future steps taken. It is difficult to assess the total economic effect of any regulations on this nimble and evolving market but economic development issues should be taken into consideration with any policy recommendations.

VI. STAFF ANALYSIS AND RECOMMENDATION

At the previous HCDC meeting on September 30, 2015, staff had researched how other states and cities were approaching the regulation of short term rental units. As mentioned above, this is a new and quickly evolving issue that makes evaluating time tested best practices difficult to come by. Committee members asked staff to examine local and state laws to provide the Committee with a better understanding of what is allowed within current regulations as well as the potential for these to be applied within the existing governing structure of the City.

After additional research it appears that there are some provisions within state and local regulations that have the potential to be applied to STR's. Section 14-404(e)



Jeff Lavine, AICP

Director Planning & Urban Development Department

of the City's zoning ordinance allows for the letting of up to two rooms within an existing dwelling unit. Section 14-404(e) is allowed in every major residential zone in the City. There is no mention of the length of stay as this provision was likely written prior to the wide spread use of STR's through online platforms. Reforms could be directed at this section depending on the goals of the City. At the state level private homes shall not be deemed or considered lodging places and thus subject to a license where not more than three rooms are let. The state also considers Guest Homes to be allowed but the definition lacks details on the specific applicable regulations. Guest Homes must be licensed by the state. However, the issuance of a state license does not provide exemption from other local laws, ordinances, or regulations.

There is also the potential for the newly created Housing Safety Office or the Inspections Division to play a role in the enforcement of any STR policy. However, given staff constraints within the Inspection Division and the timing for the new Housing Safety Office it would be difficult to implement significant reforms quickly. Depending on the direction of the City the Landlord Registration Form and process may be able to accommodate STR registration as well but other reforms and enforcement would likely be needed to enable a well-designed STR oversight system.

The housing definitions within the existing zoning code provides a variety of lodging types including hostels, bed & breakfasts, lodging houses, tourist homes, motels, hotels, and inns. Some of these definitions, such as tourist homes, are no longer allowed within the current zoning ordinance. Most other lodging types are limited to certain zones such as the B-2 and R-6 zones. The lodging types typically stipulate that proponents must register their use with the City and prove their compliance with the various requirements of each use, including parking. Associated parking requirements may make some of these difficult to comply with for the average urban STR. Of the existing definitions in use within the zoning ordinance, lodging houses, hostels, and bed & breakfasts most closely resemble the STR structure currently being used through sites like AirBnB. However, these require state licenses and most have nuances that would not fit the modern STR business model. For example, lodging houses have a minimum rental of one week or a month. Many STR's offer nightly or weekend stays. Hostels and Bed & Breakfasts require an owner or operator to live on-site. Bed & breakfasts require that breakfast be provided. In short, it would be difficult to revise the existing uses to accommodate for the still evolving STR market without significantly altering the intention behind regulations for these already existing uses.

Portland, Maine



Yes. Life's good here.

Jeff Lavine, AICP
Director, Planning & Urban Development Department

Additional information related to lodging definitions and a zoning chart identifying where various lodging uses are allowed within the existing code are included in this package as Attachment A and Attachment B.

Attachment A: Housing Definitions

Lodging House

A house, building or portion thereof, containing two (2) or more rooming units and providing such units, with or without meals, to individuals on not less than a weekly or monthly basis for compensation. A lodging house, except for lodging houses located in the IR-2, IR-3, and I-B zones shall contain common areas for use by all residents, including a kitchen. A kitchen need not be available as part of the common areas where all meals are provided on a daily basis. No owner, operator, director, employee, shareholder, partner, corporate officer, or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in the code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term, or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel, or tourist home.

Hostel

An overnight lodging facility for transient guests that provides sleeping rooms and common areas for cooking. A hostel shall not be used as an emergency shelter. No owner, operator, director, employee, shareholder, partner, corporate officer, or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in the code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term, or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel, or tourist home.

Hostels typically require site plan and operations plan review demonstrating compliance with the following conditions:

- a) No more than 10 or 20 overnight transient guests (depending on the zone) shall be permitted in the facility at any one time.
- b) All applicable provisions of Article V of the ordinance shall be met.
- c) Parking shall be provided in compliance with Division 20.
- d) No unaccompanied minors under the age of eighteen (18) shall be permitted in the facility.
- e) The length of stay for transient guests shall not exceed fifteen (15) days out of any sixty (60) day period.
- f) An owner, manager or operator shall live in the building as a permanent resident.

- g) The building shall meet the applicable occupant load requirements as defined by the International Building Code and the NFPA Life Safety Code, as such codes are amended or adopted by the City.

Bed & Breakfasts

A building in which more than two (2) but not more than nine (9) guest rooms are used to provide or offer overnight accommodations for transient guests. An owner, manager, or operator shall live in the building as a permanent resident. No cooking facilities shall be permitted in any of the guest rooms. The only meal which may be offered is breakfast, which shall be offered only to overnight guests. No owner, operator, director, employee, shareholder, partner, corporate officer, or agent of a bed and breakfast facility, hostel, hotel, inn, lodging house, motel, or tourist home (as defined in the code) may, for direct or indirect economic remuneration, arrange for or provide any housing accommodations including but not limited to long term, short term, or overnight accommodations for an actual or potential guest, customer, or patron of the business at any off-premises site in the City, unless such a facility is authorized, under the applicable provisions of Portland's Land Use Code, to offer such accommodations as a bed and breakfast, hotel, inn, lodging house, motel, or tourist home.

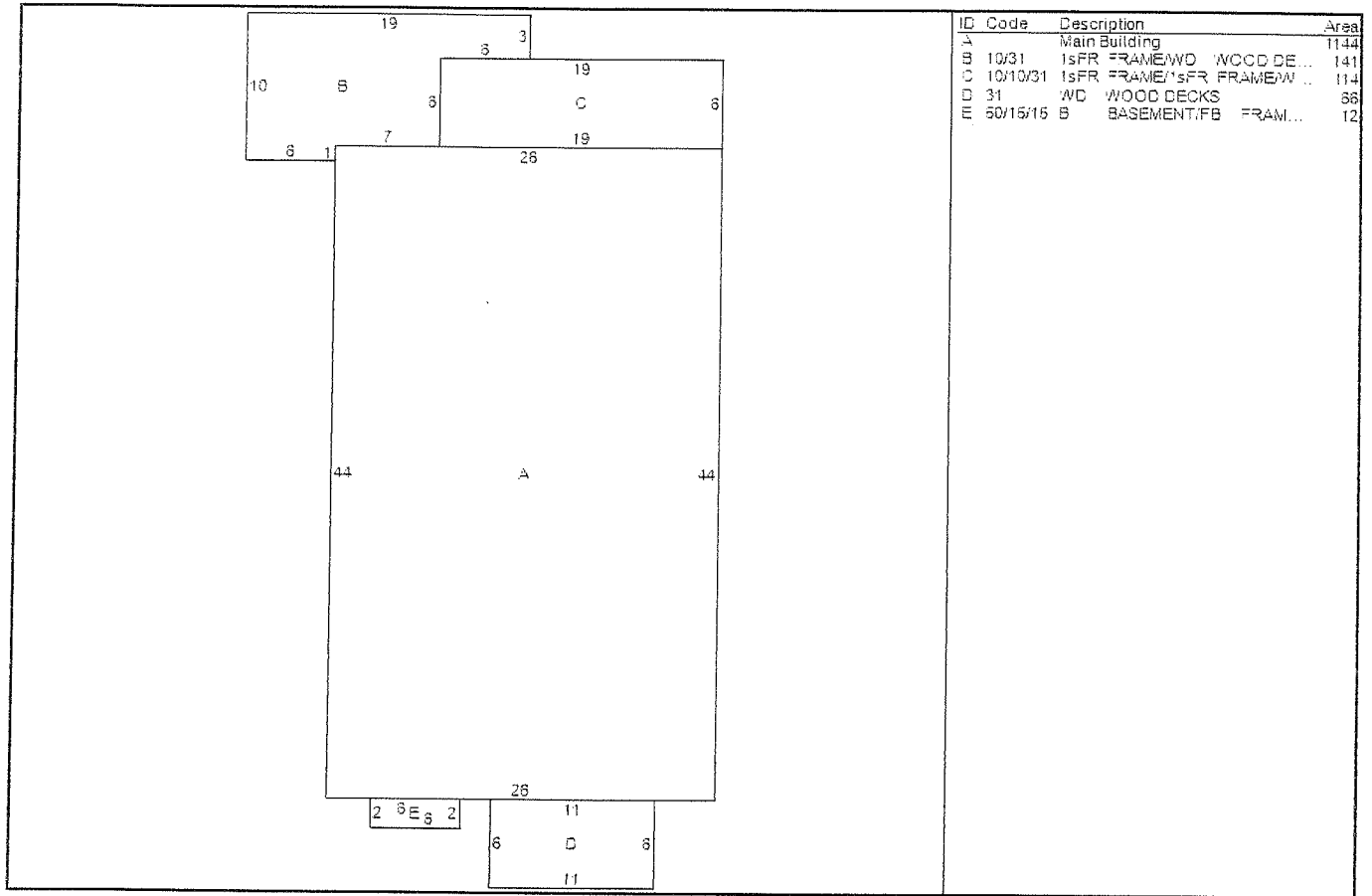
Transient Guest

Section 14-47 defines Transient guest as "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". Bed and breakfasts, hostels, hotels, motels, and tourist homes all are for transient guests. A lodging house allows the rental of rooming units on not less than a weekly or monthly basis.

Attachment B: Short Term Rental Zoning Chart

Zone	Section 14-404(e)	Lodging House	Hostel	B&B
R-1	Allowed	No	No	No
R-2	Allowed	No	No	No
R-3	Allowed	No	No	No
R-4	Allowed	No	No	No
R-5	Allowed	No	No	No
R-6	Allowed	Allowed	Allowed/Conditional Depending on Size	Allowed
R-6A	Allowed	Allowed	Allowed/Conditional Depending on Size	Allowed
R-7	Allowed	Allowed	Allowed/Conditional Depending on Size	Allowed
FH	No	No	No	No
B-1	No	Allowed	Allowed	Allowed
B-2	No	Allowed	Allowed	Allowed
B-3	No	Allowed	Allowed	Allowed
B-4	No	Allowed	No	No
B-5	No	Allowed	Allowed	No
B-6	No	No	No	No
B-7	No	Allowed	Allowed	Allowed





(SPACE ABOVE FOR RECORDING INFORMATION)

QUITCLAIM DEED

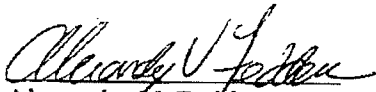
KNOWN ALL PERSONS BY THESE PRESENTS, that

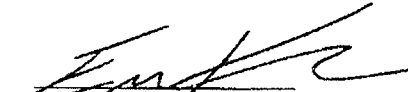
I, **Alexander V. Feddersen**, a single man, of 481 Danforth Street, Portland, ME, for nominal consideration paid, grant to **481, LLC**, a Maine Limited Liability Company, having an business address of 481 Danforth Street, Portland, Maine, with quitclaim covenants, the land and interest in land situated in Portland, Cumberland County, Maine described as follows:

See Exhibit A Attached Hereto and Incorporated Herein

Being the same premises conveyed to Cassandra D. Metcalf and Carl M. Hitchcock pursuant to a deed dated June 9, 2004 and recorded in the Cumberland County Registry of Deeds in Book 21395, Page 275. Also being the same premises conveyed to Alexander V. Feddersen by virtue of quitclaim deed of Cassandra D. Metcalf and Carl M. Hitchcock, recorded with the Cumberland County Registry of Deeds on 5/7/2013 in Book 30622, Page 284.

Witness my hand and seal this 4th day of June, 2013


Alexander V. Feddersen


Witness

Witness

STATE OF MAINE
Cumberland County, ss

June 4, 2013

Then personally appeared the above-named Alexander V. Feddersen, and acknowledged the foregoing to be their free act and deed, before me,

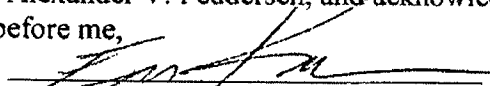

Erin Kalakowsky, Attorney at Law BBO# 4995

EXHIBIT A

A certain lot or parcel of land together with the buildings thereon, situated on the northerly side of Danforth Street, in the City of Portland, County of Cumberland and State of Maine, and being No. 481—1/2 on said street and bounded and described as follows: Beginning at a stake in the northerly side line of Danforth Street at the southeasterly corner of land now or formerly belonging to the Estate of John B. Brown; thence in an easterly direction along said northerly side line of Danforth Street fifty (50) feet to a stake and point; thence at right angles to the northerly side line of Danforth Street, One Hundred Sixty-Eight (168) feet, more or less, to land now owned by the City of Portland; thence westerly by said land of City of Portland Two and 6 tenths feet (2.6) feet, more or less, to the land now or formerly of John B. Brown estate; thence in a southwesterly direction along said Brown land, sixty-five and eight tenths (65.8) feet, more or less, to a point; thence in a southerly direction along said Brown's easterly boundary line, One Hundred and Twenty-Eight and Five Tenths (128.5) feet to the northerly side line of Danforth Street and the point of beginning.

Received
Recorded Register of Deeds
Jun 12, 2013 12:07:41P
Cumberland County
Pamela E. Lovley

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
DOCKET NO. POR-SC-RE-2016-75

KENNETH THOMAS of Portland,)
)
 Plaintiff)
)
 v.)
)
 ALEX FEDDERSEN, of Portland,)
)
 And)
)
 481 LLC, a Maine Limited Liability)
)
 Defendants)

AFFIDAVIT OF
PAUL S. BULGER

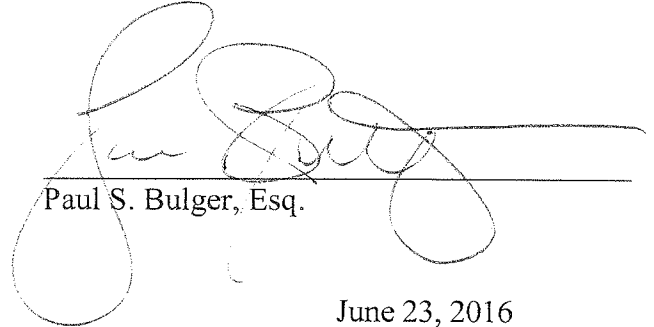
Now Comes Paul S. Bulger, who does depose and state as follows:

1. I am an attorney licensed to practice law in Maine.
2. Attached is a letter from the City of Portland Zoning Administrator, Anne Machado, in which she asserts that the AirBnB operating at 481 Danforth Street is an unlawful use; based upon an interpretation of the Portland Zoning Ordinance definition of “residential dwelling” and a prohibition against “transient guests” in the residential zone.
3. In response to Ms. Machado’s letter, I tendered a letter requesting clarification on the City’s Zoning policy and enforcement as it concerns the use of the AirBnB platform, a system for connecting renters with property owners who rent out space, rooms online.
4. The City’s Housing committee deferred taking action on the issue of enforcement and regulation last Fall. Member David Brennerman stated that owner occupied buildings would likely not be prohibited.
5. Ms. Machado acknowledged that the City’s Housing Committee is developing policy to regulate this use and that her office does not enforce against property owners in the absence of a Complaint.
6. I requested information on who had complained in this case.
7. Ms. Machado stated a complaint had not been filed, and that the enforcement action is based upon information discovered on Zillow in which a broker advertised the property.
8. The Applicant has not listed the property or advertised on Zillow.

9. On behalf of Ken Thomas, an interpretation appeal has been filed today, June 23, 2016 on recommendation of the Zoning Administrator. I have requested a stay of enforcement.

The foregoing statements by me are true and were made on information and belief I believe them to be true.

DATE: June 23, 2016

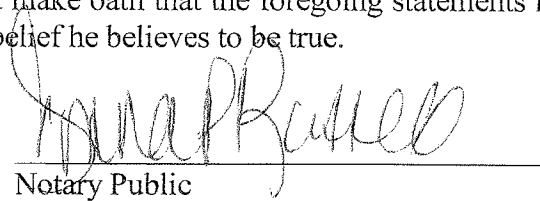


Paul S. Bulger, Esq.

STATE OF MAINE
CUMBERLAND, SS

June 23, 2016

Now Comes, Paul S. Bulger, under oath and make oath that the foregoing statements made by him are true, and were made on information and belief he believes to be true.



Notary Public

Printed Name:

My commission expires:

Donna P. Russell
Notary Public, Maine
Commission Expires: September 23, 2020