



Permitting and Inspections Department
Michael A. Russell, MS, Director

Ann Machado, Zoning Administrator

TO: Zoning Board of Appeal Chair and Members

FROM: Ann Machado, Zoning Administrator *AM*

SUBJECT: Interpretation Appeal for 481 Danforth Street, CBL 071-A-001

DATE: July 19, 2016

On April 20, 2016 I received an email from Tyler Norod, the Housing Planner in the Housing and Community Development Division regarding the use of the an apartment at 418 Danforth Street for a short term rental. Mr. Norod and I had previously worked together on a few properties that were being used for short term rentals and have been working with other City staff and management to coordinate an enforcement protocol for enforcing existing City ordinances which do not allow such rentals. After considering the facts relating to the short-term rental of this property, including not only that it was listed for short term rent on Airbnb but was also being listed for sale with short term rental of two units as an advertised and purportedly permissible use, I determined that action was necessary.

I mailed a letter to the property owner on May 25, 2016 notifying him that the short-term rental of the Property was in violation of the City's Code of Ordinances. The letter was addressed to Alexander V. Feddersen, 481, LLC, 481 Danforth Street, Portland (Exhibit A). In the letter, I stated that our office had "recently received complaints" about the renting of short term rentals at the property. The two letters and emails that I had sent previously to properties operating illegal short term rentals had been based on complaints from the public. When I wrote the letter for 481 Danforth Street, I was unaware that the illegal use of part of the property for short term rentals was discovered by Mr. Norod during the normal research that he does as part of his job rather than through a complaint from a member of the public. Although it was not brought to my attention by a complaint from the public, once I have been asked to address an illegal use of a property, I must address it. The City has always been and still remains authorized to enforce its Code, whether or not a specific complaint has been made.

The legal use of the property at 481 Danforth Street is three dwelling units as shown on the certificate of occupancy that was issued on 1/19/2016. (Exhibit B). Section 14-47



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defines a dwelling as: *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.* Section 14-47 defines dwelling unit as: *One (1) or more rooms with private bath and kitchen facilities comprising an independent self-contained dwelling unit.* The Ordinance also defines family as: *Not more than sixteen (16) individuals living together in a dwelling unit as a single nonprofit housekeeping unit* (§ 14-47).

Attorney Bulger is correct in stating that § 14-47 does not define the term “residential.” The definition section of the ordinance (§ 14-47) does not define every word that is used within the ordinance. When a term is not specifically defined, we turn to zoning glossaries that are put out by various planning associations or a dictionary. In this case, I used *A Glossary of Zoning, Development and Planning Terms* published by the American Planning Association Planning Advisory Service which lists four different definitions of “residence” (Exhibit C). The fourth definition is similar to the definition of dwelling in the Portland City Code. The second definition of residence is: “A home, abode or place where an individual is actually living at a specific point in time”. The Third Edition of Webster’s II New College Dictionary (2005) defines *reside* as “To live in a place for a permanent or extended time”. Looking at these two definitions, and the City’s definition of dwelling, it is clear that a dwelling unit is to be used as a place where a person lives and not just visits for a short period of time.

The Ordinance 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”. In § 14-47 of the Ordinance, the following uses specifically included the term transient guests in their definition: Bed and Breakfast, Hostel and Tourist Home. The term “more or less temporary occupancy of individuals” is used as part of the definition of hotel and inn. A motel is defined as “to be used principally by automobile transients for compensation. Motels include tourist courts, motor lodges or cabins”. All of these uses are for short term stays and not a permanent residence.

481 Danforth Street is located in the R-4 Residential Zone. Section 14-102 of the Ordinance lists the permitted uses allowed in the zone and Section 14-103 lists the Conditional Uses allowed in the zone (Exhibit D). Section 14-104, Prohibited Uses, states “Uses that are not expressly enumerated herein as either permitted or conditional uses are prohibited”. Neither § 14-102 or § 14-103 list any of the short term uses listed in the previous paragraph as a permitted or conditional use in the R-4 Residential Zone. Since



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they are not listed in either section they are not allowed in the zone. § 14-102(a) allows for “single-family detached dwellings” and “new construction of two-family dwellings”. § 14-103(b) allows for multiplex development of three or more dwelling units. The legal use of the property is three dwelling units. Moreover, and as outlined above, because rental to or occupation by transient guests does not meet the well-established definition of a “residential use,” that use is not, as Attorney Bulger contends, permitted by implication in R-4.

In his July 13, 2016 letter, Attorney Bulger “submits that for an owner occupied residence in the residential zone, a short term rental or guest stay is accessory to a residential use.” Section 14-102(b) does allow “Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses subject to the provisions of section 14-404 (accessory use) of this article” (Exhibit E). In the Zoning Administrator’s letter dated May 25, 2016, the violation related to a unit that was being rented on a short-term basis and was not being occupied by the owner. That is, the unit that was being rented on a short-term basis was not the owner’s residence but another unit within the building. Since the legal use of the building is three dwelling units, and a dwelling unit is a permitted use under § 14-102, as a permitted or principal use, it cannot also be considered as an accessory use to the owner occupied unit within the building. The dwelling units that are not owner occupied must be rented as dwelling units not as short term rentals.

For all of the above reasons, I feel that the Notice of Violation issued in this matter was entirely consistent with the City Code and should be upheld by the Board.

Exhibit A

Portland, Maine



Yes. Life's good here.

Department of Permitting and Inspections

Ann Machado, Zoning Administrator

May 25, 2016

Alexander V. Feddersen
481 LLC
481 Danforth Street
Portland, ME 04102

RE: 481 Danforth Street – 71-A-1 (the "Property") - R-4 Residential Zone - unauthorized rental to transient guests.

Dear Mr. Feddersen:

This office has recently received complaints that you are renting dwelling units at the above-referenced property to transient guests. This letter shall serve as notice that such rentals violate Portland's Land Use Code.

Our records reveal that 481 Danforth Street is located in the R-4 Residential Zone and that the legal use is a 3-unit multifamily dwelling. Under Portland's Land Use Code, in order to be permissible, residential dwellings must be used exclusively for residential occupancy by "families," rather than "transient guests." See § 14-47 of the Land Use Code defining "dwellings" and "multifamily dwellings". Under the Code, a "family" is defined as: "Not more than sixteen (16) individuals living together in a dwelling unit as a single nonprofit housekeeping unit. . .," while a "transient guest" is defined 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." (Section 14-47). Because the rental of residential dwelling units to someone for fewer than 15 days out of a sixty-day period constitutes a rental to "transient guests" rather than to a family, such rentals are not permitted in the R-4 zone (section 14-102).

An investigation has revealed that at least one of the units located at 481 Danforth Street has in fact been listed for rental on the "Airbnb" website on a short-term basis.

In light of the above, it is essential that you immediately stop any unauthorized use of 481 Danforth Street and bring the Property into compliance by ceasing operation as an unauthorized transient rental. **This letter shall serve as notice that if you fail to do so within 30 days of the date of this letter, this matter will be referred to the City's Corporation Counsel's office for enforcement action. Be advised that, under Section 1-15 of the City's Code of Ordinances and 30-A M.R.S. 4452, violations of the City's code are subject substantial civil penalties.**

You have the right to appeal this Notice of Violation. If you wish to exercise your right to appeal, you have thirty days from the date of this letter to do so. If you fail to appeal, my decision is binding. Please contact this office for the necessary paperwork if you decide to file an appeal.

Portland, Maine



Yes. Life's good here.

Department of Permitting and Inspections

Yours truly,

A handwritten signature in black ink, appearing to read "Abh", with a long horizontal flourish extending to the right.

Ann B. Machado
Zoning Administrator
(207) 874-8709



Certificate of Occupancy

CITY OF PORTLAND, MAINE

Department of Planning and Urban Development Building Inspections Division



Location: 481 DANFORTH ST

CBL: 071 A001001

Issued To: 481 LLC

Issued Date: 01/19/2016

This is to certify that the building, premises, or part thereof, at the above location, built-altered-changed as to use under Building Permit No. 201301769 has had a final inspection, has been found to conform substantially to the requirements of the Building Code and the Land Use Code of the City of Portland, and is hereby approved for occupancy or use, limited or otherwise, as indicated below.

<u>PORTION OF BUILDING OR PREMISES</u>	<u>APPROVED OCCUPANCY ZONING</u>	<u>APPROVED OCCUPANCY BUILDING</u>
Entire	Three legal dwelling units	Residential Apartments - 3 dwelling units No sprinkler system Use Group R-2 Type 5B Existing MUBEC/IBC 2009/Housing Code

LIMITING CONDITIONS:

Approved: /S/ Doug Morin

Inspector

Inspection Division Director

Notice: This certificate identifies the legal use of the building or premises, and ought to be transferred from owner to owner upon the sale of the property.

A Glossary of

Zoning, Development and Planning Terms

Exhibit C

Edited by Michael Davidson and Fay Dolnick

50th
Anniversary



American Planning Association

Planning Advisory Service
Report Number 491/492

repair shops, or repair of musical instruments. (*Blacksburg, Va.*)

■ **replacement** (See also *teardown*) Construction on an existing street in an existing neighborhood in which the existing house on the lot is torn down and replaced by a new house. (*Lexington, Mass.*)

■ **replacement value** The current construction cost for replacement of an existing building, structure, or portion thereof, including accessory facilities and other parts of an established use. (*Santa Clara County, Calif.*)

■ **request for proposal (RFP)** Usually issued by a public agency and disseminated to consulting or development firms, a good RFP contains a description of: the project or program (what is supposed to be accomplished and for whom); what services are required; the amount budgeted to accomplish the work; the type of contract (e.g., fixed price or time-and-expense); qualifications required (unless using the two-part RFQ/RFP process); evaluation criteria; what to do to submit the RFP properly. APA recommends a two-part process in which agencies first issue a request for qualifications (RFQ) (see below) and then solicit proposals. (*PAS Report No. 443, Selecting and Retaining a Planning Consultant*)

■ **request for qualifications (RFQ)** A statement of qualifications prepared by a consultant and submitted to a community seeking assistance in a project. The RFQ should ideally contain contact information; a description of the form of the organization (e.g., is it a partnership or corporation); resumes of key personnel; a statement of qualifications (e.g., a narrative describing work done on similar projects); availability (e.g., notable time constraints or other commitments); a list of projects completed by the firm; and references. (*PAS Report No. 443, Selecting and Retaining a Planning Consultant*)

■ **research and development** A business that engages in research, or research and development, of innovative ideas in technology-intensive fields. Examples

include research and development of computer software, information systems, communication systems, transportation, geographic information systems, multi-media and video technology. Development and construction of prototypes may be associated with this use. (*Blacksburg, Va.*)

■ **research and development centers** Research, development, and testing laboratories that do not involve the mass manufacture, fabrication, processing, or sale of products. Such uses shall not violate any odor, dust, smoke, gas, noise, radiation, vibration, or similar pollution standard as specified herein. (*Jefferson County, Colo.*)

A structure or complex of structures designed or used primarily for research development functions related to industry and similar fields of endeavor. (*Cranberry Township, Pa.*)

■ **research laboratory** (1) An administrative, engineering, scientific research, design, or experimentation facility; (2) Includes research on such things as electronic components, optical equipment, etc., but not research requiring the use of animal husbandry (including dogs, poultry, or monkeys), heavy equipment (such as construction equipment); and (3) Shall be free of dust, smoke, fumes, odors, or unusual vibrations or noise. The waste from such facilities shall meet the requirements of the appropriate health authority. (*Pima County, Ariz.*)

A structure or group of structures used primarily for applied and developmental research, where product testing is an integral part of the operation and goods or products may be manufactured as necessary for testing, evaluation, and test marketing. (*Londonderry, N.H.*)

■ **reservation of site** The withholding of land, in a subdivision plan, for later purchase for public purposes such as schools or parks. (*Handbook for Planning Commissioners in Missouri*)

■ **reservoir** Any impoundment of surface waters designed to provide drinking water to the public. (*York, Va.*)

■ **residence** (See also *dwelling definitions*) A place where a person resides; particularly a house. (*Grand Forks, N.D.*)

A home, abode, or place where an individual is actually living at a specific point in time. (*Siskiyou County, Calif.*)

The general term implying place of human habitation and embracing both residential and apartment residential district classifications. (*Columbus, Ohio*)

A structure or part of a structure containing dwelling units or rooming units, including single-family or two-family houses, multiple dwellings, boarding or rooming houses, or apartments. Residences do not include: such transient accommodations as transient hotels, motels, tourist cabins, or trailer courts; dormitories, fraternity or sorority houses; in a mixed-use structure, that part of the structure used for any nonresidential uses, except accessory to residential uses; recreational vehicles. (*Londonderry, N.H.*)

■ **resident** One who lives and usually works in the vicinity; not a visitor or transient. (*Whatcom County, Wash.*)

■ **residential** Land designated in the city or county general plan and zoning ordinance for buildings consisting only of dwelling units. May be improved, vacant, or unimproved. (*California Planning Roundtable*)

■ **residential burn** (See also *open burning*) Open burning performed with the approval of the fire chief at the site of a one- or two-family dwelling unit for the purpose of disposing of natural vegetation generated at that location. (*Hilton Head Island, N.C.*)

■ **residential care facility** (See *elderly housing, residential care facility*)

■ **residential complex** A residential development with 15 or more dwelling units situated on the same tax parcel. (*Columbus, Ohio*)

■ **residential concierge services** The operation of an establishment that provides pick-up and delivery service, personal services such as laundry and dry cleaning drop off and pick up, packaging

***Editor's note**--Ord. No. 535-84, adopted May 7, 1984, repealed former Div. 5, §§ 14-101--14-104, and enacted a new Div. 6, §§ 14-101--14-106. The result of this action was that this Art. III contained no division designated 5. The editor has, therefore, in agreement with the city, retained the division designation 5. Formerly §§ 14-101--14-104 were derived from Code 1968, § 602.5.A--D; Ord. No. 499-74, § 2, adopted Aug. 19, 1974; and Ord. No. 91-83, §§ 1, 2, adopted Aug. 3, 1983.

Sec. 14-101. Purpose.

The purpose of the R-4 residential zone is:

- (a) To preserve the unique character of the Western Promenade area of the city by controlling residential conversions and by allowing the continued mix of single-family, two-family, and low-rise multifamily dwellings and other compatible development at medium densities.

(Ord. No. 535-84, 5-7-84)

Sec. 14-102. Permitted uses.

The following uses are permitted in the R-4 residential zone:

(a) *Residential:*

1. Single-family detached dwellings;
2. New construction of two-family dwellings;
3. Reserved;
4. Handicapped family unit, as defined in section 14-47 (definitions) of this article, for handicapped persons plus staff;
5. Single-family, multiple-component manufactured housing, as defined in section 14-47 (definitions) of this article, except in a National Register Historic District;
6. Single-family, single-component manufactured housing, as defined in section 14-47 (definitions) of this article, on individual lots under separate and distinct ownership, except in a National Register Historic District, provided that each unit meets the performance standards listed below:

- a. More than half of the roof area of each unit

shall be double pitched Class C rated shingled roof with a minimum pitch of 3/12.

- b. Each unit shall be installed on a full foundation or a concrete frost wall in accordance with all applicable codes and regulations. Any hitch or tow bar shall be removed from the unit after it is placed on its foundation or frost wall. In the case of a frost wall, vermin proof skirting shall be installed on all sides of the unit. The skirting may consist of either (a) concrete or masonry block or (b) manufactured skirting. If concrete or masonry block skirting is installed, either the exterior siding of the unit shall extend within one (1) foot of grade or decorative masonry siding shall be applied. If manufactured skirting material is installed, the color shall be identical to or compatible with the exterior siding of the unit.
- c. Each unit shall have exterior siding that is residential in appearance, including but not limited to natural materials such as wood clapboards or shakes, or exterior materials which simulate wood. Clapboards or simulated clapboards shall have less than eight (8) inches of exposure and sheet metal type siding shall not be permitted.
- d. Each unit shall have the long side of the unit parallel to the street line where the required street frontage is met.
- e. Each unit shall be provided with at least two (2) trees meeting the city's arboricultural specifications and which are clearly visible from the street line and are located so as to visually widen the narrow dimension or proportion of the unit.
- f. Each unit shall have all fuel oil supply systems constructed and installed within the foundation wall or underground in accordance with all applicable codes and regulations.

- g. No unit shall be horizontally or vertically attached to any other unit or other structure, provided however, that this provision shall not be deemed to prohibit building additions, such as porches, garages, room additions or solar greenhouses.

(b) *Other:*

1. Cemeteries;
2. Parks, and other active and passive noncommercial recreation spaces;
3. Accessory uses customarily incidental and subordinate to the location, function, and operation of principal uses, subject to the provisions of section 14-404 (accessory use) of this article;
4. Home occupations subject to the provisions of section 14-410 (home occupation) of this article;
5. Municipal uses, excluding those specifically set forth in section 14-103 of this division.
6. Special needs independent living units, provided that a building housing special needs independent living units shall not house other types of residential or other permitted uses. The owner of a special needs independent living unit building shall file in the Cumberland County Registry of Deeds a statement under oath that the building is a special needs independent living unit building and that any future change of use to a permitted residential use shall require a change in use review by the City of Portland and a decrease in the number of units in the building in accordance with the Portland City Code, chapter 14. The owner shall file proof of such recording with the building inspections division prior to the issuance of any certificates of occupancy for the new uses.
7. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 535-84, 5-7-84; Ord. No. 264-84, § 1, 12-17-84; Ord. No. 67-87, § 2,

11-2-87; Ord. No. 82-88, § 1, 7-19-88; Ord. No. 86A-89, § 4, 8-21-89; Ord. No. 33-91, § 5, 1-23-91; Ord. No. 33A-91, § 2, 4-17-91)

***Editor's note--**Ord. No. 82-88, § 1, adopted July 19, 1988, amended § 14-102 by adding subsection (b)5 to read as herein set out. See also the editor's note to Art. III of this chapter for additional provisions relative to Ord. No. 82-88.

Sec. 14-103. Conditional uses.

The following uses shall be permitted only upon the issuance of a conditional use permit, subject to the provisions of section 14-474 (conditional uses) of this article and any special provisions, standards or requirements specified below:

(a) *Residential:*

1. Sheltered care group homes, as defined in section 14-47 of this article, for up to twelve (12) individuals, plus staff, and serving a primary population which is not handicapped persons, parolees, persons involved in correctional prerelease programs, or current illegal drug users, provided that:
 - a. A sheltered care group home shall not be located within five hundred (500) feet of another, as measured along street lines to the respective property lines;
 - b. There shall be no open outside stairways or fire escapes above the ground floor;
 - c. The facility shall make provision for adequate on-site staffing in accordance with applicable state licensing requirements. If a facility is not licensed by the state, there shall be a minimum of one (1) staff person for every ten (10) residents or fraction thereof.

The board of appeals may impose conditions upon a conditional use permit concerning the creation or operation of a sheltered care group home including but not limited to the following: site and building maintenance; lighting, fencing, and other appropriate security measures; screening and

buffering of parking areas; compatibility of any additions or alterations with the existing residential structure; compatibility of new structures with the architectural character of the surrounding area; and limitation on the duration of a sheltered care group home permit.

2. Alteration of an existing structure to accommodate one (1) or more dwelling units provided that:
 - a. No additional dwelling unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic;
 - b. No open outside stairways or fire escapes above the ground floor shall be or have been constructed in the immediately preceding five (5) years;
 - c. The alteration will not result in a total cubic volume increase of more than ten (10) percent within the immediately preceding five (5) years;
 - d. A lower level dwelling unit shall have a minimum of one-half of its floor-to-ceiling height above the average adjoining ground level;
 - e. No existing dwelling unit shall be decreased to less than one thousand (1,000) square feet of floor area;
 - f. Three thousand (3,000) square feet of land area per dwelling unit shall be required;
 - g. The project shall be subject to article V (site plan) of this chapter for site plan review and approval.
 - h. Parking shall be provided as required in division 20 of this article.
3. Multiplex development with three (3) or more horizontally or vertically attached, or a series of

such attached dwelling units and the construction of at least one (1) building, provided that:

- a. No open outside stairways or fire escapes above the ground floor shall be constructed;
- b. No habitable space in a dwelling unit shall be below grade, except basements that are a part of and below aboveground units.
- c. Three thousand (3,000) square feet of land area per dwelling unit shall be required for the first three (3) dwelling units with a requirement of six thousand (6,000) square feet of land area per dwelling unit for additional dwelling units;
- d. No dwelling unit shall have less than six hundred (600) square feet of floor area, exclusive of common hallways and storage in basement and attic;

The project shall be subject to article V (site plan) of this chapter for Planning Board site plan review and approval.

(b) *Institutional*: Any of the following conditional uses provided that, notwithstanding section 14-474(a) (conditional uses) of this article or any other provision of this Code, the Planning Board shall be substituted for the board of appeals as the reviewing authority:

1. Elementary, middle, and secondary school (except as otherwise provided in section 14-276.10);
2. Places of assembly;

Such uses shall be subject to the following conditions and standards in addition to the provisions of section 14-474:

- a. In the case of expansion of existing such uses onto land other than the lot on which the principal use is located, it shall be demonstrated that the proposed use cannot reasonably be accommodated on the existing

site through more efficient utilization of land or buildings, and will not cause significant physical encroachment into established residential areas: and

- b. The proposed use will not cause significant displacement or conversion of residential uses existing as of June 1, 1983, or thereafter; and
- c. In the case of a use or use expansion which constitutes a combination of the above-listed uses with capacity for concurrent operations, the applicable minimum lot sizes shall be cumulative; and
- d. Article V (site plan) sections 14-522 and 14-523 notwithstanding, in the case of places of assembly the proposed use shall be subject to the requirements of article V (site plan) of this chapter; and
- e. Community halls:
 - i. The structure was in existence as of January 4, 2010;
 - ii. The structure was built for institutional or other non-residential uses;
 - iii. The structure is operated by, or operated subject to the control of, a not-for-profit entity in accordance with its not-for-profit purposes; and
 - iv. A parking management plan is submitted for review and approval by the planning board; and
- f. Private club or fraternal organizations: any such establishment serving alcoholic beverages or in possession of a license for serving alcoholic beverages shall be located on a large lot, as specified in the minimum lot size provisions of this section.

(c) *Other:*

1. Off-street parking of passenger cars as provided in section 14-344 (board of appeals may authorize parking in certain residential zones) of this article;
2. Utility substations, including sewage and water pumping stations and standpipes, electric power substations, transformer stations, and telephone electronic equipment enclosures and other similar structures, provided that such uses are suitably screened and landscaped so as to ensure compatibility with the surrounding neighborhood;
3. Day care facilities or home babysitting services not permitted as a home occupation under section 14-410, and nursery schools and kindergartens, subject to the following conditions:
 - a. The facility shall be located in a structure in which there is one (1) or more occupied residential units or in an existing accessory structure, unless the facility is located in a principal structure that has not been used as a residence in whole or in part within the five (5) years immediately preceding the application for a day care or home babysitting use or in a nonresidential structure accessory to the principal nonresidential use.
 - b. The maximum capacity shall be twelve (12) children for facilities located in residential or existing structures accessory thereto, unless the additional standards in subsection v. are met. There shall be no maximum limit on the number of children in a facility located in a principal structure that has not been used as a residence in whole or in part within the five (5) years immediately preceding the application for a day care use, home babysitting use, nursery school, or kindergarten or in a nonresidential structure accessory thereto, provided that any such structure that serves more than twelve (12) children shall be subject to review under

article V of this chapter.

- c. Outdoor play areas shall be screened and buffered from surrounding residences with landscaping and/or fencing to minimize visual and noise impacts.
- d. Solid waste shall be stored in covered containers. Such containers shall be screened on all four (4) sides.
- e. Day care facilities, nursery schools and kindergartens located either in structures that have been in residential use within the past five (5) years or in existing accessory structures and that serve between thirteen (13) and twenty-four (24) children shall meet the following additional standards:
 - i. The facility shall provide a minimum of seventy-five (75) square feet of outdoor play area per child;
 - ii. The play area shall be located in the side and rear yards only and shall not be located in front yards;
 - iii. Outside play areas shall be separated from abutting properties by a fence at least forty-eight (48) inches in height;
 - iv. A ten-foot wide landscaped buffer shall be required outside of the fenced play area, and shall be established in accordance with the landscaping standards of the City's Technical Standards and Guidelines;
 - v. The minimum lot size for a day care facility, home babysitting service, nursery school, or kindergarten located in a residential or existing accessory structure and serving more than twelve (12) children shall be twenty thousand (20,000) square feet;

- vi. *Off-street parking:* Off-street parking is required as provided in division 20 (off-street parking) of this article.
 - vii. The maximum number of children in a day care facility, home babysitting service, nursery school, or kindergarten located in a residential or existing accessory structure shall be twenty-four (24); and
 - viii. Any additions or exterior alterations such as facade materials, building form, roof pitch, and exterior doors shall be designed to be compatible with the architectural style of the building and preserve the residential appearance of the building.
4. Temporary wind anemometer towers, as defined in Sec 14-47, are permitted provided the following standards are met in addition to Sec 14-430:
- a. Towers may be installed for the purpose of wind data collection for no more than two (2) years after the issuance of a Certificate of Occupancy for the tower. At the conclusion of the aforementioned two (2) years, the tower must be dismantled and removed from the site within sixty (60) days; and
 - b. Towers shall be constructed according to plans and specifications stamped by a licensed professional engineer, which shall be provided to the Board of Appeals with the application; and
 - c. Towers shall be set back from habitable buildings by a distance equal to 1.1 times the tower height; and
 - d. The applicant shall provide a safety report prepared and stamped by a licensed professional engineer to the Board of Appeals with their application for

conditional use, which demonstrates how the proposed temporary wind anemometer tower is safe in terms of strength, stability, security, grounding, icing impacts and maintenance; and

- e. The applicant shall provide evidence of commercial general liability insurance, such insurance to be satisfactory to Corporation Counsel and cover damage or injury resulting from construction, operation or dismantling of any part of the temporary wind anemometer tower; and
- f. Towers and associated guy wires shall be sited to minimize their prominence from and impacts on public ways (including pedestrian ways); and
- g. Towers shall be used for installing anemometers and similar devices at a range of heights from the ground to measure wind characteristics (speed, direction, frequency) and related meteorological data, but shall not be used for any other purpose; and
- h. A performance guarantee shall be required for the cost of removal of the tower, guy wires and anchors. This requirement may be satisfied by surety bond, letter of credit, escrow account or by evidence, acceptable to the City, or the financial and technical ability and commitment of the applicant or its agents to remove the facility at the end of the use period.

5. Wind energy systems, as defined and allowed in Article X, Alternative Energy.

(Ord. No. 535-84, 5-7-84; Ord. No. 264-84, § 2, 12-17-84; Ord. No. 76-85, § 5, 7-1-85; Ord. No. 67-87, § 3, 11-2-87; Ord. No. 82-88, §§ 2, 3, 7-19-88; Ord. No. 235-91, § 7, 2-4-91; Ord. No. 118-93, § 7, 10-18-93; Ord. No. 133-96, § 4, 11-18-96; Ord. No. 154-96, § 7, 12-16-96; Ord. No. 222-99, §4, 3-01-99; Ord. No. 29-09/10, 8-3-09 emergency passage; Ord. No. 127-09/10, 1-4-10 emergency passage; Ord. No. 240-09/10, 6-21-10; Ord. No. 9 10/11, 8-2-10; Ord. No. 138-09/10, 1-20-10; Ord. No. 149-10/11, 3-7-11; Ord. No. 33-11/12, 1-18-12)

***Editor's note--**Ord. No. 82-88, §§ 2, 3, adopted July 19, 1988, amended this section by amending subsection 14-103(a) and by deleting subsection (b)3, municipal use. See also the editor's note to Art. III of this chapter for additional provisions relative to Ord. No. 82-88.

Sec. 14-104. Prohibited uses.

Uses that are not expressly enumerated herein as either permitted uses or conditional uses are prohibited.
(Ord. No. 535-84, 5-7-84)

Sec. 14-105. Dimensional requirements.

In addition to the provisions of division 25 of this article (space and bulk regulations and exceptions), lots in the R-4 zone shall meet the following requirements:

(a) *Minimum lot size:*

1. Residential: Six thousand (6,000) square feet except as provided for lots of record in section 14-433 (lots of record and accessory structure setbacks for existing buildings) of this article.
2. Multiplex: Nine thousand (9,000) square feet.
3. School: Thirty thousand (30,000) square feet.
4. Places of assembly:

Large	30,000 sq. ft.
Medium	15,000 sq. ft.
Small	7,500 sq. ft.

5. Municipal use: Six thousand (6,000) square feet.
6. All other uses: Six thousand (6,000) square feet.

Provided that for uses specified in section 14-105(a)3 through 5 above, no minimum lot area shall be required in the following cases:

- a. Uses existing on June 1, 1983;
- b. Expansion onto land abutting the lot on which the principal use is located;

requirement of curbing under this section, if it determines that an acceptable alternative drainage plan will be provided. Prior to the issuance of a building permit for erection of a building on a lot abutting any portion of a street which is unimproved or improved but not permanently paved, the following shall occur: (1) A plan of the street improvements required by this section shall be submitted to the public works authority; and (2) upon determination by the public works authority that the plan meets the street improvement requirements established by this subsection, a performance guarantee and inspection fee for said improvements shall be submitted to the city as set forth in section 14-501. Also as set forth in section 14-501, a one-year defect bond shall be tendered to the city prior to release of the performance guarantee required hereby. The provisions of this subsection (b) shall not apply to the erection of any single-family dwelling on any lot where the owner of the lot establishes that he or she was the owner of that same lot on November 19, 1984, and at all times thereafter, and states his or her intention under oath to make the structure his or her personal residence.

I *Exceptions.* The requirements of this section shall not apply to the following city streets upon their construction by the public works authority to such standards as are determined by the authority to be the most feasible:

1. Dingley Court;

2. Morgan Court.

(Code 1968, § 602.18.B; Ord. No. 193-84, § 1, 11-19-84; Ord. No. 178-87, 11-2-87; Ord. No. 372-89, 3-20-89; Ord. No. 273-90, 3-19-90)

Sec. 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. No "garage sale," "lawn sale," "attic sale," "rummage sale," or other similar casual sale of tangible personal property which is advertised by any means whatsoever whereby the public at large is or can be made aware of such sale, shall be deemed to be "customarily incidental" if such sale occurs after sales have been conducted on the same premises for six (6) or more days previously during the calendar year.

Except where the principal use consists of the sale of alcoholic beverages for consumption on premises or where the principal structure is an airline terminal, pinball machines or amusement devices shall not be considered to be accessory uses whenever there are more than a total of two (2) such machines or devices on the premises.

- (b) Off-street parking when serving conforming uses located in any zone.
- (c) Home occupations as defined in section 14-47 and section 14-410.
- (d) Signs as defined in division 22 of this article.
- (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.

(Code 1968, § 602.18.C; Ord. No. 574-81, 4-6-81; Ord. No. 66-87, § 1, 11-2-87; Ord. No. 240-09/10, 6-21-10)

Sec. 14-405. Business entrances.

In any business zone which abuts a residence zone in such a manner that the dividing line between the zones is one hundred (100) feet or less from the main business street of such business zone, no building of nonconforming use in such residence zone shall be built and no such existing building shall be altered so as to have its front or any entrance door or any part thereof used for a nonconforming use in such residence zone facing upon any other street than the main business street unless such entrance is at a distance greater than sixty (60) feet from the nearest residence zone.

(Code 1968, § 602.18.D)

Sec. 14-406. Garages.

No building in any zone shall be erected, altered or used as a