

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.