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June 13, 2016

City of Portland
389 Congress Street
Portland Maine
Attention: Anne Machado, Zoning Administrator

Re: 481 Danforth Street/ Enforcement Action

Hello Ms. Machado:

I am writing on behalf of the lessee/occupant of 481 Danforth Street, Ken Thomas in response to your enforcement letter of May 25. I am asking that the enforcement action be stayed for reasons set forth in this letter. I am concerned that an Interpretation Appeal will be required in the absence of a stipulated stay of enforcement.

Background

In May of 2013, partners Alex Fedderson ("Alex") and Ken Thomas ("Ken") purchased the property at 481 Danforth Street, a legal 2 unit building. Alex is the sole member owner of 481, LLC, the limited liability company and nominal owner. A building permit allowed the partners to refurbish the 2 units and add a third unit. After over 2 years of planning and labor, the partners received a certificate of occupancy for 3 units and commenced to occupy the first floor and rent out the top 2 floors.

For personal reasons, in August of 2015, Alex moved out and the partners agreed to a lease arrangement under which Ken Thomas agreed to lease the entire building, occupy the first floor and rent the top 2 floors. By his admission Ken has used AirBnB as a platform to rent the upper floors as a matter of convenience. The idea at the time was to allow the partners' time to work out various credits for labor and materials owed to Ken and allow Ken Thomas to purchase the property if possible.

In the Spring of 2016, Alex decided that he would not sell to Ken and he put the property on the market in violation of terms of the lease, and their informal agreement. Ken Thomas filed suit for liquidation of the partnership and also a substantial lien in the amount of \$300,000 for the value of his labor and improvements in the property. According to the Superior Court calendar the lawsuit will not go to trial for another year.

City Policy

Ken Thomas understands that the Zoning Administrator and staff believes that AirBnB (or other short term rental platforms) encourages transient rentals not permitted in residential housing of the city and that rentals to “transient guests” as defined in the Ordinance are impermissible unless in the form of a Guest Home, Bed & Breakfast, Hostel, or other use permitted under the Ordinance, and registered with the City.

The Housing Committee has examined the question and new policy is in process. The Housing Committee also acknowledges that existing definitions in the Ordinance were never intended to regulate these platforms in the way that they are being used.

Last Thursday the Housing Committee met. In connection with the study of city policy I have reviewed the minutes of the Housing Committee of October 9, 2015 published by Jeff Levine, the Director of Planning and Urban Development. There is a concern that AirBnB rentals or Short Term Rentals (“STRs”) remove some portion of rental units from the city’s base of available rentals. Nationwide many communities are grappling with regulation of STRs and overnight room rentals. The Housing Committee has suggested several means by which to regulate the STR format. I have attached those minutes. The Committee has noted that Section 14-404e allows for the letting of up to two rooms within an existing dwelling unit in every residential zone in the City.

Current Information and Enforcement

Ken Thomas has not advertised the property for sale. He occupies the property and uses AirBnB temporarily to keep operations afloat until the lawsuit and partnership liquidation is completed.

Contrary to the information contained in the enforcement letter, there have been no “complaints” about operations at this location by citizens and neighbors. Mr. Norod acknowledged to me that there have been no complaints. It is my understanding that Mr. Norod pursued enforcement because of advertising by Alex Fedderson who had listed the property for sale, a sale that Mr. Thomas opposes. I have been told by attorney Chris Pazar, counsel to Mr. Fedderson, that the building has been “taken off the market” because of the lawsuit. It is worth noting that Mr. Thomas attempted to get broker David Marsden of The Bean Group to delist the property on at least 6 occasions between March and May, in writing and by other means. Further, that I personally contact the designated broker several months ago to demand that the property be delisted at least until the lien claim and partnership action had been resolved.

Ken Thomas lives on site and will live on site in the future. Ken opposes the marketing of the property as an “overnight rental opportunity” as Mr. Fedderson advertised at one time and as that advertising shows on Zillow. The property is registered with the City.

June 7, 2016

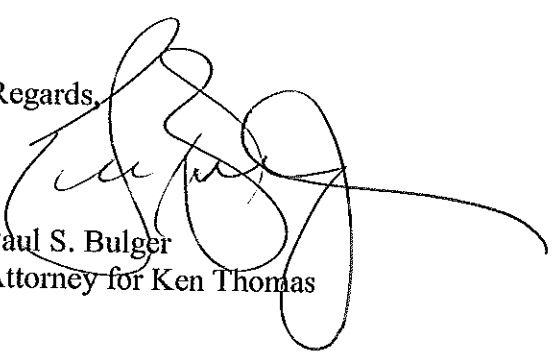
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Respectfully, Mr. Thomas does not oppose the issuance of the Notice of Violation but requests that the City stay enforcement at 481 Danforth Street pending completion of the new policy or termination of the suit, whichever comes first. A letter in the file (or recorded in the CCRD) will prohibit any purchaser from financing using cash flow from AirBnB operations or purchasing in reliance on STR income.

Given the location of this property, and depending upon the outcome of the lawsuit, it is likely that Mr. Thomas will apply for licensing under the new regulations once issued. The property has ample parking and is well located away from the denser neighborhood just up the hill. The property may be suitable for "hostel" designation and may be suitable for a zone change if necessary per our discussion and as described in Housing Committee notes

Please review this request with Mr. Norod. If a meeting at your office is preferred as a first step, please let me know. If you want or need copies of the lease and the pleadings I will send those along.

Regards,


Paul S. Bulger
Attorney for Ken Thomas