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SENT VIA EMAIL TO: ceo@raymondmaine.org

Zoning Board of Appeals
Attn: Chris Hanson, Code Enforcement Officer
Town of Raymond
401 Webbs Mills Road
Raymond, ME 04071

Re: Administrative Appeal – The Roma Farm
141 Raymond Hill Road – Tax Map 13. Lot 29

Dear Raymond Zoning Board of Appeals,

This letter provides supplemental information in support of an administrative appeal filed by Todd Roma from the October 29, 2024, Notice of Violation (the “NOV”) issued by Chris Hanson, the Town’s Code Enforcement Officer (“CEO Hanson”). The NOV incorrectly alleges that the property owners, Todd Roma and Jessica Dobson (“Appellants”), are using the property “as a wedding venue [which is] not a Conditional Use or Permitted Use in the Rural Residential District and [is] therefore prohibited.”

We respectfully request that this Board issue a written decision rescinding the NOV and affirming that the Town does not regulate rentals and that the use of the existing barn constitutes an allowable “Accessory Use” within the RR District.

Background

The Appellants, owners of The Roma Farm, purchased the property at 141 Raymond Hill Road in 2002. The property initially featured a residential dwelling and 1,440 sq. ft. single-story barn with a loft area. Over the next six years, the Appellants renovated both the dwelling and the barn for their personal residence and a residential property rental. In 2017, the Appellants acquired an adjacent vacant parcel (Tax Map 13, Lot 30), also for personal and rental purposes.

In 2007, the Appellants began using the barn as an event space, hosting a wedding and subsequent private events. The Applicants set up a large tent and commissioned two portable restrooms to be placed on the property. Since then, the residential dwelling and barn have been utilized to host private events on numerous occasions. The Roma Farm and its amenities has been utilized for private functions for 18 years with the Town’s knowledge.

In 2017, the Appellants sought clarification from the then Code Enforcement Officer, Scott Dvorak (“CEO Dvorak”), regarding the legality of using the property as a rental and for private functions. CEO Dvorak confirmed that no zoning violations were present and explicitly stated that the Town does

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not regulate rental properties. In 2018, the Appellants submitted a Conditional Use application to this Board to formalize the already established use of the property. The application was denied, but a Board member confirmed that the Appellants' use of the property as a residential rental and to host private functions did not violate any land use ordinances.

The Town has no existing regulations governing short- or long-term rentals. This is evidenced by efforts from the "Raymond Short Term Rental Initiative," a citizen group working with CEO Hanson to draft potential amendments to the Town's ordinances to regulate rentals.

The NOV states that the Appellants' website (www.theromafarm.business.site) "appears" to advertise the property as a wedding venue. However, the website simply describes the property as "a little piece of heaven on earth" and identifies it as a "seasonal rental property," clearly marketed as a "vacation home rental." Nowhere does the website advertise a commercial event space or a wedding venue. The NOV also references the presence of a tent, portable toilets, and parking signs directing visitors to the adjacent property, inferring that such use is prohibited because a "wedding venue" is not a permitted use in the RR District.

Discussion

1. The use of the barn for private functions is a permitted Accessory Use in the Rural Residential District.

Pursuant to the Town's Zoning Ordinance (the "Ordinance") § 300-4.4(B)(6), Accessory uses and buildings are explicitly permitted in the Rural Residential (RR) District. Ordinance § 300-12.1 defines an "accessory use" as "A use which is incidental and subordinate to the principal use." It further defines an "accessory structure" as "A structure of a nature customarily incidental or subordinate to that of the principal structure or the primary use to which the premises are devoted." Ordinance § 300-12.1

Maine's Law Court has recognized that an accessory use is lawful if it is dependent on a principal use, has a reasonable relationship with that primary use, and is customarily associated with it. *See Boivin v. Sanford*, 588 A.2d 1197, 1200 (Me. 1991) (internal quotations omitted). The Law Court has explained determining factors of whether a use is "accessory." These factors include but are not limited to the size of the land area involved, the nature of the primary use, the economic structure of the area. *See Shapleigh v. Shikles*, 427 A.2d 460, 465 (Me. 1981)

The Town's ordinance does not list "wedding venue," "private event space," "function hall," or other similar use as permitted or conditional uses in any zoning district. Such uses are not considered by the Ordinance whatsoever. In fact, there are not any permitted or conditional uses that even remotely relate to private event venues. Either the Ordinance creates a blanket prohibition of such uses across the Town by explicitly omitting them as permitted or conditional uses, or they are allowed as accessory uses for certain properties. Applying CEO Hanson's interpretation would mean that no property in the Town of Raymond could host private events, regardless of zoning district. Such an interpretation would lead to an absurd result that is clearly contrary to the Town's intent.

The Appellants' use of the property to host events also has a reasonable relationship with the primary residential use of the property, consistent with the Ordinance and Maine law. A barn is

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customarily incidental to a residential dwelling, particularly on a farm property, regardless of whether it is used for storage, events, or otherwise. This barn is centuries old and has been used for a variety of purposes subordinate to the principal purpose of the property. Over time, the primary use of the property has transitioned from farming to residential use. The barn's use for private events by the property owner or their invitees is incidental to the property's primary residential purpose, a use that has been ongoing for nearly two decades. The Town has no regulations that prohibit private events on residential properties. The Ordinance is silent on what constitutes a "private event" and contains no size-based restrictions on gatherings. The Appellants, like any other property owner, are allowed to hold private gatherings at the property.

As recent as 2017, CEO Dvorak and the Town's Planner confirmed that the Appellants' use was permitted. This understanding was confirmed by members of this Board during the 2018 Conditional Use review. CEO Hanson only cited a violation after recent citizen group initiatives to regulate rentals in Raymond.

2. The prohibition on private events implicates the Appellants' constitutional rights.

CEO Hanson's demand would effectively prohibit the Appellants' use of their property. On its face, this appears to be a regulatory taking. A regulatory taking occurs when governmental regulation limits the use of private property to such an extent that the owner is deprived of nearly all beneficial use of their property. Under such circumstances, the Appellants would be entitled to just compensation or the regulation would be struck down. To this point, CEO Hanson has failed to disclose or point to any process by which the Appellants could seek just compensation.

CEO Hanson's demand may also implicate the Appellants' equal protection rights. Both the US and Maine Constitutions demand that similarly situated persons receive similar treatment by the law. It appears that CEO Hanson has singled out the Applicants and their specific use of their property for private events. We are unaware of a single notice of violation that has been issued to any other homeowner in Raymond regarding homeowners personally or their renters hosting an event on private property. When the NOV at issue in this appeal is the ONLY notice the CEO has ever sent to a homeowner about hosting private events or renting their property, it is plainly apparent that the Appellants are not being treated in the same manner as other homeowners in Raymond.

3. Rental of a residential property does not establish a commercial use.

Maine's Law Court has considered whether renting property for profit creates a commercial use. The Court has held "the fact that this use may involve income in some fashion does not change a fundamentally residential use to a commercial enterprise." *Silsby v. Belch*, 2008 ME 104, ¶ 14, 952 A.2d 218. It reasoned that to rule otherwise would create an affirmative rule that any property rented for use by someone other than the owner is a commercial enterprise, potentially causing numerous properties to violate local zoning ordinances that prohibit commercial uses. *Id.*

The fact that the entire residential property is occasionally rented, and those guests may host private functions, does not alter the fundamental residential nature of the use. The rental encumbers the entire property, including the residential dwelling, barn, and farmland. Any private events are not open to

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the public at large. The property is advertised as a vacation home rental. Like the owner, any function hosted by a tenant is incidental to the primary residential function of the property.

Renters hosting occasional private events as part of the rental experience does not convert the property's use into a commercial event venue.

4. The Town is equitably estopped from requiring the Appellants to cease using the barn for rental purposes.

Maine courts have long recognized the doctrine of equitable estoppel as a defense to zoning enforcement, where “(1) the statements or conduct of [Town officials] induced [the property owner] to act; (2) the reliance was detrimental; and (3) [the] reliance was reasonable.” *Tarason v. Town of S. Berwick*, 2005 ME 30, ¶ 15, 868 A.2d 230. Application of estoppel turns upon the unique facts; courts evaluate “particular circumstances surrounding [the landowners] claim of estoppel” on a case-by-case basis to determine whether estoppel should apply. *Auburn v. Desgrosseilliers*, 578 A.2d 712, 714 (Me. 1990). A court will seek to weigh the cost of the party's reliance against the policy the town is seeking to enforce. *See Id.* at 715.¹

Raymond Town officials have been aware of the Appellants' use of the property for private functions for nearly two decades, and no enforcement actions were taken until the recent NOV. In 2017, the Appellants sought assurance from the Town that their use was permitted. Town officials confirmed that no permit was required for the use, and the Appellants were informed their use was compliant with the Ordinance. Seeking further assurances, the Appellants submitted a formal Conditional Use application to this Board. Although this Board denied the application, it reasoned that event spaces are not listed within the RR District—or any other district—as a conditional use. Members of this Board opined that the Appellants' use was not in violation of the Ordinance. Condition use approval is not necessary to permit the Appellants' use.

Nearly two decades of conduct by Town officials induced the Appellants to fully renovate the residential and accessory buildings and continue hosting residential tenants and private events at the property. The Appellants reasonably relied on these assurances in making substantial investments in the property, including the building renovations and the purchase of the adjacent parcel. The Town's previous acquiescence, lack of citation, and verbal affirmation contrast with the NOV, which disregards the history of the property and prior actions of Town officials. Instead, CEO Hanson demands the Appellants cease hosting events at the property.

The Appellants has already expended substantial resources based on the Town's conduct. Enforcing the NOV will impose an undue burden on them, outweighing any interest the Town may have, especially given its long-standing inaction.

¹ “[I]n balancing the interest in uniform enforcement against the city's misleading actions and the injury that the business owners would suffer if enforcement was permitted, in the interest of fairness and justice the city was equitably estopped from enforcing the land-use ordinance against the business owners.” *Desgrosseilliers*. 578 A.2d at 714.

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5. CEO Hanson's conflict of interest makes the NOV voidable by the Zoning Board of Appeals.

A conflict of interest is presented where "the town official by reason of his interest, is placed in a situation of temptation to serve his own personal interest to the prejudice of the interests of those for whom the law authorized and required him to act..." *Tuscan v. Smith*, 130 Me. 36, 46, 153 A. 289, 294 (1931). Town officials, such as code enforcement officer, must disclose any conflicts of interest and, where a conflict exists, delegate enforcement authority. *See Herrle v. Town of Waterboro*, 2001 ME 1, ¶ 2, 763 A.2d 1159 (noting that the Town of Waterboro's Code Enforcement Officer referred a matter to the Board of Selectmen due to a conflict of interest)

It is our understanding that CEO Hanson has been actively involved with the "Raymond Short Term Rental Initiative," which seeks to impose restrictions on rental properties. His involvement in this initiative constitutes a conflict of interest when enforcing regulations against short-term rentals, including the Appellants' use. The NOV, drafted and issued by CEO Hanson, is the first notice of violation provided to the Appellants and the first time the compliance was in question. The NOV clearly supports an initiative to regulate private short-term rentals.

Further, CEO Hanson previously or currently had a close relationship with prior neighbors of the Appellant. Those neighbors received a permit from the Town, executed by CEO Hanson, for a nonconforming use of their land. Legal action ensued from the neighborly dispute which questioned decision made by CEO Hanson and the municipality. CEO Hanson's intimate involvement with that matter and ongoing relationship with the prior neighbor creates a conflict of interest warranting his recusal from any enforcement action related to the Appellants or their property.

CEO Hanson failed to disclose his clear conflict of interest within the NOV. Given CEO Hanson's direct involvement with matters affecting the Appellants' property, the NOV should be deemed void. Enforcement authority should be delegated to the Town's Select Board to ensure impartiality.

Conclusion

For the reasons outlined above, we respectfully request that the Zoning Board of Appeals rescind the Notice of Violation, affirm that the Appellants' use of the property is permitted under the Town's Ordinance, and that no further action is required.

Please let me know if you have any questions or require further clarification.

Sincerely,



Michael J. Skolnick, Esq.

CC: The Roma Farm, LLC
Todd Roma
Jessica Dobson