

**TO: Town of Barnstable - Zoning Enforcement**  
**FROM: Heather Hunt and David Bogan**  
**424 Main Street, Osterville MA**  
**DATE: March 15, 2019**  
**RE: Zoning Enforcement: 438 Main Street, Osterville MA**

We live at 424 Main Street, Osterville, which is in zoning District RC. District RC permits homes to be used as single-family residential dwellings. The home next door to ours is no longer being used as a single-family residential dwelling. This is to request enforcement of the current zoning regulation at 438 Main Street, Osterville.

We purchased our home in 2016. We chose not to purchase a home in other residential districts that permit room rentals, Bed and Breakfasts, hotels, or commercial enterprises because we wanted to live in a neighborhood comprised of single-family residential dwellings. We were familiar with the character of this specific area, as Heather's mother and sister each have homes right off of Main Street in Osterville.

The home next door to ours - 438 Main Street - was sold in December 2018. In February 2019, we noticed five cars at the home over a weekend. The cars had license plates from two different states (CT and MA). The next weekend we noticed six different cars with license plates from two states (NH and MA) at the home. This is roughly approximately to the number of cars that park in front of the closest commercial establishment, Fancy's Market.

This unusual activity at the home caused us to question the use of the home. Research revealed that the owner is a Domestic Profit Corporation named "Scudder Bay Investment Corp", which purchased the property with a commercial mortgage. Further research revealed that Scudder Bay Investment Corp advertises and uses the home as a de facto hotel. It is available to the public throughout the year in exchange for compensation at a daily overnight rate and according to its terms and conditions. Scudder Bay Investment Corp represents to potential lodgers that the property is not owner occupied and that the owner will not be resident.<sup>1</sup>

As a consequence of Scudder Bay Investment Corp using the single-family residential home next door as a commercial enterprise that is akin to Bed and Breakfast or hotel rather than to a home where a family resides, we no longer have the sense of familiarity, and consequently security, that our single-family residential neighborhood once offered. It is impossible when we walk alone or are in the yard with our dog at night to know faces or cars, and which belong and which do not. Our neighbor is now the equivalent of a de facto hotel - without the benefit of a hotel's on-site manager - that is a home to no one, and where a steady stream of as many as ten strangers file in and out at Scudder Bay Investment Corp's designated check-in and check-out times if each pays their per night rate per their lodging reservation.

In February, Heather went to town offices to inquire about building permits, health inspections and zoning, in an effort to understand what was happening next door to our home and what was

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<sup>1</sup> Please see images of Scudder Bay Investment Corp's advertisement to the public, which includes its commercial terms and conditions and demonstrates current reservations by the public at a nightly rate over weekends and single weeks and associated information in a slide deck marked Attachment B.

permitted to happen.<sup>2</sup> When she asked about the permissible use and zoning, she was told then and in a subsequent call that the Town of Barnstable intends to begin to work on “AirBnB” regulations. We appreciate the Town’s intent to adopt new regulations prospectively to govern certain circumstances. The intent to adopt new regulations does not, however, override or suspend the current regulations that govern the permitted use of homes in our neighborhood. Moreover, “AirBnB” is of course a website and neither websites, nor the internet more broadly, define or change what is a permissible use of a home in District RC under current regulations.

The *current* RC District zoning regulations do not permit the commercial use to which Scudder Bay Investment Corp is using 438 Main Street today, and we ask the Town to enforce the current zoning regulations at this time.

In addition to the disruption to the character of our neighborhood and quality of life, our ability to sell our home to buyers who wish to live in a neighborhood comprised of single families using their homes as residences is substantially diminished: prospective buyers can see and/or research, as we did, and learn that the property next door is being operated by a commercial enterprise for a commercial use. It should be noted that this request does not raise the question of whether a homeowner may or may not rent their home to another family to use as a single-family residential dwelling according to the ordinary use of those words. That is not the use to which Scudder Bay Investment Corp is putting 438 Main Street.

The following is a short summary of the relevant facts and regulations relevant to this zoning enforcement request. We also provide separately: 1) Massachusetts Land Court cases from 2017 and 2018 that support the requested enforcement marked as Attachment A, and 2) a slide deck with Scudder Bay Investment Corp’s advertisements and related information marked as Attachment B.

We appreciate the town’s action on this important matter. We would be pleased to meet with the town’s enforcement officers, analysts or attorneys to discuss the facts, regulations or case law.

Thank you for work on behalf of Barnstable residents to maintain the use and character of homes and neighborhoods in a manner that the current zoning laws contemplate. Zoning laws and enforcement of those laws provides certainty to homeowners, and when we no longer have certainty, we no longer have the protection afforded by those laws.

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<sup>2</sup> Scudder Bay Investment Corp did not seek required permits and registrations per health and building regulations, and we appreciate the town’s intent to enforce those. This communication addresses the separate matter of permissible use under current zoning regulations.

### **Facts – 438 Main Street Osterville (RC)**

1. Scudder Bay Investment Corp registered in the Commonwealth of Massachusetts as a Domestic Profit Corporation in 2014.
2. Scudder Bay Investment Corp's registered address is 65 Scudder Bay Circle, Centerville Massachusetts, a residential property owned by its director, Robert J. Corcoran. Its agent is James P. Smith, whose address is 800 Hingham Street, Rockland Massachusetts. Its other agent is Donna Rogers, who appears to reside at 65 Scudder Bay Circle, Centerville.
3. Scudder Bay Investment Corp purchased a single-family residential dwelling at 438 Main Street in Osterville Massachusetts on December 14, 2018.
4. Scudder Bay Investment Corp executed a mortgage deed secured by a Commercial Real Estate Promissory note with Rockland Federal Credit Union on December 14, 2018 in connection with the purchase of 438 Main Street. This was pursuant to a board of director vote dated December 12, 2018 authorizing its president to sign documents related to a commercial loan for 438 Main Street. In addition, Scudder Bay Investment Corp executed a Conditional Assignment of Leases and Rents with the Rockland Federal Credit Union on December 14, 2018.
5. 438 Main Street is within Barnstable's residential zone District RC.
6. Scudder Bay Investment Corp is not using the property as a single-family residential dwelling.
7. None of the directors of Scudder Bay Investment Corp reside at 438 Main Street.
8. Scudder Bay Investment Corp represents in solicitations to potential lodgers that the property owner does not reside at 438 Main Street.
9. Scudder Bay Investment Corp offers 438 Main Street to the public at a daily rate pursuant to its terms and conditions every day of every month throughout 2019.
10. Scudder Bay Investment Corp's reservations show 438 Main Street is reserved for periods of weekends and single weeks throughout 2019.
11. Barnstable Assessor records indicate 438 Main Street has two (2) bedrooms and two and one-half (2.5) bathrooms within 972 square feet on .38 acres, and an unfinished attic.
12. In 2019, Scudder Bay Investment Corp began to offer 438 Main Street for rent as a non-owner occupied lodging facility with 4 bedrooms and 3 bathrooms that accommodates 10 overnight guests (per lodging advertisements, bedroom no. 1 has a queen bed; bedroom

no. 2 has a queen bed; bedroom no. 3 has 1 double bed and 2 single beds; bedroom no. 4 has 2 single beds; and, a common space has a single bed).<sup>3</sup>

13. Publicly available “reviews” of 438 Main Street about the use of the property as a de facto hotel by its various lodgers and by Scudder Bay Investment Corp refer to weekend accommodations for “groups” and “larger groups”.
14. Scudder Bay Investment Corp represents that it furnishes amenities to paying lodgers similar to those that Bed and Breakfasts and hotels provide to guests, including for example towels, bedsheets, soap and toilet paper and free parking.<sup>4</sup>
15. Scudder Bay Investment Corp requires its lodgers to check-in to the premise after 3:00 p.m. and to check-out of the premise by 10:00 a.m., terms and conditions similar to the terms and conditions of commercial lodging facilities such as hotels, motels and Bed and Breakfasts.
16. Scudder Bay Investment Corp’s identifies one “House Rule”: “No Smoking”. Parties and gatherings are permitted under Scudder Bay Investment Corp’s “House Rules”.

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<sup>3</sup>A review of the Town of Barnstable records revealed that Scudder Bay Investment Corp did not seek building permits from the Town of Barnstable to convert 438 Main Street to a 4 bedroom/3 bath property. The town also indicated verbally to me that Scudder Bay Investment Corp did not register as a rental property with the Health Department as of February 25, 2019. These permit and registration issues are separate from Scudder Bay Investment Corp’s use of the property per zoning regulations discussed in this request. The Health Department regulations concerning rental registration and inspections do not create permissible uses that are not conferred by the town’s zoning regulations. For example, in January 2019, members of the Zoning Board of Appeals stated publicly that zoning regulations did not permit a homeowner in District RC to rent rooms in a single-family home despite the fact that the homeowner registered the home with the Health Department per rental regulations.

<sup>4</sup> Scudder Bay Investment Corp also purchased 69 Fox Run in Centerville, Massachusetts in mid-2018. Town of Barnstable property records indicate 69 Fox Run is a three (3) bedroom, three (3) bathroom residential property. Scudder Bay Investment Corp offers 69 Fox Run for rent every day as a three (3) bedroom, four (4) bathroom home that accommodates nine (9) overnight guests. Similar to 438 Main Street, there is no evidence that Scudder Bay Investment Corp obtained permits to add a bathroom to the property (images of 69 Fox Run on-line advertisements available on request).

## Use of 438 Main Street, Osterville MA

1. **The use of buildings and structures for residences or other purposes are regulated as provided in zoning ordinances. The purpose of the town's zoning ordinance is set forth in Sec. 240-2, which provides that:**

The purpose of this chapter is **to promote the health, safety, convenience, morals and general welfare of the inhabitants of the Town of Barnstable, to protect and conserve the value of the property within the Town**, to increase the amenities of the Town, and **to secure safety from seasonal or periodic flooding, fire, congestion or confusion**, all in accord with the General Laws, Chapter 40A, as amended. **For this purpose, the height, number of stories, size of buildings and structures, size and width of lots, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population and the location and use of buildings, structures and land for trade, marine business, industry, agriculture, residence or other purposes are regulated within the Town of Barnstable as hereinafter provided.** (Emphasis added)

2. **Section 240-7 sets forth the permitted use within District RC.**

A. Conformance to use regulations. No building shall be erected or altered and **no building or premises shall be used for any purpose except in conformity with all of the regulations herein specified for the district in which it is located.** (Emphasis added)

3. **The principal permitted use of 438 Main Street in conformance with District RC regulations is as a single-family residential dwelling.**

**Scudder Bay Investment Corp's principal use of 438 Maine Street for commerce – turning control of the property over to unrelated lodgers for weekends and/or weeks at a per day rate on a continuing basis - does not conform to the principal permitted use.**

**Similarly, Scudder Bay Investment Corp's use of 438 Main Street as a de facto hotel or other commercial lodging facility is not an accessory or a conditional use permitted in the RC District.<sup>5</sup>**

§ 240-13 RC, RD, RF-1 and RG Residential Districts.

- A. Principal permitted uses. The following uses are permitted in the RC, RD, RF-1 and RG Districts:

**(1) Single-family residential dwelling (detached).**

- B. Accessory uses. The following uses are permitted as accessory uses in the RC, RD, RF-1 and RG Districts:

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<sup>5</sup> Where the zoning regulations intend to permit rentals to non-family members it specifies such permitted use. For examples, homeowners in certain other residential districts are permitted to rent a specified number of rooms to non-family members as an Accessory Use. Similarly, in certain other districts, homeowners are permitted to rent rooms to a specified number of lodgers in a multiple-unit dwelling as a Conditional Use provided a special permit is obtained.

(1) Keeping, stabling and maintenance of horses subject to the provisions of § 240-11B(2) herein.

C. Conditional uses. The following uses are permitted as conditional uses in the RC, RD, RF-1 and RG Districts, provided a special permit is first obtained from the Zoning Board of Appeals subject to the provisions of § 240-125C herein and subject to the specific standards for such conditional uses as required in this section:

(1) Public or private regulation golf courses subject to the provisions of § 240-11C(2) herein.

(2) Keeping, stabling and maintenance of horses in excess of the density provisions of § 240-11B(2)(b) herein, either on the same or adjacent lot as the principal building to which such use is accessory.

(3) (Reserved)<sup>[1]</sup>

[1] *Editor's Note: Former Subsection C(4), regarding family apartments, was repealed 11-18-2004 by Order No. 2005-026. See now § 240-47.1.*

(4) Windmills and other devices for the conversion of wind energy to electrical or mechanical energy, but only as an accessory use.

D. Special permit uses. The following uses are permitted as special permit uses in the RC, RD, RF-1 and RG Districts, provided a special permit is first obtained from the Planning Board:

(1) Open space residential developments subject to the provisions of § 240-17 herein.

4. **Unlike permitted uses in other districts (see, for example, Districts RB, RD-1 and RF-2), District RC does not permit use of single-family residential dwellings as Bed and Breakfasts or other transient lodging uses, such as hotels. Where permitted, the regulations allow such conditional lodging use subject to specific requirements, including but not limited to the home being owner-occupied and the owner being resident at all times that rooms are rented to lodgers.**

**Like Bed and Breakfast or hotel lodging facilities, Scudder Bay Investment Corp offers 428 Main Street for public lodging at a per day rate over weekends or weeks or a duration of lodgers' choice throughout the year; allows for the public to make overnight lodging reservations pursuant to specific terms and conditions such as cancelation policies; has designated check-in and check-out times for paid lodgers; and provides paid lodgers with amenities required by overnight transient guests such as sheets, towels, and other necessities. Scudder Bay Investment Corp is not resident and notifies lodgers that the owner will not be resident; in this respect, Scudder Bay Investment Corp's management of the property departs from Bed and Breakfasts, which are required by regulation to be owner-occupied and to be resident when in operation.**

5. **Hotels are not permitted in Residential District RC. The zoning regulation's definition of a "hotel" describes the use to which Scudder Bay Investment Corp is putting 438 Main Street – a property that is kept, used and advertised and held out to the public as a place where sleeping accommodations are supplied by the owner for pay to guests on a transient basis. Scudder Bay Investment Corp uses 438 Main Street for that purpose without, however, the on-site management required at hotels.**

A "hotel" shall mean a hotel, motel, resort, or inn, which is kept, used or advertised as, or held out to the public to be, a place where sleeping or housekeeping accommodations are supplied for pay to guests for transient occupancy. (Sec. 505-1)