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BOARD OF APPEAL

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SALEM, MASS

March 6, 2019

Decision

City of Salem Board of Appeals

Petition of EMILY SWILLING GRITTERS for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of one non-owner occupied short-term rental unit in the two-unit condominium at 105F DERBY STREET (Map 41, Lot 288, Block 801) (B1 Zoning District).

A public hearing on the above Petition was opened on February 20, 2019 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Mike Duffy (Chair), Peter A. Copelas, Patrick Shea, and Paul Viccica (alternate).

The Petitioner seeks a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of one non-owner occupied short-term rental unit. 105F Derby Street is a condominium unit that has operated as one non-owner occupied short-term rental unit, and the Petitioner is seeking to continue this use by special permit, per the procedure set forth in Section 15-6 (d) of the Salem Code of Ordinances.

Statements of Fact:

1. In the petition date-stamped January 10, 2019, the Petitioner requested a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of one non-owner occupied short-term rental unit. 105F Derby Street is a condominium unit that has operated as one non-owner occupied short-term rental unit, and the Petitioner is seeking to continue this use by special permit, per the procedure set forth in Section 15-6 (d) of the Salem Code of Ordinances.
2. Petitioner Emily Swilling Gritters presented the petition.
3. The property is one condominium unit located in the Residential Two-Family (R2) Zoning District. This property has operated as a single non-owner occupied short-term rental unit since June 2018.
4. Chapter 15 of the Salem Code of Ordinances, *Short-Term Rentals*, was enacted by an amendment to the Code of Ordinances that was approved by the Mayor on October 1, 2018. Section 15-6 sets forth *Requirements for Short-Term Rentals*. Section 15-6 (d) *Short-Term Rental of a Non-Owner Occupied Unit* states, in relevant part, that "An Operator may use his or her Non-Owner Occupied Unit as a Short-Term Rental only if the Operator was engaged in the Short-Term Rental of the property as of the date this Ordinance was filed with the Council and provided that the Operator obtains a Special Permit from the Zoning Board of Appeals." The same Section states that "Qualifying Operators must petition for a Special Permit within 60 days of the date of passage of this Ordinance in order to be eligible for this exception."
5. Per the Statement of Grounds included with the application, this property was first listed as a short-term rental on March 18, 2018 and was first used as such (first guests) in June 2018. This is before the

- ordinance allowing short-term residential rentals in the City of Salem was filed on July 19, 2018. The Petitioner included an email from Airbnb confirming publication of the listing dated March 17, 2018. The Petitioner also included a Certificate of Fitness for this property issued November 28, 2018.
6. As the above amendment was approved by the Mayor on October 1, 2018, the deadline for Qualifying Operators to petition for Special Permit was initially understood to be December 1, 2018.
 7. An Ordinance to amend the Salem Zoning Ordinance to add the use “non-owner occupied short-term rentals” to Section 3.0 *Table of Principal and Accessory Use Regulations* and to add definitions for “non-owner occupied short-term rental” and “short-term rental” to Section 10.0 *Definitions* was, however, adopted for second and final passage by the City Council on November 15, 2018.
 8. In light of the foregoing, in January of 2019, following consultation with the Assistant City Solicitor, Victoria Caldwell, a final deadline of January 15, 2019 was established for the aforementioned “Qualifying Operators.” This deadline was 60 days from the date of passage of the aforementioned Zoning Ordinance.
 9. Several parties contacted the City for information on the special permit process for non-owner occupied short-term rentals in October of 2018. However, the City did not inform these parties about the special permit process until December 6, 2018, after the original understood deadline of December 1, 2018 had passed. In consultation with Victoria Caldwell, Zoning Enforcement Officer Tom St. Pierre and Staff Planner Brennan Corriston, and consistent with the establishment of a final deadline of January 15, 2019 following the City Council’s vote on November 15, 2018, it was determined that these parties should not be denied the opportunity to seek a special permit and that their Petitions would be deemed timely under Section 15-6 (d).
 10. Petitioner Emily Swilling Gritters submitted the petition per the process outlined in Section 15-6 (d) of the Salem Code of Ordinances. This petition was submitted January 11, 2019, prior to the January 15, 2019 deadline.
 11. Section 3.0 *Table of Principal and Accessory Uses* of the Salem Zoning Ordinance was amended in 2018 to include the new use of “Non-Owner Occupied Short-Term Rentals.” Non-Owner Occupied Short-Term Rentals are allowed by special permit from the Zoning Board of Appeals in the following Zoning Districts:
 - Residential Two-Family (R2);
 - Residential Multifamily (R3);
 - Business Neighborhood (B1);
 - Business Highway (B2);
 - Business Wholesale & Automotive (B4);
 - Central Development (B5).
 12. As noted above, the property is located in the Business Neighborhood (B1) zoning district. The Non-Owner Occupied Short-Term Rentals use is allowed by special permit from the Zoning Board of Appeals in this district.
 13. The requested relief, if granted, would allow the Petitioner to continue to operate the condominium unit at 105F Derby Street as one non-owner occupied short-term rental unit.
 14. At the February 20, 2019 public hearing, Petitioner Emily Swilling Gritters discussed the petition. Mrs. Gritters noted that she and her husband had lived in Salem for several years, then moved, and rented their unit as a short-term rental through Airbnb. Mrs. Gritters noted that this is a two-unit, duplex-style condominium; she and her husband own the front unit and have neighbors in the back.

This is a four bedroom, two-and-a-half bathroom apartment of 1,350 square feet, sleeping six people at most. Mrs. Gritters noted that there is one parallel parking spot, and that with the downtown location, guests do not always have a car.

15. At the February 20, 2019 public hearing, one (1) member of the public – the abutter within the same condominium – spoke in favor of the petition, and no (0) members of the public spoke in opposition to the petition. Chair Mike Duffy noted that the Board received a letter in opposition to the petition from Flora Tonthat.
16. Chair Duffy noted that this application met the filing deadline and that the unit was operated as a short-term rental before July (19th) of 2018. Chair Duffy noted that the applicant submitted a Statement of Grounds addressing the criteria for special permit (noted below).

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petition, including the application narrative and plans, and the Petitioner's presentation and public testimony, makes the following **findings** that the proposed project meets the provisions of the City of Salem Zoning Ordinance:

Findings for Special Permit:

The Board finds that the continued use will not be substantially more detrimental to the neighborhood.

1. Social, economic and community needs served by the proposal: as the Petitioner notes in the Statement of Grounds, this use provides a service for visitors to the city.
2. There will be no changes to traffic flow and safety, including parking and loading, as the use will not change. One parking space is available and many guests do not need a car.
3. There will be no change in use of utilities and other public services; adequate utilities and public services already service the property.
4. There will be no change in impacts on the natural environment, including drainage, as no changes to the use or structure are proposed.
5. This use is consistent with neighborhood character. As the Petitioner notes in the Statement of Grounds, "The Derby Street neighborhood is a tourist district." This use has not caused issues with the neighbors. At the public hearing, the person who lives in the other unit of this condominium spoke in support of the petition.
6. Potential fiscal impact, including impact on City tax base and employment: this use will have a positive impact for the City through tax revenue.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Patrick Shea, Paul Viccica, Peter Copelas, and Mike Duffy (Chair)) and none (0) opposed to grant the requested Special Permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of one non-owner occupied short-term rental unit in the two-unit condominium at **105F Derby Street**, subject to the following **terms, conditions, and safeguards**:

Standard Conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes and regulations.
2. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
3. A Certificate of Inspection is to be obtained.

4. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Mike Duffy / BTC

Mike Duffy, Chair
Board of Appeals

A COPY OF THIS DECISION HAS BEEN FILED WITH THE PLANNING BOARD AND THE CITY CLERK.

Appeal from this decision, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws Chapter 40A, and shall be filed within 20 days of filing of this decision in the office of the City Clerk. Pursuant to the Massachusetts General Laws Chapter 40A, Section 11, the Variance or Special Permit granted herein shall not take effect until a copy of the decision bearing the certificate of the City Clerk has been filed with the Essex South Registry of Deeds.