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MAYOR

CITY OF SALEM, MASSACHUSETTS  
BOARD OF APPEALS

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CITY CLERK  
SALEM, MASS

May 1, 2019

Decision

City of Salem Board of Appeals

**Petition of ERIC SULLIVAN 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 (a single-family house) at 14 LYME STREET (Map 34, Lot 70) (R2 Zoning District).**

A public hearing on the above Petition was opened on April 17, 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), Jimmi Heiserman, Jimmy Tsitsinos, 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. 14 Lyme Street is a single-family house that has operated as one non-owner occupied short-term rental unit. 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 March 21, 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. 14 Lyme Street is a single-family house that has operated as one non-owner occupied short-term rental unit. 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. Attorney William Quinn, representing petitioner Eric Sullivan, presented the petition.
3. The property is a single-family home located in the Residential Two-Family (R2) Zoning District. This property has operated as a single non-owner occupied short-term rental unit since May 5, 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. The ordinance allowing short-term residential rentals in the City of Salem was filed with the City Clerk on July 16, 2018.

6. The submitted application included a printout of the listing on Airbnb as well as a spreadsheet of Airbnb reservations (including date, type, confirmation code, start date, number of nights booked, guest, listing, fees, and more). This spreadsheet shows that the first reservation was made on May 5, 2018. This is before the ordinance allowing short-term residential rentals in the City of Salem was filed with the City Clerk on July 16, 2018.
7. The deadline for qualifying operators to apply for a special permit to “grandfather” their non-owner occupied short-term rentals had been previously understood to be January 15, 2019. Assistant City Solicitor Victoria Caldwell stated in a memorandum to Staff Planner Brennan Corrison dated March 15, 2019 that the deadline could be reasonably interpreted to be June 15, 2019. The below is reproduced from the memorandum:
  - “Section 15-6 d. ‘Short-Term Rental of a Non-Owner Occupied Unit’ requires that any petitioner seeking a special permit for an eligible non-owner occupied unit must file within 60 days of the passage of the Ordinance. The City Council passed the different ordinances relating to short-term rentals on different dates and passed the last of these, the amendment to the Use Table, on November 15, 2018. The Council, however, also amended the general ordinance to include an effective date of April 15, 2019, rather than upon passage.”  
“Given that the public was informed of the April 15 effective date, several owners of existing non-owner occupied short-term rentals, which were located in zones where they were eligible to continue to operate on a grandfathered basis with a special permit, assumed that they had until at least April 15 to submit a petition. As such, a question has arisen as to what deadline should apply to these petitions. To read all of the sections of the ordinance sections together and avoid any conflict between the provision calling for an April 15, 2019 implementation date and the ‘60 days of passage’ language in Section 15-6 d., a reasonable interpretation would be to allow any eligible owners to file a petition requesting a special permit no later than 60 days after the implementation date – on or before June 15, 2019.”
8. Based on this memorandum, this petition date-stamped March 21, 2019 was timely submitted.
9. Mr. Sullivan submitted his petition per the process outlined in Section 15-6 (d) of the Salem Code of Ordinances.
10. 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).
11. As noted above, the property is located in the Residential Two-Family (R2) zoning district. The Non-Owner Occupied Short-Term Rentals use is allowed by special permit from the Zoning Board of Appeals in this district.
12. The requested relief, if granted, would allow the Petitioner to continue to operate the single-family house at 14 Lyme Street as one non-owner occupied short-term rental unit.

13. In the Statement of Grounds submitted with the petition, the petitioner spoke to the special permit criteria (noted below).
14. At the April 17, 2019 public hearing, Attorney William Quinn discussed the petition. Attorney Quinn noted that Mr. Quinn spent 6 months renovating the property, spending \$40,000-\$50,000. Attorney Quinn stated that Mr. Sullivan started renting this unit to single-family users in May of 2018, before the ordinance was filed, and has continued since then. Attorney Quinn stated that this is a three-bedroom home and that no bedrooms were added during the renovation. Attorney Quinn stated that there will not be many other non-owner occupied short-term rentals.
15. Attorney Quinn stated that this house is located in a quiet, residential setting, and has been since 1885. He stated that the owner qualifies under the ordinance. Attorney Quinn spoke to the special permit criteria. He noted that there are three bedrooms. He added that the property will be subject to the usual zoning definition of what a single-family use is: no more than three unrelated people, or a family. He added that those are the people who have been renting the property and who will continue to rent the property. He spoke to the special permit criteria:
  - Social, economic, and community needs served by the proposal: The need for clean, fit tourist housing is well-recognized in the City of Salem in addition to the need for affordable housing. The City is trying to address all these needs in different ways at the same time. The City is providing parks and recreation areas for single-family neighborhoods including congested areas downtown, and at the same time trying to cater to and accommodate the hundreds of thousands of tourists who come to the city every year. He stated that granting one more unit of single-family non-owner occupied housing is not going to have any significant effect one way or the other, and will provide good housing for some of the tourists that come here.
  - Traffic flow is unaffected. There is no change in the number of bedrooms. There is no driveway for extra cars to be backed into. There is a large church on the corner of Canal Street (and Lyme Street) that is a religious, weekend use. Attorney Quinn stated that this house sits behind the church. He added that the neighborhood was developed in the 1800s and that this house is consistent. He stated that there is parking on both sides of Lyme Street, and that Canal Street is public parking close to this property. He stated that as far as he and the petitioner are aware, that has more than serviced the need. He added that Mr. Sullivan owns properties with parking space on Lafayette Street which is only a block or two away; in the wintertime, if there is a snow emergency, a tenant can thus be accommodated nearby if not right in front of the property. They have not had complaints about parking from neighbors.
  - Neighborhood character: This is an R2 neighborhood with one- and two-family homes. He added that this is allowed as a two-family house but is used as a single-family, and this will continue to be used as a three-bedroom, one-family house. He stated that the exterior of the property is very fit and very appropriate. He stated that the house is very consistent with and is part of the historic character of the neighborhood, and that no exterior work is being done.
  - Utilities: This property has all the utilities and has been served by water and sewer for a hundred years or more. There will be no effect on any utilities.
  - The property has been improved. Its value will reflect that every time it is re-assessed. It will add to the tax income of the City.
  - Generally positive: serving tourists without any negative effect on the community that has been apparent or complained about.

16. Board member Jimmi Heiserman asked whether the unit was always rented as a single unit, or if three individual rooms were rented. Mr. Sullivan responded that the property was never rented as individual rooms, always as a single unit. Attorney Quinn noted that they cannot change that after the decision, and that there is no easy way to change the use if it is approved.
17. At the April 17, 2019 public hearing, one (1) member of the public spoke in favor of the petition and no (0) members of the public spoke in opposition. This member of the public, Jeff Cohen, noted that there is a section of the Ordinance (regulating short-term residential rentals) that exempts bed & breakfasts and inns because they have their own criteria and regulations. Jeff Cohen stated that he thinks there should be a condition that if someone tries to convert this property (at 14 Lyme Street) into a multi-unit Airbnb with three bedrooms, this should be exempt from the Ordinance and go in front of the building inspector because all buildings in Salem have to get a special permit.
18. Attorney Quinn stated that he does not have any trouble with that condition as long as it is written carefully. There was discussion of how the condition ought to be phrased. If, at any point, the owner of the property sought permission to use the property as a bed and breakfast as regulated by the City of Salem, the property would have to comply with the regulations for a bed and breakfast. Chair Duffy suggested that if the property were to come here for a change of use, the Zoning Board would have some jurisdiction anyway. Attorney Quinn suggested that the condition state that any change of use needs to come back to this Board. Chair Duffy noted that the existing Ordinance states that the rental of the unit must be for the entire unit; individual rooms within the unit cannot be occupied separately. Attorney Quinn agreed, stating that that is required under the definitions of a single unit in the Ordinance as adopted by the city. Chair Duffy stated that a condition that we could impose would be that the approval is for this building as currently constituted, as one rental unit. Brennan Corriston noted that this was how it was advertised as well: "to allow the continued operation of one non-owner occupied short-term rental unit (a single-family house)" Attorney Quinn stated they have no problem with that.

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: This use will serve the need for clean, fit tourist housing.
2. There will be no changes to traffic flow and safety, including parking and loading, as the use will not change. Parking is available on both sides of Lyme Street, as well as nearby on Canal Street.
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 the use and structure are not proposed to change.
5. Neighborhood character: This single-family house fits in with the other one- and two-family houses in this neighborhood, which is zoned Residential Two-Family. This historic house fits in with the historic character of the neighborhood, and no exterior work is proposed.

6. Potential fiscal impact, including impact on City tax base and employment: The petitioner has invested in the improvement of the property. The use will likely have a positive impact on City tax base by increasing the assessed value of the property.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Jimmi Heiserman, Mike Duffy (Chair), Jimmy Tsitsinos, and Paul Viccica) 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 (a single-family house) at **14 Lyme 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 Occupancy is to be obtained.
4. A Certificate of Inspection is to be obtained.
5. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Special Conditions:

1. A Certificate of Fitness is to be obtained.
2. With the exception of reversion to a single-family residential use, the use of this property shall not be changed without approval from the Zoning Board of Appeals.

*Mike Duffy / BJC*

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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.