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MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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CITY CLERK
SALEM, MASS

January 30, 2019

Decision

City of Salem Board of Appeals

Petition of COPPER REALTY LLC 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 home) at 20 TURNER STREET (Map 41, Lot 16) (R2 and B1 Zoning Districts).

A public hearing on the above Petition was opened on January 16, 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, Jimmi Heiserman, Patrick Shea, and Jimmy Tsitsinos.

The Petitioner seeks a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of non-owner occupied short-term rentals. 20 Turner Street is a single-family home 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 December 18, 2018, the Petitioner requested a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of a non-owner occupied short-term rental. 20 Turner Street is a single-family home 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. Attorney William Quinn, representing petitioner Copper Realty LLC, presented the petition.
3. The property is a single-family home located in the Residential Two-Family (R2) and Business Neighborhood (B1) Zoning Districts. This property has operated as a single non-owner occupied short-term rental unit since March 23, 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 "All confirmed reservations" report from Airbnb for this property included with the application, this use began March 23, 2018. This is before the ordinance allowing short-term residential rentals in the City of Salem was filed on July 19, 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. The Petitioner 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 the Petitioner about the special permit process until December 6, 2018, after the original deadline had passed. The Petitioner was one of several parties in this situation. In consultation with Assistant City Solicitor Victoria Caldwell, Zoning Enforcement Officer Tom St. Pierre and Staff Planner Brennan Corrison it was determined that the Petitioner should not be denied the opportunity to seek a special permit and its Petition would be deemed timely under Section 15-6 (d).
8. 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 adopted for second and final passage by the City Council on November 15, 2018.
9. In light of the foregoing, in January of 2019, following additional consultation with 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.
10. Petitioner Copper Realty LLC submitted the petition per the process outlined in Section 15-6 (d) of the Salem Code of Ordinances.
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 Residential Two-Family (R2) and Business Neighborhood (B1) zoning districts. The Non-Owner Occupied Short-Term Rentals use is allowed by special permit from the Zoning Board of Appeals in both these districts.
13. The requested relief, if granted, would allow the Petitioner to continue to operate the single-family home at 20 Turner Street as one non-owner occupied short-term rental unit.
14. At the January 16, 2019 public hearing, Attorney William Quinn discussed the petition. Attorney Quinn noted that the property is a small colonial home near the House of Seven Gables, the marina, and the ferry. He noted that the property has been available for short-term rentals through Airbnb since 2017. Attorney Quinn stated that there have been no problems with the property to the best of his knowledge, and that this property is perfect for this use.
15. Attorney Quinn spoke to the special permit requirements:
 - Traffic flow and safety, including parking and loading: There are six (6) parking spaces on the property, and no more than one (1) family (or group) can rent the property at a time. This is more parking than is required in the R2 zoning district, and because the use will not change and no construction is going on, there will be no changes to traffic flow and safety.

- Utilities and other public services: there is no change planned; existing utilities and other public services are adequate.
 - Impacts on the natural environment, including drainage: as the use would not change, the environmental impacts would not change.
 - Neighborhood character: this historic Colonial building fits in with the other single- and multifamily historic Colonial buildings in the neighborhood.
 - Potential fiscal impact: The assessed value of the property is likely to increase, and there will be increased revenue to the City through real estate taxes.
 - Social, economic and community needs (Attorney Quinn did not address this in the meeting, but noted this in the Statement of Grounds submitted with the application): This use meets the City's need for "clean and fit housing for tourist families visiting the City."
16. At the January 16, 2019 public hearing, Staff Planner Brennan Corrison noted that in the advertisements for the public hearing, he had mistyped the name of the Petitioner as Cooper Realty LLC, not Copper Realty LLC. Mr. Corrison stated that he had checked with Attorney Quinn and the City Solicitor's Office to see if they could proceed without re-advertising, and they said this would be permissible. Attorney Quinn noted that the name of the petitioner is properly written as Copper Realty LLC on the application.
17. At the January 16, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.

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 Petitioner notes, this use meets the City's need for "clean and fit housing for tourist families visiting the City."
2. There will be no changes to traffic flow and safety, including parking and loading, as the use will not change. With six (6) off-street parking spaces at the property, there is more parking than is required (1.5 spaces required).
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 will not change.
5. There will be no change in impact on neighborhood character. As Petitioner notes, "the building is consistent with the historic architecture of the neighborhood, and the neighborhood already accommodates both residential and commercial uses serving tourists visiting the City."
6. Potential fiscal impact, including impact on City tax base and employment: as Petitioner notes, this use "will increase the assessed value of the property" and thus generate "increased real estate tax revenue for the City."

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Patrick Shea, Jimmi Heiserman, Jimmy Tsitsinos, Mike Duffy (Chair), and Peter A. Copelas) 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 home) at 20 Turner 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.

 /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.