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BOARD OF APPEALS
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CITY CLERK
SALEM, MASS.

May 29, 2019

Decision

City of Salem Board of Appeals

Petition of LIANN DIMARE 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-family house at 26 CROSS STREET (Map 36, Lot 57) (R2 Zoning District).

A public hearing on the above Petition was opened on February 20, 2019 pursuant to M.G.L Ch. 40A, § 11. The hearing was continued to March 20, 2019 (no testimony was heard), April 17, 2019, and May 15, 2019, and closed on May 15, 2019 with the following Salem Board of Appeals members present: Mike Duffy (Chair), Peter A. Copelas, Jimmi Heiserman, Patrick Shea, Jimmy Tsitsinos, and Paul Viccica (Alternate). As noted below, Jimmi Heiserman and Jimmy Tsitsinos were absent at the February 20, 2019 hearing but present at the March, April, and May hearings; they both affirmed that they examined all evidence pertaining to this petition prior to participating in the vote to continue at the March 20, 2019 hearing. Paul Viccica was absent at the March 20, 2019 hearing, but no testimony was heard. As noted below, Peter A. Copelas and Patrick Shea were absent at the April 17, 2019 public hearing but present at the February, March, and May hearings; they both affirmed that they examined all evidence pertaining to this petition prior to participating in the vote to grant the request at the May 15, 2019 hearing.

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. 26 Cross Street is a two-family house in which one unit (Unit #2) has been used as a 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 January 14, 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. 26 Cross Street is a two-family house in which one unit (Unit #2) has been used as a 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. Petitioner Liann DiMare presented the petition.
3. The property is a two-family house located in the Residential Two-Family (R2) Zoning District.
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. 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 Liann DiMare submitted the petition per the process outlined in Section 15-6 (d) of the Salem Code of Ordinances. This petition was submitted January 14, 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 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.
13. The requested relief, if granted, would allow the Petitioner to continue to operate one unit (Unit #2) in the two-family house at 26 Cross Street as one non-owner occupied short-term rental unit.

14. The Petitioner included with the application a Short Term Transient Rental Property Management agreement for the property with an effective date of June 7, 2018. The owner of the property is Wendy Samuels; the authorized Petitioner, Liann DiMare, is the President of iTrip North Shore, the property management organization.
15. At the February 20, 2019 public hearing, Petitioner Liann DiMare discussed the petition. Ms. DiMare noted that this is an unusual situation in that the property was rented under a different host, Debra Crosby, for a few years. Ms. DiMare noted that they have had roof and water damage and had not yet reactivated the listing. The Board asked Ms. DiMare to speak to the previous use, and Ms. DiMare noted that she did not have access to Ms. Crosby's Airbnb account. Building Commissioner Tom St. Pierre asked if the petition could be continued due to outstanding issues at the property that needed to be resolved. The Board also noted that they would like to see proof of a continuing use.
16. At the February 20, 2019 public hearing, no (0) members of the public spoke in favor of the petition and two (2) members of the public spoke in opposition to the petition. In addition, Chair Duffy noted that the Board received a letter in opposition to the petition from Flora Tonthat of 30 Northey Street.
17. At the February 20, 2019 public hearing, the Board voted four (4) in favor (Peter A. Copelas, Mike Duffy (Chair), Patrick Shea, and Paul Viccica) and none (0) opposed to continue the petition to the regularly scheduled meeting on March 20, 2019.
18. The petitioner retained an attorney, Peter G. Calabrese. On March 12, 2019, Attorney Calabrese submitted a memorandum in support of this special permit application to the Board. Attorney Calabrese noted at this time that he did not yet have documented evidence in support of the application (which was referenced in the memorandum), but that Ms. DiMare would be happy to continue the hearing from the March meeting to the April meeting; otherwise, he would bring the evidence to the March hearing. Staff Planner Brennan Corrison recommended that Mr. Calabrese request to continue the petitions to April to give the Board sufficient time to review the evidence.
19. Board members Jimmi Heiserman and Jimmy Tsitsinos, who were absent at the February 20, 2019 hearing of this petition, signed affidavits of service on March 20, 2019, certifying that they examined all evidence pertaining to 26 Cross Street which was distributed at the single missed session on February 20, 2019, which evidence included an audio recording of the missed session. They submitted these certifications prior to participating in the vote to continue the matter to the April 17, 2019 public hearing.
20. At the March 20, 2019 meeting of the Zoning Board of Appeals, the Board voted five (5) in favor (Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Patrick Shea, and Jimmy Tsitsinos) and none (0) opposed to continue the petition to the regularly scheduled meeting on April 17, 2019.
21. Prior to the April 17, 2019 meeting, Attorney Calabrese submitted the above-referenced evidence in support of the special permit application.
22. At the April 17, 2019 public hearing, Attorney Calabrese, representing the petitioner, presented the petition. Attorney Calabrese stated that the unit was rented through Airbnb from July 2017 to November 2018. He spoke to the special permit criteria.
23. At the April 17, 2019 public hearing, Chair Duffy asked about the Building Department compliance issues. Attorney Calabrese noted that the roof is in progress, and Ms. DiMare stated that all violations have been resolved. Included in the evidence submitted by Attorney Calabrese was a letter from Building Inspector Steve Cummings regarding 26 Cross Street dated March 20, 2019, which stated in relevant part: "This is a follow up letter to inform you that all the violations on the property

referenced in the previous letter have been corrected. Except for the third floor unit however a permit has been pulled and construction has began to merge the second and third floor unit into one unit.”

24. At the April 17, 2019 public hearing, Chair Duffy asked about the use prior to July 19, 2018. (At the time, the filing date was understood to be July 19, 2018. Since then, it has become clear that the ordinance regulating short-term residential rentals was filed with the City Clerk on July 16, 2018, and was first before City Council on July 19, 2018. As such, the deadline for operation is understood to be July 16, 2018.) Ms. DiMare noted that included as evidence were reviews from August 2017 to November 2018. The Board questioned whether the reviews provided were indeed for the 26 Cross Street unit and not for other units rented out by Debra Crosby. Paul Viccica stated that the previous operator was renting out individual bedrooms through Airbnb. Tom St. Pierre stated that this was more like a boarding house. The Board asked about the makeup of the building and the apartment. Ms. DiMare explained that there are long-term tenants on the first floor and that the unit for which the special permit has been requested is on the 2nd and 3rd floors and includes four bedrooms, two bathrooms, and one kitchen.
25. At the April 17, 2019 public hearing, no (0) members of the public spoke in favor of the petition and two (2) members of the public spoke in opposition to the petition. One member of the public who spoke in opposition, Susan Matula, read from a letter from Tom St. Pierre dated July 25, 2018 directing the property owner, Wendy Samuels, to cease the use of the third floor unit which is not legal and has one egress only, and to either dismantle the unit or have an architect design layout that creates a legal, townhouse-type unit. Ms. Matula questioned whether any portion of the third floor could be rented or used as basis for grandfathering the non-owner occupied short-term rental of the unit. She also raised concerns about other issues at the property. Ms. Matula had also submitted to the Board a letter in opposition and attached photos of issues at the property. Building Inspector Steve Cummings clarified that a third unit would not be allowed in an R2 neighborhood without coming before this Board. Chair Duffy read a letter in support of the petition from Lesley Niccolini and Brian Riley of 12 Lemon Street in support of the petition.
26. Chair Duffy asked Ms. DiMare if she wanted to address parking concerns; she stated that they have rules about parking at the property, and it is managed.
27. At the April 17, 2019 public hearing, Paul Viccica stated that his issue is whether the unit was “engaged in the short-term rental” as of the date required. After discussion among the Board, the petitioner, and Attorney Calabrese, Chair Duffy stated that the question is where the Board stands with evidence of prior use. Paul Viccica asked for additional evidence directly connected to 26 Cross Street in particular. Jimmy Tsitsinos asked for a parking plan for the site.
28. The Board wondered whether an established property management agreement would be considered “engaged in the short-term rental” of the property. The Board requested an opinion from the City Solicitor’s office.
29. The Board gave Ms. DiMare the opportunity to request to continue to the next meeting to provide more evidence; she requested the continuance.
30. At the April 17, 2019 meeting of the Zoning Board of Appeals, the Board voted four (4) in favor (Mike Duffy (Chair), Jimmi Heiserman, Jimmy Tsitsinos, and Paul Viccica) and none (0) opposed to continue the petition to the regularly scheduled meeting on April 17, 2019.
31. Prior to the May 15, 2019 meeting, Ms. DiMare submitted additional documentation linking Debra Crosby to the operation of 26 Cross Street Unit 2 as a short-term rental through Airbnb, including documentation related to a housing court case between Jeanne Binda and Debra Crosby regarding property address “26 Cross Street, HOPE Guest Room 2 Salem MA 01970” as well as a Craigslist

advertisement for the room and a letter from Debra Crosby to Jeanne Binda dated April 9, 2018, advising Jeanne Binda that if she would like to book the "Hope Guest Room" ("26 Cross St Apt #2") she must do so through Airbnb. The housing court case had a file date of June 4, 2018. Ms. DiMare also submitted a parking plan for the property.

32. Board members Peter A. Copelas and Patrick Shea, who were absent at the April 17, 2019 hearing of this petition, signed affidavits of service on May 15, 2019, certifying that they examined all evidence pertaining to 26 Cross Street which was distributed at the single missed session on April 17, 2019, which evidence included an audio recording of the missed session. They submitted these certifications prior to participating in the discussion and vote in the May 15, 2019 public hearing.
33. At the May 15, 2019 public hearing, Ms. DiMare discussed the documentation that she submitted. She noted that there is off-street parking for four total cars: two tandem spots for Unit 1 (the long term tenant) and two tandem spots for Unit 2.
34. At the May 15, 2019 public hearing, no (0) members of the public spoke in favor of the petition and one (1) member of the public spoke in opposition to the petition. Chair Duffy noted that the Board received a letter in opposition to the petition from Jeff Cohen, who attended prior hearings on this issue. Chair Duffy read from the letter.
35. At the May 15, 2019 public hearing, Chair Duffy noted that the starting date of the use was a concern, and that the Board has received supplemental information. Paul Viccica stated that the Board has accepted this quality of proof before, and that he was pretty satisfied with the proof. Paul Viccica confirmed that, if approved, the special permit is for a single unit, Unit 2. Peter A. Copelas stated that he was satisfied that the petition has met the standard for when the unit was in use (as a non-owner occupied short-term rental).
36. Chair Duffy spoke to the special permit criteria.

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**:

The property owner **was engaged** in the short-term rental of the property as of the date the Ordinance was filed.

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: There is a need for this type of housing for visitors to Salem.
2. There will be no significant changes to traffic flow and safety, including parking and loading, as the use will not change.
3. Adequate utilities and public services service the property.
4. There will be no change in impacts on the natural environment, including drainage, as there are no proposed changes to the exterior.
5. There will be no change in impact on neighborhood character. The property has been in use to this extent or similar in this neighborhood.
6. Potential fiscal impact, including impact on City tax base and employment: There is a potential positive fiscal impact from this use.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Patrick Shea, and Jimmy Tsitsinos) 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 (**Unit 2**) in the two-family house at **26 Cross 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 construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. A Certificate of Occupancy is to be obtained.
6. A Certificate of Inspection is to be obtained.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Mike Duffy / BJC

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.