

City of Salem Zoning Board of Appeals
Meeting Minutes
February 20, 2019

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, February 20, 2019 in the first floor conference room at 98 Washington Street, Salem, Massachusetts at 6:30 pm.

Chair Mike Duffy calls the meeting to order at 6:30 pm.

ROLL CALL

Those present were: Mike Duffy (Chair), Peter A. Copelas, Patrick Shea, and Paul Viccica. Also in attendance were: Brennan Corrison - Staff Planner, Tom St. Pierre - Building Commissioner, and Lorelee Stewart - Recording Clerk.

REGULAR AGENDA

Location: **80 Margin Street (Map 25, Lot 632) (R2 Zoning District)**
Applicant: **John Femino**
Project: **The applicant requested a continuance to the regularly scheduled meeting on Wednesday, February 20, 2019** of a public hearing for all persons interested in the petition of JOHN FEMINO to appeal two decisions of the Building Commissioner regarding 80 MARGIN STREET.

Chair Duffy opens the meeting and announces that there are only four members of the Board present. He notes that this is a quorum and this allows the Board to conduct business, but applicants will need to obtain all four votes in order to have some relief granted. He states that in these circumstances, the Board has traditionally offered applicants the choice of proceeding tonight with a four-member Board or requesting a continuance to the next meeting, when there may be five members and a full board present for considering any applications, so that will come up with each application as we proceed.

The petitioner, John Femino, states that he requests a continuance at the advice of his attorney because there are only four Board members. Chair Duffy notes that there have been a couple of continuances of this before, some requested by Mr. Femino or his attorneys on his behalf. Chair Duffy states that where there are only four members tonight, it is not Mr. Femino’s fault that they’ve got this situation. Chair Duffy notes that the Board sent Mr. Femino a letter saying that they would not consider other continuances, but this is a different circumstance. Mr. Femino states that he told Brennan [Corrison] about that letter and that Brennan already knew about it, and says Brennan advised him about the four members.

Motion and Vote: Peter A. Copelas motions to continue the petition to the next regularly scheduled meeting of the Zoning Board on Wednesday, March 20, 2019. Paul Viccica seconds the motion. **The vote is unanimous with four (4) (Patrick Shea, Mike Duffy, Peter A. Copelas, and Paul Viccica) in favor and none (0) opposed.**

Location: **15 Salem Street (Map 34, Lot 321) (R3 Zoning District)**

Applicant: **Juan Figueroa**

Project: A public hearing for all persons interested in the petition of JUAN FIGUEROA for a special permit per Section 3.3.3 Nonconforming Structures and variances per Section 4.1.1 Table of Dimensional Requirements of the Salem Zoning Ordinance for minimum lot area and minimum lot area per dwelling unit to allow the use of the existing third story as a third unit in the two-family home at 15 SALEM STREET (Map 34, Lot 321) (R3 Zoning District).

Documents and Exhibitions

- Application date-stamped January 10, 2019 and supporting documentation

Petitioner Juan Figueroa and his daughter, Yandi Figueroa, present their petition. Chair Duffy asks them to discuss what their plans is and what they are hoping for the Board to do. Ms. Figueroa states that the home is a legal two-family home but there is a third floor dwelling that is not recognized as a legal third-floor apartment, and therefore cannot be legally rented. There would be no changes to the property, to the land, to the structure of the home; they are asking just for the special permit and the variance to make the home a legal three-family to therefore legally rent out the third floor apartment.

Chair Duffy asks if there is a third floor already separate and divided up. Ms. Figueroa responds yes, stating that there are two separate exits, kitchen, bathroom, two bedrooms, living room, living area.

Paul Viccica asks, of the six parking spaces, are all of them on-site? Ms. Figueroa responds yes. Mr. Viccica asks if any of the spaces are tandem, as they do not have the site survey. Ms. Figueroa states that the parking area has been surveyed by the neighbor, they have not surveyed it, but there is parking at 15 Salem Street. Mr. Copelas asks what the configuration of the parking is. Ms. Figueroa responds that there are two cars in front of each other and three along if that makes sense. Mr. Copelas responds that they call that tandem parking, one in front of the other – you'd have to move one car to get the other out. Ms. Figueroa states yes, and adds that right now, four cars are parking there, but six cars fit comfortably in the parking lot. Mr. St. Pierre asks Mr. Figueroa how long he has owned the property. Mr. Figueroa responds, 28 years. Mr. St. Pierre asks if it was a two-family when they bought it. Mr. Figueroa responds yes. Mr. Copelas asks Mr. Figueroa if he is the one who put the kitchen and the third floor apartment in. Mr. Figueroa states no, it was already there before he bought it. Ms. Figueroa clarifies that the house was purchased as a two-family, but the third floor already had the kitchen set up, the bathroom set up, but he purchased it as a two-family home. Mr. Copelas says to Ms. Figueroa, I think you mentioned you have to date rented it to family members. Ms. Figueroa responds yes, her aunt lived there, her brother currently lives there, she lived there; it has only been family that has been able to reside.

Mr. Viccica states that it is hard to see without floor plans and surveys about how the parking is going to be stacked. They prefer not tandem so you can get six cars in. He states that he sees from pictures that it might be wide enough to 45-degree park. He states that he does not see that there would be a problem here but that he does not think that the application is complete enough. He would like to see an internal configuration so he can see where the egress stairs are and how you're egressing, especially from a third floor attic. He states that he knows the Board will condition it on the basis of making sure that it complies with building codes, but he doesn't know if he wants to throw it into Tom's lap without seeing, because there may need to be some external or configurations that he might want to have in terms of exterior stairs.

Mr. Copelas states that he thinks the other issue is that for the application for the variance, there are some very specific boxes that you have to check off in order to be eligible for a variance, and one of them is laying out what the hardship is according to state law. There is a certain definition for what a hardship is. That absolutely needs to be included in the application and I don't see it anywhere, so that's another reason why we may not want to act on this tonight. It's one more piece that's missing from the whole package.

Mr. Viccica suggests that the Board consider a continuance, and whether the petitioner will accept it or not is totally up to them, so the Board can get the documentation that is required as part of the submission and to determine some of those issues – a survey, site plan with parking laid out, certainly the grounds for hardship, that should be part of the paperwork that you update for the March meeting. I assume you would like to be in the March meeting. Ms. Figueroa responds yes.

Chair Duffy adds that the second page of the petition form discusses the need for the written statement of hardship addressing three bullet points.

Mr. Copelas adds that the petition itself only mentions a special permit. Staff Planner Brennan Corriston responds that that's on him, stating that the request was expanded to include the variance when we realized that it would be required in addition to the special permit. Mr. Copelas asks if it was advertised. Mr. Corriston responds that it was advertised as such.

Mr. Corriston tells Ms. Figueroa that if she would like to present any additional information as they had discussed, that would be acceptable, but it sounds like the Board would also like to see a written, more complete statement of hardship. The Board agrees.

Mr. Viccica asks Tom St. Pierre if he would need to see anything relative to the egress requirements. Mr. St. Pierre responds that they can either do that or a site visit, perhaps, and eliminate that – that might be the best thing to do.

Motion and Vote: Paul Viccica motions to continue the petition to the regularly scheduled meeting on March 20, 2019. Patrick Shea seconds the motion. **The vote is unanimous with four (4) (Peter A. Copelas, Mike Duffy, Patrick Shea, and Paul Viccica) in favor and none (0) opposed.**

Location: **47 Summer Street (Map 25, Lot 578) (R2 Zoning District)**
Applicant: **Philip Marchand**
Project: A public hearing for all persons interested in the petition of PHILIP MARCHAND for 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 unit in the single-family house at 47 SUMMER STREET (Map 25, Lot 578) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped January 10, 2019 and supporting documentation

Petitioner Philip Marchand presents the petition. He explains that the property was formerly run as a traditional bed and breakfast (the Henry Derby House Bed & Breakfast) and that he has been running it as a short-term rental since 2015. Mr. Marchand explains that the rentals help him pay the bills and do some work and maintenance on the property; he would like to keep the property in his family – it has been in his family since the 1950s – keep up the property, and pay the bills.

Chair Duffy asks Mr. Marchand to describe the configuration of the unit. Mr. Marchand notes that the unit is a five-bedroom, four-bathroom single-family house that is rented as one unit, usually to big families coming to town for weddings, family reunions, or Halloween festivities. He gears it towards weddings and big families. He does not like to rent it as individual rooms, and it makes a lot more sense as a house. He rents it as one house, usually for a weekend, sometimes for a full week. He states that it is usually pretty well occupied in the summer months, May through November, and pretty quiet this time of year.

Mr. Copelas notes that if approved, the special permit only allows for the use of this unit as a single non-owner occupied short-term rental unit; individual rooms may not be rented. Mr. Marchand agrees.

Chair Duffy opens the hearing for public comment.

Brian Shaughnessy of 4 Broad Street speaks in favor of the petition. He notes that he has known Mr. Marchand for years. He states that Mr. Marchand is a wonderful member of the community. He states that the house is incredibly difficult to maintain and for many years did not look good. He states that since Mr. Marchand has taken over and reinvested, his own property value has increased because his (Mr. Marchand's) house looks so good. He states that there have been no issues with renters at this house or 49 Summer Street. He adds that this is a wonderful operation.

Jeff Cohen of 12 Hancock Street speaks in favor of the petition. He discloses that his wife has a bed and breakfast in Salem and that they are friends with the family. He states that when 47 Summer Street was a bed and breakfast, the owners conformed to all the regulations for bed and breakfasts. He states that he believes that because the building qualified as a bed and breakfast and conforms to all the regulations of a bed and breakfast, which are exempt from the short-term rental law.

Eva Mossberg, owner of the property that overlooks Mr. Marchand's property, speaks in favor. She states that she has been Mr. Marchand's neighbor for 13 years, and moved to Marblehead about 2 years ago, but for 11 years preceding that and is still at the house often. She states that she is much in favor of the special permit.

Dennis Alice of 57 Summer Street speaks in favor. He states that he moved to Salem in 2011 and has known Mr. Marchand since then. He states that he has seen Mr. Marchand invest in the property and that Mr. Marchand is at the house pretty much every day, and that Mr. Marchand is a huge asset to the neighborhood.

Joseph Gagnon states that he owns a three-family house one house away from Mr. Marchand's properties. He states that he has known Mr. Marchand for about six years, that Mr. Marchand takes good care of the place, and that he is always working on it. He states that Mr. Marchand has really improved the neighborhood and that he supports this petition 100%.

James Zavaglia of 25 High Street states that he is around the corner and has known the family for years. He states that he supports the petition. He notes that parking is very tight and that he hopes that they can do something to remedy the situation. He adds that this is minimal impact, of course, and that he supports this and it is the same problem we always have in Salem with parking. He adds that he supports both properties.

Chair Duffy notes that the criteria particular to these applications have been met with respect to the use before the cutoff date in July of last year, and the application filing deadline. Chair Duffy reviews the general criteria for a special permit:

1. Social, economic and community needs served by the proposal: we have heard some discussion of that. We have also seen in the materials submitted with the application a discussion of what is being provided here in terms of those criteria.
2. Traffic flow and safety, including parking and loading: There has been some discussion from members of the public about parking issues in that area, but as far as this property is concerned, there is a driveway that holds two cars, which is usually enough, according to the applicant.
3. Existing utilities and other public services are adequate, and there will be no change.
4. There will be no negative impacts on the natural environment, including drainage, as the use will not change.
5. The historic property fits into neighborhood character based on the descriptions from many of the residents who live nearby in support of the application and from the applicant.
6. Potential fiscal impact, including impact on City tax base and employment: There is a positive fiscal impact in allowing this operation to continue.

Chair Duffy notes that the Board received an email from Flora Tonthat in support of the petition, stating it was previously a bed & breakfast and was up to code and licensed, so she supports that continuing to operate as a short-term rental house.

Motion and Vote: Peter A. Copelas moves to grant 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 unit in the single-family house at 47 SUMMER STREET (Map 25, Lot 578) (R2 Zoning District), subject to the following terms, conditions, and safeguards. Paul Viccica seconds the motion. **The vote is unanimous with four (4) (Patrick Shea, Paul Viccica, Peter A. Copelas, and Mike Duffy) in favor and none (0) opposed.**

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.

Location: **49 Summer Street (Map 25, Lot 579) (R2 Zoning District)**
Applicant: **Philip Marchand**

Project: A public hearing for all persons interested in the petition of PHILIP MARCHAND for 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 unit in the single-family house at 49 SUMMER STREET (Map 25, Lot 579) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped January 10, 2019 and supporting documentation

Petitioner Philip Marchand speaks about 49 Summer Street. His parents purchased this house in 2005 with the intention of living there, next to the bed and breakfast (at 47 Summer Street). They moved out of the property and converted it to a short-term rental. 49 Summer Street has been a short-term rental since around 2006 or 2007. Mr. Marchand states that he has been running it since 2012 and uses it in the same manner as 47 Summer Street. It is used as one unit and rented to families and groups for weddings and Halloween. He notes that he almost lost the property but was able to rework the mortgage and get to a much better interest rate, and with the short-term rentals was able to maintain the property and has been keeping it up as he can.

Mr. Copelas asks if this is a single unit. Mr. Marchand states that this is a five-bedroom, three-bathroom property. They rent it to families and try to gear it towards wedding parties. Sometimes if there is a very big party he will put people in both houses. They are trying to get families coming in for weddings so they can all stay together and save on costs.

Chair Duffy notes that Mr. Marchand discussed in his application that there has been an issue with respect to parking. Mr. Marchand explains that mainly it is with his immediate neighbor at 51 Summer Street. Mr. Marchand explains that there is a driveway on either side of the house and they are both brick, Mr. Marchand's to the left, his neighbor's to the right, and it's one of those really tiny ones that you could miss if you're not paying attention. He states that occasionally people will park in front of the house and sometimes block the driveway. Mr. Marchand states that his neighbor called him before the meeting and said she wasn't going to come to the meeting but she wanted to let me know that the parking is an issue. Mr. Marchand says he told his neighbor to give all her tenants his number and if the driveway is ever blocked, have them call him rather than the police, because he can usually contact his guests immediately and have them move [their car] out of the way. He adds that it does happen; he knows it happens every season a couple of times occasionally.

Chair Duffy notes that it is discussed in Mr. Marchand's application that he has had an issue with parking. He adds that the neighbors at 51 Summer Street have complained about guests blocking their driveway. Mr. Marchand states that he has a standing agreement with residents of 51 Summer Street to call him on his cell phone if this is a problem. He will have guests move their car right away.

Chair Duffy opens the hearing for public comment.

Dennis Alice of 57 Summer Street speaks in favor, stating "everything I said before."

Eva Mossberg, owner of 26 High Street, speaks in favor, stating she supports this motion for the same reasons as she supports the other property (47 Summer Street).

Joseph Gagnon of High Street speaks in favor, stating that he supports what Mr. Marchand is doing. He notes that Mr. Marchand uses historically appropriate materials for the property.

Brian Shaughnessy of 4 Broad Street speaks in favor, stating that everything he said before goes. He adds that short-term rentals should be encouraged so that people can maintain their homes.

James (“Jim”) Zavaglia of 25 High Street speaks in favor, stating that he is in full support.

Chair Duffy notes that this application is slightly different from the prior application with respect to the parking, but the applicant spoke to that and he has made himself very available to his neighbors to try to address any parking issues that arise.

Motion and Vote: Paul Viccica moves to approve 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 unit in the single-family house at 49 SUMMER STREET (Map 25, Lot 579) (R2 Zoning District), subject to the following terms, conditions, and safeguards. The motion is seconded by Peter A. Copelas. **The vote is unanimous with four (4) (Patrick Shea, Paul Viccica, Mike Duffy (Chair), and Peter A. Copelas) in favor and none (0) opposed.**

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.

Location: **105F Derby Street (Map 41, Lot 288, Block 801) (B1 Zoning District)**
Applicant: **Emily Swilling Gritters**
Project: A public hearing for all persons interested in the 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).

Documents and Exhibitions

- Application date-stamped January 10, 2019 and supporting documentation

Emily Swilling Gritters speaks about her request for a special permit. She states that she lived in Salem for eight years, before she and her husband moved for work. She states that they still love Salem and were not ready to let go. She states that they stayed in some Airbnbs while house-hunting and the quality of places to stay and the price over the extended stay hotels was something they

wanted to be able to provide people if necessary. She states that they really enjoy being hosts and helping people enjoy the city, and that it is a great creative outlet, too.

Mrs. Gritters explains that this is a duplex style, two-unit condominium; they have the front unit, and there are neighbors in the back. This is a four-bedroom, two-and-a-half bathroom unit, but it is small at 1,350 square feet. There is one parallel parking space. Because the unit is located downtown, renters do not always have a car.

Chair Duffy opens the hearing for public comment.

Patrick McCormack, owner of the rear unit of the condominium, speaks in favor. He states that there have been no problems with the Airbnb and it has gone very smoothly.

Chair Duffy notes that the Board received a letter in opposition to the petition from Flora Tonthat, who expressed opposition to all of the applications except 47 Summer Street. Chair Duffy reads from the letter: "Salem's short term rental ordinance came into being because of the housing shortage created by short term rentals. People who work here cannot afford to live here. People who want to live here long term and be a part of the community cannot find apartments because there are too few apartments for rent. Please help support the essence of Salem's short term rental ordinance and for that matter, Boston's short term rental ordinance also. Allow apartments to be available to be rented and lived in by people who want to live here long term. Some of you may know Joanne McCrea who serves on SHC & many other committees. She was displaced from her apartment from a condo conversion and could not find a decent apartment in her price range to stay in Salem. Fire victims who have good jobs have a very hard time finding apartments in Salem. With all the hotels added and Hampton Inn coming up, we don't need more short term rentals."

Chair Duffy notes that this application met the filing deadline and criteria, and that the unit was operated as a short-term rental before July of 2018. He notes that the applicant submitted a Statement of Grounds addressing the special permit criteria.

Motion and Vote: Paul Viccica moves to grant 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), subject to the following terms, conditions, and safeguards. Patrick Shea seconds the motion. **The vote is unanimous with four (4) (Patrick Shea, Paul Viccica, Peter A. Copelas, and Mike Duffy (Chair)) in favor and none (0) opposed.**

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.

Location: **17 Fowler Street (Map 25, Lot 86) (R2 Zoning District)**

Applicant: **George Claassen**

Project: A public hearing for all persons interested in the petition of GEORGE CLAASSEN for 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 unit in the single-family house at 17 FOWLER STREET (Map 25, Lot 86) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped January 14, 2019 and supporting documentation

Mr. Claassen speaks about his short term rental. He states that he and his wife have been part of the Salem community for nearly twenty years. He states that he and his wife moved to Maine just over a year ago, but did not want to sell the house because they still feel part of the community. He states that they thought a good solution would be to do a short-term rental; he adds that they usually stay in Airbnbs when they travel. This is a small, single-family, two-bedroom home, with parking for two cars. There is a fenced-in backyard. Most tenants have pets; he states that people with pets say they have a challenge finding suitable accommodations. He adds that a lot of renters have kids, and they like the fenced-in backyard and the safety and privacy it provides. He states that this serves a good need, they charge a fair price, and the people who stay spend money in Salem, because they are mostly here for events in Salem. He adds that they were caught a little by surprise by the ordinance but were grateful to have the chance to be grandfathered in.

Peter A. Copelas notes that Mr. Claassen provided proof of a booking on July 14, which was close to the July 19, 2018 deadline. Mr. Claassen states that the first rental was June 20, but he had set up the Airbnb account and changed his email address since, so the latest booking he could provide proof for was July 14. He adds that it is easy to find more proof if required. Mr. Copelas states that the application meets the criteria; it is not a long-term historical use, but it meets the deadline.

Chair Duffy opens the hearing for public comment. No one speaks in favor of or in opposition to the petition.

Chair Duffy notes that the application was submitted timely, and that the applicant has submitted a rather detailed discussion of the special permit criteria and has also spoken to a lot of those issues tonight. Chair Duffy reviews the special permit criteria.

Motion and Vote: Peter A. Copelas moves to grant 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 unit in the single-family house at 17 FOWLER STREET (Map 25, Lot 86) (R2 Zoning District), subject to the following terms, conditions, and safeguards. Patrick Shea seconds the motion. **The vote is unanimous with four (4) (Mike Duffy (Chair), Peter A. Copelas, Patrick Shea, and Paul Viccica) in favor and none (0) opposed.**

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.

Location: 26 Cross Street (Map 36, Lot 57) (R2 Zoning District)
Applicant: Liann DiMare
Project: A public hearing for all persons interested in the 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).

Documents and Exhibitions

- Application date-stamped January 14, 2019 and supporting documentation

The petitioner, Liann DiMare, explains that this unit had been rented out by a different host for a couple of years, then she took over as manager: she signed the agreement with the owner in June. There was roof and water damage in that time so they have not reactivated the listing. It was being used under a different host, and it will be reactivated in June after the repairs are completed.

Ms. DiMare notes that this unit has four bedrooms, two bathrooms, and two parking spaces. It has contributed to the community from a financial perspective; they encourage and promote local businesses.

Board member Peter A. Copelas asks the petitioner to speak to the previous use as short-term rental: is there any evidence that it has been used as a short-term rental? Ms. DiMare states that she does not have access to the previous Airbnb account from the host. It was hosted by Debra Crosby as a short-term rental for two years while she was a resident there. The account was shut down because of water damage so Ms. DiMare could not access previous reviews.

Mr. Copelas asks about the other unit. Ms. DiMare states that this is a two-family house. The first floor is a permanent resident who has Ms. DiMare's card and can call at any time.

Building Commissioner Tom St. Pierre asks for a continuance to the next meeting because of outstanding code and other issues with the property that have not been resolved. He states that he would like to close the loop on some of the issues that they have had. Ms. DiMare asks if the continuance would be until the repairs are complete. Mr. St. Pierre states that there are outstanding issues that they need to resolve with the owner, and this would give them time to discuss. He asks Ms. DiMare to contact him to discuss the issues.

Board member Paul Viccica states that they need more credible information. Mr. Copelas states that the petitioner would have a more solid case if there was some evidence of continuing use as a short-term rental. Ms. DiMare states that she will try but when one manager is replaced by another it is not the most warm relationship. Mr. St. Pierre states that this unit was being probably overly used – they were renting rooms.

Chair Duffy reads from an email from Flora Tonthat of 12 Hancock Street in opposition to the petition, stating that she is opposed to the absentee owner using this unit for short-term rental. She speaks to short-term rentals limiting other rental opportunities for people who would stay long term.

Mr. St. Pierre asks if Ms. DiMare would be living there or managing. Ms. DiMare states that she manages short-term rentals full time.

Chair Duffy opens the hearing for public comment.

Susan Matula of 10 Lemon Street speaks in opposition to the petition. She discusses problems with the property including shoveling. She states that someone who was living there called the police on Debra.

Fran Bates of Lemon Street abuts this property and notes that there was an abandoned vehicle and abandoned boat left out at the property. He states his opposition to the petition until this is resolved. Mr. St. Pierre states that some of those issues have not been resolved.

Mr. Viccica states that the Board needs proof that this was operating prior to July 19, 2018. He states that if it was operating as an illegal boarding house, that is a problem. He states that he thinks the petitioner will need to provide proof at the next meeting.

Ms. DiMare states that she spoke with Dominick Pangallo in the Mayor's Office about the two properties – one they are transferring, and one that they will be starting on June 7 – and asked if this would be considered operating. She states that he said yes, according to the ordinance, it is considered operating if you have a signed agreement and are showing the intent. Mr. Viccica states that the ordinance is very clear that you must show proof. Ms. DiMare argues that her proof is the contract signed on June 7, 2018. (This is in the meeting packet.)

Chair Duffy states that if the petitioner can find additional information, he would highly encourage her to provide it. He states that they are continuing to the next meeting so that some of the compliance issues there can be addressed.

Motion and Vote: Peter A. Copelas makes a motion to continue to the 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) to the regularly scheduled meeting on March 20, 2019. Patrick Shea seconds the motion. **The vote is unanimous with four (4) (Peter A. Copelas, Mike Duffy (Chair), Patrick Shea, and Paul Viccica) in favor and none (0) opposed.**

Location: **82 Federal Street (Map 26, Lot 631) (R2 Zoning District)**

Applicant: **Liann DiMare**

Project: A public hearing for all persons interested in the petition 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 82 FEDERAL STREET (Map 26, Lot 631) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped January 14, 2019 and supporting documentation

The petitioner, Liann DiMare, discusses the petition. She notes that this is a six-bedroom, two-bathroom unit on two floors (the second and third floors). This is one unit in the two-family house at 82 Federal Street. They rent to families. A contract was signed in June. They asked the Mayor's Office if this would be considered grandfathered; after being told yes, they proceeded to furnish the unit and launch in late August 2018. The first floor of the building has full-time residents.

Tom St. Pierre states that a zoning opinion needs to come from the Zoning Enforcement Officer, not the Mayor's Office, because the Zoning Enforcement Officer can be appealed. Mr. St. Pierre states that information (regarding zoning) from others is not necessarily accurate or legally sustainable. Ms. DiMare states that they went to the source of the ordinance to say, "How do we interpret this?" She states that with this information, they proceeded to spend money in furnishing and refurbishing the property.

Board member Peter Copelas asks Staff Planner Brennan Corrison for the exact language of the ordinance regarding the date. Mr. Corrison reads from his reproduction of Section 15-6 Requirements for short-term rentals (d) Short-term rental of a non-owner occupied unit: "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. 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. Rentals of non-owner occupied units must be for the entire unit; individual rooms within non-owner occupied units may not be offered as separate short-term rentals. Non-owner occupied units used for short-term rental under this subsection shall be subject to section 36-6 of the ordinance and required to pay a trash fee, but shall not be eligible for a vacancy waiver pursuant to section 36-6 d."

Board member Paul Viccica states that the gist of the ordinance is to grandfather those properties that have been in active agreements for use for short-term rental prior to that date. Ms. DiMare states that she did have an active agreement. Mr. Copelas states that there is a contract, but it was not being used for short-term rentals. Ms. DiMare states that they had work to do to get the unit ready, which happened from June to mid-August. She states that they would not have proceeded (if not available).

There was a question of the definition of "engaged." Mr. Corrison states that this might be a situation where the Board defers to the Solicitor's Office for an opinion. Mr. Viccica states that he thinks the Board has to (do so). Mr. Viccica states that from his perspective, the point of grandfathering something is that it is in operation so that things that occur over time can be experienced by the neighbors. He states that he would rather have the Solicitor discuss the intent of the Ordinance than parse the petitioner's language against anybody else's language. He suggests that

the petition be continued to the next meeting so the Board could get guidance from the City Solicitor.

Mr. St. Pierre notes that Assistant City Solicitor Victoria Caldwell worked on the ordinance, so the question would be directed to her. Mr. Copelas states that the Board would request an opinion from Assistant City Solicitor Caldwell.

Chair Duffy opens the hearing for public comment.

Jane Arlander of 93 Federal Street speaks in opposition to the petition. She states that the home was owned by one owner for 50 years, always with two families there. She adds that the unit was sold to an LLC in December 2016. She notes that one family moved in to the first floor unit in March 2017, and a couple moved into the second and third floor unit later in 2017. They were in the second and third floor unit until this summer. Jane Arlander states that she does not feel that this has ever been used as a non-owner occupied short-term rental prior to July 19, 2018. She states that she knows there was a bridal party there in October (2018). She states that she does not see how this unit qualifies.

Jeff Cohen of 12 Hancock Street states that he believes it is important that the Assistant City Solicitor issue an opinion. He discusses his understanding of the intent of the timing of elements of the Ordinance.

Connie Arlander of 91 Federal Street speaks in opposition to the petition. She states that there have been parking issues, noise, parties, and density problems.

Chair Duffy notes that the Board received a letter in opposition to this petition and others from Flora Tonthat.

Mr. Copelas asks if the petitioner would accept a request to continue. The petitioner responds in the affirmative.

Motion and vote: Peter A. Copelas motions to continue the 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 82 FEDERAL STREET (Map 26, Lot 631) (R2 Zoning District) to the regularly scheduled meeting on March 20, 2019. The motion is seconded by Patrick Shea. **The vote is unanimous with four (4) (Patrick Shea, Mike Duffy (Chair), Paul Viccica, and Peter A. Copelas) in favor and none (0) opposed.**

Location: **225 Lafayette Street (Map 33, Lot 496) (R3 and R2 Zoning Districts)**
Applicant: **Stephen Tolan**

Project: A public hearing for all persons interested in the petition of STEPHEN TOLAN 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 225 LAFAYETTE STREET (Map 33, Lot 496) (R3 and R2 Zoning Districts).

Documents and Exhibitions

- Application date-stamped January 15, 2019 and supporting documentation

The petitioner, Stephen Tolan, speaks about the three-family home he owns at 225 Lafayette Street. He states that the house is very well maintained. He states that his brother and his sister-in-law live on the third floor and help maintain and clean the short-term rental unit. Mr. Tolan states that he has had only positive feedback. He states that there are eight parking spaces for three units. He notes that the other units are long-term rentals, and he is not trying to change those. He states that the extra income that comes from the one unit helps him keep up the units and maintain reasonable rents (for the long-term units). Mr. Tolan states that it is mainly extra income in the summer. He states that the unit is vacant about half of the time, so it is using less of the services that our taxes go to. He notes that renters usually park at the house and walk into town.

Chair Duffy asks if the unit is designated by any number. Mr. Tolan states that it is the first floor – 225 Lafayette Apartment 1.

Staff Planner Brennan Corriston notes that in the legal advertisements for this petition, he incorrectly described the property as a two-family house, not a three-family house, but that he had checked with Assistant City Solicitor Victoria Caldwell who confirmed that it would not necessary to be re-advertise. The legal advertisements noted that the special permit request was to continue the non-owner occupied short-term rental use in one unit.

Chair Duffy opens the hearing for public comment.

Jeff Hancock of 12 Hancock Street speaks in favor of the petition. He states that he is generally against non-owner occupied short-term rentals and explained his reasoning, including diminished rental stock, but states that Mr. Tolan is really trying to keep two-thirds of the property long-term rentals, which is not easy in Salem. He commends Mr. Tolan for that.

George Claassen (Mr. Tolan's brother-in-law) speaks in favor of the petition. He states that the rents are extremely affordable, that his tenants spend a lot of money in town, and that he is providing quality accommodations.

Chair Duffy notes that the Board received a letter from Flora Tonthat in opposition to the petition (and others) for reasons already stated.

Board member Peter A. Copelas asks the petitioner to clarify that he is renting this unit as an inclusive unit, not to separate parties at the same time. Mr. Tolan answers that this is one unit, two bedrooms, one booking – you can only book the whole unit and could not split it. He states that there is one kitchen, one and a half bathrooms, and that it is spacious, historic, and clean, with great reviews.

Chair Duffy reviews the criteria for special permit.

Motion and vote: Patrick Shea moves to approve the petition of STEPHEN TOLAN 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 **225 LAFAYETTE STREET Apartment 1** (Map 33, Lot 496) (R3 and R2 Zoning Districts), subject to the following terms, conditions, and safeguards. The motion is seconded by Peter A. Copelas. **The vote is unanimous with four (4) (Peter A. Copelas, Mike Duffy (Chair), Patrick Shea, and Paul Viccica) in favor and none (0) opposed.**

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.

Location: **11 Ames Street (Map 37, Lot 50) (R2 Zoning District)**

Applicant: **Stefano J. Basso**

Project: A public hearing for all persons interested in the petition of STEFANO J. BASSO for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to alter the existing nonconforming structure, add an addition and a shed dormer, and add a second dwelling unit, as well as a variance per Section 5.1 *Off-Street Parking* for parking configuration at the single-family house at 11 AMES STREET (Map 37, Lot 50) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped January 18, 2019 and supporting documentation
- Petition of non-opposition signed by four neighbors

The petitioner, Stefano J. Basso, introduces himself and Leticia De Gool. Mr. Basso notes that they had a neighborhood meeting and they have a petition that four neighbors signed; he submits this. Mr. Basso explains that he is a registered architect and his partner is an interior designer. He explains that he and his partner purchased the property and plan to convert it into a duplex-style two-family home, with them living in one unit and renting out the other. Mr. Basso explains that there the house is “in shambles” and has had many issues. It has been uninhabited since 1993. He states that it was used illegally as a commercial fishery and had an unpermitted dock that the City removed. There have been health violations for storage of junk. The City was in the process of receivership on the property when the owners decided to sell the property.

Mr. Basso notes that they went to the Conservation Commission last week. The proposal is an addition on the water side of the property. They are planning to convert the house from a single-

family to a two-family. They are planning to live there and will use the second unit as an income unit to afford the renovations. This will be a townhouse-style layout.

He notes that the addition will be set in three feet (3') from the face of the front wall and will also be set in slightly in the back; this has made their neighbors happy, as the addition will not block their view. The planned second story of the addition steps in from the first story. There will be a hipped roof. They plan to finish the attic, add a shed dormer, and a roof deck on top of the addition.

Mr. Basso shows the designs for the house renovations and addition. He states that they are adding some metal roof details to the existing features. This is a simpler Victorian house. The addition will have a vertical natural cedar treatment to highlight the existing house and the addition. He states that the house will fit into the quirky neighborhood with a mix of houses.

Chair Duffy notes that they are planning tandem parking, which requires a variance. He asks the petitioner to speak to the need and why the request for variance is supported. Mr. Basso notes that they initially had a different idea for the addition and parking which would require no zoning relief, putting some parking on the left of the building and some on the right (closer to the water). However, the layout of this addition would have been bulkier and would have had more impact on the neighborhood. Ames Street terminates close by and concrete bollards make it tight on the 11 Ames side of the street; parking on the right side of the building would be difficult. He explains that keeping the addition tucked closer to the existing building and putting all the parking spaces on the left side worked out better. Mr. Basso adds that the lots on the street are typically 40 feet wide and 43 feet deep, and that though this lot is longer, they do not have the benefits of the length – parts of the lot do not constitute frontage because they are on the riverbank.

Mr. St Pierre supports Mr. Basso's description of the property, noting that the street is narrow and ends at 11 Ames Street; Mr. St. Pierre states that you would not be able to pull in to parking on the right side, back out, and turn back up the street. Mr. St. Pierre also speaks to the history of issues with the property.

Chair Duffy opens the hearing for public comment. No members of the public speak in favor of or in opposition to the petition.

Mr. Copelas discusses the variance criteria, stating that this seems to be a reasonably good example of the hardship that is required for the variance.

Chair Duffy states that the special permit criteria are fairly obvious. He states that this will take a dilapidated property that has been a problem for the city for almost two decades and bringing it back to what looks like a very nice reconstruction.

Mr. St. Pierre asks Mr. Basso if the neighbors had any other comments; Mr. Basso responds that there is a lot of excitement from everyone they have talked to.

Staff Planner Brennan Corriston notes that the petition of non-opposition was signed by Kelly Semons, Patrick Murtaugh, Lori Swasey, and Elizabeth Hope Manseau.

The Board takes separate votes for the two forms of relief.

Special Permit motion and vote: Paul Viccica makes a motion to approve a special permit per a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to alter the existing nonconforming structure, add an addition and a shed dormer, and add a second dwelling unit at the single-family house at 11 AMES STREET (Map 37, Lot 50) (R2 Zoning District), subject to the following terms, conditions, and safeguards. The motion is seconded by Peter A. Copelas. **The vote is unanimous with four (4) (Peter A. Copelas, Patrick Shea, Mike Duffy (Chair), and Paul Viccica) in favor and none (0) opposed.**

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. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Variance motion and vote: Paul Viccica moves to approve the requested variance per Section 5.1 *Off-Street Parking* for parking configuration at the single-family house at 11 AMES STREET (Map 37, Lot 50) (R2 Zoning District), subject to the following terms, conditions, and safeguards. The motion is seconded by Peter A. Copelas. **The vote is unanimous with four (4) (Paul Viccica, Patrick Shea, Mike Duffy (Chair), and Peter A. Copelas) in favor and none (0) opposed.**

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. Petitioner shall obtain a building permit prior to beginning any construction.
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.

MEETING MINUTES

Chair Duffy states that there are minutes from December, and he does not have any comments. Paul Viccica states that he was not at the December or January meetings, and he thinks he made a motion somehow in one of the minutes (it might have been January). Brennan Corrison states that he will double-check that and make sure that is corrected. Peter A. Copelas asks if they were distributed electronically. Mr. Corrison says they were emailed.

(The below discussion of old/new business occurred before the vote on minutes.)

Motion and vote: Paul Viccica makes a motion to approve the December 19, 2018 meeting minutes as amended. The motion is seconded by Patrick Shea. The vote is three (3) (Paul Viccica, Mike Duffy (Chair) and Patrick Shea) in favor, none (0) opposed, and one (1) (Peter A. Copelas) abstaining.

OLD/NEW BUSINESS

Salem.com email addresses

Mr. Corrison states that he received an email from Dominick Pangallo stating that Board emails should be used to conduct Board business. He states that some Board members may not have emails. There is some discussion about this. Mr. Copelas states that he does not get emails from it. Mr. Corrison states that he requested emails from the IT department, and that he will request instructions on how to link to another account if you want to get them forwarded. Mr. St. Pierre states that it is very important to use those for public record.

2019 ZBA Application Package

Chair Duffy states that they've been dealing with the application package for a little while. Mr. Corrison states that he asked the Solicitor's office to find out if there are any procedural requirements beyond just a vote from the Board to approve the changes. He adds that hopefully for March they can move forward with the application (package).

Fee Discussion

Chair Duffy mentions the fees of nearby cities, and some are charging higher fees. Mr. Copelas states that a tiered structure is appropriate because the financial value of some of the projects is miniscule all the way up to extraordinary. It's been important that coming to the Board is affordable for people without an attorney, for a homeowner looking to do something modest, but a \$2 or \$5 or \$7 million project ought to reflect the amount of effort that has to go into it. Mr. St. Pierre states that the Building Department fee structure is set up as one and two families and everything else, and that the Board may want to use that. Mr. Corrison notes that several towns have a similar tiered structure, and some differentiate between residential projects of various sizes and things like appeals of decisions of the Building Commissioner, which tend to have a larger time cost involved.

Chair Duffy states that they will keep it on the agenda and table the discussion until everyone can look at the documents, and people may want to make recommendations or presentations on what the approach should be. Mr. Corrison states that he will look into the procedure for approving the fee structure.

The upcoming agenda is discussed to see if an additional meeting is required. Mr. Corrison states that they have received many applications for next month; he asks if they should push some applications for March to April or have a special meeting. He states that there are nine applications so far, three of which are extension requests for marijuana special permits. It is noted that four were continued at today's meeting. Mr. St. Pierre says not to take any more for March. Chair Duffy thinks that they do not need a special meeting. The board opts for a longer meeting next month. Mr. Copelas asks if any petitions are very complicated. Mr. Corrison states that most are very straightforward, and some are more complicated.

ADJOURNMENT

Motion and vote: Paul Viccica makes a motion to adjourn. The motion is seconded by Peter A. Copelas. The vote is unanimous with four (4) (Peter A. Copelas, Mike Duffy (Chair), Patrick Shea, and Paul Viccica) in favor and none (0) opposed.

The meeting ends at 8:30 pm.

For actions where the decisions have not been fully written into these minutes, copies of the Decisions have been posted separately by address or project at:

<https://www.salem.com/zoning-board-appeals/pages/zoning-board-appeals-decisions-2019>

Respectfully submitted,
Brennan Corrison, Staff Planner