

**City of Salem Zoning Board of Appeals**  
**Meeting Minutes**  
July 17, 2019

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, July 17, 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 6:35 pm.**

**ROLL CALL**

Those present were: Peter Copelas, Mike Duffy (Chair), Jimmi Heiserman, Rosa Ordaz, Jimmy Tsitsinos, and Paul Viccica. Also in attendance were Brennan Corrison – Staff Planner, Tom St. Pierre – Building Commissioner, and Lorelee Stewart – Recording Clerk.

**REGULAR AGENDA**

Location: **79 Columbus Avenue (Map 44, Lot 57) (R1 Zoning District)**  
Applicant: **Eric Cormier**  
Project: A continuation of a public hearing for all persons interested in the petition of ERIC CORMIER for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to reconstruct and expand a nonconforming single-family home to a greater height (three stories) at 79 COLUMBUS AVENUE (Map 44, Lot 57) (R1 Zoning District).

Documents and Exhibitions

- Application date-stamped May 29, 2019 and supporting documentation

Petitioner Eric Cormier addresses the Board and describes his process of getting here tonight. He went in to purchase the home to re-do it and to live in it. He states that he had a hard time getting a mortgage because the property was nonconforming and in such distress, with a lot of water in the basement. He explains that Jim [McElroy, now the property owner] got involved and financed the house with me; after they are done with the construction, they will revisit a mortgage company and finance it.

Mr. Cormier states that prior to purchasing the home, he asked Tom [St. Pierre] if he could fill in the basement and make it a slab home, and Tom said it was not a bad idea. Mr. Cormier says he did not have any drawings to present to him at the time. He notes that Tom directed him to Darya [Mattes, the Conservation Planner]. He states that Darya said that because you are not changing any footprints, you’re staying on existing foundation, you’re not doing any elevations to the outside of the foundation, it does not seem to be a problem if you’re going straight up. He states that he asked Darya if he needs to notify Historic [Commission] and that Darya told him that no, Historic is not in his zone. Mr. Cormier explains that he then got there in early spring, his neighbors welcomed him, and the architects were taking a long time to do his drawings, but the architect knew he had to build up on existing foundation. He states that someone had suggested that he put a garage under [i.e., on the first floor]. Mr. Cormier states that the first floor would be non-livable space - a garage - and then the second floor would be the start of the living space, and the third floor would be three bedrooms. He states that the house was a two-bedroom bungalow and the ceilings on the second

floor were six and a half feet high. He states that his neighboring house has a high ridge, and the home on the other side is a little bit shorter, and that he felt that he might be able to do such a thing. He says that he talked to his architect today and noted that there was a concern about the look, and we are going with high-end architectural shingles, wide wood, all Pella windows, true-divided glass, the kitchen is a \$50,000 kitchen. He states that we really want to build the home to be a beautiful home. He states that the goal is to fit in with the neighborhood. He states that he is open to changing a few things, but the tough part is, if he changes the height of 34 feet - he could come down two feet to 32 feet - but if we were to change the height, we would lose the garage.

Mr. Viccica asks if he had a building permit. Mr. Cormier says that he had a permit for interior work only. Mr. Viccica asks, when you demolished the house, there was no building permit issued? Mr. Cormier states that he started work on it on the Saturday and he went to the Building Department on the Monday. Mr. Copelas asks if the permit was for interior renovation. Mr. Cormier responds in the affirmative. Mr. Cormier states that he knows what they are saying and he feels awful about this. Mr. Cormier says the tough thing about it is that the senior engineer who did the drawings said to him that as long as you are building on a pre-existing foundation and you don't exceed the ridge height of 34 feet, you should be fine to do that. He states that he knows it is a little different because of the area it is in, but the state code book says as long as you are building on an existing footprint, you are able to do so. He says he might be wrong.

Mr. Viccica says he understands and that actually that is true, if you're looking not to get variances or exacerbate a special permit request. Mr. Viccica states that the point is that Mr. Cormier originally intended and pulled the permit for an interior renovation; that quickly morphed into whatever you thought was possible, and you demolished an existing residence without getting a permit. And that permit process may have triggered you to go to the ZBA, and the Planning Board, and the Conservation Commission; there is a list of significant approval processes in the area you want to occupy. Mr. Viccica says right now, because of what is in front of us, there are a lot of issues and he is sure there are neighbors who might want to speak. Mr. Viccica says the difference between an interior renovation and what you're proposing is dramatic.

Mr. Cormier states that he apologizes. He states that he has a letter from someone saying that there is a lot of mold throughout the house. He states that he had a structural engineer come in and the roof rafters were 2 by 6 rafters and the floor joists were 2 by 6s and they would not be able to accommodate current code.

Mr. Copelas asks Mr. Cormier whether they are proposing to build on the exact same footprint. Mr. Cormier answers in the affirmative. He states that they are actually reducing the living space - it had an addition on the back and they took that down and are not asking to put that back on. He expands that there was a small enclosed porch in the back that was built on pylons and was not safe. Mr. Cormier states that the engineer said they would not be able to reproduce this because they cannot dig in the waters.

There is some discussion of proposed dimensions and alternatives.

Mr. Viccica notes that a special permit requires that what comes before the Board is in character with the neighborhood. He states that he knows the Board has received some information from the Historical Commission and while they don't have purview here, they are a resource in the City of Salem for places that are historically relevant in the City. He states that he knows that they are willing to work with Mr. Cormier if he is amenable to that. Mr. Viccica states that his issue is that

Mr. Cormier is increasing the nonconformity in height - the number of stories - so dramatically. Mr. Viccica states that he is glad Mr. Cormier looked at the neighbors. One neighbor is two and a half stories, the bedroom spaces are under the dormers; the one adjacent to you on the right is a gambrel, which is another form that allows you to have more square footage. He states that those are interesting precedents that allow you to have more living space on the upper floor without abandoning the context of your neighbors. He states that since you brought it up as something of value to you, his suggestion is that the resource of the Historical Commission or the architect with a little bit more creativity could come up with a solution that allows you to move forward quickly.

Mr. Cormier states that his intent is to build a beautiful home and he wants to get along with his neighbors, as they will be his neighbors for a long time. He states that he would love to have the garage under if possible, and if he has to change the roof design to make it work, if Mr. St. Pierre could give some guidance as to what avenues to keep the garage under...

Mr. Viccica states that the allowed height is 35 feet. He states that there is a desire to take cars off the street, but other than that, he would say that his first reaction would be to deny the application on the basis that it is so egregiously not a part of the neighborhood character. He states that that is his opinion, and there are other Board members who will weigh in. He states that Mr. Cormier's willingness is appreciated.

Mr. Cormier states that if it's going to take another month, that's fine.

Mr. Copelas states that he agrees with Mr. Viccica: The requirement of the special permit is whether it is more detrimental to the neighborhood character, and the drawings that we saw, the massing, it seems very much out of character to the Willows neighborhood, combining that with the very troubling fact that Mr. Cormier essentially demolished the house. He states that he is glad Mr. Cormier is willing to rework this and consult with the Historic Commission. He notes that the Board also received a letter from a neighbor who had some serious concerns with the state of the construction site, and that really needs to be addressed in the very short term; living next to these, he would be appalled.

Mr. Cormier states that he can take care of anything. He asks if he can see the photos to see if they are current. Mr. Cormier says he can clean them.

Mr. Copelas tells Mr. Cormier I am also open to giving you the opportunity to continue this and consult with the Historic Commission and your architect to reconsider something that's more in line with what's appropriate to the neighborhood.

Mr. Tsitsinos agrees that it is oversized; he adds that Mr. Cormier will still have to go for a curb cut for a garage.

Mr. Viccica adds that the curb cut does not exist, so assuming that it is within the limits, it is as of right to have the curb cut; that is not part of the application. Chair Duffy agrees.

Mr. Viccica says looking at the context and the environs is a very valuable lesson.

Mr. Cormier states that he has listened to many people and some have not liked the renderings. He states that in fairness to all that, he is open, but he asks the Board if he comes back with revised drawing that fits the neighborhood character and that would appease the Historical Commission,

would the Board allow him to put the garage under? Mr. Cormier states that the architect will charge \$4,000 to do another drawing and is concerned about not getting approved.

Mr. Viccica states that he thinks a good architect in cooperation with the Historic people and looking around the neighborhood; you have the right words, but you have to put it into action. He states that he is sure the Historic Commission will help.

Mr. Cormier asks Tom St. Pierre if he has an idea of what they are looking for or if he has to stay neutral. Mr. St. Pierre states that he has to stay neutral, but that the architect should call him if he has questions.

Mr. Viccica states that the architect is being paid to understand what the zoning codes are.

Mr. Cormier states that he will address the yard cleanup.

After some discussion among the Board and Mr. St. Pierre, Chair Duffy opens the hearing for public comment, noting that Mr. Cormier will be reworking the proposal and what he comes back with next month may be substantially different from what is proposed currently.

Tom Nally of 18 Bay View Ave next door to Mr. Cormier states that Mr. Cormier told him that he is from Waltham, this is the sixth house that he has flipped, and he was not planning on living there. Mr. Nally adds that their houses are 13.5 feet apart and that he has solar panels. He states that he is concerned that if Mr. Cormier goes up that high, there go his solar panels. He states that the house will not fit in the Willows. He mentions a house on Juniper Ave that is 42 feet high, and that he hopes that does not happen next to his house.

Gary Gill of Ward Three states that he is outraged since this a historic property and he demolished it. He asks how this can ever come back to something that will really fit in there, that had the character already. Gary Gill also expresses concerns about tearing down the house without the proper permit.

Ginny Johnson of 75 Columbus Avenue states that she is the neighbor on the other side. She sent the photos of the condition of the yard. She states that she is still concerned because now it is all overgrown; he has exterior wall being held up by strapping; the site is very unsafe. She states that they have been looking at it since April. She states that there is a stove in the basement that was never removed. She states that Mr. Cormier told her the same thing about the house: he is not going to live in it, he's flipping it.

Tom St. Pierre states that he will ask the petitioner to meet with him on the property and they will address some of this immediate stuff. He states that it will be another month to develop a different plan, so they will make sure [the site] is cleaned up so the site is a little more bearable, but it will sit unfinished for another month, but he thinks it is the best for the project.

Eric Johnson of 75 Columbus Avenue is worried that the walls of the house will come down with grandkids running around the driveway. He states that something has to be done. He thinks the house should be taken down and start fresh. He states that 90% of the people in the Willows park in the street; parking on the street is not an issue, you do not need an underground garage to park.

Jeff Cohen of 12 Hancock Street states that he ran the Solarize Program and he is the vice chair of the Salem Sustainability, Energy, and Resiliency Committee and that they are considering ordinances to propose to the City Council that if a new development or retrofit affects someone's solar panels, that there would be some compensation for the person who put up the solar panels with the idea that it would have the same amount of sun.

Ward One City Councillor Bob McCarthy notes that a plan was approved on Juniper [Avenue] and it was built, and as soon as the roof walls went up, he called the building inspector to look, and it is within the scale and height of what was approved. Councillor McCarthy notes the difference between seeing the numbers on the plan and seeing something built. He suggests that the petitioner provide an architectural drawing larger than 8.5 by 11 and something that shows the proposed building, the building to the left, and the building to the right, to show the scale, massing, and how it's going to fit. This would give people the ability to understand what it's going to be. He suggests this as a requirement in general for this kind of relief.

Ed Wolfe of 95 Bay View Avenue discusses the need for good drawings, having seen the same issue across the street from him. He states that the Board should require this.

Ray Jerzylo of 17 Bay View Ave asks if the house on Juniper Ave was approved for 42 feet in height. Chair Duffy says they will look at the height for this application, but [Mr. Jerzylo's question] is not the subject of the hearing and suggests that he call the Building Department.

Mr. Jerzylo asks what prevents Mr. Cormier from building the garage and renting it as an accessory living space. Mr. St. Pierre states that no living quarters would be allowed at that elevation with the current wetlands regulations. Mr. Jerzylo offers further comments that are not related to the current petition.

Gary Gill speaks again saying he does not think there is an architect involved.

Chair Duffy states that he thinks the proposal is to continue the matter to the next meeting with the applicant to come back with revised plans in accordance with our discussion tonight. Mr. St. Pierre suggests that we add in consultation with the Building Department and the Historic Commission.

Mr. Corriston clarifies who will be voting because there are four members and two alternates (Ms. Ordaz and Mr. Viccica). The voting alternate member will be alternated.

**Motion and Vote:** Peter Copelas moves to continue the public hearing for all persons interested in the petition of Eric Cormier for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to the next regularly scheduled meeting on August 21, 2019 to allow the petitioner time to redesign the project and consult with the Salem Historic Commission and the Building Department. Paul Viccica seconds the motion. **The vote is five (5) in favor (Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Jimmy Tsitsinos, and Paul Viccica) and none (0) opposed.**

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Location:        **11 Wisteria Street (Map 33, Lot 399) (R2 Zoning District)**

Applicant: **Piotr Goszczynski**  
Project: A public hearing for all persons interested in the petition of PIOTR GOSZCZYNSKI 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 11 WISTERIA STREET (Map 33, Lot 399) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped June 11, 2019 and supporting documentation

Petitioner Piotr Goszczynski addresses the Board. Mr. Goszczynski says he and his oldest daughter bought this two-family house on Wisteria Street in 2014. He states that they lived there for three years, then two years ago, he and his wife bought a new house on Savoy Road and vacated the upstairs apartment. His daughter was still living downstairs. He stated that at the beginning of last year, his daughter moved so the house was vacant; then, his other daughter moved to Salem, into the upper apartment at Wisteria Street. They looked into long-term rentals and short-term rentals for the lower apartment. He states that they thought about it and decided that they might want to try the short-term option; it would be his daughter's source of income. They started operation in the beginning of June last year [2018]. He states that since his daughter is a new tenant in the upper apartment and they are having short-term rentals in the lower apartment, he should obtain a Certificate of Occupancy from the Health [department], so he did. They have been running the business for a year and it has been going smoothly; so far, they have seventy-four (74) reviews; all of them are five stars. There is no nuisance to neighbors that he knows of.

Mr. Copelas asks which unit is the short-term rental unit, Unit 1 or Unit 2. Mr. Goszczynski replies Unit 1, which is downstairs. Chair Duffy reviews the application and says it was filed on time and with proof of operation of short-term rental. Mr. Goszczynski submits certificates of occupancy. Mr. Viccica asks about parking. Mr. Goszczynski says he has spaces for up to six cars. He adds that his daughter is here tonight.

Chair Duffy opens the hearing for public comment.

Teasie Riley Goggin of 9 Wisteria Street says her neighbors are quiet and she has nothing against them but she doesn't want an Airbnb there. She suggests that there be a probationary period for these special permits before they are granted. She also suggests that the Board get a public announcement system because some people cannot hear.

Polly Wilbert of 7 Cedar Street and President of the South Salem Neighborhood Association speaks. She states that her recollection was that in December, Mr. St. Pierre said just a few more applications would be heard to work through the backlog. She states that if there really is a housing crisis in Salem, to allow anyone who is not in strict compliance with the requirements for a short-term non-owner occupied rental should not be allowed to have those permits. She states that they are now all over the city and seemingly aggregating in number. She states that she has looked at the minutes from December and Mr. St. Pierre's comments were not tracked in those minutes. She also notes that the Board is quite a few meetings backlogged in their minutes, which is a concern for the public as they try to follow what is happening with every Board and commission.

Gary Gill of Ward Three says he wants to come to this 5 star Airbnb. He asks if it will always be short-term rental.

Mr. Goszczynski replies that this is working for them now but it may not be forever. They will keep it under family control and for the family.

Mr. Goszczynski's daughter speaks about extra income for her which is helpful. Their guests are all reviewed prior. There have been no incidents. The short-term rental she runs is child and family friendly. She provides things that a hotel doesn't to visiting families that appreciate a full kitchen.

Ray Jerzylo of 17 Bay View Avenue brings up the high number of special permits on the agenda by Mr. Becker. He tells the Board that he thought it had to be owner occupied.

The Board tells him this is not true.

Mr. Jerzylo notes other issues, expressing concern that the City will have too many Airbnbs, and says he is against it.

Mr. Copelas asks Chair Duffy to address the date requirement for filing for a special permit for short-term rental. Chair Duffy says that the Board had advice from the City Solicitor on this issue and there were multiple potential interpretations for when the final date was for filing and ultimately we have determined with that advice that the application deadline was June 15, 2019, so that's the cutoff date for any applications for a permit of this type.

Mr. Goszczynski notes that his daughter caught the rules for Airbnb.

Mr. Viccica states that the filing date was met and there is ample good evidence that it was an active short-term rental prior to July 16, 2018. Mr. Copelas states that the normal special permit criteria are clearly met and addresses each criterion individually.

**Motion and Vote:** Peter Copelas moves to grant a special permit to Mr. Goszczynski per Section 15-6 (d) [15-6 (4)] 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 **11 Wisteria Street, Unit 1**, subject to the following terms, conditions, and safeguards. Paul Viccica seconds the motion. **The vote is five (5) in favor (Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Jimmy Tsitsinos, and Paul Viccica) 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.

Location: **20 Boardman Street (Map 35, Lot 462) (R2 Zoning District)**

Applicant: **Dean Walsh**

**Project:** A public hearing for all persons interested in the petition of DEAN WALSH for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to construct a 12' by 12' one story addition to connect an unused room to the rest of the two-family house at 20 BOARDMAN STREET (Map 35, Lot 462) (R2 Zoning District).

#### Documents and Exhibitions

- Application date-stamped June 21, 2019 and supporting documentation

Petitioner Dean Walsh addresses the Board. He explains that he and his wife live on the top two floors and his son lives on the first floor. He notes that downstairs is a four room apartment with a room that is not connected, separated by a staircase going up. They are looking to add a hallway to connect one existing room to the other so they can move downstairs and get rid of the steps. The change will not be visible from the street as there is a garage in front of it.

Chair Duffy asks if the addition will fill space behind the house. Mr. Walsh responds in the affirmative, stating that there is an "L" behind the house. He notes that the addition will be three feet farther from the property line than the existing side of the house. Chair Duffy asks Mr. Walsh to confirm that this does not increase any encroachment on setbacks, and there is about 8.5 feet between the outside boundary of this addition and the garage; Mr. Walsh confirms.

Peter Copelas notes that the only additional nonconformity is lot coverage - it was already nonconforming at 39%, and Mr. Walsh is going to 42%.

Mr. Viccica notes that the included building permit application says 15 feet by 15 feet but the application is for 12 feet by 12 feet. Mr. Walsh states he initially thought it would be 15, but the architect found that it would be 12 by 12 feet.

Chair Duffy opens the hearing for public comment; there is none.

Chair Duffy reviews the application and additional material including plot plan and elevations. He reviews the standard criteria for a special permit.

Peter Copelas asks if this is open underneath, with a door to the basement. Mr. Walsh confirms and says there is a door to the basement that will remain. Mr. Copelas asks if they are putting a deck above. Mr. Walsh states that they are not.

Jimmy Tsitsinos states that he knows the house and this is a nice project.

While bringing the motion, Paul Viccica wants to make sure that it is noted that Mr. Walsh is constructing a 12' by 12' addition. Mr. Corrison confirms that this is in the legal advertisement language.

**Motion and Vote:** Paul Viccica moves to grant Dean Walsh the requested special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to construct a 12' by 12' one story addition to connect an unused room to the rest of the two-family house at 20 Boardman Street, subject to the following terms, conditions, and safeguards. Mr.

Copelas seconds the motion. **The vote is five (5) in favor (Jimmi Heiserman, Jimmy Tsitsinos, Paul Viccica, Mike Duffy (Chair), and Peter A. Copelas) 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 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.

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Location: **109 Boston Street (Map 15, Lot 208) (B2 & ECOD Zoning Districts)**  
Applicant: **Michael Becker**  
Project: A public hearing for all persons interested in the petition of MICHAEL BECKER for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of two non-owner occupied short-term rental units in the two-family house at 109 BOSTON STREET (Map 15, Lot 208) (B2 & ECOD Zoning Districts).

Documents and Exhibitions

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

William Quinn, attorney for petitioner Michael Becker, says this is the end of the road for short-term rental special permits. He adds that about 20 units have been approved and they are seeking 16 units at several different properties.

He states that they would like to continue 25 Lynde Street to the next meeting because they do not have the evidence to be able to convince the Board tonight but they think they will find some.

Attorney Quinn states that his client filed all of the permit requests on his own, and he and his client have only had a few days to discuss what evidence they want to present. He notes that he submitted handouts for each of the properties that show the new documents that they have found so far, but if the fact that the Board received the documents today, they do not have an exception to continuing them to the next meeting. The Board clarifies what he is requesting. Attorney Quinn clarifies that he is only requesting a continuance for 25 Lynde Street. The Board tables 25 Lynde Street and asks him to speak to 109 Boston Street first, as that was called out.

Attorney Quinn discusses 109 Boston Street, presenting documents and noting that it is a two-family home on a narrow lot. Mr. Copelas raises a question about standing. He states that they have established that the application deadline was June 15, and the application clearly states that you are applying for Unit 2 at 109 Boston Street. There was an email received by the City on June 17 requesting an additional unit, which falls after the requested date. So unless the City were to give

different direction, from Mr. Copelas' reading, the only timely application was for 109 Boston Street Unit 2, and he is troubled by having a conversation that includes Unit 1.

Mr. Corrison clarifies that because June 15 fell on a Saturday, we accepted applications on Monday, June 17. He states that he checked in with the City Solicitor's office to confirm that that would be acceptable. Mr. Copelas asks if the deadline was not the 15<sup>th</sup>, it is the 17<sup>th</sup>. Mr. Corrison states that the deadline is the 15<sup>th</sup> because it is based on the effective date of the Ordinance, but because it fell on a day that City Hall was not open, we accepted it on the 17<sup>th</sup>. There is some more discussion about the dates and filing.

Mr. Becker states he was told on the 14<sup>th</sup> that applications would be accepted until Monday.

Attorney Quinn notes that that is a standard legal principle in state law for filing any petition to any governmental body, if it falls on a legal holiday, it goes to the next business day.

Attorney Quinn raises the standing issue of whether he represents someone who was engaged in the business of short-term rentals on July 19, 2018, because those are the only people who can apply. He points the Board to the documents he has provided and discusses the documents. He describes a chart showing rental activity in March 2018 for this property. He points to the "Charming 1-bedroom," which has several bookings, and asks Mr. Becker which unit that is. Mr. Becker responds that it is Units 1 and 2 - they both have the same description. Attorney Quinn states that there is evidence as of March 2 through March 23 that Boston Street was used as a rental as defined in the Ordinance, which is for periods of less than 30 days.

Attorney Quinn points to the next document from Traveler's Haven, which he describes as a housing placement agency for traveling professionals. He states that they place nurses and that this owner had an agreement to provide housing upon request for short-term situations for nurses. The letter is dated July 13, 2018 and refers to Unit 2 of 109 Boston Street. Also included is a copy of a check and receipt received as a security deposit for such a tenant; the check is dated July 19, 2018 [*sic* - 2018].

Mr. Viccica asks how can we determine which unit was being rented according to your documents. Attorney Quinn says he had the same question for the first chart. There is some discussion about this ambiguity. Paul Viccica explains that it could be a single unit being rented over and over. He indicates that other applicants have provided more information. Attorney Quinn notes that the reservation for nurses is for Unit 2. There is some discussion about the two units.

Mr. Becker asks if there is a lease for Unit 1. Mr. Copelas states that we were provided with that, but that it was a tenant for unit 1 that was in there for three months; it does seem to indicate that one of the units was being used *not* for short-term rentals, and that is another indication that we do not have enough information to know that both units are being used.

Mr. Becker explains the kind of bookings he does, including with placement companies who place workers, and that they are for various lengths; the primary function is to rent for a few months, and the short-term rentals infill between those. He notes that he also does business with sellers that need a place to stay.

Mr. Viccica states that there is the issue that there is evidence of short-term rental for at least one of the units, but there is no way to tell if the same unit is rented. He states that on the basis of our precedent, there has to be some concrete, date-driven evidence that allows us to make the determination. Attorney Quinn reiterates that the Traveler's Haven [agreement] is for Unit 2.

Mr. Becker indicates that he can probably provide more proof. Attorney Quinn asks that if they feel there is not sufficient evidence, they approve at least unit 2 and continue this one to the next meeting, and we will glean more records and see what we can come up with. There is some more discussion about this. Attorney Quinn states that there is evidence that both units were used for relatively short periods, but under 30 days there is only evidence that one of them was used.

Mr. Copelas notes that they are not separate petitions - it is one petition for 109 Boston Street Units 1 and 2. Attorney Quinn asks why they could not find that one was sufficient and one was not. Chair Duffy states that that would be a denial of one of them. Mr. Becker states that he would rather continue and bring the evidence.

Mr. Corrison notes that he spoke with Assistant City Solicitor Victoria Caldwell regarding the question of short-term rentals in the colloquial sense over 30 days. Her position - he does not have this in writing but can provide it for the next meeting - is that a rental for a period longer than 30 days cannot be used as evidence of a pre-existing short-term rental use. So the previous rentals need to meet the definition of short-term rental that is in the Ordinance, which is a period of fewer than 30 days.

Ms. Ordaz raises that there was no Certificate of Fitness. Mr. Corrison states that those were not provided; he explains that a Certificate of Fitness is a requirement for rentals. He states that he also asked about this, and Victoria Caldwell's position is that if there is not one, it's not a dealbreaker to use her term, so theoretically a petition could be approved without the Certificate of Fitness, but that if there is one it is positive, and if there isn't one, it could be a negative but not a dealbreaker. Attorney Quinn asks if Mr. Corrison is talking about a Board of Health Certificate of Fitness. Mr. Corrison responds in the affirmative. Mr. Becker states that he has had both those units inspected by the Board of Health previously.

Attorney Quinn states that he is happy to get it. He notes that he has been here several times doing this and he has never heard of that requirement for this, but he knows there is a registration requirement with the Board of Health. Ms. Ordaz states that if they have those, if they could submit those as well.

Mr. St. Pierre encourages the Board to move a bit faster because there are so many agenda items.

Mr. Viccica states that they would like to see more evidence and a Certificate.

**Motion and Vote:** Peter Copelas moves to continue the public hearing for the petition of Michael Becker for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of two non-owner occupied short-term rental units in the two-family house at 109 Boston Street (Map 15, Lot 208) (B2 & ECOD Zoning Districts) to the next regularly scheduled meeting on August 21, 2019. Mr. Viccica seconds the motion. **The vote is five (5) in favor (Mr. Copelas, Mr. Duffy, Mr. Heiserman, Mr. Tsitsinos, and Ms. Ordaz) and none (0) opposed.**

Location: **31-33 Cedar Street (Map 34, Lot 52) (R2 Zoning District)**  
Applicant: **Michael Becker**  
Project: A public hearing for all persons interested in the petition of MICHAEL BECKER 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 31-33 CEDAR STREET (Map 34, Lot 52) (R2 Zoning District).

#### Documents and Exhibitions

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

Attorney Quinn clarifies that this petition is for unit one, not unit two as was on the original petition. He states that it was amended before it was advertised for unit 1. Mr. Corrison states that the ad is for one unit, but no unit number is noted in the legal ad.

Attorney Quinn reviews information from the packet he prepared for the Board. He points out the proof submitted of various short-term rentals for unit one, several occasions.

There is discussion about Certificates of Fitness and whether the Board has required them for other applicants. Attorney Quinn does not have them at this point. Mr. Copelas asks whether the Board has required them in the past; he states it is a legal requirement of the City to rent something, but he is not sure if the Board has required that from previous petitions if a petitioner met all of the other requirements of the ordinance. Mr. Tsitsinos notes that they have been presented. Mr. St. Pierre states that it has been used only as evidence of a unit existing; Mr. Corrison states that it was never established as a requirement. Ms. Ordaz notes that to grant a non-owner occupied permit, you have to have established that it was a short-term rental prior to that cutoff date. There is some more discussion about this. Paul Viccica notes they could condition this; Mr. St. Pierre notes that it is also a condition that the petitioner must comply with city code.

Ms. Ordaz has questions about an email from VRBO submitted as proof of use as a short-term rental, noting that it is handwritten that it is Cedar Street Unit 1, but the subject line says Unit 2. She seeks clarification of which unit was being used (as presented in the evidence submitted) and states that it is not very clear.

Mr. Becker points out that the unit they are seeking a special permit for has three bed, two bath while the upstairs unit is a three bed, one bath. Mr. Copelas seeks clarification, stating that Unit 1 is a three bed, two bath unit and Unit 2 has a different configuration. Mr. Becker confirms.

Chair Duffy opens the hearing for public comment.

Flora Tonthat of 10 Northey Street owns a bed and breakfast. She is against all 16 special permits. She says that the Bed and Breakfasts in Salem abide by more rules, and pay more in taxes and fees. They have stronger protections against fires, etc. She states that these 16 units are the opposite of the spirit of the short-term rental ordinance. Short-term rentals reduce housing stock and have an

unfair advantage over bed and breakfasts. She wants her statements to apply to all the other ones. She is against all 16 units of short-term rental.

Teasie Riley Goggin of 9 Wisteria Street asks with 16 units, what reassurance we have that Airbnb won't be "air brothel and brothel."

Shawn O'Brien of 21 Cedar Street says that last year he had to go to the Board of Health because of Mr. Becker's unkempt property. We had to put out rat bait. The grass in back was 2 feet high for two years and all of a sudden he started maintaining the property because he wants a permit. He is against the petition.

Ty Hapworth of 6 Brown Street is an owner-occupied Airbnb host and is against this proposal. He states that this is essentially the nightmare scenario: talking about the process going back over a year, the worry was investors would buy up property and take units off the market, and would not benefit local Salem homeowners. He thinks that what we are seeing here and hopes they will not issue the special permit.

Jeff Cohen of 12 Hancock Street speaks. He reminds the Board that standing does not mandate approval. He states that he was involved in the writing of this and he was at every hearing and worked with City Councillors on the language. He brings up the unfair standards between bed and breakfasts and short-term rentals. The intent of the ordinance was to protect the rental stock. The intent of the ordinance is also to prevent virtual hotels. Mr. Becker has these units scattered all over Salem, and one property has 6 units. This is a virtual hotel that doesn't conform to hotel standards. He adds that he will stand up each time for every unit tonight to oppose.

Dick Pabich of Winter Island Road states that he owns the Salem Inn at 15 Summer Street. He is an abutter to Mr. Becker's Summer Street property. Mr. Becker bought the property on June 1<sup>st</sup> of last year with a deadline of renting short-term by July 17<sup>th</sup> that's 40 days. Mr. Viccica asks Mr. Pabich to wait for that location to come up on the agenda.

Shawn O'Brien asks if students can rent Airbnb to have a party.

Chair Duffy lists the letters he has received regarding these applications [from Mr. Becker] in general. He reads from an email from Richard Lindeman of 113 Federal Street, in opposition specifically to 23 Summer Street but also the other properties that Mr. Becker is bringing for special permit. This letter cites problems with absentee landlord. He notes that Mr. Becker is applying for special permits for 15 units in 6 properties, and that granting a special permit would be inconsistent with the city's efforts to provide more rental housing for residents. He states that in essence Mr. Becker is trying to run a decentralized hotel. He urges the Board to deny the request.

Chair Duffy notes that there is an email from Lois Ferrarresso, no address, which effectively copies the prior email, stating the same types of concerns for 23 Summer Street and the other properties.

Chair Duffy notes that correspondence from Meg Twohey of 122 Federal Street states the same opposition for 23 Summer Street and the other properties, with the same concerns raised.

Attorney Quinn states this will not be a virtual hotel; this is a two unit building. He adds that if neighbors are concerned with upkeep they should call the Board of Health and Mr. Becker will have to improve upkeep. He adds that the City Council weighed all viewpoints and it passed this

ordinance with an opportunity to grandfather in uses. The ordinance has been debated and passed. We are following the terms of the ordinance and Mr. Becker has applied. Mr. Becker states he has a regular maintenance and landscaping crew. His units have hard wired smoke detectors and are pet friendly.

Jeff Cohen states that a virtual hotel is not one property, it's virtual; it could imply one person owning seventy-five units scattered around Salem. He states that the Ordinance says there are no allowed short-term rentals in non-owner occupied property; the relief is that an applicant who meets the guidelines can apply for a special permit, but just because they meet the criteria, there is nothing in the Ordinance that says that this Board should issue the special permit.

Mr. Becker adds that his would-be competitors are testifying against him getting his special permits.

Mr. Viccica states that he would like to have a special condition that a valid certificate of fitness be obtained prior to any future short-term rentals.

Mr. Copelas states that his comments are specifically for this unit, but it seems to him that the petitioner has provided adequate evidence that the unit was being used for short-term rental prior to the date of the ordinance, and the application was submitted in a timely manner, so the special conditions for a short-term non-owner occupied [unit] appear to be met. He states that given that this is going to continue to be used as two units, the standard conditions of a special permit also seem to be met. He agrees with Mr. Viccica about the special condition.

Mr. Viccica and Mr. Copelas clarify the unit makeup and numbering with Mr. Becker. Unit 1 is the three-bed, two-bath unit. The other unit is three-bed, one-bath. Attorney Quinn suggests adding language referencing the first floor.

**Motion and Vote:** Peter Copelas moves to grant the petition of Michael Becker for a special permit per Section 15-6 (d) [15-6 (4)] 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 **31-33 Cedar Street, Unit 1 (also referenced as First Floor)**, subject to the following **terms, conditions, and safeguards**. Mr. Tsitsinos seconds the motion. **The vote is five (5) in favor (Jimmi Heiserman, Mike Duffy (Chair), Peter A. Copelas, Jimmy Tsitsinos, and Paul Viccica) 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.

Special Condition:

1. A Certificate of Fitness is to be obtained prior to Petitioner engaging in any further short-term rentals of this property pursuant to this Special Permit.

Peter Copelas suggests taking the continuance of 25 Lynde Street out of order.

Location: **25 Lynde Street (Map 26, Lot 440) (B5 Zoning District)**  
Applicant: **Michael Becker**  
Project: A public hearing for all persons interested in the petition of MICHAEL BECKER for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of two non-owner occupied short-term rental units in the mixed-use building at 25 LYNDE STREET (Map 26, Lot 440) (B5 Zoning District).

Documents and Exhibitions

- Application date-stamped June 17, 2019 and supporting documentation

Chair Duffy asks for a motion on this request to continue.

**Motion and Vote:** Paul Viccica moves to continue the public hearing for the petition of Michael Becker for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of two non-owner occupied short-term rental units in the mixed-use building at 25 Lynde Street (Map 26, Lot 440) (B5 Zoning District) to the next regularly scheduled meeting on August 21, 2019. Peter Copelas seconds the motion. **The vote is five (5) in favor (Paul Viccica, Jimmy Tsitsinos, Jimmi Heiserman, Mike Duffy (Chair), and Peter Copelas) and none (0) opposed.**

Location: **14-16 Hodges Court (Map 35, Lot 311) (R2 Zoning District)**  
Applicant: **Michael Becker**  
Project: A public hearing for all persons interested in the petition of MICHAEL BECKER for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of two non-owner occupied short-term rental units in the multi-family house at 14-16 HODGES COURT (Map 35, Lot 311) (R2 Zoning District).

Documents and Exhibitions

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

Attorney Quinn states that he has Unit 1 first floor as what they are seeking a special permit for. Chair Duffy asks if that is one of the corrections. Brennan Corrison states that in the correction email from Mike Becker dated June 17 it says 14 Hodges Court Units 1 and 2. Mr. Becker states, "Correct."

Attorney Quinn reviews the application for the Board. Attorney Quinn and Mr. Becker explain that the building contains four units but they are asking for #14, units one and two, located on the right side.

Chair Duffy asks about the makeup of the units. Mr. Becker discusses the makeup of the units and recent changes. Chair Duffy struggles to find something that indicates which unit(s) is/are the subjects of the rental activity in the materials that have been submitted.

Attorney Quinn notes that one unit was rented April 12, 2018 through April 17 by a particular family; it is described as three bedrooms, two baths. Mr. Becker states he believes this was 14-1. Attorney Quinn says he does not see it in the documents.

Mr. Viccica adds that the proof is hard to identify and asks about parking spaces. Mr. Becker says there was no parking when he bought it; now he has three spaces on-site and two garage spaces in the south garage that are assigned. Two garage parking spaces are used for Hodges Court. Mr. Becker says 14-1 and 14-2 each have a spot in the driveway; there are two spaces in the garage; and a third [on-site] space used for 16-2 right now. The two garage spaces are not assigned to any one unit. Mr. Becker adds that he is not required to have them for zoning as it is a nonconforming pre-existing property that had no parking previously. Mr. Viccica says there is a neighborhood character issue.

Attorney Quinn identifies that there is insufficient evidence today. Mr. Becker apologizes. Attorney Quinn asks for a continuance so they can try to get better factual evidence.

Chair Duffy states that there is a request for continuance. Noting this will be continued to next month, he opens the hearing for public comment.

Jeff Cohen of 12 Hancock Street asks the Board not to continue this petition and says there was enough time to get the evidence required. Mr. Cohen adds that there is not sufficient parking. He mentions the definition of adjacent units. This defines whether a second unit in a single building. He states that this is converting the entire 14 to short-term rentals. He feels that this conflicts with the ordinance.

Attorney Quinn respectfully disagrees about the definition. He states that “adjacent” is used to define what is and isn’t an owner-occupied unit. There is nothing that says that adjacent units can’t be given the special permit.

Mr. Corriston notes that the Board received a letter from Nancy Corral regarding 14-16 Hodges Court specifically. Chair Duffy reads this letter, which states that Ms. Corral would like to suggest that Mr. Becker is given a date of completion of his yard project; it has been a long time so far. The home should be secured also.

Attorney Quinn states that his understanding is that the yard work is virtually complete and he does not know what she means by securing the home.

Mr. Becker has picture of yard to show to the Board. Chair Duffy states that we do not need that now.

Chair Duffy states that the request is to continue and he would entertain a motion. Mr. Viccica begins to bring the motion but pauses on the address.

Mr. Copelas asks Attorney Quinn if we can call it 14 Hodges Court Unit 1 and 2. Attorney Quinn checks with Mr. Becker and responds in the affirmative. Mr. Becker states that he believes the City's official address is 14-16 but he is fine referring to it as 14.

**Motion and Vote:** Paul Viccica moves to continue the public hearing for a petition of Michael Becker for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of two non-owner occupied short-term rental units in the multi-family house at 14 Hodges Court, Units 1 and 2 (Map 35, Lot 311) (R2 Zoning District) to the next regularly scheduled meeting on August 21, 2019. Mr. Copelas seconds the motion. **The vote is five (5) in favor (Mike Duffy (Chair), Jimmi Heiserman, Jimmy Tsitsinos, Peter Copelas, and Paul Viccica) and none (0) opposed.**

Location: **19-21 Charter Street, also known as 22 Hawthorne Boulevard (Map 35, Lot 271) (B5 Zoning District)**  
Applicant: **Michael Becker**  
Project: A public hearing for all persons interested in the petition of MICHAEL BECKER for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of three non-owner occupied short-term rental units in the mixed-use building at 19-21 CHARTER STREET, also known as 22 HAWTHORNE BOULEVARD (Map 35, Lot 271) (B5 Zoning District).

#### Documents and Exhibitions

- Application date-stamped June 17, 2019 and supporting documentation

Attorney Quinn presents the petition. He notes that this is a former funeral home that is now used as a three-family and Mr. Becker has a small office in the building as well.

Attorney Quinn reviews evidence that has been submitted. He notes that there is a 25-day lease or so-called rental agreement from his rental company to an individual for January 17, 2017 to February 11, 2017. He notes that there is another rental agreement for 31 days, which does not meet the requirement, in January 2018. Attorney Quinn states that there are two more that were several months. He states that this is the extent of the documentation.

Mr. Becker states that he just emailed something to Brennan. He notes that he let a neighbor who was displaced by the Pickering Wharf fire stay there for ten (10) days; he did not actually charge her. He states that it was at the time used as a furnished rental but he refused payment as his neighbor was basically homeless in this devastating circumstance. He states that he does not feel that he should be penalized for that, and she did offer to pay. Attorney Quinn states that he has a copy of that - it is a ten-day rental agreement for no consideration to a neighbor under stress.

Mr. Copelas asks which unit that was. Attorney Quinn says unit three. Mr. Becker says the individual sent him an email referencing that, and he forwarded it to Brennan. Mr. Corriston states that he does not think they can work with that tonight.

Attorney Quinn states that he thinks this one is going to have to be continued. Mr. Copelas states he may have to disagree, noting that some of the other petitions that they have continued were because

of ambiguity regarding the evidence that was being provided. There really is no ambiguity on this evidence. There are several units that do not meet the conditions of the ordinance by anybody's understanding. Mr. Copelas states that he is a little less comfortable simply continuing it when you had ample opportunity to provide the evidence and the evidence that was provided does not meet the requirements. Mr. Copelas states that it might be subtle, but there seems to be a difference between some of the other ones the Board has continued and this one, which clearly does not meet the terms of the ordinance.

Mr. Viccica asks Mr. Copelas to go through each unit. Mr. Copelas, reviewing submitted evidence, notes that Unit 1 has a handwritten adjustment to the rental agreement that seems to be initialed, so we can take that on its face as being for 25 days. He reviews the next page, the 31 day rental; he notes that both of these pages reference for 19 Charter Street Unit 1. He states that if we are to assume that that is considered evidence of that unit, we have evidence of Unit 1. He states that the next one is referenced as Unit 3 for two and a half months. The last page is referenced as Unit 2 for three months. Mr. Copelas states that it would appear to him that you've met the bar for one of the units, and you haven't met the bar for the other two.

Chair Duffy says the requirement of the ordinance is less than 30 days. On the basis of the records we have, there is only one evidenced.

Mr. Becker asks about the unit that was rented for ten days when he forewent payment. Mr. Viccica states that it's not that the Board does not have compassion for it, but that does not count. He states that if it was legitimately a short-term unit, it would have more evidence than [this]; that is not evidence. Mr. Becker says there is a lease and occupancy agreement for it instead of the standard lease.

Attorney Quinn suggests that they continue the matter. Mr. Viccica disagrees; he states that he thinks you have provided evidence, it just does not meet the requirements. Mr. Copelas states that he would not be in favor of continuing this. Mr. Viccica states that for the other ones, there was ambiguity; for this one, you have provided evidence, the dates do not align. Attorney Quinn suggests there is ambiguous evidence for Unit 1; Mr. Viccica responds that it is your responsibility to provide the evidence that is required.

Chair Duffy asks if they would consider this application for just the one unit, or is it as it stands an application for three units. Mr. St. Pierre states that his opinion is that you can grant less, as long as it was advertised.

Chair Duffy opens the hearing for public comment.

Jeff Cohen of 12 Hancock Street states he thinks it was a gracious effort to help the individual. He says the Board granted five units at 24 Hawthorne Street and this is adjacent; they would basically be creating a short-term rental block. He thinks parking is a problem as well. Mr. Becker states he has three garage rental spaces for 22 Hawthorne Boulevard that are specifically assigned spaces. He gives one of those parking passes to each one of the units. The garage is right across the street.

Chair Duffy reminds everyone of emails he read earlier from Meg Twohey, Lois Ferrarresso, and Richard Lindeman that are all in opposition.

Mr. Viccica asks if they are going to approve one [unit] but not three, the Unit 1, which seems to have evidence - is in 19 or 21 [Charter Street]? There is some discussion. Chair Duffy notes that the rental agreement says 19 Charter Street Unit 1. Mr. Becker says he believes that is the one-bed, one-bath. Attorney Quinn says the City considers this property 22 Hawthorne Boulevard; that is the legal address. He states that he tried to look up 19-21 Charter Street on Patriot Properties and there was no information, it was only assessed as 22.

Mr. Copelas asks Attorney Quinn if he would accept an amended motion that made reference to 22 Hawthorne Boulevard, Unit 1. Attorney Quinn notes that the application says both. Mr. Copelas asks if they should reference all three units or one unit. Attorney Quinn says one unit.

Brennan Corrison asks if the rental agreement being referenced is the one from November 30, 2017 to January 1, 2018. Chair Duffy responds in the affirmative. Mr. Corrison asks if that is not a period longer than 30 days. Mr. Copelas responds that the page prior to that is the same unit, which is 25 days; that is Unit 1.

After Mr. Copelas brings the motion, Mr. Becker again asks about the ten-day rental for which he refused payment. Mr. Viccica responds that it is because there is no evidence that it was a short-term rental that complies with the ordinance. Mr. Copelas states that there is a motion on the floor.

**Motion and Vote:** Peter Copelas moves to grant the petition of Michael Becker for a special permit per Section 15-6 (d) [15-6 (4)] of the Salem Code of Ordinances to allow the continued operation of one non-owner occupied short-term rental units in the mixed-use building at **19-21 Charter Street, also known as 22 Hawthorne Boulevard, Unit 1**, subject to the following **terms, conditions, and safeguards**. Paul Viccica seconds the motion. **The vote is five (5) in favor (Jimmy Tsitsinos, Jimmi Heiserman, Mike Duffy (Chair), Peter Copelas, and Paul Viccica) 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.

Special Condition:

1. A Certificate of Fitness is to be obtained prior to Petitioner engaging in any further short-term rentals of this property in accordance with this Special Permit.

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Chair Duffy asks that the Board take a five minute recess. They do.

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Location: **51 Canal Street (Map 34, Lot 86) (R2, B4, and ECOD Zoning Districts)**  
Applicant: **Salem Car Wash LLC**

**Project:** A public hearing for all persons interested in the petition of SALEM CAR WASH LLC for a special permit per Section 3.3.3 Nonconforming Structures and Section 3.3.4 Variance Required of the Salem Zoning Ordinance to reconstruct a nonconforming structure, the car wash at 51 CANAL STREET (Map 34, Lot 86) (R2, B4, and ECOD Zoning Districts).

Documents and Exhibitions

- Application date-stamped June 26, 2019 and supporting documentation

*This item was taken out of order.*

Attorney Scott Grover, representing the petitioner, states he has spent the last two hours meeting with neighbors who have some concerns about the operation and traffic flow at the car wash. He states that they have agreed to rework the plan for entering and exiting the car wash and plan to meet with the neighbors again a week from today. Attorney Grover requests to continue to the August meeting with the intention to come back with the support of the neighborhood.

**Motion and Vote:** Peter Copelas move to continue the petition of Salem Car Wash LLC for a special permit per Section 3.3.3 *Nonconforming Structures* and Section 3.3.4 *Variance Required* of the Salem Zoning Ordinance to reconstruct a nonconforming structure, the car wash at 51 Canal Street (Map 34, Lot 86) (R2, B4, and ECOD Zoning Districts) to the next regularly scheduled meeting on August 21, 2019. Jimmy Tsitsinos seconds the motion. **The vote is five (5) in favor (Mike Duffy (Chair), Peter Copelas, Jimmi Heiserman, Jimmy Tsitsinos, and Rosa Ordaz) and none (0) opposed.**

**Location: 23 Summer Street (Map 26, Lot 463) (B5 Zoning District)**

**Applicant: Mike Becker**

**Project:** A public hearing for all persons interested in the petition of MIKE BECKER for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of six non-owner occupied short-term rental units in the multi-family house at 23 SUMMER STREET (Map 26, Lot 463) (B5 Zoning District).

Documents and Exhibitions

- Application date-stamped June 17, 2019 and supporting documentation

Attorney Quinn addresses the Board. He notes that he has provided another package of information today. He says this is the only application he has half-decent documentation of standing. He states that it has Airbnb listings for all of the month of July 2018, the prices for which the units were being marketed, pictures of each of the units, and sheets for each of the units showing a couple of reservations, showing it was on the market with dates available and a couple were reserved. He states that this was all the month the ordinance was filed with the City Clerk, including the 19<sup>th</sup> of July, 2018. He states that this could not be more on-the-spot in terms of evidence of the owner being engaged in the short-term rental business.

Attorney Quinn reviews the special permit criteria. He states that he believes there are six condominium units that are each assessed separately by the city of Salem. He states that it is a few doors away from The Salem Inn on the same side of the street. He states that there are six parking spaces on the property which are available to serve the users of each unit. It is a legal, existing use. He states that all six units were being used as short-term rentals and marketed as such at the time the ordinance was filed with the City Clerk. From the point of view of the grounds of the special permit, there is no new work going on, nothing that would affect drainage, parking, traffic. It's the same number of units, the same number of parking spaces. The natural environment will not be affected by work on the site because there will not be any. He notes that there is a strong difference in opinion between members of the audience and others and himself about what is in the public interest. He states that we believe that among the many things the City has to balance, the economy is primarily grounded on the tourist industry these days, and serving tourists in the way they want to be served – Airbnb is a desirable alternative for many families traveling. The City Council has decided in enacting the ordinance how that would be done and by whom it could be done. My client is one of the people who qualifies to apply for the special permit. Other than general concerns about housing needs in the community which have already been considered by the City when they enacted this, and are now being addressed in a number of interesting and different ways by Mayor Driscoll, I don't see that there is any evidence that there is anything more detrimental to the neighborhood in having these units used by couples or family groups visiting the city for a short time as opposed to owner-occupants and selling them off as condos.

Tom St. Pierre notes that he only found five units – we had trouble identifying six units. Peter Copelas states that in a note to us, the City notes that in an application to the SRA, Scott Grover – attorney for the property owner of 23 Summer Street – wrote that presently there are five condominium units located within the property. Attorney Quinn asks when that was. Brennan Corrison responds that it was February of 2019. Attorney Quinn asks if that was a permit application. Brennan Corrison responds that the petition appeared before the Salem Redevelopment Authority for a significant expansion project. He adds that we also have a letter from Planning Director Tom Daniel speaking to this. Mr. Becker responds that we bought it as six units; two of them are part of one condo. We haven't added any kitchens, haven't added any baths; the building is the same as it was when we bought it minus paint. However, I think the former owner had live-in help or something that she had within one very large unit. Peter Copelas asks if the one condo unit has two complete kitchens. Mr. Becker responds that there are two complete living units, four egresses, two kitchens, three baths. Attorney Quinn says that we better call the tax assessor and that he will have to see the condo documents. He states that we will have to clarify that. We are applying for the building as it is occupied and used. He states that he understood that and it was listed as six units, and if it is six, it should be assessed for six, and if not, we will have to amend that request. Attorney Quinn states that he noticed that there is no 803 in the assessor's records. Mr. St. Pierre agrees that there is one missing. Attorney Quinn asks Mr. Becker if he knows which unit is the double unit.

Mr. Becker responds that the condo units are numbered 1-6 but one is missing, unit 3 is missing or unit 2 is missing. They merged two of them together. He states that the previous owner was a real estate professional and they did the condo conversions, and he is not privy to the circumstances.

Attorney Quinn says they will investigate. Mr. St. Pierre says it would be helpful if they had the condo docs. Attorney Quinn says the point is the whole building has been used for this, and every

unit that legally exists, whether it is five or six, has been used for this and listed as a short-term rental.

Ms. Ordaz asks for proof of anyone actually renting the units other than the listings. Mr. Heiserman notes that the documentation only shows what the prices are, and “Unavailable” doesn’t mean they were necessarily rented, they just mean that you also weren’t ready to rent them out. He adds that it looks like only Unit 6 shows data of being rented on July 10 onward.

Attorney Quinn says he does not see any from before that date. He says that the ordinance doesn’t say evidence that it had been rented on a prior date, the ordinance says that the owner was engaged in the business of short-term rentals on the day.

Chair Duffy notes that on prior applications we have had this issue come up and tried to understand what was meant by “engaged,” and our understanding was that it [meant] rented, not just proposed or offered. Mr. Copelas asks if we did not accept listed. Mr. Heiserman says no, someone was staging – just had furniture there – but that does not count. Mr. Copelas says the property was not actually listed. Mr. Copelas explains that in one of the previous petitions, a woman had signed a contract to list that property, but it was not listed yet, and we did not consider that adequate – just the fact that she had a contract with somebody, but the property itself was not listed. Chair Duffy asks if this is really different, in the sense that – what was the intent of engaged? This was trying to preserve rights of people that were already conducting this type of business in the city; could a person, an applicant simply post a listing somewhere and have that establish having been engaged?

Mr. Becker says we did not post them as listings until they were cleaned and furnished and pointed, at which point we advertised them, then we took reservations. The reservation might not have been for the day the person booked it, it might have been for one or two weeks out, but we were actively engaged in using it as a furnished short-term rental.

Mr. Corrison points out that based on what he has provided to the Board, for Units 1, 2, and 3 – and he guesses there is a question on the numbering of the units – the first available date to be rented based on the listing published confirmation email were July 19, July 20, and July 20, respectively. Attorney Quinn asks, 2018? Mr. Corrison confirms. Ms. Ordaz notes that this is roughly a week apart. Mr. Corrison says right, from when the listing goes up and when it is first available. He states, again, those are based on the emails that were initially submitted with the application.

Mr. Becker says he is a one-third owner in this building and his partner’s project manager is here, he manages the property and knows it better than I do, and if you want to ask questions relative to that, I can direct you to him.

Attorney Quinn says we’re focused on the issue of what is engaged. The ordinance does not say, “units were rented before this date.” He understands the concern about having somebody just throw an ad in the paper to try and qualify. But they bought the building, renovated it, installed the appliances, and engaged Airbnb to market it for him, for a period of time apparently as of the day of the ordinance and after. So if that’s not engaged in, that’s an awful strict definition.

Mr. Heiserman says when we had this last time, the argument was that it could have been engaged simply to be furnished long-term rental as well. Simply painting a unit and putting furniture in it doesn't mean it's going to be short-term.

Attorney Quinn says he does not think there is any requirement that once someone makes a short-term rental unit, every time they rent it has to be a short-term rental. The idea is whether or not a property and the units are actively engaged in seeking short-term rentals and renting to such people when they can. There may be other leases and timeframes involved, but the ordinance doesn't seem to prohibit that, in my mind.

Mr. Corrison thinks it would be an appropriate time to read the letter from Tom Daniel regarding the SRA.

Mr. Viccica notes that someone previously provided a list – and I'm assuming Airbnb will provide this to you – of all of the dates, the person who rented it, the cost of it, and I'm sure if you drop that down, a description of it. Attorney Quinn says he has seen that before. Mr. Viccica wants to understand the timing of when it was purchased, he knows there is a question from Mr. Pabich about timing. He knows there has been issues surrounding this property, just from the zoning issues.

Mr. Heiserman asks if this was available in June of 2018. There is some discussion of the effect on the calendar generated by Airbnb.

Mr. Copelas asks if the City Solicitor gave us some guidance on this question of "engaged." Mr. Corrison says he believes he has the letter; the thrust of it is that it is up to the Board's discretion to define the meaning of "engaged."

Chair Duffy says while we are looking for that, let's look at Tom Daniel's email, which was sent to Brennan today. It says, I would like to see if the ZBA could have a question answered for me regarding the 25 Lynde Street and 23 Summer Street applications. The Salem Redevelopment Authority reviewed additions to these properties over several meetings between February and June of this year. The SRA approved the addition to 23 Summer Street in May 2019 and the addition to 25 Lynde Street in June 2019. It was understood that the additions were creating additional housing units to meet local housing demand. Use as short-term rentals was not addressed. The addition for 23 Summer Street also requires review and approval by the Planning Board, and one of the ten units would be required to be affordable. I understand the current matter before the ZBA is with regard to short-term rentals in existing units. The question I would like answered is whether or not the applicant will be moving forward with the additions.

Mr. Becker says we will be moving forward with the additions. We may abandon some of the short-term rentals. He says the reason we rented 23 Summer short-term is we know the permitting process is long and costly, and a year or a year and a half of vacancy is expensive. Rather than putting tenants in there, which then, per Massachusetts law we would have to offer one of those tenants one of the units for sale if we turn them into condos down the line. It created a potential headache down the line if we put long-term tenants in there. By leaving it short-term tenants, people move in, they move out. We plan on clearing it out to do construction within the next few months once we hopefully get approval from Planning Board on our expansion, at which point we will abandon some or all of the Airbnb/VRBO units.

Attorney Quinn asks, since he says he does not know about this either, if they have approvals for the units. Mr. Becker says we have approvals through design review; the only thing that remains is site plan review.

Mr. Copelas asks if we are going to go through this effort so you can rent these short term for two or three months. Mr. Becker says it is probably more like until December; they just do not want it vacant in the meantime and do not want a violation in the meantime. Attorney Quinn says depending on legalities, the period could go a lot longer.

Mr. Viccica says he does not know if this information is a slam dunk so far. He says it will take a little more research about whether this is just auto-filled this way or that way. The only significant evidence is for Unit 6. We don't know when it was listed. It would be helpful to have that; he assumes Airbnb gives you a date list when you list with them. Then we could argue whether active means this.

Mr. Corrison says the listing published dates and the first available rental dates are on page 14 of my memo to the Board, and that's just pulled from the application and supporting materials.

Mr. Viccica asks if the listing published dates for three of the units are prior to the date.

Mr. Corrison says his understanding is the listing published date for all four units is prior to July 16 of 2018, but the first available rental date for three of the units is after July 16 of 2018 for Units 1, 2, and 3.

Mr. Copelas says Units 1, 2, and 3 were not available until those dates, the 19<sup>th</sup> and the 20<sup>th</sup>.

Attorney Quinn asks if there were any units that were not available on the 19<sup>th</sup>.

The Board answers yes. Ms. Ordaz says 2 and 3.

Mr. Corrison says the "magic date" is July 16, not the 19<sup>th</sup>.

Attorney Quinn says the ordinance itself says July 19 it was filed with the City Council. Mr. Corrison says this was a question he had previously seen. Initially, our understanding was that it was the 19<sup>th</sup>. The date that it was filed with the City Clerk for the Council was July 16, so that's the date that we're working off of. Attorney Quinn says, so that is different than in the published ordinance, which has its dates on it. Mr. Corrison says July 16 is the date we are working with.

Mr. Viccica asks about the current parking situation. He says there are currently six or seven spots. He asks if there is additional off-site parking for short-term tenants. Mr. Becker explains that there are six or seven parking spots there and that seems to be adequate. Typically, short-term tenants have one car, a rental car. He says they have not had any issues with there not being enough parking there. Mr. Viccica says he thinks the Planning Board will have issues. Mr. Becker says they are increasing parking to ten by demolishing a newer addition. Mr. Viccica asks if any part of that addition is one of six units; he asks if they are reducing the number of units to be short-term rented. Mr. Becker says that part of the building is part of the very big unit with two units merged. That unit will just become smaller.

Ms. Ordaz speaks about “engaged.” She says since the definition of “engaged” is up to the Board, she would like to see a history that there was not just a published date, that there were actual transactions. She does not have an admin Airbnb account, so she does not know what they can provide, but she knows that there are ways to pull the rental history. She states that what we are talking about is whether these six units were engaged in short-term rental to grant that special permit, so that information is pretty critical. Mr. Copelas agrees. He references the chart that Brennan provided to the Board, which Attorney Quinn has not seen. He states that the units did not need to be occupied, if it’s available to be rented. He states that Units 1, 2, and 3 were not even available prior to July 19, 20, and 20. He says it would seem that there is no possible interpretation that those three units were engaged in the rental if there was no possibility that it was even available until that date. He adds that for the other units – July 8, 8, and 8 for (Units) 4, 5, and 6 – perhaps nobody rented them, but they were still available for rental. But for the first three, that’s a real problem.

Attorney Quinn says he still has a question about the effective date of the ordinance. He says that he has not seen what Brennan has given the Board and he does not know the source of those dates. He asks where Mr. Corrison got the information.

Mr. Corrison explains that the dates are from the application that was originally submitted – not including the information submitted today – provided six different emails with the Airbnb listing publication confirmations. There is a date on the email from when the email was sent from Airbnb – that’s the date the listing is published. And then there is a little calendar graphic that shows you the first date you can rent it. He says Rosa’s got one over there. Ms. Ordaz shows this to Attorney Quinn.

Mr. Copelas says if physically, nobody, regardless of circumstance, could have rented that unit before that date, then it doesn’t seem like you’re engaged in that business. He says I agree, if you and the City have a difference of opinion as to what the date that we’re using is, then we can figure that out.

Attorney Quinn says if I have an ice cream store and I open the window and nobody buys ice cream, am I engaged in the business of selling ice cream? Mr. Copelas says that is exactly my point – just because it isn’t rented, but it was available, then I would say you’re open for business. Attorney Quinn asks, but if I rented the store, and registered the name of Bill Quinn’s Ice Cream, and I bought freezers and coolers and hired people to start working, I wasn’t engaged in the business of selling ice cream?

Mr. Viccica says the difference is there is a date certain in the Ordinance. They didn’t say you couldn’t buy ice cream only starting on a certain date, anything before that you can’t buy ice cream. The ordinance is date certain. Attorney Quinn says it’s date certain depending on how you define the word “engaged.” Mr. Viccica argues that if one hadn’t seen the ordinance when it passed, and said, “I gotta get my stuff ready,” then you do the work to get it ready and get it listed. He says instead, some of the units waited to be listed, some did not. He says the intent apparently wasn’t short-term rental at all, it was long-term rental – that’s what I’m hearing from the city planner. He says as a matter of course, we have to only rely on two things: one is the ordinance, and that has a date certain, and the other one is when it’s engaged, of which we have consistently mentioned that it has to be actively listed and available for short-term rental. There has been no wavering on the Board in terms of that.

Attorney Quinn says he cannot answer because he has to have the information to look at and review.

Chair Duffy asks which units comprise the 2,000 square foot unit. Mr. Becker says it is apparent in the condo docs. Attorney Quinn says there must be floor plans in the condo docs. There is some reference to and discussion of the memo. Chair Duffy asks if this is Unit 1; Unit 1 and 2; Unit 1 and 3. Ms. Ordaz says she thinks it is Unit 1 and 3; it says Units 1 and 3 were combined into a single unit, then you go here, and it says Unit 1, 2, 4, 5, 6. Chair Duffy says he does not know how we approve an application for a unit if we're not even clear if it is one unit or two. Attorney Quinn says if it's been combined physically and there's an occupancy permit and hopefully the condo documents have been updated to reflect it, then it is what it is, it's five units. Mr. Becker says it hasn't been removed – it still has two kitchens, four egresses. Attorney Quinn says what the condo docs say is the answer. He says we need to go through the condo docs.

Mr. Viccica says we still must go back to what is given to us as evidence that there are only three units (listed numerically) that were actively engaged. He says we're left with 1, 2, and 3 that were not available on the date, 1 was available on the date. Attorney Quinn says if you're willing to continue them all to give me a chance to check the date and look at the condo docs, I will correspond with you and we'll either withdraw one of the units or if we're convinced that on a certain date, certain units were not available for short-term rental, we'll withdraw those applications and just go with the applications of those that were. He says that's the best I can think of doing today.

Chair Duffy opens the hearing for public comment.

Jeff Cohen of 12 Hancock Street says the filing date is the date filed with the Clerk. 48 hours – that's the process – from the City Council meeting, so it's always been Tuesday by noon, so it is the 16<sup>th</sup> [July 16]. He says as far as “engaged,” the ZBA was considering this issue with a Federal Street property, where the applicant said they purchased the property with the intent of making it this luxurious short-term rental property. The ordinance was very specific – it gave all short-term rental owners six months to get their evidence and prepare their applications. One of the ZBA members mentioned there was more than plenty of time to understand what needed to be done to fulfill “engaging.” He cites the email from Tom Daniel, noting that this was before the Design Review Board and the SRA; the fact that it didn't come up about short-term rental and the applicant has said today about maybe abandoning short-term rental is not something the ZBA should be relying on, unless you said you can only do it for two or three months. Mr. Cohen says one thing the Council said was the community benefit is about tourism. The applicant has maintained throughout the process of the six properties that most of the short-term rentals are for visiting nurses and people like that; these are not necessarily tourists. He says he believes there has been a lot presented to the ZBA just to get it to the next step. Mr. Cohen says he believes it would be the best thing for the ZBA to deny the continuance and rule upon the evidence that has been presented at this hearing.

Richard Pabich of Winter Island Road and an abutter at 15 Summer Street states that Mr. Becker bought this property on June 1, 2018, approximately 45 days before the due date where you had to have shown occupancy in that building. He says the building was always long-term rental. Ann Cook rented those units when she sold the building. So that gives you forty days to either get rid of tenants that are in there – and I don't think the building came empty – so they may have been asked to leave and they left – then you have to have time to clean it, paint it, furnish it, list it, get

reservations in. You have to do all of that and rent one of them in forty days. He says I have been in this business for thirty-five years as an innkeeper. He says it takes a hell of a lot longer than forty-five days to turn around a unit that's respectable to rent. He says he also knows all about Airbnbs and what kind of information you get. As a host, you can get statistics from them every single day. They'll tell you month by month how much money they made you; they'll give you histograms, they'll tell you the dates people were in there. Reservations come in and you have to accept a reservation and then the customer comes and they pay Airbnb, they don't pay the host; the host gets paid by Airbnb, so they collect all the money. Airbnb knows exactly what the rental history of those units is. So I would expect to see those histograms for those five units – because that's what they bought, five units – to come before the Board, to show that information. If you can't show that information and this thing is approved, I'll appeal the special permit. He says I think that building was bought specifically to get it in before the deadline so they could turn it into a short-term rental. He says I have no objections to short-term rentals; it's perfectly legal. But to do it this way is not quite up to snuff.

Chair Duffy addresses a couple of letters the Board received.

Chair Duffy reads letter from Dr. Janice Lebel of 1 Chestnut Street:

“Because I am not certain that I can attend the hearing requested by Mr. Becker, I hope you will accept this letter as written testimony in lieu of my presence and include it in the record of this meeting.

I have lived in Salem on Chestnut Street since 1988. My home is directly across the street from 23 Summer Street and faces this historic federal style home. Until the sale of 23 Summer Street in 2018 by Ann Fisher to Mr. Becker, the property was always an owner-occupied residence and had some long-term rental capacity.

Since the sale, the use of the home has changed. It is now being used as an Air B&B with a continual turnover of guests. With this turnover and no on-site oversight, I have observed parking wars between guests, trash improperly removed and strewn on the sidewalk, and a deterioration of the property since it ceased being a home and converted to a building with an absentee landlord.

The change in use, the inadequate parking, the lack of oversight, the elimination of needed long-term rental capacity in Salem – not to mention the burgeoning eyesore at the entry of this highly-traveled tourist area – all make Mr. Becker's request unacceptable. I do not support this petition and ask that you please deny this special permit request.

Thank you for your time and consideration.”

Chair Duffy mentions the letters that we read previously which stated their opposition from Meg Twohey at 122 Federal Street, Lois Ferraresso, and Richard Lindeman at 133 Federal Street. Chair Duffy asks Mr. Becker if he would like to address comments.

Mr. Becker says the building came vacant, 100% empty. We also had thirty to forty-five days of notice prior to closing that we were in escrow that we could make reservations accordingly, although I appreciate his endorsement that we must be rock stars to get the place up and running in such a short amount of time. He says relative to that letter, the property was Coldwell Banker previously, and before that it was a dress shop, so I don't know that it was always owner-occupied. He says

when Joyce Cook owned it, it was a real estate agency that she owned before it became Coldwell Banker.

Chair Duffy asks if they are requesting a continuance on this application. Attorney Quinn says they are requesting a continuance for all units. Mr. Becker asks Attorney Quinn if they can discuss. Chair Duffy asks if they want to take a recess. Attorney Quinn responds in the affirmative and says he has to talk to his client.

Mr. Corrison notes that he does not know how helpful it would be, but he does have the confirmation of the language from Victoria Caldwell regarding the definition of “engaged,” but we can save it for next time. Chair Duffy says let’s save it for next time.

A recess is taken to allow Attorney Quinn and Mr. Becker time to confer about requesting to continue. Chair Duffy begins to call the application for 19 Oakview Avenue, but Attorney Quinn notes that it is his client.

Mr. Corrison says when we return, he can read out the language regarding the filing date if that would be helpful.

After the recess, Attorney Quinn requests to continue the petition to the next regularly scheduled meeting.

**Motion and Vote:** Peter Copelas moves to continue the petition of Mike Becker for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of six non-owner occupied short-term rental units in the multi-family house at 23 SUMMER STREET (Map 26, Lot 463) (B5 Zoning District) to the next regularly scheduled meeting on August 21, 2019. Mr. Tsitsinos seconds the motion. **The vote is three (3) in favor (Peter A. Copelas, Mike Duffy (Chair), and Jimmy Tsitsinos) and two (2) opposed (Rosa Ordaz and Jimmi Heiserman).**

There is discussion about whether this is a passing vote. Mr. Corrison says he thinks just a majority is needed. Chair Duffy and Mr. Corrison are looking up whether this is a passing vote. Mr. Viccica notes that if it is continued, then we will need substantial documentation. He says he can go upstairs and check it. Attorney Quinn says whatever it is, we’ll accept it. Mr. St. Pierre says a vote was taken. Attorney Quinn says he is ready to take his clients when you’re ready. Chair Duffy begins to call the petition of 19 Oakview Avenue.

There is discussion about what happens if the vote to continue fails. Mr. St. Pierre says it’s denied. Mr. Copelas says if the vote to continue did not pass, we still need to vote on the petition. Mr. Corrison agrees, saying it doesn’t go to the next meeting. Mr. Heiserman said we just said no to continuation. Mr. Corrison goes to get the Rules and Regulations. Mr. St. Pierre says to Attorney Quinn, this was a vote to continue, not a vote on the petition. Mr. Copelas says if the vote did not pass, then we need to act on the petition.

Chair Duffy says [Mr. Corrison] is researching that question. In the meantime, let’s take up the next matter. Mr. Viccica asks Attorney Quinn if he needs to notify [his client]. Attorney Quinn leaves to check if he is still in the building.

Mr. Corrison returns. He reads from Article Four of the City of Salem Board of Appeals Rules and Regulations that “[t]he concurring vote of at least four (4) members of the Zoning Board of Appeals shall be necessary in any action taken by the Board.” Chair Duffy says we did not get four. Mr. Copelas says the motion failed. Mr. Corrison agrees – the motion failed. Mr. Viccica asks if, because there is ambiguity on the dates and the units, should we vote per unit – i.e., make a motion for Unit 1, Unit 2? He says either that, or someone has to move to approve only some and not others? Ms. Ordaz asks if we can do that if he just submitted one [application]? Mr. Copelas says we did that earlier tonight. Chair Duffy says there was only one unit, one vote. Chair Duffy says the question is should we have a separate vote for each unit. Mr. Viccica says he would think we do, and because we have been given evidence that links the unit to – it’s studio, it’s a three-bedroom apartment, it’s a studio, the ones that fall outside of the date, with one being ambiguous; the other ones are the one bedroom, the one bedroom, and [Unit] 6 is another one bedroom, so it’s all the one-bedrooms that fall within the date.

Attorney Quinn returns. Chair Duffy says we researched the issue and we determined that any action by the Board requires four votes. Attorney Quinn asks, any action including continue? Chair Duffy responds in the affirmative. Attorney Quinn says he can’t find them [his clients], he sent them an email. Attorney Quinn says it sounds right to him. He looks at the language. Chair Duffy asks Attorney Quinn if he wants to give his client the chance to see the email and come back, and deal with 19 Oakview, and then take that back up. Attorney Quinn says if you’re willing, but if they’re not back by the time we get done with 19 Oakview, I expect you to act and then we’ll go home. Chair Duffy says that’s correct. They take up 19 Oakview Avenue. [Please see below for this discussion.]

Upon returning to this item, Chair Duffy notes that the motion to continue did not pass, which leaves us to having to act on the application. Mr. St. Pierre notes that they could ask to withdraw. Attorney Quinn says it is too late. Mr. Becker is not back.

Attorney Quinn says the issue of whether it is the 16<sup>th</sup> or 19<sup>th</sup> [of July] is an important issue that is not resolved. That would make a difference at least to one or two of the units. He says my request would be whether you would consider to make a motion to continue only as to the units that turn out to be affected by that date. In other words, you’ve decided that if something hasn’t been rented by the right date, you’re going to consider that the owner is not engaged in the business of short-term rentals. But we don’t know yet how many units that would apply to because we are still talking about the date. He says he knows he has seen copies of the Ordinance that say the 19<sup>th</sup> is when it was filed with the City Council. So there may be some lawyer-ish answer that isn’t occurring to me.

Mr. Viccica says he’s confused what the confusion is: it says in the ordinance, “was filed July 19, 2019.” Mr. Corrison says the language in 15-6 part 4 of the Ordinance is “engaged in the short-term rental of the property as of the date this ordinance was filed with the Council.” Mr. Corrison says he believes the ordinance may have been filed with the Council on the 16<sup>th</sup> and heard before the Council on the 19<sup>th</sup>, so that is the point that needs clarification. Attorney Quinn says the published ordinance, which comes off the website, says filed with the City Council on the 19<sup>th</sup>. Mr. Corrison responds, another portion of the website – which is actually the reason I found out about this 16<sup>th</sup> versus 19<sup>th</sup> question – which came from Dominick Pangallo, the Chief of Staff, was the short-term rental page, the date in question is the 16<sup>th</sup>. Mr. Corrison says I had emailed him to say I think it’s the 19<sup>th</sup>, and he said it’s the 16<sup>th</sup>. Attorney Quinn asks whether he is talking about what the actual ordinance on file with the City Clerk says. Mr. Corrison says now I am talking about a webpage from the City website. Attorney Quinn asks, don’t you think the right answer is the date it was filed

with the City Clerk, and the City Clerk will know that date? Attorney Quinn says he would like the opportunity to find out, which he thinks affects several units.

Mr. Copelas says, my reading of this was that the first available date that the unit is available is the way that I have chosen to interpret “engaged in.” There are three units – Units 4, 5, and 6 – were all available on July 8. The first one (Unit 1) was available on July 19. Units 2 and 3 were available on July 20. He states that from my interpretation, if that’s what the ordinance says – if it says the 19<sup>th</sup>, then we use the 19<sup>th</sup>. That would then make, in terms of my interpretation, four out of the six eligible and two not eligible.

Mr. Viccica says every one of them that’s come before us, we have used that July 19 date. We’ve never parsed it, because no one coincidentally fell right on the 19<sup>th</sup>. I would be more inclined to make a motion that would approve [Units] 1, 4, 5, and 6. I’d make a motion again to approve [Units] 2 and 3, but I would vote no on that one.

Mr. Copelas asks if that was the will of the Board and the approval of the counselor, could we make a motion to approve those four?

Ms. Ordaz asks Mr. Corriston to read the definition of engaged. Mr. Corriston responds, stating, this is the memorandum dated March 15, 2019 from Victoria Caldwell to Members of the Board of Appeals, CCing me and Elizabeth Rennard.

“At a recent meeting of the Zoning Board of Appeals, members raised the following questions to the Legal Department:

1. What is the meaning of the phrase ‘engaged in the Short-Term Rental of the property as of the date this Ordinance was filed’ in Section 15-6 d. of the Ordinance?
2. Does this language require actual rentals prior to the filing date, or would a signed short-term rental property management agreement indicating intent to operate as a short-term rental (signed prior to the filing date) be sufficient?

As there is no definition contained in the Ordinance, the Board of Appeals is free to exercise its discretion to determine what evidence it will require to find that a petitioner was ‘engaged in the Short-Term Rental of the property’ as of the date the Ordinance was filed. Although the Board may choose to require proof that a property had been listed as a short-term rental and/or previously rented as a short-term rental in order to qualify under the grandfathering provisions, the Board could also determine that proof such as a signed short-term rental property agreement is sufficient to establish eligibility for grandfathered status. Either way, the Board’s decision should include a finding that the petitioner was or was not ‘engaged in the Short-Term Rental of the property’ as of the date the Ordinance was filed.”

Mr. Viccica reviews evidence submitted by the applicant: emails noting publishing dates and first available dates. He notes that Unit 1 was available to be rented on July 19; all the dates prior to that, it was not. That would apply to Unit 1; Unit 2, July 20 – that does not meet the criteria; Unit 3, July 20. Unit 4, June 30, and it’s available on the 8<sup>th</sup> (of July), so there’s no question that that was engaged in; whether someone rented or not is in his opinion irrelevant. That would go for Unit 5 and Unit 6. He notes that the big problem is there are only five units; he asks whether there is a Unit 6.

Attorney Quinn notes that there actually is a 4, 5, and 6; there is no Unit 3. Mr. Corrison notes that of course, the unit in question that contains the two units is from July 19, 2018. He states the one that our understanding is units 1 and 3 were combined into unit 1 is from July 19.

Mr. St. Pierre notes that Attorney Quinn offered to go through the condo docs to determine that issue.

Chair Duffy notes that if 1 and 3 are the same – they’re combined – 3 wasn’t available until July 20. Ms. Ordaz asks, if they’re combined, why are there two different listings and two different dates? Mr. St. Pierre responds he thinks Mr. Becker was considering them units; our city records show five condos, not six.

Chair Duffy states we have this bubble date of July 19, and that unit, Unit 1, is part of the combined unit.

There is more discussion about which unit is the combined unit. Mr. St. Pierre notes that the City’s suffix (801, 802, 803) does not mean it’s the same as the unit number. Mr. Viccica states we could condition it on being a legal, registered unit; otherwise, we could make a motion to adjourn and we could take it up in August.

There is extensive discussion about which unit is which (in terms of unit numbers and City Assessor numbers). Mr. St. Pierre says it would have been good to continue this, but it says you can’t reconsider a vote in those rules too, once a vote is taken. Attorney Quinn asks, isn’t it that if one of the people on the side who prevailed moved to reconsider, it could be considered? Mr. Corrison looks up this question in the Rules and Regulations.

Ms. Ordaz states that there is way too much unclear information; aside from the units, there was no certificate of fitness in any of them; there is no rental history; there is a publishing date, but there is nothing after that.

Chair Duffy asks them to take up the procedural question first. Mr. St. Pierre reads, under Reconsideration [in the Rules and Regulations], it says, “Once a petition has been voted upon and the meeting is adjourned; there shall be no reconsideration of a decision of the Board.” He says that may leave that open to reconsideration because you haven’t closed the meeting. Chair Duffy says we haven’t adjourned. Attorney Quinn says the way that always works is reconsideration has to be moved under general parliamentary rules by a person who is on the prevailing side. Mr. Copelas says the prevailing side is the two who voted against. Mr. Corrison says that’s Jimmi Heiserman and Rosa Ordaz. Mr. Copelas says if you wanted to choose to reconsider, we could vote again and continue this until the next meeting. Ms. Ordaz asks, if we choose not to, then we have to vote as it’s submitted? Chair Duffy says we could grant something less than the complete relief that’s requested. We could permit something less than all units, but the issue is identifying which units are the lawful units, which are the combined units.

Mr. Heiserman asks, if I just re-vote to continue, then you will be here and we will have hopefully more evidence going forward? Chair Duffy says we would certainly want clarification as to which units constitute 1 through 6 in the application. Mr. Corrison says he thinks that’s the real question; he doesn’t know how much more proof of bookings or rentals can be provided at this juncture, but he thinks getting clarification on the parcels. Mr. Copelas says he does not know what additional evidence you might bring, but he still has problems with the first three. Attorney Quinn asks if this is

based on the date of service. Mr. Tsitsinos asks, but that date's the 19<sup>th</sup>, right? Mr. Copelas says engaged implies past tense; so he would exclude, according to the way these are numbered, [Units] 1, 2, and 3. Mr. Tsitsinos says on the 19<sup>th</sup>, he opened up for business. Mr. Copelas says, but the Ordinance says, you had to be engaged in it... Mr. Corriston says, "as of the date the Ordinance was filed."

Mr. Heiserman says if it's just that answer, I would vote for yes, we continue to get that answer from [Attorney Quinn]. Ms. Ordaz offers that she does not think it is just that answer. Mr. Tsitsinos asks if it is being engaged on the 19<sup>th</sup>, by the 19<sup>th</sup>, or prior to the 19<sup>th</sup>? Mr. Copelas says he doesn't think it's unfair to think about the intent of the ordinance, and the intent was grandfathering people who already were existing in this practice. Ms. Ordaz says this was not. Mr. Tsitsinos says that's a great point.

Chair Duffy returns to the procedural question: we are not going to be reconsidering a continuance at all if a member of the prevailing side of that vote doesn't request the reconsideration. So, ultimately, it's up to the no votes to determine whether they're willing to put it forward for reconsideration.

**Motion and Vote:** Mr. Heiserman moves to reconsider the previous motion. Mr. Tsitsinos seconds the motion to reconsider the previous motion. **The vote is four (4) in favor (Mr. Copelas, Mr. Duffy, Mr. Heiserman, and Mr. Tsitsinos) and one (1) opposed (Ms. Ordaz). The motion to reconsider passes.**

Chair Duffy says what we would need at this point is a motion to continue. Any member can make that motion and can make it subject to the terms you propose for the continuance. Mr. Viccica says the reason for the continuance is to clarify which units are applicable to which one of the descriptions. Mr. Tsitsinos adds, he may not be grandfathered in if he wasn't engaged prior to the 19<sup>th</sup>. Chair Duffy says we could consider that at any time. We're just asking about whether we're continuing. Mr. Viccica adds, and whether there are five units or six units. Mr. St. Pierre says if you continue it, the petitioner is free to bring in additional evidence.

Mr. Becker returns and is updated by Chair Duffy. The Board can now consider a motion to continue to the next regularly scheduled meeting. Mr. Copelas says he would prefer to just continue.

**Motion and Vote:** Mr. Copelas moves to continue the petition of Mike Becker for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of six non-owner occupied short-term rental units in the multi-family house at 23 Summer Street (Map 26, Lot 463) (B5 Zoning District) to the next regularly scheduled meeting of the Board on August 21, 2019. Mr. Tsitsinos seconds the motion. **The vote is four (4) in favor (Mr. Duffy, Mr. Copelas, Mr. Heiserman, and Mr. Tsitsinos) and one (1) opposed (Ms. Ordaz). The motion to continue passes.**

Location: **19 Oakview Avenue (Map 21, Lot 106) (R1 Zoning District)**  
Applicant: **Benjamin and Christine Dzedulionis**  
Project: A public hearing for all persons interested in the petition of BENJAMIN AND CHRISTINE DZEDULIONIS for a special permit per Section 3.3.5

Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance to enlarge an existing nonconforming single-family home by adding a second story addition on the existing footprint and adding a new front porch at 19 OAKVIEW AVENUE (Map 21, Lot 106) (R1 Zoning District).

Documents and Exhibitions

- Application date-stamped June 25, 2019 and supporting documentation

Attorney Quinn represents the Dzedulionis family. He states they currently have three adolescent children and they are taking in three more kids as foster children. This whole group of six children are living in a two-bedroom house off of Loring Avenue. He states that they have now been awarded permanent guardianship of the children, and they now are looking at being legally responsible for the children until they all reach the age of majority. They want to expand the house by adding several bedrooms and an additional bathroom on an additional floor above. They are seeking a special permit to enlarge a single-family home. The only nonconformity that is being extended: the setback is about seven feet on this side; right now, it's just an open stairway; they would like to add a small porch, so they can watch the kids while they are playing outside. It extends a seven-foot nonconforming sideline about ten feet. He says because this is a single-family house, under the ordinance, we need a special permit to enlarge the house. We desperately need your assistance so we can get started and provide better living quarters for all the family.

Attorney Quinn introduces architect Peter Sandorse. Mr. Sandorse says they call it a de-cap: taking the roof off the house, build a second floor, trying to hold the profile down a bit, so we've tucked down the windows kind of tightly, so it's not a full two-story addition. Mr. Sandorse says the first floor stays the same; the only addition is the front porch at the front entry. The second floor is being added to provide three more bedrooms, a master bathroom, and a family bathroom. He presents front, left, side, and rear elevations. He notes it will be pretty simple, more of a Colonial design. Right now, this is a ranch with a garage under.

Chair Duffy asks if the total proposed height will be 32 feet. Mr. Sandorse responds in the affirmative. Mr. Tsitsinos asks what the third floor will be used for. Mr. Sandorse says just attic; there will be no staircase. Mr. St. Pierre jokes, "Where's the Airbnb?"

Mr. Duffy summarizes that we are within requirements with respect to stories and height; the only nonconformity we are addressing is the side yard setback. You're not encroaching further; you're just continuing along that wall.

Attorney Quinn submits a petition signed by all their abutters on all sides. (The petition is signed by five abutters.)

Chair Duffy opens the hearing for public comment.

Gary Gill of Ward Three says he thinks the presentation is absolutely beautiful. He wishes them well.

Chair Duffy reviews the criteria for a special permit. This is serving a valid social, economic, and community need to provide additional space for this family. Traffic flow and safety including

parking and loading don't seem to be an issue with respect to this proposal. The adequacy of utilities and public services similarly are not an issue here. Impacts on the natural environment, including drainage: it's more or less over the same footprint; there's really no impact on that. Neighborhood character: with the drawings that we've seen, it looks as though the proposal is in keeping with the style of the house as it currently is. With the support of neighbors, it must be in the public opinion of those neighbors and abutters, within the character of their neighborhood. Clearly with this increase, there is a potential positive fiscal impact, including on the City tax base. Mr. St. Pierre asks if the petitioner is on city water and sewer. Mr. Dzedulionis responds in the affirmative.

**Motion and Vote:** Mr. Viccica moves to approve the petition of Benjamin and Christine Dzedulionis for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to enlarge an existing nonconforming single-family home by adding a second story addition on the existing footprint and adding a new front porch at 19 Oakview Avenue (Map 21, Lot 106) (R1 Zoning District), per the following terms, conditions, and safeguards. Mr. Copelas seconds the motion. **The vote is five (5) in favor (Mr. Tsitsinos, Mr. Heiserman, Mr. Viccica, Mr. Duffy, and Mr. Copelas) 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. The 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. The petitioner is to obtain approval from any City Board or Commission including, but not limited to, the Planning Board.

*[After the hearing for 19 Oakview Avenue, discussion returned to 23 Summer Street, above.]*

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## APPROVAL OF MINUTES

1. March 20, 2019
2. April 17, 2019
3. May 15, 2019

Mr. Copelas moves to approve the minutes as printed for March 20, 2019. Mr. Tsitsinos seconds. All are in favor.

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## OLD/NEW BUSINESS

1. Vote on revised ZBA Application Package
2. Vote on revised ZBA Fee Schedule

Mr. Corrison feels that something that addresses massing and scale of buildings which was mentioned earlier by Councillor McCarthy should be in the application package. He says he would be happy to add something like that language. Mr. Viccica says he thinks it is onerous to have to draw it; the scale doesn't necessarily apply. He does think we should be provided with photographs of two adjacent properties or two to the right and two to the left. It would help if the applicant understood where they were. The Board discusses scaled streetscapes as a possibility to show changes in height. Examples given are adding a second or third story or reconstruction. Mr. Corrison and Mr. St. Pierre will work on language to reflect this in the package for next month's meeting.

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## ADJOURNMENT

**Motion and Vote:** Mr. Heiserman moves to adjourn the meeting. Mr. Tsitsinos seconds the motion. A motion to adjourn is made by Mr. Heiserman. The vote is unanimously in favor.

The meeting ends at 10:40 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