



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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February 2, 2021

## Decision

### City of Salem Board of Appeals

2022 FEB -2 AM 9:34  
CITY CLERK  
SALEM, MASS

**Petition of JAMES FLYNN and SAM ALLEN to remove an owner occupancy requirement for the three-family dwelling at 11 HERSEY STREET (Map 33, Lot 30) (R2 Zoning District).**

A public hearing on the above Petition was opened on January 20, 2021 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Zoning Board of Appeals members present: Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, Carly McClain (Alternate), and Steven Smalley (Alternate).

The petitioner is requesting an amendment to a previously issued decision of the Board of Appeals to remove the owner occupancy requirement of the special permit.

#### **Statements of Fact:**

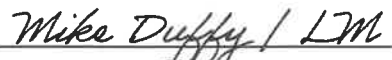
1. In the petition date-stamped December 3, 2020, the petitioner requested an amendment to a previously issued decision of the Board of Appeals dated March 20, 1985, to remove the owner occupancy requirement of the special permit.
2. 11 Hersey Street is owned by the petitioners, James Flynn and Sam Allen.
3. 11 Hersey Street is a three-family dwelling in the Residential Two-Family (R2) zoning district.
4. The requested relief, if granted, would allow the petitioners to own the property without occupying it.
5. Due to the ongoing COVID-19 pandemic and related precautions and Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, the January 20, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
6. At the January 20, 2021 public hearing, petitioner Sam Allen presented the petition.
7. A previous owner of 11 Hersey Street was granted a special permit dated March 20, 1985 to allow the continued use as a three-family dwelling subject to a special condition that the property must be owner occupied.

8. At the November 18, 2020 public hearing, Rosa Ordaz asked if 11 Hersey Street was a short-term rental or a long-term rental. Mr. Allen responded that the property is not used for short-term rental.
9. At the January 20, 2021 public hearing one member of the public, Pam McGee, spoke about the application. Pam McGee stated that she was involved in the Zoning Board of Appeals application for 80 Ocean Avenue. Ms. McGee described how the decision, dated August 29, 2018, removed the owner occupancy requirement of a previous special permit. Ms. McGee described that City Solicitor, Beth Rennard, had provided an opinion that in the words of Ms. McGee stated: "limitation to ownership related to owner occupancy is not permissible by the City". Ms. McGee believes this application to be a formality. She also stated that there are two three-family dwellings across the street from 11 Hersey Street. No (0) members of the public spoke in favor or in opposition to the proposal.
10. At the January 20, 2021 public hearing, Chair Duffy stated the proposal is a request for an amendment to conditions of an existing special permit, not a new special permit. Mr. Duffy stated it was appropriate to consider whether allowing the relief would create a condition that is substantially more detrimental than the existing use. Mr. Duffy expressed his opinion that the relief would not be substantially more detrimental than the existing use. Mr. Duffy discussed how the proposal would not change the density of the use, and the only change would be who is occupying the unit. He noted that there is a need for suitable housing and affordable housing to allow people to live and work in the city of Salem. Mr. Duffy expressed that it would be bad policy to constrain these owners from continuing to own a property that they would let out to renters. Mr. Viccica expressed agreement.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Steven Smalley, Rosa Ordaz, Carly McClain, Mike Duffy (Chair), and Paul Viccica) and none (0) opposed to allow **James Flynn** and **Sam Allen** to amend a previously issued decision of the Board of Appeals dated March 20, 1985, to remove the owner occupancy requirement of the special permit subject to the following terms, conditions, and safeguards:

**Condition:**

1. All other previous conditions remain unaltered.

  
Mike Duffy, Chair  
Board of Appeals

A COPY OF THIS DECISION HAS BEEN FILED WITH THE PLANNING BOARD AND THE CITY CLERK.

Appeal from this decision, if any, shall be made pursuant to Section 17 of the Massachusetts General Laws Chapter 40A, and shall be filed within 20 days of filing of this decision in the office of the City Clerk. Pursuant to the Massachusetts General Laws Chapter 40A, Section 11, the Variance or Special Permit granted herein shall not take effect until a copy of the decision bearing the certificate of the City Clerk has been filed with the Essex South Registry of Deeds.