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BOARD OF APPEALS

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CITY CLERK
SALEM, MASS

July 31, 2019

Decision

City of Salem Board of Appeals

Petition of PIOTR GOSZCZYNSKI 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 11 WISTERIA STREET (Map 33, Lot 399) (R2 Zoning District).

A public hearing on the above Petition was opened on July 17, 2019 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Rosa Ordaz (alternate), Jimmy Tsitsinos, and Paul Viccica (alternate).

The petitioner seeks 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. 11 Wisteria Street is a two-family house in which one non-owner occupied short-term rental unit has operated. The petitioner is seeking to continue this use by special permit per the procedure set forth in Section 15-6 (4) of the Salem Code of Ordinances.

Statements of Fact:

1. In the petition date-stamped June 11, 2019, the petitioner requested a special permit per Section 15-6 of the Salem Code of Ordinances to allow the continued operation of one non-owner occupied short-term rental unit in a two-family house. 11 Wisteria Street is a two-family house in which one non-owner occupied short-term rental unit has operated. The petitioner is seeking to continue this use by special permit per the procedure set forth in Section 15-6 (4) of the Salem Code of Ordinances.
2. The petition was advertised as being for a special permit per Section 15-6 (d) of the Salem Code of Ordinances. This section is actually titled Section 15-6 (4) of the Salem Code of Ordinances. Both refer to the same language, the fourth subsection of Section 15-6 of the Code of Ordinances. Going forward, Section 15-6 (4) will be referenced.
3. Petitioner Piotr Goszczyński presented the petition.
4. The property is a two-family home located in the Residential Two-Family (R2) Zoning District. The petitioner provided proof of non-owner occupied short-term rentals through Airbnb dating back to July 10, 2018.
5. Chapter 15 of the Salem Code of Ordinances, *Short-Term Rentals*, was enacted by an amendment to the Code of Ordinances that was approved by the Mayor on October 1, 2018. Section 15-6 sets forth *Requirements for Short-Term Rentals*. Section 15-6 (4) *Short-Term Rental of a Non-Owner Occupied Unit* states, in relevant part, that "An Operator may use his or her Non-Owner Occupied Unit as a Short-Term Rental only if the Operator was engaged in the Short-Term Rental of the property as of the date this Ordinance was filed with the Council and provided that the Operator obtains a Special Permit from the Zoning Board of Appeals." The same Section states that "Qualifying Operators must petition for

a Special Permit within 60 days of the date of passage of this Ordinance in order to be eligible for this exception.”

6. The ordinance allowing short-term residential rentals in the City of Salem was filed with the City Clerk on July 16, 2018.
7. The submitted application included a Certificate of Fitness from the Salem Board of Health for 11 Wisteria Street Unit #1 dated June 19, 2018. The application also included a “Transaction History” printed from Airbnb showing rentals of the property dating back to July 11, 2018. July 11, 2018 is before the ordinance allowing short-term residential rentals in the City of Salem was filed with the City Clerk on July 16, 2018. In addition, the application included a Certificate of Fitness for 11 Wisteria Street Unit #2 dated November 7, 2018, as well as photos of Unit #2 and select reviews from Airbnb.
8. The deadline for qualifying operators to apply for a special permit to “grandfather” their non-owner occupied short-term rentals had been previously understood to be January 15, 2019. Assistant City Solicitor Victoria Caldwell stated in a memorandum to Staff Planner Brennan Corriston dated March 15, 2019 that the deadline could be reasonably interpreted to be June 15, 2019. The below is reproduced from the memorandum:
 - “Section 15-6 d. ‘Short-Term Rental of a Non-Owner Occupied Unit’ requires that any petitioner seeking a special permit for an eligible non-owner occupied unit must file within 60 days of the passage of the Ordinance. The City Council passed the different ordinances relating to short-term rentals on different dates and passed the last of these, the amendment to the Use Table, on November 15, 2018. The Council, however, also amended the general ordinance to include an effective date of April 15, 2019, rather than upon passage.”
“Given that the public was informed of the April 15 effective date, several owners of existing non-owner occupied short-term rentals, which were located in zones where they were eligible to continue to operate on a grandfathered basis with a special permit, assumed that they had until at least April 15 to submit a petition. As such, a question has arisen as to what deadline should apply to these petitions. To read all of the sections of the ordinance sections together and avoid any conflict between the provision calling for an April 15, 2019 implementation date and the ‘60 days of passage’ language in Section 15-6 d., a reasonable interpretation would be to allow any eligible owners to file a petition requesting a special permit no later than 60 days after the implementation date – on or before June 15, 2019.”
9. Based on this memorandum, this petition date-stamped June 11, 2019 was timely submitted.
10. Mr. Goszczynski submitted his petition per the process outlined in Section 15-6 (4) of the Salem Code of Ordinances.
11. Section 3.0 *Table of Principal and Accessory Uses* of the Salem Zoning Ordinance was amended in 2018 to include the new use of “Non-Owner Occupied Short-Term Rentals.” Per Section 3.0, Non-Owner Occupied Short-Term Rentals are allowed by special permit from the Zoning Board of Appeals in the following Zoning Districts:
 - Residential Two-Family (R2);
 - Residential Multifamily (R3);
 - Business Neighborhood (B1);
 - Business Highway (B2);
 - Business Wholesale & Automotive (B4);
 - Central Development (B5).

12. As noted above, the property is located in the Residential Two-Family (R2) zoning district. Per Section 3.0 of the Salem Zoning Ordinance, the Non-Owner Occupied Short-Term Rentals use is allowed by special permit from the Zoning Board of Appeals in this district.
13. The requested relief, if granted, would allow the Petitioner to continue to operate one unit in the two-family home at 11 Wisteria Street as one non-owner occupied short-term rental unit.
14. In the Statement of Grounds submitted with the petition, the petitioner spoke to the special permit criteria (noted below).
15. At the July 17, 2019 public hearing, petitioner Piotr Goszczynski discussed the petition.
16. Peter A. Copelas asked the petitioner which unit is being rented and for which he is applying for the special permit. Mr. Goszczynski answered that it is Unit 1, the downstairs unit; his daughter lives in Unit 2, upstairs. Mr. Goszczynski also presented a new Certificate of Fitness for 11 Wisteria Street Unit #1 dated June 17, 2019; this was submitted for the record.
17. At the July 17, 2019 public hearing, Chair Duffy noted that the petition met the special requirements for applications for special permit for non-owner occupied short-term rentals, including filing by the deadline and showing that the petitioner was engaged in the short-term rental of the property as of the date the Ordinance was filed.
18. At the July 17, 2019 public hearing, no (0) members of the public spoke clearly in favor of or in opposition to this petition. Three (3) members of the public had questions or expressed concerns about the short-term rental regulations or other applications that were on the agenda, but did not speak in opposition to 11 Wisteria Street. One (1) member of the public, Gary Gill, asked about Mr. Goszczynski's plans for the unit long-term. Mr. Goszczynski's daughter was in the audience and spoke about the unit, noting that the income is indispensable for her family; that all guests have good reviews; and that the unit is a good resource for families, especially with young children or people with dietary restrictions, as compared to hotels.
19. At the public hearing, Paul Viccica stated that the filing date was met and that there was "ample evidence" and "good evidence" that it was an active short-term rental prior to July 16, 2018. Peter A. Copelas reviewed the standard special permit criteria.

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petition, including the application narrative and plans, and the Petitioner's presentation and public testimony, makes the following **findings**:

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

Findings for Special Permit:

The Board finds that the continued use will not be substantially more detrimental to the neighborhood.

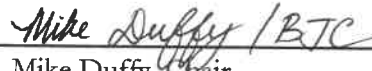
1. Social, economic and community needs are served by the proposal.
2. There is adequate traffic flow and safety, including parking and loading.
3. Adequate utilities and public services service the property.
4. There will be no change in impacts on the natural environment, including drainage, as there are no proposed changes to the exterior.
5. This continued use will not be substantially more detrimental to neighborhood character.

6. Potential fiscal impact, including impact on City tax base and employment: There is a potential positive fiscal impact from this use.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Jimmy Tsitsinos, and Paul Viccica) and none (0) opposed to grant the requested 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 **11 Wisteria Street, Unit 1**, subject to the following **terms, conditions, and safeguards**:

Standard Conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes and regulations.
2. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
3. A Certificate of Occupancy is to be obtained.
4. A Certificate of Inspection is to be obtained.


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.