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MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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CITY CLERK
SALEM, MASS

March 6, 2019

Decision

City of Salem Board of Appeals

Petition of GEORGE CLAASSEN for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of a non-owner occupied short-term rental unit in the single-family house at 17 FOWLER STREET (Map 25, Lot 86) (R2 Zoning District).

A public hearing on the above Petition was opened on February 20, 2019 pursuant to M.G.L. Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Mike Duffy (Chair), Peter A. Copelas, Patrick Shea, and Paul Viccica (alternate).

The Petitioner seeks a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of one non-owner occupied short-term rental unit. 17 Fowler Street is a single-family house that has operated as one non-owner occupied short-term rental unit, and the Petitioner is seeking to continue this use by special permit, per the procedure set forth in Section 15-6 (d) of the Salem Code of Ordinances.

Statements of Fact:

1. In the petition date-stamped January 14, 2019, the Petitioner requested a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of one non-owner occupied short-term rental unit. 17 Fowler Street is a single-family house that has operated as one non-owner occupied short-term rental unit, and the Petitioner is seeking to continue this use by special permit, per the procedure set forth in Section 15-6 (d) of the Salem Code of Ordinances.
2. Petitioner George Claassen presented the petition.
3. The property is a single-family home located in the Residential Two-Family (R2) Zoning District. This property has operated as a single non-owner occupied short-term rental unit since at least July 14, 2018.
4. Chapter 15 of the Salem Code of Ordinances, *Short-Term Rentals*, was enacted by an amendment to the Code of Ordinances that was approved by the Mayor on October 1, 2018. Section 15-6 sets forth *Requirements for Short-Term Rentals*. Section 15-6 (d) *Short-Term Rental of a Non-Owner Occupied Unit* states, in relevant part, that "An Operator may use his or her Non-Owner Occupied Unit as a Short-Term Rental only if the Operator was engaged in the Short-Term Rental of the property as of the date this Ordinance was filed with the Council and provided that the Operator obtains a Special Permit from the Zoning Board of Appeals." The same Section states that "Qualifying Operators must petition for a Special Permit within 60 days of the date of passage of this Ordinance in order to be eligible for this exception."
5. Per the Airbnb confirmation email included with the application, this property was used as a non-owner occupied short-term rental since at least as early as July 14, 2018. This is before the ordinance allowing short-term residential rentals in the City of Salem was filed on July 19, 2018. As stated, the

- Petitioner included an email from Airbnb dated June 13, 2018 confirming a booking for July 14-16, 2018. The Petitioner also included a Certificate of Fitness for this property issued October 17, 2018.
6. As the above amendment was approved by the Mayor on October 1, 2018, the deadline for Qualifying Operators to petition for Special Permit was initially understood to be December 1, 2018.
 7. An Ordinance to amend the Salem Zoning Ordinance to add the use “non-owner occupied short-term rentals” to Section 3.0 *Table of Principal and Accessory Use Regulations* and to add definitions for “non-owner occupied short-term rental” and “short-term rental” to Section 10.0 *Definitions* was, however, adopted for second and final passage by the City Council on November 15, 2018.
 8. In light of the foregoing, in January of 2019, following consultation with the Assistant City Solicitor, Victoria Caldwell, a final deadline of January 15, 2019 was established for the aforementioned “Qualifying Operators.” This deadline was 60 days from the date of passage of the aforementioned Zoning Ordinance.
 9. Several parties contacted the City for information on the special permit process for non-owner occupied short-term rentals in October of 2018. However, the City did not inform these parties about the special permit process until December 6, 2018, after the original understood deadline of December 1, 2018 had passed. In consultation with Victoria Caldwell, Zoning Enforcement Officer Tom St. Pierre and Staff Planner Brennan Corrison, and consistent with the establishment of a final deadline of January 15, 2019 following the City Council’s vote on November 15, 2018, it was determined that these parties should not be denied the opportunity to seek a special permit and that their Petitions would be deemed timely under Section 15-6 (d).
 10. Petitioner George Claassen submitted the petition per the process outlined in Section 15-6 (d) of the Salem Code of Ordinances. This petition was submitted January 14, 2019, prior to the January 15, 2019 deadline.
 11. Section 3.0 *Table of Principal and Accessory Uses* of the Salem Zoning Ordinance was amended in 2018 to include the new use of “Non-Owner Occupied Short-Term Rentals.” Non-Owner Occupied Short-Term Rentals are allowed by special permit from the Zoning Board of Appeals in the following Zoning Districts:
 - Residential Two-Family (R2);
 - Residential Multifamily (R3);
 - Business Neighborhood (B1);
 - Business Highway (B2);
 - Business Wholesale & Automotive (B4);
 - Central Development (B5).
 12. As noted above, the property is located in the Residential Two-Family (R2) zoning district. The Non-Owner Occupied Short-Term Rentals use is allowed by special permit from the Zoning Board of Appeals in this district.
 13. The requested relief, if granted, would allow the Petitioner to continue to operate the single-family house at 17 Fowler Street as one non-owner occupied short-term rental unit.
 14. At the February 20, 2019 public hearing, Petitioner George Claassen discussed the petition. Mr. Claassen noted that he and his wife have been part of the Salem Community for almost twenty years. They bought this house in 2005 and moved to Maine just over a year ago; they did not want to sell the house because they were not sure if they would come back, and they still see themselves as part of this community. The property is a small single-family house with two bedrooms, parking for two cars, and a small, fenced-in backyard. Mr. Claassen noted that many guests have pets; he noted that these guests

say they struggle to find suitable accommodations so they can bring their pets with them. Mr. Claassen added that many guests have kids; these guests like the backyard and the safety and privacy. He added that this rental serves a need and that they charge a fair price. Mr. Claassen noted that his guests spend money in the community as well.

15. Mr. Copelas noted that Mr. Claassen provided proof of a booking on July 14, which was close to the July 19, 2018 deadline by which operators needed to be engaged in the short-term rental of the property in order to be eligible to apply for this special permit. Mr. Claassen replied that the first rental was June 20, but he had set up the Airbnb account and changed his email address since, so the latest booking he could provide proof for was July 14. He stated that it is easy to find more proof if required. Mr. Copelas stated that the application meets the date and the criteria; it's not a long-term historical use, but it meets the deadline.
16. At the February 20, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition. Chair Mike Duffy noted that the Board received a letter in opposition to the petition from Flora Tonthat.
17. Chair Duffy spoke to the criteria. He noted that the application was submitted timely. Chair Duffy stated that the applicant submitted a detailed discussion of the special permit criteria and had spoken to the criteria at the hearing, including the need for this type of housing in the city; the available parking (two spaces); no changes to the dwelling that would impact utilities or the natural environment, including drainage; and a positive fiscal impact for the City.

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** that the proposed project meets the provisions of the City of Salem Zoning Ordinance:

Findings for Special Permit:


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

1. Social, economic and community needs served by the proposal: This use provides short-term rental housing suitable for guests with children and/or pets, who may find it difficult to find suitable short-term rentals in Salem.
2. There will be no changes to traffic flow and safety, including parking and loading, as the use will not change. There are two (2) off-street parking spaces at the property.
3. There will be no change in use of utilities and other public services; adequate utilities and public services already service the property.
4. There will be no change in impacts on the natural environment, including drainage, as the use and structure are not proposed to change.
5. Neighborhood character: As the Petitioner notes in the Statement of Grounds, "I have not heard any negative feedback that would make me believe that using this property as a STR would have a negative impact on the neighborhood character." The Petitioner notes in the Statement of Grounds that his neighbors have told him "that they enjoy interacting with the visitors."
6. Potential fiscal impact, including impact on City tax base and employment: As the Petitioner notes in the Statement of Grounds, guests who stay at this property support local businesses, and this use generates taxes for the City.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Mike Duffy (Chair), Peter Copelas, Patrick Shea, and Paul Viccica) and none (0) opposed to grant the requested Special Permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of a non-owner occupied short-term rental unit in the single-family house at **17 Fowler Street**, subject to the following **terms, conditions, and safeguards**:

Standard Conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes and regulations.
2. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
3. A Certificate of Inspection is to be obtained.
4. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.


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.