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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK
SALEM, MASS

March 6, 2019

Decision

City of Salem Board of Appeals

Petition of PHILIP MARCHAND for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of a non-owner occupied short-term rental unit in the single-family house at 49 SUMMER STREET (Map 25, Lot 578) (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. 49 Summer Street is a single-family home 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 10, 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. 49 Summer Street is a single-family home 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 Philip Marchand 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 October 2012.
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 "Reservations" report for this property included with the application, the use of this property ("John Edwards House") as a short-term rental began at least as early as October 2012. This is before

the ordinance allowing short-term residential rentals in the City of Salem was filed on July 19, 2018. The Petitioner also included a Certificate of Fitness for this property issued May 11, 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 Corriston, 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 Philip Marchand submitted the petition per the process outlined in Section 15-6 (d) of the Salem Code of Ordinances. This petition was submitted January 10, 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 house at 49 Summer Street as one non-owner occupied short-term rental unit.
14. In the Statement of Grounds, the Petitioner spoke to the special permit criteria (as noted in “Findings for Special Permit” below).
15. At the February 20, 2019 public hearing, Petitioner Philip Marchand discussed the petition.
16. At the February 20, 2019 public hearing, five (5) members of the public spoke in favor of the petition, and no (0) members of the public spoke in opposition to the petition.

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 meets the need for affordable rentals for large groups. As the Petitioner notes in the Statement of Grounds, the "income generated has allowed [him] to make improvements to the property which helps... maintain the character of the house and neighborhood."
2. Traffic flow and safety, including parking and loading: The driveway holds two cars, which is usually sufficient. There have been some issues with renters parking in front of the driveway at the abutting 51 Summer Street. The Petitioner has made himself very available to neighbors to try and address any parking issues.
3. Existing utilities and other public services are adequate, and there will be no change.
4. There will be no change in impacts on the natural environment, including drainage, as the use and structure will not change.
5. The historic property fits into neighborhood character. Residents who live nearby spoke in support of the application at the public hearing. As the Petitioner notes in the Statement of Grounds, the "income generated has allowed [him] to make improvements to the property which helps... maintain the character of the house and neighborhood."
6. Potential fiscal impact, including impact on City tax base and employment: this use has a positive fiscal impact on the City.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Patrick Shea, Paul Viccica, Mike Duffy (Chair), and Peter A. Copelas) 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 one non-owner occupied short-term rental unit (a single family home) at **49 Summer 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 / BTC

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.