



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS 2019 MAY 29 PM 2:39

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CITY CLERK  
SALEM, MASS

May 29, 2019

## Decision

### City of Salem Board of Appeals

**Petition of KATHERINE CASIGLIA 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 mixed-use building at 398 ESSEX STREET (Map 25, Lot 96) (R2 Zoning District).**

A public hearing on the above Petition was opened on May 15, 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, Jimmi Heiserman, Patrick Shea, Jimmy Tsitsinos, 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. 398 Essex Street is a mixed-use building in which one residential unit has operated as a non-owner occupied short-term rental unit. 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 April 24, 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. 398 Essex Street is a mixed-use building in which one residential unit has operated as a non-owner occupied short-term rental unit. 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 Katherine Casiglia presented the petition.
3. The property is a mixed-use building located in the Residential Two-Family (R2) Zoning District. One residential unit in the building has been rented as a non-owner occupied short-term rental unit at least as early as September 22, 2017. There is a dental practice, operated by the petitioner's husband, on the first floor of the building.
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. The ordinance allowing short-term residential rentals in the City of Salem was filed with the City Clerk on July 16, 2018.

6. The petitioner provided Airbnb reservations dating back to September 22, 2017 as proof of the non-owner occupied short-term rental of this unit prior to the July 16, 2018 filing of the ordinance allowing short-term residential rentals in the City of Salem with the City Clerk. The petitioner also provided additional photos (including a photo showing the address of the property), reservation data exported from Airbnb showing bookings from 2017, Airbnb profile information, and a copy of the Airbnb listing details.
7. 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 Corrison 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.”
8. Based on this memorandum, this petition date-stamped April 24, 2019 was timely submitted.
9. Ms. Casiglia submitted her petition per the process outlined in Section 15-6 (d) of the Salem Code of Ordinances.
10. 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).
11. 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.
12. The requested relief, if granted, would allow the Petitioner to continue to operate one unit in the mixed-use building at 398 Essex Street as one non-owner occupied short-term rental unit.

13. At the May 15, 2019 public hearing, petitioner Katherine Casiglia discussed the petition. Chair Duffy asked about the unit. Ms. Casiglia explained that this is one unit on the second and third floors of the building. The unit has four bedrooms. Chair Duffy asked about parking. Ms. Casiglia explained that there is off-street parking for three cars comfortably, possibly four cars, and on-street parking available nearby. Patients for the dental practice in the same mixed-use building do not use the parking area.
14. At the April 17, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition. One (1) member of the public asked if this is an historic building; Ms. Casiglia responded yes. Ms. Casiglia presented a letter in support of the petition, from Betsy and Dan Ricciarelli of 397 Essex Street, to the Board; Chair Duffy read from this letter.

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:

The petitioner **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 served by the proposal: This use serves a social, economic and community need that has been identified and is memorialized in the existence of the ordinance.
2. There will be no negative impact to traffic flow and safety, including parking and loading, as there will be no change in use or to the building.
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: This is a historic building that has been well maintained and is in keeping with the character of the neighborhood.
6. Potential fiscal impact, including impact on City tax base and employment: There is a positive fiscal impact from having short-term rental availability in the City.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Jimmy Tsitsinos, Patrick Shea, Jimmi Heiserman, 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 in the mixed-use building at **398 Essex Street (Unit 2)**, 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. Petitioner shall obtain a building permit prior to beginning any construction.
4. A Certificate of Occupancy is to be obtained.
5. A Certificate of Inspection is to be obtained.

6. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Mike Duffy / BJC

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.