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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #
CITY CLERK, SALEM, MASS.

April 15, 2014

Decision

City of Salem Board of Appeals

Petition of MICHELE CONWAY for an administrative appeal of a decision of the Building Commissioner regarding agricultural use of the property, for the property at 69 ORCHARD ST (R2 Zoning District).

A public hearing on the above Petition was opened on March 19, 2014 pursuant to M.G.L. Ch. 40A, § 11. The hearing was closed on that date with the following Salem Board of Appeals members present: Ms. Curran (Chair), Mr. Dionne, Mr. Duffy, Mr. Watkins, and Mr. Tsitsinos (alternate).

The Petitioner seeks an Appeal of the Decision of the Building Inspector, and petitions the Board to find that the keeping of chickens on her property does not constitute an agricultural use.

Statements of fact:

1. Michele Conway, petitioner, and Jim Adams, abutter at 5 Manning Street, presented the petition for the property at 69 Orchard Street (R2 – Residential Two Family Zone).
2. In the petition, date-stamped February 25, 2014, the Petitioner requests an Appeal of the Decision of the Building Inspector, and petitions the Board to allow the keeping of chickens on their property, by finding that the keeping of chickens in this instance does not constitute an agricultural use.
3. The requested relief, if granted, would allow the Petitioner to keep chickens on their property.
4. The petitioner does not sell eggs laid by the chickens.
5. At the public hearing for this petition, 27 residents - including Councilor Josh Turiel, Councilor David Eppley, and Councilor Beth Gerard - spoke in support of the Board granting the appeal, and two (2) residents spoke in opposition to the appeal. In addition, the Board received 10 letters in support of granting the appeal, including a letter from Councilor-at-Large William H. Legault, and a petition in support of granting the appeal which was signed by 14 residents.

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 narrative, the Petitioner's presentation, and public testimony, makes the following **findings**:

1. The chickens at 69 Orchard Street are being kept as pets. The eggs are not sold, and therefore cannot be considered an agricultural use, as defined by Chapter 128, Section 1A.
2. The keeping of chickens has become customary.
3. The keeping of chickens is currently vaguely addressed in Salem's Zoning Ordinance. The Salem City Council and the Board of Health should establish an ordinance that clearly addresses and regulates the keeping of chickens.

On the basis of the above findings of fact and all evidence presented at the public hearing including, but not limited to, the plans, documents and testimony, the Salem Board of Appeals concludes:

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1. An agricultural use does not exist and the order of the Building Commissioner to cease the use is therefore overturned.

In consideration of the above, the Salem Board of Appeals voted four (4) in favor (Ms. Curran, Mr. Dionne, Mr. Watkins, and Mr. Tsitsinos) and one (1) opposed (Mr. Duffy), to grant the petitioner's request to Appeal the Decision of the Building Commissioner.



Rebecca Curran, 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.