



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK  
SALEM, MASS

October 2, 2019

## Decision

### City of Salem Board of Appeals

**Petition of MICHAEL BECKER for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of two non-owner occupied short-term rental units in the two-family house at 109 BOSTON STREET (Map 15, Lot 208) (B2 & ECOD Zoning Districts).\***

**\*NOTE: The Board decided to approve one out of the two units for which the special permit was originally applied, 109 Boston Street Unit 2.**

A public hearing on the above Petition was opened on July 17, 2019 pursuant to M.G.L. Ch. 40A, § 11, continued to August 21, 2019 (during which meeting no testimony was heard), continued to September 18, 2019, 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), and Paul Viccica. At the July 17, 2019 meeting, Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Rosa Ordaz (alternate), Jimmy Tsitsinos, and Paul Viccica (alternate) were in attendance. At the August 21 meeting, Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica were in attendance.

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 two non-owner occupied short-term rental units. 109 Boston Street is a two-family house.

#### Statements of Fact:

1. In the petition date-stamped June 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 in a two-family house, 109 Boston Street Unit 2.
2. Petitioner Michael Becker presented the petition.
3. The petition form states that the petition is for 109 Boston Street Unit 2. In an email to Planner Brennan Corrison dated June 17, 2019 at 10:24 AM, Michael Becker clarified that the application is for "109 Boston units 1 & 2."
4. The petition was thus understood to be and was advertised as a request for a special permit per Section 15-6 (d) of the Salem Code of Ordinance to allow the continued operation of *two* non-owner occupied short-term rental units in the two-family house at 109 Boston Street.
5. 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.

6. The petitioner is seeking to continue the use of non-owner occupied short-term rentals by special permit per the procedure set forth in Section 15-6 (4) of the Salem Code of Ordinances.
7. The property is a two-family home in the Business Highway (B2 zoning district) and the Entrance Corridor Overlay District.
8. 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.”
9. The ordinance allowing short-term residential rentals in the City of Salem was filed with the City Clerk on July 16, 2018.
10. 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.”
11. Based on this memorandum, this petition date-stamped June 14, 2019 was timely submitted.
12. Mr. Becker submitted his petition per the process outlined in Section 15-6 (4) of the Salem Code of Ordinances.
13. 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).
14. As noted above, the property is located in the Business Highway (B2) 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.
  15. The initially requested relief, if granted, would have allowed the Petitioner to continue to operate two units in the two-family house at 109 Boston Street as two non-owner occupied short-term rental units. As discussed below, the petition was later modified by the petitioner to be a request for a special permit to continue to operate only one unit, Unit 2, at 109 Boston Street as a non-owner occupied short-term rental unit.
  16. The initially submitted application included an Airbnb booking confirmation email for February 25, 2018 to March 2, 2018. Handwritten on the bottom right corner of the email is "109-2 Boston St." The application also included a rental agreement from Salem Residential Rental Properties for 109 Boston Street Unit 1 for a short-term lease from April 9, 2018 to July 20, 2018.
  17. On July 17, 2019, Attorney William Quinn, representing petitioner Michael Becker, submitted via email to Brennan Corrison some additional documents in support of the petition, which included an Airbnb page showing three confirmed bookings for "Boston St Charming 1 bedroom fully furnished," for February 25 to March 2, 2018; March 11-17, 2018; and March 17-23, 2018. These documents also included a "Letter of Responsibility" dated July 3, 2018 from Elia Wallen of Travelers Haven L.L.C. directed to Atlantic Coast Homes, attention to Jennifer Crowe, regarding the following address:  
**"Unit Address:**  
2  
109 Boston Street  
Salem, MA 01970."
  - The documents also included a copy of a check from Travelers Haven, payable to Salem Residential Rental Properties, with a date of July 19, 2018.
  18. At the July 17, 2019 public hearing, Attorney William Quinn, representing petitioner Michael Becker, discussed the petition. He discussed the documents submitted in support of the application. Attorney Quinn described Travelers Haven as "a housing placement agency for traveling professionals and in this case it's nurses..." Attorney Quinn described the Traveler's Haven letter as referring to an agreement with Traveler's Haven to provide housing upon request for short-term situations for traveling nurses.
  19. At the July 17, 2019 public hearing, the Board discussed the petition. Board member Paul Viccica raised a question about how to link the proof to specific units – Units 1 and 2. The Board expressed that there was not sufficient evidence linking the proof to specific units to approve the petition at this point.
  20. At the July 17, 2019 public hearing, the Board discussed the lease agreement for Unit 1. Brennan Corrison noted that he spoke with Assistant City Solicitor Victoria Caldwell regarding rentals longer than 30 days, and her position was that a rental for a period longer than 30 days cannot be used as evidence of pre-existing short-term rental use.

21. "Short-term rental(s)" are defined in Section 15-2 *Definitions* of the Salem Code of Ordinances as "The use of a residential unit for residential occupancy by a person or persons for a period of fewer than 30 consecutive calendar days for a fee. A short-term rental may or may not be facilitated through a booking agent."
22. At the July 17, 2019 public hearing, Certificates of Fitness (from the Board of Health) were discussed. Brennan Corrison noted that Victoria Caldwell's position was that a lack of a Certificate of Fitness was not a "dealbreaker," but might be a negative, and that having a Certificate of Fitness for the rental would be beneficial for the application.
23. At the July 17, 2019 meeting, Chair Duffy read from three (3) emails from members of the public expressing opposition to 23 Summer Street and the other properties brought by Michael Becker seeking special permits. (These other properties include 14-16 Hodges Court.) The letters were from Richard Lindeman of 113 Federal Street, Lois Ferrarresso of 315 Essex Street, and Meg Twohey of 122 Federal Street.
24. The July 17, 2019 public hearing was not opened for public comment.
25. At the July 17, 2019 public hearing, the Board expressed that there was not enough proof to grant the requested special permit and requested more evidence. Attorney Quinn requested to continue the petition to the next regularly scheduled meeting on August 21, 2019. The Board voted five (5) in favor (Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Jimmy Tsitsinos, and Rosa Ordaz) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting. (Paul Viccica, as an alternate member, did not vote).
26. On July 18, 2019, the City Council confirmed Paul Viccica as a regular member of the Board. This involved Mr. Viccica stepping down from his then-seat as an alternate to take over a regular member term to conclude on May 1, 2022.
27. On August 21, 2019, only three Board members were in attendance: Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica. Three members out of the five-member Board constitutes a quorum (enough members to hold a meeting). However, per the Zoning Board of Appeals' Rules and Regulations, "[t]he concurring vote of at least four (4) members of the Zoning Board of Appeals shall be necessary in any action taken by the Board." As such, the Board could not vote to approve any petitions in the August 21 meeting. Petitioners were informed of this attendance situation in advance and were given the opportunity to submit requests to continue their petitions to the next regularly scheduled meeting on September 18, 2019. In an email to Planner Brennan Corrison dated August 20, 2019, Attorney Quinn submitted a request to continue 109 Boston Street to the September 18 meeting. This request was duly filed with the City Clerk on August 21, 2019. In the meeting, the Board voted three (3) in favor (Mike Duffy (Chair), Paul Viccica, and Jimmi Heiserman) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting.
28. In an email to Planner Brennan Corrison dated September 10, 2019, Attorney Quinn provided additional documentation regarding 109 Boston Street Unit 2 and stated, "...we withdraw our application for Unit 1 (first floor) of this property." The documentation shows the above-mentioned Airbnb bookings for "Boston St Charming 1 bedroom apt- fully furnished" for February 25 - March 2, 2018; March 11 - March 17, 2018; and March 17 - March 23, 2018. The document also includes some screenshots, which appear to be from Airbnb. One shows "109 Boston Street 2," to indicate Unit 2, and one shows the name of the listing as "Boston St Charming 1 bedroom apt- fully furnished."
29. At the September 18, 2019 public hearing, Attorney Quinn discussed the petition and the new evidence that was provided. Attorney Quinn noted that no qualifying evidence was submitted for Unit

- 1 so they would like to withdraw their request for 109 Boston Street Unit 1. Attorney Quinn directed the Board to the three above-referenced bookings as proof of the use of 109 Boston Street Unit 2 as a short-term rental. Attorney Quinn discussed the general special permit criteria, noting that there is no evidence that this would be any more detrimental than the existing use to the neighborhood.
30. At the September 18, 2019 public hearing, Paul Viccica asked about parking at the site, and petitioner Mike Becker explained that parking is available on-site, with one parking spot always allocated to the 109 Boston Street short-term rental unit.
31. At the September 18, 2019 public hearing, one (1) member of the public spoke in favor of the petition and no (0) members of the public spoke in opposition.

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 **109 Boston Street Unit 2** 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 (Rosa Ordaz, Paul Viccica, Jimmi Heiserman, Mike Duffy (Chair), and Peter A. Copelas) 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 home at **109 Boston Street, Unit 2**, subject to the following **terms, conditions, and safeguards**.\*

\*The petition was originally advertised as written below. The Board decided to approve one out of the two units for which the special permit was originally applied, 109 Boston Street Unit 2. The request for 109 Boston Street Unit 1 was withdrawn by the petitioner.

*Original advertisement:*

Petition of MICHAEL BECKER for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of two non-owner occupied short-term rental units in the two-family house at 109 BOSTON STREET (Map 15, Lot 208) (B2 & ECOD Zoning Districts).

**Standard Conditions:**

1. Petitioner shall comply with all city and state statutes, ordinances, codes and regulations.

2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
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.

  
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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.