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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) [15-6 (4)] of the Salem Code of Ordinances to allow the continued operation of two non-owner occupied short-term rental units in the mixed-use building at 25 LYNDE STREET (Map 26, Lot 440) (B5 Zoning District).**

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. 25 Lynde Street is a mixed-use building.

#### Statements of Fact:

1. In the petition date-stamped June 17, 2019, the petitioner requested 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, Units 2 and 3, at 25 Lynde Street. The petitioner is seeking continue the use of Units 2 and 3 as non-owner occupied short-term rental units by special permit per the procedure set forth in Section 15-6 (4) of the Salem Code of Ordinances.
2. 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.
3. The petition was presented by a representative from petitioner Michael Becker's office.
4. This property is a mixed-use building in the Central Development (B5) zoning district.
5. 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.”
6. The ordinance allowing short-term residential rentals in the City of Salem was filed with the City Clerk on July 16, 2018.
  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. The petition was submitted and date-stamped June 17, 2019. Because the deadline of June 15, 2019 fell on a Saturday (a day when City Hall is closed), the effective deadline was the next day that City Hall was open following the deadline, which was June 17, 2019. As such, this petition date-stamped June 17, 2019 was timely submitted.
  9. Mr. Becker submitted his petition per the process outlined in Section 15-6 (4) 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.” 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).
  11. As noted above, the property is located in the Central Development (B5) 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.

12. The requested relief, if granted, would allow the Petitioner to continue to operate two units in the mixed-use building at 25 Lynde Street as two non-owner occupied short-term rental units.
13. The initially submitted application included rental agreements for the two units for which special permits were sought (Units 2 and 3). The rental agreement for 25 Lynde Street Unit 2 is for April 21, 2018 to July 31, 2018. The rental agreement for 25 Lynde Street Unit 3 is for February 28, 2018 to April 28, 2018. These rental agreements are for periods longer than thirty days.
14. "Short-term rental" is defined in the Salem Code of Ordinances (Section 15-2) as follows:  
*Short-term rental(s)*. 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.
15. The rentals in the rental agreements provided do not meet the definition of short-term rental in the Ordinance.
16. In the July 17, 2019 meeting of the Board of Appeals, Attorney William Quinn, representing petitioner Michael Becker, introduced all the short-term rental special permit requests brought by Mr. Becker. Attorney Quinn explained that they did not have sufficient evidence at the moment for 25 Lynde Street, but that they thought they would find some. He stated that they would be requesting to continue the petition for 25 Lynde Street to the next regularly scheduled meeting.
17. 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.
18. At the July 17, 2019 public hearing, the Board voted five (5) in favor (Paul Viccica, Jimmy Tsitsinos, Jimmi Heiserman, Mike Duffy (Chair), and Peter A. Copelas) and none (0) opposed to approve the request to continue to the next regularly scheduled meeting on August 21, 2019.
19. 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.
20. 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 21, 2019, Attorney Quinn submitted a request to continue 25 Lynde 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), Jimmi Heiserman, and Paul Viccica) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting.
21. In an email to Planner Brennan Corrison dated September 10, 2019, Attorney Quinn stated in part, "Please also be advised that we are withdrawing our application for 25 Lynde Street."

22. At the September 18, 2019 public hearing, Attorney William Quinn requested to withdraw the application without prejudice because they had not been able to generate sufficient evidence of use prior to the effective date of the statute.

On the basis of the above statements of fact, the Salem Board of Appeals voted five (5) in favor (Jimmi Heiserman, Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, and Peter A. Copelas) and none (0) opposed to allow the petitioner to withdraw the application without prejudice.

**THE PETITION IS WITHDRAWN WITHOUT PREJUDICE.**

  
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.