



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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January 2, 2019

## Decision

### City of Salem Board of Appeals

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CITY CLERK  
SALEM, MASSACHUSETTS

**Petition of ALEXANDER PEDAN ON BEHALF OF PAIR CAPITAL LLC for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of non-owner occupied short-term rentals at 40-42 DOW STREET (Map 34, Lot 220) (R3 Zoning District).**

A public hearing on the above Petition was opened on December 19, 2018 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, and Jimmy Tsitsinos.

The Petitioner seeks a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of non-owner occupied short-term rentals. 40-42 Dow Street is a two-family house which has operated as two non-owner occupied short-term rental units through Airbnb; 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 November 26, 2018, the Petitioner requested a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of non-owner occupied short-term rentals. 40-42 Dow Street is a two-family house which has operated as two non-owner occupied short-term rental units through Airbnb; 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 Alexander Pedan and his son presented the petition.
3. The property is a two-family house located in the Residential Multifamily (R3) Zoning District. The property has operated as two non-owner occupied short-term residential rental units since 2016.
4. Per the Statement of Grounds submitted with the application, the two “apartments in the house have been rented out as short-term rentals since 2016... and were registered with the city before July 19, 2018 when the new ORDINANCE ALLOWING SHORT-TERM RESIDENTIAL RENTALS IN THE CITY OF SALEM was filed.”
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 (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.”

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 December 1, 2018.
7. This application was submitted and date-stamped on November 26, 2018. As such, the application met the deadline.
8. Mr. Pedan submitted his petition per the process outlined in Section 15-6 (d) of the Salem Code of Ordinances.
9. 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).
10. As noted above, the property is located in the Residential Multifamily (R3) zoning district. The Non-Owner Occupied Short-Term Rentals use is allowed by special permit from the Zoning Board of Appeals in this district.
11. The requested relief, if granted, would allow the Petitioner to continue to operate two non-owner occupied short-term rental units in the two-family house at 40-42 Dow Street.
12. At the December 19, 2018 public hearing, the Petitioner discussed the following in reference to the criteria for special permits:
  - Social, economic and community needs: the use of this building as non-owner occupied short-term rental units adds taxes to the City and allows the homeowners to invest in and improve the property in what could be considered a blighted area.
  - Traffic flow and safety, including parking and loading: the use of this building as non-owner occupied short-term rental units requires less parking than a traditional long-term rental use would require, because not everyone who stays at the property requires a vehicle and because there are days in the year when the property is not occupied.
  - Utilities and other public services: no change is required. Because of less-than-100% occupancy, this use likely requires less utility usage than a longer-term rental use.
  - Impacts on the natural environment, including drainage: as the use would continue, there are no different impacts. Lower occupancy may mean a lower impact on the natural environment.
  - Neighborhood character: as mentioned, the neighborhood can be considered a blighted area with elevated crime. Investing in the property helps bring money to the area where the city needs it.
  - Potential fiscal impact, including impact on City tax base and employment: occupancy tax will generate a \$10,000 increase in taxes to the City, as a direct benefit to the City; indirectly, investment in the property
13. The Board asked how long the property has operated this way. The petitioner's son explained that the property has operated as non-owner occupied short-term rentals since August 2016.

14. At the December 19, 2018 public hearing, no members of the public spoke in favor of the petition and one (1) member of the public spoke in opposition to the petition. In response to the stated concerns, the petitioner's son stated that the people who stay at the property invest in Salem through the restaurants, the theatre, and ongoing events, and have helped vitalize the neighborhood.
15. The Board asked more questions. Chair Mike Duffy asked how many units are available for rental, and petitioner answered that there are two units available for rental. Mr. Copelas asked how many units are in the building; petitioner answered that there are two units - it is a two-family house. Chair Duffy asked if there are rules or requirements for guests who stay there; the petitioner's son answered that there are quiet hours, no smoking, no parties allowed; those rules are stated before people rent and people are notified of these rules again once they rent. Chair Duffy asked if there is a way for people to contact the operators if they are concerned; the petitioner's son answered that there is. Mr. Tsitsinos asked if there had been any problems with the police, and the petitioner's son answered that there were not.

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 use will not be substantially more detrimental than the existing use to the neighborhood.

1. Social, economic and community needs served by the proposal: the use of this building as non-owner occupied short-term rental units adds taxes to the City and allows the homeowners to invest in and improve the property in what could be considered a blighted area.
2. There will be no changes to traffic flow and safety, including parking and loading, as the use will not change. The use of this building as non-owner occupied short-term rental units may require less parking than a traditional long-term rental use would require, because not everyone who stays at the property requires a vehicle and because there are days in the year when the property is not occupied.
3. There will be no change in use of utilities and other public services; as such, existing utilities and other public services are adequate. Because the property is not occupied all 365 days of the year (i.e., there are days when the property is not occupied), this use requires less utility usage than a longer-term rental use.
4. There will be no change in impacts on the natural environment, including drainage, as the use will not change.
5. Neighborhood character: Petitioner states in the Statement of Grounds that "[o]ur ability to continue to operate the building as a non-owner occupied short-term rental will allow us to continue to invest money into improving the property which should have positive spillover impacts on the rest of the neighborhood. Specifically, over the past two years, we have invested over \$75k into improving the property which has elevated the street block and mitigated blighting influences on the neighborhood."
6. Potential fiscal impact, including impact on City tax base and employment: Petitioner states in the Statement of Grounds that "[t]he property should generate an incremental \$9K-12K in occupancy tax directly to the city as a result of its being a short-term rental." Visitors that rent the units spend money at Salem businesses. In addition, Petitioner states in Statement of Grounds that "[t]he property supports one contract employee who is local to Salem to oversee cleaning and property maintenance."

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Mike Duffy (Chair), Peter A. Copelas, Jimmi Heiserman, Patrick Shea, and Jimmy Tsitsinos) 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 non-owner occupied short-term rentals at 40-42 Dow 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.

  
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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.*