



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) [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 multi-family house at 14-16 HODGES COURT (Map 35, Lot 311) (R2 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. 14-16 Hodges Court is a multi-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, 14-1 Hodges Court, in the multi-family house at 14-16 Hodges Court.
2. Petitioner Michael Becker presented the petition.
3. The petition form states that the petition is for 14 Hodges Court Unit 1 ("14-1 Hodges Court"). In an email to Planner Brennan Corrison dated June 17, 2019 at 10:24 AM, Michael Becker clarified that the application is for "14 Hodges court 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 multi-family house at 14-16 Hodges Court.
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 multi-family house in the Residential Two-Family (R2) zoning 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 Corriston 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 Residential Two-Family (R2) 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 requested relief, if granted, would allow the petitioner to continue to operate two units in the multi-family house at 14-16 Hodges Court as two non-owner occupied short-term rental units.
16. The initially submitted application included an Airbnb booking confirmation email for April 12 to 17, 2018; handwritten on the first page of the email is "14-1 Hodges Ct." In the email, the Airbnb listing is called "Beautiful updated 3 bed/2bath close to so much." No proof was submitted for 14-2 Hodges Court at this point.
17. On July 17, 2019, Attorney William Quinn, representing petitioner Michael Becker, submitted some additional documents in support of the petition, which included what appears to be a screenshot from HomeAway.com showing the property address ("14 Hodges Ct") and a map. The documents also included a table titled "Reservations as of July 15, 2019 12:58 PM" which showed two reservations for a property called "2 bedroom apartment located STEPS from the ocean and downtown Salem, 1..." One booking was for 10/27/2017-10/29/2017. The other was for 10/30/2017 to 11/01/2017. The documents also included a screenshot from VRBO showing "14 Hodges Ct" and a property number, 7188837.
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. There was discussion between Attorney Quinn and Mr. Becker regarding unit numbering; it was determined that the right side of the building is considered 14 Hodges Court, the left side 16 Hodges Court. Through discussion between Attorney Quinn and Mr. Becker, it was determined that the request is for only the two units on the right-hand side, 14 Hodges Court Units 1 and 2. Mr. Becker stated that they are all currently three-bedroom, two-bathroom units.
19. At the July 17, 2019 public hearing, the Board struggled to link the bookings to the specific units (Units 1 and 2). The Board asked about the parking on site.
20. At the July 17, 2019 public hearing, Mr. Becker stated that the two units on the left [16 Hodges Court] will be long-term rental units. He stated that when he bought the building, there were no parking spaces; now there are three spaces on-site, and there are two assigned spaces in the South Garage. He stated that 14 Hodges Unit 1 and Unit 2 each have a parking spot in the driveway. One on-site spot is currently used by 16 Hodges Unit 2. The two garage spaces are extra.
21. At the July 17, 2019 public hearing, Attorney Quinn requested to continue the petition to the next regularly scheduled meeting on August 21, 2019.
22. At the July 17, 2019 public hearing, no (0) members of the public spoke in favor of the petition and one (1) member of the public spoke in opposition to the petition. This member of the public, Jeff Cohen, asked the Board not to continue the petition to next month, and expressed opposition to the petition due to parking and the definition of "adjacent units" in the Ordinance.
23. One letter was submitted to the Board from a neighbor, Nancy Corral, stating, "I would like to say, 'I suggest [sic] that Mr. Becker is given a date of completion of his yard project.' It has been a long time so far. The home should be secured also."
24. At the July 17, 2019 public hearing, Attorney Quinn responded that his understanding is that the yard project is complete and he was not sure what she meant by secure the home.
25. 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.

26. The Board voted five (5) in favor (Mike Duffy (Chair), Jimmi Heiserman, Jimmy Tsitsinos, Peter A. Copelas, and Paul Viccica) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting. (Rosa Ordaz, as an alternate member, did not vote.)
27. 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.
28. In an August 16, 2019 email regarding 14 Hodges Court to Planner Brennan Corriston, Michael Becker provided a screenshot of the VRBO dashboard showing "on which floor: 1."
29. 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 Corriston dated August 20, 2019, Attorney Quinn submitted a request to continue 14-16 Hodges Court 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 (Jimmi Heiserman, Paul Viccica, and Mike Duffy (Chair)) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting.
30. In an email to Planner Brennan Corriston dated September 10, 2019, Attorney Quinn provided additional documentation regarding 14-16 Hodges Court and stated: "14 Hodges Court – Units 1 (first floor) and 2 (second and third floors); we are withdrawing our application of approval of 16 Hodges Court." The documentation includes proof of rentals for two units, 14 Hodges Court Unit 1 and Unit 2. For Unit 1, two HomeAway rentals are provided with dates October 27 - October 29, 2017 and October 30 - November 1, 2017. These rentals do not show a unit number. For Unit 2, a VRBO screenshot is provided showing "14 Hodges St., Unit 2, Salem," and a number "1193192." Another VRBO screenshot is provided showing a rental for February 17 - March 18, 2018 (29 total nights). There is also an Airbnb reservation confirmation email for a rental April 12 - 17, 2018 for the listing "Beautiful updated 3 bed/2bath close to so much."
31. In City Assessor's records, the address of this property is referred to as 14-16 Hodges Court. The petition was advertised as being for two units in 14-16 Hodges Court.
32. At the September 18, 2019 public hearing, Attorney Quinn discussed the petition and the new evidence that was provided. He noted that they are not seeking special permits for anything in 16 Hodges Court; only for 14 Hodges Court, Units 1 (basement and first floor) and 2 (second and third floor). Attorney Quinn noted that renovations to the property included adding a bedroom to Unit 1. Attorney Quinn noted the building is in an historic district. Attorney Quinn discussed special permit criteria.
33. The Board asked about inconsistencies between City records and the application in the number of bedrooms and bathrooms in the building. Mr. Becker explained that this is because the Assessor has not yet been to the building since the improvements have been made.

34. At the September 18, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.

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 **14 Hodges Court Units 1 and 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. The property offers safe, code-compliant housing.
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 (Paul Viccica, Mike Duffy (Chair), Jimmi Heiserman, Rosa Ordaz, 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 two non-owner occupied short-term rental units in the multi-family house at **14-16 Hodges Court, 14 Hodges Court Units 1 and 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 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. Petitioner shall obtain a building permit prior to beginning any construction.
5. A Certificate of Occupancy is to be obtained.
6. A Certificate of Inspection is to be obtained.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

  
Mike Duffy, Chair  
Board of Appeals

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October 2, 2019  
Project: 14-16 Hodges Court  
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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.