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MAYOR

# CITY OF SALEM, MASSACHUSETTS

## BOARD OF APPEALS

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CITY CLERK  
SALEM, MASS

July 31, 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 one non-owner occupied short-term rental unit in the two-family house at 31-33 CEDAR STREET (Map 34, Lot 52) (R2 Zoning District).**

A public hearing on the above Petition was opened on July 17, 2019 pursuant to M.G.L Ch. 40A, § 11 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), Jimmy Tsitsinos, and Paul Viccica (alternate).

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 one non-owner occupied short-term rental unit. 31-33 Cedar Street is a two-family house in which one non-owner occupied short-term rental unit has operated. The petitioner is seeking to continue this use by special permit per the procedure set forth in Section 15-6 (4) of the Salem Code of Ordinances.

#### 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. 31-33 Cedar Street is a two-family house in which one non-owner occupied short-term rental unit has operated. The petitioner is seeking to continue this use 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. Petitioner Michael Becker presented the petition.
4. The petition form states that the petition is for 31-33 Cedar Street Unit 1. In an email to Planner Brennan Corrington dated June 17, 2019 at 10:24 AM, Michael Becker clarified that the application is for "31-33 Cedar St unit 1, not unit 2."
5. The property is a two-family home located in the Residential Two-Family (R2) Zoning District. The petitioner provided proof of non-owner occupied short-term rentals through Airbnb and VRBO dating back to at least February 15, 2018.
6. 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."

7. The ordinance allowing short-term residential rentals in the City of Salem was filed with the City Clerk on July 16, 2018.
8. The submitted application included an invoice from VRBO for "Pay Per Booking Commission (Listing 1193192)" dated October 23, 2017. Handwritten on this invoice is "31-33 Cedar St Unit 2." In addition, an email from VRBO was included showing details of a booking of Property #1193192 for April 28 to May 2, 2018. Neither of these documents includes the address other than what was handwritten on the page. In addition, the application included seven pages of Money Transfers, at least six of which appear to be from PayPal; handwritten on each of these pages is some variation of "Cedar St."
9. On July 17, 2019, prior to the meeting, Attorney Bill Quinn supplied a packet of additional evidence of short-term rentals for 31-33 Cedar Street. This included a screenshot of what appears to be an Airbnb page showing bookings. This page includes a confirmed booking for "33 Cedar Street-Beautiful updated 3 bed/2 bath" from February 15 to 20, 2018 and another confirmed booking for the same listing from March 7 to 21, 2018; there is a canceled booking from February 16 to March 7, and a portion of a confirmed booking for March 21 to 26, 2018 at the bottom of the page (it is cut off at the bottom of the page). This packet also included the same VRBO email as referenced in #8 above; however, this copy has "31-33 Cedar St. (U1)" handwritten on the page. The packet also included the same VRBO invoice as referenced in #8 above. (The packet also included an unofficial property card for 31 Cedar Street.
10. The first night the unit was rented, based on the evidence provided, was at the latest February 15, 2018; this is before the ordinance allowing short-term residential rentals in the City of Salem was filed with the City Clerk on July 16, 2018.
11. 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.”

12. Based on this memorandum, this petition date-stamped June 14, 2019 was timely submitted.
13. Mr. Becker submitted his petition per the process outlined in Section 15-6 (4) of the Salem Code of Ordinances.
14. 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).
15. 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.
16. The requested relief, if granted, would allow the Petitioner to continue to operate one unit in the two-family home at 31-33 Cedar Street as one non-owner occupied short-term rental unit.
17. At the July 17, 2019 public hearing, Attorney William Quinn, representing petitioner Michael Becker, discussed the petition.
18. At the July 17, 2019 public hearing, the Board discussed Certificates of Fitness. No Certificates of Fitness were provided as evidence for this application. Certificates of Fitness had not been required by the Board in previous short-term rental special permit applications; some applicants have used Certificates of Fitness as part of their evidence of operation.
19. Section 15-6 (1) of the Salem Code of Ordinances requires, in part, that “every new owner and/or operator is required to complete a new registration form and obtain a new certificate of fitness prior to making the unit available as a short-term rental.” Section 15-6 (8) notes that “The residential unit offered as a short-term rental shall continue to be subject to the requirements of section 2-705 of this Code to obtain a certificate of fitness and the applicable requirements of the state sanitary code.”
20. As part of the discussion regarding Certificates of Fitness, Paul Viccica noted that the Board could condition an approval on obtaining a Certificate of Fitness, as Certificates of Fitness are required for short-term rental operations. Attorney Quinn responded, in the affirmative.
21. During a discussion regarding which unit was rented through VRBO (Unit 1 or Unit 2), petitioner Michael Becker stated that the unit he has rented through Airbnb is a three-bedroom, two-bathroom unit and the upstairs unit is a three-bedroom, one-bathroom unit. Peter Copelas asked if Unit 1 at 31-33 Cedar Street is a three-bedroom, two-bathroom unit; Mr. Becker responded, “Correct.” Mr. Copelas asked if Unit 2 has a different configuration; Mr. Becker responded, “Correct.”
22. At the July 17, 2019 public hearing, no (0) members of the public spoke in favor of the petition and four (4) members of the public spoke in opposition to the petition. Of these four (4) members of the public, three (3) spoke in opposition to the full set of six short-term rental special permit petitions brought by Mr. Becker; one (1) spoke specifically with regard to the management of the Cedar Street

property. In addition, one (1) member of the public spoke in what appeared to be opposition to Airbnb rentals in general, but did not address Mr. Becker's petitions specifically. In addition, 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 31-33 Cedar Street.) The letters were from Richard Lindeman of 113 Federal Street; Lois Ferraresso of 315 Essex Street; and Meg Twohey of 122 Federal Street.

23. At the public hearing, Board member Paul Viccica suggested that there be a special condition that a Certificate of Fitness be obtained prior to any future short-term rentals.
24. At the public hearing, Board member Peter A. Copelas stated that he believes that the petitioner has provided adequate evidence that the unit was being used for short-term rental prior to the (filing) date of the Ordinance, and the application was submitted in a timely manner, so the special conditions (requirements) for a non-owner occupied short-term rental appear to be met. Mr. Copelas added, given the fact that the property is a two-family house and is going to continue to be used as two units, he believes that the standard special permit criteria are met.
25. There was discussion regarding the correct way to reference this particular unit.

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 the property 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 (Jimmi Heiserman, Mike Duffy (Chair), Peter A. Copelas, Jimmy Tsitsinos, and Paul Viccica) 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 house at **31-33 Cedar Street, Unit 1 (also referenced as First Floor)**, 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 requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
3. A Certificate of Occupancy is to be obtained.
4. A Certificate of Inspection is to be obtained.

Special Condition:

1. A Certificate of Fitness is to be obtained prior to Petitioner engaging in any further short-term rentals of this property pursuant to this Special Permit.

Mike Duffy / BJC

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.