



# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

~~2012 APR -4 P 1:24~~

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FILE #  
CITY CLERK, SALEM, MASS.

April 4, 2012

## Decision

City of Salem Zoning Board of Appeals

**Petition of MARCELO CABRERA requesting a Special Permit to expand a nonconforming structure, and Variances from lot area per dwelling unit and off-street parking regulations, in order to construct a third story dormer for use as a third unit on the existing two-family house on 24 WARD ST, Salem, MA (R3 Zoning District).**

A public hearing on the above Petition was opened on March 21, 2012 pursuant to Mass General Law Ch. 40A, § 11. The hearing was closed on March 21, 2012 with the following Zoning Board of Appeals members present: Rebecca Curran (Chair), Annie Harris, Richard Dionne, Jamie Metsch, Jimmy Tsitsinos and Bonnie Belair.

Petitioner seeks a Variance pursuant to Section 4.1, and a Special Permit pursuant to Section 3.3.3, of the City of Salem Zoning Ordinances.

### **Statements of fact:**

1. In a petition date-stamped March 7, 2012, petitioner requested a Variance from lot area per dwelling unit and a Special Permit to expand a nonconforming structure, in order to construct a third-story dormer for use as a third dwelling unit. Petitioner also requested a Variance from Section 5.1, off-street parking regulations, but later revised his parking plan so that relief was no longer needed.
2. The petitioner represented himself at the hearing.
3. At the hearing, no one spoke in support of or in opposition to the petition.

The Board of Appeal, after careful consideration of the evidence presented at the public hearing, and after thorough review of the plans and petition submitted, makes the following findings:

1. Owing to special conditions relating to the building and parcel, which do not generally affect the other parcels in this zoning district, literal enforcement of the provisions of this ordinance would involve substantial hardship to the appellant. The multi-family use is an allowed use in the R-3 Zoning District, but expansion of the dormer is needed to meet code for access, and the lot is very small.
2. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance, since the use is an allowed one in this zoning district, and the dimensional relief requested is minimal. Additionally, parking will be provided.
3. In permitting such change, the Board of Appeals requires certain appropriate conditions and safeguards as noted below.

On the basis of the above findings of fact and all evidence presented at the public hearing including, but not limited to, the Plans, Documents and testimony, the Zoning Board of Appeals **concludes:**

1. A Variance under Section 4.1 is granted to allow for the proposed addition, as shown on the submitted plans.
2. A Special Permit under Section 3.3.3 is granted to allow for the proposed addition, as shown on the submitted plans.

In consideration of the above, the Salem Board of Appeals voted, four (4) in favor (Curran, Metsch, Dionne, and Belair) and one (Harris) opposed, to grant petitioner's request for a Variance and Special Permit subject to the following **terms, conditions, and safeguards:**

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. Exterior finishes of the new construction shall be in harmony with the existing structure.

6. A Certificate of Occupancy 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.
8. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.



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Rebecca Curran, Chair  
Salem 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.