



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #  
CITY CLERK, SALEM, MASS.

December 26, 2012

## Decision

City of Salem Zoning Board of Appeals

**Petition of MATTHEW BANKO requesting to amend a previous decision of the Zoning Board of Appeals to eliminate the owner occupancy requirement from a Special Permit for the property located at 9-11 OCEAN TERRACE (R-1). Applicant also requests a Variance and Special Permit to add a third-floor dormer to the structure.**

A public hearing on the above Petition was opened on December 19, 2012 pursuant to Mass General Law Ch. 40A, § 11. The hearing was closed on December 19, 2012 with the following Zoning Board of Appeals members present: Rebecca Curran (Chair), Annie Harris, Michael Duffy, Richard Dionne, and Jimmy Tsitsinos (alternate).

Petitioner seeks to amend a Special Permit granted on June 16, 2010 for the property located at 9-11 Ocean Terrace, Salem. Petitioner also seeks relief pursuant to Sections 4.0 and 3.3.4 of the Salem Zoning Ordinance.

### **Statements of fact:**

1. Three previous Special Permit decisions, date-stamped September 10, 1980, March 12, 1986, and July 1, 2010, had been issued for this property, allowing its use as a three-family house, with the condition that the premises remain owner-occupied, or it was to revert to a two-family house.
2. In a petition date-stamped October 24, 2012, petitioner requested elimination of the owner-occupancy requirement so that he could convert the apartments to condominiums. The petition also requested dimensional relief to construct a third-story dormer.
3. Attorney Michael McCardle represented the petitioner at the hearing.
4. At the hearing, no member of the public spoke in favor of or in opposition to the petition.

The Board of Appeals, 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**:

With regard to the requested Variance and Special Permit for a shed dormer:

1. Desirable relief could not be granted without nullifying or substantially derogating from the intent or purpose of the zoning ordinance.
2. Special conditions and circumstances do not exist affecting the parcel or building, which do not generally affect other land or buildings in the same district.
3. Evidence was not presented establishing that a literal enforcement of the provisions of this ordinance would involve substantial hardship, financial or otherwise, to the appellant.

With regard to the requested elimination of the owner-occupancy requirement for the property:

1. Desirable relief could not be granted either without detriment to the public good or without nullifying or substantially derogating from the intent or purpose of the zoning ordinance. All previous Board decisions regarding this issue had contemplated reversion of the three-family house to a two-family house if it were ever not occupied by the owner. Existence of a three-family house in the Residential One-Family Zoning District warrants this condition.

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 voted five (5) opposed (Curran, Dionne, Tsitsinos, Duffy and Dionne) and none (0) in favor, to grant the requested amendment to the previously issued Special Permit to eliminate the owner occupancy requirement for a three-family house. The Board voted one (1) in favor (Dionne) and four (4) opposed (Curran, Tsitsinos, Duffy and Dionne) to grant the requested Variance and Special Permit to construct a third-story addition. Both petitions are denied.



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.