



CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #
CITY CLERK, SALEM, MASS

March 28, 2013

Decision

City of Salem Board of Appeals

Petition of PAUL BARRETT, requesting Variances of Section 4 Dimensional Requirement of the Salem Zoning Ordinance, in order to allow reduction of the front, side and rear yard setbacks and to increase the maximum allowable lot coverage by all buildings for construction of a two-story addition to the home on the property located at 35 Juniper Avenue (R1 Zoning District).

A public hearing on the above Petition was opened on March 20, 2013 pursuant to Mass General Law Ch. 40A, § 11. The hearing was closed on March 20, 2013 with the following Board of Appeals members present: Rebecca Curran (Chair), Annie Harris, Richard Dionne, Tom Watkins, and David Eppley (Alternate). The following Board of Appeals were absent from the hearing Mike Duffy and Jimmy Tsitsinos (Alternate).

Petitioner seeks a Variance to Section 4.1.1 *Table of Dimensional Requirements* of the City of Salem Zoning Ordinances.

Statements of fact:

1. Mr. Barrett, petitioner, presented the petition for the property at 35 Juniper Avenue (R1 Zoning District).
2. In the petition, dated February 26, 2013, the petitioner requested Variances from the minimum depth of front yard (15 ft.), minimum width of side yard (10 ft.), minimum depth of rear yard (30 ft.), and maximum lot coverage by all buildings (30%) requirements of Section 4.1.1 *Table of Dimensional Requirements* in the City of Salem Zoning Ordinances for the property at 35 Juniper Avenue. The petitioner's proposed dimensional requirements were:
 - **Minimum Depth of Front Yard:** 0 feet
 - **Minimum Width of Side Yard:** 5 feet
 - **Minimum Depth of Rear Yard:** 0 feet
 - **Maximum Lot Coverage by All Buildings:** 91.60 percent
3. The petitioner's proposed hardship necessitating the need for the Variances included, the unique size and dimensions of the parcel, and the costs and impact on neighboring properties associated with expanding the existing structure vertically.
4. There was no public present at the meeting to speak in opposition or support to the Variance requests. Additionally, no written comments from the public were received prior to the public hearing.

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. The desired relief may be granted without detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the City of Salem Zoning Ordinances.
2. The literal enforcement of the City of Salem Zoning Ordinance's Table of Dimensional Requirements would be physically impossible to apply due to the unique size and dimensions of the parcel.
3. The proposed horizontal expansion of the structure would be more in keeping with the character of the neighborhood than the vertical addition of a third story.
4. The presence of a protected public open space adjacent to the property greatly reduces the impact of the proposed addition.
5. In permitting such relief, 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 Board of Appeals **concludes**:


1. The petitioner's Variances requesting relief to Section 4.1.1 *Table of Dimensional Requirements* of the City of Salem Zoning Ordinances is granted as shown on the submitted plans.

In consideration of the above, the Salem Board of Appeals voted to approve the Variances being requested. The five members voted in favor, with a 5-0 vote (Ms. Curran (Chair), Ms. Harris, Mr. Dionne, Mr. Watkins and David Eppley (Alternate) in favor and none (0) opposed. Board of Appeals members Mike Duffy and Jimmy Tsitsinos (Alternate) were not present for the hearing.

The Salem Board of Appeals voted to grant petitioner's requested Variances 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. A Certificate of Inspection is to be obtained.

8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. 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.



Rebecca Curran, 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.