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MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #  
CITY CLERK, SALEM, MASS.

August 27, 2014

## Decision

### City of Salem Board of Appeals

**Petition of JOHN ESPINOLA seeking a Special Permit per Section 3.3.3 *Nonconforming Structures* and a Variance from the maximum height of buildings in stories requirement of Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance, to allow the extension of an existing nonconforming structure and the addition of a shed dormer at the property located at 28 TREMONT STREET (R1 Zoning District).**

A public hearing on the above Petition was opened on July 16, 2014 pursuant to M.G.L Ch. 40A, § 11. The hearing was closed on that date with the following Salem Board of Appeals members present: Ms. Curran (Chair), Mr. Duffy, Mr. Watkins, and Mr. Copelas (Alternate).

The Petitioner seeks a Special Permit from Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance and a Variance under Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance.

#### Statements of fact:

1. In the petition date-stamped June 23, 2014, the Petitioner requested a Special Permit to extend an existing nonconforming structure and a Variance from the 2.5 stories maximum height requirement in an R1 zoning district. The addition of the shed dormer and the extension of the third floor will create adequate space for the legally required second point of egress for a third story living unit, creating a useable third story.
2. Ms. Brigitte Fortin, Architect, presented the petition for the property at 28 Tremont Street.
3. Mr. St. Pierre, Zoning Enforcement Officer and Building Inspector, stated that the third floor has been in use as a residential unit for some time, and the current owners are trying to bring the unit into compliance with the Building Code. The three-family residential use of the building has been ongoing for some time, and is a legally grandfathered nonconforming use.
4. In order for the petitioner to continue the existing three-family residential use of the building, and to gain income from the rental of the third floor unit, the petitioner must construct a second point of egress for the third floor.
5. The requested relief, if granted, would allow the Petitioner to extend the rear wall 3-feet 10.5-inches toward the rear of the property, and to add a 13-foot 3-inch long shed dormer.
6. At the public hearing, Ms. Lori Hrdy of 9 Japonica Street expressed her concerns about the petition. Ms. Hrdy has had difficulties with the tenants of 28 Tremont Street - with loud gatherings on the porch and parking. Ms. Hrdy expresses that the proposed shed dormer would tower over her property. Ms. Hrdy requests installation of a six-foot high opaque fence on the property line.

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petitions, including the application narrative and plans, and the Petitioner's

presentation and public testimony, makes the following **findings** that the proposed project meets the provisions of the City of Salem Zoning Ordinance:

**Findings – Special Permit to allow the extension of an existing nonconforming structure:**

1. The proposal will have no negative impact on the community's needs.
2. The proposal will have no negative impact on parking or loading.
3. The proposal will have no negative impact on the utilities and public services to the building.
4. The proposal will have no negative impact on the neighborhood character, and the condition requiring construction of a six-foot fence will be an improvement for the neighbors.
5. The proposal will have no negative impact on the natural environment.
6. The proposal will have no negative economic or fiscal impact.

**Findings – Variance from the 2.5 story maximum allowed height of buildings to allow the building to be 3 stories in height:**

1. Without constructing a second form of egress to the third floor, the current building owner would be unable to continue use of the third floor dwelling unit, thus losing income. Therefore, literal enforcement of the provisions of the Ordinance would be a substantial hardship.
2. The desired relief, as conditioned, may be granted without substantial detriment to the public good.
3. The desired relief may be granted without nullifying or substantially derogating from the intent or purpose of the City of Salem Zoning Ordinance.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted four (4) in favor (Mr. Watkins, Ms. Curran, Mr. Copelas and Mr. Duffy in favor) and none (0) opposed, to grant the requested Special Permit to allow the extension of an existing nonconforming structure, and Variance from the maximum height of buildings in stories requirement, to allow the extension of an existing nonconforming structure and the addition of a shed dormer, subject to the following **terms, conditions, and safeguards**:

1. The 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 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. Petitioner shall install a six-foot high stockade fence on the rear property line prior to completion of construction of the approved additions.
10. Construction shall proceed continuously. A construction debris dumpster shall be on on-site during construction, and shall be removed as soon as is practical after completion of construction.

City of Salem Board of Appeals  
August 27, 2014  
Project: 28 Tremont Street  
Page 3 of 3



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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.*