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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #
CITY CLERK, SALEM, MASS.

September 10th, 2014

Decision

City of Salem Board of Appeals

Petition of MARC BERRUBE and KEN KAYSER requesting a Variance from the provisions of Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance to allow the construction of a roof deck over an existing 2nd floor roof, which would exceed the 2.5-story maximum allowed height of buildings. The proposal is for the property located at 14 FORRESTER ST. UNIT 2 (R2 Zoning District)

A public hearing on the above Petition was opened on August 27, 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, Mr. Copelas (Alternate), and Mr. Tsitsinos (Alternate).

The Petitioner seeks a Variance from the provisions of Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance.

Statements of fact:

1. In the petition date-stamped July 23rd, 2014, the Petitioner requested a Variance from the provisions of Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance to allow the construction of a roof deck over an existing 2nd floor roof, which would exceed the 2.5-story maximum allowed height of buildings.
2. Mr. Berube and Mr. Kayser, petitioners, presented the application for the property at 14 Forrester Street Unit 2.
3. The proposed location of the deck is on top of an existing flat roof with existing sliding door access, last modified in 1986.
4. The requested relief, if granted, would allow the Petitioner to construct a 12' x 18' deck and a 36" tall deck rail on top of an existing flat roof over the second floor.
5. Mr. Berube stated that the existing sliding door to roof access has potential safety issues without a railing and that this existing condition may negatively impact the ability to re-sell the property.
6. The petitioners submitted six (6) letters of support from abutters.
7. At the public hearing one (1) member of the public spoke in opposition to the petition, citing concerns about impact to the privacy of abutters.

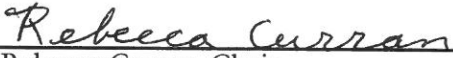
The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petition, including the application narrative and plans, and the Petitioner's presentation and public testimony, makes the following **findings** that the proposed project meets the provisions of the City of Salem Zoning Ordinance:

Findings

1. Literal enforcement of the provisions of the Ordinance to allow a maximum allowed height of 2.5 stories would be a substantial hardship due to unique conditions affecting the property including the existing sliding door to the roof poses a safety risk. Without relief, it would not be possible to build a 12' x 18' deck and 36" tall railing.
2. The proposed new deck and railing would not be a substantial detriment to the public good.
3. The proposed new deck and railing does not increase the 3rd floor space significantly, but technically the increase in usable space requires a Variance to go from 2.5 stories to 3 stories.
4. 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 five (5) in favor (Mr. Watkins, Ms. Curran, Mr. Tsitsinos, Mr. Copelas and Mr. Duffy) and none (0) opposed, to grant the requested Variance to allow a 12'x 18' deck and 36" tall railing 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 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.



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.