



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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**November 4, 2022**

## **Decision**

### **City of Salem Board of Appeals**

The petition of ATLANTIC COAST HOMES at 10 OSBORNE STREET (Map 27, Lot 314) (R2, B1 Zoning District), for a Special Permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to renovate and expand the existing third floor dormer in the existing house for two (2) townhome units and a rear addition with garage parking below. The addition would have three (3) townhome units. This proposal would create a total of five (5) townhome units and eight (8) parking spaces. The existing lot and building are nonconforming in lot area, frontage and front and side setbacks.

A public hearing on the above petition was opened on September 21, 2022 and was continued to October 19, 2022. The hearing was closed on October 19, 2022.

On October 19, 2022, the following members of the Salem Board of Appeals were present: Mike Duffy (Chair), Paul Viccica, Nina Vyedin, Peter Copelas and Steven Smalley.

#### **Statements of Fact:**

The petition is date stamped August 2, 2022. The petitioner seeks a Special Permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to renovate and expand the existing third floor dormer in the existing house for two (2) townhome units and a rear addition with garage parking below. The addition would have three (3) townhome units. This proposal would create a total of five (5) townhome units and eight (8) parking spaces. The existing lot and building are nonconforming in lot area, frontage and front and side setbacks.

1. 10 Osborne Street is owned by Eric Moriello.
2. The petitioner was Atlantic Coast Homes.

3. The representative was attorney Bill Quinn.
4. 10 Osborne Street is located in the R2 and B1 zoning districts. (Map 27, Lot 314).
5. The requested relief, if granted, would allow the Petitioner to renovate and expand the existing third floor dormer in the existing house for two (2) townhome units and a rear addition with garage parking below. The addition would have three (3) townhome units for a total of five (5) townhome units.
6. On September 21, 2022, the petition was presented to the board.
7. Peter Copelas inquired about the owner of the property for the petition. At the time of the petition the Southern Essex County Registry of Deeds records stated that the petitioner was not the current owner of the property at 10 Osborne Street. Attorney Quinn stated that his client, Mike Becker, has a purchase and sales agreement with a cooperation clause in it. His client is relying on that for the application to the petition. Attorney Quinn stated he would forward documents to the Zoning Board staff planner to show proof of ownership.
8. Attorney Quinn offered to continue the petition until a date certain if the board wanted to wait to see the documents.
9. Chair Duffy decided to proceed with the petition stating that if they approved the petition, they would have a condition that satisfactory documents would be provided to show proof of ownership.
10. Attorney Quinn presented the petition to the board.
11. 10 Osborne Street is a single-family home that has had various extensions and additions. The property sits within two zoning districts-R2 and the B1. Attorney Quinn discussed section 2.4 *Lot Split by District Boundary Line* of the Salem Zoning Ordinance- Where a district boundary line divides a lot of record at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend not more than thirty (30) feet into the more restricted portion, provided that the lot has frontage on a street in the less restricted district. The proposal is to make a single-family home and make it into a five (5) unit property.
12. Attorney Quinn reminded the board that multi-family use is allowed in the B1 Zoning District.
13. The majority of the parcel is within the R2 Zoning District, however, the B1 Zoning District line does run through property at approximately twenty-four feet (24). Due to this, the property is planned to be developed by using the B1 Zoning regulations because of the less restrictive use.
14. Attorney Quinn reviewed the criteria for applying for a special permit under the Salem Zoning Ordinance 3.3.5 *Nonconforming Single- and Two-Family Residential Structures*. He stated that they are taking a single-family home and expanding it under the provision of 3.3.5 section of the Zoning Ordinance.
15. Attorney Quinn stated that the property is within all the required setbacks and has the required amount of parking spaces.

16. Dan Ricciarelli, architect, presented to the board. Each townhome for the property would have two (2) bedrooms and two (2) bathrooms.
17. Chair Duffy opened the meeting to questions from the board.
18. There were no questions from the public.
19. Daniel Hanscom, 5 Osborne Street, stated that he had some serious concerns about the petition. He stated that he felt that this project was not good for the neighborhood. He felt that the proposal was far too dense and he felt that there was not adequate space for snow removal and that the snow would end up back in the street. He stated that he felt that the property would use more than the eight (8) provided parking spaces and fill up the already narrow street. He also mentioned that he was concerned about water pressure in the neighborhood.
20. Mr. Hanscom stated that he felt that there was not a third (3<sup>rd</sup>) floor on the property.
21. Alex Meyer, 8 Osborne Street U1, stated that he had general support for the project. He stated that he can see 10 Osborne Street from his window and that it was a "total eye sore" for the street and something really needs to be done at 10 Osborne Street.
22. Mike Becker, developer, commented that he did the construction at 8 Osborne Street. He went through the special permitting process and created the three (3) family that is there currently. He stated that it was his intention to also develop 10 Osborne Street similarly to 8 Osborne Street.
23. Carlos Amaral, 9 Osborne Street, stated that the parking on Osborne Street can be quite challenging depending on the time and day. He didn't feel that adding a five (5) family unit to the neighborhood made sense for the community.
24. Diane Robichaud, 7 Foster Street, a direct abutter at the back of the property expressed her concern about flooding of the property. She inquired about paving on the property.
25. Ms. Robichaud expressed her concern about the overgrowth of bamboo at the rear of the property. She expressed to the developer what was he going to do about the bamboo.
26. Mike Becker responded that they were going to relandscape the whole property.
27. Peter Copelas expressed that he has major concerns around the petition and the criteria for a special permit. He expressed that he was not convinced that this project was within keeping or improving the residential character. He agreed that it is within the legal parameters of the zoning. He expressed his challenge of approving a five-unit development in a place where a single-family home is and how that fits the needs of the neighborhood.
28. Attorney Quinn responded by stating that if it was a R1, R2 he would agree with him. However, this is a B1 zone and multi-family dwellings are allowed.

29. Mr. Copelas stated that he agreed that the petitioner is entitled to ask for the relief at 10 Osborne, he was having a hard time seeing how it improves the neighborhood character.
30. Attorney Quinn stated that the criteria states that the petition cannot be more detrimental to the neighborhood and that this petition is not more detrimental.
31. Attorney Quinn made a request to continue to October 19, 2022.
32. Paul Viccica made a motion to continue the petition.
33. On October 19th, Attorney Bill Quinn continued the petition. Attorney Quinn spoke to the purchase and sale agreement that shows that the petitioner has the right to make the request for relief at the property at 10 Osborne Street.
34. Attorney Quinn discussed the proposed changes that reduced the density from five (5) units to four (4) units. The existing structure will stay a single-family home instead of dividing it into two (2) units. There will still be three (3) newly constructed units.
35. The petitioner is no longer proposing to add any height to the building or a dormer on the third (3rd) floor.
36. Attorney Quinn stated that they are proposing to go from a one-family to a four-family home which is allowed in that zoning district. The petitioner has all of the required parking spaces (8).
37. Attorney Quinn stated that the petitioner has promised some concessions to the neighbor at 7 Foster Street which is behind the property based on conversations that were had between the petitioner and the neighbor.
38. Peter Copelas commended the petitioner for meeting all the parking requirements for the proposed petition.
39. Chair Duffy opened the meeting to questions from the board.
40. Nina Vyedini inquired if they were going to keep the original structure for the street facing property. The applicant responded that it was the intended plan.
41. Chair Duffy opened the meeting to public comments.
42. Victoria Ricadeillo, 5 Foster Street, stated that the comments regarding giving the property owner at 7 Foster Street was not accurate and that they did not have an agreement between the parties.
43. The sight lines at 12 Osborne Street were brought about the impact on privacy due to the proposed addition of several dormers on the proposed town homes.
44. The board discussed sight specific conditions for the property at 10 Osborne Street.
45. Peter Copelas made a motion to approve the petition.
46. The September 21, 2022 and the October 19<sup>th</sup>, 2022 meeting of the Board of Appeals was held remotely, via the online platform Zoom in accordance with Chapter 107 of the Acts of 2022.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (5) in favor (Steven Smalley, Nina Vyedin, Mike Duffy(Chair), Paul Viccica, and Peter Copelas) and none (0) opposed to grant ATLANTIC COAST HOMES at 10 OSBORNE STREET a Special Permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to renovate the existing house and a rear addition with garage parking below. The addition would have three (3) townhome units. This proposal would create a total of four (4) townhome units and eight (8) parking spaces.

**Receiving five (5) in favor votes, the petition for a Special Permit is GRANTED.**

**Standard Conditions:**

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.
10. All construction shall be done per the plans and dimensions submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are

deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

11. Petitioner shall schedule Assessing Department inspections of the property, at least annually, prior to project completion and a final inspection upon project completion.

**Special Conditions:**

1. A stormwater plan will be implemented to prevent runoff from the adjacent properties as approved by the City of Salem's Engineering Department.
2. No paving will be done within eight (8) feet of the rear property line.
3. All three (3) dormers from the original petition that face 12 Osborne Street will be removed.
4. The owner will provide landscaping improvements to ensure privacy for abutters and will remove all invasive plantings.

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Mike Duffy/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.

