



# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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KIMBERLEY DRISCOLL  
MAYOR

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CITY CLERK  
SALEM, MASS

**March 1, 2022**

## Decision

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

The petition of EDWARD P. and DORIS HARRINGTON at 112 BROADWAY (Map 32, Lot 72) (I Zoning District) for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use (one-family dwelling) to another nonconforming use (four-family dwelling). The petitioner also seeks a variance per Section 4.1 *Dimensional Requirements* to keep the existing non-conforming 6' front yard where 30' feet is required. The side yard will continue to be non-conforming at 44' where 30' is required and the rear yard will be 13' of setback where 30' is required.

A public hearing on the above Petition was opened on February 16, 2022 and was closed on February 16, 2022.

On February 16, 2022, the following members of the Salem Board of Appeals were present: Mike Duffy(chair), Rosa Ordaz, Carly McClain, Paul Viccica and Steven Smalley.

The petitioner seeks a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use (one-family dwelling) to another nonconforming use (four-family dwelling).

The petitioner also seeks a variance per Section 4.1 *Dimensional Requirements* to keep the existing non-conforming 6' front yard where 30' feet is required. The side yard will continue to be non-conforming at 44' where 30' is required and the rear yard will be 13' of setback where 30' is required.

### **Statements of Fact:**

1. 112 Broadway is owned by Edward P and Doris Harrington.
2. The Petitioners were represented by Bill Quinn, Attorney.
3. 112 Broadway is located in the I zoning district. (Map 32, Lot 72)

4. The requested relief, if granted, would allow the Petitioner to convert a one-family dwelling into a four-family dwelling. It would also allow for the non-conforming six (6) feet front yard to stay where thirty (30) feet is required. Also, allow for the side yard to stay at forty-four (44) feet where thirty (30) is required. And the rear yard will stay at thirteen (13) feet where thirty (30) feet is required.
5. On February 16, 2022, Bill Quinn presented the petition for 112 Broadway to the Board.
6. 112 Broadway currently sits in an industrial zone that does not allow for residential uses. In the Industrial zone all yard setbacks are thirty (30) feet. The Industrial zone does not have a requirement for lot area per dwelling unit. There is a forty-five (45) foot height limitation for buildings in the Industrial Zone.
7. Attorney Quinn addressed the hardship for the variance. He stated that the property lot shape made it have frontage on all sides. The property was adjacent to a paper street (Daisy) and a storm water basin that did not allow for the majority of uses so that the property could comport with law. To comply with zoning setbacks, there would virtually be no room to construct anything due to the lot shape. Attorney Quinn also mentioned the topography of the lot. He stated that the lot slopes to the rear as do the other properties in the area. This allows the water runoff to get to the basin which could create construction problems and additional expenses resulting from the topography of the land.
8. Attorney Quinn stated that they will also be seeking relief from the Conservation Commission.
9. Chair Duffy spoke to the proposal and how the Daisy Street side was the setback that was being most encroached on from the proposed plans. Chair Duffy spoke to how at the rear of the property, there is a significant sized parking lot and a water basin that was there to catch run off from the properties surrounding Broadway. He mentioned there would be a hardship around the development of the property. He also stated that this parcel is in a mixed-use neighborhood.
10. There are quite a few residential uses in the surrounding area, and within the Industrial Zone.
11. Paul Viccica referenced the plans submitted that showed the original lot, and that without the variance, the lot would be quite challenging to develop.
12. Chair Duffy addressed the Special Permit findings and the hardship required for acquiring a variance. He felt that the petition met those needs.
13. There were no public comments for this petition.
14. Chair Duffy discussed the special permit and variance criteria.
15. Due to the ongoing COVID-19 pandemic and related precautions and Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, the December 15, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.

### **Special Permit Findings:**

The Board finds that the proposed modifications will not be substantially more detrimental than the existing nonconforming use to the neighborhood and that the adverse effects of the proposed use will not outweigh its beneficial impacts to the City and the neighborhood:

1. Social, economic, or community needs were served by this petition.
2. Traffic flow and safety, including parking and loading: there will no impact on traffic or parking.
3. Adequate utilities and other public services: The petition will not impact utilities or public services.
4. Impacts on the natural environment, including drainage: No negative impact would be expected.
5. Neighborhood character: The project will be in keeping with and improving the residential neighborhood character.
6. Potential fiscal impact, including impact on City tax base and employment. There will be a positive fiscal impact on the city or its tax base.

### **Variance Findings:**

1. Special conditions and circumstances especially affect the land, building, or structure involved, generally not affecting other lands, buildings, and structures in the same district: The topography of the lands and presence of the paper street and water basin on the property impact where the applicant could feasibly place the proposed dwellings.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant in attempting to put the property to productive use.
3. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent of the district or the purpose of the ordinance.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor ( Rosa Ordaz, Mike Duffy (chair), Carly McClain, Paul Viccica and Steven Smalley) and none (0) opposed to EDWARD P. and DORIS HARRINGTON at 112 BROADWAY a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to

change from one nonconforming use (one-family dwelling) to another nonconforming use (four-family dwelling). And a variance per Section *4.1 Dimensional Requirements*.

**Receiving five (5) in favor votes, the petition for a special permit is approved.**

**Receiving five (5) in favor votes, the petition for a variance is approved.**

**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.

*Mike Duffy / DL*

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.