



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK  
SALEM, MASS

February 18, 2021

## Decision

### City of Salem Board of Appeals

**Petition of BETH TOBIN for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from maximum height of buildings (stories) to expand a nonconforming two-family home by adding a dormer at 10 BARTON STREET (Map 36, Lot 409) (R2 Zoning District).**

A public hearing on the above Petition was opened on January 20, 2021 pursuant to M.G.L Ch. 40A, § 11; continued to February 17, 2021 and closed on that date. On January 20, 2021, the following Zoning Board of Appeals members were present: Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, Carly McClain (Alternate), and Steven Smalley (Alternate); Peter Copelas and Jimmy Tsitsinos were absent. On February 17, 2021, Mike Duffy (Chair), Paul Viccica, Carly McClain, and Steven Smalley were present; Peter Copelas, Rosa Ordaz, and Jimmy Tsitsinos were absent.

The petitioner seeks a variance per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* from maximum height of buildings (stories) to expand a nonconforming two-family home by adding a dormer at 10 Barton Street.

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

1. In the petition date-stamped December 11, 2020, the petitioner requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to, "build a shed dormer in the attic" at 10 Barton Street.
2. 10 Barton Street is owned by the petitioner, Beth Tobin.
3. 10 Barton Street is a two-family home located in the Residential Two-Family (R2) zoning district.
4. The property is nonconforming to dimensional requirements including at least minimum lot area.
5. The proposal is to add a dormer to the existing structure, which is currently 2.5 stories. The dormer will be located on the side of the roof that faces east. The dormer will be on the left side of the structure if looking at the home from Barton Street. Adding the dormer would take the height of the structure from 2.5 stories to 3 stories, exceeding the maximum allowed height (stories) in the R2 zoning district (2.5 stories allowed; 3 stories proposed).
6. The requested relief, if granted, would allow the petitioner to expand a nonconforming two-family home by adding a dormer to the existing structure.
7. 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 January 20, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
8. At the January 20, 2021 public hearing, property owner Beth Tobin discussed the proposal. Ms. Tobin explained that the proposal would add a dormer to the third floor attic to enlarge bedrooms. Ms. Tobin stated that her neighbors are in support of the proposal, and that there are many homes in her neighborhood of a similar style, with dormers. She stated that the extension would not change the structure's footprint and presented drawings of the proposed dormer.
  9. Mr. Viccica noted the application was incomplete as it did not contain an elevation of the entire structure, or an elevation that shows the proposed dormer's length. Chair Duffy asked if other Board members would want to see elevations in order to act on the petition. Ms. McCain indicated she would like to see elevations, as they have required them for other petitions. The petitioner, Ms. Barton, stated she did not know what an elevation entailed. Building Inspector, Tom St. Pierre, offers to provide the applicant with examples of elevations.
  10. At the January 20, 2021 public hearing the Board voted five in favor (Paul Viccica, Rosa Ordaz, Steven Smalley, Carly McClain, and Mike Duffy (Chair)) and none (0) opposed to continue the petition to the next regularly scheduled meeting of the Zoning Board of Appeals on February 17, 2021.
  11. On February 2, 2021, architect Stephen Livermore of Livermore Architecture submitted to the Board a set of existing and proposed elevation drawings for 10 Barton Street. The drawings show the proposed shed dormer will be twenty-four (24) foot eight (8) inches wide, and eight (8) foot four (4) inches tall. The drawings show the proposed shed dormer will not extend beyond the existing footprint or above the existing roof peak.
  12. At the February 17, 2021 public hearing, the petitioner was represented by Attorney Neil Tobin. Mr. Tobin introduced the proposal, and presented the new elevations submitted by Mr. Livermore. Mr. Tobin stated that this proposal would allow the petitioner to have two full sized bedrooms in what is currently the attic. He noted that a neighboring house at 12 Barton Street has very similar dormers. Building Inspector, Tom St. Pierre, noted that Ms. Tobin came to see him before the hearing to be sure that the elevations match what the Board requested. There were no questions from the Board.
  13. At the February 17, 2021 public hearing, Chair Duffy discussed how the proposal meets the criteria for special permit (as noted below), noting that this is a rather modest request for dimensional relief.

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

**Special Permit Findings:**

The Board finds that the proposed modifications will not be substantially more detrimental than the existing nonconforming structure to the neighborhood:

1. Social, economic, or community needs are served by this proposal. The work will make better use of the attic level including adding space for two bedrooms.
2. Traffic flow and safety, including parking and loading: No negative impact is expected.
3. Adequate utilities and other public services already service the structure.
4. Impacts on the natural environment, including drainage: The addition is all within the existing footprint of the house, and no negative impact is expected.
5. Neighborhood character: The project is in keeping with the neighborhood character.
6. Potential fiscal impact, including impact on City tax base and employment: There is a potential positive fiscal impact, including enhancing the City's tax base.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Mike Duffy (Chair), Paul Viccica, Carly McClain, and Steven Smalley) and none (0) opposed to grant to Beth Tobin a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from maximum height of buildings (stories) to expand a nonconforming two-family home by adding a dormer at 10 Barton Street, subject to the following terms, conditions, and safeguards:

**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. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. All construction shall be done per the plans and dimensions, submitted to and approved by this Board, as amended. No change, extension, material corrections, additions, substitutions, alterations, and/or modification to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

**Special Condition**

1. The extension included in this decision will expand an existing dwelling unit. The property will remain a Two-family Dwelling.

  
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.