



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK  
SALEM, MASS

August 11, 2020

## Decision

### City of Salem Board of Appeals

**Petition of LINDSAY A. FAIR for a special permit per sections 3.3.3 *Nonconforming Structures*, 3.3.4 *Variance Required*, and 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to change the use of this commercial building to a single-family home and expand the structure by adding a second story at 121 NORTH STREET (Map 26, Lot 359) (B1 and ECOD Zoning Districts).**

A public hearing on the above Petition was opened on May 20, 2020 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Carly McClain (Alternate), Rosa Ordaz, Steven Smalley (Alternate), and Paul Viccica.

The petitioner seeks a special permit per Sections 3.3.3 *Nonconforming Structures*, 3.3.4 *Variance Required*, and 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to change the use of this commercial building to a single-family home and expand the structure by adding a second story at 121 North Street.

#### Statements of Fact:

1. In the petition date-stamped April 23 2020, the petitioner requested a special permit per Sections 3.3.3 *Nonconforming Structures*, 3.3.4 *Variance Required*, and 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to change the use of this commercial building to a single-family home and expand the structure by adding a second story at 121 North Street.
2. 121 North Street is owned by petitioner Lindsay A. Fair.
3. 121 North Street is located in the Business Neighborhood (B1) zoning district and the Entrance Corridor Overlay District.
4. At the time of application, 121 North Street was a vacant building that was last used as a sewing shop.
5. 121 North Street is nonconforming to dimensional requirements including minimum lot area, minimum lot area per dwelling unit, maximum lot coverage, and all setbacks.
6. The proposal is to change the use to a single-family home and to expand the existing structure by adding a second story. The footprint of the structure will not change under this proposal.
7. "Dwelling, single-family" is an allowed use in the B1 zoning district.
8. Because the change in use is allowed by right, the new use is single-family residential, and the footprint of the structure will not be expanded, the relief to expand this nonconforming structure may be granted by special permit rather than variance. Section 3.3.4 *Variance Required* includes the

provision that “the extension of an exterior wall at or along the same nonconforming distance within a required yard shall require a special permit and not a variance from the Board of Appeals.”

9. The proposed height of 26 feet is below the maximum of 30 feet in the B1 zoning district.
10. The requested relief, if granted, would allow the petitioner to change the use of 121 North Street from commercial to a single-family home and to expand the structure by adding a second story without expanding the footprint.
11. 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 May 20, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
12. At the May 20, 2020 public hearing, Attorney William Quinn, representing petitioner Lindsay A. Fair, discussed the petition. Attorney Quinn explained that the use has been used as a small commercial space, which the Fair sisters want to convert into a single-family home. He stated that the lot is small but not small for the neighborhood and noted that the structure as it is now is not suitable for a single-family home. Attorney Quinn noted that the proposal has been designed to fit two spaces on the property: one legal space and one that falls one foot short of meeting the required width. He also explained that most homes in the neighborhood have little to no setback, like this property. Architect Steve Livermore discussed the design and presented floor plans. He stated the home will be modest with traditional detailing.
13. At the May 20, 2020 public hearing, Mr. Viccica stated that the plans are quite nice. He confirmed that one parking spot is compliant and one is not compliant but fairly close.
14. At the May 20, 2020 public hearing, one (1) member of the public spoke in favor of the petition and no (0) members of the public spoke in opposition.
15. At the May 20, 2020 public hearing, Chair Duffy discussed the special permit criteria, referencing the Statement of Grounds submitted with the petition.

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 nonconforming structure is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

1. Social, economic, or community needs are served by code-compliant family housing.
2. Traffic flow and safety, including parking and loading are not expected to be impacted. On-site parking is being provided.
3. Adequacy of utilities and other public services: Existing utilities and other public services are adequate.
4. Impacts on the natural environment, including drainage: No negative impact is anticipated as the footprint is not changing.
5. Neighborhood character: The building will be consistent with and complementary to other residences in the neighborhood, so no negative impact to neighborhood character is anticipated.

6. Potential fiscal impact, including impact on City tax base and employment: There is the potential for a positive fiscal impact.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Peter A. Copelas, Steven Smalley, Mike Duffy (Chair), Paul Viccica, and Rosa Ordaz) and none (0) opposed to grant the requested Special Permit per sections 3.3.3 *Nonconforming Structures*, 3.3.4 *Variance Required*, and 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to change the use of this commercial building to a single-family home and expand the structure by adding a second story at **121 North 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 structures.
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. 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.

  
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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.