



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK  
SALEM, MASS

April 27, 2020

## Decision

### City of Salem Board of Appeals

**Petition of RICARDO GARCIA for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming two-family structure by adding a side dormer at 138 BRIDGE STREET (Map 35, Lot 43) (R2 and ECOD Zoning Districts).**

A public hearing on the above Petition was opened on April 1, 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, Rosa Ordaz, Steven Smalley, and Paul Viccica. Board member Jimmy Tsitsinos was absent.

The petitioner seeks a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming two-family structure by adding a side dormer.

#### Statements of Fact:

1. In the petition date-stamped January 29, 2020, the petitioner requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming two-family home by adding a dormer to the side of the building.
2. 138 Bridge Street is owned by Ricardo Garcia and Karol Peralta.
3. 138 Bridge Street is a two-family home in the Residential Two-Family (R2) zoning district and Entrance Corridor Overlay District (ECOD). The two-family residential use is allowed in the R2 district.
4. The existing two-family residential structure is nonconforming to dimensional requirements including minimum lot area, lot area per dwelling unit, and front, rear, and both side yard setbacks.
5. The proposal is to add a dormer on the left side of the building (if looking at the building from North Street). The proposed dormer would not increase the peak height of the building.
6. The requested relief, if granted, would allow the petitioner to expand a nonconforming two-family residential structure by adding a dormer.
7. The April 1, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
8. At the April 1, 2020 meeting of the Board of Appeals, petitioner Ricardo Garcia discussed the petition. Mr. Garcia explained that the proposal would allow for better use of the third floor, in allowing a full size closet and a bathroom at the same level as the master bedroom.

9. At the April 1, 2020 public hearing, the Board asked whether the dormer has already been built. Mr. Garcia stated that it has already been built, and he is now going through the process to make the dormer legal. Board member Paul Viccica asked whether there are any windows on the side of the house adjacent to the neighbor that are impacted. Mr. Garcia responded in the negative.
10. A special permit and a building permit would have been required for this dormer to be constructed, but they were not obtained. The petitioner is now seeking a special permit post-construction.
11. At the April 1, 2020 public hearing, the Board discussed issues relating to construction and inspection with the petitioner and with Building Commissioner Tom St. Pierre. Mr. Viccica asked if the dormer has been inspected before its completion; Mr. Garcia answered in the negative. Mr. Viccica noted that one condition will be that Mr. Garcia will be required to open up, to the extent the Building Department wishes, all existing built walls and roof structure, so that they can do a proper inspection. Mr. Garcia responded, "Yes." Board member Peter Copelas expressed his discomfort with approving projects after they have been built but stated that this is a relatively minor project. Chair Duffy agreed that this is not the way the Board wants to do things.
12. At the April 1, 2020 public hearing, Mr. St. Pierre asked Mr. Garcia whether the expansion added another unit to the building. Mr. Garcia responded in the negative.
13. At the April 1, 2020 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.
14. At the April 1, 2020 public hearing, Chair Duffy reviewed the special permit criteria. He stated that the need to ensure that the construction is up to code can be addressed by a special condition. Rosa Ordaz expressed that she would support that if it was a special condition.

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, 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 the proposal: The utility of the upper floor of the house is increased.
2. Traffic flow and safety, including parking and loading: No impacts are anticipated.
3. Adequacy of utilities and other public services: The existing two-family home has adequate utilities and public services.
4. Impacts on the natural environment, including drainage: Negative impacts are unlikely.
5. Neighborhood character: The proposal is generally in keeping with the neighborhood character.
6. Potential fiscal impact, including impact on City tax base and employment: The addition will make the upper level more usable, which may have 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 (Rosa Ordaz, Paul Viccica, Mike Duffy (Chair), Carly McClain, and Peter A. Copelas) and none (0) opposed to grant the requested Special Permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of

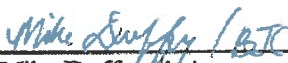
the Salem Zoning Ordinance to expand a nonconforming two-family structure by adding a side dormer at **138 Bridge Street**, subject to the following **terms, conditions, and safeguards**:

**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. 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. 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.

**Special Condition:**

1. Within thirty (30) days of April 1, 2020, the petitioner shall make the property available for inspection by the Salem Inspectional Services Department. The petitioner shall make available all aspects of the construction, including behind walls, light fixtures, and ceiling additions, to allow the Building Commissioner to observe the method and means of construction to his satisfaction.



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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.