



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

98 WASHINGTON STREET ♦ SALEM, MASSACHUSETTS 01970
TEL: 978-619-5685

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Decision

City of Salem Board of Appeals

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CITY CLERK
SALEM, MASS

Petition of ROBERT OUELLETTE AND MICHAELINE LAROCHE for variances per Sections 3.2.4 *Accessory Buildings and Structures* and 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from height and front and side setback requirements for accessory structures and from maximum lot coverage to reconstruct a carriage house on existing stone foundation on the lot of the condominium at 146 FEDERAL STREET (Map 26, Lot 552) (R2 Zoning District).

A public hearing on the above Petition was opened on September 16, 2020 (during which no testimony was heard) pursuant to M.G.L Ch. 40A, § 11; continued to September 29, 2020; and closed on September 29, 2020. On September 16, 2020, Jimmy Tsitsinos, Paul Viccica, Carly McClain (Alternate), and Steven Smalley (Alternate) were present; Peter A. Copelas, Mike Duffy (Chair), and Rosa Ordaz were absent. On September 29, 2020, Peter A. Copelas, Mike Duffy (Chair), Jimmy Tsitsinos, Paul Viccica, and Carly McClain (Alternate) were present; Rosa Ordaz and Steven Smalley (Alternate) were absent.

The petitioner seeks variances per Section 3.2.4 *Accessory Buildings and Structures* and 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from height and front and side setback requirements for accessory structures and from maximum lot coverage to reconstruct a carriage house on existing stone foundation on the lot of the condominium at 146 Federal Street.

Statements of Fact:

1. In the petition date-stamped August 26, 2020, the petitioner requested variances per Section 3.2.4 *Accessory Buildings and Structures* and 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from height and front and side setback requirements for accessory structures and from maximum lot coverage to reconstruct an historic carriage house on existing stone foundation.
2. 144-146 Federal Street is a two-unit condominium. The petitioners, Robert Ouellette and Michaeline LaRoche, are the owners of 146 Federal Street, a single-family condominium unit. The petitioners were represented by Attorney Scott Grover.
3. 144-146 Federal Street is a two-family building in the Residential Two-Family (R2) zoning district. This is an allowed use in the district.
4. The proposal, as described in the Statement of Grounds submitted with the application, is “to reconstruct an historic carriage house on the existing stone foundation where the carriage house was previously located for use to park vehicles and for storage purposes.” The carriage house is proposed to be twenty-four (24) feet tall and two (2) stories. This carriage house would be within the required front and side yard setbacks for accessory structures.

5. Per Section 3.2.4 *Accessory Buildings and Structures* of the Zoning Ordinance: “No accessory building or structure shall be located within any required front yard or within any side yard of a corner lot.” Also per Section 3.2.4, “No unattached accessory building or structure shall be located nearer than five (5) feet to any side lot line.” In the R2 zoning district, the minimum depth of front yard is fifteen (15) feet. Under this proposal, the “front” is considered to be the frontage running along Flint Street. The accessory structure would be located six (6) feet from the front lot line and zero (0) feet from the side lot line. The petitioner is thus appropriately requesting variances from front and side setback requirements for accessory structures.
6. The proposed height of the accessory structure is twenty-four (24) feet tall and two (2) stories. The maximum height for accessory structures and garages per Section 3.2.4 is one and one-half (1.5) stories or eighteen (18) feet. The petitioner is appropriately also seeking relief from height of accessory structures.
7. The other variance requested, per Section 4.1.1 *Table of Dimensional Requirements* of the Zoning Ordinance, is from maximum lot coverage. The proposed carriage house would bring lot coverage to 35.3%, just above the 35% maximum allowed in the R2 zoning district per Section 4.1.1.
8. The requested relief, if granted, would allow the petitioner to reconstruct a carriage house on existing foundation, within required front and side yard setbacks for accessory structures, at a greater height than is allowed for accessory structures, and in excess of the maximum lot coverage allowed in the R2 district. This would be a two-story, 24-foot-tall carriage house.
9. 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 September 16, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
10. Due to an issue with the Zoom webinar platform preventing access via Zoom toll-free dial-in numbers, no testimony was heard on petitions in the September 16, 2020 meeting. Applicants were informed of the opportunity to request to continue to a special meeting to be held later in the month (determined during the September 16 meeting to be September 29, 2020) or to the regularly scheduled meeting on October 21, 2020.
11. On September 16, 2020, before the meeting began, the petitioner submitted a written request to continue to the to-be-scheduled special meeting. In the September 16 meeting, the Board voted four (4) in favor (Paul Viccica, Carly McClain, Steven Smalley, and Jimmy Tsitsinos) and none (0) opposed to continue the hearing to the special meeting to be held on Tuesday, September 29, 2020 at 6:30 pm.
12. At the September 29, 2020 public hearing, Attorney Grover discussed the proposal. He explained that the petitioners have painstakingly restored the Federal-period home at this property. The property was converted to two condominium units; the petitioners’ primary residence is one of these units. Attorney Grover explained that the last element of the restoration of the property is the reconstruction of the carriage house that once existed in the back of the property [“back” relative to Federal Street]. Attorney Grover noted that architect Dan Ricciarelli has designed an historically appropriate building to replace the carriage house in the same location. Attorney Grover discussed the zoning relief being requested, explaining that the existing foundation of the original carriage house is on the lot line. He also explained that the height relief is being sought as the height limitations were designed to apply to more traditional garages and sheds. He also noted that the carriage house would exceed the 35% maximum lot coverage at 35.3%; he has included a request for that de minimis relief.

13. At the September 29, 2020 public hearing, Attorney Grover spoke to the variance criteria. He argued that the existence of the foundation of the original carriage house classifies as a special condition affecting this property and not affecting other properties in the district. He noted that the dimensional requirements would prevent the petitioner from rebuilding the carriage house in the appropriate location. Attorney Grover argued that given that great care has been taken to restore the property and preserve its historical significance, it would be a substantial hardship to force the petitioners to build in a location that was not historically appropriate. He noted that relief can be granted without any detriment to the neighborhood or the zoning ordinance; he stated that if anything, not granting the relief would be detrimental to the neighborhood, as it would affect the integrity of the property as an historic property.
14. At the September 29, 2020 public hearing, architect Dan Ricciarelli of Seger Architects discussed the project. He presented photos of the existing home as well as plans and elevations. He explained that many of the details of the carriage would match the existing home, including clapboard, roofline, cornice details, corner boards, fenestration, and skirtboards. Mr. Ricciarelli noted that the Historical Commission unanimously approved the proposal and that they think it is significant and important for the carriage house to be back in this location. He noted that the carriage house would provide parking for a work truck plus storage and a workshop above. Mr. Ricciarelli noted they have included upward-acting carriage-style doors. After public comment was taken (as discussed below), Mr. Ricciarelli also presented photos of the original carriage house, explaining that they tried to keep the same massing as existed with the original. Mr. Ricciarelli also referenced the layout of the property, including a wall near the carriage house foundation and a downward slope from the primary dwelling towards the carriage house foundation.
15. At the September 29, 2020 public hearing, one (1) member of the public spoke in favor of the proposal, and no (0) members of the public spoke in opposition. Chair Duffy also read a letter from Ronald Cimon of 52-54 Flint Street and noted that the Board received a letter with the same language from Frances Clifford of 142 Federal Street, both in support of the proposal.
16. At the September 29, 2020 public hearing, the Board discussed the proposal. In response to Board member Paul Viccica's question about what happened to the carriage house, Mr. Ouellette stated he thought it came down in the early 1970s due to disrepair. He stated that the previous owners did not keep up with it. It was taken down in two sections - the roof, and then the first floor. Board member Peter Copelas expressed his only concern that there is no possibility through zoning relief to make this a residential unit. Building Commissioner/Zoning Enforcement Officer Tom St. Pierre stated that for a carriage house special permit [to make this a residential unit], it would have needed to exist prior to 1900; as this would essentially be a new structure except for the foundation, it would not meet that criteria. Mr. Copelas expressed his support for the design. Mr. Ouellette noted there is no intention to make it a living space, but water will run to the structure. Mr. St. Pierre noted that there is no harm in adding a special condition to this effect. Mr. Copelas stated that it benefits us to have that protection. Mr. Viccica reinforced that the Board is not looking at this as an historic building; future owners would have to argue that the structure was pre-1900, and that is not the case here as there is not enough left to be considered an historic carriage house residential conversion.
17. At the September 29, 2020 public hearing, Mr. Viccica referred to the special permit allowing residential conversion of carriage houses existing since before 1900. He noted that the ordinance does not refer to the possibility of recreating something that was lost that has value. Mr. Viccica stated that a building of this size on that lot would never have been as short as the zoning ordinance [now] requires in terms of height; making it that height [i.e., as required by zoning] would cause an awful aesthetic that would not serve the neighborhood well. Mr. Viccica also noted that this is not that different from an application that came for height of an accessory structure at Cabot Farms, which

also needed to be higher because of its proportion and its value to the city. He stated that the present case is a similar condition. Board member Carly McClain noted that she was thinking of the same case. Attorney Grover expressed that this is the same theory in an urban setting.

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:

Variance Findings:

- a) 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 presence of the existing foundation of the carriage house, which dictates its location, constitutes a special condition affecting this property generally not affecting other properties in the same district. It is fairly unique to have an existing carriage house foundation that would allow for the construction of an accessory building honoring the historic features.
- b) Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant. An accessory structure built per the requirements of the Ordinance would be inappropriate for the property given the property's historic significance and restoration. The existing wall and height change from the carriage house foundation to the yard make it difficult to make it usable to enter into the property. Given the historic nature of the property and streetscape and the scale of the structure that would be required by the zoning ordinance, literal enforcement of the Ordinance would constitute a hardship to the applicant, financial and otherwise.
- c) 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. Granting this relief would honor the historic nature of the neighborhood and the rest of the property. Failing to grant this relief could lead to a structure that is more detrimental to this historic neighborhood than granting the relief would.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Paul Viccica, Carly McClain, Jimmy Tsitsinos, Mike Duffy (Chair), and Peter A. Copelas) and none (0) opposed to grant to **Robert Ouellette and Michaeline LaRoche** for variances per Sections 3.2.4 *Accessory Buildings and Structures* and 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from height and front and side setback requirements for accessory structures and from maximum lot coverage to reconstruct a carriage house on existing stone foundation on the lot of the condominium at **146 Federal 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. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
7. 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. There shall be no dwelling in the accessory structure.

Mike Duffy / BTC

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.