



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS

## BOARD OF APPEALS

2020 DEC 30 AM 11:30

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

CITY CLERK  
SALEM, MASS

December 28, 2020

### Decision

### City of Salem Board of Appeals

**Petition of FRANK LANZILLO for a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot area and minimum lot area per dwelling unit to construct a 2.5-story, single-family home on the vacant lot at 2 DUNDEE STREET (Map 10, Lot 50) (R1 Zoning District).**

A public hearing on the above Petition was opened on September 16, 2020 pursuant to M.G.L Ch. 40A, § 11 (during which no testimony was heard). The hearing was continued to September 29, 2020; continued to October 21, 2020; continued to November 18, 2020; continued to December 16, 2020; and closed on December 16, 2020.

On September 16, 2020, Jimmy Tsitsinos, Carly McClain, Steven Smalley, and Paul Viccica (acting Chair) were present; Mike Duffy (Chair), Rosa Ordaz, and Peter Copelas were absent. On September 29, 2020 Mike Duffy (Chair), Peter Copelas, Jimmy Tsitsinos, Carly McClain, and Paul Viccica were present; Rosa Ordaz, and Steven Smalley were absent. On October 21, 2020 Mike Duffy (Chair), Jimmy Tsitsinos, Peter Copelas, Steven Smalley, and Pul Viccica were present; Rosa Ordaz, and Carly McClain were absent. On November 18, 2020, Mike Duffy (Chair), Jimmy Tsitsinos, Peter Copelas, Carly McClain, Rosa Ordaz, and Paul Viccica were present; Steven Smalley was absent. On December 16, 2020 Mike Duffy (Chair), Paul Viccica, Rosa Ordaz, Carly McClain, and Steven Smalley were present; Peter Copelas, and Jimmy Tsitsinos were absent.

The petitioner seeks a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot area and minimum lot area per dwelling unit to construct a 2.5-story, single-family home on the vacant lot at 2 Dundee Street.

#### Statements of Fact:

1. In the petition date-stamped July 29, 2020, the petitioner requested a variance to build a 2.5-story, single-family home on a 5,000 square foot lot.
2. 2 Dundee Street is owned by the petitioner, Frank Lanzillo.
3. 2 Dundee Street is a vacant lot in the Single-Family Residential (R1) zoning district.
4. According to the petition date-stamped July 29, 2020, 2 Dundee Street is a 5,000 square foot lot. Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance shows that the minimum lot area for the R1 district is 15,000 square feet.
5. The requested relief, if granted, would allow the petitioner to build a 2.5-story, single-family home on the lot at 2 Dundee Street.
6. The petition date-stamped July 29, 2020 did not include a Statement of Hardship.

7. Prior to the September 16, 2020 meeting Staff Planner, Brennan Corrison received three (3) public comments over email expressing opposition to the petition.
8. In a staff memo submitted to Board members before the September 16, 2020 public hearing, Staff Planner Brennan Corrison recommended that the Board ask for a Statement of Hardship and other additional details from the applicant and suggest a continuance to the October public hearing.
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. Prior to the September 16, 2020 meeting, petitioner Frank Lanzillo submitted a written request to continue to the October, 21 2020 meeting via email to Staff Planner Brennan Corrison. The Board voted four (4) in favor (Carly McClain, Steven Smalley, Jimmy Tsitsinos, and Paul Viccica) and none (0) opposed to continue the hearing to the October 21, 2020 meeting at 6:30 pm.
12. Prior to the October 21, 2020 meeting, petitioner Frank Lanzillo submitted a Statement of Hardship as well as supplemental information which included an aerial view of 3 Sutton Terrace and a plan that is labeled 1907.
13. Prior to the October 21, 2020 meeting Brennan Corrison, Staff Planner, received two (2) public comments over email expressing opposition to the petition.
14. For the same reasons as noted in statement #9 above, the October 21, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
15. During the October 21, 2020 meeting, attorney Sam Vitali discussed the proposal on behalf of the applicant. Attorney Vitali presented a plot plan and explained the lot was recorded in October of 1907 as part of Sutton Village in Peabody, and that the dimensions had remained unchanged since that date. Attorney Vitali contended the lot is unique because it resulted from a subdivision, and that the line between Salem and Peabody runs through the lot. Attorney Vitali also claimed the shape of the lot is unique, stating that it falls 20 feet short of the minimum lot size of 5,000 square feet due to it being a parallelogram, which he maintained is a hardship. Attorney Vitali stated the City of Salem taxes the land as developable, and that the proposal would be consistent with others in the subdivision over the years. He explained that other homes in the proximity are single family homes, and that the applicant would like to build one on the lot. Attorney Vitali reiterated the lot was created in 1907, but remarked that zoning did not come to Salem until the 1930's. He stated the proposed structure satisfies all other dimensional regulations, and that the proposal would help satisfy housing needs in the City.
16. During the October 21, 2020 meeting members of the board, including Peter Copelas and Paul Viccica; and Building Commissioner Tom St. Pierre discussed the geometry and location of the property. Building Inspector Tom St. Pierre explained to the Board that at the time of the petition the lot contained a house on Sutton Street, and that the lot in question was not a standalone lot, but one that merged with an adjacent lot in Peabody with a home on it. The applicant has recently acquired

the property and had proposed to sell off this lot. Mr. Viccica asked if the two lots are considered all one parcel, and Mr. St. Pierre indicated that it is. Attorney Vitali stated the adjoining lot is not in the City of Salem, and that the existing home is also not in Salem, but in Peabody, and that Salem is taxing the portion of the lot in Salem as developable.

17. During the October 21, 2020 meeting Building Commissioner Tom St. Pierre said he would like to have the City Solicitor assess the situation. Chair Duffy, Mr. Viccica, and Mr. Copelas agreed. Chair Duffy asked if the applicant would accept a continuance, and Attorney Vitali stated he had no objection.
18. During the October 21, 2020 meeting the Board voted five (5) in favor (Peter Copelas, Paul Viccica, Jimmy Tsitsinos, Steven Smalley, and Mike Duffy (Chair)) and none (0) opposed to continue the hearing to the November 18, 2020 meeting at 6:30 pm.
19. On November 18, 2020, Assistant City Solicitor Victoria Caldwell submitted a memo that states in part: “The 2020 splitting of the parcels appears to be an attempt to reverse a merger of the lots. In Wells v. Zoning Board of Appeals of Billerica, 68 Mass. App. Ct. 726, 735 (2007), the Appeals Court held that adjacent lots in common ownership will normally be treated as a single lot for zoning purposes so as to minimize nonconformities with the zoning ordinance and landowners cannot separate them with an expectation that a building could be constructed. **As such, the undersized parcel (lots 116 and 117) was made less conforming by the current owners and should not be eligible for a variance under this analysis [emphasis added]**”.
20. For the same reasons as noted in statement #9 above, the November 18, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
21. During the November 18, 2020 meeting, attorney Sam Vitali briefly responded to the Assistant City Solicitor’s memo, then requested a continuance.
22. During the November 18, 2020 meeting the Board voted five (5) in favor (Peter Copelas, Mike Duffy (Chair), Jimmy Tsitsinos, Paul Viccica, and Steven Smalley) and none (0) opposed to continue the hearing to the December 16, 2020 meeting at 6:30 pm.
23. Prior to the December 16, 2020 meeting, in an email sent to Staff Planner Lev McCarthy dated December 16, 2020 Attorney Samuel Vitali requested to withdraw without prejudice the petition of Frank Lanzillo for the property at 2 Dundee Street.
24. For the same reasons as noted in statement #9 above, the December 16, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
25. At the December 16, 2020 public hearing, no representatives for the petitioner were present, no testimony was heard, and no public comment was taken.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, Carly McClain, and Steven Smalley) and none (0) opposed to allow the applicant to withdraw the petition without prejudice.

**This application is withdrawn without prejudice.**

*Mike Duffy / LM*

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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.