



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

2020 DEC 30 AM 11:31

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 STEPHAN O’SULLIVAN AND PATRICK O’SULLIVAN and property owner PHILIP KELLY 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) and minimum width of side yard to alter and expand a nonconforming single-family home by extending the first floor and porch; renovating the rear facade and adding second and third story balconies; and adding a third-story rear dormer at 78 BAY VIEW AVENUE (Map 44, Lot 136) (R1 Zoning District).

A public hearing on the above Petition was opened on July 15, 2020 pursuant to M.G.L Ch. 40A, § 11. The hearing was continued to August 19, 2020 (during which no testimony was heard); continued to September 16, 2020 (during which no testimony was heard); continued to September 29, 2020; continued to October 21, 2020 (during which no testimony was heard); continued to November 18, 2020 (during which no testimony was heard); continued to December 16, 2020; and closed on December 16, 2020.

On July 15, 2020, Mike Duffy (Chair), Peter Copelas, Rosa Ordaz, Carly McClain, Paul Viccica, and Steven Smalley were present; Jimmy Tsitsinos was absent. On August 19, 2020, Mike Duffy (Chair), Peter Copelas, Rosa Ordaz, and Paul Viccica were present; Jimmy Tsitsinos, Carly McClain, and Steven Smalley were absent. 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 Paul 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 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) and minimum width of side yard to alter and expand a nonconforming single-family home by extending the first



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floor and porch; renovating the rear facade and adding second and third story balconies; and adding a third-story rear dormer at 78 Bay View Avenue.

Statements of Fact:

1. In the Statement of Grounds that accompanies the petition date-stamped June 24, 2020 the petitioner requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* “to alter and change the existing non-conforming 1-family dwelling at 78 Bay View Avenue by making interior and exterior renovations, including extending the first floor rear of the building (facing the water) and porch several feet further to the rear, renovating the rear façade to include second and third story exterior balconies, and adding a third-story rear dormer that adds about 6 feet to the building height, which will be about 31 feet, will be below the maximum height of 35 feet”.
2. 78 Bay View Avenue is owned by Philip Kelly. The petitioners were Stephan and Patrick O’Sullivan, who were represented by Attorney William (Bill) Quinn. The petitioners provided a letter of consent from owner Philip Kelly
3. 78 Bay View Avenue is a single-family home located in the Residential One-Family (R1) zoning district.
4. The property is nonconforming to dimensional requirements including at least minimum lot area, minimum lot area per dwelling unit, minimum frontage, front setback, and both sides setback.
5. The initial proposal, date-stamped June 24, 2020, was to substantially alter the existing building by extending the first floor and porch; renovating the rear facade and adding second and third story balconies; and adding a third-story rear dormer.
6. The requested relief, if granted, would allow the petitioner to expand a nonconforming one-family home by extending the first floor and porch; renovating the rear facade and adding second and third story balconies; and adding a third-story rear dormer.
7. On July 13, 2020 Attorney Quinn submitted a request to be continued to the next regularly scheduled meeting on August 19, 2020.
8. 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 July 15, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
9. At the July 15, 2020 public hearing Chair Duffy introduced the request for a continuance. The Board voted five (5) in favor (Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, Carly McClain, and Steven Smalley) and none (0) opposed to continue the hearing to the August 19, 2020 meeting.



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10. On August 10, 2020 Attorney Quinn submitted a request to be continued to the next regularly scheduled meeting on September 16, 2020.
11. Prior to the September 16, 2020 meeting Staff Planner Brennan Corriston received five (5) comments from abutters expressing concern about the petition.
12. On September 14, 2020, Preservation Planner Patti Kelleher emailed a memorandum to Staff Planner Brennan which encouraged the Zoning Board of Appeals to recommend the applicant work with the Historical Commission on additional design revisions “to ensure that the project is more respectful of the building’s original architecture and the surrounding streetscape”.
13. For the same reasons as noted in statement #8 above, the September 16, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
14. 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.
15. At the September 16, 2020 meeting of the Board of Appeals, the board voted four (4) in favor (Carly McClain, Jimmy Tsitsinos, Steven Smalley, and Paul Viccica) and none (0) opposed to continue the hearing to the special meeting scheduled to be held on September 29, 2020. No testimony was heard on the matter on September 16.
16. Prior to the September 29, 2020 meeting Brennan Corriston, Staff Planner, received seven (7) public comments expressing concern about the petition. The Board also received a petition with 118 signatures that included the statement: “We believe that allowing a 25% increase in height, a significant increase in massing, an additional full story, and rear decks and roof eaves that project beyond the existing footprint to an already significantly nonconforming structure is *substantially more detrimental* than the existing structure [emphasis in original]”.
17. For the same reasons as noted in statement #8 above, the September 29, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
18. At the September 29, 2020 meeting the petitioners were represented by attorney Bill Quinn and architect Dan Ricciarelli. Attorney Quinn, Mr. Ricciarelli, and the Board discussed the proposal. The Board expressed concerns regarding constructability given the proximity to nearby structures. The Board also discussed the concerns raised by Historical Commission, Historic Salem, and others regarding the elimination of the front porch. Attorney Quinn noted that the project would appear before the Historical Commission
19. At the September 29, 2020 meeting seven (7) members of the public, Robert Chadwick of 80 Bay View Avenue, David Fellows of 72 Bay View Avenue, Elizabeth Wolfe of 95 Bay View



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Avenue, Susan St. Pierre and Richie Thibodeau (address not provided), Diego Fellows of 72 Bay View Avenue, and Linda St. Pierre or 83 Bay View Avenue asked questions of the petitioners and expressed concerns about the proposal. No (0) members of the public spoke in support.

20. At the September 29, 2020 meeting the Board expressed that it was prudent to continue the hearing given significant stakeholder concerns and the possibility of changes from the Historical Commission review process. Attorney Quinn stated the petitioners request a continuance.
21. At the September 29, 2020 meeting of the Board of Appeals, the board voted five (5) in favor (Peter Copelas, Jimmy Tsitsinos, Mike Duffy (Chair), Paul Viccica, and Carly McClain) and none (0) opposed to continue the hearing to the October 21, 2020 meeting.
22. On November 10, 2020, the petitioners submitted a set of revised plans to Staff Planner, Brennan Corrison. One change shown in the plans is that the front porch would be maintained, while previous plans had shown it being removed.
23. On November 11, 2020 Attorney Bill Quinn submitted a written request to continue from the November 18, 2020 meeting to the December 16, 2020 meeting date.
24. On November 16, 2020 Salem Historical Commission submitted a letter to the Board detailing the Commission's interactions with the petitioners over the previous few weeks. The letter states that the Commission met with the project architect on October 21 and November 3, 2020, to review design details of the proposed renovations. The Commission writes: "Since the November 3rd meeting, the proponents have revised their plans and now propose to retain three of the building's existing walls with new construction for the third floor roof, and rear of the building. We appreciate the Proponent's decision to retain much of the building's historic fabric, which is more historically and environmentally appropriate than wholesale demolition". The letter continues, "We also appreciate the owners' willingness to incorporate many of the Commission's recommendations into their final design, which retain the overall historic character of this 19th century 2½ story cottage. The plans retain the building's steeply pitched gabled roof line and front porch, both characteristic design elements of the historic Willows neighborhood, as well as the chamfered corners on the building's rear elevation. However, we recommend that the new porch retain the existing 5' depth since the proposed 4' depth would likely be too narrow for the porch to be fully usable".
25. On December 10, 2020 the petitioner's representative, Attorney Bill Quinn, submitted a written request to withdraw without prejudice.
26. On December 15, 2020, Lev McCarthy, Staff Planner, received an email from member of the public Susan St. Pierre, asking if the Board can add conditions to its vote on the request to withdraw without prejudice. Susan St. Pierre expressed concern that the public comment,



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- and design alterations made through the Zoning Board of Appeals process would be lost should the applicant be able to refile.
27. Prior to the December 16, 2020 meeting Brennan Corrison, Staff Planner, received one (1) new public comment from Elizabeth Wolfe of 95 Bay View Avenue expressing concern about the petition.
 28. For the same reasons as noted in statement #8 above, the December 22, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
 29. At the December 16, 2020 public hearing, the petitioners were represented by Attorney Bill Quinn. Mr. Quinn indicated several neighbors objected to the plans and that the applicant had been attempting to address as many concerns as possible. Mr. Quinn explained that the applicant ultimately decided to cease their application as some neighbors were still displeased with the updated proposals. As such, the applicant seeks to withdraw their petition without prejudice.
 30. At the December 16, 2020 public hearing Chair Duffy notes that an abutter submitted materials into the public record and raised an issue with the proposed withdrawal without prejudice. Mr. McCarthy confirms, and notes the abutting resident asked if conditions could be applied to a withdrawal without prejudice. Mr. McCarthy read the email from Susan St. Pierre, dated December 15th, 2020. The Board discussed whether it is appropriate to propose any kind of condition on a petition to withdraw. Chair Duffy, Mr. Viccica, and Ms. McClain speak on the lack of precedent for such conditions, and their concerns with imposing conditions on this request to withdraw without prejudice. Chair Duffy acknowledged there were robust interactions and discussions amongst the neighbors with respect to this project, and noted that the applicants' desire to withdraw and regroup prior to submitting any new plans is a testament to the neighbors' voices being heard.

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.

The application is withdrawn without prejudice.



Mike Duffy, Chair
Board of Appeals



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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.