



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK  
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## Decision

### City of Salem Board of Appeals

**Petition of CARLOS DELGADO 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) to expand the single-family home from 2.5 to 3 stories and from lot area per dwelling unit to change the single-family home to a two-family home; and a special permit per Section 3.2.4 *Accessory Buildings and Structures* to allow a second accessory structure, a two-car garage at 8 IRVING STREET (Map 16, Lot 284) (R2 Zoning District).**

A public hearing on the above Petition was opened on June 17, 2020 pursuant to M.G.L Ch. 40A, § 11; continued to July 15, 2020, and closed on July 15, 2020 with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, Carly McClain (Alternate), and Steven Smalley (Alternate). Jimmy Tsitsinos was absent on July 15. On June 17, Peter A. Copelas, Mike Duffy (Chair), Carly McClain (Alternate), Rosa Ordaz, Steven Smalley (Alternate), and Paul Viccica were present; 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 from maximum height of buildings (stories) to expand the single-family home from 2.5 to 3 stories and from lot area per dwelling unit to change the single-family home to a two-family home; and a special permit per Section 3.2.4 *Accessory Buildings and Structures* to allow a second accessory structure, a two-car garage at 8 Irving Street.

#### Statements of Fact:

1. In the petition date-stamped May 27, 2020, the petitioner requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Structures* to “Expand a nonconforming two family structure by changing the layout from up and down apartments to side by side dwelling, creating a additional bedroom and badroom in the attic” [*sic*] and a special permit per Section 3.2.4 *Accessory Buildings and Structures* to “allow a second accessory structure two car garage.”
2. The application was filed by petitioner and property owner Carlos Delgado.
3. 8 Irving Street is a single-family home located in the Residential-Two Family (R2) zoning district. This is an allowed use in the district.
4. 8 Irving Street is nonconforming to dimensional requirements including minimum lot area and minimum depth of front yard. There is one accessory structure on the property, a garage in the rear right corner.

5. The proposal is to alter and expand the nonconforming home by adding a third story; to change the number of dwelling units from one (1) to two (2); and to add a second accessory structure, a two-car garage.
6. Relief by special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Structures* of the Zoning Ordinance is required to expand this nonconforming one- or two-family structure and to change the dwelling from one to two units. By adding a second unit, the property would become newly nonconforming to the required lot area per dwelling unit in the R2 district. This necessitates the special permit relief. Relief by special permit per Section 3.2.4 *Accessory Buildings and Structures* is required to allow the requested second accessory structure.
7. The requested relief, if granted, would allow the petitioner to change from one to dwelling units; to expand the home by adding a third story; and to add a second accessory structure, a two-car garage at 8 Irving Street.
8. There was confusion regarding whether 8 Irving Street was a one-family home or two-family home at the time of application. As noted, the May 27 application indicated that the home was a two-family home. However, per the Salem Inspectional Services Department, the property is a single-family home.
9. The petition was first advertised for the June 17, 2020 meeting of the Board of Appeals. This advertisement described the special permit request per Section 3.3.5 as a request to “alter and expand a nonconforming two-family home by adding a third story.” The issue that the property is in fact a one-family home was not identified in time to change the public notice for the June 17 meeting.
10. 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 June 17, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
11. At the June 17, 2020 public hearing, petitioner Carlos Delgado discussed the petition. He presented the plot plan and elevations. He noted that his proposal is to change the property to a two-family home, which was its original state. (He stated that the previous owner changed the property from a two-family to a one-family.) Mr. Delgado also discussed the expansion and garage proposals. The Board, along with Building Commissioner Tom St. Pierre and Planner Brennan Corrison, discussed the conversion of the property from one dwelling unit to two. Mr. St. Pierre noted that he had advised the applicant that relief from lot area per dwelling unit would be required to convert the property to a two-family home. Mr. Corrison noted that the application did not include reference to lot area per dwelling unit and such relief was not advertised. He noted the relief would fall under the same reference to Section 3.3.5. Mr. Copelas and Chair Duffy agreed that the petition has not been properly advertised, and Chair Duffy expressed his concern about the public not having full notice of the relief being sought. Mr. Corrison, Mr. St. Pierre, and the Board suggested a continuance to the next regular meeting in order to re-advertise the petition with the correction. Mr. Delgado agreed to request to continue to the following meeting. The Board voted five (5) in favor (Paul Viccica, Steven Smalley, Peter A. Copelas, Rosa Ordaz, and Mike Duffy (Chair)) and none (0) opposed to continue the petition to the next regularly scheduled meeting on July 15, 2020.
12. In advance of the July 15, 2020 meeting of the Board of Appeals, the petition was re-advertised in the Salem News and noticed was mailed to abutters including in part the following language: “City of Salem Zoning Board of Appeals Will hold a public hearing for all persons interested in the petition of CARLOS DELGADO 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) to expand the single-family home from 2.5 to 3 stories and **from lot area per dwelling unit to change the single-family home to a two-family home**; and a special permit per Section 3.2.4 *Accessory Buildings and Structures* to allow a second accessory structure, a two-car garage at 8 IRVING STREET (Map 16, Lot 284) (R2 Zoning District).” [Emphasis added.]

13. The July 15, 2020 meeting of the Board of Appeals was also held remotely, via Zoom, for the same reasons as stated in item 10 above.
14. At the July 15, 2020 meeting of the Board of Appeals, petitioner Carlos Delgado discussed the proposal, including to convert the property to a two-family home and to add a second garage for space for cars as well as storage, as the house has two curb cuts and no basement. Mr. Delgado stated that by adding another bedroom to the third floor would be a benefit. Mr. Delgado presented elevations of the house and garage. Mr. Delgado confirmed that the footprint of the primary structure will not change. He also presented floor plans. Mr. Delgado confirmed that the height will be 35 feet.
15. At the July 15, 2020 public hearing, Mr. Corrison confirmed that the corrected language regarding the conversion from one to two units has been advertised in mail to abutters and in the Salem News. Mr. Delgado noted that prior to the previous owner’s conversion of the property to one unit, it had always been multifamily. Mr. Copelas asked about the number of units historically and Mr. St. Pierre stated that before the last owner, it was being used as a two-family, and it was originally built as an office building—it was not always a residence—but the most recent history is two-family, then single-family.
16. At the July 15, 2020 public hearing, one (1) member of the public, Robert Webber, noted that on the other side of the property, a new white fence was installed recently, and asked if Mr. Delgado will install a new fence on the other two sides of the property. Mr. Delgado stated that he does intend to put one on the back and one on the other side so they are conforming with the neighbor to his left. Mr. Webber also asked whether they will be two separate addresses and whether they will be rentals or sold. Mr. Delgado noted that they will go back to however it was addressed when it was multifamily, and explained that he and another individual intend to live in the two units. Mr. Webber also asked if there would be cosmetic changes to the existing garage; Mr. Delgado stated that it will be painted. Mr. Webber also asked about the roof—the elevation shows a new pitched roof, and the existing does not have a pitched roof. Mr. Delgado noted that the pitched roof is just from the way his architect drew it; the new one will basically be a mirror image of the existing. No (0) members of the public spoke in favor of or in opposition to the petition.
17. At the July 15, 2020 public hearing, Chair Duffy reviewed the special permit criteria.
18. At the July 15, 2020 public hearing, Mr. St. Pierre asked about the proposed finish of the dormers (as the existing building is brick). Mr. Delgado answered that the dormers will be clad in clapboard and the existing brick will remain natural. There was some confusion due to the architect’s renderings, which showed a gray and white home. Mr. Delgado confirmed with Mr. Viccica that the red brick will remain.
19. At the July 15, 2020 public hearing, Mr. Copelas asked about including special conditions regarding the fence and the finish of the third-floor dormers. Mr. St. Pierre noted that he would like to see them as conditions if he is being asked to ensure those elements are included. Mr. Delgado confirmed that those conditions are acceptable.

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

1. Social, economic and community needs served by the proposal by rehabilitating the property and creating two units.
2. Traffic flow and safety, including parking and loading: There is adequate parking on-site including two garages, so no negative impact is anticipated.
3. Adequacy of utilities and other public services: Existing utilities and public services are adequate.
4. Impacts on the natural environment, including drainage: No significant negative impact is anticipated. No drainage problems were discussed.
5. Neighborhood character: The property has been a two-family home and an office building in the past and is located in an R2 zoning district. In addition, the property is being updated. The property will be appropriate to the neighborhood character.
6. Potential economic and fiscal impact, including impact on City services, tax base, and employment: There is the potential for a positive impact, including on the City tax base.

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 Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from maximum height of buildings (stories) to expand the single-family home from 2.5 to 3 stories and from lot area per dwelling unit to change the single-family home to a two-family home; and the requested Special Permit per Section 3.2.4 *Accessory Buildings and Structures* to allow a second accessory structure, a two-car garage at **8 Irving 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 shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to be visible from the street.
9. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
10. 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 Conditions:

1. The petitioner will replace the fence on two sides as described in the testimony.

2. The petitioner will clad the third-floor addition to the primary structure in a hardy plank-style finish.

A handwritten signature in cursive that reads "Mike Duffy /BJC".

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.