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MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK  
SALEM, MASS

August 11, 2020

## Decision

### City of Salem Board of Appeals

**Petition of HELEN F. SIDES 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 home by adding a 4' by 7' balcony within the required side yard setback at 90 FEDERAL STREET (Map 26, Lot 627, Block 801) (R2 Zoning District).**

A public hearing on the above Petition was opened on May 20, 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 (Alternate), Rosa Ordaz, Steven Smalley (Alternate), and Paul Viccica. Paul Viccica recused himself for this petition.

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 home by adding a 4' by 7' balcony within the required side yard setback at 90 Federal Street.

#### **Statements of Fact:**

1. In the petition date-stamped April 28, 2020, the petitioner requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to expand the nonconforming two-family home at 90 Federal Street by adding "a 'fire-escape-like' balcony."
2. 90 Federal Street is owned by Carrie Francis Cabot. Petitioner Helen F. Sides is the architect for the proposal.
3. 90 Federal Street is a two-family home located in the Residential Two-Family (R2) zoning district. This is an allowed use in the district.
4. 90 Federal Street is nonconforming to dimensional requirements including minimum depth of front yard and minimum width of side yard (both sides). In the R2 district, the required side yard setback is 10 feet.
5. The proposal is to "install a 'fire-escape-like balcony' that is 4' by 7'. The balcony will be located within the required side yard setback. As noted on the petition form, "There is no ladder. Its outer edge will come close to dripping on the retaining wall which is the property line... We will keep the outer edge within the property line." Under this proposal, it appears that there will be roughly 0 feet between the balcony and the lot line, constituting a reduction in the setback and an increase in the extent of the infringement. The balcony is proposed to be located above the first floor.
6. 90 Federal Street is an historic structure located in the McIntire Historic District. The proposal has received a Certificate of Appropriateness from the Historical Commission.

7. The requested relief, if granted, would allow the petitioner to install a 4' by 7' balcony within the required side yard setback at 90 Federal Street, thus expanding the nonconforming two-family home.
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 May 20, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
9. At the May 20, 2020 public hearing on this petition, Paul Viccica recused himself.
10. At the May 20, 2020 public hearing, architect and petitioner Helen F. Sides presented the proposal. Ms. Sides described the property as a tall Victorian home renovated two years ago with a new owner. Ms. Sides showed a plot plan and explained the proposal is to create a small, fire escape-like balcony space off of the main floor the owner can step out onto. Ms. Sides explained it would be made of steel grating and bracketed against the house. She noted the proposed structure would come close to the property line. Ms. Sides noted the platform is above head height. Ms. Sides presented floor plans and photos to show existing and proposed conditions, identifying where the balcony and door would go in relation to the property line and building. She noted that the Historical Commission had approved the design. Ms. Sides noted that the structure would be built by Colonial Iron Works in Peabody. She showed a photo of a similar fire escape she designed on Chestnut Street.
11. At the May 20, 2020 public hearing, two (2) members of the public spoke in opposition to the proposal and no (0) members of the public spoke in favor. These members of the public raised concerns about the proximity to the property line and the adjacent property at 92 Federal Street and about seeing the structure from across the street. Ms. Sides noted that the balcony will not be visible from Federal Street and that the closest abutting property has decks on all floors.
12. At the May 20, 2020 public hearing, Mr. Copelas asked about the distance of the structure to the property line. Ms. Sides stated she did not have the property surveyed as she did not think it was necessary. Mr. Copelas noted that the addition might go right up to the property line, but it seems like it is not inconsistent where another (existing) corner of the structure goes. She added that the material and color choices were to make the balcony disappear visually unless someone is using it and to minimize the amount of drip edge.
13. At the May 20, 2020 public hearing, Chair Duffy discussed the special permit criteria, noting that this is a minor addition.

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

1. Social, economic, or community needs are served by the proposal. This small change will enhance the use of the property for the owner.
2. Traffic flow and safety, including parking and loading will not be impacted.
3. Adequacy of utilities and other public services: Existing utilities and other public services are adequate.

4. Impacts on the natural environment, including drainage: No negative impact is anticipated. The deck has been designed to be permeable.
5. Neighborhood character: This is an insignificant addition to the building which otherwise is not changing.
6. Potential fiscal impact, including impact on City tax base and employment: There is the potential for a positive fiscal impact, if any.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Steven Smalley, Carly McClain, Rosa Ordaz, Mike Duffy (Chair), 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 home by adding a 4' by 7' balcony within the required side yard setback at **90 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. A Certificate of Occupancy is to be obtained.
6. A Certificate of Inspection is to be obtained.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. 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.

  
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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.