



DOMINICK PANGALLO  
MAYOR

# CITY OF SALEM, MASSACHUSETTS

## BOARD OF APPEALS

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**August 14, 2023**

### **Decision**

### **City of Salem Board of Appeals**

The petition of LORI A. PATTISON at 11 ½ HARDY STREET (Map 41, Lot 30) (R2, B1 Zoning Districts) for a special permit per Section *3.3.3 Nonconforming Structures* of the Salem Zoning Ordinance to alter and to enlarge the residential use of a nonconforming structure by restoring and using the third (3<sup>rd</sup>) floor unit. Petitioner is also seeking variances from section 4.1 *Dimensional Requirements* for lot area per dwelling unit where 1,423 sq. ft is proposed/3,500 sq. ft required. In addition, a variance per section 5.1.1 – 5.1.8 *Off-Street Parking*.

A public hearing on the above petition was opened on February 15, 2023 and was continued to March 15, 2023 and again continued to May 17, 2023 and continued again to June 21, 2023 and was closed on July 19, 2023.

On February 15, 2023, the following members of the Salem Board of Appeals were present: Rosa Ordaz, Peter Copelas (Acting Chair), Paul Viccica, Nina Vyedin and Steven Smalley.

On March 15, 2023, the following members of the Salem Board of Appeals were present: Rosa Ordaz, Peter Copelas (Acting Chair), Paul Viccica, Nina Vyedin and Steven Smalley.

On May 17, 2023, the following members of the Salem Board of Appeals were present: Rosa Ordaz, Peter Copelas (Chair), Paul Viccica, Nina Vyedin and Hannah Osthoff.

On June 21, 2023, the following members of the Salem Board of Appeals were present: Carly McClain, Peter Copelas (Chair), Paul Viccica, Nina Vyedin and Hannah Osthoff.

On July 19, 2023, the following members of the Salem Board of Appeals were present: Rosa Ordaz, Peter Copelas (Chair), Paul Viccica, Nina Vyedin, Carly McClain and Hannah Osthoff.

### **Statements of Fact:**

The petition is date stamped January 24, 2023. The petitioner requests to perform interior work to re-establish the use of the previously existing third floor unit.

1. 11 ½ Hardy Street is owned by Lori A. Pattison.
2. The petitioner was Lori A. Pattison.
3. 11 ½ Hardy Street is located in the R2 and B1 zoning districts. (Map 41, Lot 30).
4. On February 15, 2023, Bill Quinn, representative, presented the plans to the board.
5. Attorney Quinn stated that the property at 11 ½ Hardy Street was marketed and sold to Ms. Pattison as a three-family home. After the purchase of the home, they tried to renovate the third-floor unit. The renovations of the third-floor unit were stopped due to personal reasons with the owner.
6. There are two apartments in the home currently. A first and second floor unit. The first floor is occupied by the owner, Ms. Pattison. The second-floor apartment is occupied by her daughter and her partner.
7. Attorney Quinn stated that the property at 11 ½ Hardy Street is split between two zoning districts- R2 and B1.
8. Mr. Quinn, using the plot plan, showed the board how the property is split between the two zoning districts.
9. Mr. Quinn stated that in the B1 district, three-family use is permitted. This is the reason they are seeking to have the third unit reinstalled for use at the property.
10. Mr. Quinn reviewed the two submitted parking plans for the petition. One of the plans had four parking spaces. The other plan had five parking spaces.
11. The four-space plan would allow for the fifty-foot tall (50) cedar tree on the property to not be cut down.
12. The five-space plan would require the cedar tree to be cut down.
13. Lori Pattison, homeowner, stated the parking plan shows tandem spaces, however they are very long spaces, not tandem.
14. Peter Copelas inquired to Tom St. Pierre, Building Commissioner, if the unit is a legal unit in the B1, why do the petitioners need relief.
15. It was stated that the original relief requested, a special permit under section 3.3.5 Nonconforming single- and two-family structures, was not correct for the proper relief. The basis for 3.3.5 was so that single family homes go to a two-family home or you could dimensionally expand a two-family. One may not use 3.3.5 for a three-family use. This is why requested relief was not under the provision of section 3.3.5 of the Salem Zoning Ordinance.

16. Tom St. Pierre stated that Section 3.3.5 would be used improperly for this petition. This is why he suggested to Attorney Quinn to seek the current relief.
17. Due to circumstances around the validity of the third-floor unit, a request to continue to the March 15, 2023 meeting was requested.
18. The board approved the request for a continuance until March 15, 2023.
19. On March 15, 2023, attorney Quinn continued to present to the board.
20. Mr. Quinn reviewed the information presented in the previous hearing regarding parking and the validity of third-floor unit.
21. Chair Copelas stated the board had received a letter from 2001, from the then Building Commissioner, Peter Strout, stating that the property at 11 1/2 Hardy Street is a legal single-family home. Chair Copelas asked Attorney Quinn how he would like to address the new letter.
22. Attorney Quinn stated that everything in the home shows that the house is a three-family. There are two enclosed stairways serving all three floors. There are separate utilities for three units. However, only the first two floors are active. Hence, the request in front of the board. Mr. Quinn reiterated that when the petitioner bought the property, it was marketed as a three-family.
23. Attorney Quinn stated that the three-family use is a legal use in the B1. This is why they are in front of the Zoning Board.
24. Attorney Quinn stated that for many years the second unit of the home had been rented many times throughout the years.
25. Chair Copelas stated that he was still unclear on the relief sought. He asked the Building Commissioner to clarify.
26. Tom St. Pierre stated that Attorney Quinn needed relief to reestablish the third unit use. He suggested that there be a records review to see what the utilities state and similar documents like voting records show for the history of the residence.
27. Paul Viccica stated that the board needs to discuss the need for a variance. In the B1 district multi-family use is allowed. Therefore, the board needs to decide on the variances requested for parking and lot area per dwelling unit.
28. Chair Copelas decided to move forward with the petition to review the request for variances.
29. Attorney Quinn reviewed the two submissions for parking plans. One with four parking spaces and one with five parking spaces. Currently, the two units are serviced by four parking spaces. Attorney Quinn stated that those parking spaces are "grandfathered" in for the current two units. The proposed two new parking spaces would be for the required 1 1/2 spaces for the proposed new unit.
30. The five-car parking plan was reviewed; however, the five-car plan would require removing a very old Cedar tree from the property. The petitioner would like to not cut down the Cedar tree to keep the property in compliance with the neighborhood character.

31. Paul Viccica stated that he felt that if the petitioner removed some of the sheds on the property, they would be able to accommodate the required five parking spaces.
32. The board requested the petitioner return with a new plot plan that showed the parking layout with less or no sheds on the property. The petition was continued to May 17, 2023.
33. On May 17, 2023 the petitioner made a request to continue to June 21, 2023.
34. The request was approved.
35. On June 21, 2023, the board had only a quorum of four members. However, not all present members were eligible to vote. The petitioner requested a continuance to July 19, 2023 in order to have a full eligible board.
36. The request to continue was approved.
37. On July 19, 2023 Attorney Quinn continued his petition for 11 ½ Hardy Street. Attorney Quinn reviewed the petition and its details for the board as it had been several continuances since the board had last heard the petition.
38. The sheds on the property have been removed and Attorney Quinn reviewed the submitted four car parking plan that allowed the Cedar tree to stay on the property.
39. Paul Viccica requested that Attorney Quinn review the variance statement of hardship for the petition.
40. Attorney Quinn summarized that the shape of lot is very deep and very narrow. The narrow lot was a hardship for the parking spaces required. The parcel also is bisected by two zoning districts (B1, R2).
41. Attorney Quinn also reviewed the criteria for a special permit.
42. Chair Copelas inquired if there were any more questions from the board. There were none.
43. Chair Copelas inquired if there were any questions from the public. There were none.
44. Attorney Quinn reiterated that there has been a submitted letter signed by the abutters in the neighborhood that support the petition.
45. Paul Viccica made a motion to approve the petition.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Peter Copelas(Chair), Rosa Ordaz, Carly McClain, Nina Vyden and Paul Viccica and none (0) opposed to grant LORI A. PATTISON a Special Permit per Section *3.3.3 Nonconforming Structures* of the Salem Zoning Ordinance to alter and to enlarge the residential use of a nonconforming structure by restoring and using the third (3<sup>rd</sup>) floor unit. In addition, a Variance per *4.1 Dimensional Requirements* for lot area per dwelling unit where 1,423 sq. ft is proposed/3,500 sq. ft required and a Variance per section *5.1.1 – 5.1.8 Off-Street Parking*.

**Receiving five (5) in favor votes, the petition for a Special Permit is GRANTED.**

**Receiving five (5) in favor votes, the petition for Variances from sections 4.1.1 Dimensional Requirements and 5.1.1-5.1.8 Off-street Parking are GRANTED.**

**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. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
9. All construction shall be done per the plans and dimensions submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.
10. Petitioner shall schedule Assessing Department inspections of the property, at least annually, prior to project completion and a final inspection upon project completion.

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Peter Copelas/ 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.