



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS

## BOARD OF APPEALS

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2019 OCT -2 PM 3:27  
CITY CLERK  
SALEM, MASS

October 2, 2019

### Decision

### City of Salem Board of Appeals

**Petition of GRAHAM W. HINES for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to construct a shed dormer, a 6' by 18' three-story side addition, and rear egress stairs for the first and second floors at the two-family home at 7 BURNSIDE STREET (Map 36, Lot 157) (R2 Zoning District).**

A public hearing on the above Petition was opened on August 21, 2019 (during which no testimony was heard) pursuant to M.G.L. Ch. 40A, § 11, continued to September 18, 2019, and closed on that date with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Rosa Ordaz (alternate), and Paul Viccica. At the August 21 meeting, Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica were in attendance.

The petitioner seeks a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance.

#### Statements of Fact:

1. In the petition date-stamped July 29, 2019, the petitioner requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to construct a shed dormer, a 6' by 18' three-story side addition, and rear egress stairs for the first and second floors at the two-family home at 7 Burnside Street.
2. Petitioner Graham Hines presented the petition.
3. The property is a two-family home in the Residential Two-Family (R2) zoning district.
4. The property is nonconforming to required front and side yard setbacks. The existing building is 2.5 stories in height, the maximum in the R2 zoning district.
5. The proposal is to add a shed dormer atop the existing structure, bringing the height to 3 stories (exceeding the R2 maximum). The proposal is also to add a 3-story addition to the rear of the existing structure, which shall extend past the envelope of the existing structure and include porches on each level (first, second, and third stories). The proposal also includes the addition of egress stairs at the rear of the property for the first and second floors. Per the application, the rear egress stairs are proposed to be within 3' of the side property line; the minimum setback is 10'.
6. The requested relief, if granted, would allow the petitioner to construct a shed dormer, a 6' by 18' three-story side addition, and rear egress stairs for the first and second floors at 7 Burnside Street.
7. At the August 21, 2019 meeting of the Board of Appeals, only three Board members were in attendance: Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica. Three members out of the five-member Board constitutes a quorum (enough members to hold a meeting). However, per the Zoning Board of Appeals' Rules and Regulations, "[t]he concurring vote of at least four (4) members of the

Zoning Board of Appeals shall be necessary in any action taken by the Board.” As such, the Board could not vote to approve any petitions in the August 21 meeting. Petitioners were informed of this attendance situation in advance and were given the opportunity to submit requests to continue their petitions to the next regularly scheduled meeting on September 18, 2019. In an email to Planner Brennan Corrison dated August 20, 2019, petitioner Graham Hines submitted a request to continue 7 Burnside Street to the September 18 meeting. This request was duly filed with the City Clerk on August 21, 2019. In the meeting, the Board voted three (3) in favor (Paul Viccica, Jimmi Heiserman, and Mike Duffy (Chair)) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting.

8. At the September 18, 2019 public hearing, petitioner Graham Hines discussed his petition and the requested relief. He explained that the shed dormer creates usable space on the third floor to allow additional bedrooms, a bathroom, and a living area for the second unit. The decks on the side of the building will create outdoor space for each floor. The rear egress stairs will exit from the living rooms on the first and second floors.
9. At the September 18, 2019 public hearing, the Board asked about the proposed decks. The petitioner noted that the decks would look into the parking area of the adjacent property. The Board discussed with the applicant the proposed rear egress stairs. Mr. Hines noted that the building is currently 1.9 feet from the side yard setback at that point. Chair Duffy noted that the side setback (where the stairs will be located) will actually increase from the current condition.
10. At the September 18, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.
11. At the September 18, 2019 public hearing, Chair Duffy read from the Statement of Grounds, which discussed special permit criteria.

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petition, including the application narrative and plans, and the Petitioner's presentation and public testimony, makes the following **findings**:

**Findings for Special Permit:**

The Board finds that the proposed nonconforming structure is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

1. Social, economic and community needs are served by the proposal: This will allow for a renovated three-bedroom dwelling unit.
2. There will not be negative impacts to traffic flow and safety, including parking and loading. There are four off-street parking spaces.
3. Adequate utilities and public services service the property.
4. Little impact is expected in terms of impacts on the natural environment, including drainage.
5. The property will be within the character of the neighborhood.
6. Potential fiscal impact, including impact on City tax base and employment: Bringing the second unit into more complete use, along with the other improvements to the property, will likely increase the assessed value of the house and positively impact 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 (Jimmi Heiserman, Paul Viccica, Mike Duffy (Chair), Peter A. Copelas, 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 to construct a shed dormer, a 6' by 18' three-story side addition, and rear egress stairs for the first and second floors at the two-family home at **7 Burnside 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 is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

  
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.