



DOMINICK PANGALLO  
MAYOR

# CITY OF SALEM, MASSACHUSETTS

## BOARD OF APPEALS

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**August 21, 2023**

### **Decision**

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

The petition of RAMON HILDALGO at 107 MASON STREET (Map 16, Lot 361) (R2 Zoning District) for a Special Permit per Section *3.3.3 Nonconforming Structures* of the Salem Zoning Ordinance to expand a nonconforming three-family home by adding a three-level deck. The required rear setback is 30 feet. The deck would be at 17 feet. Also, a Variance per Section *4.1.1 Dimensional Requirements* for maximum height of buildings (stories).

A public hearing on the above petition was opened on August 16, 2023 and was closed on August 16, 2023.

On August 16, 2023, the following members of the Salem Board of Appeals were present: Peter Copelas (Chair), Carly McClain, Paul Viccica, Rosa Ordaz and Hannah Osthoff.

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

The petition is date stamped June 29, 2023. The petitioner proposes to expand a nonconforming three-family home by adding a three-level deck.

1. 107 Mason Street is owned by Ramon Hildalgo
2. The petitioner was Ramon Hildago
3. The representative was Architect Darguin Fortuna.
4. 107 Mason Street is located in the R2 zoning district. (Map 16, Lot 361).
5. On August 16, 2023, Darguin Fortuna presented the plans to the board.
6. Mr. Fortuna stated the while the petitioner was having a routine inspection for the interior of the building, the building inspector noticed that there was a life safety hazard with the rear stairs.
7. The issue was that people who are leaving the unit would need to reenter the unit again to access the stairs. This is neither safe nor legal according to Massachusetts's building code.

8. Mr. Fortuna stated that they are proposing to build a deck and stairs that allows access for three floors to a safe exit at the rear of the property.
9. Mr. Fortuna showed photos of the decks for the units and how tenants have to go onto the rear porch through sliding doors and turn left to access the stairs. The stairs are only accessible by going on the porch.
10. Mr. Fortuna reviewed the proposed set of stairs and how they will allow everyone access to the new stairs from their deck without having to reenter the building for the staircase.
11. Mr. Fortuna shared with the board the letters they received from all the abutters stating their approval of the proposed stairs. There were eight letters of support for this project.
12. Mr. Fortuna reviewed the criteria for a special permit.
13. Chair Copelas stated that the drawings show that the house was designed with the staircase inside at the rear of the home.
14. Mr. Fortuna stated that the internal rear stairs go all the way to the basement. However, currently, no apartment has access to those stairs except by going out onto the porch and reentering into the home.
15. Chair Copelas inquired if there was any thought about creating access from the apartments to the stairs.
16. Mr. Fortuna stated they had tried multiple options, however, the options for creating access to those stairs was cost prohibitive.
17. Mr. Fortuna stated that they thought of enclosing the back area and allowing access to the stairs. Unfortunately, that led to tenants having to enter bedrooms to exit. Mr. Fortuna said that they had tried multiple solutions and the proposal was the in front of the board was the one that made the most sense and was not cost prohibitive.
18. Chair Copelas asked if Mr. Fortuna could explain why they were asking for a variance.
19. Mr. Fortuna stated that he was unsure of why a variance was being asked for as well.
20. The acting building commissioner, Voula Orfanos, was not in attendance. City staff explained that the variance request was because of the number of stories allowed in the ordinance (two and a half stories) and this was a proposal of three storied staircase.
21. Mr. Viccica stated that he felt that the other options are within the means of not renovating or destroying most of the interior to renovate the interior of the apartments.
22. The board members discussed the possibility of approving the special permit and having the petitioner come back if it was determined that they did need a variance.
23. Carly McClain stated that she felt the petitioner, in going through the options they had clearly articulated the reasons they could not do the other stairway options. She felt this statement given by the petitioner did qualify as a reason for

granting the variance. She stated that she felt fine by granting both the special permit and the variance.

24. Paul Viccica stated he did agree with Mrs. McClain that the petitioner did express their hardship for being granted a variance.

25. Chair Copleas opened the meeting to public comments. There were none in addition to the submitted written comments.

26. Carly McClain made a motion to approve the special permit and variance.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Peter A. Copelas(Chair), Nina Vyden, Carlie McClain, Rosa Ordaz, Hannah Osthoff and Paul Viccica and none (0) opposed to grant RAMON HILDALGO at 107 MASON STREET a Special Permit per Section *3.3.3 Nonconforming Structures* to expand a nonconforming three-family home by adding a three-level deck. In addition, a Variance per Section *4.1.1 Dimensional Requirements* for maximum height of buildings (stories).

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

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

8. 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.
9. 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 A. 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.

