



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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2016 SEP 28 P 1: 06

FILE #  
CITY CLERK, SALEM, MASS.

September 26, 2016

## Decision

### City of Salem Board of Appeals

Petition of JAMES W. LEWIS seeking an Appeal of the Decision of the Building Inspector to contest the interpretation of fence and fence height at the property of 3 LILLIAN ROAD ( Map 30 Lot 30)(R1 Zoning District).

A public hearing on the above Petition was opened on June 15, 2016 pursuant to M.G.L. Ch. 40A, § 11. Public testimony was heard on that date and the public hearing was continue to September 21, 2016 and closed on that date with the following Salem Board of Appeals members present: Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Jimmy Tsitsinos, Mike Duffy, and Tom Watkins.

The Petitioner is seeking an Appeal of the Decision of the Building Inspector to contest the interpretation of fence and fence height.

#### Statements of fact:

1. In the petition date-stamped May 24, 2016, the Petitioner requested to appeal the Decision of the Building Inspector to contest the interpretation of fence and fence height.
2. Attorney Stephen Zolotas of 133 Washington Street, Salem, MA presented the petition.
3. The petitioner, Mr. James W. Lewis, filed an appeal of the Decision of the Building Inspector. Mr. Lewis requested that the building inspector enforce the Salem Zoning Ordinance nine (9) years after a building permit was issued for the construction of a swimming pool.
4. The petitioner states that a retaining wall constructed in relation to the swimming pool needed a building permit and therefore, the statute of limitation on enforcement of other zoning matters could be done.
5. In particular, Mr. Lewis requested that the building inspector enforce the fence height requirements of the Salem Zoning ordinance due to concerns about the fence height and location installed by an abutting neighbor.
6. The location of the installed fence is a civil matter.
7. In a letter dated March 21, 2016, the City's assistant building inspector provided a zoning opinion stating that the permit for an in-ground pool was applied for and issued 5/21/2007. There is no record on-file of a request for a zoning variance or for a building permit to increase the height of the border/retaining wall above 6' feet. There is no record on-file that the City Engineer was notified of the intent to alter the grade of the land.
8. While there was no grade alteration permit applied for from the Engineering Department to alter the grade of the land, it is not within the purview of the Zoning Board to discuss a permit of the Engineering Department since it is not part of the zoning ordinance.

9. In a letter dated April 29, 2016 the Building Inspector stated that he met with the neighbors and discussed the construction work done at 19 Chandler Street. Work included the installation of a pool, patio and raising of a retaining wall that was done in 2007. The Massachusetts General Law Ch.40A Section 7 states that no enforcement actions may be taken if the work was permitted and a period of six (6) years has passed.
10. It is the opinion of the Building Inspector officer that no enforcement actions may be taken as the construction work received a building permit and a period of six (6) years has passed.
11. Regarding fence height, the Salem Zoning Ordinance states the following "retaining walls, boundary walls and or fences may be built abutting the property line. The height of the retaining wall boundary walls and or fences shall be measured on the inside face of the structure on the owners side." It is the opinion of the Building Inspector that as long as the abutter's fence does not exceed six (6) feet measured from their side, there is no zoning violation.
12. The height of the raised retaining wall is approximately three and a half feet (3.5') and would not have required a building permit at the time of construction.
13. The requested relief, if granted, would allow the zoning enforcement officer to take any associated enforcement actions.
14. At the public hearing, two (2) members of the public spoke in opposition and no members of the public spoke in favor, of the petition.

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, makes the following **findings**:

**Findings:**

1. A building permit was pulled on May 21, 2007 for the construction of the swimming pool. A building permit was not required for the construction of the 3.5' foot retaining wall. Therefore, the statute of limitation of six (6) years for any zoning enforcement action has passed.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (5) in favor (Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Jimmy Tsitsinos, Mike Duffy, and Tom Watkins) and none (0) opposed, to uphold the decision of the building inspector. The decision of the Building Inspector is upheld.

  
Rebecca Curran, 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.*