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CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS

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March 22, 2023

Decision

City of Salem Board of Appeals

The petition of EZEKIEL HOLT at 1 PURCHASE STREET (Map 15, Lot 139) (R1 Zoning District), for a Special Permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to build a new, second egress with a porch for the first-floor unit. The proposed change will permit petitioner to restrict access to the basement from the first-floor unit and to specifically make it a part of the second unit.

A public hearing on the above petition was opened on December 14, 2022 and was continued to January 18, 2023 and to February 15, 2023 and was continued again to March 15, 2023. The petition closed on March 15, 2023.

On December 14, 2022, 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 January 18, 2023 the following member of the Salem Board of Appeals were present: Carly McClain, Peter Copelas (Acting Chair), Paul Viccica, Steven Smalley and Nina Vyden. On February 15, 2023 the following members were present: Peter Copelas (Chair), Nina Vyedin, Paul Viccica, Carly McClain, Rosa Ordaz, and Steven Smalley. And on March 15, 2023 the following members were present: Peter Copelas (Chair), Nina Vyedin, Paul Viccica, Rosa Ordaz, and Steven Smalley.

Statements of Fact:

The petition is date stamped November 9, 2022. The petitioner requests to build a new, second egress with a porch for the first-floor unit.

1. 1 Purchase Street is owned by Ezekiel Holt
2. The petitioner was Ezekiel Holt.
3. 1 Purchase Street is located in the R1 zoning district. (Map 15, Lot 139).

4. On December 14, 2022, Ezekiel Holt submitted a request for a continuance to the January 18, 2023 meeting.
5. On January 18, 2023 Ezekiel Holt presented his plans to the board.
6. The property at 1 Purchase Street had a finished basement when Mr. Holt had purchased it. While going through the process, he discovered that the third unit in the basement was illegal. He wanted to go through the process of making the property compliant with bylaws and codes.
7. Mr. Holt would like to restrict access from the first floor to the basement area. He is proposing to close off access to the stairwell that gives access to the basement. He would also like to create a new egress so the tenant on the first floor would still have access to the egress despite the closed stairwell access.
8. The creation of the second egress would enter into the setback of the abutter which is why Mr. Holt is seeking a special permit.
9. Mr. Copelas inquired as to the reference made in the presentation to the studio in basement. Mr. Copelas expressed his concerns that the petition appeared to be creating an additional unit in the basement of a two-family home in an R1 zone. His concern was around the addition of a bathroom and a kitchenette as proposed by the plans.
10. Mr. Holt stated that the kitchenette and the bathroom were there when they purchased home.
11. Mr. Viccica inquired about who currently lives in the home. Mr. Holt responded that he and his family live on floors two and three and they have a tenant on the first floor.
12. Mr. Viccica then asked are there three units in the home. Mr. Holt responded yes. Mr. Holt also stated that was the way the home was when they purchased it.
13. Mr. Viccica inquired if they were paying taxes on three units.
14. Mr. Holt responded that he has been paying the taxes as they have come in. He is paying taxes for two units.
15. Assessor data states that the home is a two family.
16. Mr. Holt stated that he had spoken with Tom St. Pierre, Building Commissioner, and that Mr. St. Pierre told him to apply for the special permit for the proposed new egress as it would stretch into the setback.
17. Mr. Viccica stated that they are looking for a special permit to build a third unit.
18. Mr. Holt stated that was not what they are doing. He clarified that they are seeking to have the basement be part of the second and third floor unit by restricting access to the first-floor unit.
19. Carly McClain stated that she felt this was a genuine petition and that Mr. Holt is coming to the board to make the unit in the basement legal. Mrs. McClain stated that the board could add a condition to mandate that this isn't additional unit for renting or for an Air BnB.

20. Mr. Holt stated that when they bought the property, there was an additional gas line for the basement that they had taken out because they specifically are looking to not create an additional unit in the basement.
21. Paul Viccica reiterated that the board reviews petitions based on "per plans" and according to the submitted plans there are indications of a studio apartment and there are pieces missing from the plans that Mr. Holt has referred to.
22. The board recommended to Mr. Holt that he return to his architect and have them draw up new plans that specifically state and show what was planned to be done in the basement unit.
23. Mr. Holt agreed to have the plans revised.
24. The petition was continued to the February 15, 2023 meeting.
25. Due to the lack of plans available, the petition was continued to the March 15, 2023 meeting.
26. On March 15, 2023, Ezekiel Holt presented his updated plans to the board. The major changes to the plans were the update to the plan descriptions to make the plans easier to understand.
27. Mr. Copelas opened the meeting up to the board.
28. Nina Vyedin inquired about the "kitchen" in the basement space.
29. Mr. Holt responded that there is a sink, cabinets, refrigerator and a microwave in the basement space.
30. Mr. Holt also reiterated that they have removed the gas line from the apartment because they did not want to have to explain to people that the unit is not a full live-in unit.
31. Mr. Copelas opened the meeting up to public comments.
32. Jon Peters, 3 Purchase Street, stated that he is in full support of the Holt's petition.
33. Andrea Wawrzyn, 8 Ober Street, stated the Holts are great neighbors and that she was also in full support of the petition.
34. Paul Viccica made a motion to approve the petition.
35. The March 15, 2023 meeting of the Board of Appeals was held remotely, via the online platform Zoom in accordance with Chapter 107 of the Acts of 2022.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Peter Copelas(Chair), Steven Smalley, Rosa Ordaz, Nina Vyedin and Paul Viccica and none (0) opposed to grant EZEKIEL HOLT at 1 PURCHASE STREET a Special Permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to build a new, second egress with a porch for the first-floor unit. This will permit petitioner to restrict access to the basement from the first-floor unit and to specifically make it a part of the second unit.

Receiving five (5) in favor votes, the petition for a Special Permit 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. 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.
9. 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.
10. 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.
11. Petitioner shall schedule Assessing Department inspections of the property, at least annually, prior to project completion and a final inspection upon project completion.

Special Condition:

1. Lower level "Guest Suite" will not be used as a third (3rd) unit.

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.