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MAYOR

CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS

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April 30, 2024

Decision

City of Salem Board of Appeals

The petition of FLORA TONTHAT at 30 NORTHEY STREET (Map 36, Lot 20) (R2 Zoning District) for a Special Permit per Section *3.3.3 Nonconforming Structures* to construct an Accessory Dwelling Unit (ADU) in an existing 20' x 30'10" detached 3-car garage with an 8-foot expansion into the rear yard. In addition, a Variance from section *4.1.1 Dimensional Requirements* for side and rear yard setback requirements. The detached garage is nonconforming regarding with side and rear yard setbacks at less than one foot. The proposed accessory dwelling is seven hundred nine square feet. (709) where nine hundred square feet (900) is allowed.

A public hearing on the above petition was opened on March 20, 2024, and was continued to April 17, 2024. On April 17, 2024, the petition was closed.

On March 20, 2024, the following members of the Salem Board of Appeals were present: Nina Vyedin (Chair), Carly McClain, Hannah Osthoff, and Ellen Simpson.

On April 17, 2024, the following members of the Salem Board of Appeals were present: Nina Vyedin (Chair), Carly McClain, Hannah Osthoff, Paul Viccica, Stephen Larrick, and Ellen Simpson.

Statements of Fact:

The petition is date stamped December 14, 2023. The petitioner seeks the Board of Appeals approval to construct an affordable accessory dwelling unit.

1. 30 Northey Street is owned by Flora Tonthat.
2. The petitioner was Flora Tonthat.
3. Claudia Paraschiv was the representative.
4. 30 Northey Street is located in the R2 Zoning District (Map 36, Lot 20).
5. On March 20, 2024, a request to continue to the April 17, 2024, meeting was received.
6. Carly McClain made a motion to approve the request for a continuance to the April 17, 2024, meeting.
7. On April 17th, 2024, Flora Tonthat and Claudia Paraschiv presented the plans to the board.

8. It was determined by the City Solicitor, the Building Commissioner, and city staff that a variance was not required for this petition and the request for relief would be for the *Nonconforming Structures* (Section 3.3.3) special permit only.
9. The petitioner received the Salem Historical Commission's waiver of demolition delay on April 17, 2024.
10. This is an existing nonconforming garage in the R2 zoning district. The garage is constructed of CMU/prefabricated concrete blocks.
11. The petitioner is seeking to construct an affordable accessory dwelling unit within the existing footprint of the garage for her daughter.
12. Ms. Paraschiv stated that the change in height of the garage would be approximately two feet and two inches (2' 2") at the front of the garage and three feet nine inches (3' 9") at the rear of the garage. This will create a cathedral height space in the proposed art studio/bedroom.
13. The special permit request is for the nonconformity of the rear and side yard setbacks of the garage. The petitioner's rear set back is +/- half of a (1/2) foot and their side setback is +/- two tenths (.2) of a foot. In the R2 zoning district, the rear yard setback is thirty (30) feet, and the required side yard setback is ten (10) feet.
14. Chair Vyedin asked the petitioner to speak to the section of her application where she refers to a bed and breakfast operation versus a bed and breakfast residence due to some of the rooms in her house being short-term rentals.
15. Ms. Tonthat stated Massachusetts General Law makes a distinction between a bed and breakfast home and a bed a breakfast establishment. Ms. Tonthat stated a bed and breakfast home can only have three (3) rooms and that is what she has at her property. She stated that she lives on the first floor and on the second and third floors are where the rentable rooms are.
16. Chair Vyedin stated that per the Accessory Dwelling Unit ordinance the proposed accessory dwelling unit could not be used for a short-term rental. Ms. Tonthat stated that she understood.
17. Mr. Viccica inquired if Ms. Tonthat had a structural engineer inspect the CMU walls of the garage. Ms. Tonthat stated that will be her next step. She stated she wanted to get through the Historical Commission and the Zoning Board of Appeals first.
18. Mr. Viccica stated his concern was the CMU walls on the zero-foot (0) lot line or within inches of the lot line adjacent to existing structures that the petitioner does not own. There would be a special condition if the structural engineer determined the CMU walls or the foundation cannot withstand the loads from the occupants or if it is required to come down, Ms. Tonthat would need to return to the Zoning Board of Appeals. The project would become a brand-new building with a different set of parameters and regulations.
19. There were nine (9) letters of support submitted for this petition.
20. The meeting was opened to public comment.

21. Jeff Cohen, 12 Hancock Street, stated he was Flora Tonthat's husband and was in support of the project.

22. Mandy Spittle, 8 Woodbury Court, stated she was in support of the project.

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearings, and after thorough review of the petition, including the application narrative and plans, makes the following **findings** that the proposed project meets the provisions of the City of Salem Zoning Ordinance:

Special Permit Findings:

The Board finds that the adverse effects of the proposed use will not outweigh its beneficial impacts to the City or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this Ordinance, the determination includes consideration of each of the following:

1. Social, economic, or community needs are served by this proposal. The accessory unit will add to Salem's housing stock.
2. Traffic flow and safety, including parking and loading: there is adequate parking at the site.
3. Adequate utilities and other public services already service the structure. There will be minimal impact on utilities.
4. Impacts on the natural environment, including drainage: there will be no impact on the natural environment.
5. Neighborhood character: the petitioner has undergone suggestions from the Salem Historical Commission to keep the project within the neighborhood character.
6. Potential fiscal impact, including impact on City tax base and employment: there will be an increase in taxes for the city with the addition of the accessory dwelling unit.

On the basis of the above statements of fact and findings, **the Salem Board of Appeals voted five (5) in favor (Nina Vyedin (Chair), Carly McClain, Paul Viccica, Ellen Simpson and Hannah Osthoff)) and none (0) opposed** to grant FLORA TONTHAT a Special Permit per Section *3.3.3 Nonconforming Structures* to construct an Accessory Dwelling Unit (ADU) in an existing 20' x 30'10" detached 3-car garage, 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.
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.

Special Condition:

1. Should the existing CMU walls that abut adjacent properties, cannot be maintained as a part of the project, that would be deemed a major field change and therefore, the petitioner would need to come back and represent the new project to the Salem Board of Appeals.

Nina Vyedin, 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.