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CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS

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December 15, 2022

Decision

City of Salem Board of Appeals

The petition of GEORGE LAMBOS at 70 PROCTOR STREET (Map 15, Lot 386) (R1 Zoning District), for a Special Permit per Section 3.3.5 *Non-conforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to convert a two (2) family dwelling into a three (3) family dwelling by constructing the third (3rd) dwelling in the basement.

A public hearing on the above petition was opened on June 15, 2022 and was continued to July 27, 2022, August 17, 2022, September 14, 2022, October 19, 2022. It was continued again to December 14, 2022.

On July 27, 2022, the following members of the Salem Board of Appeals were present: Carly McClain, Mike Duffy (Chair), Paul Viccica, Peter Copelas and Steven Smalley.

Statements of Fact:

The petition is date stamped April 27, 2022. The petitioner seeks a Special Permit per Section 3.3.5 *Non-conforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to convert a two (2) family dwelling into a three (3) family dwelling by constructing the third (3rd) dwelling in the basement.

1. 70 Proctor Street is owned by George Lambos
2. The petitioner was George Lambos
3. The petitioner was represented by Darguin Fortuna.
4. 70 Proctor Street is located in the R1 zoning district. (Map 15, Lot 386).

5. The requested relief, if granted, would allow the Petitioner to convert a two (2) family dwelling into a three (3) family dwelling by constructing the third (3rd) dwelling in the basement.
6. On June 15, 2022, Darguin Fortuna requested that the petition be continued to the July 27, 2022 meeting due to only a four member board.
7. On July 27, 2022 Darguin Fortuna presented to the board.
8. 70 Proctor Street is a non-conforming two-family in the R1 Zoning District.
9. The proposal is to convert the basement into a habitable living space as a third apartment. Mr. Fortuna showed the Zoning Map of Salem to demonstrate that the property was currently located in a R1 Zoning District, however, behind the property was a R3 Zoning District, and across the street from the property was the R2 Zoning District.
10. Mr. Fortuna also presented a letter in support from Salem's Councilor at Large, Domingo Dominguez.
11. Tom St. Pierre, the Building Commissioner, was called away from the meeting due to a structure fire in the City and was not able to attend the petition.
12. Chair Duffy opened up the meeting to comments from members of the board.
13. Peter Copelas stated that he was under the impression that regardless of how close the R2 and R3 districts were to the property, it was still in a R1. And in an R1, regardless of the non-conformity, a property could not be converted to a three family even with a special permit.
14. Peter Copelas also discussed his concerns for the amount of parking for the property. He stated that currently, as the plans show, there were only two legal parking spaces at the property. He expressed that he felt there were a lot of problems with the current parking configuration and he felt that the parking is currently insufficient for the property.
15. Paul Viccica stated that the proper relief had not been requested and the petitioner may decide to request a variance for parking. Furthermore, they would not be able to make a motion for the petition at this current meeting without input from the Building Commissioner.
16. Chair Duffy agreed that the parking issue for the petition would not allow them to make a motion on the petition at that current time. The petitioner was informed that they would need 1.5 parking spaces per unit. And the current plans did not contain dimensions for one of the proposed parking spaces. He recommended that the petition be continued to the next meeting.
17. Chair Duffy opened the meeting up to public comment.
18. Nina Vyden, 27 Daniels Street, inquired about the floor plan and the exits. She inquired if it was ok if both egresses could be on the same side of the house and next to each other.
19. Mr. Fortuna stated that ideally, one would want them on opposite sides of the structure, but since the apartment was going to be fit with a sprinkler system they were proceeding with the current forms of egress.
20. Chair asked for a motion to continue this petition until the August 17, 2022 meeting.

21. Paul Viccica made a motion to continue the petition.
22. The petition resumed on September 14, 2022 to further the discussion on the legality of the parking at the property.
23. The board discussed whether or not they needed to include existing non-conforming parking spaces at the property or if they were "grandfathered" in with the property and only needed to look at the current 1.5 parking spaces required for the new living unit.
24. Building Commissioner, Tom St. Pierre, was called away and could not provide answers to the board's questions. The petition was continued to October 19, 2022.
25. On October 19th, 2022, Darquin Fortuna presented to the board. Mr. Fortuna reviewed the information from the last several meetings. The issue has been whether the existing parking counts towards the parking requirements.
26. Mr. St. Pierre, Building Commissioner, discussed the letter he submitted for the record regarding the parking at 70 Proctor Street. The letter stated that existing residential properties are "Grandfathered" regarding the number of spaces they have and that the parking requirement of 1.5 spaces applies only to additional units. This means that Mr. Fortuna would need to provide 1.5 spaces for the proposed unit.
27. Based on the information, Mr. Fortuna and his client agreed to a continuance to decide whether to move forward with this petition and resubmit a relief request as a variance or return to the board seeking the special permit relief.
28. John Gillooly, 72 Proctor Street, submitted documents that showed a different set of property lines than the plot plan submitted for the petition at 70 Proctor Street. The documents submitted showed that there were six (6) feet of property that was in dispute. 72 Proctor Street deeds show the six (6) feet of property is 72 Proctor Street and not 70 Proctor Street. The applicant and Mr. Gillooly planned to have conversations around the property lines involved with their two parcels.
29. Due to the property lines and relief to be requested, the petition was continued to December 14, 2022.
30. On December 14, 2022, Darguin Fortuna, representative, requested to withdraw the petition without prejudice.
31. Due to the ongoing COVID-19 pandemic and related precautions and Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, the June 15, 2022, July 27, 2022, September 14, 2022 October 19, 2022 and the December 14, 2022 meeting of the Board of Appeals was held remotely, via the online platform Zoom.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (5) in favor (Steven Smalley, Rosa Ordaz, Paul Viccica Nina Vyedin and Peter Copelas) and none (0) opposed to allow GEORGE LAMBOS a withdrawal without prejudice for the petition at 70 Proctor Street.

Receiving five (5) in favor votes, the withdrawal without prejudice is approved.

Peter Copelas/ Vice 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.