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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CLERK
SALEM, MASS

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September 18, 2020

Decision

City of Salem Board of Appeals

Petition of PHILLIP PAULI for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from minimum width of side yard to expand a nonconforming single-family home by constructing a 16' by 16' one-story rear addition within the existing footprint of the home and deck at 13 BARTON STREET (Map 36, Lot 367) (R2 Zoning District).

A public hearing on the above Petition was opened on August 19, 2020 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Board members present: Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, and Paul Viccica. On August 19, 2020, Carly McClain (Alternate), Steven Smalley (Alternate), and Jimmy Tsitsinos were absent.

The petitioner seeks a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from minimum width of side yard to expand a nonconforming single-family home by constructing a 16' by 16' one-story rear addition within the existing footprint of the home and deck at 13 Barton Street.

Statements of Fact:

1. In the petition date-stamped July 28, 2020, the petitioner requested a special permit per Section 3.3.3 of the Salem Zoning Ordinance to expand a nonconforming structure, seeking relief from side setback, by adding a 16' by 16' one-story rear addition. The application noted, "The proposed addition would be built on the current footprint of the existing addition plus deck and therefore expand on a non-conforming structure."
2. 13 Barton Street is owned by petitioner Phillip Pauli and his wife, Emily Pauli.
3. 13 Barton Street is a single-family home in the Residential Two-Family (R2) zoning district. This is an allowed use in the district.
4. 13 Barton Street is currently nonconforming to dimensional requirements including at least minimum lot area, lot area per dwelling unit, and front and side setbacks (both sides).
5. The proposal is to expand the home by constructing a 16' by 16' one-story rear addition within the existing footprint of the home and deck. The construction would occur within the required left side setback. The petitioner is appropriately seeking a special permit for this nonconforming structure.
6. Although the application made reference to Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance, staff planner Brennan Corrison changed the reference to Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* in providing public notice for the petition and bringing the petition to the Board. This section of the ordinance has specific relevance to one- and two-family

- homes. (13 Barton Street is a single-family home.) Emily Pauli approved the draft legal notice with the reference to Section 3.3.5 via email to Mr. Corrison.
7. The requested relief, if granted, would allow the petitioner to expand a nonconforming single-family home within the required side yard setback by constructing a 16' by 16' one-story rear addition within the existing footprint of the home and deck at 13 Barton Street.
 8. 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 August 19, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
 9. At the August 19, 2020 public hearing, petitioner Phillip Pauli and his wife Emily discussed the proposal. Mr. Pauli noted that they would like to renovate the deck and small existing rear addition. He noted that the home is nonconforming, with only three feet of side yard setback on the left-hand side. He explained that the room would be used as an additional bedroom/family room. Mr. Pauli presented the elevations and plot plan. Chair Duffy asked if the changes would be consistent with the existing side line of the property. The applicants responded in the affirmative. Mr. Viccica noted that this is a beautiful house with details that make the house beautiful and unique, including the window trim, cornice and eve, the width of corner boards and clapboards. He asked if they would use clapboards and corner boards similar to the existing house. The applicants responded in the affirmative, Ms. Pauli noting that they want to keep the same charm and style that made them fall in love with the house.
 10. At the August 19, 2020 public hearing, no (0) members of the public spoke in favor of or in opposition to the proposal.
 11. At the August 19, 2020 public hearing, Chair Duffy discussed the proposal in relation to the special permit criteria. He noted this is relatively minor dimensional relief consistent with the nonconforming side yard setback.

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 proposed modifications will not be substantially more detrimental than the existing nonconforming structure to the neighborhood:

1. Social, economic, or community needs are served by this proposal. This allows the applicants to remain in their house, expand their family, and expand their use of the home.
2. Traffic flow and safety, including parking and loading: No negative impact is anticipated. Existing off-street parking will not be affected.
3. Adequate utilities and other public services already service the structure.
4. Impacts on the natural environment, including drainage: Negligible, if any, impacts are anticipated.
5. Neighborhood character: The proposal is in keeping with the neighborhood character. The applicants are interested in preserving the existing character of the house with the addition.
6. Potential fiscal impact, including impact on City tax base and employment: There is a potential positive fiscal impact, including enhancing the City's tax base, as a result of the improvements to the structure.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Mike Duffy (Chair), Peter A. Copelas, Paul Viccica, and Rosa Ordaz) and none (0) opposed to grant to Phillip Pauli a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from minimum width of side yard to expand a nonconforming single-family home by constructing a 16' by 16' one-story rear addition within the existing footprint of the home and deck at **13 Barton Street**, 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. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. All construction shall be done per the plans and dimensions, submitted to and approved by this Board, as amended. No change, extension, material corrections, additions, substitutions, alterations, and/or modification to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

Mike Duffy / BTC

Mike Duffy, 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.