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CITY CLERK
SALEM, MASS

July 2, 2020

Decision

City of Salem Board of Appeals

Petition of MICHAEL SHERIFF for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to expand a nonconforming single-family home by demolishing and replacing an existing rear addition within required side and rear yard setbacks at 13 CAMBRIDGE STREET (Map 25, Lot 566) (R2 Zoning District).

A public hearing on the above Petition was opened on February 19, 2020 pursuant to M.G.L Ch. 40A, § 11. No testimony was heard on this petition in the February 19 meeting. The hearing was continued to March 18, 2020 (during which no testimony was heard); and April 15, 2020, and closed on April 15, 2020, with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, Steven Smalley, and Paul Viccica.

At the February 19, 2020 meeting, Peter A. Copelas, Rosa Ordaz, Jimmy Tsitsinos, and Paul Viccica were present; Mike Duffy (Chair) and Carly McClain were absent, and Steven Smalley was not yet a member. At the March 18, 2020 meeting, Peter A. Copelas, Mike Duffy (Chair), Carly McClain, Rosa Ordaz, and Steven Smalley were present; Jimmy Tsitsinos and Paul Viccica were absent. At the April 15, 2020 meeting, Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, Steven Smalley, and Paul Viccica were present, as noted above; Carly McClain 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 to expand a nonconforming single-family home by demolishing and replacing an existing rear addition within required side and rear yard setbacks at 13 Cambridge Street.

Statements of Fact:

1. In the petition date-stamped January 14, 2020, the petitioner requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to “replace an existing nonconforming rear addition” at 13 Cambridge Street. Per the petition, the existing addition has an 8 ½’ ± rear yard setback. The proposed addition will be 8’± from the rear lot line. The plans submitted with the application also illustrated that the addition is within the required side yard setback.
2. 13 Cambridge Street is owned by petitioner Michael Sheriff.
3. 13 Cambridge Street is a single-family home in the Residential One-Family (R1) zoning district.
4. The property is nonconforming at least to minimum lot area, minimum lot area per dwelling unit, minimum depth of front yard, minimum depth of side yard (both sides), and minimum depth of rear yard.

5. The proposal is to demolish and replace an existing rear addition. As noted above, the replacement, located within required side and rear yard setbacks, would increase the extent of the nonconformity of the rear yard setback by one-half foot ($\frac{1}{2}$ ”).
6. The requested relief, if granted, would allow the petitioner to replace an existing rear addition within required side and rear yard setbacks.
7. In advance of the February 19, 2020 meeting, petitioners were informed that there would only be four members in attendance. With four members in attendance, the positive vote of all members is required to grant a special permit or variance. In these situations, petitioners are afforded the opportunity to request to continue to a future meeting in which five members might be in attendance. The architect for the project, Helen Sides, submitted a written request to continue from February 19, 2020 to March 18, 2020. This request was duly filed with the City Clerk on February 19, 2020. The Board voted three (3) in favor (Peter Copelas, Rosa Ordaz, and Jimmy Tsitsinos) and none (0) opposed to continue the hearing to March 18, 2020. Paul Viccica recused himself.
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 March 18, 2020 meeting of the Board of Appeals was slated to take place via conference call, with a public call-in option. However, it was determined that the meeting as planned would not meet the temporary requirements of the partially suspended Open Meeting Law, and as such, no testimony should be heard. As such, the meeting was held for the sole purpose of continuing all matters before the Board.
9. In the March 18, 2020 meeting of the Board of Appeals, held remotely via public conference call, Chair Duffy described each application before the Board and noted that due to the unique circumstances, he would entertain a motion to continue all matters until the next regularly scheduled meeting on April 15, 2020. The vote was four (4) in favor (Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, and Steven Smalley) and none (0) opposed.
10. The April 15, 2020 meeting of the Board of Appeals was held remotely using the web conference platform Zoom. The meeting was also accessible via public conference call and Salem Access TV.
11. At the April 15, 2020 public hearing, Paul Viccica recused himself. Architect Helen Sides discussed the petition on behalf of Mr. Sheriff. Ms. Sides noted that they have received approvals to do this work. The proposed rear addition would not be visible from a public way. Ms. Sides noted that the proposal enlarges the footprint slightly. She stated that the structure is very close to the abutter. Tom St. Pierre reminded Ms. Sides that with only four members, all four votes are required in the affirmative, and she had the option to continue; Ms. Sides opted to proceed with the hearing. Ms. Sides noted the only increase in nonconformity would be bringing the property four (4) to six (6) inches closer to the northern property line.
12. At the April 15, 2020 public hearing, Rosa Ordaz asked if the wooden deck would be expanded or would remain the same size. Ms. Sides stated the deck’s shape would be different but the deck will fall within the same perimeter as existing. Peter Copelas asked about the height and pitch of the roof. Ms. Sides noted it would be consistent with existing conditions.
13. At the April 15, 2020 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.

14. At the April 15, 2020 public hearing, Chair Duffy briefly addressed the special permit criteria. He noted that this is fairly minimal dimensional relief.

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 nonconforming structure is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

1. Social, economic, or community needs are served by the proposal.
2. Traffic flow and safety, including parking and loading: No impact is anticipated.
3. Adequacy of utilities and other public services: Existing utilities and other public services are adequate.
4. Impacts on the natural environment, including drainage: No negative impact is anticipated.
5. Neighborhood character: No impact is anticipated.
6. Potential fiscal impact, including impact on City tax base and employment: No impact is anticipated.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Rosa Ordaz, Peter Copelas, Mike Duffy (Chair), and Steven Smalley) and none (0) opposed to grant the requested Special Permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to expand a nonconforming single-family home by demolishing and replacing an existing rear addition within required side and rear yard setbacks at **13 Cambridge 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. 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. 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 / BJC

Mike Duffy, Chair
Board of Appeals

A COPY OF THIS DECISION HAS BEEN FILED WITH THE PLANNING BOARD AND THE CITY CLERK.

Appeals, if any, shall be made pursuant to M.G.L., Chapter 40A, Section 17. Please be advised that any statutory deadlines for filing such appeals have been suspended by order of the Supreme Judicial Court of the Commonwealth of Massachusetts which order was entered on April 27, 2020. 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.