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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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March 25, 2021

Decision

City of Salem Board of Appeals

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CITY CLERK
SALEM, MASS

Petition of JOSH CHMARA for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one non-conforming use (single-family dwelling) to another (two-family dwelling), and a variance from Section 5.1.8 *Table of Required Parking Spaces* to construct two parking spaces instead of the required three spaces at 157 BOSTON STREET (Map 16, Lot 66) (B2 and ECOD Zoning Districts).

A public hearing on the above Petition was opened on January 20, 2021 pursuant to M.G.L Ch. 40A, § 11; continued to February 17, 2021; continued to March 17, 2021 and closed on that date. On January 20, 2021, the following Zoning Board of Appeals members were present: Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, Carly McClain (Alternate), and Steven Smalley (Alternate); Peter Copelas and Jimmy Tsitsinos were absent. On February 17, 2021, Mike Duffy (Chair), Paul Viccica, Carly McClain, and Steven Smalley were present; Peter Copelas, Rosa Ordaz, and Jimmy Tsitsinos were absent. On March 17, 2021, Mike Duffy (Chair), Paul Viccica, Carly McClain, and Steven Smalley were present; Peter Copelas, Rosa Ordaz, and Jimmy Tsitsinos were absent.

The petitioner seeks a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one non-conforming use (single-family dwelling) to another (two-family dwelling), and a variance from Section 5.1.8 *Table of Required Parking Spaces* to construct two parking spaces instead of the required three spaces at 157 Boston Street.

Statements of Fact:

1. In the petition date-stamped January 7, 2021, the petitioner requested a special permit per Sections "2.1 and 3.3" of the Salem Zoning ordinance, "in order to Convert existing legal non-conforming single residence in B2 to two family with same existing footprint".
2. In the petition date-stamped January 7, 2021, the petitioner also requests a variance from Section 5.1 *Off Street Parking* of the Salem Zoning Ordinance, "specifically from... [the required] 1.5 spaces per dwelling unit". The petitioner requests, "relief that would allow [them] to have only 2 off-street spaces".
3. 157 Boston Street is owned by the petitioner, Josh Chmara.
4. 157 Boston Street is a single-family home located in the Business Highway (B2) and Entrance Corridor Overlay (ECOD) zoning districts.
5. The existing single-family dwelling use is a nonconforming use in the Business Highway (B2) zoning district.

6. The proposal is to add one (1) additional dwelling unit, resulting in a nonconforming two-family dwelling. The existing property has no (0) off-street parking. The proposal is to add two (2) off-street tandem parking spaces correlated to the proposed additional dwelling unit.
7. The requested relief, if granted, would allow the petitioner to change from one nonconforming use (single-family dwelling) to another nonconforming use (two-family dwelling), and provide two (2) off-street parking spaces, one (1) of which would be nonconforming.
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 January 20, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
9. At the January 20 meeting, the petitioner Josh Chmara discussed the proposal. Mr. Chamara explained that he purchased the property in December 2020, and it requires substantial rehab. With this petition, Mr. Chamara seeks to create a second unit to defray some of the cost of rehabilitation. Although the application requests a variance from the parking requirement to only include two spaces, Building Inspector, Tom St. Pierre clarified that the parking requirement only applies to the additional unit, meaning the applicant will not need the variance if they can show two legal parking spaces.
10. At the January 20 meeting, Mr. Viccica noted that the application does not include a certified plot plan in their application materials, and since among other reasons it appeared that a retaining wall might be required, Mr. Viccica suggested a plot plan be necessary to consider the application. Ms. McClain, Ms. Ordaz, and Chair Duffy agreed that a certified plot plan including the parking should be necessary.
11. At the January 20, 2021 public hearing the Board voted five in favor (Paul Viccica, Rosa Ordaz, Steven Smalley, Carly McClain, and Mike Duffy (Chair)) and none (0) opposed to continue the petition to the next regularly scheduled meeting of the Zoning Board of Appeals on February 17, 2021.
12. On February 9, 2021 the petitioner submitted to Staff Planner, Lev McCarthy, a certified plot plan that did not show the proposed parking. Mr. McCarthy reminded Mr. Chmara the Board has requested a certified park plan showing the proposed parking.
13. For the same reasons as noted in statement #8 above, the February 17, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
14. At the February 17, 2021 public hearing, petitioner, Josh Chmara, briefly requested to continue to the next regularly scheduled public hearing. Mr. Chmara explained that he needed to gather a few more materials to make his application whole.
15. At the February 17, 2021 public hearing the Board voted four in favor (Mike Duffy (Chair), Paul Viccica, Carly McClain, and Steven Smalley) and none (0) opposed to continue the petition to the next regularly scheduled meeting of the Zoning Board of Appeals on March 17, 2021.
16. On February 25, 2021 Mr. Chmara submitted to Staff Planner, Lev McCarthy, a set of updated plans, and a parking plan certified by a Professional Engineer. The parking plan shows two possible parking layouts. Mr. McCarthy reviewed the plans with Building Inspector Tom St. Pierre. Mr. St. Pierre advised that neither of the proposed parking plans conform to the requirements of the Zoning Ordinance. Per Section 5.1.6 *Off Street Parking: Setbacks*, "In all districts parking stalls in parking lots shall be set back from the street lot line

to whatever extent may be necessary in the specific situation, as determined by the Building Commissioner, to avoid the probability of cars backing or otherwise maneuvering on the sidewalk upon entering or leaving the stalls. In no case shall parking lots be designed to require or encourage cars to back into a public or private way in order to leave the lot". Mr. St. Pierre determined that the perpendicular parking spaces shown in one of the two possible parking layouts were not permissible. Mr. McCarthy informed the petitioner, Mr. Chmara, of Mr. St. Pierre's determination, and Mr. Chmara stated his intent to request relief for the tandem parking alignment.

17. The petition date-stamped January 7, 2021 did not mention the alterations to the exterior of the structure that are included in the updated drawings dated 2/25/21. Mr. St. Pierre and Mr. McCarthy reviewed the revised drawing. Mr. St. Pierre and Mr. McCarthy found that the proposed alterations to the structure did not require relief from the Board. Per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures*; "Alteration to a structure which encroaches upon one of more required yard setback areas, where the alteration will comply with all current setback, yard, building coverage and building height requirements" is a circumstance that, "shall not be deemed to increase the nonconforming nature of said structure", and therefore does not need approval from the Board.
18. On March 10, 2021 the petitioner, Josh Chmara, submitted to Staff Planner, Lev McCarthy, a revised Statement of Grounds and Statement of Hardship that addressed the special permit and variance criteria.
19. For the same reasons as noted in statement #8 above, the March 17, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
20. At the March 17, 2021 public hearing, petitioner, Josh Chmara, discussed the proposal and presented the revised plot plan dated February 25, 2021. Mr. Chmara explained that he is seeking a special permit to turn a nonconforming single-family dwelling in the Business Highway (B2) zoning district into a nonconforming two-family dwelling. Mr. Chmara stated he intends to be the owner occupant of one of the units. Mr. Chmara presents supporting arguments that address each of the five special permit criteria listed in Section 9.4.2 *Criteria* of the Salem Zoning Ordinance. He noted positive or no impact for each criterion. Mr. Chmara presented supporting arguments that address the variance criteria.
21. At the March 17, 2021 public hearing Paul Viccica asked whether the variance was to allow two spaces instead of a required three, or to allow two tandem spaces. Mr. Duffy stated that in his recollection the Board had required petitioners to supply parking for all units on the subject property, not only new units. Mr. St. Pierre said the existing condition is grandfathered, so only the new units require parking. Mr. Viccica noted he is unfamiliar with any places in the Zoning Ordinance that allow for grandfathered parking nonconformities. Mr. St. Pierre stated that there is precedent to grandfather in the existing units, this is his interpretation based on this past precedent. Chair Duffy clarified that the variance request is to approve the tandem parking because this is consistent with Mr. St. Pierre's interpretation of what the Zoning Ordinance allows.
22. At the March 17, 2021 public hearing Chair Duffy ask to confirm the special permit is only to allow the change in use, not the structural changes shown in the drawings submitted on February 25, 2021. Mr. St. Pierre confirms the proposed structural alterations comply with the dimensional requirements of the zoning ordinance in the Business Highway (B2) zoning district.

23. At the March 17, 2021 public hearing, the petitioner, Josh Chmara, presented his Statement of Hardship to support the variance request. Mr. Chmara stated there is a natural gas pipeline that runs from Boston Street to the front of his property, making it difficult to place parking in front of the home. Mr. Chmara also stated that there is significant elevation change from the front lot line to the rear lot line, that increases significantly at the rear of the house. Mr. Chmara stated this elevation change means there are practical difficulties to adding parking at the rear of the house.
24. At the March 17, 2021 public hearing, no (0) members of the public spoke in favor or in opposition to the proposal.
25. At the March 17, 2021 public hearing, Chair Duffy discussed how the proposal meets the criteria for a special permit and a variance (as noted below).

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 proposal adds a residence unit which serves community needs.
2. Traffic flow and safety, including parking and loading: The board does not see a traffic flow issue. The proposal adds off-street parking, so this would not have a negative impact.
3. Adequate utilities and other public services already service the structure.
4. Impacts on the natural environment, including drainage: There are no indications that the proposal would have negative impacts.
5. Neighborhood character: The project is in keeping with the neighborhood character.
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.

Variance Findings:

The Board finds that the proposed use will not outweigh its beneficial impacts to the City of the neighborhood.

1. Special conditions and circumstances affect the site. There is an elevation change from the street to the front lot line and from the front lot line to the rear lot line that would make parking in the rear yard difficult, and presents a hardship that is related to features of the land

that are not ubiquitous to the zoning district. The applicant identified the location of a gas line in the front yard that makes locating a parking space in the front yard impossible or impractical. This being a residential property, the Building Commissioner's interpretation of the zoning ordinance discourages parking in the front yard that is parallel and so close to the front lot line.

2. Literal enforcement of the provision of the Ordinance would involve substantial hardship to the applicant. Off-street parking could not be provided without substantial and difficult changes to the property or the building.
3. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially degrading from the intent of the district of the purpose of the ordinance. The changes, as necessitated by the special conditions of the lot and building, will be accommodated with minimal impact to the public good, and with minimal impact on the zoning ordinance.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Mike Duffy (Chair), Paul Viccica, Carly McClain, and Steven Smalley) and none (0) opposed to grant Josh Chmara for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one non-conforming use (single-family dwelling) to another (two-family dwelling), and a variance from Section 5.1.8 *Table of Required Parking Spaces* to construct two parking spaces instead of the required three spaces at 157 Boston 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, 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, 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.