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CITY CLERK
SALEM, MASS

2020 MAR -4 AM 11:08

March 4, 2020

Decision

City of Salem Board of Appeals

Petition of KAREN PRATER as attorney-in-fact for property owner ARTHUR HERLIHY for a special permit per Section 3.2.8 *Accessory Living Areas* of the Salem Zoning Ordinance to allow an accessory living area within the existing footprint of the single-family home at 17 LOVETT STREET (Map 17, Lot 46) (R2 Zoning District).

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

The petitioner seeks a special permit per Section 3.2.8 *Accessory Living Areas* of the Salem Zoning Ordinance to allow an accessory living area within the existing footprint of the single-family house.

Statements of Fact:

1. In the petition date-stamped January 8, 2020, the petitioner requested a special permit per Section 3.2.8 *Accessory Living Areas* of the Salem Zoning Ordinance to allow an accessory living area within the existing footprint of the single-family house at 17 Lovett Street.
2. Petitioner Karen Prater as attorney-in-fact for property owner Arthur Herlihy presented the petition.
3. The property is a single-family home located in the Residential Two-Family (R2) zoning district.
4. The petitioner is seeking the approval of an accessory living area within the existing footprint of the home to provide an accessory living area for petitioner Karen Prater's son and fiancée. Already, the basement is finished and includes a kitchenette area. The petitioner is seeking approval to allow an electric range to be added and for the official use of this area as an accessory living area to be permitted.
5. In Section 10.0 *Definitions* of the Salem Zoning Ordinance, "Accessory living area" is defined as: "A housekeeping unit, with its own sleeping, cooking and sanitary facilities, located within a single family dwelling that is subordinate in size to the principal unit, separated from it in a manner which maintains the appearance of the building as a single family dwelling, and allowed by special permit pursuant to Section 3.2.8 of this ordinance."
6. The requested relief, if granted, would allow the petitioner to finish an accessory living area within the existing footprint of the home.
7. As noted in the Statement of Grounds submitted with the petition, the accessory living area would "allow members of our immediate family to have their own private living space without the

extenuating expense of purchasing or renting an additional property.” The Statement of Grounds further notes that “this conversion will serve an economic need of the community by providing affordable housing for a newly married couple. This fulfills the purpose in Subsection 1 of the Accessory Living Areas ordinance, items ‘b’ and ‘c’, by encouraging ‘the economic and energy efficient use of the city’s housing supply’ and by ‘maximizing privacy... among family members preserving domestic family bonds.’”

8. The identities and birth dates of the family members who live at the property were also included in the application submitted to the Board of Appeals.
9. A to-scale floor plan was submitted with the application.
10. The petitioner provided a quitclaim deed showing ownership of property by Arthur E. Herlihy and Joan M. Herlihy, husband and wife, as tenants by the entirety of the property.
11. The petitioner provided a copy of the Durable Power of Attorney, including Principal Arthur E. Herlihy and Attorney-in-Fact Karen J. Prater.
12. The petition was signed by Attorney-in-Fact Karen Prater.
13. At the February 19, 2020 public hearing, petitioner Karen Prater discussed the petition.
14. At the February 19, 2020 public hearing, the Board asked some questions based on the requirements of Section 3.2.8 *Accessory Living Areas*. Rosa Ordaz asked about the location of the entry, the off-street parking, and whether there are one or two electric and gas accounts. Ms. Prater explained that the exterior entry is in the back of the house. Ms. Prater stated that there are three off-street parking spaces. Ms. Prater stated that there is one electric account and no gas.
15. At the February 19, 2020 public hearing, there was discussion about how the proposal meets the requirements of the ordinance. Peter Copelas noted that the ordinance is precise about who can live there and what their role in the family unit is. Ms. Prater explained that herself, her husband, and their five children live in the main dwelling. Their oldest son is getting married, so he and his wife-to-be will live in the accessory living area. Rosa Ordaz noted that the ordinance reads as being designed for an elderly person that needs care and read from the “Purpose” section of the ordinance. Ms. Ordaz asked Ms. Prater to speak to how the application might fulfill the requirements. Ms. Prater stated that the economic factor comes to mind – they will be newly married and will not be in a position to buy a home on their own; this is an opportunity to help them get on their feet financially. Mr. Copelas asked if they [the newly married couple] would be helping with the care and assisting with the older residents in the rest of the house. Ms. Prater responded in the negative. Staff planner Brennan Corrison noted that the ordinance states “older homeowners or other family members.”
16. At the February 19, 2020 public hearing, there was continued discussion about how the proposal fulfills the “purpose” of the ordinance.
17. Section 3.2.8 *Accessory Living Areas* subsection 1. *Purpose* of the Salem Zoning Ordinance reads as follows:
 - “1. Purpose
 - a. To provide older homeowners or other family members with a means of obtaining companionship, security, and services, thereby enabling them to remain in their homes and neighborhoods they might otherwise be forced to leave;
 - b. To encourage the economic and energy efficient use of the city’s housing supply while preserving the character of the city’s single-family neighborhoods.

- c. To maximize privacy, dignity, and independent living among family members preserving domestic family bonds as well as to protect the stability, property values, and the single-family residential character of the neighborhood.
 - d. To permit the owner of an existing, or a proposed, single-family detached dwelling to construct one additional dwelling unit for occupancy by family members who have some dependency for special housing needs due to age, mental or physical health, personal care requirements or economic factors, or by paid or unpaid individuals, including but not limited to nurses, nurse's aids, homemakers, nannies or au pairs, who occupy the accessory living area to facilitate providing direct care to a family member of the owner that resides in the dwelling. Such a use is incidental and subordinate to the primary use of the dwelling as a single-family dwelling.
 - e. A primary purpose of generating income from the additional dwelling unit is not permissible in the single-family zoning district; however, nothing shall prevent payments from the occupant to the owner.”
18. At the February 19, 2020 public hearing, Peter Copelas noted that past petitions have usually involved assisting with day-to-day activities of an older family member. Rosa Ordaz noted that the proposed accessory dwelling unit ordinance that is in committee is less restrictive than the current ordinance; she stated that the current ordinance reads pretty strict as needing to be an immediate family member, it involves taking care of someone, or you have to prove that these other needs will be fulfilled by having this other person live there. Ms. Prater stated that she thought the economic aspect of the comment addressed that. Peter Copelas noted that the property is in an R2 district, and Ms. Prater might want to consider getting some outside advice, but there is a possibility that Ms. Prater could apply to make this a two-family house. He stated that the other option is to gamble on the proposed accessory dwelling unit ordinance. Paul Viccica asked if the newly married couple will help take care of the residence, doing yard work, upkeep of the house; he asked if they are home and there are security aspects. Ms. Prater stated that he [her son] is definitely primarily in charge of the maintenance of the grounds of the property. Mr. Viccica stated that in his opinion, he thinks it fulfills the gist of the requirements. He stated that he assumes there are some economics of having the son and his wife there to support the family and preserve the family and perhaps even contribute to the high cost of living in Salem. Mr. Viccica stated that he does not think it is that far-flung to assume that this relationship is actually to the petitioner's benefit as well as to her son's. He stated that he would be more open to stretch the idea that this is in fact meeting the gist of the ordinance.
19. At the February 19, 2020 public hearing, Mr. Corrison noted that [Section 3.2.8.1] *Purpose* subsection a. reads, “To provide older homeowners or other family members with a means of obtaining companionship, security, and services, thereby enabling them to remain in their homes and neighborhoods they might otherwise be forced to leave.” He stated that this could be read as broadly as the Board wishes.
20. At the February 19, 2020 public hearing, the Board asked about ownership of the residence and proof of ownership. Mr. Corrison stated that this was submitted. Ms. Prater explained that the house is under the name of her father [Arthur Herlihy] and that she is his Power of Attorney.
21. At the February 19, 2020 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.
22. At the February 19, 2020 public hearing, it was confirmed that the square footage of the accessory living area is well under the maximum of 800 square feet.
23. Peter Copelas stated that he does not have a problem with a more generous understanding of how the ordinance is written. He noted that Ms. Ordaz's points are pertinent and precise about the intent, but

he agrees with Mr. Viccica that we are not varying all that far from that, and it is a special permit. Mr. Copelas reviewed the standard special permit requirements and noted that they were addressed in the petition.

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, 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:

Findings for Special Permit


The purpose, procedure and requirements of Section 3.2.8 *Accessory Living Areas* of the Salem Zoning Ordinance have been fulfilled. This use will not be substantially more detrimental than the existing use to the neighborhood.

1. Social, economic and community needs served by the proposal: This accessory living area would fulfill community needs set forth in Section 3.2.8 of the Salem Zoning Ordinance. It would fulfill an economic need by providing affordable housing for a newly married couple.
2. Traffic flow and safety, including parking and loading: There are three (3) off-street parking spaces and on-street parking available in front of the property. Traffic and parking should not be significantly detrimentally impacted.
3. Existing utilities and other public services are adequate. One set of electric utilities services the main dwelling and the proposed accessory living area.
4. There are no negative impacts to the neighborhood character as there are no changes to the exterior.
5. There are no negative impacts to the natural environment, including drainage, as there are no changes to the exterior.
6. Potential economic and fiscal impact, including impact on City services, tax base, and employment: No impact anticipated.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Peter Copelas (Acting Chair), Rosa Ordaz, Jimmy Tsitsinos, and Paul Viccica) and none (0) opposed to grant the requested Special Permit per Section 3.2.8 *Accessory Living Areas* of the Salem Zoning Ordinance to allow an accessory living area within the existing footprint of the single-family home at **17 Lovett 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 requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
3. Petitioner shall obtain a building permit prior to beginning any construction.
4. A Certificate of Occupancy is to be obtained.
5. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.



Peter Copelas, Acting Chair
Board of Appeals

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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.