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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK
SALEM, MASS

2021 MAY -5 AM 11:03

May 5, 2021

Decision

City of Salem Board of Appeals

Petition of JANET M FELLOWS for variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot area, minimum lot area per dwelling unit, and minimum lot frontage to decrease the lot area by 296(+/-) sq ft at 21 CRESCENT DRIVE (Map 15, Lot 563) (R1 Zoning District).

A public hearing on the above Petition was opened on April 21, 2021 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Zoning Board of Appeals members present: Mike Duffy (Chair), Peter A. Copelas, Rosa Ordaz, Paul Viccica, Carly McClain (Alternate), and Steven Smalley (Alternate). Board member Jimmy Tsitsinos was absent.

The petitioner seeks a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot area, minimum lot area per dwelling unit, and minimum lot frontage to decrease the lot area by 296(+/-) sq ft at 21 Crescent Drive.

Statements of Fact:

1. In the petition date-stamped March 30, 2021, the petitioner requested a variance per Section 4.0 of the Salem Zoning Ordinance, “specifically from Lot size [which] is already smaller than requirements; this [proposal] will make [the] lot size 296 square feet smaller”.
2. 21 Crescent Drive is a lot in the Residential One-family (R1) zoning district.
3. Per plans (dated October 26, 2020) submitted with the initial application, the existing lot area was 7,031 square feet, which is less than the 15,000 square feet minimum lot area in the R1 zoning district.
4. The lot is nonconforming to dimensional requirements including minimum lot area, minimum lot area per dwelling unit, and minimum lot frontage.
5. The proposal is to decrease the lot area by 296(+/-) square feet.
6. In the petition date-stamped March 30, 2021 the petitioner states that, “a property survey performed at 21 Crescent Drive revealed that 23 Crescent Drive is encroaching on 21 Crescent Drive by approximately 296 square feet. [The] owners at 23 Crescent Drive want to purchase the portion of encroachment. Prior to submission of ANR and the planning board sign off,

Mason Wells advised that a variance application would need to be submitted due to the fact that the transfer of these pieces of land will cause what is already a non-conforming lot... at 21 Crescent Drive to become less conforming”.

7. The requested relief, if granted, would allow the petitioner to decrease the size of the lot at 21 Crescent Drive by 296(+/-) square feet, per the dimensions and plans provided with the application.
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 April 21, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
9. At the April 21, 2021 public hearing, petitioner Janet Fellows discussed the proposal. Ms. Fellows stated that the subject property was surveyed last year, and the survey revealed that the adjacent property at 23 Crescent Drive was encroaching on the petitioner’s property at 21 Crescent Drive. Ms. Fellows explained there is a fence and landscaping belonging to the owners of 23 Crescent Drive in the encroachment. Ms. Fellows stated she sought an Approval Not Required (ANR) to move the lot line. Ms. Fellows stated Salem Planning Department staff directed her to seek relief from the Zoning Board of Appeals prior to applying for an ANR because the lot at 21 Crescent Drive is nonconforming to dimensional requirements.
10. At the April 21, 2021 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.
11. At the April 21, 2021 public hearing, the Board discussed the proposal. Chair Mike Duffy read the Statement of Hardship aloud. After reading the Statement, Mr. Duffy commented that the special circumstances effecting the land appear to be an unwitting encroachment with landscaping that would otherwise have to be dug up and substantially changed to reset these property boundaries to what they were previously. Mr. Duffy finds this to be a unique condition pertaining to these two properties that is not pervasive in the district. He went on to note that if relief is not granted, there would be “relative substantive hardship” to both parties in having to bear the costs of having to make all those shifts as opposed to consenting to leave the landscaping as it is.

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:

Variance Findings:

1. Special conditions and circumstances especially affect the land, building, or structure involved, generally not affecting other lands, buildings, and structures in the same district: There is an

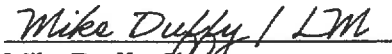
unwitting encroachment with landscaping and a fence that without relief, would have to be dug up and substantially changed to reset the property boundary between 21 Crescent Drive and 23 Crescent Drive. This is a unique condition pertaining to these two properties that is not pervasive in the district.

2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant because the applicant would have to bear the cost of having to make all the changes required to substantially change the landscaping, fence, and other features in the encroachment.
3. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent of the district or the purpose of the ordinance.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Rosa Ordaz, Paul Viccica, Mike Duffy (Chair), Stephen Smalley, Peter Copelas) and none (0) opposed to grant to Janet M Fellows variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot area, minimum lot area per dwelling unit, and minimum lot frontage to decrease the lot area by 296(+/-) sq ft at **21 Crescent Drive**, 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. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.


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.