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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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June 30, 2021

Decision

City of Salem Board of Appeals

Petition of JJC GENERAL CONTRACTING INC. for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming two-family structure by adding two exterior stairways and a second-floor rear deck at 21 WILLOW AVENUE (Map 33, Lot 621) (R1 Zoning District).

CITY CLERK
SALEM, MASS.

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A public hearing on the above Petition was opened on May 19, 2021 pursuant to M.G.L Ch. 40A, § 11, continued to June 16, 2021 and closed on that date.

On May 19, 2021, Mike Duffy (Chair), Peter Copelas, Paul Viccica, Rosa Ordaz, and Carly McClain were present; Jimmy Tsitsinos and Steven Smalley were absent. On June 16, 2021, Mike Duffy (Chair), Peter Copelas, Paul Viccica, and Carly McClain were present; Jimmy Tsitsinos, Steven Smalley, and Rosa Ordaz 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 two-family structure by adding two exterior stairways and a second-floor rear deck at 21 Willow Avenue.

Statements of Fact:

1. In the petition date-stamped March 29, 2021, the petitioner requested a special permit per Section 3.3.5. of the Salem Zoning Ordinance to add, “two exterior stairways and 2-nd floor rear deck” to an existing two-family residential dwelling at 21 Willow Avenue.
2. 21 Willow Avenue is owned by petitioner JJC General Contracting Inc.
3. The petitioner JJC General Contracting Inc was represented by attorney Bill Quinn.
4. 21 Willow Avenue is a two-family home in the Residential Single-Family (R1) zoning district. This is a pre-existing nonconforming use in the district.
5. Per a plot plan submitted with the original application (dated 3/18/2021) the property is nonconforming to dimensional requirements including minimum lot area, minimum lot area per dwelling unit, minimum depth of rear yard, minimum depth of front yard, minimum width of side yard, and maximum lot coverage by all buildings.

6. The proposal is to modify the existing structure by adding a second-story deck above the existing rear deck and adding two exterior stairways.
7. The plot plan submitted with the original application show the proposed modifications would increase the nonconforming nature of the structure by decreasing the eastern side yard setback from eight and a half (8.5) feet to four and a half (4.5) feet.
8. The requested relief, if granted, would allow the petitioner to expand a nonconforming two-family home by adding a second-story rear deck and two exterior staircases to the two-family dwelling at 21 Willow Avenue.
9. Prior to the May 19, 2021 public hearing Staff Planner Lev McCarthy received four (4) public comments expressing concerns with the proposal.
10. On the afternoon of May 19, 2021, the applicant's representative, attorney Bill Quinn submitted a revised plot plan (dated 5/19/2021) and revised floor plans (dated 05/19/2021) to Staff Planner Lev McCarthy via email. Mr. McCarthy did not confirm receipt of the revised materials until the following morning of May 20, 2021.
11. 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 May 19, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
12. At the May 19, 2021 public hearing the applicant's representative, Attorney Bill Quinn presented the proposal. Mr. Quinn stated the plans were discussed with neighbors, and the applicant received some reasonable objections. As a result, the applicant had revised the plans, and copies of those plans were submitted to the Board earlier that day, on May 19, 2021.
13. At the May 19, 2021 public hearing Paul Viccica asked Mr. Quinn if neighbors have seen the revised plans, and Mr. Quinn responded they have not. Mr. Viccica, Ms. McClain, and Mr. Copelas noted that the revisions were submitted too late for the Board or the public to properly consider and suggested a continuance to the next regularly scheduled meeting.
14. At the May 19, 2021 public hearing, four (4) members of the public expressed concerns regarding the proposal. The members of the public were James Tierney of 19 Willow Avenue, Rita McAteer (no address given), Meg McMahan (no address given), and Sara Calland of 12 Messervy Street.
15. At the May 19, 2021 public hearing, the Board voted five (5) in favor (**Rosa Ordaz, Peter Copelas, Mike Duffy (Chair), Paul Viccica, and Carly McClain**) and none (0) **opposed** to continue the hearing to the regularly scheduled meeting on June 16, 2021.

16. On May 20, 2021, Staff Planner Lev McCarthy received the revised plot plan (dated 5/19/2021) and revised floor plans (dated 05/19/2021) Mr. Quinn had submitted via an email on May 19, 2021. Mr. McCarthy added these materials to the project file for review by the Board and the public. The revised plot plan showed a second-floor deck smaller than what was proposed in the plans submitted with the original application. The revised plot plan showed a fourteen (14) foot by twelve (12) foot second floor deck.
17. Prior to the June 16, 2021 public hearing Mr. Quinn submitted to the Board a revised elevation drawing (dated 06/07/2021) and a copy of a Building Permit for 21 Willow Avenue with a watermark that reads "Downloaded from City of Salem, MA", and a date of permit that reads "6/20/74". The Building Permit reads in part: "8/9/00 #104-00 Construct 12' X 14' rear deck per drawing submitted. Est. 1,500.00 fee 20.00".
18. Prior to the June 16, 2021 public hearing Staff Planner Lev McCarthy received three (3) public comments expressing concerns with the proposal.
19. 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, and An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency signed into law by Governor Baker on June 16, 2021 the June 16, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
20. At the June 16, 2021 public hearing, representative attorney Bill Quinn discussed the revised proposal for a fourteen (14) foot by twelve (12) foot second-floor rear deck and single exterior staircase. Mr. Quinn stated that the building permit submitted to the Board since the last public hearing shows that the existing rear deck was permitted.
21. At the June 16, 2021 public hearing, Ms. McClain noted public comments submitted to the Board stated that neighbors had not been contacted by the applicant or representative to discuss the revised proposal. Mr. Quinn stated the elevations were finished just a few days prior to the June 16, 2021 meeting, and copies were mailed to the four neighbors who offered comment at the May 19, 2021 public hearing. The applicant, John Camire of JJC General Contracting Inc., described how based on feedback from the neighbors they shrunk the deck down to be the same size as the existing first floor deck, and relocated the exterior stairs from the sides of the house to the rear of the house. He stated the reason for this proposal is to have safe egress and provide some useful outdoor space. Mr. Camire noted he tried to work with the neighbors to shrink the deck and make it aesthetically the same as the first-floor deck.
22. At the June 16, 2021 public hearing Chair Duffy read into the record one (1) letter submitted to the Board in favor of the proposal from Pam McKee, who was a real estate agent working with the petitioner. Mr. Duffy read into the record four (4) letters submitted to the Board opposing and expressing concerns with the proposal from Rita McAteer of 10 Messervy St (two letters), Tom and Meg McMahon of 23 Willow Ave, and James Tierney and Lisa Quinn

of 19 Willow Ave. Mr. Duffy summarized the content of an additional three (3) letters submitted to the Board expressing concerns with the proposal from the same individuals listed above.

23. At the June 16, 2021 public hearing, no (0) members of the public spoke in favor and three (3) members of the public spoke in opposition to the proposal. The members of the public speaking in opposition were James Tierney of 19 Willow Ave, Meg McMahon of 23 Willow Ave, and Rita McAteer of 10 Messervy St.
24. At the June 16, 2021 public hearing the Board discussed the proposal. Mr. Viccica recognized that the proposed deck is a space that will be useful and enjoyed, but he noted that 12 feet by 14 feet is quite large. Mr. Viccica stated having a deck that can fit sizeable gatherings at the height where neighbors have bedrooms is understandably concerning. Mr. Viccica asked if the applicant would be willing to make the second-floor deck smaller, and the applicant Mr. Camire stated yes, he would be willing to propose a second-floor deck smaller than what is shown in the revised proposed plot plan (dated 5/19/2021). During the June 16, 2021 public hearing Mr. Camire made a hand-drawn revised plan for the proposed deck based on the discussion with the Board.
25. At the June 16, 2021 public hearing, the petitioner John Camire submitted to the Board via an email to Staff Planner Lev McCarthy an image of a hand-drawn revised plan. The proposed plan (dated 6/16/21) showed no change to the first floor deck. The revised plan showed a new fourteen (14) foot by eight (8) foot second-floor deck and a single exterior stairway from the second-floor deck down to the ground. Mr. St. Pierre confirmed that the revised plan is sufficient for enforcement, but stated the applicant would need to submit an architect's drawing in order to receive a building permit. Mr. Viccica stated the smaller deck shown on the revised plan decreases the likelihood of disruptive noise for the neighbors.
26. At the June 16, 2021 public hearing the Board opened the meeting to public comment so members of the public would have a chance to comment on the revised plan. Staff Planner Lev McCarthy read into the record a written comment from James Tierney of 19 Willow Ave that was submitted to the Board via email during the public hearing. Three (3) members of the public expressed concerns regarding the revised proposal. The members of the public expressing concerns were James Tierney of 19 Willow Ave, Rita McAteer of 10 Messervy St., and Tom McMahon of 23 Willow Ave.
27. At the June 16, 2021 public hearing, Board Chair Mike Duffy discussed how the proposal meets the criteria for special permit (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. The proposal adds some additional space that will bring residents of this property in contact with their neighbors, but there are other houses in the neighborhood with outdoor space and second-floor decks, so the proposal is in keeping with this neighborhood character.
2. Traffic flow and safety, including parking and loading: Would not be impacted by this proposal.
3. Adequate utilities and other public services already service the structure.
4. Impacts on the natural environment, including drainage: Minimal impact expected. The proposed second-floor deck will be above an existing first-floor deck. The proposal does not increase the existing house footprint.
5. Neighborhood character: The project is in keeping with the neighborhood character. There are other properties surrounding this property that have outdoor gathering spaces and decks. The proposal as revised seems similar to other second-floor decks and outdoor spaces at other properties in the neighborhood.
6. Potential fiscal impact, including impact on City tax base and employment. Improving the property as proposed would likely bring a positive fiscal impact.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Carly McClain, Peter Copelas, Mike Duffy (Chair), Paul Viccica) and none (0) opposed to grant to JJC General Contracting Inc. a special permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance to expand a nonconforming two-family structure by adding a single exterior stairways and a second-floor rear deck at 21 Willow Ave, as revised on June 16, 2021, 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. Any modification to the plans and dimensions must be approved by the Board of Appeals, unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals. The approved plans were submitted to the Board via an email to Staff Planner Lev McCarthy that was received at 7:57pm on June 16, 2021.


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.