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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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Decision

City of Salem Board of Appeals

Petition of BARBARA FLAHERTY for a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from maximum height of buildings (stories) and a special permit per Section 3.3.3 *Nonconforming Structures* to expand a nonconforming three-family home by adding a three-level deck with roof and exterior staircase at 23 ANDREW STREET (Map 35, Lot 558) (R2 Zoning District).

A public hearing on the above Petition was opened on September 16, 2020 pursuant to M.G.L Ch. 40A, § 11 (during which meeting no testimony was heard); continued to September 29, 2020; continued to November 18, 2020; and closed on November 18, 2020.

On September 16, 2020, Jimmy Tsitsinos, Paul Viccica, Carly McClain (Alternate), and Steven Smalley (Alternate) were present; Peter A. Copelas, Mike Duffy (Chair), and Rosa Ordaz were absent. On September 29, 2020, Peter A. Copelas, Mike Duffy (Chair), Jimmy Tsitsinos, Paul Viccica, and Carly McClain (Alternate) were present; Rosa Ordaz and Steven Smalley (Alternate) were absent. On November 18, 2020 Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, Jimmy Tsitsinos, Paul Viccica, Carly McClain (Alternate), and Steven Smalley (Alternate) were present.

The petitioner seeks a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from maximum height of buildings (stories) and a special permit per Section 3.3.3 *Nonconforming Structures* to expand a nonconforming three-family home by adding a three-level deck with roof and exterior staircase at 23 Andrew Street.

Statements of Fact:

1. In the petition date-stamped August 24, 2020, the petitioner requested a special permit per Section 9.4 *Special Permits* to “build a three-level deck with roof and exterior staircase” at 23 Andrew Street.
2. 23 Andrew Street is owned by petitioner Barbara Flaherty.
3. 23 Andrew Street is a three-family home in the Residential Two-Family (R2) zoning district. This is a pre-existing nonconforming use in the district.
4. The property is nonconforming to dimensional requirements including minimum lot area, minimum lot area per dwelling unit, maximum height of buildings (stories), minimum depth of front yard, and minimum width of side yard.
5. The proposal is to modify the existing structure by adding a deck to each of the three levels, which would constitute a means of egress for each of the three units.
6. The plans submitted to the Board (dated August 5, 2020) show that the three-level deck would include a roof as well as a staircase. Although the roof will not extend beyond the existing building height of three stories, because this addition will be taller in height than the district maximum of 2.5 stories, a

variance from height in stories is required. The applicant was not aware of this upon initially filing the application, but was informed of the required relief and has since submitted a Statement of Hardship. The legal notice for the application references both the variance and special permit requests, and changes the statutory reference for the special permit from Section 9.4 *Special Permits* to the more specific Section 3.3.3 *Nonconforming Structures*.

7. In an email to Staff Planner Brennan Corrison dated September 8, 2020, petitioner Barbara Flaherty provided a written Statement of Hardship relating to the variance request. This was added to the project file.
8. The requested relief, if granted, would allow the petitioner to expand a nonconforming three-family home by adding a three-level deck with roof and exterior staircase at 23 Andrew Street.
9. 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 September 16, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
10. Due to an issue with the Zoom webinar platform preventing access via Zoom toll-free dial-in numbers, no testimony was heard on petitions in the September 16, 2020 meeting. Applicants were informed of the opportunity to request to continue to a special meeting to be held later in the month (determined during the September 16 meeting to be September 29, 2020) or to the regularly scheduled meeting on October 21, 2020.
11. Prior to the September 16, 2020 meeting, petitioner Barbara Flaherty submitted a written request to continue to the special meeting to be scheduled via email to Staff Planner Brennan Corrison. The Board voted four (4) in favor (Carly McClain, Steven Smalley, Jimmy Tsitsinos, and Paul Viccica) and none (0) opposed to continue the hearing to the special meeting to be held on Tuesday, September 29, 2020 at 6:30 pm.
12. For the same reasons as noted in statement #8 above, the September 29, 2020 meeting of the Board of Appeals was also held remotely, via the online platform Zoom.
13. At the September 29, 2020 public hearing, petitioner Barbara Flaherty discussed the proposal, noting that the property has undergone extensive renovations, and that the proposal would help complete the look, feel, and flow of the property, as well as create proper egress for all three units. Ms. Flaherty explained that the home was built around 1890, and that the interior staircases do not conform to current standards, and stating that the rear staircase is in poor condition and less than 30 inches. The proposed deck would provide improved access.
14. At the September 29, 2020 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.
15. At the September 29, 2020 public hearing, the Board discussed the proposal. Chair Duffy discussed the Statement of Hardship that was provided, which noted that the existing three egresses were not large enough to be compliant and safe for each unit but that granting the relief would allow for code-compliant, safe egress for each unit. Board members noted that the proposal might be beneficial but expressed doubt over whether there was sufficient hardship presented. The Board discussed the existing stairways and means of egress. Chair Duffy noted that there was not a demonstration that a substantial hardship exists and that there are conditions unique to the structure rather than ones that prevail in the district. Staff planner Brennan Corrison and Building Commissioner Tom St. Pierre noted that if the proposal met the height requirement of 2.5 stories, only a special permit and not a variance would be required. Chair Duffy suggested examining alternatives and that finding no alternatives for appropriate egresses might demonstrate a hardship. Mr. Viccica noted that floor plans would be needed to understand the existing situation better. Chair Duffy asked if the applicant would be willing to continue to the October or November meeting; Ms. Flaherty selected the November meeting.

16. At the September 29, 2020 public hearing, the Board voted five (5) in favor (Peter Copelas, Paul Viccica, Carly McClain, Mike Duffy (Chair), and Jimmy Tsitsinos) and none (0) opposed to continue the hearing to the regularly scheduled meeting on November 18, 2020.
17. Prior to the November 18, 2020 meeting, the petitioner provided new information to the Board, including PowerPoint slides with new information and a revised Statement of Hardship.
18. At the November 18, 2020 public hearing, petitioner Barbara Flaherty discussed the additional information she provided, including the Statement of Hardship. She noted that this is a narrow lot and that the stairway opening inside of the home is 24.5" and 18.5" around each corner. She noted that there is no way to create a safe stairway other than the proposed external deck-and-stair setup. Ms. Flaherty noted that if relief were not granted, the safety hazard posed by the stairway would not be rectified. The stairway would not accommodate people of all shapes and sizes, including first responders with equipment or a gurney. She noted that this would be a hazard to anyone living in the dwelling. Ms. Flaherty presented photos showing the stairway measurements and noted the steep nature of the stairway. She presented plans of the proposal. Ms. Flaherty also showed a photo of the existing third floor bathroom and explained that if the internal stairway was removed, the bathroom would be expanded to be more usable. Ms. Flaherty showed a floor plan and explained where the proposed stairway would be located. Ms. Flaherty noted that she has done extensive work on the house and that her neighbors are happy that they are working on the home.
19. At the November 18, 2020 public hearing, Chair Duffy noted that last time, the Board was looking at the hardship question. Mr. Viccica asked if the proposal was already built or not; Ms. Flaherty confirmed it was not yet built. He asked whether there was a roof on top of the stairway; Ms. Flaherty confirmed there was, to protect from the elements. He asked why the stair was not enclosed inside the house; Ms. Flaherty noted they had not thought of it. Mr. Tsitsinos noted that he walked the job site and that if there was an emergency, EMTs could not get up the stairs. He noted that the bathroom was very small. Mr. Tsitsinos expressed his support for the proposal, stating "they definitely need this." Ms. McClain expressed her support for the photos that were provided; they helped her understand that this is a lot more of a safety enhancement and not only a cosmetic change, and that this would help people get up and down the stairs safely, including Salem Police and Fire.
20. At the November 18, 2020 public hearing, no (0) members of the public spoke in favor of or in opposition to the proposal.
21. At the November 18, 2020 public hearing, Chair Duffy discussed how the proposal meets the criteria for special permit and variance (as noted below).
22. At the November 18, 2020 public hearing, Mr. Copelas asked what the changes were that required the height variance. Chair Duffy noted that it was the height of the three-level deck and roof in excess of the allowed 2.5-story height. Mr. Corrison confirmed. Mr. Viccica expressed his thought that the roof over the deck caused the issue; Mr. Corrison noted his understanding was that the deck alone on the third level constituted a third story and Mr. Viccica agreed. Mr. Copelas asked to clarify that removing the roof above the third floor would not eliminate the need for the variance; Mr. Corrison confirmed.

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: The structure of the building itself is affected by special conditions and circumstances, with an extremely narrow rear stairway as a means of egress. There does not seem to be any way to easily accommodate a more code-compliant or

- safety-sufficient access in and out of the upper level. Other buildings in the district may be narrow, but this stairway seems to be somewhat particular to this site.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant because the applicant would not be able to provide safer, better access and egress without relief.
 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.

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 work will increase the use of the house and make the upper stories of the house more usable and safe.
2. Traffic flow and safety, including parking and loading: No impact is expected.
3. Adequate utilities and other public services already service the structure.
4. Impacts on the natural environment, including drainage: No negative impact is expected; drainage would remain on-site.
5. Neighborhood character: The project is in keeping with the neighborhood character. This is a rather minor addition in the rear of the house.
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 by enhancing the value of the property.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Paul Viccica, Jimmy Tsitsinos, Carly McClain, Peter Copelas, and Mike Duffy (Chair)) and none (0) opposed to grant to **Barbara Flaherty** the requested Variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from maximum height of buildings (stories) and the requested Special Permit per Section 3.3.3 *Nonconforming Structures* to expand a nonconforming three-family home by adding a three-level deck with roof and exterior staircase at **23 Andrew 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. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
7. 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.