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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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SALEM, MASS

November 17, 2020

Decision

City of Salem Board of Appeals

Petition of SUZANNE BISCAIA for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to modify and expand a nonconforming single-family home by adding a second story (bringing height to 2.5 stories), removing the existing side deck, and building a rear deck at 25 CUSHING STREET (Map 17, Lot 119) (R1 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 October 21, 2020; and closed on October 21, 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 October 21, 2020, Peter A. Copelas, Mike Duffy (Chair), Jimmy Tsitsinos, Paul Viccica, and Steven Smalley (Alternate) were present; Rosa Ordaz, and Carly McClain (Alternate) were absent.

The petitioner seeks a special permit per Section 3.2.2 *Home Occupations* to allow a clothing alterations business in the existing freestanding garage or alternatively within the primary dwelling, the single-family home at 24 Loring Avenue;

Statements of Fact:

1. In the petition date-stamped August 26, 2020, the petitioner requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to “construct a full second floor addition” the single-family house at 25 Cushing Street. The proposal as described on the petition form includes: “to add a 28x33 foot 2nd floor addition on the existing foundation to add bedrooms and a bath, open the first floor and relocate the side entry door to the rear. The side entrance deck will be replaced with a 10x19 maximum deck off the rear.”
2. 25 Cushing Street is owned by petitioner Suzanne Biscaia.
3. 25 Cushing Street is a single-family home in the Residential One-Family (R1) zoning district. This is an allowed use in the district.
4. 25 Cushing Street is nonconforming to dimensional requirements including at least minimum lot area, minimum lot area per welling unit, minimum depth of front yard, and minimum width of side yard.

5. The proposal is to modify and expand this nonconforming single-family home by adding a second story (bringing height from 1.5 stories to 2.5 stories), removing the existing side deck, and building a rear deck. Per the Plot Plan of Land prepared by David P. Terenzoni, P.L.S., dated September 5, 2020 and submitted to this Board, the proposed rear deck would be 9.0 feet from the right (west) side lot line instead of 6.6 feet from the right side lot line, where the existing deck is located.
6. The existing dwelling is located 3.3 feet from the left (east) side lot line. As such, the proposed addition of another story would increase the height of the structure within a required setback, though it would not decrease the width of the setback.
7. The requested relief, if granted, would allow the petitioner to modify and expand a nonconforming single-family home by adding a second story (bringing height to 2.5 stories), removing the existing side deck, and building a rear deck at 25 Cushing Street.
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 September 16, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
9. 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.
10. During the September 16, 2020 meeting, petitioner Suzanne Biscaia and her husband Paul Biscaia requested to continue to the special meeting scheduled for September 29, 2020. The Board voted four (4) in favor (Carly McClain, Jimmy Tsitsinos, Paul Viccica, and Steven Smalley) to continue the hearing to the special meeting to be held on Tuesday, September 29, 2020 at 6:30 pm.
11. Prior to the September 29 meeting, Paul Biscaia provided revised elevations, described via email as follows: "The rear bump out for the existing basement door was wrong for the side views. I probably cleaned up some other minor edits, but that was the issue needing correction."
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 Suzanne Biscaia and her husband Paul Biscaia presented the petition. Mr. Biscaia described the house as a two-bedroom, 1950s Cape-style house. Mr. Biscaia noted they live next door at 21 Cushing Street. Mr. Biscaia noted that they would like to update the property, make it more reasonably sized, and make the first floor more accessible so Ms. Biscaia's father can live close by as he ages and requires assistance. He noted the desire to make the property more reasonably sized and explained that 21 Cushing Street used to be similar to 25 Cushing Street, but was renovated and expanded. Mr. Biscaia explained the proposal to raise the roof including the existing bump-out so the house will look like a Colonial. He noted that the proposal is to bump out the rear of the house by 2 feet, from 26 feet to 28 feet, giving the rear a gambrel appearance. (The plot plan describes this as a "2' CANTILEVER.") He presented photos of the property. Mr. Biscaia explained there is currently a side entrance with a deck that sits in the driveway impeding a second car from getting in comfortably, so the proposal would remove the side entrance and put the second entry in the rear, facing the backyard off of the kitchen, with a new deck. Mr. Biscaia presented Excel drawings which he stated were to scale. Mr. Copelas stated that the proposal could benefit from more accurate drawings. There was some discussion about approval subject to receiving more accurate

drawings. Mr. Copelas stated he was not comfortable approving the proposal without more information and drawings.

14. At the September 29, 2020 public hearing, one (1) member of the public spoke in favor of the petition and no (0) members of the public spoke in opposition. The individual who spoke in favor, Councillor Megan Riccardi, noted that this house is the smallest on the street by far and is out of character for the neighborhood. She stated that these changes make sense to fit a family. She asked why architectural elevations would be necessary for the special permit or how it would be helpful to the applicant and asked if there are any other concerns.
15. At the September 29, 2020 public hearing, Mr. Copelas stated that he suspected this is a straightforward proposal that we would approve, but that the nature of the presentation was too thin for him to feel comfortable going forward. Mr. Tsitsinos expressed his agreement. Mr. Viccica stated he thought he understood the proposal but understood other Board members' concerns. Mr. Viccica suggested showing the height of the building in feet and inches, so it is on record from the grade to the median of the roof, so it is well documented that the proposal will fall within height requirements. Mr. Viccica suggested, instead of hiring an architect, the applicant could take photographs of the eaves, corner boards, and window types at 21 Cushing Street as he assumed the builder would replicate that. He stated presenting these elements would help the Board determine whether neighborhood character is met without having to spend money on architectural drawings from an architect. Mr. Copelas expressed the need for Tom St. Pierre (Building Inspector) to have the information he needs to do his job. Mr. Viccica expressed that the drawings presented would not be enough information to pull a building permit. Mr. St. Pierre said he stated he could understand what they are doing based on the drawings, but he would need additional framing details. Mr. Viccica expressed dimensions he would like to see.
16. At the September 29, 2020 public hearing, Chair Duffy suggested the applicants provide additional information for the Board to better understand the proposal. He asked if they would prefer to continue to the October or November meeting. They requested to continue to October 21. The Board voted five (5) in favor (Paul Viccica, Mike Duffy (Chair), Peter Copelas, Carly McClain, and Jimmy Tsitsinos) and none (0) opposed to continue the petition to the next regularly scheduled meeting of the Zoning Board of Appeals on October 21, 2020.
17. Prior to the October 21 meeting, the applicant provided architectural elevations dated October 13, 2020.
18. For the same reasons as noted in statement #8 above, the October 21, 2020 meeting of the Board of Appeals was also held remotely, via the online platform Zoom.
19. Board member Steven Smalley was absent from the September 29 meeting. He certified prior to the meeting that he had examined all evidence pertaining to 25 Cushing Street, which was distributed at the single missed session on September 29, 2020, which evidence included an audio recording of the missed session. Mr. Smalley submitted his written certification via email before the meeting.
20. At the October 21, 2020 public hearing, Mr. Biscaia noted that they obtained professional elevations. He presented the drawings and summarized the proposal. He noted that the height of the building will be nowhere near the maximum [35 feet]. Mr. Viccica asked if the curb cut would be widened; Mr. Biscaia stated it would not.
21. At the October 21, 2020 public hearing, no (0) members of the public spoke in favor of or in opposition to the proposal.

22. At the October 21, 2020 public hearing, Chair 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 work will increase the use of the house and provide more space for family.
2. Traffic flow and safety, including parking and loading: No negative impact is expected. Parking may be minorly enhanced.
3. Adequate utilities and other public services already service the structure.
4. Impacts on the natural environment, including drainage: No negative impact is expected.
5. Neighborhood character: The project is in keeping with the neighborhood character and will mirror the appearance of the building next door.
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.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Paul Viccica, Steven Smalley, Jimmy Tsitsinos, Mike Duffy (Chair), and Peter Copelas) and none (0) opposed to grant to **Suzanne Biscaia** a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to modify and expand a nonconforming single-family home by adding a second story (bringing height to 2.5 stories), removing the existing side deck, and building a rear deck at **25 Cushing 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 / BTC

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.