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BOARD OF APPEALS

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CITY CLERK
SALEM, MASS

June 30, 2021

Decision

City of Salem Board of Appeals

Petition of ELTON CELA and ERXHINA TAFA for a special permit per *Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from minimum lot area per dwelling unit, minimum width of side yard, and minimum depth of front yard to alter and expand a nonconforming single-family home by relocating the building entrance; expanding the existing first-floor deck; adding a second-floor deck over the existing first-floor deck; adding an asphalt driveway to the rear of the structure; and changing the use from single-family to two-family residential dwelling at 44 BUTLER STREET (Map 16 Lot 117) (R2 Zoning District).

A public hearing on the above Petition was opened on June 16, 2021 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following members present: Mike Duffy (Chair), Peter Copelas, Paul Viccica, and Carly McClain (Alternate). Board members Jimmy Tsitsinos, Rosa Ordaz, and Steven Smalley (Alternate) were absent.

The petitioners seek a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from minimum lot area per dwelling unit, minimum width of side yard, and minimum depth of front yard to alter and expand a nonconforming single-family home by relocating the building entrance; expanding the existing first-floor deck; adding a second-floor deck over the existing first-floor deck; adding an asphalt driveway to the rear of the structure; and changing the use from single-family to two-family residential dwelling at 44 Butler Street.

Statements of Fact:

1. In the petition date-stamped May 25, 2021, the petitioner requested a special permit per Section 3.3.5 to, "turn one single family home into 2 condo [sic]". The petition continues, "we are adding a second floor deck above the existing first floor deck. We are changing the front entry of the house, from the left side (facing the house) to the front of the house (facing Butler st [sic])".
2. 44 Butler Street is owned by petitioners Elton Cela and Erxhina Tafa.
3. The petitioners were represented by attorney David Summer of Law Offices of David B. Summer at 100 State Street, Suite 900, Boston, MA, 02109.
4. 44 Butler Street is a single-family home in the Residential Two-Family (R2) zoning district.

5. The property is nonconforming to dimensional requirements including minimum lot area, minimum lot area per dwelling unit, minimum depth of front yard, and minimum width of side yard.
6. The proposal is to modify the existing structure by relocating the entrance; expanding the first-floor rear deck; adding a second-floor deck over the existing first-floor deck; adding and asphalt driveway to the rear of the structure; and changing the use from single-family to two-family residential dwelling.
7. Per a plot plan submitted with the proposal (dated May 21, 2021, the existing structure is nonconforming to dimensional standards including at least depth of front yard, width of side yard, and minimum lot area. The petitioner sought a special permit to increase the nonconforming nature of the structure by expanding the structure into the required front yard and side yard setbacks. The relocated entrance would be +/-1ft from the front lot line, and the proposed stairs to the second-floor deck would be 5ft from the side lot line.
8. Prior to the June 16, 2021 meeting, in consultation with the Building Department the applicant found the proposal did not include sufficient space around the side of their home to provide the required width of entrance drive for the proposed off-street parking at the rear of the structure.
9. On June 19, 2021 before the meeting that evening, the petitioner, Erxhina Tafa submitted to the Board an unsigned document titled "DEED GRANTING DRIVEWAY EASEMENT". The easement document includes in part; "Gustavo A. Gomes of 46 Butler Street, Salem, Middlesex County, Massachusetts on behalf of himself, successors, heirs and assigns, grants to Elton Cela and Erxhina Tafa of 44 Butler Street, Salem, Essex County, Massachusetts, and to their successors, heirs and assigns, in consideration of paving the driveway, paying for the recording of this easement and maintaining the easement portion of the driveway, an exclusive three-foot wide strip easement to be used for a driveway easement".
10. On June 16, 2021 before the meeting that evening, Ms. Tafa submitted a revised plot plan (stamped "Received June 16 2021"). The revised plot plan shows a proposed driveway easement with an area of +/-270 square feet.
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, 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.
12. At the June 16, 2021 public hearing, petitioners Elton Cela and Erxhina Tafa were represented by attorney David Summer. Mr. Summer discussed the proposal, noting that the proposed changes to the exterior are relatively mild. The proposal would relocate parking

from the westerly side of the residence to the rear of the residence. He noted that the applicants have spoken to the abutters at 46 Butler Street and 40 Butler Street. As he understood, both neighbors were in favor of the project. Mr. Summer noted that the property was very run down and in need of repair, and the intent of this project was to significantly repair the exterior. He noted the footprint is nearly identical except for the deck, which is slightly enlarged. The proposal would add another unit of housing, making 44 Butler Street a two-family dwelling.

13. At the June 16, 2021 public hearing Attorney Summer presented an easement the petitioners have proposed to their neighbor at 46 Butler Street. Mr. Summer noted that the easement is not agreed upon by the owner of 46 Butler Street yet. Mr. Summer proposed that the Board approve the application with the condition that the easement is finalized.
14. At the June 16, 2021 public hearing, Chair Duffy acknowledged a handwritten comment from Irene Saxon Fleming. Mr. Duffy noted that the handwriting was difficult to read. The letter was in opposition, though it was difficult to discern why.
15. At the June 16, 2021 public hearing one member of the public, Gustavo Gomez of 46 Butler Street, stated he looks forward to the home being repaired and the backyard being redone. Mr. Gomez described stated he discussed the proposed easement with the petitioners on Monday, June 14. He stated he is still considering the easement proposal and has not agreed to anything yet. Mr. Gomez expressed support for the petition with the condition that they finalize the easement agreement. No (0) members of the public spoke in opposition to the proposal.
16. At the June 16, 2021 public hearing, the Board discussed the proposal. Chair Duffy read aloud a summary of the petitioner's Statement of Grounds submitted with the original application. Ms. McClain stated she visited the property, noted it is in very poor condition, and thinks the proposal would be substantially beneficial to the neighborhood.

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. This proposal takes a poorly maintained house and provides suitable and usable housing opportunities.
2. Traffic flow and safety, including parking and loading: No impact is expected. The proposal includes three off-street parking spaces.
3. Adequate utilities and other public services already service the structure.
4. Impacts on the natural environment, including drainage: No negative impact is expected; There is only marginal change to the building footprint.

5. Neighborhood character: The project is in keeping with the neighborhood character. Moving the entrance to the front is consistent with other houses in the neighborhood. The proposal would result in a two-family home, which aligns with the neighborhood's Residential Two-Family (R-2) zoning.
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 four (5) in favor (Mike Duffy (Chair), Paul Viccica, Carly McClain, Peter Copelas) and none (0) opposed to grant **Elton Cela and Erxhina Tafa** a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from minimum lot area per dwelling unit, minimum width of side yard, and minimum depth of front yard to alter and expand a nonconforming single-family home by relocating the building entrance; expanding the existing first-floor deck; adding a second-floor deck over the existing first-floor deck; adding an asphalt driveway to the rear of the structure; and changing the use from single-family to two-family residential dwelling at **44 Butler 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. 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.

Special Condition:

1. A suitable easement to provide legal access to parking at the rear of the property will be executed between the petitioners and the owners of the property at 44 Butler Street. The executed easement shall be recorded at the Southern Essex Registry of Deeds. The executed easement shall be consistent with the dimensions shown in the revised plot plans submitted to and approved by the Board of Appeals (dated May 21, 2021 and stamped "Received 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.