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MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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June 30, 2021

Decision

City of Salem Board of Appeals

Petition of JODIE FENTON for a special permit per Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to demolish a nonconforming three-story three-family home and detached garage, and reconstruct a nonconforming three-story three-family home at 56 JEFFERSON AVENUE (Map 24, Lot 91) (R1 Zoning District).

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 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to demolish a nonconforming three-story three-family home and detached garage, and reconstruct a nonconforming three-story three-family home at 56 Jefferson Avenue.

Statements of Fact:

1. In the petition date-stamped April 26, 2021, the petitioner requested a special permit to “remove and rebuild a 3 family” at 56 Jefferson Avenue.
2. 56 Jefferson Avenue is owned by Jodie Fenton. The petitioner submitted a letter of consent signed by Jodie Fenton (dated April 24, 2021).
3. 56 Jefferson Avenue is a three-family home in the Residential One-Family (R1) zoning district. This is a pre-existing nonconforming use in the district.
4. The property is nonconforming to dimensional requirements including at least minimum lot area, lot area per dwelling unit, depth of front yard, and width of side yard. Per the plot plan submitted with the original application (dated March 30, 2021), the proposal would increase the width of side yard from 4.6 feet to +/- 5.5 feet. The depth of front yard would remain +/- 11.5 feet.

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5. The proposal is to demolish the existing residential structure and detached garage and construct a new three-story three-family residential structure.
6. In the petition date-stamped April 26, 2021, the petitioner included a Statement of Grounds that read in part: “The property at 56 Jefferson ave [sic] was a house that was originally moved from behind the post office back in the early 1900’s”.
7. On May 5, 2021 Staff Planner Lev McCarthy emailed the petitioner’s representative, Scott Ingemi, to notify him that because the existing structure at 56 Jefferson Avenue was over 50 years old, the applicant would need to apply for a Waiver of Demolition Delay from the Salem Historical Commission.
8. On May 19, 2021 Preservation Planner Patti Kelleher who staffs the Historical Commission, emailed the Board a written statement that read in part: “Please let the ZBA know that the Historical Commission will be reviewing the request to waive the demolition delay ordinance for 56 Jefferson Avenue at their meeting on June 2nd... The Commission typically asks other municipal boards to delay their decision regarding properties seeking demolition delay waivers until the Commission has rendered their decision on whether to waive the 6 month delay”.
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 May 19, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
10. At the May 19, 2021 public hearing, representative Scott Ingemi discussed the proposal, noting that the existing residential structure at 56 Jefferson Avenue was relocated from the area behind the post office in the early 1900’s. Mr. Ingemi stated that over the years the home has lost much of its structural integrity. He described the proposes to demolish the existing three-family three-story residential structure and detached garage, and replace them with a new three-family three-story residential structure and paved uncovered parking.
11. At the May 19, 2021 public hearing Paul Viccica noted that the applicant had applied for a Waiver of Demolition Delay from the Salem Historical Commission, but had not received the Waiver in time for the May 19, 2021 meeting of the Board of Appeals. Mr. Viccica suggested they continue to the next meeting after there is more clarity on whether demolition can begin or needs to be delayed.
12. At the May 19, 2021 public hearing Staff Planner Lev McCarthy noted that Preservation Planner Patti Kelleher sent an email pertaining to the petition for 56 Jefferson Avenue (see note #8 above). Mr. McCarthy read the contents of the email into the record.
13. At the May 19, 2021 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.

14. At the May 19, 2021 public hearing Peter Copelas stated he values Mr. Viccica's input, and since the petitioner is scheduled to go in front of the Historical Commission on June 2, 2021, Mr. Copelas suggests there is clarity regarding the Waiver of Demolition Delay.
15. At the May 19, 2021 public hearing, the Board voted five (5) in favor (**Paul Viccica, Carly McClain, Rosa Ordaz, Mike Duffy (Chair), and Peter Copelas**) and none (0) opposed to continue the hearing to the regularly scheduled meeting on June 16, 2021.
16. Prior to the June 16, 2021 meeting, Preservation Planner Patti Kelleher notified Staff Planner Lev McCarthy that the proposal for 56 Jefferson Avenue received a Waiver of Demolition Delay from the Salem Historical Commission at their meeting on June 2, 2021.
17. At the June 16, 2021 public hearing, representative Scott Ingemi stated that since the last hearing on May 19, 2021 the Historical Commission approved the application for a Waiver of Demolition Delay. He also noted that the structure is in very poor condition, so rehabilitating the existing structure would require substantial work. Mr. Ingemi stated that it did not make financial sense to renovate.
18. At the June 16, 2021 public hearing, no (0) members of the public spoke in favor of or in opposition to the proposal.
19. At the June 16, 2021 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 existing structure is in disrepair. This proposal will create a new three-family structure that will be livable and useful.
2. Traffic flow and safety, including parking and loading: There is no significant change. The plot plan shows there is provision for adequate parking.
3. Adequate utilities and other public services already service the structure.
4. Impacts on the natural environment, including drainage: No negative impact is expected; the proposed structure would be more or less on the same footprint as the existing structure.

5. Neighborhood character: The project is in keeping with the neighborhood character. This replacing an existing three-family house with a new three-family 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 by adding a new well-maintained structure.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Carly McClain, Paul Viccica, Mike Duffy (Chair), Peter Copelas) and none (0) opposed to grant to Jodie Fenton a special permit per Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to demolish a nonconforming three-story three-family home and detached garage, and reconstruct a nonconforming three-story three-family home at 56 Jefferson Avenue, 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. A Certificate of Occupancy is to be obtained.
6. A Certificate of Inspection is to be obtained.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. 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.



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.