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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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Decision

City of Salem Board of Appeals

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CITY CLERK
SALEM MASS

Petition of SAMANTHA STONE for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from maximum height of buildings (stories), maximum lot coverage, minimum depth of front yard, and minimum width of side yard to alter and expand a nonconforming single-family home by adding a 26' by 25', 3-story rear addition as well as a covered porch at 5 ORCHARD STREET (Map 27, Lot 432) (R2 Zoning District).

A public hearing on the above Petition was opened on August 19, 2020 pursuant to M.G.L Ch. 40A, § 11; continued to September 16, 2020 (during which meeting no testimony was heard); continued to September 29, 2020; and closed on September 29, 2020. On August 19, 2020, Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, and Paul Viccica were present; Carly McClain (Alternate), Steven Smalley (Alternate), and Jimmy Tsitsinos were absent. 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.

The petitioner seeks a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from maximum height of buildings (stories), maximum lot coverage, minimum depth of front yard, and minimum width of side yard to alter and expand a nonconforming single-family home by adding a 26' by 25', 3-story rear addition as well as a covered porch at 5 Orchard Street.

Statements of Fact:

1. In the petition date-stamped July 23, 2020, the petitioner requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to alter and extend an existing nonconforming single-family home.
2. 5 Orchard Street is owned by petitioner Samantha Stone.
3. 5 Orchard Street is a single-family home in the Residential Two-Family (R2) zoning district. This is an allowed use in the district.
4. 5 Orchard Street is currently nonconforming to minimum lot area, lot area per dwelling unit, lot frontage, depth of front yard, and width of side yard.
5. The proposal is to add a 26' by 25' rear addition and a covered porch. Under the proposal, the property would be newly nonconforming to maximum lot coverage; would slightly increase the infringement on the right-side setback; and would involve construction within the required front yard

setback. The petitioner is appropriately seeking a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures*.

6. The requested relief, if granted, would allow the petitioner to alter and expand a nonconforming single-family home by adding a 26' by 25', 3-story rear addition as well as a covered porch at 5 Orchard Street.
7. 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 August 19, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
8. Prior to the August 19, 2020 meeting, the public notice about this petition described the addition as being 2.5 stories. However, the Building Department determined that the height of the proposed addition is 3 stories due to the proposed dormers. As such, revised public notice regarding height was required. As a result, the public hearing in the August 19, 2020 meeting moved forward with the requirement that the Board could not take final action on the matter in said meeting. The petition would be re-advertised with corrected information about the height of the building before the September meeting, at which meeting the Board would be permitted to take final action if desired.
9. At the August 19, 2020 public hearing, Staff Planner Brennan Corriston explained the situation regarding public notice and the requirement that no final action be taken in this meeting as described in statement #8 above. Petitioner Samantha Stone presented the proposal and discussed its relation to the character and scale of the neighborhood.
10. At the August 19, 2020 public hearing, three (3) members of the public spoke in favor of the proposal and no (0) members of the public spoke in opposition. Chair Duffy also read from two letters submitted to the Board: one from Sandra Meuse, 19 Orchard Street, indicating support for the proposal; the other from Anne Sterling, 29 Orchard Street, asking that it be acknowledged that this addition would be three stories, not two-and-a-half, and asking for a shade study due to the topography.
11. At the August 19, 2020 public hearing, Chair Duffy noted that the Board cannot act tonight. The Board voted four (4) in favor (Paul Viccica, Rosa Ordaz, Mike Duffy (Chair), and Peter Copelas) and none (0) opposed to continue the hearing to the next regularly scheduled meeting on September 16, 2020.
12. At the August 19, 2020 public hearing, the Board and the applicants discussed the survey and continuance. The Board voted five (5) in favor (Rosa Ordaz, Peter A. Copelas, Steven Smalley, Mike Duffy (Chair), and Paul Viccica) and none (0) opposed to continue the hearing on 27 Boardman Street to the next regularly scheduled meeting on August 19, 2020.
13. Prior to the September 16 meeting, petitioner Samantha Stone submitted a shadow study along with photos of the house and property before and after her purchase.
14. Board members Carly McClain, Steven Smalley, and Jimmy Tsitsinos were absent from the August 19 meeting. All three Board members certified prior to the meeting that they had examined all evidence pertaining to 5 Orchard Street, which was distributed at the single missed session on August 19, 2020, which evidence included an audio recording of the missed session. Ms. McClain and Mr. Smalley submitted their written certifications via email before the meeting. Mr. Tsitsinos presented his written certification via Zoom video during the meeting and submitted it via email after the meeting.

15. For the same reasons as noted in statement #7 above, the September 16, 2020 meeting of the Board of Appeals was also held remotely, via the online platform Zoom.
16. 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.
17. On September 16, 2020, before the meeting began, the petitioner submitted a written request to continue to the to-be-scheduled special meeting. In the September 16 meeting, the Board voted four (4) in favor (Jimmy Tsitsinos, Steven Smalley, Paul Viccica, and Carly McClain) and none (0) opposed to continue the hearing to the special meeting to be held on Tuesday, September 29, 2020 at 6:30 pm.
18. At the September 29, 2020 public hearing, Ms. Stone presented the before and after photos and noted the improvements made to the property. She also presented the shadow study, showing anticipated shadow for the solstices and equinoxes.
19. 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 of Orchard Street, reiterated her spoken support from the August meeting. Mr. Corriston read a letter from Mary Ellen McHugh-Sullivan and Howard W. Sullivan of 1 Orchard Street in support of their proposed renovation.
20. At the September 29, 2020 public hearing, Chair Duffy discussed how the project meets the special permit criteria, referencing the Statement of Grounds submitted by the applicant. He noted that it appears from the application materials and additional information that this special permit could be granted without creating a substantially more detrimental building than the existing dwelling. Board member Carly McClain expressed her appreciation for Ms. Stone doing the shade study.

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 improve the house and bring it into more code-compliant family housing while maintaining the historic integrity of the existing structure.
2. Traffic flow and safety, including parking and loading are unaffected. No additional dwellings will be created and no new parking strategy is required.
3. Adequate utilities and other public services already service the structure.
4. Impacts on the natural environment, including drainage will be minimally affected as grading changes to accommodate the proposed structure are not substantially different than existing grading, and existing plantings and trees on the site will remain in place or be relocated to a new location on the site.
5. Neighborhood character: The project is in keeping with the neighborhood character, using complementary building materials and architectural language that agrees with the existing structure and maintaining the historic architectural integrity of the existing dwelling.
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, as a result of the improvements to the structure.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Carly McClain, Paul Viccica, Jimmy Tsitsinos, Mike Duffy (Chair), and Peter A. Copelas) and none (0) opposed to grant to **Samantha Stone** a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from maximum height of buildings (stories), maximum lot coverage, minimum depth of front yard, and minimum width of side yard to alter and expand a nonconforming single-family home by adding a 26' by 25', 3-story rear addition as well as a covered porch at **5 Orchard 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. 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, 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.

/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.