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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK
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2020 APR 28 PM 1:33

April 28, 2020

Decision

City of Salem Board of Appeals

Petition of SCOTT PERRY for a variance per Section 3.2.4 *Accessory Buildings and Structures* of the Salem Zoning Ordinance from minimum required setbacks for an accessory building or structure to build a 10' x 16' one-story garage at 7 ORANGE STREET (Map 35, Lot 366) (R2 Zoning District).

A public hearing on the above Petition was opened on April 1, 2020 pursuant to M.G.L. Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Carly McClain, Rosa Ordaz, Steven Smalley, and Paul Viccica. Board member Jimmy Tsitsinos was absent.

The petitioner seeks a variance per Section 3.2.4 *Accessory Buildings and Structures* of the Salem Zoning Ordinance from minimum required setbacks for an accessory building or structure to build a 10' x 16' one-story garage.

Statements of Fact:

1. In the petition date-stamped January 29, 2020, the petitioner requested a variance per Section 3.2.4 *Accessory Buildings and Structures* of the Salem Zoning Ordinance from minimum required setbacks for an accessory building or structure to build a 10' x 16' one-story garage at the multifamily home at 7 Orange Street.
2. 7 Orange Street is a four-unit residential structure in the Residential Two-Family (R2) zoning district. This is a nonconforming use in the district.
3. The existing residential structure is nonconforming to dimensional requirements including minimum lot area, lot area per dwelling unit, and front and side yard setbacks.
4. The proposal is to construct a 10' x 16' one-story detached garage in the backyard at 7 Orange Street.
5. Section 3.2.4 *Accessory Buildings and Structures*, subsection 3 of the Salem Zoning Ordinance states in part: "No unattached accessory building or structure shall be located nearer than five (5) feet to any side lot line (side lots in this instance refer to a projected line starting from the front lot line, terminating at the rear lot line parallel five (5) feet from the side or five (5) feet from the rear lot line."
6. The proposed garage would be located one and one-half (1.5) feet each from the rear lot line and the side lot line.
7. The proposed garage would replace an existing 8' by 6' shed that is 1' from the side lot line and 7' from the main structure. This existing shed would be torn down.
8. The requested relief, if granted, would allow the petitioner to build a 10' by 16' one-story garage at 7 Orange Street.

9. The April 1, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
10. At the April 1, 2020 meeting of the Board of Appeals, petitioner Scott Perry discussed the petition. Mr. Perry noted that the structure is intended to replace the existing shed. The shed's distance from the lot lines will ensure that water running off from the shed remains within the petitioner's property; in addition, the shed will be located at the lowest point of the lot to minimize the visual height impact. Mr. Perry noted that much of the proposed garage has already been built. He stated that he does not plan on running power or utilities to it. He noted that the design is also intended to minimize impact on the view from the nearby Customs House.
11. At the April 1, 2020 public hearing, the Board discussed the proposal and the requirements for the variance with the applicant. The Board asked Mr. Perry to speak to conditions specifically affecting the structure, including potentially topography and soil conditions. Mr. Perry noted that in order to comply with all setback requirements, the proposed structure would need to be located in the center of the yard, which would make the yard unusable and the proposed construction work (for which the garage will be utilized) impossible. Mr. Perry stated that there are erosion and drainage issues in the yard; water pools in the center of the lot, and water would collect under a structure located there. Locating the garage in the back corner minimizes the visual impact (due to the slope of the yard, this would effectively reduce the height of the garage relative to other locations) and is best for use of the yard. Mr. Perry noted that the yard is subject to erosion and the rear portion of the yard on the east and south side has a retaining wall built by the Customs House. Mr. Perry noted that there is a financial hardship, as he needs to maintain the primary structure himself due to costs, and the proposed garage will enable him to do so.
12. At the April 1, 2020 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition. Two letters in support of the proposal were submitted to the Board.
13. At the April 1, 2020 public hearing, Chair Duffy discussed the variance criteria, noting the findings presented below (with the exception of the discussion of drainage and erosion issues, which were presented earlier).

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, 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 yard is affected by drainage and erosion issues. Special conditions also include the age and size of the primary building in relation to the lot, and the difficulty imposed by the location of the house on the lot combined with required rear and side yard setbacks in locating any outbuilding without some kind of relief.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant: The applicant has presented financial and practical use hardship in not having an outbuilding that has enough dimensions to be usable for the maintenance of the main structure.
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.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, and Carly McClain) and none (0) opposed to

grant the requested Variance per Section 3.2.4 *Accessory Buildings and Structures* of the Salem Zoning Ordinance from minimum required setbacks for an accessory building or structure to build a 10' x 16' one-story garage at **7 Orange 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 requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
3. Petitioner shall obtain a building permit prior to beginning any construction.
4. Exterior finishes of the new construction shall be in harmony with the existing structure.
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. 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.