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CITY CLERK
SALEM, MASS

August 13, 2020

Decision

City of Salem Board of Appeals

Petition of CABOT FARM TRUST for a variance per Section 3.2.4 *Accessory Buildings and Structures* of the Salem Zoning Ordinance from height of accessory structures to allow a twenty-five (25) foot tall freestanding garage at 91-91B ORNE STREET (Map 28, Lot 16) (R1 Zoning District).

A public hearing on the above Petition was opened on May 20, 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 (Alternate), Rosa Ordaz, Steven Smalley (Alternate), and Paul Viccica.

The petitioner seeks a variance per Section 3.2.4 *Accessory Building and Structures* from height of accessory structures to allow a twenty-five (25) foot tall freestanding garage at 91-91B Orne Street.

Statements of Fact:

1. In the petition date-stamped March 12, 2020, the petitioner requested a variance per Section 3.2.4 *Accessory Buildings and Structures* from height of accessory structures to allow a twenty-five (25) foot tall freestanding garage at 91-91B Orne Street.
2. 91-91B Orne Street is owned by Cabot Farm Trust.
3. 91-91B Orne Street is a large property that is used as Cabot Farm. The property is located in the Residential One-Family (R1) zoning district.
4. The proposal is to construct a twenty-five (25) foot tall freestanding garage at the property. This garage would exceed the maximum allowed height of accessory structures, which is 18 feet per Section 3.2.4 *Accessory Buildings and Structures* of the Salem Zoning Ordinance.
5. The requested relief, if granted, would allow the petitioner to build a twenty-five (25) foot tall freestanding garage at 91-91B Orne Street.
6. 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 20, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
7. At the May 20, 2020 public hearing, Attorney Scott Grover, representing petitioner Cabot Farm Trust, discussed the petition. Attorney Grover explained that Cabot Farm is a farm over 26 acres in area with several houses on the property—some new, some centuries-old—occupied by members of the Lutts family. Attorney Grover noted that the proposal is for a four-bay garage to store classic automobiles and actively-used farm equipment. He noted that in keeping with the pastoral nature of

the property, the garage is really more in the nature of a barn: the 25-foot height is needed to achieve that appearance. He noted that other than exceeding the allowed 18-foot height, the proposed structure meets all requirements for an accessory structure: 5 feet from a lot line and 10 feet from a building on an abutting property. This structure will be 70 feet from the lot line of the next abutting property. Attorney Grover argued that the size of the property is the condition that qualifies it for the variance. He argued that literal enforcement of the ordinance would cause the building to be out of scale with the property. Attorney Grover also argued that this relief could be granted without nullifying the intent of the ordinance because of the separation between the buildings. Attorney Grover stated that the intent of the height limitation is to prevent a building of significant height from being close to other buildings; he stated there is no possibility of such a situation here because of the significant distances between buildings. Rob Lutts, a trustee of Cabot Farm Trust, explained that the design of the building is in keeping with the farm. He noted that there is a fairly large barn on the other side of the property that is a couple of hundred years old. This garage was designed to be appropriate to the setting.

8. At the May 20, 2020 public hearing, the Board discussed the proposal. Rosa Ordaz asked whether the hardship is cosmetic. Rob Lutts stated that if the building was only 18 feet high, it could not really look like a barn. Paul Viccica noted that there is no aesthetic issue embedded in the variance process. He stated that building to the 18-foot requirement would be a detriment to the farm and would be an egregious mistake within the historic context of an historic city like Salem. Mr. Viccica added that the proposed building is within a fairly large piece of property and would not have a significant effect on neighbors. He stated that he does not take issue with the requested proposal in light of the variance criteria. Referring to the first of the variance criteria, Peter Copelas noted that there could not be a better example in the City of Salem of a special condition than Cabot Farm: there is nothing else like it in the city. The property is unique. He added that desirable relief can be granted without substantial detriment because no precedent is being created here as there is no other property like Cabot Farm in Salem.
9. At the May 20, 2020 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.
10. At the May 20, 2020 public hearing, Chair Duffy added to Mr. Viccica's and Mr. Copelas's discussion of the variance criteria.
11. At the May 20, 2020 public hearing, Building Commissioner Tom St. Pierre noted that he asked for this ordinance to be changed in reaction to people in Salem with garages located 5 feet from the setback adding second stories to those garages. The intent was to prevent a two-story garage from overlooking the neighbor's yard from five feet away.

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:

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. Cabot Farm is a unique property, and its uniqueness involves aspects of shape and topography.

2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant: Building the accessory structure per the requirements of the Ordinance would create a structure that is out of scale with the property and would diminish the historic value of the property.
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. Granting this relief is a benefit, not a detriment. The accessory structure is located such that it will have no detrimental impact on neighboring buildings.

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, Rosa Ordaz, Mike Duffy (Chair), and Peter A. Copelas) and none (0) opposed to grant the requested Variance per Section 3.2.4 *Accessory Buildings and Structures* of the Salem Zoning Ordinance from height of accessory structures to allow a twenty-five (25) foot tall freestanding garage at **91-91B Orne 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 structures.
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. 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.