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BOARD OF APPEALS

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October 30, 2019

Decision

City of Salem Board of Appeals

Petition of PAMELA J. BARTON for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to enlarge an existing two-family structure by adding one additional story to the existing 2.5-story building, removing a side addition, and adding several exterior stairways and porches at 11 RICE STREET (Map 36, Lot 197) (R2 Zoning District).

A public hearing on the above Petition was opened on August 21, 2019 pursuant to M.G.L. Ch. 40A, § 11. No testimony was heard during the August 21, 2019 hearing. The petition was continued to September 18, 2019 and October 16, 2019, and closed on October 16, 2019 with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Jimmy Tsitsinos, and Paul Viccica. At the August 21, 2019 meeting, only Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica were in attendance, and no testimony was heard; this is discussed in the Statements of Fact below. At the September 18, 2019 meeting, Peter Copelas, Mike Duffy (Chair), Jimmi Heiserman, Rosa Ordaz, and Paul Viccica were in attendance; Jimmy Tsitsinos was absent.

The petitioner seeks a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance.

Statements of Fact:

1. In the petition date-stamped July 30, 2019, the petitioner requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to enlarge the existing two-family structure at 11 Rice Street to reconfigure and improve the two dwelling units by removing a side addition and adding a third-floor addition and several exterior stairways and porches.
2. Attorney William Quinn, representing petitioner Pamela J. Barton, presented the petition.
3. The property is a two-family home in the Residential Two-Family (R2) zoning district.
4. With the existing structure, the property is nonconforming to at least minimum lot area, minimum lot area per dwelling unit, lot frontage, lot width, lot coverage, depth of front yard, width of side yard (both sides), and depth of rear yard.
5. The proposal is to add one story to the existing building, remove an existing side addition, and add several exterior stairways and porches.
6. The existing building is 2.5 stories in height. The maximum height of buildings (stories) allowed in the R2 zoning district is 2.5 stories. The maximum height (feet) is 35 feet. Under this proposal, the height will exceed the allowed number of stories, but will not exceed 35 feet.
7. Under the proposal, the nonconformities to front and rear yard setback and lot coverage will also be increased.

8. The requested relief, if granted, would allow the petitioner to add one story to the existing building, remove an existing side addition, and add several exterior stairways and porches at 11 Rice Street.
9. At the August 21, 2019 meeting of the Board of Appeals, only three Board members were in attendance: Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica. Having three members in attendance out of the five-member Board constitutes a quorum (enough members to hold a meeting). However, per the Zoning Board of Appeals' Rules and Regulations, "[t]he concurring vote of at least four (4) members of the Zoning Board of Appeals shall be necessary in any action taken by the Board." As such, the Board could not vote to approve any petitions in the August 21 meeting. Petitioners were informed of this attendance situation in advance and were given the opportunity to submit requests to continue their petitions to the next regularly scheduled meeting on September 18, 2019. In an email to Planner Brennan Corriston dated August 20, 2019, Attorney William Quinn, representing the petitioner, submitted a request to continue 11 Rice Street to the September 18 meeting. This request was duly filed with the City Clerk on August 21, 2019. In the meeting, the Board voted three (3) in favor (Jimmi Heiserman, Paul Viccica, and Mike Duffy (Chair)) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting, September 18, 2019.
10. At the September 18, 2019 meeting of the Board of Appeals, Attorney William Quinn discussed the proposal. Attorney Quinn noted that the property is somewhat out-of-repair. Attorney Quinn and the property owner, Pamela J. "Joy" Barton, discussed the plans for the project. Attorney Quinn showed photos of 4 Rice Street, which is very similar to the proposal for 11 Rice Street. The Board asked about the "bump-out" in the front of the building. Ms. Barton noted that only the second and third floors bump out, with 24 inches of clearance at the second floor and 12 inches of clearance at the sidewalk. Paul Viccica asked about the side deck. Ms. Barton stated that this was a means of egress. Mr. Viccica stated that he saw the deck as unsightly and as a detriment to the neighbor.
11. At the September 18, 2019 public hearing, one (1) member of the public spoke in favor of the petition and no (0) members of the public spoke in opposition.
12. At the September 18, 2019 meeting, there was discussion of the means of egress and whether the side deck was legally serving as a means of egress. Chair Duffy noted that it may be useful to have some further discussion from the architect about the purpose of the side deck other than as living space. Mr. Viccica suggested continuing the project and seeing if the architect can discuss it. Ms. Barton requested a continuance and stated that she would bring in her neighbor as well.
13. At the September 18, 2019 meeting, the Board voted five (5) in favor (Mike Duffy (Chair), Peter Copelas, Rosa Ordaz, Paul Viccica, and Jimmi Heiserman) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting, October 16, 2019.
14. Prior to the October meeting, the petitioner submitted revised elevations. These were dated October 2, 2019.
15. Board member Jimmy Tsitsinos, who was absent at the September 18, 2019 hearing on this petition, signed an affidavit of service on October 16, 2019, certifying that he examined all evidence pertaining to 11 Rice Street which was distributed at the single missed session on September 18, 2019, which evidence included an audio recording of the missed session. He submitted this certification prior to participating in the vote on this matter in the October 16, 2019 public hearing.
16. At the October 16, 2019 meeting of the Board of Appeals, Attorney Scott Grover (of the same law firm as Attorney William Quinn, Tinti, Quinn, Grover & Frey), representing the petitioner, discussed the project. The architect, Bernardo Jose, was also in attendance. Attorney Grover explained the changes made from the initial plans, stating that the initially proposed porch along the side of the

property has been removed, and that there is now a porch with egress to the ground from the second floor. Attorney Grover also noted that the front section has been revised to better match neighborhood character. Mr. Copelas asked if the only material change was the elimination of the side porch. Attorney Grover stated that the access points were changed slightly. Mr. St. Pierre noted the change in the façade including the bay window. Attorney Grover stated that this change (from the previously proposed cantilevered projection) is now in keeping with the surrounding neighborhood. Mr. St. Pierre commented positively on the petitioner's efforts, including the drawing and before and after images.

17. At the October 16, 2019 public hearing, no (0) members of the public spoke in favor of or opposition to the petition.

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, and the Petitioner's presentation and public testimony, makes the following **findings**:

Special Permit Findings:

The Board finds that the proposed nonconforming structure is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

1. Social, economic and community needs are served by the proposal. This proposal will take a building that is not in productive use and restore the property to two habitable units, serving a community need.
2. There will be no in impact on traffic flow and safety, including parking and loading.
3. Adequacy of utilities and other public services: Adequate utilities and public services service the property.
4. Impacts on the natural environment, including drainage: Environmental impact will be improved by the restoration of this building, which is currently in disrepair.
5. Neighborhood character: The restoration of a building in a serious state of disrepair will positively impact neighborhood character.
6. Potential fiscal impact, including impact on City tax base and employment: The rehabilitation of the property will have a positive fiscal impact.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Jimmi Heiserman, Mike Duffy (Chair), Peter Copelas, Jimmy Tsitsinos, and Paul Viccica) and none (0) opposed to grant the requested special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning to enlarge an existing two-family structure by adding one additional story to the existing 2.5-story building, removing a side addition, and adding several exterior stairways and porches at **11 Rice 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 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 /BJC

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.