



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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April 3, 2019

Decision

City of Salem Board of Appeals

2019 APR -3 PM 3:41
CITY CLERK
SALEM, MASS

Petition of JUAN FIGUEROA for a special permit per Section 3.3.3 *Nonconforming Structures* and variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for minimum lot area and minimum lot area per dwelling unit to allow the use of the existing third story as a third unit in the two-family home at 15 SALEM STREET (Map 34, Lot 321) (R3 Zoning District).

A public hearing on the above Petition was opened on February 20, 2019 pursuant to M.G.L. Ch. 40A, § 11, continued to March 20, 2019, and closed on March 20, 2019 with the following Salem Board of Appeals members present: Mike Duffy (Chair), Peter A. Copelas, Jimmi Heiserman, Patrick Shea, Jimmy Tsitsinos, and Paul Viccica (Alternate).

The Petitioner seeks a special permit per Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance.

Statements of Fact:

1. In the petition date-stamped January 10, 2019, the Petitioner requested a special permit per Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to make the house a legal-three family house. Staff Planner Brennan Corrison and Zoning Enforcement Officer Tom St. Pierre determined that variances would also be required for this petition; upon hearing this, the Petitioner also requested variances per Section 4.1.1 *Table of Dimensional Requirements* for minimum lot area and minimum lot area per dwelling unit.
2. Petitioner Juan Figueroa and his daughter, Yandi Figueroa Slack, presented the petition.
3. The property is a two-family house in the Residential Three-Family (R3) zoning district.
4. The property is nonconforming to several dimensional requirements including minimum lot area and minimum lot area per dwelling unit; it appears to also be nonconforming to minimum lot frontage, minimum lot width, maximum lot coverage, minimum depth of front yard, minimum depth of rear yard, and minimum width of side yard.
5. The petitioner is proposing to officially use the existing third story of this building as a third unit. The home is officially considered a two-family home. As the petitioner notes in the application, the "home is already divided into three levels," but the "third floor is not considered a legal apartment."
6. A three-family home is an allowed use in the Residential Multifamily (R3) zoning district. However, deeming the property a three-family home would increase the nonconformity of minimum lot area per dwelling unit and maintain the nonconformity of minimum lot area. As such, making the third story an official third dwelling unit requires the requested special permit and variances.
7. The requested relief, if granted, would allow the petitioner to use the existing third story as a third dwelling unit, making the home a three-family home. No structural changes are proposed.

8. At the February 20, 2019 public hearing, the petitioner discussed the proposal. The Board expressed that there was not sufficient information about the situation of the existing house (including a lack of floor plans and site survey), and that there was not a sufficient Statement of Hardship. The Board voted to continue the petition to the March 20, 2019 meeting, noting that the petitioner should provide a complete Statement of Hardship, and should either submit floor plans or have the Building Commissioner visit the site.
9. At the February 20, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.
10. Building Commissioner Tom St. Pierre visited the property on March 11, 2019, during which time he confirmed two points of egress for the third story.
11. The Petitioner submitted a new Statement of Hardship on March 14, 2019.
12. At the March 20, 2019 public hearing, Yandi Figueroa discussed elements noted in the new Statement of Hardship. She noted that Tom St. Pierre visited the site and confirmed the two points of egress for the third floor. Tom St. Pierre stated that the unit has been used this way for many years and there is nothing new.
13. At the March 20, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.
14. Board members Jimmy Tsitsinos and Jimmi Heiserman were not present at the February 20, 2019 public hearing. In signed affidavits of service, both Mr. Tsitsinos and Mr. Heiserman certified that they examined all evidence pertaining to 15 Salem Street distributed at the single missed session on February 20, 2019, including an audio recording of the missed session. They were thus eligible to vote on the matter in the March 20, 2019 public hearing.

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, and the Petitioner's presentation and public testimony, makes the following **findings** that the proposed project meets the provisions of the City of Salem Zoning Ordinance:

Findings for Special Permit:

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

1. There are social, economic and community needs served by the proposal.
2. Regarding traffic flow and safety, including parking and loading, there is a parking lot on site that fits up to six cars in tandem parking; this will not impact on-street parking.
3. As there will be no greater demands on utilities or public services, the existing utilities and public services are adequate.
4. There will be no impacts on the natural environment, including drainage, as there will be no structural changes.
5. The proposal fits with the neighborhood character and other dwellings in the neighborhood as the property is located in the Residential Multifamily zoning district.
6. The potential fiscal impact, including impact on City and tax base and employment, is positive: this proposal could generate additional taxes for the City.

Special Permit:

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Mike Duffy (Chair), Jimmi Heiserman, Patrick Shea, Peter A. Copelas, and Jimmy Tsitsinos) and none (0)

opposed to grant the requested Special Permit per Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to allow the use of the existing third story as a third unit in the two-family home at **15 Salem 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. A Certificate of Occupancy is to be obtained.
4. A Certificate of Inspection is to be obtained.
5. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Findings for Variance:

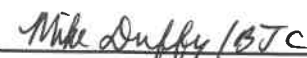
1. Special conditions and circumstances especially affect the land, building, or structure involved, generally not affecting other lands, buildings, and structures in the same district: The petitioner purchased the building with the third story built out as a dwelling unit, but it was not officially deemed such.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant: the property has been taxed by the City as a three-family home for several years, and literal enforcement of the provisions of the Ordinance would prevent the applicant from using the third story as an additional dwelling unit.
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: as this property is located in the Residential Multifamily zoning district, the use of this property as a three-family house is in keeping with the intent of the district. As no structural changes are required in this proposal, there will not be substantial detriment to the public good.

Variance:

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Mike Duffy (Chair), Patrick Shea, Jimmy Tsitsinos, Jimmi Heiserman, and Peter A. Copelas) and none (0) opposed to grant the requested variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for minimum lot area and minimum lot area per dwelling unit to allow the use of the existing third story as a third unit in the two-family home at **15 Salem 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.
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Mike Duffy, Chair
Board of Appeals

City of Salem Board of Appeals
April 3, 2019
Project: 15 Salem Street
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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.