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SALEM, MASS

December 19, 2019

Decision

City of Salem Board of Appeals

Petition of SCOTT SOBOLEWSKI for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance for minimum lot area per dwelling unit to officially convert a single-family home to a two-family home at 169 NORTH STREET (Map 27, Lot 105) (R2 and ECOD Zoning Districts). The property has been used and assessed as a two-family home.

A public hearing on the above Petition was opened on November 20, 2019 pursuant to M.G.L. Ch. 40A, § 11. No testimony was heard during the November 20, 2019 hearing. The petition was continued to December 18, 2019 and closed on that date with the following Salem Board of Appeals members present: Peter Copelas, Mike Duffy (Chair), Carly McClain, Rosa Ordaz, and Jimmy Tsitsinos. At the November 20, 2019 meeting, only Peter Copelas, Mike Duffy (Chair), and Rosa Ordaz were in attendance, and no testimony was heard; this is discussed in the Statements of Fact below.

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 October 8, 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 officially convert the existing home at 169 North Street from a single-family home to a two-family home. The property has been used and assessed as a two-family home.
2. Petitioner Scott Sobolewski submitted the petition. As noted below, at the December 18, 2019 meeting of the Board of Appeals, Adam Doane presented the petition on behalf of Mr. Sobolewski.
3. The property is a home in the Residential Two-Family (R2) zoning district and the Entrance Corridor Overlay District (ECOD).
4. Per the "Table of Principal and Accessory Use Regulations" in Section 3.1 *Principal Uses* of the Salem Zoning Ordinance, "Dwelling, Two-family" is an allowed use in the R2 zoning district.
5. A search of the Building Department's records did not turn up any evidence of a legal conversion of this property to a two-family home. As such, it is not currently considered a two-family home by the Building Department.
6. The application argues that "City does not have proper records for when this property was converted legally to a 2-family." According to the application, "The property has been used as a two family (and assessed) as a two family for as long back as electronic records in 1999." Petitioner included documents reflecting assessment of the property as a two-family, which is not determinative of its legal status.

7. In addition to the petition form, the application included a written statement speaking to some of the sales and assessment history of the property as well as to special permit criteria including potential fiscal impact, traffic safety and parking, utilities, and neighborhood character. As noted in this written statement, the application also included two MLS listings of the property [#3059431 and #70572760], assessments from 1999-2018, [information about] a building permit, an interior field card, and a mortgage plot plan showing the parking layout.
8. The proposal is to officially convert this single-family home to a two-family home. No structural changes are proposed.
9. The petitioner is requesting a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance. This section notes, in part, that “In the event that the Building Commissioner determines that the nonconforming nature of such structure would be increased by the proposed reconstruction, extension, alteration, or change, the Board of Appeals may, by special permit, allow such reconstruction, extension, alteration, or change where it determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.”
10. The existing property is nonconforming at least in terms of minimum lot area and minimum lot area per dwelling unit. The lot area is 4,356 square feet. The required minimum lot area in the Residential Two-Family (R2) zoning district is 15,000 square feet.
11. As the property is currently on record with the Building Department as a single family, the existing lot area per dwelling unit is 4,356 square feet, which is less than the required 7,500 square feet. Under this proposal, in officially increasing the number of dwelling units from one to two, the lot area per dwelling unit would decrease from 4,356 square feet to 2,178 square feet, thus increasing the nonconformity of minimum lot area per dwelling unit.
12. In this case, though no structural change is proposed and the proposed use is allowed, the increase in nonconformity of minimum lot area per dwelling unit triggers the requirement for relief per Section 3.3.5.
13. The requested relief, if granted, would allow the petitioner to officially convert the home at 169 North Street from a one-family home to a two-family home.
14. On October 30, 2019, petitioner Scott Sobolewski submitted a letter authorizing his real estate agent, Adam Doane, to serve as his representative before the Board.
15. At the November 20, 2019 meeting of the Board of Appeals, only three Board members were in attendance: Peter Copelas, Mike Duffy (Chair), and Rosa Ordaz. 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 November 20 meeting, and all petitions were continued to the next regularly scheduled meeting. In the meeting, the Board voted three (3) in favor (Peter Copelas, Mike Duffy (Chair), and Rosa Ordaz) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting, December 18, 2019.
16. At the December 18, 2019 meeting of the Board of Appeals, Adam Doane, representing petitioner Scott Sobolewski, discussed the proposal. Mr. Doane noted that the property has been assessed as a two-family since 1999 and that there would be no impact on taxes going forward. He noted that there are five parking spots and there is adequate parking: two garage spots and three on Bryant Street. [These are off-site parking spots.] He stated that traffic will not be hindered in any way and nothing

changes in regard to that. Mr. Doane noted that there are two heating systems, two electrical systems, and two gas meters, and that there are proper egresses for both units. He noted that the property was marketed as a two-family when it was sold in 2001 and again when it was sold to the current owner [the petitioner] in 2007. Mr. Doane stated that Salem Fire Prevention has a record of the Smoke Certificate as a two-family from the 2007 sale. He identified nearby two- and three-family buildings.

17. At the December 18 meeting, Mr. Doane added that the property has been operated as a two-family for twenty years. He stated that before 1999 - he believes in 1998 - a permit was pulled to add another egress. He suggested that at the time, they either did not go through the final step of making it a two-family, or something was done a long time ago and it is no longer in anybody's system.
18. At the December 18 meeting, Mr. Doane noted that when the application was filed, Mr. Sobolewski went with a building inspector to the property, who said the property is "good to go."
19. At the December 18 meeting, there was discussion among Board members, Zoning Enforcement Officer/Building Commissioner Tom St. Pierre, and Mr. Doane. Mr. St. Pierre noted that Assessor's records have no bearing legally on the standing. The Building Department could not find a building permit, special permit, or variance to go from a one-family to a two-family. Mr. St. Pierre stated that the mere passage of time since a building permit was issued to add an egress is not a strong argument for the Board to view the property as a lawful two-family.
20. At the December 18 meeting, the discussion shifted from the argument of the petitioner that the property has been used as a two-family to a discussion of whether the Board would now approve converting the property from a single-family to a two-family house based on the standard special permit criteria. As noted above, the requested relief is a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures*. Based on the petition including the written documentation that was submitted, the Board was able to find that the special permit criteria were satisfactorily met, as discussed below.
21. At the December 18 meeting, Board member Carly McClain asked when the sale of the property is supposed to go through. Mr. Doane indicated that it was supposed to go through a couple of months ago, and that the approval of this Board is the one thing that is holding it back.
22. At the December 18, 2019 public hearing, no (0) members of the public spoke in favor of or in 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: Adding a second unit works towards alleviating the need of housing in the City of Salem.
2. Traffic flow and safety, including parking and loading: There is adequate parking for two units on the property. No parking variances are being requested.
3. Adequacy of utilities and other public services: There appear to be adequate utilities. Utilities are installed as if they are serving two separate units.
4. Impacts on the natural environment, including drainage: No such impacts are anticipated as no change to the exterior of the building is proposed.

5. Neighborhood character: There are other two-family homes in the immediate and adjacent area around the property. The approval would be consistent with buildings in the neighborhood and with the neighborhood character.
6. Potential fiscal impact, including impact on City tax base and employment: Continuing to tax the property as a two-family and approving its lawful use in such status may have a positive fiscal impact either to the value of the property or its generation of tax revenue. There was no evidence of any negative fiscal impact.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Rosa Ordaz, Jimmy Tsitsinos, Carly McClain, Peter Copelas, and Mike Duffy (Chair)) 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 Ordinance for minimum lot area per dwelling unit to officially convert a single-family home to a two-family home at **169 North 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. 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.

 / 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.