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MAYOR

# CITY OF SALEM, MASSACHUSETTS

## BOARD OF APPEALS

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**April 16, 2024**

### **Decision**

### **City of Salem Board of Appeals**

The petition of 28 FAIRMOUNT STREET, LLC at 28 FAIRMOUNT STREET (Map 27, Lot 164) (R2 Zoning District) for a Special Permit per Section *3.3.5 Non-conforming Single- and Two-Family Structures* of the Salem Zoning Ordinance to request Board of Appeals approval for work of a previous owner which added two dormers to the 3rd floor and to alter the rear exterior stairs/deck.

A public hearing on the above petition was opened on February 14, 2024, and was continued to March 20, 2024, and was closed on March 20, 2024.

On February 14, 2024, the following members of the Salem Board of Appeals were present: Nina Vyedin (Chair), Paul Viccica, Hannah Osthoff, and Ellen Simpson.

On March 20, 2024, the following members of the Salem Board of Appeals were present: Nina Vyedin (Chair), Carly McClain, Hannah Osthoff, and Ellen Simpson.

### **Statements of Fact:**

The petition is date stamped January 24, 2024. The Petitioner seeks the Board of Appeals approval for work that was completed by the previous owner without permits.

1. 28 Fairmount Street is owned by 28 Fairmount Street, LLC.
2. The petitioner was 28 Fairmount Street, LLC.
3. Attorney Bill Quinn was the representative.
4. 28 Fairmount Street is located in the R2 Zoning District (Map 27, Lot 164).
5. On February 14, 2024, Bill Quinn presented the requested relief to the board.
6. Attorney Quinn stated that he was at the board to represent the new owners of 28 Fairmount Street: 28 Fairmount Street, LLC.
7. Attorney Quinn stated that the prior owner had received a demolition permit, however, they did much more work at the property, including installing dormers and a large rear stair tower without a building permit.
8. On February 3<sup>rd</sup>, 2023, Building Commissioner, Tom St. Pierre, issued a stop work order. In the letter, it stated that they would need approval from the Board of Appeals for the work they wanted to complete.

9. The new owners of 28 Fairmount Street are requesting a special permit from the board. This is to complete the work that was stopped about a year ago. The request is for the board to grant the special permits; so that the new owners do not have to demolish the current construction and start the construction over again.
10. Attorney Quinn stated that the current owners have spoken to the neighbors about their intentions. The new owners will keep the property as a two-family. They will not seek a third unit for the structure.
11. Attorney Quinn stated that they intend to remove the stairs that have access to the third floor on the structure. This removal would ensure that there will not be a third unit at any time at 28 Fairmount Street.
12. Darguin Fortuna, Flow Design Architects, 50 Grove Street, Salem, MA, discussed the plans for the board. Mr. Fortuna stated that the house is gutted currently, and they are seeking to create a first-floor unit with use of the basement for the first-floor unit. A second-floor unit that will be comprised of the second and third floors.
13. Mr. Fortuna also presented the new proposed parking plan with three spaces at the rear of the property.
14. Nina Vyedin stated that she has seen photos of the property before the construction and the dormers on the structure were much narrower than they are currently from the unpermitted renovation. Mr. Fortuna confirmed that the current dormers are larger than the original dormers that were on the structure.
15. Paul Viccica stated that he was concerned with the lack of detail surrounding the requested relief. He stated that in this particular application, because work has been done, it would have been more reasonable to request what had not been conforming from the original house to what has been done in the past and asked for a special permit specifically for the things that are now part of the house that are being changed.
16. Mr. Viccica stated that he would like to see a zoning table of the original structure, the current structure, and the proposed structure. It would help him to understand what was there, what has changed and what is being proposed. As well as any photos that can demonstrate any conditions from the three states of the structure, pre-2023, current, and proposed.
17. Nina Vyedin opened the meeting up to public comment.
18. Andrew Grilz, 21 Nursery Street, stated he is much happier with the scaled down version from a three-family to a two-family and with the current proposed plans.
19. Dave Titus, 53 Appleton Street, stated his backyard abuts the backyard at 28 Fairmount Street. He is glad that they are removing the third-floor portion of the stairs at the rear of the property. He stated his concern is the proposed parking at the rear of the property. His concern was the increase in impervious surface and stormwater runoff onto his property. He stated that flooding is already an issue for his property due to it being ten to twelve feet below the yard at 28 Fairmount Street.

20. Darguin Fortuna stated that he could design the parking in a way to offset the runoff.
21. Attorney Quinn requested to continue to the March 20<sup>th</sup>, 2024, meeting in order to get the requested documents for the board.
22. Ellen Simpson made a motion to approve the request for a continuance.
23. On March 20, 2024, Attorney Bill Quinn continued to discuss the plans at 28 Fairmount Street.
24. Attorney Quinn reiterated that the prior owner, without building permits, tried to convert the structure to a three-family house by putting dormers and a three-story exterior stairway on the building. His clients are in front of the board to get the proper approval to continue to work at the property.
25. Attorney Quinn, at the request of the board, presented a four-column diagram that showed the various dimensions: the pre-existing dimensions as best their architect could reconstruct them from photographs. Also, the existing conditions and what the proposed conditions are.
26. Attorney Quinn stated that there are no new non-conformities except the definition of a third story with the addition of the dormers.
27. Attorney Quinn stated that they plan to remove the third-story stairs and replace the stairs with a two-story stairway.
28. At the February 14, 2024, meeting, a neighbor had raised concerns that surface water drainage was coming downhill onto his property. The architectural firm, Flo Design, designed a non-paved, permeable parking surface and curbing to assist with rainwater run-off.
29. Nina Vyedin stated that she appreciated that they have included the required two (2)-foot setback for parking from the lot line.
30. Carly McClain stated that she appreciated Attorney Quinn's attention to detail and the time he took translating the request from the board for the March 20, 2024, meeting.
31. Ellen Simpson said she too appreciated the work that went into drainage and the permeable pavement.
32. Nina Vyedin opened the meeting up to public comment. There were no public comments.

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:

### **Special Permit Findings:**

The Board finds that the adverse effects of the proposed use will not outweigh its beneficial impacts to the City or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors

that may be set forth in the zoning ordinance, the determination includes consideration of each of the following:

1. Social, economic, or community needs are served by this proposal. The proposal meets the community needs by adding two additional dwelling units to Salem's housing stock that are up to building codes and standards.
2. Traffic flow and safety, including parking and loading: the applicant is providing legal and adequate parking for three vehicles.
3. Adequate utilities and other public services already service the structure. The necessary municipal utilities that serve the original structure will also serve the new units.
4. Impacts on the natural environment, including drainage: there will be no impact on the natural environment.
5. Neighborhood character: the project is in keeping with the neighborhood character.
6. Potential fiscal impact, including impact on city tax base and employment: Construction will allow for new and temporary construction jobs and the new units will add to the city's tax base.

On the basis of the above statements of fact and findings, **the Salem Board of Appeals voted four (4) in favor (Nina Vyedin (Chair), Carly McClain, Ellen Simpson, Hannah Osthoff) and none (0) opposed** to grant 28 FAIRMOUNT STREET, LLC a Special Permit per Section *3.3.5 Non-conforming Single- and Two-Family Structures* to request Board of Appeals approval for work of a previous owner which added two dormers to the 3rd floor and to alter the rear exterior stairs/deck, 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 Occupancy is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any city board or commission having jurisdiction including, but not limited to, the Planning Board.
9. Petitioner shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to be visible from the street.
10. Unless this decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
11. All construction shall be done per the plans and dimensions submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.
12. Petitioner shall schedule Assessing Department inspections of the property, at least annually, prior to project completion and a final inspection upon project completion.

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Nina Vyedin, 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.