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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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2019 JUL -3 PM 3:03
CITY CLERK
SALEM, MASS

July 3, 2019

Decision

City of Salem Board of Appeals

Petition of SUSAN & JOHN FRACZEK for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to build an unattached 13' by 24' garage, nonconforming to setbacks, next to the single-family home (a nonconforming structure) at 29 CUSHING STREET (Map 17, Lot 121) (R1 Zoning District).*

***NOTE:** Following the first public hearing and the Zoning Board's suggestions, the petitioner submitted revised plans, effectively modifying the petition to be a request for a special permit per Section 3.3.5 to build a 13' by 24' garage attached to the single-family home. The garage will not be nonconforming to setbacks. Zoning relief is still required to expand a nonconforming single-family residential structure.

A public hearing on the above Petition was opened on May 15, 2019 pursuant to M.G.L Ch. 40A, § 11, continued to June 19, 2019, and closed on June 19, 2019 with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica (alternate). Patrick Shea and Jimmy Tsitsinos were present at the May 15, 2019 public hearing, but not the June 19, 2019 public hearing. Patrick Shea recused himself at the May 15, 2019 hearing.

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 April 11, 2019, the petitioner requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to build an unattached 13' by 24' garage, nonconforming to setbacks, next to the single-family home at 29 Cushing Street.
2. John Fraczek, on behalf of petitioners Susan & John Fraczek, presented the petition.
3. The property is a single-family home located in the Residential One-Family (R1) Zoning District.
4. The property is nonconforming to several dimensional requirements, including at least minimum lot area, minimum lot area per dwelling unit, minimum lot frontage, minimum lot width, maximum lot coverage by all buildings, minimum depth of front yard, minimum width of side yard (left side of property).
5. The petitioner initially proposed to build an unattached 13' by 24' garage to the right of the existing primary structure, located three inches (3") from the lot line between 29 Cushing Street and 31 Highland Street. The garage was proposed to be located five feet from the primary structure.
6. Section 3.2.4 *Accessory Structures* of the Salem Zoning Ordinance states in relevant part: "No accessory building or structure shall be located nearer than ten (10) feet to the principal building, unless such

accessory building or structure is attached to the principal building”; “No unattached accessory building or structure shall be located nearer than five (5) feet to any side lot line.” This proposal would fail to meet both these requirements, and thus would require relief from Section 3.2.4 *Accessory Structures* in addition to Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures*.

7. The requested relief, if granted, would allow the petitioner to build an unattached 13' by 24' garage, nonconforming to setbacks, at the property at 29 Cushing Street.
8. At the May 15, 2019 public hearing, Susan Fraczek discussed the petition. Patrick Shea recused himself because he is a direct abutter to the property. Members of the Board of Appeals expressed concern about the location of the garage so close to the lot line, including that the gable would overhang onto the neighboring property and that there might be maintenance issues. The Board suggested that moving the garage further back (i.e., further away from Cushing Street) would provide the opportunity to move the garage to the left as well, thus increasing the setback between the garage and the lot line.
9. The May 15, 2019 hearing was not opened for public comment.
10. At the May 15, 2019 public hearing, the petitioner requested to continue the petition to the next regularly scheduled meeting on June 19, 2019. The Board voted four (4) (Mike Duffy (Chair), Peter A. Copelas, Jimmi Heiserman, Jimmy Tsitsinos) in favor, none (0) opposed, and one (1) (Patrick Shea) abstaining to approve the motion to continue to the next regularly scheduled meeting. (Paul Viccica, as an alternate member, did not vote.)
11. Prior to the June 19, 2019 meeting of the Board of Appeals, petitioner John Fraczek submitted revised plans, with the garage moved back (further from the front lot line) and left (moved from the side lot line). The submission of these plans effectively modified the petition. These plans included a plot plan dated October 10, 2018, prepared by David P. Terenzoni, Professional Land Surveyor for John F. & Susan M. Fraczek. The petitioner drew the proposed garage location on this plot plan. Under the revised proposal, the garage remains 13' by 24', but is attached to the existing building. The garage is proposed to be located 5.9' from the side lot line and 19' from the rear lot line.
12. Under the revised proposal, the petition does not require relief from Section 3.2.4 *Accessory Structures*, because the garage is proposed to be attached to the principal building and located more than five feet from any side lot line. In addition, the garage is no longer nonconforming to setback requirements. However, zoning relief is still required to expand a nonconforming single-family residential structure.
13. At the June 19, 2019 public hearing, John Fraczek discussed the petition and the revised plans.
14. At the June 19, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.
15. At the June 19, 2019 public hearing, Paul Viccica stated that the issues raised at the previous meeting have been taken care of. Peter A. Copelas noted that the Statement of Grounds addresses the required special permit criteria.

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 structure is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

1. No impact is anticipated on social, economic and community needs served by the proposal: the structure will be set back and will not block any views or sun.
2. Traffic flow and safety, including parking and loading, will not be impacted due to the setback of the garage. The proposal will add one (1) extra spot of driveway parking.
3. Adequate utilities and public services service the property. The garage doors will be manual.
4. There will be no change in impacts on the natural environment, including drainage, as there will be no trees or foliage cut down and the pitch of the driveway allows for sufficient drainage.
5. Neighborhood character: The proposal fits into the neighborhood character: there are many homes with garages nearby. The garage will match the existing house.
6. Potential fiscal impact, including impact on City tax base and employment: There is likely to be a positive fiscal impact as this proposal will increase the value of the property.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Mike Duffy (Chair), Jimmi Heiserman, Peter A. Copelas, 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 Ordinance to build an **attached** 13' by 24' garage connected to the single-family home* (a nonconforming structure) at **29 Cushing Street**, subject to the following **terms, conditions, and safeguards**:

***NOTE: Following the first public hearing and the Zoning Board's suggestions, the petitioner submitted revised plans, effectively modifying the petition to be a request for a special permit per Section 3.3.5 to build an attached 13' by 24' garage. The garage will not be nonconforming to setbacks. Zoning relief is still required to expand a nonconforming single-family residential structure.**

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. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.


Mike Duffy, Chair
Board of Appeals

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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.