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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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2020 JAN 30 PM 3:18
CITY CLERK
SALEM, MASS

January 30, 2020

Decision

City of Salem Board of Appeals

Petition of BARRY KERNFELD & SALLY MCMURRY for a special permit per Section 3.3.4 *Variance Required* of the Salem Zoning Ordinance to extend an exterior wall along the same nonconforming distance by expanding an existing deck along an existing nonconforming side yard setback at the multi-family residential building at 54 FORRESTER STREET (Map 41, Lot 223) (R2 Zoning District).

A public hearing on the above Petition was opened on January 15, 2020 pursuant to M.G.L. Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Peter Copelas, Mike Duffy (Chair), Carly McClain, Rosa Ordaz, Jimmy Tsitsinos, and Paul Viccica.

The petitioner seeks a special permit per Section 3.3.4 *Variance Required* of the Salem Zoning Ordinance.

Statements of Fact:

1. In the petition date-stamped December 16, 2019, the petitioner requested a special permit per Section 3.3.4 to extend an exterior wall along the same nonconforming distance. Specifically, they requested "...to expand an existing deck along a nonconforming side yard set back. Existing set back is 5 ft. Required is 10 ft." [Punctuation added.]
2. 54 Forrester Street is a multi-family residential building containing six condominium units in the Residential Two-Family (R2) zoning district. Multifamily dwelling is a nonconforming use in the R2 zoning district.
3. The property is nonconforming to several dimensional requirements, including at least minimum lot area, minimum lot area per dwelling unit, maximum lot coverage, minimum lot frontage and width, and front, rear, and side yard setbacks.
4. At Unit 1 of 54 Forrester Street, owned by petitioners Barry Kernfeld & Sally McMurry, there is an existing deck, as well as a disconnected bulkhead to access basement laundry. The proposal is to move the existing stairs off the deck from one side of the deck to the other, and to extend the deck out to the bulkhead.
5. The extension of the deck would be along the existing setback. Under this proposal, the setback would not be decreased.
6. Section 3.3.4 *Variance Required* of the Salem Zoning Ordinance states in relevant part that "the extension of an exterior wall at or along the same nonconforming distance within a required yard shall require a special permit and not a variance from the Board of Appeals."
7. On the application, the extension is described as being along "a nonconforming side yard set back." In the notices of this petition that were mailed to abutters and posted in The Salem News, the petition

was advertised as being an extension “along an existing nonconforming side yard setback.” However, the extension is actually along an existing nonconforming rear yard setback.

8. Although the extension is along a nonconforming rear yard setback and not a nonconforming side yard setback, the same relief – a special permit per Section 3.3.4 – is required. However, where the required side yard setback in the R2 district is 10 feet, the required rear yard setback in the R2 district is 30 feet.
9. Planner Brennan Corrison consulted with City Solicitor Elizabeth Rennard as well as the petitioner about this issue. It was determined that the issue of referring to side yard rather than rear yard was minor enough to not require re-advertising the petition with corrected language. The petitioner was given the opportunity to re-advertise and decided not to re-advertise and to instead move forward with the petition as-is. As noted below, this situation was explained in the January 15, 2020 meeting.
10. The requested relief, if granted, would allow the petitioner to extend an exterior wall along the same nonconforming distance by expanding an existing deck along an existing nonconforming rear yard setback at 54 Forrester Street.
11. At the January 15, 2020 meeting of the Board of Appeals, Brennan Corrison explained the situation noted in Statement of Fact #9 above. Petitioners Barry Kernfeld and Sally McMurry discussed their petition. Mr. Kernfeld explained the layout of the change and noted that it would give them a small space to sit outside in nice weather. The change will shift the stairs from the right side to the left side of the door (facing out towards the back fence) and would extend the porch to the existing bulkhead. He noted that the railing of the porch will not extend past the bedroom window. He noted that there is a solid wooden fence at the back of the property.
12. At the January 15, 2020 public hearing, one (1) member of the public stated that he did not have any issues with the proposal. No (0) members of the public spoke in opposition to the proposal.
13. At the January 15, 2020 public hearing, Chair Duffy discussed the 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**:

Special Permit Findings:

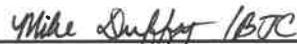
The Board finds that the proposed nonconforming structure is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

1. Some social, economic, or community needs are served by the proposal. This change would make the space more usable for the applicant
2. Traffic flow and safety, including parking and loading: No impact is anticipated.
3. Adequacy of utilities and other public services: No impact is anticipated.
4. Impacts on the natural environment, including drainage: No impact is anticipated.
5. Neighborhood character: The changes will be made in the back of the property. The property has a solid wooden fence along the back. No impact on neighborhood character is anticipated. The proposal appears to be in keeping with the existing neighborhood.
6. Potential fiscal impact, including impact on City tax base and employment: Having an enjoyable space on the outside of the building could have a positive fiscal impact, including on the City tax base.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Mike Duffy (Chair), Paul Viccica, Peter Copelas, Rosa Ordaz, and Jimmy Tsitsinos) and none (0) opposed to grant the requested special permit per Section 3.3.4 *Variance Required* of the Salem Zoning Ordinance to extend an exterior wall along the same nonconforming distance by expanding an existing deck along an existing nonconforming rear yard setback at the multi-family residential building at **54 FORRESTER STREET** (Map 41, Lot 223) (R2 Zoning District), 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, 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.