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MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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CITY CLERK SALEM, MASS

## August 3, 2016 Decision

### City of Salem Board of Appeals

**Petition of RICARDO and ROSE HELEN GARCIA seeking Variances requesting relief from Sec. 4.1.1 *Table of Dimensional Requirements* from minimum lot area per dwelling unit, number of stories and a Special Permit per Sec. 3.3.5 *Nonconforming Structures* to construct a rear egress at 24 LEMON STREET (Map 36 Lot 44)(R2).**

A public hearing on the above Petition was opened on July 20, 2016 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Rebecca Curran (Chair), Peter A. Copelas, Jimmy Tsitsinos, Paul Viccica (alternate).

The Petitioner seeks seeking a Variance from the provisions of Sec. 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance, for minimum lot area per dwelling unit, number of stories and a Special Permit per Sec. 3.3.5 *Nonconforming Structures* to allow two (2) dwelling units at the property.

#### Statements of fact:

1. In the petition date-stamped June 27, 2016, the Petitioner requested a Variance from the provisions of Sec. 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance, for minimum lot area per dwelling unit, number of stories and a Special Permit per Sec. 3.3.5 *Nonconforming Structures*.
2. Attorney Louis Izzi of Bell & Izzi, Melrose, MA- presents the petition.
3. The property is an existing single-family home in an R-2 Zoning District.
4. The petitioner is proposing to create a second dwelling unit, which is allowed by-right in the R2 Zoning District.
5. The property is currently used as a single family home on an existing 4,084 square feet of the 15,000 square foot lot area per dwelling unit required.
6. The petitioner is proposing to construct two (2) dormers and a rear egress for the proposed second unit.
7. The Building Inspector ruled at the July 20, 2016 meeting that the petitioner could request a special permit per Sec. 3.3.5 *Nonconforming Single and Two-Family Residential Structures* to reconstruct, extend, or structurally change the existing non-conforming structure to allow the construction of the dormers and rear egress where the Board determines that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.
8. The petitioner proposed to formally create a driveway and three (3) parking spaces, which meets the parking requirements of the Salem Zoning Ordinance.
9. The petitioner has requested and received a permit for a formal curbcut at the property.

10. The petitioner is proposing to construct a second unit, rear stairway to the second unit and construct dormers in accordance with plans submitted, "24 Lemon Street", dated March 4, 2016 by RD Design & Construction Corp.
11. The requested relief, if granted, would allow the petitioner to allow two (2) dwelling units, dormers and a rear egress.
12. At the public hearing, no (0) members of the public spoke in support and two (2) members spoke in opposition to the petition.

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 Permits:**

**The Board finds that the proposed modification will not be substantially more detrimental than the existing nonconforming structure to the neighborhood.**

1. The proposed change or extension of a non-conforming structure to allow the proposed dormers and rear staircase would not be more substantially detrimental than the existing non-conforming structure to the impact on the social, economic or community needs served by the proposal.
2. There are no impacts on traffic flow and safety, including parking and loading as the on-site parking requirements are met.
3. The capacity of the utilities is not affected by the project.
4. There are no impacts on the natural environment, including drainage as the petitioner is proposing to use pervious materials for the new parking area.
5. The rehabilitation of the building and the creation of an additional dwelling unit conform to the existing neighborhood character.
6. The potential fiscal impact, including impact on the City tax base is positive.

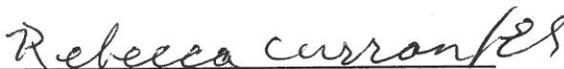
#### **Findings for Variance:**

1. Special conditions and circumstances that especially affect the land, building, or structure is that the lot is an existing irregularly shaped and undersized lot.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant as the use requested is one that is available as a matter of right in the R2 Zoning District.
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.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted four (4) in favor (Rebecca Curran, Peter A. Copelas, Jimmy Tsitsinos, Paul Viccica (alternate) and none (0) opposed, to allow to two (2) dwelling units at the property subject to the following **terms, conditions and safeguards**:

Standard Conditions:

1. The 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.

  
Rebecca Curran, 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.*