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FILE #
CITY CLERK, SALEM, MASS.

January 4, 2017

Decision

City of Salem Board of Appeals

Petition of ARSEN SHERAJ seeking a Special Permit per Sec. 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to expand the nonconforming structure and a Variance per Sec. 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for minimum lot area per dwelling unit at 2 BRADFORD STREET (Map 17, Lot 50)(R-2 Zoning District).

A public hearing on the above Petition was opened on October 19, 2016 pursuant to M.G.L. Ch. 40A, § 11. The hearing was continued to November 16, 2016 and December 21, 2016 and closed on that date with the following Salem Board of Appeals members present: Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, and Jimmy Tsitsinos.

The petitioner is seeking a Special Permit per Sec. 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to expand the nonconforming structure and a Variance per Sec. 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for minimum lot area per dwelling unit.

Statements of fact:

1. In the petition date-stamped September 27, 2016, the Petitioner requested a Special Permit per Sec. 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to expand the nonconforming structure and a Variance per Sec. 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for minimum lot area per dwelling unit.
2. Nicole Magno, wife of Arsen Sheraj, and Attorney Quinn presented the petition.
3. The petitioner proposes removing an existing garage to construct a 2.5 story addition connected to the existing non-conforming structure and to convert the single-family structure into a two (2) family structure.
4. The property is located in an R2 (Residential Two-Family) district.
5. The proposed construction is an alteration, extension and change which will increase the non-conforming nature of the existing structure will be within six (6') feet of the side-yard setback where the requirement is ten (10') feet. The structure will also be within 13.5' feet of the rear setback where thirty (30') feet is required. The subject lot contains 7,558 square feet where 7,500 square feet per dwelling unit is required.
6. The petitioner is also proposing to convert the existing single family home into a duplex. A two (2) family use is allowed by right.
7. The petitioner is proposing three (3) parking spaces and complies with the requirements of the Salem Zoning Ordinance.

8. On October 19, 2016, the Board requested that the site plans show the parking layout and suggested to the petitioner to remove as many non-conformities as possible.
9. On November 9, 2016, Attorney Quinn submitted supplemental information on behalf of the applicant. Attorney Quinn, provided a counter opinion of the Zoning Ordinance that the applicant needed to request a Variance for minimum lot size per dwelling unit. The Zoning Ordinance in Sec. 3.3.5 Nonconforming Single- and Two-Family Residential Structures provides 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. At the public hearing on November 16, 2016, Attorney Quinn restated this opinion and the Board requested that a legal opinion on the interpretation of the Zoning Ordinance be sought. The petitioner requested a continuation to the next regularly scheduled meeting on December 21, 2016.
11. In a memo dated December 2, 2016, the City Solicitor provided an opinion on the interpretation of the Zoning Ordinance as it pertains to the expansion of existing single and two-family non-conforming structures and found that the petitioner did not require a Variance, but rather a special permit is the appropriate relief.
12. At the public hearing on December 21, 2016 the Board discussed the legal opinion and considered the criteria of the request for a Special Permit per *Sec. 3.3.3 Nonconforming Structures* and *Sec. 3.3.5 Nonconforming Single and Two-Family Residential Structures* of the Salem Zoning Ordinance to allow the petitioner to reconstruct, extend, alter or change the nonconforming structure.
13. The requested relief, if granted, would allow the Petitioner Special Permit per *Sec. 3.3.3 Non-Conforming Structures* and *Sec. 3.3.5 Nonconforming Single- and Two-Family Residential Structures* to expand the nonconforming structure.
14. At the public hearing one (1) member of the public spoke in favor of and none (0) 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 Permit

1. The proposed expansion of a non-conforming structure 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 there are three (3) on-site parking spaces that conform to the parking requirements of the Salem Zoning Ordinance.
3. The capacity of the utilities is not affected by the project.
4. There are no impacts on the natural environment, including drainage.
5. The proposal improves neighborhood character as it improves the property.

6. The potential fiscal impact, including impact on the City tax base is positive.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (Rebecca Curran (Chair), Peter A. Copelas, Jimmy Tsitsinos, Tom Watkins, Mike Duffy) in favor and none (0) opposed, to grant a Special Permit per *Sec. 3.3.3 Nonconforming Structures* and *3.3.5 Nonconforming Single- and Two-Family Residential Structures* to reconstruction, extension, alteration or change a nonconforming single or two-family structure subject to the following **terms, conditions and safeguards**:

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 new construction shall be in harmony with the existing structure.
6. A Certificate of Inspection shall be obtained.
7. A Certificate of Occupancy shall 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.