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MAYOR

CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS

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SALEM, MASS

June 28, 2017

Amended Decision

City of Salem Board of Appeals

Petition of GAIL M. RUSSELL f/k/a GAIL M. MAZZARINI seeking an amendment to existing Decisions dated July 2, 1984 and November 27, 1985 to remove a condition that the premises remain owner occupied, if the property ceases to be owner occupied it will revert to a two-family dwelling at the property located at 19 DEARBORN STREET (Map 27 Lot 365)(R-2 Zoning District).

A public hearing on the above Petition was opened on June 21, 2017 pursuant to M.G.L. Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Rebecca Curran-Cutting (Chair), Peter A. Copelas (Vice-Chair), Tom Watkins, Mike Duffy and Jimmy Tsitsinos.

The Petitioner seeks an amendment to existing decisions dated July 2, 1984 to remove a condition that the premises remain owner occupied, if the property ceases to be owner occupied it will revert to a two-family dwelling. The petitioner is also seeking to amend an existing decision dated November 27, 1985 to remove a condition that the fourth unit shall be occupied by blood relatives only.

Statements of fact:

1. In the petition date-stamped April 24, 2017, the Petitioner seeks an amendment to existing decisions dated July 2, 1984 to remove a condition that the premises remain owner occupied, if the property ceases to be owner occupied it will revert to a two-family dwelling. The petitioner is also seeking to amend an existing decision dated November 27, 1985 to remove a condition that the fourth unit shall be occupied by blood relatives only.
2. Attorney Thomas Alexander, Beverly, MA- presents the petition on behalf of the petitioner.
3. The property is located in an R-2 Zoning District.
4. Gail Russell, purchased the property in 1970 and has been in the neighborhood for 47 years.
5. The existing house is large with +/- 4,750 square feet. The assessor's records list that there are twenty (20) rooms in this structure.
6. One (1) of the existing units is currently occupied by the petitioner, Gail M. Mazzarini. A second unit is occupied by Sue Mazzarini and her children. The other two (2) existing units are occupied by tenants.
7. The petitioner states that if the property were to revert back to a two (2) family structure, the two (2) units would be very large spaces and would be a financial burden to the applicant to deconstruct two (2) of the four (4) existing dwelling units.
8. The existing parking area is 2,064 square feet with the ability to provide two (2) parking spaces for each of the four (4) units.

9. In 1984, the petitioner applied for a special permit, to allow a third dwelling unit with the special condition that the premises remain owner occupied, if the property ceases to be owner occupied it will revert to a two-family dwelling. In 1985, the petitioner applied for another special permit to allow a fourth dwelling unit. At the time, the Zoning Board of Appeals granted the request with a special condition that the fourth unit shall be occupied by blood relatives only.
10. Soon after the 1985 decision, the petitioner constructed an addition to accommodate a fourth dwelling unit.
11. The petitioner is requesting to amend existing decisions dated July 2, 1984 to remove a condition that the premises remain owner occupied, if the property ceases to be owner occupied it will revert to a two-family dwelling. The petitioner is also seeking to amend an existing decision dated November 27, 1985 to remove a condition that the fourth unit shall be occupied by blood relatives only.
12. These special permits were granted about 35 years ago and a lot has changed. The petitioner is working on her estate plan and the possibility that this property could revert back to a two-family with 5 to 7 rooms. The petitioner states that there is no market for two (2) large rental units unless bedrooms are individually rented to students.
13. The petitioner states that the Salem economy has changed and the need for very large dwelling units has also changed. The student population has increased dramatically and there is a need for student housing.
14. The petitioner is a fixed income retiree who cannot afford to change the structure to remove two (2) dwelling units, if the special permit conditions from the 1984 and 1985 decisions are not amended.
15. The petitioner is requesting to keep the four (4) existing dwelling units without the special condition restrictions to require owner occupancy. The petitioner states that all four (4) existing units meet all building code requirements, there is adequate parking, utilities are adequate, the neighborhood character is maintained and the proposal meets a community housing demand for one and two bedroom units. The requested modifications of the decisions are in conformance with the Special Permit requirements.
16. This current use has been maintained for 34 years and fits with character of the neighborhood.
17. The Board chair stated that the petitioner is requesting an amendment for the removal of special conditions associated with a Special Permit request. To not set a precedent, the current Board does not always remove special conditions.
18. There was one (1) other case in the Point Neighborhood whereby the ZBA removed this kind of special condition due to undue hardship on the applicant who was unable to sell a property.
19. Tom St. Pierre, Building Inspector, stated that the Board has a history of previously granting the removal of this kind of these kinds of special conditions.
20. At the time, the Board would not have granted the special permit if these special conditions were not associated with the decision. If the petitioner would have applied to the Board for this request today, it would require a use Variance, which is not a mechanism that is currently allowed in the City of Salem.

21. The Board states that there has been a significant amount of time that has passed since the special permits have been granted.
22. The petitioners are currently in compliance with the special conditions of the existing special permits.
23. At the public hearing, a petition in support was submitted with twelve (12) members of the public in favor and no (0) members of the public spoke in opposition to the amended decision.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (5) in favor (Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Tom Watkins, Jimmy Tsitsinos, Mike Duffy) and none opposed to remove the conditions that the units be owner occupied. Specifically, the Board voted to approve the requested amendment to existing Decisions dated July 2, 1984 and November 27, 1985 to remove a condition that the premises remain owner occupied, if the property ceases to be owner occupied it will revert to a two-family dwelling to amend an existing decision dated November 27, 1985 to remove a condition that the fourth unit shall be occupied by blood' relatives only, subject to the following **terms, conditions and safeguards:**

Conditions:

1. Special condition #1 of the July 27, 1984 Decision shall be removed.
2. Special condition #2 of the November 27, 1985 Decision shall be removed.
3. All other conditions of the above referenced Decisions shall remain in effect.


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.