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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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March 29, 2017

Decision

City of Salem Board of Appeals

Petition of PETER LUTTS, seeking a Special Permit under *Sec. 3.3.5 Nonconforming Single and Two-Family Residential Structures* and *Sec. 4.1.2 Notes to the Table of Dimensional Requirements* of the Salem Zoning Ordinance, to construct 14' wide and 16.6' deep roof deck at 24 WINTER STREET (Map 35 Lot 83)(R2 Zoning District).

A public hearing on the above Petition was opened on February 15, 2017 pursuant to M.G.L Ch. 40A, § 11 and continued to the next regularly scheduled meeting on March 15, 2017. The hearing was closed on that date with the following Salem Board of Appeals members present: Ms. Curran (Chair), Mr. Copelas (Vice-Chair), Mr. Duffy, Mr. Watkins, Mr. Tsitsinos.

The Petitioner seeks a Special Permit per *Sec. 3.3.5 Nonconforming Single and Two-Family Residential Structures* and *Sec. 4.1.2 Notes to the Table of Dimensional Requirements* of the Salem Zoning Ordinance, to construct 14' wide and 16.6' deep roof deck.

Statements of fact:

1. Dan Ricciarelli of Seger Architects and Peter Lutts, applicant, present the petition.
2. A public hearing for the petition was opened on February 15, 2017. No testimony or evidence was heard on that date and the public hearing was continued to the next regularly scheduled meeting on March 15, 2017, at the request of the applicant.
3. In the petition date-stamped January 24, 2017, the Petitioner requested Special Permit under *Sec. 3.3.5 Nonconforming Single and Two-Family Residential Structures* and *Sec. 4.1.2 Notes to the Table of Dimensional Requirements* of the Salem Zoning Ordinance, to construct 14' wide and 16.6' deep roof deck.
4. The applicant is proposing a roof deck on an existing second story. Mr. Ricciarelli believes that there was once a roof deck on this structure as there is an existing door that provides access to the roof. The petitioner is proposing to install decking and a railing on top of the existing flat roof.
5. The petitioner is proposing to place the roof deck on the "L" addition that has an existing flat roof.
6. The applicant had applied to the Historic Commission and deferred to the Zoning Board of Appeal to make a decision before the Historic Commission made a final decision.
7. Mr. Ricciarelli testified that the existing access to the roof is unsafe without a railing.
8. Mr. Lutts testifies that when he bought the house, there was already a water spigot installed and electrical. These existing amenities lead the applicant to believe that the flat roof had been used as a deck.
9. Mr. Ricciarelli stated that the petitioner applied to the Historic Commission with a proposal for a larger roof deck. At the request of the Historic Commission, the roof deck was reduced in size such that the railing of the deck could not be seen from Winter Street. The proposal is to step back the

railing to be behind the existing gabled roofline along Winter Street. The proposed deck is 70' feet away from Oliver Street. It would be difficult to see the roof deck.

10. Mr. Ricciarelli testifies that the deck will be dedicated to the primary owner's unit and no community access will exist. The deck will add value to the property and in turn will create value to the City.
11. No additional parking will be triggered by this proposal
12. There are adequate utilities to the site.
13. The deck will be set back from the existing cornice to screen the floor structure from the street (Oliver and Winter Street). The rail will be as transparent as possible within the limitations of the building code and will be subject to review and approval by the Salem Historic Commission.
14. The Building Commissioner testifies that the height of the railing needed is 36' inches in height for a one or two family structure not the 42" that had been specified by the architect.
15. The Board discussed and expressed concern for privacy for the next door neighbors as the proposed roof deck will face the upper windows of 24 1/2 Winter Street. The proposed deck will be 18' feet from the side yard lot line.
16. The requested relief, if granted, would allow the Petitioner to construct 14' wide and 16.6' deep roof deck in accordance with the proposed plan titled, "Proposed Roof Deck, Lutts Residence, 24 Winter Street, Salem, MA 01970", prepared by Seger Architects Inc. and associated plans.
17. At the public hearings no members of the public spoke in favor or in opposition to the proposal.

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 reconstruction, extension, alteration or change to the non-conforming two-family residential structure is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

1. The Board finds that there are social, economic and community needs served by the proposal.
2. There are no impacts on traffic flow and safety, including parking and loading.
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 conforms to the existing neighborhood character.
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 (5) in favor (Ms. Curran (Chair), Mr. Copelas (Vice-Chair), Mr. Duffy, Mr. Watkins, Mr. Tsitsinos) and none (0) opposed, to grant a Special Permit under *Sec. 3.3.5 Nonconforming Single and Two-Family Residential Structures* and *Sec. 4.1.2 Notes to the Table of Dimensional Requirements* of the Salem Zoning Ordinance, to construct 14' wide and 16.6' deep roof deck, **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 new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy shall be obtained.
7. A Certificate of Inspection 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.

Special Condition:

1. The Special Permit granted by the Zoning Board of Appeals is contingent upon Historic Commission approval.


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.