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CITY OF SALEM, MASSACHUSETTS
BOARD OF APPEALS

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CITY CLERK
SALEM, MASS

December 31, 2019

Decision

City of Salem Board of Appeals

Petition of FRANDY XU for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to expand a nonconforming two-family home by adding an exterior stair and extending an existing dormer at 30 LEACH STREET (Map 33, Lot 585) (R2 Zoning District).

A public hearing on the above Petition was opened on November 20, 2019 pursuant to M.G.L. Ch. 40A, § 11. No testimony was heard during the November 20, 2019 hearing. The petition was continued to December 18, 2019 and closed on that date with the following Salem Board of Appeals members present: Peter Copelas, Mike Duffy (Chair), Carly McClain, Rosa Ordaz, and Jimmy Tsitsinos. Paul Viccica was absent on December 18, 2019. At the November 20, 2019 meeting, only Peter Copelas, Mike Duffy (Chair), and Rosa Ordaz were in attendance, and no testimony was heard; this is discussed in the Statements of Fact below. On November 20, 2019, Rosa Ordaz, Jimmy Tsitsinos, and Paul Viccica were absent; Carly McClain had not yet been confirmed as a Board member.

The petitioner seeks a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance.

Statements of Fact:

1. In the petition date-stamped September 25, 2019, the petitioner requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to expand a nonconforming two-family home by extending an existing dormer and by adding an exterior stair to access the third floor. This proposal would reduce the existing nonconforming rear yard setback.
2. The property is a two-family home in the Residential Two-Family (R2) zoning district. This is an allowed use in the R2 zoning district.
3. The property is nonconforming to front, side, and rear yard setbacks, as well as to minimum lot area and minimum lot area per dwelling unit. In the R2 zoning district, the minimum depth of rear yard is 30 feet. Per the application, the current rear yard setback is 13' 6". The proposed depth will be 6' 10".
4. The requested relief, if granted, would allow the petitioner to expand the existing nonconforming two-family home at 30 Leach Street by adding an exterior stair and extending an existing dormer.
5. As noted, the initial application was date-stamped September 25, 2019. A revised Statement of Grounds was submitted October 7, 2019.
6. The elevations submitted with the petition, dated September 25, 2019, included two different options for executing the exterior stair, designated as Option 1 and Option 2. These were discussed by architect John Seger in the December 18 meeting as noted below.

7. At the November 20, 2019 meeting of the Board of Appeals, only three Board members were in attendance: Peter Copelas, Mike Duffy (Chair), and Rosa Ordaz. Having three members in attendance out of the five-member Board constitutes a quorum (enough members to hold a meeting). However, per the Zoning Board of Appeals' Rules and Regulations, "[t]he concurring vote of at least four (4) members of the Zoning Board of Appeals shall be necessary in any action taken by the Board." As such, the Board could not vote to approve any petitions in the November 20 meeting, and all petitions were continued to the next regularly scheduled meeting. In the meeting, the Board voted three (3) in favor (Mike Duffy (Chair), Rosa Ordaz, and Peter Copelas) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting, December 18, 2019.
8. At the December 18, 2019 meeting of the Board of Appeals, architect John Seger, representing petitioner and property owner Frandy Xu, discussed the proposal. He noted that there is an existing second floor balcony and first floor deck, as well as an existing third floor dormer. The second floor dormer and first floor deck will be removed under this proposal. Mr. Seger noted that the proposal is to extend the dormer and add a stair. He noted that the idea is to put the exterior stair on the outside to accommodate a couple of new bathrooms on the inside.
9. At the December 18, 2019 meeting, Mr. Seger discussed Options 1 and 2. He explained that the two options in terms of the impact on rear yard setback. He stated that Option 1 is the preferred option as Option 2 blocks some of the side windows. Mr. Seger stated that the main reason we are seeking the special permit is to have access to the units from the outside and to free up space inside the house. He stated that the first floor is currently one unit with one bathroom, and the second unit is a townhouse with a bathroom on each floor [two and three]. He stated that there is a need for more than one bathroom, and that Mr. Xu works at night and is hoping to be able to use the back stairs to get to his bedroom late at night so he is not going through the house. Mr. Seger stated that there should be little if any impact on the side yard. He added that you cannot really see the dormer extension because the existing dormer is blocking it.
10. At the December 18, 2019 meeting of the Board of Appeals, Board member Jimmy Tsitsinos asked if there would be a kitchen on the third floor. Mr. Seger responded that there would not be. The third floor would include two bedrooms and a bathroom. Board member Peter Copelas asked about the setbacks under the two options. Mr. Seger stated that one of the options [Option 2] is a 9.5 foot setback, which would be less intrusive; the preferred option would have a 6.9 foot rear yard setback. Mr. Copelas asked whether the 6.9 foot setback is the preferred option; Mr. Seger confirmed. This is Option 1. Mr. Seger explained that this would be less intrusive to the house.
11. At the December 18, 2019 meeting, Mr. Seger explained that the proposal would take the second means of egress from inside the building to outside the building.
12. At the December 18, 2019 meeting, Mr. Tsitsinos was concerned about making a third unit. There was discussion about the internal and external stairs and the proposal. Mr. Tsitsinos took issue with the proposal.
13. At the December 18, 2019 meeting, there was further discussion among Mr. Seger, Mr. Xu, and the Board about the interior layout. Board member Carly McClain asked Mr. Seger if they are adding a third bathroom to the second unit. Mr. Seger answered in the affirmative. Mr. Copelas asked if they are adding two bathrooms to the whole house: one on the first floor and one on the second floor or third floor. Mr. Seger responded in the affirmative, noting that the bathroom is being added to the second floor.
14. At the December 18, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.

15. At the December 18 meeting, Mr. Seger presented interior plans and explained circulation and layout, including the addition of bathrooms. Mr. Tsitsinos asked if a second egress is needed on the third floor (as the second unit has an egress on the second floor). Mr. Seger responded that it is strictly the owner's request for convenience. There was more discussion of these egresses.
16. At the December 18 meeting, Mr. Copelas asked Mr. Seger to state which option he wanted the Board to consider. Mr. Seger asked if the difference in the setbacks would be an issue. Mr. Copelas stated that he did not think it was material. Mr. Seger stated that in that case, they would like to pursue Option 1. Mr. Xu agreed.
17. At the December 18 meeting, Chair Duffy discussed the special permit criteria.
18. At the December 18 meeting, Mr. Copelas asked the representative if he would accept a special condition that the second and third floor duplex will remain as one residential unit. Mr. Seger responded in the affirmative. Mr. Copelas brought the motion, referring specifically to Option 1.

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. Social, economic and community needs served by the proposal: This proposal is allowing for additional family members to come back and live in the house, keeping the house in occupation by a family longstanding in Salem.
2. No impact is anticipated on traffic flow and safety, including parking and loading.
3. Adequate utilities and public services serve the property. There will be no significant change to utilities or public services.
4. There will be minimal if any impacts on the natural environment, including drainage as pervious surface is not expected to change much.
5. The proposal fits with the character of the neighborhood.
6. Potential fiscal impact, including impact on City tax base and employment: there is the potential for some minor positive fiscal impact on the tax base if it improves the value and usability of the property.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Peter Copelas, Mike Duffy (Chair), Rosa Ordaz, and Carly McClain) and one (1) opposed (Jimmy Tsitsinos) to grant the requested special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to expand a nonconforming two-family home by adding an exterior stair and extending an existing dormer at **30 LEACH STREET, using Option 1 of the plans (elevations dated September 25, 2019)**, 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 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.
9. 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.

Special Conditions:

1. The second and third floor duplex shall remain one residential unit.



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.