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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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July 3, 2019

Decision

City of Salem Board of Appeals

2019 JUL -3 PM 3:00
CITY CLERK
SALEM, MASS

Petition of RAYNALDO DOMINGUEZ for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* and a variance from Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for maximum lot coverage to extend a nonconforming two-family home by building a kitchen addition at the rear of the building at 38 CABOT STREET (Map 33, Lot 173) (R2 Zoning District).

A public hearing on the above Petition was opened on June 19, 2019 pursuant to M.G.L. Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica (alternate).

The petitioner seeks a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* and a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance.

Statements of Fact:

1. In the petition date-stamped May 6, 2019, the petitioner requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* and a variance from Section 4.1.1 *Table of Dimensional Requirements* for maximum lot coverage to extend a nonconforming two-family home by building a kitchen addition at the rear of the building at 38 Cabot Street.
2. Petitioner Raynaldo Dominguez presented the petition.
3. The property is a two-family home located in the Residential Two-Family (R2) Zoning District.
4. The property is nonconforming to minimum lot area, minimum lot frontage, depth of front yard, width of side yard, depth of rear yard, and maximum lot coverage by all buildings.
5. The petitioner is proposing to build a kitchen addition at the rear of this property. The proposed kitchen addition will make the property more nonconforming as to maximum lot coverage (from 37% to 48% or 50%).
6. The requested relief, if granted, would allow the petitioner to extend the nonconforming two-family home by building a kitchen addition at the rear of the building at 38 Cabot Street.
7. In the Board of Appeals decision regarding 38 Cabot Street dated December 3, 2014, the Board granted the same requested variance for maximum lot coverage and special permit per Section 3.3.5, with standard conditions. The variance and special permit have since lapsed; as such, a new variance and special permit are required for this proposal to move forward.
8. At the June 19, 2019 public hearing, petitioner Raynaldo Dominguez discussed the petition. Mr. Dominguez stated that he was not aware of the time requirements for the special permit and variance, so although the special permit and variance were previously approved, he needed to re-apply. The

Board asked if the garage shown on the plans had already been built; Mr. Dominguez responded that it had, and that it was built as approved

9. At the June 19, 2019 public hearing, Board member Paul Viccica stated that he was generally in favor of the scheme, but that the proposed side stairway, infringing on the side setback, would be a substantial impact on the house next door (36 Cabot Street). Board member Peter A. Copelas noted that there is a high standard for variance requests, and that anything that can be done to mitigate some of the negative aspects of a variance request – in this case, encroaching further on the side setback – makes it easier for the Board to approve a petition. The Board suggested that an approval could be conditioned on relocating the stairs and submitting revised plans prior to construction. Chair Duffy told Mr. Dominguez that it was up to him as to whether he wanted to go forward with the suggested change. Mr. Copelas explained that, if the petition is approved with this condition, the petitioner would still need to change the plans (for the stairway) and submit revised plans to the Building Inspector, but that he would not be required to bring the revised plans before the Board of Appeals.
10. At the June 19, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.
11. Chair Duffy discussed the variance and special permit criteria. He noted that there was a prior granting of the variance. He also noted that there was no opposition from the neighborhood.

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 Variance:

1. Special conditions and circumstances that especially affect the land, building or structure involved, generally not affecting other lands, buildings and structures in the same district: The existing kitchen and rear of the property in general are in a state of disrepair.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant by preventing these improvements from occurring.
3. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the ordinance. With the relocation of the stairway outside of the side yard setback (per the special condition included below), there is a less significant impact on the neighboring property.

Findings for Special Permit:

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: The proposed work will provide improved housing.
2. There will be no impact to traffic flow and safety, including parking and loading.
3. There will be no change in use of utilities and other public services; adequate utilities and public services already service the property.
4. There will be limited if any impacts on the natural environment, including drainage.

5. **Neighborhood character:** The proposed work will improve the appearance of the property. With the relocation of the stairway outside of the side yard setback (per the special condition included below), there is a less significant impact on the neighboring property.
6. **Potential fiscal impact, including impact on City tax base and employment:** The proposed work will increase the assessed value of the property, thus increasing the City's tax base.


On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica) and none (0) opposed to grant the requested Special Permit per Section 3.3.5 *Nonconforming One- and Two-Family Residential Structures* and Variance from Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for maximum lot coverage to extend a nonconforming two-family home by building a kitchen addition at the rear of the building at **38 Cabot Street**, 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. 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 petitioner shall modify the plans presented to the Zoning Board of Appeals to relocate the new, proposed stairway outside of the side yard setback and internal to the structure. Such plans must be submitted to and approved by the Building Commissioner before beginning any construction.



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.