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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK
SALEM, MASS

October 30, 2019

Decision

City of Salem Board of Appeals

Petition of HELIO DUARTE AND CAROLINE DUARTE for a special permit per Section 3.2.8 *Accessory Living Areas* of the Salem Zoning Ordinance to construct an accessory living area within the footprint of a to-be-constructed single-family house at 42 OSBORNE HILL DRIVE (Map 4, Lot 42) (R1 Zoning District).

A public hearing on the above Petition was opened on October 16, 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, Jimmy Tsitsinos, and Paul Viccica.

The petitioner seeks a special permit per Section 3.2.8 *Accessory Living Areas* of the Salem Zoning Ordinance to construct an accessory living area within the footprint of a to-be-constructed single-family house.

Statements of Fact:

1. In the petition date-stamped September 23, 2019, the petitioner requested a special permit per Section 3.2.8 *Accessory Living Areas* of the Salem Zoning Ordinance to construct an accessory living area within the footprint of the to-be-constructed single-family house at 42 Osborne Hill Drive.
2. The property, once construction is complete, will be a single-family home located in the Residential One-Family (R1) zoning district.
3. The petitioner is proposing to construct an accessory living area within the footprint of the home in order to provide an accessory living area for the petitioner's mother/mother-in-law. The proposal is for a portion of the basement to be used as an accessory living area.
4. In Section 10.0 *Definitions* of the Salem Zoning Ordinance, "Accessory living area" is defined as: "A housekeeping unit, with its own sleeping, cooking and sanitary facilities, located within a single family dwelling that is subordinate in size to the principal unit, separated from it in a manner which maintains the appearance of the building as a single family dwelling, and allowed by special permit pursuant to Section 3.2.8 of this ordinance."
5. The requested relief, if granted, would allow the petitioner to construct an accessory living area within the footprint of the to-be-constructed single-family home.
6. As noted in the Statement of Grounds submitted with the petition, the accessory living area "would provide our family with the means to obtain companionship, security, and to enable the mother-in-law to spend as much time with her grandchildren as possible."
7. The identities and birth dates of the family members who will live at the property were also included in the application submitted to the Board of Appeals.
8. A floor plan was included in the application submitted to the Board of appeals.

9. No change is proposed to the footprint of the building.
10. The property is not currently owned by the petitioners, Helio and Caroline Duarte. The property is currently owned by Osborne Hills Realty Trust. The petitioners provided a letter dated October 14, 2019, from Paul DiBiase, Trustee of Osborne Hills Realty Trust, expressing the Trust's consent "to allow Helio and Caroline Duarte ('BUYERS') permission to file an application with the Salem Board of Appeals requesting a permit to build an in-law at the Property." This letter was signed by Mr. DiBiase and included a copy of the recorded deed for the Property, showing full ownership by Paul DiBiase Trustee of Osborne Hills Realty Trust. The letter notes that "The BUYERS will be deeded at a future date full ownership interest in the Property pursuant to the terms and conditions set forth by the Purchase and Sale Agreement signed between OHRT and the BUYERS dated August 15, 2019."
11. At the October 16, 2019 public hearing, Helio and Caroline Duarte were in attendance. Helio Duarte discussed the petition.
12. At the October 16, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.
13. At the October 16, 2019 public hearing, Chair Duffy noted that information was provided (by the applicants) specific to the Accessory Living Area bylaw. Chair Duffy discussed

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:

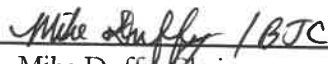
The purpose, procedure and requirements of Section 3.2.8 *Accessory Living Areas* of the Salem Zoning Ordinance have been fulfilled. This use will not be substantially more detrimental than the existing use to the neighborhood.

1. Social, economic and community needs served by the proposal: This proposal serves social, economic, or community needs. This would provide housing for a mother-in-law and allow the family to stay together and provide a supportive living environment.
2. Traffic flow and safety, including parking and loading: No impact is anticipated.
3. Adequacy of utilities and other public services: Existing utilities and public services will be sufficient to serve this use.
4. Impacts on the natural environment, including drainage: There is no change to the footprint of the building, so no changes in impacts on the natural environment, including drainage, are anticipated.
5. Neighborhood character: The proposal is in keeping with the neighborhood character. There is no change to the footprint there will be no change in impact on neighborhood character.
6. Potential fiscal impact, including impact on City tax base and employment: The potential fiscal impact is positive.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Paul Viccica, Peter Copelas, Mike Duffy (Chair), Jimmy Tsitsinos, and Jimmi Heiserman) and none (0) opposed to grant the requested special permit per Section 3.2.8 *Accessory Living Areas* of the Salem Zoning Ordinance to construct an accessory living area within the footprint of a to-be-constructed single-family house at **42 Osborne Hill Drive**, 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. A Certificate of Occupancy is to be obtained.
6. A Certificate of Inspection 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.
8. 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.



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.