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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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January 2, 2019

Decision

City of Salem Board of Appeals

2019 JAN -2 PM 11
CITY OF SALEM
SALEM, MASSACHUSETTS

Petition of CHARLES & GRACE ABONGNELAH for a special permit per Section 3.3.5 of the Salem Zoning Ordinance for minimum lot area and minimum lot area per dwelling unit to allow the use of the existing second floor as a second unit in the existing single-family home at 64 LEMON STREET (Map 36, Lot 66) (R2 Zoning District).

A public hearing on the above Petition was opened on December 19, 2018 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Mike Duffy (Chair), Peter A. Copelas, Jimmi Heiserman, Patrick Shea, and Jimmy Tsitsinos.

The Petitioner is requesting a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures*.

Statements of Fact:

1. In the petition date-stamped November 27, 2018, the Petitioner requested a special permit per Section 3.3.5 of the Salem Zoning Ordinance to provide less than minimum lot area and minimum lot area per dwelling unit of the Salem Zoning Ordinance to operate an existing single-family home as a two-family home.
2. Petitioner Charles Abongnelah presented the petition.
3. The property is located in the Residential Two-Family (R2) zoning district.
4. This proposal includes changing the official use of the home from single-family residential to two-family residential; the proposal does not include any structural changes. The two-family residential use is permitted in the Residential Two-Family (R2) zoning district. Zoning relief is required because the existing structure is nonconforming per minimum lot area and minimum lot area per dwelling unit; the proposal would maintain the nonconformity per minimum lot area and increase the nonconformity as to minimum lot area per dwelling unit.
5. In the R2 zoning district, minimum lot area is 15,000 square feet; petitioner's lot is 5,227 square feet. Minimum lot area per dwelling unit in this district is 7,500 square feet. Current lot area per dwelling unit is 5,227 square feet; by adding a second unit, lot area per dwelling unit will be reduced to 2,613.5 square feet. Many nearby Lemon Street properties are nonconforming to lot area and lot area per dwelling unit.
6. The property had previously been operating as a two-family home. In a letter from Local Building Inspector Stephen Cummings dated October 22, 2018, the Inspector determined that petitioners' home is a single-family home, and notified the petitioners that they must cease and desist using it as a two family home immediately upon receipt of the letter. At the November 19, 2018 public hearing, Petitioners appealed that decision before this Board. Through discussion at that meeting between the

Petitioners, the Board, and the Building Commissioner, a procedural problem was identified: the request was to overturn the decision of the Building Inspector, not to grant a permit for the two-family residential use. The Building Commissioner noted that the Petitioner should have applied for a special permit and could do so with a new petition the following month. Petitioners requested to withdraw without prejudice their petition appealing a decision of the Building Inspector, which the Board approved. Petitioners then brought this new petition for a special permit.

7. The requested relief, if granted, would allow petitioners to use the existing second floor of their home as a second dwelling unit, thus operating the property as a two-family home that is nonconforming per minimum lot area and minimum lot area per dwelling unit.
8. At the public hearing, no members of the public spoke in favor of or in opposition to the petition.
9. At the public hearing, members of the Board asked what changes will be made. Mr. Abongnelah stated that the changes include: putting in a door, providing separate access to the second floor by making improvements to an existing staircase, and converting the existing utilities – which are currently combined for the first and second floors – into two separate sets of utilities, one for each floor.
10. The Board noted that the criteria are whether the changes is substantially more detrimental than the existing nonconforming structure, as well as the standard special permit criteria (presented below).

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 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 nonconforming structure is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

1. The proposal is not expected to newly serve social, economic, or community needs, as the property had been operating as a two-family home prior to the decision of the Building Inspector. The property will continue to serve the community need of housing in Salem.
2. Traffic flow and safety, including parking and loading are not expected to change. The property meets parking requirements for a two-family home as there are three legal parking spaces on the property (one and one-half spaces per dwelling unit are required).
3. Utilities and other public services will be separated, which will make them adequate for operating this property as a two-family home.
4. Impacts on the natural environment, including drainage, are not expected to change, as there will be no changes to the structure.
5. The property fits into the neighborhood character of this R2 zoning district and will continue to do so; there will be no change to the footprint, and the use will now officially be a two-family use, which is the intention of the R2 district.
6. No changes are anticipated in terms of fiscal impact; the homeowners had been paying taxes on the home as a two-family home, so tax impact is not expected to change.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Mike Duffy (Chair), Peter A. Copelas, Jimmi Heiserman, Patrick Shea, and Jimmy Tsitsinos) and none (0)

opposed to grant the requested special permit per Section 3.3.5 of the Salem Zoning Ordinance for minimum lot area and minimum lot area per dwelling unit to allow the use of the existing second floor as a second unit in the existing single-family home at 6 Lemon 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. If there is any change to the exterior, 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. If there is not already street numbering, petitioner shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to be visible from the street.
9. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.



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.