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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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2019 OCT 30 PM 3:28
CITY CLERK
SALEM, MASS

October 30, 2019

Decision

City of Salem Board of Appeals

Petition of ERIC CORMIER for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to reconstruct and expand a nonconforming single-family home to a greater height (three stories) at 79 COLUMBUS AVENUE (Map 44, Lot 57) (R1 Zoning District).

A public hearing on the above Petition was opened on June 19, 2019 pursuant to M.G.L. Ch. 40A, § 11; in this meeting, no testimony or other evidence was received, and the petition was continued. The petition was continued to July 17, 2019, August 21, 2019 (during which no testimony was heard), September 18, 2019, and October 16, 2019, and closed on October 16, 2019 with the following Salem Board of Appeals members present: Peter Copelas, Mike Duffy (Chair), Jimmi Heiserman, Jimmy Tsitsinos, and Paul Viccica. At the June 19, 2019 meeting, Peter Copelas, Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica were in attendance; Jimmy Tsitsinos and Rosa Ordaz were absent. At the July 17, 2019 meeting, Peter Copelas, Mike Duffy (Chair), Jimmi Heiserman, Jimmy Tsitsinos, Rosa Ordaz, and Paul Viccica were in attendance. At the August 21, 2019 meeting, only Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica were in attendance, and no testimony was heard; this is discussed in the Statements of Fact below. At the September 18, 2019 meeting, Peter Copelas, Mike Duffy (Chair), Jimmi Heiserman, Rosa Ordaz, and Paul Viccica were in attendance; Jimmy Tsitsinos was absent.

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 May 29, 2019, the petitioner requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to reconstruct and expand the existing nonconforming single-family home at 79 Columbus Avenue to a taller than previous height (three stories).
2. Petitioner Eric Cormier presented the petition.
3. The property is a single-family home in the Residential One-Family (R1) zoning district.
4. With the existing structure, the property is nonconforming at least in terms of minimum lot area, minimum lot frontage, minimum lot width, minimum depth of front yard, and minimum width of side yard (both sides).
5. The proposal is to reconstruct and expand the existing single-family home to a taller-than-previous height. The maximum height in feet allowed in this district is 35 feet; the maximum height in stories is 2.5 stories. Under this proposal, the building would be 3 stories (nonconforming) and 34 feet in height (conforming). The property would remain nonconforming to the other criteria noted above.

6. By the time the project appeared before the Board, much of the structure had already been demolished.
7. The requested relief, if granted, would allow the petitioner to reconstruct and expand the nonconforming single-family home at 79 Columbus Avenue to a greater height (three stories).
8. The initially submitted application included floor plans and elevations but did not include a plot plan. Plot plans are not typically required for one- and two-family buildings where the footprint is not proposed to change. However, there was disparity between the building dimensions in the Assessor's database and the dimensions presented in the plans accompanying the petition. As such, Brennan Corriston requested that the petitioner submit plot plans showing the original building and proposed construction.
9. Prior to the June 19, 2019 meeting of the Board of Appeals, City of Salem Preservation Planner distributed a memorandum dated June 12, 2019 to Planning Department staff including planner Brennan Corriston regarding this house. This memorandum noted in part: "The house at 79 Columbus Avenue was a well-preserved residence with its scale, massing and decorative detail intact from its ca. 1915 construction. It is listed as a contributing building in the Salem Willows National Register District; it is not designated within a local historic district. The majority of this building was recently demolished, with only a portion of its first story exterior walls remaining. This work was completed erroneously without the proper building permits." The memorandum also stated: "I encourage the Zoning Board of Appeals to work with the applicant on significant design changes to ensure that this project is more respectful of the building's original architectural character and will have a positive impact on the historic character of the Salem Willows Historic District. In the past, the ZBA has added a condition to special permits for historic buildings that requires applicants to work with the Salem Historical Commission on appropriate design changes for historic buildings."
10. At the June 19, 2019 meeting of the Board of Appeals, four Board members were in attendance. In these situations, the Board allows petitioners the opportunity to request to continue to the next regularly scheduled meeting, when a full Board of five members might be in attendance. At the meeting, Peter Copelas stated that there was not a plot plan, and that he would have a difficult time moving forward on this petition with an incomplete application. Chair Duffy asked the petitioner whether he could get a plot plan for the Board; Mr. Cormier stated that he was having one done. Chair Duffy suggested that the petition should be continued to the next meeting so the Board would have the plot plan. The hearing was not opened for public comment. No testimony or other evidence was received. The Board voted four (4) in favor (Peter Copelas, Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica) and none (0) opposed to continue the petition to the next regularly scheduled meeting of the Board of Appeals on July 17, 2019.
11. On July 8, 2019, the Historical Commission wrote a letter to Chair Duffy expressing "strong concern about the partial demolition and proposed redevelopment of 79 Columbus Avenue." In this letter, Interim Chair Laurence Spang stated, "The Commission encourages the Zoning Board of Appeals to deny the requested special permit and require the applicant to restore the building to its original appearance since the demolition work was completed without proper permits or approvals."
12. On July 8, 2019, petitioner Eric Cormier submitted a plot plan for 79 Columbus Avenue.
13. At the July 17, 2019 meeting of the Board of Appeals, Mr. Cormier provided updates regarding the situation. He discussed the proposal, noting that he wanted to have a garage on the first floor and that the first floor will not be living space; he wanted to increase the roof height to have a parking space on the first floor. Paul Viccica asked if Mr. Cormier had a building permit for demolition. Mr. Cormier stated that the permit was for interior work; he added that he started work on demolition

three days before he had a permit. More demolition was done than was permitted. There was more discussion. Peter Copelas noted that the plan does not exceed any dimensional requirements. Mr. Viccica defined neighborhood character and stated that, while the house is not in an historic district, he recommended that Mr. Cormier work with the Historical Commission. Mr. Viccica states that he would deny the proposal as is. Mr. Copelas adds that the plans seem out of character with the neighborhood and that the demolition was troubling. Mr. Copelas also raises concerns about the state of the construction site, noting that a neighbor expressed concerns in a letter received by the Board. (This letter was from abutter Virginia Johnson.) Mr. Copelas and Mr. Tsitsinos expressed that they are open to continuing the petition. Mr. Cormier asks if the plans are revised to fit neighborhood character, if he can keep the garage on the first floor.

14. At the July 17, 2019 meeting, Chair Duffy opened the hearing for public comment, noting that Mr. Cormier will be reworking the proposal and coming back next month. At the public hearing, no (0) members of the public spoke in favor of the petition and four (4) members of the public spoke in opposition and/or expressed concerns. Concerns included the height of the building, parking, and the current condition of the construction site. In addition, Ward 1 Councillor Robert McCarthy suggested that the proposed height of the building should be shown in scale with the building to the left and the building to the right. Councillor McCarthy and another member of the public suggested that this should be a requirement for other applications as well. Another member of the public raised a question about whether this garage could be turned into a dwelling unit. Mr. St. Pierre responded that this would not be allowed because of the proximity to wetlands.
15. At the July 17, 2019 meeting of the Board of Appeals, the Board voted five (5) in favor (Peter Copelas, Mike Duffy (Chair), Jimmi Heiserman, Jimmy Tsitsinos, and Paul Viccica) and none (0) opposed to continue the petition to the next regularly scheduled meeting of the Board on August 21, 2019. Chair Duffy noted that the applicant should come forward with revised plans. The Board suggested that the petitioner consult with the Building Department and the Historical Commission.
16. The Board of Appeals received a letter dated August 13, 2019 from Laurence Spang, Interim Chair of the Historical Commission, noting that the Historical Commission discussed 79 Columbus Avenue in its August 8, 2019 meeting. The Commission recommended architectural details to be included in the plan. The letter notes that "The owner agreed to present updated design sketches at the Commission's next meeting on August 21, 2019." In the letter, Mr. Spang also asked the Board "to postpone its deliberation to allow the Commission to continue to work with the building owner on a design for this property that will be appropriate for the historic Juniper Point neighborhood."
17. At the August 21, 2019 meeting of the Board of Appeals, only three Board members were in attendance: Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica. 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 August 21 meeting. Petitioners were informed of this attendance situation in advance and were given the opportunity to submit requests to continue their petitions to the next regularly scheduled meeting on September 18, 2019. In an email to Planner Brennan Corriston dated August 20, 2019, property owner James McElroy submitted a request to continue 79 Columbus Avenue to the September 18 meeting. This request was duly filed with the City Clerk on August 21, 2019. In the meeting, the Board voted three (3) in favor (Jimmi Heiserman, Paul Viccica, and Mike Duffy (Chair)) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting.

18. Prior to the September meeting, Reed Cutting, Acting Chair of the Historical Commission, submitted a letter to Chair Duffy dated September 10, 2019 offering the Commission's "conditional support for the redesign renovation plans for 79 Columbus Avenue as submitted to the Commission at its meeting on September 4, 2019." The letter notes that "The owner attended several Commission meetings to discuss the reconstruction of the National Register listed Victorian-era bungalow and incorporated the Commission's suggestions for adding character-defining features of Juniper Point's architecture in a redesign of the project." The letter notes that in its September 4 meeting, "the Commission recommended the following items to be incorporated and/or clarified in the final architectural plans:

- 1) Dormers to have significant setback from front plane of building façade;
- 2) Roof rake projection to replicate detail and depth of original roof;
- 3) Windows to be wood, true-divided single-glazed windows;
- 4) Porch lattice to be square and not on the diagonal;
- 5) Porch to be framed by flat boards and not turned posts;
- 6) Garage door to be carriage style with upper panel of vertically-oriented windows; and
- 7) Incorporation of a salvaged diamond-shaped window in gable to replicate original window."

In addition, the letter states, "In order to complete our review and finalize our support for this project, the Commission requests the following items be provided:

- 1) Full set of architectural plans;
- 2) Stamped professional plot plan with the proposed footprint of the structure; and
- 3) Certification by an architect or engineer that the design meets flood elevation requirements as designed."

The letter continues: "Should the Zoning Board of Appeals vote to approve this project prior to the Commission's receipt of the above items, we request that the ZBA approval be conditional upon final sign-off by the Historical Commission. We also request that a standard condition be added that requires the applicant to follow the specific architectural design details and use the specific building materials as indicated on the ZBA approved plans."

19. At the September 18, 2019 public hearing, Mr. Cormier explained that he had appeared before the Historical Commission, and they agreed on a drawing that was presented. Mr. Cormier stated that he was told by Brennan Corriston that he needed drawings [full architectural plans – only a front elevation was submitted]. Mr. Cormier asked, if the drawings met the Historical Commission's standards, could those be presented to Tom St. Pierre and move forward? Tom St. Pierre stated that without an updated set of drawings submitted to this Board, the Board cannot rule on the design. Mr. St. Pierre stated that he relies on that drawing and the Board's endorsement of that drawing for his enforcement of what was granted. If there is not a finished drawing, he stated, he does not see how the Board can make a vote. Mr. Cormier expressed his concern of spending money on drawings that, if not allowed by the Board, would have to be changed, adding to the cost. The Board discussed the petition. Peter Copelas noted that he was at the Historical Commission meeting and that the Commission spoke favorably about this and wrote a letter stating that. Mr. Copelas stated that he would be favorably disposed to look carefully at architectural drawings, but with the new design, all the Board has is a sketch, and the Board cannot act on a sketch. Mr. Copelas stated that the Board really needs what would be considered a full application. Mr. Viccica stated that if the Board was to approve this contingent on what the Historical Commission has suggested, they have asked that the Board set a condition that the petitioner provide a full set of architectural drawings to the Historical Commission, so it is just a timing question. He added that the petitioner can go to the Historical Commission with the drawings first and then come back to the Board, but that the petitioner would have to provide architectural drawings either way. Mr. Copelas asked if Mr. Cormier would like to

request to continue. Mr. Cormier responded in the affirmative. The Board voted five (5) in favor (Mike Duffy (Chair), Peter Copelas, Rosa Ordaz, Paul Viccica, and Jimmi Heiserman) and none (0) opposed to continue the petition to the regularly scheduled meeting on October 16, 2019.

20. The September 18, 2019 hearing was not opened for public comment.
21. On October 15, 2019, Mr. Cormier submitted architectural elevations showing all sides of the building, as well as an existing conditions plot plan.
22. Board member Jimmy Tsitsinos, who was absent at the September 18, 2019 hearing on this petition, signed an affidavit of service on October 16, 2019, certifying that he examined all evidence pertaining to 79 Columbus Avenue which was distributed at the single missed session on September 18, 2019, which evidence included an audio recording of the missed session. He submitted this certification prior to participating in the vote on this matter in the October 16, 2019 public hearing.
23. At the October 16, 2019 public hearing, Mr. Cormier provided updates on the project. Mr. Cormier stated that he went in front of the Historical Commission several times with drawings and that they came to an agreement that the current architectural drawing being presented would be fine. He added that a certified plot plan was done. Planner Brennan Corrison directed the Board to the drawings and plan and a letter from Preservation Planner Patti Kelleher dated October 16, 2019. Chair Duffy read from the letter from Ms. Kelleher, noting that the letter mentioned issues regarding the plot plan; architectural plans; identifying building materials; the porch base being framed by flat boards and not turn posts; windows needing to be wood, true divided single glazed windows; garage doors to be carriage style with upper panel vertically oriented windows; and incorporation of a salvaged diamond shape window; and a gable to replace the original window. Chair Duffy asked if all these issues have been addressed and if Mr. Cormier accepts them; and Mr. Cormier responded in the affirmative to both.
24. At the October 16, 2019 public hearing, Mr. Cormier discussed the plans in more detail. He noted that the lattice work on the first floor is a square as opposed to a diamond shape to fit the period aesthetics, and that he will be instructed what style of door to install. He stated that the first floor is being called a non-conforming area, as previously discussed, and the property is in a flood zone. Brennan Corrison provided a copy of Ms. Kelleher's letter to Mr. Cormier and noted that some of the issues in the letter are referring to elements that are not clear in the plan, stating to the Board that this is an opportunity for the Board to look at the letter and the plans and see if there is enough to perhaps move forward with conditions. Mr. Cormier stated that he spoke to the Historical Commission and told them he was willing to comply with all of their requirements. He also indicated that we had said that we would put everything in writing and that whatever is on this letter, "we would definitely uphold to that."
25. At the public hearing, Jimmy Tsitsinos asked about a needed curb cut for the garage. Mr. Cormier stated that they would wait on that. There was some discussion of the curb cut. Mr. St. Pierre stated that Mr. Cormier is entitled to a curb cut if he brings in documentation to the Engineering Department and goes through the process; the maximum is 20 feet. Mr. St. Pierre added that this is not an issue.
26. At the public hearing, Mr. Viccica asked Mr. Cormier to confirm that he will adhere to all the guidelines in the letter from Ms. Kelleher dated October 16, 2019 and address all the issues presented. Mr. Cormier confirmed. He stated that Ms. Kelleher had gone over this with him.
27. At the public hearing, Mr. Corrison stated that the plot plans shows the existing conditions, not the proposed conditions, and asks if one with proposed conditions is being prepared (as requested by the Historical Commission). Mr. Cormier said he would be able to have one made.

28. At the public hearing, Mr. Corriston noted the final item listed in the letter (from Ms. Kelleher) is a certification by an architect or engineer that the design meets flood elevation requirements as designed. He noted that the Conservation Commission will be involved in that process, and asked if Mr. Cormier has received their approval. Mr. Cormier stated that the Commission was waiting on the Board's approval to go forward, but that they were fine with everything else presented including the survey plan. He added that he needs to be informed about what else the Conservation Commission is looking for other than the survey and the plot plan.
29. At the October 16, 2019 public hearing, no (0) members of the public spoke in favor of the petition, and three (3) members of the public expressed concerns or spoke in opposition to the petition. Two of these individuals stated that the site had not been properly cleaned up. The other individual asked questions about height limitations and other building concerns, and stated his opposition to the petition.
30. At the October 16, 2019 public hearing, Mr. Viccica asked about the diamond shaped window (as noted in the letter). Mr. Cormier noted that this is being replicated and will match the original. Mr. Tsitsinos asked about concerns regarding basement fill raised by a member of the public; Mr. Cormier indicated that it will be filled with a special crushed stone per an engineer's recommendation and that the items will be removed prior to filling.
31. At the October 16, 2019 public hearing, Chair Duffy suggested that the Board could take a motion and that conditions could include those expressed in the October 16 letter from Ms. Kelleher. Conditions were discussed. Mr. St. Pierre asked Mr. Cormier if there is funding to move forward in a timely manner, as neighbors have concerns about the lot appearance. Mr. Cormier confirmed that he would like the house to be completed and on the market by Spring. Chair Duffy asked that an orderly site be kept in the course of construction; Mr. St. Pierre suggested a condition that a functioning dumpster be available at all times.

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearings, 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**:

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 are served by the proposal: This proposal will improve a property that had been in disuse and will be in line with social, economic and community needs.
2. There will not be negative impacts to traffic flow and safety, including parking and loading. There had not been off-street parking on the site. Off-street parking will be added.
3. Adequate utilities and public services service the property.
4. Impacts on the natural environment, including drainage: This house is located in the riverfront area; the project is being addressed by the Conservation Commission.
5. Neighborhood character: The proposed construction is in keeping with the neighborhood. This is a single-family house in a residential area.
6. Potential fiscal impact, including impact on City tax base and employment: Updating and expanding the house and bringing it back to full use and occupancy will be a benefit.

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 Copelas, Jimmi Heiserman, Jimmy Tsitsinos, and Paul Viccica) and none (0) opposed to grant the requested special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to reconstruct and expand a nonconforming single-family home to a greater height (three stories) at **79 Columbus Avenue**, 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 former 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.
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.

Special Conditions:

1. A stamped, professional plot plan shall be submitted prior to any building permit being issued, which shall include the proposed footprint of the structure, the driveway, and curb cut dimensions and location.
2. The owner is required to use wood for building clapboards and all trim. If a composite material is used for the trim, the composite material should be applied with smooth side exposed and should be painted to appear as wood.
3. The porch base shall be framed by flat boards and not turned posts.
4. Windows are to be wood, true-divided single-glazed windows.
5. Garage doors shall be carriage-style with an upper panel of vertically-oriented windows.
6. A replica of the diamond-shaped window that was once part of the original structure shall be incorporated, replicating size, dimension, and configuration.
7. A functioning dumpster shall be kept on site at all times during construction and emptied per the Conservation Commission requirements. The dumpster shall be removed promptly upon completion of the project.

Mike Duffy / BJC

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.