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MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK  
SALEM, MASS

2019 JUL -3 PM 3:04

July 3, 2019

## Decision

### City of Salem Board of Appeals

**Petition of EVERGREEN REALTY TRUST for a special permit per Sections 3.3.3 *Nonconforming Structures*, 3.3.4 *Variance Required*, and 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to expand a nonconforming residential structure, the two-family house at 8 OSBORNE STREET (Map 27, Lot 315) (B1 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 Sections 3.3.3 *Nonconforming Structures*, 3.3.4 *Variance Required*, and 3.3.5 *Nonconforming Single- and Two-Family Residential Structures*.

#### Statements of Fact:

1. In the petition date-stamped May 29, 2019, the petitioner requested a special permit per Sections 3.3.3 *Nonconforming Structures*, 3.3.4 *Variance Required*, and 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to expand a nonconforming residential structure, the two-family house at 8 Osborne Street.
2. Attorney William Quinn presented the petition on behalf of the petitioner, Evergreen Realty Trust (Michael W. Becker, Trustee).
3. This property is currently a two-family home. As noted in the Statement of Grounds submitted with the application, "On 6/6/2018, the applicant received a building permit to reconstruct the dwelling at 8 Osborne Street as a 3-family dwelling with 3 on-site parking spaces, which is a legally conforming use in the B-1 district." "Dwelling, multifamily" is an allowed use in the Business Neighborhood (B1) zoning district.
4. The property appears to be nonconforming to minimum lot area, lot area per dwelling unit, lot frontage, lot width, depth of front yard, width of side yard, depth of rear yard, and maximum lot coverage by all buildings.
5. As noted in the Statement of Grounds, the petitioner is proposing to expand the nonconforming structure by "extend[ing] the rear exterior wall at and along the same nonconforming distance." The proposed design changes are described in the Statement of Grounds as "an underground garage within conforming or existing setbacks, a new shed dormer at the roof and replacement/modification to existing exterior steps at the first floor level." The submitted plans show two stories of living space above the underground garage. As also noted in the Statement of Grounds, "All proposed construction complies with the dimensional requirements of the Ordinance except as to the extension of the nonconforming rear setback because of the addition." There is no maximum height of buildings (stories) in the B1 zoning district. The maximum height of buildings (feet) is thirty feet (30') in the B1 zoning district; the proposed height is less than thirty feet.

6. Section 3.3.4 *Variance Required* of the Salem Zoning Ordinance states in relevant part that “the extension of an exterior wall at or along the same nonconforming distance within a required yard shall require a special permit and not a variance from the Board of Appeals.”
7. The requested relief, if granted, would allow the petitioner to expand the nonconforming residential structure at 8 Osborne Street.
8. At the June 19, 2019 public hearing, Attorney William Quinn, representing the petitioner, discussed the petition. Attorney Quinn noted that the petitioner received a building permit from the Building Department last summer, and during work on the project, it became clear that there might be a better design than what was originally submitted for the building permit. (The modified plan led to the instant application.) Attorney Quinn described the existing addition and the proposed changes.
9. At the public hearing, Michael Becker, Trustee of Evergreen Realty Trust, was also in attendance. He explained that there is an existing two-story addition (where the new addition is proposed). Architect Tom Mayo was also in attendance, and he described the proposed design. Mr. Mayo explained that they are essentially rebuilding the existing addition but extending it to accommodate the car parking (the garage). He noted that Unit 1 will contain three bedrooms and Units 2 and 3 will each contain two bedrooms.
10. Board member Peter A. Copelas asked about the parking situation. Mr. Becker explained that the building permit that they obtained (which included three parking spaces) would require the removal of an existing tree on the site; by moving the parking for the third car underneath the addition, they can save green space and the tree.
11. At the June 19, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition. Attorney Quinn submitted to the Board a signed note from abutter Eric Moriello of 10 Osborne Street stating that he is in favor of the proposed renovation.
12. Chair Duffy noted that the grounds for the special permit are reflected in the Statement of Grounds submitted with the application.

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 Special Permit:**

The Board finds that the proposed nonconforming structure is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

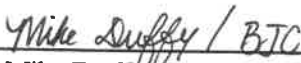
1. Social, economic and community needs served by the proposal: The need to provide improved, code-compliant family housing is served by this proposal.
2. Traffic flow and safety, including parking and loading will be unaffected because there no additional dwelling units beyond what has already been permitted is proposed, so no additional cars will be entering or leaving the property.
3. Adequacy of utilities and other public services: Adequate utilities and public services already service the property.
4. Impacts on the natural environment, including drainage are unaffected as the expansion of the structure is mostly within the existing footprint. The parking garage being constructed beneath the addition eliminates the need for a third outdoor parking space, allowing the petitioner to add about

- 100 square feet of additional green space and to preserve a large existing tree that would otherwise need to be removed for parking. The proposed addition, which replaces an existing addition, is not likely to have any adverse impact on surface drainage from the property.
5. Neighborhood character: The proposed addition is designed to be consistent with and complementary to the design of the existing structure and those in the neighborhood, so it should have no negative impact on neighborhood character.
  6. Potential fiscal impact, including impact on City tax base and employment: The proposed project will increase the assessed value of the property, thus having a positive fiscal impact on the City by generating increased real estate tax revenue for the City.

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 Sections 3.3.3 *Nonconforming Structures*, 3.3.4 *Variance Required*, and 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to expand a nonconforming residential structure, the two-family house at **8 Osborne 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.

  
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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.