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BOARD OF APPEAL

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November 2, 2011

Decision

City of Salem Zoning Board of Appeals

Petition of WILLIAM WHARFF requesting a Special Permit under Sec. 3.3.5 of the Salem Zoning Ordinance, and a Variance under Sec. 5.1 (Off Street Parking), for the property located at 11R WINTER ISLAND ROAD (R-1 Zoning District).

A public hearing on the above Petition was opened on October 19, 2011, pursuant to Mass General Law Ch. 40A, § 11. The hearing was closed on that date with the following Zoning Board of Appeals members present: Rebecca Curran (chair), Richard Dionne, Jamie Metsch and Bonnie Belair (alternate).

Petitioner seeks a Special Permit pursuant to Section 3.3.5 and a Variance pursuant to Section 5.1 of the City of Salem Zoning Ordinances.

Statements of fact:

1. Attorney Scott Grover represented owner and petitioner William Wharff at the hearing.
2. In a petition date-stamped September 28, 2011, petitioner requested a Special Permit pursuant to Sec. 3.3.5 of the Salem Zoning Ordinance to reconstruct a nonconforming single family residential structure, and a Variance to allow tandem parking, on the property located at 11R Winter Island Road.
3. At the hearing, Paul O'Shea, 15 Winter Island Road, stated that he supported the petition, except for the location of the front stairway, which would be directly in line with his view of the ocean. He requested that the stairs be repositioned.
4. At the hearing, Ed Moriarty, 29 Winter Island Road, stated that he supported the petition, but only if there would not be a wood burning stove in the house. He stated that the previous occupants had used a wood burning stove, and the prevailing winds in the neighborhood blew smoke toward the homes at higher elevations. He stated that he had no issue with gas fires.

5. At the hearing, Attorney Grover submitted a petition with the signatures of five neighbors indicating they supported the project. Two of those neighbors indicated their support was conditional upon there not being a wood burning stove on the premises.

The Board of Appeal, after careful consideration of the evidence presented at the public hearing, and after thorough review of the plans and petition submitted, makes the following **findings**:

1. Desirable relief may be granted, since the proposed modification will improve the property and will not be substantially more detrimental to the neighborhood than the existing nonconforming structure. Such development is consistent with the intent and purpose of the Zoning Ordinance.
2. Owing to the proximity of the property to a natural resource area, parking must be located on the south side of the house, away from ocean, and so a literal enforcement of the provisions off-street parking regulations would involve substantial hardship, financial or otherwise, to the appellant.
3. In permitting such change, the Board of Appeals requires certain appropriate conditions and safeguards as noted below.

On the basis of the above findings of fact and all evidence presented at the public hearing including, but not limited to, the Plans, Documents and testimony, the Zoning Board of Appeals **concludes**:

1. A Special Permit under Section 3.3.5 to reconstruct a nonconforming single-family structure is granted to allow for the proposed addition on the property located at 11R Winter Island Road as shown on the submitted plans titled "Plot Plan of Land, 11R Winter Island Road, Salem, Prepared for 11R Winter Island LLC," dated September 27, 2011, by North Shore Survey Corporation, and elevation plans titled "Winter Island, Salem Mass., William Wharff, Builder," by Lew Oliver Inc. (no date).
2. A Variance under Section 5.1 is granted to allow tandem parking as shown on the submitted plans.

In consideration of the above, the Salem Board of Appeals voted, four (4) in favor (Curran, Metsch, Dionne and Belair) and none (0) opposed, to grant petitioner's request for a Special Permit and Variance subject to the following **terms, conditions, and safeguards**:

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. 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.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. There are to be no solid fuel burning devices on the premises.
9. Petitioner is to work with the abutter at 15 Winter Island Road to create a less intrusive front stair design.



Rebecca Curran, Chair
Salem 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.