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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #
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December 5, 2013

Decision

City of Salem Board of Appeals

Petition of FRANCISCO HERNANDEZ requesting a Variance from Section 4.1.1 Table of Dimensional Requirements of the Salem Zoning Ordinance to reduce the minimum depth of rear yard to allow for enclosure of an existing open, first-floor deck, for the property located at 152 LORING AVENUE (R1 Zoning District).

A public hearing on the above Petition was opened on November 20, 2013 pursuant to M.G.L Ch. 40A, § 11. The hearing was closed on that date with the following Salem Board of Appeals members present: Ms. Curran (Chair), Mr. Duffy, Mr. Watkins, and Mr. Tsitsinos (Alternate).

The Petitioner seeks a Variance pursuant to Sec. 4.0 *Dimensional Requirements* of the Salem Zoning Ordinance.

Statements of fact:

1. In the petition, date-stamped October 21, 2013, the Petitioner requests a Variance to reduce the minimum depth of the rear yard to 7.5 feet to allow for the enclosure of an existing open first-floor deck.
2. Mr. Rod Rivera, designer, presented the petition for the property at 152 Loring Avenue (R1 Residential One-Family Zoning District).
3. Mr. Rivera stated that his client, Mr. Hernandez, had hired a contractor to enclose the deck. This contractor did not inform Mr. Hernandez of any requirements to seek relief from the Board of Appeals, and had completed the work in a substandard fashion. The Building Department issued a stop-work order, and the contractor had not returned Mr. Hernandez's calls, or any part of the money Mr. Hernandez had paid for the work. Mr. Rivera is now working with Mr. Hernandez to correct the problems created by the first contractor, and to seek the appropriate relief from the Board of Appeals.
4. Mr. St. Pierre, Building Inspector, stated that Assistant Building Inspector Michael Lutrzykowski ordered the work on the deck to be stopped, as there were several building code violations in the enclosure and roof structure.
5. The Salem Zoning Code, Section 3.3.4 *Variance Required (under Nonconforming Uses and Structures)* states that "... the reconstruction, extension, or structural change of a nonconforming structure in such a manner as to increase an existing nonconformity, or create a new nonconformity, shall require the issuance of a variance ..." The enclosure of the deck in this instance results in a new nonconformity, as the corner of the deck falls 7.5 feet from the rear lot line, which is closer to the rear lot line than the corner of the existing house, which falls 8.0 feet from the rear lot line.
6. The requested Variance relief, if granted, would allow the enclosure of an existing first-floor deck within 7.5 feet of the rear property boundary, which would fall short of the minimum required rear yard depth of 30 feet.
7. At the public hearing for this petition no members of the public spoke in favor or in opposition to the petition.

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petitions, 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:

1. The location of the house and attached first-floor deck on the lot is a unique condition. The north-west corner of the existing house lies within 8.0 feet of the rear lot line. The western side of the house is aligned at an angle to the rear lot line, such that the existing first-floor deck, which was constructed in a continuous line with the western side of the house, terminates at a point on 7.5 feet from the rear lot line.
2. The enclosure of the existing deck is a natural extension of the existing house.
3. The applicant is applying to the Board in good faith, in a situation that is not entirely of his own making.
4. The desired relief may be granted without substantial detriment to the public good.
5. The desired relief may be granted without nullifying or substantially derogating from the intent or purpose of the City of Salem Zoning Ordinance.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted four (4) in favor (Ms. Curran – Chair, Mr. Duffy, Mr. Watkins, and Mr. Tsitsinos in favor) and none (0) opposed, to approve the Variance from the required minimum depth of rear yard, subject to the following **terms, conditions, and safeguards**:

1. The 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 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.



Rebecca Curran, 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.