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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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2014 SEP 30 P 2:55
FILE #
DIONNE CLEMENS, SALEM, MASS.

October 1st, 2014

Decision

City of Salem Board of Appeals

Petition of JOHN KALANTZIS, TRUSTEE, seeking to reconstruct and extend a three-story nonconforming structure that was damaged by fire. The Petitioner is requesting a Variance from the maximum allowed height of buildings in stories as set forth in Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance, to allow expansion of livable space on the third floor, as well as a Special Permit under Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to allow the expansion of a nonconforming structure, in order to expand the previously existing nonconforming building for the property at 12 SCHOOL STREET (R2 Zoning District).

A public hearing on the above Petition was opened on August 27th, 2014 pursuant to M.G.L Ch. 40A, § 11. The hearing was continued to September 17th and closed on that date with the following Salem Board of Appeals members present: Ms. Curran (Chair), Mr. Dionne, Mr. Copelas (Alternate), Mr. Tisitsinos (Alternate).

The Petitioner seeks a Variance from Section 4.1.1 and Special Permit from Section 3.3.3 of the Salem Zoning Ordinance.

Statements of fact:

1. In the petition date-stamped August 6th, 2014, the Petitioner requested a Variance to construct a 3-story structure where 2.5-stories are allowed by the Zoning Ordinance and a Special Permit to expand a nonconforming structure.
2. On August 27th, 2014, Mr. Patrick Chasse, contractor, presented the petition.
3. On March 31st, 2014, the previously existing 3-unit building was destroyed by fire.
4. By-right, the applicant may construct a building to the same bulk, height and building footprint as the previously existing building. The petitioner is seeking a Variance as the previously existing building, if replicated as allowed by-right, would not provide adequate room for the construction of internal stairways in compliance with current building codes. The petitioner also seeks a Special Permit to expand a nonconforming structure along previously existing lot lines, in order to square-off the previously existing odd-shaped building footprint. The building has three (3) dwelling units.
5. At the August 27, 2014 meeting, no members if the public spoke in favor of the petition. Three (3) residents spoke in opposition to the petition.
6. On August 27th, 2014, Zoning Board of Appeals members stated that the proposed building design takes away from the existing neighborhood character, and suggested that the petitioner revise the elevation and pans.
7. Mr. Chasse requested to continue to the hearing to the next regularly scheduled meeting on September 17th, 2014, in order to make revisions to the elevations and plans
8. The hearing was continued on September 17th, 2014. Attorney Lovely, representing John Kalantzis, trustee, presented the petition and amended elevation plans.

9. The amended elevation plans dated September 12th, 2014 show changes to the front façade including the addition of shutters and a central oval window on the third story façade. The right elevation was also amended to include nine (9) fewer windows and one (1) less doorway on the north side facade.
10. The requested relief, if granted, would allow the Petitioner to allow expansion of livable space on the third floor and to expand the previously existing nonconforming building for the property.
11. At the September 17th, 2014 meeting, no members of the public spoke in favor of the petition and two (2) members spoke 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 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 – Special Permit:

1. Because the building was damaged by fire, the applicant is allowed to build the same bulk, height and the previously existing building footprint as a matter of right within two years.
2. The structural infill proposed to square-off the building is minimal and will have little impact to the surrounding community.
3. There will be no impact on traffic flow and safety including parking and loading as there is no change.
4. There will be no impact on adequacy of utilities and other public services as there is no change.
5. The existing and proposed buildings are both three-units, and the proposed building as shown on the revised plans and elevations submitted at the September 17, 2014 meeting (drawings dated September 12, 2014) is consistent with the neighboring buildings and character.
6. The potential fiscal impact is positive for the City as this building will be back on the City's tax base.

Findings – Variance:

1. The special conditions and circumstances that especially affect the land, building or structure involved, and generally not affecting other lands, buildings, and structures of the same district, are that the existing building was a unique size and peculiar shape with a combination of 2.5-stories and 3-stories.
2. The literal enforcement of the provisions of the Ordinance are that the combination of 2.5-stories and 3-stories would not allow for the construction of internal stairways that would be in compliance with current building code.
3. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent of the district or the purpose of the ordinance.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted four (4) in favor (Ms. Curran, Mr. Dionne, Mr. Copelas, and Mr. Tsitsinos) and none (0) opposed, to grant the requested Variance and Special Permit to allow expansion of livable space on the third floor and to expand the previously existing nonconforming building 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 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. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board
9. The Petitioner has agreed to a condition to construct, mulch, and plant a 2-3 foot wide flower bed from the foundation of the structure to the sidewalk edge across the entire length of the front façade by May 1st, 2015 or within 5 days of completion of construction of the front façade.

Rebecca Curran

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.