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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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Decision

City of Salem Board of Appeals

Petition of ROBERT AND CHRISTINE KING requesting a Special Permit under Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to allow the renovation and expansion of an existing nonconforming structure, and two Variances from the provisions of Section 4.1.1 *Table of Dimensional Requirements*, specifically from the 2.5 story maximum allowed height of buildings to allow the building to be 3 stories in height, and from the minimum width of side yard to allow the construction of stairs from the ground elevation up to the deck, at the property located at 84-86 BAY VIEW AVENUE (R1 Zoning District).

A public hearing on the above Petition was opened on February 19, 2014 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. Dionne, Mr. Duffy, Ms. Harris, Mr. Watkins, Mr. Copelas (Alternate), and Mr. Tsitsinos (Alternate).

The Petitioner seeks a Special Permit from Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance, as well as two Variances under Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance.

Statements of fact:

1. In the petition date-stamped January 28, 2014, the Petitioner requested: a Variance to allow the addition of two dormers to provide walk-up access to the attic, when the addition of the dormers creates a third story and only 2.5 stories are permitted in an R1 district; and a Special Permit in order to renovate and expand an existing nonconforming structure.
2. Mr. Tom St. Pierre, Zoning Enforcement Officer, found that the proposal also required a second Variance to allow the construction of an exterior stairway from the proposed rear deck to the ground level. These proposed stairs encroach on the required 10-foot minimum width of side yard.
3. Mr. Robert King presented the petition for the property at 84-86 Bay View Avenue.
4. The existing structure is approximately 27 feet in height. The proposed structure will be 32 feet in height. The proposed dormers would be 31 feet in height. In an R1 zoning district, 2.5 stories is the maximum allowed height of buildings in stories, and 35 feet is the maximum allowed height of buildings in feet.
5. The petition proposes to remove three features of the existing structure that encroach on the minimum required depth of side yard, and to construct one stairway at minimum width and with a lesser encroachment on the required depth of side yard than the existing features.
6. Mr. King submitted plans that show the proposed rear deck to be 8 feet deep by 21 feet wide. At the public hearing, Mr. King requests to amend the proposed deck to be 6 feet deep by 21 feet wide, to accommodate the request of one of the direct abutters.
7. The property is currently a two-family residence and will remain a two-family residence.

8. The requested relief, if granted, would allow the Petitioner to renovate and expand the existing non-conforming structure, would allow the addition of two dormers to create a third floor, and would allow the construction of exterior stairs from ground level up to the rear deck, within the required minimum width of side yard.
9. At the public hearing, one abutter expressed their non-opposition to the petition if the proposed rear deck is limited to a maximum depth of six feet, one abutter expressed concerns regarding the petition. Two written comments in support of the petition were received.

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 – Special Permit to allow the renovation and expansion of an existing nonconforming structure:

1. The impact of the proposal on the community's needs is no different than the existing use, as the property will remain a two-family residence.
2. There will be no impact on parking or loading in the area, as the property will remain a two-family residence.
3. The adequacy of utilities and public services to the building will remain the same as existing.
4. It will be an improvement to the neighborhood character.
5. The value of the home would increase, resulting in an increased tax base. This would have a positive economic and fiscal impact.

Findings – Variance from the required minimum width of side yard to allow the construction of stairs from the ground elevation up to the deck:

1. The proposed stair from the deck is at the minimum allowed width. Due to the narrowness of the lot, any potential location for the stairway would be within a required side yard setback.
2. Literal enforcement of the provisions of the Ordinance would be a substantial hardship.
3. The proposed stairway is smaller than the existing stairway, so the desired relief may be granted without substantial detriment to the public good.
4. The desired relief may be granted without nullifying or substantially derogating from the intent or purpose of the City of Salem Zoning Ordinance.

Findings – Variance from the 2.5 story maximum allowed height of buildings to allow the building to be 3 stories in height:

1. Due to the narrowness of the lot, the size of the house, and the configuration of the lot and the house, the applicant cannot create a staircase to the attic space without dormers. The dormers trigger a technical third story. Although it's technically a third story, the height of the proposed structure is within the allowed maximum 35 foot height of buildings in feet.
2. Literal enforcement of the provisions of the Ordinance would be a substantial hardship.
3. The proposed dormers are located toward the front of the house, such that the greatest impact of the dormers would be on the neighbor across the street. The petition has the support of the neighbor across the street. The desired relief may be granted without substantial detriment to the public good.

4. 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 (Mr. Watkins, Ms. Curran, Mr. Dionne, and Mr. Duffy in favor) and one (1) opposed (Ms. Harris), to grant the requested Special Permit to allow the renovation and expansion of an existing nonconforming structure, the Variance to allow the building to be three (3) stories in height, and the Variance to allow the construction of stairs to the deck within the minimum width of sideyard, 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. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board
8. The submitted plans show an eight (8) foot deep rear deck. The rear deck shall be a maximum of six (6) feet deep.



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.