



Memo to: Salisbury Zoning Board of Appeals

From: Abby Conroy, Land Use Administrator

Date: September 13, 2022

Subject: Request for Variance 2022-0188 on the Basis of Reduction of Nonconformity

Application Request

Janet Andre Block, owner of a historic home at 4 Main Street Salisbury has a pending request for variance relating to sections 304.1 and 300.3 of the Zoning Regulations. The intent of the project is to replace a single-story art studio with a two-story building including a bathroom and kitchen area for potential future use as an accessory apartment.

The Salisbury Zoning Regulations define three separate types of non-conforming situations.

NON-CONFORMING LOT. A lot that does not meet the dimensional requirement(s) of these Regulations, such as the minimum lot area requirement.

NON-CONFORMING BUILDING OR STRUCTURE. A building or structure that does not conform to one or more of the building or structure exterior dimension or location requirements of these Regulations as set forth in the Tables of Dimensional Requirements, or other dimension requirements of these Regulations.

NON-CONFORMING USE. A non-conforming use is a use of a lot, building or structure that does not meet the use requirements for the zone or overlay district in which it is located. A non-conforming use may be a non-conforming use of land and/or a non-conforming use of a building or structure.

The lot itself is nonconforming consisting of 6696 square feet where 20,000 square feet are required. Additionally, the home is nonconforming with regard to side yard setback and building coverage. However, the use as a single-family residence with a home office (studio) of convenience is a conforming use allowed as of right.

Applicable Regulations

Section 304.1 of the Zoning Regulations identifies that “principal buildings... shall meet the minimum yard setback requirements...”. Section 300.3 is the Table of Dimensional Requirements for Rural Enterprise, Commercial, and Industrial Zones which defines the setback standards. The property in question is located in the C-20 commercial district. Therefore, the required yard setbacks and maximum building coverage are as follows:

Front – 20’ Side – 12’ Rear – 30’ Maximum Building Coverage – 25%

The application materials include survey #1323 (1973) and survey #1571 (1979) both of which are on file in the office of the Town Clerk. The 1973 survey shows that the existing 27’-4” x 21’-4” studio is



2'-0" from the northern property bound. The new 22'4" by 24'8" studio is proposed 5'-1" from the northern property bound thereby doubling the setback and reducing the encroachment in the setback by 3'-1". The portion of the existing studio footprint located in the side yard setback is 256 square feet. The portion of the proposed addition footprint located in the side yard setback is 140 square feet. While the proposal does involve expanding the structure in a southerly direction, that expansion respects the required 12' side yard setback to the south. Further, the applicant has proposed a reduction of 14 square feet or 0.2% reducing the building coverage from 36.5% to 36.3%.

Standards for Approval

Generally, one seeking a variance from the Zoning Board of Appeals (ZBA) must demonstrate both that:

1. the proposal will not affect substantially the comprehensive zoning plan, and
2. that adherence to the strict letter of zoning will cause unusual hardship

However, the courts have upheld variances granted by the ZBA when an application will result in the elimination and/or reduction of nonconformities. In these instances, it is not necessary for the applicant to demonstrate or for the Board to find hardship. Where a proposal seeks to reduce a nonconforming situation, the burden on the applicant is slightly different. Under these circumstances, an applicant need not demonstrate the hardship component only that the variance would not affect substantially the comprehensive zoning plan. By default, a reduction in nonconformity constitutes a degree of abandonment of a nonconforming situation to one that more closely aligns with the comprehensive zoning plan.

Conclusion

The applicant endeavors to construct a new addition on her home, in a slightly different location than the existing studio. Because the proposed location does not meet the dimensional requirements in the C-20, she must pursue a variance through the Zoning Board of Appeals. While her proposal is transparent, anticipating future use as an accessory apartment, the request before the Board pertains only to the dimensional requirements identified in Section 304.1 and 300.3 of the Zoning Regulations.

The applicant must first obtain a variance from the Zoning Board of Appeals before pursuing approvals through the Planning & Zoning Commission for the vertical expansion of a nonconforming dwelling in accordance with section 503.2, or for an attached accessory apartment in accordance with section 208. As such the applicant is asking the Board to grant relief from the table of dimensional requirements by finding that her proposed structure will be more conforming than what currently exists.

It is recommended that a condition of approval of any and all variances is that the permittee provide an A-2 As-Built Site Improvement and Grading Plan, prepared by a State of Connecticut Registered Land Surveyor, to the Land Use Administrator after all of the site work is completed, and prior to requesting a Certificate of Occupancy.