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MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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2015 DEC 30 P 1:16

FILE #  
CITY CLERK, SALEM, MASS.

December 30, 2015

## Decision

### City of Salem Board of Appeals

Petition of MATTHEW and MARIE GAGNON, TRUSTEES of HENRIE REALTY TRUST, requesting Variances seeking relief from *Sec. 4.1.1 Table of Dimensional Requirements* from minimum lot frontage and minimum lot width to all lots and minimum lot area per dwelling unit for Lot 3 to create three (3) lots located at 186-190 MARLBOROUGH ROAD (Map 10 Lot 32) (R1).

A public hearing on the above Petition was opened on December 16, 2015 pursuant to M.G.L. Ch. 40A, § 11. The hearing was closed on that date with the following Salem Board of Appeals members present: Rebecca Curran (Chair), Peter Copelas, Tom Watkins, Mike Duffy and Jim Hacker (alternate).

The petitioner is seeking Variances requesting relief from *Sec. 4.1.1 Table of Dimensional Requirements* of the Salem Zoning Ordinance for minimum lot frontage and minimum lot width to all lots and minimum lot area per dwelling unit for Lot 3 to divide the existing lot into three (3) lots.

#### Statement of facts:

1. In the petition date-stamped November 23, 2015, the Petitioner requested a Variances seeking relief from *Sec. 4.1.1 Table of Dimensional Requirements* to from minimum lot frontage and minimum lot width to all lots and minimum lot area per dwelling unit for Lot 3 to create three (3) lots.
2. Attorney Atkins presents the petition on behalf of the applicants.
3. The existing property is one (1) lot with three (3) residential structures. The petitioner proposes to create three (3) separate lots out of one (1) large existing lot with one building on each lot.
4. The property is unique as there are three (3) existing houses on one (1) lot.
5. The existing structure on Lot 1 is a single-family home. The existing structure on Lot 2 is a single family home that will be demolished and reconstructed and remain a single family home. Lot 3 is used as a non-conforming two (2)- family residential building that will remain. The property is located in an R1 Single Family Residential Zoning District.
6. The petitioner proposes fifty (50) feet of the required 100' feet of frontage for each proposed lot.
7. The petitioner proposes approximately 57 feet, 31 feet and 62 feet of lot width for Lots 1-3 consecutively of the required 100' feet.
8. The petitioner seeks relief for minimum lot area per dwelling unit for Lot 3. This lot is 25,788 square feet of the required 15,000 square feet of lot area per dwelling unit on Lot 3. This lot requires 30,000 square feet as the structure is an existing nonconforming two-family dwelling unit.
9. Attorney Atkins testifies that the existing lot is irregular in shape and a large portion of the proposed divided lots contain wet soil making the use of a large portion of each proposed lot impractical for development.

10. Attorney Atkins testifies that the petitioner does not propose to change the nature of the lots as the use will remain residential.
11. The requested relief, if granted, would allow the Petitioner to create three (3) dimensionally non-conforming lots.
12. At the public hearing one (1) member of the public spoke in favor, of and none (0) spoke in opposition to, the petition.

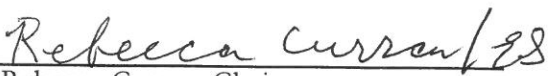
The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petition, including the application narrative and plans, and the Petitioner's presentation and public testimony, makes the following findings that the proposed project meets the provisions of the City of Salem Zoning Ordinance:

**Findings for Variance:**

1. Special conditions and circumstances that especially affect the land, building or structure generally not affecting other lands, buildings or structures in the same district are that there are three structures on a single lot, a substantial portion of the proposed lots have wet soils, and the topography is such that the lot is lower than the surrounding properties.
2. The literal enforcement of the provisions of the Ordinance would prevent the property owner from dividing the property involve substantial hardship.
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 five (5) in favor (Rebecca Curran (Chair), Peter Copelas, Tom Watkins, Mike Duffy and Jim Hacker (alternate) and none (0) opposed, to grant Variances for minimum lot frontage and minimum lot width to all lots and minimum lot area per dwelling unit for Lot 3 to create three (3) lots, **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. Certificate of Occupancy shall 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.

  
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.*