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FILE #
CITY CLERK SALEM, MASS.

February 3, 2016

Decision

City of Salem Board of Appeals

A petition of ROBERT BURR requesting a Special Permit per *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to change an existing nonconforming use of a multifamily residential units to another nonconforming use of mixed use commercial office/retail and a Special Permit per *Sec. 3.3.3 Nonconforming Structures* to alter a nonconforming structure. The petitioner is also requesting Variances for relief from *Sec. 4.1.1 Table of Dimensional Requirements* to exceed the maximum height and front yard setbacks at the properties located at 331-335 LAFAYETTE ST, 5-7 WEST AVE, 11 WEST AVE (Map 32 Lots 231, 232, 233, 234)(B1, R1, R2).

A public hearing on the above Petition was opened on October 21, 2015 pursuant to M.G.L Ch. 40A, § 11. The public hearing was continued on November 11, 2015, December 16, 2015 and January 20, 2016. The hearing was closed on January 20, 2016 with the following Salem Board of Appeals members present: Ms. Curran (Chair), Mr. Copelas, Mr. Watkins, and Mr. Viccica (alternate).

The Petitioner is requesting a Special Permit per *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to change an existing nonconforming use of a multifamily residential property to another nonconforming use of mixed use commercial office/retail and a Special Permit per *Sec. 3.3.3 Nonconforming Structures* to alter a nonconforming structure. The petitioner is also requesting Variances for relief from *Sec. 4.1.1 Table of Dimensional Requirements* to exceed the maximum height and front yard setbacks.

Statements of fact:

1. Attorney Grover presented the petition on behalf of the petitioner.
2. In the petition date-stamped September 25, 2015, the Petitioner requested a Special Permit per *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to change and existing nonconforming use of a multifamily residential property to another nonconforming use of mixed use commercial office/retail. The petitioner also requested Variances for relief from *Sec. 4.1.1 Table of Dimensional Requirements* to exceed the maximum height, front yard setbacks and relief from *Sec. 5.0 Table of Parking Requirements* and *5.1.5 Parking Design* located at the properties located at 331-335 Lafayette Street and 5-7 West Ave (Map 32 Lots 231, 232, 233).
3. A public hearing for the petition was opened on October 21, 2015 and continued to the next regularly scheduled meeting on November 11, 2015, December 16, 2015 and January 20, 2016 at the request of the applicant to revise the original plans to eliminate the request for a variance from the parking

requirements and lessen the impact of the proposed development on the neighborhood character particularly along the eastern boundary of the property.

4. The original petition, dated September 25, 2015, proposed a three (3) story building with approximately 7,000 square feet of retail space on the first floor and approximately 32,000 square feet of office space on the upper two (2) floors.
5. The original petition, proposed a building with a height of 39.5 feet, which exceeds the allowable height of the B-1 and R-2 zoning districts. The proposed building also had setbacks proposed along Lafayette Street and West Avenue that encroached on the fifteen (15) feet front yard setback requirements.
6. The original petition, dated September 25, 2016, proposed to provide 55 parking spaces for a 39,000 square foot building. To meet the parking requirements of the Zoning Ordinance, the petitioner would need to provide 132 parking spaces for the proposed building square footage and uses.
7. At the public hearing on October 21, 2015, the Board stated concerns about the impacts of the proposal on the neighborhood character and concerns that the proposed square footage was directly causing the petitioner to request a Variance from the parking requirements.
8. At the public hearing on October 21, 2015, the petitioner requested a continuation to the next regularly scheduled meeting on November 11, 2015 to respond to the concerns of the Board and the public.
9. The applicant submitted a revised petition dated November 24, 2015. The petitioner withdrew the request for Variances for relief from *Sec. 5.0 Table of Parking Requirements and 5.1.1 Parking Design*. In addition, the petitioner entered into a purchase and sales agreement to purchase the property located at 11 West Avenue (Map 32 Lot 234).
10. The petitioner submitted a revised petition form dated November 24, 2015 and the legal notice was re-advertised to include the additional property at 11 West Avenue (Map 32 Lot 234).
11. On November 11, 2015 the petitioner requested a continuation of the public hearing to the next regularly scheduled meeting on December 16, 2015 for more time to revise plans. The Board granted the request.
12. On December 16, 2015, Attorney Grover presented the revised petition requesting a Special Permit per *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to change and existing nonconforming use of a multifamily residential property to another nonconforming use of mixed use commercial office/retail and a Special Permit per *Sec. 3.3.3 Nonconforming Structures* to alter a nonconforming structure. The petitioner is also requesting Variances for relief from *Sec. 4.1.1 Table of Dimensional Requirements* to exceed the maximum height and front yard setbacks.
13. The revised petition proposed to reduce the square footage of the three (3) story building by approximately 10,000 square feet. The total square footage of the revised building included approximately 6,300 square feet of retail on the first floor and 23,000 square feet of office space on the upper two (2) floors.
14. The applicant states that a two (2) - story office building would be more detrimental to the neighborhood than the proposed mixed use building.

15. The revised petition proposed to provide the required eighty-three (83) parking spaces to be in conformance with the zoning requirements associated with the reduced building square footage and associated uses as proposed in the revised plans.
16. There were no dimensional changes proposed to the setbacks or building height in the revised plan dated November 24, 2015.
17. Mr. Burr also proposed to grant an easement to the City to accommodate ongoing traffic improvements at the intersection of West Avenue and Lafayette Street.: if the City Engineer determines it would be beneficial.
18. Attorney Grover presented the following grounds for the Variance requests:
 - Special conditions and circumstances that especially affect the land, building, or structure involved, generally not affecting other lands, buildings and structures in the same district are that parcel at 331 Lafayette Street is an odd “L” shaped lot that that cannot be commercially developed as allowed by-right. The irregular shape of this parcel required the petitioners to aggregate several parcels in order to create a site that could be practically developed. The property at 5-7 West Street is a six (6) unit residential property surrounded by two (2) commercially zoned properties including a portion of 331 Lafayette Street and 335 Lafayette Street is also a unique circumstance. Another unique feature of these properties is that there are four (4) separate parcels in three (3) different zoning districts. Since the public hearing in October, the petitioner has added an additional parcel to the project properties, 11 West Avenue, to meet the required parking regulations and piece together property can be developed.
 - Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant because the shape of 331 Lafayette Street has forced the applicant to The one irregularity along the northern edge of 331 Lafayette Street still presents some physical challenges and directly affects where a building can be located and how high the building needs to be. The irregular shape of 331 Lafayette along the northern edge also forced the location of the building to be within the front yard setbacks along Lafayette Street and West Avenue in order to make space for the required parking and on-site traffic circulation. The other reason for the proposed location of the building is to lessen the impact on the abutting residential properties. Both the Board and the neighborhood are concerned about the impacts of a commercial use on abutting residential properties. The proposed building height Variance is directly in response to these site-specific physical challenges.
 - 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. The site is in poor condition with a series of commercial and residential properties that are in disrepair. The petitioner proposes put a program in place that significantly improves the properties and does so in a way to maintain a first floor retail space that is important to the neighborhood and also keeps a reasonable buffer between the proposed commercial and existing residential neighborhood. Diminishing the size of the building and increasing the parking addresses the negative aspects and concerns from the neighborhood that the project would cause increased traffic and parking overflow into the neighborhood. The petitioner has addressed the concerns of the neighborhood with the revised plan presented.
19. Mr. Cameron- Engineer- testified that the odd shape of the lot along the northern boundary presents significant challenges to the overall site design. The proposed building angle is designed in this way to accommodate the parking requirements. If the jog in the lot line were not irregularly shaped, along the

northern edge of 331 Lafayette, there would be space for another parking lane and alternative options for building location. However, this lot line angle pushes the building down further onto the corner of Lafayette Street and West Avenue. The proposed building is no closer to the street than any of the existing buildings.

20. Mr. Cameron-Engineer and Mr. Pittman- Architect testify that the project team studied the design and building orientation and found that the proposed configuration was the best option for three (3) reasons. 1) The corner has a major sight distance deficiency. By pulling the building back from the corner and placing it at this angle, the sight distance around the corner from West Avenue to Lafayette Street is significantly improved and will help with traffic circulation; 2) Given the irregular shaped lot, there is no ability to orient the parking spaces at the 11 West Avenue property and meet the parking requirements and a safe parking lot design without this building orientation; 3) From an architectural perspective, the angle of the building also reduces the visual mass of the building along Lafayette Street.
21. The existing footprint square footage at 331-335 Lafayette Street is approximately 12,000 square feet with approximately 130 +/- linear feet along Lafayette Street. The existing width of the property is approximately seventy (70') feet.
22. The proposed footprint square footage is approximately 11,500 square feet with ninety-two (92') +/- linear feet along Lafayette Street, which is less than the existing development.
23. The existing buildings vary in height from eighteen (18') feet to thirty-nine (39') feet tall.
24. The proposed building height is thirty-nine (39') feet tall.
25. Mr. Pittman- Architect- testified that the additional building height beyond the maximum dimensional requirement of thirty (30') feet is necessary to provide visual and auditory screening for various mechanical systems including the elevator and HVAC. In order to construct a three (3) story structure within the 30' foot building height requirement is not physically possible. Mr. Pittman demonstrated that with this height restriction, the interior ceiling height would be seven (7) feet tall in many locations with a peak height of 7.8 (feet) tall. This height does not account for the roof, parapet, slope edges and mechanical systems. The thirty (30') feet requirement is unrealistic for a three (3) story structure. The height of the building to the bottom of the cornice detail is twenty (20') feet and to the top of the gutter and assembly is twenty-two (22) feet. From the grade level to the top of the dormer is thirty-one and a half feet (31.5) feet.
26. At the public hearing on December 16, 2015, in response to public concerns from abutters, the Board requested that the developer consider expanding the buffer between the development and residential neighborhood along the eastern edge of the property, move the dumpster pad location from any property edges, and further reduce the size of the proposed building to help reallocate space to lessen the impacts of the proposal on the neighborhood.
27. The applicant submitted revised plans to the Board on January 13, 2015 with the following changes: 1) A reduction in the building size from 29,000 square feet to 24,000 square feet; 2) An expansion of the buffer between the eastern edge of the subject property and abutting residential properties by shortening the proposed building along West Avenue by thirty (30') feet 3) A reconfiguration of the parking lot design and reduction in the number of parking spaces to include a total of seventy-two (72) parking spaces; 4) The location of the dumpster pad is located away from the property boundaries; 5) The petitioner proposed to keep and restore the existing two (2)- family dwelling unit

at the property of 11 West Avenue (Map 32 Lot 234) and using the back portion of the 11 west street lot as parking and buffer for the proposed structure.

28. The requested relief, if granted, would allow the Petitioner to change and existing nonconforming use of a multifamily residential units to another nonconforming use of mixed use commercial office/retail and to exceed the maximum height and front yard setbacks in accordance with the revised site plan dated January 13, 2016.
29. At the public hearings, a petition in opposition to the request was submitted and signed by one hundred and sixteen (116) residents. In addition, eight (8) letters of opposition were submitted. Three (3) letters of support were submitted and many people spoke both in opposition and support of the proposal. At the final hearing, residents expressed broad support for the revised plans.

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:

The Board finds that the proposed project is not substantially more detrimental than the existing nonconforming use to the neighborhood.

1. Social, economic and community needs are served by the proposal. An office building could be constructed on the parcel as of right, but the first floor retail component is an important use that provides a better opportunity to meet the needs of the community.
2. Traffic flow and safety, including parking and loading are adequate as the proposal meets the parking requirements.
3. There are no changes to the impact on utilities and other public services.
4. Impacts on the natural environment, including drainage are no more than what already exists. In particular, the petitioner has shown that there is a decrease in impervious surfaces than the existing development.
5. The proposal is in keeping with the neighborhood character. The proposal is a change to the overall look of the building, the board determined that in order for the project to be less detrimental than the existing use, a landscape buffer and fencing and dumpster location were critical to this. a significant buffer between the proposed building and the residential neighborhood as the petitioner is proposing to keep the use and structure of 11 West Avenue
6. The potential fiscal impact, including the impact on the City tax base is positive as this will be an improved property.

For these reasons, the special permit is warranted.

Findings – Variances from maximum height (feet) and front yard setback requirements.

1. Special conditions and circumstances that especially affect the land, building, or structure involved, generally not affecting other lands, buildings, and structures in the same district is that the property is within three (3) different zoning districts and an Overlay District, the irregular shape of the property along the northern boundary is different.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant in that any alternative proposal to develop this site, including what is allowable by right, would not be less detrimental to the neighborhood.


3. 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, Mr. Watkins, Mr. Copelas, Mr. Viccica (alternate)) and none (0) opposed, to grant a Special Permit per *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to change and existing nonconforming use of a multifamily residential units to another nonconforming use of mixed use commercial office/retail, a Special Permit per *Sec. 3.3.3 Nonconforming Structures* to alter a nonconforming structure and Variances for relief from *Sec. 4.1.1 Table of Dimensional Requirements* to exceed the maximum height and front yard setbacks, 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.

Special Conditions:

1. The existing structure and residential dwelling at 11 West Avenue will remain.
2. The fence and vegetative buffers shall be maintained by the petitioner, his successors or assigns.
3. This decision requiring the buffer between the approved proposal and the residential properties shall be recorded in the chain of title on the deed of the property.


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.