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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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CITY CLERK SALEM, MASS

August 3, 2016

Decision

City of Salem Board of Appeals

A public hearing for all persons interested in the petition of RICHARD JAGOLTA, seeking a Special Permit per Sec. 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance, to allow a change from one non-conforming use to another non-conforming use at 107 FEDERAL STREET (Map 26 Lot 531)(R-2 Zoning District).

A public hearing on the above Petition was opened on June 15, 2016 pursuant to M.G.L Ch. 40A, § 11. The hearing continued to July 20, 2016 and closed on that date with the following Salem Board of Appeals members present: Rebecca Curran (Chair), Peter A. Copelas, Jimmy Tsitsinos, Paul Viccica (alternate).

The petitioner is seeking a Special Permit per Sec. 3.3.2 Nonconforming Uses to allow a change from one non-conforming use to another non-conforming use.

Statements of fact:

1. In the petition date-stamped May 20, 2016, the Petitioner requested a Special Permit per Sec. 3.3.2 Nonconforming Uses to allow a change from one non-conforming use of a commercial business to a non-conforming residential use.
2. Mr. Jagolta, owner of the first floor unit and petitioner, presented the petition.
3. The three (3) story building, built around 1880, is an existing nonconforming structure located in an R-2 Zoning District.
4. The building is divided into three (3) condominium units that include two (2) residences and one (1) first floor commercial space.
5. In 2014, a Special Permit was granted by the Board of Appeals to allow a real estate consulting office at the property. The Special Permit of 2014 was appealed by abutters and an Agreement for Judgement was executed by the City in the Superior Court action, Arlander v. Sinclair, CA No. 2014-1030B.
6. In 2006, a Special Permit was issued by the Board of Appeals to allow a graphic design and art gallery at the property.
7. At the June 15, 2016 public hearing, the Board requested an opinion of the City Solicitor to determine whether a Special Permit per *Sec. 3.3.2 Nonconforming Uses* was the correct form of relief required for the request. Further, the Board also requested an opinion on whether a previously issued Special Permit was valid.
8. On July 20, 2016, the Board discussed the legal opinion of the City Solicitor.

9. The memorandum to the Board dated July 14, 2016 provided by Jill Mann of Mann & Mann P.C. concluded the following findings: 1) The Special Permit of 2006 did not lapse as a result of the discontinuation of the permitted business for a period in excess of two years; 2) The Special Permit and the conditions set forth continue to be valid, however at the closure of the business, a Special Condition was triggered that required that any future occupant return to the Board of Appeals to request a new Special Permit for any future use of the property; 3) The current petitioner, Mr. Jagolta, needed to request a special permit under Sec. 9.4 of the Zoning Ordinance of the City of Salem in accordance with Special Condition #7 of the 2006 Special Permit to convert the first floor unit to a residential dwelling unit.
10. On July 18, 2016, the petitioner requested a minor modification to the application to request relief a Special Permit under Sec. 9.4 of the Ordinance in accordance with condition #7 of the 2006 Special Permit and not a under *Sec. 3.3.3 Nonconforming Uses* as requested in the petition form.
11. The petitioner is proposing to convert the first floor commercial unit into a residential unit.
12. The petitioner is proposing to restore the existing building exterior including the replacement of the aluminum framed plate glass door with one to closely match the other existing front entry door, removal of a large air conditioning unit above the front door entry, removal of plywood covering a former entry door on Beckford Street and installing windows, and removing plywood on a rear window and restoring the window, among other restoration measures.
13. The unit has three (3) existing parking spaces, two (2) tandem spaces in the Federal Street driveway and one (1) space behind the building with access on Beckford Street.
14. At the public hearing eight (8) members of the public spoke in favor of and six (6) 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, makes the following **findings**:

The Board finds any adverse effects of the proposed use will not outweigh its beneficial impacts to the City or the neighborhood as a residential dwelling unit and the use is consistent with the existing building and neighborhood.

1. Social, economic and community needs are served by this proposal
2. There will be less impact on the neighborhood regarding traffic flow and safety as the proposal will convert the first floor unit from a commercial space to a residential unit.
3. The utilities and other public services are adequate.
4. The proposal fits with the neighborhood character as the petitioner is proposing to rehabilitate the exterior first floor unit to be more in keeping with the historic character of the building and the proposed residential unit is consistent with the existing uses in the building and neighborhood.
5. There are no changes to impacts on the natural environment.
6. The potential economic and fiscal impact, including impact on City services, tax base and employment will be positive.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted four (Rebecca Curran (Chair), Peter A. Copelas, Jimmy Tsitsinos, Paul Viccica (alternate) in favor and none (0) opposed, to allow the petitioner to convert the first floor unit to a residential dwelling unit subject to the following **terms, conditions and safeguards:**

Standard:

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 shall be obtained.
7. A Certificate of Inspection is to be obtained.
8. 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.
9. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Special Condition:

1. Any person who proposes a change of use to occupy this space is required to apply for a new Special Permit per Section 9.4 of the Salem Zoning Ordinance.


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.