



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

120 WASHINGTON STREET ♦ SALEM, MASSACHUSETTS 01970
TELE: 978-745-9595 ♦ FAX: 978-740-9846

FILE #
CITY CLERK, SALEM, MASS.

January 4, 2017

Decision

City of Salem Board of Appeals

A petition of MICHAEL MEYER, TRUSTEE, requesting a Special Permit per *Sec. 3.3.2 Nonconforming Uses* and Variances per *Sec. 4.1.1 Dimensional Requirements* for the following minimum lot area per dwelling unit, minimum lot frontage, minimum distance between buildings, and maximum number of stories to construct eight (8) residential units at 1-3 EAST COLLINS STREET (Map 36 Lot 277) (R-1 Zoning District)

At the October 19, 2016 meeting, a public hearing was open pursuant to M.G.L Ch. 40A, § 11. Testimony was heard on that date and the public hearing was continued on October 19, 2016, November 16, 2016 and December 21, 2016. The hearing was closed on December 21, 2016 with the following Salem Board of Appeals members present: Rebecca Curran (Chair), Peter A. Copelas, Mike Duffy, Tom Watkins, and Jimmy Tsitsinos.

The Petitioner is requesting a Special Permit per *Sec. 3.3.2 Nonconforming Uses* and Variances per *Sec. 4.1.1 Dimensional Requirements* for the following minimum lot area per dwelling unit, minimum lot frontage, minimum distance between buildings, and maximum number of stories to construct eight (8) residential units.

Statements of fact:

1. Attorney Grover presented the petition on behalf of the petitioner. Dan Ricciarelli of Seger Architects, of Salem, MA and Scott Cameron, CE of Morin-Cameron Group, of Danvers, MA also presented testimony.
2. In March of 2015, the petitioner withdrew an application without prejudice for a development at this location for a residential use and submitted a significantly different application on September 27, 2016 for review.
3. In the petition date-stamped September 27, 2016, 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 social club to another nonconforming use of multi-family residential units. The petitioner is also requesting Variances for relief from *Sec. 4.1.1 Table of Dimensional Requirements* for minimum lot area per dwelling unit, minimum lot frontage, minimum distance between buildings, and number of stories.
4. The property is located at the Planters Street and East Collins Street in an R-1 Zoning District. The previous use of the property was the Ward 2 Social Club.

5. At the October 19, 2016 public hearing testimony was heard and there was a question about whether the property had lost its grandfathered non-conforming status. The Board requested a legal opinion from the City Solicitor to clarify whether property had lost its non-conforming status. The non-conforming status of the property determines whether the Board has the ability to allow a change in the property use from one non-conforming use to another non-conforming use by special permit.
6. On November 16, 2016, the petitioner requested a continuation of the public hearing to the next regularly scheduled meeting on December 21, 2016. No testimony was heard at this meeting.
7. At the December 21, 2016 meeting, the Board reviewed and discussed the legal opinion from the City Solicitor dated December 4, 2016.
8. The following are conclusions from the legal opinion relevant to the issues discussed at the October 19, 2016 public hearing:
 - The use of the property is entitled to protected status as a legally non-conforming use under M.G.L. Ch. 40A Section 6.
 - The club did not abandon its use of the property in January 2014, when it closed the building to the public.
 - The sale of the property to the petitioner does not constitute a termination of the use of the property.
 - It is within the authority of the City of Salem Board of Appeals to issue a special permit to allow a non-conforming use of the Property to continue, provided that the Board issues a finding that the proposed new use of the Property, is less detrimental than the existing nonconforming use.
9. Delinquent property taxes were paid by the petitioner before the December 21, 2016 public hearing.
10. On November 30, 1948, various residents of the City of Salem formed the Club as a Massachusetts not-for-profit corporation organized under M.G.L. Ch. 180 for the purpose of promoting brotherhood and charity in the Ward II District of Salem.
11. On November 1, 1956, the Club acquired title to the Property for the purpose of constructing a building to serve as the location for the charitable activities of its membership including a place to hold meetings and place where the public would be able to hold events. At this time, the property was located in a Single Residence District- B and the 1955 Ordinance was in effect. Pursuant to Sec.4.B.5 the Use of the Property was a permitted use in the Single Residence District, but is no longer a permitted use by right in the R1 Zoning District. The Social Club is an existing non-conforming use. (See Opinion 1-3 E. Collins St. Dated Dec. 4, 2016 for further discussion).
12. On May 21, 2015, the Club sold the property to the petitioner. The land area of the property consists of 41,834 square feet and has a one-story concrete block structure. The existing structure does not meet the current floodplain construction standards.
13. The petitioner is proposing to change the use of the property from the non-conforming use of a social club to multi-family residential dwelling units.
14. The petitioner testifies that the proposed residential use of the property is more consistent with the surrounding neighborhood use than the existing social club and bar room.
15. The existing building cannot be reconstructed for another purpose under the Chapter 91 requirements due to current flood plain construction standards. As such, the petitioner is proposing to demolish the

Ward 2 Social Club structure to construct eight (8) residential dwelling units in single and two family dwelling arrangements.

16. The proposed eight (8) units will be divided into three (3) duplexes and two (2) single-family homes. The petitioner testifies that the proposed residential use is consistent with the use of the surrounding neighborhood and the dwelling unit arrangement of single and two- family units is consistent with the arrangement of dwelling units within the surrounding neighborhood.
17. The petitioner is requesting a special permit per Sec. 3.3.2 Nonconforming Uses to change the existing non-conforming use of the property from the existing Ward 2 Social Club to multi-family residential dwelling units in single and two (2) family arrangements.
18. The petitioner expects to provide future public access to the waterfront through the property, in a location determined by the Planning Board and Massachusetts Department of Environmental Protection (DEP) through the Chapter 91 permitting process.
19. The proposed plan is providing fourteen (14) parking spaces where the requirement is twelve (12) parking spaces. The Salem Zoning Ordinance requires one and a half (1.5) parking spaces per dwelling unit.
20. Currently, there is one long curbcut with approximately thirty (30) parking spaces on the property. The petitioner is proposing to reduce the number of parking spaces and formalize a curbcut that meets the dimensional requirement of a maximum of 20' feet for a residential use.
21. Mr. Cameron, CE of Morin-Cameron Group, of Danvers, MA testified that the existing public utilities and other public services are adequate to support the proposed eight (8) residential units.
22. Mr. Cameron, CE of Morin-Cameron Group, of Danvers, MA testified that the impacts on the natural environment, including drainage would be positive. The petitioner is proposing to reduce the existing impervious surface from 30% to 15%. The property will comply with all stormwater management requirements.
23. The existing Ward 2 Social Club structure is 5,200 square feet at 12.5% lot coverage. In comparison, the five (5) proposed residential structures are a total of 6,400 square feet at 13.3% lot coverage. Mr. Cameron testifies that the proposed structures will have similar lot coverage and footprint areas as the existing structure.
24. Mr. Cameron testifies that existing average lot area per dwelling unit in the neighborhood one (1) dwelling unit per 2,600 square feet. The petitioner is proposing a lot area per dwelling unit of 5,229 square feet, making the proposed development approximately 30% less dense than neighboring dwelling units.
25. Mr. Cameron testifies that the spacing between buildings in the existing neighborhood is approximately ten (10) to twenty (20) feet. The proposed distance between the buildings at 1-3 East Collins Street is twenty-five (25') feet at the narrowest point.
26. The footprints of the proposed buildings are comparable to the existing footprints of the buildings in the surrounding neighborhood.
27. Mr. Ricciarelli, of Seger Architects testified that the proposed building footprints, massing and architectural design are consistent with the architectural details, massing, and form of the surrounding

neighborhood. For example, the proposed buildings incorporate simple cladding, bay windows, and "A" shaped rooflines. The building facades are slender with the remaining mass of the structure in the rear. All of these details fit with the existing character of the dwelling units in the neighborhood.

28. The arrangement of the buildings is in response to the public request to retain view corridors of the waterfront.
29. The potential fiscal impact, including impact on the City tax base is positive.
30. The petitioner is also requesting four (4) variances including minimum lot area per dwelling unit, minimum lot frontage, minimum distance between buildings, and maximum number of stories.
31. The petitioner, proposed the following deviations from the dimensional requirements of the Zoning Ordinance: a) a lot area per dwelling unit of 5,300 square feet where the requirement per the Zoning Ordinance is 15,000 square feet; b) 94.5 feet of frontage where the requirement per the Zoning Ordinance is 100 square feet of linear frontage; c) a minimum of 25 feet of distance between buildings where the minimum required distance is 40 feet d) Three (3) stories where the maximum requirement is 2.5 stories.
32. The petitioner testifies that the 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 a significant portion of the property is salt march and coastal dune and the entire site lies within the floodplain. Further, the site is traversed by an easement for the natural gas line, which will be constructed in the near future. In addition, most of the land is within the jurisdiction of the Commonwealth of Massachusetts under Chapter 91. The land is also located in the most restrict zoning district, but surrounding by districts that are less restrictive. These unique conditions of this property make the development of the site expensive and challenging.
33. The petitioner testifies that the social club is no longer viable as evidenced by its recent closure due to declining membership. Further the existing building cannot be reconstructed for another purpose under the Chapter 91 requirements due to current flood plain standards. The literal enforcement of the zoning ordinance would allow the property owner to construct a single-family home. Due to unique conditions of the land, the cost of the required specialized construction would exceed the market value of the home for the area.
34. The petitioner proposes a density of 5,300 square feet where the requirement is 15,000 square feet per dwelling unit and testifies that the proposed density of eight (8) residential dwelling units is needed. A single-family use, which is an allowable use by right on this property, is not an economically feasible use and creates an economic hardship for the petitioner due to the cost of construction needed for this property.
35. The petitioner is proposing 94.5 feet of frontage where the requirement per the Zoning Ordinance is 100 square feet of linear frontage. The frontage is a pre-existing non-conforming dimension with no alternative to provide additional linear frontage.
36. The petitioner is proposing 25'-30' feet of distance between buildings where the minimum required distance is 40 feet.
37. The petitioner is proposing to construct dwelling units that are three (3) stories rather than the maximum requirement of 2.5 stories. The proposed living areas are raised with parking proposed underneath the building by necessity because the entire property is located within the flood zone. Coastal construction requires that the first floor be elevated above the ten (10) foot flood elevation.

38. The dwelling unit mean rafter height does not exceed the 35' foot maximum requirement.

39. At the public hearings, ten (10) residents spoke in opposition to the proposal and one (1) member spoke in support of 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. The special conditions and circumstances that especially affecting land, building or structure involved generally not affecting other lands, buildings, and structures in the same district is that a significant portion of the property is salt march and coastal dune and the entire site lies within the flood plain. Further, the site is traversed by an easement for the natural gas line, which will be constructed in the near future. In addition, most of the land is within the jurisdiction of the Commonwealth of Massachusetts under Chapter 91. The land is also located in the most restrict zoning district, but surrounding by districts that are less restrictive. These unique conditions of this property make the development of the site expensive and challenging.
2. The literal enforcement of the provisions of the Ordinance would involve substantial hardship as the cost of building a single-family home on the property would far exceed the market value of the area.
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.

Findings for Special Permit

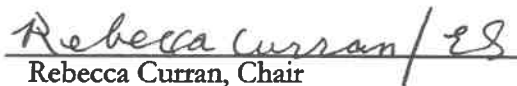
1. The proposed change use of a non-conforming social club to another non-conforming use of multi-family residential uses in a single and two (2) family arrangement is not substantially more detrimental than the existing non-conforming use to the impact on the social, economic or community needs served by the proposal.
2. There are no impacts on traffic flow and safety, including parking and loading as there are fourteen (14) on-site parking spaces that exceed the minimum parking requirements of the Salem Zoning Ordinance.
3. The capacity of the utilities and public services are not significantly affected by the project.
4. There are net positive impacts on the natural environment, including drainage as the existing property has approximately 12,000 square feet of existing pavement surface. The petitioner is proposing to reduce the impervious surface on the property to approximately 5,500 square feet.
5. The proposal improves neighborhood character as it improves the property and the residential use is consistent with the use of the surrounding neighborhood. The dwelling unit arrangement of single and two- family units is consistent with the arrangement of dwelling units within the surrounding neighborhood. Further, proposed building footprints, massing, density and architectural design are consistent with the architectural details, massing, density and form of the surrounding neighborhood.
6. The potential fiscal impact, including impact on the City tax base is positive.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (Rebecca Curran (Chair), Peter A. Copelas, Jimmy Tsitsinos, Mike Duffy, and Tom Watkins) in favor and none (0) opposed, to grant a Special Permit per *Sec. 3.3.2 Nonconforming Uses* and Variances per *Sec. 4.1.1 Dimensional Requirements* of the Salem Zoning Ordinance, for minimum lot area per dwelling unit, minimum lot frontage, minimum distance between buildings, and maximum number of stories, to construct eight (8) residential units 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 Inspection shall be obtained.
7. A Certificate of Occupancy shall 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. The applicant shall provide public access to the waterfront per DEP Chapter 91 license requirements.


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.