



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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

2017 MAR -1 AM 9:23  
CITY CLERK  
SALEM, MASS.

March 1, 2017

## Decision

### City of Salem Board of Appeals

Petition of JUNIPER POINT 9 SOUTH MASON STREET LLC, seeking a Special Permit under *Sec. 3.3.2 Nonconforming Uses* and *3.3.3 Nonconforming Structures* of the Salem Zoning Ordinance to extend a non-conforming residential use and structure; The petitioner is also requesting Variances per *Sec. 4.1.1 Table of Dimensional Requirements* for relief from minimum lot area per dwelling unit; *Sec. 8.4.8 Mechanical Equipment and Refuse Storage* to allow mechanical equipment within front yard or within twenty five (25) feet of the side yard lot line; *8.4.13 Transitional Overlay District* of the NRCC to allow less than the required fifty foot (50') buffer, to exceed the maximum building height (feet and stories), and to exceed the maximum fence height adjacent to non-residential uses; at 9 SOUTH MASON STREET, 3A BUFFUM STREET EXTENSION, and 23 MASON STREET also including 23 ½ and 23R MASON STREET (Map 26 Lots 73, 74, 79) (NRCC and I Zoning Districts).

A public hearing on the above Petition was opened on February 15, 2017 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Mr. Duffy (Acting Chair), Mr. Watkins, Mr. Hacker (alternate), and Mr. Viccica (alternate).

The petitioner is seeking a Special Permit under *Sec. 3.3.2 Nonconforming Uses* and *3.3.3 Nonconforming Structures* of the Salem Zoning Ordinance to extend a non-conforming residential use and structure; The petitioner is also requesting Variances per *Sec. 4.1.1 Table of Dimensional Requirements* for relief from minimum lot area per dwelling unit; *Sec. 8.4.8 Mechanical Equipment and Refuse Storage* to allow mechanical equipment within front yard or within twenty five (25) feet of the side yard lot line; *8.4.13 Transitional Overlay District* of the NRCC to allow less than the required fifty foot (50') buffer, to exceed the maximum building height (feet and stories), and to exceed the maximum fence height adjacent to non-residential uses.

#### Statements of fact:

1. Attorney Joseph Correnti and Bob Griffin, Griffin Engineering present the petition.
2. In the petition date-stamped January 24, 2017, the petitioner requested a Special Permit under *Sec. 3.3.2 Nonconforming Uses* and *3.3.3 Nonconforming Structures* of the Salem Zoning Ordinance to extend a non-conforming residential use and structure; The petitioner is also requesting Variances per *Sec. 4.1.1 Table of Dimensional Requirements* for relief from minimum lot area per dwelling unit; *Sec. 8.4.8 Mechanical Equipment and Refuse Storage* to allow mechanical equipment within front yard or within twenty five (25) feet of the side yard lot line; *8.4.13 Transitional Overlay District* of the NRCC to allow less than the required fifty foot (50') buffer, to exceed the maximum building height (feet and stories), and to exceed the maximum fence height adjacent to non-residential uses.
3. The petitioner is seeking zoning relief to allow for the construction of a 29 unit residential development at a combined site that includes 9 South Mason Street, 3A Buffum Street Extension and 23 Mason Street.

4. 23 Mason Street and 3A Buffum Street Extension are non-conforming residential uses in an Industrial (I) Zoning District.
5. The petitioner is not proposing any new construction on the property on 23 Mason Street.
6. At 3A Buffum Street Extension, there is an existing three-family dwelling unit that is structurally non-conforming as to the side yard and front yard setbacks. The petitioner is proposing to expand the existing non-conforming residential structure and use at 3A Buffum Street Extension by expanding the structure and creating four (4) additional dwelling units. The petitioner is requesting a special permit under Sec. 3.3.2 Nonconforming Uses and 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance to extend a non-conforming residential use and structure.
7. At 3A Buffum Street Extension the petitioner is proposing to use the existing foundation and completely renovate and expand the existing non-conforming structure. The petitioner is proposing to increase the number of units at this location from three (3) to seven (7) units.
8. The property of 9 South Mason Street is located in the NRCC Zoning District and NRCC Transitional Overlay District (TOD).
9. The TOD encompasses those parcels that are located at the boundaries of the NRCC District and that also abut a residential zone (either directly or across a public way) or abuts a residentially used parcel outside of the NRCC District. This section of the Ordinance is intended to create development in the NRCC District that will be compatible with the adjacent residentially zoned and used parcels.
10. The surrounding uses along the north, east and western boundaries of 9 South Mason Street are residentially used parcels, and a 50' buffer area is required from which the petitioner is seeking relief.
11. The existing industrial building at 9 South Mason Street is within 50' of a residentially used parcel.
12. On the 9 South Mason Street property, the petitioner is proposing to reuse the existing industrial building property and construct two (2) new residential structures of multiple units.
13. The petitioner is requesting the following dimensional variances from regulations of the NRCC District and NRCC TOD:
  - a. The petitioner is requesting a variance from *Sec. 8.4.13* of the Ordinance from the 50'ft minimum buffer area requirement in the TOD. The Zoning Ordinance requires that no construction or destruction of land shall take place within 50' feet from any residential use.
  - b. The petitioner is requesting a variance from maximum number of stories in the NRCC TOD. The Zoning Ordinance per *Section 8.4.13* requires that buildings located within fifty (50) feet of a residentially zoned or used parcel shall be a maximum three (3) stories. The petitioner is proposing to construct a fourth (4<sup>th</sup>) story on the existing three (3) story structure.
  - c. The petitioner is requesting a variance from maximum building height (feet) in the NRCC TOD. The Zoning Ordinance per *Sec. 8.4.13* allows 40' feet where the petitioner is proposing to construct to a height of 46' feet.
  - d. The petitioner is requesting a variance for mechanical equipment within the front yard and within 25' of the side yard lot line. The petitioner is proposing air conditioning condensing units behind Building #4 and Building #2 that are triggering the request for this variance.

- e. The petitioner is proposing to locate the mechanical equipment on the ground and screened with lattice.
  - f. The petitioner is requesting a variance to allow an increase in the height of fences where the lot lines intersect non-residentially zoned and/or used parcels. The petitioner is proposing an 8' foot high decorative wooden stockade fence where the maximum is 4' feet.
  - g. The Board found that uniformity of the fence height proposed around the property was consistent with the City Ordinance and the Planning Board Decision.
  - h. The petitioner is requesting a variance from *Sec. 4.1.1 Table of Dimensional Requirements* for minimum lot area per dwelling unit. This parcel is 1.01 acres. The petitioner is requesting a density of 21.7 units per acre where the NRCC would allow 12.4 units per acre. The density requested is in conformance with the density of other recently approved projects in the NRCC.
14. The project has been reviewed by the Planning Board for Site Plan Review and a Flood Hazard Overlay District Special Permit. Through this process, the project was peer reviewed and vetted for impacts to traffic and civil engineering.
15. The location of the site in the Flood Hazard Overlay District, relatively level topography, filled tideland soil conditions, and consistent years of industrial use of this site requires significant development costs due to environmental cleanup and the development of flood mitigation measures including the regrading portions of the site.
16. The requested relief, if granted, would allow the petitioner to expand and redevelop two existing buildings and construct two new buildings for a total of 29 dwelling units.
17. At the public hearing two (2) members of the public spoke in favor of, and none (0) 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 Special Permit:**

**The Board finds that the proposed extension of the existing non-conforming use and structure is not substantially more detrimental than the existing non-conforming use and structure in that:**

- 1. Social, economic and community needs are served by the proposal.
- 2. Traffic flow and safety, including parking and loading is adequate.
- 3. Adequacy of utilities and other public services have been peer reviewed and will be in accordance with the requirements of the Planning Board decision.
- 4. Impacts on the natural environment, including drainage will remain the same have been peer reviewed and will be in accordance with the requirements of the Planning Board decision.

5. The proposal fits with the character of the neighborhood.
6. Potential fiscal impact including impact on City tax base and employment is positive.

**Findings for Variance:**

1. There are 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. The property is unique as to the shape, the environmental contamination, filled tideland soils, flat topography and existing industrial structure. As to the building height, a corner of the existing industrial structure is located within the NRCC TOD 50' setback from residentially used parcels and thus subject to a height limitation of 40' ft and three stories, while the majority of the existing building is subject to a height limitation of 50'ft and four stories.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant due to associated cost to develop this parcel due to environmental contamination remediation and flood mitigation costs.
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 four (4) in favor (Mr. Duffy (Acting Chair), Mr. Watkins, Mr. Hacker (alternate), and Mr. Viccica (alternate)) and none (0) opposed, to grant a Special Permit under *Sec. 3.3.2 Nonconforming Uses* and *3.3.3 Nonconforming Structures* of the Salem Zoning Ordinance to extend a non-conforming residential use and structure; The petitioner is also requesting Variances per *Sec. 4.1.1 Table of Dimensional Requirements* for relief from minimum lot area per dwelling unit; *Sec. 8.4.8 Mechanical Equipment and Refuse Storage* to allow mechanical equipment within front yard or within twenty five (25) feet of the side yard lot line; *8.4.13 Transitional Overlay District* of the NRCC to allow less than the required fifty foot (50') buffer, to exceed the maximum building height (feet and stories), and to exceed the maximum fence height adjacent to non-residential uses subject to the following **terms, conditions and safeguards**:

**Standard Conditions:**

1. 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 finished of the 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.

City of Salem Board of Appeals

March 1, 2017

Project: 9 S. Mason Street, 3A Buffum Street Extension, 23 Mason Street, 23 ½ and 23R Mason Street

Page 5 of 5

  
Mike Duffy, Acting 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.*