



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

120 WASHINGTON STREET ♦ SALEM, MASSACHUSETTS 01970

TELE: 978-745-9595 ♦ FAX: 978-740-9846

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FILE #  
CITY CLERK SALEM, MASS.

March 30, 2016

## Decision

### City of Salem Board of Appeals

A petition of MICHAEL MEYER requesting 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 eighteen (18) 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 lot coverage, front and side yard setbacks, minimum distance between buildings, and number of stories at the property located at 1-3 EAST COLLINS STREET (Map 36 Lot 277)( R1 Zoning District).

At the October 21, 2015 meeting the Board granted the petitioner's request to continue to the next regularly scheduled meeting on November 18, 2015. The project was not presented and the public comment period was not opened until November 18, 2015 pursuant to M.G.L Ch. 40A, § 11. The public hearing was continued on November 18, 2015, December 16, 2015, January 20, 2016, February 17, 2016 and March 16, 2016. The hearing was closed on March 16, 2016 with the following Salem Board of Appeals members present: Rebecca Curran (Chair), Peter A. Copelas, Mike Duffy, Tom Watkins, and Paul Viccica (alternate).

The Petitioner is requesting 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 eighteen (18) 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 lot coverage, front and side yard setbacks, minimum distance between buildings, and number of stories.

#### 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 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 lot coverage, front and side yard setbacks, minimum distance between buildings, and number of stories located at 1-3 EAST COLLINS STREET (Map 36 Lot 277)( R1 Zoning District).
3. The original petition, dated September 25, 2015, proposed two (2) three (3) story buildings with eighteen (18) residential units in an R-1 Zoning District.

4. The proposed living areas are raised with parking proposed underneath the building by necessity because the entire property is located within the flood zone.
5. The original petition, proposed the following deviations from the dimensional requirements of the Zoning Ordinance: 1) a lot area per dwelling unit of 2,324 square feet where the requirement per the Zoning Ordinance is 15,000 square feet; 2) 94.5 feet of frontage where the requirement per the Zoning Ordinance is 100 square feet of linear frontage; 3) exceeding the maximum lot coverage with 31.8% lot coverage where the requirement is 30% lot coverage; 4) 1.8 feet from the front yard setback where 15 feet is required; 5) 0.25 feet from the side setback where 10 feet is required; 6) Three (3) stories where the maximum requirement is 2.5 stories.
6. The petitioner proposed to provide twenty-seven (27) parking spaces to comply with the required number of parking spaces as per the Zoning Ordinance and provide close to two (2) parking spaces per dwelling unit in response to neighborhood concerns regarding parking.
7. The petitioner also requested a special permit from one nonconforming use of a social club to another nonconforming use of multi-family residential dwelling units.
8. At a public hearing for the petition was opened on October 21, 2015 and continued to the next regularly scheduled meeting on November 18, 2015 at the request of the applicant to revise the original plans to respond to neighborhood concern about density, parking, view corridors to the water among other concerns.
9. Between the time that the petitioner submitted the proposal to the Board and the October 21, 2015 meeting, the petitioner met with the neighborhood to listen to concerns about the proposal and revised plans that were submitted thereafter to the Board and reviewed at a public meeting on November 18, 2015.
10. At the public meeting on November 18, 2015, the petitioner presented revised plans and proposed fourteen (14) residential units rather than the eighteen (18) proposed in the original petition in response to continued concerns from the neighborhood. There were eight (8) units proposed for the linear building that runs along Planters Street, Building "A" and six (6) residential units along East Collins Street, Building "B".
11. The petitioner proposed to construct the project in two (2) phases with the building along Planters Street to be constructed first because this portion of the property is outside of the jurisdiction of state Chapter 91 licensing. The second "Building B" would be built after the Chapter 91 process.
12. Attorney Grover stated that before the petitioner can apply to the state for a Chapter 91 license all local approvals have to be received first. The project also would have to go through the Massachusetts Environmental Policy Act review before Chapter 91. Both MEPA and Chapter 91 can be a very long process.
13. The project was designed to have the opportunity to develop eight (8) units with local approvals that are required by the Zoning Board of Appeals, Planning Board, and Conservation Commission. Phase II to construct building "B" requires MEPA and Chapter 91 review and would take approximately a year and a half for state approvals.

14. Attorney Grover presented the following grounds for the Special Permit request:
- Social, community, or economic needs served by the proposal are that the petitioner is proposing to change the use from a commercial use to residential, which is closer to the underlying allowable use of the neighborhood. This property is also a nuisance to the neighborhood as there are illicit activities that occur frequently on the property and the redevelopment of the site is required to formalize meaningful access through a Chapter 91 requirement to provide public access and use of the waterfront which is a positive public benefit.
  - Traffic flow and safety, including parking and loading are adequate as the petitioner is providing more than the required number of parking spaces.
  - Utilities and public services are adequate.
  - Impacts on the natural environment including drainage will be greatly improved as the impervious parking lot will be significantly reduced and new landscaping materials and plantings will cover a significant portion of the site using low impact development design. In addition, the petitioner proposes to improve an existing drain that was installed incorrectly in the parking lot area.
  - The design and proposed use fit better with the character of the neighborhood than the existing use and structure. The proposed density of fourteen (14) units is not as a lot given the overall density in the area.
  - The potential fiscal impact, including impact on City tax base and employment will be positive.
15. The petitioner presented a density study of the acre surrounding the subject property to demonstrate that the average density in the neighborhood was 22.1 units per acre with an average lot area of 2.613 square feet (0.06 acres).
16. At the November 11, 2015 meeting the Board requested that the building be redesigned to better fit the existing architecture of the neighborhood. The Board suggested considering a design that was more akin to townhouses with stairways leading to each unit to break up the massing of the building along Planters Street. Revisions requested included breaking up building "A" along Planters Street to include three (3) individual buildings each with separate entrances to better match the existing architectural character of the neighborhood.
17. At the November 11, 2015 the Board stated concerns about the request for Variances and design choices to allow the petitioner to accept a design to fit with the regulatory and time constraints of the Chapter 91 process.
18. The petitioner requested a continuation at the December 16, 2015 meeting to the next regularly scheduled meeting on January 20, 2016 to allow more time for plan revisions.
19. At the January 20, 2016 meeting, the petitioner presented revised architectural plans. Changes included the division of Building "A" along Planter Street into three (3) distinct multi-family structures including a three (3) unit building, a two (2) unit building and another three (3) unit building and the Board requested that building "B" also be reduced to a two (2) family dwelling unit to better

fit with the character of the neighborhood. The petitioner reduced the number of proposed units from eighteen (18) to fourteen (14).

20. The petitioner proposed to have a public access way to the water along the southern lot line of the property.
21. It was suggested by the Board that the petitioner consider an alternative location of the public access way either through the center of the site or eliminate the public pathway until further review was done through Chapter 91 licensing.
22. The Board also stated that the proposal for Building B, was not an appropriate density and is out of character for the neighborhood.
23. The Board requested that the petitioner consider looking at the possibility of constructing single family homes along the existing frontage.
24. Attorney Grover testified that the existing frontage is 95 feet along East Collins Street, which does not allow for even a single conforming lot. Further to create individual lots from this parcel would be a subdivision and the lots could not comply with the zoning requirements because there is no sufficient frontage for one (1) or more lots.
25. The Board suggested that the petitioner consider duplexes hugging the property boundaries as there are unique limitations to the site including the location of the flood zone, an existing gas easement, wetlands and other unique features of the property.
26. At the January 20, 2016 meeting Attorney Grover presented the follow statement of hardship for the request for Variances:
  - Special conditions and circumstances that especially affect the land, building, or structure generally not affecting other lands, buildings, and structures in the same district are that the land is subject to Chapter 91 jurisdiction, there is a coastal dune and wetlands on the property, there is also a gas line easement running through the property. These special conditions limit part of the site available for development. The petitioner needs variances from the zoning ordinance to exceed the height and setback requirements because there is such a narrow building envelope.
  - The special and unique site conditions also make it a very expensive site to develop, requiring a certain level of density to make development economically feasible.
  - Desirable relief can be granted without detriment to the public good as the current site is in poor condition.
27. At the February 17, 2016 meeting the petitioner requested a continuation to the next regularly scheduled meeting on March 16, 2016. No testimony was heard at the February 17, 2016 meeting.
28. The requested relief, if granted, would allow the Petitioner to change and existing nonconforming use of a social club to another nonconforming use multi-family residential units and relief from Sec. 4.1.1 Table of Dimensional Requirements for minimum lot area per dwelling unit, minimum lot frontage,

minimum lot coverage, front and side yard setbacks, minimum distance between buildings, and number of stories.

29. At the public hearings, twenty (20) residents submitted letters and spoke in opposition to the proposal. No members of the public spoke in support of the petition.

30. At the March 17, 2016 meeting the petitioner requested to withdraw the petition without prejudice.

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 A. Copelas, Mike Duffy, Tom Watkins, and Paul Viccica (alternate). and none (0) opposed, to allow the petitioner to withdraw without prejudice.

WITHDRAWN WITHOUT PREJUDICE.

  
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.*