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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #
CITY CLERK, SALEM, MASS.

March 30, 2016

Decision

City of Salem Board of Appeals

Petition of 114 DERBY STREET NOMINEE TRUST, seeking a Variance for relief from the provisions of Sec. 3.3.4 and a Special Permit from Sec. 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance to increase an existing non-conformity and alter a nonconforming structure for a substantially different purpose at the property of 114 Derby Street (Map 41 Lot 14)(B1 Zoning District).

A public hearing on the above Petition was opened on March 16, 2016 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Rebecca Curran (Chair), Peter A. Copelas, Mike Duffy, Tom Watkins, Jimmy Tsitsinos.

The petitioner is seeking a Variance for relief from the provisions of Sec. 3.3.4 of the Salem Zoning Ordinance to increase an existing non-conformity and a Special Permit from Sec. 3.3.3 Nonconforming Structures and alter a nonconforming structure for a substantially different purpose.

Statements of fact:

1. In the petition date-stamped February 23, 2016, the Petitioner requested a Variance for relief from the provisions of Sec. 3.3.4 and a Special Permit from Sec. 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance to increase an existing non-conformity and alter a nonconforming structure for a substantially different purpose.
2. Attorney Grover presented the petition on behalf of the petitioner.
3. The subject property is located in a B1 Zoning District.
4. The petitioner proposes to renovate the existing building and the addition along Turner Street.
5. The property is dimensionally nonconforming with respect to lot coverage and side yard setback. The petitioner proposed to construct two (2) porches that will cause the lot coverage to increase from the existing 42% to 43% lot coverage and requested a Variance per Section 3.3.4 to allow an increase in an existing nonconformity.
6. The petitioner proposed to convert the existing building, currently owned and operated by the House of the Seven Gables Settlement Association, to six (6) residential dwelling units. The current use of the structure is an alternative high school. The petitioner has requested a special permit per Section 3.3.3 to alter a nonconforming structure for a substantially different purpose.
7. The petitioner proposed nine (9) parking spaces, which meets the required number of parking spaces per the Zoning Ordinance.

8. The requested relief, if granted, would allow the Petitioner to increase an existing non-conformity and to alter a nonconforming structure for a substantially different purpose.
9. At the public hearing three (3) members of the public spoke in favor of and none (0) 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, 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. 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 this building is unusually large on the lot. Both the building and the lot have unique features that are of historic significance.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant as residential use calls for some aspect of outdoor access that cannot be allotted in a meaningful way other than other than this 1% increase which creates a further dimensional nonconformity.
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:

The proposed change in use is not substantially more detrimental to the neighborhood than the existing use.

1. The proposed change in use would not be more substantially detrimental as the building is no longer in productive commercial use and a residential use will be a positive impact on the social, economic or community needs served by the proposal.
2. There are no negative impacts on traffic flow and safety, including parking and loading as the petitioner is providing the required number of parking spaces and making improvements to the existing curbcut.
3. The capacity of the utilities is not affected by the project.
4. There are no impacts on the natural environment, including drainage.
5. The proposal improves neighborhood character as it improves the property.
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 (5) (Rebecca Curran (Chair), Peter A. Copelas, Mike Duffy, Tom Watkins, Jimmy Tsitsinos) in favor and none (0) opposed, to grant a Variance in accordance with the provisions of Sec. 3.3.4 and a Special Permit from Sec. 3.3.3. Nonconforming Structures of the Salem Zoning Ordinance to increase an existing non-conformity and alter a nonconforming structure for a substantially different purpose 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 shall 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.

Rebecca Curran/ES
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.