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CITY CLERK, SALEM, MASS.

July 25, 2016

Decision

City of Salem Board of Appeals

Petition of HIGH ROCK BRIDGE STREET LLC seeking Variances per *Sec. 4.1.1 Table of Dimensional Requirements* for minimum lot area per dwelling unit; *Sec. 8.4.13 Transitional Overlay District* of the NRCC to allow less than the required fifty feet (50') buffer; *Sec. 8.2.3.1 Entrance Corridor Overlay District* to allow a curb cut that exceeds the maximum curb cut width. A Special Permit per *Sec. 5.1.7 Shared Parking* to permit shared parking where parking usage would not occur simultaneously as determined by the Board. The proposal is for the property located at 401 BRIDGE STREET & 44 BOSTON STREET (Map 25 Lot 74; Map 15 Lot 305) (NRCC).

A public hearing on the above Petition was opened on July 20, 2016 pursuant to M.G.L. Ch. 40A, § 11. The hearing was closed 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 Variances per *Sec. 4.1.1 Table of Dimensional Requirements* for minimum lot area per dwelling unit, *Sec. 8.4.13 Transitional Overlay District* of the NRCC to allow less than the required fifty feet (50') buffer; *Section 8.2.3.1 Entrance Corridor Overlay District* to allow a curb cut that exceeds the maximum curb cut width. A Special Permit per *Sec. 5.1.7 Shared Parking* to permit shared parking where usage would not occur simultaneously as determined by the Board.

Statements of fact:

1. In the petition date-stamped June 28, 2016, the Petitioner requested a Variances per *Sec. 4.1.1 Table of Dimensional Requirements* for minimum lot area per dwelling unit, *Sec. 8.4.13 Transitional Overlay District* of the NRCC to allow less than the required fifty feet (50') buffer; *Section 8.2.3.1 Entrance Corridor Overlay District* to allow a curb cut that exceeds the maximum curb cut width. A Special Permit per *Sec. 5.1.7 Shared Parking* to permit shared parking where usage would not occur simultaneously as determined by the Board.
2. Attorney Correnti presented the petition along with the development team of the Petitioner, including William Begeron, the Project Engineer from Hayes Engineering, as well as the architects for the Project.
3. The petitioner is proposing to construct two (2) buildings including a four (4) – story residential building with first floor retail space and a two (2) story municipal building, the Jean A Levesque Community Life Center.
4. The property is located in the North River Canal Corridor District (NRCC), Transitional Overlay District (TOD) and the site also falls within the Entrance Corridor Overlay District (ECOD).

5. The project was reviewed and approved by the Planning Board with recommendations from the Salem Design Review Board and the Conservation Commission.
6. The petitioner proposes 117 dwelling units where 76 units are allowed by-right including 12 units granted by a Density Bonus permitted by the Planning Board under the NRCC Section 8.4.11.2
7. The 12 additional dwelling units granted by a Density Bonus will be year-round units that serve households at or below eighty (80) percent of the area median income and shall remain affordable for a minimum of ninety-nine years.
8. The petitioner is requesting a Variance for minimum lot area per dwelling unit to provide forty-one (41) additional dwelling units beyond what is allowed by-right. The proposed density is approximately 23 units per acre, which is considered medium-density development.
9. The petitioner is requesting a Variance for minimum lot area per dwelling unit to construct 41 additional dwelling units due to the cost of redevelopment of this site related to the soil conditions and location of this property within a flood zone.
10. This property is a brownfield site on filled tidelands. As such, the construction on this property will require soil remediation to a level that will support residential use of the property. Significant pilings will be needed to support any buildings at this location. In addition, the elevation for the entire 5.1 acre site will need to be raised approximately 2.5 feet with new material to account for 100-year flood elevations and to account for sea level rise. The requirements to develop the site conditions have a significant cost due to the unique conditions of this property.
11. The Board of Appeals has approved three (3) other Variances to other projects in the NRCC for minimum lot area per dwelling unit to provide between 24-31 units per acre.
12. As the portion of the property on Boston Street is located in the Entrance Corridor Overlay District and the primary use of the site is residential, only one (1) curbcut no greater than twenty-four (24') feet is permitted for residential uses.
13. The petitioner is proposing a curbcut that exceeds the twenty-four (24') feet along Boston Street as per the request of the Fire Department and the traffic engineers to provide adequate space for emergency vehicles and for cars to enter and exit the site along Boston Street by only turning right.
14. The literal enforcement of the 24' wide curbcut along Boston Street would not provide adequate safety and traffic flow on and off of the site.
15. The petitioner proposes to construct a landscaped buffer between the property and abutting residential properties along Federal Street. The NRCC Zoning Ordinance requires a fifty-foot buffer at this location.
16. The proposed buffer will be 28.9' feet at the widest point and narrow to 13.5' feet by the existing retaining wall. The petitioner will provide a fence between the property and Federal Street that can be up to ten (10') per the Planning Board Special Permit dated June 1, 2016.
17. If the fifty-foot (50') buffer requirement were literal enforced, the shape of the lot is such that 83 parking spaces would be lost and adequate parking could not be provided in a configuration that allowed for the development of the property because the NRCC zoning ordinance also requires parking spaces at the rear of buildings with buildings to be located in a way to create a presence on main corridor street edges. There would be no feasible alternatives to provide adequate parking on this site.

18. The petitioner is requesting a Special Permit per *Sec. 5.1.7 Shared Parking* to permit shared parking where parking usage would not occur simultaneously as determined by the Board.
19. There are a total of 275 parking spaces proposed for the property.
20. The NRCC requires two (2) parking spaces per dwelling unit and the petitioner meets the requirement by providing 234 parking spaces.
21. There is 4,000 square feet of first floor retail proposed for the site, which requires one (1) parking space per 150 square feet. With 4,000 square feet of retail, 27 parking spaces are required and provided by this proposal.
22. Parking requirements for municipal buildings are one (1) space for each two (2) employees, plus additional spaces as shall be deemed necessary by the Board of Appeal. The petitioner is providing fourteen (14) parking spaces to meet the requirement of providing parking for up to 28 employees.
23. Although the City of Salem zoning ordinance does not provide a method to determine whether parking demand would not occur simultaneously, a standard method provided by the Metropolitan Area Planning Council shared parking toolkit that is endorsed by the Commonwealth, was used to demonstrate the maximum amount of parking anticipated at given times. The method of calculating parking demand has been implemented in many cities and towns including Beverly, Waltham, and Wilmington.
24. When applied to this project, it is anticipated that weekday night time use (midnight to 7:00am) would require 234 parking spaces (100%) of required parking for the 117 residential units; two (2) parking spaces for retail use (5%) of the required of the required parking spaces for the 4,000 square feet; and fourteen (14) parking spaces for "all other uses" (100%), even though the CLC will not be open all night. The model does not provide anticipated parking for municipal buildings, therefore such use is counted as requiring 100% count of required spaces.
25. During the weekday day time (7:00am to 5:00pm), the anticipated parking demand is 141 parking spaces for the 117 residential units (60% capacity), 22 parking spaces for retail use (70% capacity); 14 parking spaces for "all other uses" (100%) for the CLC.
26. During the week evening (5:00pm to midnight), the anticipated parking demand is 211 parking spaces for the 117 residential units (90% capacity); 25 parking spaces for retail use (90% capacity); 14 parking spaces for "all other uses" (100% capacity) for the CLC.
27. During the weekend day (6:00am to 6:00pm), the anticipated parking demand 188 parking spaces for the 117 residential units (80% capacity), 27 parking spaces for retail use (100% capacity); and 14 parking spaces for "all other uses" (100 % capacity) for the CLC.
28. During the weekend evening (6:00pm to midnight), the anticipated parking demand is 211 parking spaces for the 117 residential units (90% capacity), 19 parking spaces for retail use (70%) capacity, and 14 parking spaces (100% capacity) for the CLC.
29. A letter from Lynn Duncan, former Director of Planning and Community Development submitted a letter to the Board in support of the project and testified that the proposed project complies with the North River Canal Corridor Neighborhood Master Plan.
30. The Petitioner demonstrated that the peak-hours of operation for each proposed use does not occur simultaneously.
31. Meredith McDonald, Director of the Salem Council on Aging, testified that the anticipated peak hours for the Community Life Center are from 9:00am to 5:00pm, Monday through Friday. It is also

anticipated that there will be occasional events in the evening and on weekends after normal hours of operation.

32. Although there may be occasional events that may create parking demand overlap with the residential use, the Board agrees that it is poor practice to plan a site for the occasional special event.
33. The Board states that if the Community Life Center were not owned by the City, the Board would likely add a special condition to limit the number of special events per year and/or timing of such events as to limit potential negative impacts on the surrounding neighborhood.
34. At the public hearing two (2) 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**:

Findings for Variances:

Minimum Lot Area per Dwelling Unit Findings:

1. Special conditions and circumstances that especially affect the land is that this property is a brownfield site on filled tidelands. As such, the construction on this property will require soil remediation to a level that will support residential use of the property. Significant pilings will be needed to support any buildings at this location. In addition, the elevation for much of the 5.1 acre site will need to be raised approximately 2.5 feet with new material to account for 100-year flood elevations. The requirements to develop the site conditions have a significant cost due to the unique conditions of this property.
2. Literal enforcement of the provisions of the Ordinance to allow the construction of 76 dwelling units by-right, including 12 long-term affordable housing units, would not allow the project to be feasible due to the significant costs related to the redevelopment of this brownfield site on filled tidelands.
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.

Maximum Curbcut Width:

1. Special conditions and circumstances that especially affect the land is that traffic circulation on and off of the site must occur at Boston Street by right turn only to provide safe access.
2. The literal enforcement of the 24' wide curbcut along Boston Street would not provide adequate safety and traffic flow on and off of the site. The Fire Department and the City traffic engineers have requested for the petitioner to provide adequate space for emergency vehicles and have cars enter and exit the site along Boston Street by only turning right.
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.

Transitional Overlay District Buffer Width:

1. Special conditions and circumstances that especially affect the land is the shape of the lot.
2. If the fifty-foot (50') buffer requirement were literal enforced, the shape of the lot is such that 83 parking spaces would be lost and adequate parking could not be provided in a configuration that allowed for the development of the property because the NRCC zoning ordinance also requires

parking spaces at the rear of buildings with buildings to be located in a way to create a presence on main corridor street edges. There would be no feasible alternatives to provide parking on this site that would be feasible to provide adequate parking.

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.

Special Permit for Shared Parking:

The Board finds that the peak parking demand for each associated use of the property (retail, residential and Community Life Center) does not occur simultaneously.

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 Variances per *Sec. 4.1.1 Table of Dimensional Requirements* for minimum lot area per dwelling unit; *Sec. 8.4.13 Transitional Overlay District* of the NRCC to allow less than the required fifty feet (50') buffer; *Sec. 8.2.3.1 Entrance Corridor Overlay District* to allow a curb cut that exceeds the maximum curb cut width. A Special Permit per *Sec. 5.1.7 Shared Parking* to permit shared parking where parking usage would not occur simultaneously as determined by the Board 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 is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.



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.