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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #
CITY CLERK SALEM, MASS.

May 4, 2016

Decision

City of Salem Board of Appeals

A petition of THE CHARLES HOPE COMPANIES, LLP, seeking a Special Permit from the provisions of Sec. 3.3.4 and Variances from the provisions of Sec. 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance, for maximum lot coverage, rear yard setbacks, and the number of stories to allow the reconstruction, extension or structural change of an existing nonconforming structure at the property of 81 Derby Street (Map 41 Lot 275) (R2 Zoning District).

A public hearing on the above Petition was opened on April 20, 2016 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Ms. Curran (Chair), Mr. Duffy, Mr. Copelas, Mr. Watkins, Mr. Tsitsinos.

The Petitioner seeks a Special Permit from the provisions of Sec. 3.3.4 and Variances from the provisions of Sec. 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance, for maximum lot coverage, rear yard setbacks, and the number of stories to allow the reconstruction, extension or structural change of an existing nonconforming structure of the Salem Zoning Ordinance.

Statements of Fact:

1. Dan Bumagin, Project Manager of The Charles Hope Companies, LLP presents the petition.
2. The applicant, The Charles Hope Companies, LLP is the receiver of the property.
3. In 2003, the property was declared to be unlivable by the City of Salem and has recently been placed in receivership.
4. In the petition date-stamped March 29, 2016, the Petitioner requested a Special Permit per Sec. 3.3.4 and Variances requesting relief from the provisions of Sec. 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance, for maximum lot coverage, rear yard setbacks, and the number of stories to allow the reconstruction, extension or structural change of an existing nonconforming structure.
5. The petitioner proposes to rehabilitate the currently existing two (2) family structure in an R2 Zoning District and in the Salem Waterfront Historic District.
6. The property is an existing dimensionally non-conforming structure that does not conform as to lot area, lot width, front yard setback, side yard setback, rear yard setback, parking and lot coverage.
7. As to parking, there are currently no parking spaces on the property and is a preexisting nonconforming condition that can remain because the existing use of the property is the same.

8. The petitioner is proposing to construct a rear two (2) story egress and deck area that would reduce the rear yard setback to 2' to 5' feet of the required thirty (30) feet required and provide a second means of egress for the two (2) dwelling units.
9. The proposed rear deck and stairway increase the maximum lot coverage per dwelling unit from the existing 50.6% to 62.4%.
10. The petitioner also proposed to add a dormer and lift the entire roof of the building by three (3) feet, which exceeds the maximum number of stories. The petitioner proposes to have three (3) stories where the requirement is a maximum of 2.5 stories.
11. The petitioner also proposed to construct a second story on an existing one story entry way.
12. The requested relief, if granted, would allow the Petitioner Special Permit to exceed the dimensional requirements for maximum lot coverage, rear yard setbacks, and the number of stories and to allow the reconstruction, extension or structural change of an existing nonconforming structure of the Salem Zoning Ordinance.
13. At the public hearing no members of the public spoke in favor of, or 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 Variances:

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 the structure has code violations, impairs health, safety and welfare of the abutters and community and constitutes a public nuisance.
2. Literal enforcement of the provisions of the Ordinance would create a substantial and unique hardship as the receiver has no responsibility to remedy the code violations except where the revenue would support it in their action as a receiver. The revenue generated from this property can have a significant impact on whether the present condition of the property can be remedied at all. The literal enforcement of the bylaw may result in revenue than may not support bringing the property back into use and remedy the dilapidated property.
3. The desired relief may be granted without nullifying or substantially derogating from the intent of the district or purpose of the City of Salem Zoning Ordinance.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (5) in favor (Ms. Curran (Chair), Mr. Duffy, Mr. Copelas, Mr. Watkins, Mr. Tsitsinos) and none (0) opposed, to grant a Special Permit per Sec. 3.3.4 and Variances requesting relief from Sec. 4.1.1 Table of Dimensional Requirements of the Salem Zoning Ordinance, from maximum lot coverage, rear yard setbacks, and the number of stories to allow the reconstruction, extension or structural change of an existing nonconforming structure, subject to the following **terms, conditions and safeguards**:

Standard Conditions:

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 the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy shall be obtained
7. A Certificate of Inspection shall be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, Planning Board.

Special Conditions:

1. The petitioner may increase the height of the roof by two (2) feet rather than the proposed three (3) feet.


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.