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FILE #
CITY CLERK SALEM, MASS.

March 30, 2016

Decision

City of Salem Board of Appeals

Petition of SCHIAVUZZO REALTY LLC seeking a Special Permit from the provisions of *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to allow the change from one nonconforming use of a candy factory to another nonconforming use of residential dwelling units at the property of 93-95 CANAL STREET (Map 33 Lots 164, 165)(B-4 Zoning District).

A public hearing on the above Petition was opened on February 17, 2016 and continued on March 16, 2016 pursuant to M.G.L Ch. 40A, § 11. The hearing was closed March 16, 2016 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 Special Permit from the provisions of *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to allow the change from one nonconforming use of a candy factory to another nonconforming use of residential dwelling units.

Statements of fact:

1. In the petition date-stamped January 26, 2016, the Petitioner requested a Special Permit per *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to allow the change from one nonconforming use of a candy factory to another nonconforming use of residential dwelling units.
2. Attorney Atkins presented the petition on behalf of the petitioner.
3. The subject property is located in a B-4 Zoning District.
4. The property was previously used as a candy manufacturing facility for over forty years (40) and employed between six (6) and thirty (30) employees. Shipping and deliveries were made from Canal Street and included small box trucks and large trucks making deliveries twice (2) a day. The facility operating hours were from 6am to 5pm.
5. The petitioner proposed to change an existing nonconforming use of a food and manufacturing facility to eight (8) residential units within the existing building footprint.
6. There are commercial properties located directly on either side of the subject property and multi-family residential buildings along Canal Street within the same zoning district.
7. The petitioner proposes to sell these residential units as condominiums.
8. The petitioner proposed to renovate the existing structure and add a ramp in the rear of the building for accessibility. The petitioner also proposed to extend the existing second story such that the entire building will be a two (2)- story structure.
9. The petitioner will be providing fifteen (15) parking spaces, three (3) more spaces than required number of spaces per the zoning ordinance.

10. The petitioner proposed to continue to share an existing driveway with the property located at 89 Canal Street (Map 33 Lot 163).
11. In response to public concern that the residential units may be rented to Salem State students, the Board weighed whether or not the approval of the proposal could be conditioned subject to the residential units being owner occupied.
12. At the public meeting on February 17, 2016, the Board requested a legal opinion from the City Solicitor for a decision on whether the ZBA has the authority to condition the approval of the proposal subject to the residential units being owner occupied.
13. On March 2, 2016, the ZBA received a legal opinion from the City Solicitor with a statement that the Board likely does not have the authority condition an approval of the proposal based on the units being owner occupied.
14. The requested relief, if granted, would allow the Petitioner to allow the change from one nonconforming use of a candy factory to another nonconforming use of residential dwelling units.
15. At the public hearing no (0) members of the public spoke in favor of and three (3) 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 Special Permit

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

1. The proposed change in use would not be more substantially detrimental than the existing nonconforming structure to the impact on the social, economic or community needs served by the proposal as it provides an affordable housing option for families.
2. There are no negative impacts on traffic flow and safety, including parking and loading.
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 (Rebecca Curran (Chair), Peter A. Copelas, Mike Duffy, Jimmy Tsitsinos, Tom Watkins) in favor and none (0) opposed, to grant a Special Permit from the provisions of *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to allow the change from one nonconforming use of a candy factory to another nonconforming use of residential dwelling units 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.

SPECIAL CONDITIONS:

1. An easement to allow shared passage over the existing driveway shall be recorded with the deed of the property.


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.