



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

98 WASHINGTON STREET ♦ SALEM, MASSACHUSETTS 01970
TEL: 978-745-9595

2019 JAN -2 PM 1:15
CITY CLERK
SALEM, MASS

January 2, 2019

Decision

City of Salem Board of Appeals

Petition of YANCARO FLIPPING CO., LLC for a special permit per Section 3.3.2 of the Salem Zoning Ordinance to change from one nonconforming use (professional offices) to another nonconforming use (mixed use: office and residential multifamily) and a variance per Section 4.1.1 *Table of Dimensional Requirements* for relief from minimum lot area per dwelling unit to convert the existing medical office to a mixed use (office and three residential apartments) at 116 HIGHLAND AVENUE (Map 14, Lot 105) (R1 Zoning District).

A public hearing on the above Petition was opened on December 19, 2018 pursuant to M.G.L. Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Mike Duffy (Chair), Peter A. Copelas, Jimmi Heiserman, Patrick Shea, and Jimmy Tsitsinos.

The Petitioner seeks a special permit per Section 3.3.2 *Nonconforming Uses* and a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance.

Statements of Fact:

1. In the petition date-stamped November 27, 2018, the Petitioner requested a special permit per Section 3.3.2 *Nonconforming Uses* to change from one nonconforming use (professional offices) to another nonconforming use (mixed use: office and residential multifamily) and a variance per Section 4.1.1 *Table of Dimensional Requirements* for relief from minimum lot area per dwelling unit to convert the existing medical office to a mixed use (office and three residential apartments).
2. Attorney Scott Grover, representing Petitioner Yancaro Flipping Co., LLC, presented the petition.
3. The property is located in the Residential One-Family (R1) zoning district.
4. The property most recently operated as medical offices (a pediatric practice). Pediatric Associates moved out of the property last year. This is a nonconforming use in the R1 zoning district. The existing structure is nonconforming as to minimum depth of side yard (feet): on the left side of the building there is a 6' side yard, where a 10' side yard is required.
5. The proposed mixed use of office and residential multifamily is a nonconforming use in the R1 zoning district. The Petitioner is requesting a special permit per Section 3.3.2 *Nonconforming Uses* to change from the existing nonconforming use to another nonconforming use.
6. The Petitioner included in the application a letter from Donald T. McAuliffe of Pediatric Associates and Trustee of DHM Realty Trust granting permission to Attorney Grover to file an appeal for change of use for the 116 Highland Avenue property.
7. The proposal of three dwelling units triggers the requirement for a variance from minimum lot area per dwelling unit. In the R1 zoning district, the required minimum lot area per dwelling unit is 15,000 square feet. Under this proposal, lot area per dwelling unit would be 5,400 square feet. The Petitioner

is requesting a variance per Section 4.1.1 *Table of Dimensional Requirements* for relief from minimum lot area per dwelling unit.

8. The footprint of the building would not change under this proposal, so the existing side yard nonconformity is not affected.
9. The requested relief, if granted, would allow the petitioner to change the use of the existing medical offices to a mixed use of office and three residential apartments. The footprint of the existing building would not change.
10. At the December 19, 2018 public hearing, Attorney Grover presented details about the property and the proposed changes. Attorney Grover stated that Cynthia Nina Soto of Yancaro Flipping Co., LLC wants to use the first floor as offices for her real estate business, and use the second floor as three residential units, including one unit designated affordable per the City's definitions. Attorney Grover stated that there will be no changes to the footprint of the building, but that the plan is to re-paint the exterior of the building to a gray color instead of the existing white.
11. Attorney Grover discussed the criteria for special permit per Section 3.3.2 of the Zoning Ordinance to change from one nonconforming use to another nonconforming use; he mentioned the standard that the proposed use is not substantially more detrimental to the neighborhood than the existing use. To that point, Attorney Grover read a letter from Mark McKenna, Chief Financial Officer of Pediatric Associates, discussing the intensity of the prior use of the property. Per that letter, regarding traffic in 2016 – the final year of “full operation” at 116 Highland Avenue – Mr. McKenna’s “best estimate would be over 110 cars daily entering and leaving that site Monday - Friday.” Attorney Grover stated that the proposed use would have substantially less traffic and would be a less intense use. He added that the mixed use of office and residential would move the use closer to the underlying zoning, which is Residential Single-Family.
12. Attorney Grover discussed the criteria for variance per Section 4.1.1 of the Zoning Ordinance. Attorney Grover stated that if the ordinance were literally enforced, only a single residential unit would be allowed in the over 2,000 square feet in the upper floors of the building. Attorney Grover stated that the special conditions affecting the lot are the existing building: providing only one residential unit in the existing building would make it unviable. Attorney Grover noted that the building stayed on the market for over a year; the existing medical uses are not especially viable, either. Attorney Grover stated that a former Dr. Von Weiss medical building (107 Highland Avenue) nearby was converted into eight residential units several years ago and that a nearby service station (111 Highland Avenue) was converted into two residential units. He stated that both have significantly less lot area per dwelling unit than proposed for 116 Highland Avenue off 5,400 square feet per dwelling unit. 107 Highland Avenue provided only 2,117 square feet per dwelling unit; 111 Highland Avenue provided about 4,000 square feet per dwelling unit. For this reason, Attorney Grover suggested that this proposal would not be detrimental to the public good and would not derogate from the intent of the zoning ordinance. Attorney Grover stated that this is a good opportunity for a productive reuse of a building that is not suitable for single-family residential use.
13. Attorney Grover called up Cynthia Nina Soto to discuss her proposed office use for the project. Mrs. Soto stated that including her, there are six total agents in her real estate firm, and that most of the work is done remotely, meeting with employees online and meeting with clients in their homes or in the properties they are showing. Mrs. Soto stated that she wants to move the office into this location is to add more formality to the business, so she can meet with clients in office space. Mrs. Soto stated that she does not have very much walk-in traffic; there would be minimal traffic at the property for the office use. Mrs. Soto stated that she wants to change the color of the building and add cosmetic

changes. Mrs. Soto stated that the second floor will include three two-bedroom residential units with space for coin-operated laundry, and that one of the three units will be affordable.

14. Mr. Copelas asked Mrs. Soto about the large size of the first floor for the office. Mrs. Soto stated that there is no basement, and that she is required to store files for seven years; the first floor would allow ample space to meet with clients and store files. Mr. Copelas mentioned that there is more than enough parking, almost like there is too much parking; he asked Mrs. Soto if she has any idea how to use it. He stated that he understands that the Zoning Board has no jurisdiction over this, but he asked about the parking. Attorney Grover noted that per the zoning, only 11 parking spaces would be required; there are 27 parking spaces there. Mrs. Soto stated that the idea of green space has come up, but that she does not want to approach it until the units are set up. Mrs. Soto noted that she sent letters out to neighbors but did not get any responses from neighbors; she did get a response from City Councillor Domingo Dominguez. Mrs. Soto read Councillor Dominguez's letter, which includes in part, "I strongly support this plan and recommend that the proper reliefs be awarded so that this property becomes a place for some to call home."
15. At the December 19, 2018 public hearing, one (1) member of the public spoke in favor of the petition and no (0) members of the public spoke in opposition to the petition. Ward 4 Councillor Timothy Flynn was the member of the public who spoke in favor of the project.
16. The Board deliberated the petition. Mr. Copelas spoke to the special permit criteria and variance criteria met by the application (noted below).

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 Board finds that the proposed nonconforming use is not substantially more detrimental than the existing nonconforming use to the neighborhood.

1. Social, economic and community needs served by the proposal are clearly met by the additional housing, including affordable housing, and the lack of interest in the commercial use at this property.
2. Regarding traffic flow and safety, including parking and loading: the proposed use will generate substantially less traffic than the previous use.
3. The use of utilities and other public services will be substantially less than for the previous use; as such, utilities and other public services are adequate.
4. There will be no change in impacts on the natural environment, including drainage, as the use will not change.
5. Neighborhood character: The three residential units bring the property closer to the underlying residential zoning than the previously existing use.
6. Potential fiscal impact, including impact on City tax base and employment: there will be a positive fiscal impact for the City through taxes generated because the building will become occupied, including three residential units.

Findings for Variance:

1. Special conditions and circumstances especially affect the land, building, or structure involved, generally not affecting other lands, buildings, and structures in the same district: The existing building itself presents special circumstances, because literal enforcement would allow only a single residential

unit in the building. As noted in the Statement of Hardship, office building of this size is not suitable for any use allowed by right in the Residential One-Family zoning district.

2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant: if the Ordinance were literally enforced, only one residential unit would be allowed; this is not economically viable. In addition, the previous medical office use (also nonconforming) does not appear to be particularly viable given that the property was on the market for over a year.
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: the proposal brings the property closer to the underlying residential zoning and meets needs of the community. In addition, the previously approved adapted uses at 107 and 111 Highland Avenue demonstrate that such projects do not constitute a substantial detriment to the public good.

On the basis of the above statements of fact, the Salem Board of Appeals voted five (5) in favor (Mike Duffy (Chair), Peter A. Copelas, Jimmi Heiserman, Patrick Shea, and Jimmy Tsitsinos) and none (0) opposed to grant the requested Special Permit per Section 3.3.2 of the Salem Zoning Ordinance to change from one nonconforming use (professional offices) to another nonconforming use (mixed use: office and residential multifamily) and the requested Variance per Section 4.1.1 *Table of Dimensional Requirements* for relief from minimum lot area per dwelling unit to convert the existing medical office to a mixed use (office and three residential apartments) at 116 Highland Avenue, subject to the following **terms, conditions, and safeguards**:

Standard Conditions:

1. 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 is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. Petitioner shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to be visible from the street.
9. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Special Conditions:

1. One of the three residential units will be reserved as affordable as per the definition of affordability in the City of Salem.

 / BJC

Mike Duffy, 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.