



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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

January 2, 2019

Decision

City of Salem Board of Appeals

Petition of ANTHONY FORTES for variances from Section 4.1.1 of the Salem Zoning Ordinance for minimum lot area and minimum lot width to build a single-family home at 14 BUTLER STREET (Map 15, Lot 204) (R2 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 variances from Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for minimum lot area and minimum lot width to build a single-family home on a currently vacant lot.

Statements of Fact:

1. In the petition date-stamped November 27, 2018, the Petitioner requested variances from Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance to provide less than the minimum required lot area and minimum lot width in order to build a single-family home on the currently vacant lot, which Petitioner owns, at 14 Butler Street.
2. Attorney Scott Masse, representing Petitioner Anthony Fortes, presented the petition.
3. The property is located in the Residential Two-Family (R2) Zoning District. The existing lot is nonconforming to minimum lot area and minimum lot width. Required minimum lot area is 15,000 square feet; the lot area is 7,383 square feet. Required minimum lot width is 100 feet; lot width is 45.5 feet.
4. The property is currently a vacant lot. Per the Statement of Hardship submitted with the application, "[a]n existing factory on the land was torn down in 1964... The lot has been vacant since then."
5. The requested relief, if granted, would allow the Petitioner to build a single-family home on the existing vacant lot, which is nonconforming to minimum lot area and minimum lot width.
6. On this block of Butler Street between Colonial Terrace and Prospect Avenue, most homes do not meet minimum lot area requirements, but it appears that they are considered pre-existing nonconforming as they all appear to have been built prior to the first institution of Salem's Zoning Ordinance in 1965.
7. The lot was vacant when the Zoning Ordinance was first adopted in 1965.
8. In the Statement of Hardship submitted with the application, Petitioner states that "anyone looking to build a residence on this lot – as would seem to be the intention of the R2 district – would need to seek relief due to the lot size and area."

2019 JAN 2 PM 1:15
CITY CLERK
SALEM MASS

9. Due to minimum lot area and minimum lot width requirements, no residence could be built on this vacant lot without zoning relief.
10. In a decision dated March 1, 2007, the Salem Zoning Board of Appeals granted the same variances as are now being requested – minimum lot size and minimum lot width – to a different petitioner, Joseph Reither. This decision stated that “A literal enforcement of the zoning ordinance would create a substantial hardship to the petitioner as the site would remain unbuildable in this zoning district.”
11. Per Mass. Gen. L. ch. 40A, § 10, “If the rights authorized by a variance are not exercised within one year of the date of grant of such variance such rights shall lapse.” The rights authorized by the variances granted by the Salem Zoning Board of Appeals for 14 Butler Street in 2007 have thus lapsed.
12. At the December 19, 2018 public hearing, Attorney Masse stated that, if allowed, the home would be consistent with the neighborhood and would have four parking spaces, more than meeting the requirement. With regard to the criteria for granting a variance, Attorney Masse stated that there is extreme hardship because without the variance, the property is not buildable. Attorney Masse stated that there would be no detriment to the public good because off-street parking would be provided for the house and because it will be consistent with the neighborhood character.
13. At the December 19, 2018 public hearing, no (0) members of the public spoke in favor of the petition and four (4) members of the public spoke in opposition to the petition. One of the main concerns expressed was the limited available parking on the street; people currently park on the vacant lot. One abutter who spoke, Charles Pelletier, explained that he had appealed the 2007 decision of the Zoning Board.
14. Regarding the 2007 Zoning Board decision and Mr. Pelletier’s appeal, Attorney Masse explained that, after Mr. Pelletier brought appeal, Mr. Reither (to whom the variances were granted in 2007) decided not to go forward, so Mr. Pelletier’s appeal was not heard in court.
15. The Board deliberated. Mr. Copelas stated that the fact that the Zoning Board previously granted variances does not speak to the Board’s current decision. Mr. Copelas stated that he was concerned about the third criterion for granting a variance: that 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. He stated that the City is filled with undersized lots, and that’s the reason we have zoning. Mr. Copelas said it seems to him that it is derogating from the intent of the ordinance to allow someone to build on a clearly undersized lot, and that doing so would open a Pandora’s box for other potential applicants.
16. Mr. Copelas added that he is struggling to find a hardship if the variances are not granted. Attorney Masse responded that without the variances, the lot is not buildable. Mr. Copelas stated that, when the petitioners purchased the property, zoning was already in place, and they understood that they were purchasing a substantially undersized lot.
17. The Board voted unanimously to close the public hearing and move to discussion.
18. Mr. Copelas restated that there are many undersized lots in Salem, and that zoning exists so that people cannot put up a house on every 7,000 or 8,000 square foot lot. Mr. Shea asked that the issue is less about the parking and more about the size of the lot and the effect on zoning; Mr. Copelas answered yes. Chair Duffy added that there is a significant question of coming to the hardship. Mr. Copelas added that the property was bought with the understanding of what the zoning was. Mr. Copelas stated that there are not many special circumstances about the lot – it’s the same size as many other nearby lots – but those homes were built prior to zoning, so they are allowed to stay. Mr.

Tsitsinos stated that he is hung up on the idea that petitioner bought it with the understanding that the plans were approved by the Zoning Board, and the understanding that he could build on that lot. Mr. Copelas said that he allowed it to lapse. The Board discussed the dimensions of the lot compared to the zoning. Chair Duffy stated that the approach is to have a motion framed in the positive, and members vote to approve the requested variance or not.

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 **does not** meet the provisions of the City of Salem Zoning Ordinance:

Findings for Variances:

1. It is not clear that special conditions and circumstances especially affect the land, building, or structure, generally not affecting other lands, buildings and structures in the same district. The size of the lot is very similar to nearby lots; the difference is that the homes on those nonconforming lots were built prior to zoning and have remained there, whereas the lot in question is vacant.
2. Literal enforcement of the provisions of the Ordinance would not involve substantial hardship, because when the Petitioner purchased the undersized lot, zoning was already in place.
3. Desirable relief may not 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. Allowing someone to build on a clearly undersized lot would derogate from the intent of the Zoning Ordinance.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted one (1) in favor (Jimmy Tsitsinos), three (3) opposed (Mike Duffy (Chair), Peter A. Copelas, and Patrick Shea), and one (1) abstaining (Jimmi Heiserman) to grant the requested Variances from Section 4.1.1 of the Salem Zoning Ordinance for minimum lot area and minimum lot width to build a single-family home at 14 Butler Street. **Failing to receive four votes in favor, the petition for variances is denied.**



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.