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CITY CLERK
SALEM, MASS

July 3, 2018

Decision

City of Salem Board of Appeals

Petition of SPIRE INVESTMENTS, LLC seeking a special permit per sec. 3.3.2 Nonconforming Uses to change the existing non-conforming function hall into a multi-family residential use. The petitioner is also requesting variances from the provisions of sec. 3.3.4 and sec. 4.1.1 Table of Dimensional Requirements, of the Salem Zoning Ordinance, for lot area per dwelling unit, number of stories, height, front yard and side yard setbacks to allow a two-story addition to the existing one-story rear structure at 94 WASHINGTON SQUARE EAST (Map 35 Lot 536) (R-2 Zoning District).

A public hearing on the above Petition was opened on April 18, 2018 pursuant to M.G.L Ch. 40A, § 11 and continued to May 16, 2018 and June 20, 2018. The public hearing was closed on that date with the following Salem Board of Appeals members present: Peter A. Copelas (Vice-Chair), Mike Duffy, Jimmy Tsitsinos, Chris Drucas, and Paul Viccica.

The petitioner is seeking a special permit per Sec. 3.3.2 Nonconforming Uses to change the existing non-conforming function hall into a multi-family residential use. The petitioner is also requesting variances from the provisions of sec. 3.3.4 and sec. 4.1.1 Table of Dimensional Requirements, of the Salem Zoning Ordinance, for lot area per dwelling unit, number of stories, height, front yard and side yard setbacks to allow a two-story addition to the existing one-story rear structure.

Statements of fact:

1. In the petition date-stamped March 23, 2018, the petitioner requested a special permit per Sec.3.3.2 Nonconforming Uses to change the existing non-conforming function hall into a multi-family residential use. The petitioner is also requesting variances from the provisions of sec. 3.3.4 and sec. 4.1.1 Table of Dimensional Requirements, of the Salem Zoning Ordinance, for lot area per dwelling unit, number of stories, height, front yard and side yard setbacks to allow a two-story addition to the existing one-story rear structure.
2. Attorney Scott Grover- presented the petition.
3. The property is located in an R-2 Zoning District.
4. The Silsbee, Nathaniel House, also known as the Knights of Columbus Hall, is a federal style building that was constructed in 1818. It is also a contributing building in the Salem Common National Historic District.
5. The petitioner is proposing to change the existing non-conforming Knights of Columbus function hall into a multi-family residential use. In the original petition, the petitioner proposed to construct twenty (20) residential units. The petitioner proposed to restore the existing interior and exterior of the front historic mansion and also proposing a rear two (2) story addition on the existing rear one-story attached structure.

6. In the original petition, the proposed redevelopment required variances per Sec. 3.3.4 and Sec. 4.1.1 Table of Dimensional Requirements, of the Salem Zoning Ordinance, for lot area per dwelling unit, number of stories, height, front yard and side yard setbacks. The minimum lot area per dwelling unit requirement in the R-2 Zoning District is 7,500 square feet. As proposed, the lot area per dwelling unit was approximately 1,251 square feet. The proposed rear addition was approximately forty (40) feet and three stories in height, which exceeds the 35 feet and 2.5 stories that is permitted in the R-2 Zoning District. The petitioner also requested a variance from the front yard setback requirement to allow an architectural feature of the proposed new addition to encroach into the setback. The last variance requested, was for relief from the side yard setback to allow the petitioner to construct a trash/recycling shed to be approximately 3.4 feet from the left side line, where a distance of ten (10) feet is required.
7. The petitioner proposed to convert the front mansion building into five (5) residential dwelling units and have fifteen (15) units in the rear expanded addition. As for parking, the petitioner proposed thirty (30) parking spaces, which complied with the requirements of the zoning ordinance.
8. At the April 18, 2018 Board of Appeals public hearing, the Board requested that the petitioner provide a supporting memorandum with a legal opinion and case law to demonstrate the thresholds of what constitutes a hardship for a variance request. Members of the Board also requested changes to the proposal including eliminating some variances particularly for the requested relief for height and front yard setback.
9. In a letter dated May 15, 2018, the petitioner provided a memorandum to the Board for consideration in support of the requested variances. In particular, the literal enforcement of the hardship would create a substantial hardship to the petitioner due to the unique shape, size and historical nature of the building on the property. The petitioner stated that a substantial hardship, financial or otherwise, is satisfied when it is not 'economically feasible or likely that the locus would be developed in the future for a use permitted by the zoning ordinance or bylaw.'
10. The existing structure is a 20,224 +/- square foot historic structure with a three-story brick mansion and one-story annex on 25,032 square foot lot in the R-2 Zoning District. If the dimensional requirements of the Salem Zoning Ordinance were literally enforced, the minimum lot area per dwelling unit of 7, 500 square feet would allow only two (2) residential units at the property. Due to the unique shape, size and historic character of the building, the petitioner stated that the restoration of the historic structure would not be economically feasible or likely that the property would be developed for a use permitted by the zoning ordinance or by-law.
11. At the May 16, 2018 meeting, the Board requested that the petitioner provide a pro forma and alterations to the plans to consider the elimination of the number of variances requested.
12. At the June 20, 2017 meeting, the petitioner presented a project pro forma, a revision to the original plans and supplemental information regarding the density within the neighborhood.
13. The changes to the plans included the following: a reduction in the number of units from twenty (20) units to eighteen (18) residential units; a reduction in the height of the building from forty (40) feet to thirty (35') feet, eliminating the need for a height variance and allowance for the relocation of mechanical equipment from the roof to within the building; redesign of the façade of the rear addition to step it back from Briggs Street, eliminating the need for a front yard setback variance; a reduction of three (3) parking spaces to meet the zoning requirements to allow for more open space, improve circulation and also provide an alternative location to the proposed trash and recycling shed eliminating the need for a side setback variance.

14. As modified, the petitioner requested a special permit per Sec. 3.3.2 Nonconforming Uses to change the existing non-conforming function hall into a multi-family residential use and requesting variances from the provisions of sec. 3.3.4 and sec. 4.1.1 Table of Dimensional Requirements, of the Salem Zoning Ordinance, for lot area per dwelling unit and number of stories to allow the construction of a two (2) story rear addition to the existing one-story structure.
15. The requested relief, if granted, would allow the Petitioner change the existing non-conforming function hall into a multi-family residential use and construct a two (2) story addition to the existing one-story structure.
16. At the public hearing four (4) member of the public spoke in opposition and three (3) spoke in favor of 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 from a non-conforming function hall to a multi-family residential structure will not be substantially more detrimental than the existing non-conforming use.


1. There are positive impacts on the social, economic and community needs by providing additional housing options in the City.
2. There are no 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 residential use, historic preservation of the main building, and new addition are all in keeping with the existing neighborhood character.
6. The potential fiscal impact, including impact on the City tax base is positive.

Findings for Variances:

1. There are 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. The building is a prominent historic mansion with a large one-story addition. The total interior square footage of the building is 20,244 +/- square feet. The petitioner plans to restore the main building to the historically appropriate standards and create a structure that is in harmony with the existing neighborhood.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant as only two (2) residential units could be constructed. This reuse is impractical and would prevent any reasonable re-use of this property. Further, the proposed density is needed to support the restoration of the mansion and the density requested is in keeping with the existing density of the neighborhood.
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 proposed change from the existing non-conforming function hall to a residential use is more consistent with the underlying zoning than the existing commercial use.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted four (4) (Peter A. Copelas (Vice-Chair), Mike Duffy, Jimmy Tsitsinos, and Paul Viccica) in favor and one (Chris Drucas) opposed, to grant a special permit per sec. 3.3.2 Nonconforming Uses to change the existing non-conforming function hall into a multi-family residential use and variances from the provisions of sec. 3.3.4 and sec. 4.1.1 Table of Dimensional Requirements, of the Salem Zoning Ordinance, for lot area per dwelling unit and number of stories, to allow a two-story addition to the existing one-story rear structure 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 Inspection shall be obtained.
7. A Certificate of Occupancy shall be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.


Peter A. Copelas, Vice 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.