



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS

CITY CLERK
SALEM, MASS.

120 WASHINGTON STREET ♦ SALEM, MASSACHUSETTS 01970
TELE: 978-745-9595 ♦ FAX: 978-740-9846

May 31, 2017

Decision

City of Salem Board of Appeals

A public hearing for all persons interested in the petition of BRIMPTS REALTY LLC seeking Special Permits per *Sec. 3.3.2 Nonconforming Uses* and *Sec. 3.3.3 Nonconforming Structures* to extend a non-conforming use and reconstruct a non-conforming building. The petitioner is also requesting a Variance per *Sec. 3.3.4 Variance Required* and *Sec. 4.1.1 Table of Dimensional Requirements* of the Salem Zoning Ordinance, to allow the petitioner to change a non-conforming structure in such a manner as to increase an existing nonconformity and for relief from the rear and side yard setback requirements at the property of 15 BROADWAY (Map 32 Lot 55)(I Zoning District)

A public hearing on the above Petition was opened on May 17, 2017 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Rebecca Curran (Chair), Tom Watkins, Mike Duffy, Jimmy Tsitsinos, and Paul Viccica (alternate).

The petitioner is seeking a Special Permit per *Sec. 3.3.2 Nonconforming Uses* and *Sec. 3.3.3 Nonconforming Structures* to extend a non-conforming use and reconstruct a non-conforming building. The petitioner is also requesting a Variance per *Sec. 3.3.4 Variance Required* and *Sec. 4.1.1 Table of Dimensional Requirements* of the Salem Zoning Ordinance, to allow the petitioner to change a non-conforming structure in such a manner as to increase an existing nonconformity and for relief from the rear and side yard setback requirements.

Statements of fact:

1. Attorney Scott Grover presented the petition on behalf of the applicant.
2. In the petition date-stamped April 25, 2017, the petitioner requested a Special Permit per *Sec. 3.3.2 Nonconforming Uses* and *Sec. 3.3.3 Nonconforming Structures* to extend a non-conforming use and reconstruct a non-conforming building. The petitioner is also requesting a Variance per *Sec. 3.3.4 Variance Required* and *Sec. 4.1.1 Table of Dimensional Requirements* of the Salem Zoning Ordinance, to allow the petitioner to change a non-conforming structure in such a manner as to increase an existing nonconformity and for relief from the rear and side yard setback requirements
3. The property is located in an Industrial Zoning District.
4. The petitioner currently operates a construction/carpentry business in addition to providing space for three (3) other contractors in the current building.
5. The existing building construction/carpentry businesses are non-conforming uses. The existing property is in poor condition and an underutilized property. The petitioner is proposing a new structure and associated paved parking to provide much needed indoor workshop and contractor spaces.

6. The petitioner is proposing to raze the existing building to construct a 3,360 +/- square foot one-story structure with a mezzanine level above. The proposed structure will be parallel to Broadway and include four (4) small contractor bays for workshop space and storage or office space.
7. The existing building is dimensionally non-conforming as to front yard, rear yard and side yard setbacks. The proposed new building does not increase the existing non-conformities with respect to the setbacks on the east side and rear yard setback.
8. The west side yard setback is a new non-conformity. The petitioner is proposing a side yard setback of eleven (11') feet where thirty (30') feet are required.
9. The existing lot is 10,000 square feet with required rear yard, side yard and front yard setbacks of 30' feet in the Industrial Zone.
10. The requested relief, if granted, would allow the petitioner to extend a non-conforming use and reconstruct a non-conforming building. A Variance per Sec. 3.3.4 *Variance Required* and Sec. 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance, would allow the petitioner to change a non-conforming structure in such a manner as to increase an existing nonconformity and for relief from the rear and side yard setback requirements.
11. The property abuts a plumbing business where the business owner also lives at the property. This is the only residential property on Broadway. There are many businesses on this street including machine shops, sea food processing plant, body shops and other commercial businesses in this neighborhood.
12. At the public hearing the petitioner presented a petition to the Board, five (5) members of the public spoke in favor of, and none (0) opposed 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 Board finds that the proposed expansion of a non-conforming use is not substantially more detrimental than the existing non-conforming use. The Board also finds that the proposed expansion to alter a non-conforming structure is not substantially more detrimental than the existing non-conforming structure.

1. Social, economic and community needs are served by the proposal.
2. Traffic flow and safety, including parking and loading is adequate.
3. Adequacy of utilities and other public services will not be negatively impacted.
4. Impacts on the natural environment, including drainage will remain the same.
5. The proposal fits with the character of the neighborhood.
6. Potential fiscal impact including impact on City the tax base and employment is positive.

Findings for Variance:

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.
2. The literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant as the required rear yard, side yard, and front yard setback requirements are thirty (30') feet, which severely restricts development on the site.
3. Desirable relief may be granted without substantial detriment to the public good, and without mollifying or substantially derogating from the intent of the district or the purpose of the ordinance.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (5) in favor (Rebecca Curran (Chair), Tom Watkins, Mike Duffy, Jimmy Tsitsinos, and Paul Viccica (alternate)) and none (0) opposed, to grant a Special Permits per *Sec. 3.3.2 Nonconforming Uses* and *Sec. 3.3.3 Nonconforming Structures* to extend a non-conforming use and reconstruct a non-conforming building. The petitioner is also requesting a Variance per *Sec. 3.3.4 Variance Required* and *Sec. 4.1.1 Table of Dimensional Requirements* of the Salem Zoning Ordinance, to allow the petitioner to change a non-conforming structure in such a manner as to increase an existing nonconformity and for relief from the rear and side yard setback requirements, subject to the following **terms, conditions and safeguards**:

Standard Conditions:

1. Petitioner shall comply with all city and state statues, 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 finished 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 is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to the Planning Board.

Special Conditions:

1. The petitioner shall construct the building along the existing non-conforming west side yard to increase the east side yard setback to fifteen (15') feet.
2. The curbcut shall meet the dimensional requirements of the Zoning Ordinance and be thirty (30') feet or less.
3. The petitioner shall pave the front parking area and driveway prior to a Certificate of Occupancy.
4. A fence shall be maintained all the way around the property.

5. There shall not be any outside storage of construction materials.



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.