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MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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September 2, 2015

Decision

City of Salem Board of Appeals

2015 SEP -2 P 2
FILE #
CITY CLERK, SALEM, MASS.

Petition of 161 FEDERAL STREET LLC, seeking a Special Permit per Sec. 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use to another nonconforming use to allow four (4) residential dwelling units. The applicant is also seeking Variances per Sec. 4.1.1 *Table of Dimensional Requirements* for relief from minimum lot area per dwelling unit and maximum height to allow a new dormer to slightly exceed the thirty-five (35') height limit. The applicant is also seeking Variances per Sec. 5.1.2 *Location of Parking* to allow two (2) of the required parking to be located off-site and Sec. 5.1.5 *Design* to allow the one-way use driveway to be less than the required twelve (12) feet wide at the property of 161 FEDERAL STREET (Map 25 Lot 112)(R2 Zoning District).

A public hearing on the above Petition was opened July 15, 2015 pursuant to M.G.L. Ch. 40A, § 11. The public hearing was continued at the request of the applicant to August 19, 2015 and closed on this date with the following Salem Board of Appeals members present: Peter A. Copelas (Vice-Chair), Jimmy Tsitsinos, Mike Duffy, Tom Watkins, James Hacker (alternate).

The Petitioner seeks a Special Permit per Sec. 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use to another nonconforming use to allow four (4) residential dwelling units. The applicant is also seeking Variances per Sec. 4.1.1 *Table of Dimensional Requirements* for relief from minimum lot area per dwelling unit and maximum height to allow a new dormer to slightly exceed the thirty-five (35') height limit. The applicant is also seeking Variances per Sec. 5.1.2 *Location of Parking* to allow two (2) of the required parking to be located off-site and Sec. 5.1.5 *Design* to allow the one-way use driveway to be less than the required twelve (12) feet wide.

Statements of Fact:

1. Attorney Grover presents the petition.
2. In the petition date-stamped June 23, 2015, the petitioner requests Special Permit per Sec. 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use to another nonconforming use to allow four (4) residential dwelling units. The applicant is also seeking Variances per Sec. 4.1.1 *Table of Dimensional Requirements* for relief from minimum lot area per dwelling unit and maximum height to allow a new dormer to slightly exceed the thirty-five (35') height limit. The applicant is also seeking Variances per Sec. 5.1.2 *Location of Parking* to allow two (2) of the required parking to be located off-site and Sec. 5.1.5 *Design* to allow the one-way use driveway to be less than the required twelve (12) feet wide.

3. The property served as a rectory for St. James church and is located in an R2 Zoning District.
4. The parcel is approximately 7,500 square feet of land with a three-story historic structure that is approximately 7,000 square feet of improved living area plus a basement and attic.
5. The petitioner proposes to convert the building from one non-conforming use of the rectory building to another nonconforming use to four (4) large residential dwelling units that range in size from 1,825 square feet to 2,900 square feet.
6. There is a permanent easement associated with 161 Federal Street for the use of six (6) parking spaces in the St. James Church parking lot across the street.
7. The petitioner originally requested a variance per Sec. 5.1.2 *Location of Parking* to allow two (2) of the required parking to be located off-site at the St. James Church property and withdrew this request. The petitioner proposes to locate all six (6) required parking spaces on the property to serve the residential dwelling units and another six (6) parking spaces in the St. James Church parking lot across the street.
8. The petitioner proposed to construct a new dormer that slightly exceeded the total building height limit of 35' feet. After consideration, the petitioner withdrew this request for a variance for relief maximum height to allow a new dormer to slightly exceed the thirty-five (35') height limit and will not construct a dormer.
9. The petitioner also requests a variance per Sec. 5.1.5 Design to allow the one-way use driveway to be less than the required twelve (12) feet wide. The petitioner plans to work with the abutter to place bollards or protective barrier between the property and driveway where the driveway significantly narrows.
10. The requested relief, if granted, would allow the Petitioner to change from one nonconforming use to another nonconforming use to allow four (4) residential dwelling units and to allow the one-way use driveway to be less than the required twelve (12) feet wide.
11. At the public hearings eight (8) members of the public spoke in favor and four (4) spoke 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**:

Findings for Special Permit:

The proposed use of a four (4) residential dwelling unit is not substantially more detrimental than the existing nonconforming use to the neighborhood. The building is not suitable for anything besides a multi-family dwelling unit as it would not be economically feasible to undertake the restoration of this scale as a single-family or two-family home.

Findings for Variances:

- 1) Special conditions and circumstances that especially affect the land, building, or structure involved generally not affecting other lands, buildings or structures in the same district is that the building was used as a rectory and is over 7,000 square feet.
- 2) Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant as without the relief the applicant could not provide on-site parking spaces that meet the requirements of the Zoning Ordinance.
- 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.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted with five (5) in favor (Peter A. Copelas (Vice-Chair), Jimmy Tsitsinos, Mike Duffy, Tom Watkins and James Hacker (alternate) and none (0) opposed to grant a Special Permit per Sec. 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use to another nonconforming use to allow four (4) residential dwelling units and Variances per Sec. 4.1.1 *Table of Dimensional Requirements* for relief from minimum lot area per dwelling unit and Sec. 5.1.5 *Design* to allow the one-way use driveway to be less than the required twelve (12) feet wide subject to the following **terms, conditions and safeguards**:

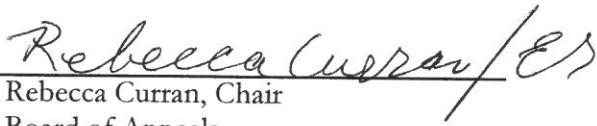
Standard Conditions:

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. A Certificate of Occupancy shall be obtained.
6. A Certificate of Inspection shall be obtained.
7. 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.
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 agrees to convert the property to a condominium no later than the expiration of the five (5) year holding period for the historic tax credits associated with the property and to market the units for sale, provided that the petitioner has the discretion to reasonably adjust the timing of the sale of units in the event market conditions are not reasonably favorable at the expiration of 60 months, provided however the said sale should occur within a reasonable period thereafter.

2. The petitioner acknowledges that the four (4) approved units may not be further subdivided to create any additional units, and that at no time shall there be more than four (4) units at said property.
3. The petitioner shall provide six (6) off-street parking spaces on the premises, plus whatever additional spaces are provided by a formal easement between the petitioner and the Archdiocese of Boston behind the current St. James Church.
4. The petitioner shall remove the brick planter and shrubs at the front of the building and restore the brick sidewalk up to the foundation.
5. The petitioner shall replace the window that has been boarded up on the second floor of the western wall, and should attach matching shutters.
6. All work shall be done in compliance with the plans and elevations submitted to the ZBA.


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.