



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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

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CITY CLERK  
SALEM, MASS

December 3, 2018

## Decision

### City of Salem Board of Appeals

**Petition of JUNIPER POINT INVESTMENT CO LLC requesting a special permit per Section 3.3.2 of the Salem Zoning Ordinance to change from one nonconforming use (junkyard and auto service) to another nonconforming use (multifamily residential) and variances for relief from Section 4.1.1 Table of Dimensional Requirements for the minimum required lot area per dwelling unit and maximum number of stories to construct 42 residential units within five buildings at 16, 18 & 20R FRANKLIN STREET (Map 26, Lots 402, 401 & 400) (NRCC and RC Zoning Districts).**

A public hearing on the above Petition was opened on November 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, Jim Hacker, Patrick Shea, and Paul Viccica.

The Petitioner is requesting a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance as well as two variances under Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance.

#### Statements of fact:

1. In the petition date-stamped October 29, 2018 the Petitioner requested variances under Section 4.1.1 *Table of Dimensional Requirements* to provide less than the minimum lot area per dwelling unit, proposing 2,350± square feet per dwelling unit when 3,500 square feet are required in the North River Canal Corridor (NRCC) district, and to exceed the maximum height of buildings (stories), proposing 5 stories when 4 stories are allowed in the NRCC district. In the same petition, the Petitioner also requested a special permit under Section 3.3.2 *Nonconforming Uses* to change from one nonconforming use (junkyard and auto service) to another nonconforming use (multifamily residential) in a Residential Conservation (RC) district.
2. Attorney Joseph Correnti presented the petition on behalf of petitioner Juniper Point Investment Co LLC.
3. Most of the property is located in the NRCC district, and part of the property is located in the RC district. As noted in Petitioner's application, "Buildings do not extend more than 30' into the RC district, and the lot has frontage in both districts, as per the provisions of Lot Split by District Boundary Line (§2.4)."
4. The property currently operates as a junkyard and auto service shop, Ferris Auto Service.
5. The Petitioner is proposing to build 42 residential units within five buildings.
6. Previously, the Planning Board approved with conditions the Petitioner's application for Site Plan Review and Special Permits under the North River Canal Corridor Neighborhood Mixed Use District, Flood Hazard Overlay District, and Stormwater Management Permit.

7. The northern lot boundary, between the existing auto service shop and City-owned Furlong Park, is in dispute. The proposed plan includes development of 16 parking spaces and vehicular access in or near the disputed area.
8. With the 42 proposed units, lot area per unit would be 2,350± square feet. A minimum of 3,500 square feet per dwelling unit is required in the NRCC district. In the application, Petitioner notes the need for environmental remediation due to junkyard and industrial use. Petitioner states in the application that the “considerable costs” “associated with the remediation of the site” mean that “this project would not be feasible without the requested relief.” Petitioner is requesting a variance from Section 4.1.1 *Table of Dimensional Requirements* to provide less than the minimum lot area per dwelling unit.
9. The proposed “three midrise buildings located closer to the river” (per the application) would have a height of five (5) stories: one (1) garage story and four (4) stories of living area. Petitioner notes that the site is located in a flood zone, and that “[c]urrent regulations require that living area is elevated above the flood plain.” Petitioner is requesting a variance from Section 4.1.1 *Table of Dimensional Requirements* to build five stories, one story greater than the allowed maximum height of buildings (stories). The buildings will not exceed the maximum height of buildings (feet) of 50 feet.
10. The requested relief, if granted, would allow petitioner to change from one nonconforming use (junkyard and auto service) to another nonconforming use (multifamily residential) in the Residential Conservation zone, and would allow petitioner to provide less than required lot area per dwelling unit and more than maximum number of stories (§4.1.1) to construct 42 residential units within five buildings at 16, 18 & 20R Franklin Street.
11. At the public hearing, Attorney Correnti presented information about the proposal, including the need for remediation, the site’s location in a flood zone, and the use of the first-floor garage story to elevate living areas above the flood plain while meeting the parking requirements of the Ordinance.
12. At the public hearing, two (2) members of the public spoke in support and five (5) spoke in opposition to the petition.
13. Also at the hearing, Chair Mike Duffy read letters from members of the public. Two (2) members of the public wrote letters in support of the petition; one (1) member of the public wrote a letter in opposition to the petition.
14. The Board discussed the project, including asking Mr. Correnti about anticipated costs of remediation.

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 multifamily residential use is not substantially more detrimental than the existing nonconforming junkyard use; indeed, the Board finds that the residential use is “clearly less detrimental” than the existing use.

1. The social, economic, and community needs are served by the proposal with respect to the change from one nonconforming use to another, less detrimental nonconforming use.

2. The project meets the parking requirements of the zoning ordinance. Proximity to the train station may allow residents to cross over railroad tracks to get to the train station.
3. There are adequate utilities and public services in the area.
4. The proposed project's impacts on the natural environment, including drainage, would be uniformly better than the impacts of the current use, especially regarding runoff into the canal and the adjacent parkland.
5. The fact that this is a residential development helps this project fit into the neighborhood character. Issues of building aesthetics were approved by the Planning Board.
6. The residential tax base would have a positive fiscal impact, and the project would have a positive impact on short-term employment for construction and long-term employment for on-site maintenance.

#### **Findings for Variances:**

The Board finds that the proposed use will not outweigh its beneficial impacts to the City or the neighborhood.

1. Several special conditions and circumstances affect the site, including its location in the flood plain, which limits buildable area, and issues around soil and the need for environmental remediation.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant. The enforcement of the minimum lot area per dwelling unit provision would be burdensome, as the flood plain reduces buildable area on the lot and costs of environmental remediation will be significant. The Board has seen that it can be difficult to build reasonably without triggering the need for a variance from minimum lot area per dwelling unit requirements.
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 maximum height of the building in stories (5), if approved, would still not exceed the maximum height of building in feet (50 feet); some members of the Board discussed the idea that the two ordinances regarding building height (i.e., the stories ordinance and the height ordinance); the fact that it does not exceed the height in feet ordinance seems to mitigate the issue of height in stories.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (5) in favor (Mike Duffy (Chair), Patrick Shea, Peter Copelas, Jim Hacker, and Paul Viccica) and none (0) opposed to grant the requested special permit per Section 3.3.2 of the Salem Zoning Ordinance to allow the change from one nonconforming use (junkyard and auto service) to another nonconforming use (multifamily residential) and the requested variances from Section 4.1.1 Table of Dimensional Requirements for the minimum required lot area per dwelling unit and the maximum number of stories to construct 42 residential units within 5 buildings at 16, 18 & 20R Franklin Street, 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. A Certificate of Occupancy is to be obtained.

6. 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
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Special Conditions:

1. A favorable outcome regarding the disputed land – approximately 25,000 square feet of the property – in the developer's favor must be included in the project as presented.

  
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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.*