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CITY CLERK
SALEM, MASS

January 30, 2019

Decision

City of Salem Board of Appeals

Petition of CASTLE HILL GROUP, LLP for a special permit per Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to allow a full story (an extra-tall half-story) instead of a standard half-story under a gable or gambrel roof at 19 PICKMAN STREET (Map 35, Lot 578) (R2 Zoning District).

A public hearing on the above Petition was opened on January 16, 2019 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 a special permit per Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance.

Statements of Fact:

1. In the petition date-stamped December 20, 2018, the Petitioner requested a special permit per Section 3.3.3 *Nonconforming Structures* to allow a full story (an extra-tall half-story) instead of a standard half-story under a gable or gambrel roof.
2. Attorney Scott Grover, representing petitioner Castle Hill Group, LLP, presented the petition.
3. The property is located in the Residential Two-Family (R2) zoning district.
4. The existing building contains four (4) dwelling units. This use (residential multifamily) is a nonconforming use in the Residential Two-Family zoning district. This use is not proposed to change.
5. The structure is nonconforming in terms of maximum building height (stories). The building is three (3) stories tall, where 2.5 stories is the maximum in the R2 zoning district.
6. The property also appears to be nonconforming as to maximum building height (feet) minimum lot area, minimum lot area per dwelling unit, minimum lot frontage, minimum lot width, maximum lot coverage by all buildings, minimum depth of front yard, minimum depth of rear yard, and minimum width of side yard.
7. The proposal is to extend a nonconforming structure by extending the third story from two feet six inches (2'6") to eight feet (8'). The third story is currently used as an attic. This is currently a short story at 2'6", but because the existing knee wall is over two feet tall, this is considered a full story instead of a half story. This makes the total height of the building three (3) stories. As such, the proposal would extend an existing nonconformity but would not create a new nonconformity.
8. The definitions of story and half story in Section 10.0 *Definitions* of the Salem Zoning Ordinance are as follows:
Story: As defined in the State Building Code.

Story, half: A story under a gable or gambrel roof, the wall plates of which on at least two opposite exterior walls are not more than two (2) feet above the floor of such story.

9. The requested relief, if granted, would allow the Petitioner to extend the nonconforming structure by extending the third story from two feet six inches (2'6") to eight feet (8'). The proposal would not change the overall height of the building (36'11").
10. At the January 16, 2019 public hearing, Board member Patrick Shea recused himself from voting on this petition.
11. At the public hearing, Attorney Grover presented details about the property and the proposed changes. He noted that the existing building is in a state of serious disrepair. Attorney Grover stated that it is an unusual building – it is really two buildings connected by a small hallway or breezeway. The main structure faces on Pickman Street, and a small two-story structure faces on Spring Street. Attorney Grover stated that there are four units in the combined buildings there, and that will not change with the proposed redevelopment. Attorney Grover stated that the units will change from apartments to condominiums.
12. Attorney Grover stated that the existing hallway connecting the two buildings will be expanded to improve flow between the buildings. He stated that this is the only change in footprint, and that the footprint around the perimeter of the building will not change.
13. Attorney Grover stated that the other change is the construction of shed dormers on both the front and back of the building.
14. Attorney Grover added that the plan between the owner of 19 Pickman Street and 13 Spring Street (a building under development) is to combine the two into a single condominium consisting of the four units at 19 Pickman Street and the three units at 13 Spring Street, in order to provide (off-street) parking for 19 Pickman Street. [The combination of these properties is from a legal standpoint – no structural connection is proposed.] Attorney Grover stated that there is currently no parking for 19 Pickman Street, and the lack of parking is a concern for the neighborhood, and a concern for the owner from a marketability standpoint.
15. Attorney Grover stated that by combining 19 Pickman Street and 13 Spring Street into one condominium, sufficient parking can be provided for both properties. He added that because they are not increasing the density at 19 Pickman Street, they are not triggering a parking requirement, but the parking is needed from a marketability standpoint and a neighborhood standpoint. Attorney Grover added that there is an existing agreement between the two property owners. Attorney Grover noted that he wanted the Board to be aware of this agreement because it is an important aspect of the finding the Board needs to make that the change is not more detrimental to the neighborhood, and that it is actually beneficial, creating parking where none exists.
16. Attorney Grover discussed the zoning relief. Because they are not creating a new nonconformity, they are requesting a special permit to alter an existing nonconforming structure. Attorney Grover discussed the criteria for special permit per Section 3.3.3 Nonconforming Structures of the Zoning Ordinance.
 - Social, economic and community needs served by the proposal: The proposal is serving a community need by changing from transient housing and providing opportunities for homeownership, which is good for both the future homeowners and for the neighborhood.
 - Regarding traffic flow and safety, including parking and loading: this proposal will take a property with no parking and create new parking through the collaboration between the owners of 19 Pickman Street and 13 Spring Street.

- Utilities and other public services: there is no impact; there are existing utilities.
 - There will be no impact on the natural environment, including drainage.
 - [Attorney Grover did not specifically address neighborhood character during his presentation. The Statement of Grounds submitted with the application notes that “The neighborhood character will be enhanced by the improvement and rehabilitation at the site.”]
 - Potential fiscal impact, including impact on City tax base and employment: by converting the four residential units from rentals to condominiums, the proposal will increase the tax benefits for the City.
17. Attorney Grover added that the idea behind the dormers is to make the interior space more usable; they are not adding square footage with the dormers, just creating better headroom so the third floor is more usable.
 18. Chair Duffy asked what the current use of the third story is. Architect Steve Livermore stated that the existing third floor (in the larger building) is a full apartment (though it is under eaves). He added that the smaller building, facing Spring Street, will be independent of the Pickman Street units with a fire wall, so it is almost like a separate, attached house. The larger building, facing Pickman Street, will be reconfigured internally so that there is a flat on the first floor and two townhouses on the second and third floors.
 19. Mr. Copelas noted that the LLC Attorney Grover referenced representing (19 Pickman Street, LLC) is different from what is listed on the petition (Castle Hill Group, LLP), and asked Attorney Grover to clarify. Attorney Grover stated that since the petition was filed, the property was conveyed from the prior owner to a new LLC, 19 Pickman Street, LLC. He added that the original petition was filed with the consent of the then-owner of the property.
 20. Mr. Copelas asked if the additional parking is to be part of a finding that this proposal is not more detrimental, should the Board condition approval on the establishment of the condominium. Attorney Grover stated that that would be acceptable. He added that the configuration of the parking may change from what is represented in the plans, but they can certainly condition that there will be 6 parking spaces (that would ordinarily be required by zoning) provided for 19 Pickman Street on the adjacent property.
 21. At the January 16, 2019 public hearing, three (3) members of the public spoke in favor of the petition member of the public spoke in favor of the petition and no (0) members of the public spoke in opposition to the petition. In addition, Caroline Coburn stated that she had submitted questions and concerns in a letter to the Zoning Board; Chair Duffy noted this for the record, and added that the concerns in the letter were addressed by the applicant. Ms. Coburn stated that Steve Lovely had addressed her concerns. In addition, Kathleen Keefe Ternes noted that some of the people at 19 Pickman Street have lived there for years and disagreed with Attorney Grover’s description of this as “transient” housing. Ms. Keefe Ternes added that once a property is bought as a condominium, it is not guaranteed that it will not be rented out. Attorney Grover agreed. In addition, Chair Duffy read a letter from Lynda Fairbanks Atkins in support of the project.
 22. Mr. St. Pierre stated that off-street parking is not required, but once it is added, the Zoning Ordinance states that it must stay in ownership and cannot be separated, so there are protections in the Ordinance against separating the parking. He stated that he would not object to a special condition, but that he thinks the Ordinance takes care of it.
 23. Mr. Copelas stated that since the condominium hasn’t been formed yet, and the Board needs some way of referencing it, he thinks the easiest way to reference it is a special condition. Chair Duffy stated

that it may be a little belt and suspenders, but no one will be embarrassed by that. Attorney Grover added that they are fine with that.

24. Chair Duffy spoke to the findings for the special permit (noted below).

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 structure is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

1. Social, economic and community needs served by the proposal: this is an improvement to the housing in the building and the condition of the building.
2. Regarding traffic flow and safety, including parking and loading: the parking situation will be bettered by the provision of parking through the establishment of the condominium and shared parking between 19 Pickman Street and 13 Spring Street.
3. Adequate utilities and other public services exist.
4. There is no significant negative impact on the natural environment, including drainage.
5. Neighborhood character: The design fits in with neighborhood character, and many members of the public in the neighborhood are in favor of the petition.
6. Potential fiscal impact, including impact on City tax base and employment: this will have a positive impact on the City's tax base through the conversion of the units from rentals to condominium units.

On the basis of the above statements of fact, the Salem Board of Appeals voted four (4) in favor (Mike Duffy (Chair), Peter A. Copelas, Jimmi Heiserman, and Jimmy Tsitsinos), none (0) opposed, and one (1) abstaining (Patrick Shea) to grant the requested Special Permit per Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to allow a full story (an extra-tall half-story) instead of a standard half-story under a gable or gambrel roof at 19 Pickman 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. Exterior finishes 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. This approval is subject to the establishment of the aforementioned seven-unit condominium complex between 19 Pickman Street and 13 Spring Street, with shared parking in which no fewer than six (6) parking spaces are reserved for 19 Pickman Street.

Mike Duffy /BJC

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.