



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS
BOARD OF APPEALS

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CITY CLERK
SALEM, MASS

98 WASHINGTON STREET ♦ SALEM, MASSACHUSETTS
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January 2, 2020

Decision

City of Salem Board of Appeals

Petition of JUNIPER POINT INVESTMENT CO LLC for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use (music school) to another nonconforming use (business or professional offices) at 3-5 PLEASANT STREET (Map 36, Lot 432) (R2 and ECOD Zoning Districts).

A public hearing on the above Petition was opened on November 20, 2019 pursuant to M.G.L Ch. 40A, § 11. No testimony was heard during the November 20, 2019 hearing. The petition was continued to December 18, 2019 and closed on that date with the following Salem Board of Appeals members present: Peter Copelas, Mike Duffy (Chair), Carly McClain, Rosa Ordaz, and Jimmy Tsitsinos. Paul Viccica was absent on December 18, 2019. At the November 20, 2019 meeting, only Peter Copelas, Mike Duffy (Chair), and Rosa Ordaz were in attendance, and no testimony was heard; this is discussed in the Statements of Fact below. On November 20, 2019, Rosa Ordaz, Jimmy Tsitsinos, and Paul Viccica were absent; Carly McClain had not yet been confirmed as a Board member.

The petitioner seeks a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance.

Statements of Fact:

1. In the petition date-stamped October 29, 2019, the petitioner requested a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from a nonconforming use (music school) to another, less detrimental nonconforming use (business or professional offices).
2. 3-5 Pleasant Street is located in the Residential Two-Family (R2) zoning district and the Entrance Corridor Overlay District (ECOD).
3. The property was most recently used as a music school. This is a nonconforming use in the R2 zoning district.
4. Per the "Table of Principal and Accessory Use Regulations" in Section 3.1 *Principal Uses* of the Salem Zoning Ordinance, the proposed use (business or professional offices) is not allowed in the R2 zoning district.
5. The proposal is to change from the existing nonconforming use (music school) to another nonconforming use (business or professional offices), which the application describes as "less detrimental."
6. Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance notes in part that "The Board of Appeals may award a special permit to change a nonconforming use in accordance with this section only if it determines that such change or extension shall not be substantially more detrimental than the existing nonconforming use to the neighborhood." One of the types of changes to

nonconforming uses which may be considered by the Board of Appeals, per this section, is “Change from one nonconforming use to another, less detrimental, nonconforming use.”

7. The application does not describe any structural changes.
8. The requested relief, if granted, would allow the petitioner to change from one nonconforming use (music school) to another nonconforming use (business or professional offices) at 3-5 Pleasant Street.
9. At the November 20, 2019 meeting of the Board of Appeals, only three Board members were in attendance: Peter Copelas, Mike Duffy (Chair), and Rosa Ordaz. Having three members in attendance out of the five-member Board constitutes a quorum (enough members to hold a meeting). However, per the Zoning Board of Appeals’ Rules and Regulations, “[t]he concurring vote of at least four (4) members of the Zoning Board of Appeals shall be necessary in any action taken by the Board.” As such, the Board could not vote to approve any petitions in the November 20 meeting, and all petitions were continued to the next regularly scheduled meeting. In the meeting, the Board voted three (3) in favor (Peter Copelas, Mike Duffy (Chair), and Rosa Ordaz) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting, December 18, 2019.
10. At the December 18, 2019 meeting of the Board of Appeals, Board member Jimmy Tsitsinos recused himself from this matter. The members voting on this matter were thus Peter Copelas, Mike Duffy (Chair), Carly McClain, and Rosa Ordaz.
11. At the December 18, 2019 meeting of the Board of Appeals, Attorney Joseph Correnti, representing petitioner Juniper Point Investment Co LLC, discussed the petition. He noted that the property appears to have been used commercially since to the 1950s. He stated that the property was previously used as 1, 3, and 5 Pleasant Street, and that at one point, when new owners bought the property, they sold 1 Pleasant Street and kept 3 and 5 Pleasant Street (the Salem Music Studio) while reserving some easements over 1 Pleasant Street for parking spaces and a private driveway. Attorney Correnti stated that part of the building (the smaller brick side) will be used for Juniper Point Investment Co LLC’s own business office, and the other side (the larger side) will also be leased as office space, though a tenant has not yet been identified. Attorney Correnti discussed the grounds for the special permit, in part noting the change in peak hours from evening hours (for the music school) to typical office hours Monday to Friday as well as office hours Saturday mornings. He stated that this is a business office operation and will not be used for storage of materials for the developer nor for dump truck parking. Meetings to look at colors, textures, fixtures, and so forth will be available on Saturday mornings by appointment only. He stated that there will be no changes to the exterior of the buildings except for some minor improvements.
12. At the December 18, 2019 public hearing, Attorney Correnti added that when they were here last month [when the Board continued all matters and did not have a typical meeting hearing], he met [outside the public meeting] with some neighbors who were curious about some details of the plan. He stated that none are here tonight, and he hesitates to speak for them, but it went very well and they thought it was a great idea and were pleased with the proposed use. Attorney Correnti stated that there is little impact to the neighborhood. Attorney Correnti added that the property will remain taxed as a commercial property and that this proposal will keep a Salem-based business in Salem, allowing Juniper Point to hire local people as it continues to grow.
13. At the December 18, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.
14. At the December 18 meeting, Chair Duffy discussed the special permit criteria.

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**:

Special Permit Findings:

The Board finds that the proposed nonconforming use is not substantially more detrimental than the existing nonconforming use to the neighborhood.

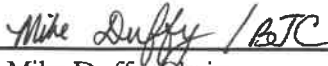
1. Social, economic, or community needs are served by the proposal.
2. Traffic flow and safety, including parking and loading: The proposal is likely to improve traffic flow.
3. Adequacy of utilities and other public services: Existing utilities and public services are adequate.
4. Impacts on the natural environment, including drainage: No impact is anticipated.
5. Neighborhood character: The proposed use appears to be appropriate to neighborhood character.
6. Potential fiscal impact, including impact on City tax base and employment: This proposal may have a positive fiscal impact.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Carly McClain, Rosa Ordaz, Mike Duffy (Chair), and Peter Copelas) and one (1) abstaining (Jimmy Tsitsinos) to grant the requested special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use (music school) to another nonconforming use (business or professional offices) at **3-5 PLEASANT 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. A Certificate of Inspection is to be obtained.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. All construction shall be done per the plans and dimensions submitted to and approved by this Board. No change, extension, material corrections, additions, substitutions, alterations, and/or modification to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

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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.