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MAYOR

CITY OF SALEM, MASSACHUSETTS
BOARD OF APPEAL

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January 30, 2019

Decision

City of Salem Board of Appeals

Petition of CASTLE HILL GROUP, LLP requesting a special permit per Section 3.3.2 *Nonconforming Use* of the Salem Zoning Ordinance to change from one nonconforming use (commercial) to another nonconforming use (multifamily residential) and variances per Section 4.1.1 *Table of Dimensional Requirements* for relief from minimum required lot area, lot area per dwelling unit, front yard setback, rear yard setback, and minimum distance between buildings to construct 4 dwelling units at 331-333 BRIDGE STREET (Map 26, Lot 583) (R2 Zoning District).

A public hearing on the above Petition was opened on December 19, 2018 pursuant to M.G.L. Ch. 40A, § 11, continued to January 16, 2019 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 3.3.2 *Nonconforming Uses* and variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance.

Statements of Fact:

1. In the petition date-stamped September 25, 2018, the Petitioner requested a special permit per Section 3.3.2 *Nonconforming Uses* to change from one nonconforming use (commercial) to another nonconforming use (multifamily residential) and variances per Section 4.1.1 *Table of Dimensional Requirements* for relief from minimum lot area, lot area per dwelling unit, front yard setback, rear yard setback, and minimum distance between buildings to construct four (4) dwelling units.
2. Attorney Stephen Lovely, representing Petitioner Castle Hill Group, LLP, presented the petition.
3. The property is located in the Residential Two-Family (R2) zoning district.
4. The property currently operates as Bridge Street Automotive Service/Morneau Brothers Oil. This commercial use is nonconforming in the R2 zoning district.
5. The property is currently owned by JEMM Realty Trust. The Petitioner included in the application a statement signed by Edmond Morneau, Trustee of JEMM Realty Trust, authorizing Castle Hill Group, LLP to submit this and other necessary applications.
6. The Petitioner is proposing to demolish the existing building and build four dwelling units.
7. The proposed multifamily residential use is a nonconforming use in the R2 zoning district. The Petitioner is requesting a special permit per Section 3.3.2 *Nonconforming Uses* to change from the existing nonconforming use to another nonconforming use.

8. The Petitioner is requesting variances per Section 4.1.1 *Table of Dimensional Requirements* from minimum required lot area, minimum lot area per dwelling unit, front yard setback, rear yard setback, and minimum distance between buildings.
9. In the R2 zoning district, the minimum required lot area is 15,000 square feet. Under this proposal, the lot area is 9,177± square feet. Minimum required lot area per dwelling unit in the R2 zoning district is 7,500 square feet; petitioner is proposing to provide 2,294± square feet per dwelling unit. Minimum front yard in the R2 zoning district is 15 feet; petitioner is proposing to provide 4± feet. Minimum rear yard in the R2 zoning district is 30 feet; petitioner is proposing to provide 24± feet. Minimum distance between buildings on lot in the R2 zoning district is 30 feet; petitioner is proposing to provide 6± feet.
10. The requested relief, if granted, would allow the petitioner to change the use of the property from commercial to multifamily residential, and allow the petitioner to build four dwelling units.
11. The existing building that is proposed to be demolished is over 50 years old; as such, this project is required to appear before the Salem Historical Commission before demolition is allowed.
12. At the December 19, 2018 public hearing, Board member Peter Copelas objected to acting on this agenda item because the Board was not given a complete application prior to the meeting – important application materials were given to the Board for the first time at the meeting. Attorney Lovely stated that when he had put the application in initially, he bumped it back (asked that it be saved for a later meeting) and explained that he wanted to meet with the neighbors and bring the drawings in later, and was told at that time that it was not a problem. Attorney Lovely stated he had met with the neighbors, finalized the drawings, spent quite a bit of money, and hired an LSP and would like to go forward, and if there are questions and the Board needs more information, he would be happy to provide that. Mr. Copelas stated that he did not feel the Board had adequate time to evaluate the complete petition. Attorney Lovely stated that since many of the neighbors are at the meeting, he would like to go forward and hear their concerns if it was acceptable to Mr. Copelas. Attorney Lovely stated that if he had known it would be a problem, he would have submitted something (drawings) subject to change after meeting with the neighbors. The petition was presented. As noted below, following the presentation, comments from members of the public, and some Board discussion, the petition was continued to the January 16, 2019 meeting of the Zoning Board of Appeals.
13. At the December 19, 2018 public hearing, Attorney Lovely discussed the project. He stated that he has met with neighbors to discuss the design and has sought the guidance of the Historical Commission, and that he would like to add the property to the abutting McIntire Historical District.
14. Attorney Lovely explained that the site is currently used as an auto repair garage and was previously a service station. Attorney Lovely stated that he has hired an LSP to review the site for contaminants, including coal dust, which will be a considerable expense.
15. Attorney Lovely noted special circumstances affecting the site. He stated that the site is an odd size, shape, and situation relative to the street. Attorney Lovely added that there is hardship in the cleanup of the site, possibly including coal dust and other contaminants, at considerable expense.
16. Attorney Lovely discussed the special permit request. He stated that the property is currently a nonconforming commercial use in a nonconforming building, and he hopes to allow the continuation of the nonconforming use to allow two separate structures to be built, each with two units (for a total of four units), with a six foot buffer in between.

17. Attorney Lovely discussed the plans. He noted that the building will be situated close to the street in kind with other nearby buildings, as requested by neighbors. They will add a sidewalk and curb cuts where currently there are none. There is a fifteen foot (15') right of way for the property at 128 Federal Street on the side of the property; that will be maintained. Attorney Lovely added that he has requested a variance from the setback for the rear line; the building is 30 feet from the rear lot line, but the second-floor porch extends from the building; Attorney Lovely thinks they are acceptable in terms of distance and will defer to the Building Inspector.
18. Attorney Lovely discussed the special permit criteria:
- Social, economic and community needs served by the proposal: The proposal will add housing to the community.
 - Regarding traffic flow and safety, including parking and loading: Traffic flow and pedestrian safety will be enhanced by the proposal.
 - Existing utilities are adequate and public services will not be negatively affected.
 - There will be no impact on the natural environment, including drainage. The petition will appear before the Conservation Commission because it is within the 100' buffer of a flood zone.
 - Neighborhood character: The proposal fits with the character of the neighborhood.
 - Potential fiscal impact, including impact on City tax base and employment: The proposed project will generate 4 times the amount of taxes to the City compared to the existing automotive use.
19. Attorney Lovely discussed the variance criteria:
- There are special conditions and circumstances affecting the building and the lot that are not affecting other lands, buildings, and structures in the district. There are odd dimensions to the lot.
 - Literal enforcement of the provisions of the Zoning Ordinance would involve hardship to the applicant. Limiting the development of the site to the dimensions in the zoning code would make redevelopment of the site impractical. Someone could continue the commercial aspect, which I do not think the neighbors are in favor of.
 - 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 zoning bylaw.
20. The Board asked if parking is required. Attorney Lovely stated that there is adequate parking: there will be 4 garage spaces and additional parking. The Board asked where the parking would be, and Attorney Lovely stated that it is not delineated on the plan.
21. The Board wanted to see more detail on the plans, including the parking, the driveway, the distance between the two buildings, curb cuts, trash removal, and snow removal. Attorney Lovely stated that he would add those details into the plans.
22. The Board asked about testing by the LSP. Attorney Lovely stated that the testing is not complete but coal dust will need to be removed at a premium. Board member Peter Copelas stated that, because the potential cleanup is part of the basis for the hardship, the nature of the cleanup will have to be more

clearly delineated. Mr. Copelas stated that he does not think the shape of the lot is all that irregular, and that he is having trouble getting to the hardship on that, and if there is not site cleanup, he's having trouble. Attorney Lovely asked if he would like to see something from the LSP stating that the coal dust will need to be cleaned. Mr. Copelas stated he would like to see a determination whether there is a cleanup that would rise to the level of contributing to the hardship; simply testing does not rise to the level of contributing to the hardship. Chair Mike Duffy added that a lot of relief is being requested, driven by the fact that there will be four units. Chair Duffy stated that they presume the need for four units is related to the financial ability to do the project; the Board has been reluctant to request pro formas, but the Board needs to see some sense of that economic driver.

23. At the December 19, 2018 public hearing, twelve (12) members of the public spoke in favor of the petition and two (2) members of the public spoke in opposition to the petition. (At the beginning of the hearing, one member of the public representing two neighbors had noted that they were not part of discussions with Attorney Lovely.)
24. The board voted unanimously to continue the petition to the January 16, 2019 meeting.
25. After the December meeting and before the January meeting, Attorney Lovely provided updated plans and drawings, with the plot plan showing the distance between buildings, parking, curb cuts, and trash removal. He also provided a revised Statement of Hardship discussing the variance criteria.
26. At the January 16, 2019 public hearing, Attorney Lovely presented the petition and discussed the project.
27. Board member Patrick Shea recused himself.
28. Attorney Lovely stated that when he first submitted the application, the original plan had a much higher height; now, even though they are asking for a variance for the height in stories, the overall height is lower than it was in the original proposal. Attorney Lovely stated that parking is shown on the plan. He added that snow removal will be in condominium documents. Attorney Lovely stated that trash barrels will probably be stored inside the garages, but could be stored behind them, too.
29. Attorney Lovely stated that he included a letter from the LSP noting that there will probably have to be more testing at the site, because the property used to be a service station, and there could have been a tank at the location. The LSP also noted the costs of removing the fill (if they choose to move it). Attorney Lovely states that in addition to that, the size of the lot and the fact that they need to tear down the existing building are criteria for the hardship.
30. Architect Steve Livermore was in attendance.
31. Chair Duffy noted that there was a letter submitted by the environmental engineer discussing some of the testing, what they found, and expectations for the condition of the site.
32. Mr. Copelas asked to what extent the additional request for a variance is considered as a separate issue – in addition to the continued petition, there is a new, separate petition. Mr. Copelas asked Attorney Lovely to speak to what led to the second petition and how it impacts either one of the petitions.
33. Attorney Lovely asked Architect Steve Livermore to discuss the change.
34. Mr. Livermore stated that he originally designed the building with higher plate heights because of the upper floor; when Attorney Lovely applied for the special permits, they didn't catch the fact that because they were exceeding two feet on opposite plate heights, they were exceeding the definition of two and a half floors [the maximum allowed by the zoning ordinance]. When they applied last month, they submitted drawings that met the definition of two and a half floors, but they prefer higher plate

heights for the use of the floors. The drawings with the higher plate heights had been shown to the neighborhood, and Mr. Livermore thought that the neighborhood preferred that design to the one that they came up with for the December meeting. Technically, the building with the higher plate heights will be lower overall than the one that was presented last month; for the plans presented in December, the ridge was higher than what is now being presented, with the higher plates. The proposed building that met the two and a half floor definition had a height of thirty-eight feet (38'). The proposal now being submitted has a height of thirty-four feet (34'). This building, which they would prefer to build and which the neighborhood liked better, exceeds two and a half stories but has a lower height [in feet].

35. Mr. Copelas asked if the one in the packet that indicates 34' supersedes the presentation from last month; Mr. Livermore answered in the affirmative.
36. The drawings dated December 18, 2018 are thus considered to be the official drawings for both petitions (the continued petition and the newly submitted petition).
37. Chair Duffy noted that the Board had questions about parking and other uses of the site; he saw in the new drawings, there is indication of where garbage storage and snow storage would be, and proposed parking space; he asked Attorney Lovely if there is also parking under. Attorney Lovely answered yes, there will be parking in the garage, and that people will likely also park behind their garages, but that does not meet parking requirements, so they also included additional parking. Mr. Copelas stated that there are four (garage) spots, one for each building, and three spots at the rear of the property. Attorney Lovely answered yes.
38. At the January 16, 2019 public hearing, fifteen (15) members of the public spoke in favor of the petition and none (0) spoke in opposition to the petition. Chair Duffy also noted that the Board received an email from Ann Whittier stating that she and her husband are in support of the project. John Carr, who spoke in support of the project, also read a letter from Tim and Margaret Doggett dated January 15, 2019 in favor of this project. The Board had received this letter, and Chair Duffy noted for the record that the Board had a copy of the letter.
39. Chair Duffy noted that there are variance requests on two applications, and a special permit request. Staff Planner Brennan Corrison asked if there should be one vote or two votes. Zoning Enforcement Officer Tom St. Pierre stated that there should be two votes. Chair Duffy stated that one application is for a special permit and variance requests, and the other application is the height variance request.
40. Chair Duffy summarized the grounds that were submitted in support of the variance requests. Chair Duffy stated that there was a supplemental submission that addressed the hardship issue that was discussed last meeting, and that the submission was supplemented by a letter from the environmental consultant noting that there may be some additional costs in developing this project and handling the soils. Chair Duffy noted that Attorney Lovely stated that the existing building will be demolished; this will add costs and burden to the development of the project. Chair Duffy stated that counsel's Statement of Hardship also made reference to the unique shape and dimension qualities of the parcel itself. Mr. Copelas spoke to the special permit criteria and variance criteria met by the application (noted below).
41. Chair Duffy also discussed the Statement of Grounds in support of the special permit request, speaking to traffic flow and safety, utilities, neighborhood character, natural environment, and boost to economic development. Chair Duffy added that the Statement notes that this will add needed affordable housing to the Salem housing stock. Mr. Copelas asked if this will technically be reserved as affordable housing. Attorney Lovely stated that he thinks it will be at the lower end of market rate,

but there will not be a deed restriction regarding affordability. Chair Duffy added, "affordable in the market sense."

42. The Board proceeded to a vote on the first application submitted [date-stamped September 25, 2018], for a special permit and variances.

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

1. Social, economic and community needs served by the proposal: the project will create new housing that is needed in Salem.
2. Regarding traffic flow and safety, including parking and loading: adding a curb, sidewalk, and curb cuts will improve traffic flow and pedestrian safety. Adequate parking will be provided.
3. Existing utilities are adequate, and public services will not be negatively impacted.
4. Impacts on the natural environment, including drainage: No impact on the natural environment is anticipated.
5. Neighborhood character: The proposed residential use and design fit into neighborhood character, and the project has significant support from neighborhood residents.
6. Potential fiscal impact, including impact on City tax base and employment: The project will likely increase tax revenue for the City.

Findings for Variances:

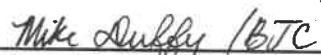
1. Special conditions and circumstances especially affect the land, building, or structure involved, generally not affecting other lands, buildings, and structures in the same district: Existing soil conditions may require some remediation; in addition, the lot has a unique shape and situation relative to the street, and the existing commercial building (a nonconforming use) will need to be demolished.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant as it would make redevelopment of the site impractical.
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: this use is closer to the underlying residential use of the district than the existing commercial use.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, and Jimmy Tsitsinos), none (0) opposed, and one (1) abstaining (Patrick Shea) to grant the requested Special Permit per Section 3.3.2 *Nonconforming Use* of the Salem Zoning Ordinance to change from one nonconforming use (commercial) to another nonconforming use (multifamily residential) and the requested Variances per Section 4.1.1 *Table of Dimensional Requirements* for relief from minimum required lot area, lot area per dwelling unit, front yard setback, rear yard setback, and minimum distance between buildings to construct 4 dwelling units at 331-333 Bridge 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 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.

BTC

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.