



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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CITY CLERK  
SALEM, MASS

January 30, 2019

## Decision

### City of Salem Board of Appeals

**Petition of CASTLE HILL GROUP, LLP requesting a variance per Section 4.1.1 Table of Dimensional Requirements of the Salem Zoning Ordinance for relief from maximum height of buildings (stories) to build a third story (an extra-tall half-story) under a gable or gambrel roof in two buildings at 331-333 BRIDGE STREET (Map 26, Lot 583) (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 variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance.

#### Statements of Fact:

1. In the petition date-stamped December 20, 2018, the Petitioner requested a variance per Section 4.1.1 *Table of Dimensional Requirements* for relief from maximum height of buildings (stories) to build a third story (an extra-tall half-story) under a gable or gambrel roof in two buildings.
2. The Petitioner also requested a special permit and variances for 331-333 Bridge Street in a petition date-stamped September 25, 2018.
3. Attorney Stephen Lovely, representing Petitioner Castle Hill Group, LLP, presented the petition.
4. The property is located in the Residential Two-Family (R2) zoning district.
5. The property currently operates as Bridge Street Automotive Service/Morneau Brothers Oil. This commercial use is nonconforming in the R2 zoning district.
6. The property is currently owned by JEMM Realty Trust. The Petitioner included in the application date-stamped September 25, 2018 a statement signed by Edmond Morneau, Trustee of JEMM Realty Trust, authorizing Castle Hill Group, LLP to submit that application and other necessary applications.
7. The Petitioner is proposing to demolish the existing building and build four dwelling units.
8. The proposed multifamily residential use is a nonconforming use in the R2 zoning district. In the separate application date-stamped September 25, 2018, 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, as well as 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 this application, the Petitioner is requesting a variance from maximum height of buildings (stories). In the R2 zoning district, the maximum height of buildings (stories) allowed is 2.5 stories. The Petitioner proposes to build 3 stories.
10. The requested relief, if granted, would allow the petitioner to build four dwelling units at a height of three stories.
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 January 16, 2019 public hearing, Attorney Lovely presented the petition and discussed the project.
13. Board member Patrick Shea recused himself.
14. Attorney Lovely stated that when he first submitted an application for special permit and variance relief for this project, 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.
15. 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 believes that the tank had been addressed by previous plans. 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.
16. Architect Steve Livermore was in attendance.
17. 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.
18. 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.
19. Attorney Lovely asked Architect Steve Livermore to discuss the change.
20. Mr. Livermore stated that he originally designed the building (in the application submitted for the December meeting of the Zoning Board of Appeals) 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].

21. Mr. Copelas asked if the one in the packet that indicates 34' supersedes the presentation from last month; Mr. Livermore answered in the affirmative.
22. 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).
23. 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.
24. 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.
25. Chair Duffy noted that the applicant had submitted variance requests on two applications, and a special permit request. Staff Planner Brennan Corriston 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.
26. 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).
27. Chair Duffy also discussed the Statement of Grounds in support of the special permit request for the petition date-stamped September 25, 2018, 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."
28. The Board proceeded to a vote on the first application submitted [date-stamped September 25, 2018], for a special permit and variances.

29. After that, the Board proceeded to a vote on the second application submitted [date-stamped December 20, 2018], for a variance from maximum height of buildings (stories), which is the subject of this decision.

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 Variance:**

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 (Jimmy Tsitsinos, Jimmi Heiserman, Mike Duffy (Chair), and Peter A. Copelas), none (0) opposed, and one (1) abstaining (Patrick Shea) to grant the requested Variance per Section 4.1.1 *Table of Dimensional Requirements* for relief from maximum height of buildings (stories) to build a third story (an extra-tall half-story) under a gable or gambrel roof in two buildings 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.

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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*

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Project: 331-333 Bridge Street (Petition 2)  
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*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.*