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SALEM, MASS

October 2, 2019

Decision

City of Salem Board of Appeals

Petition of SALEM CAR WASH LLC for a special permit per Section 3.3.3 *Nonconforming Structures* and Section 3.3.4 *Variance Required* of the Salem Zoning Ordinance to reconstruct a nonconforming structure, the car wash at 51 CANAL STREET (Map 34, Lot 86) (R2, B4, and ECOD Zoning Districts).

A public hearing on the above Petition was opened on July 17, 2019 pursuant to M.G.L. Ch. 40A, § 11 (no testimony was heard), continued to August 21, 2019 (during which meeting no testimony was heard), continued to September 18, 2019, and closed on that date with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Rosa Ordaz (alternate), and Paul Viccica. At the July 17, 2019 meeting, Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Rosa Ordaz (alternate), Jimmy Tsitsinos, and Paul Viccica (alternate) were in attendance. At the August 21 meeting, Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica were in attendance.

The petitioner seeks a special permit per Sections 3.3.3 *Nonconforming Structures* and 3.3.4 *Variance Required* of the Salem Zoning Ordinance.

Statements of Fact:

1. In the petition date-stamped June 26, 2019, the petitioner requested a special permit per Sections 3.3.3 *Nonconforming Structures* and 3.3.4 *Variance Required* to reconstruct a nonconforming structure, the car wash at 51 Canal Street.
2. Attorney Scott Grover presented the petition on behalf of the petitioner, Salem Car Wash LLC.
3. The property is currently a car wash facility. The property is located in the Residential Two-Family (R2) and Business Wholesale & Automotive (B4) zoning districts as well as the Entrance Corridor Overlay District. The use in the use table, "Motor vehicle light service," is a nonconforming use in the R2 district. As noted in the Statement of Grounds submitted with the application, "the petitioner does not plan to change or substantially expand [the car wash] use."
4. The property is nonconforming to minimum depth of rear yard (B4 and R2 dimensional requirements) and minimum width of side yard on the left side of the property (R2 dimensional requirement).
5. The proposal is to demolish the two existing buildings and reconstruct a new car wash building on the site.
6. Section 3.3.4 *Variance Required* of the Salem Zoning Ordinance states in relevant part that "the extension of an exterior wall at or along the same nonconforming distance within a required yard shall require a special permit and not a variance from the Board of Appeals."

7. The requested relief, if granted, would allow the petitioner to reconstruct the nonconforming car wash structure at 51 Canal Street.
8. Initially, the new structure was proposed to be located further from the Florence Street Extension lot line than the existing structure, with a rear yard setback of 7.2 feet in the B4 district and 8.0 feet in the R2 district. This is per the site plan for 51 Canal Street prepared for Salem Car Wash, LLC with a date of June 25, 2019, as originally submitted with the application.
9. The petition was first scheduled to appear before the Board of Appeals in its July 17, 2019 meeting.
10. At the July 17, 2019 public hearing, Attorney Scott Grover stated that while other petitions were being discussed, he had met with a group of neighbors of the property for about two hours who expressed concerns about traffic flow in and out of the property. He stated that they agreed to rework the circulation plan and meet with the neighbors again. Attorney Grover requested to continue the petition to the next regularly scheduled meeting of the Board of Appeals on August 21, 2019, with the intention of returning with the support of the neighborhood. The Board voted five (5) in favor (Mike Duffy (Chair), Peter A. Copelas, Jimmi Heiserman, Jimmy Tsitsinos, and Rosa Ordaz) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting.
11. On July 18, 2019, the City Council confirmed Paul Viccica as a regular member of the Board. This involved Mr. Viccica stepping down from his then-seat as an alternate to take over a regular member term to conclude on May 1, 2022.
12. Before the August 21, 2019 meeting, Attorney Grover submitted a new site plan which shows a revised approach to circulation. In this second site plan, the proposed building appears to have been rotated 180 degrees and pushed back toward the lot line fronting on Florence Street Extension (compared to the first proposed site plan). The building appears to maintain the same dimensions, but due to the location change, the right side setback is increased from the previous proposal and the left side setback decreased. Under this proposal, the depth of rear yard is only 1 foot – a slight increase from the 0.1 foot setback of the existing building, but still well below the required 25 feet. (The previous proposal had a setback of 7.2 feet in the B4 district and 8.0 feet in the R2.) As such, the new structure will remain nonconforming to depth of rear yard.
13. On August 21, 2019, only three Board members were in attendance: Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica. Three members 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 August 21 meeting. Petitioners were informed of this attendance situation in advance and were given the opportunity to submit requests to continue their petitions to the next regularly scheduled meeting on September 18, 2019. In an email to Planner Brennan Corriston dated August 20, 2019, Attorney Grover submitted a request to continue 51 Canal Street to the September 18 meeting. This request was duly filed with the City Clerk on August 21, 2019. In the meeting, the Board voted three (3) in favor (Jimmi Heiserman, Paul Viccica, and Mike Duffy (Chair)) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting.
14. At the September 18, 2019 public hearing, Attorney Grover discussed the petition. Kevin Yorrio, one of the principals of Salem Car Wash LLC, was also in attendance, as was Civil Engineer Scott Cameron. Attorney Grover explained that the car wash has become obsolete by modern standards. He stated that Salem Car Wash LLC has an agreement with the owner of the present car wash to buy the business, and an agreement with the owner of the property to lease it long-term. Attorney Grover explained that the plan is to demolish the existing buildings and replace them with a smaller, cleaner,

- more efficient car wash. He noted that the proposal requires a special permit and not a variance because no existing nonconformities are being increased; under the proposal, existing nonconformities are being reduced or eliminated. Attorney Grover discussed the special permit criteria.
15. The nonconformity as to rear yard setback is being reduced under the new proposal. The nonconformity as to side yard setback is being eliminated.
 16. At the September 18, 2019 public hearing, Attorney Grover noted that the project will also appear before the Planning Board for Site Plan Review and, because the project is in the Entrance Corridor Overlay District, the Design Review Board. Civil Engineer Scott Cameron noted that the project will appear before the Conservation Commission.
 17. At the September 18, 2019 public hearing, Civil Engineer Scott Cameron explained the design, noting that the revised design was "generally... mirrored" from the initial design. He noted that the amount of curb cuts on Canal Street will be reduced. He showed the reduced footprint of the proposed building compared with the existing. Mr. Cameron noted that the facility is very efficient with water usage.
 18. At the September 18, 2019 public hearing, the Board asked about parking and drainage. Mr. Cameron explained that there are four parking spaces for four employees and currently, 20 proposed parking spaces for customers, but that number may be reduced through the site design process. Mr. Cameron noted that the City has installed two catch basins which appear to be functioning; those will be reused, and will add some pre-treatment through the landscaping.
 19. At the September 18, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition. One (1) member of the public, John Femino, asked about the noise of the blower at the car wash, noting that the old blower was loud and that a City Councillor was involved in quieting it down. Mr. Cameron responded that the current system is probably older and louder than what will be installed. Mr. Cameron added that the new landscaping will reduce the noise diffusion from the site. Mr. Femino asked the Board to keep the noise level at a minimum. Attorney Grover noted that as part of Site Plan Review, the project will go to the Board of Health, who enforces the noise ordinance.
 20. At the September 18, 2019 public hearing, Attorney Grover submitted a letter from Anthony J. Picariello of Pic's Screw Machine, Inc. of 1 Florence Street dated September 12 in support of the proposal with the revised plan. The letter notes in part, "We were opposed to the initial plan for the new car wash and we were prepared to express that opposition at the public hearing before the Board. However, after hearing our concerns, the operator of the car wash agreed to reconfigure the entry and egress points of the facility. This will significantly improve the project from our perspective. Based on the changes that have been made, we are now in support of the project and we encourage the Board to approve the applicant's petition." The letter is signed by two individuals from the business.
 21. At the September 18, 2019 public hearing, Chair Duffy read from the Statement of Grounds, which discussed 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**:

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 are served by the proposal: The car wash will serve the community need for that service.
2. Traffic flow and safety, including parking and loading: Traffic flow and safety will be improved by providing a more effective flow of traffic through the site.
3. Adequacy of utilities and other public services: The utilities in the roadway adjacent to the site have been upgraded. The utilities and public services are adequate to serve the site.
4. Impacts on the natural environment, including drainage, will be improved by improving the drainage.
5. Neighborhood character: The clean look and updated building will be an improvement and will be appropriate to the commercial character of the surrounding properties.
6. Potential fiscal impact, including impact on City tax base and employment: The improved facility is likely to result in an increased assessed value and thus increased tax revenue for the city; new employment opportunities may also be generated.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Paul Viccica, Rosa Ordaz, Jimmi Heiserman, Mike Duffy (Chair), and Peter A. Copelas) and none (0) opposed to grant the requested special permit per Section 3.3.3 *Nonconforming Structures* and Section 3.3.4 *Variance Required* of the Salem Zoning Ordinance to reconstruct a nonconforming structure, the car wash at **51 Canal 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.


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.