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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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October 16, 2019

Decision

City of Salem Board of Appeals

2019 OCT 16 PM 3:28
CITY CLERK
SALEM, MASS.

Petition of PETER J. LABONTE, ET AL. for a variance from Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance to change the lot line between two nonconforming properties at 87 JACKSON STREET (Map 25, Lot 657) and 26 PHELPS STREET (Map 25, Lot 326) (R2 and B4 Zoning Districts).

A public hearing on the above Petition was opened on October 2, 2019 pursuant to M.G.L. Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Jimmy Tsitsinos, and Paul Viccica.

The petitioner seeks a variance from Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance to change the lot line between two nonconforming properties.

Statements of Fact:

1. In the petition date-stamped July 31, 2019, the petitioner requested a variance from Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance to change the lot line between two nonconforming properties, 87 Jackson Street and 26 Phelps Street.
2. Attorney John R. Keilty, representing the petitioner, presented the petition.
3. 87 Jackson Street is a commercial property located primarily in the Business Wholesale & Automotive (B4) zoning district, with a portion in the Residential Two-Family (R2) zoning district. 87 Jackson Street's frontage is in the B4 district. 26 Phelps Street is a residential property located primarily in the R2 district, with a portion in the B4 district. 26 Phelps Street's frontage is in the R2 district.
4. The dimensional requirements that apply to 87 Jackson Street are the requirements of the B4 district. The dimensional requirements that apply to 26 Phelps Street are the requirements of the R2 district.
5. The petitioner is proposing to move the lot line between the two properties. Per the Statement of Hardship submitted with the application, the reason for the request is to "create new lots that accommodate grade changes and actual occupancy," and notes that "The tenant at 87 Jackson Street desires to purchase the property as Lot A.
6. Under this proposal, the lot line between the properties would be moved south, increasing the size of the 26 Phelps Street lot and decreasing the size of the 87 Jackson Street lot.
7. 87 Jackson Street is nonconforming to rear yard setback. 26 Phelps Street is nonconforming to minimum lot area and minimum lot area per dwelling unit.
8. Under the proposal, the existing lot area nonconformities at 26 Phelps Street will be reduced because the lot area will increase. The rear yard setback at 87 Jackson Street will increase slightly, thus slightly increasing an existing nonconformity.

9. The requested relief, if granted, would allow the petitioner to move the lot line between 87 Jackson Street and 26 Phelps Street south per the plans submitted with the application, increasing the size of the 26 Phelps Street lot and decreasing the size of the 87 Jackson Street lot.
10. The identities and birth dates of the family members who live at the property were also included in the application submitted to the Board of Appeals.
11. At the October 2, 2019 public hearing, Attorney John R. Keilty presented some history of the properties and explained the request. He noted that if approved by the Board of Appeals, the project will next go to the Planning Board for a subdivision "ANR" (Approval Not Required).
12. At the public hearing, Attorney Keilty explained that there is a difference in topography between the two properties which is not currently reflected by the lot line.
13. At the public hearing, the Board asked about the lots referenced, which included Lots 1, 2, and 3 as well as Lots A and B. Peter Copelas asked whether lots 2 and 3 are merged; Attorney Keilty answered in the affirmative. Mr. Copelas asked whether the Jackson Street property is commercial; Attorney Keilty answered in the affirmative.
14. At the public hearing, there was discussion between the Board and Attorney Keilty regarding the current and proposed location of the lot line between these two properties.
15. At the public hearing, Mr. Copelas stated that Lot A (87 Jackson Street) is still conforming and that Lot B (26 Phelps Street) is less nonconforming under the proposal.
16. 87 Jackson Street would still be conforming to lot area requirements, but the nonconformity in terms of rear yard setback would be increased because the rear yard setback would be decreased.
17. At the public hearing, Paul Viccica asked whether the skew in the lot line is due to topography. Attorney Keilty answered that it is mainly due to topography.
18. At the October 16, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.
19. Chair Duffy stated that this is a relatively minor dimensional change.
20. Chair Duffy discussed the variance 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, 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 that especially affect the land, building, or structure involved, generally not affecting other lands, buildings, and structures in the same district: The topography of the land at these two sites specifically affects these properties.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant, as it would require that these lots would stay in inconsistent dimensions and would make them less usable in terms of their topography and relationship to each other.
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 is relatively minor relief. This change would bring the two lots into better relationship to each other in terms of how they are used.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Jimmi Heiserman, Jimmy Tsitsinos, Paul Viccica, Mike Duffy (Chair), and Peter Copelas) and none (0) opposed to grant the requested variance from Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance to change the lot line between two nonconforming properties at **87 Jackson Street and 26 Phelps 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. 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.