



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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August 29, 2018

Amended Decision

City of Salem Board of Appeals

2018 AUG 29 AM 8:17
CITY CLERK
SALEM, MASS

Petition of RIVERVIEW PLACE LLC requesting to amend a previously issued decision of the Board of Appeals dated November 2, 2007, which allowed the development of 130 residential units, 5,540 square feet of commercial space located in three (3) new buildings. The petitioner is seeking Variance per *Sec. 4.1.1 Table of Uses* and *Sec. 8.4.13 NRCC Mixed Use District* of the Salem Zoning Ordinance, to allow the petitioner to exceed the allowable height (feet) by one foot nine inches (Building 1) and by nine inches (Building 2) at 72 FLINT STREET, 67-69 MASON STREET and 71 MASON STREET (Map 26 Lots 91, 95, 97)

A public hearing on the above Petition was opened on August 15, 2018 pursuant to M.G.L Ch. 40A, § 11. The hearing was closed on that date with the following Salem Board of Appeals members present: Mike Duffy (Chair), Peter A. Copelas, Jimmy Tsitsinos, Paul Viccica.

The Petitioner is requesting to amend a previously issued decision of the Board of Appeals dated November 2, 2007, which allowed the development of 130 residential units, +/- 5,540 square feet of commercial space located in three (3) new buildings. The petitioner is seeking Variance per *Sec. 4.1.1 Table of Uses* and *Sec. 8.4.13 NRCC Mixed Use District* of the Salem Zoning Ordinance, to allow the petitioner to exceed the allowable height (feet) by one foot nine inches (Building 1) and by nine inches (Building 2).

Statements of fact:

1. Attorney Scott Grover- Tinti, Quinn, Grover and Frey, presented the petition.
2. In the petition date-stamped July 23, 2018, the Petitioner requested to amend a previously issued decision of the Board of Appeals dated November 2, 2007, which allowed the development of 130 residential units, approximately 5,540 square feet of commercial space located in three (3) new buildings. The petitioner is seeking Variance per *Sec. 4.1.1 Table of Uses* and *Sec. 8.4.13 NRCC Mixed Use District* of the Salem Zoning Ordinance, to allow the petitioner to exceed the allowable height (feet) by one foot nine inches (Building 1) and by nine inches (Building 2).
3. The property is approximately 4.5 acres of land located between Mason Street and Flint Street within the North River Canal Corridor Zoning District.
4. The original plan that was approved in November 2007 included 282 parking spaces and included a proposed parking deck to meet the parking requirements of the Zoning Ordinance. Since 2007, the Salem Zoning Ordinance has been amended to lower the parking ratio to 1.5 parking spaces per dwelling unit. The modified plans, submitted on July 23, 2018, include the elimination of the originally proposed parking deck. The petitioner is proposing 217 parking spaces, which meets the requirements of the zoning ordinance.

5. The petitioner has also modified the original plan to include a second curb cut along Flint Street to provide an entry point for a standalone parking lot that will be parking for the adjacent neighbors of Flint Street.
6. The original plan that was approved in November 2007 also included approximately 5,000 square feet of commercial space located on the rear portion of the proposed Mason Street building. The modified plans, submitted on July 23, 2018, include a change to relocate the +/- 5,000 square feet of commercial space to Building #2.
7. The petitioner has also modified the plans for Building #3 along Mason Street, by decreasing the height and bulk of the building to better fit with the neighborhood and existing homes along Mason Street. In particular, the building will be reduced in height from approximately thirty-eight (38') feet to approximately twenty-two (22') feet. The footprint of this building has also been reduced by half of the original proposal.
8. The petitioner is seeking Variance per Sec. 4.1.1 Table of Uses and Sec. 8.4.13 NRCC Mixed Use District of the Salem Zoning Ordinance, to allow the petitioner to exceed the allowable height (feet) by one foot nine inches (Building 1) and by nine inches (Building 2).
9. Building #2, as shown on plans dated July 19, 2018, by William and Sparages, is within the transitional zone of the North River Canal Corridor Zoning District (NRCC). The maximum allowable height in this district is three (3) stories and forty (40') feet. This transitional zone applied to areas that are adjacent to residential properties. Although the proposed building meets the three (3) stories requirement, a portion of this structure is nine (9) inches higher than the forty (40') feet allowed.
10. Building #1, as shown on plans dated July 19, 2018, by William and Sparages, is within the NRCC Zoning District not within the transitional zone. The maximum height is four (4) stories and fifty (50') feet. The petitioner is proposing a four (4) story building with a height of 51' 9".
11. The petitioner testified that the site, which extends from Mason Street to the North River Canal, has special conditions that affect the site including significant grade changes and is located within a floodplain. Since the property is located in a flood zone, areas of the Site must be kept at existing grades. Raising grades is prohibited by the Massachusetts Department of Environmental Protection (DEP) as additional filling negatively affects flooding in the area during extreme storm events. The site also cannot be lowered as the buildings would be deeper into the flood plain and the petitioner would not be able to comply with flood proof construction or be able to locate drainage utilities below mean high water.
12. The original approvals assumed a fourteen (14") inch floor to floor. However, eighteen (18") inches is needed for the construction of the proposed structures.
13. The petitioner testified that the change in height of Building #1 and Building #2 can be granted without substantial detriment to the public good. The height variances are extremely minor and will be insignificant to anyone who views the property as the perspective will remain the same. Overall, the petitioner is significantly changing the height of Building #3, along Mason Street, which will be reduced in height and footprint to better fit with the scale of the existing neighborhood.

14. The requested relief, if granted, would allow the petitioner to amend a previously issued decision of the Board of Appeals dated November 2, 2007, which allowed the development of 130 residential units, 5,540 square feet of commercial space located in three (3) new buildings. The petitioner is seeking Variance per *Sec. 4.1.1 Table of Uses* and *Sec. 8.4.13 NRCC Mixed Use District* of the Salem Zoning Ordinance, to allow the petitioner to exceed the allowable height (feet) by one foot nine inches (Building 1) and by nine inches (Building 2).
15. At the public hearing three (3) members of the public spoke in favor and five (5) members of the public spoke in opposition to the proposal.

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 Variances:

1. There are special conditions and circumstances that especially affect the land, building, or structure, generally not affecting other lands, buildings and structures in the same district including significant grade changes and the site's location within a floodplain. Since the property is located in a flood zone, areas of the Site must be kept at existing grades. Raising grades is prohibited by the Massachusetts Department of Environmental Protection (DEP) as additional filling negatively affects flooding in the area during extreme storm events. The site also cannot be lowered as the buildings would be deeper into the flood plain and the petitioner would not be able to comply with flood proof construction or be able to locate drainage utilities below mean high water.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship in that the buildings, which are consistent with the allowed size of buildings in terms of stories, cannot be constructed within the permitted limitations in terms of feet due to the special conditions relating to grading and the flood zone.
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.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted four (4) in favor, (Mike Duffy (Chair), Peter A. Copelas, Jimmy Tsitsinos, Paul Viccica) and none opposed to allow the petitioner to amend a previously issued decision of the Board of Appeals dated November 2, 2007, which allowed the development of 130 residential units, approximately 5,000 square feet of commercial space located in three (3) new buildings and to allow Variances per *Sec. 4.1.1 Table of Uses* and *Sec. 8.4.13 NRCC Mixed Use District* of the Salem Zoning Ordinance, to allow the petitioner to exceed the allowable height (feet) by one foot nine inches (Building 1) and by nine inches (Building 2), subject to the following terms, conditions and safeguards:

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Project: 72 Flint Street, 67-69 Mason Street and 71 Mason Street
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Standard Conditions:

All conditions of the original decision of the Board of Appeals dated November 2, 2007 shall remain in effect.



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.