



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK
SALEM, MASS

August 1, 2018

Decision

City of Salem Board of Appeals

Petition of GREGORY INVESTMENT GROUP, LLC, seeking a Special Permit per Sec.3.3.2 Nonconforming Uses to allow a change from a non-conforming service station to a twelve (12) unit multi-family dwelling above a first floor retail use. The petitioner is requesting the following dimensional variances per Sec. 4.1.1 Table Of Dimensional Requirements of the Salem Zoning Ordinance: to exceed lot area per dwelling unit, maximum lot coverage, front yard, side yard, and rear yard setbacks, building height and building number of stories. The petitioner is also requesting dimensional variances from the provisions of Sec. 5.1.5 Parking Design, to vary the design and size of parking spaces, a variance to vary the size and location of the new curb cut proposed, and a variance per Sec. 5.1.8 Table of Required Parking Spaces at the property of 84 CONGRESS STREET (Map 34 Lot 218)(R-3 Zoning District).

A public hearing on the above Petition was opened on June 6, 2018 pursuant to M.G.L Ch. 40A, § 11. The public hearing was continued to July 18, 2018 and closed on that date with the following Salem Board of Appeals members present: Peter A. Copelas (Vice-Chair), Mike Duffy, Jimmy Tsitsinos, Chris Drucas, Paul Vicca.

The petitioner is seeking a Special Permit per Sec.3.3.2 Nonconforming Uses to allow a change from a non-conforming service station to a twelve (12) unit multi-family dwelling above a first floor retail use. The petitioner is requesting the following dimensional variances per Sec. 4.1.1 Table Of Dimensional Requirements of the Salem Zoning Ordinance: to exceed lot area per dwelling unit, maximum lot coverage, front yard, side yard, and rear yard setbacks, building height and building number of stories. The petitioner is also requesting dimensional variances from the provisions of Sec. 5.1.5 Parking Design, to vary the design and size of parking spaces, a variance to vary the size and location of the new curb cut proposed, and a variance per Sec. 5.1.8 Table of Required Parking Spaces.

Statements of fact:

1. Attorney William Quinn presents the petition on behalf of the petitioner.
2. The property is located in the R-3 Zoning District.
3. In the petition date-stamped April 25, 2018, the petitioner requested a Special Permit per Sec.3.3.2 Nonconforming Uses to allow a change from a non-conforming service station to a twelve (12) unit multi-family dwelling above a first floor retail use. The petitioner is requesting the following dimensional variances per Sec. 4.1.1 Table Of Dimensional Requirements of the Salem Zoning Ordinance: to exceed lot area per dwelling unit, maximum lot coverage, front yard, side yard, and rear yard setbacks, building height and building number of stories. The petitioner is also requesting dimensional variances from the provisions of Sec. 5.1.5 Parking Design, to vary the design and size of parking spaces, a variance to vary the size and location of the new curb cut proposed, and a variance per Sec. 5.1.8 Table of Required Parking Spaces.

4. The property currently has a service station, which has been in continuous use since 1950. The service station existed prior to the 1965 enactment of the Zoning Map for the City of Salem and is a non-conforming use of the property. The petitioner is seeking a special permit to demolish a non-conforming service station and construct a non-conforming multifamily dwelling above a first-floor business office use.
5. The petitioner is proposing to demolish the existing service station and construct a four (4) story wood frame structure with twelve (12) dwelling units, including ten (10) market rate units and two (2) affordable units, and a first floor commercial space that will be donated to a local community organization for their use. The development will also have a total of fifteen (15) surface parking spaces located underneath the proposed building. The proposed building is approximately 18,740 square feet.
6. The petitioner submitted two (2) letters to the Board from Geological Field Services, Inc. As described the letter dated February 13, 2018, Geological Field Services, Inc. prepared an Environmental Site Assessment. Historical recognized environmental conditions included the release of petroleum discovered during the replacement of the south bay lift system. The release was cleaned up. However, there were three (3) recognize environmental conditions including a former underground storage tank, the presence of four (4) feet of urban/historic fill on the property as identified by previous investigations and the presence of chlorinated volatile organic compounds in groundwater. In the letter dated April 26, 2018, a Phase II environmental assessment was conducted and data collected from soil sables during this investigation contained several petroleum compounds. As a result, soil displaced during construction activities will need to be managed and disposed offsite under the Massachusetts Contingency Plan. There were also other contaminants including, but not limited to lead that were detected above Reportable Condition levels and were consistent with the definition of Historic Fill. The fill on the property contains coal, wood ash, brick, glass, sand and gravel. Any historic fill displaced during construction activities will need to be managed and disposed of offsite under the Massachusetts Contingency Plan.
7. At the July 18, 2018 meeting, the petitioner also presented a pro forma that was requested by the Board at the June 6, 2018 meeting.
8. The requested relief, if granted, would the petitioner to change the use of the property from a non-conforming service station to a twelve (12) unit multi-family development above a first floor retail use with fifteen (15) parking spaces.
9. As for the structure, the lot area per dwelling unit is 753 square feet per unit where a minimum of 3,500 square feet is required. The proposed lot coverage is 76.7% lot coverage by the proposed building, where no more than 35% is required. The petitioner is proposing a front yard depth on this corner lot to be 1.2 feet from the lot line on Congress Street and 4.5 feet on Dow Street, where 15 feet is required. The petitioner is proposing a side yard depth of 4.5 feet where twenty (20') feet is required and a rear yard depth of 6.6 feet where thirty (30') feet is required. The petitioner is proposing a building of four (4) stories in height where the maximum is 3.5 stories. The petitioner is proposing 15 parking spaces where eighteen (18) spaces are required for the proposed number of residential units and one parking space is required for each employee of a business or professional office.
10. The curbut size and location meets the requirements of the zoning ordinance and this previously requested relief is not needed.
11. At the public hearing two (2) members of the public spoke in favor and none (0) spoke in opposition to the petition.

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 change in one non-conforming use of a service station to another non-conforming use of a twelve (12) unit multi-family dwelling above a first floor retail use is not substantially more detrimental than the existing use to the neighborhood.

1. Social, economic and community needs served by the proposal as additional dwelling units would provide housing to the community including two (2) affordable housing units.
2. Traffic flow and safety, including parking and loading is adequate.
3. Adequacy of utilities and other public services will not be negatively impacted.
4. Impacts on the natural environment, including drainage will remain the same.
5. The proposal fits with the character of the neighborhood.
6. Potential fiscal impact, including the impact on City tax base and employment is positive.

Findings for Variances:


1. There are 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. Specifically, there are existing soil conditions from historic fill, as presented in a letter from Geological Field Services, Inc dated April 26, 2018, that create a financial hardship to the applicant.
2. Literal enforcement of the provisions of the Ordinance would involve substantial financial hardship to the applicant due to the anticipated environmental clean-up required for the existing soil conditions.
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 (Peter A. Copelas (Vice-Chair), Mike Duffy, Jimmy Tsitsinos, Paul Viccica) and one (1)(Chris Drucas) opposed, to grant a Special Permit per Sec.3.3.2 Nonconforming Uses to allow a change from a non-conforming service station to a twelve (12) unit multi-family dwelling above a first floor retail use. The petitioner is requesting the following dimensional variances per Sec. 4.1.1 Table Of Dimensional Requirements of the Salem Zoning Ordinance: to exceed lot area per dwelling unit, maximum lot coverage, front yard, side yard, and rear yard setbacks, building height and building number of stories. The petitioner is also requesting dimensional variances from the provisions of Sec. 5.1.5 Parking Design, to vary the design and size of parking spaces and a variance per Sec. 5.1.8 Table of Required Parking Spaces, subject to the following **terms, conditions and safeguards:**

Standard Conditions:

1. Petitioner shall comply with all city and state statues, 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. Exterior finished of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. 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, if needed.
9. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to the Planning Board.


Peter A. Copelas, Vice 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.