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BOARD OF APPEALS

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May 29, 2019

Decision

City of Salem Board of Appeals

Petition of GERREN, LLC for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change a nonconforming use (commercial and warehouse) to another nonconforming use (service industry, warehousing, light industrial, business and professional offices) that is no more detrimental to the neighborhood and a special permit per Section 3.3.3 *Nonconforming Structures* to reconstruct and enlarge a nonconforming structure at 9-11 FRANKLIN STREET (Map 26, Lot 375) (B1 and R2 Zoning Districts).

A public hearing on the above Petition was opened on May 15, 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, Jimmy Tsitsinos, and Paul Viccica (Alternate).

The Petitioner seeks a special permit per Section 3.3.2 *Nonconforming Uses* and a special permit per Section 3.3.3 *Nonconforming Structures*.

Statements of Fact:

1. In the petition date-stamped April 24, 2019, the Petitioner requested a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change a nonconforming use (commercial and warehouse) to another nonconforming use (service industry, warehousing, light industrial, business and professional offices) that is no more detrimental to the neighborhood and a special permit per Section 3.3.3 *Nonconforming Structures* to reconstruct and enlarge a nonconforming structure.
2. Attorney William Quinn, representing petitioner Gerren, LLC, presented the petition.
3. The property is located in the Business Neighborhood (B1) and Residential Two-Family (R2) zoning districts. The current use of the property is commercial and warehouse.
4. "Wholesale, warehouse, or distribution facility" is an allowed use in the B1 district, but is not allowed in the R2 district. As such, the current use is considered nonconforming.
5. The petitioner is proposing to change the existing nonconforming use to other nonconforming uses ("service industry, warehousing, light industrial, business and professional offices").
6. The petitioner is also proposing to "reconstruct and enlarge a nonconforming commercial warehouse structure." The petitioner states that "The new structure will comply with all existing dimensional regulations and will comply with the parking regulations for such uses."
7. The requested relief, if granted, would allow the petitioner to change a nonconforming use (commercial and warehouse) to another nonconforming use (service industry, warehousing, light industrial, business and professional offices) and to reconstruct and enlarge a nonconforming structure.

8. The application was accompanied by a set of plans and elevations titled “Zoning Submission Drawings,” prepared by Pitman & Wardley Associates and issued April 24, 2019.
9. At the May 15, 2019 public hearing, Attorney William Quinn, Scott Cameron (Civil Engineer), and architect Pete Pitman of Pitman & Wardley discussed the petition. Attorney Quinn explained that most of the commercial buildings on this site have been there since at least the 1920s. He stated that one of the buildings burned down almost two years ago. (This is the structure that is proposed to be reconstructed in this petition.) That structure had been nonconforming to minimum width of side yard and minimum depth of rear yard. The proposal is to enlarge that structure and to change the use of the building. Attorney Quinn stated the building had been used as an automotive use and most recently as a very active transmission repair shop; this use caused issues in the neighborhood including many cars on site, noise, and odors. Attorney Quinn stated that there are two years to reconstruct a building destroyed by fire or natural disaster; Zoning Enforcement Officer Tom St. Pierre agreed. Attorney Quinn stated that the property owner could rebuild the nonconforming building by right, but that he is interested in upgrading the site instead. He added that there is plenty of parking and the traffic flow is the same. Attorney Quinn added that there is a preliminary landscaping plan, and that the project will go before Planning Board for Site Plan approval. Attorney Quinn stated that Servpro, a national company that provides disaster cleanup and mold abatement, is currently located in the other building on the site. The proposal is for Servpro to move into at least half of the proposed new building, which will have garage bays for the trucks and office space for the business.
10. At the public hearing, Civil Engineer Scott Cameron explained that the proposed new building will be in full compliance with the zoning requirements. Everything on the property is designed to face onto Franklin Street, with limited access (for maintenance and emergencies) to the rear area. Mr. Cameron explained that the new building is designed to comply with the most restrictive applicable zoning requirements (for each dimensional requirement, the more restrictive requirement – whether from the B1 or R2 zoning district – was used). He noted that the project will go before Planning Board for Site Plan Review including stormwater management, parking, lighting, and landscaping. He added that they will be able to fit at least sixty-six (66) parking spaces, including fifty-nine (59) surface spaces and seven (7) bay doors. He noted that the landscaping on the site is proposed to serve as a buffer between the property and the R2 zoning district. He stated that existing mature vegetation will be preserved in its entirety. Architect Pete Pitman explained the design and layout of the building, noting that this is a non-combustible structure with steel frame with insulated metal panels. There is an eight-foot deep bay, some mezzanine area, and office spaces, as well as two other suites: a smaller bay and a larger bay with flex space. The building will be fully sprinkled. Attorney Quinn added that this will be a “low-key use” replacing a use (transmission shop) that was a nuisance, and that the property owner must act soon to preserve his right to reconstruct the building.
11. There was discussion among the Board, Mr. St. Pierre, Attorney Quinn, and the property owner regarding hours of operation. This is a twenty-four hour business, but work is not done on-site late at night. Trucks are stored on the site and dispatched to other sites to work.
12. Tom St. Pierre asked about the proposed uses. Attorney Quinn recited the proposed uses: service industry, warehousing, light industrial, business and professional offices. He stated that they are hoping that it will be primarily or all service industry, with potentially some other general office use in the other portion of the building. No automotive or transmission-related use is proposed.
13. Paul Viccica asked about hours of operation: What happens when there is a call at 2:00 in the morning? Mr. Cameron explained that dispatch will send the call to a service technician on duty, who may be off-site or at the office; that person will take the truck to the service call, then probably go home. He added that this is not a use where people are there all hours of the day. Attorney Quinn

stated that he did not think there were complaints about ServPro, and asked Tom St. Pierre to correct him if he was wrong. Tom St. Pierre stated that the dumpster was an issue, but as he has not heard any more about it, he assumes that was resolved. Mr. St. Pierre added that that issue (the dumpster) will be worked out with Planning Board and the other boards. The property owner noted that the previous operator had installed the dumpster without his permission.

14. At the May 15, 2019 public hearing, one (1) member of the public spoke in favor of the petition and three (3) members of the public expressed concerns or complaints. There were questions and complaints from members of the public regarding parking on the sidewalk near the site, the 24 hour operation of ServPro without a variance, and the previous presence of a dumpster with hazardous waste on the site. Members of the public also asked questions about the plans. Councillor At Large Arthur Sargent stated that he sees this as a good opportunity to fix some old problems. He suggested several conditions including hours of operation, preventing side and rear yard access except for emergencies, and keeping the same use as applied for. He spoke in favor, stating that this is somewhat of a model for how to design something up against the (residential) neighborhood. Chair Duffy noted that the Board received the email from Dorothy H. Lemelin, who expressed concerns in person during the meeting. (Though it was not noted in the hearing, this email stated in part that "The requested use IS detrimental to our neighborhood.") Chair Duffy also noted that the Board received a letter from Judy French, including issues about the dumpster and complaints about the previous transmission building and some of the same concerns that abutters expressed.
15. The property owner stated that he wished to talk to ServPro before conditioning hours of operation. Peter Copelas noted that ServPro occasionally needs to get a truck from the premises, and that there may be a way to say that there cannot be ongoing operations, but they need to be able to get the truck or some equipment. Jimmy Tsitsinos agreed.
16. Chair Duffy noted that special permit criteria are discussed in the petitioner's Statement of Grounds and noted that the Board has the ability to condition the decision. Peter Copelas noted that if the building is used for something else (than what is requested), it is an enforcement issue. Paul Viccica stated that they should clarify and condition the hours of operation. Peter Copelas also discussed a special condition limiting access to the rear of the building to emergency egress only. Attorney Quinn agreed. Tom St. Pierre stated that the buffer zone should be maintained as per the drawing submitted to the Board of Appeals and whichever plan is approved by the Planning Board.

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 Permits:

The Board finds that the proposed nonconforming structure and use are not substantially more detrimental than the existing nonconforming structure and use to the neighborhood.

1. The social, economic, and community need to provide clean and code compliant commercial business and warehouse space and the related new jobs is served by this proposal.
2. There will be no impacts to traffic flow and safety, including parking and loading. Parking is being provided; there are no new curb cuts; only the existing access to the site from Franklin Street will be used.
3. Adequate utilities and public services already service the property.

4. Impact on the natural environment, including drainage, will be minimal.
5. Neighborhood character will not be negatively impacted as the property has been occupied by commercial buildings since at least 1920. The new building will comply with all applicable dimensional regulations.
6. The potential fiscal impact, including impact on City and tax base and employment, is positive: the proposed new uses will bring new jobs and will likely increase the assessed value of the property.

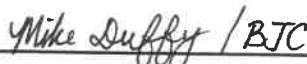
On the basis of the above statements of fact, the Salem Board of Appeals voted five (5) in favor (Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Patrick Shea, and Jimmy Tsitsinos) and none (0) opposed to grant the requested Special Permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change a nonconforming use (commercial and warehouse) to another nonconforming use (service industry, warehousing, light industrial, business and professional offices) that is no more detrimental to the neighborhood and the requested Special Permit per Section 3.3.3 *Nonconforming Structures* to reconstruct and enlarge a nonconforming structure at **9-11 Franklin 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. Exterior finishes 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 is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Special Conditions:

1. There shall be no commercial access to the rear of the building. Access to the rear of the building shall be for emergency egress only.
2. Ongoing business operations are per the existing City ordinance.
3. The buffer zone shall be maintained as presented in the Board of Appeals hearing. There shall be no commercial use of the buffer zone.



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.