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BOARD OF APPEAL

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June 22, 2011

Decision

City of Salem Zoning Board of Appeals

Petition of JAY LEVY AND NEAL LEVY, TRUSTEES OF 66 DERBY STREET REALTY TRUST, requesting Variances from lot area, lot area per dwelling unit, frontage, lot width, front and rear yard setbacks, and off-street parking regulations, and a Special Permit to allow the reconstruction, extension, alteration and changing of an existing nonconforming two-family structure on a nonconforming lot to a single-family house, in order to subdivide the property located at 66 DERBY ST, Salem, MA, into two lots, construct an addition on one lot, and construct a new single-family home on the other (R-2 zoning district).

A public hearing on the above Petition was opened on June 15, 2011, pursuant to Mass General Law Ch. 40A, § 11. The hearing was closed on that date with the following Zoning Board of Appeals members present: Rebecca Curran, Richard Dionne, Annie Harris, Elizabeth Debski and Jamie Metsch.

Petitioner seeks Variances pursuant to Section 4.0 (Dimensional Requirements) and 5.1 (Off-Street Parking Regulations), and a Special Permit pursuant to Section 3.3 (Nonconforming Uses and Structures), of the City of Salem Zoning Ordinances.

Statements of fact:

1. On March 25, 2011, the Salem Historical Commission voted unanimously to approve a conceptual plan that allowed the demolition of the rear addition existing on the house on 66 Derby Street, renovation of the remaining front main house, construction of a new addition and construction of one new two-unit building on the site.
2. After the Historical Commission issued their conceptual approval, input from the Director of Inspectional Services indicated that placing two principal structures on the same residential lot would be problematic. The petitioners revised the plans to show the subdivided lot and a new single-family house, rather than two-family house, proposed on the newly created lot.
3. In a petition date-stamped June 1, 2011, petitioners requested dimensional Variances and a Special Permit to subdivide the property located at 66 Derby Street into two lots; alter the existing house on 66 Derby Street by removing a portion of it, constructing a new addition and converting it to a single-family house; and construct a new single-family home on the other, newly created lot. Petitioner also requested

relief from Off-Street Parking regulations in order to allow tandem parking spaces and backing into a public way.

4. The petitioners were represented at the hearing on June 15, 2011 by Attorney Mark Glovsky. Architect David Jaquith and the petitioners were also present.
5. At the meeting on June 15, 2011, resident Angela Connery, 6 Connors Road, spoke in support of the petition. The Board also received a letter of support from At-Large Councillor Joan Lovely. A petition in favor of the project was also submitted. No one at the hearing opposed the project.

The Board of Appeal, after careful consideration of the evidence presented at the public hearing, and after thorough review of the plans and petition submitted, makes the following **findings**:

1. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance, since the proposed project's density is in keeping with the surrounding neighborhood, tandem parking is not problematic with single-family houses, and the proposed new house is intelligently sited and a positive addition to the neighborhood.
2. In permitting such change, the Board of Appeals requires certain appropriate conditions and safeguards as noted below.


On the basis of the above findings of fact and all evidence presented at the public hearing including, but not limited to, the Plans, Documents and testimony, the Zoning Board of Appeals **concludes**:

1. Variances pursuant to Section 4.0 (Dimensional Requirements) and 5.1 (Off-Street Parking Regulations), and a Special Permit pursuant to Section 3.3 (Nonconforming Uses and Structures), of the City of Salem Zoning Ordinances, are granted in order to subdivide and redevelop the site as proposed on the plans titled "Proposed Subdivision, 66 Derby Street, Salem, Property of Jay Levy, Neal Levy," dated May 10, 2011, and the plans and renderings titled "Proposed Restoration & Rebuilding of 66-68 Derby Street, Salem, MA," dated May 12, 2011.

In consideration of the above, the Salem Board of Appeals voted, five (5) in favor (Curran, Harris, Metsch, Debski and Dionne) and none (0) opposed, to grant petitioner's requests for a Special Permit and Variances subject to the following **terms, conditions, and safeguards**:

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 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.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to the Planning Board.
8. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
9. The renovated house on 66 Derby Street and the proposed house on the proposed newly created lot are to both remain single-family homes.



Rebecca Curran, Chair
Salem 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.