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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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February 29, 2012

Decision

City of Salem Zoning Board of Appeals

2012 FEB 29 P 1:37
FILE #
CITY CLERK, SALEM, MASS.

Petition of 127 CANAL STREET LLC requesting a Special Permit to extend a nonconforming use, and a Variance from off-street parking regulations, in order to convert a garage located on 127 CANAL ST, Salem, MA, to a residential unit (B4 Zoning District).

A public hearing on the above Petition was opened on February 15, 2012 pursuant to Mass General Law Ch. 40A, § 11. The hearing was closed on February 15, 2012 with the following Zoning Board of Appeals members present: Rebecca Curran (Chair), Annie Harris, Richard Dionne, Jamie Metsch, Jimmy Tsitsinos and Bonnie Belair.

Petitioner seeks a Special Permit pursuant to Section 3.3.2 and a Variance under Section 5.1 of the City of Salem Zoning Ordinances.

Statements of fact:

1. The property located at 127 Canal Street contains a three-unit residential structure and a garage structure. The residential structure is nonconforming in the B-4 Zoning District.
2. Five parking spaces exist for use by the residential building.
3. In a petition date-stamped January 25, 2012, petitioner requested a Special Permit to extend a nonconforming use, in order to convert the garage structure to a single residential unit. A Variance from off-street parking regulations was also requested.
4. Attorney Scott Grover represented the petitioner at the hearing.
5. At the hearing, revised plans were presented, dated February 8, 2012 showing a reconfiguration of the parking area. Six spaces were shown instead of five due to removal of a chain-link fence. The applicant stated that the dimensional requirements for the spaces do not meet the

standards of the Zoning Ordinance, and so relief from off-street parking requirements was still requested.

6. At the hearing, no residents spoke in support of or opposition to 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. Special conditions and circumstances exist affecting the parcel or building, which do not generally affect other land or buildings in the same district. The existing mix of uses on the property affects the residential occupants negatively due to interaction with the garage use.
2. Literal enforcement of the provisions of this ordinance would involve substantial hardship, financial or otherwise, to the appellant. The mix of uses on the property causes a hardship to the residential occupants of the property due to vehicles entering and exiting the site for service, and the lack of parking available for the garage use. Additionally, the way the buildings are situated on the lot does not provide for adequate parking area.
3. 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 expansion of the nonconforming residential use is less detrimental to the current residents of the property and to the surrounding neighborhood than the existing garage use.
4. 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. A Special Permit under Section 3.3.2 is granted to allow expansion of the nonconforming residential use by converting the garage to a single-unit residence.
2. A Variance under Section 5.1 is granted to allow six parking spaces that do not meet the dimensional requirements of the Zoning Ordinance.

In consideration of the above, the Salem Board of Appeals voted, five (5) in favor (Curran, Harris, Metsch, Dionne, and Belair) and none (0) opposed, to grant petitioner's request for a Variance and Special Permit 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. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.
7. 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.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. 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.
10. Petitioner shall maintain six (6) off-street parking spaces for the exclusive use of this property.



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.