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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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May 1, 2013

Decision

City of Salem Zoning Board of Appeals

Petition of MATTHEW BANKO for leave to present an application, the substance of which was denied within the previous two years, pursuant to M.G.L Ch. 40A § 16. That petition concerns Variance and Special Permit applications denied by the Board of Appeals on December 19, 2012 for the property located at 9-11 OCEAN TERRACE (R1 Zoning District). Applicant also request modification of the Special Permit issued by the Board of Appeals on June 16, 2010 to clarify what happens to the owner occupancy requirements in the instance of a foreclosure.

A public hearing on the above Petition was opened on April 17, 2013 pursuant to Mass General Law Ch. 40A, Sections 11 and 16. The hearing was closed on April 17, 2013 with the following Zoning Board of Appeals members present: Annie Harris (Vice Chair), Richard Dionne, Mike Duffy, Tom Watkins and Jimmy Tsitsinos (Alternate).

Statements of fact:

1. Attorney Michael McArdle, agent for petitioner Matthew Banko, presented the petition for the property at 9-11 Ocean Terrace (R1 Zoning District).
2. In the petition, dated March 27, 2013, the petitioner requested Reconsideration pursuant to M.G.L Ch. 40A § 16 of a Variance and Special Permit applications denied by the Board of Appeals on December 19, 2012.
3. The specific and material changes supporting the finding required pursuant to said §16 are :
 - a. The prior petition, which was denied by the Board of Appeals on December 19, 2012, requested the elimination of the owner occupancy requirement stipulated in the Special Permit approved by the Board of Appeals on July 1, 2010.
 - b. The new petition, outlined in the petition packet dated March 27, 2013, requests the owner-occupancy requirement be retained, but that the language for Condition # 2 of that Special Permit be modified to clarify that if any of the three condominium units involuntarily forfeits his/her owner occupancy status due to a foreclosure the structure does not revert to a to-family dwelling.
4. At the hearing no members of the public were in attendance that spoke in opposition to the requested reconsideration. Two members of the public spoke in favor of the petition. No written comments were submitted before or during the public hear speaking in favor on in opposition to the requested reconsideration or modification request.

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

With regards to the request Reconsideration of the Variance and Special Permit applications denied by the Board of Appeals on December 19, 2012:

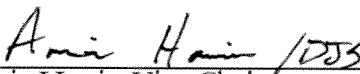
1. The specific and material changes between the said prior and present applications are: :
 - a. The previously denied petition sought the elimination of the owner-occupancy requirement
 - b. The present application does not request the elimination of the owner-occupancy requirement, but simply seeks the narrowing of the owner occupancy limitation if and when any owner is foreclosed on by a lender that the structure does not revert to its previous use as a two-family dwelling.

With regards to the requested modification of Special Permit issued by the Board of Appeals on June 16, 2010:

1. The described Special Permit modification may be granted without detriment to the public good and safety and without nullifying or substantially derogating from the intent or purpose of the City of Salem Zoning Ordinance.

On the basis of the above facts, findings and all evidence presented at the public hearing including, but not limited to, documents and testimony, All the members voted in favor, with a 5-0 vote in favor (Ms. Harris (Vice Chair), Mr. Dionne, Mr. Watkins, Mr. Duffy and Mr. Tsitsinos (Alternate)) and none opposed to grant leave pursuant to G.L. c. 40A § 16.. The Board of Appeals also voted to grant the requested modification of the Special Permit approved by the Board on June 16, 2010. All the members voted in favor, with a 5-0 vote in favor (Ms. Harris (Vice Chair), Mr. Dionne, Mr. Watkins, Mr. Duffy and Mr. Tsitsinos (Alternate)) and none opposed. Petitioner's amended Special Permit is subject to the following **terms, conditions, and safeguards**:

1. Structure is to remain owner-occupied with two rental units and one owner-occupied unit, or all owner-occupied condominiums.
2. In the instance of a lender foreclosure or if any of the three owner-occupied condominiums involuntarily forfeit his/her occupant status the structure does not automatically revert to a two-family dwelling; and the lender is obligated to adhere to the owner-occupied criteria stated in Condition # 1 with respect to all future buyers.
3. Condition # 2 of the previously granted Special Permit, approved June 16, 2010, is hereby revoked; the Special Permit now allows all owner-occupied condominiums to retain its owner occupied status in the event of foreclosure or an involuntary forfeiture of any owner occupant.
4. All conditions of the prior special permit not explicitly changed hereby remain in full force and effect.



Annie Harris, 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.