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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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April 15, 2014

Decision

City of Salem Board of Appeals

Petition of ROBERT WILLWERTH requesting a Variance from the provisions of Section 4.1.1 *Table of Dimensional Requirements*, specifically from the maximum allowed height of buildings, and a Special Permit under Section 3.3 *Nonconforming Uses and Structures* of the Salem Zoning Ordinance to change from one non-conforming use to another, and to change a non-conforming structure, to allow the conversion of the property to residential use, at the property located at 107 HIGHLAND AVENUE (R1 Zoning District).

A public hearing on the above Petition was opened on February 19, 2014 pursuant to M.G.L. Ch. 40A, § 11. The hearing was closed on March 19, 2014 with the following Salem Board of Appeals members present: Ms. Curran (Chair), Mr. Dionne, Mr. Duffy, Mr. Watkins, and Mr. Tsitsinos (Alternate).

The Petitioner seeks a Special Permit from Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance, as well as two Variances under Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance.

Statements of fact:

1. In the petition date-stamped January 28, 2014, the Petitioner requested a Special Permit to change from one non-conforming use to another, to allow the conversion of the property from a medical office to eight (8) residential units; and to change an existing non-conforming structure, to allow the addition of dormers and decks on the second and third floor over a portion of the existing first-floor porch.
2. After receipt of the application, Mr. Tom St. Pierre, Zoning Enforcement Officer, found that the proposed dormers created a functional third story, where only 2.5 stories is permitted in an R1 Zoning District, and thus required a Variance from the maximum allowed height of buildings in stories. The proposed building does not exceed the 35-foot maximum height of buildings in feet requirement.
3. Attorney Scott Grover presented the petition on the applicant's behalf for the property at 107 Highland Avenue.
4. The existing site is largely paved, and provides 27 parking spaces. The application proposed reducing this to 16 spaces, and to increase landscaping on the site. Over 15,000 square feet of the existing 17,000 square foot site is impervious. The proposed reduction in parking would result in a reduction of the impervious area.
5. The medical practice had 5 doctors, 22 full and part-time employees and an average of 60 patient visits per day. The proposed eight (8) residential units will be occupied by one to two people per unit, and will result in fewer vehicular trips in and out of the site.
6. Prior to the March 19, 2014 public hearing, the applicant submitted to the Board a revised site plan showing 16 parking spaces, and also provided a financial analysis indicating that the redevelopment of the property was only financially feasible with the creation of a minimum of 8 residential units.

7. The requested relief, if granted, would allow the Petitioner to construct a dormer to accommodate residential units on the third floor, construction of rear decks on the second and third floors, and use of the property for eight (8) residential units.
8. At the public hearing, one abutter spoke in non-opposition to the application, and the applicant submitted a petition in support of the application, signed by six neighbors at five different addresses.

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petitions, 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 – Special Permit: to allow a change from one non-conforming use to another, and to allow a change to an existing non-conforming structure.

1. The proposed changes and alterations shall not be substantially more detrimental than the existing nonconforming use to the neighborhood as there will be less traffic to and from the site, and fewer parking spaces will be required than with the previous use.
2. The utilities and public services to the building are adequate.
3. The proposed changes would benefit the City's tax base.

Findings – Variance from the maximum allowed height of buildings in stories.

1. The large size of the building, the arrangement of the lot, and the property's location in a residential zone as well as on a main commercial corridor creates a unique condition in which literal enforcement of the provisions of the Ordinance would involve substantial hardship. It would not be economically feasible to convert this building to less than 8 residential units, which can only be accommodated by allowing the third story.
2. The desired relief may be granted without substantial detriment to the public good.
3. The desired relief may be granted without nullifying or substantially derogating from the intent or purpose of the City of Salem Zoning Ordinance.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (5) in favor (Mr. Watkins, Ms. Curran, Mr. Dionne, Ms. Harris, and Mr. Duffy in favor) and none (0) opposed, to grant the requested Special Permit to allow a change from one non-conforming use to another and to allow a change to an existing non-conforming structure, and to grant the requested Variance to allow the renovation and expansion of an existing nonconforming structure to allow the building to be three (3) stories in height, subject to the following **terms, conditions, and safeguards**:

1. The 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 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.
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.



Rebecca Curran, 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.