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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #
CITY CLERK, SALEM, MASS.

May 13, 2014

Decision

City of Salem Board of Appeals

Petition of THANG TRAN requesting a Special Permit under Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one non-conforming use to another to allow the operation of a nail salon on the lower level of the existing single-family residence, and a Variance from the requirements of Section 5.1.5 *Off-Street Parking - Design* of the Salem Zoning Ordinance to grant relief from the required minimum width of a two-way drive, to allow the drive to be narrower than the required minimum width of twenty (20) feet, for the property located at 284 HIGHLAND AVENUE (B2 Zoning District).

A public hearing on the above Petition was opened on April 16, 2014 pursuant to M.G.L. Ch. 40A, § 11. The hearing was closed on that date with the following Salem Board of Appeals members present: Ms. Curran (Chair), Mr. Dionne, Mr. Duffy, Mr. Watkins, and Mr. Copelas (Alternate).

The Petitioner seeks a Special Permit under Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance, and a Variance from the requirements of Section 5.1.5 *Off-Street Parking - Design* of the Salem Zoning Ordinance.

Statements of fact:

1. In the petition date-stamped March 20, 2014, the Petitioner requested: a Special Permit to change from one non-conforming use to another to allow the operation of a nail salon on the lower level of the existing single-family residence, with the upper level remaining in use as a single-family residence, and a Variance to grant relief from the required 20-foot minimum width of a two-way drive, to allow the drive to be 13 feet wide at its narrowest point.
2. Ms. Thao Nguyen, wife of the petitioner, presented the petition for the property at 284 Highland Avenue.
3. The existing use of the property is as a single-family home. The petitioner is proposing to convert the lower level of the building to a nail salon (a personal service establishment use), and retain the upper level of the building as a single-family residence. In a B-2 Business Highway zone, a personal service establishment may be permitted as a special permit by the Zoning Board of Appeals.
4. The petitioner proposes to add parking for clients of the nail salon at the rear of the building, with a single two-way driveway providing access from Highland Avenue. The required minimum driveway width for two-way use is 20 feet, however, the proposed drive would be restricted to 13 feet wide at its narrowest point, requiring a Variance from the Zoning Board of Appeals.
5. The requested relief, if granted, would allow the Petitioner to convert the lower level of the existing home into a nail salon, and to construct a two-way driveway for patrons that is only 13 feet wide at its narrowest point.
6. At the public hearing, no member of the public spoke in favor of or in opposition to the petition.

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 change from one non-conforming use to another, to allow the operation of a nail salon on the lower level of the existing single-family residence:

1. The proposal adds a commercial use to a commercial area
2. The conditions placed upon the approval have attempted to address and mitigate the traffic flow and safety issues
3. The utilities and public services are adequate
4. The proposal is in keeping with the character of the neighborhood
5. There will be no negative impact on the natural environment
6. The proposal would have a positive economic and fiscal impact on the city.

Findings – Variance to grant relief from the required minimum width of a two-way drive, to allow the drive to be narrower than the required minimum width of twenty (20) feet:

1. Literal enforcement of the provisions of the Ordinance would be a substantial hardship on the applicant, due to the following: the location that is available for a driveway on this particular property, the lack of space in the front of the property to increase the driveway to a conforming width, and the need for handicap accessible access to the lower level of the building, which is only available through the rear of the building due to grade changes in the lot.
2. Relief may be granted without substantial detriment to the public good, particularly as the business will be limited to four service stations.
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, Mr. Duffy, and Mr. Copelas in favor) and none (0) opposed, to grant the requested Special Permit to change from one non-conforming use to another, and the Variance to grant relief from the required minimum width of a two-way drive, 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. There shall be a maximum of four service stations in the nail salon
10. A paved area at the front of the building, running 18 feet along the front of the house and approximately 20 feet from the house to Highland Avenue, shall be added to allow for client maneuvering and owner parking.
11. The Petitioner shall seek the advice of the City Planner or the City Engineer regarding on-site traffic signage. Approval of the installed signage by the City Planner and/or the City Engineer shall be required prior to issuance of a Certificate of Occupancy.
12. The Petitioner shall remove the shrubs along the northeast property line from the house to Highland Avenue, in the area adjacent to the proposed entrance drive.



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.