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MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #
CITY CLERK, SALEM, MAS

September 9th, 2014

Decision

City of Salem Board of Appeals

Petition of ANTHONY JERMYN & RICHARD JERMYN requesting Variances from the provisions of Section 4.0 *Dimensional Requirements* of the Salem Zoning Ordinance to allow less than the required 100-foot minimum lot frontage and less than the required 100-foot minimum lot width for two proposed lots. The proposed lots will take their frontage from a shared driveway off of Marlborough Road, at the property located at 148 MARLBOROUGH ROAD (R1 Zoning District)

A public hearing on the above Petition was opened on July 16, 2014 pursuant to M.G.L. Ch. 40A, § 11 and continued to August 27, 2014. The hearing was closed on August 27, 2014 with the following Salem Board of Appeals members present: Ms. Curran (Chair), Mr. Duffy, Mr. Watkins, Mr. Copelas (Alternate), and Mr. Tsitsinos (Alternate).

The Petitioner seeks Variances from the provisions of Section 4.0 *Dimensional Requirements* of the Salem Zoning Ordinance.

Statements of fact:

1. In the petition date-stamped May 28, 2014, the Petitioner requested: Variances from the provisions of Section 4.0 *Dimensional Requirements* of the Salem Zoning Ordinance to allow less than the required 100-foot minimum lot frontage and less than the required 100-foot minimum lot width for two proposed lots.
2. Attorney Correnti presented the petition for the property at 148 Marlborough Road.
3. The existing lot is a so called "porkchop lot" that was last modified in 1961.
4. Mr. Bill Ross, Engineer, illustrated that the southern third of the parcel is not buildable land due to an existing wetland resource area and ledges on the site. These environmental and topographic constraints, combined with setbacks required by the Salem Zoning Ordinance, established the proposed lot layout and building footprint locations.
5. The two proposed lots would each exceed the required minimum lot size (15,000 SF) to create two lots with a shared driveway and access easement over 146 Marlborough Street (Lot 250B). The proposed lots sizes are 26,199 square feet and 24,422 square feet.
6. The requested relief, if granted, would allow the Petitioner to create two lots with a shared driveway and access easement over 146 Marlborough Road.
7. Mr. Bill Ross addressed the drainage concern expressed by the abutters, explaining that a new pipe had been installed between Lot 250B and Lot 250C, replacing an old drainage pipe that had failed and was causing flooding on the property in question.
8. On July 16, 2014, the Board of Appeals requested that alternative lot configurations for lot 250B and the two proposed lots be considered, including three conforming lots for a possible "by-right" configuration.

9. On August 27, 2014 the applicant presented plans illustrating that alternative lot configurations had been explored, including the creation of three "by-right" lots. These alternatives were not feasible due to high costs and the existing natural features on the land limiting the areas where house construction is feasible.
10. At the public hearing, one abutter expressed their opposition to the petition and submitted a letter and photographs to the Board. Concerns included inadequate frontage and minimum lot width, traffic, emergency access, floodwater drainage, embankment erosion, and proximity of proposed new homes to the abutter's property.
11. Two letters of support were submitted by the applicant with the petition.

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petition, 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

1. Literal enforcement of the provisions of the Ordinance requiring a 100-foot minimum lot frontage and a 100-foot minimum lot width for each of the two proposed lots would be a substantial hardship, as the existing lot is uniquely shaped and has unique natural features limiting the buildable area of the lots.
2. The proposed two new lots would not be a substantial detriment to the public good, provided that the proposed common driveway be approved by the Fire Department.
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. Tsitsinos, Mr. Copelas and Mr. Duffy) and none (0) opposed to grant the requested Variances to allow less than the required 100-foot minimum lot frontage and less than the required 100-foot minimum lot width for two proposed lots 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 including the approval of the width, length and surface materials for the common driveway.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. A Certificate of Occupancy is to be obtained.
6. A Certificate of Inspection 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 conservation commission and the Planning Board.
9. Petitioner shall obtain approval from the City of Salem Fire Department that the proposed driveway width, length, and surface material are adequate for fire safety

10. Petitioner shall obtain any necessary approvals from the Salem Conservation Commission.

Rebecca Curran

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.