



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

120 WASHINGTON STREET ♦ SALEM, MASSACHUSETTS 01970

TELE: 978-745-9595 ♦ FAX: 978-740-9846

April 22, 2014

## Amended Decision City of Salem Board of Appeals

**Petition of Riverview Place LLC requesting Variances to allow for a minimum lot area of 1,440 square feet per dwelling unit, common building entrances, and to allow construction within the 50 foot buffer area for the properties located at 72 FLINT STREET AND 67-69 & 71 MASON STREET [NRCC].**

A public hearing on the above Petition was opened on August 22, 2007 and continued to September 19, 2007, and October 17, 2007 pursuant to Mass General Law Ch. 40A, §§ 11. The public hearing was closed on October 17, 2007 with the following Board of Appeals members present: Robin Stein, Bonnie Belair, Elizabeth Debski, Rebecca Curran, and Steven Pinto. The petition was granted on November 2, 2007.

On February 26, 2014 Riverview Place, LLC submitted a request to amend the decision to allow a reduction in the number of parking spaces required for the commercial space, and an increased encroachment on the 50 foot buffer required for construction activity abutting residential property. A public hearing on the request for modification was held on March 19, 2014 and duly posted and noticed in accordance with Mass General Law Ch. 40A, §§ 11. The public hearing was closed on March 19, 2014 with the following Board of Appeals members present: Rebecca Curran (Chair), Richard Dionne, Mike Duffy, Tom Watkins, and Jimmy Tsitsinos (alternate).

### **Statements of fact:**

1. The locus in is in the North River Canal Corridor (NRCC) District and includes 72 Flint Street (3.69 acres), 71 Mason Street (0.34 acres), and 67-69 Mason Street (0.11 acres) for a total of 4.14 acres (the "Locus").
2. Plans accompanying the original Petition, as approved on November 2, 2007, include the site plan prepared by Eastern Land Survey, entitled "Site Development Permit Plan", dated October 9, 2007, and elevations prepared by H.H. Morant & Co., Inc. Architects, entitled "Riverview Place: Schematic Roof Plan & Elevations", dated September 26, 2007.
3. In 2007, the Zoning Board of Appeals decision was appealed to the land court. A judgement of the landcourt was issued which upheld the decision of the Zoning Board of Appeals. The judgement of the landcourt was issued based on the final

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plans as approved by the Salem Planning Board on April 17, 2009 [Site Plan Review Decision]. Those plans are:

- a. "Site Development Permit Plan of Riverview Place in Salem, Massachusetts," Sheets 1 through 8, dated January 24, 2008 and revised on March 17, 2008, November 12, 2008, December 23, 2008, February 19, 2009, and March 26, 2009, prepared by Eastern Land Survey Associates, Inc., Peabody, MA;
  - b. "Riverview Place, Flint & Mason Street, Salem, Massachusetts," Sheets C1.1, A1.0 through A1.7, A2.1, A2.2, A2.3c, and A2.4b.
  - c. "Conceptual Landscape Plan," Sheets L-1 and L-2, dated March 18, 2009, prepared by Huntress Associates, Inc., Andover, MA;
  - d. "Traffic Signing and Pavement Marking Plan," dated March 2009, prepared by AECOM, Concord MA; and
  - e. "Riverview Place, Salem, MA, Site Lighting with Wall Fixtures," dated March 25, 2009, prepared by Peter Beane.
4. The 2009 plans have been modified by the plans submitted with the February 26, 2014 petition to the Board of Appeals, as noted in #3, below.
  5. Construction of parking areas and portions of the buildings within the 50 foot residential buffer required by Section 8.4.13 of the Ordinance shall be permitted in accordance with the submitted plans entitled "Symes Riverway" dated March 18, 2014 by O'Sullivan Architects Inc.
  6. The petition for amendment of the November 2, 2007 Decision requested that additional encroachment on the 50 foot residential buffer be allowed, to accommodate the reconfiguration of the north-west parking area and minor relocation of the buildings, all as shown on the "Symes Riverway" plan as referenced above.
  7. The elevation change between the closest residential abutters and the proposed parking lot within the buffer zone would aid in reducing the visual impact of the parking lot on the residential abutters.
  8. The proposed amendments to the November 2, 2007 Decision are the result of changes to the plan required to bring the proposed plan into compliance with the new 2013 Flood Plain standards, and the requirements of Chapter 91.
  9. The October 9, 2007 plans provided 309 parking spaces, including 260 allotted to the residential units (2 spaces per dwelling unit), 12 spaces for Flint Street residents, and 37 spaces allotted to the commercial space. The revised plans, dated March 18, 2014 project provide 282 parking spaces, which includes 260 allotted to the residential units (2 spaces per dwelling unit), 12 spaces for Flint Street residents, and 10 spaces allotted to the commercial space.
  10. At the public hearing, one member of the public spoke in opposition to the petition, Beth Gerard, Ward 6 Councilor, expressed concern regarding the additional encroachment on the 50 foot residential buffer, and one member of the public asked

about the preservation of a right-of-way for a potential future extension of Commercial Street.

The Board of Appeal, after careful consideration of the evidence presented at the public hearing on March 19, 2014, and after thorough review of the plans and petition submitted, makes the following **findings regarding the proposed modifications**:

1. The modifications requested are not contrary to the original variance granted.
2. The parking relief requested will be permitted with the condition that the Zoning Enforcement Officer will determine the number of parking spaces required for any proposed use of commercial space based on the requirements of Section 5.1 of the Zoning Ordinance. No use of the commercial space will be permitted which requires more than the number of spaces required under said Section 5.1.
3. The findings and all conditions of the original decision remain in effect, except where this approval modifies such conditions.

The Board of Appeal, after careful consideration of the evidence presented at the public hearings on August 22, 2007, September 19, 2007, and October 17, 2007, and after thorough review of the plans and petition submitted, made the following **findings in their Decision dated November 2, 2007**:

4. There are circumstances including soil conditions and use and condition of the existing buildings which especially affect the Locus but do not affect generally the zoning district in which the Locus is located. The contaminated soil must be remediated prior to redevelopment of the Locus.
5. A literal enforcement of the provisions of the ordinance would involve substantial hardship, financial or otherwise to the petitioner.
6. The proposed development complies with the goals of the NRCC Neighborhood Mixed Use District and the requirements set forth in § 7-21 (a) to achieve these goals, as follows:
  - a. The Locus is being redeveloped for housing and commercial uses
  - b. Public pedestrian access to and along the North River Canal will be provided.
  - c. A public-private partnership to provide enhanced maintenance trees, sidewalks, benches, along the canal will be developed.
  - d. The streetscape along Mason Street will be enhanced.
  - e. The project is designed to enhance solutions to neighborhood traffic, including the granting of an easement to the City of Salem to allow it to construct an extension of the Commercial Street public roadway across the development site. Further the applicant will work with the City to incorporate reasonable recommendations from the Earth Tech, Inc. traffic study to improve travel along Flint Street.

For these reasons, 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 ordinance.

On the basis of the above findings of fact and all evidence presented at the public hearings on August 22, 2007, September 19, 2007, and October 17, 2007 including, but not limited to, the Plans, Documents and testimony, the Zoning Board of Appeals **concluded findings in their Decision dated November 2, 2007:**

1. To enable the proposed development, the petitioner may vary the following terms of the North River Canal Corridor Zoning District § 7-21:
  - minimum lot area per dwelling unit may be reduced to 1440 sf/dwelling unit (from the 3,500 sf/dwelling unit required) § 7-21 (k)(1),
  - common building entrances can be used instead of having separate exterior entrances for each unit § 7-21 (e)(2)(a)(3)
  - a small percentage of two buildings, and a portion of the roadway and parking on the western side of the Locus are within the 50 ft buffer zone, therefore construction may take place in the buffer zone § 7-21 (m)(1)(c).
2. In permitting such change, the Board of Appeals requires certain appropriate conditions and safeguards as noted below.

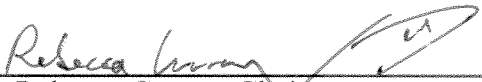
On the basis of the above findings of fact and all evidence presented at the public hearings on March 19, 2014, including, but not limited to, the Plans, Documents and testimony, the Zoning Board of Appeals **concludes:**

1. All conditions of the original variance dated November 2, 2007 shall be retained except where this approval modifies such conditions.

In consideration of the above, the Salem Board of Appeals voted five (5) in favor (Ms. Curran, Mr. Dionne, Mr. Duffy, Mr. Watkins, and Mr. Tsitsinos) and none (0) opposed to grant the petitioner's request for Amendments to the Variances granted in the Decision of November 2, 2007, 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. A Certificate of Occupancy is to be obtained.
6. 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.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to the Planning Board.

8. The Petitioner shall place an Affordable Housing Restriction on thirteen (13) of the one hundred and thirty (130) units in the form of a deed rider approved by the City Planner and registered with the Essex South Registry of Deeds. The affordable housing restrictions are to be in accordance with the eligibility criteria for the Commonwealth Department of Housing and Community Development's Subsidized Housing Inventory for the purpose of ensuring that thirteen (13) dwelling units will be restricted as affordable housing for households whose annual incomes are eighty percent (80%) or less of area median income ("low income households") with a sales price affordable to low income households for a period of ninety-nine (99) years from the date of the first occupancy permit.
9. Twelve (12) on site parking spaces are to be reserved for the sole use of Flint Street residents. The proposed mechanism for reserving the spaces is to be submitted and approved by the Department of Planning and Community Development prior to issuance of any Certificate of Occupancy.
10. The applicant, upon taking title to the premises, will grant to the City of Salem and easement to construct an extension of the Commercial Street public roadway across the site in the location shown on the site plan at any time within a ten (10) year period after all necessary approvals for the project become final. Upon such construction, such easement shall automatically become a full and permanent easement to use and maintain the easement area as a public way in the City of Salem.

  
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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.