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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #
CITY CLERK, SALEM, MA

2015 JUL 29 P 2:11

July 29, 2015 Decision City of Salem Board of Appeals

Petition of CONGRESS & DOW LLC of the NORTH SHORE COMMUNITY DEVELOPMENT COALITION, INC. requesting a Special Permit per Sec. 3.3.3 (2) of the Salem Zoning Ordinance to alter an existing non-conforming structure for a substantially different purpose to restore the first floor of 105 CONGRESS STREET from a residential unit to a commercial space for retail or a restaurant and a Variance per Sec. 5.1.8 *Table of Required Parking Spaces* specifically from off-street parking requirements for retail or restaurant space to allow seven (7) off-site parking spaces & on-street parking at the property located at 105-109 & 111 CONGRESS STREET (Map 34, Lot 169) (B1 Zoning District).

A public hearing on the above Petition was opened on July 15, 2015 pursuant to M.G.L. Ch. 40A, § 11. The hearing was closed on that date with the following Salem Board of Appeals members present: Peter A. Copelas (Vice-Chair), Jimmy Tsitsinos, Mike Duffy, Tom Watkins and Paul Viccica (alternate).

The Petitioner seeks a Special Permit from the provisions of *Sec. 3.3.3 (2) Non-Conforming Structures* of the Salem Zoning Ordinance, to alter to provide for a substantially different purpose to restore the first floor of 105 Congress Street from a residential unit to a commercial space for retail or a restaurant and a Variance per Sec. 5.1.8 *Table of Required Parking Spaces* specifically from off-street parking requirements for retail or restaurant space to allow seven (7) off-site parking spaces & on-street parking.

Statements of facts:

1. In the petition date-stamped June 23, 2015, the Petitioner requested a Special Permit from the provisions of *Sec. 3.3.3 (2) Non-Conforming Structures* of the Salem Zoning Ordinance, to alter to provide for a substantially different purpose to restore the first floor of 105 Congress Street from a residential unit to a commercial space for retail or a restaurant and a Variance per Sec. 5.1.8 *Table of Required Parking Spaces* specifically from off-street parking requirements for retail or restaurant space to allow seven (7) off-site parking spaces & on-street parking.
2. Attorney Grover presented the petition on behalf of the petitioner, North Shore Community Development Center.
3. The petitioner proposes to convert two (2) first floor residential units located at 105 CONGRESS STREET to a commercial retail or restaurant space provide seven (7) on-site parking spaces that service the proposed commercial and residential uses for 105-109 & 111 CONGRESS STREET.
4. North Shore CDC proposes to rehabilitate the existing buildings to restore the historic character of the original building as the location is newly designated as a National Historic District.
5. The petitioner intends to leverage funds from the proposed commercial space, state and federal historic tax credits and other financing to rehabilitate seven (7) properties including the buildings on 105-109 & 111 CONGRESS STREET.

6. Currently, buildings located at 105-109 & 111 CONGRESS STREET have eight (8) residential units each with seven (7) existing off-street parking spaces.
7. There are two primary structures located on one lot and are non-conforming.
8. The property is located in a B-1 Zoning District and the proposed uses for the property, including a retail space or a restaurant without service of alcoholic beverages, are allowed by right.
9. The requested relief, if granted, would allow the petitioner alter an existing non-conforming structure for a substantially different purpose to restore the first floor of 105 CONGRESS STREET from a residential unit to a commercial space for retail or a restaurant and a Variance per Sec. 5.1.8 Table of Required Parking Spaces specifically from off-street parking requirements for retail or restaurant space to allow seven (7) off-site parking spaces & on-street parking.
10. At the public hearing, one (1) member of the public spoke in support and one (1) member spoke 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 petition, including the application narrative and plans, makes the following **findings**:

Findings for Special Permit:

1. The proposed alteration of an existing non-conforming structure for a substantially different purpose to restore the first floor of 105 CONGRESS STREET from a residential unit to a commercial space for retail or a restaurant would not be more substantially detrimental than the existing non-conforming structure and will significantly benefit the social, economic or community needs served by the proposal.
2. There are no impacts on traffic flow and safety, including parking and loading compared to the existing conditions.
3. Adequacy of utilities and other public services are sufficient.
4. There are no impacts on the natural environment, including drainage.
5. The proposal conforms to the existing neighborhood character.
6. The potential fiscal impact, including impact on the City tax base is positive due to the anticipated rehabilitation of the residential units and new commercial space.

Findings for Variance:

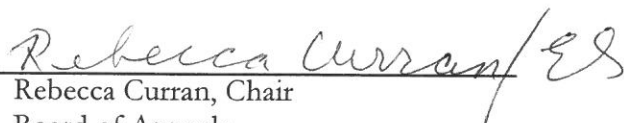
1. There are special conditions and circumstances generally affecting the land, building and structure generally not affecting other lands, buildings and structures in the same district in that the existing building size, location and density consumes the entire lot and it is physically possible to meet the off-street parking needs required.
2. Literal enforcement of the provisions of the Ordinance for off-street parking would involve substantial hardship to the applicant as not allowing the variance would prevent the applicant from using the building for any other use and as presented would prevent the owner from making renovations to the buildings on this property and others to rehabilitate low-income housing and provide another economic development opportunity at this location. Further, the Variance will provide the opportunity to rehabilitate the property in a manner that is needed in the community in this location.

3. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the district or the purpose of the ordinance.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (5) in favor (Peter A. Copelas (Vice-Chair), Jimmy Tsitsinos, Mike Duffy, Tom Watkins, Paul Viccica (alternate)) and none (0) opposed, to approve the requested Special Permit to alter an existing non-conforming structure for a substantially different purpose to restore the first floor of 105 CONGRESS STREET from a residential unit to a commercial space for retail or a restaurant and a Variance per Sec. 5.1.8 *Table of Required Parking Spaces* specifically from off-street parking requirements for retail or restaurant space to allow seven (7) off-site parking spaces & on-street parking to allow subject to the following **terms, conditions and safeguards**:

Standard Conditions:

1. Petitioner shall comply with all city and state statues, 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 finished of the new construction shall be in harmony with the existing structure.
6. A Certificate of Inspection is to be obtained.
7. A Certificate of Occupancy 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.


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.