



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

98 WASHINGTON STREET ♦ SALEM, MASSACHUSETTS 01970
TEL: 978-619-5685

2022 JUN 27 AM 9:04
CITY CLERK
SALEM, MASS

June 27, 2022

Decision

City of Salem Board of Appeals

The petition of PETER LUTTS at 143-145 DERBY STREET (Map 41, Lot 319) (B1 Zoning District), for a Variance per Section 4.1.1 *Dimensional Requirements* of the Salem Zoning Ordinance to construct five (5) residential dwelling units. The relief, if approved, will be for lot area per dwelling at 1,781 sq.ft where 3,500 sq. ft is required Also, relief from front, rear and side yard setbacks is requested.

A public hearing on the above petition was opened on June 15, 2022 and was closed on June 15, 2022.

On June 15, 2022, the following members of the Salem Board of Appeals were present: Carly McClain, Paul Viccica, Peter Copelas (Vice Chair) and Steven Smalley.

Statements of Fact:

The petition is date stamped April 26, 2022. The petitioner seeks a Variance per Section 4.1.1 *Dimensional Requirements* of the Salem Zoning Ordinance to construct five (5) residential dwelling units. The relief, if approved, will be for lot area per dwelling at 1,781 sq.ft where 3,500 sq. ft is required Also, relief from front, rear and side yard setbacks is requested.

1. 143 Derby Street is owned by Captain Dusty's.
2. The petitioner was Peter Lutts.
3. 143 Derby Street is located in the B1 zoning district. (Map 41, Lot 319) and the Derby Street Historic District.
4. The requested relief, if granted, would allow the Petitioner to construct five (5) dwelling units outside of the dimensional requirements for the B1 Zoning District.
5. On June 15, 2022, Attorney Scott Grover presented to the board. Mr. Grover spoke about how the owners had had an earlier petition in the winter and had

- listened and considered the neighbor's feedback. They had withdrawn their petition without prejudice. They were now returning to the board with new plans and elevations based on the input they received at the earlier meeting.
6. Attorney Grover spoke to how they current structure on the lot will need to be preserved and the remainder of the lot consists of a large parking lot. The lot is shaped "pork chop" lot that is on a corner lot of Daniels Street and Derby Street.
 7. The petitioners are proposing to eliminate the commercial use and construct five (5) new residential units. One unit will be in the existing historic building and a second unit attached to the first one. In addition, there will be a three (3) unit building in the form of town houses for the other units. There will be ten (10) parking spaces which exceeds the 1.5 spaces required for the B1 Zoning District.
 8. Attorney Grover discussed the relief requested for setbacks and lot area per dwelling unit for the property. Attorney Grover discussed the criteria for a variance. The irregular shape of the lot was one of the hardships. Another is that it is a corner lot must comply with the front yard setbacks for both streets that it is on-Daniels Street and Derby Street. This will drastically impact the land available for building. The final hardship is that the owner must keep the historic building intact on the lot which will prohibit the owner from constructing the number of units.
 9. Thad Siemasko from SV Design presented the plans to the board.
 10. Peter Copelas spoke to the new entrance on Derby Street and how it was a new change that made a lot of sense to allow access on Derby and not have the new owners have to drive around the block to enter on Daniels Street.
 11. Paul Viccica inquired about what would happen if the Historical Commission decided that the second dwelling unit needed changes to the dimensions. It was determined that they would need to return to the board to discuss the changes required.
 12. Carly McClain stated that she appreciated the new plans and design for the proposed project at 143 Derby Street especially with the feedback given to the petitioner from the neighbors.
 13. Peter Copelas opened the meeting up to public comment.
 14. Nina Vyden, 27 Daniels Street stated that she really liked the improvements to the project since the changes from the first petition. She inquired about fence heights that will be facing Daniels Street. She expressed that she felt that a lower fence, not a six foot (6 ft) fence would expand on the sense of community and not close off the new tenants from the rest of the neighborhood.
 15. Dean Liedberg, 131 Derby Street, spoke about his concern regarding the space at the back corner of the property that was directly at his bedroom window. He expressed concern about what would be placed there since it was directly at his bedroom window.
 16. Attorney Grover stated that there would be no dumpster there since each unit would have their own space for trash receptacles.
 17. Paul Viccica made a motion to approve the variance at 143 Derby Street.

18. Due to the ongoing COVID-19 pandemic and related precautions and Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, the June 15, 2022 meeting of the Board of Appeals was held remotely, via the online platform Zoom.

Variance Findings:

1. Special conditions and circumstances especially affect the land, building, or structure involved, generally not affecting other lands, buildings, and structures in the same district: The "pork chop" shape of the lot does not allow for proper development of the land.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant in attempting to put the property to productive use. Setbacks on both Daniels and Derby Street would directly impact the development of the structures on the property.
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 fact and findings, the Salem Board of Appeals voted four (4) in favor (Steven Smalley, Carly McClain, Paul Viccica and Peter Copelas) and none (0) opposed to grant PETER LUTTS a Variance per Section 4.1.1 *Dimensional Requirements* of the Salem Zoning Ordinance to construct five (5) residential dwelling units.

Receiving four (4) in favor votes, the petition for a variance is approved.

Standard Conditions:

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. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. 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.

9. All construction shall be done per the plans and dimensions submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

A handwritten signature in dark ink, reading "Peter Copelas" followed by a stylized "DL" or similar mark.

Peter Copelas/ Vice 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.