



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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

August 8, 2022

Decision

City of Salem Board of Appeals

The petition of PASQUANNA DEVELOPERS, INC. at 50 CIRCLE HILL ROAD (Map 9, Lot 256) (R1 Zoning District), for a Variance per Section 4.1 *Dimensional Requirements* of the Salem Zoning Ordinance to construct two (2) single-family dwellings on five (5) separate and contiguous land court parcels. One dwelling will meet the requirements of the Salem Zoning Ordinance for R1 Zoning. The other dwelling will be constructed at 10,788 sq.ft. the relief, if granted, would be for minimum lot area, lot area per dwelling unit and lot width.

A public hearing on the above petition was opened on June 15, 2022 and continued to July 27, 2022 and was closed on July 27, 2022.

On July 27, 2022, the following members of the Salem Board of Appeals were present: Carly McClain, Mike Duffy(Chair), Paul Viccica, Peter Copelas and Steven Smalley.

Statements of Fact:

The petition is date stamped April 12, 2022. The petitioner seeks a Variance per Section 4.1.1 *Dimensional Requirements* of the Salem Zoning Ordinance to construct two (2) single-family dwellings on five (5) separate and contiguous land court parcels. The relief, if approved, will be for minimum lot area, lot area per dwelling unit and lot width.

1. 50 Circle Hill Road is owned by Pasquanna Developers, Inc.
2. The petitioner was Patrick Delulis.
3. 50 Circle Hill Road is located in the R1 zoning district. (Map 9, Lot 256).
4. The requested relief, if granted, would allow the Petitioner to construct two (2) single family dwellings on five (5) separate and contiguous land court parcels.

5. On June 15, 2022, Pasquanna Developers, Inc. requested that their petition be continued to the July 27, 2022 meeting due to only a four member board.
6. On July 27, 2022, Patrick DeLulis presented his petition to the board.
7. Mr. DeLulis presented some of the property's history to the board. He stated, the property was originally purchased in 1963 by Mario and John DeLulis as part of a larger acquisition for what would become the Sable Heights Subdivision. John and Mario constructed a section of Mooney Road, Seemore Street and a section of Circle Hill Road (now Durkin Road) and over the next decade built and sold a number of custom homes. When John and Mario incorporated their business, ownership was transferred to DeLulis Brothers Construction. In the early 1990's DeLulis Brothers completed the second phase of Sable Heights. At the time the original Sable Heights was built, the R1 zoning required 5,000 square feet of land and 50 feet of frontage. By the time Phase II was constructed, the zoning required 15,000 square feet and 100 feet of frontage, resulting in a yield of 8 lots instead of the original 24. Further, because DeLulis Brothers completed the subdivision, the City of Salem was able to realize proceeds from the sale of land it owned on the previously unconstructed section of Mooney Road and another landowner on the opposite side was able to sell their lot which had previously lacked any street frontage. This other lot did not meet R1 zoning; however, it was deemed a grandfathered lot. The streets in Sable Heights followed the layout on the Land Court Plans from which they originated, with temporary turnarounds constructed since the land beyond was owned by others. The subject parcel was located beyond the Durkin Road temporary turnaround, on the far side of the power lines, and at the time was surrounded by land owned by others, including the City of Salem. In 2011 DeLulis Brothers transferred ownership of the subject parcel to DeLulis Properties, an affiliated real estate development company, who in turn transferred the subject parcel in 2014 to Pasquanna Developers. Around 2005 the City of Salem deeded the land abutting the subject parcel to Ken Steadman / Bartlett & Steadman Development, who constructed the Witch Hill Subdivision, extending the roadway from the end of Durkin Road and in the process eliminating the temporary turnaround. Steadman did not follow the Land Court layout, and instead filed a new subdivision plan which excluded the subject property from having any frontage on the new subdivision road. The subject property maintains frontage on the paper street designated by the City as Circle Hill Road, but shown on the Land Court Plan as Sable Road. Furthermore, the Witch Hill Subdivision was approved as a cluster development with lot sizes significantly less than the R1 zoning requirements.
8. Chair Duffy inquired if they were seeking relief for the 15,000 sq. ft. lot or were they seeking relief for the 10,788 sq. ft. lot. Mr. DeLulis stated they were only seeking relief for the 10,788 sq. ft. lot and that the other lot was fully conforming to the Salem Zoning Ordinance.
9. Chair Duffy opened the meeting up to comments from the board.
10. Peter Copelas inquired whether relief was required for the driveway due to the need for access to the lot itself. It was determined that they did not need relief due to the fact that a portion of Circle Hill Road was not developed. The

- property would have had the frontage if Circle Hill Road had been developed. However, this portion of Circle Hill Road was currently part of a paper street.
11. Chair Duffy stated that if it turns out that they don't have access due to development around the paper street, they could condition that they petitioner return to the board to discuss further relief.
 12. Chair Duffy opened the meeting up to public comment.
 13. Nina Vyden, 27 Daniels Street, asked who owns the driveway access to both homes. The petitioner responded that they hadn't specifically determined who would have ownership between the two homes. But, since it is a driveway that they would have some covenant in the deed about shared responsibility for maintaining, plowing and other requirements needed for the upkeep of the driveway. It would be a shared driveway.
 14. Chair Duffy clarified that currently, the city has no plans to make Circle Hill Road a complete street.
 15. Darquin Fortuna, 5 Warner Street, stated that he was in favor of the proposal.
 16. Chair Duffy reviewed the request for relief and the statement of hardship. He also reiterated that the proposed lots are larger than the currently permitted lots that have already been developed in the area.
 17. Chair Duffy inquired if someone would take up a motion on the petition.
 18. Peter Copelas made a motion to approve the petition.
 19. The July 27, 2022 meeting of the Board of Appeals was held remotely, via the online platform Zoom in accordance with Chapter 107 of the Acts of 2022.

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.
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.
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 five (5) in favor (Steven Smalley, Carly McClain, Mike Duffy(Chair), Paul Viccica and Peter Copelas) and none (0) opposed to construct two (2) single-family dwellings on five (5) separate and contiguous land court parcels with relief for minimum lot area, lot area per dwelling unit and lot width.

Receiving five (5) in favor votes, the petition for a variance is GRANTED.

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. 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. 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.

Special Conditions:

1. To the extent that more relief is needed due to driveway access off of Martin Lane the petitioner will return to the Salem Zoning Board of Appeals.

Mike Duffy/ 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.