



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS

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

August 4, 2021

Decision

City of Salem Board of Appeals

Petition of CASTLE HILL REALTY GROUP, LLC for variances from provisions of Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for minimum lot area, minimum lot area per dwelling unit, minimum lot frontage, minimum lot width, minimum depth of front yard, minimum width of side yard, and minimum depth of rear yard to construct a single-family dwelling at 0 STORY STREET (Map 23, Lot 12) (RC Zoning District).

A public hearing on the above Petition was opened on July 21, 2021, pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following members present: Mike Duffy (Chair), Peter Copelas, Paul Viccica, Rosa Ordaz, Carly McClain, and Steven Smalley (Alternate).

The petitioner seeks variances from provisions of Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for minimum lot area, minimum lot area per dwelling unit, minimum lot frontage, minimum lot width, minimum depth of front yard, minimum width of side yard, and minimum depth of rear yard to construct a single-family dwelling at 0 Story Street.

Statements of Fact:

1. In the petition date-stamped June 10, 2021, the petitioner requested variances per Section 4.1.1 *Table of Dimensional Requirements* from minimum lot area (square feet), minimum lot area per dwelling unit (square feet), minimum lot frontage (feet), minimum lot width (feet), minimum depth of front yard (feet), minimum width of side yard (feet), and minimum depth of rear yard (feet) to, “allow the construction of a single-family home” at 0 Story Street.
2. Petitioner Castle Hill Partners, LLC. was represented by attorney John R. Kielty (offices at 40 Lowell Street, Peabody, MA).
3. The property is currently a vacant lot in the RC zoning district.
4. The proposal would create one $\pm 18,000$ square foot lot within the larger 5.4-acre parcel of land at 0 Story Street.
5. Per the plot plan submitted with the petition, the proposed lot area is $\pm 18,800$ square feet, proposed lot area per dwelling unit is $\pm 18,000$ feet, proposed lot frontage is ± 110 feet, proposed lot width is ± 110 feet, proposed depth of front yard is ± 10 feet, proposed width of side yard is ± 20 feet, and proposed depth of rear yard is ± 90 feet.
6. Due to the ongoing COVID-19 pandemic and related precautions and An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency signed into law by Governor Baker on June 16, 2021, the July 21, 2021, meeting of the Board of Appeals was held remotely, via the online platform Zoom.

7. At the July 21, 2021 meeting of the Board of Appeals, attorney John Kielty discussed the petition. Mr. Kielty noted the presence of wetlands on the rear of the site, which forces the building to the front of the lot, necessitating the dimensional relief.
8. At the July 21, 2021 meeting, Mr. Kielty stated the petitioner received an Order of Conditions from the Salem Conservation Commission for a structure with the same dimensions and location as are proposed in this petition.
9. At the July 21, 2021 meeting the recent permitting history of the property was discussed. Building Commissioner Tom St. Pierre described how the petitioner was granted variances in Zoning Board of Appeals Decision that was filed on October 30, 2019 to create three lots at 0 Story Street. Mr. St. Pierre and Mr. Kielty stated the petitioner has not acted on that 2019 Decision, and the petition currently in front of the Board is separate.
10. At the July 21, 2021 public hearing, no (0) members of the public spoke in favor of the petition, and one (1) member of the public, Linda Tardiff-Pierro of 15 Story Street spoke in opposition to the petition. Ms. Tardiff-Pierro stated that the petitioner had already excavated a portion of 0 Story Street close to 15 Story Street. Ms. Tardiff-Pierro mentioned that the petitioner was also applying to the Salem Conservation Commission for approvals to build a barn on 0 Story Street outside the lot the Zoning Board of Appeals was considering. She stated concern that there is not a clear understanding of what will happen to the entirety of the 0 Story Street lot. One (1) member of the public stated concern and confusion with the petition.
11. At the July 21, 2021 public hearing, Mr. St. Pierre mentioned that the Salem Engineering Department has put the property owner, Mr. Lovely, in violation, requiring Mr. Lovely to resolve existing issues with the excavation described by Ms. Tardiff-Pierro in statement #11 above. Mr. St. Pierre stated he had explained to Mr. Kielty that the Building Department will not issue any Building Permits so long as the violation is outstanding.
12. At the July 21, 2021 public hearing, Mr. Kielty confirmed that the petitioner has applied to the Conservation Commission to construct a barn at 0 Story Street, in a location outside the lot that would be created by the variances sought in the Zoning Board of Appeals petition.
13. At the July 21, 2021 public hearing, the Board discussed what other permitting would be required for the petitioner to build a home on 0 Story Street with the dimensions considered by the Board. Mr. St. Pierre confirmed that if the petition was approved, the petitioner would still need to seek approval from the Salem Planning Board to create a subdivision.

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**:

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: There are extensive areas of wetland and resource areas on this property. The topography and presence of ledge on the property impact where the applicant could feasibly place the proposed dwellings, and where the access to the dwellings would have to be.
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 four (4) in favor (Mike Duffy (Chair), Peter Copelas, Paul Viccica, and Carly McClain) and one (1) opposed (Rosa Ordaz) to grant the requested variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for minimum lot area, minimum lot area per dwelling unit, minimum lot frontage, minimum lot width, minimum depth of front yard, minimum width of side yard, and minimum depth of rear yard to construct a single-family dwelling at **0 Story Street**, subject to the following **terms, conditions, and safeguards**:

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. 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 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 Board of Appeals.

Special Conditions

1. The portion of 0 Story Street shown in the submitted plot plan (entitled "Site Development Permit Plan Located in Salem, Mass. Cleveland Street", prepared by Eastern Land Survey Associates, and dated "Rev. June 9, 2021") as "Lot A" will not be encumbered beyond one (1) single-family dwelling, and a barn.



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.