



KIMBERLEY DRISCOLL
MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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

2021 MAY -5 AM 11:46
CITY CLERK
SALEM, MASS.

May 5, 2021

Decision

City of Salem Board of Appeals

Petition of ERJOLA CANI for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use (three-family dwelling) to another (four-family dwelling), and a variance per Section 4.1.1 *Table of Dimensional Requirements* from minimum lot area per dwelling unit at 11 ORCHARD STREET (Map 27, Lot 434) (R2 Zoning District).

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

The petitioner seeks a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use (three-family dwelling) to another (four-family dwelling), and a variance per Section 4.1.1 *Table of Dimensional Requirements* from minimum lot area per dwelling unit at 11 Orchard Street.

Statements of Fact:

1. In the petition date-stamped February 23, 2021, the petitioner requested a special permit per Section 3.3.2 *Nonconforming Uses* of the Zoning Ordinance for “change of nonconforming use from 3 to 4 unit”, and a variance per Section 4.1.1 *Table of Dimensional Requirements* from “Minimal [sic] Lot Area per Dwelling Unit”.
2. 11 Orchard Street is owned by petitioner Erjola Cani.
3. Per the plot plan (dated February 18, 2021) submitted with the application 11 Orchard Street is a 7,120 (+/-) square foot lot containing two separate structures. The structure towards the rear of the lot (hereinafter, rear structure) is a single-family residential dwelling, and the structure towards the front of the lot (hereinafter, front structure) is a two-family residential dwelling. 11 Orchard Street is in the Residential Two-Family (R2) zoning district. The use of the land at 11 Orchard Street is determined to be three-family dwelling, as the property contains three dwelling units split across the two separate structures. Three-family dwelling is a nonconforming use in the R2 zoning district.

4. The proposal is to change from one non-conforming use (three-family dwelling) to another nonconforming use (four-family dwelling) by adding a third residential dwelling unit to the front structure.
5. The plot plan submitted to the Board (dated February 18, 2021) shows an existing lot area per dwelling unit was 2,373(+/-) square feet, and the proposed lot are per dwelling unit was 1780(+/-) square feet. Per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance the minimum lot are per dwelling unit in the Residential Two-Family (R2) district is 7,500 square feet.
6. In the petition date-stamped February 23, 2021 the petitioner states, “the main [front] structure is very large, containing 12 rooms with 8 bedrooms. The design and historic use... has been as a 3-family, with one unit located on each floor, as evidenced by the existence of full kitchen and plumbing connections on the third floor of the existing primary structure”.
7. Upon first receiving the petition, Building Commissioner, Tom St. Pierre expressed concern to the applicant that the rear structure was a legal grandfathered dwelling unit. If the rear structure and its dwelling unit were illegal, the resulting two-family dwelling in the front structure would conform to the ordinance, and the requested relief would be inapplicable.
8. On April 21, 2021 Staff Planner Lev McCarthy received several materials from the petitioner supporting their claim that the rear structure existed as a dwelling prior to by-laws or ordinances that rendered it non-conforming. Building Commissioner, Tom St. Pierre reviewed the materials, and confirmed that the rear structure was an existing nonconforming single-family dwelling unit.
9. The requested relief, if granted, would allow the petitioner to add a unit to the existing front structure at 11 Orchard Street, changing the property use from one nonconforming use (three-family dwelling) to another nonconforming use (four-family dwelling).
10. Prior to the April 21, 2021 public hearing Staff Planner, Lev McCarthy, received three (3) public comments and one (1) petition with twenty-nine (29) signatures opposing the petition.
11. 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 April 21, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
12. At the April 21, 2021 public hearing, representative Attorney Bill Quinn discussed the proposal. Mr. Quinn stated the petitioner purchased the subject property in December 2020, from a family that had owned it for seventy (70) years. Mr. Quinn presented the plot plan submitted with the original application, showing two structures on the lot. He stated the front structure appeared to have been built as a three-family home, but since the 1960s it has been used as a two family structure with one unit on the first floor and a large unit on the second and third floor. The proposal is to add a third unit to the front structure that would

fit within the existing third floor. Mr. Quinn stated that plot plan shows six parking spaces, which would fulfill the parking requirements for the additional unit. He presented the Statement of Grounds/Hardship, and described how the proposal meets the criteria for a special permit and variance as requested in the petition.

13. At the April 21, 2021 public hearing Peter Copelas questioned the petitioner's statement that the property is not marketable with the front structure as a two-family house. Mr. Copelas noted the petitioner had bought the property recently and understood what the current circumstances were. Mr. Copelas noted that Mr. Quinn acknowledged that the front structure has been a two-family dwelling since the 1960s. Mr. Quinn clarified his statement, saying that having a unit with eight bedrooms and run it as two apartments is wasteful of space, and wasteful in the sense of providing housing in the city of Salem. Mr. Quinn stated the configuration with two units is more difficult to rent than three units would be. Paul Viccica stated that the property has been used as a two unit since the 1960's, and the assessor's records show it is two units. Mr. Viccica stated that excess space does not fulfill the criteria for a variance; he states excess space is not a hardship.
14. At the April 21, 2021 public hearing Rosa Ordaz asked the applicant for evidence that the front structure used to be a three-family dwelling. The applicant, Erjola Cani, stated that she purchased the property intending to change the front structure into a three-family dwelling. Ms. Cani stated that the previous owner told her that the front structure used to be a three-family.
15. At the April 21, 2021 public hearing Peter Copelas stated that he looked back at the listing for this property, and it shows six bedrooms total for both buildings, and there seems to only be two windows on the whole third floor. Mr. Viccica stated this is a two-unit structure, it has been assessed that way and taxed that way. Mr. Viccica stated there is no evidence that it was legally a three-unit building. He noted the information submitted with the application shows two units in the front structure.
16. At the April 21, 2021 public hearing, six (6) members of the public; Richard Rivera of 17 Orchard Street, City Councillor Megan Riccardi of 23 Orchard Street, Anne Sterling of 29 Orchard Street, Therese Golden of 6 Orchard Street, Dave and Ellen Petto of 7 Orchard Street, and Andrew Fett of 0 Felt Street Way expressed concerns about the proposal. No (0) members of the public spoke in support.
17. At the April 21, 2021 public hearing, the Board discussed the proposal. Chair Duffy stated that the Board did not see any evidence that there had ever been a legal third unit in the front structure, so the proposal would not restore a prior existing condition. He stated the proposal would allow an additional unit. He stated he did not see the hardship. Mr. Duffy noted that the present owner came to this condition with full knowledge that the front structure was an existing two-unit structure. Mr. Duffy stated the notion the front structure may become a three-unit structure was speculative and does not make sufficient grounds for a variance.

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearings, and after thorough review of the petition, including the application narrative and plans, makes the following **findings** that the proposed project **does not** meet the provisions of the City of Salem Zoning Ordinance:

Variance Findings:

1. It is not clear that 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. It has not been demonstrated that literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant. The applicant purchased the property knowing that the front structure was an existing two-unit structure.
3. Desirable relief may not 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.

Special Permit criteria were not discussed in detail by the Board. Members of the Board expressed that variance criteria were not met by this petition.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted none (0) in favor and five (5) opposed to grant to Erjola Cani the requested a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use (three-family dwelling) to another (four-family dwelling), and a variance per Section 4.1.1 *Table of Dimensional Requirements* from minimum lot area per dwelling unit at **11 Orchard Street**.

Failing to receive four votes in favor, the petition for a variance is denied.


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.