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BOARD OF APPEALS

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2021 OCT -6 PM 2:20
CITY CLERK
SALEM, MASS

October 6, 2021

Decision

City of Salem Board of Appeals

Petition of JOHN H. CARR, JR. to appeal a decision of the Building Inspector per M.G.L. ch.40A sections 8 and 15. The petitioner is appealing the Building Inspector's decision that 23 RIVER STREET (Map 26, Lot 644) (R2 Zoning District) is a lawfully existing non-conforming lot containing a lawfully existing non-conforming structure.

A public hearing on the above Petition was opened on July 21, 2021, pursuant to M.G.L Ch. 40A, § 11; continued to September 22, 2021, and closed on that date.

On July 21, 2021, Mike Duffy (Chair), Peter Copelas, Paul Viccica, Rosa Ordaz, Carly McClain, and Steven Smalley (alternate) were present; no members were absent; no testimony was heard. On September 22, 2021, Mike Duffy (Chair), Peter Copelas, Paul Viccica, Rosa Ordaz, and Carly McClain were present; Steven Smalley (Alternate) was absent.

The petitioner seeks to appeal a decision of the Building Inspector per M.G.L ch.40A sections 8 and 15. The petitioner is appealing the Building Inspector's decision that 23 River Street is a lawfully existing non-conforming lot containing a lawfully existing non-conforming structure.

Statements of Fact:

1. On March 29, 2021, the owner of the property at 23 River Street was issued a building permit to renovate an existing non-conforming two-family residential structure in the Residential Two-Family (R2) zoning district.
2. On May 6, 2021, John H. Carr of 7 River Street submitted a written statement to Building Inspector Tom St. Pierre via email requesting an enforcement action, specifically that Mr. St. Pierre revoke the building permit issued on May 6, 2021, and require the owners of 23 River Street to seek zoning relief for their proposed renovations.
3. On May 20, 2021, Mr. St. Pierre submitted a written response to Mr. Carr stating Mr. St. Pierre's decision to not revoke the building permit for 23 River Street.
4. In the petition date-stamped June 17, 2021, the petitioner submitted to the Zoning Board of Appeals an application to appeal a decision of the Building Inspector from May 20, 2021 (the "Decision"). In the written Decision, the Building Inspector states in part, "the non-conforming dwelling located on 23 River Street has not lost its protected status because it

has not been abandoned and it has been sufficiently used. Of note, although it appears the property has been in foreclosure, the bank has continued to secure the property, has kept the water on, paid the real estate taxes and conducted a substantial environmental cleanup at the property". In the application to the Zoning Board of Appeals, the petitioner, Mr. Carr, asked the Zoning Board to overturn Mr. St. Pierre's May 20, 2021, Decision regarding 23 River Street.

5. 23 River Street is owned by Paschal Corrigan.
6. On July 19, 2021, the Board received five affidavits signed by the following individuals: John H. Carr Jr. of 7 River Street, Jeremiah Jennings of 18 River Street, Justin Whittier of 10 River Street, Frederick C. Biebesheimer, IV of 17 ½ River Street, and Lisa Ann Spence of 17 ½ River Street. The affidavits stated in part: "Having in mind that there are **more than five years** that 23 River Street was completely empty and unoccupied between February 16, 2016 and February 8, 2021, when Paschal Corrigan acquired title to the property, and having in mind that a prior nonconforming use 'shall lose' such use if 'not used for a period of two years,' absolutely no convincing or persuasive evidence to the contrary has been introduced in support of Mr. St. Pierre's May 20, 2021 Opinion".
7. Prior to the July 21, 2021, public hearing. The property owner, Paschal Corrigan, contacted Staff Planner Lev McCarthy in-person and via email requesting that the board continue the petition to the "next available meeting of the zoning board and not beyond".
8. 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.
9. At the July 21, 2021, public hearing the petitioner, Attorney John H. Carr, introduced himself to the Board. Mr. Carr stated that he received a request from the property owner to continue the public hearing (see statement #7 above). Mr. Carr requested to continue the public hearing to the regularly scheduled meeting on September 22, 2021. The Board voted five (5) in favor (Mike Duffy (Chair), Peter Copelas, Rosa Ordaz, Paul Viccica, and Carly McClain) and none (0) opposed to continue the hearing to the regularly scheduled meeting on Wednesday, September 22, 2021, at 6:30 pm.
10. For the same reason noted in statement #8 above, the September 22, 2021, meeting of the Salem Zoning Board of Appeals was held remotely, via the online platform Zoom.
11. At the September 22, 2021, public hearing, petitioner John H. Carr discussed the appeal petition. Mr. Carr stated he has lived at 7 River Street for forty-eight (48) years and has first-hand knowledge of 23 River Street. Mr. Carr stated that well over two (2) years before Paschal Corrigan purchased 23 River Street in February 2021, the property had been completely empty with no residents. Mr. Carr stated that 23 River Street had the look of a completely abandoned building. Mr. Carr mentioned the five affidavits submitted to the Board from neighbors who attest that the home was abandoned (see statement #6 above).

Mr. Carr stated the burden is on the Building Inspector to argue that the home has not gone into disuse. Mr. Carr repeated three statements from Mr. St. Pierre's May 10, 2021, written decision. Mr. Carr described those statements to be: 1) The bank had foreclosed on mortgage continued to pay real estate, 2) the bank maintained heat and paid water bills and water connection, and 3) the bank paid for cleanup of the property. Mr. Carr argued that none of those reasons have anything to do with use of the property. Mr. Carr concluded his testimony by saying that if the owner wants to have a two-family at 23 River Street they need to apply for a special permit and have the Zoning Board of Appeals vote to approve it.

12. At the September 22, 2021, public hearing the property owner, Paschal Corrigan offered testimony. Mr. Corrigan stated that if a bank owns a property it should not count as abandoned.
13. At the September 22, 2021, public hearing the Board asked questions of the petitioner. Peter Copelas stated that just because there is no tenant does not mean there was an abandonment of use. Mr. Copelas asked Mr. Carr: what constitutes abandonment? The petitioner, John H. Carr stated that the State Legislature changed the meaning of discontinuance to entail only use, not abandonment.
14. At the September 22, 2021, public hearing Building Inspector Tom St. Pierre offered testimony. Mr. St. Pierre stated the decision dated May 10, 2021, was written in consultation with City Solicitor Beth Rennard. He states that Mr. Carr has a simple read of discontinuance and nonuse that relies on use, but Mr. St. Pierre's interpretation of nonuse requires intent.
15. At the September 22, 2021 public hearing five (5) members of the public spoke in favor of the petition. No (0) members of the public spoke in opposition to the petition. Those speaking in support were Justin Whittier of 10 River St, Jeremiah Jennings of 18 River Street, Justin Whittier of 10 River Street, Frederick C. Biebesheimer, IV of 17 ½ River Street, and Lisa Ann Spence of 17 ½ River Street.
16. At the September 22, 2021, public hearing Peter Copelas stated that he has to believe that there is more nuance to the definition of use than the petitioner is proposing. Mr. Copelas stated that because St. Pierre consulted with the City Solicitor, he feels that they have not been presented with enough evidence to overturn the permit and decision of the Building Inspector.
17. At the September 22, 2021, public hearing the voted five (5) in favor (Carly McClain, Mike Duffy (chair), Rosa Ordaz, Peter Copelas, and Paul Viccica), and none (0) opposed to close the public hearing and proceed to discussion amongst the Board.
18. At the September 22, 2021, public hearing, Chair Duffy discussed the petition, evidence, and findings. He stated that in Salem, Building Inspector Tom St. Pierre is the person charged with interpreting the Salem Zoning Ordinance. In this case, Mr. St. Pierre consulted with City legal counsel, and responded to the request for enforcement from Mr. Carr with a written statement that incorporated evidence that supported his decision that there was not

an intentional disuse; that the bank continued to pay the taxes, kept the water on, and conducted an environmental cleanup. Mr. Duffy agreed with Mr. Copelas that they value Mr. St. Pierre's decision, opinions, and interpretation of the Zoning Ordinance. Mr. Duffy stated that based on the evidence considered in the record at the public hearing, Mr. St. Pierre's decision was sufficiently supported and the applicant has not convinced the Board that reasons existed to sustain this appeal of the Building Inspector's May 10, 2021, decision.

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 (Paul Viccica, Peter Copelas, Mike Duffy, Carly McClain, Rosa Ordaz) to the petition of JOHN H. CARR, JR. to appeal a decision of the Building Inspector per M.G.L ch.40A sections 8 and 15. The petitioner is appealing the Building Inspector's decision that 23 RIVER STREET (Map 26, Lot 644) (R2 Zoning District) is a lawfully existing non-conforming lot containing a lawfully existing non-confirming structure.

The administrative appeal was 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.