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CITY CLERK
SALEM, MASS

September 1, 2021

Decision

City of Salem Board of Appeals

Petition of SALEM WATERVIEW DEVELOPMENTS, LLC for a variance from parking requirements in Section 5.1.9 *Central Development (B5) District* of the Salem Zoning Ordinance to provide one parking space per new dwelling unit rather than the required 1.5 spaces per unit at 30 FEDERAL STREET (Map 35, Lot 190) (B5 Zoning District).

A public hearing on the above petition was opened on August 18, 2021, pursuant to M.G.L Ch. 40A, § 11, and closed on that date with the following board members present: Mike Duffy (Chair), Paul Viccica, Rosa Ordaz, Carly McClain, and Steven Smalley (Alternate). Peter Copelas was absent.

The petitioner seeks a variance from parking requirements in Section 5.1.9 *Central Development (B5) District* of the Salem Zoning Ordinance to provide one parking space per new dwelling unit rather than the required 1.5 spaces per unit at 30 Federal Street.

Statements of Fact:

1. In the petition date-stamped June 23, 2021, the petitioner requested a variance from requirements of Section 5.1.9. to “allow one parking space per residential dwelling unit, rather than 1.5 spaces as required by the zoning ordinance” at 30 Federal Street.
2. 30 Federal Street is owned by petitioner Salem Waterview Developments, LLC.
3. 30 Federal Street is a commercial building in the Central Development (B5) zoning district.
4. The existing structure is three and one-half (3.5) stories tall and is separated from the adjacent 28 Federal Street by a party wall.
5. The proposal is to expand the existing structure by constructing a four (4) story mixed use addition to the rear of the existing structure. The proposed expansion includes four (4) off-street parking spaces at ground level with retail space on the second floor and four (4) residential units on the third and fourth floors.
6. Section 5.1.9 *Central Development (B5) District* of the Salem Zoning Ordinance lists the off-street parking requirements in the B5 district. Per Section 5.1.9 structures in the B5 are required to provide one and one-half (1.5) off-street parking spaces per dwelling unit in new construction. The proposed four (4) residential dwelling units in new construction would require six (6) off

street parking spaces, and the petitioner proposed only four (4) off street spaces. The petitioner correctly sought a variance from this parking requirement.

7. 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 August 18, 2021, meeting of the Board of Appeals was held remotely, via the online platform Zoom.
8. At the August 18, 2021, public hearing, attorney Scott Grover, petitioner Michael Becker of Salem Waterview Developments, LLC. and project architect Dan Ricciarelli of Seger Architects discussed the proposal. Mr. Grover stated 30 Federal Street is in the Central Development (B5) district which puts it in the jurisdiction of the Salem Redevelopment Authority (SRA). The applicant is proposing an addition to the rear of the structure. Original plans submitted to the SRA included one commercial space and four new residential units in the second, third, and fourth floors of the addition. This plan was in full compliance with dimensional requirements of the Zoning Ordinance, but because the units are in new construction, the project would require one and one-half (1.5) off-street parking spaces per dwelling unit for a total of six (6) parking spaces, compared to the four (4) that were proposed. In an attempt to comply with the parking requirements, the petitioner proposed an additional two (2) parking spaces off Federal Street at the front of the building where there is currently a landscaped courtyard. Mr. Grover stated this idea was opposed by neighbors and rejected by the SRA. In response, the petitioner proposed to relocate two of the proposed residential units into the existing structure so the three (3) parking spaces required for the two (2) remaining residential units in the addition could fit on-site, while the two (2) required parking spaces for the residential units in the existing structure could be satisfied with spaces in the municipal garage. The SRA approved the plan to add two (2) residential units to the existing building, relocate two (2) commercial tenants to the new building, and add two (2) residential dwelling units to the new structure. This plan would comply with all the off-street parking requirements of the zoning ordinance. Since that approval, the property owner has learned that the tenants on the existing commercial space are resistant to being relocated to the new addition. Mr. Grover stated the petitioner changed the plan to keep the existing units as commercial offices and places all four (4) of the proposed new residential dwelling units into the new addition.
9. At the August 18, 2021, public hearing attorney Scott Grover described how the petition meets the variance criteria. Mr. Grover stated the hardship is due to the inability to use the front yard for parking. Mr. Grover continued that if the SRA would permit parking in the front area a variance would be unnecessary. Mr. Grover stated the site is close to public transportation and several public parking facilities, so the proposed one-to-one parking ratio would not burden the residents or the neighborhood. He stated a one-to-one parking ratio has been recognized as appropriate by other City boards in the vicinity of this project. He stated the proposal meets the intent of the ordinance to provide adequate parking, but not excessive parking.
10. At the August 18, 2021, public hearing the board discussed the proposal. Carly McClain questioned the petitioner's claim that the existing landscaping constitutes a hardship. Ms.

McClain emphasized the need for parking in the downtown area. Mr. Grover responded that the petitioner had proposed two (2) parking spaces to the SRA, that would have left substantial open space. He continued to say that one (1) parking space per unit in the downtown area is becoming more common.

11. At the August 18, 2021, public hearing the property owner, Mike Becker (of 2 School Street Court, Salem, MA), stated that the new addition to the building is not built yet, so if the petitioner needed to relocate the existing commercial tenants into the new addition, there would be substantial disruption to the tenants' businesses.
12. At the August 18, 2021, public hearing Paul Viccica stated that the hardship appeared to come from the Salem Redevelopment Board's decision to not permit a proposal with two (2) parking spaces in place of the existing courtyard.
13. At the August 18, 2021, public hearing architect Dan Ricciarelli of Seger Architects (10 Derby Square, Salem, MA) presented the project plans and elevations. Mr. Ricciarelli noted that access to the proposed parking is provided by a deeded agreement with abutting properties. Mr. Ricciarelli stated that if the petition was approved, the applicant would then need to return to the Salem Redevelopment Authority for a final sign-off and approval. He noted that the exterior design of the addition will not change regardless of if the uses are residential or commercial.
14. At the August 18, 2021, public hearing, no (0) members of the public spoke in favor of the petition, and two (2) members of the public expressed concerns that the proposal would have a negative impact on traffic and parking.
15. At the August 18, 2021, public hearing Board Chair Mike Duffy read aloud summaries of thirteen (13) written public comments that were submitted to the board ahead of the August 18, 2021, hearing. These written comments included two petitions; the first petition was signed by twelve (12) residents at 28 Federal Street, and the second petition was signed by seventeen (17) residents at 1 Washington Street.
16. At the August 18, 2021, public hearing, the Board discussed the proposal. Chair Duffy discussed the criteria for a variance, and the testimony provided by the petitioner. Mr. Duffy noted that regardless of the board's vote, there will only be four parking spaces. The board's vote will only serve to decide where the uses are placed in the existing and proposed building. Mr. Duffy noted that the financial circumstances may constitute a hardship. Mr. Duffy noted that the SRA has required that the applicant not provide parking in a portion of the lot that is currently a landscaped courtyard. Mr. Duffy stated concern that if the Board did not grant the ordinance, the petitioner would achieve the same ends through a more costly and circuitous route that would be detrimental to the tenants and the neighbors. Mr. Duffy noted that this could constitute financial concerns and practical hardships. Mr. Duffy noted that the special circumstance that effects this land is the Salem Redevelopment Authority's insistence that the applicant not place two additional off-street parking spaces on the corner of Federal Street and Washington Street where there is currently a landscaped courtyard.

17. At the August 18, 2021, public hearing, the petitioner Mike Becker stated that the existing structure has a party wall. The party wall is six (6) feet high and extends from the façade of the building to the front lot line along Federal Street. Mr. Becker stated if the wall remained and parking was placed in the landscaped courtyard drivers exiting the parking would have a difficult time seeing pedestrians and cars approaching from Federal Street, constituting a safety concern.
18. At the August 18, 2021, public hearing Carly McClain noted that the applicant did not provide any testimony from the current tenants. Ms. McClain states she will believe the petitioner when they say the tenants do not want to relocate to the proposed addition, but written statements or testimony from current tenants would have been valuable to support the claim of a hardship.

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 meets the provisions of the City of Salem Zoning Ordinance:

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: This lot is located on the corner of Federal Street and Washington Street in the Central Development (B5) zoning district and within the jurisdiction of the Salem Downtown Renewal Plan. This lot is unusual in that it has an existing landscaped courtyard on the corner of Federal Street and Washington Street that the Salem Redevelopment Authority (SRA) required the applicant retain as open space to receive the required SRA approvals. The lot is near public transit. The petitioner and representatives stated that adding parking to the remaining open space that is an existing courtyard would pose a safety concern because there is conflicting traffic on Federal Street and a party wall that obscures sightlines from any proposed parking spaces.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant because the applicant argued relocating commercial tenants into the new addition would generate financial cost and practical difficulty. Not approving the requested variance would lead the applicant to construct a similar addition, with a different internal layout of uses, via a significantly more costly and circuitous method.
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), Rosa Ordaz, Paul Viccica, Steven Smalley) and one (1) opposed (Carly McClain)** to grant to Salem Waterview Developments, LLC. the requested variance from parking requirements in Section 5.1.9 *Central Development (B5) District* of the Salem Zoning Ordinance

to provide one parking space per new dwelling unit rather than the required 1.5 spaces per unit at 30 Federal 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. 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, as amended. Any modification to the plans and dimensions must be approved by the Board of Appeals, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

Special Conditions:

1. The applicant shall provide two (2) parking passes in a municipal parking facility for use by residents or tenants at 30 Federal Street.

Mike Duffy / LM

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.