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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK
SALEM, MASS

December 1, 2020

Decision

City of Salem Board of Appeals

Petition of 321 JEFFERSON PROPERTY LLC for variances per Sections 3.3.4 *Variance Required* and 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum width of side yard and a special permit per Section 3.3.2 *Nonconforming Uses* to change from one nonconforming use to another nonconforming use in order to change an existing nonconforming three-family dwelling to a nonconforming six-family dwelling and construct a three-story addition within the required side yard setback at 321 JEFFERSON AVENUE (Map 23, Lot 174) (I Zoning District).

A public hearing on the above Petition was opened on October 21, 2020 pursuant to M.G.L. Ch. 40A, § 11 and closed on that date with the following Board members present: Peter A. Copelas, Mike Duffy (Chair), Jimmy Tsitsinos, Paul Viccica, and Steven Smalley (Alternate). Rosa Ordaz and Carly McClain (Alternate) were absent.

The petitioner seeks variances per Sections 3.3.4 *Variance Required* and 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum width of side yard and a special permit per Section 3.3.2 *Nonconforming Uses* to change from one nonconforming use to another nonconforming use in order to change an existing nonconforming three-family dwelling to a nonconforming six-family dwelling and construct a three-story addition within the required side yard setback at 321 Jefferson Avenue.

Statements of Fact:

1. In the petition date-stamped September 30, 2020, the petitioner requested variances per Sections 3.3.4 *Variance Required* and 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum width of side yard and a special permit per Section 3.3.2 *Nonconforming Uses* to change from one nonconforming use to another nonconforming use in order to “alter existing but non-conforming 3-family dwelling in Industrial District to non-conforming 6-family dwelling with adequate on-site parking for [sic] the new dwelling units (6 spaces).”
2. 321 Jefferson Avenue is owned by petitioner 321 Jefferson Property LLC. The petitioner was represented by William F. Quinn, Esq. of Tinti & Navins, PC.
3. 321 Jefferson Avenue is a three-family home in the Industrial (I) zoning district. This is a nonconforming use in the district.
4. 321 Jefferson Avenue is nonconforming to dimensional requirements including at least minimum lot area, frontage, depth of front yard, and width of side yard (right side). Residential uses are not allowed in the Industrial zoning district. There is no minimum lot area per dwelling unit in the Industrial zoning district.

5. The proposal is to add a three-story addition, which would infringe on the required side yard setback on the left side. A side setback of 30 feet is required in the Industrial zoning district; a setback of 11.1 feet would be provided under this proposal. The proposal includes adding three dwelling units, bringing the total number of dwelling units at the property to six. The new infringement on the left side setback brings about the need for the variance request
6. The change from one nonconforming use to another brings about the need for the special permit request per Section 3.3.2 *Nonconforming Uses*. Although both three-family and six-family dwellings fall into the “Dwelling, Multifamily” use category in Section 3.1 *Principal Uses* of the Salem Zoning Ordinance, per Section 3.3.2, one of the “types of changes to nonconforming uses” which “may be considered by the Board of Appeals” is “Change or substantial extension of the use.” Increasing from three dwelling units to six units falls into this category.
7. The requested relief, if granted, would allow the petitioner to change an existing nonconforming three-family dwelling to a nonconforming six-family dwelling and construct a three-story addition within the required side yard setback at 321 Jefferson Avenue.
8. 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 October 21, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
9. Prior to the October 21 meeting, the applicant provided pro forma figures discussing the anticipated costs and income involved with the project. These were added to the project file.
10. At the October 21, 2020 public hearing, Attorney William Quinn discussed the proposal. Attorney Quinn noted that the owners updated the existing three-family home into a nice-three family home. He stated that upon hearing that the City needs housing, the applicants determined that due to the lot’s unique shape and size, they had the space to convert to a six-family dwelling. Attorney Quinn stated that the zoning is unusual, noting that the property is in an industrial zone but that there are several residential properties nearby on Jefferson Avenue. Attorney Quinn noted the petition needs variance relief on the right-side setback as well as special permit relief to change from one non-conforming use to another. He stated that because of the size of the site, they can accommodate six units and nine total parking spaces (six in addition to the existing three parking spaces). Attorney Quinn suggested that for the questions of appropriateness and density, there is a balancing of whether the City favors having three new, code-compliant, two- or three-bedroom housing units as opposed to deciding that this would be detrimental to the neighborhood or that the variance is not grounded.
11. At the October 21, 2020 public hearing, architect Dan Ricciarelli discussed the plans for the proposal, explaining the design and noting that the addition would keep with neighborhood character.
12. At the October 21, 2020 public hearing, the Board discussed the petition. Peter Copelas stated that the applicant already purchased and renovated the existing three-family home because they saw a reasonable return on their investment. He argued that there is no justification for a hardship because there is no hardship in continuing to use the property as-is. Paul Viccica expressed his agreement that the proposal creates its own hardship; he noted that the pro forma only shows that an addition needs to be a certain size to be profitable. Attorney Quinn noted that grounds for hardship can include financial hardship, and that the pro forma is meant to show that three units need to be built for the project to be viable; Mr. Viccica noted that the existing building must be making adequate income as it is in order to exist, and stated the variance is being requested for a hardship that only exists because of the proposal. The Board discussed whether there are nearby multifamily homes with more than

three units. Mr. Copelas stated it is mostly three-family homes. Property owner Marc Galardi stated there is one five-unit building down the street. Chair Duffy noted that the Board is constrained as certain findings are needed to approve a variance; he noted that the existing use is fully viable and that the finding of a hardship is difficult. Mr. Viccica noted it is not clear where the hardship comes from for side setback, when the existing building seems to comply and seems to be profitable because it has been renovated. He stated that there are concerns that it does not meet the gist of the zoning and about whether it is detrimental to the character of the neighborhood.

13. At the October 21, 2020 public hearing, no (0) members of the public spoke in favor of the proposal and two (2) members of the public expressed concerns about the proposal, including about the size of the proposal, parking, and water runoff.
14. At the October 21, 2020 public hearing, there was further discussion by the Board, including about parking requirements at the site. Chair Duffy noted that he struggled with the finding of hardship and also noted concerns about drainage and about whether the proposal would fit into neighborhood character; he noted that he struggled to find that the proposal would be in keeping with the neighborhood character. Building Commissioner Tom St. Pierre noted that there is a real drainage problem on Jefferson Avenue due to inadequate drains and suggested it would be appropriate to get an engineer to weigh in.

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, makes the following **findings** that the proposed project **does not** meet the provisions of the City of Salem Code of Ordinances:

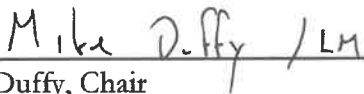
Variance Findings:

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 existing three-family use of the property is viable. It appears that financial hardship from seeking to add new units to the building would solely be a product of adding new units; without the proposed addition, such hardship does not exist.
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 (Mike Duffy (Chair), Steven Smalley, Peter Copelas, Jimmy Tsitsinos, and Paul Viccica) to grant to **321 Jefferson Property LLC** the requested Variance per Sections 3.3.4 *Variance Required* and 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum width of side yard and the requested Special Permit per Section 3.3.2 *Nonconforming Uses* to change from one nonconforming use to another nonconforming use in order to change an existing nonconforming three-family dwelling to a nonconforming six-family dwelling and construct a three-story addition within the required side yard setback at **321 Jefferson Avenue**.

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.