



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS 2020 DEC 30 AM 11:29

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

CITY CLERK  
SALEM, MASS

December 28, 2020

## Decision

### City of Salem Board of Appeals

**Petition of AGRON GJERASI for a special permit per Section 3.1.2 *Special Permit: Zoning Board of Appeals* of the Salem Zoning Ordinance to construct an Adult Day Care center within the first-floor space at 34 ST. PETER STREET (Map 35, Lot 180) (R3 Zoning District).**

A public hearing on the above Petition was opened on December 16, 2020 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), Rosa Ordaz, Paul Viccica, Carly McClain (Alternate), and Steven Smalley (Alternate). Board members Peter Copelas and Jimmy Tsitsinos were absent.

The petitioner seeks a special permit per Section 3.1.2 *Special Permit: Zoning Board of Appeals* of the Salem Zoning Ordinance to construct an Adult Day Care center within the first-floor space at 34 ST. PETER STREET.

#### **Statements of Fact:**

1. In the petition date-stamped November 25, 2020, the petitioner requested a special permit per Section 3.1.2 *Special Permit: Zoning Board of Appeals* of the Salem Zoning Ordinance to, “construct an Adult Day Care Center within the 1st floor space located at 34 St. Peter Street, Salem, MA, in the R-3 Zoning District”.
2. 34 St. Peter Street is owned by the Roman Catholic Archbishop of Boston. The petitioner, Agron Gjerasi submitted a written statement of consent from the owner authorizing the petitioner to “pursue the change of use application” with the Salem Zoning Board of Appeals.
3. 34 St. Peter Street is a two-story building in the Residential Multifamily (R3) zoning district.
4. The proposal is to renovate the first floor and use it as an Adult Day Care center. As noted in the Statement of Grounds submitted with the petition, the proposed renovations will, “replace the windows, will install a new heating/cooling system, will install sprinklers and all the fire detection and fire protection devices, will install new bathrooms, and internal ramp and a lift”. The Statement continues; “Except for window replacement and the mechanical equipment on the roof no other external modifications are part of this application”.
5. Adult day care is designated in Section 3.1 *Table of Principal and Accessory Use Regulations* as a use that, “may be permitted as a special permit only if the Zoning Board of Appeals so determines and grants a special permit therefore as provided in Section 9.4 of this Ordinance subject to such restrictions as are set forth elsewhere in this Ordinance, and such restrictions as said Board may establish”.
6. The requested relief, if granted, would allow the petitioner to renovate the first floor of 34 St. Peter Street, and then use the first floor for Adult day care.

7. 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 December 16, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
8. During the December 16, 2020 meeting, attorney Scott Grover discussed the proposal. The petitioners provided plans of the existing structure and the proposed changes. Attn. Grover explained there will be no changes to the exterior of the structure except for replacing windows and adding a concrete ramp to the St Peter Street side of the structure. Attn. Grover explained that when the center is operating at full capacity they will have 70-100 clients who are picked up and dropped off with five or six vans and three mini vans. The center will employ six drivers and about 10 staff inside the center. Attn. Grover said there is abundant parking on the St. Peter Street side of the property, and twenty of those spaces are dedicated to the proposed adult day care center. 34 St. Peter Street is in the R3 zoning district. Attn. Grover explained that in this district Adult Day Care is an approved use if allowed by the zoning board. He said that the community and the neighbors will be well served by this center, in particular the senior center across the street and neighboring Polish church. He thinks the neighborhood character will be improved by returning an underused building to active use. Attn. Grover said the project will have a positive fiscal impact since the for-profit use will generate tax revenue for the City, and the new use will bring new employment opportunities.
9. At the December 16, 2020 public hearing, no (0) members of the public spoke in favor of or in opposition to the proposal.
10. At the December 16, 2020 public hearing Paul Viccica asked about parking and transportation. Since the clients for this facility would be dropped off and picked up every day, how will the petitioner avoid queuing that will disrupt traffic on St Peter Street? The petitioner, Agron Gjerasi, described how the facility will use the available parking spots to offload clients from the mini vans and busses in a way that prevents negative traffic impacts. Mr. Viccica asked about the timing for drop off and pickup: Does the petitioner expect that any of the uses after COVID would result with people arriving at the same time, and cause traffic? Mr. Gjerasi explained that the arrivals are staggered. The petitioners operate another adult day care center in Braintree, MA, and at that location it is rare that more than two vehicles arrive at the same time. Offloading from the busses takes no more than five minutes for fifteen passengers. Rosa Ordaz asked where the clients will gather outside. Attn. Grover explained there is an existing space on the property that could be used. Chair Duffy asked if there are any other licensing requirements or permitting to open this facility. The petitioners responded that there are none.
11. At the December 16, 2020 public hearing, Chair Duffy discussed how the proposal meets the criteria for special permit (as noted below).

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:

**Special Permit Findings:**

The Board finds that the proposed modifications will not be substantially more detrimental than the existing nonconforming structure to the neighborhood:

1. Social, economic, or community needs are served by this proposal:

2. Traffic flow and safety, including parking and loading: There issues were discussed, and it seems there is ample parking space. So long as there is good management of client arrival and departure it seems that there is no detrimental impact.
3. Adequate utilities and other public services already service the structure.
4. Impacts on the natural environment, including drainage: No negative impact is expected.
5. Neighborhood character: This proposal is on a church campus, and this new use is in character for the campus and the neighborhood.
6. Potential fiscal impact, including impact on City tax base and employment: Having a for-profit business with tax obligations would have a positive fiscal impact on the City tax base.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Steven Smalley, Paul Viccica, Carly McClain, Rosa Ordaz, and Mike Duffy (Chair) and none (0) opposed to grant to **Agron Gjerasi** for a special permit per Section 3.1.2 *Special Permit: Zoning Board of Appeals* of the Salem Zoning Ordinance to construct an Adult Day Care center within the first-floor space at **34 St. Peter 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. No change, extension, material corrections, additions, substitutions, alterations, and/or modification to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

  
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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.