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CITY CLERK
SALEM, MASS

February 18, 2021

Decision

City of Salem Board of Appeals

Petition of LEONCIO VIZCAINO for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to construct a five-story extension to an existing one-story structure, and a variance from Section 5.1.9 *Central Development (B5) District* to provide the required off-street parking by use of parking facilities more than 1,000 feet away from the property at 5 HARBOR STREET (Map 34, Lot 411) (B5 Zoning District).

A public hearing on the above Petition was opened on January 20, 2021 pursuant to M.G.L Ch. 40A, § 11; continued to February 17, 2021 and closed on that date. On January 20, 2021, the following Zoning Board of Appeals members were present: Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, Carly McClain (Alternate), and Steven Smalley (Alternate); Peter Copelas and Jimmy Tsitsinos were absent. On February 17, 2021, Mike Duffy (Chair), Paul Viccica, Carly McClain, and Steven Smalley were present; Peter Copelas, Rosa Ordaz, and Jimmy Tsitsinos were absent.

The petitioner seeks a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to construct a five-story extension to an existing one-story structure, and a variance from Section 5.1.9 *Central Development (B5) District* to provide the required off-street parking by use of parking facilities more than 1,000 feet away from the property at 5 Harbor Street.

Statements of Fact:

1. In the petition date-stamped December 22, 2020, the petitioner requested a special permits per Section 3.3.2 *Nonconforming Use* and Section 9.4.2 *Special Permits: Criteria* to “allow the existing non-conforming accessory parking to be changed to allow the petitioner to provide each unit with the required (1) off-street parking space by use of annual parking contract with the City of Salem Museum Place Garage, which is more than 1,000 feet away from the property... or other parking facilities in the vicinity of the property, which change would be no more detrimental to the neighborhood than the existing use”.
2. In the petition date-stamped December 22, 2020, the petitioner requested a variance from Section 5.1.9 *Central Development (B5) District* to “allow the petitioner to provide each of the newly constructed units with the required (1) off street parking space by use of annual parking contracts with the City of Salem Museum Place Garage, which is more than 1,000 feet away from the property, or other parking facilities in the vicinity of the property”.
3. 5 Harbor Street is owned by the petitioner, Leoncio Vizcaino. The petitioner was represented by Attorney Bill Quinn.

4. 5 Harbor Street is a single-story non-residential structure in the Central Development (B5) zoning district. Per the petition, the current property use was “commercial services”.
5. The existing property conforms to dimensional requirements.
6. The proposal is to extend the existing structure by adding five stories containing ten residential units atop the existing single-story structure, resulting in a six-story structure.
7. The petitioner seeks relief from parking requirements, so they can provide the required amount of parking spaces at an off-site parking facility that is more than 1,000 feet from the primary structure.
8. Section 5.1.9 *Central Development (B5) District* of the Salem Zoning Ordinance mandates that new residential dwelling units in the B5 District must make provisions for, “not less than one (1) parking space per dwelling unit for existing buildings”, and that the parking requirements for “rehabilitated” buildings may be accommodated by, “parking at municipal or other parking facilities in the vicinity of the proposed use”. Section 5.1.9 goes on to require that, “All municipal or other parking facilities which are used to satisfy the parking requirement must meet the following criteria: The parking facility must be less than one thousand (1,000) feet from the proposed development”.
9. Prior to the first public hearing for this petition, the Board received at least five (5) public comments. One (1) comment from Salem City Councilor Dominic Dominguez expresses support for the project stating the project will provide, “modern and safe housing units that are badly needed in the neighborhood”. Comments in opposition to the project state concerns about the impact of this development on parking and loading in the neighborhood.
10. 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 January 20, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
11. At the January 20, 2021 public hearing, representative Attorney Bill Quinn discussed the proposal. Mr. Quinn stated the petitioner would like to change the proposal to decrease the overall structure height to four stories, and address parking issues. Mr. Quinn requested a continuance to the February 17, 2021 public hearing of the Zoning Board of Appeals to afford the petitioner time to submit revised plans.
12. At the January 20, 2021 public hearing the Board voted five in favor (Paul Viccica, Rosa Ordaz, Steven Smalley, Carly McClain, and Mike Duffy (Chair)) and none (0) opposed to continue the petition to the next regularly scheduled meeting of the Zoning Board of Appeals on February 17, 2021.
13. On February 9, 2021, the petitioner submitted to the Board a set of revised plans. Changes shown in these plans include lowering the total height by one story, bringing the total height to five stories, and eight dwelling units. The plans show two on-site parking spaces, a decrease from the four nonconforming spaces proposed in the original plans.
14. On February 16, 2021, representative Attorney Bill Quinn, submitted to the Board a request to withdraw without prejudice. In the emailed request, Mr. Quinn wrote, ““The petitioner is re-evaluating his plans in light of neighborhood concerns, and will file again with the ZBA if necessary””.
15. For the same reasons as noted in statement #10 above, the February 27, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.

16. At the February 17, 2021 public hearing, the petitioner was represented by Attorney Bill Quinn. Mr. Quinn described how the applicant initially proposed a five-story structure. He noted there were several public comments raising concerns related to the structure's height and parking. In response to these concerns and other considerations, Mr. Quinn stated that the petitioner revised their proposal to be four (4) stories down from five (5), and eight (8) new residential units down from ten (10). Mr. Quinn said the petitioner is in the process of trying to identify off-site parking, "within a reasonable distance to the building". Rather than continue the process while they work on these revisions, Mr. Quinn requested to withdraw the petition without prejudice.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Mike Duffy (Chair), Paul Viccica, Carly McClain, and Steven Smalley) and none (0) opposed to allow the applicant to withdraw the petition without prejudice.

The application is withdrawn without prejudice.


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.