



KIMBERLEY DRISCOLL
MAYOR

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CITY OF SALEM, MASSACHUSETTS
BOARD OF APPEALS

CITY CLERK
SALEM, MASS.

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

May 18, 2020

Decision

City of Salem Board of Appeals

Petition of LH CAPITAL DEVELOPMENT, LLC for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance for maximum height of buildings (stories) and minimum front and side yard setbacks to expand an existing nonconforming two-family home by raising the existing attic, changing the roof from gambrel to gable, and adding two dormers; by adding a story above the existing two-story rear addition; and by adding egress steps and landings within required front and rear yard setbacks at 7 CURTIS STREET (Map 35, Lot 339) (R2 Zoning District).

A public hearing on the above Petition was opened on January 15, 2020 pursuant to M.G.L Ch. 40A, § 11. The hearing was continued to February 19, 2020 (during which no testimony was heard); March 18, 2020 (during which no testimony was heard); and April 15, 2020, and closed on April 15, 2020, with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, Steven Smalley, and Paul Viccica.

At the January 15, 2020 meeting, Peter A. Copelas, Mike Duffy (Chair), Carly McClain, Rosa Ordaz, Jimmy Tsitsinos, and Paul Viccica were present; Steven Smalley was not yet a member of the Board. At the February 19, 2020 meeting, Peter A. Copelas, Rosa Ordaz, Jimmy Tsitsinos, and Paul Viccica were present; Mike Duffy (Chair) and Carly McClain were absent, and Steven Smalley was not yet a member. At the March 18, 2020 meeting, Peter A. Copelas, Mike Duffy (Chair), Carly McClain, Rosa Ordaz, and Steven Smalley were present; Jimmy Tsitsinos and Paul Viccica were absent. At the April 15, 2020 meeting, Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, Steven Smalley, and Paul Viccica were present, as noted above; Carly McClain and Jimmy Tsitsinos were absent.

The petitioner seeks a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance.

Statements of Fact:

1. In the petition date-stamped November 22, 2019, petitioner Len Karan / Lighthouse Realty requested a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* for maximum height of buildings (stories) and minimum front and side yard setbacks to expand an existing nonconforming two-family home by raising the existing attic, changing the roof from gambrel to gable, and adding two dormers; by adding a story above the existing two-story rear addition; and by adding egress steps and landings within required front and rear yard setbacks at 7 Curtis Street.
2. 7 Curtis Street is a two-family home in the Residential Two-Family (R2) zoning district. This is an allowed use in the R2 zoning district.

3. Len Karan, Principal at LH Capital Development, LLC, submitted a letter which stated in part, "Please let this letter serve as a formal request to change the petitioner from 'Len Karan / Lighthouse Realty' to 'LH Capital Development, LLC' in regards to the 7 Curtis St submission to be reviewed at the 1/15/20 ZBA meeting." This letter was filed with the City Clerk on January 14, 2020. Advertisements for the hearing on this petition listed the petitioner as "LH Capital Development, LLC."
4. The property is nonconforming to several dimensional requirements, including minimum lot area, minimum lot area per dwelling unit, minimum lot frontage and width, maximum lot coverage by all buildings, minimum depth of front yard, minimum depth of rear yard, and minimum depth of side yard (on the southern side of the lot, next to 9 Curtis Street).
5. The existing building includes a main building, which dates from c. 1855 based on Massachusetts Cultural Resource Information System Records, as well as a more recent addition. The initial proposal was to raise the existing attic of the main building by half of a story, change the roof from gambrel to gable, build 36" knee walls, and build two dormers. This would bring this story (story 2.5) to a full, third story. The height in stories (3 stories) would thus be greater than the allowed height (2.5 stories) in the R2 zoning district. The new height in feet (28.5 feet, up from existing 26 feet) would be less than the 35-foot maximum height in the R2 district.
6. In addition, the initial proposal was to add a full story above the existing rear addition, which is currently two stories tall. This would bring the height to three stories, requiring the same relief as noted above. The proposal was to match the proposed main roof in height and construction, with 36" knee walls and a gable roof.
7. Finally, the proposal included adding landings and steps to serve as second means of egress. Four new landings were proposed: two on the left (north) side of the building, one on the front of the building, and one on the rear of the building. Two of these landings would be located within the required rear yard setback of 30 feet; one of those would also be located within the required side yard setback of 10 feet, though it would not decrease the existing nonconforming side yard setback. One landing does not appear to be in violation of any setbacks. The fourth (front) landing is proposed to be located within the front yard setback.
8. The proposal is to divide the existing two-family home into two adjoining townhouses.
9. The application stated, "Currently there are no parking spots on the lot." The initial proposal included up to three off-street parking spaces. Google Maps street view indicates that the paved area in the rear of the property (the Orange Street side) may have been used for the parallel parking of one vehicle.
10. The requested relief, if granted, would allow the petitioner to expand an existing nonconforming two-family home by raising the existing attic, changing the roof from gambrel to gable, and adding two dormers; by adding a story above the existing two-story rear addition; and by adding egress steps and landings within required front, rear, and side yard setbacks at 7 Curtis Street.
11. Prior to the January 15, 2020 meeting of the Board of Appeals, the Board received written comments expressing concern about the proposal from the Salem Historical Commission and Historic Salem, Inc. (HSI). The concerns generally were about changing the historic character of the building.
12. At the January 15, 2020 meeting of the Board of Appeals, Andrew Falkenstein of Concise Design Group discussed the petition. Mr. Falkenstein is listed as the Representative on the application that was submitted to the Board. Mr. Falkenstein stated that he would be asking for a continuance because it had come to his attention that the Historical Commission had questions about the petition. He indicated that he would be happy to work with them, and stated that he would like to hear any

comments or concerns from the Board or public before asking for a continuance. Mr. Falkenstein discussed the proposal, noting that it would be a renovation and describing the proposed changes. He stated they would be looking to sell the property as two separate condominium units: one three-bedroom and one two-bedroom.

13. At the January 15, 2020 public hearing, planner Brennan Corriston noted an issue with the legal advertisement. The advertisement referred to front and side setbacks in one place and front and rear setbacks in another, but in both places, it should have referred to all three—front, side, and rear yard setbacks. He stated that he consulted with the City Solicitor and the petitioner. The City Solicitor said it was OK to move forward as-is, and the petitioner agreed to move forward.
14. At the January 15, 2020 public hearing, Chair Duffy discussed the letters received by the Board. He noted that the letter from the Historical Commission dated January 14, 2020 expresses concerns about the renovations, stating the house was constructed c. 1855 and has been documented in the historic resource inventory. The letter states that the renovations would change the scale and design of the building, removing the character-defining gambrel roof, increasing the building's height in stories with the gable roof and dormers, reorienting the façade to face the street, changing fenestration pattern, adding multiple new entrances, utilizing most of the lot for parking, and exterior AC condenser units which would create a more modern-looking building out of character with the surrounding streetscape. The letter requests to continue the hearing to allow for time for the petitioner to consult with the Historical Commission. Chair Duffy noted that the letter from Historic Salem Inc. dated January 15, 2020 raises many of the same issues asserted in the Historical Commission's letter, also urging for consultation before moving forward.
15. At the January 15, 2020 public hearing, several members of the public spoke about the project. One member of the public, Barbara Cleary, chair of the Preservation Committee at Historic Salem, Inc., expressed that she is looking forward to working with the applicant. Others expressed concerns about the project. Two (2) members of the public stated that they agreed with the comments in the letters. One (1) other member of the public asked a question about showing neighborhood context on "both streets." Two (2) other members of the public also spoke about the property, and though one thought that renovations could improve the property, they both expressed concerns, including regarding loss of green space to parking. There were concerns about the proposed driveway on the Curtis Street side.
16. At the January 15, 2020 public hearing, Mr. Falkenstein noted that the economics of selling two condos means that they do want to have two parking spots, but they will do a landscape plan which will show a green divider between the parking spots, and they are willing to sign something that gets registered that they are not going to pave the driveway; they will use stone or cobblestone instead.
17. At the January 15, 2020 public hearing, Mr. Falkenstein requested to continue the hearing to the February meeting in order to consult with the Historical Commission and HSI. The Board voted five (5) in favor (Rosa Ordaz, Mike Duffy (Chair), Peter A. Copelas, Paul Viccica, and Jimmy Tsitsinos) and none (0) opposed to continue the hearing of 7 Curtis Street to the next regularly scheduled meeting on February 19, 2020.
18. In advance of the February 19, 2020 meeting, on February 10, Len Karan on behalf of LH Capital Development, LLC submitted a written request to continue the hearing for 7 Curtis Street from February 19 to March 18, 2020. This request was duly filed with the City Clerk.
19. At the February 19, 2020 meeting of the Board of Appeals, no testimony was heard for this petition, and the Board voted to continue the petition to the next regularly scheduled meeting on March 18,

2020. The vote was four (4) in favor (Rosa Ordaz, Jimmy Tsitsinos, Paul Viccica, and Peter A. Copelas) and none (0) opposed.
20. Prior to the March 18, 2020 meeting of the Board of Appeals, Len Karan submitted revised plans dated March 9, 2020. In an email to planner Brennan Corrison, Mr. Karan wrote in part, "We ae [*sic*] only requesting permission for the 3 dormers and small roof deck, these were design request HSI made of us."
 21. The Board received a letter from President Timothy R. Jenkins of Historic Salem, Inc., dated March 18, 2020, which in part expressed appreciation for Len Karan "listening to the advice and recommendation of HSI's historic preservation consultants on interior improvements..." In the letter, which is addressed to Mr. Karan, Mr. Jenkins also wrote, "We strongly recommend that you continue to investigate the movement of the utility pole to a new location on Orange St. to allow a curb cut and a single parking space on the east side of the property. As you know, Curtis St. neighbors are very concerned about a further curb cut that results in two parking spaces off Curtis St. because of the street's capacity to handle additional traffic." The letter states, "As a result of the changes you've made in your commitments to further improvements to the property, HSI will be sending a copy of this letter to the Zoning Board of Appeals so that it may be put into the record at their upcoming coming [*sic*] meeting on March 18, 2020."
 22. 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 March 18, 2020 meeting of the Board of Appeals was slated to take place via conference call, with a public call-in option. However, it was determined that the meeting as planned would not meet the temporary requirements of the partially suspended Open Meeting Law, and as such, no testimony should be heard. As such, the meeting was held for the sole purpose of continuing all matters before the Board.
 23. Prior to the March 18, 2020 meeting, Board member Steven Smalley certified that he had examined all evidence pertaining to 7 Curtis Street which was distributed at the single missed session on January 15, 2020, which evidence included an audio recording of the missed session. As such, Mr. Smalley was eligible to participate in future hearings and votes on the matter.
 24. In the March 18, 2020 meeting of the Board of Appeals, held remotely via public conference call, Chair Duffy described each application before the Board and noted that due to the unique circumstances, he would entertain a motion to continue all matters until the next regularly scheduled meeting on April 15, 2020. The vote was four (4) in favor (Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, and Steven Smalley) and none (0) opposed.
 25. Patti Kelleher, Salem Preservation Planner, submitted a memo to Brennan Corrison dated April 10, 2020, noting in part: "While the Commission has not yet reviewed the revised plans, I believe that all members would agree that the current proposal is an excellent example of how to renovate an historic house into modern living units while at the same time, preserving the historic architecture of the building."
 26. The Board received a letter from Laurence Spang, Chair of the Salem Historical Commission, dated April 15, 2020. The letter is discussed in statement #31 below.
 27. The April 15, 2020 meeting of the Board of Appeals was held remotely using the web conference platform Zoom. The meeting was also accessible via public conference call and Salem Access TV.

28. At the April 15, 2020 meeting of the Board of Appeals, Len Karan discussed the petition. He noted that the plans have been revised and modified since the January 15 meeting. Mr. Karan stated that the plans presented on January 15 were for a more modern style development and were met with opposition from the historic committees. They requested a continuance to work with the Historical Commission and HSI on preserving the historic fabric of the building and coming up with plans that preserve the historic nature of the building and allow them to build condos to a modern standard that would be attractive for resale. Mr. Karan noted that they have done very little to change the exterior of the building. The only changes to the original structure are three dormers coming out of the gambrel roof and the roof deck on the second- floor roof of the addition. He noted that they are seeking relief for the roof deck within side and rear yard setbacks. Brennan Corriston noted that the dormers need relief because it is the expansion of a nonconforming structure. Chair Duffy asked if the addition of dormers takes the building to a true third story instead of a two-and-a-half-story. Tom St. Pierre confirmed that the dormers and roof deck take it to a third story.
29. At the April 15, 2020 public hearing, Chair Duffy stated that the Board has received correspondence from Historic Salem, Inc., recounting the process of working through preserving some of the historic features of the building; a memo from Preservation Planner Patti Kelleher, also detailing having worked with the owner to preserve and retain the historically appropriate design aspects of the building. Chair Duffy noted that this correspondence is in the materials on the Salem website [accessible to the public]. Mr. Corriston noted that recent additions to that list are a letter from the Historical Commission and a letter from a few neighbors.
30. At the April 15, 2020 public hearing, Paul Viccica asked about parking. Mr. Karan noted that there is one existing space on the Orange Street side up against the back of the building. He stated that there is no other existing parking. They are proposing a curb cut on the Curtis Street side to allow parking on that side of the building.
31. At the April 15, 2020 public hearing, Chair Duffy read from the letter from the Salem Historical Commission addressing the previous plans and recently revised drawings:
“The Commission recently received revised drawings by Concise Design Group dated 3-9-20. We are pleased to see that these revised plans retain most of the exterior and interior features of the historic building, including the gambrel roof, fenestration pattern, historic entrance and interior staircases. We are also pleased that the Proponent has reduced the amount of parking, creating a lawn and patio along Orange Street and limiting parking on the Curtis Street side of the property. New building features such as dormers, roof deck and second entrance portico are in keeping with the Georgian style. The owner is also proposing to retain the building’s existing 2/2 window configuration for new window units. We encourage the owner to select replacement windows that have exterior applied muntins and not windows with muntins sandwiched between the glass panes or applied on the interior only to further preserve the historic character of the house. We request that in your determination, the ZBA require the Proponent to work with the Planning Department staff to finalize the details of the proposed alternations to maintain the historic character of the property and the neighborhood.

The Commisison [sic] would like to commend the owner for revising his plans for this historic building. We believe that these plans are an excellent example of how to renovate an historic house into modern living units while preserving the historic architecture of the building. We encourage the Zoning Board of Appeals to look favorably upon this request.”

32. At the April 15, 2020 public hearing, Chair Duffy read the above-referenced letter from Historic Salem, Inc. and memo from Patricia Kelleher.

33. At the April 15, 2020 public hearing, Chair Duffy also read the above-referenced letter from neighbors Maureen Buck and Edward Bullock, 11 Curtis Street; Mira Riggin, 2 Curtis Street; Jack Kabral, 8 ½ Curtis Street; and Kathy Streacker, 8 Curtis Street. The letter expresses in part “support to the developer of 7 Curtis Street for his work with the Salem Historical Commission and Historic Salem, Inc. to develop and publish the most recent building renovation plans.” The letter, in part, also asks for clarification regarding parking: “Per the original special permit application, the response to the impact regarding ‘traffic flow and safety, including parking in loading’, reads:

‘Currently there are no parking spaces on the lot. Up to three new on-site parking spaces are planned (see site plan), which will lessen parking congestion on the surrounding streets.’

This statement appears to be inaccurate, as there is currently a parking space on the lot accessible from Orange Street. In the current site plans, there are two tandem parking spots noted. In the plans, the existing Orange Street parking spot has been designated as a brick patio, and parking access is accomplished through a Curtis Street curb cut.

We strongly encourage no Curtis Street curb cut, and no access to parking from Curtis Street for the following reasons.

- Parking at 7 Curtis Street is currently accomplished off of Orange Street.
- The proposed curb cut on Curtis Street has relatively blind access due to the proximity of the next-door house to the property and road.
- Orange Street has better lines of sight and is therefore safer.
- Curtis Street does not go through to Derby Street and receives much foot traffic, including residents of the Brookhouse House utilizing mobility walking aids.
- The street is already subject to much traffic from Brookhouse House employees, vendors and visitors.

We ask City of Salem departments to help the developer resolve any issues with National Grid to reduce the burden of moving the utility pole so that an Orange Street curb cut can be made for parking access at 7 Curtis Street.”

34. At the April 15, 2020 public hearing, several members of the public spoke about the petition. Mira Riggin, who signed the letter, noted that she supports everything except access to parking off of Curtis Street. Jack Kabral also signed the letter and stated that he agrees with Maureen and Mira that he supports the changes but that the curb cut on Curtis Street is intrusive on a small street. Brennan Corriston noted in between public comments that the curb cut is not before the Board for zoning relief in this application. Building Commissioner Tom St. Pierre said that is correct and noted that you are entitled to 20 feet of curb cut in a residential property, so it is not the jurisdiction of the Zoning Board to approve or disapprove that. Mr. St. Pierre added that as long as they meet the five-foot setback from the property line, it is not before the Board. Tim Jenkins thanked Len Karan for taking the extra steps to work with Historic Salem, Salem Historical Commission, and the neighbors. Mr. Jenkins raised parking concerns and stated that he thought tandem parking would not be permitted without a variance here. He stated he believes it is a public safety issue.
35. At the April 15, 2020 public hearing, Chair Duffy noted that the Board is not being asked for any relief regarding parking requirements for this application. Mr. Corriston noted that if the applicant were required to add parking, the configuration might become a question, but because it is not required, the configuration is not material to the Board. Mr. St. Pierre noted that tandem parking is not prohibited; it is not allowed to be used as an official or legal parking space when you need to meet required spaces, but there is nothing prohibiting tandem parking. Mr. St. Pierre also clarified regarding avoiding backing onto the street: it is a peculiarity of the off-street parking regulations that he has interpreted as meaning, to avoid parking in line with the sidewalk and backing over the sidewalk to get out. He noted that every driveway in the city, with few exceptions, requires you to back out over sidewalk.

36. At the April 15, 2020 public hearing, Chair Duffy noted that the relief has been reduced from the original request. The Board is no longer dealing with changing the roof from gambrel to gable. They are still dealing with the addition of dormers and with the story. Chair Duffy referred to egresses. Mr. Karan noted that there are no changes to the egresses; they remain as part of the original structure as they were, and they will do some decorative work there. Mr. Karan said there are no changes other than the roof deck and three dormers. Chair Duffy reviewed the special permit criteria.
37. While Paul Viccica made the below motion, there were questions about special conditions, including regarding windows. Mr. Karan referenced the design process that the project went through and stated that he did not wish for there to be a special condition about windows.

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, and the Petitioner's presentation and public testimony, makes the following **findings**:

Special Permit Findings:

The Board finds that the proposed nonconforming structure is not substantially more detrimental than the existing nonconforming structure to the neighborhood.

1. Social, economic, or community needs served by the proposal: The proposal brings updates and upgrades to the house, and the house has been reconceived to be consistent with historic preservation.
2. Traffic flow and safety, including parking and loading: The proposal will add off-street parking to the property, which may lessen congestion on surrounding streets.
3. Adequacy of utilities and other public services: Existing utilities and public services are adequate.
4. Impacts on the natural environment, including drainage: No negative impact is anticipated.
5. Neighborhood character: With the retention of historic elements, this project will have a positive contribution to neighborhood character.
6. Potential fiscal impact, including impact on City tax base and employment: This updated two-family home has the potential to have a positive fiscal impact.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Peter A. Copelas, Steven Smalley, Mike Duffy (Chair), Paul Viccica, and Rosa Ordaz) and none (0) opposed to grant the requested Special Permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance for maximum height of buildings (stories) and minimum side and rear yard setbacks by adding three dormers and adding a roof deck above the existing two-story rear addition at **7 Curtis 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. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

8. All construction shall be done per the plans and dimensions submitted to and approved by this Board. 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.

Mike Duffy / BTC

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.

This notice posted on "Official Bulletin Board"
City Hall, Salem, Mass. on *May 18, 2020*
at *1:34 pm* in accordance with MGL Chap. 30A,
Sections 18-25.