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MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK
SALEM, MASS

June 30, 2021

Decision

City of Salem Board of Appeals

Petition of DAVID CUTLER for a variance per Section 4.1.1 *Table of Dimensional Requirements* from maximum height of buildings (stories) to construct new three-story multifamily residential structures at 9 FRANKLIN STREET (Map 26, Lot 375) (B1 and R2 Zoning Districts).

A public hearing on the above Petition was opened on June 16, 2021 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following members present: Mike Duffy (Chair), Peter Copelas, Paul Viccica, and Carly McClain (Alternate). Board members Jimmy Tsitsinos, Rosa Ordaz, and Steven Smalley (Alternate) were absent.

The petitioner seeks variance per Section 4.1.1 *Table of Dimensional Requirements* from maximum height of buildings (stories) to construct new three-story multifamily residential structures at 9 Franklin Street.

Statements of Fact:

1. In the petition date-stamped May 26, 2021, the petitioner requested a variance per Section 4.1.1. of the Salem Zoning Ordinance. In the petition, the applicant states: "A two and half [sic] story building is allowed, a three story building is being proposed" at 9 Franklin Street.
2. 9 Franklin Street is owned by 11 Franklin Street LLC. The petitioner submitted a letter of consent from Patrick Shea, the manager of 11 Franklin Street LLC.
3. The application was filed by Attorney Kellie Barile, representing the petitioner David Cutler.
4. The initial application included plans created by Scott P. Cameron Civil dated May 24, 2021. According to those plans 9 Franklin Street is a 33,852 sq ft vacant lot. According to the Statement of Grounds/Hardship submitted with the initial application, at a public hearing held on April 21, 2021, the Zoning Board of Appeals voted to grant a special permit and variances to allow a portion of 9 Franklin Street to be developed with twelve (12) residential dwelling units in three (3) new buildings. The Statement continues: "During the course of the public hearing, it was determined that although all three buildings complied with the height limitation of 35 feet, two of the buildings exceeded the height limitation of two and one-half (2 ½) storied in the R-2 zoning district. A request for a variance from height in stories was inadvertently not included in the initial petition".

5. The proposal is to construct two new three-story multifamily residential structures within the portion of 9 Franklin Street that is in the Residential Two-Family (R-2) zoning district
6. 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, 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 June 16, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
7. At the June 16, 2021 public hearing, Attorney Scott Grover discussed the proposal, noting a commercial use is permitted for the property at 9 Franklin Street, but this proposal would change it to residential use. Mr. Grover described that the petitioner presented this proposal to the Board at the April 21, 2021 public hearing and was granted unanimous approval for a special permit and several dimensional variances. Mr. Grover states that at the April meeting, Building Commissioner, Tom St. Pierre noticed that the applicant needed relief for building height in stories for two of the three proposed structures. Mr. Grover noted that all three structures are each twenty-five (25) feet tall, well below the thirty-five (35) foot maximum height in the B-1 and R-2 zones.
8. At the June 16, 2021 public hearing, Mr. Grover stated that the proposed structures are located in the flood plain, so the living areas have to be located above a certain elevation. This condition led the architects to design the first floor as parking, with two floors of living space above. If the zoning ordinance were strictly enforced, they would be limited to one and a half stories of livable area, which they argued is impractical for a "good living area".
9. At the June 16, 2021 public hearing project architect Dan Ricciarelli of Seger Architects, presented the project design, and reiterated Mr. Duffy's statement that the buildings are proposed at three stories because the flood prohibits parking on the ground floor.
10. At the June 16, 2021 public hearing Peter Copelas noted that at the time of the hearing there was a gate along the western border of 9 Franklin Street, where the property abuts a parking lot at 6 Foster Street. Mr. Grover responded that he was not aware of any agreement allowing abutters to pass over the land at 9 Franklin Street. Mr. Copelas asked for confirmation that there would not be access. The petitioner David Cutler stated there was no intention to create any access across the neighbor's property, and he is not aware of any existing agreement.
11. At the June 16, 2021 public hearing, no (0) members of the public spoke in favor of or in opposition to the proposal. One (1) member of the public, Victoria Ricciardiello of 5 Foster Street asked whether the proposed residential dwellings would require flood insurance.
12. At the November 18, 2020 public hearing, Chair Duffy discussed how the proposal meets the criteria for a variance (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:

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: The property is in a flood plain which requires the living area to be above the mean flood elevation. The proposal solves this limitation by putting the dwelling space above a single story of parking. The flood plain requirements for where habitable space can be, and the configuration of parking on site to provide adequate parking without excessive impermeable surface warrants increasing the height of the residential structures to three stories, a half-story taller than the maximum height of buildings.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant because the applicant would not be able to provide sufficient habitable space in one and a half stories.
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 five (5) in favor (Mike Duffy (Chair), Paul Viccica, Peter Copelas, Carly McClain) and none (0) opposed to grant to **David Cutler** a variance per Section 4.1.1 *Table of Dimensional Requirements* from maximum height of buildings (stories) to construct new three-story multifamily residential structures at **9 Franklin 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. A Certificate of Occupancy is to be obtained.

6. A Certificate of Inspection 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. Any modification to the plans and dimensions must be approved by the Board of Appeals, unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

Special Condition:

1. There will be no transportation across the property line between the property at 9 Franklin Street and the property at 6 Foster Street.


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.