



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS

## BOARD OF APPEALS

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

**December 1, 2022**

### **Decision**

### **City of Salem Board of Appeals**

The petition of SCOTT TRUHART at 4 EAST COLLINS STREET (Map 36, Lot 246) (R1 Zoning District), to appeal the issuance of a building permit at 1-3 EAST COLLINS STREET (Map 36, Lot 277).

A public hearing on the above petition was opened on November 16, 2022 and was closed on November 16, 2022.

On November 16, 2022, the following members of the Salem Board of Appeals were present: Rosa Ordaz, Peter Copelas (Acting Chair), Carly McClain, Nina Vyedin and Steven Smalley.

### **Statements of Fact:**

The petition is date stamped October 17, 2022. The petitioner seeks to appeal the issuance of a building permit at 1-3 East Collins Street.

1. 1-3 East Collins Street is owned by Rm Capital, LLC. And Collins Cove Realty LLC.
2. The petitioner was Scott Truhart.
3. 1-3 East Collins Street is located in the R1 zoning district. (Map 36, Lot 277).
4. On November 16, 2022, Scott Truhart presented to the board. Mr. Truhart stated that he felt the Building Commissioner, Tom St. Pierre, had erred in issuing the building permit for 1-3 East Collins Street. Mr. Truhart stated that the dimensions for the project being built at 1-3 East Collins Street, in a R1 Zoning District, were significantly exceeding the requirements of the R1 Zoning District. Mr. Truhart stated the Dover Amendment does allow for exemptions to zoning in the form of actual use. He stated that it does not allow the developer to not come before other interested land use boards. Mr. Truhart requested that the board rescind the issuance of the building permit.

- Mr. Truhart stated he felt that Tom St. Pierre had sidestepped the Zoning Board of Appeals and issued the building permit in error.
5. Mr. Copelas asked if Mr. St. Pierre would like to respond to Mr. Truhart's statements. Mr. St. Pierre stated that his office did not work in a vacuum and consulted various city departments, including the City Solicitor, on whether or not to allow the developer to construct the rehabilitation center in accordance with the Dover Amendment.
  6. Attorney, Ben Fierro, representative for the developer, addressed the board. Mr. Fierro stated that this project was moved forward by the City after substantial conversations, meetings, and submissions to the building department and to the Legal and Mayoral departments.
  7. Attorney Fierro stated that this rehabilitation center was not a methadone clinic. That it will be a facility that is a residential treatment facility licensed by the Department of Public Health and the Bureau of Substance Abuse Services. It will be a short-term detox. program for individuals seeking sobriety. Individuals can come to the program for five (5) to fourteen (14) days.
  8. Attorney Fierro stated that on more than one occasion he and his client met with the Planning and Municipal staff, Engineering Staff, and Board of Health at the City Hall Annex to go through the plans and staff had reviewed them and provided substantial feedback to the developer. On June 14, 2022, the Building Commissioner, Tom St. Pierre, issued his determination approving the development at the site of 1-3 East Collins Street.
  9. Attorney Fierro stated that the proposed building has a smaller footprint than the prior structure and that it complies with the minimum front yard, rear yard, and right-side setbacks in the district. He stated that the left side setback does not meet the minimum requirement. However, it was non-conforming previously and it is slightly more non-conforming. Mr. Fierro stated that the city and the Building Commissioner granted his client a reasonable accommodation regarding the left side setback as pursuant to the Americans with Disabilities Act and the Fair Housing Act in the Section 504, the Rehabilitation Act of 1974 also granted his client a reasonable accommodation for the maximum height of three stories.
  10. Acting Chair Copelas asked Mr. Fierro to elaborate on how some of the other federal statutes made an impact on the relief that normally would have been required dimensionally for the building.
  11. Mr. Fierro stated that in the ADA and in the Federal Fair Housing Amendments Act, it specifically states that individuals in recovery from drug and alcohol addiction are considered disabled and are entitled to release and they are entitled to housing. He also stated that patients are entitled to treatment.
  12. Attorney Fierro stated that a reasonable accommodation can include relief from local land use regulations.

13. Mr. Copelas asked Mr. Fierro about how the building complies with what would have been required for a building adjacent to or within a floodplain?
14. Mr. Fierro responded that his client had already gone to the Conservation Commission and that the Conservation Commission had issued an order of conditions for the project. Those conditions were appealed by the abutters to the Department of Environmental Protection. The D.E.P sustained the decision of the Salem Conservation Commission and upheld that there was to be no further appeal. His client also had to seek a Chapter 91 license through the state. His client did receive the Chapter 91 license.
15. Mr. Fierro reiterated that building has been designed to address and offset issues from a one-hundred-year flood.
16. Tom St. Pierre stated that the building codes make sure that any bedrooms must be above any possible flood plain.
17. Mr. Fierro stated that his client had also gone through a process with the Planning Board for their feedback on the building and on the site to make a better project. There were two meetings with the Planning Board and useful suggestions were incorporated into their plans.
18. Mr. Fierro stated that his client had gone back to the City with plans and the City granted the accommodation exempting them from site plan review and the provisions of the flood plain district.
19. Mr. Fierro also stated that the Department of Public Health issued a letter of determination of eligibility to New View Rehabilitation to operate this facility, however, New View will not be granted a license until they show compliance with all of the other requirements under the Department of Public Health.
20. Peter Copelas requested that Mr. Fierro talk to how other federal statutes impact the relief that normally would have been required dimensionally for the building.
21. Mr. Fierro responded by saying the rehabilitation act, the ADA and Fair Housing Act, provide legal protections to individuals who are deemed either handicapped or disabled. Specifically, the ADA and Federal Fair Housing Amendments Act, specifically state that individuals in recovery from drug and alcohol addiction are considered disabled, or handicapped and entitled to release, they're entitled to housing they're entitled to treatment. Their community and communities may not discriminate against them so that they can access either housing or services. A reasonable accommodation has been found to include relief from local land use regulations and that relief must be granted if necessary to enable the services to be provided or their housing would be provided and that specifically is what was relied upon and the city agreed was appropriate and necessary in this case.
22. Nina Vyedin inquired how is the building noncompliant.
23. Attorney Fierro responded that the nonconformity was the left side setback when looking at the property from the front. They tried to keep the plans within the original nonconforming left side setback but to accommodate space for counseling and for the sleeping quarters are all dictated by the

- Department of Public Health and the architect had to design the interior to comply.
24. Vice Chair Copelas opened the meeting to public comments.
  25. Steve Kapantais, 23A Wisteria Street, commented that the developer should come back the Zoning Board and the ZBA should decide if they should allow a fifty-one (51) foot building in a R1 Zoning District. Mr. Kapantais also stated that this sets a very dangerous precedent that says any future Dover project never has to come in front of zoning.
  26. Paul Yasi, 13 Planters Street, stated he felt that this sort of facility should not be approved for this community. Mr. Yasi stated that there should not be an exception that is to allow more people into this facility and the facility is an undue burden on the community.
  27. Mr. Copelas inquired if the petitioner had a response to the comments made.
  28. Mr. Truhart responded by saying the board should feel insulted that the plans were not brought in front of the board to make this determination and that this petition belongs in a courtroom and not a Zoning Board Meeting.
  29. Mr. Truhart requested that the board rescind the building permit in question and take whatever action the board feels it needs to carry on.
  30. Carly McClain stated that it seems appropriate that the law department of the City of Salem, along with consulting other boards, that the City has made the decision that they felt it could issue.
  31. Peter Copelas stated that there has been tremendous work done in terms on consultations between the City and the Building Commissioner. Also, it has been made clear that it is within the building inspector's and the City's rights to grant this building permit.
  32. Charlie Knight, 5 East Collins Street, stated that putting something like this in the corner of a quiet residential neighborhood is disgusting.
  33. Mr. Copelas explained about Robert's Rules and that the Board makes its motions in the affirmative, he explained that an "opposed" vote would keep the building permit active and "approve" vote would rescind the building permit.
  34. Carly McClain made a motion to approve the petition.
  35. The October 19, 2022 meeting of the Board of Appeals was held remotely, via the online platform Zoom in accordance with Chapter 107 of the Acts of 2022.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted none (0) in favor and five (5) (Acting Chair Copelas, Rosa Ordaz, Carly McClain, Steven Smalley, and Nina Vyedin) opposed to deny the appeal of the issuance of a building permit at 1-3 EAST COLLINS STREET.

**Receiving no (0) in favor votes, the petition to appeal a Building Permit at 1-3 East Collins Street is DENIED.**

---

Peter Copelas/ Acting 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.