



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS

## BOARD OF APPEALS

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CITY CLERK  
SALEM, MASS

October 2, 2019

### Decision

### City of Salem Board of Appeals

Petition of JUNIPER POINT INVESTMENT CO LLC for an amendment to the October 26, 2018 decision of the Board of Appeals, seeking an additional variance per Section 4.1.1 *Table of Dimensional Requirements* for relief from maximum height of buildings (stories) to allow a change in the height of buildings from 2.5 stories to 3 stories at 106 BRIDGE STREET (Map 36, Lot 73) (R2 and ECOD Zoning Districts). Two 2.5-story buildings were approved by the Board of Appeals in the October 26, 2018 decision. The proposed alteration is to expand approved dormers on the upper level to allow for additional headroom. There will be no change to the height of the roof ridge and no additional floor area will be created. There will be no change to the building facades along Bridge, Saunders and Cross Streets.

A public hearing on the above Petition was opened on August 21, 2019 (during which no testimony was heard) pursuant to M.G.L Ch. 40A, § 11, continued to September 18, 2019, and closed on that date with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Rosa Ordaz (alternate), and Paul Viccica. At the August 21 meeting, Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica were in attendance.

The petitioner seeks an amendment to the October 26, 2018 decision of the Zoning Board of Appeals granting a special permit and variances.

#### Statements of Fact:

1. In the petition date-stamped July 31, 2019, the petitioner requested an amendment to the decision granting a special permit and variances to the same petitioner by the Zoning Board of Appeals on October 26, 2018.
2. In the October 26, 2018 decision, the Board of Appeals approved two, 2.5-story buildings containing a total of eight residential units.
3. In the petition date-stamped July 31, 2019, the petitioner requested an amendment to the October 26, 2018 decision seeking an additional variance per Section 4.1.1 *Table of Dimensional Requirements* for relief from maximum height of buildings (stories) to allow a change in the height of buildings from 2.5 stories to 3 stories.
4. The requested relief, if granted, would allow the petitioner to expand previously-approved dormers on the upper level of the development to allow for additional headroom. There would be no change to the height of the roof ridge and no additional floor area would be created. There would be no change to the building facades along Bridge, Saunders, and Cross Streets.
5. The petition was scheduled for the August 21, 2019 Zoning Board of Appeals meeting.

6. On August 21, 2019, only three Board members were in attendance: Mike Duffy (Chair), Jimmi Heiserman, and Paul Viccica. Three members out of the five-member Board constitutes a quorum (enough members to hold a meeting). However, per the Zoning Board of Appeals' Rules and Regulations, "[t]he concurring vote of at least four (4) members of the Zoning Board of Appeals shall be necessary in any action taken by the Board." As such, the Board could not vote to approve any petitions in the August 21 meeting. Petitioners were informed of this attendance situation in advance and were given the opportunity to submit requests to continue their petitions to the next regularly scheduled meeting on September 18, 2019. In an email to Planner Brennan Corrison dated August 21, 2019, Denese Luxton of Correnti & Darling LLP submitted, via email, a request for continuance from the petitioner (Juniper Point Investment Co LLC) c/o Attorney Joseph Correnti, signed by Attorney Correnti. This was a request to continue the petition from the August 21, 2019 meeting to the September 18, 2019 meeting. This request was duly filed with the City Clerk on August 21, 2019. In the meeting, the Board voted three (3) in favor (Mike Duffy (Chair), Paul Viccica, and Jimmi Heiserman) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting.
7. At the September 18, 2019 public hearing, Attorney Kristin Kolick, representing petitioner Juniper Point Investment Co LLC, discussed the petition. Developer Marc Tranos and the team from Juniper Point Investment Co; Architect Ryan McShera; and Attorney Joseph Correnti were also in attendance. Attorney Kolick reviewed the previous, approved petition, which allowed the change in use from a muffler shop to eight townhouse-style residential units. Attorney Kolick noted that the amendment being sought is for a variance to allow a redesign of the roof to improve the usability of the interior space, which will affect the view from the courtyard and the bike path.
8. At the September 18, 2019 public hearing, Architect Ryan McShera presented the elevations presented to the Board in October 2018 as well as the revised elevations. Mr. McShera noted that there was additional review by the Planning Department. He showed the plans to enlarge the previously-approved shed dormers. Mr. McShera noted that there is no change proposed to the overall height, the ridge height, or the footprint of the buildings. Mr. McShera explained that because the redesigned dormers have walls higher than two feet, they constitute a full story rather than a half story, bringing the overall height in stories from 2.5 to 3 stories.
9. The revised drawings submitted at the September 18, 2019 note "SEPTEMBER 18, 2019 SUBMITTED FOR RECORD (FROM DESIGN MTGS. WITH PLANNING DEPT.)"
10. At the September 18, 2019 public hearing, Attorney Kolick also referred to the additional review by the Planning Department. She noted that some changes came from that process, and that the changes before the Board on this night were different changes that require Board approval.
11. Special condition #2 of the October 26, 2018 Board of Appeals decision for 106 Bridge Street is as follows: "Prior to issuance of a building permit, petitioner shall submit to the Department of Planning & Community Development, for review and approval, final construction plans and mock ups."
12. At the September 18, 2019 public hearing, Attorney Kolick explained that the project is already under construction and that much of the framing work has been completed. She noted that during the excavation and soil remediation phase, the applicant encountered additional costs performing the remediation, and some excavation work in combination with the soil condition led to a problem with Bridge Street, which needed to be shored up with steel beams. Attorney Kolick stated that she believes the changes will make the units more marketable with minimal impact on the neighborhood and the view from the streets.

13. At the September 18, 2019 public hearing, the Board asked about the project. The architect stated that there will be no additional bedrooms.
14. At the September 18, 2019 public hearing, Attorney Kolick stated that the hardship was the additional, unanticipated costs encountered during construction, including from the worse-than-expected condition of the soil.
15. At the September 18, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition. One (1) member of the public, Flora Tonthat of the Bridge Street Neck Neighborhood Association, raised concerns regarding a change that was resolved: the addition of a porch to the third floor, facing the bike path; the porch was removed after being discovered. Ms. Tonthat stated that this led her to be concerned about whether Juniper Point Investment Co LLC would make the previously-agreed-upon payment to the Bridge Street Neck Commercial Corridor Fund.
16. At the September 18, 2019 public hearing, Attorney Kolick responded to these concerns. She noted that any conditions in the prior Board of Appeals decision, unless modified, would remain. Attorney Kolick stated that there have been changes between the time the Board last saw the project and today, as the project was reviewed by the Planning Department. She stated that the plans currently before the Board include the present state of the project. She stated that the developer has agreed to remove the balcony mentioned by the member of the public due to privacy concerns raised by a neighbor.
17. At the September 18, 2019 public hearing, Peter Copelas asked Attorney Kolick if she acknowledged the \$25,000 commitment made. She responded in the affirmative. Brennan Corrison read from a Memorandum of Agreement dated January 15, 2019 between Juniper Point Investment Co LLC and the City of Salem which states, in part, that "Juniper Point agrees to provide a one-time payment to the City of \$25,000.00 to be used toward a commercial corridor fund to support commercial improvement projects in the Bridge Street Neck commercial corridor." This was not a special condition in the October decision of the Board; this was a separate agreement. Building Inspector Tom St. Pierre stated that this was not an issue for this Board, and that the developer has always come through with contractual obligations.
18. At the September 18, 2019 public hearing, Paul Viccica reviewed the hardship.
19. At the September 18, 2019 public hearing, when the motion was brought to approve the requested amendment, Peter Copelas stated that the approval would be subject to the same standard and special conditions as the original decision.

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**:

**Findings for Variance:**

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, including poor soil condition, required remediation, and structural issues with Bridge Street requiring steel shoring.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant: significant financial costs were associated with the condition of the site. Expanding the dormers, as proposed, would improve the marketability of the units.

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 (Peter A. Copelas, Mike Duffy (Chair), Jimmi Heiserman, Paul Viccica, and Rosa Ordaz) and none (0) opposed to grant the requested amendment to the October 26, 2018 decision of the Board of Appeals, seeking an additional variance per Section 4.1.1 *Table of Dimensional Requirements* for relief from maximum height of buildings (stories) to allow a change in the height of buildings from 2.5 stories to 3 stories at **106 Bridge Street**, subject to the **following terms, conditions and safeguards**.

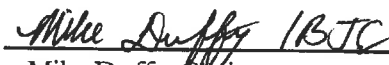
*Conditions from October 26, 2018 decision:*

**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 neighborhood.
6. A Certificate of Occupancy is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. Petitioner shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to be visible from the street, if needed.
9. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to the Planning Board.

**Special Conditions:**

1. Prior to issuance of a building permit, petitioner shall submit to the Department of Planning & Community Development, for review and approval, a site plan including landscaping, lighting, and trash disposal.
2. Prior to issuance of a building permit, petitioner shall submit to the Department of Planning & Community Development, for review and approval, final construction plans and mock ups.
3. Light trespass onto adjacent parcels/rights of way, shall be avoided.

  
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.