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MAYOR

CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS

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November 6, 2023

Decision

City of Salem Board of Appeals

The petition of JOSEPH R. GAGNON at 106 BROADWAY (Map 32, Lot 73) (I Zoning District) for a Special Permit per Section 3.3.2 Nonconforming Uses, Section 3.3.3 Nonconforming Structures, and Section 3.3.4 Variance Required of the Salem Zoning Ordinance to change a nonconforming single-family use to a nonconforming three-family use by adding two stories and two small first floor additions, with legally sufficient on-site sufficient parking.

A public hearing on the above petition was opened on October 18, 2023 and was closed on October 18, 2023.

On October 18, 2023, the following members of the Salem Board of Appeals were present: Peter Copelas (Chair), Nina Vyedin, Rosa Ordaz and Hannah Osthoff.

Statements of Fact:

The petition is date stamped September 27, 2023. The petitioner proposes to change a nonconforming single-family use to a nonconforming three-family use with legally sufficient on-site sufficient parking.

1. 106 Broadway is owned by Joseph R. Gagnon.
2. The petitioner was Joseph R. Gagnon.
3. The representative was Attorney Bill Quinn.
4. 106 Broadway is located in the I zoning district. (Map 32, Lot 73).
5. On October 18, 2023, Attorney Bill Quinn presented the plans to the board.
6. Attorney Quinn stated to the board the petitioner is applying only for special permits. Petitioner does not require a variance because of the specific language in section 3.4 of the Salem Zoning Ordinance that allows the extension of existing non-conforming dimensional lines.
7. Joseph Gagnon is familiar with the area in the City because he owns 105 Broadway which is across the street which is an existing two-family home.

8. Mr. Gagnon purchased the home at 105 Broadway when it was condemned. He has renovated the home to provide livable unit for Salem residents.
9. 106 Broadway is a one floor building. Currently, it is a three-bedroom apartment on the first floor and Mr. Gagnon is renting it to university students.
10. Attorney Quinn reminded the board that in 2022 they approved variances at 112 Broadway to go from a single-family home to a four-family home. The approved design was created by the same architect, Seger Architects, that is designing this petition.
11. Attorney Quinn described the structures that are near the locus of the petition. There is a fire station, a barber shop, multiple one-family, two-family and three-family homes. This is also a four-unit condominium.
12. Attorney Quinn reminded the board that this is also an Industrial zoned area of the City.
13. The petitioner is seeking to add two units to the existing structure. The original structure is non-conforming because the required setbacks are thirty feet, and the property has approximately eight feet setbacks at the site. The petitioner is seeking a Special Permit to alter, expand or enlarge a non-conforming structure.
14. The petitioner is seeking to alter the use of the structure from a single-family home to a three-family home.
15. The board reviewed the site plan for the petition.
16. Dan Ricciarelli, Architect, reviewed plans for the board.
17. Attorney Quinn discussed a City Ordinance that stated all paper streets in the city would be considered public ways.
18. Clover Street was brought up as part of the petition. Currently, Clover Street serves as a public way adjacent to the property at 106 Broadway. Mr. Gagnon has requested that the city return Clover Street to a private way. Attorney Quinn stated that he spoke with the City Solicitor, Beth Rennard, and there are plans to be presented to the City Council and Legal Affairs to have a public meeting to discuss plans to revert paper streets back to private ways.
19. Attorney Quinn stated that it's a public way and his client would have legal access over a public way to get to the rear of his property where the parking is going to be located. If it does revert back to a private way, his client would have the same right of an abutter of a private way under state law.
20. Attorney Quinn stated he wanted this to be part of the public record to show merit of the petition. In addition, if it stays a public way the petitioner would have to get a curb cut to access their parking in the rear of the property.
21. Attorney Quinn stated that the petitioner will not be able to build anything at the site until the issue with Clover Street being a private or public way is resolved.
22. Attorney Quinn stated his client would accept a special condition regarding Clover Street in the decision.
23. Attorney Quinn stated that his client has been working with the City's engineering department to work on a drainage issue at the rear of the property. Attorney Quinn stated that this would also be a special condition of a decision.

The engineer for the project was not available for the meeting on October 18, 2023.

24. Dan Ricciarelli, architect, stated that the petitioner did go to the Historical Commission and received a demolition delay waiver. The Historical Commission deemed the building not significant in its current state.
25. Dan Ricciarelli stated that the Historical Commission requested that they keep the porch as an important element of the structure.
26. Hannah Osthoff requested that Dan Ricciarelli walk her through the plans. She expressed concerns for lack of additional egress for the property. Mr. Ricciarelli stated that the whole structure will be sprinkled as part of the approved plans. The structure will need to be sprinkled because it has three units.
27. Attorney Quinn reviewed the criteria for a special permit.
28. Chair Copelas inquired if there was any public comment. There were none.
29. A letter from Ward Five City Councilor, Jeff Cohen, expressing his support for the project was read for the public record.
30. Hannah Osthoff made a motion to approve the petition.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Peter A. Copelas(Chair), Nina Vyden, Rosa Ordaz, and Hannah Osthoff and none (0) opposed to grant JOSEPH R. GAGNON a Special Permit per Section 3.3.2 Nonconforming Uses, Section 3.3.3 Nonconforming Structures, and Section 3.3.4 Variance Required of the Salem Zoning Ordinance to change a nonconforming single-family use to a nonconforming three-family use by adding two stories and two small first floor additions, with legally sufficient on-site sufficient parking.

Receiving four (4) in favor votes, the petition for Special Permits is GRANTED.

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. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
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.
9. Petitioner shall schedule Assessing Department inspections of the property, at least annually, prior to project completion and a final inspection upon project completion.

Special Conditions:

1. The approvals are subject to the approval of a curb cut by the City of Salem should Clover Street remain a public way.
2. City Engineer has final approval of drainage plan as shown on submitted plans.

Peter A. Copelas/ 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.

