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MAYOR

CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS

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August 14, 2023

Decision

City of Salem Board of Appeals

The petition of 31 CEDAR STREET, LLC and SALEM RESIDENTIAL RENTAL PROPERTIES LLC at 31 CEDAR STREET (Map 34, Lot 52) (R2 Zoning District) for a Variance per Section 4.1.1 *Dimensional Requirements* of the Salem Zoning Ordinance to subdivide this ¼-acre parcel into two lots which will be non-conforming as to lot area, frontage, and lot area per dwelling unit, where one lot will be occupied by the existing two-family dwelling and the other lot to be occupied a new two-family dwelling on the vacant portion the lot.

A public hearing on the above petition was opened on March 22, 2023 and was continued to May 17, 2023.

On March 22, 2023, the following members of the Salem Board of Appeals were present: Rosa Ordaz, Peter Copelas (Chair), Carly McClain, Paul Viccica, Nina Vyedin and Steven Smalley.

On May 17, 2023 the following members were present: Rosa Ordaz, Nina Vyden, Paul Viccica, Peter A. Copelas (Chair), Steven Smalley and Hannah Osthoff.

On June 21, 2023 the following members were present: Carly McClain, Nina Vyden, Paul Viccica, Peter A. Copelas (Chair) and Hannah Osthoff.

On July 19, 2023 the following members were present: Rosa Ordaz, Nina Vyden, Paul Viccica, Peter A. Copelas (Chair), Carly McClain and Hannah Osthoff.

Statements of Fact:

The petition is date stamped February 22, 2023. The petitioner requests to subdivide this 1/4-acre parcel into two lots which will be non-conforming as to lot area, frontage, and lot area per dwelling unit. One lot will be occupied by the existing two-family dwelling and the other lot to be occupied a new two-family dwelling on the vacant portion the lot.

1. 31 Cedar Street is owned by 31 Cedar Street, LLC and Salem Residential Rental Properties LLC.
2. The petitioner was 31 Cedar Street, LLC and Salem Residential Rental Properties LLC.
3. 31 Cedar Street, LLC and Salem Residential Rental Properties LLC. was represented by Attorney Bill Quinn.
4. 31 Cedar Street is located in the R2 zoning district. (Map 34, Lot 52).
5. On March 22, 2023 Bill Quinn presented the plans to the board.
6. Attorney Quinn stated that the petitioner, Mike Becker, would like to develop a two-family home on the parcel at 31 Cedar Street.
7. Attorney Quinn discussed the history of the property at 31 Cedar Street. In the early 1900's, another house stood on the property. There were two homes on two parcels. It was a residential dwelling that burned down. For years, the deed contained two separately described lots. The owner who in 1980 went to the Board of Appeals and sought approval to reconstruct another residential dwelling in the same location as the prior house that had burned down. The board approved the request. However, the house was never built.
8. Attorney Quinn stated that the city assesses all this property as 31 Cedar St. as a two-family dwelling on 1/4-acre lot. The petitioner is proposing to put the old property line between the two lots back. One lot would have forty (40) feet of frontage and the other would have sixty (60) feet of frontage. The petitioner would like to subdivide the lot into separate parcels. This would be to build an additional two-story, two-family house which will share on-site parking and a driveway.
9. Attorney Quinn stated that the driveway can easily serve both properties. A two (2) car garage is at the rear of the new two-family home and there will be five (5) paved parking places. This would be more than the required amount of six (6) parking spaces for the proposed four (4) units.
10. Attorney Quinn stated that both properties would be owned by Mr. Mike Becker and therefore, no legal objection to using shared parking. A permanent easement would be created between the properties, so any changes of ownership don't negatively affect the ability of either property owner to use the parking in the driveway.
11. Nina Vyden asked the representative to clarify information from a public comment letter in the file about whether the property was grandfathered or not.
12. Chair Peter A. Copelas stated that the past decision did not bind them and that the former ZBA decision had expired many years ago.
13. Attorney Quinn stated that he was not clear what the public comment letter was referring to, however, there is no grandfathering in the decision from the 80's. Attorney Quinn stated that they are not making any claim that this is a pre-existing grandfathered use.

14. Paul Viccica stated that he was not amenable to create a lot that did not comply with the zoning ordinances. Mr. Viccica stated that he did not see a hardship for the petition.
15. Mr. Viccica stated that he was currently not in favor of this petition. Mr. Viccica stated that he found nothing compelling about creating another non-conforming lot, especially when it comes to a shared driveway.
16. Attorney Quinn stated that with this project, the neighborhood would not be changing. He stated that it was not like they were trying to put a five (5) unit building on this lot. Attorney Quinn agreed that this was a difficult issue to justify. However, the house currently sits crammed up against one sideline of the property and has an expansive, unnecessary side yard on the property. This is unused property.
17. Paul Viccica stated that he was very sympathetic to this application because the property was being held hostage by an antiquated zoning ordinance that does not allow for this type of development to happen. Attorney Quinn stated this argument could be made all over the city about housing, and the need for housing. Also, he felt that there was not a need to subdivide everything in the City. He stated this petition didn't rise to the level of issuing a variance.
18. Mr. Viccica stated that the current lot is non-conforming. The petitioner is wanting to create two (2) non-conforming lots.
19. Mr. Viccica inquired if the petitioner had any historical documentation that shows there were two homes on this parcel of land.
20. Mr. Becker stated that he did have documents, he just didn't have them submitted for the meeting.
21. Chair Copelas opened the meeting up to public comment.
22. Sean O'Brien, 21 Cedar Street, stated that he was opposed to the project and that parking was a big issue for the tenants on Cedar Street.
23. Jay Valatka, 40 Cedar Street, stated that his greatest concern is the on-street parking situation on Cedar Street.
24. Jeff Cohen, 12 Hancock Street, Ward 5 City Councilor, stated that based on his conversations with neighbors and Mr. Becker, he suggested Mr. Becker continue the petition to give him time to communicate with his neighbors more about his proposed plans.
25. Erin Heenan, 6 Fairfield Street, stated that she was concerned about the conditions at Mr. Becker's current property at 29 Cedar Street. She alleged that Mr. Becker was an absentee landlord and rents out the units to Air BnB. She stated that he does not take care of his current property and speculated that it would be the same for the proposed property at 31 Cedar Street.
26. Chair Copelas stated that they were running up against timing for the petition and wanted to give Mr. Becker and Mr. Quinn an opportunity to discuss the issues that have been addressed by the abutters.
27. Attorney Quinn made the request to continue the petition to the May 17th, 2023, meeting.

28. Carly McClain made a motion to approve the request for a continuance.
29. On May 17th a request to continue to the June 21, 2023, meeting was approved.
30. On June 21, 2023, due to eligibility issues and attendance with board members, the petition was continued to July 19, 2023.
31. On July 19, 2023, Attorney Bill Quinn presented the petition to the board. Attorney Quinn reviewed the petition from the previous meetings.
32. Attorney Quinn informed the board that his client had received some favorable news from the Salem Historical Commission about possibly relocating a historical home to this site instead of a new construction. The petitioner stated that he was open to the idea of having the historic home be the structure on the subdivided portion of the lot.
33. Attorney Quinn reviewed the July 19th, 2023, submission of a new plot plan and elevations for the board.
34. Attorney Quinn discussed an email that was submitted on July 19, 2023, from Attorney Robin Stein that stated that the application for variances for this petition does not implicate sections *3.3.3 Nonconforming Structures* or *Section 3.3.5 Nonconforming Single- and Two-family Structures*. The email also refers to Ms. Stein's opinion that if the necessary dimensional variances are granted, each of the lots may be used for any lawful purpose in the zoning district.
35. Paul Viccica stated that he felt this was a complex petition and it was made even more complex by the requested relief. He stated he did not understand the reason behind the requested relief.
36. Chair Copelas stated that if the lots have been merged by law, how is the petitioner allowed to sell the separate parcels at the site.
37. Attorney Quinn stated that property law is what determines if there is a lot or not. Property law recognizes that there are two separate lots that have existed for over a hundred years in Salem. Zoning law states that if you are trying to expand onto a vacant lot and it is owned by the same entity, you cannot do that without a board of appeals decision.
38. Paul Viccica stated that he felt the petitioner was using the ZBA to deny the petition and then appeal the decision and go to the courts to prevail. He stated that he felt the petitioner should go to land court. He felt that they were using the ZBA for their own needs. He stated that the petition made him feel uneasy.
39. Nina Vyden stated that she felt that the right course of action was for the petitioner to go the Board of Appeals for this petition.
40. Attorney Quinn stated that there is no ill intent for this petition, and they are in front of the Board of Appeals with an honest petition. He felt that the Board of Appeals was the proper avenue for his client.
41. Rosa Ordaz inquired about what happens to the historic home if the petition is denied.

42. Mike Becker stated that it would most likely be demolished. The parcel at 31 Cedar Street is the only viable location for a structure like that.
43. Chair Copelas opened the meeting to public comment.
44. Patricia Macdonald, 8 Fairfield Street, stated that she owns a concrete wall that abuts the property at 31 Cedar Street. She stated she wanted to know how the drainage for her property would be addressed if the variance is approved. Also, Ms. Macdonald wanted to know who would fix the retaining wall if damage occurred during construction if the petition was approved. She also wanted to know how the layout of structures would be on the new subdivided parcel if approved.
45. Chair Copelas took note of the questions so that they could be answered later. He stated he wanted to get to all public comments for the evening regarding this petition.
46. Chris Drucas, attorney for an abutter, stated that they had met with the petitioner and his representative. Unfortunately, they were not able to make accommodation or compromise during those conversations.
47. Attorney Drucas stated that it was his understanding that under M.G.L. 40a section. 6, the lots have been legally merged.
48. Attorney Drucas stated that the petitioner has not shown that there is a hardship other than the one that has been self-imposed by the requested relief.
49. Polly Wilbert, 7 Cedar Street, expressed her frustration that there were last minute submissions by the petitioner and the abutters and members of the public have had no time to review the submissions. She felt that this put all of the abutters at a disadvantage.
50. Chair Copelas stated that he would like Attorney Quinn to address the concerns brought by the public.
51. Mike Becker requested to respond to the public comments. Attorney Quinn stated that his client should speak. Mr. Becker apologized for the late submissions. He stated that he submitted them as soon as he got them back from his surveyor.
52. Mr. Becker stated that he would work with all abutters that would be impacted the construction on any part of a retaining wall. Mr. Becker stated that he would also be willing to have any special conditions that would be in response to the retaining wall.
53. Attorney Quinn stated that the lot is larger than any other of the lots in the area. The lot has plenty of space to have an additional structure. Attorney Quinn reiterated that before the Salem fire, there were already two three-story dwellings at the site.
54. The email from Robin Stein was brought up again for the board's attention.
55. Paul Viccia stated that he felt that the board should disregard the email because it was not written by the City Solicitor, Beth Rennard. Therefore, it was his opinion that the city was not endorsing the petition.
56. Nina Vyden made a motion to approve the petition.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted one (1) in favor (Nina Vyden), Peter Copelas(Chair), Rosa Ordaz, Carly McClain and Paul Viccica and four (4) opposed (Peter Copelas(Chair), Rosa Ordaz, Carly McClain and Paul Viccica) to deny 31 CEDAR STREET, LLC and SALEM RESIDENTIAL RENTAL PROPERTIES LLC at 31 CEDAR STREET a Variance per Section *4.1.1 Dimensional Requirements* of the Salem Zoning Ordinance to subdivide this ¼-acre parcel into two lots.

Receiving one (1) in favor vote, the petition for a Variance is DENIED.

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.

