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MAYOR

CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS

2019 DEC 31 AM 9: 53

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CITY CLERK
SALEM, MASS

December 31, 2019

Decision

City of Salem Board of Appeals

Petition of VAVEL LLC for a special permit per Section 7.1 *Multifamily Development* to construct a three-story building consisting of 20 apartment units at 602 LORING AVENUE (Map 20, Lot 11) (R3 and ECOD Zoning Districts).

A public hearing on the above Petition was opened on November 20, 2019 pursuant to M.G.L. Ch. 40A, § 11. No testimony was heard during the November 20, 2019 hearing. The petition was continued to December 18, 2019 and closed on that date with the following Salem Board of Appeals members present: Peter Copelas, Mike Duffy (Chair), Carly McClain, Rosa Ordaz, and Jimmy Tsitsinos. Paul Viccica was absent on December 18, 2019. At the November 20, 2019 meeting, only Peter Copelas, Mike Duffy (Chair), and Rosa Ordaz were in attendance, and no testimony was heard; this is discussed in the Statements of Fact below. On November 20, 2019, Rosa Ordaz, Jimmy Tsitsinos, and Paul Viccica were absent; Carly McClain had not yet been confirmed as a Board member.

The petitioner seeks a special permit per Section 7.1 *Multifamily Development* of the Salem Zoning Ordinance.

Statements of Fact:

1. In the petition date-stamped September 25, 2019, the petitioner requested a special permit per Section 7.1 *Multifamily Development* off the Salem Zoning Ordinance to allow a multifamily development of twenty (20) apartment units.
2. Attorney Scott Grover, representing petitioner Vavel LLC, submitted the petition.
3. The property is a former child care facility in the Residential Multifamily (R3) zoning district and the Entrance Corridor Overlay District (ECOD).
4. Per the "Table of Principal and Accessory Use Regulations" in Section 3.1 *Principal Uses* of the Salem Zoning Ordinance, the use "Multifamily Development" is allowed in the R3 zoning district by special permit from the Zoning Board of Appeals.
5. The proposal is to build a three-story building consisting of twenty (20) apartment units at 602 Loring Avenue.
6. The requirements for such proposals are set forth in Section 7.1 *Multifamily Development* of the Salem Zoning Ordinance. The application meets the required criteria set forth in this section.
7. The requested relief, if granted, would allow the petitioner to build a three-story building consisting of twenty (20) apartment units at 602 Loring Avenue.
8. There was a previous petition for a multifamily development at this property. The Board approved a proposal for a five-story multifamily development in a decision dated November 1, 2017. That proposal required the special permit per Section 7.1 as well as variances for both building height and for the required "buffer zone of seventy-five (75) feet from any building or structure on an adjacent

lot where said lot is not under the same ownership.” Both these requirements are set forth in Section 7.1. The original decision was appealed and, as noted in the Statement of Grounds included in the new petition, “the case is still pending before the Land Court.”

9. The proposal has been revised with a different building and site layout. The new proposal has a height of three (3) stories and thirty-five (35) feet, as allowed per Section 7.1.2. In addition, the new proposal meets the 75-foot buffer zone requirement. As such, no variances are being requested and none are required for this proposal.
10. The plans submitted with this proposal were revised twice. The first revised plans were dated October 25, 2019. Another set of revised plans, dated December 6, 2019, was submitted. The December 6 version corrected an error in the October 25 version in which a portion of the building fell within the required 75-foot buffer zone.
11. On the morning of November 20, 2019, Staff Planner Brennan Corrison informed petitioners that only four members would be in attendance at the meeting that evening (at the time, it was understood that four members would be attending), and that petitioners had the opportunity to request to continue the hearing for their petition to the next regularly scheduled meeting when five members might be in attendance. Attorney Grover responded with a signed request to continue the hearing for 11 West Avenue to the December 18, 2019 meeting. This request was duly filed with the City Clerk.
12. At the November 20, 2019 meeting of the Board of Appeals, only three Board members were in attendance: Peter Copelas, Mike Duffy (Chair), and Rosa Ordaz. Having three members in attendance 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 November 20 meeting, and all petitions were continued to the next regularly scheduled meeting. In the meeting, the Board voted three (3) in favor (Peter Copelas, Mike Duffy (Chair), and Rosa Ordaz) and none (0) opposed to approve the motion to continue to the next regularly scheduled meeting, December 18, 2019.
13. At the December 18, 2019 meeting of the Board of Appeals, Attorney Grover discussed the proposal along with Scott Cameron, P.E., of The Morin-Cameron Group, and Architect Peter Pitman of Pitman & Wardley Associates. Attorney Grover explained the background of the proposal, including the previous approval and appeal, and noted that the revised proposal was filed with the encouragement of the court and the new owner of the abutting property. He noted that no variances are required in this proposal. Attorney Grover read the Board’s special permit findings from the 2017 decision, noting that the same conditions still exist.
14. At the December 18, 2019 meeting, Attorney Grover noted that three special conditions were included with the previous approval and stated that these would need to be carried forward. Attorney Grover explained that a section of the property along Loring Avenue that has been occupied for years by the property owner is actually within the City layout of Loring Avenue. He noted that last time, they had negotiated a permanent easement with the City Solicitor’s office to legalize what had been a practice for many years. He stated that this condition would need to be carried forward with any new decision, and stated that the petitioner would be prepared to carry all the same special conditions.
15. At the December 18, 2019 meeting, Mr. Cameron explained challenges of the site, including a dangerous traffic condition as a result of existing ledge on the site and the road’s curvature. Mr. Cameron pointed out how this condition will be improved under this proposal. Mr. Pitman explained that the unusual shape and angles of parts of the building are a product of the site requirements and the zoning requirements.

16. At the December 18, 2019 meeting, Attorney Grover noted that the new owner of the abutting 1 Carol Way property has indicated that if approved plans go forward, they do not object.
17. At the December 18, 2019 meeting, Board member Peter Copelas asked how the petitioner was able to put this together without variances and why this was not the original request. Mr. Cameron explained that the new proposal requires more rock excavation and the new configuration makes for a more difficult construction and foundation than the previous proposal. Mr. Pitman agreed that the blasting and site work are more difficult under the new proposal. He noted that the basement was much further out of the ground before than it is now.
18. At the December 18, 2019 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition. One member of the public asked about blasting, noting that her home rocks when there is particulate blasting. Mr. Cameron spoke about the blasting process. This member of the public did not express opposition to the project.
19. At the December 18 meeting, Chair Duffy noted that the proposal looks to meet all the criteria per Section 7.1 *Multifamily Development*. He noted that the Board made findings on the prior proposal which contained a variance request in addition to a special permit request. He stated that the current proposal is less intense than what the Board dealt with before. He stated that the findings supported granting a special permit under the typical criteria, so the special permit criteria have been met. Chair Duffy stated that a motion should carry forward the special conditions that were imposed on the first application. Chair Duffy asked about dealing with the existing special permit and variance in light of this being granted. Attorney Grover answered that the previous approval should stand until they are through all permitting for the new proposal. He stated that he does not think this needs to be included in the Board's decision.
20. At the December 18 meeting, Chair Duffy noted that the previous special permit findings apply, in addition to Mr. Grover's findings for Section 7.1.

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**:

Special Permit Findings:

The Board finds that the adverse effects of the proposed use will not outweigh its beneficial impacts to the City or the neighborhood.

1. There are social, economic and community needs served by the proposal as the building is providing new housing units in the City.
2. The existing negative conditions of traffic flow and safety in and out of the site will be improved and the proposed parking and loading are adequate.
3. There will be no impact to the adequacy of utilities and other public services.
4. There will be no impacts on the natural environment, including drainage as the petitioner is proposing to locate parking under the building and reduce the amount of impervious surface on the property.
5. The proposal fits with the character of the neighborhood compared to the adjacent larger buildings and adjacent apartment building.
6. The potential fiscal impact, including impact on City and tax base and employment is positive.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Jimmy Tsitsinos, Rosa Ordaz, Carly McClain, Mike Duffy (Chair), and Peter Copelas) and none (0) opposed to grant the requested special permit per Section 7.1 *Multifamily Development* to construct a three-story building

consisting of 20 apartment units at **602 LORING AVENUE**, 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. No change, extension, material corrections, additions, substitutions, alterations, and/or modification to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

Special Conditions:

1. The petitioner shall secure an easement with the City of Salem to allow the private use of this portion of land for the benefit of providing parking for the proposed development.
2. All HVAC units shall be located on the roof of the property and shall be screened.
3. The petitioner shall provide recycling at the property and shall provide adequate space for a recycling dumpster.

Mike Duffy / BTC

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.