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MAYOR

CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS

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December 11, 2023

Decision

City of Salem Board of Appeals

The petition of 75 NORTH STREET, LLC at 75 NORTH STREET (Map 26, Lot 58) (BPD, NRCC Zoning Districts), 3 SOUTH MASON STREET (Map 26, Lot 54) (NRCC Zoning District), 2 COMMERCIAL STREET (Map 26, Lot 57) (NRCC Zoning District) to re-develop a new four-story transit oriented mixed-use development that will consist of 60 units and a small commercial office space on North Street. The applicant is seeking variances per section 4.1.1 Dimensional Requirements from lot area per dwelling unit where 3,500 sq.ft is required and 742 sq.ft is proposed. A variance from Section 8.4.9 Parking Requirements where one space is proposed and 1.5 spaces are required. And a variance from Section 8.4.9.c Each unit has a separate exterior entrance if located within 100 feet of a residentially used parcel in an abutting zoning district. This parcel is within 100 feet of a residentially used parcel. And a variance from section 8.4.13(4) to allow construction of a park area and parking spaces in a buffer area.

A public hearing on the above petition was opened on September 20th, 2023 and was continued to October 18, 2023 and was closed on November 15, 2023.

On September 20, 2023, the following members of the Salem Board of Appeals were present: Rosa Ordaz, Carly McClain, Peter A. Copelas (Chair), Paul Viccica, Hannah Osthoff and Nina Vyedin.

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

On November 15, 2023, the following members of the Salem Board of Appeals were present: Carly McClain, Peter A. Copelas (Chair), Paul Viccica, Hannah Osthoff and Nina Vyedin.

Statements of Fact:

The petition is date stamped August 29th, 2023. The petitioner requests to re-develop a new four-story transit oriented mixed-use development that will consist of 60 units and a small commercial office space on North Street.

1. 75 North Street, 3 South Mason and 2 Commercial Street is owned by 75 North Street, LLC.
2. The petitioner was 75 North Street, LLC.
3. The representative was Attorney Scott Grover.
4. 75 North Street is located in the NRCC zoning district. (Map 26, Lot 58). 3 South Mason Street is located in the NRCC zoning district. (Map 26, Lot 54) and 2 Commercial Street is located in the NRCC zoning District. (Map 26, Lot 57)
5. On September 20th, 2023, Scott Grover presented the plans to the board.
6. Attorney Grover explained that the petition consists of three parcels that are located in the North River Canal Corridor (NRCC) zoning district.
7. 75 North Street is a small office building and shop space facing the extension of North Street. 2 Commercial Street is occupied by Bill's Towing Company. And 3 South Mason Street is the largest of the three parcels.
8. Attorney Grover states that applicant is seeking to combine all three parcels to develop a four-story, transit oriented, mixed-use development that will have sixty (60) residential units and a small commercial space on the North Street corridor.
9. The plans for development include park space and public access to the to the site from the MBTA train station located nearby.
10. Attorney Grover stated that the petition is seeking to have one parking space per residential unit and nine new spaces will be along Commercial Street.
11. Attorney Grover states that the applicant has worked with Councilor Megan Stott and with her help coordinated well attended neighborhood meetings. A number of changes were made to the plans before being submitted to the Board of Appeals based on neighborhood feedback.
12. Attorney Grover discussed the requested relief for the petition. Due to the City's Planning Board being the permit granting authority for Special Permits to allow for multi-family residential use in the NRCC, the applicant is seeking the four variances. Without the variances the project will not be able to move forward to the Planning Board.
13. Chair Copelas notes that the posted agenda only shows a request for three variances, rather than four. Attorney Grover states that all four were included in the public notice but not the agenda.
14. The board discussed whether they could proceed or not on all of the variances even if not all were posted on the agenda.
15. City staff reached out to the City Solicitor to find out if the board can proceed on the petition.

16. City staff informed the board that the board can review the three variances that were on the agenda and would need to wait to review the fourth variance in a future hearing.
17. Attorney Grover discusses the grounds for relief. There are requirements imposed by the state Chapter 91 licensing requirements. There are challenges created by existing flood conditions. In addition, environmental remediation is needed based on past industrial uses.
18. Attorney Grover contends literal enforcement of the zoning ordinance is causing the hardship. Mr. Grover states the relief can be granted without detriment to the public good or derogating from the intent of the zoning ordinance because there are many public benefits such as the creation of housing including affordable units, revitalizing several blighted properties, creating a park space, and overall economic stimulation.
19. Chris Koeplin, developer, describes the project as an underutilized/urban infill redevelopment that will help reduce commercial traffic while addressing critical housing needs. The project will be one hundred (100%) percent electric and solar and have flood resistance and resiliency.
20. Mr. Koeplin presents maps of the area and discusses the NRCC Vision Statement from 2003, which focuses on expanding the urban character of the city, reconnecting diverse neighborhoods, utilizing vacant parcels, and providing a range of housing types and affordability.
21. Mr. Koeplin states the proposal is consistent with goals of the NRCC. Mr. Koeplin presents a proposed site layout and discusses the traffic impacts in the area.
22. Bob Griffin, Engineer, presents a map of the site showing the Chapter 91 jurisdiction and public accommodation zone requirements.
23. Mr. Griffin discussed the flood zone requirements and showed the building's elevations. The building will store water underneath during floods.
24. Dan Skolski, architect, presented an aerial rendering of the site. He also showed renderings of the site from before neighborhood feedback and renderings after the neighborhood feedback to show that the developer is taking the neighborhood input seriously.
25. Chair Copelas asked Mr. Grover if he could review the traffic data for the site.
26. Paul Viccica stated that the issues of traffic and parking should be discussed with the Board of Appeals since they impact the variance requests. Mr. Viccica requests information on any recently approved buildings that have had only one parking space per residence. Mr. Viccica wants to see the results and any ramifications from that development.
27. Scott Thornton, traffic engineer, explained that initial traffic analysis was conducted to provide some data to go along with standard industry guidelines and methods. Mr. Thornton indicated traffic counts and parking utilization information that was studied for nearby sites. Sites such as Halstead Station apartments and South Mason condominiums are known to generate between 17% and 37% less traffic than what would be expected under ITE guidelines.

- and standards. This is most likely because of proximity to the train station and downtown.
28. Mr. Thornton also states that parking demand ratios ranged from 0.9 to 1.3 spaces per unit. He suggests the proposal here is most similarly to those with ratios closer to 0.9 spaces per unit, and that therefore the proposed parking is appropriate. Mr. Thornton emphasizes the proposals proximity to the train station and bike infrastructure. He reiterates that there will be a comprehensive traffic review.
 29. Chair Copelas inquired about traffic flow at the site.
 30. Chris Koeplin shared slides that showed traffic flow and movements that are expected to occur based on data.
 31. Nina Vyedin inquired if studies on North Street will be done with a good look at the intersections of North Street and Commercial Street.
 32. Mr. Thornton stated that there will be additional traffic studies for the site.
 33. Paul Viccica stated that for the next meeting, he would like to see more information on the traffic proposal.
 34. Chair Copelas opened the meeting to public comment.
 35. Polly Wilbert, 7 Cedar Street, stated that the discussions on urban needs and what should go on North Street has been shortsighted. Ms. Wilbert suggests there is a benefit to the towing company being located at this site. She expressed concern that the entrance to the building will be in the flood plain.
 36. Jack Priest, 6 Water Street, stated he was in favor of this project.
 37. Barbara Warren, 5 Hardy Street, Director of Salem Coast Watch, states that rain gardens were planted with plants that can tolerate brackish water. However, they all died within the first summer and it is now salt marsh plants. This is a tidal area and the river wants to reclaim where it was, which is why the area is Chapter 91.
 38. Ms. Warren stated that by 2050 the projection by the State shows 1.4 to 3.1 feet of sea level rise. Ms. Warren suggested thinking twice about placing people in harms way. Ms. Warren also notes that North Street is at elevation 8 feet, and that parking will be at 12 feet, so if there is nearby flooding cars will not be able to get out and emergency vehicles could not get in.
 39. James Tegeder, Historic Salem, stated that he hopes the project will be compatible with all of the provisions of the North River Canal Corridor plan.
 40. Peggy Bukowski, 12 Holly Street, stated that the area suffers from increasing congestion and traffic, particularly with the new residential properties added recently. Ms. Bukowski expressed concern that businesses will be pushed out of the area by the proposal.
 41. Rosalie Hezekiah, 20 Commercial Street, expressed her support for the project.
 42. Chair Copelas stated that there will be more opportunities for public comment in the coming meetings.
 43. Nina Vyedin made a motion to continue the petition to the October 18, 2023 Board of Appeals meeting.

44. On October 18, 2023, Attorney Grover reviewed the presentation given at the September 20, 2023 meeting. Mr. Grover summarized the information from the prior meeting, and noted that the areas that have been focused on are traffic and parking, Chapter 91 requirements, resiliency and flood mitigation, and the financial feasibility of the project as it relates to the standard of hardship.
45. Attorney Grover stated that due to not having a full board it might be appropriate to continue at the end so that a full board could participate of this large of a decision.
46. Scott Thornton, Traffic Engineer, presented a map of the area to review traffic and parking for the area. Mr. Thornton stated that the team conducted traffic counts and signal warrant analysis. They also reached out to the Salem Traffic and Parking Department to inquire about any suggestions for the intersection. Mr. Thornton presented a map with suggestions for new striping to direct and channel traffic flow. Mr. Thornton noted that there may be a need for modifications to have a balance between uses and safety.
47. Chair Copelas inquired about the status of Route 114 and how it being a state road impacts the changes in terms of the required approvals.
48. Mr. Thornton clarified that while the road is state numbered, the road is not state maintained. The city is responsible for the maintenance of Route 114.
49. Bob Griffin, civil engineer, reviewed the Chapter 91 process for the board. He discussed the details on flood mitigation and the resiliency measures proposed.
50. Mr. Griffin explained that Chapter 91 is targeted toward ensuring public access to the shoreline and the public benefit to uses on any shoreline.
51. Mr. Griffin explained that 100 feet from the shoreline is the public accommodation zone, the first-floor use must be for public facilities such as a restaurant or gym. Here, the public accommodation zone is proposed landscaped public area and the nine (9) public parking spaces are proposed.
52. Mr. Griffin also noted the proposed walkway connection South Mason Street with Commercial Street as a way to add shoreline access.
53. Chair Copelas inquired if the nine public parking spaces are on private land.
54. Mr. Griffin confirmed they will be on private land, but they will be available for public use based on Chapter 91 regulations.
55. Chair Copelas inquired about the heights and elevations of the exits.
56. Mr. Griffin explained that the South Mason Street exit is mostly at elevation ten. The North Street entrance is elevation eight mostly, and Commercial Street is at elevation six.
57. Chair Copelas asked if the exit at the rear will still be a legitimate way out, if Commercial and North Street are flooding at the 100-year flood line. Mr. Griffin stated it would be.
58. Nina Vyedin inquired about flood storage at the site.
59. Mr. Griffin reviewed the FEMA 100-year flood line, the king tide, mean water height, and other data points and discussed the frequency of king tides. He

- showed the existing and proposed grades. This proposal does not involve work or any changes in the roadway in front of the river.
60. Mr. Griffin described the flood vents and latticed screens that will be under the proposed building that will allow for storage of flood waters during flood events. Mr. Griffin indicated under the flood storage area will be crushed stone so that water will go into the soil, but most will come in and go out laterally at the site.
 61. Rosa Ordaz inquired about the six parking spaces impacted by floods based on the proposed maps.
 62. Mr. Griffin explained that between the North Street side entrance and the full elevation parking area there are eight parking spaces in a section that ramps up, with approximately four to six spaces at elevation ten or slightly below. During a flood event, those spaces would need to be notified or marked to make sure the cars get moved.
 63. Chris Koeplin discussed their feasibility study. He stated that current lending rates are at 8.5%. Mr. Koeplin stated that land costs and fixed construction costs do not decrease in proportion to total units. A 60-unit project and a 40-unit project will have the same fixed costs. Mr. Koeplin stated that any increase in per unit costs must be absorbed by increases in market rents. The market rents are currently around \$2,700 per month per unit based on data.
 64. Mr. Koeplin maintained that the proposed 60 units were reduced to 50, rents would need to increase by \$567 per unit to achieve the same feasibility, bringing the average market rent to \$3,348 per month. Mr. Koeplin noted extensive environmental remediation costs and the costs associated with flood storage and stated that 60 units was the appropriate number to achieve market feasibility.
 65. Chair Copelas opened the meeting to public comment.
 66. Penelope Caritas (no address provided) expressed concerns regarding the flooding in the area, and suggested the City is continuing to ignore the issue of flooding instead of working with the state to get anything resolved.
 67. Polly Wilbert, 7 Cedar Street, expressed concern regarding any plans to make adjustments on North Street, whether it is state maintained or not. Ms. Wilbert stated that the proposed changes in the striping on North Street would remove six parking spaces that are important for food businesses.
 68. Emmet Costen, 190 Bridge Street, stated he is in support of the project.
 69. Christine Madore, 20 Federal Street, stated that she is in support of the project.
 70. Chair Copleas inquired if Attorney Grover wanted to respond to any of the comments.
 71. Attorney Grover stated he will take the comments and questions from the public and the board and draft some responses for the coming meeting.
 72. Nina Vyedin made motion to continue the petition.

73. On November 15, 2023, Scott Grover reviewed the materials that had been presented to the board at the October meeting.
74. Attorney Grover stressed that the variances being requested at the Zoning Board of Appeals are the first step of a very multi-step permitting process. There will need to be multiple boards that the applicant will be in front of. Especially, the Planning Board with their Site Plan Review process.
75. Paul Viccica inquired if the applicant would accept a condition that no parking spaces shall be assigned to any residents so that the resident in a two-bedroom apartment doesn't get two parking spaces assigned to them like a condo would, even though it's a rental unit rather than a condo.
76. Chris Koeplin stated that they would accept the condition.
77. Peter Copelas reviewed the submitted public comments for the public record.
78. The meeting was opened to public comment from the audience.
79. Penelope Chouski stated that she feels that there have been problems that have not been addressed by the applicant, specifically the parking.
80. Justin Whittier, 10 River Street, stated he was upset that the submitted letters were not read out loud. He read his public comment statement for the record. He stated that the ZBA lacks the authority to grant variances. That the requested variances requested were ludicrous.
81. Attorney Grover responded and stated that the ZBA does have the jurisdiction to rule on these variances which would be required to move forward with permitting for the site.
82. Killian O'Connell, 190 Bridge Street. She read her prepared statement for the board supporting the project.
83. Attorney Grover stated that there have been other projects where the separate entrance requirement relief has been granted. Halstead Station in 2007 was one of the projects that was granted this same relief.
84. Attorney Grover reviewed the three requirements for a variance for the board. He stated that if the zoning ordinance was literally enforced you would have only twelve units by right. If that were the case, based on the presented feasibility study the development of the parcels would not be economically feasible.
85. Paul Viccica made a motion to approve the petition.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Peter A. Copelas(Chair), Nina Vyedin, Carly McClain, Hannah Osthoff and Paul Viccica and none (0) opposed to grant 75 NORTH STREET, LLC at 75 NORTH STREET to re- develop a new four-story transit oriented mixed-use development that will consist of 60 units and a small commercial office space on North Street.

Receiving five (5) in favor votes, the petition for Variances 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. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. 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.
10. 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.
11. 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. No parking spaces shall be assigned to individual units or residents.

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.

