



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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**March 3, 2023**

## Decision

### **City of Salem Board of Appeals**

2023 MAR -2 PM 5:31  
CITY CLERK  
SALEM MASS

The petition of MD PROPERTY DEVELOPMENT at 275 LAFAYETTE STREET (Map 33, Lot 438) (R1,R3 Zoning Districts) for Special Permits per Section 3.3.2 *Nonconforming Uses* to change from one nonconforming use- educational use to a multi-family residential use. A Special Permit per Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to allow for alteration of the existing nonconforming structure. In addition, petitioner seeks Variances from Section 4.1 *Dimensional Requirements* for lot coverage where 30% is permitted and 32.5% is being sought/ lot area per dwelling unit where 3,500 SF is required in the R3 Zoning District and 15,000 SF in the R1 where 1,500 SF is proposed/ Side setback where 20 feet is required and 10 feet is sought. And per Section 5.1.5 *Curb Cuts* for 30 feet of curb cut where 20 feet is allowed. A total of 15 residential units in the existing building and a new building to be constructed at 275 LAFAYETTE STREET.

A public hearing on the above petition was opened on December 14, 2022 and was continued to January 18, 2023 and was continued to February 15, 2023 and was closed on February 15, 2023.

On February 15, 2023, the following members of the Salem Board of Appeals were present: Rosa Ordaz, Peter Copelas (Chair), Paul Viccica, Carly, McClain, Nina Vyedin and Steven Smalley.

### **Statements of Fact:**

The petition is date stamped November 17, 2022. The petitioner seeks a change of use at the property from an educational use to a multi-family use to develop fifteen (15) units at 275 LAFAYETTE STREET.

1. 275 Lafayette Street is owned by MD Property Development, Corp.
2. The petitioner was MD Property Development, Corp.



3. MD Property Development, Corp. was represented by Attorney Scott Grover and Architect Daniel Ricciarelli.
4. 275 Lafayette Street is located in the R1 and R3 zoning districts. (Map 33, Lot 438).
5. On December 14, 2022, Attorney Scott Grover presented to the board. Attorney Grover discussed the history of the property and its site conditions.
6. The lot is long and narrow and it spans a full city block from Lafayette Street to Summit Avenue. There is frontage on both Lafayette Street and Summit Avenue on this property. There is a single large building at the Summit Avenue end of the property that was built and occupied originally as a Chapel for Saint Joseph's Church. In the 1990s when St. Joseph's closed its doors, the property was sold to United Cerebral Palsy, which operated an educational facility. It was a training facility for disabled adults. The property is located in both the R1 and the R3 zoning districts, with approximately 1/3 of the land up at the Lafayette Street side in the R3 District and the remaining land and building in the R1 district. In addition, the property is also located in an entrance corridor overlay district. This means that the Design Review Board will have jurisdiction over the site plan review.
7. 275 Lafayette Street is located in the Lafayette Street Historical District, which will require The Historical Commission review of the project. The project will also require site plan review from the Planning Board. This project will be carefully scrutinized by City authorities.
8. The project proposes to have ten (10) units in the existing structure located towards the Summit Avenue side of the lot and to construct an additional five (5) units in a new structure closer to the Lafayette Street side of the property. The parking for both structures would be in between both structures on the site.
9. The petitioner is proposing of a total of twenty-three (23) parking spaces in a parking area that will be shielded from view from both streets. The spaces will comply with the 1.5 parking space requirement of the zoning ordinance.
10. Attorney Grover discussed the relief requested. A special permit is needed under Section 3 of the zoning ordinance to allow the change from the non-conforming religious educational use to a non-conforming multifamily residential use on the R1 portion of the site.
11. Attorney Grover stated that they had an opinion from the city solicitor that the former exempt use did qualify as a non-conforming use under state law. The second special permit is to allow a change in an existing non-conforming structure to allow to some limited exterior changes to be made.
12. Attorney Grover communicated that community need will be served by eliminating the existing commercial use in a predominantly residential neighborhood and that they will be providing much needed new housing units in the city. The traffic and parking impacts associated with the educational use will be replaced by a less intense residential use.

13. Attorney Grover stated that there are existing utilities on both Summit Avenue and Lafayette Street that will serve the new units. The planning Board will require any upgrades to those utility systems that are necessary as part of their site plan review.
14. Attorney Grover stated that there will also be a substantial increase in the tax revenue for the city with the proposed new residential units.
15. Attorney Grover discussed the requested variances for the petition. They are requesting 1,500 square feet per unit where 3,500 square feet is required in the R3 Zoning District and 15,000 is required in the R1 Zoning District. The requirement for lot coverage in the R1 Zoning District is thirty percent (30%) and in the R3 Zoning District it is thirty five percent (35%). Attorney Grover also stated they were taking the conservative approach and asked for a variance from the side yard setback requirement of twenty feet (20) to allow for the ten (10) foot set back. They are also proposing two curb cuts on the Summit Avenue side to serve existing parking spaces there.
16. Attorney Grover stated that the board may grant the requested variances with special conditions affecting the land of buildings that would cause a hardship if the dimensional requirements were strictly enforced. First, the properties are located in split zoning districts. Second, the lots are considerably larger than most of the others in the neighborhood, with a major portion being a substantially underutilized parking lot. Lastly, the building was designed and built first as a religious facility. It was then converted to an educational use.
17. Attorney Grover stated that to adapt the building to any reasonable use will require a significant investment, which is only feasible if a certain level of density is allowed.
18. Attorney Grover also stated that the Petitioner had done quite a bit of groundwork within the community. They have had a neighborhood meeting with abutters to share the proposed plans. They have also had several meetings with their Ward Councilor, Jeff Cohen, to help facilitate communication with their neighbors. There was also a one-stop meeting with the City to receive feedback.
19. Dan Ricciarelli, Architect, went through the proposed plans for the site at 275 Lafayette Street. Mr. Ricciarelli stated that the lot is very unique in the neighborhood as it goes one complete city block from Lafayette Street all the way to Summit Avenue. The entire lot is in the Historic District and it is also in the Entry Corridor District along Lafayette Street. Mr. Ricciarelli stated that about ninety (90) feet plus or minus back from Lafayette Street is the R3 District and there is a thirty (30) foot zone where we penetrate into R1 district.
20. Mr. Ricciarelli stated that according to the State register, Saint Theresa's Chapel was built in 1946. He stated that this is an unusual building for this neighborhood. They are proposing to keep the massing as it exists today for the proposed 10 units for this development. There's a very large basement

which probably served as a function hall. At one time or another it was overflow for the Chapel. They feel that there is adequate headroom. They will be using that space for garden units and some connecting as townhomes. The first floor will be all units and they will be creating some units up in the loft area, which is the attic space. In order to facilitate that, they will need to punch a few dormers into the roof.

21. Mr. Ricciarelli stated that they met with the Historic Commission and the Historic Commission was very supportive of what they are trying to achieve at the site. Mr. Ricciarelli stated that this is great project for Salem because they are reusing a vacant property and will be adding to the affordable housing stock for the City.
22. Bob Griffin, MD Development, stated that the proposed parking lot improvements don't require any substantial grading changes. They have a level lot that goes from Lafayette Street back to Summit Avenue. There are some grading changes around the proposed new building, and we will be adding a fair amount of green to the site plan. The landscaping beds will be getting rid of a lot of pavement and that will reduce the amount of stormwater runoff.
23. Mr. Griffin stated that the smaller size of the parking areas will lead to improvements in stormwater runoff quality. He stated that they will be putting some of the stormwater infiltration structures beneath the pavement to improve the drainage characteristics of this site.
24. Peter Copelas asked for questions from the board.
25. Paul Viccica stated that he understands the issue with density that has been raised by neighbors and in abutter comments. Mr. Viccica also stated that most of the requested variances are triggered from the proposed new building on Lafayette Street. He suggested that if the proposed new building had three (3) units instead of five (5) units they would be able to meet the parking requirements and be able to comply with the setbacks and not need the variance for that relief.
26. Mr. Viccica also stated he believes that the Planning Board will have an issue with the current proposal of the buildings not being aligned on Lafayette Street. The proposed new building has been pushed forward quite a bit on Lafayette Street and not in line with the other structures on Lafayette Street.
27. Drew Murphy, MD Development, stated that they are still trying to evolve the plans for the best project they can make. He reiterated that they had met with the community to get all of their input surrounding the development. He stated that they have looked at documents on Zillow.com and the Registry of Deeds and verified that abutting properties all had four (4) to six (6) units in them. He stated that those were in line with their proposal.
28. Paul Viccica opined that the petitioner's desire for higher density is causing their issue in front of the Zoning Board and could cause trouble for the petition in front of other boards.

29. Rosa Ordaz asked if there will be external construction on the existing building on Summit Avenue.
30. Mr. Ricciarelli stated that it would be an internal gut job and they plan to add dormers to the roof to improve the roof form.
31. Rosa Ordaz inquired if the neighbors received a full picture of what was planned for the property.
32. Dan Ricciarelli stated that they didn't show plans for the proposed building because they felt they just weren't there with the plans for that structure so they didn't show it. They were trying to introduce the project to the neighbors. Mr. Ricciarelli stated that he was happy to show plans with neighbors once they have a plan they are happy with and are ready to show them.
33. Peter Copelas opened the meeting up to comments from the public.
34. Anthony Porcello, 271 Lafayette Street spoke to the board about his concerns on the project. Mr. Porcello stated that when one reviews the requirements for Section 3.3.2 non-conforming uses you have to do a comparison. He stated that this section allows the conversion if it determines that such change or extension shall not be substantially more detrimental to the neighborhood. He stated that the old use wasn't detrimental at all because of the educational use. He felt that a change to a large multifamily unit would be drastically detrimental to the neighborhood.
35. Mr. Porcello stated that the proposed density is extreme, and it's primarily because the land is being used up by the parking spaces. As a result, all the density gets pushed in and the impact will be to us directly. He stated that the new building is going to be ten (10) feet from the property line and that creates several problems for us, not the least of which is the fact that it's going to be in the way of his light. The new building will cast great shadows on the property at 271 Lafayette Street.
36. Mr. Porcello also stressed the challenge of getting out of their driveway with traffic on Lafayette Street would be increased based on the current set of plans.
37. Mr. Porcello also raised concerns surrounding snow and trash removal.
38. Liz Vago, 29 Summit Avenue, stated that she has concerns around the proposed development, in particular curb cuts, the density of the proposed building in the historic district and the amount of parking with the lack of green space.
39. Polly Wilbert, 7 Cedar Street, expressed her concern over the density of the project. In particular, she expressed concern for the development of garden apartments in the basement. She stated that they are not compatible with or similar to the large type of living units, including rental units that are in this part of South Salem. She stated that the windows on the former Chapel on the basement level are very small. There are going to be cars parked adjacent to that building in the winter. I think there'll be snow piled up in that building. She stated that she felt the proposed units are not consistent with the kind of quality living spaces that are currently in the neighborhood.

40. Jeff Cohen, 12 Hancock Street, stated the communication from the developer has been really good. They had the first community meeting. They've committed to another one. He stated the development team has reached out to some individuals who have expressed concerns. Mr. Cohen believes that process will be inclusive of people, businesses and residents of the neighborhood.
41. Mr. Cohen also expressed that with his knowledge the amount of residents at this location, it would require a private company to remove trash and recyclables. It would not be the City's responsibility for removal.
42. Mr. Copelas offered time to Attorney Grover to respond to the comments that were provided during the public comment.
43. Attorney Grover asked Dan Ricciarelli to provide some feedback regarding the basement/garden apartments.
44. Mr. Ricciarelli stated that they were not amendable to the current amount of windows. The developers are working with the Historical Commission to have compromise surrounding the development. Mr. Ricciarelli stated that they have several ideas to improve on. However, they are not there yet with the development plans.
45. Peter Copleas inquired with Attorney Grover around a continuance.
46. Attorney Grover felt a continuance to January 18, 2023 would be advantageous to the petition and revision of plans.
47. Paul Viccica made a motion to approve the continuation.
48. The petition was continued to January 18, 2023.
49. On January 18, 2023 a request for a continuance to the February 15, 2023 meeting. The petition was continued to February 15, 2023.
50. On February 15, 2023, Attorney, Scott Grover, presented to the board the new plans for the petition.
51. The first change to the petition is the total amount of units which went from fifteen (15) to ten (10).
52. The decrease in the number of units meant that the petitioner was able to decrease the amount of parking spaces to fifteen (15).
53. Dan Ricciarelli, Seger Architects, went through the plan changes to the site.
54. Peter Copelas requested that attorney Grover state again what relief the petitioner is seeking based on the plan revisions.
55. Attorney Grover reviewed the relief required. The petitioners are seeking a variance from lot area per dwelling unit for two thousand two hundred and fifty square feet. (2,250 sq.ft) where fifteen thousand (15,000) sq. ft is required. Also, a variance from lot coverage of thirty percent (30%) required to thirty-three and six tenths percent (33.6%). In addition, a variance of ten feet (10 ft) for the side setback where twenty feet (20 ft) is required. And a variance for two curb cuts for forty-four feet (44 ft) where twenty feet (20 ft) is required.
56. Chair Copelas opened up the meeting to comments from the board.

57. It was expressed by the members of the board, that they were happy with the process of taking feedback from the neighborhood residents and the board to modify plans for a much improved project.
58. Peter Copelas opened the meeting up to public comment.
59. John Porcello, abutter, read a letter stating their approval for the changes made to the plans and gave his support for the project.
60. Paul Viccica made a motion to approve the special permit and the variances.
61. The February 15, 2023 meeting of the Board of Appeals was held remotely, via the online platform Zoom in accordance with Chapter 107 of the Acts of 2022.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Steven Smalley, Peter Copeals(Chair), Rosa Ordaz, Carly McClain and Paul Viccica and none (0) opposed to grant MD PROPERTY DEVELOPMENT at 275 LAFAYETTE STREET Special Permits per Section 3.3.2 *Nonconforming Uses* to change from one nonconforming use-educational use to a multi-family residential use. A Special Permit per Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to allow for alteration of the existing nonconforming structure. In addition, Variances from Section 4.1 *Dimensional Requirements* for Lot area per dwelling unit, curb cuts, lot coverage, and side setbacks.

**Receiving five (5) in favor votes, the petition for a Special Permit and Variances are 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 shall obtain numbering from the City of Salem's Assessor's Office and shall display said number to be visible from the street.

9. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
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.

**Variance Findings:**

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:
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant in attempting to put the property to productive use.
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.

Date MAR 27 2023

I hereby certify that 20 days have expired from the date this instrument was received, and that NO APPEAL has been filed in this office.

A True Copy

ATTEST: None Simons  
CITY CLERK, Salem, Mass.

Peter Copelas/DC

Peter 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.