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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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SALEM, MASS

August 11, 2020

Decision

City of Salem Board of Appeals

Petition of DODGE AREA LLC for a variance from Section 4-51 *On-premises signs in nonresidential districts* of the Salem Zoning Ordinance to allow a 2'4" wide by 16' tall blade sign at the Hampton Inn Hotel at 9-11 DODGE STREET, 217-219 WASHINGTON STREET, and 231-251 WASHINGTON STREET (Map 34, Lots 404, 405, 406) (B5 Zoning District).

A public hearing on the above Petition was opened on April 1, 2020 pursuant to M.G.L Ch. 40A, § 11; continued to May 20, 2020 (no testimony was heard on May 20); and continued to June 17, 2020 and closed on June 17, 2020 with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Carly McClain (Alternate), Rosa Ordaz, Steven Smalley (Alternate), and Paul Viccica; Jimmy Tsitsinos was absent.

On April 1, 2020 and May 20, 2020, Peter A. Copelas, Mike Duffy (Chair), Carly McClain (Alternate), Rosa Ordaz, Steven Smalley (Alternate), and Paul Viccica were present and Jimmy Tsitsinos was absent.

The petitioner seeks a variance from Section 4-51 *On-premises signs in nonresidential districts* of the Salem Code of Ordinances to allow a 2'4" wide by 16' tall blade sign at the Hampton Inn Hotel at 9-11 Dodge Street, 217-219 Washington Street, and 231-251 Washington Street.

Statements of Fact:

1. In the petition date-stamped March 10, 2020, the petitioner requested variances per Section 4-51 (a) (4) (e) and 4-51 (a) (4) (d) of the Salem Code of Ordinances from maximum area of an on-premises sign in a nonresidential district to allow a blade sign 2 feet 4 inches wide and 16 feet tall, to allow a blade sign greater than the allowed size and above the allowed height for such signs.
2. The application was filed by Attorney Thomas J. Alexander.
3. The petitioner and property owner of 9-11 Dodge Street, 217-219 Washington Street, and 231-251 Washington Street is Dodge Area LLC.
4. 9-11 Dodge Street, 217-219 Washington Street, and 231-251 Washington Street is the site of the new Hampton Inn Hotel. The property is located in the Central Development (B5) zoning district.
5. The proposal is to construct a blade sign on the hotel, at the corner of the building where Dodge Street and Washington Street meet, with dimensions 2'4" wide and 16' tall. At this site, per Section 4-51 of the Salem Code of Ordinances, the maximum allowed blade sign would be 24 square feet per side. The proposed sign is 37 1/3 square feet per side. The height for blade signs must be no less than 10 feet above grade at bottom and 25 feet above grade at the top. The proposal is for the sign to be 16 feet 4 inches above grade at bottom and 32 feet 4 inches above grade at top.

6. The requested relief, if granted, would allow the petitioner to install a 2'4" wide by 16' tall blade sign at a height greater than typically allowed at the Hampton Inn Hotel at 9-11 Dodge Street, 217-219 Washington Street, and 231-251 Washington Street.
7. The method and standards by which the Board of Appeals may vary the terms of the Salem Code of Ordinances relative to signs are from Sections 4-44 and 4-45 of the Salem Code of Ordinances. Section 4-44 *Variations* of the Salem Code of Ordinances reads in part: "The board of appeals may vary the sections of this article in specific cases which appear to it not to have been contemplated by this article and when its enforcement would involve practical difficulties or unnecessary hardship if, in each instance, desirable relief may be granted without substantially derogating from the intent and purpose of this article, but not otherwise. Sections of this article may be varied only by a decision of four of the five members of the board, which shall specify any variance allowed and the reasons therefor." Section 4-45 *Conditions and safeguards in granting variances* reads: "The board of appeals, in granting variances to this article, shall set forth appropriate conditions and safeguards whenever, in its opinion, they are desirable."
8. The Hampton Inn Hotel project has received other required approvals and the blade sign design was approved by the Salem Redevelopment Authority following the recommendation of the Design Review Board.
9. The public notices for the petition incorrectly referenced the "Salem Zoning Ordinance" instead of the "Salem Code of Ordinances" and incorrectly noted the height of the sign as 16" (16 inches) instead of 16' (16 feet).
10. Due to the ongoing COVID-19 pandemic and related precautions and Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, the April 1, 2020 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
11. At the April 1, 2020 meeting of the Board of Appeals, Attorney Thomas J. Alexander and owner representative (and landscape architect) Ken McClure discussed the proposal. Mr. Corrison noted the issues with the public notice (16 inches instead of feet, and Zoning Ordinance instead of Code of Ordinances). Attorney Alexander indicated that common sense would dictate that 16 inches would not be the height of the sign for this building, so he did not see that as a problem, nor did he have issue with the reference to the Zoning Ordinance instead of the Code of Ordinances, so they are good to move forward as-is. Attorney Alexander provided context for the size of the project (113 hotel rooms, 90,000 square feet interior, parking for 211 vehicles, 11,000 square feet of commercial space). He presented the design and context within the downtown area. He noted that he worked with the Design Review Board and Salem Redevelopment Authority to come up with the design and states that it is appropriate for the building scale, location, and use, despite being slightly larger than what ordinances normally allow. He noted that construction is on time and on budget for June completion and July opening. Attorney Alexander argued that the variance standard has been met as there are practical difficulties relating to visibility due to the building's size and low elevation and the need for patrons to be able to clearly see the sign. The applicant team noted the need for tourists to be able to locate the building. Mr. McClure noted that they had initially proposed a larger sign with different branding, and the SRA and DRB process yielded a smaller sign with the new branding. He noted that Hampton Inn has only done such branding in one other instance, in Portland, OR.
12. At the April 1, 2020 public hearing, Mr. Viccica asked the petitioner to explain the hardship. He noted that he has seen a Hampton Inn in Savannah, GA that is not a blade sign or illuminated (and thus was different than the traditional branding). He indicated that he has not heard a hardship that he could

support. Attorney Alexander noted that the awning will not be visible on Washington or Canal Street and the blade sign will allow people in motor vehicles to find the hotel as they are driving down major streets. Mr. Viccica noted that people are more often finding locations not from visual cues but through GPS, phones, and maps. Mr. Copelas added that the request is for a sign that is 50 percent larger than what the ordinance calls for, which seems a rather large departure from the intent of the Ordinance. He noted that he respects the consideration of the SRA but is concerned, and agrees with Mr. Viccica that visual cues are not as important as they were 10 or 20 years ago. Attorney Alexander noted that this is a larger building than anything else in the area but that the signage regulations are one-size-fits-all; he noted that people will need confirmation of where they are and need to get to their destination safely. There was some more discussion between Board members, Attorney Alexander, and Mr. McClure. Ms. McClain indicated that the size might be a positive safety consideration. Ms. Ordaz agreed with Mr. Viccica and Mr. Copelas' concerns. Mr. Copelas noted that it would be helpful to have more streetscape renderings to visualize the signage better. Mr. Viccica asked about practical difficulties with installing a sign on the Washington Street side and noted that he does not think no alternative exists that fits with the ordinance's requirements. Mr. McClure noted that the proposed trees would make visibility difficult. Mr. Viccica reinforced that he has not seen a real hardship or practical difficulty. Mr. McClure noted he would get more information on the Savannah location and would provide better renderings. He asked to continue the hearing. Ms. Ordaz asked about a non-illuminated sign in the glass window; Mr. McClure noted that they looked into this but the signage would be on the downhill side of the building. Mr. Viccica and Chair Duffy referenced other hotels in the City that do not have large blade signs. Mr. Copelas noted that the applicant disadvantaged themselves with the location of the residential portion of the building compared to the hotel portion—the residential portion would be a better location for signage. He noted that this design should not be a reason for a variance. Attorney Alexander stated he would be comfortable with a continuance.

13. At the April 1, 2020 public hearing, no (0) members of the public spoke in favor of or in opposition to the proposal.
14. At the April 1, 2020 public hearing, the Board voted five (5) in favor (Peter Copelas, Mike Duffy (Chair), Rosa Ordaz, Paul Viccica and Carly McClain) and none (0) opposed to continue the hearing to the next regularly scheduled meeting on May 20, 2020.
15. Prior to the May 20, 2020 meeting of the Board of Appeals, Attorney Alexander submitted a signed request to continue the hearing on this petition from May 20, 2020 to June 17, 2020. Said request was filed with the City Clerk on May 15, 2020.
16. At the May 20, 2020 meeting of the Board of Appeals, the Board voted five (5) in favor (Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, and Carly McClain) and none (0) opposed to continue the hearing to the next regularly scheduled meeting on June 17, 2020. No testimony was heard on the petition during this meeting.
17. Prior to the June 17, 2020 meeting of the Board of Appeals, Tom Daniel, AICP, Executive Director of the Salem Redevelopment Authority, sent a memorandum to the ZBA regarding the "SRA and DRB review of the Hampton Inn Blade Sign." The memorandum noted in part, "The review process for the signage on this building has been extensive. Both the SRA and the DRB have thoroughly vetted its design and have found that final design iteration of the blade sign is appropriate for the scale of the building, its location in a heavily-trafficked intersection, and its style that reads as more downtown urban rather than suburban or highway." The memo discussed the uniqueness of the site and noted that "The signage challenges are specific to this building and to this site – neither of which could have been contemplated when the sign regulations for the B5 zoning district were written." The

memorandum also spoke to the question of whether approval would substantially derogate from the intent of the sign ordinance. In closing, the memo noted, "The SRA respectfully requests that you find the sign design was fully vetted over the course of several months of both staff and public meetings and that you grant the requested relief."

18. Prior to the June 17, 2020 meeting of the Board of Appeals, the petitioner provided more sign images and more details. The applicant installed a temporary sign of the same size and at the same location as the proposed sign and provided photos of the sign. The applicant was directed to remove this temporary sign, as it was installed without a permit.
19. At the June 17, 2020 meeting of the Board of Appeals, Attorney Alexander and Mr. McClure discussed the proposal. Attorney Alexander noted that the size of the project and building is one of the reasons behind the request. He noted that the designs were reviewed and approved by the Design Review Board, Salem Redevelopment Authority, and Planning Department. He noted that in order to grant the sign variance, the Board must find that enforcement would result in practical difficulty or hardship, but not necessarily both. He noted that in this case, the practical difficulty is with respect to visibility and safety. Mr. McClure reiterated the design and review process and noted that a temporary sign was installed to help the Board members understand what the sign would look like. He provided statistics regarding hotel occupancy and where visitors will be coming from, noting that 75 percent will come from points south. He noted that the nearby intersection and traffic conditions are the reason for the variance. He noted that the proposed trees may reach 40 feet in height and 20 feet in width, causing visibility issues. He emphasized that the height and size of the sign are important to visibility.
20. At the June 17, 2020 public hearing, Ms. Ordaz expressed concerns and noted that if visibility and traffic are issues, it seems strange to not locate the sign further south on the building. Mr. McClure noted the residential portion of the building (to the south) cannot be used for hotel signage. Ms. Ordaz asked about the temporary signage; Mr. Corrison confirmed that he was made aware of the temporary. Mr. Corrison mentioned the memorandum from Tom Daniel encouraging approval of the petition.
21. At the June 17, 2020 public hearing, Mr. Viccica stated that he has tried to come around to the proposal, and walked around and saw the temporary sign, but he still has difficulty. He noted that looking from the corner of Mill Street and Canal Street to the train station, there are few signs that are very visible, and that with the exception of pre-existing nonconforming signs, they comply with sign ordinance requirements. He noted that the trees at maturity would be 40 feet or taller, definitely obscuring the sign at least six months of the year. He noted that he is currently unmoved and would not vote in favor. Ms. Ordaz indicated that she feels similarly to Mr. Viccica. She expressed concern that the sign was installed in a sneaky way. Mr. Corrison noted that he was made aware of the temporary signage and asked the Board to focus on the variance standard rather than procedural challenges. Mr. Viccica noted he is not convinced that there is practical difficulty, because he did not see a rendering showing what a conforming sign would look like; presenting the "worst-case scenario" did not resonate with him, and he contended that there was no attempt to make the sign work with the ordinance first. He also expressed concern about setting precedent, including for other large developments on Washington Street.
22. At the June 17, 2020 public hearing, Mr. McClure and Attorney Alexander emphasized the need for visibility for new visitors; discussed the less strict standard of the ordinance; and spoke to concerns regarding the trees and the precedent. Mr. McClure noted that the trees could be modified to be a smaller variety.

23. At the June 17, 2020 public hearing, Chair Duffy asked Mr. Viccica if he believes that the proposal would take away from the intent of the ordinance. Mr. Viccica stated that most non-pre-existing signs comply with the ordinance, and that he did not see a reason this sign could not comply. He was not convinced that the difficulties presented were practical or could not be overcome. He stated that the sign ordinance levels the playing field for all businesses, and he believes the equality of signage was the intent of the ordinance.
24. At the June 17, 2020 public hearing, no (0) members of the public spoke in favor of or in opposition to the petition.

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, makes the following **findings** that the proposed project **does not** meet the provisions of the City of Salem Code of Ordinances:

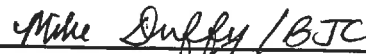
Variance Findings:

The Board does not find that the enforcement of the ordinance would involve practical difficulties or unnecessary hardship. The petitioner has other options available for signage which would not require relief from the terms of the sign ordinance.

Desirable relief may not be granted without substantially derogating from the intent and purpose of this article. Granting the requested relief would allow a larger and taller blade sign than the ordinance envisions. The blade sign ordinance is consistent for properties across the City. Granting this relief would derogate from the intent and purpose of said regulation.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted one (1) in favor (Peter A. Copelas) and four (4) opposed (Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, and Steven Smalley) to grant the requested Variance from Section 4-51 *On-premises signs in nonresidential districts* of the Salem Zoning Ordinance to allow a 2'4" wide by 16' tall blade sign at the Hampton Inn Hotel at **9-11 Dodge Street, 217-219 Washington Street, and 231-251 Washington Street.**

Failing to receive four votes in favor, the petition for a variance is denied.

/BJC

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.