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MAYOR

# CITY OF SALEM, MASSACHUSETTS

## BOARD OF APPEALS

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**April 16, 2024**

### **Decision**

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

The petition of DEMETRA KARLIS (A/KOUNSALIEH), TRUSTEE at 152-156 DERBY STREET (Map 35, Lot 348) (B1 Zoning District) for a Variance from Section *5.1.8 Table of Required Parking Spaces* of the Salem Zoning Ordinance to delete the requirement in the December 30, 2013, Board of Appeals decision that the owner lease three (3) off-site parking spaces within a reasonable distance of the residential units. Petitioner proposes to change present nonconforming use as a first-floor restaurant with 2 dwelling units above subject to a condition to lease off-street parking to the same use with no requirement to lease off-street parking.

A public hearing on the above petition was opened on March 20, 2024, and was closed on March 20, 2024.

On March 20, 2024, the following members of the Salem Board of Appeals were present: Nina Vyedin (Chair), Carly McClain, Hannah Osthoff and Ellen Simpson.

### **Statements of Fact:**

The petition is date stamped February 8, 2024. The petitioner seeks the Board of Appeals approval to remove the parking requirement at the property.

1. 152-156 Derby Street is owned by Demetra Karlis, Trustee.
2. The petitioner was Demetra Karlis, Trustee.
3. Attorney Bill Quinn was the representative.
4. 152-156 Derby Street is located in the B1 Zoning District (Map 35, Lot 348).
5. On March 20, 2024, Bill Quinn presented the requested relief to the board.
6. Attorney Quinn stated to the board that his client was seeking relief from the parking requirements that were a condition in the 2013 Zoning Board of Appeals Decision. This decision required the Applicant to lease three (3) off-site parking spaces.
7. The basis for the request is the location where the leased parking spaces were located no longer exist. The parking lot that was being used has been sold and a housing development was created.
8. On February 8, 2024, an application was submitted for a special permit to seek relief from the parking requirements that were a condition of the 2013 Zoning

Board of Appeals Decision. Attorney Quinn informed the board that he had communication with the City Solicitor, Beth Rennard, and she indicated that a variance would be needed, and not a special permit. On February 14, 2024, the Zoning Board approved the request of the applicant to withdraw the special permit application without prejudice due to the requested relief being incorrect.

9. Attorney Quinn stated he was in front of the board tonight to request a variance to remove the parking requirement for the current petition at 152-156 Derby Street in which the owner must lease three (3) off-site parking spaces for the property.
10. Attorney Quinn stated there are several restaurants up and down Derby Street in the surrounding area. This petition's establishment is going to have outdoor dining. Attorney Quinn stated the city did his client a favor by expanding the sidewalk in front of the building to make room for outdoor dining.
11. Attorney Quinn stated that they are requesting to remove the condition because the owner intends to sell the property to a restaurant operator and move on with her life since the passing of her husband.
12. Attorney Quinn stated that tenants can purchase resident parking stickers for the property and surrounding areas that extend all the way down Derby Street. The parking garages are too far to be reasonable to ask people to walk to and from their housing units.
13. Attorney Quinn stated that his client is trying to find the appropriate relief that can get them what they want, and his client is being cognizant of the city's interests about protecting people's right to park.
14. Attorney Quinn stated that if the board denies the petition, it really will be an extraordinary hardship for his client because she won't be able to use the property as it now exists. The board retained in its last decision the right to revoke the 2013 decision if the client was not complying, which could result in orders to remove portions of the building.
15. Attorney Quinn stated that it doesn't seem reasonable or rational that the property that has been successfully operated at this location, to the city's benefit, as well as the owner's benefit, should be torn apart because they cannot answer the question of off-site parking for the property.
16. Nina Vyedin opened the meeting up to public comment.
17. Cindy Jerzylo, Ward 1 City Councilor, stated that she felt the requirement should stay in place due to the parking being much tighter now than back when the original decision was made.
18. Attorney Quinn responded that they have asked multiple property owners in the area to lease parking spaces; however, they have been unsuccessful in finding parking spaces to lease.
19. There were no more public comments.
20. Nina Vyedin stated that the client has done their due diligence and has pursued the available parking options. She stated that the parking situation in that area is not going to be changed by whether the board approves the petition. They are not

adding new units nor adding new residents. This petition is already matching what is happening in the neighborhood.

21. Ellen Simpson stated that the neighborhood is very walkable, and it would be a different discussion if they were adding new units. Since they are not adding new units at this location, the impact is less on the parking.
22. Carly McClain wanted to give credit to Attorney Quinn for looking around to find other leasable parking spaces.
23. Attorney Quinn presented the statement of hardship for the variance. He stated that the development of the neighborhood, and the crowded conditions in the neighborhood are reasons why they have not been able to secure parking for the property.
24. Attorney Quinn stated that the character of the neighborhood is walking to a spot and having a cup of coffee or a meal of some kind.
25. Attorney Quinn said the Board of Appeals has the authority to review and make orders rescinding prior approvals from earlier Board of Appeals decisions.

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearings, and after thorough review of the petition, including the application narrative and plans, makes the following **findings** that the proposed project meets the provisions of the City of Salem Zoning Ordinance:

### **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: the lack of available off-street parking spaces to lease within the neighborhood. In addition, the Board of Appeals approved the expansion of the structure at the property where they were legally allowed by the Board of Appeals in 2003 and 2013, neither of which required on-site parking.
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: non approval would require the removal of the restaurant addition, removal of the third-floor apartment, the access and egress stairway legally required to serve it. The dispossession of residential tenants, and the loss of two (2) legal apartments for housing the residents of Salem.
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: the owner has acted to secure zoning relief for all of their previous improvements. Due to Salem's need for additional residential housing units, the relief sought may be granted without substantial detriment to the public good, without nullifying or substantially derogating from the intent of the district or the purpose of the ordinance.

On the basis of the above statements of fact and findings, **the Salem Board of Appeals voted four (4) in favor (Nina Vyedin (Chair), Carly McClain, Ellen Simpson, Hannah Osthoff)) and none (0) opposed** to grant DEMETRA KARLIS (A/KOUNSALIEH), TRUSTEE at 152-156 DERBY STREET a Variance from Section 5.1.8 *Table of Required Parking Spaces* to delete the requirement in the December 30, 2013, Board of Appeals decision that the owner lease three (3) off-site parking spaces within a reasonable distance of the residential units; 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. 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. Petitioner shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to be visible from the street.
10. 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.
11. 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.
12. Petitioner shall schedule Assessing Department inspections of the property, at least annually, prior to project completion and a final inspection upon project completion.

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Nina Vyedin, 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.