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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK
SALEM, MASS

February 5, 2024

Decision

City of Salem Board of Appeals

The petition of JERRY'S LLC at 301 ESSEX STREET (Map 26, Lot 458) (B5 Zoning District) for a Variance per Section 5.1.9 *Off-street Parking – Central Development District* to reduce the parking spaces required to a one-to-one ratio. This would result in a total of twenty spaces- twelve would be on site and the remaining eight in an offsite facility. Further, the Applicant is requesting a variance from the requirement in Section 5.1.9(d) that the offsite spaces be located in a facility that is within 1,000 feet of the Property. The Applicant is proposing to purchase additional parking at the Museum Place parking garage which is approximately 1,200 feet from the Property.

A public hearing on the above petition was opened on January 17, 2024 and was closed on January 17, 2024.

On January 17, 2024, the following members of the Salem Board of Appeals were present: Nina Vyedina (Chair), Carly McClain, Paul Viccica, and Hannah Osthoff.

Statements of Fact:

1. 301 Essex Street is owned by Jerry's LLC.
2. The petitioner was Jerry's LLC.
3. The representative was Attorney Scott Grover.
4. 301 Essex Street is located in the B5 Zoning District (Map 26, Lot 458).
5. On January 17, 2024, Attorney Scott Grover explained the requested relief to the board.
6. Attorney Grover shared that the property rests on the very edge of the Central Development District (B5). This is significant because there are very few properties that are outside of the B5 zoning district.
7. Jerry's LLC is proposing to redevelop the property to create a mixed-use project that will consist of approximately 1,500 square feet of retail space on the 1st floor along Essex Street and residential units above the commercial space.
8. The development of this property is unique because under the Zoning Ordinance Section 5.1.9, ten of the new units will be constructed within a portion of the

original structure. These units within the original structure will require a one-to-one ratio for parking. The other ten units that will be in the new three and a half addition will require one and a half spaces per unit.

9. This brings the total parking spaces for the proposed construction to a total of twenty-five spaces. The applicant is seeking relief from the one and a half spaces per unit requirement for all ten new units. They are asking for the one-to-one ratio to be extended to the new units, bringing the parking requirement to twenty-two spaces.
10. A total of 12 covered parking spaces will be located on the first floor behind the retail space.
11. The Applicant has proposed to procure the remaining eight (8) spaces in an off-site facility in order to bring the property into compliance with the one and a half spaces per unit for the new units.
12. Attorney Grover let the board know that this petition has been to the Salem Redevelopment Authority and the Salem Design Review Board.
13. Attorney Grover let the Board of Appeals know that the petition was currently in front of the Planning Board for site plan review.
14. Attorney Grover stated that given the location of the property in the downtown area and close to public transit, the Applicant was urged to reduce the required parking by seeking relief for the parking requirements from the Board of Appeals.
15. Attorney Grover stated that this is why they are requesting the Board of Appeals to approve a one-to-one ratio for the project.
16. Attorney Grover discussed the grounds for the second requested variance. The applicant is seeking relief from the requirement of Zoning Ordinance Section 5.1.9.D that offsite parking be located in a facility that is within 1,000 feet of the property. This would allow the additional parking to be purchased at the Museum Place Garage which is approximately 1,200 feet from the property.
17. Attorney Grover reviewed a map that showed just how few properties are located beyond 1000 feet from the Museum Place Garage. The reason for creating the map is to show how few properties in the B5 district don't have the benefit of being able to use a municipal facility.
18. Attorney Grover reviewed the Statement of Hardship for the variance request. There are special conditions that affect this property that do not affect most of the other properties in the B5 district. The property occupies a very prominent location at the entrance to the city center. The Salem Redevelopment Authority stated that the proposed building make a strong statement. For this reason, the SRA urged the Applicant to create a large enough structure to anchor the corner there.
19. It was equally important to the Salem Redevelopment Authority that the Applicant maintain a retail presence in this location which limited the number of parking spaces available at the ground level.

20. If there was not a retail presence for this project, the entire first floor could have been devoted to parking. Because retail was an important feature of the project, it is the only area behind the storefront that is available for parking.
21. Attorney Grover reviewed the last condition for the hardship. The location is different from most of the other properties in the district because it does not have the benefit of being able to use a municipal facility for parking. So, the location is creating the conditions that require a variance for the project. Based on these special conditions, the literal enforcement of the parking requirements would create a hardship by forcing the applicant to either reduce the building to a significantly smaller scale to comply with the parking requirements or eliminate the retail component to provide more parking. Neither of these options were viewed favorably by the SRA or the DRB.
22. Attorney Grover stated that the project complies with the dimensional requirements of the zoning ordinance in all respects other than parking, including height, lot coverage and lot area per dwelling unit. Reduced parking is consistent with the intent of the B5 District.
23. Attorney Grover shared with the Board of Appeals that the Planning Board unanimously approved supporting the reduction in parking. In addition, a persuasive letter from an individual member of the Planning Board, Jonathan Berk, articulating the many reasons why reduced parking at this location is appropriate. Lastly, a letter from David Kucharsky, Director of Traffic and Parking, recommended two conditions that should be attached to any decision by the Board of Appeals.
24. The two conditions are: The Applicant purchase annual parking passes at the Museum Place garage to satisfy the number of off-site spaces, if approved and the residents of the property are ineligible to obtain resident parking permits.
25. Attorney Grover stated that both conditions are acceptable to the Applicant.
26. Chair Vyedin opened the meeting up to questions from the board.
27. Hannah Osthoff requested Attorney Grover to go over the map showing the distances between properties. Attorney Grover reviewed what the map was showing-the distances between other properties in the B5 district and how they were within 1000 feet of municipal parking sites. However, 301 Essex Street is not within 1000 feet of other municipal parking sites.
28. Paul Viccica asked if they cannot enter into the agreement at Museum Place Garage for the eight spaces then the Applicant would need to return the Board of Appeals. Attorney Grover stated that was correct.
29. The Board discussed the proposed condition from the Director of Traffic and Parking that parking passes be limited to Museum Place Garage. The Board discussed that the Zoning ordinance provides that Applicants can purchase parking passes in any lot or garage within 1000 ft, and whether or not it was appropriate to limit the Special Condition to a single location.

30. Carly McClain stated that she didn't feel the condition of not allowing resident sticker parking for these residents was right. She felt that condition was not appropriate.
31. Chair Vvedin opened the meeting up to public comment.
32. There was none.
33. Attorney Grover again reviewed the Statement of Hardship for the request for the variances.
34. Paul Viccica made a motion to approve the petition.

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 Salem Redevelopment Authority wants the building to be a strong presence. The SRA urged the Applicant to create a large enough new structure to anchor the corner. The size of the proposed structure in turn dictated a certain number of units and a corresponding number of spaces to comply with zoning.
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: Literal enforcement of the parking requirements would create a hardship by forcing the Applicant to reduce the building to a significantly smaller scale in order to comply with the requirements or alternatively eliminating the retail component to provide more parking.
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 proposed project complies with the dimensional of the of the Zoning Ordinance in all respects, including height, lot coverage, and lot area per dwelling. The idea of reduced parking requirements is consistent with the B5 Zoning District.

On the basis of the above statements of fact and findings, **the Salem Board of Appeals voted four (4) in favor (Paul Viccica, Carly McClain, Nina Vyedin (Chair), and Hannah Osthoff) and none (0) opposed** to grant JERRY'S LLC at 301 ESSEX STREET a Variance per Section *5.1.9 Off-street Parking – Central Development District*. Further, a variance from the requirement in Section 5.1.9(d) that the offsite spaces be located in a facility that is within 1,000 feet of the Property.

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 shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to visible from the street.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. 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 change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.
10. Petitioner shall schedule Assessing Department inspections of the property, at least annually, prior to project completion and a final inspection upon project completion.

Special Condition:

1. Petitioner shall obtain eight (8) parking spaces at Museum Place Garage or in a location no further than 1000 feet of the Property.


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.