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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #
CITY CLERK, SALEM, MASS.

December 30, 2013

Decision

City of Salem Zoning Board of Appeals

Petition of SPIRO KOUNSALIEH requesting a Special Permit under Section 3.3 *Nonconforming Uses and Structures* of the Salem Zoning Ordinance to change from an existing nonconforming use to another non-conforming use; a Variance under Section 5.1.2 *Location* of the Salem Zoning Ordinance to allow required parking to be located on a separate lot; Variances under Section 4 *Dimensional Requirements* of the Salem Zoning Ordinance to allow encroachment on the minimum allowed width of side yard and minimum allowed depth of rear yard, and relief from the maximum allowed lot coverage by buildings, at the property located at 156 DERBY STREET (B1 Zoning District).

A public hearing on the above Petition was opened on December 18, 2013 pursuant to M.G.L. Ch. 40A, § 11. The hearing was closed on that date with the following Salem Board of Appeals members present: Ms. Curran (Chair), Ms. Harris (Vice Chair), Mr. Dionne, Mr. Watkins, and Mr. Eppley (Alternate).

The Petitioner seeks Variances from Section 5.1.2 *Location* and Section 4.0 *Dimensional Requirements*, and a Special Permit under Section 3.3 *Nonconforming Uses and Structures*, of the Salem Zoning Ordinance

Statements of fact:

1. Attorney William Quinn of Tinti, Quinn, Grover & Frey, P.C. presented the petition for the property at 156 DERBY STREET (B1 Zoning District).
2. In the petition, date-stamped October 30, 2013, the Petitioner requested:
 1. A Special Permit under Section 3.3 *Nonconforming Uses and Structures* in order to change from one nonconforming use to another
 2. A Variance from the provisions of Section 4 *Dimensional Requirements* for relief from the 10 foot minimum width of side yard requirement, the 30 foot minimum depth of rear yard requirement, and the 40 percent maximum lot coverage by all buildings requirement, of the Salem Zoning Ordinance. See the table below:

Dimensional Requirements	Zoning Ordinance Required Standard	Proposed Dimension	Current Dimension
Minimum width of side yard	10	0	0
Minimum depth of rear yard	30	2.6'	2.6'
Maximum lot coverage by buildings	40%	68.9%	69.9%

3. A Variance from the provisions of Section 5.1.2 *Location* for relief from the requirement that all parking spaces be on the same lot as the building or use which they are intended to serve.
3. The requested relief, if granted, would allow: a residential unit on the third floor of the existing building, the reconstruction of an existing stairway so that it complies with building code and to locate it entirely on the applicant's property where it had previously encroached onto a neighboring property, and to allow the required parking for the two residential units to be located across the street.
4. There is an existing nonconforming use of the building (a restaurant with one residential unit) as there is currently a residential unit on the second floor of the property, which has been in use since at least 1965. Additionally, the 2006 Decision of the Zoning Board regarding this property specifically mentions the existence of the residential unit. The Petitioner seeks to change to another non-conforming use (a restaurant with two residential units).
5. The Petitioner submitted a copy of a parking lease to provide three (3) off-street parking spaces for exclusive use by the residents of the two residential units, at Captain Dusty's, 143-147 Derby Street, for a period of five (5) years, with an unrestricted option to extend the lease for an additional five year period.
6. At the public hearing for the petition, the board considered the comments of interested persons who spoke in favor of the petition. There were no comments submitted 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 petitions, including the application narrative and plans, and the Petitioner's presentation and public testimony, makes the following **findings** that the proposed project meets the provisions of the City of Salem Zoning Ordinance:

Findings

1. The desired relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the City of Salem Zoning Ordinance, as off-street parking has been secured.
2. The location of the building on the lot, and the location of the neighboring building relative to the lot, creates a hardship that justifies the variances required for the rebuilding of the stairs.
3. The proposed non-conforming use is not more detrimental than the existing non-conforming use.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (5) in favor (Ms. Curran – Chair, Ms. Harris – Vice Chair, Mr. Watkins, Mr. Dionne, and Mr. Eppley in favor) and none (0) opposed, to approve the Special Permit to change from an existing nonconforming use to another non-conforming use; the Variance allow required parking to be located on a separate lot, and the Variances to allow encroachment on the minimum allowed width of side yard and minimum allowed depth of rear yard, and relief from the maximum allowed lot coverage by buildings, subject to the following **terms, conditions, and safeguards**:

1. The 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 is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. Petitioner will provide proof of current lease to the Zoning Enforcement Officer for three off-street parking spaces, to be renewed as necessary. Petitioner will report on the leases at 5 year intervals from the execution of the first lease. Failure to file a current lease for 3 parking spaces within reasonable distance of the residential units will result in a mandatory appearance before the Board of Appeals for review and potential revocation of approval.



Rebecca Curran, 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.