

City of Salem Zoning Board of Appeals
Meeting Minutes
January 17, 2024

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, January 17, 2024 at 6:30 pm via remote participation in accordance with Chapter 2 of the Act of 2023 and a Special Act extending remote participation meetings.

Vice Chair Carly McClain calls the meeting to order at 6:30 pm.

Vice Chair McClain explains how individuals can participate in the meeting remotely via Zoom, and that instructions to participate remotely can also be found on the Salem website. Ms. McClain also explains the rules regarding public comment.

ROLL CALL

Those present were: Nina Vyedin, Carly McClain, Paul Viccica, and Hannah Osthoff. Also in attendance were Daniel Laroe – Staff Planner, Voula Orfanos — Acting Zoning Officer, and Jonathan Pinto – Recording Clerk. Those absent were: Rosa Ordaz

Motion and Vote: Vice Chair McClain motions to appoint Nina Vyedin as Chair of the Zoning Board of Appeals. Ms. Osthoff seconds the motion. **The vote is four (4) in favor (Nina Vyedin, Paul Viccica, Carly McClain, and Hannah Osthoff) and none (0) opposed. The motion passes**

Vice Chair McClain turns the meeting over to Chair Vyedin.

CONTINUANCES

Location: **45 Jefferson Avenue (Map 25, Lot 653) (I Zoning District)**

Applicant: **Boston Bud Runners, LLC**

Project: A public hearing for all persons interested in the petition of BOSTON BUD RUNNERS LLC at 45 JEFFERSON AVENUE (Map 25, Lot 653) (I Zoning District) for a Special Permit per Section 3.1.4 Table of Principal and Accessory Use Regulations, Section 9.4.2 Special Permit Criteria to operate a marijuana delivery business. In addition, a Variance from 5.1.5 Off-street parking- Design of the Salem Zoning Ordinance proposes aisle width of twenty (20) feet where twenty-four (24) feet is required.

Documents and Exhibitions

- Application date-stamped October 25, 2023 and supporting documentation

Chair Vyedin introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the petitioner, and states that at the last meeting he discussed the requirements of a marijuana delivery business at length. Mr. Quinn describes the industrial site and location where the business will lease space and operate. Mr. Quinn indicates his understanding is that he had sufficiently answered questions regarding the permit and business itself, but that the remaining issue had been parking. He maintains that originally the petition requested a variance for a parking plan which the Board asked to revisit. Mr. Quinn explains that since then the

landlord has consented to four legal parking spaces, and he shows the new parking plan. Mr. Quinn states that they are withdrawing the request for any parking relief based on the new plan.

Chair Vyedin asks about the width of the spaces, and Mr. Quinn states they are 27 feet. Ms. Vyedin also asks about the location of the loading zone, and Mr. Quinn explains there is a garage door at the back end of the building that is secured.

Mr. Viccica asks if the petitioner will share the building or garage with other businesses. Mr. Quinn indicates they are in a separately partitioned completely secured space, which is attached to a larger building, but that there is no access other than the exterior door.

Ms. Osthoff asks Mr. Quinn to review the statement of grounds again, and he does. He also summarizes the additional requirements, such as security plans and approval by other bodies.

Mr. Viccica asks if there is a request for signage, and Mr. Quinn states he is not aware of any, but that if so they would have to comply with all City design criteria.

Chair Vyedin opens the floor to public comment but there is none.

Motion and Vote: Mr. Viccica motions to approve the petition of BOSTON BUD RUNNERS LLC at 45 JEFFERSON AVENUE (Map 25, Lot 653) (I Zoning District) for a Special Permit per Section 3.1.4 Table of Principal and Accessory Use Regulations, Section 9.4.2 Special Permit Criteria to operate a marijuana delivery business, subject to the following 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's Assessor's Office and shall display said number so as to be 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 dimension 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.
10. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

Ms. Osthoff seconds the motion. **The vote is four (4) in favor (Nina Vyedin, Paul Viccica, Carly McClain, and Hannah Osthoff) and none (0) opposed. The motion passes.**

REGULAR AGENDA

Location: **52 Forrester Street (Map 41, Lot 224) (R2 Zoning District)**

Applicant: **Circle Hill Builders, LLC**

Project: A public hearing for all persons interested in the petition of CIRCLE HILL BUILDERS LLC at 52 FORRESTER STREET (Map 41, Lot 224) (R2 Zoning District) for a Special Permit per Section 3.3.5 Nonconforming Single- and two-family Residential Structures to alter and to enlarge a non-conforming single-family structure to a two-family structure. The petitioner proposes to remove the existing garage and to construct a second dwelling which is physically connected to the existing structure.

Documents and Exhibitions

- Application date-stamped November 21, 2023 and supporting documentation

Chair Vyedin introduces the petition.

Attorney Quinn introduces himself and Matt Carlson, project architect. Mr. Quinn describes the property as a single-family house and big old garage on a large lot, with the home located in the front corner of the property. The neighborhood is a mix of single, double, and multifamily residences. Mr. Quinn states the proposal is to create a two-family project, allowed by special permit, with the addition of a good-sized structure that would connect to the existing structure on the second floor. Mr. Quinn indicates they went before the Historic Commission and received a demolition delay waiver for the garage.

Matt Carlson introduces himself and describes the project, showing site plans with the existing structure and proposed addition. He notes that even with the large yard space, the existing structure is still nonconforming in multiple dimensions. Mr. Carlson states the proposal considers and is aligned with the existing neighborhood character, and next presents a site analysis and sun study, noting little to no impact on surrounding properties. Mr. Carlson also presents a map showing neighboring plots and lot coverage to show that the proposal would be consistent with abutting properties. He notes that the deck structures in the rear would be removed and rebuilt, and discusses the connection point between the two buildings. Mr. Carlson presents existing and proposed floor plans, and discusses flood resistance measures. He shares photos of existing conditions, as well as renderings of the proposal.

Chair Vyedin asks if there will be three parking spaces, and Mr. Carlson confirms and shares a survey plan with the parking spaces. Mr. Quinn notes they are all legally compliant spaces. Ms. Vyedin asks about flood resistance and the existing structure as well. Mr. Carlson indicates that they have not finalized all decisions yet, but as of now the basement is being left as is, while getting MEP's above flood elevation.

Chair Vyedin asks if there were any discussions with abutters, and Mr. Quinn states he cannot speak to that, but notes he has not heard of any objections.

Chair Vyedin notes that a letter of support was submitted from the resident at 48 Forrester Street.

Ms. Osthoff asks Mr. Quinn to go over the statement of grounds and he does.

Chair Vyedin opens the floor to public comment .

Ward 1 City Councilor Cindy Jerzylo introduces herself and asks why only three spaces are required. Mr. Quinn clarifies that the new structure is one-family, for a total of two-families with the existing structure, and that each residence requires 1.5 spaces, for a total of three.

Motion and Vote: Ms. Osthoff motions to approve the petition of CIRCLE HILL BUILDERS LLC at 52 FORRESTER STREET (Map 41, Lot 224) (R2 Zoning District) for a Special Permit per Section 3.3.5 Nonconforming Single- and two-family Residential Structures to alter and to enlarge a non-conforming single-family structure to a two-family structure, remove the existing garage, and construct a second dwelling which is physically connected to the existing structure, subject to the following 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 street numbering from the City of Salem's Assessor's Office and shall display said number so as 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. 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 dimension 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, to project completion and a final inspection upon project completion.

Mr. Viccica seconds the motion. **The vote is four (4) in favor (Nina Vyedin, Paul Viccica, Carly McClain, and Hannah Osthoff) and none (0) opposed. The motion passes.**

Location: **301 Essex Street (Map 26, Lot 485) (B5 Zoning District)**

Applicant: **Jerry's, LLC**

Project: A public hearing for all persons interested in 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.

Documents and Exhibitions

- Application date-stamped November 22, 2023 and supporting documentation

Chair Vyedin introduces the petition.

Attorney Scott Grover introduces himself on behalf of the petitioner, along with project principles Michael Becker and Charissa Vitas, and project architect Sanir Lutfija. Mr. Grover describes the site as the former Jerry's Army Navy Store, and provides an aerial view of the site at the corner of Summer and Essex Street. The property is located at the edge of the B5 zoning district, which ends at Summer Street. Mr. Grover presents a graphic showing how few properties are located beyond 1,000 feet from the Museum Place Garage, which he states will be important to note. Mr. Grover provides a project overview to redevelop the property and create a mixed use project comprised of 1,500 square feet of retail on the first floor along the Essex Street facade where retail currently exists, 20 residential apartment units (10 within the existing building and the other 10 within the 3.5 story addition proposed above). Mr. Grover discusses the calculation of parking requirements, which he states are complicated due to the intricacies of the B5 zone requirements. Per Section 5.1.9, the ten units in the existing building are allowed to have one parking space per unit, but the ten units in the additional new construction would require the standard 1.5 spaces per residential unit, for a total of 25 required spaces. Twelve covered spaces are proposed on the first floor behind the retail space, and Mr. Grover explains the original proposal was for the remaining spaces to be in an offsite facility. Pursuant to Design Review Board ("DRB") and Salem Redevelopment Authority ("SRA") review, the petitioners were urged to reduce the required parking by seeking relief from the Zoning Board of Appeals, which Mr. Grover indicates is why the petitioner is here before the Board. Mr. Grover explains that the current proposal is to have the entire project have a one-to-one parking ratio, with the twelve spaces still behind the retail space, and the additional eight spaces at an offsite facility. Mr. Grover explains the second variance being sought is for Section 5.1.9(d) which requires that offsite spaces be within 1,000 linear feet of the property. This relief would allow for parking to be purchased at the Museum Place Garage, which is just outside to the 1,000 foot requirement. Mr. Grover discusses the grounds for relief, noting special conditions affecting the property such as the prominent location at the City entrance, and the SRA's urging that the proposed building make a strong statement and be large enough to anchor the corner. The SRA also stressed the importance of keeping the retail location, which limited the amount of parking available at the ground level, according to Mr. Grover. He notes the location being unable to use a municipal facility, and maintains the location itself creates real conditions that do not affect other properties in the B5 zone. Mr. Grover argues that a literal enforcement of the ordinance would create a hardship by forcing the building size to be reduced to a smaller scale or to eliminate the

retail component, both of which were viewed unfavorably by the DRB and SRA. Mr. Grover states the project complies with all dimensional requirements in all aspects other than parking. He adds that the reduced parking is also consistent with the intent of the B5 district. Mr. Grover explains the Planning Board voted unanimously in support of reducing the parking being requested, and he also notes a letter from the director of Traffic and Parking, David Kucharsky, recommending two conditions: 1) Require the applicant purchase annual passes at the Museum Place Garage to satisfy the off-site spaces, and 2) Residents of the property be ineligible to receive resident parking permits. Mr. Grover states the applicant finds both special conditions to be acceptable.

Sanir Lutfija introduces himself and discusses project details while presenting an aerial view. He discusses the property history showing photos of the area, and also presents floor plans. Mr. Lutfija states the current facade of the building will be maintained, but that the masonry will be updated and cleaned up. The second floor will have units with exterior spaces. Mr. Lutfija presents a cross section of the proposed layout as well as renderings, noting the penthouse with roof deck.

Ms. Osthoff asks for clarification regarding the prior graphic showing distance. Mr. Grover explains that for units in the B5 district, the parking requirements can be satisfied at in a municipal facility as long as it is within 1,000 linear feet. Mr. Grover indicates the graphic showed that most of the buildings in the zone have the benefit of being able to use the South Harbor or Museum Place Garage, but that this property is one of the few that does not.

Mr. Viccica asks about the requirement that the spaces be in the Museum Place Garage, and whether the petitioner would need to come back before the ZBA if the are unable to secure those spaces. Mr. Grover states that is correct. Mr. Viccica notes this condition would be in perpetuity or until some change comes about, noting that the next agenda item is doing just that. Mr. Grover indicates that the other condition regarding permit parking is to make sure the residents do not park in the McIntire district, and notes that near the property the parking is mostly meters.

Chair Vyedin also asks about the parking needing to specifically be in the Museum Place garage, and whether it would be better to say a municipal parking area within 1,200 feet to open the possibility of going elsewhere should parking be unavailable at the garage. Mr. Grover states it does not have to be a municipal facility specifically, and explains the original proposal was going to be renting spaces from the nearby methodist church, but that a municipal facility allows for better monitoring.

Mr. Viccica suggests the language reflect the option of Museum Place or a location no farther than 1,200 feet from site for sake of appearances and not having a special condition that only allows for parking at a City garage. Ms. McClain agrees with Mr. Viccica, but states she is not in favor with the other special condition regarding a resident permit parking ban. Mr. Viccica and Ms. McClain discuss the matter of permit parking in the nearby area. Ms. Vyedin notes that parking permits are tied to zones, and that the residents should have the ability to park in resident spots in that particular zone. Mr. Viccica clarifies that the McIntire district does not have exclusive resident permit parking and is not a zone, noting that he lives in the district and that his street as well as others do not have resident permit parking. All board members agree that the second suggested special condition seems unreasonable.

Chair Vyedin opens the floor to public comment but there is none.

Chair Vyedin states there is one letter in support that was submitted to the Board.

After additional discussion, the Board determines that the one special condition that should apply to any approval is that the petitioner shall obtain eight parking spaces at the Museum Place Garage or in a location no farther than 1,000 linear feet from the property.

Mr. Grover again discusses the grounds for approval.

Motion and Vote: Mr. Viccica motions to approve 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, which would result in a total of twenty spaces- twelve would be on site and the remaining eight in an offsite facility; 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; and a proposal to purchase additional parking at the Museum Place parking garage which is approximately 1,200 feet from the Property, all subject to the following 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 street numbering from the City of Salem’s Assessor’s Office and shall display said number so as 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 dimension 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, to project completion and a final inspection upon project completion.

And the following special condition:

1. The petitioner shall obtain eight parking spaces at the Museum Place Garage or in a location no farther than 1,000 linear feet from the property.

Ms. Osthoff seconds the motion. **The vote is four (4) in favor (Nina Vyedin, Carly McClain, Hannah Osthoff, and Paul Viccica) and none (0) opposed. The motion passes.**

Location: **152-156 Derby Street (Map 35, Lot 348) (B1 Zoning District)**

Applicant: **Demetra Karlis (a/Kounsaliéh)**

Project: A public hearing for all persons interested in the petition of public hearing for all persons interested in the petition of DEMETRA KARLIS (A/KOUNSALIEH), TRUSTEE at 152-156 DERBY STREET (Map 35, Lot 348) (B1 Zoning District) for a Special Permit per Section 3.3.2 Nonconforming Uses to delete condition #8 from the Board of Appeals decision dated December 30, 2013. 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.

Documents and Exhibitions

- Application date-stamped December 20, 2023 and supporting documentation

Chair Vyedin introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the petitioner, the widow of Spyro Kounsaliéh, who owned and operated the Witch's Brew Cafe at the property. Mr. Quinn explains that his client made valiant efforts to continue the restaurant, but now wishes to sell the building and retire. He describes the property having a restaurant on the first floor, and two apartments above (one on the second floor and one of the third floor). Mr. Quinn indicates parking has always been an issue in this neighborhood, and that at the time the ZBA approved the third floor unit in 2013, it included a condition requiring that three off-street parking spaces be leased. Mr. Quinn contends this requirement has always been met, but that in 2023 the lease terminated and it is physically impossible to renew because of new developments being built in the space where the parking was formerly leased (former Captain Dusty's parking lot). Mr. Quinn states that when the property was being marketed for sale, his client was reminded of the condition. She received an offer from a local restaurant operator to purchase the building and business, but Mr. Quinn indicates the potential purchasers' lawyers came across the condition and stated they were no longer interested. The two potential buyers to date have determined the condition is too open ended as it exists, and Mr. Quinn states this is the only relief to apply for that would solve this problem so his client can sell the property. He asks that the Board terminate the provision from the prior ZBA decision requiring off-street parking, without imposing a new requirement for parking. Mr. Quinn discusses the B1 district and neighborhood, and how commercial units in the zone are not allowed by right to have units above, and so the request would need to be a special permit or a variance depending on the approach.

Chair Vyedin asks Mr. Quinn to discuss a bit more why he decided to apply for a special permit here rather than a variance for the parking requirement. Mr. Quinn states the property is existing nonconforming both dimensionally and in use, and that with a special permit you can modify an existing nonconforming use to insert a new one, as long as the special permit criteria is met. Mr. Quinn contends that by removing the parking special condition, the Board would in effect be allowing for a use without parking, which is a different use than what was allowed in 2013. Mr. Quinn asserts that after discussions with his team, they determined they could apply for a special permit in this instance.

Mr. Viccica states the Chair raises a good point, as he views this as a request to vacate a prior Board decision. Mr. Viccica suggests there is no new project here, and that while he is in support of eliminating the requirement based on the changes in the neighborhood and as a matter of equity, he questions if this is the correct approach. He states he cannot recall an instance in which a Board

decision was vacated using a special permit, and that he would be hesitant to set precedent. Mr. Viccica suggests continuing and obtaining guidance from City Counsel to guide the proper route forward. Chair Vyedin states that while she hates continuing for a formality, this particular case feels legally ambiguous and would benefit from further consultation.

Mr. Quinn argues the matter is straight forward, but is willing to continue.

Motion and Vote: Mr. Viccica motions to continue the petition of public hearing for all persons interested in the petition of DEMETRA KARLIS (A/KOUNSALIEH), TRUSTEE at 152-156 DERBY STREET (Map 35, Lot 348) (B1 Zoning District) for a Special Permit per Section 3.3.2 Nonconforming Uses to delete condition #8 from the Board of Appeals decision dated December 30, 2013, to the next regularly scheduled meeting of the zoning board of appeals on February 14, 2024.

Ms. Osthoff seconds the motion. **The vote is four (4) in favor (Nina Vyedin, Carly McClain, and Mr. Viccica, Hannah Osthoff) and none (0) opposed. The motion passes.**

MEETING MINUTES

November 15, 2023

Chair Vyedin states she has reviewed and found one typo on page 6. The second sentence after the petition is introduced has an errant letter “p” that should be removed.

Motion and Vote: Mr. Viccica motions to approve the minutes from the November 15, 2023 meeting of the Zoning Board of Appeals, as amended. Ms. Osthoff seconds the motion. **The vote is four (4) in favor, and none (0) opposed. The motion passes**

OLD/NEW BUSINESS

Mr. Viccica thanks former Chair Peter Copelas for his time on the Board and his contributions. The other Board members agree.

Next Meeting

February 14, 2023

ADJOURNMENT

Motion and Vote: Mr. Viccica motions to adjourn the meeting. Ms. McClain seconds the motion. **The vote is all in favor. The motion passes.**

The meeting ends at 8:47 PM on January 17, 2024.

For actions where the decisions have not been fully written into these minutes, copies of the Decisions have been posted separately by address or project at:

City of Salem Zoning Board of Appeals
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<https://www.salem.com/zoning-board-appeals/pages/zoning-board-appeals-decisions-2024>

Respectfully submitted,
Daniel Laroe, Staff Planner