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MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #  
CITY CLERK, SALEM, MASS.

December 30, 2013

## Decision

### City of Salem Board of Appeals

Petition of JACQUELINE'S GOURMET COOKIES, requesting Variances under Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance, to increase the height of a previously approved tank by 5 feet, for a proposed total height of 43 feet and 9 inches. The construction of the tank to a height of 38 feet and 9 inches was previously approved in a Decision dated May 29, 2013, at the property located at 96 SWAMPSCOTT ROAD (BPD 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 a Variance pursuant to Sec. 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance.

#### Statements of fact:

1. In the petition, date-stamped October 28, 2013, the Petitioner requests a Variance to increase the height of a previously approved storage tank by 5 feet, for a proposed total height of 43 feet and 9 inches.
2. Mr. Marc Hazel of Jacqueline's Gourmet Cookies presented the petition.
3. The Board of Appeals approved the construction of a 38-foot 9-inch high storage tank for nitrogen storage at the property in a Decision dated May 29, 2013.
4. The proposed storage tank would be the same diameter and in the same location as the nitrogen tank previously approved by the Board. The only change from the originally approved storage tank would be the additional five (5) feet in height. The height of the originally approved tank was 38'-9". The height of the tank with the proposed increase would be 43'-9".
5. The increased height of the storage tank would provide a greater volume of nitrogen storage for the production facility. The originally approved storage tank had a capacity of 13,000 gallons. The proposed storage tank would have a 15,000 gallon capacity. The increase in capacity would allow greater flexibility in scheduling truck delivery of nitrogen as the truck could deliver a full load (approximately 7,500 gallons) at each delivery, and there would still be enough nitrogen in the storage tank between deliveries to allow continued production in the facility.
6. At the public hearing the Board, in consultation with Mr. Tom St. Pierre, Zoning Enforcement Officer, found that the relief sought by the applicant could be allowed with a modification to the existing Variance, as all other aspects of the original application will remain unchanged, and all conditions from the original Variance should be carried forward.
7. At the public hearing for this petition no 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 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 capacity of the nitrogen delivery trucks and the need to maintain a certain quantity of nitrogen in the storage tank to allow continued production at the facility between nitrogen deliveries creates a hardship that could be alleviated by increasing the capacity of the storage tank by the requested amount.

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 - Alternate) and none (0) opposed, to approve a Modification to the existing Variance, subject to the Conditions laid out in the previous Decision, which included 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. Exterior finishes of the new construction shall be in harmony with the existing structure.
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. The petitioner his successors or assigns shall comply with all MassDEP Standards and Regulations for noise.



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.*