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MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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November 20, 2012

## Decision

City of Salem Zoning Board of Appeals

**Petition of NORTHEAST BEHAVIORAL HEALTH CORP. appealing a Cease and Desist order of the Building Inspector for the property located at 41 MASON STREET**

A public hearing on the above Petition was opened on November 7, 2012 pursuant to Mass General Law Ch. 40A, § 11. The hearing was closed on November 7, 2012 with the following Zoning Board of Appeals members present: Rebecca Curran (Chair), Annie Harris, Michael Duffy, Jamie Metsch, Richard Dionne, and Jimmy Tsitsinos (alternate).

Petitioner seeks an administrative appeal of a Cease and Desist order of the Building Commissioner.

### Statements of fact:

1. On March 19, 2003, the Zoning Board of Appeals issued a Variance for the property located at 41 Mason Street, in the Industrial Zoning District, granting dimensional relief to allow for an addition onto the existing building on that property. The Variance restricted hours of operation of the businesses on the premises to 7:00 a.m. to 6:00 p.m.
2. In a letter dated August 1, 2012, Building Commissioner Thomas St. Pierre ordered two businesses operating at 41 Mason Street, a dance studio and HES Group, to cease operation between the hours of 6:00 p.m. and 7:00 a.m.
3. In a petition date-stamped September 21, 2012, petitioner appealed the Cease and Desist order dated August 1, 2012.
4. Attorney Marshall J. Handly represented the petitioner at the hearing.
5. At the hearing and in the petition, Attorney Handly stated that the decision should be overturned because the use and operation of the space leased by Northeast Behavioral Health Corporation ("NHB") were exempt from zoning under the provisions of M.G.L. Chapter 40A §3, since NHB is a non-profit educational corporation. Section 3 provides, in

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relevant part, that “No zoning ordinance or by-law shall ... prohibit, regulate or restrict the use of land or structures for religious purposes or ... or by a nonprofit educational corporation; provided, however, that such land or structures may be subject to reasonable regulations concerning the bulk and height of structures and determining yard sizes, lot area, setbacks, open space, parking and building coverage requirements.”

6. At the hearing, Attorney Handly stated that the hours of operation were critical to NHB’s educational mission.
7. At the hearing, several residents spoke in support of upholding the Cease and Desist order, citing disruptions to the neighborhood from noise, police calls, traffic, lack of parking, and trash. The Board also received copies of police reports and two letters from residents supporting upholding the order. No resident spoke against upholding the order.

The Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petition submitted, makes the following **findings**:

1. A condition placed on a variance from dimensional requirements restricted the hours of operation of all tenants in the building. This condition allowed for the expansion of the structure and without this condition, the building may not have been enlarged. The hour restrictions were a safeguard on dimensional control.
2. The Board does not make a finding as to whether Northeast Behavioral Health is an educational use entitled to protection under M.G.L. Chapter 40A §3.
3. The 2003 Variance’s limitations were included to serve a municipal goal. Further, there is ample evidence that this condition limiting hours of operation is necessary and such supporting evidence is on record, e.g. police reports presented to the Board and the testimony of neighbors.

On the basis of the above findings of fact and all evidence presented at the public hearing including, but not limited to, the Plans, Documents and testimony, the Zoning Board of Appeals voted five (5) in favor (Curran, Harris, Dionne, Duffy and Metsch) and none (0) opposed, to uphold the Cease and Desist order issued by the Building Commissioner restricting the hours of operation of Northeast Behavioral Health Corp. at 41 Mason Street.



Rebecca Curran, Chair  
Salem 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.