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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #
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February 1, 2012

Decision

City of Salem Zoning Board of Appeals

Petition of BHCM, INC. D/B/A BREWER HAWTHORNE COVE MARINA requesting Variances from front, side and rear yard setback requirements to construct a new building on 10 WHITE STREET and 57 REAR TURNER STREET related to the boat yard/marina use of the property (I, R-2 and B-1).

A public hearing on the above Petition was opened on November 16, 2011 pursuant to Mass General Law Ch. 40A, § 11. The hearing was continued to January 18, 2012 and closed on that date with the following Zoning Board of Appeals members present: Annie Harris (acting as chair), Richard Dionne, Jamie Metsch, Jimmy Tsitsinos and Bonnie Belair.

Petitioner seeks a Variance pursuant to Section 4.0 of the City of Salem Zoning Ordinances.

Statements of fact:

1. Attorney George W. Atkins III represented petitioner BHCM, Inc. (DBA Brewer Hawthorne Cove Marina) at the hearing.
2. In a petition date-stamped October 26, 2011, petitioner requested a Variance pursuant to Sec. 4.0 of the Salem Zoning Ordinance to construct a new building on 10 White Street and 57 Rear Turner Street related to the boat yard/marina use of the property.
3. Accompanying the application form was a statement attesting to the unusual shape of the parcel, waterfront soil conditions, mixed zoning of the site, and limited access at the end of White Street, and stating that enforcement of the dimensional regulations of the Salem Zoning Ordinance would result in hardship because the petitioner would not be "reasonably able" to use the property for a marina and boat yard.
4. The Board received three letters from residents opposed to the project, and one in support.
5. At the hearing on January 18, 2011, numerous neighbors spoke about the petition, several in favor of it and several against it. View was a commonly cited reason for both support and

6. opposition, with some neighbors preferring the view offered by the proposed new building, and others preferring that of the previous marina structure.
7. Also at the January 18 hearing, Attorney Atkins stated that the proposed location for the new building was operationally best for the marina, and would have the least impact on views in the neighborhood. A view corridor study and shadow study were submitted at the hearing.

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

1. Literal enforcement of the provisions of the Zoning Ordinance would require the applicant to place the building in such a location the Board finds to be less appropriate than the one proposed. The view analysis presented showed that impact of views from the neighborhood would be lessened if the building were placed where proposed.
2. Desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning ordinance, since impacts to the neighborhood were shown to be less substantial if sited as proposed rather than where it would be allowed by right.
3. In permitting such change, the Board of Appeals requires certain appropriate conditions and safeguards as noted below.

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 four (4) in favor (Harris, Metsch, Dionne and Tsitsinos) and one (1) opposed (Belair), to grant the requested Variance under Section 4.0 of the Ordinance to allow construction of a marina building as shown on the plans submitted, subject to the following terms, conditions and safeguards:

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. Petitioner shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to be visible from the street.

7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. The existing Quonset hut is to be removed from the property.

Annie Harris DMX
Annie Harris,
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.