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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #
CITY CLERK, SALEM, MASS.

December 26, 2012

Decision

City of Salem Zoning Board of Appeals

Petition of BING REALTY TRUST seeking to amend a previously issued Variance decision in order to change the allowed hours of operation of the dance studio located in the building on 41 MASON ST (NRCC).

A public hearing on the above Petition was opened on December 19, 2012 pursuant to Mass General Law Ch. 40A, § 11. The hearing was closed on December 19, 2012 with the following Zoning Board of Appeals members present: Rebecca Curran (Chair), Annie Harris, Michael Duffy, Richard Dionne, and Jimmy Tsitsinos (alternate).

Petitioner seeks to amend a Variance granted on March 19, 2003 for the property located at 41 Mason Street, Salem.

Statements of fact:

1. In a decision date-stamped March 27, 2003, owner Stephen W. Haley received Variances from side and rear setbacks, parking and density requirements to construct an addition on the building located at 41 Mason Street.
2. A condition of issuance of the Variances was a restriction of the hours of operation of the building from 7:00 a.m. to 6:00 p.m.
3. In a petition date-stamped November 7, 2012, petitioner requested to amend the condition of the Variance restriction hours for the dance studio only, to allow it to stay open until 9:00 p.m.
4. Attorney John R. Keilty, 40 Lowell Street, represented the petitioner at the hearing.
5. At the hearing, several neighbors spoke against the petition, citing concerns about noise, traffic, parking and congestion on and around the site.
6. At the hearing, many students, parents and teachers from the dance studio spoke in support of the petition, saying that noise, parking and traffic issues were minimal, the studio was

surrounded by businesses as well as residences, and it served youth and the community in a positive way.

The Board of Appeals, 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. While the existence of the dance studio was not problematic, relief to extend the hours of operation to 9:00 p.m. could not be granted either without detriment to the public good or without nullifying or substantially derogating from the intent or purpose of the zoning ordinance, since the expansion of the building in 2003 only occurred under the condition that business operations on the site be restricted to 6:00 p.m., and the Board finds that operations after this hour are disruptive to the neighborhood.

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 two (2) in favor (Dionne and Tsitsinos) and three (3) opposed (Curran, Harris and Duffy), to grant the requested amendment to the previously issued Variance. The petition is denied.



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.