



CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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June 28, 2013

Decision

City of Salem Board of Appeals

Petition of FOOTPRINT POWER SALEM HARBOR DEVELOPMENT, LP for a Special Permit for an Essential Services use pursuant to Sec. 3.0 *Use Regulations* and Variances to exceed the maximum allowable height allowance of 45 feet in an Industrial Zoning District pursuant to Sec. 4.0 *Dimensional Requirements* for the redevelopment of the Salem Harbor Power Station Site to include the construction of a new state-of-the-art combined cycle gas fired electric generation facility on a 20+/- acre portion of the property located at 24 FORT AVE (I Zoning District).

A public hearing on the above Petition was opened on June 19, 2013 pursuant to M.G.L Ch. 40A, § 11. The hearing was closed on June 19, 2013 with the following Salem Board of Appeals members present: Ms. Curran (Chair), Mr. Dionne, Mr. Duffy, Mr. Watkins, and Mr. Eppley (Alternate).

The Petitioner seeks a Special Permit for an Essential Services use pursuant to Sec. 3.0 *Use Regulations* and Variances from Sec. 4.0 *Dimensional Requirements* of the Salem Zoning Ordinance.

Statements of fact:

1. Attorney Joseph Correnti, representing Footprint Power Salem Harbor Development LP, Scott Silverstein, COO of Footprint Power Salem Harbor Development LP, and Bob Fox, of Cook & Fox Architects presented the petitions for the property at 24 Fort Avenue (I Zoning District).
2. In the petition, dated May 29, 2013, the Petitioner requests a Special Permit for an Essential Services use and Variances to exceed the maximum allowable height in order to allow the redevelopment of the Salem Harbor Power Station Site to include the construction of a new state-of-the-art combined cycle gas fired electric generation facility on a 20+/- acre portion of the site.
3. The requested Variance relief, if granted, would allow the vertical development of buildings and the stack proposed as part of the combined cycle gas fired electric generation facility to exceed the maximum allowable height allowance of 45 feet in an Industrial Zoning District. The Petitioner's requested height allowance for the buildings include:

Structures	Requested Height
Generator Building Stack	230 feet (+/-)
Heat Recovery Steam Enclosure	125 feet (+/-)
Air Cooled Condenser Enclosure	120 feet (+/-)
Diesel Generator Stack	86 feet (+/-)
Gas Turbine #1 Building	76 feet (+/-)
Gas Turbine #2 Building	76 feet (+/-)
STG Building	76 feet (+/-)
Ammonia Tank Enclosure	45 feet (+/-)

4. At the public hearing for these petitions numerous members of the public in attendance spoke in favor and in opposition to the petitions. Mayor Kimberley Driscoll spoke in favor of the proposed relief and recited the extensive permitting and regulatory process the Petitioner is undergoing at both the state and local levels. Also speaking in favor of the proposed petitions were Rinus Oosthoek, Executive Director of the Chamber; Robert DeRosier, President of the Chamber of Commerce; and Arthur C. Sargent, III, Councilor At-large. Prior to the hearing, written comments from State Senator Lovely and State Representative Keenan were submitted in favor of the petitions. Linda Haley, 43 Turner Street, voiced opposition to the proposed petitions due to the potential glare created by the louvers, the proposed height and width of the stack, potential air pollutants and the need for another power plant.

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:

9.3 Board of Appeals

9.3.2 Powers, Subsection 3

1. The desired relief may be granted without detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the City of Salem Zoning Ordinances.
2. A power plant use has occupied the site for over 60 years and the current buildings and stacks reach from 150+/- feet to 500+/- feet in height, making this site unlike any other in the District.
3. The size, location and layout of the site and its proximity to the natural gas pipeline and the adjoining National Grid switchyard make it unique to any other sites in the District.
4. The literal enforcement of the City of Salem Zoning Ordinance's *Table of Dimensional Requirements*, specifically the maximum allowable building height requirement of 45-feet in an Industrial Zoning District, would render the construction of the buildings and structures that are needed to contain the power plants equipment and operations impossible, thus causing a substantial hardship to Petitioner.
5. The design of the facility, including its acoustic louvers and landscaped berm, both mitigate and reduce the off-site impacts of the proposed development on the surrounding neighborhood and aid in the elimination of any detriments to the public good.
6. According to the visual comparisons of the existing and proposed power plants, the proposed facility's reduced building heights and smaller plant footprint bring it more in compliance with the Salem Zoning Ordinance.

9.4 Special Permits

9.4.2 Criteria, Subsections 1 through 6

1. The facility is and has been an essential services use for the past 60 years that has provided power generation to the City of Salem and the surrounding region, the facility as proposed continues that essential services use to meet the needs of the community.
2. The redevelopment of the Salem Harbor Power Station facility into a new combined cycle gas-fired electric generation facility is in accordance with the Salem Harbor Plan, and has been shown to meet the power generation needs of the community and the region at-large.
3. The facility, as proposed, does not change the traffic flow or safety of the neighborhood traffic flow of the neighborhood.

4. Through its reduced reliance on municipals services, especially its use of local potable water, the proposed facility will not adversely impact the public services and has adequate access to utilities.
5. The facility will be an improvement to the neighborhood character by reducing the building and stack heights throughout the facility, and shrinking the necessary footprint of the plant. In addition, the facility's design provides improved visual and physical access to a portion of the Salem waterfront and allows for greater opportunities for future commercial and industrial development and an expanded harbor.
6. As designed, the facility represents a benefit to the natural environment and visually improves the neighborhood for residents. The conversion from a coal fired plant to a new combined cycle gas-fired electric generation facility will have a positive impact to the environment.
7. The development represents a great opportunity for positive impacts on the economic and fiscal situation of the city.

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 Salem Board of Appeals **concludes:**

1. The petitioner's requested Special Permit for an essential services use and Variances to exceed the maximum allowable height allowance of 45 feet in an Industrial Zoning District is granted as conditioned.
2. In permitting the Special Permit for the essential services use and Variances to exceed the maximum allowable building height allowance, the Salem Board of Appeals requires certain appropriate terms, conditions and safeguards as noted below.

In consideration of the above, the Salem Board of Appeals voted to approve the Special Permit and Variances requested. All the members voted in favor, with a 5-0 vote in favor (Ms. Curran (Chair), Mr. Dionne, Mr. Duffy, Mr. Watkins and Mr. Eppley (Alternate)) and none opposed. The Salem Board of Appeals voted to grant petitioner's request for a Special Permit and Variances subject to 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. A Certificate of Occupancy is to be obtained.
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.



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.