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MAYOR

# CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS 2019 MAY 29 PM 2:39

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CITY CLERK  
SALEM, MASS

May 29, 2019

## Decision

### City of Salem Board of Appeals

**Petition of LIFE STORAGE LP for variances from Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for maximum height of buildings to replace the two existing self-storage buildings with a single self-storage building at 435-443 HIGHLAND AVENUE (Map 3, Lot 127) (B2 & ECOD Zoning Districts).**

A public hearing on the above Petition was opened on May 15, 2019 pursuant to M.G.L. Ch. 40A, § 11 and closed on that date with the following Salem Board of Appeals members present: Mike Duffy (Chair), Peter A. Copelas, Jimmi Heiserman, Patrick Shea, Jimmy Tsitsinos, and Paul Viccica (Alternate).

The Petitioner seeks variances from Section 4.1.1 *Table of Dimensional Requirements* for maximum height of buildings.

#### Statements of Fact:

1. In the petition date-stamped February 27, 2019, the Petitioner requested variances from Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for maximum height of buildings to replace the two existing self-storage buildings with a single self-storage building 46 feet in height. The proposal was revised to request a single self-storage building 34 feet in height, as discussed below.
2. Attorney Scott Grover, representing petitioner Life Storage LP, presented the petition.
3. The property is a self-storage facility consisting of two buildings in the Business Highway (B2) zoning district and the Entrance Corridor Overlay District (ECOD).
4. The petitioner noted in the application that "The property that is the subject of this petition has been used as self-storage facility since the Board of Appeals granted a variance allowing such use in 1988." The variance referenced here was granted by the Board of Appeals in a decision filed with the City Clerk December 10, 1987, for 441-445 Highland Avenue. That decision noted, "Petitioners are requesting Variances from lot coverage, frontage and use to allow construction of two building [*sic*] on one lot in this B-2 district. Buildings will be used as storage facilities." Today, the mini-storage warehouse facility use is allowed by special permit from the Zoning Board of Appeals in the B2 zoning district.
5. The property is nonconforming to maximum lot coverage by all buildings and minimum rear yard depth: no more than 25% lot coverage by all buildings and 30 feet minimum rear yard depth are required in the B2 zoning district; the existing property has 39.6%± lot coverage and 29.7 feet of rear yard depth. Under the proposal, the property will remain nonconforming to lot coverage, but to a lesser extent (37.7%), and will no longer be nonconforming to minimum rear yard depth (37.3 feet). Under this proposal, the property will become newly nonconforming to maximum building height

- (feet): the maximum height in the B2 district is 30 feet, and the petitioner proposes to build to 34 feet in height.
6. The requested relief, if granted, would allow the petitioner to build a single self-storage building 34 feet in height. The property would become newly nonconforming to maximum building height, and would remain nonconforming (though to a lesser extent than the current status) to lot coverage.
  7. As noted above, the petition was submitted February 27, 2019. The project was initially slated to be discussed in the April 17, 2019 meeting of the Board of Appeals.
  8. The application was initially accompanied by plans prepared by Allen & Major Associates, Inc., including an existing conditions plan and a Conceptual Layout & Materials Plan dated February 11, 2019. This plan is stamped by Civil Engineer Carlton M. Quinn; the stamp is accompanied by the date February 11, 2019 ("2.11.19"). The Conceptual Layout & Materials Plan shows a proposed four (4) story facility, forty-six (46') feet in height.
  9. Prior to the April meeting of the Board of Appeals, the petitioner requested to continue the petition to the May 15, 2019 meeting.
  10. In the April 17, 2019 meeting of the Board of Appeals, the Board granted the request to continue to the May 15, 2019 meeting, with four votes in favor (Mike Duffy (Chair), Jimmi Heiserman, Jimmy Tsitsinos, and Paul Viccica) and none opposed.
  11. As Attorney Grover noted in the May 15, 2019 public hearing, after conducting neighborhood meetings with the assistance of Ward 3 Councillor Lisa Councillor, the petitioner determined that those plans would have too great an impact on the residential abutters. The plans were revised to show a proposed three-story building, thirty-four (34') feet in height, as described below.
  12. The petitioner submitted a revised Conceptual Layout & Materials Plan, along with revised elevations. The plan is stamped by Civil Engineer Carlton M. Quinn. Though the date listed on this plan is also February 11, 2019, the date "4.17.19" is written next to the Civil Engineer's stamp, and the plan notes a revision, described as "revised per owner," on April 17, 2019. This plan shows a proposed three (3) story facility, thirty-four (34') feet in height. The revised elevations are dated April 9, 2019.
  13. At the May 15, 2019 public hearing, there was extensive discussion of the project. Representing the petitioner were Attorney Scott Grover; Eric Sweet, Tim MacVittie, and Kurt Knepshild of Life Storage; and Carlton Quinn, Civil Engineer from Allen & Major Associates.
  14. At the public hearing, Attorney Grover explained that chronic flooding since 2005 has led to the redesign. He noted that the property is located at the low point of Highland Avenue. Mr. Quinn explained the flooding issues and redesign in further detail; he noted that large quantities of water run off from State Route 107 (Highland Avenue) into the drainage system at 435-443 Highland Avenue, and that the system is currently overwhelmed. The redesign, including grade increase, is meant to help address flooding issues. Representatives from Life Storage also discussed the redesign, stating that they sought to minimize impact on neighbors. They discussed the siting of the building on the property, noting that it is located to help minimize shadow impacts on nearby residential buildings. Representatives from Life Storage attested that this location has lost significant revenue due to the flooding issues. It was noted that the Life Storage site is approximately twelve (12') feet lower in elevation than the residences located behind it, and there is a retaining wall on the site.
  15. At the public hearing, Attorney Grover noted that this project will also go through Site Plan Review by the Planning Board as well as review by the Design Review Board and the Conservation Commission.

16. At the May 15, 2019 public hearing, several members of the public spoke about the petition. Ward 3 Councillor Lisa Peterson noted that she appreciated the team working with her and the neighbors. Councillor Peterson and other members of the public expressed concern regarding conditions from a previously granted variance for the property regarding hours of operation and lighting. Councillor Peterson also expressed that if the petition is approved, the City is making up for the hardship caused by the state road (MA-107, also known as Highland Avenue), rather than the state making up for the hardship. Five members of the public spoke about the petition: one (1) was in favor of the petition, and four (4) expressed concerns about the petition. Concerns included the grade change, hours of operation, lighting, and trash. Concerns were also expressed regarding operations on the site, such as cookouts and people working on vehicles. Eric Sweet of Life Storage spoke to the concerns.
17. The Board discussed the petition, including the previous conditions and conditions that could be applied to this petition, if granted.
18. Chair Duffy discussed the variance criteria, as noted below. He noted that the Board has the ability to condition the granting of the variance around some of the issues that have been raised by the community.

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petition, 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 for Variance:**

1. Special conditions and circumstances especially affect the land, building, or structure involved, generally not affecting other lands, buildings, and structures in the same district: This site, located at the low point of Highland Avenue, has experienced significant flooding. This condition is particular to the site.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant given the significant flooding that has occurred on the site.
3. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent of the district or the purpose of the ordinance.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Mike Duffy (Chair), Patrick Shea, Jimmy Tsitsinos, Jimmi Heiserman, and Peter A. Copelas) and none (0) opposed to grant the requested variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance for maximum height of buildings to replace the two existing self-storage buildings with a single self-storage building at **435-443 Highland Avenue**, subject to the following **terms, conditions, and safeguards**:

**Standard Conditions:**

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. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.

7. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Special Conditions:

1. Hours of operation for the on-site office shall be limited to 9:30 AM to 6:00 PM Monday through Friday and 8:30 AM to 5:30 PM Saturday. The office shall not operate on Sundays.
2. Access by customers shall be limited to 7:00 AM to 7:00 PM, seven days a week.
3. No idling of trucks is allowed on site.
4. There is to be no outside storage on the premises.
5. All of the conditions of the December 10, 1987 decision of the Board of Appeals regarding this property are incorporated except as modified by this decision.
6. The first floor finished grade is to be no greater than 114 feet per the drawings submitted to the Board of Appeals.
7. The agreement between the tenant and the property owner is to be strictly adhered to and to be available to the public.

  
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Mike Duffy, 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.