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CITY OF SALEM, MASSACHUSETTS

BOARD OF APPEALS

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April 30, 2024

Decision

City of Salem Board of Appeals

The petition of FRED J. DION YACHT YARD, INC. at 23 GLENDALE STREET (Map 33, Lot 646) (R1 Zoning District) for a Special Permit per Section *3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to extend and change the nonconforming boatyard use by demolishing several connected sheds and constructing a new and larger shed in the same portion of the property. In addition, a Variance from section *4.1.1 Dimensional Requirements* to allow the existing nonconforming lot coverage ratio of 40.8% to be increased to 48.8%. In the R1, 30% lot coverage is the maximum. A Variance from Section *4.1.1 Dimensional Requirements* to allow the building to extend an additional 16 feet along the existing rear set-back line of 5 feet, where the required rear setback is 30 feet.

A public hearing on the above petition was opened on April 17th, 2024, and was closed on April 17th, 2024.

On April 17th, 2024, the following members of the Salem Board of Appeals were present: Nina Vyedin (Chair), Carly McClain, Paul Viccica, Hannah Osthoff, Stephen Larrick and Ellen Simpson.

Statements of Fact:

The petition is date stamped March 21, 2024. The Petitioner seeks the Board of Appeals approval to extend and change the nonconforming boatyard use by demolishing several connected sheds and constructing a new and larger shed in the same portion of the property. In addition, to allow the existing nonconforming lot coverage ratio of 40.8% to be increased to 8.8% and to allow the building to extend an additional sixteen (16) feet along the existing rear set-back line of five (5) feet, where the required rear setback is thirty (30) feet.

1. 23 Glendale Street is owned by Atkins Salem Realty, LLC.
2. The Petitioner was Fred J. Dion Yacht Yard, LLC.
3. The representative was Attorney Bill Quinn.
4. 23 Glendale Street is located in the R1 Zoning District (Map 33, Lot 646).

5. On April 17th, 2024, Attorney Bill Quinn presented the requested relief to the board.
6. Attorney Quinn stated FJ Dion Yacht Yard, Inc. is a business established over one hundred (100) years ago. It has been operating in the R1 zoning district at the end of Glendale Street, next to the ocean from the yacht yard's opening. It is a legal nonconforming industrial use in the R1 zoning district.
7. Attorney Quinn stated the yacht yard exists due to a series of permits that have been issued over the years.
8. Attorney Quinn said the request in front of the board is that several of the boat sheds are inadequate to effectively store and service the boats during the winter. The location where the yacht yard used to store the boats for the winter is no longer available due to the storage site being sold for a housing development.
9. The proposal is to demolish two (2) sheds and to construct a larger, but not taller shed with a steel skeleton and metal surface. This will allow storage and boat work to be done over the winter.
10. Attorney Quinn stated that the project has gone to the Conservation Commission and received an order of conditions for the site. The Petitioner is also scheduled to go in front of the Planning Board for site plan review and a Flood Hazard Overlay District Special Permit. Attorney Quinn stated they have also been communicating with the city's Engineering Department to collaborate over a new sewer easement for a new installation of a city sewer facility that runs under the site.
11. Attorney Quinn stated that through conversations with the city regarding the sewer easement, his client has agreed to change the plans to accommodate the new sewer line so it can be accessible on the yacht yard's property.
12. Sydney Atkins, manager of Fred Dion Yacht Yard, stated the business has been in the family since 1914. Ms. Atkins stated that the business started as a travel lift and has grown over the last century. She stated the yacht yard business needs to evolve as boating and boats in general have evolved.
13. Ms. Atkins stated that their business revolves around hauling boats out of the water and servicing them. The business no longer has a storage site. Therefore, they need to have an indoor space for servicing and storing the boats.
14. Ms. Atkins stated, historically, the yacht yard was the only commercial waterfront access in Salem. Ms. Atkins reiterated this proposal is in front of the board due to the loss of their rented storage space, which they had been using for twenty (20+) plus years. She stated the business suffered because of the loss of storage space and her business needs the capacity to work on boats again.
15. Ms. Atkins stated, currently, their boat shed can only store twelve (12) boats. She continued by saying if there was an additional thirty (30) feet, they could store between thirty (30) and forty (40) boats at the site.
16. Ms. Atkins stated the business will not be able to continue to operate without an increase in storage capacity and service space at the site.
17. Attorney Quinn reviewed the submitted site plan for the board and the request for relief. The request was for a variance to increase the nonconformity of the lot

coverage by 8%. This would bring the lot coverage to 48.8%. In the R1 district, 30% is the maximum.

18. In addition, a variance from the side yard setback requirement is sought. The petitioner wants to extend the nonconformity an additional sixteen (16) feet to the east at the current five (5) foot side yard setback. Also, a special permit for nonconforming uses.
19. Attorney Quinn stated city staff from the Historical Commission came to the yacht yard to provide feedback on the proper materials for the proposed structure because the sheds are over fifty (50) years old.
20. Chair Vvedin asked Attorney Quinn to review the property lines of the site. Attorney Quinn stated the property of the yacht yard extends out several hundred feet out into the flats. However, you cannot use that property due to tide fluctuations.
21. Ms. Atkins stated the proposed building will extend ninety (90) feet from the current setback location and extend one hundred ninety (190) feet out to the east.
22. Ms. Atkins reiterated they have worked very closely with the city to allow access to the city sewer line that runs through their property. Ms. Atkins stated the different storage sheds on the site all have different heights. The proposed shed will be the same height in its entirety with side walls at a height of twenty-eight (28) feet and a roof peak of thirty-one (31) feet.
23. Mr. Viccica asked if there would be any changes in the services offered with the proposed structure. Ms. Atkins responded there will not be any changes to the services provided.
24. Mr. Viccica asked if services include working with toxic materials. Ms. Atkins responded they are very regulated given their location by the ocean. The yacht yard must submit water samples quarterly. There is a catch basin under their travel lift, all materials are collected. Ms. Atkins stated they are not pouring cement at the site; it will be crushed stone flooring. There will be a long list of procedures and regulations they need to follow in their day-to-day operations.
25. Ms. Atkins stated that when they had their off-site storage lot, they could store upwards of thirty-five (35) boats. Ms. Atkins stated that with the loss of the storage yard, their revenue has diminished greatly.
26. There was one letter submitted to the board from Steve Kapantais, no address given, inquiring about the number of trucks coming and going from the site.
27. Ms. Atkins responded that with the increase of storage at the site, the number of trucks coming and going from the site will decrease because boats will not have to be moved off-site for storage.
28. The meeting was opened to public comment.
29. Jeff Cohen, 12 Hancock Street, Ward 5 City Councilor, stated he fully supported the project. Mr. Cohen reiterated the willingness of the petitioner to work with the city regarding the city sewer easement on the petitioner's property.
30. Kerry Heath, 16 Ocean Avenue, stated she was concerned about the height of the proposed building. Ms. Heath said she constructed a new deck at her home and the increase in storage shed height would block their view of the water.

31. Chair Vyedin stated that the proposed structure will be conforming in height and there was no request for relief for the building's height. Ms. Vyedin encouraged the petitioner to have a conversation with the neighborhood about the proposed structure.
32. Ms. Atkins stated she has sent letters to neighbors and canvassed around the neighborhood to discuss this petition. Ms. Atkins stated conversations were positive regarding the proposed shed and she wants to be a good neighbor. Ms. Atkins stated she would be happy to have more conversations with Ms. Heath regarding her concerns.
33. Ms. Atkins said the structure's height is due to the need of the boats they are servicing and storing. Ms. Atkins stated the structure could be thirty-five (35) feet tall by right. She stated she cares about people's views and the importance of their views. The yacht yard was using only what they needed to properly service and store the boats.
34. Paul Viccica stated the Petitioner was not seeking relief for the height of the structure. He stated unfortunately, nobody is entitled to a view of the water and for those who live by the water there is no guarantee that your view would be permanent. The only way to guarantee a water view would be to live directly on the water.
35. Paul Viccica stated the Petitioner is not seeking a variance for height and there is no need for a variance for the height.
36. Steve Kapantais was given permission to speak and stated the Petitioner addressed his concerns when the board addressed his letter.
37. Attorney Quinn reviewed the Statement of Grounds and the Statement of Hardship to the board.

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearings, and after thorough review of the petition, including the application narrative and plans, makes the following **findings** that the proposed project meets the provisions of the City of Salem Zoning Ordinance:

Special Permit Findings:

The board finds that the adverse effects of the proposed use will not outweigh its beneficial impacts to the city or the neighborhood, in view of the particular characteristics of the site, and of the proposal in relation to that site. In addition to any specific factors that may be set forth in this ordinance, the determination includes consideration of each of the following:

1. Social, economic, or community needs are served by this proposal: there will be no change in use and operations at the boat yard.
2. Traffic flow and safety, including parking and loading: on-site parking is adequate for the site. There will be no impact on the parking for the neighborhood.

3. Adequate utilities and other public services already service the structure: there will be no changes to the city's utilities.
4. Impacts on the natural environment, including drainage: there will be no impact on the natural environment.
5. Neighborhood character: as a one hundred (100) year old business, the project will be within keeping the neighborhood character.
6. Potential fiscal impact, including impact on city tax base and employment: the new construction will result in increased real estate tax for the city. New jobs during construction will be created.

Variance Findings:

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: the land has been engineered for over one hundred (100) years to serve the purpose of a boat yard. The site has large equipment, cranes, and rails to help remove and place boats in the water.
2. Literal enforcement of the provisions of the ordinance would involve substantial hardship to the Applicant in attempting to put the property to productive use. The enforcement of dimensional requirements of the R1 zoning district would constitute a substantial hardship for the owner as they are nonconforming.
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. The yacht yard has received many permits and approvals from the city to operate the yacht yard over the years. The yacht yard has operated a substantial business that is consistent with the ocean-faring history of Salem for over a hundred years.

On the basis of the above statements of fact and findings, **the Salem Board of Appeals voted five (5) in favor (Nina Vyedin (Chair), Carly McClain, Ellen Simpson, Paul Viccica and Hannah Osthoff)) and none (0) opposed** to grant FRED J. DION YACHT YARD, INC. a Special Permit per Section *3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to extend and change the nonconforming boatyard use by demolishing several connected sheds and constructing a new and larger shed in the same portion of the property. In addition, a Variance from section *4.1.1 Dimensional Requirements* to allow the existing nonconforming lot coverage ratio of 40.8% to be increased to 48.8%. A

Variance from Section *4.1.1 Dimensional Requirements* to allow the building to extend an additional 16 feet along the existing rear set-back line of five (5) feet, where the required rear setback is thirty (30) feet., 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.
9. 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.
10. All construction shall be done per the plans and dimensions submitted to and approved by this board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.
11. Petitioner shall schedule Assessing Department inspections of the property, at least annually, prior to project completion and a final inspection upon project completion.

Nina Vyedin, 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.