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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK
SALEM, MASS

December 20, 2021 Decision City of Salem Board of Appeals

The petition of BERMAN PROPERTIES LLC for the following variances to allow construction of a new facility for Tropical Products, an existing Salem business, to relocate to support the company's growing needs: Variance from **Section 4.1.1 Dimensional requirements** of maximum lot coverage by all buildings in the B2 Zoning District (25% required/+, - 60% proposed); variance from **Section 8.3.9.1 Buffer Zone** in the BPD Zoning District 75 feet required, and 15 feet proposed; and variance from **Section 8.2.3.1 Curb Cuts** for two curb cuts greater than 24 feet for commercial uses. Two curb cuts are proposed-one for 42.5 feet and the second 58.4 feet. The site is comprised of the following parcels in the BPD Zoning District: 373 Highland Avenue (Map 7, Lot 58), 5 Cedar Road (Map 7, Lot 48), and 10 Cedar Road (Map 7, Lot 55); and the following parcels in the B2 Zoning District: 355 Highland Avenue (Map 7, Lot 46), 2 Cedar Road (Map 7, Lot 57), 3 Cedar Road (Map 7, Lot 47), and 6 Cedar Road (Map 7, Lot 56)

A public hearing on the above Petition was opened on December 15, 2021. The public hearing was also closed on December 15, 2021.

On December 15, 2021, the following members of the Salem Board of Appeals were present: Peter Copelas, Mike Duffy (chair), Rosa Ordaz and Steven Smalley

The petitioner seeks variances per Section 4.1.1 *Dimensional requirements* of maximum lot coverage. A variance from Section 8.3.9.1 *Buffer Zone* and a variance from Section 8.2.3.1 *Curb Cuts*.

Statements of Fact:

The petition is date stamped October 27, 2021. The petitioner has requested variances per 4.1.1 *Dimensional requirements* of maximum lot coverage. A variance from Section 8.3.9.1 *Buffer Zone* and a variance from Section 8.2.3.1 *Curb Cuts*.

1. 373 Highland Avenue is owned by K.R. Starr Realty Holding, LLC.
2. The Petitioner is Berman Properties, LLC.
3. The Petitioner is represented by Attorney Joseph Correnti of Correnti & Darling LLP
4. 373 Highland Avenue is located in two different zoning districts. The BPD (Business Park Development) zoning district and the B2 (Business Highway) Zoning District.
5. The requested relief, if granted, would allow the Petitioner to construct a new 70,000 square foot warehouse facility at 373 Highland Avenue.

6. On December 15, 2021, Attorney Correnti presented the Petition for 373 Highland Avenue to the Board.
7. 373 Highland Avenue is currently an undeveloped lot of land. The relief would allow for the proposed warehouse to be constructed with approximately sixty (60%) percent of the lot to be covered where twenty five percent (25%) is required.
8. Also, the granted relief would allow for a buffer from a residential use of seventy five (75) feet to be fifteen feet(15).
9. Granted relief would also allow to have curb cuts of forty-two and a half feet (42.5) where twenty-four (24) feet is required.
10. The lot at 373 Highland Avenue is unique due to its sitting across different zones and requirements for the single parcel. The lot is part of the Entrance Corridor Overlay District, Business Highway District and the Business Park District.
11. Attorney Correnti points out that if the proposed building was in the Business Park District, they would not be needing the proposed relief. The relief is needed because the lot is split by different zoning districts and requirements.
12. Paula Thompson, architect, spoke to the requested relief for the curb cuts and buffer zones. The required seventy-five (75) feet splits through the proposed parking lot of the site. There is one residence next to the lot that is requiring the variance from the seventy-five (75) feet for the buffer zone. Due to the parking requirements for the lot they need circulation around the building for the truck traffic. The main driveway and required parking is within that buffer zone.
13. The proposal for the buffer is fifteen (15) feet that widens from the west side and then increases again as it goes towards the east side of the proposed parking lot. Ms. Thompson proposes evergreen trees to help with the buffering from the abutting residence. Also, within the seventy-five (75) feet buffer zone are more proposed plantings for deciduous trees.
14. Ms. Thompson spoke about how the lot is on a state highway which will require them to be in contact with Massachusetts Department of Transportation (MassDoT) to get approval for the proposed curb cuts. MassDoT requires for a commercial property, a thirty (30) foot wide driveway. The reason the relief is forty-two and half (42.5) feet is because the petitioner wants to make sure that their sixty (60) foot tractor trailer can safely turn from the right lane of traffic. These curb cuts will also be under review from MassDoT.
15. Chair Duffy inquired whether there was a sidewalk adjacent to the property. Ms. Thompson stated there was a sidewalk and they will be reconstructing the sidewalk with guidance and approval from MassDoT.
16. Mr. Berman addressed the board and thanked them for hearing the petition.
17. Peter Copelas addressed the statement of hardship in the petition. He felt that it didn't address the need for a variance.
18. Attorney Correnti addressed the statement of hardship to make it clearer for the board. He spoke to the multiple lots and their requirements. The topography of the lot starts out at grade from Highland Avenue and then drops precipitously to the rear of the lot. There will be a significant amount of blasting and removal of ledge to complete the project. These are the conditions that present the hardship.
19. Ms. Thompson spoke about the unique topography of the site. She spoke about how the property has a twenty-two (22) feet of elevation change from the front of the property to the rear of the property. The drop is across where the building will be. The building will need a flat floor which will require a large amount of engineering to make it

possible due to the topography of the site. They are trying to use the topography to their advantage by having the loading dock on the low side of the property. However, there are challenges in trying to get the driveways to come around the property at the back of the site.

20. Another challenge is having to remove Cedar Road and reroute it towards the front of the site.
21. Chair Duffy asked about the statement of hardship where there will need to be some soil remediation due to contamination of the site.
22. Ms. Thompson spoke how they have been working with an environmental engineering company, Vertex, to clean up the site.
23. There were two (2) public comments.
24. Attorney Correnti made clear that they are going to be taking utilities from Highland Avenue and not from utilities connected to Cedar Road.
25. Chair closed the public comments and the board made a motion on the petition.
26. Due to the ongoing COVID-19 pandemic and related precautions and Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, the December 15, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.

Variance Findings:

The Board finds that the proposed modifications will not be substantially more detrimental than the existing nonconforming use to the neighborhood and that the adverse effects of the proposed use will not outweigh its beneficial impacts to the City and to the neighborhood:

1. Social, economic, or community needs were served by adding a local business opportunity to grow their business in this area. This is good for the city.
2. Traffic flow and safety, including parking and loading: there will no impact on traffic or parking.
3. Adequate utilities and other public services: The petition will not impact utilities or public services.
4. Impacts on the natural environment, including drainage: Will be working with engineers to minimize the impacts on the environment.
5. Neighborhood character: The project will be in keeping with and improving the city's businesses.
6. Potential fiscal impact, including impact on City tax base and employment. There will a large increase in jobs for Salem.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted four (4) in favor (Steven Smalley, Peter Copelas, Rosa Ordaz and Mike Duffy (chair)) and none (0) opposed to grant

BERMAN PROPERTIES, LLC variances per Section 4.1.1 *Dimensional requirements* of maximum lot coverage. A variance from Section 8.3.9.1 *Buffer Zone* and a variance from Section 8.2.3.1 *Curb Cuts*.

Receiving four (4) in favor votes, the petition for the variances is approved.

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



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.