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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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December 3, 2018

Decision

City of Salem Board of Appeals

Petition of I.N.S.A., Inc. seeking a special permit per Sec. 6.10.4 of the Salem Zoning Ordinance to operate a licensed retail marijuana establishment at 462 HIGHLAND AVENUE (Map 3, Lot 2) (B2 and ECOD Zoning Districts).

A public hearing on the above Petition was opened on October 17, 2018 pursuant to M.G.L Ch. 40A, § 11, continued to November 19, 2018, and closed on that date with the following Salem Board of Appeals members present: Mike Duffy (Chair), Peter A. Copelas, Jim Hacker, Patrick Shea, and Paul Viccica.

The Petitioner seeks a special permit per Section 6.10.4 of the Salem Zoning Ordinance to operate a licensed retail marijuana establishment.

Statements of fact:

1. In the petition date-stamped September 6, 2018 the Petitioner requested a special permit under Section 3.0 of the Zoning Ordinance to operate a retail marijuana facility. (Section 6.10.4 defines the Zoning Board of Appeals as special permit granting authority for marijuana establishments.)
2. John R. Keilty, Esq. (Offices at 40 Lowell Street, Peabody, MA) and F. Giles Ham, P.E. (Vanasse & Associates, Inc.) presented the petition, including the traffic plan, on November 19, 2018. The discussion was continued from the October 17, 2018 meeting at least in part because INSA's traffic engineer was not available for the October meeting.
3. As required by state statute, I.N.S.A., Inc. held a community outreach meeting on July 31, 2018.
4. The property is located in the B2 and Entrance Corridor Overlay Zoning Districts.
5. I.N.S.A., Inc. (dba INSA) is an existing marijuana business with two facilities in Western Massachusetts and a cultivation facility in Pennsylvania.
6. Petitioner is proposing to build a retail marijuana facility. The property currently operates as a Meineke Car Care Center.
7. Petitioner proposes to reconstruct and renovate the existing structure. The existing structure is 3,080 square feet. The proposal includes a secured loading area adjacent to the building.
8. Petitioner submitted Purchase and Sale Agreement; Dispensary Operations Overview; Statement from the CEO listing INSA's "designated owners, including officers, directors, partners, managers, or similarly situated individuals"; Security Plan; Memorandum from Hesnor Engineering Associates regarding odor control; and a Transportation Impact Assessment prepared by Vanasse & Associates, Inc.
9. The property is not located within five hundred (500) feet of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, or within five hundred (500) feet

of houses of worship and funeral homes, or within one thousand (1,000) feet of institutions of higher education. The property abuts Camp Lion, a site with community facilities including facilities for young people. There is a 15 foot high rock ledge between the site and Camp Lion.

10. The traffic engineer presented information from the traffic study at the public hearing. Per the traffic study included with the petitioner's application, "The Project is expected to produce a minor increase in traffic volume in the vicinity of the site with traffic increases below 1.4 or 2.8 percent during the Weekday and Saturday peak hours, respectively."
11. No on-site consumption will take place on the premises.
12. Petitioners submitted an extensive Security Plan with Security and Emergency Policies with the application. Per that Security Plan, the site will include "two independently operating security systems (primary and secondary) installed by separate security contractors as specified in 935 CMR 500. And will also use uniformed security officers to maintain a secure facility on a 24/7 basis."
13. Petitioner met with the Salem Chief of Police and received a letter dated September 19, 2018 in support of the petition and security plan that was submitted to the Salem Police Department.
14. Per the Statement of Grounds submitted by petitioners, "The INSA Salem location is expected to produce 20-30 jobs in retail, management, and security... [which] pay competitive wages and include benefits such as health insurance and retirement plans."
15. At the November 19, 2018 public hearing, The Board discussed the issue and asked some questions to the attorney, Mr. Keilty. The Board asked that northbound delivery trucks for the retail establishment enter the establishment legally (i.e., do not enter by turning left into the adjacent Wal-Mart parking lot and entering the INSA parking lot by way of the Wal-Mart parking lot), and Mr. Keilty responded yes. Mr. Keilty stated that delivery truck drivers will be instructed to enter properly and legally.
16. Board member Peter Copelas noted that, based on the information in the initial application to the Board, the included Purchase and Sale agreement had expired in October. Mr. Copelas asked Mr. Keilty whether the Purchase and Sale agreement was extended, and Mr. Keilty confirmed that it has been extended.
17. At the November 19, 2018 public hearing, no members of the public spoke in favor or opposed to the petition. Chair Duffy read a comment (submitted via email) from Lorelee Stewart and Ann Delulis, Co-Chairs of the Barnes Clark Wyman Area Neighborhood Association, expressing support for I.N.S.A., Inc. to receive the requested special permit, noting that I.N.S.A. representatives addressed their safety and traffic concerns.

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, 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:

General Special Permit findings:

1. The City of Salem's citizens have voted to approve marijuana dispensaries, and social, economic and community needs are served by this proposal.
2. Traffic flow and safety, including parking and loading – requirements have been met. Deliveries will be instructed to enter the property in a legal manner and not go through the Wal-Mart parking lot..

3. Utilities and other public services are adequate, as the property has operated as a business and will continue to operate as a business requiring the same kind of utilities.
4. There will be no negative impacts to the natural environment, including drainage. The parking lot is not being expanded significantly.
5. The project has a reasonably low impact on the surrounding neighborhood – there are few residences near the location.
6. The potential fiscal impact, including impact on City tax base and employment, is positive.

Retail Marijuana Establishment-Specific Findings:

The Board finds that the applicant has demonstrated that the following specific criteria for retail marijuana establishments will be met and is in accordance with Section 6.10.8 of the Salem Zoning Ordinance:

1. The applicant demonstrates that the marijuana establishment will meet all of the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will be in compliance with all applicable state laws and regulations including, but not limited to M.G.L c.94G, Section 12 General Marijuana Establishment Operations.
2. The applicant has satisfied all of the conditions and requirements of this section and other applicable sections of the Zoning Ordinance and any applicable city ordinances.
3. Through review of security measures, the Board has determined that the facility will provide adequate security measures to ensure that there are not direct threats to the health or safety of employees, staff, or members of the public.

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, Peter Copelas, Jim Hacker, Paul Viccica) and none (0) opposed to approve a Special Permit per Sec. 6.10.4 of the Salem Zoning Ordinance allowing I.N.S.A., Inc. to operate a licensed retail marijuana establishment at 462 Highland Avenue, subject to the following **terms, conditions, and safeguards**:

Standard Conditions:

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. Exterior finishes of new construction shall be in harmony with the existing structure.
6. A Certificate of Inspection shall be obtained.
7. A Certificate of Occupancy shall be obtained.
8. 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.
9. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Special Conditions:

1. The applicant shall not operate until the issuance and submission of a copy of the issued state license by the Commonwealth and all other state and local requirements are met.
2. A community host agreement shall be executed with the City within six (6) months of issuance of this special permit. A six (6) month extension can be granted by the Board of Appeals if good cause is shown.
3. The applicant shall be issued a state license within six (6) months of the issuance of this special permit. A six (6) month extension can be granted by the Board of Appeals if good cause is shown.
4. No on-site consumption will be allowed on the premises.

 /BJC

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.