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MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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## Decision

### City of Salem Board of Appeals

**Petition of NS ALTERNATIVE seeking a Special Permit per Sec. 6.10.4 of the Salem Zoning Ordinance, to operate a licensed retail marijuana establishment in a portion of the building at 207 HIGHLAND AVENUE (Map 13 Lot 2) (B-2 Zoning District).**

A public hearing on the above Petition was opened on March 28, 2018 pursuant to M.G.L. Ch. 40A, § 11 and continued to April 18, 2018 and May 16, 2018. The hearing was closed on that date with the following Salem Board of Appeals members present: Rebecca Curran (Chair), Peter A. Copelas, Mike Duffy, Chris Drucas, Paul Viccica.

The Petitioner seeks a Special Permit per Sec. 6.10.4 of the Salem Zoning Ordinance, to operate a licensed retail marijuana establishment in a portion of the building.

#### **Statements of fact:**

1. In the petition date-stamped February 27, 2018, the Petitioner requested a Special Permit per Sec. 6.10.4 of the Salem Zoning Ordinance, to operate a licensed retail marijuana establishment in a portion of the building.
2. As required by the state statute, the petitioner had held a community outreach meeting that was held on March 20, 2018.
3. The property is located in the B-2 Zoning District. The petitioner is proposing to locate in a portion of the existing mid-century modern building, which currently has a mix of uses including a dialysis center, food, pantry and church. The petitioner is proposing to be located in the area where there is currently a church provided that the church will relocate outside of the 500' ft buffer area.
4. The petitioner has provided a draft community host agreement to the City and will provide for the maximum amount of payment to the City that is allowed under the state statute, which is 3% of gross sales.
5. No on-site consumption will take place on the premises.
6. The petitioner is proposing to occupy approximately 4,800 square feet of the existing structure including approximately 500 square feet dedicated to an internal garage for product delivery. As described, the internal garage one of many security measures and will operate similarly to a police sally port.

7. The petitioner will utilize a fraud detecting scanner to verify government issued identification, install interior and exterior cameras, use GPS on delivery vehicles and have security guards at the location. These are a few of many security measures that will be in place at this location.
8. The petitioner is anticipating approximately four to five hundred customers per day and approximately five (5) product deliveries per week.
9. The petitioner met with the Salem Chief of Police and received a letter dated April 9, 2018 in support of the petition and security plan that was submitted to the Salem Police Department.
10. The petitioner is proposing to have forty-seven (47) dedicated parking spaces on the property as show in a plan titled, "Proposed Site Plan" dated May, 9, 2018.
11. It is anticipated that there will be approximately twenty (20) employees and wages will be no less than \$15.00 per/hour and the company will offer a preference to Salem residents and local people for employment.
12. The proposed hours of operation are 8am-8pm Monday through Saturday and Sunday 10am-8pm, with the exception that the store will be closed during the adjacent food bank hours of operation on Saturday.
13. At the request of the Board of Appeals, the City Solicitor provided dated April 9, 2018 with an opinion regarding a residency requirement for new applicants for a license to operate a marijuana establishment as a microbusiness, marijuana establishment as a craft marijuana cooperative, or economic empowerment applicant. The applicant will not be applying to any of these three (3) types of state licenses. Further, the Board requested guidance on whether the Board could approve a special permit for a petitioner where there is currently a church located at the same address. The applicant has asserted that the church intends to relocate should the retail marijuana facility be approved and has provided a letter dated April 1, 2018 to that effect.
14. The petitioner provided a traffic impact statement dated March 11, 2018 and subsequent revisions dated April 11, 2018 and May 8, 2018. When these facilities first open, the traffic assumption is that this location will initially behave as a destination and generate approximately 600-900 trips per day. However, as more facilities open, it is expected that visitors will be "drive-by" visits that are similar to a convenience or liquor store and vehicle trips per day will decrease. While there will be an increase in the number of vehicle trips on this site compared to the existing church, the additional vehicle trips from the proposed dispensary on a peak day represents an increase of approximately 2.6% of the observed ADT on Route 107 (Highland Avenue) and is a minor increase that will not significantly impact traffic flow.
15. There are currently two (2) curbcuts along Highland Avenue including a two-way driveway and a driveway that was once used for large truck deliveries for a previously existing car dealership at the site. The petitioner, at the request of the Department of Planning and Community Development and Traffic and Parking Department, is proposing to close up and significantly landscape the existing curbcut along Highland Avenue closest to First Street to limit the hazard of proximate cars turning from First Street onto Highland Avenue.
16. The petitioner is also proposing two signalized pedestrian crossing include one on First Street and one at the northeast corner of the Property across First Street at Highland Avenue. The petitioner will also repave the frontage of the property along Highland Avenue to allow for better pedestrian access.

17. The petitioner is also proposing the following traffic mitigation measures to offset the minor increase in vehicle trips from the project: 1) provide subsidies for employees for MBTA T-passes to encourage ridership of the underutilized bus-route with stops adjacent to the subject property; 2) provide bicycle racks and indoor bicycle storage to encourage alternative transportation to customers and employees; 3) provide lockers in the break room for employees that walk or bike to work; 4) provide customers with information regarding transportation options to access the facility; 5) provide and maintain information on the Natural Selection website and other distributed materials on how to access the facility by all modes of transportation with an emphasis on public transit and non-automobile modes; 6) designate a Transportation Coordinator to manage the implementation of this Transportation Demand Management plan; 7) the petitioner shall install a signalize crosswalk, including striping and curb ramps at the intersection of First Street and Highland Avenue as identified in the MassDOT Recommendations of the Route 107 Corridor Study report (2017, Route 107 Segment 4).
18. At the public hearing, one member (1) of the public spoke in favor and seventeen (17) members of the public spoke in opposition to the petition.

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:**

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 6.10.4 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. The facility provides adequate security measures to ensure that there are not direct threats to the health or safety of employees, staff, or members of the public.

**General Special Permit findings:**

1. There are social, economic, and community needs served by the proposal. The retail establishment will be extensively regulated by the Cannabis Control Commission, which was created to regulate the industry as approved by a popular vote in 2016. Pursuant to the popular vote, the proposed establishment will meet community needs expressed by such vote and Massachusetts General Laws c.94G.
2. Traffic flow and safety, including parking and loading are adequate as conditioned by the Board. The Board heard concerns regarding traffic on First Street and Highland Avenue due to an increase of use at the property. The petitioner has eliminated the proposed curbcut on First Street in addition the closure of an existing curbcut along Highland Avenue closest to First Street.

3. Utilities and other public services are adequate and the additional use will not result in significant additional service demand.
4. There will be no negative impacts to the natural environment, including drainage.
5. The proposed additional use will operate completely inside of the building subject to state regulations and the Salem Ordinance regarding signage, odor, security, and operations. The B-2 Zoning District is a Business Highway district that allows business uses. The property use proposed is a business use. There are other kinds of business uses that could be located here by-right and could generate more traffic and more detrimental impacts to the neighborhood than this proposed retail use. As for concerns regarding impacts to high school students in the neighborhood, the property is at a different elevation and the proposed landscaping further physically isolates this property and is not right at eye level. Regarding the potential use of this product in the parking lot, this use is similar to a liquor store and expected that people will purchase their product and go home because it is illegal to consume in public.
6. The potential fiscal impact, including impact on City tax base and employment is positive.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (5) in favor, (Rebecca Curran (Chair), Peter A. Copelas, Mike Duffy, Chris Drucas, Paul Viccica) and none opposed to approve a Special Permit per Sec. 6.10.4 of the Salem Zoning Ordinance, to operate a licensed retail marijuana establishment in a portion of existing building 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 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. The petitioner shall obtain a letter from the Police Chief and Fire Department concerning the single site access without allowing public access from First Street.
5. No consumption shall be allowed on site.
6. The advertising for the location shall reflect the preferred route access to the site.
7. The hours of operation will be from 8am-8pm Monday through Saturday and 10am-8pm on Sunday. On Saturday, the petitioner will not operate during the hours of operation of the food pantry.
8. All deliveries shall be interior deliveries and in accordance with the security plan that has been submitted and approved by the Police Department.
9. The church must vacate and relocate more than five-hundred (500') feet from the site.
10. The petitioner shall submit an amended landscaping plan to the Building Department for review and approval to make sure that there are adequate sight lines at the intersection of First Street and Highland Avenue.
11. All landscape improvements as presented at the May 16, 2018 meeting and any amendments that are requested by any other City department shall be approved for construction by the landlord.
12. The Salem Police and Fire Department shall review and approve ingress and egress plans from the site without creating another entrance on First Street that can be publically accessed and also prevent public access by vehicle between the subject property and 4 First Street and 227 Highland Avenue (Market Basket parking lot).
13. During hours of operation, the petitioner shall provide security on the interior and exterior of the building to prevent use of products on site.
14. The petitioner shall provide all traffic mitigation measures as proposed by the traffic study and in accordance with the approved plans dated May 15, 2018.

  
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.*