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CITY CLERK
SALEM, MASS

July 3, 2018

Decision

City of Salem Board of Appeals

Petition of SANCTUARY MEDICINALS, INC. seeking a Special Permit to operate a licensed retail marijuana establishment in a portion of an existing shopping plaza at 400 HIGHLAND AVENUE (Map 3 Lot 5) (BPD).

A public hearing on the above Petition was opened on April 18, 2018 pursuant to M.G.L. Ch. 40A, § 11 and continued to April 18, 2018, May 16, 2018, and June 20, 2018. The hearing was closed on that date with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy, Chris Drucas, Jimmy Tsitsinos, and 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 an existing shopping plaza.

Statements of fact:

1. In the petition date-stamped March 19, 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 an existing shopping plaza.
2. As required by the state statute, the petitioner had held a community outreach meeting on April 3, 2018.
3. The applicant, Sanctuary Medicinals, Inc. is an established and experienced operator of marijuana facilities provisionally licensed in Danvers and Gardner, MA and of a growing and processing facility in Littleton, MA. The petitioner also operates a retail facility in Plymouth, NH and growing and processing facility in Rochester, NH. As a holder of two Provisional Certificates of Registration issued by the Massachusetts Department of Public Health, the applicant has priority applicant status for state licensing.
4. The property is located in the Business Park Development District (BPD). The petitioner is proposing to locate in a portion of an existing shopping plaza, which currently has a mix of uses including doctor's offices, a kids painting studio, several restaurants, insurance company, real estate and other personal service establishments. The petitioner is proposing to locate in a 4,800 square foot portion of the existing shopping plaza.
5. The petitioner is proposing to employ between fourteen (14) to sixteen (16) people with up to eight (8) employees on the property during the busiest days in addition to two (2) security guards. The company will offer a preference to Salem residents and local people for employment.
6. The petitioner anticipates 300-450 customers per day at best. Overtime, it is anticipated that this facility will have 150 customers per day as more retail facilities open in the City and region.

7. No on-site consumption will take place on the premises. The Salem Police will be called in the case of illicit use on the property and be banned from making purchases from the facility. The petitioner also proposed to install explicit signage for customers inside of the entrance of the facility with explicit rules and regulations.
8. 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.
9. There is one rear entrance to the facility. At the April 18th meeting the petitioner discussed that product deliveries to the facility would be made at the rear of the property and security measures such as cameras and security guards would be in place to ensure safe deliveries. Vehicles used for deliveries are nondescript, equipped with a GPS and two (2) security personnel to make deliveries. There will also be an on-site security guard who will make a visual sweep of the area. Deliveries are randomized and will be done during daylight hours. The petitioner expects daily product deliveries. There is no alley port for deliveries due to existing site constraints.
10. The petitioner met with the Salem Chief of Police and received a letter dated April 12, 2018 in non-opposition to the security plan that was submitted to the Salem Police Department.
11. Due to neighborhood concerns about proximity of deliveries to the residential neighborhood and security concerns regarding rear delivery, the Board of Appeals requested that the petitioner consider making secure product deliveries through the front door during non-business hours.
12. At the June 20, 2018 meeting, the petitioner proposed to have secure front door deliveries. In an e-mail dated May 18, 2018, the Salem Chief of Police confirmed non-opposition to a revised security plan that proposed this change to the location of deliveries to the facility.
13. There are 219 parking spaces on the site and the petitioner will have an agreement with the landlord to designate 10-12 parking spaces for the establishment. It is anticipated that parking spaces will be used for no more than fifteen minutes. The existing plaza tenants generate a maximum of 158 space parking demand based on weekday and weekend observations. The estimated 32 space parking demand generated by the petitioner, which can be accommodated by the existing parking. It is estimated that there will be 29 parking spaces available (13%) surplus within the entire parking lot, which will accommodate fluctuations in plaza parking demand.
14. The petitioner provided a traffic impact statement dated April 2018 and subsequent revisions dated May 2018. There are several access points to the facility including a right turn in and out onto Highland Avenue, a signalized turn in either direction at Olde Village Drive, and a cross-connection between the existing Walmart plaza and the proposed site. A bus stop is located across the street on Highland Avenue and a signalized pedestrian crossing is at Highland Avenue. While there will be an increase in the number of vehicle trips on this site, the additional vehicle trips from the proposed retailer during peak hours represents an increase of approximately 3% of the observed of the baseline traffic volumes on Route 107 (Highland Avenue) and is a minor increase that will not significantly impact traffic flow or level of service.

15. The petitioner will provide for the maximum amount of payment to the City that is allowed under the state statute, which is 3% of gross sales.
16. The proposed hours of operation are 8am-8pm Monday through Saturday and Sunday 10am-8pm.
17. At the May 16, 2018 Board of Appeals meeting, after listening to extensive public comments and concerns, voted to close the public hearing to allow for continued Board discussion and deliberation. At the June 20, 2018 meeting, at the request of a member of the public, the Board voted to re-open the public hearing as the Board asked for additional information regarding a change to the location of deliveries from the back of the building to the front of the building. The Board voted 4-1 to allow the public comment period to be re-opened.
18. At the public hearing, twenty five (25) members of the public spoke in opposition to and none (0) in support of 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. The petitioner provided a traffic impact statement dated April 2018 and subsequent revisions dated May 2018 in addition to security information that demonstrated adequate traffic flow and safety, including parking and loading.
3. Utilities and other public services are adequate as there are no significant changes to the level of use proposed.

4. There will be no negative impacts to the natural environment, including drainage. The building already exists and all of the work will be inside the building.
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 Business Park Development Zoning District allows for this retail use and is consistent with the commercial character of the neighborhood.
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 four (4) in favor, (Peter A. Copelas, Mike Duffy, Chris Drucas, Jimmy Tsitsinos) and one (1) (Paul Viccica) 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 shopping plaza 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. No consumption shall be allowed on site.
5. The rear door be marked "Emergency Only."

6. All traffic and safety improvements as recommended by the traffic study shall be implemented prior to Certificate of Occupancy.
7. The petitioner shall install signage for customer rules and regulations be installed prior to a Certificate of Occupancy.
8. The petitioner shall provide a police detail, should the Salem Police Department determine that one is necessary, at the applicant's expense.

Peter A. Copelas /28
Peter A. Copelas, 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.