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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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2020 AUG -1 PM 3:25

CITY CLERK
SALEM, MASS

August 1, 2018

Decision

City of Salem Board of Appeals

Petition of WITCH CITY GARDENS, seeking a Special Permit per Sec. 6.10.4 and Sec. 6.10.9 Requirements Specific to Cultivation Facilities of the Salem Zoning Ordinance, to operate a licensed retail marijuana establishment and marijuana cultivation facility at 38 JEFFERSON AVENUE (Map 25 Lot 388)(B-4 and ECOD Zoning Districts)

A public hearing on the above Petition was opened on May 9, 2018 pursuant to M.G.L. Ch. 40A, § 11 and continued on June 20, 2018 and July 18, 2018 with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy, Chris Drucas, Paul Viccica, and Jimmy Tsitsinos)

The Petitioner seeks a Special Permit per Sec. 6.10.4 and Sec. 6.10.9 *Requirements Specific to Cultivation Facilities* of the Salem Zoning Ordinance, to operate a licensed retail marijuana establishment and marijuana cultivation facility.

Statements of fact:

1. In the petition date-stamped March 28, 2018, the Petitioner requested a Special Permit per Sec. 6.10.4 and Sec. 6.10.9 *Requirements Specific to Cultivation Facilities* of the Salem Zoning Ordinance, to operate a licensed retail marijuana establishment and marijuana cultivation facility.
2. James McMahon of McMahon Strategic Development presents the petition.
3. The property is split lot located in the R-2, B-4 and Entrance Corridor Overlay Zoning Districts.
4. The property abuts commercial and residential properties.
5. 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 from institutions of higher education. The site is located within five hundred (500) feet of a pre-school.
6. As required by the state statute, the petitioner held a community outreach meeting that was held on April 4, 2018.
7. Witch City Gardens is a newly established business that is not a currently licensed operator of marijuana facilities.
8. There are two buildings located on this property including a 1,423 +/- square foot free standing structure with frontage along Jefferson Avenue and a second building that is approximately 14,678 +/- square feet. The petitioner is proposing to locate a retail marijuana facility and marijuana cultivation facility on this site.

9. The petitioner is proposing to locate a retail marijuana facility in the entire +/-1,423 square foot building along Jefferson Ave known as Facility A. This facility will have exterior aesthetic improvements, including new paint, landscaping, and security enhancements. The structure will not be expanded.
10. The petitioner is also proposing to locate a marijuana cultivation facility at the property known as Facility B. This cultivation facility is located in a 12,445 square foot portion of a second building on the property that is shared with two (2) other tenants. This square footage includes the use of the first floor and basement of the area designated for Tenant B, as shown on the site plan by Seger Architects, Inc, titled "Witch City Gardens", dated July 9, 2018. The building also will include an office use for T.E. Andresen, Inc. "Tenant A" and an electrical contractor space as shown on the site plan "Tenant C." All tenant spaces are fully separated from one another.
11. In the original application dated March 28, 2018, the petitioner proposed installing a solar energy generation system on up to 11,500 square feet of roof to significantly offset the electric power drawn from the cultivation facility. Further, the petitioner proposed to install batteries that will allow the retail operation to also run on 100% renewable energy.
12. At the May 9, 2018 public hearing, the Zoning Board requested additional information including a preliminary structural engineering assessment to understand whether the solar that was proposed was feasible on the structure. In a letter dated June 5, 2018, to the Board, the petitioner updated petition materials with all references to on-site solar power generation to be removed. The company re-evaluated the expiry date of potential solar tax credits and incentives against their development timeline and made a decision to forego on-site solar power generation.
13. The anticipated growing production will be 5,000 square feet of canopy space which is considered a Tier 2 facility. The cultivation facility will have 133 1,000 watt light fixtures lighting the flowering rooms. The power consumption for the entire cultivation facility will require 133,000 kW Hours per day of electricity totaling 29.12 Watts per square foot. Massachusetts cannabis regulations require that the petitioner use less than 50 watts per day for this size cultivation facility. Each of the 1,000 plants will be potted and will occupy approximately 3-4 square feet. The anticipated water usage is approximately 130 gallons of water.
14. The site currently has two (2) existing curbcuts along Jefferson Avenue including one that is approximately forty (40) feet wide, and a second opening that is over 100 feet wide. Currently, there is a moving company that utilizes moving vans that are 90-90 feet long and back into the property to access loading docks. This movement to allow moving trucks to back into the site closes both sides of Jefferson Avenue and obstructs traffic flow for 1-2 minutes at a time. The moving company employs 50-75 employees during peak summer months and the moving company is estimated to generate 50-100 daily trips entering and exiting the site during peak hours.
15. An initial traffic investigation letter dated May 8, 2018 was submitted with the following recommendation; a) the sidewalks along the site frontage will require replacement as a result of the modifications to the curb cuts. These should be constructed in accordance with Americans with Disabilities Act (ADA) compliant slopes and wheelchair ramps as necessary, b) Driveways should be a minimum of 20 feet in width for two-way vehicle travel and be able to accommodate the City of Salem emergency vehicles as determined by the Salem Fire Department; c) the driveways should also be placed under STOP-sign control where they intersect Jefferson Avenue, with painted STOP-bars on the driveways at the STOP-sign locations; 4) Any landscaping or

building features should not exceed 24 inches in height or should be placed out of the lines of sight for motorists exiting the site and those approaching the driveways on Jefferson Avenue.

16. The petitioner is proposing to install new concrete sidewalks and reduce the existing curbcuts. Specifically, the south curbcut will be reduced to from 28' feet to 23' feet and the north curbcut will be reduced from 100+ feet to 24' feet in accordance with the plot plans titled "Witch City Gardens", page A-1.1, dated July 9, 2018.
17. A transportation impact assessment was subsequently prepared by Vanasse & Associates, Inc. and dated June 2018. A supplemental letter dated July 9, 2018 with revised trip general and parking calculations was submitted. It is anticipated that the retail and cultivation facilities will generate approximately 488 weekday daily trips with approximately 52 additional vehicle trips expected during the weekday evening peak-hour. On Saturday, the project is expected to generate an increase of approximately 396 vehicle trips with approximately 58 additional vehicle trips on Saturday midday.
18. The petitioner is proposing to have thirty-six (36) parking spaces including eighteen (18) spaces required for the retail and cultivation facility. The other spaces will be utilized an office, retail marijuana facility, marijuana cultivation facility, and electrical contractor space. The zoning ordinance requires a total of thirty-three (33) parking spaces for this mix of uses.
19. The petitioner will utilize a fraud detecting scanner to verify government issued identification for the retail marijuana facility. For both marijuana businesses, the petitioner plans to install interior and exterior cameras, install perimeter lighting, have restricted access areas with coded RFID security badges, and live camera tie-in to the Salem Police Department among other security measures.
20. The petitioner met with the Salem Chief of Police and received a letter dated June 1, 2018 in to confirm the receipt and review of the proposed security plan that was submitted to the Salem Police Department.
21. The petitioner also submitted an Emergency Response Plan to the Salem Fire Department. The Department submitted a letter to the petitioner dated April 25, 2018 with a confirmation of preliminary review.
22. The Board of Health submitted a letter to the Board of Appeals dated July 18, 2018, with concerns about potential public nuisance that may be caused by the operation of the cultivation facility. In particular, the Board of Health requested that the cultivation facility comply with MS. DEP regulations 310.700 to specifically not create a public nuisance in relation to odors, waste handling, or noise from mechanical ventilation units.
23. It is anticipated that there will be approximately fifteen (15) to twenty (20) employees and the company will offer a preference to Salem residents and local people for employment.
24. At the public hearing, (7) members of the public spoke in favor, and eighty (80) 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:

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 is adequate.
3. Utilities and other public services are adequate and the use will not result in significant additional service demand.
4. There will be no negative impacts to the natural environment, including drainage.
5. The property use proposed is a business 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.

Findings for Marijuana Establishments:

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.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (5) in favor, (Peter A. Copelas, Mike Duffy, Paul Viccica, Jimmy Tsitsinos, Chris Drucas) and none opposed to approve a Special Permit per Sec. 6.10.4 and Sec. 6.10.9 *Requirements Specific to Cultivation Facilities* of the Salem Zoning Ordinance, to operate a licensed retail marijuana establishment and marijuana cultivation facility 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 for Retail Marijuana Facility:

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 take place on the premises.

Special Conditions Marijuana Cultivation Facility:

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 use high-efficiency lights and equipment to limit energy and water usage demand.
5. The petitioner shall use LEDs for all fixtures except for those that are used in flowering rooms. High Pressure Sodium grow lights may be used for no more than fifty percent (50%) of the total square footage of the cultivation area to maximize flowering conditions and limit electricity demand.
6. No more than one-half of the marijuana plants may be mature flowering plants.
7. No pesticides, insecticides, or other chemicals shall be used in the cultivation of marijuana.
8. The petitioner shall comply with all regulations that may be promulgated by the Cannabis Control Commission.

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Peter A. Copelas/ES
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.