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MAYOR

CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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Decision

City of Salem Board of Appeals

Petition of ANTHONY J. PICARIELLO, JR. for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to allow the operation of a firearms retail business at 1 FLORENCE STREET (Map 34, Lot 273) (R3 Zoning District).

A public hearing on the above Petition was opened on February 17, 2021 (during which not testimony was heard) pursuant to M.G.L Ch. 40A, § 11 continued to March 17, 2021 (during which no testimony was heard); continued to April 21, 2021 and closed on that date. On February 17, 2021, the following Zoning Board of Appeals members were present: Mike Duffy (Chair), Paul Viccica, Carly McClain, and Steven Smalley were present; Peter Copelas, Rosa Ordaz, and Jimmy Tsitsinos were absent. On March 17, 2021, Mike Duffy (Chair), Paul Viccica, Carly McClain, and Steven Smalley were present; Peter Copelas, Rosa Ordaz, and Jimmy Tsitsinos were absent. On April 21, 2021, Mike Duffy (Chair), Peter A. Copelas, Rosa Ordaz, Paul Viccica, Carly McClain (Alternate), and Steven Smalley (Alternate); Jimmy Tsitsinos was absent.

The petitioner seeks a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to allow the operation of a firearms retail business at 1 Florence Street.

Statements of Fact:

1. In the petition date-stamped January 26, 2021, the petitioner requested a special permit per Section 3.3.2 *Nonconforming Uses* of the Zoning Ordinance, "in order to RETAIL".
2. 1 Florence Street is owned by Anthony J. Picariello, Sr. The petitioner is Anthony J. Picariello, Jr., who was represented by Attorney Philip D. Moran.
3. 1 Florence Street is a two-story industrial structure in the Residential Multifamily (R3) zoning district. This is a pre-existing nonconforming use in the district.
4. On January 28, 2021, Lev McCarthy, Staff Planner, received an email from representative Attorney Philip Moran, clarifying that the petitioner, "will be looking to sell firearms, ammunition, accessories and offer training/classes". This communication was added to the project file. Mr. McCarthy drafted the legal notice (reproduced at the top of this page) to specify that the petitioner is requesting to operate a "firearms retail business" at 1 Florence Street.

5. The requested relief, if granted, would allow the petitioner to operate a firearms retail business at 1 Florence Street.
6. On February 16, 2021, Lev McCarthy, Staff Planner, received an email from representative Attorney Philip Moran, requesting to continue to the next regularly scheduled meeting on March 17, 2021.
7. Prior to the February 17, 2021 public hearing Staff Planner, Lev McCarthy, received forty-one (41) public comments opposing the petition, and two (2) public comments supporting the petition.
8. 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 February 17, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
9. At the February 17, 2021 public hearing representative Attorney Philip Moran introduced the request for a continuance. Mr. Moran stated that the applicant requests to continue to have an opportunity to meet with concerned residents to discuss their concerns. The Board voted four in favor (Carly McClain, Mike Duffy (Chair), Paul Viccica, and Steven Smalley) and none (0) opposed to continue the hearing to the March 17, 2021 meeting.
10. On March 17, 2021, Lev McCarthy, Staff Planner, received an email from representative Attorney Philip Moran, requesting to continue to the next regularly scheduled meeting on April 21, 2021.
11. Since the February 17, 2021 public hearing and prior to the March 17, 2021 public hearing Staff Planner, Lev McCarthy, received twelve (12) public comments opposing the petition, one (1) public comment supporting the petition, and one (1) public comment with questions for the applicant. This brought the total public comments received up to fifty four (54) comments opposing the petition, three (3) public comments supporting the petition, and one (1) neutral public comment.
12. For the same reasons as noted in statement #7 above, the March 17, 2021 meeting of the Board of Appeals was also held remotely, via the online platform Zoom.
13. At the March 17, 2021 public hearing representative Attorney Philip Moran introduced the request for a continuance. Mr. Moran stated that since there are only four (4) Board members present at the March 17, 2021 public hearing the applicant requests to continue to have an opportunity to testify to a full Board.
14. At the March 17, 2021 public hearing Chair Duffy opened public comment so members of the public could comment on the request for a continuance. One (1) member of the public, Jeff Cohen of 12 Hancock Street, commented on the proposed continuance.

15. The Board voted four in favor (Mike Duffy (Chair), Paul Viccica, Steven Smalley, and Carly McClain) and none (0) opposed to continue the hearing to the March 17, 2021 meeting.
16. On April 13, 2021, Lev McCarthy, Staff Planner, received an email from representative Attorney Philip Moran providing a revised Statement of Grounds. Mr. Moran wrote, "I Spoke to Beth Renard [Salem City Solicitor] yesterday about the statement on the Application with respect to supplying the city's law enforcement with discounted firearms etc. She said I should write to you to delete that statement from the application and/ or request a hardship". The revised Statement of Grounds (dated April 13, 2021) reflects this change. The email communication was added to the project file.
17. Since the March 17, 2021 public hearing and prior to the April 21, 2021 public hearing Staff Planner, Lev McCarthy, received twelve (12) public comments opposing the petition, one (1) public comment supporting the petition. This brought the total public comments received up to sixty-two (62) comments opposing the petition, four (4) public comments supporting the petition, and one (1) neutral public comment.
18. For the same reasons as noted in statement #7 above, the April 21, 2021 meeting of the Board of Appeals was also held remotely, via the online platform Zoom.
19. At the April 21, 2021 public hearing, representative Attorney Philip Moran discussed the proposal. Mr. Moran described the requested relief and the relevant sections of the Salem Zoning Ordinance. Mr. Moran argued that the proposal addresses a community need: there are several thousand licensed gun owns in area and recent years have had record gun sales. Mr. Moran stated more people may need to purchase guns "the way things are going". Mr. Moran argued that the proposal addresses traffic: there is no traffic issue on Florence Street and there are 10 parking spaces. He argued there are no issues with adequacies of utilities. Mr. Moran argued that the proposal is in keeping with neighborhood character: photos show it is an industrial park, not a residential neighborhood. He stated there is not a single residence of Florence Street. Mr. Moran continued that there is no impact on the natural environment. He stated there will be a positive fiscal impact: owners already pay high taxes since they are taxed industrial in a residential zone. Mr. Moran stated that the benefits outweigh the adverse effects. He submitted that gun sales is not an adverse effect, since the guns will only be sold to licensed gun owners. He stated 1 Florence Street it not close to the Point neighborhood, and it is not relevant whether it is close to schools. Mr. Moran restated that there are thousands of legal gun owners in Salem and surrounding community that will benefit from services. He described how the owners and applicant have run businesses at this location for sixty years. Mr. Moran emphasized the location's safety. He stated that the only people able to use this facility would have a background check. There would be no gun racks, no guns, no ammunition in plain view. The business would be open by appointment only on nights and weekends.
20. At the April 21, 2021 public hearing Paul Viccica asked the applicant about the business' proximity to residential neighborhoods. Mr. Moran reiterated there is no residences on Florence St. Mr. Viccica stated, and Mr. Moran agreed that the property is 100 ft from a "robust and well-established residential district".

21. At the April 21, 2021 public hearing Peter Copelas asked for more detail on the parking. The applicant, Mr. Picariello, stated that Pic's Screw Machine is open daily. There is a retail store upstairs with one parking spot for them and their customers, and a doggy day care center. In total there are three operations. The proposed business will use one office space in the building. Mr. Picariello stated that Pic's Screw Machine is not closing; this proposed business will be added to all the current uses, taking some of the space that was previously used by Pic's. Should this application go through, there would be four businesses in the building sharing space and parking. Mr. Viccica asked if there was a parking plan submitted with the application. Lev McCarthy, Staff Planner, confirmed that none was required and none was submitted, but the Board can request one if it would inform their decision. Mr. Picariello re-states that the business would be open by appointment only, with one person in the building at a time. Mr. Picariello estimated the operating hours would be 6pm to 8pm Monday through Friday, and 10am to 2pm on Weekends. Open for transfers only.
22. At the April 21, 2021 public hearing Rosa Ordaz asked the applicant to describe what a transfer is in relation to this petition. Ms. Ordaz raised the public comments, that the difference between what is currently there and what is proposed is that the clients leave the proposed business with a gun. Ordaz asked about the open house and community meeting the applicant hosted. Mr. Moran described an open house the applicant hosted at 1 Florence Street on April 24, 2021. Mr. Moran said that three (3) attendees were positive, and one (1) attendee was negative.
23. At the April 21, 2021 public hearing Carly McClain asked if a market study was done that determined there was sufficient need for a firearm retail store at this location. Mr. Moran said there are no other gun shops presently operating in Salem. Ms. McClain stated she appreciated that they revised their Statement of Grounds submitted with the original application, since she felt there was legal issue with the promise of discounted firearms to law enforcement included in the application for a special permit. Ms. McClain stated that the crime rate seems down, but crime by licensed gun owners is up. Ms. McClain stated she is not convinced there is community need for this proposed business Mr. Moran said that if approved, the applicant's business would be only operating gun store in the Salem and surrounding communities at this time. Ms. McClain asked if there would be training on-site, and Mr. Moran stated that there would be no training on-site, only transfers.
24. At the April 21, 2021 public hearing Rosa Ordaz asked what percentage of business transactions would be transfers compared to retail purchases. The petitioner, Mr. Picariello, responded he was unsure. Ms. Ordaz asked if they have data to support the claim that there is need for a gun store in Salem. Mr. Moran responded that gun sales have increased, but he has no data on unmet demand.
25. At the April 21, 2021 public hearing, Peter Copelas asked what inventory the applicant would keep on site. Mr. Picariello stated that his inventory would be small and locked up. Purchases would be by appointment only.

26. Chair Duffy asked if there would be other employees. Mr. Picariello responded that he would be the only employee.
27. Mr. Viccica asked about security. Mr. Picariello responded that the building has an alarm, all the windows are barred, he has security cameras.
28. At the April 21, 2021 public hearing, Chair Duffy introduced Sargent John Doyle of the Salem Police Department. Mr. Doyle introduced himself as the Licensing Official to the Police Chief. Mr. Doyle stated that at this point, the applicant had been granted a Type 7 Federal Firearms License (FFL) from the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). This license is for manufacturing of gun parts, but does not concern retail. ATF will not grant license unless the business is located in an appropriate zoning district. Mr. Doyle explained that the applicant will need a Type 1 FFL dealer licence in order to do retail. He stated there is one active gun dealer in Salem. He noted that gun sales are up, and there is a demand.
29. At the April 21, 2021 public hearing (9) members of the public spoke in opposition, (1) members of the public spoke in support, and (2) members of the public commented on the proposal. The members of the public who spoke in opposition were: Jeff Cohen of 12 Hancock Street, Graysen M. Ocasio of 70 Boston Street, Lucy Corchado of 1 Chase Street, Polly Wilbert of 3 Cedar Street, Salem City Councillor Patti Morsillo (no address provided), Nicole Lashomb of 70 Boston Street, Alice Merkl of 28A Federal Street, Salem City Councillor Josh Turiel of 238 Lafayette Street, and Randy Baron of 51 Lafayette Street. The members of the public who spoke in support were: Jeff McNally of 48 Gallows Hill Road the members who commented were: Jeff Guy at 18 South Street, and Ana Gordan of 12 Crombie Street.
30. At the April 21, 2021 public hearing petitioner, Mr. Picariello responded to a question from the public comment about the security. He described the extent of the security on site, including cameras, and alarms.
31. At the April 21, 2021 public hearing Chair Mike Duffy asked what this use would be classified as if it was proposed for a Business District, would it be by-right? Attorney Moran responded that if it was in a Business Zone where this use was allowed, then he believed it would not require a special permit. Mr. Duffy asked the applicant to clarify that this petition would not replace the existing use, that it would be an added use. Peter Copelas stated there are three criteria he does not believe are being met by the proposal. Social, economic, and community needs being served: does not see how this serves the community needs in any meaningful way. Fiscal need: does not see how this would benefit, real estate taxes would not change at all. Neighborhood character: clearly Florence St is industrial, but the neighborhood is residential. Mr. Copelas noted that he read all the public comments submitted to the board ahead of the meeting, and he does not believe the application meets all of the criteria for a special permit. Paul Viccica stated that the property owner runs this business, so it is a convenience to run it at this property, but there are other places in the City where this could be done by right. He stated that the proposed location is adjacent to a dense residential neighborhood. Paul agreed with Mr. Copelas' assessment that the proposal

does not meet the three criteria Mr. Copelas listed. Mr. Duffy stated he believes an argument could be made for community need, but he has not seen the evidence presented. He stated it is unclear that there is any positive fiscal impact on the City's tax base. Mr. Viccica stated that the applicant said there will not be any employment for this business. Mr. Viccica discussed how neighborhood character is the hardest criteria for the applicant to address, since the property is in such a big residential neighborhood.

32. At the April 21, 2021 public hearing Board Chair, Mike Duffy, stated his primary concern is with the general standard that the proposal will not be substantially more detrimental than the existing nonconforming use. Mr. Duffy stated the proposal is not just a change from one nonconforming use to another nonconforming use; this proposal would add another nonconforming use to an existing nonconforming use. Mr. Duffy stated the special permit request does not seem to fit language of the Zoning Ordinance.

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, makes the following **findings** that the proposed project **does not** meet the provisions of the City of Salem Zoning Ordinance:

Special Permit Findings:

The Board finds that the proposed modifications will be substantially more detrimental than the existing nonconforming structure to the neighborhood:

1. Social, economic, or community needs served by this proposal: The applicant did not provide sufficient evidence to show that there was community need for a firearm retail store at the proposed location.
2. Traffic flow and safety, including parking and loading: The Board expressed concern that this proposal would be adding a use without adding more parking, and no parking plan was provided.
3. Adequate utilities and other public services already service the structure.
4. Impacts on the natural environment, including drainage: No negative impact would be expected.
5. Neighborhood character: The Board finds that even though Florence Street does not have residential dwellings, it is surrounded by a dense residential neighborhood. The proposed firearms retail use is detrimental to the existing residential neighborhood character. Board member Paul Viccica stated that 1 Florence Street is less than one-hundred (100) feet from a, "robust and well-established residential district".
6. Potential fiscal impact, including impact on City tax base and employment: The Board finds no evidence of positive fiscal impacts. Mr. Duffy and Mr. Copelas questioned whether the

proposal would result in any real estate tax increases to the City, and the applicant stated there would be no employees other than himself.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted none (0) in favor and five (5) Peter Copelas, Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, Carly McClain opposed to grant to **Anthony J. Picariello, Jr.** the requested special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to allow the operation of a firearms retail business at **1 Florence Street**.

Failing to receive four votes in favor, the petition for a variance is denied.


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.