



KIMBERLEY DRISCOLL  
MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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2020 JUL -2 PM 1:49  
CITY CLERK  
SALEM, MASS

July 2, 2020

## Decision

### City of Salem Board of Appeals

**Petition of BRIANNA SWEET and property owner PEP BOYS - MANNY MOE & JACK for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change or extend the use at 230 HIGHLAND AVENUE (Map 8, Lot 123) (B2, R1, and ECOD Zoning Districts) by adding another use (motor vehicle rental) to an existing nonconforming use (motor vehicle general and body repair).**

A public hearing on the above Petition was opened on February 19, 2020 pursuant to M.G.L Ch. 40A, § 11. No testimony was heard on this petition in the February 19 meeting. The hearing was continued to March 18, 2020 (during which no testimony was heard); and April 15, 2020, and closed on April 15, 2020, with the following Salem Board of Appeals members present: Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, Steven Smalley, and Paul Viccica.

At the February 19, 2020 meeting, Peter A. Copelas, Rosa Ordaz, Jimmy Tsitsinos, and Paul Viccica were present; Mike Duffy (Chair) and Carly McClain were absent, and Steven Smalley was not yet a member. At the March 18, 2020 meeting, Peter A. Copelas, Mike Duffy (Chair), Carly McClain, Rosa Ordaz, and Steven Smalley were present; Jimmy Tsitsinos and Paul Viccica were absent. At the April 15, 2020 meeting, Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, Steven Smalley, and Paul Viccica were present, as noted above; Carly McClain and Jimmy Tsitsinos were absent.

The petitioner sought a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change or extend the use at 230 Highland Avenue by adding another use (motor vehicle rental) to an existing nonconforming use (motor vehicle general and body repair).

#### Statements of Fact:

1. In the petition date-stamped January 21, 2020, the petitioner requested a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change or extend the use at 230 Highland Avenue by adding another use (motor vehicle rental) to an existing nonconforming use (motor vehicle general and body repair).
2. 230 Highland Avenue is owned by Pep Boys - Manny Moe & Jack.
3. 230 Highland Avenue is used as a Pep Boys shop conducting motor vehicle general and body repair. The property is located partially in the Business Highway (B2) zoning district and partially in the Residential One-Family (R1) zoning district. The property is also located in the Entrance Corridor Overlay District.
4. The petitioner, Brianna Sweet, was an employee of the Hertz Corporation.

5. The proposal was to use a portion of the existing building and parking lot for a car rental program for Lyft drivers.
6. The petitioner properly sought a special permit per Section 3.3.2 *Nonconforming Uses* to change or extend a nonconforming use by adding another nonconforming use. The use “motor vehicle, trailer and boat sales, service and rental” is allowed by special permit from the Zoning Board of Appeals in the B2 district.
7. The requested relief, if granted, would allow the petitioner to use a portion of the building and parking lot at 230 Highland Avenue for a motor vehicle rental program.
8. In advance of the February 19, 2020 meeting, petitioners were informed that there would only be four members in attendance. With four members in attendance, the positive vote of all members is required to grant a special permit or variance. In these situations, petitioners are afforded the opportunity to request to continue to a future meeting in which five members might be in attendance. Petitioner Brianna Sweet submitted a written request to continue from February 19, 2020 to March 18, 2020. This request was duly filed with the City Clerk on February 19, 2020. At the February 19, 2020 public hearing, the Board voted four (4) in favor (Paul Viccica, Rosa Ordaz, Jimmy Tsitsinos, and Peter Copelas) and none (0) opposed to continue the hearing to March 18, 2020.
9. 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 March 18, 2020 meeting of the Board of Appeals was slated to take place via conference call, with a public call-in option. However, it was determined that the meeting as planned would not meet the temporary requirements of the partially suspended Open Meeting Law, and as such, no testimony should be heard. As such, the meeting was held for the sole purpose of continuing all matters before the Board.
10. In the March 18, 2020 meeting of the Board of Appeals, held remotely via public conference call, Chair Duffy described each application before the Board and noted that due to the unique circumstances, he would entertain a motion to continue all matters until the next regularly scheduled meeting on April 15, 2020. The vote was four (4) in favor (Peter A. Copelas, Mike Duffy (Chair), Rosa Ordaz, and Steven Smalley) and none (0) opposed.
11. The April 15, 2020 meeting of the Board of Appeals was held remotely using the web conference platform Zoom. The meeting was also accessible via public conference call and Salem Access TV.
12. Prior to the April 15, 2020 public hearing, on the day of April 15, 2020, Michael Albina of Hertz Car Sales (in lieu of Brianna Sweet, who had been furloughed at this time) requested via email to Planner Brennan Corriston that “we will withdraw without prejudice.”
13. At the April 15, 2020 meeting, Chair Duffy noted that the Board had received a request to withdraw without prejudice. No representatives spoke on behalf of the petition during this remote meeting.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Steven Smalley, Paul Viccica, Rosa Ordaz, Mike Duffy (Chair), and Peter A. Copelas) and none (0) opposed to allow the applicant to withdraw the petition without prejudice.

This application is withdrawn without prejudice.

*Mike Duffy / BJC*

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Mike Duffy, Chair  
Board of Appeals

A COPY OF THIS DECISION HAS BEEN FILED WITH THE PLANNING BOARD AND THE CITY CLERK.

Appeals, if any, shall be made pursuant to M.G.L., Chapter 40A, Section 17. Please be advised that any statutory deadlines for filing such appeals have been suspended by order of the Supreme Judicial Court of the Commonwealth of Massachusetts which order was entered on April 27, 2020. 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.