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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEALS

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CITY CLERK
SALEM, MASS

May 5, 2021

Decision

City of Salem Board of Appeals

Petition of RONY ZACARIAS for a special permit per Section 3.1.2 *Special Permit: Zoning Board of Appeals* of the Salem Zoning Ordinance to operate a contractor's yard and landscape business at 4-6 GREEN LEDGE STREET (Map 8, Lot 140 and 157) (B2 and I Zoning Districts).

A public hearing on the above Petition was opened on April 21, 2021 pursuant to M.G.L Ch. 40A, § 11 and closed on that date with the following Zoning Board of Appeals members present: Mike Duffy (Chair), Peter A. Copelas, Rosa Ordaz, Paul Viccica, Carly McClain (Alternate), and Steven Smalley (Alternate). Board member Jimmy Tsitsinos was absent.

The petitioner seeks a special permit per Section 3.1.2 *Special Permit: Zoning Board of Appeals* of the Salem Zoning Ordinance to operate a contractor's yard and landscape business at 4-6 Green Ledge Street.

Statements of Fact:

1. In the petition date-stamped March 30, 2021 the petitioner requests a special permit per Sections 3.1.2 and 9.4 of the Salem Zoning Ordinance to operate a contractor's yard/landscape business at 4-6 Green Ledge Street.
2. 4-6 Green Ledge Street is owned by 309-311 Highland Ave LLC. The petitioner is Rony Zacarias, who was represented by Attorney Samuel A. Vitali.
3. In the petition, the petitioner describes 4-6 Green Ledge Street as a "vacant lot". A portion of 4 Green Ledge Street is within the Business Highway (B2) zoning district, the remaining portion of 4 Green Ledge Street and the entirety of 6 Green Ledge Street are within the Industrial (I) zoning district.
4. Plans (dated March 30, 2021) submitted with the application show the total lot area to be 19,131 square feet.
5. Per Section 3.1 *Table of Principal and Accessory Uses* of the Salem Zoning Ordinance "Contractor's yard; landscaping business" is a use designated by the letters "BA" in the B2 zoning district. Section 3.1.2 *Special Permit: Zoning Board of Appeals* reads: "A use designated in the Table of Principal and Accessory Use Regulation by the letters "BA" may be permitted as

a special permit only if the Zoning Board of Appeals so determines and grants a special permit therefore as provided in Section 9.4 of this Ordinance subject to such restrictions as said Board may establish”.

6. The proposal is to operate a contractor’s yard/ landscaping business at 4-6 Green Ledge Street.
7. 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 April 21, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
8. At the April 21, 2021 public hearing, representative Attorney Samuel Vitali discussed the proposal, noting that the petitioner currently operates a landscaping business, and is proposing to use the vacant lot at 4-6 Green Ledge Street for some operations related to his landscaping business. Mr. Vitali summarized how the application meets the criteria for a special permit. He stated that the proposal would not be displacing any existing use, the proposal would not burden the city services by constructing a building or residence, and that the property is in an Industrial zoning district, which requires a special permit. Mr. Vitali stated his client would fence off the property which is comprised of 4 and 6 Green Ledge Street. Mr. Vitali described Mr. Zacarias’ business operations. Mr. Vitali stated the business has six employees who would stop by 4-6 Green Ledge Street early in the morning to pick up supplies, then would return at the end of the day. He noted there would be “no back-and-forth”, and no clients on site. This proposal would allow Mr. Zacarias’ business to park a dump truck and work trucks, and store materials at 4-6 Green Ledge Street.
9. At the April 21, 2021 public hearing, one (1) member of the public provided comment. A representative from Anarpet Realty Corp. (hereinafter, Anarpet), that owns Young World Preschool & Daycare at 3 Green Ledge Street, asked questions of the petitioners and expressed concerns about the proposal.
10. At the April 21, 2021 public hearing, the Board and Building Commissioner Tom St. Pierre discussed the proposal. Peter Copelas described three possible Special Conditions that addressed the concerns raised in the public comment.
11. At the April 21, 2021 public hearing representative Mr. Vitali, and the applicant, Mr. Zacarias responded to the concerns raised by the public comment, and the Special Conditions proposed by the Board. Mr. Vitali explained that any storage of compost and mulch would be stored in bins and covered. He states there would be no tractor trailers on site, and that all loading would take place within the bounds of 4-6 Green Ledge Street. Chair Duffy asked what materials being stored on site could create an odor. The applicant, Mr. Zacarias, stated that they may store mulch on site, which could have odor. Mr. Copelas expressed sympathy for the abutter, Anarpet’s, concern. Mr. Copelas states that the quantity of mulch is related to the severity of the odor. Mr. Zacarias explains that there will be no more than 30 yards of mulch on site at a time. Chair Duffy asked Mr. St. Pierre if stipulating that no more than 30 yards can be stored on site is enforceable. Mr. St. Pierre responded that a 30-yard maximum

seems reasonable and is enforceable. Mr. Vitali and Mr. Zacarias stated they would agree with a Special Condition that sets a maximum quantity of 30 yards of mulch, 30 yards of compost, and 30 yards of stone dust at one time; these materials would be stored in binds and covered.

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 meets the provisions of the City of Salem Zoning Ordinance:

Special Permit Findings:

The Board finds that the proposed modifications will not be substantially more detrimental than the existing nonconforming structure to the neighborhood:

1. Social, economic, or community needs are served by this proposal. The special permit will allow a use for a previously vacant site.
2. Traffic flow and safety, including parking and loading: No impact is expected.
3. Adequate utilities and other public services already exist.
4. Impacts on the natural environment, including drainage: No negative impact is expected.
5. Neighborhood character: The project is in keeping with the neighborhood character. This is an industrial neighborhood, and this is a fitting use.
6. Potential fiscal impact, including impact on City tax base and employment: There is a potential positive fiscal impact, including continued employment by the landscaping business.

On the basis of the above statements of fact and findings, the Salem Board of Appeals voted five (5) in favor (Paul Viccica, Carly McClain, Rosa Ordaz, Mike Duffy (Chair), Peter Copelas) and none (0) opposed to grant to Rony Zacarias a special permit per Section 3.1.2 *Special Permit: Zoning Board of Appeals* of the Salem Zoning Ordinance to operate a contractor's yard and landscape business at 4-6 Green Ledge Street, subject to the following terms, conditions, and safeguards:

Standard Conditions:

1. 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. A Certificate of Occupancy is to be obtained.
6. A Certificate of Inspection is to be obtained.

7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. All construction shall be done per the plans and dimensions submitted to and approved by this Board. Any modification to the approved plans and dimensions must receive the prior approval of the Board of Appeals unless such changes are deemed insignificant by the Building Commissioner.

Special Conditions

1. All deliveries and loading are to occur within the bounds of the property at 4-6 Green Ledge Street.
2. There shall be no storage of mulch, compost, or crushed stone in quantities greater than thirty (30) yards each. These materials shall be stored in bins and covered.
3. There shall be no retail or other customer sales at the property.
4. All access to the property shall be from Green Ledge Street.
5. This special permit and all its conditions are tied to the applicant and shall not be transferred to anyone else.


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.