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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 Prime Tree LLC for a special permit per Sections 6.10.4, 6.10.9 *Requirements Specific to Cultivation Facilities*, and 6.10.10 *Requirements Specific to Manufacturing Facilities* of the Salem Zoning Ordinance to operate a licensed marijuana cultivation and manufacturing facility at 4 TECHNOLOGY WAY (Map 7, Lot 87) (BPD Zoning District).

A public hearing on the above Petition was opened on June 16, 2021 pursuant to M.G.L Ch. 40A, § 11; continued to July 21, 2021 and closed on that date.

On June 16, 2021, Mike Duffy (Chair), Peter Copelas, Paul Viccica, and Carly McClain (Alternate) were present; Rosa Ordaz, and Steven Smalley (Alternate) were absent. On July 21, Mike Duffy (Chair), Peter Copelas, Paul Viccica, Rosa Ordaz, Carly McClain, and Steven Smalley (Alternate) were present; no members were absent.

The petitioner seeks a special permit per Sections 6.10.4, 6.10.9 *Requirements Specific to Cultivation Facilities*, and 6.10.10 *Requirements Specific to Manufacturing Facilities* of the Salem Zoning Ordinance to operate a licensed marijuana cultivation and manufacturing facility at 4 Technology Way.

Statements of Fact:

1. In the petition date-stamped June 25, 2021, the petitioner requested a special permit per Sections 6.10.4, 6.10.9 and 6.10.10 to “operate a licensed marijuana cultivation and manufacturing facility” at 4 Technology Way.
2. The property is owned by USB Capital, LLC, and contains approximately 4.75+/- acres or 206,741 square feet of land.
3. 4 Technology Way is a two-story 86,500 square foot light industrial building with associated paved parking in the Business Park Development (BPD) zoning district.
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.

6. As required by state statute, the petitioner held a community outreach meeting that was held on March 1, 2021.
7. Per the Project Narrative and Statement of Grounds submitted along with the original application, Prime Tree LLC is a, “prospective Massachusetts cannabis company seeking permitting and licensure from the City of Salem and the Massachusetts Cannabis Control Commission (“CCC”) to cultivate, manufacture, and wholesale marijuana and marijuana related products”. Prime Tree LLC is not a currently licensed operator of marijuana facilities.
8. Per the Application Materials, the applicant intends to lease thirty-four thousand (34,000) square feet of space. Per the application, the applicant intends to begin with ten thousand (10,000) feet of cultivation area and expand into the remaining area.
9. Due to the ongoing COVID-19 pandemic and related precautions and An Act Extending Certain COVID-19 Measures Adopted During the State of Emergency signed into law by Governor Baker on June 16, 2021 the June 16, 2021 meeting of the Board of Appeals was held remotely, via the online platform Zoom.
10. At the June 16, 2021 public hearing, the petitioner was represented by attorney Nicholas A. Gomes with offices at 226 South Main Street, Fall River, Massachusetts.
11. At the June 16, 2021 public hearing Mr. Gomes presented the application. Mr. Gomes stated the intent was to start with 10,000 square feet of canopy and cannabis growth, which is considered a Tier 2 facility under the Massachusetts Cannabis Control Commission (“CCC”) standards. Mr. Gomes explained that the intent would be to eventually expand into a Tier 4 facility, with 20,000 to 30,000 square feet of canopy.
12. At the June 16, 2021 public hearing Mr. Gomes stated that the natural topography of the property, with its surrounding woods and rock outcroppings will help buffer the facility from the closest residential areas. Mr. Gomes went on to describe the proposed facility’s secure, private entrance, and twenty-four (24) hour surveillance. Mr. Gomes stated there will be no retail customers and contends this will relieve parking and traffic concerns. Mr. Gomes stated there would be ten (10) to thirty (30) employees, and the maximum number of employees on a single shift would be approximately fifteen (15). There is existing parking for thirty-nine (39) cars, with the ability to expand to fifty-four (54).
13. At the June 16, 2021 public hearing Mr. Gomes described specific actions to limit any odor emitted by the facilities. He described a system of climate control, filtration systems, positive air rooms, and air circulation that will ensure odor will not reach a level of nuisance, as required by City and State regulations.
14. At the June 16, 2021 public hearing Mr. Gomes described some of the positive financial impacts the proposal would provide to the City. Mr. Gomes described how there would be a community impact fee and increased tax revenues.

15. At the June 16, 2021, public hearing Board Member Paul Viccica noted that the applicant had not submitted letters from the Salem Police Department (SPD) acknowledging their receipt of the applicant's safety and security plan. Mr. Gomes replied that the plans were submitted to SPD, but the applicant has not received a written confirmation to submit to the Board. Mr. Viccica asked about utilities and water use. Mr. Viccica asked that the applicant engage a civil engineer to affirm that the existing utilities are sufficient to serve the proposed use, and that the proposed use will not require the City to invest in increased utility capacity or service.
16. At the June 16, 2021, public hearing Chair Mike Duffy asked about the security of the loading dock area, and details on when and how the marijuana materials and finished products would be received and shipped. The petitioner's attorney Mr. Gomes stated that the original proposal did not include an enclosed loading dock. Mr. Gomes stated that deliveries to and from the proposed facility would be done using delivery vans, and would take place during business hours.
17. At the June 16, 2021, public hearing, one (1) member of the public commented on the petition. No (0) members of the public spoke in support or in opposition. The member of the public who commented on the petition was Norman LeBlanc representing the trustees of 14 Cavendish Circle.
18. At the June 16, 2021, public hearing, Chair Mike Duffy noted that with previous special permit applications for marijuana facilities the Board has required letters of acknowledgement from the Chief of Police stating the security plans submitted for review were acceptable. Mr. Duffy recalled that in other cases, the Police have recommended alterations to the proposed security plans, so their input on this petition would be valuable.
19. At the June 16, 2021, public hearing Mr. Gomes stated a request to continue the petition to the next regularly scheduled meeting on July 21, 2021.
20. At the June 16, 2021, public hearing, the Board voted four (4) in favor **(Paul Viccica, Carly McClain) and none (0) opposed** to continue the hearing to the regularly scheduled meeting on July 21, 2021.
21. On July 19, 2021, the petitioner submitted to the Board a set of new or revised materials including an amended transportation plan, a diagram of a newly proposed gated entry, and odor control memo, a letter from Salem Chief of Police Lucas Miller, a supplement Statement of Grounds, and a vehicular access memo.
22. On July 20, 2021, the petitioner submitted to the Board a letter from a Professional Engineer at TowerPinkster that noted the sanitary main and water supply are sufficient to service the proposed use.
23. On July 21, 2021, the petitioner submitted to the Board a letter from Salem Fire Department Chief Alen E. Dionne acknowledging receipt and review of the proposal.

24. On July 20, 2021, Alternate Board Member, Steven Smalley submitted to Planner Lev McCarthy a signed Mullin Affidavit certifying he had examined all the evidence pertaining to 4 Technology Way which was distributed at the June 16, 2021 meeting of the Zoning Board of Appeals, which evidence included an audio and video recording of the missed session.
25. For the same reasons as noted in statement #9 above, the July 21, 2021, meeting of the Board of Appeals was also held remotely, via the online platform Zoom.
26. At the July 21, 2021, public hearing the petitioner's representative attorney Nicholas Gomes presented the proposal and new materials submitted to the Board since the initial public hearing on June 16, 2021. Mr. Gomes presents letters from the Salem Police Chief and Salem Fire Chief acknowledging their receipt of safety and security documentation. Mr. Gomes stated the proposal would now include a locked fence and gate to secure the loading and unloading area. Mr. Gomes stated that the proposed cultivation and manufacturing use requires far fewer trips to and from the facility than a retail use would. Mr. Gomes re-stated their odor prevention strategy, including containment and filtration with carbon-based system. He stated that the odor will be de minimis outside the structure.
27. At the July 21, 2021, public hearing Jason Novotny of TowerPinkster answered questions about the water and sewer services to the structure at 4 Technology Way. Mr. Novotny stated that the capacity exists already to meet the proposed needs. Patrick Maloy of Prime Tree LLC stated they do not expect any changes to the existing wastewater or surface water discharge.
28. At the July 21, 2021, public hearing, one (1) member of the public commented on the petition. No (0) members of the public spoke in support or in opposition.
29. At the July 21, 2021, public hearing, Chair Duffy discussed how the proposal meets the criteria for a special permit (as noted below).

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:

General 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 Salem citizens have voted to approve marijuana uses such as this cultivation and manufacturing use, so the community has affirmed this is a needed use.

2. Traffic flow and safety, including parking and loading: No impact is expected. The applicant has the use of 39 parking spaces, and they expect the maximum use will be 15. They have a loading dock at the rear of the facility that will have safe and secure gates and fences. This is a facility that is appropriate for this proposal.
3. Adequate utilities and other public services already service the structure. The applicant showed that they have planned to accommodate the needs for their use, and the existing utilities are sufficient.
4. Impacts on the natural environment, including drainage: No negative impact is expected. There are minimal alterations to the exterior of the existing structure. Internal use of water for the cultivation use will not be expelled into the on-site wastewater or runoff.
5. Neighborhood character: The project is in keeping with the neighborhood character.
6. Potential fiscal impact, including impact on City tax base and employment: There is a potential positive fiscal impact, including enhancing the City's tax base by enhancing the value of the property, positive fiscal impact from the Community Host agreements, and employment.

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. The applicant has represented through their council and materials submitted to the Board that they will be in compliance with these laws and regulations.
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. The applicant has represented through their council and materials submitted to the Board that these conditions and requirements will be met.
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. The applicant has discussed their security plan and transportation plan. They have submitted materials to the Salem Police Department, and the Salem Police Chief has written a letter acknowledging their receipt and review.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (5) in favor, (Paul Viccica, Mike Duffy (Chair), Peter Copelas, Carly McClain, Steven Smalley (Alternate)) and none (0) opposed to grant to **Prime Tree, LLC** the requested special permit per Sections 6.10.4,

6.10.9 *Requirements Specific to Cultivation Facilities*, and 6.10.10 *Requirements Specific to Manufacturing Facilities* of the Salem Zoning Ordinance to operate a licensed marijuana cultivation and manufacturing facility at **4 Technology Way**, 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. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
7. All construction shall be done per the plans and dimensions, submitted to and approved by this Board, as amended. No change, extension, material corrections, additions, substitutions, alterations, and/or modification to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

Special Conditions Marijuana Cultivation and Manufacturing 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.



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.