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CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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FILE #
CITY CLERK, SALEM, MASS

December 5, 2013

Decision

City of Salem Board of Appeals

Petition of DAVID KAPLAN and RYAN McSHAY requesting a Special Permit under Section 3.1 *Principal Uses* of the Salem Zoning Ordinance to operate a general auto repair business on the property located at 164 BOSTON STREET (Industrial Zoning District).

A public hearing on the above Petition was opened on November 20, 2013 pursuant to M.G.L Ch. 40A, § 11. The hearing was closed on that date with the following Salem Board of Appeals members present: Ms. Curran (Chair), Mr. Duffy, Mr. Watkins, and Mr. Tsitsinos.

The Petitioner seeks a Special Permit under Section 3.1 *Principal Uses* of the Salem Zoning Ordinance.

Statements of fact:

1. In the petition date-stamped October 23, 2013, the Petitioner requested a Special Permit to operate a general auto repair business, at the property located at 164 Boston Street.
2. Mr. David Kaplan and Mr. Ryan McShay presented the petition for the property at 164 Boston Street (Industrial Zoning District).
3. Under Section 3.1, in an Industrial Zone "Motor vehicle light service" is allowed by-right while "Motor vehicle general and body repair" requires a special permit granted by the Board of Appeals. Section 10.0 of the Zoning Ordinance defines "Motor Vehicle Light Service" as "Premises for the supplying of fuel, oil, lubrication, washing, or minor repair services, but not to include body work, painting, or major repairs." The definition for "Motor Vehicle General Repairs" is: "Premises for the servicing and repair of autos, but not to include fuel sales."
4. The property is currently used for light motor vehicle service.
5. The Petitioners stated that there will be no fuel sales or body repair work on the property, and that there will be no modifications to the exterior of the building.
6. Aside from the two parking spaces on the dedicated front entrance driveway, all vehicles will be parked and/or stored inside the building.
7. At the public hearing, Mr. Mike Shultz (1 Fairmount Road, Peabody), a previous employer of the Petitioners, spoke in support of the character of the Petitioners and the excellence of their business. Councilor at Large Tom Furey (36 Dunlap Street) spoke in favor of the petition. Mr. Bob Brophy asked about the traffic and parking impacts of the proposed business. Mr. Arsenio Villarosa (166 Boston Street) asked about the parking and traffic impacts of the proposed business on the adjacent driveway, and the anticipated noise levels.

The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petitions, 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:

Findings:

1. The proposed change in use will not be substantially more detrimental than the existing nonconforming use to the neighborhood.
2. Community needs will be served by this new use.
3. There will likely be no impact on parking or loading in the area, as the parking is housed inside the building, and customers will use the front driveway and door.
4. Utilities and public services to the building are adequate.
5. There will be no changes to the exterior of the building.
6. The Petitioners have stated in their application materials that they strive to operate as a “green company”
7. It is a growing business, and will have a potentially positive fiscal impact on the city, the tax base, and the surrounding businesses.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted four (4) in favor (Ms. Curran – Chair, Mr. Duffy, Mr. Watkins, and Mr. Tsitsinos in favor) and none (0) opposed, to approve the Special Permit to allow motor vehicle general repair, subject to the following **terms, conditions, and safeguards**:

1. The Petitioner shall comply with all city and state statutes, ordinances, codes and regulations.
2. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
3. A Certificate of Occupancy is to be obtained.
4. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.



Rebecca Curran, 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.