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MAYOR

# CITY OF SALEM, MASSACHUSETTS BOARD OF APPEAL

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CITY CLERK, SALEM, MASS.

January 29, 2014

## Decision

### City of Salem Board of Appeals

**Petition of DE SIEU LAM and TUYEN NGOC LAM requesting a Special Permit under Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to allow a change from one nonconforming use to another nonconforming use at the property located at 97 BOSTON ST (R2 Zoning District).**

A public hearing on the above Petition was opened on January 15, 2014 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. Dionne, Ms. Harris, Mr. Watkins, and Mr. Tsitsinos (Alternate).

The Petitioner seeks a Special Permit pursuant to Sec. 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance.

#### Statements of fact:

1. In the petition, date-stamped December 24, 2013, the Petitioner requests a Special Permit to change from one nonconforming use to another nonconforming use.
2. Attorney Scott Houseman presents the petition on behalf of the applicants.
3. The petitioner proposes to operate a nail salon business on the second floor of the property located at 97 Boston Street.
4. The property is in an R2 district, adjacent to a B2 district. The second floor was in use as an aluminum and window sales shop in 1971, when the property was rezoned from a Business district to an R2 district. A Zoning Board of Appeals Decision from 1971 regarding the use of the property states that "recent changes in the zoning ordinance rezoned the Boston Street premises from a business to a two-family zone while adjacent properties remained zoned for business. The petitioner has conducted his business in the Boston Street area for some time and is established there, and would prefer to continue operating at this locale..."
5. The first floor is currently in use by a CPR/First Aid training center.
6. A parking lot for the property is located behind the building. The lot has 10 parking spaces for use by both the first and second floor businesses. There is on-street parking available across Boston Street, and a signalized crosswalk. There is also a bus stop nearby.
7. If the CPR/First Aid training center were holding a class at the same time as peak usage of the nail salon, there is concern that there would not be an adequate number of parking spaces in the dedicated lot. Limiting the operating hours and the number of chairs/stations in the nail salon would mitigate this condition.
8. At the public hearing for the petition, an abutter asked questions regarding the details of the project, and stated that they had no objections to the proposed use. No other members of the public spoke in favor of or in opposition to the petition.

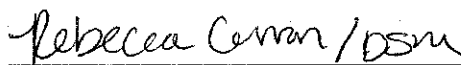
The Salem Board of Appeals, after careful consideration of the evidence presented at the public hearing, and after thorough review of the petition, including the application narrative and plans, and the Petitioner's presentation and public testimony, makes the following **findings** that the proposed project meets the provisions of the City of Salem Zoning Ordinance:

**Findings:**

1. The proposed use shall not be substantially more detrimental than the existing nonconforming use to the neighborhood. The proposed use would provide a service to the neighborhood.
2. The proposed use is in keeping with the character of the neighborhood, as there are other businesses in the area.
3. Any potential impacts on traffic will be mitigated by the set limits on the number of chairs/stations and the hours of operation.
4. The proposed use will have a positive financial impact on the city.

On the basis of the above statements of facts and findings, the Salem Board of Appeals voted five (5) in favor (Ms. Curran – Chair, Mr. Dionne, Mr. Duffy, Ms. Harris, Mr. Watkins) and none (0) opposed, to approve the Special Permit to allow a change from one non-conforming use to another non-conforming use, 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 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. There shall be a maximum of 8 chairs/stations in the nail salon
9. The operating hours of the nail salon shall be between the hours of 9:00am and 7:00pm, seven days a week.



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.*