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Planning Board:

Don Egan, Chairperson
John "Marty" Doggett,
Vice Chairperson
Gil Medeiros, Clerk
Lou Masiello
Deborah Rider
John Schillizzi, Associate

Planning Board
Town of Salisbury
5 Beach Road
Salisbury, MA 01952



DECISION SPECIAL PERMIT

June 24, 2021

Town Clerk
Town of Salisbury
5 Beach Road
Salisbury, MA 01952

Applicant: **Jonathan Kearney**
Address of Applicant: **13 Durgin Drive, Newton, NH 03858**
Owner: **Thai Realty Trust [Trustees Bang Thai and Loan Thai]**
Address of Owner: **73 Railroad Street, Lawrence, MA 01841**
Address of Project: **158 Lafayette, Road, Salisbury, MA 01952**
Deed: **Book 21474, Page 451**

To the Town Clerk:

This is to certify, at a duly noticed public hearing of the Salisbury Planning Board regarding a special permit application, that opened on May 12, 2021, continued to May 26, 2021 and closed on May 26, 2021, by a motion duly made and seconded, it was voted:

"We, the Salisbury Planning Board, as requested by Jonathan Kearney, under the provisions of Chapter 300. Zoning, Article XXI. Lafayette-Main Commercial District, §300-35. Special Permits, and 300 Attachment 1-Table of Uses of the Zoning By-Laws of the Town of Salisbury, considered a Special Permit approval for the storage of construction equipment, materials and products within the facility,

for a property addressed as 158 Lafayette (Assessors Map 22, Lots 1), as shown on plans ("The Plans") entitled:

Certified Plot Plan for 158 Lafayette Road, for Fulcrum Inc., Architects, 22 Lafayette Road, Salisbury, MA, dated November 5, 2003, prepared by Clipper City Surveying, Engineering & Mapping, Inc, P.O. Box 918, Newburyport, MA 01950;

Grading & Drainage Plan for 158 Lafayette Road, Salisbury, MA for Brendam Pham, dated December 23, 2003, prepared by Clipper City Surveying, Engineering & Mapping, Inc, P.O. Box 918, Newburyport, MA 01950;

Plans for Boston Granite Depot, Lafayette Road, Salisbury, MA 01952, dated 10/14/2003, rev thru 11/10/2003, prepared by Fulcrum Architects, 22 Lafayette Road, Salisbury, MA 01952 (Sheet SK-1); and

Plans for Boston Granite Depot, Lafayette Road, Salisbury, MA 01952, dated 10/14/2003, rev thru 11/10/2003, prepared by Fulcrum Architects, 22 Lafayette Road, Salisbury, MA 01952 (Sheet SK-2).

do hereby vote:

SPECIAL PERMIT

To approve the proposed Special Permit with accompanying site plan pursuant to the Lafayette-Main Commercial District, Subdistrict B Article XVIII of the Zoning By-Laws of the Town of Salisbury, the Planning Board has determined that the application satisfies all the special permit conditions enumerated in §300-35 of the Zoning By-Laws of the Town of Salisbury. Specifically, the Planning Board found:

1. The requested use is listed in the Table of Use Regulations as requiring a Special Permit in the district for which the application is made.
2. The requested use is desirable to the public convenience of welfare. The proposed use will provide both a retail facility as well as a service to the Town. HVAC products and services are a well utilized business and will provide convenient opportunities to the community. Moreover, the purpose of the LM Commercial Zoning District was to encourage diverse, high-quality, and attractive commercial developments and mixed-use development on Lafayette Road. This proposed use is in keeping with that purpose.
3. The requested use will not create undue traffic congestion or unduly impair pedestrian safety. The proposed use is replacing a similar use currently operating on the property. There have not been any traffic or parking issues with the existing use on the property. It is not expected that there will be any increase in traffic associated the change of use, if not a slight decrease as the volume for HVAC retail sales are arguably less than granite product sales. Also, there is more than enough existing parking on the facility, as was previously approved under site plan review.

4. The requested use will not overload any public water, drainage, or sewer system or any other municipal system to such an extent that the requested use, or any developed use, in the immediate area or in any other area of the Town will be unduly subjected to hazards affecting health, safety, or the general welfare. There are no changes proposed relating to public utilities servicing the property and the proposed use will not result in an increase in the use of such utilities. The applicant states that a reduction in water use is indicated. Overall, the applicant states this change in use will have minimal or no impact on any municipal systems servicing the property or surrounding developments. The applicant shall confer with the Town of Salisbury Health Department regarding modifications and upgrades to the site for sewage disposal.
5. Any special regulations for the use set forth in the Special Permit Table are fulfilled by the application for and granting of the Special Permit.
6. The requested use will not impair the integrity or character of the district or adjoining districts, nor be detrimental to the health or welfare of the neighborhood. The use is directly compatible with the character of the district and adjoining districts, as the business is moving into an existing facility without any proposed external change to the building or to the site. The applicant states that the transition to the proposed use will have no impact upon the character of the district, except for a change in signage, which will confirm to all applicable regulations. The applicant states that the proposed use will have no impact on health or welfare of the commercial neighborhood in which it will conduct operations. The business use shall operate in conformance with all required licensing and Board of Health permits.
7. The requested use will not, by its addition to a neighborhood, cause an excess of that particular use that could be detrimental to the character of said neighborhood. The applicant states he is not aware of any other facility of the type proposed currently operating in the neighborhood. Furthermore, there is not an overabundance of HVAC retail and service business in the area, such that it would cause a detrimental effect to the character of the neighborhood. Finally, the use is in keeping in character with the neighborhood and will provide a quality, experienced, successful retail and service use which will enhance the character of the zoning district.

Motion presented by: Louis Masiello to approve the Special Permit, with conditions, for property located at 158 Lafayette Road (Map 22, Lot 1) for the storage of construction equipment, materials, and products, as described on plans and deliverables.

Seconded by: Gil Medeiros

Vote on Special Permit:

Don Egan, Chairperson - YES

John "Marty" Doggett, Vice Chairperson - YES

Gil Medeiros, Clerk - YES

Lou Masiello - YES

Deborah Rider -YES

Vote on Special Permit: **5-0 Granted.**

MATERIALS

Hereinbelow but not limited to are the materials submitted to the Planning Board during the public hearing:

1. The Plans:

Certified Plot Plan for 158 Lafayette Road, for Fulcrum Inc., Architects, 22 Lafayette Road, Salisbury, MA, dated November 5, 2003, prepared by Clipper City Surveying, Engineering & Mapping, Inc, P.O. Box 918, Newburyport, MA 01950;

Grading & Drainage Plan for 158 Lafayette Road, Salisbury, MA for Brendam Pham, dated December 23, 2003, prepared by Clipper City Surveying, Engineering & Mapping, Inc, P.O. Box 918, Newburyport, MA 01950;

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Plans for Boston Granite Depot, Lafayette Road, Salisbury, MA 01952, dated 10/14/2003, rev thru 11/10/2003, prepared by Fulcrum Architects, 22 Lafayette Road, Salisbury, MA 01952 (Sheet SK-2);

2. Special Permit Application, received by Town Clerk April 22, 2021;
3. Letter of Authorization from Thai Realty Trust, Loan Thai and Kelly Thai, dated April 15, 2021;
4. Deed Book 21474, Page 451;
5. Waiver Petition, with justification statement;
6. Special Permit Justification prepared by Douglas Deschenes, Attorney for Mr. Kearney;
7. Submittal Letter prepared by Atty. Deschenes, dated April 21, 2021;
8. Narrative prepared by Atty. Deschenes, dated April 21, 2021;
9. Letter prepared by Att. Deschenes to Building Inspector Scott Vandewalle, dated May 20, 2021;
10. Letter prepared by Att. Deschenes to Planning Board, dated May 21, 2021;
11. Certified Abutters List stamped April 7, 2021;
12. Treasurer's Tax & Betterment Acknowledgment dated April 26, 2021;
13. Town Departments' Review Comments:
 - a. Letter from Town's Consulting Engineer Joseph J. Serwatka, P.E., dated April 25, 2021;

- b. Assessor's comments dated May 6, 2021;
- c. Building Inspector comments dated March 4, 2021 May 7, 2021 and May 26, 2021;
- d. Health Department comments dated April 23, 2021 and May 7, 2021.

PROCEDURAL HISTORY

On April 22, 2021 a request by applicant for Special Permit for the storage of construction equipment, materials and products at 158 Lafayette Road (Map 22, Lot 1), a 0.758 +/- acre parcel, located in the Lafayette Main Subdistrict B zoning district and Recreational Marijuana overlay district was filed with Town Clerk.

Applicant: Jonathan Kearney, 13 Durgin Drive, Newton, NH 03858.

Applicant's agent: Atty. Douglas C. Deschenes, Finneran & Nicholson, PC, 30 Green Street, Newburyport, MA 01950.

The plans and other submittals were reviewed by the Planning Board, its consulting engineer, Joseph J. Serwatka, P.E., Planning Director, Lisa Pearson, and Assistant Planning Director, Connie Brawders. Also, present during the hearing was Planning Board Secretary Sue Johnson.

The public hearing on the application was opened May 12, 2021 and continued to, and closed, on May 26, 2021. Throughout its deliberations, the Planning Board was mindful of the statements of the applicants and their representatives, all as made at the public hearing. There were no public comments made by the general public.

FINDINGS

1. The site plan, as presented, contains a design that has provided the foundation for Planning Board to determine that the requirements, standards and guidelines of the Salisbury Planning Board Rules and Regulations and the general requirements and design and performance standards of Article XIX of the Zoning By-Laws of the Town of Salisbury have been completed in a satisfactorily manner.
2. Currently, the site at 158 Lafayette Road is occupied by Boston Granite Depot, a company specializing in granite, marble, quartz and quartzite counter tops, vanity, and fireplace surround for resident and commercial clients.
3. The applicant intends to relocate his existing Salisbury business from 11 Main Street to 158 Lafayette Road and operate a retail sales product showroom, product assembly area and service department, with associated stock and parts storage.

4. The Special Permit is for the use of 158 Lafayette Road for storage of construction equipment, materials and products utilized in conducting his HVAC business.
5. Site Plan approval for Boston Granite Depot required nine (9) spaces. Pursuant to §300-164 [parking requirement in the LM-B zoning district] and Attachment 9 of the Salisbury Zoning Bylaw, parking calculations for the proposed use require 17 spaces. The Building Inspector reviewed the calculations and determined nine (9) existing parking spaces to be sufficient for the change of use (see letter prepared by Atty. Deschenes dated May 21 2021). Should this use require additional parking, there appears to be adequate availability for parking in the areas at the perimeter where the granite slabs had been on display.
6. The applicant stated (see letter prepared by Atty. Deschenes dated April 26, 2021) there will be no more than three (3) employees occupying the facility on a full-time basis. Other employees will come and go from the facility at random to pick up materials and work assignments during work hours. Hours of operation are 8:00 a.m. to 5:00 p.m.
7. It is anticipated there will be one (1) to five (5) customers per day between 8:00 a.m. and 5:00 p.m. Monday thru Friday with the possibility of additional hours on between 8:00 a.m. and 5:00 p.m. on Saturday (see letter prepared by Atty. Deschenes dated April 26, 2021).
8. The applicant assured the Planning Board that exterior lighting will be Dark Sky compliant. Furthermore, the applicant assured the Planning Board that as a condition for approval, a Photometric Plan will be prepared and presented to the Planning Department to illustrate upgrades to the lighting system (see letter prepared by Atty. Deschenes dated May 21, 2021).
9. The applicant stated he will operate no more than two (2) safety lights during off-hours; all other exterior lights will be motion activated (see letter prepared by Atty. Deschenes dated May 21, 2021).
10. The applicant stated that internally, no more than one (1) interior light will remain illuminated after business hours; however, there may be motion activated lighting inside as well (see letter prepared by Atty. Deschenes dated May 21, 2021).
11. There is no proposed change to the current snow storage plan, as previously approved for Boston Granite Depot.
12. The applicant shall comply with the Board of Health's requirement and provide a passing Title V inspection report for the existing septic system.
13. The applicant shall be required to connect to the Municipal Sewer system being installed along Lafayette Road in accordance with the Town's applicable requirements when the infrastructure becomes available for use [year 2022].

14. The applicant understands and accepts that he shall provide an As-built for the Boston Granite Depot and request for Certificate of Completion for the project approval known as Boston Granite Depot for the Planning Department files as a condition of approval for the change of use proposal.
15. The applicant understands and agrees that service facilities such as garbage collection, recycling containers, refrigeration units, utility areas and other facilities not specifically identified shall be screened around their perimeters. Screening may consist of fencing and/or natural vegetation. Screening shall have an effective height and width to screen from public view said service facility.

SPECIAL PERMIT CONDITIONS

The following Conditions shall be required at the Applicant's sole expense, unless otherwise noted:

16. All lighting used on site, including all future lighting, shall be Dark-Sky Compliant.
17. No Commercial vehicles shall be parked overnight on site.
17. The applicant understands and accepts that he shall provide an As-built for the Boston Granite Depot and apply for a Certificate of Completion for the site plan approval known as Boston Granite Depot. The Request for Certificate of Completion and As-built plan shall be provided to the Planning Department prior to the issuance of a certificate of occupancy.
18. The site, including off-street parking areas, shall be landscaped, at a minimum, in accordance with the originally approved site plan for the property and may include enhancements proposed by the applicant during the hearing.
19. This approval shall apply to any successor in interest or successor in control of the property and to any contractor or other person performing work.
20. This approval is not final until all administrative appeal periods from this approval have elapsed, or if such an appeal has been taken, until all proceedings have been completed.
21. After the administrative appeal period, this decision shall be recorded in the Southern Essex Registry of Deeds before the pre-construction meeting.
22. The work shall conform to the plans and conditions referenced in this approval.
23. Prior to the issuance of an occupancy permit, the Applicant shall submit a copy of the recorded special permit decision to the Planning Department.
24. The Applicant shall provide to the Planning Department, Building Inspector, and Chief of the Police Department, the name, telephone number and electronic mail address of a contact person in the event

that such person needs to be contacted after regular business hours to address an urgent issue. **Such contact information shall be kept updated by the permit holder.**

PRIOR TO THE ISSUANCE OF CERTIFICATE OF OCCUPANCY

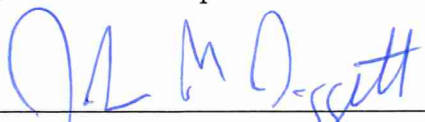
25. The site, including off-street parking areas, shall be landscaped, at a minimum, in accordance with the originally approved site plan for the property and may include enhancements proposed by the applicant during the hearing.
26. All lighting used on site, including all future lighting, shall be Dark-Sky Compliant.
27. Upon completion of the work described herein, the applicant shall submit a Request for a Certificate of Completion to the Planning Board, upon which time the Inspector for the Planning Board has 10 days to inspect the project. This must be done and the Certificate of Completion must be granted in order to receive a Certificate of Occupancy.
28. Occupancy permits may be issued for a portion of any building or structure if the only incomplete work shown on the site plan is landscaping or minor site work, provided that surety is posted with the Town Clerk in an amount to be set by the Planning Board at a regular meeting.
30. The Applicant shall schedule a meeting with the Building Inspector and Town Planner at least 30 days before the request for a Certificate of Occupancy to review compliance with this decision.
31. The Applicant shall provide to the Planning Department, Building Inspector, and Chief of the Police Department, the name, telephone number and electronic mail address of a contact person in the event that such person needs to be contacted after regular business hours to address an urgent issue. Such contact information shall be kept updated by the permit holder.

AFTER OCCUPANCY

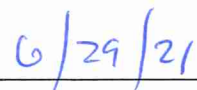
32. The Applicant or future owner shall have the responsibility of maintaining its Facility in good repair and as indicated in the plans.

MODIFICATION OF SPECIAL PERMIT

33. In the event that the Applicant intends to modify the approved special permit, the Applicant must comply with MGL Chapter 40A.



John "Marty" Doggett, Vice Chairperson
Salisbury Planning Board



Date

APPEAL NOTICE

Appeals of this decision shall be made in accordance with the M.G.L. Ch. 40A, §17 and shall be filed within twenty (20) days of the date of filing of this decision in the Office of the Salisbury Town Clerk.

By law, this decision shall not take effect until a copy of such notice has been certified by the Town Clerk that; Twenty (20) days has elapsed since the decision was filed and no appeal has been filed.

The Petitioner shall present and record the certified decision at the Essex Registry of Deeds in Salem MA. The cost of the recording shall be borne by the Petitioner. A registered copy must then be presented to the Building Inspector in order to apply for an appropriate permit.

This Decision will lapse if Substantial use of the Petitioned Relief is not made within two (2) years for a Special Permit and the work authorized hereunder must have active development or at least substantial progress toward implementation of the approved Site Plan occurring within five years or the approval becomes void. This approval may be extended by the issuing authority for an additional two-year period if, in the opinion of the issuing authority, there is just cause to approve an extension.

Cc: Applicant
Town Clerk
Assessor
Building Inspector
DPW Director
File