

**City of Salem Planning Board and City Council
JOINT MEETING
Approved Minutes
Wednesday, January 9, 2019**

A joint meeting of the Salem Planning Board and the City Council was held on Wednesday, January 9, 2019 at City Hall Chambers, 93 Washington Street, Salem, Massachusetts.

Councilor Dibble, presiding, opens the meeting at 6:39PM, and outlines procedures.

I. ROLL CALL

Planning Board Members present: Chair Ben Anderson, Kirt Rieder, Carole Hamilton, Helen Sides, Matt Smith, Matt Veno

Planning Board Members Absent: Bill Griset, Noah Koretz, DJ Napolitano

City Council Members Present:

Arthur C. Sargent II, Councilor At Large
Elaine Milo, Councilor AT Large
Thomas H. Furey, Councilor At Large
Domingo J. Dominguez, Councilor At Large
Robert K. McCarthy, Ward 1 Councilor
Christine W. Madore, Ward 2 Councilor
Lisa JB Peterson, Ward 3 Councilor
Timothy G. Flynn, Ward 4 Councilor
Josh H. Turiel, Ward 5 Councilor
Beth Gerard, Ward 6 Councilor
Stephen G. Dibble, Ward 7 Councilor

Also in attendance:

Planning staff Amanda Chiancola updates the Council and Planning Board of changes made:

- Updated copies of the ordinance are available
- The table of dimensional standards has been provided on p. 2 to require new construction comply with the underlying zoning.
- Several members of the public felt that the Historical Commission (HC) and Design Review Board (DRB) should be able to approve projects vs. make recommendations to the Planning Board (PB). However, it is important that only one body approving the criteria of the special permit. Also, to change their reviewing authority to approvals would expand the role of the above boards beyond their purview.

Discussion ensues regarding the process for public input. Councilor Dibble is concerned that some members of the public felt shut out of the process.

Councilor Turiel

- Concerned about parking requirements with regards to the use of municipal parking
- Mayor Driscoll acknowledges that this can be a challenge on weekends, snow emergencies and of course, in October; however, there is capacity.

- Site Plan Review (SPR) will be critical as, especially with regards to the site in question on Hawthorne Blvd, it is difficult to design zoning without knowing what the exact use will be. Requirements are based on B5 as the underlying zone

Planning Board comments and questions

Matt Veno notes for the record that his absence from first public hearing was a great inconvenience to the City Council, Planning Board and the public, and apologizes for holding them up.

Chair Ben Anderson

- Asks for clarification on the meaning of “specialty stores” on p.4 section 15. This is meant to exclude the serving of food on the premises.
- In 5.1.9, he agrees with modeling parking after B5 but asks that the inclusion of projects under the Salem Housing Authority (SHA) be considered. As a quasi-state agency, the SHA may not qualify for exemption, but this can be verified.

Kirt Rieder

- 8.7.1 Purpose: Those not present tonight will have difficulty interpreting intent. The wording makes it seem like redevelopment is a priority, and should be reworked to make historic preservation on equal footing. He wonders about the difference between parcel, lot and property and prefer to see “property” applied consistently throughout.
- p.2 point 5: It should be clarified that parks, conservation areas and cemeteries are municipal properties not subject to redevelopment
- Section 8.7.4 must be clarified
- Heights and rooftop construction should also be discussed. Clarification should be provided as to whether height is measured at the cornice or gutter line, and that an adapted building shall not include habitable space above the ridgeline, if a church
- Section 8.7.7 – He feels that all projects that fall under this Ordinance, not only new detached structures, should be subject to Historical Commission and Design Review Board

Presiding Councilor Dibble opens to public comment.

Mickey Northcutt, 9 Northey St., CEO of North Shore Community Development Coalition (CDC) – In favor

- The North Shore CDC is working to redevelop the schools on Federal St. and Hawthorne Blvd. but the process is just beginning, with no detailed plans as they do not have full site control and wanted this process to be complete so they have guidance
- For all new or conversion projects, in the past, it has been critical to the CDC to have a neighborhood community process established before going through permitting, but they did not even want to start that before this zoning ordinance is resolved
- However, they have already met with the Federal St. neighborhood, and gotten positive feedback. The goal is to preserve the school. North Shore CDC bid on the right to redevelop as they want to preserve its historic architecture, and allow for affordable housing, most likely elderly
- Councilor Milo asks about affordability; the CDC plans to make the majority of its units affordable, if not 100%. Affordable housing is a priority but mixed income is also desirable. Available funding programs affect who is served but it is actually easier to push toward 100%
- Councilor Furey asks about impacts to the buildings. Mickey Northcutt states that the CDC would use tax credits to pay for the project, which would protect the historic integrity of the building, as such credits dictate that the exterior be left intact. No stories can be added, and the physical appearance cannot be

changed. Currently the buildings are in decay, so this Ordinance change is needed; renovation will be expensive, and they need to ensure it is feasible; residential is the most feasible option. The NS CDC has done lots of historic rehab but never a school. Many previous projects were also in disrepair; historic characteristics that had been “butchered” and were restored to the original condition. Apartments in both school locations would be less impactful than a school.

- Councilor Madore asks about proposed pathways to redevelopment; Mickey Northcutt answers that this Ordinance will give them a framework, and they can work within the results of the process. If not in place, they would use a 40B. Converting school buildings to dwellings cannot be done through variances. The Ordinance provides more oversight than the comprehensive permit process through 40V, which is all through the ZBA. The ordinance gives more local ownership over the development process.
- Councilor Dibble is concerned about the possibility of new construction, but none is planned for these two properties. The focus is on redeveloping both schools as they exist; parking lots were not part of the Archdiocese RFPs. Additions would not be precluded if the community views them as a positive addition to the site, but that is not the goal. Councilor Dibble comments that new construction was added to Ordinance, and was not originally there

Gary Gill, Ward 3 – In favor

- Comments that several loopholes have been closed
- Still concerned about height and additions; suggests:
 - Limit height of additions
 - Rectory and school should be finished to make intersection pleasing (Hawthorne Blvd)
 - Advocates inclusion of affordable housing
 - Concerned about rot in the bell tower, bell may fall through making building unsalvageable

John Carr, 7 River St. - Opposed

- Notes his time served on Salem Historic Commission, and that no new Historic Districts have been created since he left. John Carr says that since leaving the commission he has represented the neighborhood always on a pro-bono basis.
- Feels the Ordinance is not needed as rehabilitation has been done without this process in the past, so the premise for its necessity is unsound
- Developers have previously had to bargain with neighbors for an acceptable solution
- Concerned it will diminish the process for public input
- Objects to inclusion of Old Town Hall and City Hall
- Ordinance has been improved but is not yet good enough
- Concerned that people already understand the system in place currently; concerned about Planning Board members “interpreting their own vote” and overriding the City Council
- All historic properties in Salem are working toward redevelopment.
- That the Historical Commission can only make recommendations he feels is reprehensible

City Planner Tom Daniel responds:

- Regarding previous adaptive reuses: some were done under a different framework with variances. The City can no longer grant use variances; litigation on the topic in the mid-2000 lead to its prohibition. Many projects cited by John Carr were done through that process.
- The premise for the Ordinance is sound, and the Ordinance is needed to allow, particularly, the redevelopment of 5 Broad St, a municipal property.

Councilor Gerard:

- Clarifies that purpose of Ordinance is to consolidate what had been a piecemeal process and make it into a comprehensive one
- Tom Daniel responds that it is to provide a path that is clear and still engages the public in the review by the PB, at a minimum, through hearings. The City is not skirting the necessity of public involvement, which is very valuable. There were two public meetings were before these hearings, during development of the Ordinance
- This would allow for properties to legally be reused but have public participation.

John Carr feels that these projects would not constitute a use variance, as residential uses are permitted in the neighborhoods. Tom Daniel counters that the existing use at 5 Broad St. is municipal, exempt, and not nonconforming, so it cannot be changed to a nonconforming use.

Councilor Turiel

Notes that four properties are under discussion, so if this is considered on a site by site basis, it opens up the process to accusations of spot zoning, so there is a need for scope to cover this. He is curious about the minimum size of 3,000 square feet and feels it might be beneficial to make it larger

River Street Resident. - Opposed

- Concerned that no one understands which properties are covered
- Concerned that if age of building is used as criteria, some will “age into” being covered by the Ordinance
- Feels the HC should have a more pivotal role given that historic preservation is a stated goal

Jim of, 3 River St. – Opposed

- Questions the need for the Ordinance, feels that existing one has checks and balances, allowing existing neighborhoods to control their neighborhood
- Feels the proposal is not specific enough, and allows too much for interpretation, especially by developers
- Wonders about churches wanting to maximize value of properties,
- Feels the Ordinance does not go far enough to address affordability, or housing for seniors or needy veterans

Jane Arlander, 93 Fed St. – In favor of adaptive reuse but has concerns with this ordinance.

- Questions whether the Ordinance will truly facilitate environmental sustainability and resilience as per Section 8.7.1
- Notes that no specific measures are included to address the above factors; traffic, water, population density, parking, and the loss of green and pervious spaces which are secondary to new construction Proposes reshaping the amendment such that new construction would not be allowed in any FHOD or FEMA flood zone that overlays an eligible Adaptive Overlay. This would only apply to new construction separate from an eligible building
- Otherwise, she feels this will benefit the public and make the permitting process easier for development

Polly Wilbert, 7 Cedar St. – Has concerns

- Feels that 20% affordable units should be required, and proof of Salem residency for eligibility
- Concerned that Salem is “Solving Boston’s housing problem”
- Desires a report on all permits presently purchased, and required to be purchased, for garages. Notes that owning a permit does not guarantee parking, especially on weekends, holidays, during snow emergencies and in October. She notes that there are now 36,000 registered motor vehicles in Salem

- Notes that Mass. School Building Authority places a 50 year encumbrance on selling schools that have used its funding; penalties would apply. MSBA implications should be understood
- Feels that the City Council should vote to make list of properties part of the ordinance to ensure transparency, so that only those are included, not future unknowns
- Problematic that City Hall and Old City Hall are on this list as potential renovation into condos or apartments
- Feels that museums as well as galleries should be included in the acceptable new uses
- Concerned re number of stories allowed in the flood zone
- Requests to leave the public hearing open, so that the PB can make its recommendations, then bring back in another joint hearing

President Dibble notes that he wished to divide the public hearing, with another round of additional comments to be given to the city Council after the Planning Board meets, then the Council would close and deliberate. However, the City Solicitor stated that a hearing cannot be divided in that way, so not motion to do so is being requested.

Darlene Melis, 115 Federal St. - Opposed

- Also feels Historic Commission should have a recommendation that needs to be incorporated
- Concerned about MSDA money; review should not be triggered so that procedure should be mentioned

Carole Carr, 7 River St - Opposed

- Supports input of the Historical Commission being required
- Questions the need for the Ordinance
- Feels the City Council should consider advantages to the neighbors and to the developers

Tim Jenkins, President, Historic Salem – In favor but recommends some changes

- In support of reuse of historic buildings, as saving them is the mission of Historic Salem
- Appreciate changes made to new construction provisions
- Appreciates they will comply w/standards of underlying zoning as many buildings are in residential districts; it would be inappropriate to build buildings of similar scale to the existing ones
- This Ordinance is closer to the National Trust model, which may have been the foundation of the Ordinance, co-developed w/Urban Land Institute
- Should include a minimum lot area per dwelling unit as is standard for existing buildings
- Prefer a minimum lot area requirement in the event of new construction, preferably reflecting the underlying zoning or alternately, 3500 square feet, the standard used in R3 and NRCC zones now; this would limit the size of new construction
- Agrees that it would be appropriate to have recommendation made by Historical Commission to the Planning Board, and that it would be redundant to have the Design Review Board and Historical Commission go through a similar review process. He notes that the Historical Commission only has jurisdiction over the exterior

Barbara Cleary, 104 Fed St. – In favor, has concerns

- Echoes the thoughts of Tim Jenkins, as she has also worked with Historic Salem
- Concerned about lack of density requirement in R5; feels that R3 and NRCC standards may be more appropriate
- Also feels the public hearing should be left open
- Agrees with Kirt Rieder's comments
- Feels that nonprofit museums should be an acceptable use

Tyler Terry, 22 School St.

- City Council must consider best and worst case scenarios
- Would like to know why the affordability section is not a special permit requirement generally
- Would like to see HC come to a finding that there is something significant that is worth preserving, and find that proposed development does preserve it, and continued oversight by HC should be provided

Justin Whittier, 10 River St.

- Approves of revisions to the dimensional table, as they are more in line with the National Trust model, but still has concerns about density
- Feels it should be made explicit that “new construction” applies to additions as well as freestanding new buildings
- Approvals from HC and DRB should be required
- Understands need to avoid spot zoning, but suggests it could be phrased as “eligible properties,” and include CC and PB approval to develop those properties, i.e. safeguard Old Town Hall and City Hall

Josiah Fisk, 358 Federal St, Office at 10 Derby Sq.

- Feels that the 3,000 square foot limit should be raised
- Notes that a net increase in residential structures with a net decrease in parking can be problematic
- Seconds Kirt Rieder’s comments and appreciates his careful reading of the proposal
- Reiterates the rationale for why this is needed: there cannot be variance for change in use; if true, however, there is no rationale for any other part of this proposal; suggests narrowing the amendment to just address that issue
- Unclear which properties affected; not ready to be voted upon
- Hearing should be left open so this can be gotten right

Jeff Cohen, 12 Hancock St., Vice Chair of Salem Sustainability, Energy and Resiliency Committee – In favor

- Supports the ordinance, and appreciates Dr. Arlander’s focus on climate change and resiliency
- Committee has focused on being included in such processes, and would be happy to make review and recommendation, though these would not be binding
- Feels that 10% affordability is too low and 80% of median income too high; 50% would be more appropriate

Fawaz Abusharkh, 4 Harrison Rd.

- Feels the hearing should be left open
- Mayor Driscoll had commented that uncertainty meant that flexibility would be needed, but future interpretation should be limited so that citizens, not developers, are protected
- Development in general is desirable and he is glad the CDC is participating

Anne Whittier, 10 River St.

- Some voted to close hearing but enough was heard to keep it open, and important revisions were made
- Concerned that public input can be limited
- Concerned about the properties on the list

Lou Serriani, Botts Court

- Feels public hearing should be kept open
- Concerned about density

- Feels that all buildings should undergo HC review and that that Commission should also have to approve

Jessica Hebert, 70 Webb St., Chair, Salem Historic Commission

- Appreciates work on ordinance and responsiveness of those developing it
- Importance of HC having inclusive jurisdiction over new construction (they have it over historic buildings)
- Notes that there is a professional preservation planner the HC, and it is not a burden for them to work on these projects

Betty Putnam, Washington St.

- Important to create an “urban village” preserving the character of the City
- Hearing should be kept open

Councilor Sargent

- Notes that zoning goes with the land, not the developer, so there can be unintended consequences when developers buy land based on zoning.
- Without a zoning change, we allow less by right and more by negotiation and citizen input, resulting in better projects. Appeals can be minimized
- Concerned that zoning change will give developers more leverage

Councilor Gerard

- Asks about environmental considerations, especially with regards to the allowance of Laundromats and dry cleaning establishments and why those, specifically, are in the Ordinance

Amanda Chiancola notes that the Ordinance is modeled after NRCC uses because they are low impact neighborhood serving uses. Nevertheless, changes such as the removal of dry cleaning can be made.

Councilor Gerard comments on the hearing process, noting that there are numerous opportunities for members of the public to speak. One or more joint City Council and Planning Board meetings are followed by Planning Board deliberation, and if questions arise after the Planning Board makes its recommendation, the public can provide input at Committee meetings, or write to the City Council and/or Planning Board.

Presiding Councilor Dibble notes that while individual Councilors can receive written comments, after the public hearing is closed, no correspondence can be forwarded to the City Council.

Councilor Milo feels that the process is working.

Councilor Turiel also feels that the level of public input is allowed enough. He outlines the joint Public Hearing process, in which both Boards get public feedback to consider; in first session, leaving the hearing open left an opportunity to address initial concerns, however, before the PB can work on this and return it to the CC to work with, the joint Public Hearing must be closed. The PB cannot deliberate until that happens. Once they have taken that step and worked on the Ordinance further, and once it comes back to the CC, they there is a timeframe in which to act upon it, but it doesn't have to pass on the floor night it comes back. Rather, it can go into Committee and further edits can be made based on feedback. Public comment in the hearing ends, however public input does not stop until Ordinance is passed.

Matt Venio comments that he views public hearing process as opportunity to listen and gather information, not a venue for collaboration on amending, discussing, and tweaking as in a working group. He comments that the appropriate venue is the Committee of City Council; that subcommittee process can engage anyone they want to, be

it the public or PB members acting as individuals, to participate in that venue. The time frame is constraining once the PB recommendation comes back; this is not City rules but prescribed in state statute. Unless there is a desire to gather more info/input he desires that the public hearing be closed, to deliberate in the PB, and send that recommendation back to the CC, who can then send the Ordinance to Committee if continuing work is desired.

Including Planning Board deliberations, the City Council has 90 days to act upon closing of the public hearing.

Councilor McCarthy outlines Chapter 40A:

- 21 days after a joint Public Hearing, the Planning Board must report back to the City Council
- If no PB action is taken, the CC may act without its recommendation
- CC has 90 days from the date of the hearing date to vote, but the hearing must be closed and the matter referred to the Planning Board for that Board to deliberate and make its recommendations back to the City Council. Historically, the public hearing has been closed, the PB has deliberated, and upon receiving the PB's recommendations, the CC chooses what to do
- If no action is taken within the 90 days, the process could start over again

Councilor Milo comments that the Ordinance should be referred to the PB for consideration tonight and notes that the PB meets on Jan. 17 and the CC meets on the 24th.

Tom Daniels, City Planner, responds to concerns:

- Environmental sustainability and resiliency
 - Buildings are being reused rather than demolishing and rebuilding; adaptive reuse is an inherently sustainable approach
 - Jane Arlander commented on not permitting development within FHOD; this District exists and has findings that need to be obtained by the PB for a special permit.
- Affordability requirement
 - This is critical to the community. Working with MAPC (Metropolitan Area Planning Council) to develop an ideal level of affordability
 - 10% at 80% is now required because that is what has been required to date
 - When this ordinance was drafted, we knew inclusionary would be forthcoming in 2019, until then wanted to codify what the planning board process was currently doing
 - Suggestions of increasing to 20% or reducing income to less than 80% are being analyzed for the inclusionary zoning ordinance, which will address this. 10-80% is the standard that communities use but Salem is trying to right size for our marketplace here
 - We should know we can require, for example, 10% at 50% and that private developers can do that
 - This question will be answered in a couple of months after full analysis has been done; it will not be completed in order to fit within the timeline for this Ordinance. It will undergo its own process and those requirements would replace the affordable provision in this ordinance.
 - This is only one of several ways affordable housing can be provided. For example, the NSCDC and Harborlight Development are different model than a private, profit driven model. Salem Housing Authority is also another avenue. The language in the Ordinance is meant for private developers
- Salem residency requirement
 - The Fair Housing Act prohibits residency requirements (they are illegal), but the city can have preferences
- Clarify the Ordinance clear with actual zones/properties vs. an overlay
 - The City is trying to establish standards for properties that would fall under this ordinance in order to not single out specific properties; to do that could be litigated as spot zoning.
- Historical Commission approval required

- Historical Commission recommendations not being required – recommendation vs. approval
- The Ordinance does require that the Historical Commission make recommendations if the property in question is outside its jurisdiction; their approval is required if it is in their district. If outside, the City wants the Historical Commission involved, so this actually expands their jurisdiction.
- Minimum lot area per dwelling for existing and new construction– change from 500 to 3500 or underlying zone
 - Looking at B5 zoning, which has no minimum lot area requirement for that zone
 - The new construction number was chosen to allow for flexibility, understanding that sites have other constraints via other requirements in the Ordinance such as parking, lot coverage, etc.
 - The suggestion of using the NRCC requirement of 3500 square feet makes sense from one perspective, however this has not worked in the NRCC in terms of developing compliant projects; they have not been feasible. 1000-2000 square feet has worked. The Planning Board can deliberate and has previous projects to draw from for perspective
- Regarding whether 500', same as B5 is too little:
 - This applies to new construction; it should be clarified that it applies to freestanding and additions. This can be clarified during Planning Board review
- Parking provided in municipal garages if a project is within 1000' of one
 - All properties within B5 district already have this parking requirement, so it is modeled under that
 - If existing property is to be reused for housing, parking can be provided in a municipal lot/garage within 1000'; thus this already applies to the Bridge at 211
 - Immaculate Conception could use both garages
 - The number of passes required to be purchased by urban renewal projects is known, and we have that data as to how many are needed, bought, and utilized.

Mayor Driscoll

- Regarding the process for public input:
 - Notes that the public hearing was kept open at the last meeting; changes were made despite that, but there are still issues tonight re Design Review Board and Historical Commission approval
 - There is already a comprehensive project review process through the PB, which approves all projects that go through them
 - Housing is a major consideration for Salem, and our housing policy is being redeveloped. Tomorrow is first City Council meeting of year, and the Council knows that housing is urgently needed
 - There is always pushback when new housing is proposed. This is housing proposed in vacant, often dilapidated buildings that are existing. Historic adaptive reuse is the best use. How many times did the jail NOT get done? The economy dictates development, and developers may not be able to make numbers work
 - Not advancing things is a decision, but leaving properties vacant is not helping to ease demands
 - She asks the public not to allow perfection and delay to derail the process, and not to require separate duplicate process by Planning Board, Historical Commission, and Design Review Board. This process was started in June, and it was not until January that the City Council has something to send to the Planning Board now. They are hoping to vote on it soon as the inclusionary housing amendment is forthcoming
- This is a long process, and people are being forced out of Salem who want to stay
- She is grateful that the NSCDC is involved, and wants to maximize their involvement while not creating hurdles to development
- Getting ZBA relief costs time, money, etc. and that makes difficult conditions for developers even harder. Only 3 proposals came in for 5 Broad St. Trust the people who serve on boards and are experts, and let them take the time to get this done, while not putting up hurdles to the process

- She reiterates that there is no existing pathway for this; preexisting zoning does not address it
- There is a need to move deliberately, but quickly, and projects will get approved by people who care and are volunteering their time reviewing these projects

Councilor Turiel motions to close the public hearing, is seconded by Councilor Furey, and the matter carries 6-3.

McCarthy motions to refer the matter to the Planning Board, and the motion carries.

Councilor Furey motions to adjourn, and the motion carries.

The meeting ends at 9:50PM

Respectfully submitted,
Stacy Kilb, Recording Clerk

Approved by the Planning Board on 02/07/2019

Know your rights under the Open Meeting Law M.G.L. c. 30A § 18-25 and City Ordinance § 2-2028 through § 2-2033.