

City of Salem ZBA of Appeals

Meeting Minutes

Wednesday, May 16, 2018

A meeting of the Salem ZBA of Appeals (“Salem ZBA”) was held on Wednesday, May 16, 2018 in the large first floor conference room at 98 Washington Street, Salem, Massachusetts at 6:30 p.m.

Chair Curran calls the meeting to order at 6:30 pm.

ROLL CALL

Those present were: Chair Rebecca Curran, Peter Copelas, Chris Drucas, Mike Duffy and Paul Viccica. Those not present were: James Hacker (Alternate) and Jimmy Tsitsinos. Also in attendance: Tom St. Pierre - Building Commissioner, Erin Schaeffer - Staff Planner, and Colleen Brewster – Recorder.

REGULAR AGENDA

Project	A public hearing for a petition requesting a Special Permit <i>per Sec. 3.3.3 Non-conforming Structures</i> to allow a 10’x20’ one story addition on an existing non-conforming structure.
Applicant	Paul and Elizabeth Duda
Location	14 FAIRMOUNT STREET (Map 27, Lot 195)(R-2 Zoning District)

Documents and Exhibitions

- Application dated April 17, 2018 and supporting documentation

Paul and Elizabeth Duda were present to discuss the project.

Mrs. Duda stated that they would like to create a single story, 10 feet x 20 feet bump-out to house a ¾ bath and TV area. There will also be a 6-foot x 6-foot porch and the rest will be ground level. Chair Curran noted that there is no new non-conformity but the addition goes over 20-feet with the new stair. Mrs. Duda noted that they will only use 1 set of stairs, the one facing the back yard will be removed. They are also still debating on the number of windows in the addition but the addition itself has not changed.

Mr. Copelas noted that only one new window is shown. Mrs. Duda replied that it is for the bathroom window, it will be removed and a small transom will be installed on the site. On the other side of the back door they will place a new window facing the rear yard rather than facing the neighbor’s house as it currently it shown.

Mr. Drucas asked if the applicant has gone over the lot coverage. Mr. St. Pierre replied no.

Chair Curran opens public comment.

John and Sally Hayes, 21 Fairmount Street. Mr. Hayes noted that they are in favor, the non-conforming lots addition will save the same 3-foot offset from the property line. They are great neighbors who spoke with all their neighbors and they are all in favor. They are urging the Board to approve it.

No one in the assembly wished to speak

Chair Curran closes public comment.

Chair Curran noted that what the applicant is requesting is a minimal request for a special permit.

Motion and Vote: Mr. Duffy makes a motion to approve the application for *per Sec. 3.3.3 Non-conforming Structures* to allow a 10'x20' one story addition on an existing non-conforming structure. Chair Curran added that the stairs facing the back yard will be removed, the window facing the neighboring home will be relocated next to the new door and the building plans must reflect the changes. The motion is seconded by Mr. Copelas. The vote was unanimous with five (5) in favor and none (0) opposed.

Project	A public hearing for a petition requesting a Special Permit per <i>Sec. 3.2.8 Accessory Living Area</i> to allow the construction of a 612 sq. ft. accessory living area.
Applicant	BREANNAH FORTEY
Location	42 MEMORIAL DRIVE (Map 42, Lot 34)(R-1 Zoning District)

Documents and Exhibitions

- Application dated May 30, 2018 and supporting documentation

Breannah Fortey was present to discuss the project.

Ms. Fortey stated that they will convert the exist garage into an accessory building. Chair Curran asked who will occupy the main dwelling and who will occupy the accessory structure. Ms. Fortey replied she and her husband will live at the main house and the accessory dwelling will be occupied by her grandmother Patricia.

Ms. Schaeffer noted that the application has an addendum and the petitioner is now asking for a special permit for the use as well as a variance, which is a change in the application. Mrs. Fortey

replied that they were waiting on their survey to be completed which revealed that they needed to ask for a variance. Chair Curran noted that it is a single-family home. Mr. St. Pierre questioned why a variance would be needed. Mrs. Fortey replied for the addition to the garage. Mr. St. Pierre replied that 1 & 2 families can be granted special permits and a second special permit should have been requested for the addition, which may include dimensional relief. Chair Curran noted that they also require a special permit to be advertised for the 324 SF accessory building expansion into the side yard setback. St. Pierre noted that this is not clear in the ordinance. Ms. Schaeffer noted that the zoning ordinances allows a maximum of 800 SF and considers both use and dimensional requirements, but whether construction within the side yard setback is allowed is a legal question. Mr. Drucas stated that the applicant should be allowed to refile at no additional cost but the Board can't grant what hasn't been asked for. Ms. Schaeffer noted that they have no authority over the advertising cost. Mr. St. Pierre suggested that applicant continue and the Board get a legal opinion. Mr. Drucas suggested the applicant withdrawal and refile.

Patricia questions how this was missed after all the people they've spoken to about this project. Mr. Schaeffer noted that June 20th is the next meeting and the opinion of the City Solicitor would be needed if they chose to continue. Mr. Duffy noted that if the Board acted on it at this time anyone could fight it because there wasn't sufficient notice for it, and re-advertising is better than having an unlawful use. Chair Curran recommended that the petitioner withdrawal without prejudice and reapply.

Chair Curran opens public comment.

No one in the assembly wished to speak.

Chair Curran closes public comment.

Mrs. Fortey requested to withdrawal without prejudice.

Motion and Vote: Mr. Drucas makes a motion to allow the applicant to withdrawal without prejudice and to waive the re-filing fee. The motion is seconded by Mr. Duffy. The vote was unanimous with five (5) in favor and none (0) opposed.

Project	A public hearing for a petition requesting a Special Permit per <i>Sec. 3.3.5 Non-conforming Single and Two-Family Structures</i> to construct a 15'x 26' one story addition, decks and front porch.
Applicant	STEPHAN GUTERMUTH
Location	29 PIERCE ROAD (Map 31, Lot 302)(R-1 Zoning District)

Documents and Exhibitions

- Application dated April 23, 2018 and supporting documentation

Paul Lessard, Architect, and Stephan Gutermuth, were present to discuss the project.

Mr. Lessard stated that Mr. Gutermuth would like to add a larger front porch that is more decorative to what is currently a series of discombobulated facades. At the rear they will create a family room addition, and new porches to both the left and right.

Mr. Drucas asked where the parking is located. Mr. Lessard replied that they have a driveway and a garage under the house. Chair Curran noted that a new front porch is being proposed a 26-foot x 15-foot rear addition with two new rear decks on either side. She asked how close they get to the rear yard. Mr. Lessard replied that the edge of the deck is 3-feet away from the side yard at that point. The part of the garage that is above ground and 4.3-feet from the corner, so they are getting closer to the rear property line. The adjacent property owner, Charles Smith of 27 Pierce Road, has approved of the plot plan. Chair Curran asked if he considered not increasing the existing non-conformity on the deck by making it less than 12-feet. Mr. Copelas noted that the addition is still 3-feet away from the property line as opposed to 4.3-feet.

Mr. Copelas stated that all special per requests require a statement of grounds that was not included in the application and it's the owner's responsibility to comply with the requests. Mr. Gutermuth replied that he didn't understand that request. Mr. Lessard noted that it was reviewed with them in the office.

Mr. Viccica asked where the rear stair leads and why the stair can't be located on the opposite side of the deck, so the non-conformity isn't being increased with the potential of also adding hardscape right next to the property line to get from the bottom of the steps to the driveway. Mr. Lessard replied that the stairs lead down to grade and to the driveway and Mr. Gutermuth selected the location, but they can move it to the opposite side. Mr. Gutermuth stated that the stair could be eliminated as it was added for convenience. Mr. Copelas replied that that would comply.

Mr. Drucas asked if the additions put the property over the lot coverage. Mr. St. Pierre replied that it would be 2.2% over. Chair Curran stated that being so close to compliance the plan can be altered so that the no longer need to make that particular request. Mr. St. Pierre suggested that the deck could be flush with the building. Mr. Drucas noted that 2.2% is 144-feet. Chair Curran noted that that is the stair square-footage. Mr. Copelas suggested reducing and squaring off both decks to meet up with the existing building. Mr. Gutermuth replied that he would not be opposed to that.

Chair Curran opens public comment.

No one in the assembly wished to speak

Chair Curran closes public comment.

Chair Curran asked if a new basement area is being created. Mr. Lessard replied yes, but it is under the new rear addition.

Chair Curran asked if the missing statement of grounds could be provided. Mr. Lessard replied that the current house is homely, they want to improve the appearance, and will cover the brick with clapboard. The property is on a cul-de-sac so there is no traffic to be increased by the addition, no additional parking is necessary, and the neighbor is in favor of it. The building doesn't affect the marsh across the street, utilities, and it is unknown whether it will result in an increase in taxes. Chair Curran asked whether a review by the conservation commission is required. Mr. Lessard replied no.

Motion and Vote: Mr. Duffy makes a motion to approve a special permit per *Sec. 3.3.5 Non-conforming Single and Two-Family Structures*, to allow the petitioner to construct a one-story addition, decks and front porch. A plan must be submitted to the Building Commission and amended as follows; the Westerly deck must be reduced in width to be in line with the South elevation, by approximately 3-feet, the Easterly deck must be reduced in width by 3'-6", the width of the stair, and to remove the rear stair, and to use clapboard siding on the addition as indicated on the drawings. The motion is seconded by Mr. Drucas. The vote was unanimous with 4 (four) in favor and (1) Mr. Copelas opposed.

Project	A public hearing requesting a special permit per <i>Sec. 3.2.8 Accessory Living Areas</i> , to allow the construction of 670 sq. ft. accessory living area.
Applicant	James M. Marshall
Location	33 Pickman Road (Map 22 Lot 16)(R-1 Zoning District)

Documents and Exhibitions

- Application dated April 23, 2018 and supporting documents

James Marshall, owner, was present to discuss the project.

Mr. Marshall stated that proposing to use the structure on the site that was built in 1973. It already has a permit, taxes were paid on it, and he would now like to use it.

Ms. Schaeffer stated that the property has been used as a 2-family home historically and it was recently converted to a single-family just before Mr. Marshall purchased it. It was in violation by the building inspector. Chair Curran stated that to be used as an accessory living area it needs to be occupied by a family member. Mr. Marshall stated that his wife's foster sister will live there. Chair Curran read the definition of family members. Mr. St Pierre noted that a sister is considered family.

Chair Curran noted that the deed was not included in the application. Mr. Marshall noted that both he and his wife are the owners and the occupant will be Karen Foster. Chair Curran noted that the application should say foster sister to make it apart of the legal record.

Chair Curran stated that accessory space is supposed to have no separate entrances unless it is from an existing entry from within the main dwelling or back side of the main dwelling. Mr. Marshall

replied that there is on entrance from the inside and one is on the rear deck at the outside of the house.

Chair Curran asked for the total square footage of the accessory structure. Mr. Marshall replied 670 square feet.

Mr. Viccica noted that they need a deed to show ownership and can continue the discussion to the next meeting so it can be provided.

Chair Curran opens public comment.

Lynette Stroud, 13 Hayes Road. Asked if the Board does site visits and suggested that the porch of the structure may be over the property line. 6-7 cars are parked there all the time so she questioned how many people will be living there. The zone is for a single-family structure, but it seems to be too close to the property at the rear at Hayes Road. She asked if a survey should be done. Chair Curran replied that what is proposed is within the existing building and only requires a deed but an addition would require more. Mr. Marshall replied that he can provide the plan.

No one else in the assembly wished to speak.

Chair Curran opens public comment.

Mr. St. Pierre suggested that it be a condition instead. Mr. Viccica requested a full application before the Board makes their ruling. Mr. Drucas suggested the discussion be continued until June 20, 2018 meeting. Ms. Schaeffer noted that the petitioner must also state “foster sister” on the application. Mr. Viccica noted that a survey, deed, and a statement that answers the 6 points will also be required.

Motion and Vote: Mr. Duffy makes a motion to continue to the June 20, 2018 regular meeting so that the missing information can be provided. The motion is seconded by Mr. Viccica. The vote was unanimous with five (5) in favor and none (0) opposed.

Project	A public hearing requesting a Special Permit per Sec. 3.3.2 <i>Nonconforming Uses</i> to change the existing non-conforming function hall into a multi-family residential use. The petitioner is also requesting Variances from Sec. 3.3.4 and Sec. 4.1.1 <i>Table of Dimensional Requirements</i> for lot area per dwelling unit, number of stories, height, front yard and side yard setbacks to allow a two-story addition to the existing one-story rear structure.
Petitioner	SPIRE INVESTMENTS, LLC
Location	94 WASHINGTON SQUARE EAST (Map 35, Lot 536)(R-2 Zoning District)

Documents and Exhibitions

- Application dated March 23, 2018 and supporting documents

Attorney Scott Grover of Tinti, Quinn, Grover & Frey of Salem, MA was present to discuss the project. Peter Pitman and Richard Thorton, Architects and Bridgitte Fortin of Pitman & Wardley, Dick and Jay Goldberg of Spire Investments; Scott Cameron Civil Engineer of Cameron Morin Group; Michael Radnor, Landscape Architect from Radnor & Associates.

Chair Curran noted that at the last meeting the Board requested a more in-depth statement of hardship. Atty. Grover replied they also have a revised landscaping and site plan. Char Curran noted that she believes there are two issues; the use and the dimensional request. By special permit they can change the use from one non-conforming use to another non-conforming use as long as the Board makes the determination that it is not more detrimental to the neighborhood. The dimensional variances require a hardship to expand the building. She asked if they considered requesting a special permit for a multi-family because the dimensional variances correlate to their proposed expansion. Atty. Grover replied that the density regulations and lot area per dwelling unit still applies and each dwelling unit would need to have 7,500 SF of lot area in a 20,000 SF irregularly shaped building. Literal enforcement would allow 3 residential units which is not economically feasible or practical.

Chair Curran stated that working within the existing building rather than expanding it would be an easier variance to grant and asked if they considered re-suing the existing building. Atty. Grover replied that it may not have been suitable, and the density requested is necessary to support the restoration of the existing building. Chair Curran replied that if that is the case a Pro Forma may be requested to make that determination. Atty. Grover replied that using the existing building only allows them 3 units without a variance, which is not economically feasible and practical.

Mr. Viccica asked if they could achieve their desired unit count in just the lower level and 1st floor of the existing addition. Chair Curran noted that increasing the side yard setback created a new non-conformity and they could find a way to work within the exist non-conformity rather than creating new ones. Atty. Grover replied that a variance for lot area per dwelling unit would still be required even if they used the existing building. Mr. Viccica noted that 7 units could be possible with no new upper floor. They are requesting more units in order restore the main building which requires more density. Mr. Copelas noted that the applicant keeps mentioning their financial status and added that if they were to meet the grounds for a variance that doesn't allow them an unlimited under of units. Atty. Grover replied establishing the hardship is one element, but it can be argued that the literal enforcement is the hardship.

Atty. Grover stated that their biggest hurdle is the height of building. The new addition is proposed at 40 feet and 3 stories high. The Briggs Street façade encroaches 1.9-feet from the lot line and a variance is needed for the overhang at the roof that will encroach further into the setback. Lastly, the proposed shed will be within 3 feet not 10 feet of the property line. Chair Curran noted that although those requests are minimal they are additional. They are adding new elements and can submit the Pro Forma for them the Board to review. Atty. Grover agreed to submit a pro forma.

Mr. Drucas stated that the summary on the hardship hasn't reviewed since it was given out tonight and the Board requested that it be given before. Adding variances doesn't make it minimum situation and the neighbors have been concerned with the height and are in opposition.

Atty. Grover stated that the restoration is driving this project. Chair Curran replied that they should consider reusing the existing building, because the price you pay for the property is not the hardship. Mr. Viccica noted that while he understands the economics of the purchase and asked why they could not do 1-story units in the addition, unless they need more units to fund the restoration which would require a review of the Pro Forma. The property is densely designed, more units means more parking, etc. and it becomes a hardship again. Atty. Grover stated that they are basing the hardship on the 3 residential units which is what would be allowed.

Mr. Thornton stated that the dumpster was requested by the neighbors. Chair Curran replied that they must demonstrate that it can't go anywhere else on the site.

Atty. Grover stated that the reason to go 3-stories in the addition is to provide access through the addition to the historic building, and the new stairways are going through the addition to preserve the mansion to provide access to the 3rd floor. Ms. Fortin noted that a servant stair will remain in the mansion. Mr. Viccica noted that the reason to increase the height over the entire roof for access goes back to number of units they are requesting.

Atty. Grover stated that the existing roof is 56-feet at the highest point and 40-feet at the proposed at addition.

Ms. Fortin stated that the and you cannot have two stairs next to one another, so they need to be separated. Ms. Viccica asked why they need 3 stories. Chair Curran suggested that the applicant rethink using the existing building which requires only 1 variance and a 1-story over back structure. The pro forma would be needed 2 weeks in advance so the Board has time to review it.

Atty. Grover stated that the argument in the memo is the same he made at the previous meeting. He provided the research to back it up and stated that a literal enforcement is the hardship.

Chair Curran read a letter from Nicholas Downing, 10 Andrew Street, Unit 3A, who is in favor of the project but has concerns with trash and recycling which he wants to be enclosed and not along the property line.

Chair Curran opens public comment.

Carol Hebb, 4 Andrew Street. Lives behind this property, despite the proposed structure being only 5-feet higher than what is allowed it is too tall for neighborhood. Other buildings have steep gable roofs that account of their height not flat roofs, so the massing is much lower. Other buildings have a smaller footprint and are not large as the proposed rectangular 3 story boxes. It isn't the same massing as elsewhere in the neighborhood, so the 5% increase is a lot. The restoration of the mansion is driving this project; however, the only thing that neighbors will see is the exterior. The interior details are less important if the cost of that restoration is a building is funded by a rear that is

too big for the neighborhood. The neighbors also receive no feedback regarding their density concerns which is not a good response from the developer.

Mike Redfern, 4 Andrews Street. Suggested they eliminate the proposed top 2 floors to create 10 units, 5 in the mansion and 5 and in the addition.

Rose McCullen, 19 Washington Square. Noted that she sent an e-mail with her thoughts.

Richard McCullen, 96 Washington Square. Sent a letter that was signed by Erin Murphy, Harrison Murphy, and Sue Ellen Clusterino.

Patricia Zaido, 10 Andrews Street, Unit 1A. Noted that her condominium association hasn't made a vote on this project. They want the building to become residential, the developers are trying to do it in the best way but they want as many units as possible and other residents are concerned with the density. At the community meeting the developers said if they didn't have 20 units it wouldn't be possible. Jay Goldberg informed that they haven't purchased the building yet but they plan to by the end of this summer. The proposed building is too big for Briggs Street. They are concerned with the historic preservation of the historic neighborhood, and there is a need for new housing but it should be done with the integrity of historic preservation in mind.

Marie Brescia, 48 Essex Street. The neighbors are concerned with the streetscape of the neighborhood, the hardship concerns should be directed to the neighborhood with 20 units proposed, in a building that doesn't look like it belongs in the neighborhood. If it's not feasible use as is they should tear down the extension. No one lives there now, and they are proposing to put 30-50 people there.

Mike Redfern, 4 Andrew Street. The mansion is the second highest building along the Common except for the hotel but it is also out of scale with Briggs Street. They intend to align the floors, but the first floor is already 9 steps up above grade.

Ryan Raffety, 10 Andrews Street, Unit 2A. Everyone wants something to happen, he is in favor of residential, everyone he's spoken to is concerned with density and scale, but he wants the building to be restored.

Kate Vernatter, 71 Webb Street. She is opposed to the height and density; the mass and scale of annex will ruin the view from the common. The mansion is a historic building and the addition will take away the importance of the historic building and overpower Briggs Street with its height. The neighborhood won't see the inside of it and the neighbors are concerned with the exterior.

Ms. Schaeffer noted that plans are available at the Planning Department during office hours and anyone who wants to see revised plans should call ahead to find out when they are available.

No one else in the assembly wished to speak.

Motion and Vote: Mr. Duffy makes a motion to continue to the June 20, 2018 meeting. The motion is seconded by Mr. Drucas. The vote was unanimous with five (5) in favor and none (0) opposed.

Project	A continuation of a public hearing requesting a Special Permit per Sec. 6.10.4 to operate a licensed retail marijuana establishment.
Petitioner	NS ALTERNATIVES
Location	207 HIGHLAND AVE (Map 13, Lot 2)(B-2 Zoning District)

Documents and Exhibitions

- Application dated February 27, 2018 and supporting documentation

Attorney Mike Ross, Brandon Banks – Principal of NS Alternatives, Ed Dominguez of Crowell Security Company, Doug Okun and Jonetta Naslazi of Douglas Okun & Associates, and Tony Capachietti – Traffic Engineer at Hayes Engineering, were present to discuss the project.

The April ZBA meeting, feedback from Traffic and Parking Departments, the May 10th community meeting, and ZBA comments helped lead them to the following changes;

The petitioner proposed a curb-cut on First Street, but has eliminated this proposed curb-cut due to neighborhood concerns about traffic. The Salem Traffic and Parking Department and the community requested to eliminate the second driveway closest to First Street along Highland Avenue.

The main entrance will remain on Highland Avenue. The second exit has a gate that is sometimes open; however, it is very close to Highland Avenue and First Street which creates an unsafe condition because people exiting the second exit don't always realize that someone to their right is also exiting onto First Street and onto Highland Avenue. The petitioner is also proposing to landscape the current second driveway with new landscaping and a short stone wall with associated landscaping. The applicant will also re-pave the entire Highland Avenue frontage, create rumble strips at the entrance, and add new crosswalks at Highland Avenue across First Street at the existing curb-cuts. They will add signalized pedestrian crossing at either side of the property along First Street. The parking lot will now have 47 parking spaces and several handicapped spaces, and the parking lot will be restriped and redesigned to eliminate any pinch points. The entrance is now into the building and out of view to the public and a sally port will be added to make deliveries. They have met with Hawthorne Commons to discuss the eroding sidewalks and boulders and they will add numerous robust trees at both two frontages.

Atty. Ross stated that their meeting was positive, community members has some concerns and he encouraged all neighbors to let the Board know their thoughts, whether good or bad. He read a letter from a woman named Helen whose concerns were answers and was in favor of the project.

Some in the room were beneficial and provided input from their experience with the type of products to be sold to those residents that were unfamiliar or had concerns. Owner is

Chair Curran asked if the Police Chief was aware of their plans to eliminate one entrance. Atty. Ross replied no, but a full emergency and plan will be submitted to the Fire and Police Departments.

Chair Curran noted her concern with the landscaping changes and clear site distances on First Street where there should be no high plans or stone walls to impact the view of someone along Highland Avenue. Atty Ross replied that there may be a corner provision in the code they need to review and there is a rise in grade to consider. Mr. Okun noted that a landscape architect will be hired to review the planting plan. Mr. Viccica stated that the sightlines onto Highland from First Street need to be clear and suggested that the stone wall and plantings be moved further away from Highland Avenue. Chair Curran suggested that the proposed wall be rounded. Mr. Capachietti stated that any landscaping will be 14-feet back from the stop sign and all new plantings will stay under 3-feet in height. Chair Curran added that the mature shrub height should not exceed 3-feet.

Mr. Viccica asked if they can gain access to the site from the Market Basket. Atty. Ross replied that there is an emergency easement at the rear corner, the Hawthorne Commons manager would like to see if the emergency egress is necessary although it is owned by the landlord. They've offered to have a conversation with the Kidney Care tenant to determine where to go with it since some patients did exit into the Market Basket lot through the emergency egress. Mr. Viccica noted that the fire department has jurisdiction over that and may want to keep two methods of access to the site and not create a single access point. Mr. St. Pierre noted that the access is owned by Hawthorn Common Phase II. Chair Curran stated that the fire department may want to install a crash gate. Mr. Viccica suggested installing a fence up to block vehicles from driving through.

Mr. Copelas asked how traffic flow will be improved by the removal of the First Street entrance. Mr. Capachietti replied that traffic isn't great on Highland Avenue, Mass DOT has studied it, they considered some of those plans and heard some opposition from the residents since First Street is a cut-through. Mr. Copelas noted his concern with the proposed route to enter and exit onto Highland Avenue and asked about the flow of traffic. Mr. Capachietti replied that drivers can make a U-turn at Trader's Way when traveling from the South and drivers wanting to head South can make a right onto First Street, a right onto Traders Way, and a left onto Highland Avenue. Mr. Capachietti noted that in the future it won't be a destination, so traffic flow will steady over time. Atty. Ross noted that Salem police would watch for illegal moves on the streets when it first opens. Mr. Capachietti noted that they will provided traffic demand literature, highlight the bus stop outside their establishment, and they will let customers know of the preferred use.

Mr. Viccica asked if the food bank will remain. Atty. Ross replied that they haven't heard from them, but they will shut down when the food bank opens. Mr. Banks noted that the church is planning to move, and he is aware that a future expansion into adjacent retail space would mean a return to the ZBA for approval. Mr. Viccica noted that the new issue is addressing the parking lot access. Mr. Drucas asked for the food bank hours. Mr. Banks replied 8-10AM. Mr. Drucas asked if they had permission from landlord for the proposed landscaping changes. Atty. Ross replied that they have made an amendment to the LOI for going from 32-47 parking spaces, the petitioner has discussed the landscaping with the owner/landlord who is open to it and has no issues. Mr. Viccica stated that the landscaping improvements must be approved by the landlord.

Mr. Drucas stated that he's not convinced that no First Street access is right. There should be two means of egress and the Police and Fire Departments should provide their input. Atty. Ross replied that Highland Avenue will get resolved by Mass DOT or some interim measure. Chair Curran noted that she is in favor of Highland Avenue access only since First Street wasn't designed for that additional traffic. Ms. Schaeffer noted the possibility of adding a future traffic signal at the intersection of Highland Avenue and First Street. The petitioner could return if an exit onto First Street is desired. Mr. Viccica added that if access is required he hopes it would be gated. Atty. Ross noted that they have to be approved by the Fire Department prior to a permit being issued. They are willing to create a traffic light at that intersection which would require a host community agreement with Salem which would be 3% of the sales which in 5 years' time could nearly cover the cost of traffic light. Mr. Capachietti noted that in an emergency if the building were to be on fire, the emergency vehicles would go for the fire hydrants that are on Highland Avenue and further down First Street. They'd want to have some space between them and the building.

Chair Curran read letters into the record.

Robert Ross, First Street. Opposed.

Joan Gilman, 9 First Street, Unit D. Opposed.

Lynn Fitzgerald, 11 First Street. Opposed.

Sue Ellen, Richard and Rose, and Erin Murphy, Washington Square. All opposed.

Maria Andreatol, Wheelers Lane. Opposed

Dave Goodof, 31 First Street. Concerned with the natures of the residential neighborhood, ingress and egress into Highland Avenue, and was not invited to the community meeting. People could park at Hawthorne and walk over and the entrance by Market Basket and Traders Way will be used despite what you tell them. 212 units are proposed at Traders Way and First Street which will add even more traffic to the area. The proposed is not in sync with the rest of the neighborhood and will become a burden.

Tim Flynn, Ward 4 Councilor. Asked when the community meeting took place. Atty. Ross replied that it was with the building manger and residences next door and across the street, their city councilor was informed of the meeting, but they didn't invite people outside of Hawthorne Commons. They've already held a community meeting and this time they wanted to discuss the project with direct abutters. Mr. Flynn noted that he wished he had notice, been invited, or sent representatives. He also wants the fire and police departments to review the project.

Unknown, Unknown. It's disingenuous to say they reached out to the community. They found out about the meeting through their neighbors. They haven't reached out to the neighboring condominium owners and Hawthorne Commons is a rental community.

Debbie Tucker, 25 First Street. Agrees with the need to reach out to owners rather than renters, the character of the neighborhood will be changed, there has been an incident of consuming in the community properties as recently as 2 weeks ago, the 212 units down the street will also impact traffic on First Street, they will be open an excessive number of hours, there are many children in the neighborhood, and she agrees with cutting off access to First Street. Asked if there will there be a sidewalk along their side of First Street. Atty. Ross replied new crosswalks only but they will bridge the gap with signaled crosswalks. Ms. Tucker stated that she went to the first community meeting at asked about advertising on their website and "weed apps." Mr. Brooks replied that advertising will

be limited with discrete signage, they will have a website but no apps; although, the business will be listed on the app for people to find on their location.

Barbara Canty, 33 First Street. They may close off access to First Street, but drivers will still turn onto First Street, since many people use it as a cut-through.

Lisa Peterson, Ward 3 City Councilor. Concern with not being included, the notice of the original neighborhood meeting at Hawthorne Commons wasn't distributed until after the meeting occurred, and she believes no one reached out to them because they didn't want owners there. She appreciates the closing off access directly to First Street.

Chet Kusek, 27 Osborne Hill Drive. Asked if there are numerous active proposals on Highland Avenue being pursued. Chair Curran replied yes. Mr. Cusic asked for the proposed square footage of this facility. Atty. Ross replied that the area they will occupy will be under 5,000 SF. Mr. Cusic noted that with the same entry and exit point he is concerned with people backing up towards Market Basket and turning around to go South onto Highland Avenue. Mr. Capachietti replied that even at the peak hour traffic the exit lane is 30 feet wide with sufficient turning space and an approach to parking. The site distance is close to 1,000 feet so it will be clear to see traffic coming and queuing won't be an issue.

Cindy Ansomo, Manager at the condominium. Some neighbors weren't aware of what is really going on and haven't been notified. This and the new proposed units will have an impact on the neighborhood. People speed down First Street so there is a serious traffic issue and no sidewalk down to the start of Hawthorne Commons.

John Hollian, 7 Lions Lane. Noted that the entrance only allows drivers to go North and will be a tough turn for drivers to make. Atty. Ross noted that that it is an existing condition, the traffic concern is at First Street is what was brought to their attention. This proposed use is far less than the existing uses in the surrounding area but they will to implement traffic mitigation and will meet the standards of the ordinance.

Dave Goodoff. People driving down Highland Avenue move to the inside lane to avoid those vehicles turning onto First Street and then move back to the outside lane, which creates an issue for people turning off First Street and onto Highland Avenue. People also speed down First Street towards Highland Avenue and 2 crosswalks with lights will cause a traffic back-up on First Street. Mr. Capachietti replied that it is a pedestrian warning only not a signal.

Cindy Ansomo asked if the Police Chief's letter addressed people leaving the property with product or limits to purchases. Chair Curran noted that they received a letter from the Police Chief who has approved their proposal, the interior loading location being at different times on different days, and it will be similar to a liquor store and is only allowed for people over 21. Mr. Banks added that the state has set the sale limit per customer.

Chair Curran closes the public comment.

Mr. Drucas stated that other facilities could be allowed without coming to the ZBA. Chair Curran noted that this is a business zone near residences that could attract many used could go there and generate more traffic, although their mitigation helps. They are dealing with an existing site and she

prefers having one entrance but will need a second letter from police and fire chief supporting that idea. The concerns with First Street is helpful and some items could become conditions. 212 units may be proposed but this building is here before that building, although, this traffic count could be factored into their proposal. In terms of children, the building is at a higher elevation and landscaping will help conceal it, and their signage will be discrete. There have been many concerns with using on the property but just like at a liquor store and it's a legal substances now and people would use it as they would other purchases. She would condition the sight lines and landscaping, adequate access for the police and fire departments with the use of a break-away fence towards Market Basket. There will be no consumption allowed on the property, the apps and website will give the preferred route, and employees will be encouraged to use the MBTA. She asked about the hours of operation. Atty. Ross replied 8AM – 8PM Monday – Saturday, and 10AM – 8PM on Sunday, except for when the food bank is in operation. All deliveries will be in the interior sally port. The petitioner also wouldn't be able to open until copy of state license is submitted.

Mr. Drucas noted that there should be security at the interior and exterior as a condition during hours of operation. Mr. Viccica noted that this is a legal business and others will occupy the parking lot that won't shop here and shouldn't feel spied on by security. Atty. Ross replied that they will work with Chief Butler on security and will tell customers that no consumption is allowed on the site and there will be a security detail on site to patrol the area. Mr. Banks stated that security alone acts as a deterrent, and they will use high resolution cameras, and will contact the police should any issues arise.

Ms. Viccica noted that they will also need to provide signalized pedestrian walks, the church must relocate and be at least 500 feet away, there shall be landscape improvements based on their landscape plan dated 5/16/18 and any amendments need to be approved by the landlord. Ms. Schaeffer noted that the landscaping plan should be amended as discussed at this meeting and resubmitted, the police and fire department must approve of the plan with no public access from First Street, and a way to prevent access from Market Basket by vehicles.

Mr. Drucas asked the petitioner to clarify that there will be no repeat customers allowed. Mr. Banks yes, no repeat customers will be allowed.

Ms. Schaeffer read the standard conditions were also applied to 50 Grove Street.

Mr. Drucas noted that approval from the ZBA doesn't mean it will go into effect. Only 5 facilities will be allowed in the City and petitioners have other steps to go through to receive approval; however, the ZBA is duty bound to determine if the site can meet the criteria of the bylaw. Mr. Viccica noted that this site is retail and it will remain retail.

Motion and Vote: Mr. Duffy makes a motion to approve the application for a Special Permit per *Sec. 6.10.4 to operate a licensed retail marijuana establishment* subject to the following special conditions; the applicant will obtain a letter from the Police and Fire Department approving of a single site access and no access from First Street, no consumption of the items sold in the establishment will be allowed on site, the advertising shall reflect the preferred route to gain access to the site, the hours of operation shall be 8AM-8PM Monday-Saturday, 10AM-8PM Sunday with no operation when the Food Pantry is open, all deliveries shall be at the interior of the building in accordance with the security plan submitted and

approved by the Salem Police Department, the church operation must vacate to more than 500 feet from the site, the petitioner shall submit an amended landscape plan to be approved by the Building Department that reflects the changes discussed at tonight's meeting, and the petitioner shall submit written approval from the landlord for the proposed landscaping, the petitioner shall prevent access to Market Basket by vehicle, and security will be required to prevent the use of product on site. Ms. Schaeffer added that the applicant shall not operate until the issuance of a state license by the Commonwealth and all other state and local requirements are met, a community host agreement shall be executed with the City within 6 months of the issuance of the Special Permit, a 6-month extensions can be granted by the Board if good cause is shown and the applicant shall be issued a state license within 6 months of the issuance of the Special Permit. All traffic mitigation as recommended in the report shall be integrated including the two pedestrian crosswalks. The motion is seconded by Mr. Viccica. The vote was unanimous with five (5) in favor and none (0) opposed.

Project A public hearing requesting a Special Permit to operate a licensed retail marijuana establishment in a portion of an existing shopping plaza.

Petitioner **SANCTUARY MEDICINALS, INC.**

Location **400 HIGHLAND AVE (Map 3, Lot 5)(BPD)**

Documents and Exhibitions

- Application dated March 19, 2018 and supporting documentation

Attorney William Quinn of Tinti, Quinn, Grover & Frey of Salem, MA, was present to discuss the project. He represented Non-Profit Massachusetts Corporation owned and operated by Mr. Jason Sidman, CEO of Sanctuary Medicinals. Mr. Jimmy Alex of Sanctuary Medicinals, Chief Allen a retired NH Police Chief, and Dan Mills of MDM, Traffic Consultant, were also present.

Atty. Quinn stated that supplementary materials were given for the board to review and Mr. Drucas asked for a scaled plan of the premises including exterior distances. The unit is approximately 80-foot x 60-foot equaling 4,800 SF, which includes the waiting, sales floor, and offices in the rear. Chair Curran noted that are still proposing rear access for deliveries.

Atty. Quinn noted that they've taken photos of the parking lot on a Saturday and Sunday at 1-2PM in the afternoon when the medical practices are closed and more of the parking is available. Their plot plan shows the alley where the delivery vehicle will deliver and make a U-turn at the rear. He presented a plan showing the adjacent stone wall and trees, the 31-foot wide rear driveway with some parking places along the wall. The deliveries will be made using a cargo van and showed a video of the delivery vehicle making a U-turn in the alley. Atty. Quinn noted that the Traffic Engineer is present again to make his findings.

Mr. Viccica asked if customers can't use out of state cards to there will mostly cash on site, the delivery trucks have monitored GPS, and someone may want to intercept a delivery truck in the alley with no sally port that is out of site of the police as it is moved from the truck to the building. Atty.

Quinn replied that all of the strip mall unit have rear delivery doors, but they have a security plan that has been approved by the Police Chief. Chair Curran noted that the letter provided seems like a standard letter despite it being from the police department. Ms. Schaeffer stated that she had the same concerns but the Police Chief indicated that a sally port should be used where it is physically feasible.

Mr. Sidman stated that credit cards aren't accepted yet, 60% of their sales are made with debit with a pin which is accepted, and the remaining 40% of sales is cash. They will use an certified armored car service but not all dispensaries have a sally port in Massachusetts. Chief Allen added that the front door could be used for cash removals, the delivery process was reviewed by Chief Butler, he provided her with a detailed transportation plan, in addition they will have two security guards. one inside and one outside. The Salem Police Department will also be notified of the delivery that is in-route, the delivery vehicles and dispensary will be able to communicate back and forth, two agents will be in the vehicles when it is en route, on site security will do a sweep of the back area prior to the delivery vehicles arrival, the video surveillance will be monitored in real time by the Salem Police Department, and 4 agents will be included in the move of the product from the vehicle to the store .

Chair Curran asked how many deliveries they anticipate per week. Chief Allen replied two. Mr. Viccica asked if they could use the front door and asked what were to happen if they aren't armed and someone approaches them that is armed. Chief Allen replied no, not with their security plan in place, and their security doesn't want the transaction to be made public, and doesn't want to compromise the safety of others.

Chair Curran asked if the petitioner has considered reconfigure interior for a front delivery but creating a hallway from the front to the back or adding a rear garage door. Mr. Sidman replied that they requested a front delivery, but Chief Butler preferred a rear delivery. Mr. Viccica stated that if safety is an issue at the rear and isn't logical to make the transaction of something so valuable in the rear.

Mr. Copelas stated that applicants have replied with those entities reviewing and approving it. Mr. Viccica stated that this spot doesn't satisfy the same criteria in his opinion. Mr. Sidman replied that he would have no problem accepting a condition to review a front entrance for Chief Butler to determine and the delivery can be done not during business hours. Mr. Viccica noted that if the opportunity to do something safer is presented, visible vs. not visible, it should be taken. Mr. Drucas stated that liquor stores use front doors and perhaps there is a reason the Chief requested that certain aspects aren't meant to be public. The liquor stores he represents are more comfortable with rear deliveries, but he wants something in writing from the Police Chief. Chief Allen noted that they have received a letter from the Police Chief and in addition to the physical aspects they will have video surveillance, electronic access control, notifications, and they've taken all the necessary safety precautions. Mr. Sidman suggested that another letter from the Police Chief's explain her preference also be a condition.

Dan Mills, Traffic Engineer from MDM, presented his findings on; the weekend count and the real data, parking and traffic study. He submitted a study in April based on feedback and they've done a more extensive parking evaluation, and their findings in their initial report remain valid and the facility will not general more traffic and the available parking is sufficient.

Access:

There will be several access points to the facility, including a right turn in and out onto Highland Avenue, and a signal at Olde Village Drive and Walmart with a cross-connection between the plazas. Mass DOT conducted a Route 107 study, and it was determined that the signalized intersections would provide a good level of operation over the next 20 years. The trip generation review relied on the dispensary chapter of the ITE Trip Generation Manual, which pulls its statistics from Colorado and estimates approximately 50 trip in and out during the weekday evenings and 70 trips in and out during Saturday mid-day, their projected busiest times.

Public Transportation:

The MBTA has a bus stop across the street from the plaza and a controlled pedestrian crossing at Olde Village Drive with a sidewalk connection along Highland Avenue.

Parking:

There is ample parking to support their projected peak demand of 32 spaces for their proposed use, including employee parking space. The parking study does compliment the plaza's clinic uses which are generally closed evenings and weekends. The eye doctor's office does have patients later into the night and on Saturday mornings.

They conducted a parking study recording the lot usage for 12 hours per day for 1 week. There are spaces for 219 parking vehicles and the usage did not go above 160 vehicles park which left 60 surplus spaces. They are projecting 32 cars. There is a general medical use and associated parking lot usages follows medical trends with weekend fluctuations when Weight Watchers meeting occur, which they counted approximately 50 vehicles. They saw a minimum of 60 spaces taken during the week. At its highest point, including their proposed increase of 32 spaces, leaves a minimum of 29 spaces remaining at 11AM during the week and 117 surplus spaces during the weekend.

Proactive measures:

They will discourage parking on Olde Village Road, subsidize their employees with MBTA passes, install a landing pad at the store side of 107, reduce customer wait times with increased staff, allow advanced ordering, and designate employee parking to remote areas of the lot. They will establish a traffic management plan in preparation for grand opening conditions and will prepare for working with the Salem Police Department.

Atty Quinn stated that in terms of grounds for the special permit the community agreement is the concern.

Mr. Drucas noted that the traffic study predicted 400-600 customers per day, over 12 hours that equals 50 customers per hour, and asked how long the average transaction will be. Mr. Sidman replied 5-7 minutes based on the data from Colorado and the trip generation handbook, but with the 5 expected neighboring dispensaries being approved in Salem and up to 8 in Lynn, their expected volume is 100-150 customers per day. There may be 300-350 customers per day until the other dispensaries are up and running. Mr. Drucas asked about their busier times when 70 vehicles are projects and how that effects parking space use. Mr. Mills replied that their analysis reported that a space will be used for 5-6 minutes but they are assuming 15 which got them to 32 spaces. 1 space will satisfy 4 vehicles coming to the site.

Chair Curran read letters into the record.

Jill Gray. Opposed

North Shore Medical Center- David Roberts, President, North Shore Medical Center and Steven E. Kapfhammer, President, North Shore Physicians Group- opposed to the petition.

Nicole Maria, 50 Warren Street, Peabody. Opposed

Chair Curran opens public comment.

Tim Flynn, Ward 4 Councilor. The parking photos are misleading because the aerial shot showed the parking lot almost full and don't match the numbers provided. On the other side of the rear tree line is the resident swimming pool. With unarmed guards an ambush could happen and this is not a safe situation. The parking and security don't meet the criteria and out of all dispensary presentations this one doesn't fit the requirements. Many have reached out to him and approving this would be a bad idea.

Atty. William DeBear, Represents the condominium and trust behind this site. The condominium shares a 450' long property boundary with this site. The residents are concern with what happens in the rear because their property and the neighboring woods could be used as an escape route and the pool is visible from the petitioners back door. The criteria for special permit encompasses, traffic flow and safety – including parking and loading without a sally port. The Police Chief's expertise on this matter was not questioned and there are no other areas in the district where there is a delivery proposed in the rear yards of resident homes. The home owners aren't satisfied that they will be safe and the proposed plan doesn't show that safety. The petitioner must provide adequate security to the public and residents too. The neighborhood character isn't limited to the plaza, there is also the neighborhood and that character will be adversely affected. He questioned whether with another dispensary just approved is this really a community need. He submitted a package of photos and plans. This facility will be open every day, the parking described wasn't represented in their charts but it was shown accurately in their aerial photo. Products could be dropped in the parking lot and picked up by kids and pets. One security guard can't monitor the entire site. If approved, the condominium would want "No Parking" signs placed on Olde Village Road.

John Holian, 7 Lions Lane. At the last meeting it was commented that there were no empty spaces in the lot on the weekend but the restaurant is currently closed and will reopen and that will impact parking. He suggested parking at the rear, where there are 12 rear spots, 5 are occupied by works, and there are also 2 dumpsters also, and on the building side there are HVAC units. The remaining available space without 9'-6" wide parking space is 21 feet wide and the HVAC units reduces that space to 18'. He asked how long will it take their delivery vehicle to turn around with a cars parked behind the building. That's enough time for people with guns to approach them.

Laura Holian, 7 Lions Lane. If people with guns were to approach the drivers, and security then there is nowhere for them to go and the residents would be trapped.

Pat Liberti, 3 Lions Lane. They have had issues with homelessness in this area, he understands the need for the product but this is not creating a safe environment for their community. The condominiums were there first and this will change their environment for their 140 townhouse community.

Tatiana Sloutsky, 13 Carriage Hill Lane. Has lived there 3 years, appreciates the community she lives in and the neighborhood, has seen people walk through the back woods. At night she's not uncomfortable and she will not feel safe.

Gerald Meola, 3 Indian Hill Lane. Lives approximately 80-90 yards away and wondered how many trips will it take to initially fill the store with product. The buffet restaurant has a liquor license which he believes isn't a good mix with this proposed dispensary.

Leanne Zeoli- 388 Highland Ave. There are 2 proposed dispensaries within 300 feet of her home. She asks that the Board consider one at a time since 5 are proposed within a 1 mile stretch of Highland Avenue, which could become known as the "Mile High" or "Pot Highway of the North Shore." The residents are concerned with their homes, neighborhoods, and community. Clustering these dispensaries is in no one's best interest, Precinct 2 in Wards 3 & 4 are disproportionately impacted by the zoning ordinance regarding marijuana retailers. She doesn't want their neighborhood to be overburdened with this marijuana retail experiment. Colorado, Oregon, and Nevada renovated their cultivating facilities to accommodate retail and she urged Salem to follow that trend. The Grove Street facility fulfills the needs of those that voted for these facilities and she hopes that less than what are approved open. Many residents are on a fixed income and there could be a 6-8% rise in their property taxes due to this increase in dispensaries.

Stacey Wish, Indian Hill Lane. Wouldn't feel save with this at their neighborhood, it will devalue their properties, will attract the wrong people. She doesn't to take the risk after all these years and wants to maintain their lifestyle.

Maria Aloisi, 15 Carriage Hill Lane. A 30 year resident, taxes have more than doubled in that time and this won't help their property values.

Judy Scrymgeour, 36 Lions Lane. Told at first meeting this company has never sold recreational marijuana only medical so they don't know what to expect. Fedex and trash trucks drive down the other direction in that back alley so what will happen when they meet the delivery vehicles.

Kandis Patch, 9 Olde Village Drive. Has safety concerns and the neighbors have a history of looking out for one another. People could turned around leaving the site and drive into their neighborhood. Wants the Board to think about where they live and give this serious review of where it will be located.

Jan Bonner, 44 Lions Lane. Asked if the Board visit the site or take the applicants word. She wanted all Board members to visit the site and see the proximity to the condominiums.

Laura Holian, 7 Lions Lane. By locating the dispensary here the daycare and plaster fun time will leave. From a moral standpoint she thinks the applicant needs to rethink the location.

Chair Curran closes public comment.

Chair Curran read a letter from Dr. stating that that they park in the back of the building, width of rear driveway is narrow, he has concerns with the drop off location being unsafe. There are other locations where it can be done safely. The Police Chief approved it but it doesn't seem like the most

secure place and it could be done in the front. Retail and residential co-exist in the area. There can be multiple of the same type in the area – liquor store, etc. and some issues raised could be fear based.

Mr. Duffy stated that his issues are parking especially when the closed restaurant reopens and the safety during deliveries, but that's what the experts are for and the police have reviewed and approved the plan. He suggested they make a condition to have the Police Chief explain why the rear was preferred or why a front corridor to the rear redesign is not.

Mr. Copelas stated that he is concerned with the special permit criteria mand the use not being ore detrimental to the neighborhood character. The summary of grounds didn't define the residential neighborhood in addition to the retail activity on Highland Avenue so how does this not impact the condominium owners. Atty. Quinn replied there have been a lot of expressed fears but no evidence to indicate that those incidents are likely. They are speculating that taxes will go up and property values will go down. His client is trying to find a place that can serve their needs but more land and parking is available along Highland Avenue. There is nothing to indicate that it will really be detrimental to the neighborhood.

Mr. Drucas asked if the police can be present during each delivery. Mr. Sidman replied yes. Mr. Viccica noted that safety is his concern and asked why that option was not included in the application. Mr. Sidman replied that they met with multiple people, Chief Butler didn't recommend it, but it can be a condition to review those security measures during each delivery. They will also discuss a front delivery option with her. Mr. Schaeffer suggested that request the petitioner investigate the detail and use of the front for deliveries. Mr. Sidman noted that they would pay for that detail. Chair Curran replied that the Board would want to see what would be recommended before they vote. Also, to investigate deliveries before other businesses open.

Atty. Quinn requested a continuance.

Motion and Vote: Mr. Duffy makes a motion to continue to the June 20, 2018 meeting. The motion is seconded by Mr. Drucas. The vote was unanimous with five (5) in favor and none (0) opposed.

OLD/NEW BUSINESS

ADJOURNMENT

Motion and Vote: Mr. Copelas made a motion to adjourn the May 16, 2018 regular meeting of the Salem ZBA of Appeals. Seconded by Mr. Duffy. The vote was unanimous with five (5) in favor and none (0) opposed.

The meeting ends at 11:50PM.

For actions where the decisions have not been fully written into these minutes, copies of the decisions have been posted separately by address or project at:

http://saalem.com/Pages/SalemMA_ZoningAppealsMin/

Respectfully submitted,
Erin Schaeffer, Staff Planner