

**City of Salem Planning Board and City Council
JOINT MEETING
Approved Minutes
Monday, April 30, 2018**

A joint meeting of the Salem Planning Board and the City Council was held on Monday, April 30, 2018 at City Hall Annex, 93 Washington Street, Salem, Massachusetts.

Beth Gerard opens the meeting and outlines procedures.

I. ROLL CALL

Planning Board Members present: Chair Ben Anderson, Carole Hamilton, Helen Sides, Matt Veno, Bill Griset

Planning Board Members Absent: DJ Napolitano, Kirt Rieder, Dale Yale, Noah Koretz

City Council Members Present:

Arthur C. Sargent II, Councilor At Large

Thomas H. Furey, Councilor At Large

Domingo J. Dominguez, Councilor At Large

Elaine Milo, 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 – Presiding

Stephen G. Dibble, Ward 7 Councilor

Also in attendance: Tom St. Pierre, Building Inspector; Tom Daniel, AICP, Planning Director; Ashley Green, Staff Planner, Beth Rennard, City Solicitor

1. **An Ordinance Amending Zoning Section 3.0 - Table of Principal & Accessory Use Regulations amending scrivener's errors from 2009 recodification including allowing a dwelling above first floor retail, service or office in B1 zone; allowing by right clubs, indoor commercial recreation, service, plumbing/carpentry/sheet metal, restaurants, manufacturing, storage, research/development and adult daycare in Industrial (I) zone; allowing by special permit outdoor commercial recreation and accessory structures in I zone.**
 2. **An Ordinance Amending Zoning Section 4.1.1 – Table of Dimensional Requirements establishing 1) max. height of fences and 2) dimensional requirements for B1 zone dwellings.**
 3. **An Ordinance Amending Zoning Section 10.0 – Definitions relative to dwelling unit; rooming, boarding and lodging house; general service establishment; assisted living residence; site plan review; and zoning bd. of appeal.**
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1. **An Ordinance Amending Zoning Section 3.0 - Table of Principal & Accessory Use Regulations amending scrivener's errors from 2009 recodification including allowing a dwelling above first floor retail, service or office in B1 zone; allowing by right clubs, indoor commercial recreation, service, plumbing/carpentry/sheet metal, restaurants, manufacturing, storage, research/development and adult daycare in Industrial (I) zone; allowing by special permit outdoor commercial recreation and accessory structures in I zone.**

Presiding Councilor Gerard notes that a letter re B1 zoning was received from Historic Salem, Inc.

Tom Daniel has submitted a letter with attachments to Councilors and the Planning Board. He outlines their contents. Ordinances referenced are included. He restates that the prior ordinance was a 1965 version, which was cumbersome to use for everyone. Usages were “nesting,” with each district referring to another; other challenges are outlined. The 2009 recodification was meant to keep policy and substance the same but make it easier to use, by formatting it into a table of uses to show what was allowed by right, special permit, etc. In that process, errors occurred. One of these was regarding swimming pools. One other continuing matter was the table of principal and accessory uses. Residential under old ordinance in B1 was and still is permitted today, but this question is whether or not a residential use can be located above commercial use. Nothing in the 1965 ordinance stated that that is allowed, yet it was stated that there could be multiple uses, subject to all provisions specified for each use. As such, if there was a property with ground floor commercial and upper residential, provisions of each use needed to be met. Given that language and its interpretation that there can be a mix of uses, and that this does reflect the character of those uses, this needs to be clarified.

The second part of this is Industrial uses. Similarly, there were recodification errors, plus a transmittal from Feb. 15 had a separate set of errors, so number (I) section 1(d) is outlined. Some changes are not needed, but what was originally 3, 4 and 6 had previously been allowed via special permit or as of right, then were omitted in the recodification. Also, in the (I) section, letter (C), regarding the Industrial uses; # 1, 2 and 4 were struck but are fine. #3 re mini storage warehouse facility should be as of right, not by special permit.

Councilor Turiel notes that the character of B1 is clear, though there are some cases of single story retail or commercial. He wonders how the dimensional tables work out in this zone, and what the permissible height is. Concerns regarding height limit were brought up at the last meeting; a 45’ height limit would be out of character, however a 30’ limit would be more appropriate. Tom St. Pierre clarifies that in the new recodification from 2009 the height limit is 30’ and no changes are proposed. Councilor Turiel is not concerned about the Industrial Zone.

Councilor McCarthy asks about how the codification as currently written is enforced. The zoning that appears in the book is what is enforced, but these hearings identify areas that, in Tom St. Pierre’s opinion, were missed or changed, and is in front of the Council to consider changing it back to how it was, or leave it as is since there was never any public hearing.

City Solicitor Beth Rennard pulled the 2009 vote to examine. They discovered in the vote that there was a section of repeal of the entire Ordinance that predates the recodification. The repeal does not revive any Ordinance but discussed future editions. The proper term to use would be “errors” though not necessarily “scrivener’s”. The old Ordinance no longer applies [due to its repeal].

Councilor Sargent notes that B1 must still comply with the dimensional requirements of R3 which has a height limit of 45’. Tom Daniel reiterates that this was discussed at the previous meeting and will continue to be discussed during revision. A discussion of minimum areas and what is allowed by right ensues; Councilor Sargent is concerned that other parts of the City would be opened to housing above retail. Tom St. Pierre notes that Zoning is based on the table of uses. Moving forward, codification was meant to prevent a “cascading” effect throughout the zones. Regarding strip malls, the language says a project must still meet the requirements of each use, so a business in B1 would have to meet parking requirements, and if they proposed to add on residential, would have to go by the number of units x 3500 square feet, plus 1.5 or 3 parking spaces per unit, so the risk of this happening is small.

Public comment in favor: None

Public comment opposed:

Polly Wilbert of 7 Cedar St.

Concerns:

- Changes made today could negatively impact investments by those who developed as per the code as it presently stands, as developers could argue that they have been damaged by the inability to maximize their investment
- Feels these are changes, not errors

Beth Rennard clarifies that 5 ordinances were advertised. One change in section 3 referenced scrivener's errors, while the others did not. Re scrivener's errors, these are changes to zoning, but only deletions which are appropriate are being proposed, and they do not require notice. Re other issues, there are no significant changes, so if the council feels that the language describing these as scrivener's errors should be struck, it can be.

Flor Tonthat of 30 Northeast St. feels that the maximum height of 30' and lot size of 3500 square feet in B1 is appropriate

Justin Whittier, 10 River St.

Concerns:

- Industrial areas abut neighborhoods, which should be protected
- Industrial usages should have to undergo a special permit process, rather than developing as of right
- Size of retaining walls.

Tom St. Pierre explains that the retaining walls as mentioned are measured from the inside of owner's wall. Backfilling behind a retaining wall is not allowed. Any change in elevation of more than 2' must be subject to the Engineer's office.

Councilor Turiel asks if the B1 zone contains lots of businesses below housing. Currently, according to the table it is an "N" (not allowed) so he wonders what the process would be if a first-floor business vacates and the new owners wish to replace that business with a shop or restaurant, as this is currently not allowed. Tom St. Pierre clarifies that if it is a similar use, it would be grandfathered, but if new, would have to comply with current zoning. Changing from one nonconforming use to another requires a special permit. Tom St. Pierre observes that the trend in B1 is that small businesses struggle and they want to replace some space with an additional housing unit. Councilor Sargent notes that the process seems to work with grandfathered uses and ZBA input.

Barbara Cleary, 140 Federal St. recommends deletion of the "scrivener's errors" language and is still concerned that these changes were not advertised correctly. She also feels that the uses in the Industrial zone should require a special permit rather than being as of right.

Tim Jenkins of 18 Broad St.

Comments/concerns:

- Density vs. dimensional requirements
- How this was advertised; notes that City could protect itself against claims that investors bought properties that they could not use to full extent possible by re-advertizing.
- Special permits should be obtained in Industrial areas if they will be next to other uses. The ability to review certain uses is important

Mike Becker of 2 School St. Court points out that, based on his research, only 7 units have been added throughout the entire city over the past 9 years. B1 lots are small with very few exceptions, so adding a 3500 square foot lot size restriction precludes most lots from having any housing added above. He also provides Bridge St. before and after photos. It is ECOD (Entrance Corridor Overlay District), meaning that those unfamiliar with Salem drive in and see it. North St. has not had such redevelopment, but people have invested in Bridge St. A 3500 square foot per unit requirement would preclude all ECOD lots from adding anything, yet they still need to meet parking and

setback requirements. If nonconforming, a project must go to the ZBA anyway. Someone worried that thousands of units could be added around town, but that is not possible. He feels that possibly one or two dozen additional units are possible but does not feel that this possibility warrants such drastic change. He outlines the benefits of current zoning:

- Encourages redevelopment of current structures. Old structures about the sidewalk
- Renovations have to comply with current building code, so there is an increase in safety
- Oversight is in place; developments of more than 5 units require PB approval, and nonconforming projects requires ZBA approval
- Provides an increase in homeownership
- Aesthetics have improved
- Revenue re 103 Bridge St. is outlined. Taxes in 2014 were \$4,423, while in 2018 they were more than \$27,000 after that address was done over. Condos are selling for far more per square foot than previously; that area is more expensive than the rest of the City. Many Bridge St. new owners are happy to pay those kinds of taxes.

Flor Tonthat of 30 Northeast St. asks about the possibility of grandfathering re the 3500 square foot requirement. All additions would need to comply or obtain relief from the ZBA. If razed, the grandfathering option goes away. Tom St. Pierre comments that such variances are not a concern.

Councilor Turiel cites the example of 172 Lafayette, which is in B1, and has a retail base and a small parking lot. He asks what the process would be if they wanted to add one or two floors. Tom St. Pierre explains that the site barely meets parking requirements for the existing use, so would need a variance, few of which have been granted. Mike Becker notes that the lot meets front but not side or rear setbacks, so is nonconforming, but would need special permit. Why not make anything that adds a unit subject to design review?

Councilor Dibble feels that the “scrivener’s errors” language should be struck and that these are zoning changes. He asks Tom St. Pierre if the 30’ height restriction in B1 will remain; it will, as will the requirement of 3500 square feet per unit proposed. The changes are meant to avoid the “domino effect” of the old ordinance. Councilor Dibble still feels that this was advertised and posted incorrectly, thus tonight’s hearing is not legal and should be readvertised as zoning changes, and the process re-started.

City Solicitor Beth Rennard states that there is no question that these are zoning amendments. She outlines the ad, noting that all case law is based on whether or not the public received notice that there would be a change that affects them. She feels that everyone who was interested in this change did get notice. She does not have a problem with readvertising but feels it is not necessary. Councilor Dibble still disagrees. It is clarified that the language “An Ordinance Amending Zoning” was what the City Solicitor stated, so as it was clear that an amendment was proposed to be discussed, the use of the term “scrivener’s error” does not mean that the public was not sufficiently notified of the items to be discussed tonight.

City Solicitor Beth Rennard also comments that the legal ads posted and in the paper are different than what the Clerk puts on agenda. “An ordinance amending zoning section 3” was the language in the legal ad in the paper and at City Hall.

Councilor Sargent thought abutters were notified by mail of amendment changes but they are not. He feels that for any piece of property affected, the owner should have gotten something in the mail. He also feels a working group should be formed to examine these issues.

Polly Wilbert of 7 Cedar St. re-emphasizes re sunshine ordinance, feeling that due to the confusion created by the original reference to “scrivener’s errors,” this diminished the importance of the matter in the mind of the average

citizen. They would have felt that nothing major was happening here. Sufficient notice was thus not provided re changes to zoning. The process should restart and be readvertised.

Councilor Dibble motions to end this process regarding zoning amendment section 3 and start over, in order to properly advertise by calling these zoning changes. He is seconded by Councilor Sargent. 5 vote in favor with 6 opposed, and the motion does not carry.

Mike Becker notes that he would have appreciated written notification as he owns several B1 properties and is very interested in the process; he only found out about the topic of these meetings as it was posted in the Building Dept. offices.

Councilor McCarthy moves to close yhe public bearing, and the matter carries.
He then moves to refer the matter to the Planning Board for review, and that motion also carries.

1. An Ordinance Amending Zoning Section 4.1.1 – Table of Dimensional Requirements establishing 1) max. height of fences and 2) dimensional requirements for B1 zone dwellings.

Councilor Dibble has excused himself as he had a previous engagement.

A maximum height was originally included, but then was deleted when recodified; a memo notes that the 1965 table did not include the NRCC column and had industrial limits at 15', but these are now proposed at 10' to conform with other commercial uses. Other language changes are outlined. Although the language appears to be redundant, if there is residential in a commercial district or vice versa, this calls out the fence height restrictions.

Regarding dimensional requirements for the lot area per dwelling unit in a B1 district, that language originally mirrored that of R3 zoning. What was stricken and added is shown; only a minimum lot area per dwelling unit of 3500 square feet is now included, not the height. It is noted that the April 9th discussion revealed the unintended consequence of raising the height limit, so the problematic language was eliminated.

Councilor Turiel was concerned about the changes but inserting a dimensional requirement was not there, so he is satisfied.

Public comment in favor: None

Public comment opposed:

Tim Jenkins, 18 Broad St. is concerned with the notification process and feels that those whose properties will be affected by zoning changes should be more clearly notified. He feels that such notification should be included in the Ordinance.

Beth Rennard comments that it can be explored but the matter is not before the Council right now.

Chair Ben Anderson of the Planning Board asks about the maximum height of retaining walls and fences. The ECOD has fence height restrictions, and that is an overriding District, so would trump this, as it was done specifically for that area.

Councilor McCarthy moves to close the public bearing, and the matter carries. He then then moves to refer the matter to the Planning Board for recommendation, and the matter carries.

1. An Ordinance Amending Zoning Section 10.0 – Definitions relative to dwelling unit; rooming, boarding and lodging house; general service establishment; assisted living residence; site plan review; and zoning bd. of appeal.

Tom Daniel outlines the changes to the definitions in question.

Councilor Sargent asks what is a “general services establishment”. These would be wholesale laundry vs. retail dry cleaners, by way of example. Upholstery, appliance repair, etc.

Public comment in favor: None

Public comment opposed:

Polly Wilbert 7 Cedar St. is still concerned re assisted living residence, as she does not believe it is legal as medications must be administered by a licensed professional to provide assistance with medication.

Councilor Milo asks if there is a difference between dispensing and medical assistance, i.e. putting pills into reminder boxes vs. someone coming in and administering/dispensing it. The latter does require a medical professional, but the former could possibly be a CAN. She is not sure but this is how she feels. Presiding Councilor Gerard notes that she worked on a PCA (Personal Care Assistant) program, not at the clinician level.

Councilor Turiel asks the City Solicitor if the state definition is accepted and assisted living is on the books, regarding the facility, would the licensing process cover medical professionals/dispensing, etc.? Beth Rennard is unsure but can research. The intent here is to simply distinguish such facilities from a hospital. Tom St. Pierre comments that the City does not have this definition its zoning, but this is frequently asked. The definition is to distinguish it from a nursing home.

Councilor McCarthy feels as long as this distinction/definition is somewhere, it is acceptable, but should be identified.

Councilor McCarthy moves to close pub bearing, and the matter carries. He then moves to refer the matter to the Planning Board for its recommendation, and the matter carries.

A motion to adjourn is made by Councilor Furey and passes unanimously.

The meeting ends at 7:32PM

Respectfully submitted,
Stacy Kilb, Recording Clerk

Approved by the Planning Board on 06/07/2018

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