

**City of Salem
Joint Planning Board & City Council
Special Meeting Approved Minutes
Thursday, July 20, 2017**

A special meeting of the Salem Planning Board was held on Thursday, July 20, 2017 at 6:00pm at City Hall, 93 Washington Street, Council Chambers, Salem, Massachusetts

Council President Milo calls the meeting to order at 6:00pm

I. ROLL CALL

Those present were:

City Council: President Elaine Milo, Councilors: Arthur Sargent, Thomas Furey, Jerry Ryan, Robert McCarthy, Stephen Lovely, David Eppley, Josh Turiel, Beth Gerard, Stephen Dibble, and Heather Famico.

Planning Board Members: Chair Ben Anderson, Bill Griset, Matt Veno, Helen Sides, Kirt Rieder, Dale Yale, and Noah Koretz are present.

Tony Mataragas and Carole Hamilton are absent.

Also present: Tom Daniel, AICP, Planning Director, Illene Simons, Assistant City Clerk and Amanda Chiancola, AICP, Staff Planner.

Attorney Bill Quinn of Tinti, Quinn and Grover introduces the project. Mr. Quinn says that he is not here for a developer, he is representing the four individual property owners. The buildings have always been mixed use buildings. They are located in the R-2 Zone, each has commercial on the first floor. It is very difficult for these property owners to change commercial tenants from one use to another, because a Special Permit for a non-conforming use is needed and a parking variance. If a tenant wants to come to Salem, they have plenty of space across the street on Pickering Wharf to choose from, and all they need to do is sign a lease. Whereas a tenant going into the subject properties would need to go to the Board of Appeals, which will take at least 3 months and we do not know whether it will get approved.

The commercial uses are similar between B-1 and B-5, but they are seeking B-5 because B-1 would only be half a favor since they would still need a parking variance.

Noah Koretz and Dale Yale arrive at 6:06pm.

A request for a parking variance is required every time tenants change, and a special permit for one nonconforming use to another is also required. The special permits are difficult, lengthy, and subject to appeal. Parking in the surrounding neighborhood is explained.

The applicant stills need a parking variance if no change, so this would resolve the special permit issue. The applicant would like to avoid having to go before the Zoning Board of Appeals every time a tenant changes. All lots are under 4,000 square feet each, and only add up to 9,600 square feet in total, divided by a street in the middle. New buildings will not be skyscrapers unless the ZBA grants appeals, because variances for lot area per dwelling unit and parking (for residential) would be needed. and that is not likely. There is no risk for overdevelopment on Derby St. This is not a risk for high rise development.

Mr. Quinn addresses two additional arguments that he has heard:

First, the Boston Archdiocese has a vacant property that abuts the properties in question at the rear. It is zoned R2, but will not be developed by anyone; right now it is an exempt religious use, so it is conforming, and cannot get a use variance because that is not allowed. So that property is never going to be developed unless they keep doing what they are doing, or if they apply to rezone their 1.6 acres. If the archdiocese wishes to develop it, they would not need our little properties to do so.

In addition, PUD is not available in the R2 district so property must remain under the same use, or apply for rezoning.

Secondly, there is a concern that allowing this zoning to change to B5 will allow commercial zoning to “roll down” derby street. That is unlikely, as the National Park district property is on one side, Pickering Wharf is already B5, and it is mostly residential, so there is nothing for us to “roll.” The applicant is not intending to rezone the area, and it is not possible regardless.

Despite the fact that B5 has a height limit of 75 feet, by no means that they will build to that height. Mr. Quinn points to nearby properties are that zoned B5, that are not 75 feet. He says that have not been built that tall because they would have to meet zoning dimensions, i.e. lot area, parking, building to lot ratio. They would not be able to build to 75 feet because of the other zoning requirements.

Mr. Quinn notes that it is unfair that these buildings were left out in the first place; if the desire is to preserve them, they should be on a level playing field so that the applicant can make enough income to maintain them. Do not put them in a position where every time they try to get a new tenant, the tenant goes someplace else due to all the red tape they have to go through.

Councillor Famico asks how many commercial usages have changed over the past 20 years, and if this becomes B-5 would the upstairs residential units be considered new? Mr. Quinn responds he does not have that information. Councillor Famico says the Council Famico asks for this information when they come back to Council. Upstairs residential units would remain so; they are currently nonconforming. If they wanted to change the units, e.g. put in an addition or subdivide units then it would trigger parking requirements.

Councilor Turiel:

- Concerned that significant changes are likely with a switch to B5. He understands it is unlikely for these properties to be redeveloped due to zoning requirements, but it could involve serious changes, without DRB and SRA oversight he is concerned that changing the zone alone would change the character of the neighborhood.
- Would be more supportive if properties were added to the Salem Redevelopment Authority (SRA) district

Discussion of design and Urban Renewal occurs. Mr. Quinn says any construction of these buildings that require Site Plan Review, would require site plan review, e.g. 6 or more residential units. Mr. Quinn does not have an objection to design review, but it is not something they can just volunteer for. There is a statutory apparatus in place. If the City decided to expand the Urban Renewal area to include these buildings, they would be happy to be included. But his clients do not want to take on the expense to be the petitioners that apply to expand the urban renewal area.

McCarthy:

- Wonders what would it take to expand Urban Renewal district. Necessary amendments and the public process are described by Planning Director, Tom Daniel. Mr. Daniel explains that the SRA includes protections in addition to design review the redevelopment authority has the authority to prevent demolition.

Councillor Eppley:

- Says the expansion of SRA protections in general (not talking about B-5) would be a good discussion for the Planning Department to have, to include the church and school as part of that, as other parts of the City are close to downtown that would also be deserving of SRA protections.

Tom Furey arrives 6:24PM

Mr. Daniel describes the zones currently on Derby St.

Councillor Famico asks, if zoning changes and then a permit was put forward, would it have grandfathered into current SRA regulations? Mr. Daniel says that he would need to confirm this with the City solicitor. If zoning changed but the Urban Renewal was not changed, the project would be subject to regulations of the zoning ordinance but not SRA review.

Matt Veno asks Mr. Quinn why B1 is not preferable to B5. Mr. Quinn responds that the B1 Zone does not include use of municipal parking facilities to satisfy commercial tenants; only B5 does that, so if the zone changes to B1, it would be half an improvement, and the applicant would still need one variance, not two from the ZBA. Parking variances are very difficult to get.

Councillor Dibble reflects how this area has changed. But says these commercial tenants have been there a long time. He says there have not been many changes over the past several decades. He wonders how difficult it has been since the existing tenants have been there for a while. Mr. Quinn says it is not fair to say you have had good tenants over the years, good luck hope, it holds out. Councillor Dibble does not see how it has been a burden given that these tenants have not changed over the years, he contends that special permits are not much of a problem here.

Differences between illegal vs. nonconforming use are outlined

Discussion of Heritage Plaza and Urban Renewal Plan.

Councillor Turiel:

- Occupied buildings are described; Zone B1 continues up Derby St, covering several existing blocks, and changes of tenant's triggers Zoning Board of Appeals review. That happened recently, but as far as he recalls, there was no parking requirement triggered. However, this was just a change of tenants, not a change of use, so did not trigger review.
- Mr. Daniel says he would want to confirm with the zoning officer. Mr. Quinn clarifies that one restaurant to another is the same use, so it would not trigger a parking variance. But changing the use, e.g. from a bookstore to restaurant, or restaurant to dentist, would change the use that would trigger the parking requirement.
- Mr. Quinn believes says that different types of commercial uses have different parking calculations, thus any change from one commercial to different type of use would trigger the need for a variance.

Councillor Famico:

- Comments on the policy of reserved parking spaces in the South Harbor garage. Parking requirements allowing the use of municipal lots, needs to be re-thought, as it negatively impacts the parking situation. Mr. Famico asks if abutters were notified, as discussed at the previous meeting. Councillor McCarthy sent out a notice to abutters.

The Council President opens to public comment:

No one speaks in favor of the change

Opposed:

Jennifer Firth, Historic Salem Inc.

- Concerned that the potential for demolition is too high
- She feels the applicant’s argument against B1 is disingenuous. ZBA process provides transparency when you need to get a special permit or variance that she does not want to lose. To try to rezone to get around going to the ZBA and having that transparency is not a good place to be.
- She concurs that the B-1 parking requirement should be rethought. We want to see people walking, a parking requirement is detrimental for businesses that want to be in tight areas such as this.

Victor Gart, Noonan St.

- Concerned that zoning change could allow a marijuana shop to open there
 - Specific uses regarding updated legislation are being reviewed, unknown at this point
 - Mr. Quinn adds that all locations would have to be approved by City and State, so a marijuana shop could not just be opened in a business district.
 - Councillor Eppley comments that they can’t be close to a house of worship, so probably resolves that issue off the bat.

Discussion ensues regarding which zone this should be changed to. The parking requirement for B1 is a discussion for another day. Councillor McCarthy asks the Planning Board to consider the issues that came up; the appropriate zone, and the protections. A lot of questions were raised regarding protections, he would appreciate the Planning Board look at that.

Councillor Dibble comments that there are advantages of leaving the area R2. Councilor Sargent contends that a change to B5 would add value to businesses at the expense of residential properties.

A motion to close the public hearing is made by Councillor McCarthy, seconded by Councillor Eppley, and passes unanimously.

A motion to refer the matter to the Planning Board is made by Councillor McCarthy, seconded by Councillor Eppley, and passes unanimously.

Adjournment is at 6:50PM

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://www.salem.com/planning-board/webforms/planning-board-2017-decisions>

Respectfully submitted,
Stacy Kilb, Recording Clerk

Approved by the Planning Board on 09/07/2017

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