

## City of Salem Planning Board Meeting Minutes, December 3, 2020

Chair Ben Anderson calls the meeting to order at 7:00 pm.

A public hearing of the Salem Planning Board was held on Thursday, December 3, 2020 at 7:00 p.m. via Remote Access. Public participation was possible via zoom video and conference call.

### I. ROLL CALL

Those present were: Chair Ben Anderson Vice Chair Kirt Rieder, Carole Hamilton, Helen Sides,

Noah Koretz, Tom Furey, DJ Napolitano (7)

Absent: Bill Griset, Matt Smith (2)

Also in attendance: Mason Wells, Staff Planner, Tom Devine, Senior Staff Planner

Recorder: Stacy Kilb

#### II. REGULAR AGENDA

A. Location: 57 Marlborough Road / Osborne Hills

Applicant: Osborne Hills Realty Trust

Description: The applicant has requested a continuation to the regularly scheduled meeting on December 17, 2020 of the public hearing for all persons interested in the application of OSBORNE HILLS REALTY TRUST for a Definitive Subdivision Plan and Cluster Residential Development Special Permit for the property located at 57 Marlborough Road (Map 09, Lot 0001) and currently shown as Phases 6, 7, 8, 9, and 10 of the "Definitive Subdivision of Osborne Hills Realty in Salem, Massachusetts" dated November 2, 2006 as approved under the Subdivision Control Law by the Salem Planning Board, comprising Lots 88 through 131. Specifically, the applicant proposes to modify the previously approved Subdivision and Special Permit to change the lot area and lot frontage of 44 lots that are situated in the Residential Conservation (RC) zoning district and to construct the roadways and utilities to service the construction of these modified phases.

Mr. Dibiase is requesting this continuance as the Traffic and Civil peer reviews are not yet available. Kirt Rieder notes he pointed out to Mason Wells more than an hour ago that some of the files are unreadable; please resolve before this applicant appears before the Board again.

A motion to continue to the Dec. 17, 2020 meeting, is made by Kirt Rieder, seconded by Helen Sides, and passes 7-0.

Ben Anderson Yes
Bill Griset Absent
Carole Hamilton Yes
Helen Sides Yes
Kirt Rieder Yes

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Noah Koretz Yes
Tom Furey Yes
Matt Smith Absent
DJ Napolitano Yes

B. Location: 32-50 Federal Street (Map 26, Parcel 0413)

Applicant: Tom Daniel, City of Salem

Description: Continuation of an endorsement of a Plan believed not to require approval

under the Subdivision Control Law (ANR).

Mason Wells outlines the ANR, which he recommends. Kate Newhall Smith (Principal Planner, Economic Development/works with SRA/DRB) is also available to answer questions.

- Plot Plan is outlined, standard ANR lot split
- Chair Anderson requests an update for what is being planned and the reason for the ANR.
- Two courthouses are actually connected; they were connected in the 1980's to be efficient, but are on same plot as probate court
- Purpose of ANR is to subdivide the one large lot, put each court and the probate court on their own properties, to facilitate preservation and redevelopment of courthouses
- Nov. 10 SRA meeting announced had selected Winn Development as the Developer
- Kirt Rieder wonders, when the split is completed, will the connector go away? The logistics of the split are described
- There will be use of the Drive down to Bridge street. Working w/DCAM Capital Assets Management. Probate Court knows of plan, there will be easements of access, not for parking but deliveries or access to the property for future development
- Will redevelopment come before PB or only DRB?
  - Courthouses are a beast to restore, both financially and logistically. City Council transferred ownership across the street to RDA to package that with the courthouses to facilitate finances. Redevelopment of courthouses will not come before PB but development on other lot will, in form of PUD
  - Kirt Rieder asks if it doesn't come before the PB, does it go before DRB? Courthouse probably will not, as there is a preservation restriction that will be recorded that will govern what can be done (not much) to the exterior. Kirt Rieder asks if there is no SPR, there is a preponderance of parking that may be seen as counterproductive to the project. If DRB or PB are not examining it, to what extent does the City have input to the Site Plan, not just the building?
  - Chair Anderson asks if housing is being proposed? Yes, if more than 6 units will come before PB. The Board will see these two buildings and the site across the street
  - Everything in Urban Renewal Area so SRA and DRB will review it all
- Mason Wells notes that Tom Daniel has authorization to sign this

A motion to approve the ANR is made by Carole Hamilton, seconded by Helen Sides, and passes 7-0.

Ben Anderson Yes
Bill Griset Absent
Carole Hamilton Yes
Helen Sides Yes
Kirt Rieder Yes

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Noah Koretz Yes
Tom Furey Yes
Matt Smith Absent
DJ Napolitano Yes

**C.** Location: 217-221 Essex Street (Map 35, Lot 251)

Applicant: Essex Street Lofts, LLC

**Description:** The applicant is returning to review the placement of an electrical box. The applicant has also submitted their revision to the Salem Redevelopment Authority for their concurrent review.

Joey Arcari, owner, represents his project.

- National Grid indicated a bus enclosure (type of transformer) was needed for the project, but both properties are on zero lot lines; it cannot be inside the building or any type of vault as National Grid needs access at all times
- Met with SRA and DRB, settled on current plan with enclosure 5' from the second window from the back; seven new trees and three benches will be spaced out. DRB suggested a stainless steel enclosure with black bollards surrounding, on a concrete pad
- DJ Napolitano asks if there is anything else in the area; it is unique to his building and will only serve his building. Wonders if there is no place on the roof it could be placed; no, as National Grid needs access without having to call someone
  - Feels the proposed setup would not fit and would prefer shrubbery
  - Chair comments that as this is Utility company equipment, they also need access to back a truck up, pick it up so it must remain open per their requirements
  - Helen Sides was not at DRB meeting; a letter from Cathryn Miller is in the folder or on email
  - O Kirt Rieder commends the Applicant on being so patient w/process; it was a great presentation the first time around. Appreciates his willingness to put in 7 new trees and provide benches and accommodate various opinions regarding this bus. Agrees that stainless steel is the correct thing to do, without efforts to hide it. Cites Footprint Power Plant, which is stainless steel and reflective, less obtrusive. Also, Speedway Gas Station has a stainless steel transformer. They tend to disappear *unless* you actively try to hide them
  - O Helen Sides agrees with Kirt Rieder, and notes that boxes on the street are so ubiquitous that they disappear
  - Kirt Rieder notes that he is on the Tree Commission, has been discussing what trees should go there, his comments have been provided to Bob LeBlanc, but feels layout is completely good w/him and DRB
- Procedural issues are discussed

A motion to approve as an insignificant change is made by Kirt Rieder, seconded by DJ Napolitano, and passes 7-0.

Ben Anderson Yes
Bill Griset Absent
Carole Hamilton Yes
Helen Sides Yes
Kirt Rieder Yes

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Noah Koretz Yes
Tom Furey Yes
Matt Smith Absent
DJ Napolitano Yes

D. Location: 0 Story Street (Map 23, Parcel 2)

Applicant: Stephen Lovely, Castle Hill Group, LLC

**Description:** A continuation of a public hearing for all persons interested in the application of STEPHEN LOVELY, CASTLE HILL GROUP LLC for the property located at 0 Story Street (Map 23, Parcel 2) at the west end of Cleveland Street bounded by St. Anne's Church, City of Salem, St. Anne's Park and land of Bradbury and Chasse, for a Definitive Subdivision Plan. Specifically, the applicant proposes to allow construction of an extension to Cleveland Street which will create a tee turning area and the construction of 3 single family dwellings on the approximately 5.65 acre site.

Mr. Lovely does request to continue to December 17. Mr. Lovely is seeking some direction prior to the next meeting.

A motion to continue to the December 17, 2020 meeting, is made by DJ Napolitano, seconded by Noah Koretz, and passes 6-0.

Ben Anderson Yes
Bill Griset Absent
Carole Hamilton Yes
Helen Sides Yes
Kirt Rieder Yes
Noah Koretz Yes

Tom Furey Abstain/Ineligible

Matt Smith Absent DJ Napolitano Yes

A motion to extend the timeline for final action by the Planning Board, in order to proceed in a more conventional way and obtain Applicant's input, to December 23, 2020 is made by Noah Koretz, seconded by DJ Napolitano, and passes 6-0.

Ben Anderson Yes
Bill Griset Absent
Carole Hamilton Yes
Helen Sides Yes
Kirt Rieder Yes
Noah Koretz Yes

Tom Furey Abstain/Ineligible

Matt Smith Absent
DJ Napolitano Yes

The timeline for Mr. Lovely's review is outlined.

E. Location: 0 Story Street (Map 23, Parcel 2)

Applicant: Stephen Lovely, Castle Hill Group, LLC

**Description:** A continuation of a public hearing for all persons interested in the application of STEPHEN LOVELY, CASTLE HILL GROUP LLC requesting a waiver of frontage requirements of the Subdivision Control Law for Lots A and B located at 0 Story Street (Map 23, Parcel 2) at the west end of Cleveland Street bounded by St. Anne's Church, City of Salem, St. Anne's Park and land of Bradbury and Chasse.

This item is heard prior to item (D).

Stephen Lovely represents his project.

- Appreciates work of Mason Wells and staff at Planning Department.
- Notes frustration of Board with himself and Application; outlines reasons for continual continuances; says reasons were out of his control.
- Criterion for waiver of frontage has to do with public safety; road as laid out can accept utilities, will have curbing, sidewalk, tree plantings.
- Safety argument: Cleveland St. extends beyond pavement into what appears to be a parking lot and another subdivision. People, for 40-50 years, used Cleveland St. and extension to park for Church services and events. He was surprised and asks, "is it safe for an individual to leave property as developed?" Also, road itself will be built to subdivision standards, wants to make properties good for neighborhood and City, surprised at objection to waiver as they have Fire Dept. and ZBA approval, Conservation Commission was OK with it and was waiting on PB
- Helen Sides comments that she said before, says it now, Applicant is speaking with no Plans for the Board to look at. Need to see drawings so that as the project, frontage, distance are described, the Board can see it, hence the confusion. There were alternative Plans and she cannot remember what is being judged.
  - He does not have capability to share Plans; Mason will share
  - O Sharing of Plans and the procedure are discussed. The Board notes that the Applicant has seen many presentations and should be aware of the Board's expectations
- Kirt Rieder: no mention of proximity to resource area and encroachment of homes and roadway into the resource area
  - Mr. Lovely thought that, having gone to ConCom and ZBA, moving further from the resource area was a good thing. Could get a 10-15' setback rather than 40' setback. ConCom gave an Order of Conditions on an alternative Plan that he would nprefer not to use; this is a better Plan. If moving two homes closer to the street would allay PB concerns, he would do that
  - O Discusses moving houses further out of buffer zone
- Kirt Rieder: reiterates importance of having a graphic
- Moving houses away from wetlands is further discussed
- Willing to have it continued or contingent upon approval of Board
- Continuance of Cleveland St. under original subdivision; T on right side coming down, there is a collection of lots, rec'd approval with conditions to put house on that location, but would prefer not to as it is in the buffer zone, but they approved b/c a significant amount of pavement would be reduced
- Chair: Notes the above discussion is part of next item, need to stick to waiver of frontage now

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- He is frustrated that in subsequent submissions it was unclear what the Applicant was asking the Board. Feels Applicant is trying to fit too much on the site, too big of an ask. The requirement is 200'.
- Mr. Lovely cites safety criterion for waiver
- Draft was not shared with Applicant; Chair Anderson cites Waiver of Frontage requirement. "PB may...waive compliance w/rules and regulations w/frontage and access requirements." Not sure he agrees, does not feel it is in public interest to waive frontage, feels it is inconsistent w/purpose of subdivision control law. One too many homes there, even at two the Applicant could meet frontage, but there is no plan related to that
- Kirt Rieder asks if the Board can revisit Lynn Duncan's comments for the City. Stephen Lovely says each of her memorandums reiterated what the Chair just said, but he still feels it needs to go forward. Declining him must be based on something, such as on case law
- DJ Napolitano asks if it must be peer reviewed, do we need testimony from PD and FD? Do we need a letter from them? The Board could ask; a request for comments was made, but none received
  - O Kirt Rieder notes that consultant to the City, Lynn Duncan recommends against it, so do we need further justification other than that? Typically, City provides opinion on projects, why do we need add'l peer review? Chair feels we don't, DJ Napolitano was just asking, making sure a good strategy is to rely on Lynn Duncan's memorandum
- Carole Hamilton also agrees that it is not in the public interest, cramming lots into a road that is much too small
- DJ Napolitano is concerned re case law; if we deny this tonight based on Lynn Duncan's assessment (shown on screen), Applicant appeals, and Board decision is overturned b/c case law is specific to public safety
- Carole Hamilton comments that advice received about inconsistency w/subdivision control law is sufficient; it is not the Board's place to worry about down the road. City Solicitor and Assistant both saw this, and did not note anything problematic
- Chair Anderson: We are being asked to interpret zoning and Subdivision control law; it is the Board's decision to make with the information received.

The Chair opens to public comment.

Patrick Chasse, 14 Cleveland St.

- Last house to the Church parking lot
- Feels putting houses there would be the best thing to happen; makes area safer, no drug users since fence was put up
- Safety is not an issue

Stephen Lovely notes that there was no testimony regarding public safety and that the explanation given so far was a reaffirmation of the statute/zoning ordinance, and he wants that on the record.

Tom Furey was advised by the City Solicitor that he is ineligible to vote on this item.

A motion to close the public comment period is made by Helen Sides, seconded by Carole Hamilton, and passes 6-0.

Ben Anderson Yes
Bill Griset Absent
Carole Hamilton Yes

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> Helen Sides Yes Kirt Rieder Yes Noah Koretz Yes

Tom Furey Abstain/Ineligible

Matt Smith Absent
DJ Napolitano Yes

The Board reviews the Draft Decision; Mr. Lovely asks for a copy. Chair Anderson is not sure what precedent is, if the Applicant has not seen a copy. The Board can modify and discuss the Draft. Was it in the public folder and not the Board's obligation to share? It was not in a public folder but went out today.

- Mr. Lovely objects to not having been presented with this document earlier; Applicants sometimes have access prior to review at the meeting. Chair Anderson notes he can review before the document becomes final; Mason Wells will share, he can review and the Board can finalize. They are going to vote but some of document can be modified.
- Kirt Rieder wonders, if we vote one way or the other and there are significant changes/several Board members decide changes are not in line with vote, how does it work? Changes can only be insignificant scriveners' corrections, not substantive in any way.
- DJ Napolitano wonders if there is a precedent that we share this with others, wants it to be airtight, not disputed b/c of a technicality like Mr. Lovely not receiving a Draft before the meeting. This has happened before and the Applicant was willing to work within the limited time frame.
- Noah Koretz: Surprised that it was a Draft Decision in the negative with no opportunity to vote in favor of the proposal; you would just be saying if a PB member wanted to vote in favor of granting the waiver, technically one cannot do that based on what is before use, b/c we can vote to "not, not deny is." Boards usually vote the best Decision up or down; I can't think of a precedent for voting on one as written
  - Chair: This document is a recording of the Board's decision, so members are not voting
    on a document but on the Board's decision. There will be a motion to approve a waiver
    of frontage, and this will be voted yes or no. The Decision is a record of what went into
    the vote.
  - Noah Koretz notes he is voting on all detail in proposal in front of him.
  - O Chair: much of that is recorded here, but there is accumulated knowledge over a number of meetings, which is not recorded. This is a paraphrased version. Noah Koretz says it may not be wrong, but he has not seen this before.
  - Mason Wells notes that in drafting it, a previous draft had it framed as a positive, which would be a motion to approve, and the Board would vote yea or nay, but in view of Lynn Duncan's memo, they framed it thus.
  - Kirt Rieder: can we not continue this item and give an opportunity to re-draft this?
     Decision timeline only goes to Dec. 7, Applicant would have to request an extension of that timeline.
- Kirt Rieder, asks to redraft the decision as a more conventional motion to approve and to provide the applicant time to review these changes.
- The Applicant requests to extend the timeline for final action of the Board to December 23, 2020.

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## A motion to extend the timeline for final action by the Planning Board to December 23, 2020 is made by DJ Napolitano, seconded by Kirt Rieder, and passes 5-1.

Ben Anderson Yes
Bill Griset Absent
Carole Hamilton No
Helen Sides Yes
Kirt Rieder Yes
Noah Koretz Yes

Tom Furey Abstain/Ineligible

Matt Smith Absent
DJ Napolitano Yes

# A motion to continue to the December 17, 2020 meeting, is made by Noah Koretz, seconded by DJ Napolitano, and passes 5-1.

Ben Anderson Yes
Bill Griset Absent
Carole Hamilton No
Helen Sides Yes
Kirt Rieder Yes
Noah Koretz Yes

Tom Furey Abstain/Ineligible

Matt Smith Absent
DJ Napolitano Yes

#### III. OLD/NEW BUSINESS

A. Location: 57 Marlborough Road/Osborne Hills

Applicant: Osborne Hills Realty Trust

**Description:** Planning Board consideration of Osborne Hills Realty Trust bond reduction on

outstanding bonds for both Phases 4 & 5 of the subdivision.

This item is heard first.

Paul Dibiase, Trustee, owner and developer of Strongwater Crossing, requests the bond reduction.

- Tri Party agreements and bond amounts are described
- A bond reduction of \$108,963.25 for Phase 4 and \$67,144.00 for Phase 5 is sought
- Clerk of Works has provided Planning Board an acknowledgement of work done to their satisfaction

## A motion to reduce the outstanding bonds for Phases 4 and 5 as noted is made by Helen Sides, seconded by Noah Koretz and passes 7-0.

Ben Anderson Yes
Bill Griset Absent
Carole Hamilton Yes
Helen Sides Yes

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Kirt Rieder Yes
Noah Koretz Yes
Tom Furey Yes
Matt Smith Absent
DJ Napolitano Yes

## B. Update on Clark Avenue (Map 6, Lots 7, 8, and 9) – Woodlands Subdivision

Nick Mennino, owner and developer provides the update.

- 7 houses under construction, 13 have closed and 5 are outstanding in the final phase, along with the final piece of road
- Completion anticipated by end of 2021
- Chair notes site issues/Civil peer review
  - Major component of extension is to find a Clerk of the Works (CoW) who can do more
    extensive, in depth work than usual. Would be in that role at a lower rate than a Civil
    Engineer but would be onsite more frequently. Number of hours proposed by the City
    and Applicant is discussed.
  - O Mr. Mennino comments that the agreement was to find someone at a lower rate, more as a liaison, not just inspecting the technical part. If cold/snowing, and Applicant is not doing site and utility work, may not have a need for any inspections other than a weekly check-in due to the season.
  - Chair: Official RFP put out for this position? What was in the decision to extend the duties of CoW re site and neighbors? This is reviewed. To be out on site more regularly, looking at rock crushing, rock hammering, things that create noise and dust that would require dust suppression, would ensure Applicant is following through on those requirements. Mason Wells notes candidates for CoW
  - Applicant outlines schedule, hoping to finish late 2021 with all home construction, finish with roadway, curbing, sidewalks, then too. Bill Ross of New England Civil Engineering (NECE) can attest, though, that all heavy lifting (blasting, etc.) is done
  - O Chair asks about timing and how to estimate a number of hours, taking into account New England weather. Work out with Mason Wells? Mr. Mennino suggests doing similarly to NECE, going week by week to determine what will happen the next week
  - Chair: Plan on 10 hours/week, if no work happening, he can go
  - O Tom Furey compliments Mr. Mennino on the project. Mr. Mennino notes the challenges of the site
  - Mason Wells received notes from neighbors that rock hammering happened today or yesterday

### C. Enforcement Updates

375 Wharf St: 2 trees planted, not according to Plan; this has been communicated but Mason Wells has not received confirmation that they got it. Will get Planning schedule and response to Board, if the Applicant can address landscaping, will come before Board at a future meeting

### D. Review draft 2020 Planning Board Meeting Schedule

- No August and only one October meeting are proposed, as usual
- Chair suggests (jokingly?) to skip the October meeting? Helen Sides notes it is always a busy time, especially gets backed up if nothing in August.

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• Board meets at 7PM, will be meeting through zoom, wonders if trying a 6PM meeting time could work. Thoughts? Board members outline situations and opinions. Can change back to 7 if Boards go back to meeting in person. A note about changing the time to 6:30PM can be added to the document.

The Board votes to approve the schedule for 2021 with the meeting time changed to 6:30.

Ben Anderson Yes Bill Griset Absent Carole Hamilton Yes Helen Sides Yes Kirt Rieder Yes Noah Koretz Yes Tom Furev Yes Matt Smith Absent DJ Napolitano Yes

#### IV. APPROVAL OF MINUTES

**A.** Regular Planning Board meeting minutes for October 1, 2020.

Postponed, not in folder

#### Helen Sides

- Notes some good lectures she has attended, especially in Newton, regarding a large mixed use, sustainable 1 car-per-dwelling-unit development, connected to an old industrial building, creating another downtown node but all outside
- One about suburban development with outstreeter. Michele Wu of Boston was good too . Was thinking of contacting their Planning Dept to have things sent to us. May be a fee to access but PB has a budget.

#### Noah Koretz

- Osborne Hills coming back on 17th, unhappy with how that project went last time. He is not on Facebook anymore, but has gotten screenshots of images and continues to be disturbed that one City Councilor is calling out the PB for doing job and singling out one PB member. Members owe it to the Board and each other that we make sure we stick up for each other when things like this happen out in public. The end of the meeting was totally inappropriate, and he cannot believe members of the Board would be chastised by an elected official for doing what is legally required of them by statute
- DJ Napolitano notes that the last time it came up, he spoke up, and what he said was correct, so he became the poster child for everyone who is upset about everything. Board members owe it to each other to stick up for each other, make sure individual members are not punished for speaking their minds. In an ideal world we would be civil even when we disagree, there is no place for that sort of behavior that came up
- Nip it in the bud if it goes down that road again
- Kirt Rieder: I hope you mean timeframe will be condensed.
- Helen Sides: Or just insist on civility

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- Noah Koretz: Various people tried last time, but feels reflective of things going on elsewhere, We are all neighbors, at end of day we should be able to disagree without having people be attacked for trying to do their job
- Carole Hamilton: Board members should never be in a position where they have to take a stand on an item individually, feels people should have been cut off from discussing it as it went on and on and on, and to have someone as a City Council member questioning what Board is doing is reprehensible. He clearly did not understand the role of Planning
- Helen Sides: Fuel being poured on the fire. This issue was created after the fact and was taken out of context, Councilor ran with it and created a conspiracy
- Kirt Rieder: can we agree at next meeting, we must stay on topic and Board members should work to move conversation back to topic at hand, and not allow extraneous discussion
- Noah Koretz: It is incumbent on Board members to step in as the Chair runs the meeting
- Chair Anderson agrees but says it is a public comment period, the Board must let people vent a little but not take people to task personally. They do have a right to speak about an issue. However, he was watching the list, decided on a number of people he wa going to allow to speak, and made decision to stop it, but it was a tough call.
  - o In future if comments are repetitive/abusive he will signal Mason Wells to cut them off
  - O Carole Hamilton: When the Chair states, "we are not talking about X," and commenters do it anyway, they should be cut off. Members of the public can't talk about just anything b/c it's public comment, they must stay on topic
  - Noah Koretz: There is a difference between standards for members of teh public who want to vent/are concerned and behavior of public officials
  - Chair notes a few comments were snarky but mostly respectful, the problem was repetition. Topic was well defined at the beginning
  - Helen Sides notes that there have been confrontational DRB meetings about the project on Federal and Washington, with members of the public accusing Board members/ demanding "how many of you people read these letters" and the same happening here, happening more and more
  - Noah Koretz: The item is coming up again at the next meeting and the Board should be prepared
  - O J Napolitano has has seen elected officials call out a Board, but never call out a single Board member over a discussion, which was not even a Decision

## V. ADJOURNMENT

A motion to adjourn is made by Kirt Rieder, seconded by Helen Sides and passes 7-0.

Ben Anderson Yes Bill Griset Absent Carole Hamilton Yes Helen Sides Yes Kirt Rieder Yes Noah Koretz Yes Tom Furev Yes Matt Smith Absent DJ Napolitano Yes

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The meeting ends at 9:18PM

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: <a href="https://www.salem.com/planning-board/webforms/planning-board-2020-decisions">https://www.salem.com/planning-board-2020-decisions</a>

Respectfully submitted, Stacy Kilb, Recording Clerk

Approved by the Planning Board on 3/4/2021