

**JUNE 17, 2019**  
**JOINT PUBLIC HEARING**  
**OF THE CITY COUNCIL AND PLANNING BOARD**

A Joint Public Hearing with the Planning Board and the City Council was held in the Council Chamber on Monday, June 17, 2019 at 6:00 P.M., for the purpose of discussing an Ordinance to Amend an Ordinance Relative to Zoning.

The proposed Ordinance amendment adds "Municipal and Religious Reuse" as a use permitted in the RC, R1, R2, R3 and I zoning districts upon the issuance of a special permit by the Planning Board. Residential and business uses may be permitted in buildings at least 4,000 s.f. at least 50 years old at the time of application, and had been in continuous municipal or religious use for at least 20 years. The amendment provides, among other things, eligibility, dimensional requirements, Site Plan Review, Historical Commission and Design Review Board advisory comments, and parking and loading requirements.

The purpose of this amendment is to allow for the reuse of buildings currently or formerly in municipal or religious use into new uses that may not otherwise be allowed on those properties to promote historic preservation, economic development, housing production and environmental sustainability and resilience.

The complete text of the proposed amendment to the Zoning Ordinance is on file and available for inspection during regular business hours at the office of the City Clerk, Room 1, City Hall, 93 Washington Street, Salem, MA or the Department of Planning & Community Development, 2<sup>nd</sup> floor, City Hall Annex, 98 Washington Street, Salem, MA.

Notice of this meeting was posted on May 23, 2019 at 2:52 P.M. and advertised in the Salem News on June 3, 2019 & June 10, 2019.

Councillor Dominguez was recorded with an excused absent.

The Planning Board members present were Helen Sides, Carole Hamilton, Matt Smith, Noah Korentz and Ben Anderson.

Also, in attendance were the Mayor, Tom Daniel, City Planner and Mason Wells, Planning Staff Person

President Stephen G. Dibble presided.

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**(#289) – Ordinance to amend a Zoning Ordinance relative to Municipal and Religious Reuse as a use permitted in certain zoning districts, RC, R1, R2, R3 and I.**

Before beginning any discussion Councillor Turiel made a motion that the Zoning Ordinance we are discussing is the version drafted on June 12, 2019. Three corrections made were: to correct the error in the introductory paragraph to That a Special Permit not be allowed in the Industrial Zone which lead to the deletion of text in the first paragraph of 6.11.5. A correction was also made in the first line of 6.11.2 the word "building" shall be capitalized. A change in 6.11.3 the 50-year time period apply to only religious school buildings and all other buildings in religious use will have the 20-year standard. Another change was made to 6.11.7 regarding the role of the Historical Commission review for buildings outside of the local historic districts and the DRB. Now, the Historical Commission and DRB is to confirm the application conforms to the Secretary of the Interior's Standards. And lastly to clarify that the Special Permit apply only to the buildings and not the lots. It was so voted.

Tom Daniel gave a short overview that this current ordinance was a result of the prior ordinance relative to Municipal and Religious Reuse failed. What's before us now is a new use in the use table. That a special permit is needed and the permit is for the buildings not the lots. Tom went through each correction, change and language clarification page by page.

Councillor Dibble stated he had a letter from Historic Inc.in support of this new document drafter on June 12, 2019.

Father Murray from the Immaculate Conception Church is in favor of this. St. James and Immaculate are not serving anyone. These buildings are laying empty and it would be a great opportunity to reuse them for housing.

Councillor Milo stated that Father Murray is only speaking for St. James and Immaculate. He is not responsible for St. Anne's. If we have any question, should we ask the archdiocese or the pastor at St. Anne's.

Councillor McCarthy asked Father Murry out of curiosity of the two schools under your control how many units are going in each.

Father Murray responded he believed it was 30- 40 units.

Councillor Flynn asked if 35-40 units how many will be affordable?

Father Murray responded proposal was 20%but probable more but did not know exactly except that the intention was for affordable housing.

Councillor Turiel asked Tom Daniel for clarification why B-5 has a "N".

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Tom Daniel replied that B-5 provides more flexibility as of right then the special permit provides. The Special Permit does not provide a value in the B-5.

Councillor Madore asked about the eligibility. Does the project have to satisfy all 3 different criteria?

Tom Daniel responded yes.

Councillor Madore asked does this limit the number of properties that may have qualified before?

Tom Daniel responded yes because the special permit is only allowed in the residential districts unlike the overlay district. Therefore, less number of properties qualify now with this ordinance than with the original overlay district.

Councillor Madore continued to ask about capitalize the letter “B” for building. Should we define what that means?

Tom Daniel responded that Building is already defined in the Zoning Ordinance.

Councillor Flynn asked what the biggest change was.

Tom Daniel responded that it is Defining a use in the Use Table and that the special permit is only allowed in certain districts and not the whole city, it applies only to buildings and not lots and the role of the Historic Commission has been defined.

Councillor Dibble asked a question about 6.11.1 – for how long defined for municipal and religious use.

Tom Daniel replied that 6.11.3 answers that question.

Councillor Dibble asked about 6.11.2 the word currently. Definition of currently is not in there. i.e. Old schools are not current so what does the word currently mean.

Tom Daniel directed his answer back to 6.11.3 to the paragraphs defining a building as currently municipal and religious.

Councillor Dibble then asked about 6.11.3 eligibility of special permit #1 of 4,000 sq. ft. 4,000 s.f. of what. No definition given. Is it 4,000 s.f. of the footprint or is it 4,000 sf of each floor?

Tom Daniel responded – in the building, all floors combined. I’ll defer to the body but can clarify if needed.

Councillor Sargent also spoke to the word “currently”. If it was last used 19 year ago doesn’t jive with current. How can we make that a little bit clearer?

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Tom Daniel – Understands day to day use of the word currently means right now but we define the word in this ordinance. One of the challenges with zoning in general is the use of terms. For example, using “b” should be “B” because that’s how we use it in our ordinance. Precision in language and this draft ordinance so the definitions are tight. It’s important to consider the use of this ordinance. The applicant works with a Land Use Lawyer and the Planning Board in terms of understanding how to issue the special permit. The sophistication of the Planning Board and their knowledge of terms and they are familiar with working with these technical or precise terms. They are managing this ordinance and if they are clear and others then he is comfortable with it.

Councillor Sargent stated he has a lot of respect for our Planning Board. But what dictionary are we going to use to define things. Current is something going on now and not 20 years ago. For example, would South Campus fit into this definition.

Tom Daniel again states the word current is defined in this ordinance and reads it again.

Councillor Sargent – average person has to understand the word current or formerly used. Don’t know the use of ever building eligible in City. Would St. Corinthians fit into this definition?

Tom Daniel - If it was a religious school in 1969 then yes. If only a religious building then no.

Councillor Gerard asked Tom Daniel for clarification regarding 6.11.7. What section of the Secretary of the Interior Standards will the boards be using? 36 CFR Part 67 or 68.

Tom Daniel stated Section 106. Patricia Kelleher helped answer the question of Act of 1966.

Councillor McCarthy question to Tom for clarification. Whoever applies for this special permit will apply for historical tax credit so they will all meet the standards.

Tom Daniel responded originally this was the assumption, but not always the case. For example, 5 Broad Street is not looking for a historic tax credit deal. They are building Condos for sale so they can’t get Historic Tax Credits. Extra ordinary costs for historic adaptive reuse. The price that was offered is not something that can be afforded privately so instead of historic tax credit looking at HDIP. The restoration of the project standard of rehabilitation still be under the Secretary of Standards under the special permit.

Councillor McCarthy – So all the work of the previous 9 months is now in a table

Tom Daniel – The prior work is where it ended and now a different approach, but that work is in here.

Opened up for Public Comment

Polly Wilbert – 7 Cedar St., Salem – Generally in favor of Special Permit but lost its affordability portion.

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Justin Whittier – 10 River St., Salem – Speaking on behalf of the Federal Street Neighborhood Association Board. The board has voted to support this. This proposal is a reasonable solution. However, still consider downtown parking lots. Better Proposal thanks to Councillors voting against it and thanks to the planning Board and Historic Salem.

Emily Udy – 8 Buffum St., Salem – Speaking on behalf of Historic Salem Inc. supports this ordinance. Thanks, Tom and his staff and the Councillors.

Josiah Fisk – 358 Essex St., business 10 Derby Sq., Salem – In support of this. Important to scrutinize language and thinking of what it could mean and tie up the loose ends. Thank everyone I know there has been some public scrutiny. This board should not be looked at as obstructionist the board was doing its job. This new ordinance validates it. I believe you could delete the word current and also supports affordable housing. Believe the reason it has been removed is because of the Inclusionary Ordinance.

Fawaz Abusharkh, 4 Harrison Rd., Salem – In support but like to see the affordability portion back in at 20%.

Judith Reilly – 20 West Avenue – speaking on behalf League of Women Voters. We support this proposed ordinance. We previously endorsed overlay district. We believe the changes should be made for financial reasons - Salem needs the revenue of 5 Broad St. to pay for CLC. Failure to adopt a path forward will mean financial deficit for city. We need zoning flexibility for redevelopment. Mass zoning and local zoning complex. This Use table amendment specific to our community and needed now to provide additional housing. Also support this for environmental and sustainability. Feel public has been listened to. If structures left empty would be demolished. League of Women Voters also supports the Inclusionary Ordinance so willing to overlook the Affordability portion that is missing. Special Permit would not allow residents to get residential stickers. Residents of new units should not be treated differently regarding Residential Parking. Understand it is being reviewed and would like to see it rewritten but not to delay this ordinance.

Lorelee Stewart, 7 Barnes Rd. – Chair of LWV Affordable Housing. At first glance doesn't look like this will do anything for Salem's Housing but since NSCDC involved in two of these properties will meet affordable housing. Inclusionary Zoning is coming and need to pay attention to it.

Mike Magee – 222 Derby St., Salem - Abutter to Immaculate Conception. 35 units not what social media says 141 units. Sec. 6.11.5 ambiguous term can allow to supersede as long as residential use will not adversely affect the underlying district. Who makes this determination? And what does not adversely affect.

Tom Daniel – The Planning Board determines if adversely affected. They hear the applications and hear from public that want to comment and weigh in. This is standard language and practice for review process happens before the PB. Nd Board of Appeals.

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Darleen Melis – 115 Federal St., Salem. Like to speak to the word currently. Federal Street School used as 3 public schools while their home schools being renovated. If you can take out currently and people can look at these being used as religious buildings so if in religious use in the past 50 years (1969) then it's clear; then can apply to any other building i.e. St. Anne's.

William Brauner, 5 ½ Barr St., Salem – In support will do a lot for Salem to prevent underutilization of property. Would be a stronger ordinance with affordability portion.

Cynthia Nina Soto – 6 Laurent Rd., President Elect of NS Realtors and resident. Supported overlay district and still support. Understand no affordability portion in this but also understands inclusionary ordinance in the works. It should be a separate document.

David Friedberg, 57 Britannia Cir. - In favor of this ordinance. One thing that is important is the affordability component. Have been uninformed people that have made comments about having 20% or more affordable. Not just about the profit per se but to be able to go forward with a project. So hope it will balance if 20% then more units. Also, important basic supply and demand. More housing increase supply. Supply of housing is so low right now, but if a lot more properties then prices will stabilize. Need more rental housing, more for sale housing and market rate as well. If flooded market will moderate. Pricing is related to parking. They go hand in hand. More people coming from City will use MBTA.

Jeff Cohen – 12 Hancock St., Salem – First of all the Inclusionary Zoning Ordinance already has held public meeting and addresses such issues as quantity, numbers and parking. Father Murray spoke about these building not being used and hope for housing. I was for the original ordinance but because of the urgency of a fast diminishing rental stock in Salem I support this. This would also enable the City to fulfill this body's commitment to pay for the CLC building and the restoration of historic buildings and development of affordable housing. One issue I have is that the original ordinance had a sentence about making our buildings sustainable and resilient. There is nothing in the new ordinance about this. I believe the SERC committee should be included in this process. State Law requires the inclusion of the task force in the process. I hope this body and the planning board considers this, but still strongly supports this.

Appearing in Opposition:

Marybeth Bainbridge 7 Prescott St. Thank everybody but I still some major issues that need to be addressed. Such as the need for affordable housing; we shouldn't assume the minimum will be met. What if a building only has 3,500 then what happens? What is the process. Biggest concern parking 1 space is insufficient and in elderly housing 1/3 of a space and what if the SHA no longer owns that building. Public parking downtown already doesn't exist. Reusing buildings is a great way to go, but relying on parking garages not viable strongly urge you to address this.

Councillor Turiel – respond to last comment regarding the size of 4,000 sq. ft. I asked at the last meeting to drop the 5,000 down to 4,000. My presumption or understanding of that was if anything smaller than that, then they would use for a single-family home and no special process in R-1 needed.

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(Councillor Gerard had to leave the meeting due to a scheduling conflict)

Tom Daniel responded yes that is the valid understanding.

Councillor Dibble asked if the building square footage included the basement?

Tom Daniel responded – It's 4,000 s.f. of livable space. If the basement is habitable and used as living space then yes it would be included.

Councillor Dibble asked Tom to comment on if a building was under 4,000 sq. ft. i.e. 3,999.

Tom Daniel replied that it would not meet the criteria. If R-2 then can make it a 2-family must meet the zoning.

Councillor Dibble asked Tom Daniel what the status of the Inclusionary Zoning Ordinance.

Tom Daniel stated that the Affordable Housing Trust Board has met twice. Additional data being analyzed. A review is planned for August and the submission of the final draft in the fall. Why isn't an affordable piece in this document when it was in the first. Back then didn't know when the Inclusionary was coming and wanted to codify what the Planning Board already does. Now that this Inclusionary Ordinance is moving forward that this ordinance will be the appropriate place and not part of an arbitrary special permit zoning ordinance.

NSCDC between the two properties will be greater than 10%. Father Murrays stated at least 20% of the units and Mickey Northcutt said it would be higher; 5 Broad St. has 10% due to the RFP. The RFP stated the planning board's standard practice of 10% and 80%. Remind the Councillors that when the authorization was given to the Mayor the sale was contingent upon a TIF and will come back to this body for this.

Councillor Dibble asked if there was any harm to put affordability back into this ordinance>

Tom Daniel responded for reasons just stated, the significant discussions going on regarding the Inclusionary Ordinance that's where it belongs. When looking at this ordinance in its purest form and strip everything away its giving a path for old buildings instead of being demolished a way for them to be utilized and rehabbed/redeveloped. To have life breathed back into them.

Councillor Dibble asked about the word currently that has come up a few times tonight.

Tom Daniel stated he will look at that – see if has any ripple effect on anything else. Next step is for Planning Board recommendations.

Councillor Dibble asked if 1 parking space for 1 unit too little?

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Tom Daniel replied this is the same language as previous ordinance. Greatest challenge to reuse buildings is parking onsite because site constrained. Parking on site is a barrier for project to be redeveloped. Examples across the country show the #1 barrier if require too much parking. That is why direction we took here is if not on site then within 1,000 feet of the building in either a municipal lot or private lot. 1 parking space/unit is the requirement in the B-5 for existing buildings. 3 properties not in B-5 but still in walking distance to downtown. Realistic path for these properties due to their locations. From a marketing perspective, generally people prefer parking onsite. 5 Broad Street will have parking on-site. It's a condo project which is different then what the CDC is planning on building for there 2 sites. The people who chose to live in these buildings usually are not the 2-car family.

Councillor Dibble asked about security – if senior housing only requires 1/3 parking space– what if doesn't stay senior housing.

Tom Daniel replied language for senior housing parking is in the ordinance. If Salem Housing was doing a project then their requirements are less. If SHA sells their property, I can't answer since I don't know SHA selling process.

Justin Whittier suggest finished area for square feet of building not footprint but finished.

Councillor Sargent question to Tom Daniel. 2 Catholic schools already under agreement for Mickey Northcutt.

Tom Daniel - don't know the status of their agreement.

Councillor Sargent stated both of those buildings are eligible for a friendly 40B.

Tom Daniel stated yes, eligible for a Friendly 40B however it cuts out many of the provisions and oversights i.e. Historic Commission and DRB overview. It's a more limited public process. Everything goes ZBA Only.

Councillor Sargent asked to confirm that a 40B requires 25% affordability

Tom Daniel replied yes.

Councillor Sargent felt these buildings are in good shape. As far as the criteria of buildings less than 4,000 sq. ft., from past experience once an ordinance passes can go to ZBA for an application for a variance.

Tom Daniel stated relative to this ordinance, the planning board is the special permitting granting authority. If a building does not meet the criteria then will not get a special permit.

Councillor Sargent – Affordability component waiting for Inclusionary Zoning Ordinance. If this is passed before the Inclusionary Ordinance then right now have 0% affordable. Also, would like to point out a person that builds 100 units by right versus the Inclusionary Zoning where you need to



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build a certain percent. When someone is given a gift then they should give a little more. Lastly, will you be able to give us a list of properties in Salem that would be eligible to apply for a special permit.

Tom Daniel – state yes, we have a list of properties that are 50 years from date of application can give you as of this date.

Councillor Turiel question to Tom Daniel. SHA reference as a state body exempt – they would have them by right. They would do as the felt as needed if bought any of these properties. State supersedes local laws. SHA exempt from all local ordinance except for Wetlands.

Tom Daniel answered correct.

Councillor Turiel – Looking hard at affordability in these cases. Looking forward at Inclusionary coming forward. In these cases, at this point, zoning regulations to allow 3 properties to be redeveloped where not normally an allowed use. 1 project ownership project, 5 Broad St., already agreement for affordable units. The other 3 properties will be rental because Church doing a 99-year lease. CDC chosen to redevelop their affordability range is higher then 10-20%. Only property in question is St. Anne's Church School.

Tom Daniel – The current practice of Planning Board is 10% affordable and 80% AMI. Not sufficient or adequate for affordable housing. The private sector delivers a certain # of units at market rate incentive to make a profit. You can make your money but some have to be below market rate usually 10/80. Inclusionary looking for 10% and 60% Median. Why not 15 or 20% affordable. But you can't make it higher because won't work for developers. Public attending workshops more important then percent is the affordability. In absence of this ordinance Planning Board is working at 10/80. 5 Broad Street 10% affordable and 80% market rate. If they come in for a TIF then could say 10% and 60% median. That's separate then the permitting process.

Councillor McCarthy – Anytime municipal buildings need to be declared surplus isn't that the time to say ok 10% at 80% median. Already RFP for 5 Broad Street was 10% and 80. When start playing with affordable numbers, so if you create properties that are expensive people can't afford them and the bank won't give them a loan. The Church properties because they are 99-year lease they will go after every tax credit. When the churches went out for RFP and looking for developers, they set certain needs they are looking for. I'm sure they didn't want high end condo but affordable housing. They will all be rentals which give you more flexibility. Ownership is tricky because you are dealing with a bank. Some won't qualify. This ordinance in front of us is for re-use of buildings not affordable.

Councillor Furey – This meeting very positive- What's the time frame to see people moving in. There were 1,000 people who applied for the Old St. Joseph's housing.

Tom Daniel replied for St. James and Immaculate Conception the NSCDC need to figure out their financing model. The team that responded was Salem Renewal, Pabichs, and the NSCDC. Need

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to figure out financing with Salem Renewal, Pabichs and CDC. They did not want to rely upon lower income tax credits since need to wait 2-3 years for those credits from the State because there is so much demand. Partner together can do a market deal. Pabichs got out of project because numbers didn't work for them. NSCDC still committed to doing housing. Don't know status of agreement but financing will need to come together. Need to go through permitting for low income tax credits so 2-3 years out for financing then construction. 5 Broad Street different since private financing go through permitting then finalize land disposition agreement. And then TIF through the Council. That could happen this year and then apply to state for HDIP maybe next year. It takes long time especially not for profit developers. Contrast with 212 apartments on Traders way Affordable housing component permitting last year, site work underway and then will start building.

Councillor Furey asked Mr. Northcutt what it would look like. Like the one in Beverly. Greatly optimistic.

Councillor Dibble – Agree that the Planner doing a good job and getting a better product. However, not just about these 3, 4 or 5 properties, many more we don't even know about so need to get it right.

Councillor Dibble asked the Planning Board about the lack of affordability, parking and the word currently.

Ben Anderson, Chair of Planning Board - The word currently should be studied, personally no issue with it but maybe take a better look at it. In term of no affordability in this ordinance, this ordinance is only for a Special Permit – it is one piece in an overall strategy. Would hate to assign an arbitrary number. Confident we will come up with the right number. Taking this step by step is the right move. Trying to do everything at once to front load this or overload it is a mistake. Parking issues – looking at properties being discussed. When properties were built very difficult to get parking on some of these sits so modelling it after the B-5 is a good idea and appropriate. He is comfortable with that.

Matt Smith, PB Member – Don't want to make parking piece overburdensome if trying to make affordable housing. Parking take up a lot of space. More important for people to live versus right to park on street. This is his personal and professional position. Have compassion.

Councillor Dibble asked about the Sustainability and Resiliency Component.

Ben Anderson, supports sustainability but need to stay laser focus on this reuse now. That will be a larger discussion which will come later.

Helen Sides, Planning Board Member – Currently is very clearly defined. Parking and affordability both dealt with in Inclusionary Ordinance.

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Councillor McCarthy moved that the Hearing be Closed. Seconded by Councillor Turiel. It was so voted.

Councillor McCarthy moved that the matter be referred to the Planning Board for their recommendation. Seconded by Councillor Turiel. It was so voted.

On the motion of Councillor Furey the hearing was adjourned at 8:05 P.M.