

CITY OF SALEM**JANUARY 17, 2018****JOINT PUBLIC HEARING OF THE
CITY COUNCIL AND THE PLANNING BOARD**

A joint Public Hearing of the Salem City Council and the Planning Board was held in the Council Chamber on Wednesday, January 17, 2018 at 6:30 P.M. for the purpose of discussing amending a Zoning Ordinance relative to Section 3.0 – Use Regulation by amending Sub-section 3.1 Principal uses – Notice of this hearing was posted on January 3, 2018 at 12:31 P.M. And advertised in the Salem News on January 3, 2018 and January 10, 2018

All City Councillors were present.

Councillor Beth Gerard presided.

Also in attendance were the following: City Solicitor Rennard, and the Planning Board, Amanda Chiancola from the Planning Department.

**(#678 of 2017) ZONING ORDINANCE AMENDING SECTION 3.0 – USE REGULATIONS
SECTION 3.1 PRINCIPAL USES USE OF LAND FOR PRIMARY PURPOSE OF
AGRICULTURE, HORTICULTURE, FLORICULTURE, OR VITICULTURE ON A
PARCEL OF MORE THAN FIVE ACRES AMEND TO TWO ACRES**

Appearing in favor:

Andy Varilla, 23 Cedarcrest Avenue – he is a petitioner and co-owner of the farm with his wife Holly. He has been a part of the Farmers Market since 2012 and has run the farm since 2009. He stated that he teaches at the schools about farming and does business with local businesses. The proponents to agriculture and wants to see it grow in Salem. Food is now produced on corporate levels. This ordinance amendment will not affect anything else in Salem except agriculture. The State Law allows for a parcel limit to be two acres and meets \$1,000 in revenue. He thanked Salem residents for their support. He will address any concerns by his neighbors.

Solicitor Rennard – the petitioner stated zoning does allow for 5 acres, the State Law was changed in 2010 for agriculture exemption with an income of \$1,000. The petition is a request to reduce 5 acres to 2 acres. The City Council is not required to change the zoning but if chooses to can mirror the State Law. The building inspector stated it was 2 acres and income producing but this area is not primarily used for agriculture. Bob Richie, a former Assistant Attorney General was consulted on this. He is writing a book and one chapter is small plot farming.

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Amanda Chiancola – Planning Dept., showed maps on a screen to show the parcels meet the minimum lot area of 5 acres or more before 2010 amendment. There was an aerial view of the Maitland Farm.

Councillor Furey – Thanked all for being here on a cold winter night. We are blessed to have good neighbor's, people make Salem the best. He stated he hoped we could come together as a City. None of us would be here if not for farms.

Councillor Turiel – stated that he drove by the property. Turkeys would not let me leave. This is R-1 zone, but is being used for agriculture use. Heard they want to build an out building. Will this still meet the zoning requirement.

Solicitor Rennard – you can place reasonable restrictions. Zoning officer is concerned about the close proximity to abutters. Could be height or yard side.

Councillor Turiel – We don't have lots of land in this City. Could property be sold as a subdivision? And out building we could have reasonable bounds.

Councillor Madore – is there going to be additional analyst regarding the soil.

Amanda Chiancola – we have not prepared additional analysis just a parcel map.

Councillor Milo – Question for the petitioner, why didn't he appeal the Building Inspectors decision instead it came to us.

Petitioner – We were denied for the permit for the structure because he felt (the building inspector) we were not agriculture. So we came to the City Council because we feel it's by right.

Councillor Turiel – the process from the chicken issue, we went through this process to give clarity to the issue.

Question to petitioner, you grow produce, and part of the business you can't grow enough cucumbers to make your pickles, but how is it agriculture if its manufacturing.

Solicitor Rennard – gave Campbell Soup as example made tomato soup but didn't grow tomatoes to make that soup.

Petitioner – Section 3.0 covers this. We do have a pickle business which is processed in Lynn. We need the building to create packing house per FDA. Every farm in the US is required to safe packaging, to and from.

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Councillor Turiel – We heard you wanted to bring the business in the house. What is the primary use of the out building?

Petitioner – for processing and handling of produce (incidental use of the building)

Councillor Turiel – So it's not replacing the Lynn property.

Petitioner – No. We are enforcing the primary use of the location. The house is considered incidental use to house the farmers.

Councillor Turiel - asked how much land they have

Petitioner – you have to have no less than 2 acres in agriculture use, easements and storage 2.1 acres of land (1.7 acres actual planting)

Councillor Sargent – asked is there anything to stop you growing?

Petitioner – looking to continue the agriculture and steward this to his children.

Councillor Sargent – stated he read a post on face book asking to save the farm

Petitioner – to keep it going we need to comply to FDA requirements if we don't we lose the farm.

Councillor Sargent – stated he received emails from all the way from Gloucester saying save the farm. With zoning we have to look at your rights and the rights of your neighbors. And also the quality of life.

Councillor Flynn – tanked the petitioner for the tour of the farm. Any place else on the site to put the building?

Petitioner – Yes we can adjust and put it somewhere else.

Councillor Madore – her concerns are for the neighbors, they complained about traffic, noise and smell.

Petitioner – is confused about the smell. He received no complaints. Noise is mechanical it is a truck trailer for refrigeration. The out building will address this as it will be air conditioned. Traffic is not because of the farm, its adult day care from Bridgewell on Cedarcrest Avenue. We don't do deliveries 5 days a week only 1 day a week.

Councillor Dibble – we got emails in support, none from the abutters. Abutters called in opposition for different reasons. They complained about the tree line cut down. There is

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no buffer zone for the condos. Mr. Maitland moved debris out of sight. Many neighbors have lived there for decades. The trees and noise from the refrigeration and lights from the greenhouse. Smell is compost and not manure. We are talking about only 7 properties that would be eligible for this zoning. Some complaints were for speeding vehicles none have to do with the Maitland farm. Delivery of cucumbers and trucked out.

Petitioner – the structure would be 24 x 48 a two story structure. Vegetable products and packing it and giving to distributor, we self-distribute our products. We have not cut down any trees. There are dying trees in front of property we did cut down for more growing space.

Councillor Dibble – asked why are we doing this

Solicitor Rennard – State Law states we cannot have a zoning ordinance that restricts. They should appeal the Building Inspectors decision.

Councillor Dibble – if we go forward and we reduce 5 acres to 2 acres and height, or size of building of our zoning goes out the window and state law takes precedence. I am very hesitant and want local protection is there a compromise? I fear giving up local control.

Councillor Gerard – If we vote to change we mirror the law, you can put restrictions.

Councillor Madore – asked Solicitor if we do change the zoning to 2 acres isn't local control stronger.

Solicitor Rennard – 2 acres or more is what we are discussing.

Councillor Madore – some communities have adopted the 2 acres. It's shifting to minimize not increase

Karen Murphy – Food assessment is currently being done. The city is entitled to keep it at 5 acres

Solicitor Rennard – Stated that State Law restricts

Karen Murphy – stated she will get a handout for City Council which explains law. Food assessment is agriculture.

Councillor Turiel – asked can you clarify Ch. 40A Sec. 3 Marijuana is not an agriculture use. Acts of 2012 not acceptable use. Size of sites on hand out the sites on the map are never going to be agriculture.

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Councillor Milo – to Solicitor every one appreciates urban agriculture, the root of this question of primary use of the property. The goal is to settle on primary use. If we pass that ordinance it mirrors State Law. How will this affect the Building Inspector, could this still restrict?

Solicitor Rennard – Yes you still have 3 prong test, income, produce and primary use.

Planning Board member – this is a proponent of urban farming but also quality of life. I want to understand on the property the growing.

Petitioner – January and February there is no activity. We have a heated greenhouse. March through May we are preparing and amending the fields. We use a tractor in the field 8:30 AM to 4:00 PM twice a week. The refrigeration is 3:00 PM to 8 AM its used for peppers, garlic, onions, and flowers. Deliveries are Monday or Tuesday once a week. Truck twice a week in the middle of the day 9:00 AM – 2:00 PM.

Planning Board Member – to Solicitor I need clarification is there anything limiting by abutters filing suit? Are there issues with the neighbors, is it limited by by-laws

Solicitor Rennard – it's limited by State Law. It's protected

Planning Board – primary use of the property why has the petitioner looked at accessory uses.

Petitioner – the property splits R-1 and R-3. Tis is commercial agriculture. Because we are being denied, this is a viable use.

Planning Board – could we require board of appeal approval of planning

Matt Veno, Planning Board member – does specifically we require special permit. Doesn't seem to be necessary, may be advisable to align with the ruling agriculture not primary use another option accessory use is allowed by planning board decision. We can look at 3.2.1 Accessory Uses which has some standard uses.

IN FAVOR

Michele Conway, 69 Orchard Street – I was one of the Chicken owners – I am in favor of this. I was sited for running a farming operation.

Al Snape, resident Lafayette Street – I am a business owner, we work together as he takes apple pulp. In support of the ordinance.

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Tim Haight, 38 Ocean Avenue – he picks up products in favor of the ordinance amendment

Zack Billings, 14 Oakview Avenue – in favor of Maitland Farms and these neighbors bring good things to the neighborhood.

Jeff Cohen, 12 Hancock Street – sustainability in favor. The reason we are here is the Building Inspector made a decision that restricts the petitioner.

Mark Maitland, 38 Forrester Street – In favor, this is not just for them its for the community. Small farms provide sustainability.

Kiley Sullivan, Salem Main Streets – she runs the farmers market here in Salem, why would you keep it at 5 acres. There will be no other 5 acre farms. In favor of the change to the ordinance.

Patrick Schultz, 40 Summer Street and owner of the Mercy Tavern – in favor of this amendment. This is about our community. The other properties are not going to be any other farms. Put the community first.

Matt McKenna, 4 Curtis Street – I am a teacher and started Salem Y – green space. I support local agriculture.

Resident of 65 Appleton Street – works for Maitland Farms and is in support.

Brendan Murphy, 19 East Collins Street – also in support. They contribute to the local community.

Scott Strenberger, 25 Pickman Road – is in support and stated we should reinforce local food

Rachel Duda, 48 Forrester Street – in support of the ordinance amendment

Fawaz Abusharkh, 4 Harrison Road – Don't think the city should give up control. Look closely. I have only heard good things about the farm and support them.

Rachel , 40 Cedarcrest Avenue – she stated she has no complaints about the farm. And in favor.

Heidi Scott, 3A Russel Drive – in favor. There are 700 families in the farm co-op

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Mark Verkennis, 25 Valiant Way – This is not an either or here the fact remains this is a farm in a residential area. There are impacts to abutters, it affects our quality of life.

Anthony Hoffman, 23 Valiant Way – I am a direct abutter, there were trees cut down. The end game is that this is a commercial packing house.

Norman Bogosian, 35 Valiant Way – Trees were cut down that used to create a buffer zone. This is all quality of life issues.

Cheryl Winter, 12 Cedarcrest Road – stated that she has lived there for 30 years. Her husband's family have lived there for over 100 years. You need to represent the neighbors.

Geraldine Duman – 20 Cedarcrest Avenue – supports farming but wasn't aware it's a farm. I thought it was a garden. She is concerned with the proposed Zoning change, it doesn't sound clear, even the State Law is not clear. Living there for over 60 years what does this do to the property value. I'm concerned with the future. Do not do this ordinance. She stated that she has a petition from elderly neighbors and long-time residents

Elaine Slater, 24 Valiant Way – stated there are 65 residents at Valiant Way. She has lived there 17 years and the full buffer zone is gone. Coyotes are attracted to the compost as well as turkeys. This is a change in the quality of life.

Ina Hoffman, 23 Valiant Way – she commends the Maitlands for what they have done. But there are impacts to the neighbors on Cedarcrest and Valiant way. She has lived there for 3 years.

Scott Garabedian, 23 Valiant Way – the Maitlands have done a lot for the community. Being an abutter there have been nuisances, roosters for example. Quality of life is a concern. Changing an ordinance there are other ways of dealing with this and she is very concerned with the future.

Councillor Turiel – heard a lot so far. This is still going to be R-1 or R-3. The question we have is the 5 acre language, my concern does this take away what our jurisdiction would be for a special permit or variance etc. And on the decision of the building inspector adopting the State Law this doesn't address the issue of the out building.

Solicitor Rennard – reasonable limitations prepare a memorandum. No reason to adopt its already in place. The building is still the opinion of the zoning officer (building inspector).

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Matt Veno – asked the solicitor judgement codify in zoning ordinance are there some restrictions to go along with this?

Solicitor Rennard – this doesn't address the Maitland's issue

Matt Veno – if the city moves forward to adopt reasonable regulations I would like clarity on agricultural use, we can adopt some changes for mixture of uses for this property and protect the rights of the abutters.

Councillor Dibble – stated that Mr. Veno and Councillor Turiel made good points.

Councillor Sargent – asked it should stay non-conforming with special variance

Fawaz Abusharkh, 4 Harrison Road – asked if the public hearing could be left open.

Councillor Turiel – explained the process.

Councillor Turiel moved that the hearing be closed. Seconded by Councillor Furey. It was so voted

Councillor Turiel moved that the matter be referred to the Planning Board for their recommendation. Seconded by Councillor Furey. It was so voted. Councillors Dibble and Sargent were recorded as opposed.

On the motion of Councillor Furey the meeting adjourned at 9:40 P.M.

ATTEST:

CHERYL A. LAPOINTE
CITY CLERK