



# CITY OF SALEM PLANNING BOARD

2018 APR 30 PM 1:17

CITY CLERK  
SALEM, MASS

## Report to City Council

April 30, 2018

At its meeting on April 19, 2018 the Planning Board voted to recommend denial of amending the City's Zoning Ordinance Section 3.2.5. Swimming Pools to correct Scrivener's errors from the 2009 recodification of the Salem Zoning Ordinance by inserting a new paragraph at the end of this section as follows: "2. Pools shall be surrounded on all sides by a permanent wall or fence at least four (4) feet high and located no further than twenty-five (25) feet from any side of the pool. Fences shall be constructed of pickets, stockade or chain-link type material. Rail fences shall not be permitted. The fence shall have only one (1) opening, three (3) feet maximum in width, with a locking and closing device so as to keep the gate shut at all times."

The Planning Board voted, none in favor and eight (8) opposed (Mr. Anderson, Mr. Venio, Mr. Koretz, Ms. Yale, Ms. Sides, Ms. Hamilton, Mr. Griset, Mr. Napolitano), to recommend approval of the proposed zoning amendment as it was referred to the Planning Board from the City Council.

In making this recommendation, the Planning Board made note of the following:

- The Board is concerned with short-term safety issues without having this language, but does not agree with the language as submitted.
- The Ordinance already states that pools shall be in conformity with the requirements of the State Building Code. If there is a reason to go above and beyond the State Building Code, the Board needs to understand why this is necessary and what the additional requirements should be. The language as submitted is not clear to the Board.

The draft minutes of this item from the April 19, 2018 meeting are attached to this report for reference. If you have any questions regarding this matter, please feel free to contact Tom Daniel, Director of Planning & Community Development, at 978-619-5685.

Yours truly,

A handwritten signature in black ink, appearing to read "Ben J. Anderson", is located below the "Yours truly," text.

Ben J. Anderson, Chair

CC: Ilene Simmons, City Clerk

**A. Deliberate and vote on recommendation to City Council on two (2) separate proposed Zoning Amendments listed below:**

- 1. To amend the City's Zoning Ordinance Section 8.4.9. Parking Requirements by deleting 4(a) in its entirety and replacing it with: "One and a half (1.5) parking spaces per dwelling unit."**
- 2. To amend the City's Zoning Ordinance Section 3.2.5. Swimming Pools to correct Scrivener's errors from the 2009 recodification of the Salem Zoning Ordinance by inserting a new paragraph at the end of this section as follows: "2. Pools shall be surrounded on all sides by a permanent wall or fence at least four (4) feet high and located no further than twenty-five (25) feet from any side of the pool. Fences shall be constructed of pickets, stockade or chain-link type material. Rail fences shall not be permitted. The fence shall have only one (1) opening, three (3) feet maximum in width, with a locking and closing device so as to keep the gate shut at all times."**

**2. Swimming Pool fencing requirements**

There is some question as to whether this is correcting a scrivener's error from 2009 or if there was another change in between. The timing is unclear.

One comment brought up the question if one opening was enough; the Chair thinks it is not. The building inspector indicated he would be comfortable approving one fence around the entire yard, even if it did not meet the 25 foot requirement. The language needs clarification. Bill Griset notes that this is not guidance, and that an ordinance is a requirement.

It is noted that swimming pool and fencing requirements are laid out in the code used at the state level, the Building Officials Code Administrators International (BOCA) code. Bill Griset notes that that code has many details, so there is no need to redevelop Salem's code. There is some question as to whether Salem's mirrors that code. Bill Griset cites a section of the BOCA National Building Code from May 1, 1999, section 421.10.1, "Barriers and Fencing." Noah Koretz notes that these are developed industry standards providing greater detail and safety than what is proposed.

Chair Anderson notes that administratively, the Board must vote yes or no on the language before them, but he senses that members are not comfortable with it so recommends a no vote with recommendations for further changes. However, if the language is not changed, this still presents an opportunity for homeowners building pools to challenge the Building Inspector/Zoning Enforcement Officer since there is currently no language at all in the Zoning Ordinance. The missing language was accidentally omitted during the recodification. All construction must comply with building code regardless of zoning, but those are not in sync and they should be. Chair Anderson notes that if the Board votes no and the City Council does too, there would be no guidance in the Zoning Ordinance but pools and fencing would still have to meet Building code.

Additional discussion of what State Code vs. Salem's Ordinance say occurs. It is unclear whether the City's matches the Building Code. Chair Anderson cites section 3.2.5, "Swimming Pools." Bill Griset notes that the State code adopts the International Pool and Spa Code, and that the section above states that pools must conform to those, but there is no mention of fencing.

It is noted that the conversation in the Council meeting as well as the language itself are confusing. Is it more desirable to have this confusing language vs. no language at all for a period of time? It is again noted that the City Council will vote on the language as it is, regardless of Planning Board input, but that commentary and explanations can be provided. The Board can note that this is an urgent matter that it is recommending being approved due to the need to have some language, not because it is appropriate and complete.

Ultimately whether the Board votes no or yes, with guidance, does not really matter.

A motion to recommend that the City Council so amend item 2 re swimming pool fences is made by Noah Koretz, seconded by DJ Napolitano, and fails to carry in a roll call vote with Ben Anderson, Dale Yale, Helen Sides, Noah Koretz, DJ Napolitano, and Carole Hamilton, and Matt Veno opposed (8 opposed, 0 in favor).

Noah Koretz notes that since the ordinance references building code, instead of matching the building code, if it needs to go above and beyond that, is acceptable but the Council must understand why and what the language should be.