

**City of Salem Planning Board and City Council  
JOINT MEETING  
Approved Minutes  
Wednesday, November 15, 2017**

A joint meeting of the Salem Planning Board and the City Council was held on Wednesday, November 15, 2017 City Hall, Council Chambers, 93 Washington Street, Salem, Massachusetts in accordance with Chapter 40A, Section 5, of the Massachusetts General Laws.

Council President Elaine Milo presides.

**I. ROLL CALL**

*Planning Board members present were:* Chair Ben Anderson, Kirt Rieder, Dale Yale, Bill Grisct, Helen Sides and

*Absent:* Carole Hamilton and Matt Veno

*Also in attendance:* Amanda Chiancola, Staff Planner, Stacy Kilb, Recorder, Beth Renard, City Solicitor

- I. Council President Milo opens the public hearing for all persons interested in the proposed amendment to the Zoning Ordinance:

**Adding a new section 3.2.8 entitled Accessory Living Areas to allow, only by special permit, the creation of an accessory unit within a single-family dwelling limited to two bedrooms and 800 square feet for occupancy by family members who have some dependency for special housing needs due to age, mental or physical health, personal care requirements or economic factors, or by others such as nurses or nannies who occupy the accessory living area to facilitate providing direct care to a family member of the owner that resides in the dwelling.**

Councilor Steve Dibble describes the history of this zoning amendment. The Friends of the Council on Aging had requested the regulations be changed to allow In-Law apartments, which are currently prohibited in Salem, though many other communities have them. This would apply to only single family houses, and would not allow visible changes to those houses. Beth Renard, City Solicitor, highlights the Ordinance.

The Ordinance is modeled after others in nearby towns, and would not allow changes to the character of the home, thus would need to be connected to it. As the use would be limited to that by a caregiver or family member, illegal accessory units could now acquire a special permit. Annual inspections would be done by the Building Inspector, and there will be an associated fee.

Councilor Gerard questions the square footage, in concern that it is too small.

Councilor Fury feels this change is long overdue. He outlines the benefits of allowing such units, which will help keep families together.

Kirt Rieder of the Planning Board asks for clarification as to whether the 800 s.f. structure is limited to being within the existing structure or could be an addition as long as it is on the same lot. The intent is for the conversion to be within the building envelope of the existing structure, but allows for modification of the rear and side for a new entry. Wording can be tightened if necessary.

***Public comment in favor.***

John Russel of 16 Memorial Drive states that both the Friends and Board of Directors of the COA are in favor. He reads into the record a letter from the Director of the Council on Aging. He outlines some reasons why this

Ordinance is long overdue. It is difficult for Salem to be an aging friendly community if people can't age in place. Children could live in these apartments to save money to buy homes nearby. It is important to give seniors independence and dignity. Currently the waitlist for senior housing can be two or more years, and this would alleviate that issue. Linda Coffel, who is on the Board of Directors of the COA, has also submitted a letter in favor that is read into the record.

Councilor Gerard asks why this is limited to 800 square feet and discussion occurs as to why this is considered adequate. It is not intended to be a regular apartment to be rented out.

***Public comment opposed:***

Josiah Fist of Essex St. wonders what happens if the specific need for the space as outlined in the Ordinance disappears. City Solicitor Beth Renard states that the use can transfer. If, for example, one elderly family member passes away, the family can still get the annual inspection, and the unit may remain vacant until a new permit is acquired. Mr. Fist is still concerned that the units could be rented out illegally. He also asks if the work would have to be undone in order for the owner to sell the house. There is language in the Ordinance. There can be compensation to pay for expenses but the use will extinguish unless the new owner gets the unit inspected as per the Ordinance.

Meg Twohey of 122 Federal St. is concerned about dwellings in the R2 zone or more dense neighborhoods. However, a second apartment is allowed by right in R2, so this would only apply to other zones. Ms. Twohey is also concerned about what happens when the need for the unit goes away.

Noah Koretz asks for clarification on who is allowed to live in the apartment vs. the main dwelling. For example, if Mom and Dad own the primary residence, but Mom no longer wants to live there, she can move to the accessory unit and Daughter can move into the primary residence. He notes that the State has a model bylaw that gets at this issue, which he outlines. He is concerned, and understands that the City does not want single family dwellings converted to multi family, however, perhaps the accessory unit should be available to those with a need, not just limited to family members. The Ordinance should be broader so as to allow more people to live in Salem. He argues that it should not matter whether it is a young adult just out of college, or a neighbor down the street who cannot modify their own home. However, Councilor Dibble is concerned that broadening the Ordinance would create more two-family homes.

A discussion of the intent of the Ordinance ensues. The City Solicitor also feels it is too restrictive, but notes that it was the Committee's intent to only allow a caregiver, nanny or family member. Councilor Sargent notes that families can still help someone in their home, but may not split it off into an apartment. Parking is also a concern. Further discussion of size occurs.

Kirt Rieder asks for clarification as to whether the modification must be within the existing building. The City Solicitor says she did not draft it to prohibit adding a small addition to the back, but that the family must simply keep the character of the single-family home. The relevant section is outlined.

Helen Sides expects if an addition is proposed, if permitted by zoning, it should be allowed, and that the area can be converted in future if no longer necessary, so should not be restricted. She notes that 800 square feet may seem sufficient, but it may not be that big if a family is trying to accommodate someone with accessibility issues. Annual inspections are what other towns do. With that kind of square footage, the kitchen could be dismantled so the space could be converted to some other use.

Councilor McCarthy asks about special permit and how to ensure that if a house is already nonconforming with little setback on a small lot, an addition cannot be squeezed in.

Councilor Famico notes that during Committee meetings, definitions of “accessory living areas” were raised; this is outlined in Section 2. Definitions such as “detached dwelling” and “family member” came up. For example, some families may call a close friend “Aunt,” though there is no blood relationship. Definitions should be clarified, and she is also concerned that these could be counted as affordable housing units. She points out that [masshousingregulations.com](http://masshousingregulations.com) has examples of accessory living units. Also, there is some inconsistency as the fee for a Certificate of Fitness is \$50 but the annual inspection fee for these units is \$75, despite the fact that identical services are being provided.

Kirt Rieder notes that he does not support the addition of a new curb cut to the property as a companion to this structure/expansion. This may be covered by existing Zoning or building codes, but he would like to see a prohibition on additional curb cuts due to concerns with reducing tree lawns, root zone, pedestrian space, etc.

Tim Jenkins of 18 Broad St. also notes the suggestion on Mass Housing, which has many Ordinances listed. Salem’s approach is to assist families with aging parents or disabled family members. Parking, impact on neighbors and expansion are all issues. He recommends reviewing Peabody’s Ordinance as it is much more detailed and addresses many of these issues. He also notes Topsfield, which is different, and Wakefield, which is very stringent. There are many variations within the model.

Gary Gill, of Highland Ave, Salem MA, works with seniors, and the biggest topic is seniors/handicap housing for family members, so this is a step forward but other considerations should be:

Resale value of unit: Can owners benefit from added square footage? They should be able to.

Accessibility: Everything must be big enough so later on, they can’t rent that unit out for bigger benefit

Parking: must be taken into consideration

Councilor Dibble notes that variances are not allowed; the property must be big enough, as the original intent was to make changes inside, but additions are permitted if allowed under existing zoning, but it should not be an imposition.

Councilor Turiel says that the Special Permit process was designed to cover all scenarios. Special permits would not be granted if a project would not work, more flexible solutions are possible to address housing issue, but this Ordinance is trying to address one very specific issue, which is family members who need care, in order to not force seniors out of their homes.

*A motion to close the public hearing is made by Councilor Dibble, seconded by Councilor Gerard, and passes.*

*A motion to send the matter to the Planning Board for their recommendation is made by Councilor Turiel, seconded by Councilor Gerard, and passes.*

*Councilor Turiel motions to adjourn, and the motion carries.*

- II. Council President Milo opens the public hearing for all persons interested in the proposed amendment to the Zoning Ordinance:

**Adding a new section within Section 8-Entrance Corridor Overlay District requiring Design Review Board (DRB) recommendations to the Planning Board on the design of new construction non-residential structures of 10,000 s.f. or more and new construction of residential structure of six units or more and a Planning Board vote to determine if a proposed new construction non-residential structure between 2,000 and 9,999 s.f. should be referred to the DRB for a recommendation.**

Amanda Chiancola, Staff Planner, outlines the history of the Ordinance. It would enhance the Board's purview of Site Plan Review by relying on the expertise of the Design Review Board (DRB).

Councilor Famico: Asks about if a project is within the same footprint; this would only apply if the project meets the threshold for Site Plan Review (SPR), which is 2,000-10,000 square feet of new construction in the entrance corridor.

Councilor Dibble: Asks why this is limited to 2,000 square feet. He cites the Global gas station that was demolished on Route 1A and that the Valvoline replacing it did not need to undergo SPR, despite being in the ECOD. Amanda Chiancola explains that the DRB provides its recommendations to the Planning Board; thus, if a smaller project underwent Design Review but was not required to undergo Site Plan Review, there would be nowhere for that recommendation to go. The threshold for Site Plan Review would also need to be lowered so that Design Review and Site Plan Review could coincide. Councilor Dibble opines that the threshold for Site Plan Review should also be lowered.

Councilor Turiel: Also wonders about the numbers; if the language were changed to include that nonresidential structures of 9,999 square feet and below must be subject to SPR, that the above would take effect. He feels that no minimum number should be stated.

***Public Comments in favor.***

Meg Twohey, 122 Federal St., is in favor of this and is also concerned about 2,000 square foot minimum. Discussion of areas that are and are not in the ECOD (Bridge St. between Boston and North Streets is in the North River Canal Corridor, so is subject to Design Review though not in the ECOD) and re-zoning of certain areas is discussed. Councilor Dibble wonders if Bridge Street could be added to the ECOD.

Tim Jenkins of 18 Broad St. is in favor of the change, and is also in favor of expanding and including more of Bridge St. in the ECOD.

***Public comments opposed.***

None.

Kirt Rieder notes that although tonight the focus of the discussion is on square footage of new construction, perhaps disruption of a site in general should be considered, for example if more than 10,000 square feet is disrupted by paving.

Councilor Famico wonders why this applies to the number of units and not square footage for residential units; she feels it should be based solely on size.

A motion to close the public hearing is made by councilor Dibble, and seconded by Councilor Ryan.

A motion to refer the matter to the Planning Board for its recommendation is made by Councilor Dibble and seconded by Councilor Famico.

- III. Council President Milo opens the public hearing for all persons interested in the proposed amendments to the Zoning Ordinance:

**The implementation of Chapter 94G of the Massachusetts General Laws, Regulation of the Use and Distribution of Marijuana Not Medically Prescribed. The proposed amendments add:**

- a) New uses, allowed only by special permit, to Section 3.0 -- Table of Principal and Accessory Uses for a retail marijuana cultivator within zones B2, B4, Industrial (I) and Business Park Development (BPD), a marijuana product manufacturer within zones I and BPD, a marijuana testing facility within the I zone, and a marijuana retailer within zones B2, B4, I and BPD, and a new use for a marijuana testing facility allowed by right in the B2 and BPD zones.**
- b) New definitions to Section 10.0 for marijuana establishment, marijuana cultivator, marijuana product manufacturer, marijuana testing facility, marijuana retailer, marijuana processing, marijuana manufacturing, marijuana, marijuana accessories and marijuana products**
- c) A new Section 6.10 – Special Regulations to provide for the special permit process for marijuana establishments listed in Section 3.0.**

Vicky Caldwell, Assistant City Solicitor, presents. Ms. Caldwell notes that all three items are interrelated and this is only the beginning of the discussion.

This is part of a package from the Mayor with the adoption of taxation and a limit on the number of permits available. The Zoning Ordinance is reviewed. Most people think of retail marijuana, but actually there are four types establishments to consider: retail, cultivation, testing, and processing. Basically, they are treating this similar to alcohol/package stores, with a few tweaks. The Zoning Board of Appeals and Planning staff have weighed in.

It is noted that nothing at all is allowed in B1 or B5 and that testing is allowed by right in only two areas, B2 and BPD. There will be a special permit process for all other instances, and applicants will also be required to submit a letter of non-opposition from the Mayor and City Council to obtain State Approval.

A discussion of which activities are allowed in which zones ensues.

There is already one testing facility in B5, which would be grandfathered in with a special permit to legitimize its existing use, which would be nonconforming under the new Ordinance.

Several Councilors wonder why nothing is allowed in B5, noting that there are several package stores in that Zone now, so perhaps this should be added as a special permit. Due to the cap, there would only ever be a maximum of five facilities in the City, so it may not be advisable to push them to the perimeter. It may also be desirable for the Board of Appeals to issue special permits to applicants in Zones B2 through BPD.

Councilor Famico notes that limiting locations would limit access. Although marijuana does serve medical purposes, with insurance costs and other burdens the process of obtaining it for those purposes can be onerous, so people may not go that route. Limiting establishments to certain areas will put some purchasers at a disadvantage so she hopes that accessibility and the downtown area are also considered, as industrial areas have limited access.

Councilor Gerard also feels that B5 should not be excluded, and notes that Salem Willows is considered B2 on the zoning map. She wonders how the NRCC would be treated as it is not included on this table. This would need to be reviewed moving forward, but it is noted that is a discussion for another night. The medical facility is in Ward 6 and she would like to see other wards have access.

Councilor Dibble asks about regulation of this issue; if not regulated, the City has no control over licensing, though there is no requirement that municipalities regulate. He also feels that B5 and B1 should be included. Assistant City Solicitor Caldwell explains that, while there was much debate, as this is a new usage, the City wanted to move slowly to protect the B5 zone. B1 would allow for more “mom and pop” type establishments, but Assistant City Solicitor Caldwell describes that it is a difficult point of entry for small businesses, given local regulations and State licensing requirements.

It is questioned why testing is allowed by right in BPD but not within Industrial; perhaps it should be the other way around. Testing facilities are being treated as laboratories.

Councilor Dibble suggests continuing this item so that many questions can be addressed. He would like recommendations for 100% of the City, including all zones.

Councilor Sargent asks about the distances and this is outlined. In the draft, abutter must be notified.

Noah Koretz feels that the intensive regulation of package stores sets a good precedent, and sees no reason to treat marijuana differently. He agrees that B5 should be included, and that retailer use should be allowed in B1. Most retail establishments, he notes, look like mom and pop stores, and are subtle, small operations.

***Public comments in favor:***

Brendan Murphy of 19 Collins St. feels that excluding establishments from B5 and thus downtown is not a good idea, as it would limit access via public transportation, especially since more people will be drawn to Salem for this. He is also in favor of opening B1 up to mom and pop establishments, as long as there is a rigid special permitting process they can follow on a case-by-case basis. He notes that while consistency is important, different neighborhoods have different needs.

Richard Rivera of 17 Orchard St. in Ward 6 agrees that the use should be allowed in B5 and notes that in Colorado many medical dispensaries shifted to retail due to tourist demand. He feels that this should be treated as any other business in a responsible industry.

Medical related businesses will have preference but other benefits to the community will be examined as well.

***Public comments opposed:***

Michael Latulippe, 190 Bridge St. Salem, a member of the Massachusetts Patient Advocacy Alliance, is opposed to the Ordinance in its current form but not to marijuana. He suggests that the City wait to pass its Ordinance until the Law is passed. The Law at the State level helps women, minorities and veterans, while Salem’s Ordinance does the opposite. He says there are several clerical errors, and notes that the Ordinance does not consider all stakeholders.

Issues he would like to see addressed:

- The State Statute is spread across two chapters, but Salem’s Ordinance does not incorporate changes across the chapters, as the second changed many things from the first.
- Other small business licenses will be possible under the State law once enacted; it will encourage participation from all communities oppressed by drug war
- This Ordinance does not permit the use of greenhouses for growing, yet requires that marijuana be grown onsite. This is unreasonable and impractical. Several other inconsistencies/mixed messages/public safety issues are brought up.
- The proposal was not done by stakeholders who have familiarity with the laws. Onsite consumption retailers in B1 and B5 should be encouraged. In its current iteration, the Ordinance forces parents to bring marijuana home to consume it, in the presence of their children.

Mr. Latulippe feels that a municipal cannabis advisory board should be formed. The Ordinance should not hurt the City and also should not push out marginalized groups such as women, veterans, etc. Under new adult use law, nonvertical integration is possible so businesses will not need millions of dollars to start growing, and can purchase from center or coop. This industry should not be regulated entirely like package stores due to proposed different license types. It should also not be assumed that establishments will develop along the same lines as package stores; cannabis could be incorporated into other business aspects, e.g. art centers, nail salons, etc. We may see a wide range of applicants.

Meg Twohey of 122 Federal St. is concerned about the implications of becoming a City that sells marijuana. Consequences of any actions should be considered and if we move forward with this, it should be done well in order to benefit the City and its businesses. She is also concerned that the NRCC has been left out of this discussion, and also about the timing of the vote.

Nichole Snow of 190 Bridge St. and President of Massachusetts Patient Advocacy Alliance, Market Participation Subcommittees as well as the 25-person panel at the State level. She discusses a regulated vs. realistic market. People use marijuana in all sorts of activities – yoga, art, at picnics, camping, etc. so special day permits should be considered. In other Cities, various small businesses have expressed the desire to be part of this industry. B1 would be ideal for them, as it is affordable. A laboratory that tests medical marijuana would also be able to test for adult use, hopefully, as prices would come down for lab testing and this would help patients in the long run.

Councilor Dibble would like to see restriction of K-12 to be expanded to include colleges and universities.

The Council requests that Michael Latulippe share his information package with the Planning Board and City Council, as well as the City Solicitor. The timetable of enacting local vs. State regulations is discussed. If a business comes in and no local zoning is in place, the City would not be able to regulate them. Ground rules must be set, though changes can be incorporated later. The original discussion was not to allow establishments in B1 and B5, but if the desire is there, it can be discussed further with the Mayor and her staff.

Councilor Dibble again notes the time table with State and local regulations. State regulations take effect in March of 2018 for medical marijuana licensing. All other uses begin July 1<sup>st</sup> 2018. While a ballot question could still ban marijuana establishments here, that unlikely given the response the first time around.

Councilor Turiel notes that possession and use have been legal for a year. In this case we are discussing something legally used by individuals, but unless grown in their own home, they are purchasing it illegally from somebody, so we need parameters to drive this from being an underground industry to a regulated, taxed activity. For people who currently “have a guy,” he wonders if those “guys” will be put out of business by legal establishments. Flexibility in the regulations is called for in order to deal with this. He is in favor of a cap, but notes that, while marijuana has been legalized in Massachusetts it is still a Schedule 1 drug at the Federal level. He is in favor of onsite consumption facilities eventually, as the process moves forward, but this does not need to be addressed in the near term.

Onsite consumption could be allowed with a ballot question. There is some question as to whether onsite consumption would conflict with the cap on the number of facilities allowed. The cap and taxation are separate issues and not part of this joint hearing, though the Ordinance does reference the cap.

Councilor Famico asks for clarification on timing and this is discussed at length. She also feels that the security, Operation & Maintenance plans need some work and should be reviewed by the Fire Department. Emergency plans are discussed. Details have also been filed with the Planning and Building Depts.

Councilor Dibble motions to continue the hearing to Jan. 17, 2017 but the President does not allow the motion.

Councilor Turiel motions to continue item A to Monday, Nov. 27, and the motion carries.

Councilor McCarthy motions to continue item B to Monday, Nov. 27, and the motion carries.

Councilor Turiel motions to continue item C to Monday, Nov. 27, and the motion carries.

Councillor Famico: Urges Council, Planning Board and residents to push for Ordinance s that support our zoning, e.g. signage.

The meeting ends at 8:45PM.

Respectfully submitted,  
Stacy Kilb, Recording Clerk

Approved by the Planning Board on 12/21/2017

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