

**City of Salem Planning Board and City Council
JOINT MEETING
Approved Minutes
Wednesday, January 17, 2018**

A joint meeting of the Salem Planning Board and the City Council was held on Wednesday, January 17, 2018 at City Hall Annex, 93 Washington Street, Salem, Massachusetts.

Council President Gerard opens the meeting and outlines procedures at 6:30 pm

I. ROLL CALL

Planning Board Members present: Chair Ben Anderson, Kirt Rieder, Dale Yale, Carole Hamilton, Matt Veno, and Helen Sides

Planning Board Members Absent: Noah Koretz, Bill Griset

City Council Members Present:

Beth Gerard, Ward 6 Councilor - City Council President

Arthur C. Sargent II, Councilor at Large

Thomas H. Furey, Councilor at Large

Domingo J. Dominguez, Councilor at Large

Elaine Milo, Councilor at Large

Robert K. McCarthy, Ward 1 Councilor

Christine W. Madore, Ward 2 Councilor

Lisa JB Peterson, Ward 3 Councilor

Timothy G. Flynn, Ward 4 Councilor

Josh H. Turiel, Ward 5 Councilor

Stephen G. Dibble, Ward 7 Councilor

Also in attendance: Amanda Chiancola, Staff Planner; Stacy Kilb, Recorder; Beth Rennard, City Solicitor; Cheryl LaPointe, City Clerk

The City Council held a joint public hearing with the Planning Board on Wednesday, January 17, 2018 at 6:30 P.M. in the City Council Chambers, City Hall, 93 Washington St., Salem, MA in accordance with Chapter 40A, Section 5, of the Massachusetts General Laws to consider the following petition to amend the City of Salem Zoning Ordinance Section 1. Sub-section 3.1 Principle Uses of Section 3.0 Use Regulations by deleting:

“Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area.”

and replacing it with

“Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than two acres in area.”

Relevant section of Ordinance:

SECTION 3.0 - USE REGULATIONS

3.1 - PRINCIPAL USES

Except as provided by law or in this Ordinance in each district, no building or structure shall be constructed, used or occupied, nor shall land be used or occupied, except for the purposes permitted as set forth in the accompanying Table of Principal and Accessory Use Regulations.

3.1.1 By Right. A use listed in the Table of Principal and Accessory Use Regulations is permitted as of right in any district under which it is denoted by the letter "Y" subject to such restrictions as may be specified elsewhere in this Ordinance.

3.1.2 Special Permit: Zoning Board of Appeals. A use designated in the Table of Principal and Accessory Use Regulations by the letters "BA" may be permitted as a special permit only if the Zoning Board of Appeals so determines and grants a special permit therefore as provided in Section 9.4 of this Ordinance subject to such restrictions as are set forth elsewhere in this Ordinance, and such restrictions as said Board may establish.

3.1.3 Special Permit: Planning Board. A use designated in the Table of Principal and Accessory Use Regulations by the letters "PB" may be permitted as a special permit only if the Planning Board so determines and grants a special permit therefore as provided in Section 9.4 of this Ordinance subject to such restrictions as are set forth elsewhere in this Ordinance, and such restrictions as said Board may establish.

3.1.4 Not Allowed. A use listed in the Table of Principal and Accessory Use Regulations which is denoted by the letter "N" is not allowed without an amendment to these Zoning Ordinances enacted by the Salem City Council.

(Ord. No. 9-9-10, § I)

B. EXEMPT AND INSTITUTIONAL USES	RC	R1	R2	R3	B1	B2	B4	B5	I	BPD
Use of land for the primary purpose of agriculture, horticulture, floriculture, or viticulture on a parcel of more than five acres in area	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
C. COMMERCIAL USES	RC	R1	R2	R3	B1	B2	B4	B5	I	BPD
Agricultural use, nonexempt	Y	Y	N	N	N	N	N	N	N	N

The petitioner, Andy Varella, of 23 Cerdarcrest Ave, presents. He co owns Maitland Mountain Farm (MMF or “the farm”) with Holly Maitland. The farm is located at the above address, and the family has been farming there for 9 years. Mr. Varella outlines the Farm’s contributions to the City, including work with schools. It does business with 20 establishments in the City of Salem. They are proponents of agriculture and support the local community. Small scale commercial agriculture is a viable business process that benefits the entire community and increases food security. Mr. Varella cites local examples vs. food produced on an international level, and further outlines the benefits of local agriculture.

He goes on to outline how the change in ordinance change would affect the rest of the City.

City Solicitor Beth Rennard again outlines the Ordinance and the exemption provided; the exemption is for agricultural uses on a lot of 5 or more acres. State law, which supersedes local ordinance, allows agricultural practices on lots of 5 acres if such activity is non-income-producing, but allows them on lots of 2 acres if the activity produces income. The Maitland's agricultural activities are commercial in nature and do produce an income in the amount required (\$1000 per acre) for the law to apply. The proposed change in ordinance differs slightly from the state law in that it would be somewhat more narrowly defined. As this property would already be covered by the state law, she is uncertain why the Petitioner would like to change the Ordinance.

At issue is the fact that the Zoning Enforcement Officer has determined that the primary use of this property is not agricultural. The Zoning Board of Appeals (ZBA) had a difference of opinion. Ms. Rennard cites a state memo on small farms and notes that she has worked with Bob Ritchie on this issue. The Petitioner had originally applied to erect a two-story structure at the front of the property, which would be used for their business.

Amanda Chiancola, staff planner, outlines maps of 5 acre and 2 acre parcels in Salem, for context

- Prior to 2010 – 5 acre parcels not owned by the City that meet the minimum lot acreage
- Parcels of 2 to 5 acres, affected after the 2010 amendment to state regulations
- Google image of Maitland Mountain Farm

City Council input

Councilor Tom Furey, At Large:

Councilor Furey is in favor of the ordinance change. He outlines how neighborhoods define Salem. Maitland Farm is part of that cultural history and local fabric. He assures residents that they will be heard.

Councilor Josh Turiel, Ward 5:

- Notes that this does not change the underlying zoning, but that having agricultural use on the property qualifies the Petitioner for exemptions and allowances
- One issue is their desire to build an outbuilding; he wonders about zoning and setbacks. He wonders if an agricultural use allows them to circumvent the process, or if it would still need to be followed, but they are defined as a farm
- Council President Beth Gerard, notes that they need to follow “reasonable” restrictions. The zoning office’s primary concern is the proximity to the street and abutters, plus meeting the definition of “farm.” Reasonable regulations involve heights, and proximity to side yard, but can’t prohibit construction.
- Councilor Turiel notes that there are not many large lots left in Salem; most are subdivided so theoretically this could be converted into a small subdivision, which would be a contrast to what is there. But, he clarifies, boundaries on outbuilding are reasonable even if agriculture is in place.

Councilor Christine Madore, Ward 2:

- Asks if additional analysis of the maps presented, such as soil analysis, has been done, to determine if the parcels qualify as arable land; many are currently used for industrial or other similar uses. Amanda Chiancola replies that no prepared additional analysis was done but that the chart is of existing uses, so there are 7-10 parcels that could feasibly be used.

Councilor Elaine Milo, At Large:

- Wonders why the Petitioner decided to seek a Zoning Ordinance change through the City Council, rather than go through the Zoning Board of Appeals, as the issue seems to be that they were denied a permit to build a structure
- The issue is that the Petitioner feels that what they are asking to do is by right, yet they were denied a permit to build because the City did not believe that their business is “agricultural,” thus found a creative way to deny them that permit.

Councilor Turiel:

- Outlines the issue with chickens in Salem several years ago. After a complaint, the owner did not apply for a permit, though it was a denial issue, and went to the ZBA. That Board found the use acceptable and gave them a permit, overriding the Inspector's determination. Because the Council was aware that this was not there was a legal battle in that case, the Council wanted clarity in this case and in the future, so developed the Ordinance regulating chickens in Salem. Normally the ZBA is best way to go since that Board does not deal with interpreting zoning by the book, like the zoning officer must, so they can look at extenuating circumstances.
- As a follow up question, Councilor Turiel asks the Petitioner to discuss how they use outside produce in pickle production, since they cannot grow enough cucumbers of their own to meet demand. He wonders how production factors in as an agricultural use. City Solicitor Rennard states that manufacturing ins not considered agriculture and cites the case of Campbell soup.
- Mr. Varella notes that chickens are considered urban agriculture, but that is a separate issue from commercial agriculture, which is what is being considered. The outbuilding requested is needed because pickles have become a substantial portion of MMF's business; they lease property in Lynn for production, which is separate from the farm. They grow as much as they can onsite from May-October; most pickles do not go to restaurants, but to Sysco and Costa, their distributors.
 - The building in question would be a packing house, needed in order to comply with USDA and FDA audits. Those Federal agencies require packing house to facilitate washing, packing, safekeeping of vegetables according to USDA and FDA standards. All farms are required to follow safe practices, including refrigeration from farm to end destination.
 - He further clarifies that the primary use of the building will not be to bring back "onsite," what is currently being done in Lynn; this is for processing, handling and storing produce that goes out to distributors. Activity would be supplementing Lynn mainly for packing products coming from the property, not what they acquire elsewhere.
 - The Farm produces vegetables and cucumbers, though the season is short, and garlic, for a total of 7000-10,000 pounds of produce on site, above the \$1000 per acre required for commercial agriculture.
 - Part of the reason agriculture was deemed not to be the primary use was that there is a house on the property. However, Mr. Varella argues that the house is an integral part of the farm, as the farmers who own and work the property live there. There are also tennis courts but they are no longer used. Even after subtracting the footprints of the house and tennis courts, they still meet the 2 acre minimum.
 - Councilor Turiel asks how much acreage is under production and if there are plans to remove the tennis court and use that area for production as well. The total parcel is 2.3 acres, with a physical growing space of 2.1 acres and planted land in the amount of 1.7 acres.

Councilor Arthur Sargent, At Large:

- Wonders if the farm would go out of production; the Petitioners plan to continue farming, ultimately retire from agriculture but would like for their two sons to carry on the business.
- Councilor Sargent notes that he has been getting "save the farm" calls and correspondence, as if there is a danger it will be shut down; if Mr. Varella and Ms. Maitland cannot comply with FDA and USDA standards, they would go out of business as the pickles are a main source of income. It is not viable to only sell pickles locally; most of the profits are made through distributors, with 80% of revenue coming from those sources.
- Councilor Sargent notes that property values and quality of life for neighbors must also be evaluated.

Councilor Timothy Flynn, Ward 4:

- Asks if there are any other locations on the property that the structure could be situated. The Petitioner is more than willing to establish another site in order to satisfy abutters and the City; the location can be adjusted within certain constraints.

Councilor Madore:

- Asks how the neighbor's concerns about noise, traffic, and smell, which have been brought to the Council, will be addressed
 - Mr. Varella replies that he is unsure about odors, as the only compost is from carbon and vegetable sources, with no manure or nitrogen, and they have not received any complaints from neighbors.
 - Some noise is produced, both due to normal farming practices (i.e. use of a tractor) but is also partly due to the fact that they could not build the requested structure. Due to that lack of structure, to comply with USDA and FDA regulations, they use a mechanically operated refrigerator truck/trailer, which is run between June and August for one day per week, for 12 hours at a time, before produce can legally be released to vendors. A packing house would alleviate this, having a quieter HVAC unit.
 - Regarding traffic: MMF self-distributes products; beyond infrequent LTL trips up and down the hill, most traffic in the area is not because of the farm. He notes that there are two adult day care centers abutting the farm, and the Ride plus GLSS make frequent trips up and down Cedarcrest Ave. between 7 and 10 times per day. MMF has only one vehicle that goes up and down one day per week, not five days per week

Councilor Steve Dibble, Ward 7:

- Opposed or would favor a compromise
- Notes that he received 50+ *emails* in support of change did not come from immediate neighbors, but rather from those in other communities
- Received 2 dozen calls from direct abutters opposed to expansion of the farm. Their concerns:
 - Trees removed along rear property line removed buffer/screening to condos
 - Storage of debris on the property
 - Noise from refrigeration and trucks, and in general
 - Greenhouse lights left on overnight
- Notes that only 6-7 properties citywide could potentially be used for farming on 2+ acres, so the Maitlands may be the only ones in question
- Concerned that more people may want to go into farming if marijuana cultivation becomes lucrative
- Would like more information on size and function of packing facility, wonders if building would contribute to additional trucking
- Notes rumors regarding marijuana production and fish processing

Mr. Varella describes the proposed structure as a 24x40', two story building on a slab; its primary purpose would be to process vegetables grown on the farm by washing and boxing produce before passing it on to the distributor. He notes that Costa Produce does not come to the property; MMF self distributes so the only vehicle is theirs.

He clarifies that no large trees were removed along the back edge of the property; some trees are dying and there is lots of oriental bittersweet. Some trees were cut at the front of the property, which will become a field. Another area has changed from perennials and flowers to vegetables. Complaints of speeding vehicles would have been regarding the group homes on the street, not his farm.

Councilor Dibble reiterates his opinion that this local change is not needed if it will be superseded by state law. City Solicitor Beth Rennard feels that the remedy would be to appeal the building inspector's determination to the ZBA. Even if this ordinance is changed, she feels it will not change his interpretation of the primary purpose of

the lot. Councilor Dibble worries that if the local ordinance is changed, local zoning laws would no longer apply and the local building inspector would lose authority. He would like to hold on to local control.

Councilor Beth Gerard, Ward 6, notes that this discussion is about section 3.1 not about buildings, but about agriculture, so asks if the Planning Board did recommend amending to 2 acres, and Council votes in favor, would it change local control? City Solicitor Beth Rennard says the local ordinance should mirror the state law, and with respect to structures, there is a zoning exception for agricultural uses. Local communities can put reasonable controls on those properties, but they must not be too restrictive. The City Clerk has printed Ch. 48 section 3.

Councilor Christine Madore:

Asks about strengthening local control if the Ordinance is changed; local control would be enhanced as regulations could be applied to farmland under two acres, as parcels of less than that size are not covered by the state law.

Councilor Madore calls upon Kerry Murphy of Mass in Motion, which Mass in Motion addresses food access and insecurity issues by promoting urban agriculture. She notes that if no changes are made, it would undermine the work of Mass in Motion and the state as a whole. She does not feel that to change the Ordinance would be redundant, as there is a home rule clause and the City can be stricter than the State. She passes out a handout from the Massachusetts Health Board. Mass in Motion supports this change from a public health standpoint

Councilor Turiel notes that concerns about the eventual growing of marijuana are unfounded, as that is explicitly and not included as an agricultural or even acceptable use under this standard. It is regulated elsewhere. He further notes that whether properties are more than 5 or between 2 and 5 acres, most would not see viable agricultural usage and would not be converted. Generally, such parcels are subdivided and developed. Residents are continually concerned about density, traffic, etc. but farming is a low density, low profit margin, low traffic generating activity. He feels that using a 2 acre parcel for farming is beneficial, keeping the City more open

Councilor Milo asks for clarification on the process and the City Solicitor explains; the Petitioner would still have the same issue even if the local ordinance is changed. The Building Inspector's determination would have to be appealed to the ZBA.

Chair Anderson asks the Petitioner to outline activities on the property in a typical day during growing and non-growing seasons:

- From Jan-late Feb. there are no activities in the fields, but a 30x50' heated propagation greenhouse is used to start seedlings for the fields
- March-May: Preparation and manuring fields to introduce transplants. The owners operate on the farm 2 days/week; field work with the tractor is only a very small part of it. For 4 hours per week the tractor is in the fields between 8AM-4PM.
- May: plantings occur
- Mr. Varella outlines noise generating activities, including:
 - Refrigeration unit is used on a Monday OR a Tuesday between 3PM and 8AM. The unit cycles on for 10 minutes, then off for 30 throughout the night. The proposed structure would remedy this situation.
 - All of what is grown on the farm is distributed locally on a Monday or Tuesday, or through distributors. The truck to bring the products offsite runs twice a week, both times on a Tuesday between 9AM and 2PM. The rest of the week, the truck is used in Lynn.

Chair Ben Anderson asks the City Solicitor about the ability of abutters/neighbors to bring lawsuits against the property owners. City Solicitor Rennard states that state law protects farms and in some cases will trump and appeal regarding, for example, the odor generated by spreading manure on fields.

Chair Anderson also wonders about the primary and accessory uses of the property, as urban farming is allowed in all zones. However, this is not an urban farm and this property is split between zones R1 and R3. Mr. Varella notes that the City may reasonably regulate via building codes, setback requirements, etc. While the proposed building would be defined as an “accessory use,” for the farm, it is integral as profit is made through value added products. Chair Anderson wonders, if the difficulty is in having the primary use defined as agricultural, allowing the building to be defined as an accessory would allow them to build it and continue operation. However, Mr. Varella feels very strongly about this issue as they have gotten pushback from both the City Solicitor and Building Inspector. Section 3 is very clear about how the City can reasonably regulate agricultural production, and they are not asking to do urban agriculture, but commercial. Mr. Varella fears that given the current pushback, more issues will crop up. He and his family plan to continue this business but will require accommodations to facilitate it as they age. Because they were denied a permit because Agriculture was not seen as a primary use, this ordinance would establish agriculture as a viable use in the City.

The City Solicitor will explore the question of unreasonable regulation. Chair Anderson asks if changing the table of uses could allow the Planning Board to require ZBA or Planning Board approval. This would be akin to requiring a special permit; if this is exempt agricultural use, the Board could not require that.

Further discussion occurs on Massachusetts General Laws, reasonable regulation, and special permits. Changing the ordinance, it is noted, seems like a blunt tool to attempt to remedy a specific situation.

Beth Gerard president opens to public comment and reviews procedures.

IN FAVOR:

Michelle Conway of 60 Northrop St., Salem

- The original “chicken owner” who brought about the change needed to allow homeowners to keep backyard chickens
- Understands that the State law would supersede local regulation, but also understands the expense of a ZBA appeal
- She notes the comedy of the situation. She was cited by the Inspector for running a “farming operation” with five chickens, yet the primary use of Maitland Mountain Farm has been deemed non-agricultural. She feels that the inspector is cherry picking his determinations to fit the desires of the neighbors

Al Saint, Far from the Tree Hard Cider, Jackson St. & Lafayette St., Salem

- Notes that MMF picks up apple pumice that would otherwise be discarded, and took 5 tons this year

Kokeshi Owner, Salem:

- Purchases products from MMF, notes that it is an active farm, and that increasing food safety is an interest of his.

Zack Billing, 14 Oakview Ave., Salem:

- Feels complaints may be unfounded, and that the farm brings a lot to the neighborhood. Compared to Amazon deliveries, etc. the amount of traffic it generates is negligible, so not an issue/concern.

Jeff Cohen, 12 Hancock St.

- Member of the Sustainability, Energy & Resiliency Committee (SERC)
- Notes that billion dollar farm operations that do not have people living on them are unsustainable, produce dangerous food, and have put many family farms out of business. The MMF model is the definition of sustainability, an urban community farm selling locally

- The reason this issue is before the Board and Council is one of semantics, the Zoning Officer having made an arbitrary decision that was unreasonable. This council often defers to the state, such that residents must wait for short term housing, etc. The Petitioner is asking that we not defer to the state, and should honor this country's history by supporting a family farm.

Mark Maitland, 48 Forrester St. Salem

- Outlines benefits of locally sourced food and its relevance to sustainability.
- Understands this is about community, a starting point even though it may not be the best way. It will increase the chances for small farms to prosper, outlines farming history and community.

Kiley Sullivan, 205 Essex St, Salem Main Streets

- Notes that MMF is the only local grower at the Farmers Market
- Notes that there are no parcels in Salem of 5 acres that would be used for agriculture
- Feels that the Ordinance should be changed and the Council should not wait for change at the State level.

Patrick Shultz, Summer St., Salem, owner of Mercy Tavern on Derby St.

- Reiterates that this is about the community, and that other properties are unlikely to become farms
- Also reiterates that growing marijuana is not allowed under the current law
- Outlines products that MMF supply to the Tavern, and that the Maitlands are responsible neighbors and community members
- To rest the primary argument, especially one that states that the primary use is not agriculture because the farming family happens to reside on the property, is anti-community

Matt Buchanan, 4 Curtis St. Apt. 1, Salem:

- Feels that the City should support MMF as the Maitland Family also supports the City in turn

Meg Duffy, 65 Appleton St., Salem:

- Notes that this is not the only way to address the problem, but the Maitlands thought it would be the best and want to make progress as easy as possible. The pack house will make a large difference for the day to day production and success of farm.

Brendan Murphy, 19 East Collins St., Salem:

- Comments that the Maitlands want to limit traffic and noise, and are contributing to the local economy by hiring local citizens and selling to local businesses. This is clearly a farm – with a house. Also, with regards to “chickengate,” he, too, finds it odd that 5 chickens were deemed agriculture whereas a fully fledged farm was not.

Scott Sternberg, 25 Pickman Rd., Salem

- Reiterates the importance of local food and appreciates the farm in his Ward
- Has heard traffic concerns but did not see much traffic upon canvassing the Ward, and has not concerns himself

Rachel Duda, 48 Forrester St., Sale, Health Clinician, Children's Friend and Family

- Outlines the collaboration of her organization with MMF, who provided seedlings to the children they work with, have taken groups to the farm, etc. MMF is integral to the community

Fauaz Abusharkh (a.k.a “Fuzzi”), 4 Harrison Rd., Salem:

- Feels that while the City cannot wait for the State, he does not want to see local control given up

- Feels there should be a way to approve such projects on a case by case basis without changing the Ordinance
- Is in support of the Farm in general, but feels that abutters should be heard and their concerns addressed, within reason

Owner of 40 Cedarcrest Ave., Salem:

- Is a direct abutter, and has no complaints or concerns re traffic or smells.

Heidi Scott, 3A Russel Dr. Salem,

- Believes we need to move toward local food
- Notes that Community help from MMF during the Feb. 2017 snowstorm was integral to the Farm Direct Coop (FDC).

OPPOSED

Mark Bruchennis, 25 Valiant Way, Salem:

- Is a direct abutter, supports the farm but notes it is an agricultural operation in a residential neighborhood, and as such it does impact the area, such as reducing neighbors' enjoyment of their own properties
- There are nuisances that must be weight against the benefits provided by an urban farm
- It is inappropriate for the City Council and Planning Board to consider an ordinance that would limit their ability to address impacts to surrounding neighborhood. (It is noted that while there is a perception that if adopted, the farm can do whatever it wants, that is not the case. Thee City can still place reasonable controls on its use as a farm.)
- Concerned that the processing facility will change the character of the farm.

Allen Hoff, 23 Valiant Way, Salem:

- A direct abutter, insists that some trees in the buffer zone were cut
- Is opposed to the usage of Far from the tree hard cider apple waste as fertilizer at MMF, as he feels it draws rodents
- Is concerned that the main goal of MMF is a commercial packing house with onsite refrigeration and processing, inappropriate for an R1 and R3 zoned parcel.
- Upset that abutters were not invited to tour the property
- Notes general unsanitary state of the property, on which are several structures including a barn and outhouse, with lots of waste and debris on the property. He feels that people would not want edibles coming from such an area

Norman Begogian, 35 Valiant Way, Salem:

- Is an abutter; notes that trees were cut and this affects quality of life; crops are now grown where those trees were
- Feels the greenhouse is unsightly and noisy with fan at night
- Concerned about the industrial nature of packing building
- Claims the Maitlands are not good neighbors, do not address complaints, neighbors must go to Councilors instead
- Also concerned that the Petitioner is trying to circumvent the process

Cheryl Winter, 12 Cedarcrest Rd., Salem:

- One house separates her property from MMF, and she represents the residents and neighbors of Cedarcrest Ave. She has provided a handout
- Concerns:
 - The Farm will be protected and insulated from neighbor or City concerns
 - Change in Ordinance would allow for farm stand and fish smokehouse
 - Setbacks can't be met
 - Truck and customer traffic increases
 - Pickle making is not farming
 - Quality of life and property values
 - Cites 2011 Edible Boston article and one from Northshore Magazine

Owner of 22 Cedarcrest Ave., Salem:

- Supports farming, but echoes concerns of others:
- Clarity or lack thereof of state and local ordinances
- Property values
- Traffic
- Dumping of landscape waste on Maitland properties; yard waste could be causing odor and vermin
- Lack of respect by Maitlands, never been invited to farm/garden
- Submits petition, noting that Seniors do not have internet/email, don't get news, were not notified door to door of meeting, and had no way of finding out about it.
- Questions: Clarity on zoning? Pickle process? How long has Maitland been self distributing? Property value?
- Submits petition to City Clerk, notes lots of emails to Steve Dibble by those not comfortable signing petition b/c they know the Maitlands.

Carole Hamilton raises a point of order regarding a time limit on comments. Councillor Gerard notes there are only three more members of the public who wish to express themselves.

Elaine Slater, 24 Valiant Way, Salem:

- Notes that there are 65 residents of Valiant Way, a condo village in a quiet setting with large trees that were a buffer and were removed. Concerns:
- Area no longer safe for children and dogs as Coyotes are attracted by the compost. Turkeys in the area are also a nuisance, aggressive in large numbers
- Retired fire chief said there is a fire hazard in the form of piles of shavings/compost; it was reported but was a while before alleviated
- Reduction in quality of life that has happened
- NIMBY to packaging plant/expansion

Ayna Hoffman, 23 Valiant Way, Salem:

- The farm impacts the whole area. She invites Councilors and Planning Board members to come over and see what it looks like from their backyard. Wants to maintain a quiet residential neighborhood

Scott Garabedian, 26 Valiant Way:

- Quality of life
- Future of farm once Maitlands are gone

Councilor Turiel:

Notes that whether or not the Ordinance changes goes through, R1 is not being converted to a farming/industrial zone. Without change, the “highest and best use” principal states that someone will develop this into a subdivision; farming is desirable as a low density usage. He reiterates the jurisdictional question posed by the disparity between City Ordinance and State law, requesting clarification.

Regarding the Zoning Enforcement Officer’s determination, while it may be desirable to adopt an Ordinance change to align it with State law (provided that local control can be maintained), it does not address the underlying issue of that determination.

City Solicitor Rennard will prepare a memo for the Council and PB, and reiterates that the State Law is already in play, so sees no harm but also no reason to change the local Ordinance.

Matt Venio asks if it would it be possible for the City to codify, in the Zoning Ordinance, some of these reasonable regulations that could go along with the section exempt properties. That is possible but there are some issues. Matt Venio asks that if the City were to adopt this Ordinance change to align it with the State Law, if there is the ability within 40A section 3 to codify the State regulations in the local Zoning Ordinance. There is. Thus, he recommends that if the city moves forward, it do so with a proposed set of reasonable regulations. The underlying enforcement determination aligns wit the state standard, but he wants local ordinance built around the expectations regarding what can happen on an exempt property.

Matt Venio would also like clarity as to whether the agricultural use of this particular property could be seen as an accessory use and therefore 3.2.1 and the ZBA process would be applicable; if it is not, why not, and how can we adjust the Ordinance to make it applicable? Changes to ordinance can be adopted that in a way that encourages themtype and mixture of uses on this property. The Board would like to see this promoted, but abutter interests should be protected. It is noted that this is done with the ordinance; standards are set that must be adhered to.

Councilor Dibble:

Requests additional information, but is concerned about the timetable moving forward once the public hearing is closed. This is discussed at length. Once the public hearing is closed, no more information from the public can be heard or submitted, however a memorandum from the City Solicitor could still be accepted as it is not considered additional testimony. If anything, other than the above proposed changes are considered, that would need to be advertized with a new hearing as the changes would be significant.

Councilor McCarthy:

Notes that before the Council is whether the Ordinance can change one number, from 5 to 2. No one opposes the farm itself, but the question is how to allow them to continue that use while retaining City control over certain aspects relevant to abutters. If the Ward 7 Councilor wishes to make significant changes, he should propose them separately and there will be a separate discussion. There is an allowable use on the property, and the Maitlands can question zoning through a different venue (to clarify the zoning officer’s intent). Unnecessary/unreasonable restriction is not allowed.

Councilor Turiel:

Reiterates that the public hearing regarding this change should be closed, but Councilor Dibble objects, fearing that no additional information could be accepted. President Gerard, however, points out that Councilor McCarthy is correct, and that local control would still be maintained even if the Ordinance change passes. Councilor McCarthy reiterates that the matter before the Council and Planning Board must consider only the change before them right now. Councilor Turiel echoes that, noting that the Planning Board should be allowed to deliberate and provide guidance to the City Council, and that the City Solicitor can still provide them with the additional information requested, which is separate and different from public input. A larger discussion re regulation needs to happen but it is not and cannot be at this process; it must be a separate hearing.

Councilor Sargent is concerned about giving up local control if the state statute applies. If instead the farm is grandfathered in by granting a variance, maximum local control is maintained.

Fauaz Abusharkh (a.k.a “Fuzzi”) of 4 Harrison Rd. feels that the public hearing should be left open but Councilor Turiel confirms that the public hearing cannot, procedurally, be left open. The only vote that can be taken is to close the public hearing and refer the matter to the Planning Board, so they can get guidance and send their recommendation back to Council. New items may not be part of this hearing, but the City Solicitor can provide legal and zoning guidance before they deliberate on this one word in the Planning Board. The wording is not being approved or denied tonight; that could happen up to 90 days from now.

Councilor Turiel moves to close the public hearing, and is seconded by Councilor Furey.

Discussion:

Councilor Sargent asks for clarification, and it is noted that as this is a joint meeting, closing public comment effectively ends it, for both the Council and Planning Board meetings.

The motion carries with two Councilors opposed.

A motion to refer the matter to the Planning Board for consideration is made by Councilor Turiel, seconded by Councilor Furey, and passes unanimously.

A motion to adjourn is made by Councilor Furey and passes with all in favor.

The meeting ends at 9:39PM

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: <http://www.salem.com/planning-board/webforms/planning-board-2018-decisions>

Respectfully submitted,
Stacy Kilb, Recording Clerk

Approved by the Planning Board on 02/15/2018

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