

**City of Salem Planning Board
Approved Meeting Minutes
Thursday, November 16, 2017**

A public hearing of the Salem Planning Board was held on Thursday, November 16, 2017 at 7:00 p.m. at City Hall Annex, 120 Washington Street, Room 313, Salem, Massachusetts.

Chair Ben Anderson opens the meeting at 7:05 pm.

I. ROLL CALL

Those present were: Chair Ben Anderson, Kirt Rieder, Bill Grisct, Matt Veno, and Helen Sides (5)

Absent: Carole Hamilton, Dale Yale, Noah Koretz (3)

Also in attendance: Amanda Chiancola, Staff Planner, Stacy Kilb, Recorder

II. REGULAR AGENDA

- A. Location:** 16, 18 and 20R Franklin Street (Map 26, Lots 400, 401 and 402)
Applicant: JUNIPER POINT INVESTMENT CO LLC
Description: ***REVISED:** The applicant requested a continuance to the regularly scheduled meeting on **THURSDAY, DECEMBER 7, 2017** of a public hearing for a Site Plan Review, Flood Hazard Overlay District Special Permit, and Special Permits associated with the North River Canal Corridor Neighborhood Mixed Use District in accordance with the following sections of the Salem Zoning Ordinance: Section 9.5 Site Plan Review; Section 8.1 Flood Hazard Overlay District; Section 8.4 North River Canal Corridor Neighborhood Mixed Use District; and a Stormwater Management Permit in accordance with Salem Code of Ordinances Chapter 37. Specifically, the applicant proposes to replace the existing junk yard with a residential development consisting of forty-three (43) units in five (5) buildings with parking under each building, in addition to an independent garage and some surface parking resulting in 69 parking spaces. The project also includes landscaping throughout, and public access along the riverfront with walking paths.

The Applicant has requested a continuance to Thurs. Dec. 7th.

A motion to continue to the Dec. 7, 2017 meeting, is made by Helen Sides, seconded by Bill Grisct, and passes 5-0.

- B. Location:** 19 & 23 Congress St; 223-231 & 235 Derby Street; and the parking lots at 13-15 Herbert Street (Map 34, Lot 408)
Applicant: THE SALEM WATERFRONT HOTEL & SUITES, LLC
Description: ***REVISED:** The applicant requested a continuance to the regularly scheduled meeting on **THURSDAY, DECEMBER 7, 2017** of a public hearing for all persons interested in the application of The Salem Waterfront Hotel & Suites, LLC for an amendment to the approved Planned Unit Development Special Permit, Site Plan Review, and Flood Hazard District Special Permit. Specifically, the applicant proposes to reduce the building from 5 stories and a height of 67 feet to 4 stories and a height of 54.5 feet, a reduction in the total number of hotel rooms from 42 to 34, and adjustments to the façade.

The Applicant has requested a continuance to Thurs. Dec. 7th.

A motion to continue to the Dec 7, 2017 meeting, is made by Helen Sides, seconded by Kirt Rieder, and passes 5-0.

C. Location: 8 White Street, 10 White Street and 57-R Turner Street (Map 41; Lots 284, 283 and 298)

Applicant: BHCM INC.

Description: A public hearing for all persons interested in the application of BHCM Inc. for a Flood Hazard Overlay District Special Permit in accordance with Section 8.1 Flood Hazard Overlay District on the property located at 8 White Street, 10 White Street and 57-R Turner Street. (Map 41; Lots 284, 283 and 298). Specifically, the applicant proposes to remove existing offices, sheds, tents and existing drainage system for the building of a new 7,500 sq. ft. boatyard and marina building, as well as installing a new drainage outfall and to upgrade utilities.

Presenting for the applicant is Attorney George Atkins, 65 Congress St., Salem. This is for the Brewer Hawthorne Cove Marina. Also present are:

Noah Flaherty, General Manager

Stan Point, Principal Engineer

Derek Bloom, Bloom Architecture

Thomas A. Pozerski, Merrill Engineers

This project was originally approved by the Zoning Board of Appeals (ZBA) in 2012, a decision which was appealed and subsequently upheld at the different levels of courts. In December of 2016, planning for the project moved forward; the Applicant has appeared before the Conservation Commission and has obtained an Order of Condition, and has begun the process for a Chapter 91 license.

Plans are for a building to house repairs at the boat yard; repairs are currently done outside or in small, inadequate buildings. Buildings are designed and located to have the least impact on the neighbors. The boat yard also has a travel lift for boats, so safety of the yard was also a factor. The Applicant is now here for a Flood Hazard Overlay District (FHOD) special permit.

Tom Pozerski, project engineer, gives an overview of the proposal. He outlines existing conditions, including total area of the site and elevations. Zone AE elevation 10 and a velocity zone are both on the site. The building is situated in the industrial zone area. The marina needs an update as it has been in operation since 1939. There are several sheds in the middle of the site that will be removed, along with an antiquated street and parking lot drainage system. There is no existing stormwater treatment. Construction will include the 7,500-square foot building, which will be located away from the harbor in order to have minimal visual impact, but they must have access to the site so that is where it has to be. Extensive stormwater quality improvements are outlined, including deep sump catch basins, a roof runoff capture system, a First Defender stormwater treatment system, a tide gate, and an improved outfall revetment.

Mr. Pozerski outlines the ways in which the project complies with the usage and provisions of its underlying district and the ZBA 2012 permitting requirements.

- Movement of pedestrians and vehicles during flooding: The area is easy to enter and exit during flooding
- Utilities to comply and be elevated: All utilities will comply with Massachusetts and International building codes, as well as requirements for flood proof construction. The foundation will comply, and utilities will be on the landward side of properly designed columns, openings will be sealed, and units that could pose harm, such as the HVAC, electric, mechanical systems, will be elevated, along with elevator motors, and the bottom of the shaft will be both wetproofed and dry proofed
- The construction is located in a VE zone
- Subdivision requirements: Not applicable

- Protection of health and safety of occupants: All occupied areas will be elevated above the flood zone
- Accessibility will improve on the site, as it will be ADA compliant
- Protection of property: The building is positioned as best as possible, with a louver venting system installed, details as above
- Preservation of flood characteristics of the harbor: The harbor will not be impacted, as there will be no fill
- Control of contaminants: Site has fully compliant EPA permit, but that will be updated. Reiterates that all utilities will be elevated, notes additional features
- Hazardous materials/wastes: Will be fully monitored and inspected; though there are not many materials there, all materials and wastes are labeled, stored, elevated, and can easily be removed

There is a pedestrian component. The gray area behind the building is for public access, connected to the site; it will have a public deck and viewing area on the site as well. Kirt Rieder asks for dimensions; the walkway will only be a few feet wide; there will be a decorative rope or fence to protect pedestrians, but there is an overhang there so there is more space than there appears to be on the Plan.

Chair Anderson commends the applicant for their thorough application, answering many questions off the bat. It was also clear and concise, especially the information on mechanical systems. The 100 year flood elevation line is outlined and pointed out again. Architectural drawings were not required but are much appreciated.

Normally a structure should be landward due to the zone they are in, but this design is acceptable because the structure, Chair Anderson feels, is safe, with flood proofing construction, and he is also confident that the ZBA reviewed building layouts and other components of project. Features of the elevator pit have already been explained.

Matt Venio echoes the Chair's compliments about how well done the application was, and comments that it was also beneficial to have Mr. Pozerski walk through the specific requirements of the FHOD and how the project meets them.

Kirt Rieder asks about a grading plan, as he does not see contours on the Plan and only rim elevations are shown. Mr. Pozerski states that the site is flat, but there will be spot grades along the building; the elevation of the slab is 9.3, and he can add spot grades to the Plan.

Kirt Rieder also notes that the City application erroneously says that 1-foot contours for Site Plan Review (SPR) are required, but this is an FHOD and not an SPR project, so the Board can discuss correcting that. Chair Anderson says water draining is a concern; Kirt Rieder states that he is not concerned about the submission but this issue should be discussed by the Board.

Chair Anderson opens to the public but there are no comments. The Board cannot vote on this matter because it is waiting for other input from the City.

Kirt Rieder notes that the December agenda is likely to be heavy.

A motion to continue to the Dec. 7 2017 meeting is made by Helen Sides, seconded by Kirt Rieder, and passes 5-0.

- D. Location:** 65 Washington Street Salem, MA (Map 35, Lot 600)
Applicant: 65 WASHINGTON STREET, LLC
Description: *REVISED: The applicant requested a continuance to the regularly scheduled meeting on THURSDAY, DECEMBER 7, 2017 of a public hearing for all persons interested in the application of 65 Washington Street, LLC for the property located at 65 Washington Street Salem, MA (Map 35, Lot 600) for a Planned Unit Development Special Permit, and a Site Plan Review in accordance with the Salem Zoning Ordinance sections 7.3 Planned Unit Development and 9.5 Site Plan Review. Specifically, the applicant proposes to raze the former Salem District Court building, and construct on the existing foundation a new mixed-use building consisting of sixty-one (61) residential units, two levels of enclosed parking, and commercial/restaurant space on the ground floor. General infrastructure updates to drainage, sewer and landscaping are also proposed.

The Applicant has requested a continuance to Thurs. Dec. 7th.

A motion to continue to the Dec 7, 2017 meeting, is made by Helen Sides, seconded by Matt Veno, and passes 5-0.

III. *REVISED: OLD/NEW BUSINESS

- A.** Planning Board discussion and recommendation to City Council on five (5) separate proposed Zoning Amendments listed below:
1. To add 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.
 2. To add 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;
 3. To add 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; and
 4. To add a new section 6.10 – Special Regulations to provide for the special permit process for marijuana establishments listed in Section 3.0.
 5. To add 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 s.f. 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.

Items 1 and 5 will be discussed, as items 2, 3 and 4 were continued at the Joint Meeting.

Item 1: Section 8: Entrance Corridor Overlay District

Thresholds under 8.2.8 are outlined. Previously, the Board had discussed removing the word “new” construction in the ordinance so that if zoning or interpretation changes, it will catch all. A recap of the previous discussion ensues. The Zoning Officer has interpreted “premises” in a certain manner that this Board cannot change. Another amendment to change Site Plan Review would have to be made in order for SPR to apply to all construction, not just new construction. Thus, if in this case the 2,000 square foot minimum is changed to zero square feet, it will conflict with SPR. However, if SPR changes, this item can be amended as well. Additional notes can be made in the recommendation, but will not be part of this Zoning amendment. The Board can suggest this in the current Recommendation, as a way of foreshadowing for the City Council that changes are in the works. Procedural issues are discussed.

The case of the McDonalds that was completely torn down and rebuilt, which did not require SPR but would have greatly benefitted from it, in the Board’s opinion, is discussed. Also, Kirt Rieder states that the clear cutting of entire parcels also does not require review, but should. It is noted that the discussion may need to be about more than simply a specific threshold for SPR. The Ordinance should be made clear so that the Zoning Officer’s determinations are in line with the Board’s actual intentions.

Definitions of “premises” and “construction” should also be reviewed. Kirt Rieder states that construction should include demolition and construction of new paving, since a positive impact on permeable surfaces is desirable. The Planning Board should be able to give input on that. The permitting process for project sites, in general, is discussed. Amanda Chiancola will review the permitting process for site work, but for now they are looking at expanding SPR to include site work in addition to structures.

The Board feels that “premises” should be defined to include the entire site, not just the structures, and recommends the adoption of this, with a heads up to the City Council that further changes are coming. Matt Veno asks when/where such changes would be initiated. Amanda Chiancola states that this is a unique process with a proactive Planning Board. Under New Business, language could be drafted for a proposed amendment, or could the Board could see what happens with City Council when they review it, as a Councilor may take up the action item as another route to change.

“The Planning Board recommends that the City Council adopt this zoning amendment, with one minor spelling correction, and, as a side note, also recommends that it review the initiation of an amendment to the Site Plan Review threshold. “

Item 5: Section 3.2.8 Accessory Living Areas

The Board in general feels that the Ordinance itself is a good idea, but could use some tightening of language.

Main points/concerns:

The City Solicitor clarified that an addition would be allowed at the joint public meeting, but the ordinance is unclear- this should be fixed.

- Additions are not being restricted, and there could be conditions that require variances.
- The use will require a special permit, so neighbors will have input- if the use includes development that needs either a special permit or variance from zoning then the neighbors will have input on that too.
- Helen Sides feels this should not be viewed differently than any other addition; variances and special permits due to the restriction of the sites should be allowed, and Kirt Rieder notes that the Board should *not* add language indicating that the Applicant should receive special consideration if the addition is to serve the purpose in question.

- Whether or not the additional structure is required to be attached/contiguous, or would be allowed to be a separate, detached building is discussed at length. Some Board members feel that it does not matter whether the structure is attached or detached, while others feel that an attached structure is more appropriate.
 - The language in the currently proposed Ordinance states that an enclosed space must connect the two areas; this would have to be changed if the Board feels that having the structure be attached to the original dwelling is not important.
 - Chair Anderson is concerned about the implication of having another structure in an already densely settled city, and that the perception around that may be different than it would be regarding an addition.
 - Helen Sides notes that the use is connected even if the structure is not physically connected, and that it could be a hardship for a family to be required to add onto a house when they already have a building on the property that could be converted or adapted, such as adding or renovating the space above a garage, like a carriage house. She notes that tiny homes and nanny pods are designed for in-laws, and there could be difficulties in connecting such structures.
 - Additionally, a garage is allowed to be taller than a standalone structure.
 - Also at issue are utility services; separate services are not allowed under zoning, so two separate dwellings would not be allowed on the property but, for example, an Applicant could connect to an existing system to create an apartment above a garage, as long as they were willing to dismantle it once the approved use is no longer applicable.
- - Re: separate entrances: Sections 3.7 and 3.10 prohibit adding a separate entry, but 3.7 could be reworded. The Applicant cannot add a doorway to the front; this must happen on the side or back – that should be preserved if it is an expansion of existing structure, but if it is a separate structure it does not make sense.
 - Bill Griset does not visualize an in law apt as a standalone building. Kirt Rieder notes that some public comments echoed the Board's concerns regarding higher density in the case of a noncontiguous structure. Matt Venio notes that lot area compliance is still required whether it is attached or not.
 - Ultimately it may be preferable for this Board not to delve too deeply into specifics, but rather, allow the Zoning Board of Appeals to determine what is acceptable. Projects are already controlled by Zoning and the variance/special permit process. Zoning does define what constitutes a dwelling unit, thus already takes care of that.
- What happens when the originally permitted use (quarters for a caregiver or family member) goes away?
 - Many towns are grappling with this issue. Why would an Applicant remove the structure?
 - It is noted that this is an onerous process, from building the addition or structure to the annual inspections. This would be noted in the deed.
 - Utility access could be removed if it was added to a separate structure so it would not be habitable, but if not occupied, structures will eventually become derelict.
 - If a conversion/addition to a primary residence, the space would again become part of that residence, but if it was permitted as an accessory structure, the applicant has now made an investment. There is value to any new property owners, who could decide whether or not to use the space as an accessory apartment.
 - If allowed to be a separate structure, Helen Sides points out, that which defines it as an apartment could be removed and it could be used, for example, as an office. She also argues that if the area above the garage was already an office, and the Applicant wished to convert it to an in law apartment, they should be able to do so. She wonders about converting an existing structure vs. building a new, independent structure. For some families, converting an existing but perhaps detached space makes financial sense, and others look for homes with these features for family members. She also wonders why the Planning Board is defining Zoning.

- An Applicant could build a house and garage separately, then apply for a special permit to add an apartment over the garage (which would now be considered an existing structure).
- There are concerns that this could lead to a two-family dwelling, but if it is in the single-family zone, this could not happen, and in this case, it would have to be dismantled when its use goes away. Use variances are not issued in the City so there would not be a situation where a new apartment is created in a single-family zone, this only happens if there is already a nonconforming use, e.g. from store to apartment in a single-family home.

The Planning Board recommends adopting the Ordinance, with a suggestion that the language be changed to allow the accessory unit to be a separate, detached structure and an explanation of the reasoning behind the change. Bill Grisct says to make sure it does not sound like they are recommending that it be a separate structure, but just that the wording indicates that it is allowed as an option.

Chair Anderson asks, with regards to Section 3.9, how the use be discontinued without demolition. He notes that the drafter contemplated contiguous use, assuming that the unit would be within an existing house, which is very restrictive, so many changes would need to be made to the wording in to allow a separate structure to be built or converted.

The Planning Board recommends that the ordinance be clarified to allow a separate structure.

IV. Approval of Minutes

- **Regular Planning Board Meeting held on October 19, 2017**

Postponed due to lack of Board Members who are eligible to vote on them.

- **Regular Planning Board Meeting held on November 2, 2017**

A motion to approve the minutes from the November 2, 2017 meeting, with minor edits, is made by Bill Grisct, seconded by Helen Sides and passes 5-0.

Other items

- FHOD application the Planning Board directed staff to update the submittal requirements in the application, i.e. for the plan to include 1-foot contour lines.
- Continuations: A brief discussion on applicant requests for continuation occurs. Amanda Chiancola describes the process; there is no deadline to request a continuation, but the agenda gets revised and posted online as well as with the City Clerk, and an email notification is sent out to those who subscribe to E-notifications on the website. Matt Veno feels that it is not okay for petitioners to request a continuance at the last minute, such as the day of or right before the Board has more notice, in many cases about the week before or week of the meeting. It is noted that some applicants request a continuance due to concerns about a lack of quorum.

It is noted that applicants also incur expenses in pulling their teams together for a meeting, so they also want to know ASAP whether or not they are coming to the meeting. Amanda Chiancola checks in with them ahead of time to discuss whether or not they are ready.

Ultimately it is decided that the system of notification of continuances is adequate, however the Board could summarize continuations at the start of the meeting, and/or post a notice outside highlighting, them, to notify those in the audience that the Applicant will not be presenting at the current meeting.

V. Adjournment

A motion to adjourn is made by Helen Sides, seconded by Bill Grisct, and passes with all in favor 5-0.

The meeting ends at 8:30PM.

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-2017-decisions>

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.