

**City of Salem Planning Board
DRAFT Meeting November 7, 2019**

A public hearing of the Salem Planning Board was held on Thursday, November 7, 2019 at 7:00 p.m. at City Hall Annex, 98 Washington St., Large Public Hearing Room, First Floor, Salem, Massachusetts.

Chair Ben Anderson calls the meeting to order at 7:00pm.

I. ROLL CALL

Those present were: Chair Ben Anderson, Carole Hamilton, Kirt Rieder, Bill Grisct, Matt Smith, Matt Veno, DJ Napolitano, Helen Sides (7:23PM) (8)

Absent: Noah Koretz (1)

Also in attendance: Mason Wells, Staff Planner and Tom Daniel, Director, Planning Department

Recorder: Stacy Kilb, Clerk

II. REGULAR AGENDA

A. Location: 87 Jackson Street and 26 Phelps Street ANR (Map 25, Lots 326 and 657)

Applicant: John R. Keilty

Description: Endorsement of a Plan believed not to require approval under the Subdivision Control Law (ANR).

This item only requires 5 Board members to vote so the meeting begins. John Keilty, Attorney in Peabody, comments that the property has a variance from the Zoning Board of Appeals, and the appeal period has passed without appeal. The variance was requested to move the lot line between the two properties; there was originally no subdivision.

A motion to Endorse the above Plan is made by Carole Hamilton, seconded by Bill Grisct, and passes 7-0 (Helen Sides not yet present).

B. Location: 435-443 Highland Avenue (Map 3, Lot 127)

Applicant: Life Storage LP

Description: A continuation of the public hearing for all persons interested in the application of LIFE STORAGE LP for the property located at 435-443 Highland Avenue (Map 3, Lot 127) for a Site Plan Review in accordance with Salem Zoning Ordinance section 9.5 Site Plan Review. Specifically, the applicant proposes the demolition of the (2) two-story existing storage facility buildings currently on site and the construction of a new, 90,234 gross square footage three-story storage facility. The applicant proposes to increase parking to 39 total surface spaces for employees and customers located at the front and rear of the building. The existing site includes parking for 31 vehicles. Associated improvements include utilities, stormwater improvements, site lighting, and landscaping. The project falls within the Entrance Corridor Overlay District of the Salem Zoning Ordinance.

Attorney Scott Grover presents for the Applicant; Tim McPheedy, Construction Manager, is also present. The Board was prepared to render a decision at the last meeting, however the Applicant objected to language added by the Engineering Dept. of Salem. Acceptable language has been substituted in the new Draft Decision. Additional scoping has been done of the sewer system, and this was presented to the City Engineer. The only other change from the original Plans was to the landscaping; the tree warden requested that they increase the caliper of the trees by 1/2".

A motion to close the public hearing is made by Matt Veno, seconded by Carole Hamilton, and the motion carries.

The Draft Decision is reviewed. Section 13 has changed. The project has received a unanimous recommendation from the Design Review Board. Conditions for water and sewer systems were originally required; changes are outlined. Sewer has enough capacity; water is being tested but Engineering is satisfied.

Tom Daniel notes a process change outlined in the Decision: construction drawings are to come to the DRB but any changes made between the Plans approved by the Planning Board and said DRB construction documents must be called out. The DRB will recommend whether or not to approve changes and Tom Daniel will review and approve.

A motion to approve the above Plan is made by Bill Griset, seconded by Matt Smith, and passes 7-0.
DJ Napolitano is not eligible to vote due to missed meetings.

III. OLD/NEW BUSINESS

Tom Daniel notes that the highlighted condition is part of the process changes being implemented. Better communication and coordination between the Planning Board and Design Review Board is the goal. There should be more clarity between all parties, Applicant, Boards and Staff. The Department gets requests for modifications before construction happens. He mentions the Traders Way project, which had a good public project, was approved then was sold and the new owner wanted to make changes. In the Dept, they meet with new owner and counsel, Planning Staff saw and discussed changes, looked at the minutes and Decision, and in that instance it was felt some things could be approved by Tom Daniel (relocating dog park re concom requirements, trash, sidewalks, footprints of buildings) Dog park and trash would probably not affect Site Plan Review, however some changes were felt to need a notification and amendment to Plan. Because of the public process that happened, all of the changes came back to the PB who said come back for amendment, they did not want to do that, to open up to appeal, so project was left as is. TD approved dog park and trash can b/c he felt they were within his authority. They asked for sidewalk changes, he said no. They requested sidewalks and a couple things again, but entire architecture has changed, so TD will not approve, they do need an amendment, they could have done it months ago. TD says when changes are requested, they ask if it warrants an amendment w/public notification. They review criteria, changes, are there points in process where public or Board was concerned?

Helen Sides arrives 7:23PM.

EG Waterfront Hotel decreased number of rooms but there was a change in architecture, so they were instructed to come before the Board. St. Joe's was increasing units, but not footprint, based on prior approval it was determined that ENG was not being changed bt no of units and parking changes, they were instructed to come in and also wanted the amendment b/c amended Decisions are recorded, and this affects financing.

Kirt Rieder asks re Traders Way trees if developer will come back, they will. Neighbors were advocating to have Development behind a strip of trees b/c so many were to be removed, they lost, but KR would like to see these discussions happen. That point in project was a higher threshold.

DJ Napolitano asks about the process for moving Boston St. why was it within his purview? Above 2 projects wanted to make change once construction has started. Washington & Dodge hotel is under construction; utility box by NGrid, was flagged as NGrid may not approve the box where shown on planned, they did not, so PD went back and forth with SRA, they said not to several other places, so no staff member has control, so then it becomes what is the treatment? B/c it was within SRA and PB jurisdiction, the SRA approved the mod based on DRB's review/recommendation, TD is approving it so it will not come before the PB. River Rock project was built; KR raised the issue to Mason, where did this come from? Extra wrinkle of not being on plans PB reviewed and

approved but plans DRB reviewed that said it complied w/Decision, it was on there. Tried to recreate based on minutes and conversation with Chair. DRB said it corresponded he went to City Solicitor and noted the discrepancy, Helen Sides says she does not understand language for DRB saying it conforms. She says the DRB is not there to check plans to make sure they conform, their job is to make a recommendation to the PB that the things they look at are acceptable, but are not in a position to approve. Applicant should have come back to PB and it did not happen.

TD reiterates the new language; Carole Hamilton notes that she is uncertain and has some questions, and feels that Helen Sides should review.

DJ Napolitano comments PB saw one set, DRB saw another set later on. Language added is reviewed. [insert here]. Purview of DRB was expanded 2 years ago to function as it has to the SRA, making a recommendation; they do not decide but only recommend to the governing Board. TD understands the DRB is advisory; its role in reviewing construction documents has been murky re PB and SRA. "... Language of change". Original language grants an approval role to DRB. Revised language makes it clear that DRB's is a recommending role. Similar to what happened at junkyard; DRB overstepped its purview, thought they were final say if project should move forward, they voted it down, it came back and PB had authority to make decision, project was approved. DRB trusts that what is delivered to them was approved; its role should not be complicated by who is in charge. Chair thinks the intention is that DRB confirm what PB approves is in the construction docs. Ext materials, lighting, windows, but not SPR (says Helen). IE PB approves schematic design, that gets developed into construction docs, which DRB reviews. DRB should confirm that intent of PB of what is to be built, is in the construction docs. BC they are requiring appli to mark changes between schematics and construction docs are called out. Helen says if clouded, it should come back to PB. Language of new recommendation to review, is, is that Appl will cloud changes, DRB reviews, so do plans still conform to intent of PB decision? Then will come back to TD, if in his estimation it is insignificant, he can approve, if larger, would need to come back to PB. Bill Grisette says if there is a change, by default it does not conform to what PB approves. TD has authority to approve some changes, but Bill Grisette notes PB is concerned about what is de minimus and what is not. 2016 language notes DRB approval which they do not have.

DJ Napolitano says: PB approves, does PB give DRB a document/memo saying based on schematics, here are changes seen or does DRB have to examine both sets of plans and catch any changes? Not thoroughly, so new language says it will be clouded out. Relying on Applicants to call out changes as this has not previously been done. How does TD determine it is in his purview vs. needing to go back to Planning Board? TD notes it is looking at each project and the record. If staff who worked on project still works for the City, can consult them. Some major changes are obvious. KR says he flagged it when River Rock AC units went in, but not operating, on that project we didn't discuss AC but in other projects we did discuss at length, where it goes should be PB discretion. Shortcoming of Board? Applicant said it was too early in the process, Board has matured as a group to say in future, no it's not too early. This was added to application. Helen Sides asks if that is what happens, did Appl say "DRB approved it" or is this a backup explanation? To her, it's wrong that those things are there, clear it should have come back to PB. Was it brought to their attention and he said, they can't go here, they weren't on the plan, or "OK we'll work with it?" Applicant never represented that DRB discussed and approved, but did say "it was on the plans." It was a rectangle on the construction docs the DRB reviewed. Chair of DRB, minutes were consulted, there was ambiguity. Kirt Rieder is fascinated that it is accepted b/c it is on DRB plan yet PB approved snow storage for that area, which is needed, completely inconsistent w/condenser units. This was discussed internally at staff level. KR says as a condition, they agreed to do X, and now are doing Y, so why does PB not have final say to say that built work is not compliant with the PB original decision regardless of who approved it? Grisette says we can't fix this, but can proactively work on it. We don't want to determine TD judgement of what is insignificant or not, but this is once instance where it "slapped us in the face". TD says they appreciate hearing what people see; clerk of the works, everyone wants that which gets built to be what was approved.

Carole Hamilton suggests that when construction plans come in with clouds and notes of changes, staff should determine if they are significant or not before they go before the DRB, since DRB was not part of discussion in public hearing. Helen says they are not to compare documents to documents; Carole says we would not expect the PB to notice. TD says he thought by clouding things out, PB is relying on DRB, but that is not the case. There should not be duplication of work – two boards are doing different things. IE junkyard, it was not their purview to reject a project, that is a PB decision, she was on the other side of that vote. If documents come back w/clouds and staff determine what changes are significant, what is the role of DRB. Aesthetic, subjective, design. If they had thought about it preemptively, it would not have made it OK, but if screened it would have been less noticeable on the plans and in real life. If noticed to be significant, it should go to PB not DRB.

Carole Says it was a site plan issue, not a DRB issue. Knowing the level of detail the PB goes into, this is where the disconnect is. Something approved for a specific use (snow storage) can no longer be used. Chair says maybe language re DRB role should be to confirm that construction docs conform to DRB recommendation. What if PB does not take recommendation? This happened w/ junkyard, PB and SRA are approving authorities. Carole says might not conform to DRB rec but what PB approved. Chair says DRB is separate review making recommendation to PB, assuming PB approved it? No, before PB approves. DRB says yes, this meets aesthetics or what is recommended to PB (construction docs). Role of DRB has been specific to SRA, downtown signage, aesthetics of building; hard to say no when someone has already done it. Firenze location, they had already purchased windows that DRB said was not appropriate, DRB is being blamed for Applicant to jump the gun. Happens in Historical Commission all the time, “but we already did it!”

What language would be most useful? Must reference the SPR decision; final plans, when developer comes in w/construction plans calling out changes from SPR, it is conforming to Site Plan; PB decision incorporates DRB recommendation. Site plans in front of Planning Board have sometimes folded in DRB recs, depends if they came to DRB first or not. KR says applicant came back, said “hide a/c”, DRB processed, but instead of being sent to PB, it went to Department, but PB did not vote on it. Chair says TD did call and discuss, he felt it did not need to come before PB, made sense to have DRB review design. Notes explicitly say that issue should go before PB notes poorly executed). KR says if DRB says it shall go before the PB, then TD should not say “no they can’t see it.” Helen Sides was not at that meeting but comments that Paul said “we are only discussing how to conceal, we don’t acknowledge it as our responsibility to say if it was acceptable.” KR says minutes of DRB changed to say, “it should go to PB.” But unknown who changed them or how.

Chair says if changes clouded and it is DRB project, it goes to DRB for aesthetic/intent review? At that point it has SP approval, how to close loop? Planning staff should look at changes and make a determination if changes are significant or not prior to sending along to DRB, and refer to PB if significant. Helen says DRB should not even be looking for those changes; if changes are significant by PD, should come back to PB whether or not DRB is in process of reviewing. TD says that is what happens. DJ says we have to as a Board, trust TD that if he says it’s insig, it is insig and not bring it up again. DRB does not need full construction docs but that is what is provided; this should be changed. Architects are familiar with bubbling and clouding and const does not move until everyone understands what changes are and for owners there are cost differences. So developer and architect were aware that units were not being bubbled and presented, this should have been done. Planning Dept does not ask them to bubble things. Construction docs are bid docs, and intention of bubble is change after design, there is a cost difference to be priced. Does not happen before const docs, so has not happened until now, we are asking them to do something out of the ordinary. But don’t want them to cloud the whole drawing.

If there is a change in bid process, there is a narrative, changes should be called out in this as well. Matt Smith says, something like this, where it was just a rectangle, it may not look significant, but if there is a descriptive element saying what it is. Carole says a rectangle in snow storage area should have been a red flag.

TD notes that standard language will be revised. Having const docs bubble what is changed, Dept staff will review and flag what is significant, at the same time it goes before DRB if a significant change. A subset of items, not whole construction docs, should go before the DRB. Helen says HVAC is the last thing developers tell us about, so we're like, "wait! Where are they going? How will they be screened?" Chair says have not yet hired engineers until that point. For apartments, should be defined early on. "Do not pass go until you show us where HVAC units are"

Revised draft language will be provided. Helen Sides notes it is worth studying what the DRB's role is at the beginning, and how to maintain that as much as possible. It is an adjunct, a recommendation, not a decision. The nature of its work – siding on hotel project keeps coming back to DRB

Matt Veno asks about the role of the DRB. Is there language defying this? It is in the Urban Renewal Plan, created through the SRA. If there is lack of clarity on their role, it would be good to clarify in a formal way, perhaps in an ordinance. Matt Smith notes that sitting on the SRA, the DRB role becomes very clear. SPR section 9.5 describes the DRB and its recommendation, but just says "recommendation around design." Helen Sides agrees that clarification of the role of the DRB is necessary. TD says at staff level they are consistent w/Applicants that DRB is advisory only. To Applicant though it feels like an approval process b/c you don't move on through SRA unless you have a positive recommendation from the DRB. SRA/DRB, there are specific design criteria and standards the DRB must review against, so there is clarity there. NRCC references Urban Renewal Plan for those standards, but less defined for PB/SPR.

Matt Veno compliments TD on his Staff, especially Mason Wells, and the Board agrees.

A. Regular Planning Board meeting minutes for September 5, 2019.

A motion to approve the minutes from the Sept. 5, 2019 Planning Board regular meeting is made by Helen Sides, seconded by Bill Griset, and passes 8-0.

B. Regular Planning Board meeting minutes for September 19, 2019.

A motion to approve the minutes from the Sept. 19, 2019 Planning Board regular meeting, with minor corrections, is made by Helen Sides, seconded by Kirt Rieder, and passes 8-0.

IV. ADJOURNMENT

A motion to adjourn is made by DJ Napolitano, seconded by Helen Sides, and the motion carries.

The meeting ends at 8:18PM.

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: <https://www.salem.com/planning-board/webforms/planning-board-2019-decisions>

Respectfully submitted,
Stacy Kilb, Recording Clerk

Approved by the Planning Board on XX/XX/2019

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

DRAFT