

**City of Salem Planning Board
DRAFT Meeting October 17, 2019**

A public hearing of the Salem Planning Board was held on Thursday, October 17, 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, Noah Koretz, Helen Sides, Matt Venio, DJ Napolitano (arriving late)(7)

Absent: Matt Smith, Noah Koretz (2)

Also in attendance: Mason Wells, Staff Planner

Recorder: Stacy Kilb, Clerk

II. REGULAR AGENDA

A. Location: 9-11 Franklin Street (Map 26, Lot 375)

Applicant: Gerren LLC

Description: A continuation of a public hearing for all persons interested in the application of GERREN LLC for the property located at 9-11 Franklin Street (Map 26, Lot 375) for a Site Plan Review and Flood Hazard Overlay District Special Permit in accordance with the Salem Zoning Ordinance section 9.5 Site Plan Review and section 8.1 Flood Hazard Overlay District. Specifically, the applicant proposes the reconstruction and enlargement of a commercial building destroyed by fire in 2017. The other existing light industrial/commercial building on the site will remain and access to the proposed building is provided through the existing curb cuts and parking area. Additional parking will be provided adjacent to the new building. A stormwater management system will be installed as well as new utility services to the proposed building.

Presenting for the Applicant is Attorney William Quinn from law firm Tinti, Quinn, Grover & Frey, who outlines progress on Site Plan Review thus far. Scott Cameron, Civil Engineer, is also present; however the owner is not, having the familial obligation of a new baby.

The outline of the meetings at which this item has been heard runs thus:

First time: no quorum

Second time: 6 members, did not open

Last time: questions were posed by the Planning Board; Applicant was concerned about Engineering Dept. requirement in Draft Decision for Applicant to fix City storm drain and sewer sight unseen with no cost estimate. This was an unknown and potentially large liability for a small project.

At the suggestion of the Board, the Applicant met with David Knowlton, City Engineer. They were amenable and had specific questions; what was appropriate was discussed and the language was withdrawn from the draft decision. The Applicant will still need to make sure all pipes work before they connect. The only other concern is that there are only six voting members of the Planning Board, but would prefer not to continue.

DJ Napolitano arrives at 7:08PM but is not eligible to vote on this item, having missed prior meetings where it was on the agenda.

Chair Anderson opens to the public but there are no comments.

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

The Draft Decision is reviewed. Kirt Rieder comments on p.2 regarding accessibility of a low spot on Franklin St., if there is no access from any other frontage. Scott Cameron, Civil Engineer of the Morin Cameron Group elaborates; that area is flat and in a severe emergency people could go onto an existing private property. The building itself would be a safe zone; street frontage elevation cannot be changed.

Chair Anderson asks p. 3 paragraph 3 Item (c), which does not seem prudent to have anything below flood elevation, but this is a building code reference. There is no basement; this is a slab and the whole building will be above the flood plain. 5.7CMR is the fire safety code; this is just a redundant measure and is not applicable.

The pipes were TV'd; the issue was that the pipe was filled; 3 days were spent cleaning it out in an extensive effort. Footage identified problem areas in other sites as well, but the data was very useful to the Engineering Dept. Several connections will be replaced.

Chair Anderson notes past questions about recording and clerk of the works, and how this gets recorded and reported back to the Planning Department. Mason Wells outlines the procedure. The Clerk of the Works is onsite and produces a report to the City Planning Department, which is reviewed by the Staff Planner for conformance to the Plans. Kirt Rieder wonders how the determination of what constitutes “small changes” is made; this decision is made by Tom Daniel, administratively.

A motion to approve the Draft Decision is made by Helen Sides, seconded by Carole Hamilton, and the motion carries with six (6) in favor, none (0) opposed and DJ Napolitano (1) abstaining.

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.

This Applicant has requested a continuance to a date certain on November 7, 2019.

A motion to continue this item to the November 7, 2019 regular Planning Board meeting is made by DJ Napolitano, seconded by Bill Griscti, and the motion carries.

C. Location: 1-3 East Collins Street (Map 36, Lot 277)

Applicant: New View Addiction Rehabilitation & Education Center, Inc.

Description: A continuation of a public hearing for all persons interested in the application of NEW VIEW ADDICTION REHABILITATION & EDUCATION CENTER, INC. for the property located at 1-3 East Collins Street (Map 36, Lot 277) for a Site Plan Review and Flood Hazard Overlay District Special Permit in accordance with Salem Zoning Ordinance section 9.5 Site Plan Review and section 8.1 Flood Hazard Overlay District (FHOD). Specifically, the applicant proposes redevelopment of the site to include removal of the existing building and parking lot, and construction of a new three-story building for the New View Addiction Rehabilitation & Education Center. Additional site improvements will include a new parking lot, walkways, stormwater management, utilities, and landscaping.

Presenting for the Applicant is Attorney Ben Fierro of Lynch & Fierro, LLP. He was not present at the first hearing. He outlines his professional experience and expertise working with Applicants and programs such as this one, as well as his experience working with municipalities and on controversial matters.

He notes the discussion regarding how this use is allowed in this district and the memo from the Assistant City Solicitor. The Dover Amendment is an exemption from local zoning regulations for nonprofit educational and religious uses. The City has provided an acknowledgement of the Dover Amendment. Syllabi and materials to support the request have been submitted. The primary (but not exclusive) use of the property will be educational, as required. New View also has some conditional approvals from other Agencies. They do not yet have a license and will not have one until the facility has physically been inspected. He is familiar with the very relevant McLean Hospital case and outlines his experience/opinions on that; the Court upheld the Building Commissioner's original decision that the purpose of that project was educational, a strong affirmation of the Dover Amendment. Having said that, he understands the concerns of neighbors and abutters, who will most likely appeal the project in any case. Thus, the zoning issue has been resolved, however the Dover Amendment does not exempt the project from any environmental requirements it may fall under. An Order of Conditions has been issued from the Conservation Commission and a Chapter 91 Permit through MEPA will be sought. He notes that each of those decisions may be appealed.

DJ Napolitano asks how the site will be monitored and if the facility is audited to ensure that the education they are claiming is happening is actually going on. The program is subject to all DPH (Dept. of Public Health) regulations; DPH has vigorous oversight of these programs as participants are reimbursed through MassHealth. Before receiving a final license, all issues of staffing, programming and site maintenance must be resolved. The program itself is intensive. Individuals may not have a vehicle and, although they are free to leave the program completely, may not come and go as they please; the program is based on a two year (later clarified to two week) educational experience. Extensive counseling will take place along with wellness programs to address the root of the addiction and develop the coping skills to maintain sobriety. This is currently under license as a medical facility.

DJ Napolitano asks if there will be prescribing/administration of methadone or other drug-addiction recovery related medications; methadone will be dispensed to appropriate candidates for it. However, they do not provide broad spectrum medication-assisted treatment. Prescription drugs for other medical conditions will be administered, but otherwise kept under lock and key.

DJ Napolitano also asks where patients will be during their free time; they will be in the building 24/7 unless they completely check out of the program. Kirt Rieder asks, if a patient asks to leave, can they come back 20 minutes later and do that on a daily basis? No, they are not that lenient. He also asks about the ideal duration of two years. That is incorrect; the ideal length of stay is actually two weeks.

Bill Griset asks about the smoking cessation program, and if/where participants will be allowed to smoke. Some programs allow smoking, others don't and that decision has not yet been made. There was discussion at a prior meeting of where an outdoor smoking area would be (25 feet from the building). Kirt Rieder notes that a physical receptacle has been provided. The logistics of smoking are discussed. In compliance with state regulations, smoking would not be allowed indoors.

Matt Venio asks about the ATS (Acute Treatment Services) level of care, the highest, most intensive level of inpatient treatment. That is incorrect, explains Jennifer Birdsey, Community Psychologist and Director of New View. She describes her professional background and notes that this level of detox is a 3.5 and the highest is a 4.0, having to do with mental health. The level of care at New View is described. New View wants to be a good neighbor, and wants to help resolve this public health epidemic. She understands this is a residential community and that there are some engineering issues, but that is beyond the scope of her expertise. The curriculum she has developed will help the individuals and their families. She describes how such facilities can help the community meet the need for treatment. Individuals receiving treatment will receive education, as not all are ready to get further services. What will be taught is described as pathways to recovery, how to reconnect with community, how to fill out FAFSA forms, what resources are available, smoking cessation, etc.

Matt Venio asks if these types of facilities prefer to locate in residential neighborhoods or is this just where the opportunity is, and this particular property fits some requirements they may have? This sort of use feels different than some other uses previously described in residential neighborhoods, which is why, he feels, they need to use the Dover Amendment to locate the facility in a residential neighborhood. Why is this particular location attractive to the Applicant when, he feels, there are others that would be more appropriate and better aligned with the use proposed? He cites Highland Ave hospital campus and similar facilities.

Attorney Fierro feels that the issues raised by Mr. Venio are not within the jurisdiction of this Board; the matters of use and location have already been decided. Matt Venio replies that Attorney Fierro commented that he was happy to work with the Community, and the latter will answer the question. The reason for the Dover Amendment is explained. A residential, "home like" atmosphere is the best for this type of treatment, since patients have already spent too long in clinical settings. They also want to provide services where needed; the cost of real estate is also an issue for nonprofit entities. Lastly, a quiet, serene setting with fewer distractions is more conducive to treatment. This site lends itself to this use.

Chair Anderson cautions the Board, reminding them that they are tasked with reviewing Site Plan Review (SPR) and Flood Hazard Overlay District (FHOD) issues only; everything else falls outside the scope of what the Board is required to do. Bill Griset struggles with the applicability of the Dover Amendment of this project, and comments that while he agrees with the concept of placing patients in a serene, peaceful setting, he does wonder, if patients are indoors all the time, why the setting matters. A commercial district on a highway would not be as conducive.

Chair Anderson redirects the conversation to Site Plan and FHOD issues. Attorney Fierro comments that when the program opens, municipal officials and neighbors will be invited to tour the facility and meet the staff.

Michael Laham, Civil Engineer with the Morin Cameron Group, notes the response to issues previously raised. He outlines the resulting changes, including:

- Enclosure for solid waste/recycling area will be a stockade fence
- Street shade trees added; 3 tupelo trees on East Collins St.
 - Smoking area, if included, will also have two red maples
- Bike rack for staff added next to main entrance
- Engineering comments: some have been addressed through that Department, including that sidewalk curb be pulled and reset, sidewalk along frontage constructed; this will be done. Other outstanding engineering issues will be addressed in the future
- Watershed and collection
- Flood plain FHOD special permit issues: grading and drainage plan has been updated
 - Accounting for projected sea level rise; consulted LEC Environmental
 - Pertinent information from City of Boston studies has been pulled; local communities generally accept that. In 30-50 years, LEC letter outlines ranges of what may happen; projections are outlined
 - Building originally set at 11.5, 1.5' above 100 year flood, but there were still concerns so will now be at 12.5' which is above midrange sea level rise projection
 - DJ Napolitano asks if this affects the height re need for a zoning variance; height limitation will still be met (can confirm with architect). Projects under the Dover Amendment do not need to meet certain requirements; the building will still mostly meet setback requirements, and not exceed the footprint of the previous building
 - DJ Napolitano asks about the height of the structure and if it will be higher than surrounding homes; A maximum of 2.5 stories is allowed; this building is 3 stories with a flat roof, so the variance was needed for the number of stories but not for height; Mr. Laham is fairly certain it will still be in the required height even after the additional foot is added, but can confirm with the architect
- Site Plan Review comments, Mr. Laham feels, were addressed as above. He also mentions concerns about emergency response; in the letter, key points for the emergency action plan were outlined
- Elevations and drainage are further discussed. There is no way around having patients/employees wade through 18" of water, comments the Chair.
- Chair Anderson asks if there is a basement; there is not. There is a provision for emergency power but it is not yet fleshed out. Up to and including a 10 year event, the facility can continue to run with the building and parking lot elevations. In a 100 year vent, there will be water around the building. Elevation at the sidewalk is 9'.

Chair Anderson also asks about parking. There will be 18 spaces and 14-15 employees, who will not all drive and not all be there at the same time. The Chair would like assurances that there will not be employees and

visitors parking on the street; he understands that there are not supposed to be visitors, but people and cars will come and go.

Jennifer Birdsey comments that if there is more staff than parking, they can be shuttled in, but shifts are staggered so there will not be 14-15 vehicles at a time. Deliveries including laundry services and food services, will need to be made; deliveries are made by van. There is a backup power generator, so in a major event, the facility can continue to run, and the building and parking lot elevations will help. The EAP (Emergency Action Plan) includes power generation (which includes a noise barrier on the rooftop) and also stipulates that there be reserves of food and water, operational and medical supplies for three days, onsite. Protocols for receiving weather alerts and communicating with staff will be outlined later; there is usually warning for severe weather events. All of these items are not yet fully fleshed out but will be addressed.

DJ Napolitano asks about parking; there will be 18 spots and a maximum of 13 staff on at a time. Logistics of parking are further discussed. Shifts are staggered.

Chair Anderson asks about architectural drawings; there is a rendering which is presented. The size of the building cannot be reduced or enlarged. The Chair asks about the floor plan and basic elevations; these are shown. Materials should also be noted on the elevations. He feels that given the questions of scale related to the neighborhood, photos of the neighborhood as compared to this building would be useful at the next meeting. The Chair would still like more information to evaluate the fit of the building within the neighborhood.

Michael Laham references a letter discussing points previously made; the Chair is still concerned about safety in the area during floods. He feels the measures thus far do not address the zoning ordinance requirements, but he could be convinced. This is briefly discussed.

Kirt Rieder has considered comments re the Board's questioning of the Applicant; while time consuming, he feels it has been imperative to the Board's understanding of the context and function of the project relative to the site plan. He struggles with the adjacent property, which is not the Applicant's, but that nonetheless has functioned as parking for the Social Club. They cannot make modifications to this, but he would like to see a way to close it off so that it does not become "opportunistic parking." The presentations have been proactive in dealing with site plan items, and they went above and beyond to show that the site will work. He applauds the additions of street trees along with the maples closer to the water, but he is concerned about the salt tolerance of the latter; the tree warden should be consulted. To the architect: generators will be on the roof; the Board is also interested in quantity and scale of HVAC units. They are and should be on the roof. He asks about the eye level rendering; he would also like to see additional vantage points, but appreciates them having shown the vegetation. Perspectives desired are discussed.

The Architect should attend the next meeting. One of the builders notes that there are at least 10-15 people per day that park alongside the site, to go to the beach.

Chair Anderson opens to public comment.

Flora TonThat, 30 Northey St., is concerned about the environment and the safety of the occupants. She is in favor of alleviating the opioid epidemic but against this particular project. Current policies have not

caught up with climate change, as we are currently seeing 100 year floods regularly. The solid waste area is right at the edge of the beach and could be destroyed in a storm.

Chair Anderson reminds the members of the public to focus their comments on Site Plan Review and issues related to the Flood Hazard Overlay District. The Dover Amendment and Site Operations are not up for discussion this evening (Ms. TonThat had asked about patient to staff ratio.)

Attorney Fierro reiterates that parking is the only issue related to staffing that is under the purview of this Board. The Dover Amendment does not exempt the project from any environmental regulations, which is why then went before the Conservation Commission. Abutters can appeal and the DEP may issue a Superseding Order of Conditions. Chair Anderson would like the Civil Engineer to address the question of the proximity of the dumpster to the water, and what protections will be in place. Mr. Laham outlines the construction of the fence; it will be solid, bolted to concrete. The dumpster is on wheels so if there is wash, it will go underneath. Access of water across the property is not impeded.

Mary Knight of 5 East Collins St. abuts the property and shows photos. The Chair notes that normally, if an audience member is going to present to the Board, this is arranged through the Planning Dept. Ms. M. apologizes. Her poster board shows the frequent flooding between 2010 and now. It will be submitted to the Planning Department. She mentions section 8.1.1 of FHOD and the LEC supplemental report to MEPA in response to a Chapter 91 application. She is unsure how this building can be allowed when the Applicant knows that flooding will continue to happen. Staff and patients will be put at risk. She wonders if any alternative locations were explored, but this is not in the purview of this Board. She is also concerned that the raising of the site will cause additional flooding at adjacent properties. Two 100-year storms occurred in 2018.

Jane Arlander 93 Federal St., physician and patient care advocate, also feels that this is not a safe place for patients. She notes House Bill 1765 presented in Jan. 2019:

<https://malegislature.gov/Bills/191/H1765/BillHistory>

SECTION 1. The General Court hereby finds and declares that the use of the so-called Dover amendment by nonprofit institutions to avoid wetland or natural resource area protections may be harmful to the public health and environment.

SECTION 2. Section 3 of chapter 40A of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by striking out, in line 49, the words "restrict the" and inserting in place thereof the following words:- restrict, other than through wetlands or natural resource area protections, the.

She feels that there has been a lot of abuse of the Dover Amendment, and this is a patient safety bill; as a facility being placed in the FHOD it must be safe for the community, visitors, patients and staff. Bill Griset understands the frustration with the limitations on public comment, and feels the Applicant would want to hear the full range of concerns since they are very interested in maintaining transparency. The Chair disagrees, feeling that the Board should limit itself to its purview of Site Plan Review and Flood Hazard Overlay District, the determination that this is an appropriate use of the site having already been made.

Attorney Fierro notes that the Applicant did not seek any waivers from the Conservation Commission or any local bylaws. Regarding safety of the occupants, DPH will not grant them a license if all of its requirements, including a site visit, are not met.

Denny Deroja 70 Broad St. Lynn, who works with the Salem Police Dept., and who also runs a needle exchange, discusses overdoses he has seen in the area. He notes trash barrels at the pizza place and along Collins Cove near the beach; no one has mentioned those yet abutters are concerned about the trash receptacle and fence at this project. We are in an epidemic where people need this help, and he feels that people are seeking every small reason to disallow this project. He does not agree with the concerns about storms and flooding when hundreds of people live on this street.

Phillip Bedard of 21 East Collins St. appreciates the gravity of the addiction problem, however he feels that there is a greater need for a recovery facility in the Point neighborhood. The people here are the fabric of East Collins St. The developer has come in with various plans for housing, etc. and Mr. Bedard feels that it is being forced into the neighborhood. The Planning Board does have to follow rules, and the flooding is real. He recently pumped 4,000 gallons out of his basement. The Dover Amendment may be being misused. Rehabilitation facilities are sorely needed, but 24/7 care, to him, is more like incarceration, and that goes against the fabric of the neighborhood.

Councilor At Large Arthur Sargent notes that people's lives are affected by this project. Rules were changed to allow Shaughnessy Hospital to be built by Salem Woods; he feels that is a better location for such a facility. The Dover Amendment has undergone several test cases, some of which have said they are not necessarily exempt from the rules of a zone re height, setback, etc. This should be further explored. He is also concerned that all parking will be utilized, and there will be spillover into the neighborhood. He believes that all rooftop mechanicals should be enclosed, not just screened. He believes this project is not subject to the

Dover Amendment and should not be built in the FHOD, and opines that the Planning Board should deny the project and that the onus should be on the Applicant to appeal.

DJ Napolitano understands the concern about the Dover Amendment, but notes this is at the state level, and is not a local level issue, so to say it is on the Planning Board to deny a project based on the Amendment is not under the Board's purview. If residents have issues with the Dover Amendment, they should contact their state representatives and senators. The Salem City Solicitor has agreed that this facility is covered under the Dover Amendment, and the Planning Board cannot go against its legal advice.

Justin Whittier of 10 River St. notes the value of this service but questions the location. SPR and FHOD are under discussion; he feels a review of FHOD special permit requirements is warranted. "Proposed use shall comply in all respects with underlying zoning." The Dover Amendment is not relevant, so does the proposed use comply with underlying zoning? Secondly, there shall be "adequate safety and convenience of pedestrian and vehicular traffic on the site and the adjacent streets in the event of flooding." The question is not whether people can be evacuated, but if they can be safe on the site. He feels these two points have not been addressed.

Councilor At Large Tom Furey, 36 Dunlap St., is also concerned about safety with regards to SPR, and agrees with Matt Venio. The drug problem has a human face to all involved, but this is the worst place for a recovery facility; the nearest medical facilities are miles away, and the area floods severely. There are better, safer places to build such a facility.

Attorney Fierro disagrees about the Dover Amendment and use of this site. There are other venues for appeal of that issue. The City does have control and can apply reasonable regulations on setbacks, parking,

etc. An existing, nonconforming building is one issue, razing it and building a new one is another. Parking discussions should take place between the Applicant and the Building Commissioner. The Applicant claims they do not actually need to undergo Site Plan Review or get a Special Permit for this project, but has agreed to come before the Planning Board because they are confident of their positions. Re FHOD, Dover has found that the use cannot be conditioned upon the issuing of a discretionary permit, however all related wetland/ coastal bank issues must be addressed through MEPA, Chapter 91, etc., so they are before this Board as well, voluntarily.

Chris Bittrich of 14 East Collins St. notes the severe flooding of 2018, which rose above Connors Rd. The facility will only be protected by the sand dune on the other side, at least until erosion destroys that. He urges to err on the side of caution and the issuance of a new flood map.

Gary Gill of Ward 3 thought we were past these items, and would like to see a presentation on the exterior of the building. He feels the current design shown in the rendering does not belong in the neighborhood. He does reconfirm the flooding that happens in the area and pities the neighborhood residents who will have to live with this facility. Chair Anderson comments that additional material and images will be presented at the next meeting. The discussion regarding architecture has not happened because the architect has not been present.

Ms. TonThat asks if, being in the floodplain, permeable paving can be required over the entire site. DJ Napolitano asks about the Conservation Commission process; that Board issued an Order of Conditions, which was appealed to the DEP. Ann M. Marton, President and Director of Ecological Services at LEC Environmental, discusses the Applicant's work with the DEP and MEPA/ Chapter 91. DJ Napolitano is concerned that the Board is undertaking this work, while the other Orders and Licenses the Applicant is seeking may be appealed and significantly bog down the project. He would like to see the DEP process before this Board takes up the FHOD issue. Ms. Marton notes that, in a coastal scenario, flooding is fairly straightforward; it will ebb and flow, and there is no requirement for compensatory storage and no performance standards for such LSCSF (Land Subject to Coastal Storm Flowage). Chapter 91 always comes last, though she would prefer it to come earlier.

DJ Napolitano is concerned about raising the site to 12.5 for the first floor elevation, that this will worsen flooding in the surrounding properties. This issue came up during the DEP site visit and the MEPA site visit. The site may not change the ebb and flow characteristics of the water that floods the site, and CZM commented, requesting them to produce a figure showing how water ebbs and flows. Neighbors helped with that process. The parking lot was designed to ensure that water could flow across the back of the parking lot, to allow water on the adjacent property to ebb and flow properly. DJ Napolitano wants assurances that there will be no impact on the neighbors (increase or decrease) despite raising the building. Attorney Fierro reiterates that LSCSF does not require compensatory storage for coastal flooding; this area is not adjacent to a river. By contrast, inland flooding areas are restricted in size and will displace water, which must be compensated for. The ebb and flow of coastal sites must be maintained. DJ Napolitano still questions how the water will move, as this is not obvious from the Plans. Helen Sides points out that swales will redirect, not capture, the water.

Carole Hamilton notes that 40(b) projects typically do not come before the Planning Board.

(<https://www.mass.gov/chapter-40-b-planning-and-information> Chapter 40B is a state statute, which enables local Zoning Boards of Appeals to approve affordable housing developments under flexible rules if at least 20-25% of the units have long-term affordability restrictions.) The Applicant is before this Board as a courtesy, and this Board has no authority

to impose conditions on this project. She wonders why the Applicant is present and why the Board is entertaining the project. Attorney Fierro responds that they want to cooperate with the City by undergoing this process. They cannot be subject to a discretionary permit, though they are subject to all environmental regulations. Setbacks, parking etc may be subject to reasonable regulation but do not require a permit. They will provide the information and undergo Site Plan Review. The Memorandum from Victoria Caldwell (Assistant City Solicitor) sets out the responsibilities of the Planning Board in SPR and FHOD. "The Board's review should be applied so as not to conflict with the express language of the Dover Amendment...and Planning Board review should be limited to items two through four."

Jeff Cohen, 12 Hancock St., notes that 100 year storms are now 23-year storms. Measures appropriate for today may not be in the future. The building proposed will displace more water and impact the neighborhood; he takes issue with the expert and feels this is not appropriate planning.

The Board discusses the need to continue if the Applicant is not actually required to be before them. The Chair feels this is not a question for the Board, and that they should consult the City Solicitor. Carole Hamilton notes that the Board is giving the impression that they are issuing permits, which they have the right to do on everything except for this, and that this is something members of the public can appeal. The public cannot appeal this particular Decision by the Board. Chair Anderson notes that the Board is being asked to review SPR and FHOD. The Board can vote to continue or not. Bill Griset asks what the Board has the right to say re FHOD. The Board can give its opinion re the SPR Approval and FHOD special permit. DJ Napolitano asks, if the Board chooses not to continue, and renders no decision, will the Applicant's project be hampered in any way? Attorney Fierro is uncertain, because he does not know what the reaction of the Building Commissioner would be upon application for a building permit. The Applicant is willing to come to the next meeting. The Chair urges the Board to continue, and in the meantime, ask the City Solicitor what the implications are regarding approving Site Plan Review and issuing a special permit for FHOD. He does not feel it is right to deny the Applicant positive feedback and the requested permits. DJ Napolitano requests the City Solicitor or Assistant to attend the next meeting, as well.

Bill Griset asks if Board approval is needed. Attorney Fierro feels the Applicant does not, however the City Solicitor suggested they go through the process, so here they are. If the City Solicitor changes her mind and feels they do not need to be before the Planning Board, they will withdraw. At issue is not the approval of the Site Plan but the FHOD. The Board cannot deny the use proposed, but can work with the Applicant to address concerns, which seem based around either the use, or flooding. He wonders what the property could be used for, if not this use. The Dover Amendment allows the proposed use as a matter of right. The Applicant wants Board feedback and to be responsive to the issues raised. They don't want clients and staff to be in danger either, however comments raised would preclude any use, including single or two family housing. The Applicant originally applied to the Zoning Board of Appeals for a Special Permit for 8 townhouse condominiums, was granted the permit, and there was opposition to that also because of flooding (he was appealed). He does not see any detriment to the Board or Public by continuing; the Applicant will submit all information requested.

The Chair feels that it is disingenuous for the Board to drop the matter after the Applicant has spent so much time and money for Application to make this a better project for the City re FHOD, SPR (and that it it goes against the grain to now say that we are not willing to review because we have no effect. Several Board members take exception to this, questioning what is right. DJ Napolitano asks if the Applicant proceeds in the process, and is granted a FHOD special permit based on safety, do people still have recourse to take the Applicant to court as they did not need the permit in the first place? Re standing: any

abutter within 300' has presumptive standing in zoning disputes, but they can be rebutted. They can still bring acclain to court, but defense will be that they did not need the permit in the first place.

Discussion continues as to whether or not to continue to the next meeting. The Chair feels very strongly that the Board should take the opportunity to comment on and better the project, but several other Board members do not agree.

A motion to continue the item to the Nov. 7, 2019 meeting, conditioned upon the attendance of the City Solicitor or Assistant City Solicitor, is made by Helen Sides, seconded by Carole Hamilton and the motion fails in a roll call vote with (1) in favor and (6) opposed.

In favor:

Chair Ben Anderson

Opposed:

DJ Napolitano

Matt Veno

Carole Hamilton

Helen Sides

Kirt Reider

Bill Grisct

III. OLD/NEW BUSINESS

- A. Receive and file: Design Review Board Memo to Director of Planning Tom Daniel regarding the DRB Recommendation for an AC condenser screening plan at River Rock Townhouses (70 – 92 1/2 Boston Street). Included is also a cover letter from Tom Daniel updating the board on the completed DRB review.

Tom Daniel has approved the screening for the condenser units; 6' high white trellis fence and some plantings will be installed. Helen Sides comments that, at the last Planning Board meeting, it was noted that the DRB makes recommendations to the Planning Board, but does not make decisions. If the Applicant presents a plan to the DRB that is different from the one presented to the Planning Board (PB), the DRB is not in a position to approve it. The DRB rightfully assumes that things like placement of HVAC units is something the Planning Board has approved. In this case, the DRB was put in the position of having to catch something, which is not acceptable.

Other Board members also feel that the determination that the location of the stack was “approved” overrides the process of City meetings for these projects. Discussion of how this came to be seen as an “insignificant change” to be dealt with administratively ensues, however in actuality, Tom Daniel, the Director, determined that it was not a change, but the location of the stack had been approved. The question arises, approved by whom? The units were not on the Plan approved by the Planning Board, and the DRB does not have the authority to approve plans at all.

Kirt Rieder wonders if there was a misunderstanding and the Applicant thought the DRB was sending its advisement to the Planning Department, rather than the Planning Board. However, this means that the Director discounted the process followed by both Boards.

The timing of the matter is discussed. The DRB prefers to see construction documents because Applicants typically wait until the last minute to determine the location of such items; in this case those documents said to submit them to the DRB, so it was approved by them though the units were not explicitly presented. However, this presumes the DRB has SPR authority, which it doesn't. A Sept. 19 memo notes that the Planning Director did note a concrete pad, so it may have been intentional on the part of the Applicant. On the other hand, notes Helen Sides, the Applicant deserves possible innocence, in thinking that the DRB does have authority and that it was on drawings presented to them, and the Applicant moved forward because they were not told not to, and were not told to go back to the PB.

The next step is to have the document in front of us and to have a conversation with the Planning Director. Kirt Rieder notes that the same Applicant has gotten approval to add units to this site, and is wondering where HVAC will go for those. This will also impact the future. Helen Sides notes that the Historical Commission is also dealing with this; every individual house attaches these and they cannot be put in view; conduits on side of house are unsightly. Placement of these units must be considered up front at the beginning.

Nothing in the original Decision referenced placement of HVAC. Construction documents were to be submitted to the DRB for approval; nothing was said at DRB about them being added/different. Just a pad was there. The PB should have been told they had been put there, rather than DRB having to "catch it." Tom Daniel will be invited to the next Planning Board meeting along with the Plans approved by this Board (not the construction plans).

Chair Anderson comments that Tom Daniel did call him about the situation, explaining that construction drawings were approved, and that they believed it is in muddy waters, so the Chair said to send them to the DRB for their comments (which still do not constitute approval, which the applicant already has). Mistakes were made, and lots of things "should have" happened, so now we are trying to address the problem reasonably with screening. Helen Sides does not appreciate it looking like the PB or DRB screwed up, whereas neither did. This should have been in the decision, and the Applicant should have been forthcoming. They put 12 HVAC units in a snow storage area.

This Board has learned a lot since about what it should and should not be doing. It must make sure its decisions have more information in them about what they want the Applicant to do, with less boilerplate language.

Helen Sides notes the irony of the encouragement to shorten the process, which can lead to mistakes. A checklist for reviews should be added, and the process is evolving. The Board wonders if the issue was discussed with the Applicant, and if they were asked to move the units. The Clerk of the Works got a set of the "approved" plans that made no mention of HVAC; those plans had pads only, and it would be unreasonable to expect them to catch that. Carole Hamilton Notes that the Board should not approve a site plan that doesn't show where units are, in the future. The system or location of the units should at least be designed in the schematic. Helen Sides thinks that Applicants can get a good idea of the square footage of equipment needed during the design of buildings. Carole Hamilton notes that another applicant came

back to PB with an HVAC unit change, though they were smaller than originally planned. Showing the pad in a snow storage area should have been a red flag.

B. Receive and file: Tree Warden letter regarding trees at 65 Washington Street

Mason Wells notes that the tree warden was in communication with the Applicant regarding these trees, and approves. Kirt Rieder comments that Bob (Robert LeBlanc) is appropriately engaged in many topics pertinent to Board, in his new position.

IV. APPROVAL OF MINUTES

A. None

III. ADJOURNMENT

A motion to adjourn is made by Bill Grisct, seconded by Carole Hamilton, and the motion carries.

The meeting ends at 9:58PM.

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.