

**City of Salem Planning Board  
DRAFT Meeting September 19, 2019**

A public hearing of the Salem Planning Board was held on Thursday, September 19, 2019 at 7:00 p.m. at City Hall Annex, 98 Washington St., Large Public Hearing Room, First Floor, Salem, Massachusetts.

Vice Chair Matt Veno calls the meeting to order at 7:00pm.

**I. ROLL CALL**

*Those present were:* Carole Hamilton, Kirt Rieder, Bill Griset, Noah Koretz, Matt Smith, Helen Sides, Matt Veno (7)

*Absent:* DJ Napolitano, Chair Ben Anderson (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.

Attorney Bill Tinti of Tinti, Quinn, Grover & Frey presents, introducing Jay Goldberg, owner, and Scott Cameron, Civil Engineer with the Morin-Cameron Group. The Applicant has been before the Board twice and a Draft Decision is available tonight.

Scott Cameron describes changes to the project; they are technical in nature.

- HVAC systems added to plans
- Fence enclosure around dumpster
- Utility notes clarified, utilities changed

Cleaning work in drain/sewer in public mains has been done. The sewer main was not maintained, nor was drainage. Sewer and drainage are fully clean, but they could only go so far on frontage. The Applicant spent 3 full days cleaning. Site layout remains the same.

Attorney Tinti is mostly content with the Draft Decision but is extremely concerned about the requirements of the City's Engineering Department (ED) which will subject the owner to an open ended, unknown, but very large expense, as he could potentially have to replace the sewer and drainage line. The Applicant is sympathetic to paying user fees if their development is causing deterioration or overuse of city services, however other cities have standard

calculations based on the water flow a particular project, and will generate an assessment of an Applicant's percentage of use of the pipe. Mr. Cameron has done that calculation and shown that it would yield a \$4000 user fee to the City to clear or replace the pipes. That would be acceptable, but the language in 10(b) of the Draft Decision says that prior to applying, the Applicant must demonstrate that the sewer pipe has capacity and is in good condition to accept the flow, and discusses how that will be proven. But being in a condition to accept the flow may be a large job. An obstruction was encountered, and could be a broken or severely clogged pipe. The Applicant has not been asked to determine nature of blockage, and is not being asked to pay a % of use, but could be asked to replace the entire pipe; they cannot do this. This is a relatively modest project, not a large residential one. They are concerned that a bank might deny financing based on this condition and the cost may approach the value of the land itself. They would be happy to negotiate a softening or limitation on the expense, what the City would charge standard user plus a bit in addition, but this is too big a requirement for a small developer.

Changes requested:

1. 3<sup>rd</sup> sentence: Prior to applying for a foundation permit (p. 5) (wording different on Board's vs. Applicants version). It is unfair to ask developer to bear that open ended cost, before even starting the project; suggested change to "prior to applying for occupancy permit" so they have more time
2. Delete the entire paragraph; they want to negotiate an agreeable contribution based on a standard. Vice Chair Matt Veno asks what the Applicant's current scoping of the pipe reveals. Scott Cameron discusses the state of the pipe. At least there is a blockage, possibly more severe deterioration, but this is unknown. Mr. Cameron notes that 3 days of cleaning and video have been done; sanitary sewer was almost completely full, and all material was removed. The location and extent of work are described. The Applicant also went into drainage (storm sewer), working with tides and the 24" pipe, which was half full of sediment. Video footage has not been received yet from the cleaning company, but in the field, they saw one connection from the site letting groundwater into system, and one section of sewer was cracked; these issues could be remediated, but the Applicant has already spent \$7500, and to patch the pipe and fix the sewer issue could cost \$12-\$15,000. For a commercial project that generates little sanitary flow, they are more interested in drainage. On another project, in Newburyport, they are faced with a similar condition, and it will cost \$100,000 to replace a sewer; this expense was not planned for but the Applicant does not have a choice.

Matt Veno asks Mason Wells about the Ferris junkyard proposal, which would have more impact on the sewer line and is just up the street. Did the Board require them to do scoping of sewer drain lines? It is uncertain, though no Board members recollect this being a condition. Carole Hamilton comments that this is an accepted street, with City infrastructure in the street, so if broken, why would the Developer be responsible? The Eng. Dept. considers this additional flow coming into an existing line. The Applicant has demonstrated what the additional flow will be, and the DEP has guidelines for this. The Applicant used I & I Guidance; Newburyport's which is similar. Flow x \$3 per gallon x 4 means the project will generate \$4000 worth of fees. But, they are prepared to repair the broken section and that will remove groundwater from the sanitary sewer. There is also a leaking service connection going into the sewer that will be repaired. Taking away those sources of input will mean that, post-project, they are adding in less than what is currently incoming. That is not \$100,000 worth of work.

Kirt Rieder asks if the project was peer reviewed; it was not, as this is internal by the Eng. Dept. Kirt Rieder summarizes: The Applicant is not being asked by the City to expressly replace 280' of pipe, but they are being asked to demonstrate that the flow goes the entire 280', and how far the flow goes will determine what they need to do. 400' is referenced, so as written the Applicant could be required to repair/replace the whole thing, well beyond the property. Kirt Rieder asks how in the past the Planning Board has gone against recommendation of the Eng. Dept. Usually the Planning Board recommends XYZ to Eng. but in this case Eng. is recommending that the applicant do something, to the Board.

The Board asks what the response to the Applicant was, from Newburyport. That City stated that, if they want to connect to a City line, the Applicant is responsible for fixing it. The Applicant was trying to find the most economic way to repair that other project as they have no choice, and are on their 3<sup>rd</sup> design proposal, and at a point where there are serious financial implications. They did not engage the Eng. Dept. on the draft report as they only saw it recently while testing was going on.

Noah Koretz notes that this is a procedural issue, so the Board should not vote tonight. He is confused; language in the Decision is meant to allocate the risk of unknown things happening. In this case, The Board knows that the sewer pipe has a break or blockage, as yet unidentified. He notes that aside from the financial piece, the Board is being asked to approve a development that will flow into a system that has a problem, without identifying the problem. Risk should not be allocated without being identified.

Mr. Cameron wonders why it is on one applicant to fix a municipal issue, especially as no sanitary or stormwater flow is being added, that is not being mitigated first. Flooding occurring onto adjacent properties will be redirected to the street, or the Applicant can leave it on adjacent properties. They can also fix the two issues in the sewer main that will offset tenfold what they will generate. There is no flexibility as written.

Noah Koretz comments that there are two issues: What is going on/how to fix it, and who should fix it.

Before the Board can approve a development that ties in, need to know what the problem is and how to fix it, as a Board. Other members agree. Noah Koretz recommends that the Applicant figure it out with City; their position is not unreasonable, and while they had the bad luck to find the problem, they should not be on the hook for all of it.

The Applicant has not made any progress with the Eng. Dept, and it would help if the Board could make a recommendation to the City Engineer. It is fair to say that the Board has concerns about putting the entire cost on the Developer, and can ask to meet with Engineering to develop an analysis and make a cost sharing recommendation. The Applicant notes that Engineering will probably say take it or leave it, as Planners seem to be grooming to have this be a standard condition across all projects. Mason Wells notes that the second response from the Applicant came in last evening, and Engineering and Planning did not want to hold up the project. Conditions were a response to the issue. Bill Griset comments that this Board does not desire that the Applicant be saddled w/ the entire cost. Kirt Rieder wants to hear more from Engineering. He suggests that the Applicant have this peer reviewed to bolster Engineering input. Noah Koretz feels that the Planning Board should communicate to the Engineering Dept. that it has concerns about allocation of costs, and request an explanation of why this is appropriate and how we are going to figure out what the block is and how it will be removed.

*A motion to continue to the October 17, 2019 meeting is made by Noah Koretz, seconded by Carole Hamilton, and passes 7-0.*

- 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 represents Life storage. Construction Manager for Life Storage Timothy MacVittie and Carlton Quinn from Allen & Majors are also present. The site and current condition of the project are reviewed.

There was a series of neighborhood meetings.

- Height was reduced from 46' to 34' and a variance has been obtained
- There were some concerns, especially about landscaping and lighting, were raised at the last meeting. Changes to landscaping have been made to be in ECOD compliance, ditto for lighting so as not to be intrusive to neighbors
- Board also asked for sight sections to understand relationship between Clark Ave. neighborhood and this property. They were also referred to the DRB and they did receive approval of the design

Carlton Quinn of Allen & Majors, Civil Engineer, and Land surveyor review the changes made since the July meeting; the same problem with the same condition as the previous applicant is coming up.

- They are at the low point of the neighborhood; sight sections are reviewed. A stockade fence is on top of the retaining wall, so there is about 20' of visual screening
- Lighting: Lights were lowered from 20' to 12' and some additional fixtures added. Some were relocated and will be shielded to avoid spillover onto adjacent properties
- Bird's eye view rendering has been provided; HVAC units on roof are shown
- Everything that lands onsite will be collected onsite and directed to a culvert that empties to a wetland
- Landscaping – Robert LeBlanc, City Tree Warden, was consulted; he did not provide additional comments but 4 red maples and thornless cockspur hawthorns have been added. Some are limited in height due to electrical wires
- Screening one area is done with 3 evergreen trees in front of the billboard
- Boat storage: the Applicant has no objection to disallowing this
- Accessible parking spaces are outlined; there will be 2 stalls

Lighting is discussed; all light is shining down, not out.

Kirt Rieder asks about tree requirements for ECOD; this is tied to parking spaces. Trees can be planted anywhere on the site. Language is discussed. The rendering does not take into account landscaping. The planter on the rendering is going away; there is a new one. Kirt Rieder comments on the location of Hawthorns, his comment is accurate.

Attorney Grover notes there is a Draft Decision incorporating comments from Engineering that just came in the day before, though the Applicant came in June before the hearing in July, so they saw these comments for the first time yesterday. Matt Venno notes that this last minute back and forth is not helpful to the process, and not fair to the Applicant(s), as it has happened multiple times recently. This is not due to a lack of effort on the part of the Planning Dept. to get comments, but other City Depts. are not so efficient.

The Applicant agrees with all language of the draft Decision except for the language that is the same as on the previous Application, that imposes an incredible unknown onto this Applicant, whose project is on a state highway. They are in a worse position than that other Applicant, who did camera work; they don't even know what they are dealing with. Having an Applicant do an investigation on flow seems reasonable, but to have a blanket statement that they will fix it sight unseen is unworkable in any circumstance. Mr. Goldberg describes the Knights of

Columbus \$100,000 bill for work in City of Salem streets, because the City neglected its infrastructure. Kirt Rieder notes state highway has been closed due to extreme flooding, the reason for the work. The stormwater is not a problem being handled onsite, but sewer is a problem. The storage facility will have 2 restrooms that will be minimally used, so while the input to the sewer is negligible, the Applicant would have to fix City sewer system in exchange for those 2 bathrooms.

Matt Smith notes this is boilerplate language in both, which is not taking into account individual situations. Noah Koretz says it seems that the Engineering Dept. is trying to impose a boilerplate condition that Applicants will not be willing to accommodate. Mason Wells and Tom Devine need to go to Engineering and get a more workable solution. This is not a good position for the Board to renegotiate.

Helen Sides notes that when Walmart and Home Depot were planning to develop, there was elaborate work trying to coordinate the State, City, and Developers on Highland Ave and its connection down into Lynn, so it is outrageous to put all the work on small developers. This developer comments that a Developer's fee is reasonable, if based on calculations, but with a blanket statement, the cost could be astronomical. If the language was absent, they would have an obligation to investigate, report and negotiate, which would be good. Without that language, the decision would be fine.

Kirt Rieder asks how to proceed. Vice Chair Venno is disappointed that a new standard condition is appearing in a number of applications without any conversation between Engineering and Planning. Is this new language? Versions have been included in the past, but this issue is coming up with Engineering doing less peer review to save expense and back-and-forth. The current iteration of this language is very recent. At the beginning of the process, Applicants should be asked to evaluate systems to make sure the City system can handle that project, notes Carole Hamilton, but to require them to fix it is not.

*A motion to continue to the Oct. 17 meeting is made by Helen Sides.*

Discussion: 16.a.4: "All construction will occur onsite, none in city right of way," It is noted that some curb work is on the City right of way, so this will be changed to add "except as noted on the plan."

Attorney Grover is concerned that the discussion with Engineering may not happen in the next few weeks. Vice Chair Venno comments that the Planning Board should be involved. Noah Koretz notes that Attorney Grover is a consistent advocate, and views this as a test case; the should explore alternatives employed by other Cities, then Engineering should work this out and make suggestions.

Kirt Rieder asks about the sidewalk along Highland Ave.; it is a concrete sidewalk in front. Currently bituminous with concrete ramps is there, and this will be approved by the DOT as it is in a State right of way.

Helen Sides withdraws the motion to continue.

Vice Chair Venno opens to public comment; there are none.

*A motion to continue to the October 17, 2019 meeting, is made by Kirt Rieder, seconded by Helen Sides, and passes 7-0.*

The Board applauds the applicant for having reached out to the Tree Warden; there was no further response after an initial discussion outlining the Applicant's plan, which was sent later.

- C. Location:** 1-3 East Collins Street (Map 36, Lot 277)  
**Applicant:** New View Addiction Rehabilitation & Education Center, Inc.  
**Description:** An 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.

Mark Bobrowski, Council for the Applicant, introduces the project. This is a 3 story, 45 bed detox facility, operated under licensure from the Mass. Dept. of Public Health and other Agencies as required.

Civil Engineer Michael Lahan of the Morin-Cameron Group overviews existing and proposed conditions

- Aerial view, former location of Ward 2 Social Club, 41K sf in R1 zone, surrounded by a paved parking lot and bordered by National Grid property on Planter St.
- Coastal resource areas are on site and described; approval from Salem Conservation Commission has been obtained
- In FEMA flow zone AE, LSCSF, 100 year floodplain
- Existing Conditions Plan
- Site preparation, erosion control, demolition plan
- Site layout Plan: proposed building, will overlap existing but new footprint is 400 square feet smaller
- Created defined access in contrast to current access everywhere; shifted building east and provided 2 way drive aisle, 18 parking spaces, 2 in front 16 in rear including handicapped
- Front entrance will be decorative with main entrance in rear
- Trash & recycling is outlined
- Pedestrian walkway for Chapter 91 jurisdiction/public access requirement, terminates at existing location of footprint across berm to coastal dune/marsh, so no impacts to resource areas
- Grading & drainage plan is presented, and elevations outlined; existing drainage patterns will be maintained but parking lot elevated by 1'. Finished floor will be at 11, 1.5' above 100 year flood plain
- Stormwater system is described; this is a redevelopment project. There will be a reduction of 2740 square feet impervious area, peak rates and volumes of runoff will be reduced. Water quality is being improved b/c site is currently entirely paved but will be landscaped in the future. Pavement removal of 3700sf but will repave some, hence the 2740 sf reduction. Drainage features are described
- Proposed utilities
- Landscape Plan; species selected from CZM
- Photometric Plan
- Construction details, stormwater management, site context
- Applying for FHOD special permit; building will be elevated by 1.5' above flood plain, also elevating parking lot

Mr. Bobrowski outlines; the Executive Director to be could not be here. There was a letter submitted with the Application that Ben Fiero, his predecessor, had prepared for the Board. The Application is being filed under the Dover Amendment, which applies to educational, religious and child care facilities and municipalities cannot prohibit such facilities. This is educational, and will offer a curriculum to help assist with recovery. The Building Inspector found them to be qualified to be protected under Dover Amendment. The facility must be an educational nonprofit, and they are. They also hope to operate under Acute Treatment Services, so will have State Licensure and DEA, etc. because of the opioid crisis. Opioid addiction and overdose data are reviewed. They have the right under Dover to apply and also to deviate from otherwise reasonable rules and regulations.

There are some exemptions seeking relief, but no variance needed for the nonconforming building:

- Will be a 3 story building in R1, which allows 2.5 stories. The court case Tufts College Vs. City of Medford is cited. Common facilities, treatment rooms, a laundry will be on the 1<sup>st</sup> floor, with male and female patients on the 2<sup>nd</sup> and 3<sup>rd</sup> floors
- Will not exceed height limitation for R1
- Only additional Dover relief sought is one area for setback deviation; existing building is even more out of compliance. Lot shape and proximity of coastal wetland affect building placement

As a residential facility staff are outlined; there will be 20 staff onsite 24/7. They do not allow inpatients to bring their own car, alleviating the small parking area, which is meant for staff. No visitors other than family members are allowed. There will be strict security as described. They cannot stop people from leaving if they insist; all stays at the facility are voluntary. The Applicant intends to work closely with local Police Dept. Salem residents will be given preference if the PD desires; the PD can train with their personnel.

Kerry Pike, Traffic Engineer, is also present.

The Architect was unable to make the meeting, but a drawing is shown (floor layout). A smoking area, outdoors, must be identified as many people undergoing treatment smoke; they are looking to locate this close to the building if possible, but will probably be along the property line.

The building will have a flat roof w/screened HVAC equipment.

Bill Griset asks about the Dover Amendment. The Salem Building Commissioner advised the Applicant that it is applicable, and it is in the packet in a June 14 letter addressed to Ben Fiero, after consultation with the City's Legal Dept.

Kirt Rieder asks if this is a standard Site Plan Review (SPR); it is. There are no dimensional requirements in SPR that Dover applies to, and it is all reasonable under Dover Amendment. The SPR Ordinance is a reasonable regulation of a Dover project. The Aug. 15 letter references criteria of SPR.

Vice Chair Venno asks for FHOD requirement. Anything within the building would be 1.5' above the flood level as is the entire building.

This is the first of two meetings, so no Draft Decision is prepared.

Kirt Rieder asks about HVAC, which is to be on the roof but not shown on the drawings, and he wonders if it will be justified to the elevator tower rather than at the front of the building. The Applicant has identified garbage and refuse collection, but no enclosure is shown, and this should be added (location, material, etc). There is a question about the "Cape Cod Berm" but this is a 6" curb at a battered slope that runs the length of the property.

Kirt Rieder responds to the smoking area, commenting that the Applicant is on the right track putting it next to the right side of the property, but he wonders how to make it a comfortable place to be (no trees are planned now, Applicant should consider adding a shade tree). However, it may be inadvisable to facilitate seasonal use by adding a structure.

Re East Collins St, there is no history of ample street trees but the property is at a pivotal location, so is obligated to use the front 94' of frontage; seeing as there are no overhead wires, they should increase the street tree population. They could add 3 without making other changes to the landscape at large. They have selected short ornamental trees, but should add larger street trees along the frontage. Mr. Rieder suggests black gum but the Applicant can consult with the tree warden.

He is also concerned about parking. The property used to accommodate many more cars especially because some were parking on National Grid property. Accommodations for 20 staff members would mean 15+ cars each day, taking up 15 parking spaces, but because they are focusing their effort within the property as they should, and asphalt will remain in place, they will end up with a lot of their administrators parking on National Grid property, which is undesirable. Having cars parked on Planter St. is undesirable. Ben Fiero clarified in a letter that there would be 20 parking spaces but only 14 or 15 full time staff (in contrast to the 20 noted above), and the intent is to contain all parking onsite.

Bill Griset asks re Dover Amendment, if there has there been an SJC decision in the McClean Hospital Case? The Building Inspector has reserved the right to reconsider depending on the outcome of that case. The case is discussed. Previously educational uses have been very broadly defined.

Helen Sides asks about adding bicycle racks and encouraging composting for the facility. Architecturally, she feels there is not a lot of information on the drawing and would like more details. She would like to see something more interesting than "a big box," and Matt Smith agrees.

Noah Koretz asks about the FHOD aspect and the analysis behind the 1.5' elevation over the 100 year flood elevation. State building code has a 1' requirement, the only one that exists, so they wanted to bring it higher. There is no guidance in place, so they wanted to assess the site as it was and elevate as much as reasonable while providing for handicap access. Noah Koretz is concerned about what will be sufficient in the decades to come, but this must be analyzed in greater depth.

Vice Chair Matt Venno opens to public comment and outlines the jurisdiction of the Planning Board.

Tom Furey of 36 Dunlap St. Councilor at Large, notes some facilities recently opened. He notes that his grandson died from opioid abuse on his 22<sup>nd</sup> birthday. A facility like this is sorely needed in Salem. But such facilities belong on an Entrance Corridor, not a residential neighborhood as proposed. Bridge St. or Boston St. could accommodate this facility but using the Dover Amendment is a slap in the face to Dover. The property owner is insulting the neighborhood and the City and Dover is no excuse. The original project was turned down for Residential use.

Jane Arlander, 93 Federal St. agrees with Councilor Furey. She feels the facility should be in a safer, more accessible area. Adequate movement, in case of flooding, is needed. She wonders how 45 somewhat impaired patients will be evacuated. At the Board of Health meeting the Applicant stated they received an Order of Conditions from the Conservation Commission, but this has been appealed. Also at that meeting, it was noted that patients would not be going outside, but now they say they will go outside to smoke.

Justin Whittier 10 River St. agrees with previous points, and also reinforces FHOD, that it is not about building code or the level built to, but adequate convenience and safety of vehicular and pedestrian movement in the event of flooding. Unlike other projects where customers can be warned away ahead of time, in this case, there must STILL be adequate safety for pedestrians and vehicles.

Mary Knight 5 East Collins St. lives directly next door. She is also concerned about flooding, noting that the purpose of the FHOD is to protect the health and safety of residents; this property floods so frequently and so badly that any evacuation route in the parking lot will be mostly underwater. She does not feel that the catch basin and detention pond will be adequate. She was part of citizen appeal to the Conservation Commission decision.

Tim Carnell, 6 East Collins St. notes the facility will change the character of the neighborhood. Size and style of the “big box” proposed is not conforming to the character of the neighborhood. Also it is a medical facility described as “intensive, inpatient, more like a hospital” to the Conservation Commission vs. an educational purpose as described tonight to the Planning Board. Flooding and complete inundation are severe issues; there will be no parking onsite during a flood. He is also concerned about emergency vehicles entering through the Planter St. side; this is not part of their property; it belongs to National Grid.

Brendan Murphy 19 East Collins St., does not disagree with neighbors, but says that they are leaving out that this is where we are, not how it was supposed to be. No one wants this, but it seems necessary so we as a city need to, instead of deflecting and trying to stop it, should make a relationship that works so the neighborhood can go on as it was. He approves of the trees but has some concerns about the smoking area, feeling that a gazebo may be more appropriate if the Applicant wants to keep them as patients and away from the neighborhood. This will not be the end of this, but there must be a conversation. The McClean challenge must also be clarified.

Amy Rickaan 6 Cromwell St. agrees with Mr. Murphy’s comments.

Tim Jenkins of 18 Broad St. notes that FHOD is an overlay district enabled by state law, a public statement as well as a zoning ordinance, which envisions that any structures must conform completely to the underlying zoning. Dover covers uses, with some subtleties about height, but the Planning Board has the authority to determine what happens on a site, things that are site related rather than use related. He describes case law up until now and its determinations. The City must determine whether this is primarily an educational facility. Most feel it is primarily therapeutic thus not covered by Dover. There is an educational component but it is not the primary one. Dover has been abused and the courts know this, stating, “That the program follows a well developed curriculum does not automatically make it educational.” Don’t allow form to be elevated over substance. Would we put a child care facility in this location given our knowledge of the flooding situation? This borders on a high velocity flood zone; public safety officials will not be able to access the site. The FHOD has not been tested in courts yet. This is potentially risky and it is cynical to put a hospital facility in the same location. This also must be a viable, certified nonprofit as a requirement. He notes the nebulous relationship between the Applicant (New View) and the Owner. Is there a long term lease requirement, and does New View actually have nonprofit status under Dover? It has been registered, but the AG’s office does not have the proper documents on file. There is also a contaminated site next door, where there are monitoring wells, and a claim was made at meeting with the DEP, that testing has occurred and results provided. They have not been, yet, so we are unaware of filled tideland soil conditions. On the Webb site, the site was too contaminated to build on; we need more info on this site.

Councilor Arthur Sargent At Large agrees with Councilor Furey. If this is not a Dover, we shouldn’t be here, and if it is a Dover, it should not be in a flood zone. Why are we still permitting in flood zones when 100 year flood zones are more like 5 year flood zones? The City must turn someone down and possibly face a lawsuit, but the burden of appeal will be on petitioners.

Attorney Bobrowski feels a full traffic impact survey is not necessary, and the Board will take it under advisement and let the traffic engineer know what they want.

Bill Griset disagrees with Mr. Murphy that no one wants this; people do want it, and it is needed, but perhaps not here. He also does not question if the City Solicitor has made a ruling, as the applicability of Dover Amendment must be explored. Everything hinges on the SJC decision, and we don't know enough yet. He is also concerned about the location but not as much as Dover issue. People who will receive direct benefit are patients, not students, a key difference to Mr. Griset. The Applicant's Attorney spoke with Attorney Caldwell, who rendered an opinion. They will try to provide a copy.

Vice Chair Venno asks about ATS, or acute treatment service, which is the nature of the facility license. He is familiar with levels of care, and that level is the most intense clinical, medical treatment for someone suffering from addiction, the least close to counseling for addiction. Counseling may be delivered outside of ATS but not usually along with. It is not clear if the Building Inspector was aware of that when he made his determination. Education does not seem to be a main component of the treatment plan. He is unsure the use would be allowed under Dover.

Attorney Bobrowski comments that the Building Department saw a letter from the Legal Department before making a determination. Also, the Executive Director is better versed and will be present at next meeting.

Noah Koretz notes that the Planning Board is not being asked to determine whether or not the project falls under Dover, and that the amount of comments made so far regarding that matter is not appropriate. The City made a determination, which may be wrong, but the current court case may determine that. This Board is tasked with Site Plan Review and FHOD review only. He is not convinced this is an appropriate, safe site for this use, as it is one of the most flood prone sites in the City. This Board needs to focus on that aspect of it. A letter signed by the City Solicitor should be obtained; they already have a letter.

Vice Chair Matt Venno disagrees, as he does not take a letter from the City Solicitor or Building Inspector at face value, and he feels it is the Board's obligation to assess advice given. They have not accurately captured the fundamental service being delivered, so it is appropriate for this Board to push back as they did the boilerplate language inserted by the City Engineer.

Matt Smith agrees with the location re FHOD but regarding SPR the Applicant is claiming it is an educational facility, yet there are no classrooms, and it says "patient" everywhere. This is problematic when considering use. When doing SPR we are only here because of Dover, but has the City seen the plans now before the Board? Will the Applicant do individual classes in individual sleeping rooms? Using Dover is an insult. The Program Director would be better able to outline.

Bill Griset states that the McClane hospital case has been shot down as Dover twice in Land court most recently. It was ruled that "therapeutic and curative" is not educational. The Board needs an opinion from the City Solicitor after discussion about all aspects of this. He feels that Board tests and appropriately kicks the tires of every applicant to make sure that what we are approving or not, is what the Applicant positions it as.

*A motion to continue to the Oct. 17 2019 meeting is made by Helen Sides, seconded by Bill Griset, and the motion carries.*

### III. OLD/NEW BUSINESS

**A.** 70 – 92 ½ Boston Street (River Rock / Flyntann)

Staff update on the status of the 70 – 92 ½ Boston Street project. The applicant will be at the September 25th Design Review board meeting to review an air condenser stack installed along Boston Street.

Mason Wells cites the memo from Tom Daniel re the condensers in question; the package has been submitted to the DRB re proposed screening and reason for installation. A procedural history of what happened is outlined. Condenser and pads were not on Planning Board approved Plans but the condenser pad and stack were included in DRB plans, however they did not come up explicitly in the that meeting. The process of gaining approval for the equipment is outlined; the placement was felt to be a “minor change” by the Director of Planning, but the DRB has purview regarding its treatment. Tom Daniel and the City Solicitor determined that the 2017 DRB review constituted approval of the current placement of the condenser units, but not the design treatment for the stack. The Applicant was requested to return to the DRB to design said treatment. I.e., the placement itself was seen by the Planning Department as a minor and appropriate change, but the DRB should oversee its treatment. Plans showing the current placement, which were already brought to the DRB, will be brought to that meeting.

Helen Sides feels it is shocking that the project owner finds the placement of the condensers acceptable in the front yard of a unit for sale, and feels it was an afterthought, that this was their intention all along. It was never discussed or brought to anyone’s attention as a deliberate placement. Why would the DRB think anything had been added between PB approval and the DRB submission? If not on the Planning Board’s plans, it is not approved. HVAC was not originally required on the SPR application. How to track changes made is discussed. Helen Sides thinks the Applicant did not know where the equipment was going to go upon PB approval, then lucked out that it was not noticed in DRB. Kirt Rieder finds this insulting to the Board’s work. “The Director of Planning decided this was a minor modification” but the Board strongly disagrees. He hopes the DRB can insist on something more than shrubs to screen. Noah Koretz asks why the Applicant can’t be made to move or remove the condenser units. Kirt Rieder notes that the Planning Board could revoke its approval, and make them move, however that is not an option available because the Planning Director made the decision, that in March 2017, this setup was approved by the DRB. However, it is reiterated that it was never presented to the Planning Board, and not pointed out to the DRB, and Koretz notes that the DRB is advisory only, so if an item is not in a Planning Board plan set, it is not approved. Mason Wells will consult with the City Solicitor.

Kirt Rieder notes that asphalt curb and sidewalk on Goodhue St. should be reviewed, in anticipation of future building of other units. The Applicant will come back after construction and put in the required granite curb and concrete sidewalk; the decision to allow this was made by the Planning Dept.

Regarding the curb to prevent parking on the tree lawn, the Applicant was to reset that and rebuild the sidewalk, but the Planning Department determined that, because Boston St. will get reconstructed in 5 years and the City will reset all curbs at that time, the Applicant should rebuild the sidewalk in full now. It is noted that the original approval states that the Applicant will rebuild the curb and sidewalk. Matt Smith notes that the City will reconstruct Boston St. in 5 years IF it makes it through the TIP process. This is an issue that the Planning Board spent an enormous amount of time on, and it is frustrating to see it go amiss.

Helen Sides feels it was shocking because the developer was amenable, excited and responsive, which is why she thinks they had no idea where they [the condenser units] were going. Kirt Rieder wonders what other items slide through between review by the Planning and Design Review Boards. Mason Wells and his colleagues are moving to change that. Helen Sides comments that it is not fair to put any Board in the position of having missed something. If the DRB is requested to oversee projects by the PB, they are an adjunct participant.

Mason Wells notes procedural changes to ECOD and NRCC, where the onus is on the applicant to point out changes between PB and DRB, after which the DRB must make recommendations if any changes are made, then must send the project back to the PB in an attempt to address this problem. It is not retroactive, but a change in process and conditions.

#### IV. APPROVAL OF MINUTES

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

#### V. ADJOURNMENT

*A motion to adjourn is made by Helen Sides, seconded by Matt Smith, and the motion carries.*

The meeting ends at 9:45PM.

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.