

**City of Salem Planning Board  
Meeting January 23, 2020**

A public hearing of the Salem Planning Board was held on Thursday, January 23, 2020 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 7:12pm.

**I. ROLL CALL**

*Those present were:* Chair Ben Anderson, Kirt Rieder, Matt Veno (arriving late), Helen Sides, Noah Koretz, DJ Napolitano, Bill Grisct, Matt Smith, Carole Hamilton

*Absent:*

*Also in attendance:* Mason Wells, Staff Planner

*Recorder:* Stacy Kilb

**II. REGULAR AGENDA**

**NO ITEMS**

**III. OLD/NEW BUSINESS**

**A. Location: 162 Federal Street**

**Applicant: 162 Federal Street, LLC**

**Description:** Discussion and vote on the release of a \$29,000 performance bond issued as a requirement of an Insignificant Change approved by the Planning Board at their February 21, 2019 Planning Board meeting.

*The release is approved in a roll call vote with all in favor and Matt Veno not yet present:*

Chair Ben Anderson:	Yes
Kirt Rieder:	Yes
Helen Sides:	Yes
Noah Koretz:	Yes
DJ Napolitano:	Yes
Bill Grisct:	Yes
Matt Smith:	Yes
Carole Hamilton:	Yes
Matt Veno:	Not Yet Present

**B. Location: 57 Marlborough Road/Osborne Hills**

**Applicant: Osborne Hills Realty Trust**

**Description:** Form B/Preliminary Subdivision Application for proposed access modifications to Phases 6-10 of the Osborne Hills/Strongwater Crossing subdivision.

Present for the Applicant are:

Paul DiBiase

Yugo DiBiase

Bill Lester, Planning Consultant

Paul DiBiase outlines changes made at the last meeting, as he is seeking preliminary approval tonight. A copy of the Draft Decision is available. Mason Wells outlines a letter regarding the City Solicitor's clarification on the role and ability of the Zoning Board of Appeals (ZBA) to grant dimensional relief to the Applicant, as it may constitute a zoning map change for such a large parcel. The Solicitor stated that it is within the purview of the ZBA to determine if the Applicant falls within the requirements of a variance.

Additionally, the Planning Board (PB) does not have the authority to deny the Applicant for the subdivision unless they do not comply with rules and regulations. Building not to zoning requirements is not detrimental. The PB can note that lots created are not complying and that the Applicant should go before the ZBA. The Chair asks if they would have to apply for each individual lot, since there are requirements for granting a variance, and only some lots may not fit said requirements. Is it a blanket application for a preliminary subdivision or on a lot by lot basis? This would have to be decided by the ZBA. Chair Anderson also asks about roadway extension connecting the development to Barcelona Ave, and if the PB has the authority to change that. It has been noted that the Board would need to research the record to determine the previous PB's reasoning. This could be considered later, during the submission of the Definitive subdivision Plan. It would be valuable to have a sense from the current PB, now, if they want to see a connection. A straw poll is in the Board's purview.

The sequence of events is outlined:

Preliminary approval is sought tonight. The Applicant would then appear before the ZBA for dimensional relief. Afterward, they would submit a full subdivision Plan for Planning Board approval. At that time the Board could request a connection to Barcelona Ave, provided the items outlined in the Solicitor's letter are met.

Noah Koretz is concerned that, procedurally, this would reopen every issue when a developer returns for a Definitive Plan. Is it as if they are coming back for a new permit? Mason Wells is unsure. Mr. DiBiase comments that the Definitive Plan would show more details. There are minor changes to drainage as approved. The road is in the same position as approved before, with lot size reduction sought, and the Applicant will shift twelve lots over from a street that will now not be built. He does not see infrastructure changing.

DJ Napolitano asks about the distance and amount of time needed for the residents of the lot farthest away from Marlborough Road to get there during rush hour. It is estimated at less than a mile, that would take 10 minutes or less to drive.

While Kirt Rieder is supportive of increasing the concentration of homes in cluster form, and avoiding large wetland crossings along with the reduction in road length, he wonders why the previous Board allowed something that would be double what is actually allowed in Subdivision regulations. The current Board would NOT allow this today, but needs to either rubber stamp or disallow it. Noah Koretz quotes the letter of the City Solicitor. The Board is conflating Barcelona Ave. and this topic; length could be reduced by opening it up. The City Solicitor says this is about the factual record, but it is not. Is this issue from the original approval untouchable from a legal perspective, or can this Board change it? Carole Hamilton comments that the submission of a preliminary Plan opens it up, so it is not a foregone conclusion.

Mr. DiBiase is not opposed to connecting the development at Barcelona Ave, but as the owner and developer involved in initial decision, the project was approved with no vehicular traffic to go through Barcelona Ave, and properties were sold on that basis. If he was to consider opening to through traffic that would add more traffic to this neighborhood, and he would be in trouble with existing homeowners whose perception would be that it reduces property value b/c of speeding traffic. They bought assuming no traffic coming through, but Kirt Rieder comments that this Board must weigh that against public health and safety, and this is not a private street. DJ Napolitano wonders what the fire chief would say about that lack of access through Barcelona Ave.

Mason Wells comments that, in the original decision, Barcelona Ave is called to be built to the City's standard specifications, with a gate and Knox box so that fire and safety personnel would have a key and a way to pass through, but there would be no public way. The Board notes that public safety is only one consideration, and strongly feels that access through Barcelona Ave. is also a matter of good planning.

Bill Lester, Planning Consultant, notes an acknowledgement by all involved that Barcelona Ave. could not handle additional traffic, and this it was not connected. However, that was the ruling of a previous Board. Noah Koretz is sympathetic, but it raises an odd question: if this Board is substantially different and if the issue is reopened, and the current Board feels the previous Board's decision was fundamentally incorrect, does this Board have a responsibility to reexamine it? Kirt Rieder notes that this is a different city 10 years later. The Chair concurs that the issue must be reexamined.

DJ Napolitano asks if the original Plan called for a connection to Barcelona Ave., but it was always an emergency entrance only, due to opposition from people who live on that street. That is immaterial now and should have been then. The Planning Board is not a political Board. Mr. Lester thinks that Solicitor Rennard's sentence about more research is not an issue of fact but of what happened when the original Plans were made. The Applicant can punt that b/c they know they will be back with a Definitive Plan. Carole Hamilton disagrees, noting that the fact is, with the submission of a preliminary subdivision Plan, it is a whole new plan with no bearing on what has happened before, and that this Board has the responsibility of looking at it anew. Beth Rennard did not answer that question.

Chair Anderson conducts a straw poll to ascertain whether the Board would like to see a means of egress from the development, so the Applicant will know where the Board stands. It is pointed out that Barcelona Ave may not be the only option, though others are unlikely to be feasible.

Straw poll: Is a second means of egress desired?

Ben Anderson: no

Bill Grisct: no

Carole Hamilton: yes

Noah Koretz: uncertain, more info needed. He feels there needs to be discussion on this.

Paul DiBiase reiterates the positive changes being made to the Plan, and comments that the roadway change constitutes a modification to the existing Plan. He is not sure that the Preliminary status means starting over again.

Matt Veno arrives at 7:29PM.

Also, from a Developer's perspective, Barcelona Ave. is an issue he will not be able to consider. Matt Smith wonders how this benefits the City from a public safety perspective. Having this public safety issue does not serve the neighbors, and while he understands concerns about what people bought into, this is something it took finagling to approve the first time around, and is double the length of what is allowed to be approved, so the project is adding more roadway, but fewer houses, for the City to maintain. Matt Smith feels there must be backup when a developer makes those statements. More is at play and this is not the Board that originally approved the development. Mr. DiBiase reiterates that there are many benefits to this proposal vs. the approved Plan. The roadway is being reduced with no additional density and additional open space. Carole Hamilton reminds the Chair that they were in the middle of a straw poll.

Mr. Lester passes out a list of benefits resulting from the currently proposed changes. When the Applicant comes in to do a final presentation, they acknowledge that Barcelona Ave. will be an issue, but think they can convince the Board that the benefits the enhancements proposed outweigh their concerns. This is where they will be when they come back. When they began the Form B process, the Applicant met with many people in the City, and it was

determined that it is not possible to go back to the PB informally to discuss things, as it must be a public process, so the Applicant decided to do this to give them a reason to be back and to provide public access. Chair Anderson notes he thought this was too much of a change from the previous Plan, to not be discussed.

DJ Napolitano asks for clarification as to what would happen if, in the Definitive Plan, the Planning Board requires that Barcelona Rd. be connected to the development. Would the developer revert back to the originally proposed Plan? Mr. DiBiase comments that such a requirement would open the trust to lawsuits from residents who live there. A third option would be no just no go through with this phase of development. DJ Napolitano asks why people in the houses farthest from the current entrance/exit would want to have to drive through the entire development to get in and out. Noah Koretz comments that this is dancing around the main issue, which is that the current Board wants to see a cut through to Barcelona Ave. The Developer is more concerned about residents who have already purchased homes in the project, than residents on Barcelona Ave. Carole Hamilton notes that this has nothing to do with the Planning Board. Mr. Lester notes that there are traffic and circulation issues, the same ones raised by the previous Board.

The straw poll continues. Is a second means of egress desired?

7:40PM

Ben Anderson: No

Bill Griset: No

Carole Hamilton: No

Noah Koretz: Abstain

DJ Napolitano:

Matt Smith: Abstain

Matt Venio: Abstain

Carole Hamilton feels a second means of egress should be shown in the the Definitive Plan, as a condition. Helen Sides wonders if there is a reason to go before the City Solicitor for more information. The Board may ask the Applicant to continue while they obtain further info.

Mr. DiBiase comments that people buy not just houses but into a community, and this one is exclusive. Kirt Rieder was not swayed by the list of benefits, so while he agrees that the changes are positive, the obstacle for him is the length of the roadway. He is not at peace with the procedural aspects of this project. It is definitely better, but the developer has a problem. Kirt Rieder grew up on a street with this condition; constructed as one unit, it was split by barrels, but then the City took them away, and while there was anger, it fizzled out.

Noah Koretz comments that the Developer is asking the City to accept these as public ways, and has noted that there is publicly accessible open space, but if the development is “exclusive,” then it should not go on the City grid. Carole Hamilton points out that the Board is not in public hearing mode at this point, so it is unknown how people feel, who were in the earlier part of the subdivision, but the Board will hear that in a public hearing for the Definitive subdivision. The Board is requesting the possibility of a Barcelona Ave. connection be shown.

Matt Smith comments that, looking at the City’s best interest, and how public and safety services access the Development, this is a different Board than the one that approved the project originally. As a transportation planner, he notes that cul de sacs are not good planning, that multiple access points are better for circulation, and that he wants to hear more from the City Solicitor, because if this Board does not have the authority to vote on this, there is no point to reviewing it. Carole Hamilton comments that if the Board wants to go in this direction [requesting a Barcelona Ave connection be shown on the Definitive Plan], it needs to inform the developer that they need to explore it, now, not spring it on them after they’ve prepared the Definitive Plan. DJ Napolitano would

like to get the ball rolling. He comments that it is desirable to move forward and approve the preliminary. Chair Anderson will be getting more information from the City Solicitor, which will be in the packets of the Definitive plan. He agrees with DJ Napolitano.

Kirt Rieder asks that they refer to it as “public access to open space,” as it is not being given or sold to the City. The distinction is important. It will not be a park. But, there is a mechanism for the City to obtain it with a conservation restriction. The open space can be held in trust or given via a conservation easement. Mr. DiBiase comments that, regarding other access, there is no other viable alternative access point than Barcelona Ave. He is still opposed to providing access there. Chair Anderson suggests canvassing residents of the development before the next meeting, and encouraging them to attend. The Ward councilor indicated that he was opposed to opening Barcelona Ave., but he is not on the Planning Board.

Kirt Rieder comments that the language indicating that the open space may be transferred to the City is not clear; the intent is that either the Developer or the Homeowners Association can transfer it to the City.

Carole Hamilton motions to include a condition requiring a second access point on Definitive Plans. The Preliminary Draft Decision is reviewed.

- Variance from ZBA for lot sizes has been added and is required
- “Should” - substitute “shall” → “preferred layout shall meet the requirements”:
- Kirt Rieder would like to address the transfer of open space, in the last sentence of 2006 Decision, section; clarification is needed.”The Developer or the Homeowners Association may transfer open space to the City.”

Additional discussion regarding connecting the project to Barcelona Ave., as a second means of egress, again ensues. Regarding page 1, Mason Wells comments that there is a section that includes requests for further information, and that there should be a modification section that lays out the changes. This should be deferred to page 2. The ideal language is discussed at length. At issue is whether the Board should specify that the second means of egress be noted as Barcelona Ave., or if the second means of egress should be left unspecified. Noah Koretz comments that this is about Barcelona Ave in particular; it would be fine if there was an alternative, but the Board’s responsibility is to look at the context of the project within the broader street grid, and the Applicant is purposely choosing to dead end rather than connect to Barcelona Ave. There are several issues, including safety and how this Development, which is becoming part of City infrastructure, fits into it. Even if there were to be second means of egress elsewhere, he would still want to see it connect at Barcelona because it affects how the Development connects to the City.

Kirt Rieder comments that, hypothetically, in 2035, the streets will belong to the City, not the Developer, and the City would have the prerogative to remove the gate and connect the Development to Barcelona Ave. Since the City could do this as soon as they accept the street, perhaps it should be shown on the Definitive Plan, now. Carole Hamilton concedes, finally agreeing that the Definitive Plan should show a connection at Barcelona Ave. Chair Anderson would like to have all the information, which the Developer will provide in the Definitive Plan; it is up to the Developer to figure out where the second egress desired by the Board should go. If Barcelona Ave. is the best option for that, so be it. It is currently constructed as an open thoroughfare but on the Plan it shows a dead end 2’ away from Barcelona

Carole Hamilton motions to approve the Amendment to the Draft Decision, with the Board’s strong suggestion that the Developer provide and document a second point of egress for this subdivision. She is seconded by Matt Veno and the motion carries 9-0.

Matt Veno motions to approve the Draft Decision as amended, is seconded by DJ Napolitano, and the motion carries with all in favor.

**C. Location: 94 Washington Square East (Map 35, Lot 536)**

**Applicant: The Breakaway at Salem Common, LLC**

**Description:** Review proposed paint or screening of a proposed HVAC unit partially visible from Andrew Street. On May 30, 2019 the Planning Board issued an amended Site Plan Review decision for 94 Washington Square East. A condition of this amended decision states that prior to installation of rooftop HVAC and ventilation units, the Planning Board will determine at a regularly scheduled meeting whether screening will be required.

No further information has been submitted. Mason Wells will confirm with the Applicant to make sure he submits it.

Noah Koretz asks about enforcement of Board decisions. The Board requested the attendance of the City Solicitor, City Planner, and Building Inspector Tom St. Pierre, at a meeting, but they were not available. Mason Wells does not yet have a memo. One relevant issue is at 73-75 Wharf St. The Board can issue a Notice of Violation to the Applicant, and a letter to Tom St. Pierre. Chair Anderson comments that Mason Wells can reach the developer and inform him that the Board is aware of changes that do not conform to the approved Plans. Once the Applicant understands this, he can then draft a letter from the Planning Board stating that there is nonconformance with its Decision, and request zoning enforcement by the Zoning Officer. This letter would also request the withholding of the Certificate of Occupancy, though this would be the Zoning Officer's decision to make. Kirt Rieder notes that the Board must be comfortable stating its position. A letter will be drafted.

The Board wishes for the three individuals mentioned to attend one of its meetings, together, not individually. It is noted that the Mayor should be cc'd on the letter to them as well as the previous letter re enforcement noted.

Matt Veno notes that he wanted to attend the City Council meeting, and share thoughts in public testimony re the rezoning of the parcels on Highland Ave.. He had commented that it was the "strongly held opinion of the Planning Board that the zoning code is problematic and needs thorough review.". Following coverage of the meeting on Twitter, however, it is clear that the texture of the Board's conversation was NOT conveyed appropriately to the Committee where this issue is being debated. Councilors were unaware as it was not conveyed thoroughly despite the Board's meeting with Tom Daniel. What was conveyed was that prior to the Planning Board being comfortable with the zoning change, they wanted a corridor consideration of Highland Ave. Noah Koretz comments that this was a gross mischaracterization of the discussion and wonders where to put density as the City grows. It is a question of putting density in car dependent vs. pedestrian accessible parts of the City. This must be a citywide consideration, not by corridor. Helen Sides wonders how this was miscommunicated. Tom Daniel, Planning Director, would have passed it on. Mat Smith finds it upsetting. The Board produced a detailed letter on the topic. This was after the election but before the new Councilors were seated. What goes to the City Council? Chair Ben Anderson comments that the letter he reviewed and edited, which portrayed the Board's opinion, was what went to Council, but the spirit of the message clearly was NOT conveyed. the Board thanks Matt Veno for attending the City Council meeting. He notes it was "quite discouraging" and "not okay" in his view.

### **III. APPROVAL OF MINUTES**

**A. Regular Planning Board meeting minutes for November 7, 2019.**

*A motion to approve the Regular Planning Board meeting minutes for November 7, 2019 is made by Bill Grisct, seconded by Carole Hamilton, and passes 8-0 with Noah Koretz abstaining.*

- B.** Special Joint Planning Board and City Council meeting minutes for November 14, 2019.

*A motion to approve the Special Joint Planning Board and City Council meeting minutes for November 14, 2019 is made by Matt Veno, seconded by Bill Grisct and passes 7-0 with Noah Koretz and Matt Smith abstaining.*

- C.** Regular Planning Board meeting minutes for November 21, 2019.

*A motion to approve the Regular Planning Board meeting minutes for November 21, 2019 is made by Matt Veno, seconded by Carole Hamilton, and passes 7-0 with Bill Grisct, DJ Napolitano abstaining.*

- D.** Regular Planning Board meeting minutes for December 5, 2019.

*A motion to approve the Regular Planning Board meeting minutes for December 5, 2019, with minor corrections, is made by Bill Grisct, seconded by Noah Koretz, and passes 9-0.*

- E.** Regular Planning Board meeting minutes for December 19, 2019.

*A motion to approve the Regular Planning Board meeting minutes for December 19, 2019 is made by Noah Koretz, seconded by Kirt Rieder, and passes 9-0.*

#### **IV. ADJOURNMENT**

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

The meeting ends at 8:33 PM.

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-2020-decisions>

Respectfully submitted,  
Stacy Kilb, Recording Clerk

Approved by the Planning Board on 5/21/2020

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