

City of Salem ZBA of Appeals

Meeting Minutes

Wednesday, April 18, 2018

A meeting of the Salem ZBA of Appeals ("Salem ZBA") was held on Wednesday, April 18, 2018 in the Large 1st Floor Conference Room at 98 Washington Street, Salem, Massachusetts at 6:30 p.m.

Chair Curran calls the meeting to order at 6:35 pm.

ROLL CALL

Those present were: (Acting Chair) Peter Copelas, Chris Drucas, James Hacker (Alternate), Jimmy Tsitsinos, and Paul Viccica. Those not present were: Chair Rebecca Curran and Mike Duffy. Also in attendance: Tom St. Pierre - Building Commissioner, Erin Schaeffer - Staff Planner, and Colleen Brewster – Recorder.

REGULAR AGENDA

Project	A continuation of a public hearing requesting a Variance per Sec. 3.2.4 <i>Accessory Buildings and Structures</i> to allow the petitioner to exceed the maximum floor area of an accessory structure.
Petitioner	THEODORE and BARBARA WARREN
Location	5 HARDY STREET (Map 41, Lot 26)(R-2 Zoning District)

Documents and Exhibitions

- **Application dated January 30, 2018 and supporting documentation**

Ms. Barbara Warren, 5 Hardy Street, owner, was present to discuss the project.

Ms. Warren stated that the shed in the plot plan and photo is temporary with no permanent foundation. Their lot is larger than usual at 5,100 SF. The house was built in 1700's, is 884 SF and abuts the sidewalk. The new shed and house covers 21% of the property and 78.5% of the lot is still open space. It meets all the requirement for an R 105.2 Work Exemption Permit because it is under 200 SF but in the zoning regulations it meets all the 3.2.4 Accessory Buildings Structures accept for no. 3, building area. The area of the new shed is 192 SF and the zoning call for 120 SF, and that is why they are requesting a variance.

Acting Chair Copelas stated the variance requirements require the petitioner to meet certain conditions, specifically regarding a hardship, and there are three parts to that. Ms. Warren replied that the removal of the shed from the property will involve a substantial financial hardship; the site plan cost \$1,000, purchase or construction of a new shed will cost \$4, 461, the removal of the shed would cost \$1,000 or more, a replacement shed would cost \$3,334, including temporary storage during construction, creates a financial hardship of \$9,865. The house has limited attic and storage

space and a small shed wouldn't meet their needs. Acting Chair Copelas replied that although this is a difficult situation that seems reasonable there are 3 legal findings that the Board is required to find in order to grant a variance, is difficult to find in his opinion. There is nothing unique about their situation to allow a larger structure than what is required by the ordinance. Expense incurred doesn't meet the legal definition of a hardship and neither does installing something and claiming it's too expensive to take down. It derogates from the intent of the ordinance to construct or install something and then ask for permission. Ms. Warren noted that they failed to look at the zoning code which indicated 200 SF or less for an accessory structure, others in the neighborhood are as large and their previous shed was much larger. Acting Chair Copelas replied that it makes sense why it should be allowed but there are legal requirements to meet, and in his opinion, the petitioner hasn't met either of them. The facts aren't likely to change, so it could be continued, but they won't have the legal authority to approve a variance.

Mr. Drucas stated that the financial hardship must directly affect the real estate it cannot be personal. Variance requests have a high standard to meet in order for a relief to be granted. He suggested they withdrawal without prejudice and return with something different but he cannot vote in their favor. Mr. Viccica stated that these are difficult circumstance, he asked if it can be modified rather than replaced since it is only 72 SF over what is allowed, and he suggested that the temporary foundation may have some bearing on this situation that she may get advice on prior to returning to the ZBA.

Acting Chair Copelas asked if there are any circumstances that would allow the existing deteriorated shed, which was also over the allowable SF, to be replaced. Mr. St. Pierre replied that it would have to be demonstrated that the existing shed was legally non-conforming and the petitioner could probably seek a special permit to replace it. Acting Chair Copelas noted that a shed of the pervious size could be sought because special permit requirements are less than a variance.

Acting Chair Copelas opens public comment.

Julia Andrews, 7 Hardy Street, Unit 3. For a 5,000 SF lot, a 192 SF shed is much too large and it has become a haven for rodents. The shed is closer than 5 feet from the back fence, and 5'-6" from her fence, but a survey should be done to prove that.

Mr. Viccica asked if the plot plan presented was done by a certified surveyor. Mr. Warren replied no. She asked to withdrawal without prejudice and return with a new plan.

Acting Chair Copelas closes public comment.

Motion and Vote: Mr. Drucas makes a motion to allow the petitioner to withdrawal without prejudice. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with five (5) in favor and none (0) opposed.

6.10.4 to operate a licensed retail marijuana establishment.

Petitioner **NS ALTERNATIVES**

Location **207 HIGHLAND AVE (Map 13, Lot 2)(B-2 Zoning District)**

Documents and Exhibitions

- Application dated February 27, 2018 and supporting documentation

Attorney Mike Ross, Brandon Banks – Principal of NS Alternatives, Doug Okus – Architect at Douglas Okus & Associates , and Tony Capachietti – Traffic Engineer at Hayes Engineering, were present to discuss the project.

Atty Ross stated that they will review the items the Board asked them to address today, after the March 28th meeting. Adult cannabis use is allowed by special permit. Most of the Boards concerns were about parking and transportation, the number of parking spaces needed, identifying the handicapped spaces, employee parking, legal access to the site and how it is approached from Salem with several no-U turn signs in place, they were asked to incorporate their transportation study into the plan to include crosswalks. Added a loading / unloading area increased the building square footage, the traffic impact on 1st Street was also looked at. He also presented a letter for the record from Mary Butler, Chief of Salem Police.

Ms. Schaeffer read letter from Police Chief Mary Butler.

Atty. Ross provided revised copies of the traffic study. Acting Chair Copelas stated that the traffic concerns mentioned at the last meeting have been significantly modified and the Board may not be prepared to give an opinion on it tonight. A significant portion of the traffic study does involve 1st Street and the traffic changes effect it. Atty. Ross replied that his client took Board's recommendation seriously and made the recommendations suggested.

Atty. Ross began the presentation and noted that the kidney dialysis center will remain and their proposed location will be at the North-West corner of the building. They are proposing to close off the second exit onto Highland Ave exit and open a 1st Street curb-cut to allow a legal entrance and exit. Vehicles can continue exit, by making a right turn only onto Highland Avenue, and to travel down 1st Street. The Mass DOT indicates a capacity on 1st Street for between 2,200-3,000 more cars although they expect much less. If Mass DOT's plan come into play they would create roundabouts on Highland Avenue and vehicles would never use this entrance again.

Atty. Ross stated that the previous proposed parking plan was for 30 parking spaces and the extra 500 SF of interior space for the indoor loading, as requested by Police Chief Mary Butler, increased that number to 32 parking spaces. Some Board members requested employee parking, so they amended their agreement with the landlord to include 47 parking spaces; 3 are handicap accessible, noncompliant tandem spaces and those blocking points of access were removed and reallocated, and 12 employee parking spaces at the Southern edge of the property.

Atty. Ross stated that the traffic study from the previous week include a parking study on page 6. The Board was concerned about parking for the other uses in the building and spaces are available for them. Their space requires 32, 94 parking spaces are required for the building, and 143 are available.

Atty. Ross stated that the floor plan hasn't changed, except for the new sally port. Bike racks at the front entrance, rear employee entrance, and indoor bike racks have been added as recommended by the traffic engineer. Changing rooms will also be available for staff. The elevations, signages, and landscape plan are the same as previously presented, with the exception of additional crosswalks and rumble strips.

Mr. Capachietti stated that he has worked on over 30 adult medical facilities which is a fairly new use. Destination use facilities get higher traffic when they 1st open but as they become more prominent visitors will go to the most convenient location. The estimated 400 trips per day is based off of a destination use so that number will decrease. The estimated number of customers on a slow day is between 300-350 and on a peak day 400, and each customer count as two trips, one for their destination trip and one for their return trip. That equals 600-900 trips for 300-450 customers and this study is based on the higher amount. Engineering books calculate fewer cars but they were asked to include person knowledge of what Mr. Brooks has experienced in the industry. Acting Chair Copelas replied that they did ask for true expectations not generic numbers based on the SF for typical retail space. Mr. Capachietti noted that recreational adult use numbers are from Colorado which was set up using facilities much larger than what Massachusetts has legally allowed.

Mr. Capachietti stated that Mass DOT studied Highland Avenue in 2015. It is an entrance corridor that gets approximately 35,000 vehicles per day (total for both directions.) 2,200-3,000 vehicles were calculated to use the zigzag, Swampscott Road to Highland Avenue to Marlborough Road. Mass DOT created three preferred solutions; the 1st, to reroute the zigzag through 1st Avenue, which didn't see an improvement, the second, adding physical barriers, which made a small improvement, and the third, to reroute vehicles using roundabouts, which increased the level of service along Highland Avenue. The DOT has identified that 2,200-3,000 cars can use the portion of 1st Avenue between Swampscott Road and the bend towards Highland Avenue. The question was raised how customers from downtown Salem would reach the site. The only entrance is on Highland Avenue so customers would have to loop around from Highland Avenue, to Swampscott Road, to Traders Way, and northbound onto Highland Avenue, to take a right turn into the facility. First Street would provide a better and safer access to the site, so they did review entering from there. Mr. Viccica noted that legal U-turns are allowed further down Highland Avenue and he would suggest they recommend advertising the use of those U-turns rather than suggesting 1st Street, despite Mass DOT's calculations, because too many people are using 1st Street as a shortcut from Swampscott Road to Highland Avenue.

Mr. Capachietti noted that there are two existing egresses onto 1st Street, the second is currently gated but will be removed and landscaped, leaving only one 1st Street entrance. Half of the customers would be exiting onto 1st Street. Acting Chair Copelas noted that there has been no consensus that the which option from Mass DOT would occur. Mr. Capachietti replies that they were relying on Mass DOT vehicle capacity only. They could close down the 1st Street entrance and only use the Highland Avenue but half of the traffic flow would turn onto 1st Avenue anyway to head South. Typically, it would take a 5-10% increase in traffic to affect the level of service, and they

are looking at peak of 2-3% depending on the day; however, the study recommendations do have some merit. Improving pedestrian access would be great but typically the traffic will be drive-bys. Acting Chair Copelas asked if the existing conditions on 1st Street like the sidewalks had been studied. Mr. Capachietti replied that they relied on the recent Mass DOT study because it was so robust. The public transportation could be used and as an incentive for employees. The petitioner wants to improve and include the recommended upgrades related to this site. Atty. Ross noted that a traffic study wasn't a requirement of the application and suggested that it be a condition of the license.

Mr. Drucas asked if the cross-walk would be signaled. Mr. Capachietti replied not on 1st Street, Highland Avenue has no crosswalk directly to their site, the closest crossing would be at Traders Way shopping center. Mr. Viccica asked if there would be more or less trips if there would be other stores in this location. Mr. Capachietti replied less if there were a car dealership and more if there was a CVS or restaurant. A church could have 350-400 but with a different time of use. They usually consider themselves a specialty retail with one type of product with a count of 40 per 1,000 SF. Atty. Ross noted that they debated about using a larger number but they don't believe they would hit those numbers, the totals would be closer to what was initially provided.

Mr. Drucas asked what the grade levels were for both access and egress. Mr. Capachietti replied that there is a 3-foot difference off of 1st Street but they will close that access route to provide sloped grading. There is an approximately 5% slope, which is acceptable for a driveway, with a 2% slope at the road for any future sidewalk. Along Highland Avenue he estimated 6-8%. Mr. Drucas noted that it would be difficult for someone in a wheelchair.

Mr. Tsitsinos asked to review the security when entering the site. Atty. Ross replied that Chief Butler wanted a vehicle to be able to completely enter the space and to close a gate being it, which was already provided. A security plan is in process but not complete, and it was deliberately not included in the submission package to make their security measures public knowledge, but they are working with the Salem Police Department on its design. Dan Linskey, former Superintendent-in-Chief of the Boston Police Department, was present at the last meeting and created the security plan.

Mr. Banks stated that customers will enter the vestibule, get their ideas checked, and enter the sales floor. Initially 6 registers will be in place, they will verify ID's a second time, and then exit the same way they entered. They added the carport with security cameras, for secure deliveries which will be scheduled in advanced. The cameras will be in real time for the Salem Police to also monitor their anticipated 2-3 deliveries per week. Atty. Ross stated that they will include a sally-port type entrance where one door of the vestibule must be closed in order to open the second door to keep that area secure. Mr. Tsitsinos asked if someone could jump over the ID check-in counter in the Lobby. Mr. Banks replied that there will be secure glass. Atty. Ross noted that this facility will be more secure than a bank. Acting Chair Copelas stated a sally port implied that a waiting area will be created in the Lobby. Mr. Banks replied that he anticipates 2-5 people waiting at the most. Mr. Okus added that it could hold up to 20 people.

Mr. Banks stated that on the sales floor there will be 1 seating area and several kiosks for display that aren't accessible to the customer, all items will be behind the glass. Mr. Drucas asked if any

measures to be taken to ensure that people don't use the product in the parking lot. Mr. Banks replied that security won't allow that and there will be exterior security cameras to monitor outside activity and those tapes will be regularly monitored. Atty. Ross added that Mr. Banks has no desire to allow on-site consumption and that can be a condition of their license. Mr. Tsitsinos asked if people under the influence of any kind will be served. Mr. Banks replied no, and there is a list of banned individuals who cannot be served. He is not just in the marijuana business he is in the compliance business, to make sure that the license is protected at all costs.

Acting Chair Copelas asked where security staff will be located. Mr. Banks replied that there will be 1 full-time security staff member during the week to watch the cameras, floor activity, and on the weekends, there will be a second to walk the perimeter. If there is a need extra security can be added. Atty. Ross added at a detail of the Salem police can be used but they will defer to Chief Mary Butler's requests.

Mr. Viccica asked for their operating hours especially if the food bank remains. Atty. Ross replied 8AM-8PM Monday-Friday, Sunday hours mirror a liquor license 10AM-8PM. The food bank only operates Saturday morning and they've agreed to shut down when the food bank is open on Saturday morning.

Mr. Drucas asked about the three residency requirements under the CMR for this type of business. Mr. Banks replied that they are not running a micro-business, they are not an economic opportunity petitioner, or a craft marijuana facility, so there is no residency requirement.

Acting Chair Copelas stated that the ZBA submitted 2 questions to City Solicitor; in regards to residency and whether the petitioner had standing prior to meeting the requirements of the Commonwealth, so the ZBA could act on the petition. Acting Chair Copelas read the findings of the Solicitor into the record. Atty. Ross noted that they've provided documentation stating that the church is leaving, the food bank affiliated with the church but it can stay or go, and Mr. Banks will support them in terms of their hours if they stay. Mr. Viccica stated that they can make a condition that they cannot grant them zoning approval unless the church vacates since a church must be more than 500 feet away.

(Acting Chair) Copelas opens public comment.

Laura Holian, 7 Lions Lane. Concerned with the delivery process, asked if the 3 deliveries a week following the Colorado model have deliveries at the same time on the same days, asked if the vans are easily identifiable, if someone would wait outside for them to arrive and close the door after them, and if the vans have a driver only or a driver and a helper. Atty. Ross replied that Mr. Linsky has planned for random delivery times, unidentifiable vehicle with tracking required by the state, and they will exceed the requirements requested. Mr. Banks added that Massachusetts law mandates a buddy system for deliveries and Mr. Linsky will determine if a guard is needed at the door. Acting Chair Copelas asked where deliveries will come from. Mr. Banks added that deliveries typically go direct from the facility to the delivery location, and with the state required real time tracking there hasn't been an issue.

Nicole Snow, Executive Director of the Massachusetts Patient Advocacy Alliance and adviser to the Cannabis Control Commission. They don't intend to support or oppose the client. This facility will be sourcing their marijuana from a medical marijuana petitioner. The registered qualified patients have cards to allow them access to the medicine their group fights for. This facility will be for adult users. The virtual gateway is not available at adult use centers but Mr. Banks is supportive of the medical marijuana patient's agenda. They want to move forward with verifying for patient access to offer those discounts. The price impact depends on each patient and if they are allowed lower cost medicine. It is unknown whether the petitioner will have access to that computer program until they get through the regulations at the state level.

Tim Flynn, 42 Sable Road. Concerned with security, if it will be daily security and private or armed guards. Acting Chair Copelas replied that Chief Butler has interacted directly with the petitioner. Atty. Ross noted that they have met with her twice and will continue to do so, and she will determine whether their private security guards are armed. He noted that the letter from Chief was favorable. Mr. Viccica stated that the ZBA is only denying or approving a zoning requirement and there are other compliances outside of the ZBA's purview. He added that other items will be reviewed but not by this board; however, they can apply conditions. Ms. Schaeffer read security plan requirements into the record.

Maria Andreatola, Wheelers Lane. There is a large presence of school children in the area that use 1st Street and Highland Avenue to get to school from September-June morning and afternoons. Missing that occurrence one time could result in an injury. The petitioner can't guarantee people won't light up in their car or nearby area. Acting Chair Copelas noted that there will be more discussion on the use of 1st Street and Highland Avenue.

Gloria Stuart- Has children that attend the high school, concerned with an emergency situation occurring and communication with the school so the children walking by aren't at risk. Pedestrians walking down Highland Avenue to this site is not feasible if their customers have medical problem; MS, ALS, Parkinson's, etc. The number of handicap parking spaces should be increased from the proposed 3.

Griffith Coates, 51 Hathorne Street. Their customers will take shortcuts through the neighborhoods and those side streets can't handle that amount of traffic, and it could be dangerous with many kids playing in those neighborhoods. The condominium residents at Highland Avenue and 1st Street have been petitioning for a traffic light for years.

Dave Goodoff, 31 1st Street. Vehicular traffic will take Traders Way not Swampscott Road is also a mess. It is already difficult to get around that area during major commuting times. There are safety units and potentially 212 more units going in on the corner of Traders Way and 1st Street which will add to the traffic. Crossing and getting onto 1st Street is already difficult at times. The proposed improved traffic pattern isn't enough.

Marilyn Fitzgerald, 1st St. 1st Street doesn't have a complete sidewalk on either side currently. It stops and starts at different areas, people need to cross over to get to the remaining sidewalk, but it is hard to get across the street.

Debbie Tucker, 1st street. The traffic study doesn't seem thorough. 1st Street has many children, apartments, and condominiums with high occupancy counts. She is opposed to the exit being blocked off onto Highland and directing it onto 1st instead, which will create a back-up. The lack of sidewalks is also a concern. Mr. Capachietti replied that the existing gated egress would be permanently closed. Highland Avenue will remain an entrance and exit. The 1st Street entrance could be eliminated but part of the Transportation Demand Management Plan is to encourage drivers by giving them the preferred route not the residential routes. Atty. Ross added that the transportation issues will not be solved but they've presented a plan to address the previous concerns about parking. They will work with the Salem Transportation Department and residents to come up with a plan that works and they have the money needed to mitigate that effect.

Rachel Dougherty, 7 1st Street. No vehicle or cyclist can exit the parking lot and go South on Highland Avenue with the median in place so how will that be addressed. Only the curbcut onto 1st Street has addressed it. Asked if the petitioner was willing to put in a traffic light. Acting Chair Copelas noted that her letter was received and will be included.

"Fuzzy" 4 Harrison Road. A bus picked up children at the back of 10 & 12 1st Street and there is also a playground whose protection hasn't been addressed. Salem State is allowed a 1,000 foot and the children gets a fence and that should be a consideration. Acting Chair Copelas replied that they can only deal with the ordinance passed by the City Council. It only need to comply dimensionally with those zoning requirements, that is not part of this hearing, and those concerns should be taken up with your City Councilor.

Robert Camire, 10 Francis Road. Suggested off-site parking with a shuttle and there could be a left only exit only 1st Street. Atty, Ross replied that they plan to do it but the Board was skeptical and wanted more parking spaces. They will provide a 100% MBTA pass subsidy program for employees. Acting Chair Copelas replied that the problem with that is anyone driving North on Highland Avenue will have no opportunity to turn around and head South. Directing more vehicular traffic into downtown Salem would be problematic. Mr. Capachietti added that eliminating an exit onto 1st Street won't stop them from turning onto it from Highland Avenue. 1st Street would need to have a Do Not Enter sign which wouldn't work.

Ledbia McClain, Albion Street. There are a lot of positives with the business plan and security; however, this is a poor location, it will be a burden on already stressed intersections, with the transportation flow changes being considered by the City and State this is not an excellent time to add this business to this location, it is difficult to ensure that people will not consume the products in other neighboring parking lot. He urged to Board to consider which of the multiple facilities being considered along Highland Avenue would work best instead of each one.

Jan Edgar, 5 Indian Hill Lane. Asked how many of these facilities will be along on Highland Ave. Acting Chair Copelas replied that they are legally required to respond to each petitioner as they come before the Board. The City does not have zones that allows a certain number of them in each zone. The ZBA could potentially approve more than 5 although that doesn't mean that they will open because they would still need to receive a state license. The number approved can be more than five but the number of businesses allowed to open will be cut off at 5. It is also not their job to distribute them around the City. She asked how can the traffic study support that. Mr. Capachietti

replied that the Massachusetts DOT study looked at the development of this corner, allocating a retail use and included the new cinema, and noted that there would be no change in level of service through the 2035 build-out for the corridor, and those numbers were included in their study.

Lisa Peterson, Ward 3 City Councilor. Noted that the neighborhood response is good, she helped organize the neighborhood meeting, petitioner has been very responsive since that time, and the petitioner wants to have additional meetings.

Cindy Ansolmo, Managers a condominium on 1st Street. It is her understanding that the petitioner had to meet 6 criteria and its financial impact is the City seems to be the only thing that would be met. The over 200 proposed unit, and roundabout will impact everything. She believes the traffic study claiming that 1st Street can handle 2,000 additional vehicles is inaccurate and traffic study results are in favor of who pays for them. Acting Chair Copelas replied recreational adult use, when they make a determination those 6 general special requirement conditions must be met as well as 6 additional conditions for the sale of adult use recreational marijuana. They will not be overlooked or ignored.

Mr. Viccica asked that if the petitioner wanted to expand to the tenant space next door they would need to come before the ZBA. Ms. Schaeffer replied that the BOA needs to determine what constitutes a significant change. Atty. Ross noted that they would be happy to have that restriction.

Mr. Hacker stated that he has issues with traffic from residential neighborhood, the amount of traffic turning off of Highland Avenue and going up the hill to this site will create a stop and go situation in the right lane heading North.

Mr. Drucas stated that the plan is excellent, he has issues with the facility being a good idea in this location with so many existing problems. He is troubled by the site, its features and its relationship to the abutting neighborhood. Mr. Viccica asked why this viable retail site is problematic. Mr. Drucas replied that this is still a special permit, its within their discretion whether they grant it, and other retail uses could move into this site. Acting Chair Copelas asked if Mr. Drucas the petitioner continued to refine their plans that he may be in favor of it. Mr. Drucas replied yes. Atty Ross stated that he appreciates the Boards input so far and their suggested has improved the plan and asked if they are within the statutory allowable time to return to the ZBA, and to continue their dialog with the neighboring groups. Acting Chair Copelas noted that the Public Comment will remain open.

Mr. Tsitsinos asked the petitioner to review the sidewalks on 1st Street and including a crosswalk for pedestrians near the bus stop. Acting Chair Copelas requested a more complete design for what they intend for 1st Street.

Motion and Vote: Mr. Viccica makes a motion to continue to the May 16th 2018 meeting. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with five (5) Acting Chair Peter Copelas, Chris Drucas, Jim Hacker, Jimmy Tsitsinos, and Paul Viccica in favor and none (0) opposed.

Project A public hearing requesting a Special Permit per Sec. 3.2.2 *Nonconforming Uses* to change mixed-use office space to a multi-use contractor spaces for storage, fabrication and office purposes. The petitioner is also requesting a Special Permit and Variance per Sec. 3.3.4 to allow an extension of a non-conforming structure and allow the petitioner to exceed the maximum lot coverage requirement.

Petitioner **1 JEFFERSON AVE. LLC**

Location **1 JEFFERSON AVE (Map 25, Lot 649)(Industrial Zoning District)**

Documents and Exhibitions

- **Application dated March 23, 2018 and supporting documentation**

Attorney Scott Grover of Tinti, Quinn, Grover & Frey of Salem, MA, and Todd Waller, property owner, were present to discuss the project.

Acting Chair Copelas disclosed that he has been a tenant of the petitioner for the past 12 months at 1 Jefferson Avenue where he rents an office and a workshop, he has no stake in the outcome of this petition financial or otherwise, this, and an arm's length relationship with the owner, and the outcome does not affect him in any way. Atty. Grover replied that he has no issue with Acting Chair Copelas staying.

Atty. Grover stated that the site is between the Salem Police Department and the DPW building. It was previously proposed as a haunted house and it currently houses several small uses and its proposed use is a more fitting for the neighborhood. It is in the Industrial District but also at the edge of the B5 District. It is also in an entrance avenue overlay district was extended to Jefferson Avenue. The Planning Board will conduct a Site Plan Review and possibly even a Design Review due to the recent changes to the Entrance Corridor.

Atty. Grover stated that the proposal is to demolish the rear warehouse structure and replace it with a significant expansion to create small business spaces. 24 on-site parking spaces will be available, the proposed 8 internal bays each has space for 2 vehicles, 15 parking spaces around the perimeter (the rear and Salem Police station side of the property), and 1 existing parking space in the original building, which they believe will comply with the requirement for this collection of spaces so no parking relief is being sought. The relief required is for the use of the property and minor dimensional variances. Currently there are a limited number of commercial uses allowed in the Industrial District and they are requesting a special permit to expand upon the existing non-conforming use to add additional non-conforming uses. The Board can grant that after finding that the new uses don't have more adverse effects. The property needs cleaning up, the owner will provide a new building in the place of a dilapidated building, spaces that are in demand will be provided which will increase the tax revenue for Salem, so there are significant beneficial impacts and no adverse impacts. The second area of relief is for dimensional variances for the setbacks. The industrial setback required is 30 feet at the front, side, and rear. The existing structure is 14 feet from the right setback, 27 feet from the left setback, and 42 feet at the rear setback which will

remain. They are requesting a dimensional relief for a minor increase on only the right setback because the new building will increase the non-conformity by approximately 1 foot at 25.9 feet from that setback where it existing is 27.2 feet. The other new non-conformity is for lot coverage, which in the Industrial District is 45%, the existing building covers approximately 46%, and 46.3% coverage is proposed. The grounds for Variance is the size of the existing lot which is 25,000 SF and in industrial zones the permitted lot size is 40,000 SF. The hardship of 30-foot setbacks on a 24,000 SF lot would result in a very narrow building.

Mr. Waller stated that the design of this building with respect to the entrance corridor and its downtown proximity, Jefferson Avenue will become more active with new plans in the works. He wants this site to be attractive and he plans to use industrial materials. He will add windows, clean-up the property with landscaping, to create active incubator spaces. He has created other small business and he wants to give people seeking this type of space in Salem a place to rent.

Acting Chair Copelas asked what will be seen when traveling down Jefferson Avenue. Mr. Waller replied that the building height will match the existing building and the view will not easily displayable from Jefferson Avenue. The view from the police station side of Jefferson Avenue will have a skewed view of the glass doorways at the new bays in line with the left side of the existing 1900's railway building. The original building will remain, be preserved, and cleaned up, and the new addition will be redefined with a Corten self-rusting steel which will result in a brick color.

Mr. Viccica asked for clarification on the interior parking in the 8 bays. Mr. Waller replied that the market and use will dictate whether 1 or 2 vehicles can fit into each space. Mr. Viccica noted that 6 bays could provide 9 additional parking space and decrease the square footage by approximately 1,600 would get eliminate the need for a lot coverage variance. What hardship requires 8 bays and not 6. Atty. Grover replied that that could be accomplished but it worked out better to sight it on the lot this way and the relief requested is minimal. Acting Chair Copelas stated that when you are so close to not needing a variance or one less variance, why not make that minor modification the eliminate the need for the variance. Mr. Viccica stated that he is amenable to a variance for lot square footage, and despite not requesting a parking variance, less parking will push cars onto the street. If you do not demand that tenants parking within the incubator space the 24 required legal spaces will not be met and requiring that they park within the units may make the units less attractive. Removing the two rear bays won't affect the already generous rear setback but it a decision will have to be made regarding the side setback. Atty. Grover replied that reducing the square footage by approximately 500 SF to get to 45% lot coverage will eliminate the need for a lot coverage variance. Mr. Viccica asked how many parking spaces are required based on the proposed plan. Atty. Grover replied 24 but it is hard to say without actual users. Acting Chair Copelas noted that in condominiums it is not in the documents that the tenant has to park there and suggested that if the parking is provided than it meets their obligation. Ms. Schaeffer suggested that a special condition be applied to mandate that an internal parking space be assigned to each tenant so parking spaces will not be displaced. Atty. Grover noted that all exterior spaces are available to all of the tenants and it's use is dependent upon who rents the space, there could be a tenant with 5 trucks. Mr. Waller added that there could also be a tenant with no vehicle. Mr. Viccica asked what internal space is left to use once someone parks inside the bay. Mr. Waller replied that 8 bays are approximately 1000 SF but they could be 4 double bays depending on the use. Each of the 8 bays is approximately 25-30 feet wide x 40 feet deep, and a typical parking space at 9 feet x 18 feet. Atty.

Grover noted that there will be enough room for a vehicle and 800 SF for storage, a desk, etc. and the 15 outside space will not be assigned.

Mr. Drucas stated that he is concerned with not creating a smaller addition that doesn't require the relief requested and there is nothing unique about this parcel that creates a financial hardship. Atty. Grover noted that other industrial lots aren't this small and a smaller addition can be constructed but won't be viable or usable and a literal enforcement of the setbacks creates the hardship. Acting Chair Copelas asked Atty. Grover to speak on dimensional variances as opposed to other variances. Atty. Grover stated that the courts have said that very minor dimensional variances require less of a showing of hardship, and they aren't saying that nothing can be built, but noting viable can be building when following the setbacks. Mr. Drucas noted the case of Furlong vs. Salem where Salem won. Atty. Grover replied that this case has different facts.

Atty. Grover presented a plan that requires special permits only and no variances. This plan doesn't optimize the use of the property, but it reduces the footprint, the parking spaces are the same, the building will be in line with both the left and right sides of the existing building, and some square footage is removed from the back so the building is below the lot coverage. The special permit would be required under Section 3.3.4 for the extension of a wall along a lot line which won't create a new non-conforming. Acting Chair Copelas noted that the setbacks aren't improving but adding onto the same wall means no variance is required.

Ms. Schaeffer asked if the number of bays would remain with the same square footage. Mr. Waller replied the number of bays will remain but with 900 SF, the layout depends on the tenant, and the spaces will each have 1 toilet. Acting Chair Copelas asked if there will be mezzanine spaces. Mr. Waller replied that that will depend on the demand.

Acting Chair Copelas stated that the new proposed plan solves the Boards variance concerns. Mr. Viccica stated that the petitioner should have presented the complaint plan first. Variances are hard to get, need to meet special conditions, and aren't just given out. With either plan, the 8 internal spaces need to be mandated to the tenants. Atty. Grover noted that the owner wanted to move forward with the plan requiring minor variances that he designed for the lot.

Mr. Drucas recommended shortening the building to create 3 spaces at the end. Mr. Waller replied that they reviewed that option today and there would be spaces for 4 vehicles since the building is 80 feet wide. St. Pierre noted that the Board can approve less than what was advertised as long as there is a plan that can be submitted.

(Acting Chair) Copelas opens public comment.

Lisa Peterson, Ward 3 City Councilor. In favor of current proposal that can hold the parking use and can protect the neighborhood for future disruptive uses.

Bill Linskey, neighboring property owner. Not in favor of the proposed rusted metal façade of Cortane steel that will be an eyesore, but this is a great idea and use of the property. Mr. Waller replied that there are other materials being considered and it will undergo Design Review.

Atty. Grover noted that because this property is within an Entrance Corridor Overlay District and the addition is over 2,000 SF it is subject to Site Plan Review. Is understanding of the amendment is that buildings between 2,000-9,000 SF the Planning Board can elect to send it to the DRB for Design Review. Projects over 9,000 SF will automatically receive Design Review. It is also in a flood hazard and will require Conservation Commission review.

Mr. Tsitsinos noted that he is also not in favor of Corten steel façade.

(Acting Chair) Curran closes public comment.

Motion and Vote: Mr. Viccica makes a motion to approve a Special Permit per Sec. 3.3.4 to change a mixed-use non-conforming structure to include multi-use contractor spaces for storage, fabrication, and office purposes and to expand a non-conforming structure, for the second option plan A-4 dated April 18th 2018, with the following special conditions; that the 8 internal parking spaced be assigned to and used by the tenant of each incubator space and to add 4 parking spaces at the rear of the building, and 3.3.2 for expanding a non-conforming use. The motion is seconded by Mr. Drucas. The vote was unanimous with five (5) Acting Chair Peter Copelas, Chris Drucas, Jim Hacker, Jimmy Tsitsinos, and Paul Viccica in favor and none (0) opposed.

Project	A public hearing requesting a Special Permit to operate a licensed retail marijuana establishment in a portion of an existing shopping plaza.
Petitioner	SANCTUARY MEDICINALS, INC.
Location	400 HIGHLAND AVE (Map 3, Lot 5)(BPD)

Documents and Exhibitions

- **Application dated March 19, 2018 and supporting documentation**

Attorney William Quinn of Tinti, Quinn, Grover & Frey of Salem, MA, was present to discuss the project. He represented Non-Profit Massachusetts Corporation owned and operated by Mr. Jason Sidman, CEO of Sanctuary Medicinals. Mr. Jimmy Alex of Sanctuary Medicinals, Chief Allen a retired NH police chief, and Dan Mills of MDM, Traffic Consultant, were also present.

Atty. Quinn stated that the property has over 200 existing parking spaces on site and an easement to use the property to access the neighboring Walmart property. The Site Plan shows that Olde Village Drive has a traffic signal to enter and exit that road. There is also an existing turn on and off lane from Highland Avenue. The site is flat, there is a pedestrian crosswalk at the light, and an MTBA stop at the corner. There are multiple access points to this site and the traffic report indicated that new traffic this facility will not affect the traffic on Highland and the parking is more than adequate for their number of customers even on their busiest days.

Mr. Alex stated that the property in question is approximately 4,800 SF and they've entered into a letter of intent with the landlord. The parking lot has 219 existing parking spaces and there is a second signal just south of this site at Walmart to control traffic. They will also have an agreement with the landlord to designate 10-12 parking spaces for their establishment at the side and rear of the shopping center.

Atty. Quinn stated that they had a community meeting and the neighbors were mostly concerned with deliveries made, delivery timing, and how shipments get delivered. All deliveries will go to the southern entrance, they will use the back door of the space, they will not use the parking lot, and they will enter and exit from that southern point also. Security was also a concern of the neighbor's concern and what is considered adequate. Chief Mary Butler provided a letter stating that she has reviewed and approved of their security plan. 2 security officers will be on duty at all times until they are told otherwise by the Chief Butler. Atty. Quinn stated that he has a letter from the Lt. Fire Chief of Salem approving their emergency plan and safety procedures.

Atty. Quinn presented letters from the state giving them preliminary approval for their others facilities. In the past week they've received their Registered Marijuana Dispensary Final Certificate of Registration from the Commonwealth of Massachusetts for their Littleton facility, along with a letter stating that they cannot start operating for 30 days until some other items have been completed. A notice signed by Mr. Sidman that there would be no noxious odors because they are not s processing or cultivating site, and they have good waste procedures. A notice from Officer Josh Weaver indicating that they gave notice to all licensed daycares and nursery schools within 500 feet of their property. The neighboring Plaster Fun Time and Campfire of the North Shore along the Lynn line were also alerted within the past week. An e-mail from Salem Fire Marshall was also presented and he also approved their emergency response plan.

Atty. Quinn stated that the granting of a Special Permit requires that 6 criteria be met. 1) The use meets the social/economic needs of the community. The community approved the sale of medical marijuana after the State did. 2) There must be no significant negative impacts on traffic flow and parking. The traffic study indicated that there would be no adverse effects. 3) There must be no adverse impacts on municipal utilities or services. It is an existing strip mall and they will be occupying and paying rent for an empty space. 4) There must be no adverse impacts on the natural environment or view. The strip mall has an empty storefront and work will be done inside to fill the space. 5) Property retail is allowed and is consistent within the commercial character or the neighborhood. This retail use is allowed by the ordinance in this PDB district which has always been commercial, and it is consistent with the commercial character of the neighborhood, even though the neighboring residential neighbors may disagree. Those neighboring commercial properties have been there for decades and adding one more retail tenant to the strip mall shouldn't count as changing the character of the neighborhood. 6) There will be positive impact on city tax base and employment. They will employee between 14-16 people with a preference to Salem residents, up to 8 employees will be on the property during their busiest days. Approximately \$500,000 will be put into the space for improvements, the landlord will have to pay more taxes, and 3% of their gross revenue will go to the City of Salem annually.

Atty Quinn stated that there are 3 special conditions to also meet. 1) That they meet all permitting requirements. They believe they have met all of the local ordinance requirements and are ready to submit with the state. 2) They have satisfied all conditions and requirements of the city ordinance. They've had community meetings, sent notices to all facilities with children, provided a traffic study, operating plan. 3) They've provided adequate security measures to ensure no direct threats to health/safety or employees, staff or members of the public, and that storage locations are adequately secured. They've submitted their security procedures, and letters from the Police and Lt. Fire Chief, one of their security guards will patrol the property. Their interior security will check for repeat customers, licenses, customers under the influence, and will use rule to eliminate unwanted customers.

Chief Allen stated that a medical marijuana facility moved into his community and he understands the concerns and questions. He has had extensive training in crime prevention through environmental design which is a national crime standard through the National Crime Council. It uses design principals aimed at the actions of potential offenders and mitigating those factors, as well as the design of the facility, landscaping, parking, flow of traffic, etc. He's been trained as an instructor in those areas and has applied those methods to their plan for the facility. On-site security will be provided with one guard inside and one outside, and they will target former police officers for the jobs. The regulations stated that those guards cannot be armed but they will be prepared for whatever situations arise, and that plan has been approved by the Police Chief. The Police Chief had a concern about loitering in the neighboring area and security will also patrol that area and this is their company policy. They will use electronic identification scanning system to verify their ID. There will be video surveillance throughout the interior and exterior, at the tree line between the building and neighboring condos. All of those areas will be monitor in-house and the Salem Police Department will also be able to monitor the surveillance footage.

Mr. Viccica asked about delivery safety. Chief Allen replied that the rear entrance is access controlled, will arrive in a non-descript issue cargo van with GPS, two agents making the deliveries through a single access point, there will be on-site security to sweep prior to deliveries, and those delivery times will be random, during the day, and 1-2 times per week. There will be no sallyport area but it will be safe. Mr. Viccica asked whether the rear door is more or less safe. Chief Allen replied that the Salem Police Chief was satisfied with the proposed delivery plan.

Mr. Drucas requested to review the floor plan. Mr. Sidman replied that there will be an entrance ID check-in desk in a large lobby that was overdesigned to hold up to 97 people so there will never be a line outside. There will be a controlled egress where only one door can be opened at a time. There will be no product on the floor and they mandate the ratio of one customer per ATC (alternative treatment center agent), and customers will be kept in the Lobby to keep that limit satisfied. There will be 6 staff, more during busy days. Tables and stands on the sales floor will hold books, etc. and the product will be at the perimeter.

Ms. Schaffer asked for the average length of time each client will be inside the dispensary and if there is any technology involved with ordering in advance. Mr. Sidman replied 5-8 minutes is the average time spent within the facility and there is a fast-track system for advance ordering to get that person in and out faster.

Mr. Drucas asked how many POS stations there will be. Mr. Sidman replied 4 POS stations but more can be added as needed. There will be 6-8 people working at a time plus 2 security guards, one inside and one outside the building. The Agent will walk the customer around the sales floor and to a POS for check-outs. Mr. Drucas asked if there will be edibles. Mr. Sidman replied the state mandates that there cannot be anything over 5 mg. There will be many different types of edibles; cookies, lozenges, capsules, trans-dermal patches, and they will be sold in mostly single servings with mandated child-proof packaging. Mr. Drucas asked if customers will have access to restrooms. Mr. Sidman no.

Acting Chair Copelas and Mr. Sidman discussed the requirements of the waiting room and the speed as which customers will arrive and leave the establishment. Mr. Sidman noted that they can add more POS stations but 300-400 customers per day is not realistic because Lynn will have 7 dispensaries and Salem will have 4 or 5. On-line sales is in the future and he estimates that they would be lucky to see 150-200 customers per day once the facilities are available on-line. If they were one of the first dispensaries to open they may see 300 to 450 on a very busy weekend.

Acting Chair Copelas asked if the interior security officer is the same person at the check-in counter. Mr. Sidman replied that it should be a different person, and that security guard should manage the Lobby and communicating with the outside security guard, so it makes sense that the monitor is a 3rd security guard. Chief Allen stated that the interior security officer will focus on looking for suspicious activity from the customers within the Lobby and monitoring the security system, and a secondary person will do the ID checks. The ID scanning technology will; prevent the diversion of marijuana products, will have the ability to find fake ID's, to ask challenge questions to ensure people are using their own ID's, and looping – identifying people purchasing the maximum allowable product and returning to purchase additional product. The entrance door will be a secure access-controlled door that is only opened by the Agent exiting or the check-in person buzzing them in.

Acting Chair Copelas asked that the petitioner hold off on the presentation of their traffic consultant to allow for public comment.

Acting Chair Copelas opens public comment.

Attorney William Debare of Braintree, his office represents Highland Condominium and the Trust that operates the condominium. The condominium is behind this site and they have several concerns. 1) Old Village Drive is part of the condominium but it is used gain access to the strip mall parking lot. 2) The rear deliveries will occur in a 20-foot side area with some parking space at the far edge and HVAC units for each strip mall tenant space. 140 condominium residents are on the other side of the tree line and wall and their swimming pool is 75-100 feet away from the space the petitioner wants to lease. The residents are concerned with the activity occurring at the back of the building. 3) The parking lot. The traffic study indicated 800 daily weekday trips and 1,200 Saturday trips which creates a concern with traffic flow on and off the site. The parking lot is usually full during the weekdays and there isn't room for the number of vehicles the petitioner is proposing. Another tenant can fill the open space within the strip mall that it won't generate the level of additional traffic. The only way to enter the site heading North on Highland is Olde Village Drive or a U-turn on Highland Avenue which could create confusion. There have been incidents on

condominium property in the past and there is a concern with how to prevent people from lighting up in the parking lot or the rear of the lot. There is a concern for potential loitering or using products in the parking lot. The proposed plan isn't sufficient to address those concerns, there are also parking spots in the rear and it will be difficult for 1 guard to monitor the entire site. There are other criteria that he doesn't think the petitioner can satisfy.

John Holian, Lions Lane (condominium resident.) Asked if security will patrol the parking lot because customer could consume products in the parking lot, children could approach someone who is loitering and ask them to buy them products. Their security plan is not prepared to keep an eye out for people who might cut through their yards and drive into their area. Residents and children use the swimming pool on the other side of the rear tree line. The back alley has HVAC units on the building side and dumpsters on the tree line side and allowing parking behind the building will not allow the delivery vehicles to turn around. A playground and daycare center also abut the property. There are traffic concerns with cars backing up to make a left off of Highland Avenue and additional vehicles using Olde Village Road because the condominium owns it so they'd be liable if something were to happen. In terms of MBTA service there is a guardrail only, no median, so someone who can't make it across the street in one light cycle is left standing in the middle of Highland Avenue which is a scary situation.

Jerry Meola, 3 Indian Hill. The condominium pool is approximately 75-feet away from his home. Worried about devaluing their property and the integrity of the condominium. Delivery vehicles are supposed to enter on the left by the nursery school but them exiting the same way could cause accidents.

Neil Sacard, Marlborough Road. Moved to Salem from Revere for a better quality of life since the new condominiums reduced their property values, atmosphere, safety, and security of the neighborhood and he seeing the same cycle in Salem with the marijuana facilities. He researched the pros and cons of marijuana facilities in Colorado and as a parent he is concerned with products that look like candy and Salem residents have children. Felt that Atty. Quinn was dismissive to the proximity to children and the residents of Salem with children. Atty. Quinn clarified that Plaster Fun Time was not considered a protected entity as it is not a K-12 school or daycare.

Laura Fleming, North Shore Medical Center Practice at 400 Highland Avenue. They serve approximately 5,000 patients. There are two practices in the shopping center and many patients are elderly and frail and need easy access to parking spaces for their appointments. The parking lot of usually full even without a new tenant that will bring in many additional vehicles each day. Concerned with the safety and access for their patients.

"Fuzzy" noted that a vehicle traveling North of Highland Avenue would have to use Ole Village Drive because there are no U-turns allowed at this intersection. A vehicle would need to up to Shaw's to make a legal U-turn. Acting Chair Copelas replied that there is access allowed through the Walmart parking lot but traffic has yet to be discussed.

Marybeth Lynn, 22 Tablewood Lane. The claim is that this non-profit organization will not change the character of the neighborhood but the points discussed sound alarming and this doesn't sound like a strip mall it sounds scary. They claim to have years of experience but there are only a couple

years' experience in New Hampshire but this is new for Massachusetts and all possibilities are unknown. Mr. Sidman doesn't have direct experience providing healthcare services. Don't use this neighborhood as the testing ground for what can go wrong, set the business up in an office park where you are not abutting a community. Prove the business model elsewhere to see what works and what doesn't instead of making the residents bear the brunt of what could go wrong.

Pat Laberty, Board member on the condominium Board and she works in the strip mall. During the weekday many buses bring the elderly to the Chinese restaurant in the strip mall, she's concerned about the safety of the elderly that move slowly and use walkers. Plaster Fun Time is not more than 25-feet from the front door of this retail space. There is no focus on what's best for the neighborhood and it's those residents that should take priority. She also doesn't want their property value to decrease.

Brendan Murphy, 19 E Collins Street. At each meeting he's attended for these types of proposed facilities the delivery was through a sally port except for this one. Having that large of a number of people in the Lobby waiting to enter means more vehicles in an already full parking lot filled with elderly and frail people. He is for these facilities but this is not an appropriate usage for this location.

Randall Patkin, physician at the North Shore Medical Center. In Eastern Massachusetts each community expect for Lynn and Salem either voted off or put off a vote on the same of recreational marijuana, therefore he believes the volume estimates to the parking lot are under estimated. Traffic flow to and from the site is excellent but traffic between this location and the Lynn line greater than at the other proposed establishment higher of Highland Avenue. Parents would question having their child's birthday party at Plaster Fun Time on a Saturday. Two security officers are now proposed which many no be enough to check all the cars and there is the potential for the customers to get high in their cars and drive through a parking lot with many elderly people. This is anti-business and the daycare owner already has clients that will pull their children out of there if this is approved. Questions why 500 feet is allow for a school but not an establishment geared towards children.

Jan XXX, employee of North Shore Medical Center and a Salem resident. 2-3 school buses stop in the plaza to pick up children at 7:30AM and drop them off at 3PM which is within 500 feet of this proposed facility. She's concerned with security of people walking around and one security guard isn't enough. Many other incidents can happen; needles have been found in the parking lot and suspicious activity has been recorded on camera. They can't be sure that people won't consume anything in the parking lot.

Paul XXX, 13 Parish Hill. Putting cameras in place at the rear of the property provides a false sense of security and the cameras won't see. There are many ways to get into those back woods and their proposed mitigation won't work. Their traffic study and study of the parking lot usage should be measures at its peak, not the average, when the restaurant and other tenants are open and at full of customers.

Tim Flynn, Ward 4 Councilor. Urged the Board to review the handouts from the petitioner regarding parking because the parking lot is always full and the photos provided don't show that.

He is there several times a week and he doesn't know where the additional cars would go. Concerned with security since the Chief has no experience with this type of business. It's different when you go from medicinal to recreational and none of them have that type of experience. He's concerned with the rear location for deliveries where the driver could be confronted. His constituents have informed him that they are against it. He believes that this is a bad location that is not prepared for this type of business.

XXX McClean, XXX Street. Believes this is one of the better proposed locations. The parking lot, presence of traffic lights, multiple entrances and conjoined parking lots are an advantage. It's also close to city limits so not as many people will be drawn deeper into downtown which is a busy entrance corridor.

XXX. Surprised that City of Salem is allowing this because it is irresponsible and inappropriate for this area. There are already other large use tenants in the strip mall and this is near children. Acting Chair Copelas replied that the petitioner will have to address all of those items according to the ordinance designed by the City Council. The Board of Appeals must apply that ordinance to the petition and they will or won't depending on if it meets the criteria.

Ms. Schaeffer read several letters into the record.

- Plaster Fun Time – in opposition
- Eye Center of the North Shore – in opposition
- Robert Levin, 42 Mullions Lane – in opposition
- XXX, 15 Olde Village Drive – in opposition
- Harold Gitter – in opposition
- XXX, 6 Lions Lane – in opposition
- Simonetta Cortema – in opposition
- Janice & James Benniger – in opposition
- Theodore & Marcos, 15 Indian Hill Lane – in opposition
- Karen Pagatone, 8 Tanglewood Lane – in opposition
- Tatiana Zuritsky – in opposition
- XXX, 36 Lions Lane – in opposition
- Police Chief Mary Ryan – in support of the proposed security plan
- Lt. Fire Chief – in support of emergency plan

Mr. Sidman stated that they were mandated by the stated to hold a community meeting which they did in April and they've tried to mitigate those concerns. They reached out personally to neighboring tenants and had a call with the condominium association to address their concerns pertaining to the rear area, swimming pool, areas associated with access to the left of Olde Village Drive and perhaps subsidizing a gate to mitigate their concerns. Concerning the overall alternative delivery route, they prepared a video and sent it to the city, some haven't responded but they are doing everything they can to mitigate any concerns and the reason for additional security was based on the resident feedback. Areas in remote areas of the parking lot will be designates for employees who will be encouraged to use the MBTA. The other concerns can be address one by one.

Chief Allen stated that two is the minimum for security staff on site and they spoke with Police Chief Mary Butler who noted that if issues arise the Salem Police should provide a police detail.

Atty Quinn stated that they still have a traffic report to present and they'd like a continuance.

Mr. Viccica stated that he wants to know more about the delivery process, the rear delivery methods in the alley, and its proximity to the HVAC units and dumpster, and more than just an aerial shot. He requested that the security plan be given to the Salem Police Dept for their comment and review. Mr. Sidman replied that Chief Butler has comments and they provided a view showing the rear of the building that has not been reviewed. Mr. Viccica stated that he wants to see more on the existing parking count during the weekday by whomever did the traffic study, and he asked how the count done on Friday and Saturday dovetails with the demand from other tenants Monday through Thursday. Mr. Mills replied that peak times based on their research was used. Mr. Viccica stated that the peak hours of their adjacent tenants needs to be documented to see how the additional numbers effect the parking lot. Mr. Sidman noted that they use hourly snap shots of the parking lot with the Owner's security camera.

Mr. Drucas asked for the dimensions of the leased space. Mr. Ridman replied 4,800 SF, 3 bays at 1,600 SF each. The interior dimensions are 100 feet x 160 feet.

Motion and Vote: Mr. Drucas makes a motion to continue to May 16, 2018. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with five (5) Acting Chair Peter Copelas, Chris Drucas, Jim Hacker, Jimmy Tsitsinos, and Paul Viccica in favor and none (0) opposed.

Project	A public hearing requesting a Special Permit per Sec. 6.10.4 and Sec. 6.10.9 <i>Requirements Specific to Cultivation Facilities</i> to operate a licensed retail marijuana establishment and marijuana cultivation facility.
Petitioner	WITCH CITY GARDENS
Location	38 JEFFERSON AVE (Map 25, Lot 388)(B-4 and ECOD Zoning Districts)

Documents and Exhibitions

- Application dated March 28, 2018 and supporting documentation

Acting Chair Copelas stated that the petitioner has requested a special meeting to be held on May 9, 2018 at 6:30PM, because an agenda item can't open after 11PM. It will be re-advertised with them as the only petitioner.

Project	A public hearing requesting a Special Permit per Sec. 3.3.2 <i>Nonconforming Uses</i> to change the existing non-conforming function hall into a multi-family residential use. The petitioner is also requesting Variances from Sec. 3.3.4 and Sec. 4.1.1 <i>Table of Dimensional Requirements</i> for lot area per dwelling unit, number of stories, height, front yard and side yard setbacks to allow a two-story addition to the existing one-story rear structure.
Petitioner	SPIRE INVESTMENTS, LLC
Location	94 WASHINGTON SQUARE EAST (Map 35, Lot 536)(R-2 Zoning District)

Documents and Exhibitions

- Application dated March 23, 2018 and supporting documentation

Attorney Scott Grover of Tinti, Quinn, Grover & Frey of Salem, MA, was present to discuss the project. Peter Pitman and Richard Thorton, Architects and Brigitte Fortin of Pitman & Wardley, Dick and Jay Goldberg of Spire Investments, Scott Cameron Civil Engineer of Cameron Morin Group, and Michael Radnor, Landscape Architect from Radnor & Associates.

Atty. Grover stated that Knights of Columbus building is located along the Salem Common. It's a 3 story building with a basement built in the early 1900's with a long 1 story addition done in the 1950's to act as a function hall and lower bar room. The upper floors are largely abandoned and used for storage. There is an existing parking area for over 30 parking spaces. Over time the site and building has fallen into a state of disrepair; the fences, landscaping, paving, etc. The Knights put it on the market and Spire Investments has a Purchase and Sale Agreement to buy it. It is an R-2 zoning district which only allows 2 units by right. It is not in the historic district being located on Washington Square East; however, they've agreed to go to Historic District for review and advice on the restoration of the mansion building. They went before the Historic Commission and the Commission has provided a letter. They also met with City Planning Staff who provided their input as well as a neighborhood meeting with over 100 residents.

Atty. Grover stated that the proposal is to convert the front mansion building into 5 residential dwelling units and to build a 2-story addition along Briggs Street, on top of the hall. There will be 20 units total with 15 in the addition. 30 parking spaces will be provided which comply with 1.5 parking spaces required by zoning. There will be extensive improvements to the lighting, fencing, and landscaping which will dramatically improve the neighborhood.

Atty. Grover stated that relief is necessary for 2 categories. The first is in its use, the addition is used as a function/assembly hall which doesn't comply with R2 zoning. They are proposing a multi-family residential use through a Special Permit under Sec. 3.3.2. In order to grant that the Board must find that the beneficial aspects outweigh the adverse impact. This creates housing which is needed in the city, creates a reduction in parking and traffic demands compared to what the site

could be used for, there is a substantial increase in tax revenue to the City, and the restoration impacts is what is fueling the project.

Atty. Grover stated that several variances are needed many of them are minor. The first, there are two front yards and the setback in an R2 district is 15 feet and the existing buildings don't comply. The second, there is some encroach further into the setback by adding window wells along Briggs Street for basement egress. This creates a new non-conformity by extending beyond the existing footprint. The third, for a new accessory shed for the trash. It should be 10 feet from the sideline but is proposed at 3 feet. The most significant variance request is for the lot area per dwelling unit. The R2 zoning required is 7,500 SF which would allow three dwelling units, only if the Board granted the special permit allowing a change of use. Without a special permit only 2 units would be allowed on a 20,000 SF lot which is not a viable use of the property and building. The special condition is the size of the structure.

Atty. Grover stated that relieve can be granted without substantial detriment to the public good. This has tremendous benefits to the City and neighborhood by restoring this property, there are tax benefits, the proposed use is closer to the underlying use that's allowed in the R2 district. Many neighbors have very small lots and some are multifamily properties. One the corner of Andrew's Street and Washington Square East there is an 18 unit condominium called Colonial Hill with a lot are of 15,500 SF which equals 860SF per dwelling unit and 11 parking spaces. The lot area at their property is 25,000 SF. Another condominium on 8-10 Andrews Street has 8 units, a lot area of 11,000 SF which equals 1,375 SF per dwelling unit, and 9 parking spots. The proposed lot area per dwelling unit on this project is 1,251 SF and the proposed parking complies with the requirements of the ordinance and is consistent with the character of the neighborhood with this kind of density.

Atty. Grover stated that a variance is also needed for the building height. 35 feet and 2 ½ stories is allowed in the R2 district, and 40 feet and 3 stories is proposed, to keep the floors between the two buildings aligned. The existing mansion is 50 feet so the addition will be lower and 40 feet is consistent with the neighboring building heights.

Architecture

Architect, Mr. Pitman, stated that the neighboring Federal period home built in 1818, Second French Empire mansard roof home, and a shingle style Queen Anne style home were all studied when it came time to design of the proposed addition. A Federal style addition was too institutional, the shingle style Queen Anne style created limitations due to the use of the existing footprint that doesn't allow for bump-outs and bays that would extend over the property line or recesses inward. They were confined to the footprint of the existing structure which lent itself to using the mansard style roof. The Greek Revival homes across from their parking lot range from 35-40 feet but that could be an under estimate since some of the roof peaks couldn't be seen.

Mr. Pitman stated that at the restoration of original mansion house they will install simulated true divided light windows to meet the requirements of the Historic Commission, restore the front columns, remove some veneers, remove all storefront and aluminum window, and bring back the historic period details appropriate for the latter Federal style. Along Briggs Street Extension they will continue the floor heights of the front building to make the structure ADA accessible through a common hallway. The top floor will have the minimum 8' ceiling height and the structure and

HVAC systems above it created the 40-foot building height. There will also be a small relief in the wall along Briggs Street to provide a transition to the new addition, a shadow line, eaves in the roofline, and some character to the facade.

Mr. Pitman stated that at front driveway elevation the sidewalks will continue around the building, the elevator will be accessed at the rear entry, and bike racks. The mechanical units will also be screened and wouldn't be visible from the public way anyway. Key elements of the interior will also be preserved and restored not replaced. 5 units will be in the mansion building; one 3-story townhouse on the right side of the main building, a 2-story townhouse on the left, the 2nd floor will be ADA accessible with top floor lofts. The roof burned years ago and the wood beams were replaced with steel trusses that will remain. The rear addition will house 15 units, 5 per floor, a mixture of 1, 2 & 3-bedroom units.

Mr. Drucas asked if a dimensional variance was requested for the roof projection. Mr. Pitman replied that there is no project other than the 18" fascia and soffit period detail assembly at the eaves. That allows the water to shed off the roof and run down the face of the building and the historic character would be lost. The building is existing so it cannot be setback, the upper two floors are an addition above the First Floor. Mr. Viccica asked if that Briggs Street façade has gutters. Mr. Pitman replied that Briggs Street will have gutters and the flat roofs will have internal drains.

Site Plan

Mr. Cameron presented an aerial photo and noted that very little open space exists, over 86% of the property is either the building or paving for 33 vehicles. Only the edges of the property and the left side of the driveway are greenspace. On the Briggs Street side the building is approximately 1.9 feet from the property line and where the eaves will overhang. He noted that his neighbors home that was built the same year as his, has no eave and led to the siding rotting away, so having eaves does make a significant maintenance improvement. The front yard is within the setback and the addition of a window well at grade to provide egress and light for the Basement along Briggs Street so they are requesting a variance to reduce that dimension from 9 feet to 6 ½ feet at that location. Their design objectives were parking, landscaping, circulation on the property, parking, open space, snow storage, and waste disposal. There is currently one entrance onto the property off of Washington Square East that can be used by one vehicle at a time. The proposed design is to add an entrance on Briggs Street and make Washington Square East exit only to create a 1-way circulation. This way any headlight entering Briggs Street will be screened by the side fence, as opposed to vehicles exiting onto Briggs Street that will shine into the houses across Briggs Street.

Mr. Cameron stated that there will be 30 parking spaces on site and 2 handicapped accessible to comply with the zoning ordinance and parking requirement. Bike storage will also be provided outside the rear entrance. A solid waste and recycling shed will be built as far away from any abutting structures as possible to contain the odors; however, due to the property configuration it will be closer to the lot line and within the 10-foot setback.

Mr. Drucas asked how they will indicate Washington Square East being an exit only. Mr. Cameron replied with signage and directional arrows, though there may be a learning curve at first. There will be Planning Board and Site Plan Review to provide a thorough analysis of the proposed site details,

including storm water management, utility connections, traffic flow, parking lot configuration, etc. as well as by a 3rd party consultant. The proposed is also a low traffic generating use. They used the national standard for estimating vehicle trip generations and multi-family use will have morning and evening peak hours. For 20 units it is estimated that there will be 11 trips AM peak trips and 13 evening peak trips, 60% entering and 40% exiting. Many residents could work locally or take MBTA so this site will not create big traffic generations,

Mr. Radnor stated that in regards to the proposed landscaping, they will reconfigure a 5-6-foot-wide landscaping area along Briggs Street and the left side corner by the exit driveway. The 3,300 SF of existing landscaping will become approximately 6,000 SF on a 25,000 SF lot.

Landscaping

Mr. Radnor stated that along the Washington Square East the sidewalks are brick, the front steps are stone and curved walls are stone, with some overgrown foundation plantings at the front and side of the mansion, and an asphalt sidewalk along Briggs Street. There are a couple small trees further along Briggs Street and a series of larger trees to the North side of the property or straddling the neighboring property, and all are in various conditions. The proposal is to remove the trees that will be impacted by the new work and 3 will be preserved.

The edge of pavement is into the property and they will widen the driveway width for parking. Will remove some trees and preserve several.

Mr. Radnor stated that the brick sidewalk along Washington Square East will remain, and the asphalt sidewalk will be replaced with concrete along Briggs Street. The walkway from the handicapped parking to the rear entrance will be accessible. The lighting plan is conceptual but 8-foot high post top lanterns consistent with the historic look of the neighborhood. The new lights will be installed at the perimeter and along Briggs Street. The planting bed depth along Briggs Street has been increased to 5 feet along parking perimeter to allow for heavier plantings and 5 new trees will be planted along the North edge of the property. A new 42" high steel fence with historic details and a planting hedge will be added along the parking lot of Briggs Street to block headlights. The overgrown foundation plantings around the mansion will also be replaced to refresh the front façade of the building. Several fence types exist along the Northern property line, the portion of 4-foot high chain link on their property will be replaced with a new screen fence to match an existing fence type.

Acting Chair Copelas asked how many living levels there will be in the new rear addition. Mr. Pitman replied 4 living level with 15 units, and some of those units are townhouses. The First Floor will have 5 units and will include the Basement level, and the new elevator will serve every level. Acting Chair Copelas noted that eliminating the third floor of the addition at the mansard roof will eliminate the need for the height variance.

Mr. Drucas suggested that the foundation wall along Briggs Street be moved away from the property line so the setback isn't increased. Mr. Pitman replied that after a row of parking, sidewalk, entrance, and double-loaded corridor, there isn't much room left. Mr. Drucas noted that variances require hardships and he sees no hardship. Atty. Grover replied that a literal enforcement would result in 2 units, which is not a viable use with a 20,000 SF building with 30 parking spaces, and a literal

application is what creates the hardship. Mr. Drucas replied that 2 units can be placed and is permitted but it is a use that is not financially viable to the petitioner. Because a limited number of people could make this into one or two units doesn't mean the option should be taken away. Atty. Grover replied that not granting the variance the value of the property away from the Owner. Mr. Jay Goldberg noted that he was the bidder to take the risk on this property, no bidders were interested in a single-family property, and Salem is over the limit on 40B properties.

Mr. Viccica noted that they seem to have created their hardship for building height and number of stories. 2 ½ stories could be done instead by eliminating the 5 top floor flats. Mr. Goldberg replied that the elevator also goes to the third floor of the mansion and the tallest element would be the elevator. Mr. Viccica stated that the elevator location could change and move closer to the main building where it can remain accessible. Mr. Goldberg replied that they can't make this project work unless it is approved where they are coming in at and other options will have to be looked at if this is not granted. Acting Chair Copelas replied that legally that part of the variance is problematic for the Board. Mr. Drucas noted that 5 variances are being requested not just 1 and he can't approve it based on the law. Mr. Goldberg stated that they met early on with the Planning Department, Councilor Madore, and the Mayor and informed them that they'd didn't want to take the risk knowing that multiple variances, they consider to be minor, would be necessary. The 18" eave, a height restriction with an existing building that is 50 feet high, and traffic impact are minor, the biggest relief is for the SF per dwelling unit but they have the parking which is usually the biggest argument. It will increase property values, provide taxes to the City and fills a housing need. Mr. Viccica asked if the existing mansion cannot be restored the best quality without including the top 5 units in the addition. Mr. Goldberg replied yes, they can't do the interior and exterior renovations without those top 5 units, and the returns on this project aren't typical for a developers Pro Forma.

Mr. Pitman stated that they could move the elevator closer to the mansion building but it would still need a variance for the elevator shaft and head space. They reviewed adding the elevator to the mansion building for historic tax credits, but it was evaluated that the damage to the historic character would be invasive and devastating to the interior historic details. Either way they would need the height to get this project to work.

Mr. Viccica stated that he understands the uniqueness of the property due to its historic components, the height is required for the historic renovation of the mansion, and its restoration will serve the community. The Planning Board will also review and refine the proposed plan.

(Acting Chair) Copelas opens public comment.

Mike Redfurn, 4 Andrews Street. Attended other meeting with Christine Madore, there were no strong comments against creating condominiums but it was unanimous that they wanted fewer units. The front building is one of the biggest buildings around Salem Common other than the Hawthorne Hotel, and this addition could be higher than any buildings on Briggs Street. Removing the top level will leave them with 15 units which is what the residents want. The existing windows are bricked over and with the proposed building at 3 stories there will be many windows looking down into their backyard and bedrooms making them no longer private. He requested that any new lighting be shaded so it doesn't illuminate their backyards. He wouldn't object to not having the 5 top floor units and an elevator shaft.

Mr. Viccica asked for the gross SF of the project. Ms. Fortin replied 29,259 SF.

Rose McMullen, 96 Washington Square East (next door resident). Concerned with the driveway where there is an existing wood fence and trees so close to the property lines. She disagrees with the traffic because as of now only Friday and Saturday nights are when events are held and these new units will generate more traffic by having 30 vehicles exiting the driveway. The density is also not good for the neighborhood.

Kate, 71 Webb Street. She attended the community meeting, she believes many supported the renovation of the older home but not the density in the addition. Many asked for the addition to be lowered. She asked why the function hall can't be demolished, 2 two-family dwellings constructed, and 6 condos constructed in the older home.

Jean Lovely, 1 Washington Street. She attended the community meeting and not everyone said they didn't like the density. As a realtor she knows that 20 units would be a good for that building. It makes sense to have a separate entrance and exit, this will improve the neighborhood since it is currently an eyesore. This project is positive thing.

Erin Murphy, 96 Washington Square. She attended the first meeting and many were considered with the density while being in support of the renovation project. The developer wants it done but they threaten all or nothing but do not offer a compromise.

Rose McCullen, 96 Washington Square. It was mentioned that 98 Washington Square East had 18 but the real estate records indicate 12 units.

Ms. Schaeffer read a letter from the Salem Historic Commission.

Richard McCullen, 96 Washington Square. Concerned with the trash for 20 units that would need 40 barrels and where would that be stored. Traffic density is an issue when it snows. Driving out onto Washington Square East is a concern when vehicles exiting encounter cars speeding down the street.

Bill Linksy, Jefferson Avenue. He's worked with Spire Enterprises and he would hate to the building go into disrepair and be torn down. It would be a shame to lose this building when someone is here to make it a viable project. If a developer can't make money they won't do the project.

Mr. Cameron clarified that a perimeter survey was done to show the property lines. Trash pickup will be private and several times a week depending on the demand of the facility. There are large snow storage areas in the two rear corners and property edge, and they will pay to remove excess snow. Atty. Grover clarified that his condominium comparison, the front building is 11 units and 7 units at a second rear building, totaling 18 units and its lot area per dwelling unit is 875 SF.

Mr. Drucas asked for the Basement ceiling height. Mr. Pitman replied 8'-1" and the existing is 9'.

Mr. Richard Goldberg stated that in terms of the hardship concerns, in his perspective, is the mansion which is in disrepair, fireplaces have been dismantled, and they want to restore the integrity of the building, and the Board has the ability to make that happen.

Mr. Drucas requested that Atty. Grover provide legal information regarding what constitutes a hardship. Acting Chair Copelas stated that he likes the through of renovating the building and appreciates the need for it to be fiscally responsible, but they have legal requirements to meet to grant a variance. It needs to be justified to fulfill their duty. Atty. Grover reiterated that 2 units would be the allowable use. Mr. Drucas suggested moving the addition. Mr. Pitman replied that they would need to tear down the foundation and structure. Mr. Viccica questioned whether the Basement counts as a story. Mr. St. Pierre replied that it depends on the elevation below grade and Salem adopted the stated definition of a story, which would require further study. Mr. Viccica stated that even with the Basement at 4 ½ feet below grade, it goes back to the height and number of stories. Atty. Grover replied that the requirement is 2 ½ stories. Mr. Viccica noted that the proposed is still 3 stories.

Atty. Grover requested to continue until the May 16, 2018 regular meeting.

Motion and Vote: Mr. Drucas makes a motion to continue to the May 16th 2018 regular scheduled meeting. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with five (5) Acting Chair Peter Copelas, Chris Drucas, Jim Hacker, Jimmy Tsitsinos, and Paul Viccica in favor and none (0) opposed.

OLD/NEW BUSINESS

- **Salem Zoning ZBA of Appeals Application – Review and Approval of Application Edits**

To be reviewed at the next regularly scheduled meeting.

MEETING MINUTES

To be reviewed at the next regularly scheduled meeting.

ADJOURNMENT

Motion and Vote: Mr. Drucas made a motion to adjourn the April 18, 2018 regular meeting of the Salem ZBA of Appeals, seconded by Mr. Tsitsinos, and the vote was unanimous with five (5) in favor and none (0) opposed.

The meeting ends at 12:15AM.

For actions where the decisions have not been fully written into these minutes, copies of the decisions have been posted separately by address or project at:

http://saalem.com/Pages/SalemMA_ZoningAppealsMin/

Respectfully submitted,
Erin Schaeffer, Staff Planner