

**City of Salem Planning Board
Meeting Minutes
Thursday, August 7, 2014**

A regularly scheduled meeting of the Salem Planning Board was held on Thursday, August 7, 2014 at 7:00 p.m. in Room 313, Third Floor, at 120 Washington Street, Salem, Massachusetts.

Chairman Puleo opened the meeting at 7:10 pm.

Roll Call

Those present were: Chuck Puleo, Chair, Ben Anderson, Dale Yale, Randy Clarke, Bill Grisct and Matthew Veno . Absent: Kirt Rieder, Helen Sides and Noah Koretz.

Also present: Dana Menon, Staff Planner, and Pamela Broderick, Planning Board Recording Clerk.

Election of Officers

Nomination and Vote for Vice Chair

The item was tabled until next meeting scheduled September 4, 2014.

Approval of Minutes

July 29, 2014 Meeting Minutes (joint public meeting with City Council)

No comments or corrections were made by the Planning Board members.

Motion and Vote: Randy Clarke made a motion to approve the July 29, 2014 minutes, seconded by Dale Yale. The vote was unanimous with six (6) in favor and none (0) opposed.

July 17, 2014 Meeting Minutes (regular)

No comments or corrections were made by the Planning Board members.

Motion and Vote: Ben Anderson made a motion to approve the July 17, 2014 minutes, seconded by Matt Veno. The vote was unanimous with six (6) in favor and none (0) opposed.

April 16, 2014 Meeting Minutes (joint public meeting with City Council)

No comments or corrections were made by the Planning Board members.

Motion and Vote: Randy Clarke made a motion to approve the April 16, 2014 minutes, seconded by Bill Grisct. The vote was unanimous with five (5) in favor, none (0) opposed and 1 abstaining (Chuck Puleo).

Regular Agenda

Location: 28 Goodhue Street—“North River Apartments” (Map 16, Lot 372)
Applicant: North River Canal, LLC
Description: Continuation of the discussion and vote on an after-the-fact request to allow an insignificant change to the previously approved Site Plan Review, Wetlands and

Flood Hazard District Special Permit, and North River Canal Corridor Neighborhood Mixed Use District Special Permit. Specifically to allow after-the-fact the demolition of a brick outbuilding, which according to the approved plans, was to be integrated into the new development.

Documents and Exhibitions:

Plans titled “North River Condominium” dated Nov 15, 2006

Plan titled “Site Improvement Plan” dated May 13, 2013

Attorney Joseph Correnti, 63 Federal Street, presented for the applicant.

Other presenters included: Architect Thomas Galvin, JD LaGrasse & Associates; Andover, MA

Atty Correnti advised the presentation was to provide more detailed background of what was originally approved by the Planning Board in 2006 and the evolution of the project.

Mr. Galvin described the differences in the plan as approved by the Planning Board, dated November 15, 2006, and the current site plan as built. He reminded the Board the amenities planned for the original structure were ultimately incorporated into the built plan. The built plan also reduces the overall project footprint and provides more green space and permeable surface.

Atty Correnti advised there was an error on the part of the developer in failing to return to the Planning Board for approval to demolish the original brick outbuilding. He recounted the steps that led to this action:

- The original wooden structure was deemed historically significant, not the brick add-on structure. The Historical Commission and Historic Salem Inc (HSI). Both organizations participated in discussions as early as 2003 about saving the original wooden structure. A study was conducted to examine the viability of saving this structure. The Historical Commission issued a demolition delay waiver for a portion of the building that was extremely deteriorated, leaving an L-shaped structure (issued 8/13/2004).
- After further review, the L-leg was deemed non-salvageable and the Historical Commission issued a second demolition delay waiver to demolish this section as well (issued 11/4/2004).
- After further review, it was established that it was not feasible to save the remainder of the building, and a third demolition delay waiver was issued by the Historical Commission, which authorized demolition of all remaining structures on the site (issued 4/21/2005).
- The developer tried to save the 3-walled brick structure that still remained (although they had been permitted by the Historical Commission to demolish it), and it was included on the site plans approved by the Planning Board. Eventually it was determined that this remaining partial structure had deteriorated too much and it was demolished under the authority of the third permit issued by the Historical Commission.

Board Discussion:

The Board clarified that all parties had originally intended to save any historically significant portions of the building and exhausted all efforts to do so before demolition. Atty Correnti confirmed this citing the three separate demolition permits sought and obtained from the Historical Commission.

The Board explored the process breakdown among city departments and authorizing boards; Ms. Menon reported the results of the internal research. Plans submitted to the Building Department were different than plans approved by the Planning Board. The Clerk of the Works is not tasked with reviewing the building footprint. They focus on construction work related to the public right-of-way and civil engineering elements.

The plan package required by the Building Department for a Building Permit contains different kinds of information from what is approved by the Planning Board, as the Building Department requires building details, while the Planning Board focuses on design and site layout. Moving forward, the Planning Department will review the Site Plan sheet(s) submitted to the Building Department for a Building Permit, and it will be the Planning Department's responsibility to confirm consistency between the Planning Board approved plans and the Building Permit plans.

Actionable Item: the Board requested the City draft a formal procedure to synchronize site plans and building department plans.

Board noted the proponent brought to the Board's attention the error that had been made, and the City has acknowledged there was an internal error with a failure to reconcile plans approved by the Planning Board and the Building Department.

Next steps: the proponent must submit a new plan for Planning Board approval that matches the built plan.

Motion and Vote: Ben Anderson made a motion to approve the after-the-fact request to allow an insignificant change in plan, seconded by Randy Clarke. The vote was unanimous with six (6) in favor (Mr. Puleo, Mr. Anderson, Ms. Yale, Mr. Clarke, Mr. Grisct and Mr. Veno) and none (0) opposed.

Location: 28 Goodhue Street – “North River Apartments” (Map 16, Lot 372)
Applicant: North River Canal, LLC
Description: Discussion and vote on a request to allow an insignificant change to the previously approved Site Plan Review, Wetlands and Flood Hazard District Special Permit, and North River Canal Corridor Neighborhood Mixed Use District Special Permit to allow the realignment of the multiuse pathway, use of erosion-resistant materials along the slope above the existing canal wall, and related modifications to the plantings in these areas.

Documents and Exhibitions: C1.0 “Site Improvement Plan” dated May 13, 2013
- revised July 24, 2014
C2.0 “Landscaping Plan” dated May 13, 2013
- revised July 24, 2014

Attorney Joseph Correnti, 63 Federal Street, presented for the applicant.
Other presenters included:

Architect Thomas Galvin, JD LaGrasse & Associates; Andover, MA
Civil Engineer Rich Williams, Williams & Sparages LLC; 189 North Main Street, Middleton, MA

Atty Correnti advised the proponent has not taken any physical action on the site, but currently has a contractor on hold awaiting Planning Board Approval.

Mr. Galvin presented the proposed change to the multiuse pathway. Originally the pathway was planned at elevation 9 and the parking lot at elevation 10. In response to Conservation Commission comments, the grading was revised to direct runoff from the multiuse pathway into the drainage structures in the parking lot. To achieve this, the elevation of the multiuse pathway had to be raised, which increased grade of the slope between the multiuse pathway and the top of the canal wall. The presentation included photos of a high tide/heavy rain condition last winter that showed water cresting over the canal retaining wall. The proponent proposes riprap to retain the steep slope between the multiuse pathway and the canal wall, and prevent erosion of the slope. Plantings originally proposed for the steeper sections of this slope will be relocated to the slope areas with a shallower grade.

Board Discussion:

Board clarified that the pathway now directs runoff back to the parking lot.

Atty Correnti noted the Conservation Commission has already approved this as a minor change.

Mr. Williams addressed the size of the riprap stones which is currently under discussion. He advised that the Army Corp of Engineers has a standard riprap size chart for slope/velocities, in this case the minimum recommended size is 3-inch diameter stone. The proponent is recommending 12-inch diameter stones, with the voids in-filled with smaller stones. 24-inch diameter stones will not fit in the smaller portions of the space. A filter barrier will go under the riprap to suppress weeds. Stone will be 12 inches deep.

The Board suggested the plant species be adjusted to those capable of withstanding short-term inundation due to brief flooding, and that the riprap proposed represented a downgrade to the overall landscape plan.

Mr. Williams stated the proposed riprap does allow for infiltration. The riprap will be positioned below the decorative fence along the edge of the multiuse pathway. The riprap swath varies in width from 2.5 feet to 1-foot and back to 2.5 feet as it curves around the site. The existing canal wall width varies as well from 28 – 36 inches.

The Board clarified that the top of the canal wall and the riprap barrier are not accessible by the public, as confirmed by Mr. Williams.

Motion and Vote: *Ben Anderson made a motion approved the decision on an insignificant change C2.0 (Landscaping Plan revised July 24, 2014) and C1.0 (Site Improvement Plan revised July 24, 2014) to a previously approved Site Plan Review, seconded by Dale Yale. The vote was unanimous with six (6) in favor (Mr. Puleo, Mr. Anderson, Ms. Yale, Mr. Clarke, Mr. Griset and Mr. Veno) and none (0) opposed. The decision is hereby incorporated and made a part of these minutes.*

Location: 1, 3 & 5 Harmony Grove Road, 60 & 64 Grove Street
“Legacy Park Apartments” (Map 16, Lots 236, 237, 239, 377 & 378)

Applicant: MRM Project Management, LLC

Description: A request to allow the extension of the previously approved Planned Unit Development Special Permit, Flood Hazard District Special Permit and Site Plan Review Decisions for an additional six (6) months.

Attorney Joseph Correnti, 63 Federal Street, presented the petition.

Atty Correnti summarized the history of the project to date. It has been two years since it was approved by the Planning Board. Delays have been due to a complex approval process and the appeal of an Order of Conditions issued by the Salem Conservation Commission. This appeal is ongoing with DEP.

- The MEPA certificate and other state permits cannot be issued while the DEP appeal is pending.
- A Chapter 91 license application modification needs to be filed but cannot be done while the DEP appeal is pending.
- The proponent is requesting the statutory 6-month extension to preserve all the work done to date by the community and the developers.
- This project falls outside the dates of legislative acts that would have allowed for an automatic 6-month extension.

Board Discussion:

The Board inquired about the status of the ownership; Atty Correnti acknowledged MRM Project Management, LLC is currently in Chapter 11 re-organization. He advised this project is an asset and it is very important to keep the project alive and these permits in place. The original building partner is out of the project and developers are looking for a new building partner.

The Board asked if the proponent expects these issues to be resolved within the 6-month period, or will the proponent return for another extension? Atty Correnti advised the proponent cannot continue indefinitely with the project in limbo. They are in discussions with the DEP to reach a resolution and may be before the Planning Board soon to request changes to the plan. DEP has suggested some changes to the plan may help reach resolution and those issues are being looked at by engineers. Possible changes relate to wetlands issues.

Atty Correnti advised the Board that this is their first request for an extension; The extension would start on October 26, 2014, when the current decision expires. If the extension is granted, it would push the new expiration date to April 26, 2014.

Motion and Vote: *Randy Clarke made a motion to approve the extension of the Planned Unit Development Special Permit, Flood Hazard District Special Permit and Site Plan Review Decisions for an additional six (6) months, seconded by Ben Anderson. The vote was unanimous with six (6) in favor (Mr. Puleo, Mr. Anderson, Ms. Yale, Mr. Clarke, Mr. Griset and Mr. Veno) and none (0) opposed.*

Old/New Business

Discussion and vote on a recommendation to the City Council regarding the proposed amendment to the City of Salem Zoning Ordinance to amend the Table of Uses – NRCC District under Section 8.4.5 to add “3.5 Brewery, Distillery, or Winery with Tasting Room” use, to be allowed by special permit of the Planning Board in the NRCC zoning district.

Board Discussion:

It was an administrative oversight to not have included the NRCC district in the original proposed zoning amendment regarding the addition of a “Brewery, Distillery, or Winery with Tasting Room” use. This amendment seems pretty straight-forward.

Motion and Vote: Matt Veno made a motion to recommend the City Council amend the use table to allow “3.5 Brewery, Distillery, or Winery with Tasting Room” use by special permit in the NRCC zoning district, seconded by Ben Anderson. The vote was unanimous with six (6) in favor (Mr. Puleo, Mr. Anderson, Ms. Yale, Mr. Clarke, Mr. Griset and Mr. Veno) and none (0) opposed.

Discussion regarding the proposed amendment to the City of Salem Zoning Ordinance to add a definition for “Urban Agriculture”, “Hens”, “Run”, “Coop”, “Livestock”, and “Customary agricultural, horticultural and floricultural operations” under Section 10; to amend the Table of Principal and Accessory Use Regulations under Section 3.0 to add a new “Urban Agriculture” use, to be allowed by-right in RC, R1, R2, R3, B1, B2, B4, B5, I, and BPD zones; and to add a Section 3.2.7 “Urban Agriculture” under Section 3.2 Accessory Uses.

Board Discussion:

Ms. Menon updated the Board on research since the July 29th public hearing and spoke to several of the key issues that seemed to arise from the hearing:

- Consideration of which zones allow the use by-right; in drafting the proposed ordinance the planning department recognized exceptions will occur in most or all zones. It is the view of the department that specific requirements such as setbacks and distance from the dwelling structures would provide better regulation and more flexibility rather than prohibiting a use across the entire zone. NRCC is the only zone not included by-right due to oversight when drafting the original public announcements for the proposed change to the ordinance.

During discussion, the Board members reviewed public comment (hearing and written submissions), raised additional questions and offered individual opinions in relation to the proposed ordinance:

- Multi-family buildings would require owner approval. If an owner approved all hens for all tenants in a building how would this affect abutters?
- Appropriate setbacks and lot sizes are a significant and difficult issue.
- Board of Health draft regulations were comprehensive and covered most issues of concern. It was noted that at this time they are draft only and have not been approved by the Board of Health.

- Chair Puleo reminded the Board that it is not their role to discuss Board of Health regulations needed to manage the ordinance.
- Regardless of the ordinance, owners will be able to go to the Zoning Board of Appeals (ZBA) for relief from dimensional requirements if they have exceptional conditions; noting the ZBA already has in place a thorough notice process to enable all affected parties to present their views.
- Some Board members stated that the proposed ordinance is too restrictive and will produce many appeals, and expressed the view that if an owner has a small lot but neighbors have given written approval and Board of Health conditions are met, then hens should be allowed.
- The Board members generally agreed that neighborhood /abutter buy-in is critical.
- Some Board members offered the view that zoning ordinances are meant to outlive any individual owners. Let people appeal to the ZBA. Good regulation protects new abutters and preserves the long-term purpose of zoning.
- The Board agreed slaughter is necessary to cull the flock but reached no opinion on where the slaughter could occur (onsite outside, onsite inside the home, offsite). Some Board members are opposed to backyard slaughter in an urban setting, citing wild animals and disease concerns as well as the pressures of a densely packed community.
- The Board was in general agreement that roosters should be specifically prohibited.
- Is the zoning ordinance intended for property owners or tenants? As currently drafted, either could apply but property owner must provide documented approval on behalf of requesting tenants.
- Ms. Menon noted that light ordinance restrictions will reduce neighbor/abutter involvement, as the Zoning Board of Appeals provides an opportunity for abutter/neighborhood weigh-in. She encouraged the Board to set the regulatory threshold at an appropriate level to trigger an adequate level of public process.
- The Board considered that state regulations requires a submitted poultry plan which could provide most regulation—and then concluded it is valuable to minimize situations where the city building inspector is required to interpret state regulations which can be cumbersome. There is merit to giving authority to the professionals (health and building inspectors) but it is important to provide them with clear guidelines and minimize ambiguity in the code.
- Could people who currently have hens be grandfathered in for zoning purposes? As it stands now, yes, they'd be grandfathered in for the zoning code, but they would have to come into compliance with the Board of Health regulations.
- Several Board members noted that the presence of a fence seems to be a significant factor in quality of life for abutters/neighbors and their willingness to accept hens as neighbors. Perhaps setback distances should vary depending on the presence of a fence (and its type).

Input gathered from city departments regarding questions raised at the joint public hearing with City Council:

- Larry Ramdin (health department):
 - Not in favor of allowing mobile coops because each new location would require recertification from the health department to confirm setback and other requirements are still met.
 - If the owner of a leased property wants to keep chickens on that property, they need permission from the leasee/resident approve it.

- Need definition for slaughter, the broadest would be appropriate. Health concerns regarding disposal of the carcass, etc.
- The question raised at the public hearing with regard to mixed use or two adjacent zones is currently addressed in the zoning code so there is no need to also address it in this ordinance.
- Maximum height of a coop was set to match the maximum 6-foot fence height currently in the zoning code.
- Determining adequate and appropriate setbacks seems to be the controversial aspect of the issue.
 - Ms. Menon offered to send examples from other cities. No city allows them in front yards or corner side yards. Somerville is 3-feet from side or rear lot line (their standard for regular accessory buildings). Boston is 5-feet from property line and 15-feet from structures. Peabody requires a setback of 15-feet. The Planning staff looked at a variety of examples, but left the final determination largely to health and building departments in drafting the setback recommendation.

The Board requested additional information from city staff:

- Please provide a summary of the research done on other community practices including copies of ordinances. Somerville and Cambridge practices are of particular interest.
- Please poll other cities and request any hen coop census data they have, complaints, etc.; with special attention to how they address onsite slaughter and roosters. Please ask how long have their ordinances been in effect and what lessons learned can they share. If there is any data on how many coops currently exist in Salem it would be helpful.
- Please identify any cities discovered in the course of research that regulate and manage only through the Board of Health (versus zoning ordinance).
- The Board explored whether an ordinance was even necessary, are we trying to solve a problem that doesn't exist? Ms. Menon explained the specific issue of hens has come before the ZBA twice thus far; there was a sense among city staff that this is a growing issue and it was time to address it. Bees were not specifically address because they have not come up as an issue at this point. There are cities that regulate and manage this through the Board of Health.
- There was incidental, undetailed mention of adding ducks to the ordinance.

This issue remains open. The Joint Public Hearing of the City Council and the Planning Board was opened on July 29th. Evidence was heard, and the public hearing was continued to September 11, 2014. After the public hearing is closed, the Planning Board has 21 days to respond.

Planning Board Administrative Matters:

- Ms. Menon wants to use Dropbox rather than sending email with multiple attachments. This will provide secure, online storage of documents for members.
- Board members liked the online polling tool used to set this meeting date and encouraged its use when appropriate and it provides more efficiency and visibility to all members.
- Appreciation for Tim Ready should be added to the next meeting agenda.

Chair Puleo opened the meeting to the public for general input:

- Jim Treadwell of 36 Felt Street; asked for clarification of agenda terminology, as “discussion” on the agenda does not mean open to public comment. Chair Puleo advised the Planning Board is always open to written comment from the public. “Public hearing” on the agenda indicates there will be a formal period when comments from the public are welcome.

The Board agreed to modify future agendas and postings to “Board Discussion and Vote” to indicate an item is not taking public comment during the meeting.

Mr. Treadwell offered his opinion regarding the MRM Project Management project, stating that the Conservation Commission work on the project was inadequate with regards to the wetlands legislation, which required the Department of Environmental Protection to address the omissions. The incomplete work by the Conservation Commission contributed to the delay that the project is now experiencing.

Adjournment

Motion and Vote: Randy Clarke made a motion to adjourn the meeting, seconded by Bill Griset. The vote was unanimous with six (6) in favor (Mr. Puleo, Mr. Anderson, Ms. Yale, Mr. Clarke, Mr. Griset and Mr. Veno) and none (0) opposed.

Chairman Puleo adjourned the meeting at 9:00pm.

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://www.salem.com/Pages/SalemMA_PlanMin/

Respectfully submitted,
Pamela Broderick, Recording Clerk

Approved by the Planning Board on 9/4/2014