

CITY OF SALEM
APRIL 30, 2018
CONTINUATION OF A
JOINT PUBLIC HEARING OF THE
SALEM CITY COUNCIL AND PLANNING BOARD

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A continuation of a Joint Public Hearing of the City Council and Planning Board was held in the Council Chamber on Monday, April 30, 2018 at 6:00 P.M. for the purpose of continuing discussion on the following three (3) separate Zoning Amendments.

Amending Zoning Section 3.0 - Table of Principal & Accessory Use Regulations amending scrivener's errors from 2009 recodification including allowing a dwelling above first floor retail, service or office in B1 zone; allowing by right clubs, indoor commercial recreation, service, plumbing/carpentry/sheet metal, restaurants, manufacturing, storage, research/development and adult daycare in I zone; allowing by special permit outdoor commercial recreation and accessory structures in I zone.

Amending Zoning Section 4.1.1 – Table of Dimensional Requirements establishing 1) max. height of fences and 2) dimensional requirements for B1 zone dwellings.

Amending Zoning Section 10.0 – Definitions relative to dwelling unit; rooming, boarding and lodging house; general service establishment; assisted living residence; site plan review; and zoning board of appeal.

Notice of this meeting was posted on April 11, 2018 at 11:26 A.M.

All Councillors were present

President Beth Gerard presided.

President Gerard introduced Thomas St. Pierre, Director of Inspectional Services/Zoning Enforcement Officer, Tom Daniel, City Planner, Ashley Green, Staff Planner and the Planning Board Members Ben Anderson, Helen Sides, Carole Hamilton, William Grisct and Matthew Veno.

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The following letter from Historic Salem was received and filed and made a matter of record.

April 23, 2018

Salem City Council
Salem Planning Board
93 Washington Street
Salem, MA 01970

Dear City Council Ad-Hoc Committee on Zoning:

Historic Salem, Inc. would like to comment on certain proposed zoning changes currently under consideration.

Historic Salem is generally supportive of the change in Business Neighborhood district (B1) allowing residential use over 1st floor retail, service or office (Amendment 1). Commercial use on the ground floor with residential above is a traditional building type and is found throughout our city. Many examples of this use already exist in B-1 and are grandfathered.

However, we do not support applying R3 dimensional requirements to the B1 Districts (Amendment 3). Many B-1 zones contain historic buildings which are consistent in scale with the directly adjacent historic neighborhoods. Many of the R3 dimensional requirements, for example, the height limit of 45 feet rather than the currently allowed height in B-1 of 30 feet, could introduce out of scale buildings and negatively affect abutting historic housing stock. We are also concerned that this zoning change may create an incentive for demolition of historic buildings because of the higher value of new, taller buildings. In fact, as proposed, the potential impact could be to reduce neighborhood business viability by encouraging the introduction of significantly larger new multi-family residential buildings. We also think that the impact of allowing upper floors in some B-1 Districts, such as Jefferson Avenue where some of the existing commercial buildings are already quite large need to be carefully considered in the discussion of dimensional requirements.

We are also concerned about the multiple changes in uses in the Industrial Districts (Amendment 1). Of principal concern are changes in the industrially zoned property near the Historic Derby Street neighborhood. In addition to adding new uses, the proposed amendments change many uses which are allowed by Special Permit to "By Right." The purpose of requiring a Special Permit is that it allows the Board of Appeal to attach conditions to a use, which can provide protections for historic neighborhoods. Regardless of whether or not these were "scrivener's errors" we request that the City Council not change the listed Special Permit Uses to Allowed by Right Uses (BA to Y in the Use Tables), so as to retain the ability of the Board of Appeal to review and require conditions for those uses.

Best Regards,
Jennifer Firth
President

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Councillor Gerard stated that updated letters and ordinances were provided to the City Councillors and Planning Board.

Tom Daniel stated that the letter and attachments were given to both bodies and that there were same extras for the public. There was a cover letter and three new strike through versions of the upcoming ordinances marked with Roman Numerals I, II and III.

See Below for Tom Daniel's letter and the new proposed ordinances marked I, II and III can be found in the appropriate zoning amendments listed below

April 30, 2018

Honorable Salem City Council and Planning Board
Salem City Hall
Salem, Massachusetts 01970

RE: Zoning Amendments

Ladies and Gentlemen of the City Council and Planning Board:

For tonight's continuation of the joint public hearing, the Zoning Enforcement Officer and I wanted to provide some additional information and clarification.

The goal of the 2009 re-codification process was to make the 1965 version of the ordinance more user-friendly. One of the most significant improvements to the 2009 version was to include a Table of Principal and Accessory Uses. The 1965 version was cumbersome and confusing to use because, among other issues, zoning districts referred to other districts for allowed uses, and special permits were in a separate section. The 2009 process accomplished a lot in making the document easier to use, and no policy changes were intended to be made.

As a result of errors made in 2009, there were some omissions in the section on Swimming Pools (Section 3.2.5) and from the Table of Principal and Accessory Uses (Section 3.0). The City Council closed the public hearing on the Swimming Pools matter and referred it to the Planning Board. The amendments to the Table of Principal and Accessory Uses (Section 3.0) are still before the joint public hearing.

The joint public hearing is also continuing to address corrections to Section 4.1.1 Table of Dimensional Requirements and updated and new definitions in Section 10.0.

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Part I: Corrections to Section 3.0 Table of Principal and Accessory Uses

B-1 District

The first amendment in the table concerns Residential Uses in the B1 zoning district. Section 5.2 (d) in the 1965 version (Permitted Uses in B-1 Districts) states:

“The following are permitted uses in the neighborhood business districts:

(1) All uses permitted in R-3 Districts, subject to all the provisions specified for each use.”

Clearly, residential uses were permitted in the 1965 version as they are today. The 1965 version did not make a distinction regarding uses being above or below one another. Residential and commercial uses were both permitted and there was nothing specifying that a property could not have both. In fact, the 1965 version noted above states, *“subject to all the provisions specified for each use.”* This language contemplates requirements for more than one use. The Zoning Enforcement Officer’s interpretation of the 1965 ordinance had always been to allow residential uses over commercial uses. In addition to the language above, this interpretation was consistent with the on-the-ground reality of B1 districts such as portions of Derby Street.

However, the Table of Principal and Accessory Uses in the 2009 re-codification erred in making a policy change when an “N” was inserted in the table instead of a “Y” in the row entitled “Dwelling unit above first floor retail, personal service, or office use.”

I District

Similarly, uses that had been permitted in the Industrial district in the 1965 version had errors made when the Table of Principal and Accessory Uses was created in 2009. These errors constitute policy changes that had not been intended.

An unfortunate complication to the discussion is that our February 15, 2018 transmittal to you included errors. In total, there are five corrections needed in the I district. We have updated the draft ordinance to show these corrections.

Part II: Corrections to Section 4.1.1 Table of Dimensional Requirements

This second set of amendments address omissions from the 2009 recodification and, unlike Part I above, includes some new language.

Maximum height of retaining walls, boundary walls and/or fences (feet)

A version of the table below existed in the 1965 version of the ordinance. The table was omitted in the 2009 version. The 1965 version of the table did not include the NRCC district and had 15’ as the maximum height in the I district. The updated version of the table is below:

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Table of Dimensional Requirements										
	RC	R1	R2*	R3**	B1****	B2	B4	I	BPD	NRCC
Maximum height of retaining walls, boundary walls and/or fences (feet)	6	6	6	6	10	10	10	10	10	4

The 1965 version stated:

“Retaining walls, boundary walls and/or fences may be built abutting the property line. The height of the retaining walls, boundary walls and/or fences shall be measured on the inside face of the structure on the owner’s side.”

The 2009 version added the following sentence at the end:

See Section 6.8, Visibility at Intersection.”

The current proposal is to add one more sentence to the end:

“Fences shall be no more than six (6) feet for residential uses, excluding the NRCC district unless otherwise provided, and ten (10) feet for commercial uses.” This sentence is needed to addresses residential uses in commercial districts and commercial uses in residential districts.

B1

The 1965 version of the ordinance stated the dimensional requirements for the B1 zoning district mirrored those of the R3 district. Thus, the minimum lot area per dwelling unit for the B1 district in the 1965 version was 3,500 square feet. The 2009 version deleted this requirement.

The language proposed in the February 15, 2018 submission stated:

“All dwelling units constructed in the B1 Zoning District shall comply with dimensional requirements of the R3 Multi-family Residential Zoning District.”

At the joint public hearing on April 9, 2018, public discussion identified the unintended impact of this language regarding the height that would be allowed.

The revised proposed language is to update the Table of Dimensional Requirements to include 3,500 square feet as the minimum lot area per dwelling unit in the B1 district.

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Table of Dimensional Requirements										
	RC	R1	R2*	R3**	B1****	B2	B4	I	BPD	NRCC
Minimum lot area per dwelling unit (square feet)	80,000	15,000	7,500	3,500	<u>3,500</u>	-	-	-	-	3,500

We have updated the draft ordinance to show these corrections.

Part III: Definitions

The third set of amendments involve updating and adding definitions to Section 10.0.

1. Definitions for “Dwelling Unit” and “Rooming, boarding or lodging house” are being updated to conform with definitions used by the Commonwealth of Massachusetts.
2. A language clarification is being made for the definition of general service establishment.
3. Three new definitions are being added for “Assisted Living Residences,” “Site Plan Review,” and “Zoning Board of Appeals.”

We have updated the draft ordinance to show amendments (typos, etc.) to these proposed definitions.

Sincerely,
Tom Daniel
Director

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#161 - AMENDING ZONING SECTION 3.0 - TABLE OF PRINCIPAL & ACCESSORY USE REGULATIONS AMENDING SCRIVENER'S ERRORS FROM 2009 RECODIFICATION INCLUDING ALLOWING A DWELLING ABOVE FIRST FLOOR RETAIL, SERVICE OR OFFICE IN B1 ZONE; ALLOWING BY RIGHT CLUBS, INDOOR COMMERCIAL RECREATION, SERVICE, PLUMBING/CARPENTRY/SHEET METAL, RESTAURANTS, MANUFACTURING, STORAGE, RESEARCH/DEVELOPMENT AND ADULT DAYCARE IN I ZONE; ALLOWING BY SPECIAL PERMIT OUTDOOR COMMERCIAL RECREATION AND ACCESSORY STRUCTURES IN I ZONE.

Tom Daniel restated what we were doing here and gave a recap of the prior Zoning ordinance of 1965 was cumbersome to use for city staff and applicants due to the complex nesting uses where each district referred back to another district and some were by right and some by special permit. It was difficult to interpret it and it was challenging. In 2008/2009 when the book was being recodified it was the same in policy and substance but made it easier for people to utilize the book better and included table of uses, which was a great improvement, allowed everyone to know what was permitted by right, by special permit, etc. The intention of this process was not to change policy but to make a document that was easier for everyone to use.

A couple of errors that happened were the issue with the Swimming Pool - Sec. 3.2.5 that hearing was closed and referred to the Planning Board for their review and recommendation. This amendment regarding 3.0 Table of Principal and Accessory Use has remained open. So, on page 2 of memo refers to Part 1 corrections to Sec. 3.0 Table of Principal and Accessory uses – B-1 District the first amendment in the table concerns Residential Uses in the b1 zoning District. Section 5.2 (d) in the 1965 version (Permitted Uses in B-1 District) states the following are permitted uses in the neighborhood business districts: (I) All uses in R-3 Districts, subject to all the provisions specified for each use, so residential a permitted use. So, in 1965 it was not stated that you could not do that. Ground floors had commercial uses and above that residential. Provisions of each use had to be met. Derby Street reflects the character of a B-1. Trying to clarify tonight the background why “N” to “Y” viewed as an error when the 2009 recodification process happened.

Tom Daniel also stated that the second part is looking at the Industrial uses. Some errors when recodification happened. The strike through of #s 1, 2, 5 & 7 were submitted in error and #3, 4 & 6 are renumbered to #1, 2 & 3. These uses were previously allowed by Special Permit or By Right and we are trying to bring it back to how the previous Ordinance had it.

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Below is Roman Numeral I, the updated strike through draft ordinance to this proposed ordinance:

In the year two thousand and eighteen

An Ordinance to amend an Ordinance relative to Zoning

Be it ordained by the City Council of the City of Salem, as follows:

Section 1. Section 3.0 TABLE OF PRINCIPAL AND ACCESSORY USE REGULATIONS of the Zoning Ordinance is hereby amended as follows to correct Scrivener's errors from the 2009 recodification of the Zoning Ordinance:

a. Within Section A. Residential Uses of the Table, delete the letter "N" as it appears in the B1 zoning district in the row entitled "Dwelling unit above first floor retail, personal service, or office use" and insert the letter "Y".

b. Within the Zoning District I of Section C. Commercial Uses of the Table, make the following amendments:

~~1)delete the "N" as it appears in in the row entitled "Club or lodge, private" and insert a "Y"~~

~~2)delete the "BA" as it appears in the row entitled "Commercial recreation, indoor" and insert a "Y"~~

3)1) delete the "N" as it appears in the row entitled "Commercial recreation, outdoor" and insert the letters "BA"

4)2) delete the "N" as it appears in the row entitled "General service establishment" and insert the letter "Y"

~~5)delete the "N" as it appears in the row entitled "Personal service establishment" and insert the letter "Y"~~

6)3) delete the "N" as it appears in the row entitled "Plumbing, carpentry and sheet metal shop" and insert the letter "Y"

~~7)delete the "N" as it appears in the row entitled "Restaurant, with service of alcoholic beverages" and insert the letter "Y"~~

c. Within the Zoning District I of Section D. Industrial Uses of the Table, make the following amendments:

~~1)delete the "BA" as it appears in in the row entitled "Light manufacturing" and insert a "Y"~~

~~2)delete the "BA" as it appears in the row entitled "Manufacturing" and insert a "Y"~~

3)1) delete the "BA" as it appears in the row entitled "Mini-storage warehouse facility" and insert a "Y"

~~4)delete the "BA" as it appears in the row entitled "Research, laboratories, and development facilities" and insert a "Y"~~

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d. Within the Zoning District I of Section E. Accessory Uses of the Table, make the following amendments:

- 1) ~~delete the “N” as it appears in in the row entitled “Adult day care” and insert a “Y”~~
- 2) 1) delete the “N” as it appears in the row entitled “Private garages and other accessory structures” and insert a “BA”

Section 2. This Ordinance shall take effect as provided by City Charter.

Removing the red strike through and renumbering the sections the proposed new ordinance appears as below:

In the year two thousand and eighteen

An Ordinance to amend an Ordinance relative to Zoning

Be it ordained by the City Council of the City of Salem, as follows:

Section 1. Section 3.0 TABLE OF PRINCIPAL AND ACCESSORY USE REGULATIONS of the Zoning Ordinance is hereby amended as follows to correct Scrivener’s errors from the 2009 recodification of the Zoning Ordinance:

- a. Within Section A. Residential Uses of the Table, delete the letter “N” as it appears in the B1 zoning district in the row entitled “Dwelling unit above first floor retail, personal service, or office use” and insert the letter “Y”.
- b. Within the Zoning District I of Section C. Commercial Uses of the Table, make the following amendments:
 - 1) delete the “N” as it appears in the row entitled “Commercial recreation, outdoor” and insert the letters “BA”
 - 2) delete the “N” as it appears in the row entitled “General service establishment” and insert the letter “Y”
 - 3) delete the “N” as it appears in the row entitled “Plumbing, carpentry and sheet metal shop” and insert the letter “Y”
- c. Within the Zoning District I of Section D. Industrial Uses of the Table, make the following amendments:
 - 1) delete the “BA” as it appears in the row entitled “Mini-storage warehouse facility” and insert a “Y”

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- d. Within the Zoning District I of Section E. Accessory Uses of the Table, make the following amendments:
- 1) delete the "N" as it appears in the row entitled "Private garages and other accessory structures" and insert a "BA"

Section 2. This Ordinance shall take effect as provided by City Charter.

Councillor Turiel mainly focused on B-1 – dwelling over retail is the basic character of B-1. North Street and Lafayette Street only has single story commercial stores. It would need to meet the 3,500 sf for lot area, but what would be permissible height? Need to know if there is going to be new construction over retail. No concerns on Industrial Use since his concerns have been stricken.

Tom St. Pierre stated in 2009 the height of B-1 was 30 feet. They do not propose any change to that.

Councillor McCarthy asked Tom about scrivener's errors – however they transpired - The book as it appears now, is that what you enforce now.

Tom St. Pierre replied yes, it is and the City Solicitor is prepared to speak on that.

Councillor McCarthy - some areas were inadvertently changed whether you agree with them or not. So, we are holding a public hearing to decide if we are going to change it back or not

City Solicitor, Beth Rennard, stated in a section 1 of the 2009 Ordinance there was a vote taken that repealed the entire ordinance. All zoning ordinances enacted on or before February 6, 2009 and not included in the zoning ordinance or referenced therein are hereby repealed.

Tom St. Pierre stated that they are no longer using the word scrivener's errors, but there were mistakes when recodified.

Councillor Sargent – sticking point of B-1 still says comply with all dimensions of R-3 then the height is 45 feet. Dimensions (height) versus density (lot area, set-backs) if allow density then it should be 3500 s.f.

Tom Daniel stated that when we get to the next piece we will show the 3500 sq. ft. requirement.

Councillor Sargent – Old Zoning nowhere did it say "By Right" housing above B-1 all uses permitted in R-3. If meant to have housing above B-1 then it would have been written the same way as #16 under B-5 (in old book) specifically spells out the uses. If argue allowed in B-1 then same argument could be used to allow in B-2 & B-4. Take all three or eliminate all three.

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Tom St. Pierre – Zoning based on table of uses – Old code interpretation one or the other or mixed use. Understand cascading effect and your argument for B-2 and B-4. Recodification was to address this problem you would have to meet requirement of each use i.e. strip mall parking space then with residential above it then parking requirements and 3,500 sf for residential.

Council President Beth Gerard asked if there were any other questions from the Council or the Planning Board. There being none, Councillor Gerard opened the hearing to the public.

Polly Wilbert – 7 Cedar Street – Read the following statement: The notice at the time of re-codification clearly stated that there would be a 90-day timeframe to cure any defects in the re-codification (that worked both ways, from the city side and the notice to the public side). Nine years have passed since the process was completed. During that time, many entities have bought property based on the zoning as detailed on the books. Any change of zoning or the conditions of the zoning made today under notice of a “scrivener’s error” would impact the investments made during those nine years, with possible negative impacts. Further to provide notice based on past errors diminishes the need for property owners to come out to discuss any potential changes that would be made under something that should have been publicly noticed as changes, which would be more substantive, not as errors. The 2009 re-codification process clearly and repeatedly stated that no changes were being made to the zoning. There is no evidence provided that the changes now being contemplated were errors and, in fact, these are clearly changes to the zoning that existed at the time of the re-codification. Further changes are being proposed tonight with no public notice. This is not an ongoing discussion. This needs to be publicly advertised with new hearing since public not aware of these new changes. People purchased property in B-1 expecting no residential above it. Others brought property based on B-1 Table not allowing for residential above; they could say the city damaged their maximization of investment. By providing legal notice that these were errors is not a legal and transparent process for changing zoning. Some of you have further communicated to your constituents that this hearing is simply correcting errors further diminishing the importance of what is under consideration. By proceeding with this process as presently considered, the city opens itself to significantly to legal entanglement from a variety of parties who feel that they were or could be adversely impacted by changes offered under the guise of errors. This process should begin again, with new notice that is transparent as to what changes are being considered, which would confirm to the city’s Sunshine Ordinance, which intends that the average citizen would be informed as to what is being considered. Believes this process is defective.

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Councillor Gerard asked City Solicitor to comment on that.

Beth Rennard stated there were 5 zoning amendments that were advertised. The only zoning change that was referenced as scrivener's errors was Section 3. This is a change and a public hearing is being held. Only deletions are being made to this ordinance which are allowed, so there are no significant changes. If want to strike the word scrivener's error can do that.

Flora Tonthat – 30 Northey St. -Would like to talk about the B-1 Zoning because of Bridge Street – retail on the bottom and residential above it. This needs to be fixed. Happy to hear B-1 lot size staying 3,500 sq. ft. and 30' for height which is less than R-2 so that's reasonable and to Polly's comments people built things based on these zoning requirements. If building existed then it was based on pre-2009 zoning tables. You can look at both sides.

Justin Whittier – 10 River St. – Glad to hear clarification that the old Zoning Ordinance was repealed, so scrivener's errors irrelevant. Wish we knew that from the start it would have made this process much easier. So, given that, I hope the changes under consideration will be given merit. And doing so, give consideration to Industrial Zone abutting neighbors give protection to neighbors and not make it "By Right". Hope consider Board of Appeals permit needed to give an additional layer of protection. Also, has a question about retaining walls. In business zones retaining walls allowed to be built to 10 feet. Does that mean that a potentially have a lot at a certain elevation, build a retaining wall around it and raise the level of the ground to 10feet?

Tom St. Pierre replied it is measured from inside the owner's side of the wall. If you built a wall it doesn't let you fill the rest in. It's measured from the existing ground and any change of 2 feet in elevation of 2 ft you need a drainage permit.

Councillor Turiel asked since there are many buildings in the B-1 zone with commercial and dwelling above it, since the table says "N" what is the process right now? If existing business sells is it grandfathered if similar use. If new use then Special Permit by ZBA?

Tom St. Pierre replied if similar use then it is grandfathered; if new use then follows today's zoning requirements i.e. parking; and if it's one non-conforming use to another then need a special permit through the Zoning Board of Appeals.

Councillor Sargent if in a B-1 and already a business then if another business it stays the same so no issue if housing above it then it can stay.

Tom St. Pierre replied yes. Also new trend small retail stores are struggling and want to replace with a housing unit.

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Barbara Cleary 104 Federal St. - Pleased not to be speaking about scrivener's errors. Looking at changes now, I believe Industrial uses that have a "Y" should be a "BA" and delete the word scrivener's errors from ordinance. Also, not sure if this was advertised correctly

Tim Jenkins – 18 Broad St. – First Issue is Dimensional versus density requirements. Looking to clarify that. If we use density and not dimensional that should be correct. The second issue is how this was advertised. Nine years have passed and the review period was only 90 days to appeal. My view for the city to protect itself against claims where people bought properties and couldn't do certain things based on current zoning. We could protect the city by readvertising. Also, since Industrial tends to be dangerous it would be good for a board to review the use before a determination is made.

Mike Becker – 2 School St. Ct. – Like to give benefits of current B-1 zoning. Based on research over 9 years only 7 units. B-1 are all relatively small lots so adding a 3,500 sf restriction limits housing on any lots. Bridge Street is a good case study showed pictures of before and 2 years later how B-1 has been a benefit. North Street not as much redevelopment. Investors pour money into properties and to have the 3,500 s.f. restriction precludes all entrance corridor lots. You can't buy a 2-family for \$500,000 put \$300,000 into it and sell each unit for \$375,000, but if you could add another unit then it works. Non-conforming uses still need parking and setbacks and you would have to go to the ZBA for alteration of a non-conforming structure and anything over 5 units you need to go to the Planning Board. Someone last hearing stated that tons of units would be added, just not true maybe 1-2 dozen so don't see why making this change for only a few more units. Again, benefits of B-1 are taxes – revenues on 103 Bridge Street in 2015 were \$4,423 and in 2018 are \$27,424. That's a net gain of \$23,000 on only one property. No more neglected properties all home owners. Now add 10 more properties because now you have comps. Units selling for 480/sf which is the highest in Salem.

Flora Tonthat – 30 Northey Street – Trying to understand Mike Becker's comments if you have existing retail and it's smaller than 3,500 sf and want to add 2 levels above it isn't it grandfathered? Or if one floor retail can you add 1-2 apts above it or 2 levels.

Tom St. Pierre – anything additional you have to comply with zoning requirements. If build on top of it, all grandfathered status goes away except lot size itself. You would have to go to ZBA to get relief. If could further comment on Councillor Sargent's scenario, if an owner of a B-1 wants to go to a 2nd floor would need relief from ZBA but then to go to a 3rd floor you would need a variance and that is just not going to happen. Won't be able to get a variance for a hardship.

Councillor Turiel had a specific question about 172 Lafayette St. that's in a B-1 Zone. It's retail base with a small parking lot. If they wanted to add 1-2 floors (4 units) up to 30' what would the process be and what could they do or what variances would they need to get?

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Tom St. Pierre replied as it stands now they would need a parking variance which are few and far between from the Zoning Board.

Mike Decker – 2 School St. Ct. – 172 Lafayette St. is one of the lots he looked at and it is one of the 4 lots that meet the front set back but not the side set backs so it is non-conforming and would have to go to the ZBA for a special permit. One more comment would be why don't the city just add DRB to any additional units and problem solved. Some developments could use DRB input.

Councillor Dibble – Happy to learn on firm ground from 2009 vote New Zoning Ordinance from the 1965 Book. It's law now so can't call them scrivener's errors so it's a zoning change. Question to Tom St. Pierre under B-1 clarify that the 30' height stays the same.

Tom St. Pierre – Yes, it is in the book.

Councillor Dibble – 3,500 square feet per unit proposed as a change in zoning and not scrivener's errors

Tom St. Pierre – Correct

Councillor Dibble – the Domino effect of the old book of cascading from what is allowed in B-4 allowed in B-1 allowed in R-3 is now gone. The Domino effect is not the case now

Tom St. Pierre – That document is gone that pyramid is gone. The zoning proposal in just B-1 with number inserted in table.

Councillor Dibble – Retail in B-2 won't follow B-1

Tom St. Pierre – Correct

Councillor Dibble – When this goes to the planning board for their recommendation would like them to consider Vinnin Square where Staples is. That's a big complex and it's B-1. Unlike small mom and pop stores this is a big store and don't know how many units they could put in but it would be a lot. Divide out mom and pop stores versus big stores. Also, in regards to comments made by Polly Wilbert and Tim Jenkins in agreement that this was posted wrong and advertised wrong. It was also read here tonight as scrivener's errors. Since day one I've been saying it is not. This is not totally legal. In my opinion, we should stop and advertise correctly as zoning changes.

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Beth Rennard – These are zoning changes. Beth read the advertisement relative to Section 3.0 according to all the case law she looked at is based on whether or not the public got notice that there would be a change. I can give you a legal memorandum on that and I also have no problem with re-advertising, but she believes sufficient notice was given.

Councillor Dibble – Agenda posted wrong, posted incorrectly to the website because it was posted as a scrivener's error. And it should be a zoning change.

Councillor Gerard stated that the Solicitor said it is an ordinance amending zoning. The Solicitor has a law degree and in her legal opinion there was sufficient notice was given. It was clear that a zoning amendment was going to be proposed tonight and discussed. Just because used the word scrivener's error doesn't mean there wasn't sufficient notice of what was going to be discussed.

Beth Rennard – Legal Ad posted was different then what was on the agenda.

Councillor Sargent – didn't notify property owners or abutters. If something goes in front of ZBA abutters and abutters to abutters get notified, but on a Zoning change especially use change we don't even notify property owners. When we bring Zoning forward again we should have informational meetings and neighborhood meetings.

Polly Wilbert – 7 Cedar St. reemphases based on Sunshine Ordinance diminished in the minds of the average citizen because some thought just a clean-up and not an actual change. Encourage to readvertise and start the process again to protect the city.

Councillor Dibble made a motion to stop this process now on Section 3.0 as part of our Joint Public Hearing and properly advertise as zoning changes. Seconded by Councillor Sargent. Five in favor; 6 opposed – motion does not carry.

Mike Becker – 2 School St. Ct. – Applaud what Polly and Councillor Dibble and Councillor Sargent said and as a retort to the comment the City Solicitor mad about notification he stated he did not receive any written notification and he owns five to six properties in the B-1 district.

Councillor McCarthy moved this hearing be closed. It was so voted. Councillor Dibble and Councillor Sargent recorded as opposed.

Councillor McCarthy moved that this matter be referred to the Planning Board for the recommendation. It was so voted.

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#163 - AMENDING ZONING SECTION 4.1.1 – TABLE OF DIMENSIONAL REQUIREMENTS ESTABLISHING 1) MAX. HEIGHT OF FENCES AND 2) DIMENSIONAL REQUIREMENTS FOR B1 ZONE DWELLINGS.

Tom Daniel refers to page 3 of his memo regarding the corrections to Section 4.1.1 Table of Dimensional Requirements and to the proposed strike through version of Roman Numeral II. (See ordinance at end of this section)

Let the record reflect Councillor Dibble excused himself at 7:15 P.M.

Tom Daniel noted that the table existed in 1965; however, it was deleted in the recodification. In addition, the NRCC was not part of the 1965 ordinance and was added to the table stating maximum height of retaining walls, boundary walls and/or fences (feet) is four (4) feet. This did not exist before. Another proposed change is to the Industrial Zone from 15' as the maximum height to 10' maximum to conform with other commercial uses. Memo further states the wall/fences shall be measured on the inside face of the structure on the owner's side and that the 2009 version added See Section 6.8, Visibility at Intersection." Under Section 2 of the proposed ordinance of Section 4.1.1 Table of Dimensional Requirements is hereby amended by adding the following new sentence to the end of asterisk *** notation: "Fences shall be no more than six (6) feet for residential uses, excluding the NRCC district unless otherwise provided, and ten (10) feet for commercial use. Rational of this language although seems redundant indicates if residential use in commercial area or commercial use in residential that indicates height of fence restriction. The other issue revolves around the minimum lot area in B-1. As previously submitted the language mirrored the R-3 Zoning District. The New proposed ordinance (Roman Numeral II) reflects the deletion of this language and amended by inserting "3,500 in the B1 Column of the row entitled "Minimum lot area per dwelling unit (square feet)."

Councillor Sargent just making sure if use R-3 in B1 using R3 density and not R3 dimensions.

Tom St. Pierre stated the only change is inserting the 3,500 sq. ft. per dwelling unit.

Councillor Sargent wanted to know why is still says All dwelling units constructed in the B1 Zoning district shall comply with dimensional requirement of the R3 multi-family residential zoning district.

Tom Daniel replied that language was originally submitted in February but became clear during the April 9, 2018 JPH that had other impacts so that language has been eliminated

Councillor Sargent – If its stricken then it shouldn't show up anymore right>

Tom St. Pierre – reaffirmed it was stricken and Tom Daniel referred him to page four of the memo

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Councillor Turiel - So all additional existing dimensional requirements and density of B1 stay in place i.e. parking and maximum height has not changed just lot size

Tom St. Pierre replied yes only inserting dimensional regulation that was not there.

Councillor Gerard asked if the Councillors or Planning Board members had any further questions or comments. There being none Councillor Gerard opened the hearing to the public.

Tim Jenkins – 18 Broad St. – Property owners not notified. Can we include this in our own Ordinance in addition to the MGL?

Ben Anderson – Chair of Planning Board has a question on maximum retaining wall/fence height restriction in the Entrance Corridor Overlay. How does that affect commercial us in ECOD? How do fence height restrictions correlate to this?

Tom St. Pierre stated that Entrance Corridor Overlay overrides everything else; it will trump all other height restrictions. At times the City Solicitor is consulted but stands alone or is the overriding factor.

Councillor Gerard asked if there were any other comments. There being none.

Councillor McCarthy moved that the hearing be closed. It was so voted.

Councillor McCarthy further moves that the matter be referred to the Planning Board for their recommendation. It was so voted.

Proposed Ordinance with strikethrough

In the year two thousand and eighteen

An Ordinance to amend the Ordinance relative to Zoning

Be it ordained by the City Council of the City of Salem, as follows:

Section 1. Section 4.1.1 Table of Dimensional Requirements is hereby amended by adding the following new row to the table:

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Table of Dimensional Requirements										
	RC	R1	R2*	R3**	B1****	B2	B4	I	BPD	NRCC
Maximum height of retaining walls, boundary walls and/or fences (feet)***	6	6	6	6	10	10	10	10	10	4

Section 2. Section 4.1.1 Table of Dimensional Requirements is hereby amended by adding the following new sentence to the end of asterisk *** notation:

“Fences shall be no more than six (6) feet for residential uses, excluding the NRCC district unless otherwise provided, and ten (10) feet for commercial uses.”

Section 3. Section 4.1.1 Table of Dimensional Requirements is hereby amended by inserting adding the following “3,500” in the B1 column of the row entitled “Minimum lot area per dwelling unit (square feet).” new asterisked notation and inserting the asterisks in the B1 column heading:

~~“****B1 All dwelling units constructed in the B1 Zoning District shall comply with dimensional requirements of the R-3 Multi family Residential Zoning District.”~~

Section 4. This Ordinance shall take effect as provided by City Charter.

Proposed Ordinance submitted to Planning Board

In the year two thousand and eighteen

An Ordinance to amend the Ordinance relative to Zoning

Be it ordained by the City Council of the City of Salem, as follows:

Section 1. Section 4.1.1 Table of Dimensional Requirements is hereby amended by adding the following new row to the table:

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Table of Dimensional Requirements										
	RC	R1	R2*	R3**	B1****	B2	B4	I	BPD	NRCC
Maximum height of retaining walls, boundary walls and/or fences (feet)***	6	6	6	6	10	10	10	10	10	4

Section 2. Section 4.1.1 Table of Dimensional Requirements is hereby amended by adding the following new sentence to the end of asterisk *** notation:

“Fences shall be no more than six (6) feet for residential uses, excluding the NRCC district unless otherwise provided, and ten (10) feet for commercial uses.”

Section 3. Section 4.1.1 Table of Dimensional Requirements is hereby amended by inserting “3,500” in the B1 column of the row entitled “Minimum lot area per dwelling unit (square feet).”

Section 4. This Ordinance shall take effect as provided by City Charter.

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164 - AMENDING ZONING SECTION 10.0 – DEFINITIONS RELATIVE TO DWELLING UNIT; ROOMING, BOARDING AND LODGING HOUSE; GENERAL SERVICE ESTABLISHMENT; ASSISTED LIVING RESIDENCE; SITE PLAN REVIEW; AND ZONING BOARD OF APPEAL.

Tom Daniels stated besides correcting the spelling that Polly pointed out, the definitions for “Dwelling Unit” and “Rooming, boarding or lodging house” are being updated to conform with definitions used by the Commonwealth of Massachusetts. A language clarification is being made for the definition of general service establishment. And three new definitions are being added for “Assisted Living Residences,” “Site Plan Review,” and “Zoning Board of Appeals.”

Councillor Sargent asked if a description of what a General Service Establishment could be given.

Tom St. Pierre described from the old book an example was a Wholesale Laundry Facility versus a retail dry cleaner.

Council President Beth Gerard asked if there were any other questions or comments from the City Council or the Planning Board. There being none, Councillor Gerard opened the hearing to the public.

Polly Wilbert – 7 Cedar Street – Under section D – Assisted Living cannot believe that medical assistance is legal –In order for someone to receive medical assistance and give medication you need to be licensed in MA.

Councillor Milo stated assistance could mean to set up pills and let the person know or remind them to take their medication

Councillor Gerard stated that Personal Care Attendants provide a service not but not at clinical level of service.

Councillor Turiel asked the City Solicitor are we just accepting state definitions i.e. Assisted Living Residence and putting it into our own book

Beth Rennard, City Solicitor responded we can look into it further but we wanted to distinguish this definition from the definition of a hospital

Tom St. Pierre stated this is one of the more frequently asked question. We have a definition of a nursing home in our book, but not an Assisted Living Residence in our zoning book and people want to know what the difference is. We are trying to capture what is going on in today’s society.

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Councillor Gerard asked if there were any other comments. There being none.

Councillor McCarthy moved that the hearing be closed. It was so voted.

Councillor McCarthy further moves that the matter be referred to the Planning Board for their recommendation. It was so voted.

Proposed Ordinance with strikethrough and comments:

In the year two thousand and eighteen

An Ordinance to amend an Ordinance relative to Zoning

Be it ordained by the City Council of the City of Salem, as follows:

Section 1. Section 10.0 DEFINITIONS of the Salem Zoning Ordinance is hereby amended by:

a. Inserting the following at the end of the definition of “Dwelling Unit”:

“as defined by the Commonwealth of Massachusetts State Building Code Regulations & Standards 780 CMR ~~P 310.2 and M.G.L. Ch. 140 Section 22. No more than three (3) people not within second degree of kindred shall live.~~”

b. Deleting the definition of “Rooming, boarding or lodging house” in its entirety and replacing it with the following:

“Rooming, boarding or lodging house: A house where lodgings are let to four (4) or more persons not within second degree of kindred to the person conducting it, and shall include fraternity houses and dormitories of educational institutions, but shall not include ~~fraternity houses and~~ dormitories of charitable or philanthropic institutions or convalescent or nursing homes licensed under section ~~seventy-one of chapter one hundred eleven~~ or rest homes so licensed, or group residences licensed or regulated by agencies of the Commonwealth.”

c. Amending the definition of “General service establishment” by inserting the word “and” immediately before the word “furniture” and deleting the phrase “and the like.”

d. Inserting three new definitions as follows:

“Assisted Living Residences: Offer a combination of housing, meals and personal service care to adults for a fee that includes room and board and services. Assisted living residences are intended for adults who may need some help with activities such as housekeeping, meals,

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bathing, dressing, and/or medication assistance and who like the security of having assistance available on a 24-hour basis in a home-like and non-institutional environment. Assisted living residences do not provide medical or nursing services and are not designed for people who need serious medical care on an ongoing basis.”

“Site Plan Review: Site plan review is a review process established by the City to protect and promote health, safety, convenience and general welfare of the residents of Salem. Site plan review establishes criteria for the layout, scale, appearance, safety, and environmental impacts of development. Site plan review focuses on parking, traffic, drainage, utilities, landscaping, lighting and other aspects of the proposal to arrive at the best possible design for the location.”

“Zoning Board of Appeals: The Zoning Board of Appeals as established by Chapter 40A, Section 12 of the Massachusetts General Laws.”

Section 2. This Ordinance shall be adopted as provided in the City Charter.

Proposed Ordinance as submitted without strikethroughs.

In the year two thousand and eighteen

An Ordinance to amend an Ordinance relative to Zoning

Be it ordained by the City Council of the City of Salem, as follows:

Section 1. Section 10.0 DEFINITIONS of the Salem Zoning Ordinance is hereby amended by:

a. Inserting the following at the end of the definition of “Dwelling Unit”:

“as defined by the Commonwealth of Massachusetts State Building Code Regulations & Standards 780 CMR

b. Deleting the definition of “Rooming, boarding or lodging house” in its entirety and replacing it with the following:

“Rooming, boarding or lodging house: A house where lodgings are let to four (4) or more persons not within second degree of kindred to the person conducting it, and shall include fraternity houses and dormitories of educational institutions, but shall not include dormitories of charitable or philanthropic institutions or convalescent or nursing homes licensed under

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section seventy-one of chapter one hundred eleven or rest homes so licensed, or group residences licensed or regulated by agencies of the Commonwealth.”

c. Amending the definition of “General service establishment” by inserting the word “and” immediately before the word “furniture” and deleting the phrase “and the like.”

d. Inserting three new definitions as follows:

“Assisted Living Residences: Offer a combination of housing, meals and personal service care to adults for a fee that includes room and board and services. Assisted living residences are intended for adults who may need some help with activities such as housekeeping, meals, bathing, dressing, and/or medication assistance and who like the security of having assistance available on a 24-hour basis in a home-like and non-institutional environment. Assisted living residences do not provide medical or nursing services and are not designed for people who need serious medical care on an ongoing basis.”

“Site Plan Review: Site plan review is a review process established by the City to protect and promote health, safety, convenience and general welfare of the residents of Salem. Site plan review establishes criteria for the layout, scale, appearance, safety, and environmental impacts of development. Site plan review focuses on parking, traffic, drainage, utilities, landscaping, lighting and other aspects of the proposal to arrive at the best possible design for the location.”

“Zoning Board of Appeals: The Zoning Board of Appeals as established by Chapter 40A, Section 12 of the Massachusetts General Laws.”

Section 2. This Ordinance shall be adopted as provided in the City Charter.

On the motion of Councillor Furey the hearing adjourned at 7:35 P.M.

ATTEST:

ILENE SIMONS
CITY CLERK