



CITY OF SALEM, MASSACHUSETTS  
DEPARTMENT OF PLANNING AND  
COMMUNITY DEVELOPMENT

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January 29, 2019

Honorable Salem City Council  
Salem City Hall  
Salem, Massachusetts 01970

RE: Municipal and Religious Adaptive Reuse Overlay District

Dear Ladies and Gentlemen of the City Council,

At its meeting on January 17, 2019, the Planning Board discussed the proposed Zoning Ordinance amendments adding a Municipal and Religious Adaptive Reuse Overlay District. As you will see in the attached Report to City Council, the Planning Board recommended the City Council adopt the ordinance with a number of edits that are shown in track changes. The Planning Board also directed staff to provide a clarification and make a recommendation on one item.

**Planning Board Recommended Edits**

Some of the Planning Board's recommended edits are wordsmithing and are self-evident. Other specific edits include:

- 8.7.3.5: The Planning Board's edit adds cemeteries to be clear they are not considered in Municipal use.
  - o Staff Comment: None.
- 8.7.4: In the Table of Dimensional Requirements for New Construction, the Planning Board recommended:
  1. Having the maximum lot coverage be 50 percent instead of the standard of the underlying zone;
  2. Having the maximum height of buildings (feet) be 55 feet instead of the standard of the underlying zone; and
  3. Having the maximum height of buildings (stories) be 5 instead of the standard of the underlying zone.
  - o Staff Comment: These three edits are consistent with the intent of what staff had originally proposed in the October 2018 draft submitted to the City Council. As you will recall, staff revised these three items in January in response to public comment. However, the Planning Board recommended returning to the original intent.

- 8.7.4: In the Table of Dimensional Requirements for Existing Buildings, the Planning Board recommended:
  1. Having the maximum height of fences and bordering walls (feet) be as exists or 6, whichever is greater.
  - o Staff Comment: The Planning Board’s edit would allow existing fences that needed to be replaced or extended to remain at the existing height.
  
- 8.7.4: In the first paragraph after the Table of Dimensional Requirements, the Planning Board recommended additional language to clarify the height standard.
  - o Staff Comment: None.
  
- 8.7.5: In the list of Special Permit uses, the Planning Board recommended:
  1. Revising Laundromats/drying cleaning establishments by inserting, “excluding on site cleaning”;
  2. Revising Specialty food stores by deleting, “those where food is served for consumption on the premise” and inserting, “a restaurant or food establishment unless permitted by the underlying zone”;
  3. Adding not for profit museums; and
  4. Adding Daycares.
  - o Staff Comment: Daycares cannot be added. Per G.L. c. 40A §3, “No zoning ordinance shall...require a special permit for, the use of land or structures, or the expansion of existing structures, for the primary, accessory or incidental purpose of operating a child care facility.”
  
- 8.7.7: The Planning Board recommended the Design Review Board review all applications and extended the comment period to 60 days.
  - o Staff Comment: None.
  
- 8.7.9: The Planning Board recommended adding a paragraph that restates the parking requirements for housing under the jurisdiction of the Salem Housing Authority.
  - o Staff Comment: This parking standard already exists in the Zoning Ordinance.

**Staff Clarification and Recommendation**

*Use or Ownership*

In considering the ordinance, the Planning Board informed staff that it was unclear whether the ordinance will apply to eligible buildings in which a religious and municipal use occurs or eligible buildings that are under a religious and municipal ownership.

Rather than providing a recommendation on whether use or ownership is preferred, the Planning Board directed staff to provide a recommendation to the City Council on whether the use or ownership should apply for the Council to consider during its discussion.

Staff recommends that the ordinance apply to use rather than ownership as currently drafted. Pursuant to Sec. 8.7.3. Eligibility, a building has to have been used actively for at least 20 continuous years to be considered a religious or municipal use. Staff advises that 20 years provides protection against unintended structures being eligible for this special permit. The 20 years also provides an incentive for religious and municipal institutions not to let buildings sit vacant.

As written, the ordinance applies to use not ownership. Section 8.7.1 of the proposed ordinance described the purpose of the ordinance as:

*In addition to that set out in Section 1.1 of the Ordinance, it is the intent of this Section 8.7 to allow for reuse of municipal properties (“Municipal”) and properties used for religious purposes and protected by G.L. c. 40A §3 (“Religious”).*

The statement “to allow for reuse...” means that eligible building must be a municipal or religious use. Further, religious properties protected by G.L. c. 40A §3 refers to religious purposes on land *owned or leased* by a religious sect or denomination. Thus, an eligible building has to be used for religious use; however, religious ownership is not required.

#### *New Construction*

Staff also recommends that the Table of Dimensional Requirements column header for new construction be revised to insert “Expansion or” before “New Construction”. As presented at the Joint Public Hearing, the intent is for the dimensional standards to apply to all new construction, whether it is free standing or an addition.

Lastly, staff would like to reiterate the importance of adopting this ordinance in order to provide a permitting path for the immediate and near-term reuse opportunities at the former Council on Aging building at 5 Broad Street and the Archdiocese’s school buildings. Without any zoning changes, the only residential uses allowed would be as a single-family or two-family residence.

Suggestions have been made that this overlay is not needed because applicants could apply for a special permit to change a non-conforming use to another or apply for a use variance. Neither of these suggested options is possible.

- Change in non-conforming use: Although the current municipal and religious uses are exempt uses, they are listed in the Table of Principal Uses as allowed by right in every zoning district in the City. As such, a special permit to change the non-conforming use is not possible because the use is, in fact, conforming. It is not possible to change a conforming use to a non-conforming use.
- Use variance: Per Mass General Law, use variances are only permitted when they are explicitly allowed by city ordinance. Salem does not allow use variances.

Reusing historic properties rather than tearing them down is part of what makes Salem the great place it is. The zoning overlay provides a means to allow the reuse of a subset of historic properties to proceed.

We look forward to your consideration of the recommendations and are happy to answer questions.

Sincerely,

A handwritten signature in blue ink that reads "Tom Daniel". The signature is written in a cursive style with a large, stylized "T" and "D".

Tom Daniel  
Director



# CITY OF SALEM PLANNING BOARD

## Report to City Council

January 28, 2018

At its meeting on January 17, 2018 the Planning Board discussed the proposed Zoning Ordinance amendments adding a Municipal and Religious Adaptive Reuse Overlay District to facilitate the appropriate reuse of eligible buildings and thereby protect and advance the general public welfare within Section 8.0 - Special District Regulations by adding Section 8.7 – Municipal and Religious Reuse Overlay District. This Ordinance Amendment includes sections 8.7.1 through 8.7.11 outlining respectively, Purpose, Location, Eligibility, Dimensional Requirements, Uses Allowed by Special Permit, Site Plan Review, Historical Commission and Design Review Board Review, Affordability, Parking and Loading, Conflict, and Severability.

The Ordinance Amendment provides a tool to allow for reuse of eligible buildings that will best serve the community but will minimize impacts to surrounding neighborhoods while also facilitating historic preservation, economic development, housing production and environmental sustainability and resilience.

The Planning Board voted in favor of recommending that the City Council approve the amendments as modified below:

The recommended modifications are shown in track changes herein:

**An Ordinance** to amend the zoning ordinance by adding a Municipal and Religious Adaptive Reuse Overlay District to facilitate the appropriate reuse of eligible buildings and thereby protect and advance the general public welfare.

**Section 1.** Section 8 - Special District Regulations of the City of Salem Zoning Ordinance (“Ordinance”) is hereby amended by adding the following new section:

### **8.7 Municipal and Religious Reuse Overlay District**

#### **8.7.1 Purpose.**

In addition to that set out in Section 1.1 of the Ordinance, it is the intent of this Section 8.7 to allow for reuse of municipal properties (“Municipal”) and properties used for religious purposes and protected by G.L. c. 40A §3 (“Religious”). This overlay district provides zoning flexibility to allow for such redevelopment, ~~while also facilitating~~ historic preservation, economic development, housing production and environmental sustainability and resilience. When Buildings and Lots in Municipal or Religious use no longer serve such purposes, this Section envisions a

process and zoning to allow for reuse, either by a public or private entity, which will best serve the community but will minimize impacts to surrounding neighborhoods.

### 8.7.2 Location

The Municipal and Religious Reuse Overlay District shall apply in all zoning districts to eligible Lots as defined in Section 8.7.3 herein.

### 8.7.3 Eligibility

The Municipal and Religious Reuse Overlay District shall apply to:

1. Any Lot improved with one or more Buildings currently in Municipal or Religious use;
2. Where the Building(s) in Municipal or Religious use and for which a change of use is proposed and the Building(s) is at least 3,000 square feet;
3. Where one or more of the Building(s) in Municipal or Religious use and for which a change of use is proposed is at least fifty (50) years old at the time of application under this Section and
4. Where the applicant seeks to change the use of the Lot and/or Building from Municipal or Religious use to one or more of the uses identified in Section 8.7.5.
5. Public parks and cemeteries shall not be considered in Municipal use for the purpose of this ordinance.

A Building shall be considered currently in Municipal or Religious use if the Building was actively used for at least 20 continuous years, including some point in the last 20 years, for Municipal or Religious purposes immediately preceding an Application under this section.

### 8.7.4 Dimensional Requirements

**Table of Dimensional Requirements**

	<i>Residential Uses or Mixed Use— Existing Buildings</i>	<i>Residential Uses or Mixed Use— New Construction</i>
Minimum lot area (square feet)	2,000	2,000
Minimum lot area per dwelling unit (square feet)	—	500
Minimum lot width (feet)	30	30
Maximum lot coverage by all buildings (percent)	100	<del>standard of the underlying zone</del> 50
Minimum width of setbacks (feet)	—	standard of the underlying zone

Maximum height of buildings (feet)	—	standard of underlying zone <del>55</del>
Maximum height of buildings (stories)	—	standard of underlying zone <del>5</del>
Maximum height of fences and bordering walls (feet)	<u>As exists or 6 whichever is greater</u>	6
Minimum distance between buildings if more than 1 on a lot	standard of underlying zone	

Any rooftop construction needed for building circulation, drainage, ventilation, utilities, accessibility features or passive recreation shall be excluded from the calculation of building height. For the purpose of this ordinance, the height shall not exceed the ridge or parapet of the existing structure, whichever is greater and shall not include steeples or other ornamental features that are in no way used for living purposes.

To the extent that any eligible Lot and/or existing Building thereon does not conform to the applicable dimensional requirements, the non-conforming Lot and/or existing Building shall be considered legally existing nonconforming for purposes of an application under this Section 8.7. The Planning Board may grant a special permit pursuant to Section 9.4.1 in conjunction with an application made pursuant to this Section 8.7 to partially reconstruct, extend, alter or change a nonconforming Building if it determines that such reconstruction, extension, alteration, or change shall not be substantially more detrimental than the existing nonconforming structure to the neighborhood.

#### 8.7.5 Uses Allowed by Special Permit

The Planning Board, upon a finding that a proposed use is in harmony with the purpose and intent of this Ordinance and Section 8.7, may grant a special permit pursuant to this Section 8.7 and Section 9.4 for one or more of the following uses on a Lot that meets the eligibility requirements of Section 8.7.3; provided, however that Commercial uses may only be located within a multifamily dwelling and may not exceed 30 percent of the gross floor area of said multifamily dwelling. In addition, for any Lot in the B2, B4, I and BPD Districts the Planning Board may grant such special permit only upon finding that the public good will be served and that (1) the residential use would not adversely affect the underlying ~~nonresidential~~ district and (2) the nonresidential uses permitted in the underlying ~~nonresidential~~ district are not noxious to the multi-family use. For any Lot in the R1, R2, R3, and RC Districts the Planning Board may grant such special permit that includes a Commercial use only upon finding that the public good will be served and that the Commercial use would not adversely affect the underlying residential district.

~~A project~~ The Planning Board ~~proposed under this Section 8.7~~ may, in addition to a change in use of a Building currently in Municipal or Religious use, authorize the construction of new and expanded Buildings, pursuant to Section 8.7.

### Special Permit Uses:

1. Dwelling, Multi-family.
2. Meeting and gathering space accessory to a principal use or for use by residents or tenants of a Lot.
3. Artist lofts and living space, studios, workrooms and shops of artists, artisans and craftsmen, where products of the artistic endeavor or craft activity can be for sale on the premises or by specific off-premises commission from a sponsor or client.
4. Banks and savings and loan institutions.
5. Barber shops and beauty parlors.
6. Books, stationery and gift stores.
7. Business and professional offices.
8. Crafts, related stores selling jewelry, crafts, etc. where production occurs on the premises.
9. Dwelling units above first floor retail, personal service, or office use.
10. Florist shops, but excluding greenhouses.
11. Galleries.
12. Laundromats/dry cleaning establishments, excluding onsite cleaning.
13. Medical and dental offices.
14. Specialty food stores, including candy store, meat market, delicatessen, or bakery, but not ~~those where food is served for consumption on the premises~~ a restaurant or fast food establishment unless permitted by the underlying zone.
15. Tailor and custom dressmaking shops.
16. Daycares.
17. Not for profit museums.
- ~~15.18.~~
- ~~16.19.~~ All uses permitted as of right or by special permit in the underlying zone or R2 zone.

### 8.7.6 Site Plan Review

Each project submitted hereunder shall require site plan approval under Section 9.5. Absent special circumstances, applications under Section 8.7.5 for a special permit and under 8.7.6 for site plan approval should be filed together for contemporaneous consideration by the Planning Board.

### 8.7.7 Historical Commission and Design Review Board Review

At the time of, or before filing, an application under this Section 8.7, the applicant shall provide a copy of this application to the City of Salem Historical Commission and the Design Review Board. The Historical Commission and the Design Review Board shall review the application at a public meeting and shall provide advisory comments to the Planning Board. The Planning Board shall not take final action on an application under this Section 8.7 until it receives written comment on the



application from the Historical Commission and the Design Review Board, or at least ~~forty-fivesixty~~ (4560) days have passed since delivery by the application ~~of the application~~ to the Historical Commission and the Design Review Board. Said ~~forty-fivesixty~~ (6045) day period may be extended by written agreement between the Applicant and Planning Board. ~~For any project in which a new detached building is proposed to be constructed this paragraph shall apply to both the Historical Commission and City of Salem Design Review Board.~~

Nothing set forth in this Section 8.7.7 is intended to alter or amend the rights and obligations of the Historical Commission pursuant to the G.L. c. 40C.

Failure of an applicant hereunder to timely deliver a copy of the application to the Historical Commission or Design Review Board may be grounds for denial of the application.

### **8.7.8 Affordability**

Ten (10%) percent of the total units in any project proposed under this Section 8.7 shall be SHI Eligible Housing as defined by the Massachusetts Department of Housing and Community Development being affordable to a household of one or more persons whose maximum income does not exceed 80% of the area median income, adjusted for household size, or as otherwise established by DHCD guidelines for a period of 99 years as secured by a duly recorded deed restriction. When calculation of the ten (10%) percent of the total units results in a partial unit, the number of required affordable units shall be rounded up to the next whole number.

### **8.7.9 Parking and Loading**

For new residential dwelling uses provisions shall be made for not ~~less-fewer~~ than one (1) parking space per dwelling unit for existing buildings and one and one-half (1.5) parking spaces per dwelling unit for new construction.

In contrast to all other defined housing, types built under the jurisdiction of the Salem Housing Authority for elderly and/or handicapped persons shall require one-third (1/3) parking space per dwelling unit.

Nonresidential uses shall provide parking in accordance with Section 5.1.8 Table of Required Parking Spaces.

In mixed-use developments, ~~applicants-the Planning Board~~ may ~~propose-consider~~ a reduction in total parking requirements based on an analysis of peak demand for non-competing uses provided by the applicant. In such cases the parking requirement for the largest of the uses (in terms of parking spaces required) shall be sufficient as determined by the Planning Board. An applicant may use the latest peak demand analyses published by the Institute of Traffic Engineers (ITE) or other source acceptable to the Planning Board.

The parking requirements may be accommodated by either one or a combination of on-site parking and/or parking at municipal or other parking facilities in the vicinity

of the Lot. All municipal or other parking facilities which are used to satisfy the parking requirement must meet the following criterion: The parking facility must be ~~less-fewer~~ than one thousand (1,000) feet from the Lot as measured in a straight line from the two (2) closest points between the Lot and the parking facility. If using a municipal facility, the owner must purchase an annual parking pass to satisfy the parking requirement.

A new loading zone shall not be required if the existing Building does not have an existing loading zone.

#### **8.7.10 Conflict**

The provisions of this zoning overlay district are intended to modify the standards otherwise applied to the Lot and Buildings thereon by the underlying district. Unless specifically modified by this Section 8.7, all other existing standards shall apply to the Lot and Buildings.

#### **8.7.11 Severability**

The provisions of this Section 8.7 are severable. The invalidity of any paragraph, subsection or provision of this Section 8.7 shall not invalidate any other paragraph, subsection or provision hereof.

The Planning Board directed staff to provide a clarification and a recommendation to the City Council regarding whether the ordinance should apply to eligible municipal and religious uses or eligible municipal and religious owners. The Planning Board recommends that the City Council discuss the eligibility in respect to “uses” versus “ownership”.

If you have any questions regarding this matter, please feel free to contact Tom Daniel, AICP, Director of Planning & Community Development, at 978-619-5685.

Yours truly,

Ben J. Anderson, Chair

CC: Ilene Simons, City Clerk

Staff Addendum: Please note that in the accompanying cover letter from Tom Daniel dated January 29, 2019, staff recommended adding “Expansion or” before “New Construction” in the Table of Dimensional Requirements column header for new construction (8.7.4). Staff also noted in the cover letter that Daycares cannot be included under 8.7.5. These two points are not shown in track changes above because they are clarifications that occurred after the Planning Board meeting.