**City of Salem Zoning Board of Appeals**

**Meeting Minutes**

January 18, 2023

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, January 18, 2023 at 6:30 pm via remote participation in accordance with Chapter 107 of the Act of 2022 and a Special Act extending remote participation meetings until March 31, 2023.

**Chair Peter Copelas calls the meeting to order at 6:32 pm.**

Chair Copelas explains how individuals can participate in the meeting remotely via Zoom, and that instructions to participate remotely can also be found on the Salem website. Mr. Copelas also explains the rules regarding public comment.

**ROLL CALL**

Those present were: Peter Copelas, Nina Vyedin, Paul Viccica, Carly McClain, and Steven Smalley. Also in attendance were Daniel Laroe – Staff Planner, and Jonathan Pinto – Recording Clerk. Those absent were: Rosa Ordaz

**CONTINUANCES**

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| Location: |  **275 Lafayette Street (Map 33, Lot 438) (R1, R3 Zoning Districts)** |
| Applicant: | **MD Property Development** |
| Project: | A public hearing for all persons interested in the petition of MD PROPERTY DEVELOPMENT at 275 LAFAYETTE STREET (Map 33, Lot 438) (R1,R3 Zoning Districts) for  Special Permits per Section 3.3.2  Nonconforming Uses to change from one nonconforming use-educational use to a multi-family residential use. A Special Permit per Section 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance to allow for alteration of the existing nonconforming structure.  In addition, petitioner seeks Variances from Section 4.1 Dimensional Requirements for lot coverage where 30% is permitted and 32.5% is being sought/ lot area per dwelling unit where 3,500 SF is required in the R3 Zoning District and 15,000 SF in the R1 where 1,500 SF is proposed/ Side setback where 20 feet is required and 10 feet is sought. And per Section 5.1.5 Curb Cuts for 30 feet of curb cut where 20 feet is allowed. A total of 15 residential units in the existing building and a new building to be constructed at 275 LAFAYETTE STREET. |

Documents and Exhibitions

* Application date-stamped November 17, 2022 and supporting documentation

Chair Copelas introduces the petition.

Mr. Laroe states there the applicant submitted a request to continue to the February meeting.

**Motion and Vote:** Mr. Viccica motions to continue the petition of MD PROPERTY DEVELOPMENT at 275 LAFAYETTE STREET (Map 33, Lot 438) (R1,R3 Zoning Districts) for  Special Permits per Section 3.3.2 Nonconforming Uses to change from one nonconforming use-educational use to a multi-family residential use, a Special Permit per Section 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance to allow for alteration of the existing nonconforming structure, and Variances from Section 4.1 Dimensional Requirements for lot coverage where 30% is permitted and 32.5% is being sought/ lot area per dwelling unit where 3,500 SF is required in the R3 Zoning District and 15,000 SF in the R1 where 1,500 SF is proposed/ Side setback where 20 feet is required and 10 feet is sought, and per Section 5.1.5 Curb Cuts for 30 feet of curb cut where 20 feet is allowed, for a total of 15 residential units in the existing building and a new building to be constructed at 275 LAFAYETTE STREET to the next regularly scheduled meeting of the Zoning Board of Appeals on February 15, 2023.

Ms. Vyedin seconds the motion. **The vote is five (5) in favor (Peter Copelas, Carly McClain, Paul Viccica, Steven Smalley, and Nina Vyedin) and none (0) opposed. The motion passes.**

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| Location: | **1 Purchase Street (Map 15, Lot 139) (R1 Zoning District)** |
| Applicant: | **Ezekiel Holt** |
| Project: | A public hearing for all persons interested in the petition of EZEKIEL HOLT at 1 PURCHASE STREET (Map 15, Lot 139) (R1 Zoning District), for a Special Permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance to build a new, second egress with a porch for the first-floor unit.   The proposed change will permit petitioner to restrict access to the basement from the first-floor unit and to specifically make it a part of the second unit. |

Documents and Exhibitions

* Application date-stamped November 9, 2022 and supporting documentation

Chair Copelas introduces the petition.

Ezekiel Holt introduces himself and explains that when he purchased his home it had a finished basement, which he later discovered was previously setup as an illegal third unit. Mr. Holt states he is seeking to bring the property into compliance, and that the easiest way to do so is to restrict access to the basement from the first floor tenant, so that the basement becomes part of the second and third floor unit where he and his wife live. The proposal expands and creates a new egress for the first floor unit in back and seeks to meet fire codes. Mr. Holt states that a special permit is needed because the new egress and porch will extend into the setback.

Mr. Copelas asks if there is anyone present to speak to the specifics of the plans provided. Mr. Hold explains they were drafted by his architect who is not present, and will be executed by his contractor Mike Naples, who is also not present.

Mr. Copelas notes that the plans make reference to the basement space as a studio. He asks if it is intended to be an additional rented unit since there will be a kitchenette and bathroom installed. Mr. Holt clarifies that the kitchenette and bathroom were installed prior to him purchasing the property and that he is not adding those in.

Mr. Viccica asks if the property is currently three units. Mr. Holt indicates the basement was finished when he purchased the property, but that there was no one living or renting the basement. Currently there is a tenant in the first floor unit, and Mr. Holt states that he, his wife, and daughter live in the second unit occupying the second and third floor. Mr. Viccica suggests the layout is that of a three unit building, and asks if he has been paying taxes on a three- or two-family home. Mr. Holt states he is taxed as a two-family and that there are two meters. He also notes after speaking with Mr. St. Pierre, this was determined to be the best way to bring the property into compliance. Mr. Viccica asks if Mr. Holt is trying to create a third unit. Mr. Holt states he is not, and clarifies that the basement will be part of the second and third floor unit. Mr. Copelas asks why there needs to be a kitchenette and bathroom. Mr. Holt states those are not needed, but reiterates that they were installed by the prior owner. He adds that the space will likely be used as a guest space or suite for friends and family when they come to visit.

Mr. Copleas states it is hard to see the differentiation in using the basement as guest suite space and having it be a de facto third unit. Mr. Copelas says is his not sure the Board ought to be putting a stamp of approval on something that appears to be potentially used as a third unit, whether as a rental or potential AirBnB, which is mentioned in the application. Mr. Copelas suggests this is a back-door method of getting an additional unit.

Ms. McClain indicates her understanding of the proposal is actually the opposite, and that the applicant could have kept the illegal basement unit without making any changes. Instead, Ms. McClain states that Mr. Holt has come before the Board to try to find a way to safely close off the basement from the first floor unit and use that space for his own purposes. Ms. McClain suggests a potential special condition that does not allow the basement to be used as a third unit. She also states it would not be appropriate to ask Mr. Holt to remove an existing kitchenette and bathroom that he did not put in.

Mr. Holt further explains that the kitchenette is simply a sink and some cabinets with no cooking surface. He indicates the previous owner had installed a gas line that could have been hooked up, but that he had a plumber remove it because he does not want any cooking in the basement. Mr. Holt maintains the space is not going to be a third unit or long-term rental. He states the intention is to bring the space above board, and that after having his architect conduct a code review and discussing with Mr. St. Pierre, the recommendation was seek a special permit to make the second egress.

Ms. Vyedin asks if all floors currently have access to the basement, and Mr. Holt states they do, via the butler staircase in back.

Mr. Viccica notes that the rest of the floor plans are not included, and while he does not disagree with Ms. McClain, the Board was given plans with no kitchenette drawn, just described in words with no additional plans. Mr. Viccica indicates he is hearing words but there are no associated drawings for approval.

Mr. Holt asks what the Board would need or like to see. Mr. Viccica indicates drawings showing the closing off of the first floor unit to the stairs should be part of the application. He also notes that currently the basement is labeled as a studio, and that based on the submission it would be difficult for him to approve the petition.

Mr. Holt explains he is seeking the special permit to build the porch that would establish the second egress for the first floor unit. He states he did not think he needed permission relating to the basement because there are no proposed changes to the basement. Mr. Holt again states that he is seeking to take the steps to make the basement part of his second unit by removing first floor access. To do so, a second egress is needed which requires the special permit to build into the setback.

Mr. Viccica again notes that the basement is labeled “studio”. He also states he would like to see on the record a set of drawings that show what Mr. Holt has described verbally, and that clearly represents this is not a three-unit building. Mr. Holt states he is happy to have his architect amend the renderings and provide the additional plans.

Mr. Copelas states the existing and proposed conditions are unclear on the present plans. He suggests more robust drawings of the existing and new conditions would be helpful, particularly showing the stairway and entrance being closed off.

Mr. Holt shares his screen and is able to provide proposed conditions, but not existing conditions. Mr. Viccica and Mr. Copelas summarize the additional plans and drawings they would like to see, and Mr. Viccica states he would like the “studio” nomenclature changed or removed for further clarification. Mr. Holt explains that the basement was referred to as a studio because it is open with no interior rooms aside from a utility space.

Given the need for additional plans and documentaion, Mr. Copelas asks if Mr. Holt would be amenable to a continuance to next regular meeting on February 15, 2023. Mr. Holt indicates he would, and requests a continuance.

Mr. Viccica asks the Chair about opening the floor to public comment in case anyone attending the meeting would like to be heard..

Mr. Copelas opens the floor to public comment but there is none.

**Motion and Vote:** Ms. Vyedin motions to continue the petition of EZEKIEL HOLT at 1 PURCHASE STREET (Map 15, Lot 139) (R1 Zoning District), for a Special Permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance to build a new, second egress with a porch for the first-floor unit to the next regularly scheduled meeting of the ZBA on February 15, 2023.

Mr. Viccica seconds the motion. **The vote is five (5) in favor (Peter Copelas, Steven Smalley, Carly McClain, Paul Viccica, and Nina Vyedin) and none (0) opposed . The motion passes.**

**MEETING MINUTES**

**November 16, 2022**

Mr. Copelas notes this set of minutes references a special meeting, and asks if this was a special or regular meeting. Mr. Viccica states it was a regular meeting. Mr. Copelas also notes that Mr. Smalley was listed as both present and absent, and identifies a typo on page five, paragraph three, where the word “pump” should be changed to “bump”.

Mr. Viccica notes that on page 13 he was included as voting in favor, but that he was not at the meeting and that his name should be replaced with Ms. McClain’s. A similar edit is required on the application for Leavitt Street.

**Motion and Vote:** Ms. Vyedin motions to approve the minutes from the November 16, 2022 meeting of the Zoning Board of Appeals as amended. Mr. Smalley seconds the motion. **The vote is five (4)** **in favor, one (1) abstained, and none (0) opposed. The motion passes.**

**December 14, 2022**

Mr. Copelas states he did not get a chance to read this set of minutes, and suggests tabling the review and approval to the next meeting.

**OLD/NEW BUSINESS**

**Special Permit Extension Request for 2 Bridge Street - Starboard Cannabis**

Chair Copelas introduces the agenda item.

Tim Haigh introduces himself and explains he is seeking an extension of his special permit for a cannabis cultivation facility, which was approved by the Board in July of last year. Mr. Haigh states he is currently awaiting a Chapter 91 waterway permit for change of use before he can submit a full application to the Cannabis Control Commission.

Mr. Viccica asks what the duration of the extension would be, and Mr. Haigh indicates it would be a six month extension.

Mr. Copelas indicates the Board has granted such extensions in the past because of the complexity of state licensing requirements and other issues. He asks if this will be for sale and cultivation, and Mr. Haigh states that is correct.

Ms. Vyedin asks how long this process typically takes. Mr. Haigh offers that he has heard waterway permits can sometimes take years, but the expectation is within the next couple of months. Ms. Vyedin wishes him luck.

**Motion and Vote:** Mr. Viccica motions to approve the request for a six (6) month extension for 2 Bridge Street - Starboard Cannabis, as requested. Ms. Vyedin seconds the motion. **The vote is five (5)** **in favor and none (0) opposed. The motion passes.**

The Board next generally discusses needing to find a Vice Chair. Ms. McClain suggests she would be open to being Vice Chair. The Board continues to discuss further, and determines that Ms. McClain would make an excellent Vice Chair.

**Motion and Vote:** Ms. Vyedin motions to nominate Carly McClain for Vice Chair of the Salem Zoning Board of Appeals. Mr. Viccica seconds the motion. **The vote is five (5)** **in favor and none (0) opposed. The motion passes.**

**ADJOURNMENT**

**Motion and Vote:** Mr. Viccica motions to adjourn the meeting. No one seconds the motion. **The vote is all in favor. The motion passes.**

**The meeting ends at 7:25 PM on January 18, 2023.**

***For actions where the decisions have not been fully written into these minutes, copies of the***

***Decisions have been posted separately by address or project at:***

[https://www.salem.com/zoning-board-appeals/pages/zoning-board-appeals-decisions-2023](https://www.salem.com/zoning-board-appeals/pages/zoning-board-appeals-decisions-2022)

Respectfully submitted,
Daniel Laroe, Staff Planner