

## City of Salem ZBA of Appeals

### Meeting Minutes

Wednesday, December 20, 2017

A meeting of the Salem ZBA of Appeals ("Salem ZBA") was held on Wednesday, December, 20, 2017 in the third floor conference room at 120 Washington Street, Salem, Massachusetts at 6:30 p.m.

**Chair Curran calls the meeting to order at 6:30 pm.**

### **ROLL CALL**

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

### **REGULAR AGENDA**

Project	A continuation of a public hearing for a petition requesting a Special Permit per Sec. 3.3.5 Nonconforming Structures, to add a 24' x 24' garage to the rear of the existing residential structure, remove exiting garage, and relocate R.O.W.
Applicant	<b>MATTHEW KEANE</b>
Location	<b>414 LAFAYETTE STREET (Map 32, Lot 169)(R-1 Zoning District)</b>

Mr. Keane of 414 Lafayette Street, owner, and Attorney John Keilty, 40 Lowell Street, Suite 22, Peabody, MA were present to discuss the project.

Chair Curran stated that the ZBA was seeking clarification with the R.O.W. with the driveway.

Mr. Keane stated that the original plan dated 8/16/15 the new garage was detached and the roof was pitched; however, the neighbors requested a flat roof. In the revised plan dated 11/11/16, the proposed garage was the same dimension, attached to the house, and had a flat roof that was an extension of the existing flat roof of the house. It was suggested to pitch the roof again; however, after meeting with an architect and neighbors it was decided that the roof be kept flat to fit better with the house. A decorative railing and windows were also included at the neighbors' request.

Mr. Keane noted that the amended plans have been submitted to the ZBA as well as a finished plot plan with the 2 feet for right-of-way at the existing 26-foot wide driveway. He also submitted a petition signed by all neighbors except for one who suggested the height that now matches the existing roof height. The Special Permit requested is for the rear setback that is typically 30 feet but the proposed is now 15 feet, which was requested by the majority of the neighbors.

Chair Curran asked if this was a 2-family. Mr. Keane replied yes. Chair Curran asked why the parking spaces for the tenants wasn't in the rear which is typical. Mr. Keane replied that he parks his two cars in the front and the entrance for the second unit is in the front so these two spaces would be for the second unit. If a tenant has a vehicle they would park in the front and the two spaces for his unit would be in the garage. He planted arborvitaes to help shield and to provide privacy. Atty. Keilty noted that the paving 2 feet off of the side yard was an existing condition. Chair Curran noted that if approved, a condition would be added to ensure that the new easement was recorded. Mr. Keane noted that the area will be repaved in the spring but the driveway will be wide enough for the rear abutters to access their home.

Chair Curran stated that the proposed railing was an issue. Mr. Keane replied that it was proposed by the neighbors but could be eliminated.

Mr. Copelas asked for Mr. Keane's responsibility in regards to the easement at the rear of the lot? Mr. Keane replied that the right-of-way is shifting two feet to the left and it will now be straight instead of having to curve around the existing garage. Existing stumps behind the garage will be removed to clear a path to the rear property which will have view to the street with the removal of the existing garage. Atty. Keilty added that there is no obligation of record for who plows the property, Mr. Keane does it on his own, but it can be included in the revised easement. Chair Curran stated that it would have to be on record prior to the issuance of a building permit.

Mr. Tsitsinos asked if the petitioner would require a curb cut. Mr. Keane replied no. Chair Curran noted that the pre-existing curb cut is more than the standard 20 feet.

Mr. Schaeffer noted that the second floor of the garage space would be used for storage only and it is labeled as such on the plan.

Chair Curran opens public comment.

Kristin Lewis, 412 Lafayette Street. She is not in favor of the entirety of the proposed plan. She is fine with the garage being placed behind the house but she is concerned with the proposed height and aesthetics. The proposed roof has a slight pitch and is not flat. Neither the 26-foot-wide driveway or having the entire left-hand side of the house paved, is in keeping with the neighborhood, and other driveways are 18 feet wide max. She asked how the petitioner enter his garage. No other buildings in the neighborhood are of this proportion in relation to the lot size. Believes that no other properties in the area have two-story garages. She is concerned with having an existing non-conforming 2-family in this zone that will affect neighboring properties with so much pavement. She suggested having more vegetation and less paving. 4 cars could fit in front of the house although it is labeled as 2.

Fabio Bardini, 416 Lafayette Street. The driveway is not 26 feet wide and the curb has sunken into the ground so it appears to 3 vehicles wide and he wants to know if that will remain because half of prop will be paved making it resemble a commercial property. All but one tree has been cut down in front yard and the other homes have multiple trees. A 22-foot-wide and 2'-6" high garage is high and excessive, on a house that is already non-conforming. The height could easily be reduced to 17 feet. People use flat roofs whether or not there are railings by climbing out of the windows. He

would prefer that the neighborhood stay an R-1. Private owners have the right to oppose such large structures, but the petitioner told me then would only replace what was existing but it has turned into something that is six times the volume. The beautiful neighboring properties will continue to be impacted if things of this size are built.

Chair Curran asked how much of the existing driveway will be repaved. Mr. Keane replied that the current driveway is 26' wide but he has no plan to repave the entire area. Atty. Keilty noted that the plan shows a small curb cut that is not perfectly aligned to the right of way. They will only use that curb cut and will realign the driveway to match it. Mr. Keane added that he will replace part of sunken the curb. Atty. Keilty stated that they will modify the easement to show the new driveway and curb cut condition – the Maloney's right-of-way would enter the driveway and make a jog to the left around the side of the house.

Chair Curran asked if the landscaping would be restored. Mr. Keane replied that he has no problem with there being less paving and right now the Maloney's park behind the existing garage. Mr. Copelas asked where the Maloney's would park now. Mr. Keane replied that informed the Maloney's that they can determine where they want to park. Mr. Tsitsinos asked how much paving is proposed and if grass will be placed to the left of the garage. Mr. Keane replied as much that is needed for the driveway and yes. Chair Curran stated that she would like to include restoring a portion of the existing driveway back to lawn as a condition. Mr. Keane found that acceptable.

Jonie Vavoudes, 412 Lafayette Street. She stated that her driveway is longer than his, the new garage would be behind Mr. Keane's garage but would face her yard. She has no problem with the garage as long as there is a door and window to break up the façade. There is no view to be lost.

Sue Maloney, 414 ½ Lafayette Street (rear abutter.) Wants the garage attached to the house to give them more space since the Salem State garage is already behind their property and blocks them in. It is difficult to maneuver around the current space and a 2-car garage in the existing location would make it tighter. The proposed design will give them a view to the street and ill not block anything.

Steve Dibble, Ward Councilor. He commends the Board for placing a series of conditions on this property. He requesting that the Board make sure the plan showing the right-of-way has dimensions listed for rear abutter to protect them forever.

Fabio Bardini, 416 Lafayette Street. He is not opposed to garage in back of the house, only to its extreme height and the amount of paving that is pitched towards their house in terms of water run-off. The proposed garage height is his most important concern.

Mr. Keane submitted photos of 2 ½ story garages additions (2-story garage additions with pitched roofs) all within his Ward. The flat roof at that area of his house is dictating the desire to install a flat roof on his proposed garage.

No one else in the assembly wished to speak. Chair Curran closes public comment.

Mr. Copelas stated that he is concerned and uncertain with the modifications that have no visual representation to explain them; house entrance, driveway jog to left, the width of the driveway, and

the right-of-way, as well as the proposed look. Mr. Keane replied that he will use the rear abutters 8 ½ foot right of way. Chair Curran stated that in terms of conditions the Board would; limit the driveway entrance to the width of the existing curb cut, allow a 10-foot-wide driveway, access to the garage in front of the doors, and two 9x20 parking spaces in the front yard. Landscaping at the location of the existing garage, between the house and driveway, and restoring the remaining landscaping at the rear and front of the house. There shall be no railing, no roof egress, and the second floor of the new garage can only be used for storage. All items shall be submitted in plan prior to the issuance of a building permit as well as evidence that the plan/easement has been recorded with the Registry of Deeds.

Mr. Copelas stated that a suggestion has been made at a previous meeting to construct a solid fence on left side of the property. Mr. Keane noted that there is an existing chain-link that may be on the neighbor's property that he wants has offered to remove and replace with a solid fence. He can always add one at or near the 2-foot strip at that lot line. Chair Curran noted that there will be no parking along that fence because it is an accessway.

**Motion and Vote: Mr. Duffy makes a motion to approve the petition to add a 24'x24' garage to the rear of the existing structure, remove the existing garage, and relocating the right-of-way subject to the following special conditions; submit a certified plot plan with the Registry of Deeds with a dimensioned right-of-way prior to the issuance of a Building Permit, the right-of-way access should be as shown on plan with dimensions showing jog around the house, the driveway shall align with the existing curb cut, the petitioner shall install a solid wooden fence the entire length of property along the left side property line, the second story of the garage must be used for storage as indicated on the plan, eliminate the railing on the plan, reinstall the curbing in line with the existing curb cut, reinstall landscaping at the areas of removed driveway, all parking spaces to be limited to 9'x20', and two parking spaces are allow at the front. The motion is seconded by Mr. Watkins. The vote was unanimous with five (5) in favor and none (0) opposed.**

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Project	A public hearing for a special permit per <i>Sec. 3.3.2 Nonconforming Uses</i> , to allow a change from a service station and storage facility to four (4) new dwelling units and variances from the provisions of <i>Sec. 4.1.1 Table of Dimensional Requirements</i> to exceed the minimum lot area per dwelling unit, minimum rear yard setback, maximum height requirements. The petitioner is also requesting a variance from the provisions of <i>Sec. 8.2 Entrance Corridor Overlay District</i> to exceed the number of curbcuts.
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Applicant	<b>HARTS HILLS LLC</b>
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Location	<b>111 HIGHLAND AVE. (Map 14 Lot 199) (R-2 Zoning District)</b>
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Chair Curran recused herself for not being present at a previous meeting when this agenda item was discussed and for not listening to the previous taped discussion.

Attorney Scott Grover, of Tinti, Quinn, Grover & Frey, 27 Congress Street, Suite 414, Salem, MA 01970, represents the applicant Harts Hill, LLC.

Others present were:

- Peter Lutz, Principal of Harts Hill, LLC
- Dan Ricciarelli of Seger Architects

Atty. Grover stated that this was a former filling station on Highland Avenue, between Salem Hospital and Wilson Road. The petitioner originally proposed a four (4) residential unit development with at grade parking below the residential units. However, after meeting with the neighbors, the petitioner is currently proposing two (2) residential units. The original proposal also include a total of four (4) curbcuts, including three (3) on Wilson Road and one (1) on Highland Ave. The petitioner is currently proposing one (1) single curbcut off of Wilson Road, with surface parking for four (4) vehicles at the rear of the property. The structure was three (3) stories, which required a variance, but the proposal has been altered to two and a half stories, which does not require a variance. The lot coverage was reduced from 30% down to 24%. The petitioner also submitted a significantly enhanced landscaping plan and is also proposing to install sidewalks along Highland Ave. and Wilson Ave. along the lot property frontage.

As proposed currently, the petitioner is requesting a special permit per Sec. 3.3.2 Nonconforming Uses special permit allow a change from a service station and storage facility to four (4) new dwelling units and variances from the provisions of *Sec. 4.1.1 Table of Dimensional Requirements* to exceed the minimum lot area per dwelling unit.

A special permit is still required for the request to change the current non-conforming use of the property to another non-conforming use. The property was used as a service station and then a storage facility for EMR drywall. The petitioner is proposing multi-family residential. To allow this change of use to the property, the Board needs to find that the proposed use is less detrimental than the existing use. The proposal for a residential use at the property is substantially less detrimental to the neighborhood than a commercial use of the property and there is a need for moderately priced housing. There will be minimal traffic impacts and there will be a single curbcut on Wilson Road. The curbcut on Highland Ave. will be closed up and the petitioner will restore and continue the sidewalk along the property boundaries along the frontage of Highland Ave. and Wilson Road. The petitioner is also proposing four (4) parking spaces, which is in excess of what is required. There are adequate utilities at the property. The entire site is currently paved. The proposed landscaping will improve the drainage and visual appeal of the site. The tax revenue to the City will increase because the property will be improved. For these reasons, it is appropriate for the Board to grant the special permit requested.

The only other relief that is necessary is a Variance from lot area per dwelling unit. The size of the variance requested is much less. The petitioner is proposing 4,250 square feet per dwelling unit. The conditions that create the hardship here is that the property is located in the R-1 Zoning District, which is not a marketable or appropriate use on this section of Highland Ave. If the Zoning Ordinance were literally enforced, the property use as a single family home would be unmarketable. Dan Ricciarelli-Seger Architects- Presents the proposed architectural drawings and layout. The petitioner is proposing two (2) parking spaces per dwelling unit. Each of the units will have their own entry and unit one will be oriented with frontage on Highland Ave, while unit two will be

oriented with frontage on Wilson Road. The proposed building will also be 2 ½ stories with massing that is a more residential scale. The architecture includes more traditional features including cladding, gables and porches for a softer façade. The proposed building is shaped like an “L”. The petitioner is proposing units that are approximately 2,000 square feet with three (3) bedrooms each.

Peter Lutts, 24 Winter Street- Developer, states that he originally proposed four (4) units and was met with a lot of neighborhood opposition to the density. He revised his plans to three (3) units and that plan was opposed and postponed a month. Then the petitioner proposed two (2) units and the neighbors said that they would not oppose two (2) units. This is the background to how we got to two (2) units.

Mr. Copelas – That said, the Board will be evaluating the proposal as it stands. We will look at this and give it a fair hearing. Could you clarify that there is a single special permit request for changing from one non-conforming use to another and a single variance request for lot area per dwelling unit. Is there an existing curbcut on Wilson Road?

Attorney Grover- Confirms the requested relief.

Mr. Ricciarelli- There are no existing curbcuts on either Highland Ave, or Wilson Road. There is a berm and there is one large curbcut along Highland Ave and Wilson Road.

Mr. Copelas- Confirms that the petitioner will be constructing a new sidewalk and curbcuts per the dimensions on the proposed plan.

Mr. St. Pierre- Clarifies that the new sidewalk and curbcuts will be constructed per the proposed plan and the requirements of the Salem Engineering Department review and approval.

Mr. St. Pierre- What is the proposed exterior material?

Mr. Ricciarelli- HardiePlank is proposed.

Vice Chair- Copelas opens public comment.

John Lunt, 6 Greenway Road – Speaks in opposition to the proposal due to concerns about the bulk and size of the building. We were not going to support two (2) units, but we would probably be more receptive if it included a reduction in the size of the building. The proposed driveway on Wilson Road is also the current location of a telephone pole. There are other issues too including the possibility of contamination on the site. I am glad the proposal is for a residential use, but the proposal is a big building for a small building lot.

Stan Poirier, 8 Cottage Street- Speaks in opposition to the proposal. One time this lot was a gas station and the house was built in 1962. Mr. Poirier states that the old man who owned the gas station, dumped oil into the ground when there were no restrictions. There was a 21E conducted and the gas tanks were removed. It is my understanding that the existing building will be torn down. Mr. Poirier states concern about taking out the existing concrete slab due to concerns of

contamination. Mr. Poirier requests that a 21E be performed when the existing structure is demolished. The proposed plans also do not show the proposed nine foot cellar.

Mr. Copelas- Will there be a cellar?

Mr. Ricciarelli- States that the proposed residential structure could have a basement, or crawl space or be constructed on a slab depending on site conditions and requirements. We have a clean 21E from 2014.

Stan Poirier, 8 Cottage Street – It is my understanding that previous 21E when you go back in to an area that has not been checked that you have a responsibility of running the tests on that area again. The only other bone of contention is maintain the R-1 Zoning District. If you look at the residences along Highland Ave., they are all R-1's. When it comes time to sell these condos, will they be sold individually? I hope...

Mr. Lutts- Yes.

Mr. Poirier- Will the people who buy them to the best of your knowledge, do in fact live there? If the two (2) are bought by one person, who knows who you will get in there.

Mr. Copelas- The Board cannot put conditions on the occupancy of residential dwelling units.

Mr. Poirer- You people don't really have control over the zoning do you? That has to go to another Board.

Ms. Schaeffer- There is no zoning ordinance change that is being proposed here. The existing Salem Zoning Ordinance allows this petitioner to come before the Zoning Board of Appeals to request a special permit because the property is currently a non-conforming use. For example, Salem Hospital, is located in the R-1 (single family residential) zoning district, and is not a single family home like the Zoning Ordinance requires. This proposal is a similar circumstance that there is a current use on this property that is not a single family home or any other conforming use of the R-1 Zoning District.

Mr. Poirer- That makes sense. Those are my points of contention. Thank you.

Attorney Grover- by all measures of what is appropriate of this building is in accordance with the Zoning Ordinance, the height, lot coverage, setbacks, we are within the dimensional requirements.

Pauline Bertini, 5 Wilson Road- Speaks in opposition to the proposal and states that she was not contacted about the neighborhood meeting.

Mr. Copelas- The abutters were notified, the project was advertised in the Salem News.

Attorney Grover- The petitioner made every effort to try to communicate with abutters.

Aaron Udy, 8 Buffum Street- The context of this site is well done. It makes sense to create a real curb and the property next door has been converted into eight (8) residential units. Two (2) townhouses and the proposed scale makes sense for the property.

Mr. Poirer- But the property is R-1.

Mr. Udy, 8 Buffum Street- Right.

John Lunt- 6 Greenway Road- The comparison of this proposal against the property next door is totally irrelevant. This property is a tear down and rebuild, not a renovation. Mr. Lunt continues to speak against the proposal due to concerns about massing and scale of the proposal.

No one else in the assembly wished to speak.

Mr. Copelas to Tom St. Pierre- Could you clarify whether the 21E will need to be redone due to the demolition of the existing building on the property?

Tom St. Pierre- I don't believe so. Are there any AUL's on the property? If there is a lender involved, the lender may insist on a new report or 21E. However, you may want to have one done anyway. The Health Department could get involved a little bit, but only if there is a reported issue.

There is no AUL recorded on the property.

Tom St. Pierre- For the architect, if you did a full foundation, how much above grade will the building sit?

Dan Ricciarelli- About two (2) feet.

Mr. Copelas- Asks Mr. Grover to repeat the findings for the special permit and variance.

Mr. Grover- The findings that the Board needs to make to grant the special permit is that the proposed use is not substantially more detrimental to the neighborhood than the existing non-conforming use of the property. The reasons that this is true, is that this proposal The proposal for a residential use at the property is substantially less detrimental to the neighborhood than a commercial use of the property and there is a need for moderately priced housing. There will be minimal traffic impacts and there will be a single curbcut on Wilson Road. The curbcut on Highland Ave. will be closed up and the petitioner will restore and continue the sidewalk along the property boundaries along the frontage of Highland Ave. and Wilson Road. The petitioner is also proposing four (4) parking spaces, which is in excess of what is required. There are adequate utilities at the



property. The entire site is currently paved. The proposed landscaping will improve the drainage and visual appeal of the site. The tax revenue to the City will increase because the property will be improved. For these reasons, it is appropriate for the Board to grant the special permit requested.

For the Variance, the Board needs to find that there are special conditions of this lot that would make the literal enforcement of the zoning ordinance a hardship for the applicant. The petitioner is proposing 4,250 square feet per dwelling unit. The conditions that create the hardship here is that the property is located in the R-1 Zoning District, which is not a marketable or appropriate use on this section of Highland Ave. If the Zoning Ordinance were literally enforced, the property use as a single family home would be unmarketable. The last finding is that the proposal would not derogate from the intent of the ordinance. Returning the property to a residential use in an R-1 Zoning District is consistent with the intent of the ordinance.

Mr. Copelas – Speaks in support of the petition. Mr. Copelas states that the proposal is an improvement to the use on the property and from an aesthetic perspective. The requirements for the special permit and variance have been met. Opens further comment to the Board.

Mr. Watkins – Asks about the impacts of an existing electrical pole in relation to the proposed curbcut and driveway.

Mr. Ricciarelli – will confirm that with the site plan and Civil Engineer will review.

St. Pierre – poles can also be moved.

Mr. Watkins – Will the trash be picked up curbside?

Mr. Ricciarelli- Yes. There is a trash and recycling enclosure on the site.

Ms. Schaeffer – states that the sidewalk needs to be ADA compliant including constructing a ramp on the corner of Highland Ave. and Willson Road that needs to connect with the opposite corner of Highland Ave. and Willson Road.

Mr. Lutts- I didn't know we needed to do that.

Mr. St. Pierre – will need to make both corners accessible on other side of Wilson Road. You cannot put someone down on a corner of a street and not allow access to the other side. The easy way to do this is to make sure that you have the proper permits from the Engineering Department.

**Mr. Duffy makes a motion to approve the petition seeking a special permit per *Sec. 3.3.2 Nonconforming Uses*, to allow a change from a service station and storage facility to two (2) new dwelling units and a variance from the provisions of *Sec. 4.1.1 Table of Dimensional***

**Requirements to exceed the minimum lot area per dwelling unit. The motion is seconded by Mr. Watkins. The vote was unanimous with five (5) in favor and none (0) opposed.**

Chair Curran returned.

Project	A public hearing for a Special permit per <i>Sec. 3.3.2 Non-conforming Structures</i> , to extend an existing non-conforming use and structure. The petitioner is proposing to expand the existing building to accommodate a total of three (3) dwelling units, first floor commercial space and associated on-site parking.
Applicant	<b>107 North Street LLC</b>
Location	<b>107 NORTH STREET (Map 26, Lot 345)(B-1, ECOD)</b>

Attorney Kristin Kolick- Serafini, Darling and Correnti-63 Federal Street Salem, MA – Presents the petition. Tom Mayo- Architect and Michael Becker, Developer.

This property is to Tobin TV building. The site is located in the business neighborhood district (B-1) and Entrance Corridor Overlay District. The petitioner is proposing to extend an existing non-conforming structure and use. The petitioner is request two (2) special permits including a special permit to extend and existing non-conforming structure and a special permit to extend a non-conforming use. The property has an existing first floor commercial use and a residential unit above. In the B-1 Zoning District, residential uses above a first floor commercial use is not allowed by right in this zoning district.

The petitioner is proposing two (2) new townhouse style units in the rear of the building. The petitioner is also proposing three (3) new parking spaces including one (1) rear surface parking space and two (2) interior garage parking spaces. The building is non-conforming as to the front yard, side yard and rear yard setback. The footprint of the existing building will remain the same. The petitioner is proposing new dormers along both sides and change the existing roofline. The petitioner intends to keep the neighborhood business use. The petitioner is also proposing to repair and renovate the building including the front façade. There are rear stairs that will be removed and the petitioner is also proposing to install a handicapped ramp for the public to access the first floor retail space.

The proposal to expand the non-conforming structure and use is not more detrimental than the existing structure and use to the neighborhood. The petitioner intends to build two (2) townhouse style units on the second and third floor with garage parking. The new parking will serve the new residential units and the two (2) new residential units are not expected to have significant traffic impacts. This property is not unusual in terms of the combination of uses, setbacks and architectural style. There are also other properties along North Street that have dormers similar to the dormers that the petitioner is proposing. The improvements to the property will have positive fiscal impacts to the City as the petitioner is adding residential units and also maintain first floor commercial space.

Chair Curran confirms that the petitioner is not proposing to change the footprint of the building. Does the property naturally slope to the back of the property?

Tom Mayo- Architect Ipswich, MA- Currently the slope of the driveway pitches down to the back and under the rear portion of the building is a basement. The petitioner is proposing to cut into the side of the existing basement and lower the grade in this area by approximately 15" inches to make the garage work with the existing slope. The proposed garage will be under the existing building where the basement is now.

Chair Curran- And you think that the maneuvering area is sufficient to access the garage parking?

Mr. Mayo- The garage portion of this is more than 20ft.

Chair Curran- Okay. The area to back out is twelve 12' feet.

Mr. Mayo- That is to the property line. The adjacent parcel is paved. Part of the existing driveway is on their property.

Chair Curran- Is there an easement to use it?

Mr. Mayo- No, but we don't need it.

Mr. St. Pierre- Is there a right of way to the rear property?

Attorney Kolick- Yes. There is an eight (8') foot right of way that burdens this property and benefits the rear property.

Chair Curran- Okay. There are a total of five (5) parking spaces and there are a total of three (3) residential units and one first floor commercial space?

Attorney Kolick- Yes.

Chair Curran- So you have less than the required parking?

Attorney Kolick- We felt that the parking was grandfathered for the existing commercial and residential use and we have provided three (3) new parking spaces for the two (2) proposed new dwelling units to meet the requirements.

Chair Curran- I think the Board has been pretty consistent. Not adding residential units without the required parking. I know that the parking is grandfathered, but now that you are touching the building and all units, I don't think that this grandfathered parking status applies. I would think that

there would need to be one and a half per dwelling unit and whatever is needed for the commercial unit. Did you look at doing two (2) residential dwelling units?

Attorney Kolick- The proposal right now is three (3) units. We feel that this is the best proposal because it maintains the first floor commercial space and allows the renovation of the building.

Chair Curran- States that the Board has to find that the proposal is less detrimental to the neighborhood than the existing structure. The proposal is going from a situation that has enough parking to one that does not have enough parking. But we can hear from other Board members and the public.

Mr. Watkins- There are five (5) on- site parking spaces with three (3) residential units.

Mr. St. Pierre- States that his interpretation of the zoning ordinance for parking is that the petitioner needs to provide parking spaces for the new residential dwelling units proposed and the parking requirements for the existing first floor commercial space are grandfathered.

Chair Curran- My interpretation is that once the petitioner touches the building and adds to the building that they need to meet the parking requirements. This would be true for any new use. In this case this building is being substantially increased.

Mr. Duffy- Looking at the parking spaces right now. There are two (2) existing parking spaces. The petitioner is proposing the addition of two (2) dwelling units, the zoning ordinance requires 1.5 parking spaces per dwelling unit and the petitioner is providing an additional three (3) parking spaces. There is not a net change. This is how I see it.

Chair Curran- I don't see it that way. I think it makes the project more detrimental to the neighborhood.

Mr. Copelas- I don't see any chart of existing versus proposed dimensions. Clearly lot area per dwelling unit is changing substantially. What is the density requirement?

Attorney Kolick- States that the B-1 Zoning District does not have a maximum lot area per dwelling unit requirement.

Mr. Tsitsinos- How big is the commercial space?

Mr. Mayo- It is about 2,000 square feet right now and the petitioner is proposing to decrease the commercial square footage by about 1,000 square feet to accommodate a new rear dwelling unit.

Chair Curran- Confirms with the petitioner that the proposal is to touch the first floor commercial retail space and is proposing to reduce the square footage by about half.

Mr. Watkins- Could you talk about the proposed dimensions and bedroom count of the residential dwelling units?

Attorney Kolick- The two (2) townhouse style residential units that are on the second and third floor...

Mr. Becker- Developer- The second and third floor townhouse style units are three (3) bedrooms and the first floor rear is a two (2) bedroom unit.

Mr. Copelas- Expresses concern about the proposed turning radius and space proposed for the proposed parking spaces. Specifically, the third outside parking space. How does this car get out?

Mr. Mayo- This is the site plan that you have. Currently this space and the right-of-way are paved. The person may have to make two (2) tries to get out of the parking space, but I've done it. There is space and it can be done.

Mr. Copelas- Can it be done without going over the property line.

Mr. Mayo- The driver will have to utilize the right-of-way.

Mr. St.Pierre- There is actually two (2) more feet of hot-top that is not on their property. It is all paved back there. The abutter has not taken advantage of all of their property.

Mr. Mayo- The far (2) two parking spaces that are shown on the plan are where there are currently parking spaces. The surface parking space that is closest to the building is the proposed new surface parking space as well as the two (2) interior garage spaces.

Ms. Schaeffer- Could you speak to the existing and proposed height of the rear of the building? What is the existing and proposed massing?

Mr. Mayo- There is an extension of the ridgeline that will go back to the back of the building. What we are proposing is infilling the two flat roofed areas with our new residential area. The ridgeline of the front gable is 26.5 feet. The petitioner is proposing to increase the height of the rear ridge line to 28.5 feet.

Chair Curran- From the back of the garage from the highest point to the ground, what is the height?

Mr. Mayo- That is 33 feet 2 inches from the mean height from the front of the building.

Chair Curran- From the very bottom, garage floor rear to the top of the building, what is the height?

Mr. Mayo- The ground does slope down there. It is approximately 37 feet. The level at the front is a little higher than the back.

Attorney Kolick- We use the build height measurement as set forth in the Zoning Ordinance.

Chair Curran- Right. I am also trying to get a sense of the massing of the proposed building with this information.

Mr. Mayo- Shows a rear elevation to the Board. Drawing A-3.

Chair Curran- What is in back of this property?

Mr. Mayo- Basically a junkyard.

Mr. St.Pierre- That we are currently dealing with.

Ms. Schaeffer- I noticed that the current building has second story windows that are all the same height from the front to the rear of the building. From the drawings, it appears that the proposed second story window heights will no longer be aligned with the existing window openings.

Mr. Mayo- Is proposing to raise the floor line and window heights. The front windows and rear windows will no longer be aligned. The front windows will remain the same. The air conditioning unit in the front façade opening will also be removed and replaced with a window.

Attorney Kolick- Presents a petition to the Board for the record in support of the project.

Chair Curran- Reads the letter and petition into the record in support of the project.

Aaron Udy, 8 Buffum Street - Does the driveway also connect to the junkyard? What is happening to the junkyard? Is the junk yard owned by a separate owner? Will the junkyard have any negative impact on the ability of these residential units to sell?

Mr. Becker- The junk yard is owned by someone else and it's possible.

Mr. St. Pierre- The junk yard property is currently the subject of enforcement and we are addressing this as we speak.

Mr. Udy- Speaks in support of the proposal. The trees in the neighborhood cover up the building most of the year and has very little impact on his property. However, the junk yard has quite a bit of impact year round.

No one else in the assembly wished to speak.

Chair Curran- What is the proposed exterior material?

Mike Becker- Developer- The exterior material is currently vinyl. We have not picked an exterior material at this time. The rear grade will be the same as it is now just that this will drop a little bit here in front of the garage door. To my recollection at another ZBA meeting, Tom St. Pierre said, “I always rule consistently relative to the existing parking existing units and parking needed for new units.” I recall that specific statement.

Mr. St. Pierre- I made that statement tonight.

Mr. Becker- “I may be wrong, but I’ll be consistently wrong.”

Chair Curran- Yes. That is his determination. We are trying to determine whether this proposal is less detrimental to the existing neighborhood.

Mr. Becker- Also there is an existing ADA ramp for the first floor commercial use, which there isn’t one now. That is all.

Beth Gerard- Ward 6 Councillor - I have only heard from one abutter about this project and all concerns have been addressed. Councilor Gerard speaks in favor of the petition including the preservation of the commercial space.

Mr. Becker- I did speak to all of the neighbors and abutters in approval of the project.

**Motion and Vote: Mr. Duffy makes a motion to approve a Special permit per *Sec. 3.3.2 Non-conforming Structures*, to extend an existing non-conforming use and structure. The petitioner is proposing to expand the existing building to accommodate a total of three (3) dwelling units, first floor commercial space and associated on-site parking. The motion is seconded by Mr. Watkins. The vote was unanimous with four (4) in favor and one (1) opposed. (Chair – opposed) Motion carries.**

Project	A public hearing for a petition special permit per <i>Sec. 3.1.2 Table of Uses</i> , to allow the conversion of a historic carriage house to a dwelling unit.
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Applicant	<b>PARTNER HOMES, LLC</b>
Location	<b>6 LINDEN STREET (Map 33 Lot 308)(R-2 Zoning District)</b>

Attorney Bill Quinn and Dan Ricciarelli of Seger Architects, were present to discuss the project.

Atty. Quinn presents the petition. The petitioner is proposing to convert an existing historic carriage house into a dwelling unit. A map from 1897 presented a map that indicates that the structure meets the definition of a historic carriage house as defined by the Salem Zoning Ordinance. The building has an upper hay bale window as well and other barn features. The petitioner is also proposing to renovate the existing three (3) family home and the carriage house unit would be a fourth (4<sup>th</sup>) unit on the property. The petitioner is not proposing any expansion or structural changes to the front

house. The petitioner submitted a site plan showing the location of six (6) proposed parking spaces as required by the Zoning Ordinance. There are no other changes.

Dan Ricciarelli – Seger Architects- There are minor exterior changes to the carriage house. There are no changes to the footprint. The solid doors will be changed to glass. The hay bale doors will be changed to windows and the building will be refurbished and painted similar to the house.

Mr. Wakins – Will the garage doors be staying?

Mr. Ricciarelli- The garage doors will stay and be inoperable. There will be first floor living space behind the doors.

Chair Curran- States that the petitioner has clearly presented evidence that the building meets the definition of a historic carriage house as defined in the Salem Zoning Ordinance. Patti Kelleher, staff planner of the Historic Commission, has provided staff comments for your consideration.

Chair Curran- Reads comments from staff memo including encouraging the preservation of six over six wooden windows or replacement with a new double glazed wooden window; encourage the location of the new door to be centered between the wall and corner of the building. Encourage that the architectural detail of the main structure be restored and retained.

Attorney Quinn- The petitioner intends to comply with these suggestions.

Chair Curran opens public comment.

Deborah Shafer, 7 Linden Street – Speaks in support of the proposal.

No one else in the assembly wished to speak.

Chair Curran closes public comment.

**Motion and Vote: Mr. Duffy makes a motion to approve a special permit per *Sec. 3.1.2 Table of Uses*, to allow the conversion of a historic carriage house to a dwelling unit. The motion is seconded by Mr. Watkins. The vote was unanimous with five (5) in favor and none (0) opposed.**

Project	A public hearing for a petition special permit per <i>Sec. 3.3.3 Non-Conforming Single and Two Family Structures</i> , to reconstruct and enlarge a single family structure.
Applicant	<b>JASPER PROPERTIES SERVICES, LLC</b>
Location	<b>31 JUNIPER AVE. (Map 44 Lot 062)(R-1 Zoning District)</b>



Atty. Bill Quinn of Tinti, Quinn, Grover, & Frey, presented the project. 31 Juniper Avenue looks just like it did when I grew up there. This property backs right up to Juniper Playground. The lots were all 20 x 40 feet wide. The petitioner is proposing to demolish the existing structure and construct a larger year round single family home. The plot plan shows that the proposed new house will be a small extension of the existing footprint and will cover most of the lot and keep the existing side yard. Around the house there is a fence that goes beyond the property lines. This is City of Salem property that has been fenced off from the playground for more than 60 years. The fence runs all the way down the back of these properties. City property has been used by the neighborhoods for their backyards forever. We are not proposing to build anything new on that property, but will continue to cut the grass back there. This is not part of the proposal, but this petitioner and several other property owners are planning to petition the City to acquire this property between the fence and existing property lines. Again, this is not part of this proposal and the petitioner is not planning to construct on City land.

The proposed expansion of the footprint is to accommodate an addition that includes a two (2) car garage. This will provide off-street parking spaces for the first time for this property and will be a positive to the neighborhood. The building is technically going from a two and half to three story structure, but still within the height restrictions in number of feet. The proposed house sits a half story above grade to accommodate the garage and meet flood elevation requirements. The petitioner is proposing a three (3) bedroom single family home.

Dan Ricciarelli- Seger Architects- presents the petition. As stated this is three (3) bedroom single family home. We are currently maintaining where the first floor starts because there are FEMA requirements to respect here. The porch is similar and in the same location as it was before. The petitioner met with the Salem Historic Commission and has approved the project as proposed. The petitioner plans to keep working with the Historic Commission to continue to make improvements to small details in the design. The design is basically upside down living. There is an office space on the first floor, living room and kitchen on the second floor and third bedroom, and master suite and second bedroom on the third floor. The petitioner is proposing two (2) decks looking out toward the water. The decks will not be constructed past the footprint of the existing house. The petitioner is proposing a gambrel roof and shingle style. The change in roof style increases the height of the structure by 6-7 feet and allows for more interior headroom.

Mr. Watkins- What is the proposed exterior material?

Dan Ricciarelli- We are looking at shakes, wooden shingles to be in keeping with the historic cottage style.

Chair Curran- So the house is just twenty (20) feet wide?

Dan Ricciarelli- Yes.

Chair Curran- I am asking because the fenestration on the east side looks good, but its within three (3) feet of the property line. Do they need to be fire rated?

Dan Ricciarelli- We will have to look at the code.

Chair Curran- The reason that I ask that is that I would hate to see that going away and to see a big mass.

Dan Ricciarelli- Tom what is your sense on the three feet?

Mr. St. Pierre- The way that we have handled this in the past, is a variance from the building code appeals board and the grounds for the variance is that there is a park there and will never be another building there. The reason for this space requirement is to make sure that a fire will not jump from one building to another, but there will never be a building behind this one.

Dan Ricciarelli- My understanding is if the façade is on a public way it can be allowed.

Chair Curran- To Tom St. Pierre, you think it will be a fairly straight forward variance to get?

Mr. St. Pierre- Yes.

Chair Curran- The curbcut is 19.7 feet wide. Any questions for Board members?

Ms. Schaeffer- I have a comment on design to make sure that your window placement and size are consistent.

Mr. Ricciarelli- Point taken. These drawings are still concept plans.

Lindsay Iannaccone 23 Juniper Ave- Speaks in opposition to the petition due to concerns about the height of the proposed structure.

Kelly Barrett, 35 Juniper Ave. – Speaks in opposition to the petition due to concerns about the height and size of the proposed structure. It will be beautiful. However, looking at the Zoning it looks like 2 ½ stories is what is allowed. How can three stories be accepted?

Attorney Quinn- There is a special provision in the Salem Zoning Ordinance that allows petitioner to come before the Zoning Board of Appeals to request a special permit to enlarge an existing non-conforming structure as to height, setbacks, and volume, lot coverage. The City does not require variances for dimensional changes for single and two-family houses. Instead, the Zoning Ordinance gives discretion to this Board.

Ms. Barrett- Confirms that you will need a special permit to go from 2 ½ to three (3) stories.

Chair Curran- Right, because we are the Board of Appeals so we can vary the ordinance by special permit.

Ms. Barrett- Asks questions about what is considered a half or full story. Is a gambrel roof considered a half a story or full story.

Mr. St. Pierre- The definition of a story in Salem is anything over two (2) feet wall perpendicular to a gabled end. A gabled end is often three stories or better, but if the walls that are perpendicular to it are two (2) feet it will become another story. That is why people come in for relief for dormers. The special permit request before the Board covers this request.

Ms. Barrett- Do you know of any other three (3) story houses on this street?

Mr. St. Pierre- I personally don't know, but if you go around the Willows neighborhood, if there are any dormers on the third floor that have been added, they would have had to have a special permit or a variance or have a grandfathered dimension.

Mr. Ricciarelli- There is quite a few three story houses in the neighborhood, including the house on the corner.

Ms. Curran- Confirms that the petition is extending the currently existing footprint by seventeen (17) feet.

Dale Hanson- Applicant- The proposed setback by Lindsay's property appears to be three (3) feet, but in reality, it is about 5.5 feet because there is a sliver of City property behind this parcel with a fence.

Chair Curran- The plot plan shows that there is an existing stockade fence. Is that staying? Is that owned by the City?

Mr. Hanson- I don't know who owns that fence It extends between the two properties.

Nancy Tracer, 22 Juniper Ave. – Speaks in opposition to the petition with the same concerns that the structure will dwarf the other existing homes in the neighborhood.

Chair Curran- The property is a very narrow lot and there are FEMA flood elevation requirements that require the building to be located at least two (2) feet above grade. On the first floor, the petitioner is proposing a garage and a foyer. Three (3) bedrooms.

Mr. St. Pierre – A comment for the Board, going forward in the Willows and a few other places in Salem, with the new flood maps, you will see similar petitions because the first floor spaces really cannot be used for living spaces due to the flood hazard. So you will see garages and people requesting taller buildings. I am not for or against this petition, just stating that you will see more petitions that are similar to this one.

Chair Curran- You said there are three bedrooms, but I only see two (2).

Mr. Hanson- The office on the first floor could potentially be a bedroom.

Ms. Barrett- Are you saying that the flood zone doesn't allow bedrooms on the first floor?

Mr. St. Pierre- Maybe.

Chair Curran- You can't have habitable space depending on the flood elevation.

Mr. Hanson- The first floor of the structure will be four and a half feet above grade to conform with the flood elevation requirements.

Ms. Barrett- Are you going to be living there or renting it?

Mr. Hanson- Live there.

Chair Curran- We don't limit occupancy anymore.

Ms. Schaeffer- States that petition is also subject to Planning Board review for a flood hazard overlay district special permit and the Salem Conservation Commission.

No one else in the assembly wished to speak.

Chair Curran closes public comment.

**Motion and Vote: Mr. Duffy makes a motion to approve a special permit per *Sec. 3.3.3 Non-Conforming Single and Two Family Structures*, to reconstruct and enlarge a single family structure. The motion is seconded by Mr. Watkins. The vote was unanimous with five (5) in favor and none (0) opposed.**

## **OLD/NEW BUSINESS**

### **Salem Zoning ZBA of Appeals Fees Discussion**

The Zoning Board of Appeals currently charges a \$75.00 flat fee to apply to the Board. If a petitioner is proposing additional new dwelling units, the Board charges a fee of \$50.00 for each additional dwelling unit. Salem's Board fees are the lowest in the region.

Schaeffer- Some communities have a tiered system of fees depending on the request, while other communities have a flat fee. I would like to do more research on tiered fee structures.

Below is a comparative of costs for Zoning Board of Appeal applications for adjacent municipalities:

### **City of Beverly**

Special Permit or Variance= \$150.00

Administrative Appeal = \$200.00

### **Town of Swampscott**

#### **Residential**

Up to three (3) dwellings = \$400.00

Four (4) or more dwelling units = \$400.00 + \$50/per dwelling unit

#### **Commercial**

First 1,000 square feet proposed Gross Floor Area = \$400.00

Each additional 1,000 square feet proposed Gross Floor Area (or portion thereof) = \$50.00

### **Town of Danvers**

Residential One and Two Family = \$150.00

Multifamily & Commercial = \$250.00

Comprehensive Permits = \$0 for housing authority to \$2,000 +

Modification of Decision = \$250.00

### **Peabody**

Flat Fee \$100

### **Marblehead**

Flat Fee \$100

### **City of Lynn**

Variance Application Fee

Minimum Side/Back Yard Encroachment

- 1-3 Family Residential Dwelling \$150.00
- Commercial/All Others \$350.00
- Minimum Lot Area Variance
- 1-3 Family Residential Dwelling \$300.00
- Commercial/All Others \$500.00
- Non-conforming Building/Use \$250.00
- Subdivide Lots (per Lot subdivided) \$1000.00
- Additional Dwelling Unit (per Unit added) \$1000.00
- Waiver Off-Street Parking (per Space to be waived)
- 1 & 2 Family Residential Dwelling \$50.00
- Commercial/All Others \$350.00

Board discussion- Board fees need to relate the cost of an application. A tiered fee structure makes sense including charging a little less for smaller projects versus bigger project because the process costs less typically. Mr. Watkins- By typically, do you mean the costs associated with mailing abutters? Chair Curran- No that stays the same. It's Erin's professional time. The professional costs of coordinating with applicants and professional staff support to the Board. Schaeffer- The suggestion to the Board is to raise Board fees to cover the cost of abutter mailings, Board packet mailings, and some professional staff support time. Chair Curran- Run this by Beth Rennard. Tom

St. Pierre- The Board fee has been \$75.00 for over 25 years. Schaeffer- What I presented to you in this packet is data from the last three (3) years that show that the Board fee is not covering the cost of abutters' notices and postage. The Board fees could also include revenue generation for Board and staff training and the cost of Board mailings and packets. Mr. Copelas- Would like to suggest that the Board fees are miniscule compared to all of the other costs that are experienced by an applicant. If we were to go to \$125.00, compared to the overall cost of a project, the Board fee is simply not the difference between \$75.00 and \$125.00. This is a very small fee. If we are substantially underpriced compared to abutting municipalities, I do not understand why we should not consider raising our fee to \$125.00 as opposed to \$100.00.

Schaeffer- Is the Board interested in having me conduct more research and look into a tiered fee structure versus a flat fee? We want to make sure that the fee structure is connected to the costs of an application and also equitable across development types. Board requests more information on tiered fee structures. Mr. St Pierre- Suggests aligning the ZBA fee structure with the building code tiering structure.

Schaeffer- Still working on application changes.

**Mr. Watkins informed the Board that this will be his final meeting with the ZBA as he has taken a new position with the City of Salem.**

## **MEETING MINUTES**

**Motion and Vote: Mr. Copelas makes a motion to approve the October 18, 2017 minutes as presented. Seconded by Mr. Duffy. The vote was unanimous with five (5) in favor and none (0) opposed.**

## **ADJOURNMENT**

**Motion and Vote: Chair Curran made a motion to adjourn the December 20, 2017 regular meeting of the Salem ZBA of Appeals, seconded by Mr. Duffy, and the vote was unanimous with five (5) in favor and none (0) opposed.**

**The meeting ends at 9:05PM.**

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

*[http://saalem.com/Pages/SalemMA\\_ZoningAppealsMin/](http://saalem.com/Pages/SalemMA_ZoningAppealsMin/)*

Respectfully submitted,  
Erin Schaeffer, Staff Planner