

City of Salem Zoning Board of Appeals
Meeting Minutes
November 16, 2022

A regular meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, November 16, 2022 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.

Vice Chair Peter Copelas calls the meeting to order at 6:30 pm as acting Chair.

Acting 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.

Vice Chair Copelas explains the meeting could be a long one, and asks that each petitioner limit their presentation and questions to 45 minutes. If no decision is made after that time, he states that the petition will be continued to a future date.

ROLL CALL

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

REGULAR AGENDA

- Location: **13 Mall Street (Map 35, Lot 133) (R2 Zoning District)**
- Applicant: **Matthew Formica**
- Project: A public hearing for all persons interested in the petition of MATTHEW FORMICA at 13 MALL STREET (Map 35, Lot 133) (R2 Zoning District) for a Special Permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance to construct a dormer addition that will bring the total amount of stories to three (3). In the R2 district, the maximum height is two and a half (2.5) stories.

Documents and Exhibitions

- Application date-stamped September 20, 2022 and supporting documentation

Acting Chair Copelas introduces the petition.

Sanir Lutfija introduces himself on behalf of the petitioners, Matthew and Sue Formica, who he states are also present. Mr. Lutfija explains the request is for a special permit to add a dormer to an existing 2.5 story home. He presents the site plan, as well as front and side elevations, along with photos of the existing property. Mr. Lutfija indicates the petitioners have lived in Salem for a few years, but have had limited use of the existing bedroom because of low ceiling height. The plan is to add a shed dormer on the north elevation. Mr. Lutfija states the intent is to keep the changes as

minimal as possible, and that the proposed dormer will have three windows, as well as siding and trim that match the existing materials.

Mr. Coplas clarifies that there is one existing dormer, and that this proposal is for a second dormer on the opposite side. Mr. Lutfija confirms that is correct. Mr. Lutfija presents floor plans and discusses some of the roof details.

Mr. Copelas indicates the relief being sought is minimal, and states he has no other questions.

Acting Chair Copelas opens the floor to public comment.

Kerry Murphy of 10.5 Mall street introduces herself and states she lives across the street. Ms. Murphy expresses support for the project, indicating she likes the design and does not think it will be a dramatic change. She explains she would like her neighbors to be able to improve their home and stay in the neighborhood.

Mr. Copelas states there was also a letter submitted from John and Nadine Stillings at 15 Mall Street expressing support. Mr. Copelas discusses the special permit criteria and findings.

Motion and Vote: Ms. Vyedini motions to approve the petition of MATTHEW FORMICA at 13 MALL STREET (Map 35, Lot 133) (R2 Zoning District) for a Special Permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance to construct a dormer addition that will bring the total amount of stories to three (3), subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
10. All construction shall be done per the plans and dimension submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.
11. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

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

Location: **21 Flint Street (Map 25, Lot 197) (R2 Zoning District)**

Applicant: **David Kaytes**

Project: A public hearing for all persons interested in the petition of DAVID KAYTES at 21 FLINT STREET (Map 25, Lot 197) (R2 Zoning District) for a Special Permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance to demolish a deck and construct a new 10' x 8' one story addition. The required setback is 10'. The proposed addition will be 7.6' feet in the setback.

Documents and Exhibitions

- Application date-stamped September 15, 2022 and supporting documentation

Vice Chair Copelas introduces the petition.

Geordie (David) Kaytes introduces himself and explains the he would like to demolish his existing deck and create a slightly smaller footprint addition that will be eight by ten feet. Mr. Kaytes presents plans showing existing and proposed conditions. The addition will be used as a mud room off the back of the home. He next presents elevations, and provides additional details regarding the addition.

Mr. Copelas notes that because the footprint of the addition is smaller, the setback will actually increase, which is a good thing. He notes the petition is straight forward, and that the project is modest but nice.

Vice Chair Copelas opens the floor to public comment.

Jeff Bellin of 396 Essex Street introduces himself and asks if this will be going before the Historic Commission as well. Mr. Kaytes explains that the proposal was approved by the Historic Commission three months ago.

Motion and Vote: Ms. Ordaz motions to approve the petition of DAVID KAYTES at 21 FLINT STREET (Map 25, Lot 197) (R2 Zoning District) for a Special Permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance to demolish a deck and construct a new 10' x 8' one story addition, where the proposed addition will be 7.6' feet in the setback, subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.

5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

Ms. McClain seconds the motion. **The vote is five (5) in favor (Peter Copelas, Steven Smally, Rosa Ordaz, Carly McClain, and Nina Vyedín) and none (0) opposed . The motion passes.**

Location: **44 Hanson Street (Map 15, Lot 256) (R1 Zoning District)**

Applicant: **Steven Mahar**

Project: A public hearing for all persons interested in the petition of STEVEN MAHAR at 44 HANSON STREET (Map 15, Lot 256) (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 construct a kitchen addition that will be 4' X 11'. The house already is nonconforming with a front yard setback of eight (8) feet. The addition will be within that eight (8) foot setback.

Documents and Exhibitions

- Application date-stamped October 3, 2022 and supporting documentation

Acting Chair Copelas introduces the petition.

Kellie Sacco, property owner, introduces herself and indicates she recently found out that Steven Mahar left Mother Construction and that he will not be joining us tonight.

Erin Hayes, Senior Project Manager at Mother Construction states she will be representing on behalf of Steven and the applicant if that is okay with the Board. Mr. Copelas states it is fine as long as she is familiar with the project.

Ms. Hayes presents a site plan and explains that the existing home is nonconforming, noting that the stairs in front are 8.1 feet from the property line, where a 15 foot setback is required. The other setbacks on the sides are 13 feet. Ms. Hayes explains the proposed addition, stating Ms. Sacco would like to construct a kitchen addition as the existing kitchen is very small and she works there often since the pandemic. Ms. Hays presents floor plans and proposed conditions.

Mr. Copelas asks if there is more to the application and submission. Ms. Hayes states there are only layout drawings, and that they did not want to complete architectural drawings unless the special permit was approved. Mr. Copelas states he is concerned because the Board normally sees images, photos of existing conditions, and renderings of new additions. He also notes that the Board is

accustomed to having plot plans with a table including all existing setbacks, requirements, and proposed new setbacks. Ms. Hays states she can pull those documents up.

Ms. Ordaz notes the application indicates the request is for a variance rather than a special permit, and that the advertisement is for a special permit. Mr. Copelas clarifies the mistake was on the application.

Ms. Sacco presents additional plans, and explains the proposal to bump out the existing front point of entry. Mr. Copelas notes that while the request is modest, normal more information is presented. He states he will leave it to the rest of the Board to determine whether they would like to see a more complete application, or if given the nature of the request feel comfortable going forward.

Ms. McClain indicates she is comfortable proceeding, and the Board continues to review the petition and discuss the potential for additional special conditions to confirm verbal representations as a street view of the property is shown.

Mr. Copelas asks if the windows that will be covered up by the proposal will be replicated. Ms. Sacco states they will, and Ms. Hayes clarifies that the existing windows will actually be reused.

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

Mr. Copelas notes that any motion should include the special conditions for verbal representations regarding the setback and windows.

Motion and Vote: Ms. McClain motions to approve the petition of STEVEN MAHAR at 44 HANSON STREET (Map 15, Lot 256) (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 construct a kitchen addition that will be 4' X 11', subject to the follow standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Inspection is to be obtained.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
9. All construction shall be done per the plans and dimension submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the

Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

10. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

And the following special conditions:

1. The addition shall be within the eight foot setback and shall not be more not conforming than the existing nonconforming setback.
2. The layout of the windows on the addition will not change from the current configuration.

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

Location: **1-3 East Collins Street (Map 36, Lot 277) (R1 Zoning District)**

Applicant: **Scott Truhart**

Project: A public hearing for all persons interested in the petition of SCOTT TRUHART at 4 EAST COLLINS STREET (Map 36, Lot 277) (R1 Zoning District) to appeal the issuance of a building permit at 1-3 EAST COLLINS STREET (Map 36, Lot 425).

Documents and Exhibitions

- Application date-stamped October 17, 2022 and supporting documentation

Acting Chair Copelas introduces the petition, and notes there are many accompanying materials. Mr. Copelas suggests that Mr. St. Pierre at some point provide his opinion and basis for granting the petition after the petitioner presents.

Scott Truhart of 4 East Collins Street introduces himself and states he has filed an appeal because he believes the building commissioner erred or exceeded his authority by issuing the permit in question. Mr. Truhart contends that numerous R1 dimensional requirements are not met based on plans, and that he had thought the original petition would have come before the Zoning Board of Appeals. Mr. Truhart states the applicant claims the Dover Amendment allows for exemptions from zoning in the form of actual use, but does not give up review for central variances and other considerations. Mr. Truhart states this is clearly established in case laws surrounding Dover projects. Mr. Truhart asks that the Board rescind the issued permit number B22592, and have the applicant come before the Board to consider the variances, which he suggests are large requests, such as the exceeding height by 30 to 40 percent, including a full additional story, and those regarding side setbacks. Mr. Truhart contends the Board was side-stepped in error by Mr. St. Pierre.

Mr. St. Pierre suggests hearing from the developer or their counsel, and also notes that the decision was not made in a vacuum. He states the decision was made in consultation with the City's legal department.

Attorney Benjamin Fierro introduces himself on behalf of the developer, and states he has served on the Ipswich zoning board of appeals for 18 years. He suggests he is familiar with the Board's work and the type of issues that come before the Board. Mr. Fierro echoes Mr. St. Pierre's remarks that the decision was not made in a vacuum, but after substantial conversations and meetings with the legal department, building department, and mayor's office. Mr. Fierro explains that the property in question is not a methadone clinic, but rather a residential treatment program, with a license issued by the Department of Mental Health Licensing. He explains that it will be a short term detox program for individuals in recovery seeking sobriety, with stays ranging from five to 14 days. Individuals are put through a program of education, counseling, and other services to help them deal with the issues that led them to their disease. Mr. Fierro states that further treatment is provided only when prescribed, and that this is primarily an educational facility run by health providers. He indicates the Board was provided with materials detailing the program. The materials substantiate the programmatic and educational elements, and Mr. Fierro states the building commissioner and other city officials were satisfied that the use was primarily education. He adds that he met with planning and city staff, including the Board of Health, Engineering Department, and others, all of which provided feedback. Mr. Fierro explains that the building commissioner issued a letter on June 14, 2022 determining that the use qualified as an exempt use under the Dover Amendment, and would not be subject to public hearing, finding it exempt as a matter of state law. He contends that Dover uses may be subject to reasonable regulation of height, bulk, setback, and other elements, but that the key word here is "may," with precedent supporting such decisions being unchallenged. Mr. Fierro indicates the plans show the proposed building will be on a smaller footprint than the previous structure, and that it will comply with front, rear, and right setbacks. The left setback was previously nonconforming, and will still not meet the minimum requirement. He maintains the City and commissioner granted reasonable accommodations pursuant to ADA and the Dover Amendment. Mr. Fierro states that all issues have been addressed by the City and determined to be reasonable accommodations under Dover and federal anti-discrimination laws. Mr. Fierro provides some of the project history, including site plan review and discussion of flood plain district requirements. He notes that the letters of approval were issued in March 2020, but because of the pandemic all plans were delayed for a while, but that they are finally able to move forward. He also notes that the Department of Public Health issued a letter of determination of eligibility to operate the facility, but will not be not granting the final the license until they can show compliance with all other requirements under Department of Public Health regulations and a final building inspection.

Mr. Copelas asks Mr. Fierro to discuss the Fair Housing Act and ADA, and how the project is relying on those to not require ZBA review, despite the use being clearly allowed through the Dover Amendment.

Mr. Fierro indicates the Rehabilitation Act, Fair Housing Act, and ADA offer legal protections for individuals that are handicapped or disabled, which include individuals in recovery from addiction, who are entitled to relief, housing, and treatment within their community. The project submitted requests for reasonable accommodation waivers, and in the past courts have found that Title II of the ADA includes relief from local land use regulations such as zoning regulations, particularly if necessary to enable the services and housing to be provided. The City agreed this was appropriate, according to Mr. Fierro, based on the facts and existing case law.

Ms. McClain asks how the blanket relief from all zoning is tied directly to the building of a temporary center for individuals dealing with addiction. Mr. Fierro indicates the nexus has to be tied

to the ability to provide housing or the service, and whether there exists an undue burden. Mr. Fierro states the program/project does not impose a burden on Salem, but rather be a benefit. He adds that the building is designed to not look like an office or medical building, but more like a small apartment building. There will be no signage in front, and entrance for staff and clients is in the rear. Mr. Fierro notes that someone walking down the street would not see this as anything other than housing. He adds that the space for sleeping, counseling, and other services area all dictated by the Department of Public Health, and that the interior had to be designed to comply with all requirements.

Mr. Copelas asks about flood plain issues and how the building does or does not comply with what would be required. Mr. Fierro explains that the petition came before the conservation commission and that they issued an order of conditions. Abutters appealed the decision, and DEP sustained the decisions of the conservation commission. He states a Chapter 91 license was received through the state, with requirements set forth in the zoning ordinance for flood plains. The project addresses the issue of 100 year floods per DEP and other regulations, but other provisions of the flood plain were waived by the City pursuant to the determination of reasonable accommodations. Mr. St. Pierre also notes the site is being elevated to comply with building codes regarding flood plains. Mr. Fierro notes the property was a social club before, and that the proposed use will not have the same level of noise or people coming and going as before.

Mr. Copelas asks Mr. Fierro to speak to why coming before the Zoning Board of Appeals would have been an undue burden. Mr. Fierro states that the notion of undue burden is applicable to federal statutes, and that the petitioner and City both agreed that as a non-profit educational entity, the services and activities are exempt under a matter of law. He adds that the ordinance provides that in all zoning districts uses which qualify under Dover are permitted uses, and thereby exempt like any other permitted use. Mr. Fierro asks that the decision be upheld.

Ms. Ordaz asks if Mr. Fierro can speak to some of the other businesses in the area that would not fall under Dover. Mr. Fierro says he is unsure off the top of his head.

Acting Chair Copelas opens the floor to public comment.

Steve Kapanias of 23 Wysteria Street introduces himself and states that there is no disagreement here that an educational use is an allowed use. Mr. Kapanias suggests that case law is specific that exemptions provided are not absolute, and that the ZBA may enforce ordinances with respect to things like height, setback, and other elements. He notes that the building is in excess of 50 feet and that the nonconforming setback is not even close to the requirement. Mr. Kapanias contends the burden remains with the applicant to prove that such regulations are unreasonable, and that in this case the ZBA has not been granted the ability to review the project in a proper manner, setting dangerous precedent. Mr. Kapanias insists that any future Dover project would never have to come before the Board and could bypass the process by making plans with City officials. Mr. Kapanias argues it is not difficult to come before the Board and as for variances as a part of public review.

PJ Yasi of 13 Planter Street introduces himself, stating he just purchased his home in November. Mr. Yasi states he is not up to date on the procedural history and just became aware of this project a week ago. Mr. Yasi states he does not think this type of facility should be approved, claiming it is not the appropriate venue. Mr. Yasi suggests that while Mr. Fierro insists this is not a methadone

clinic, that the description matches that of such a clinic. Mr. Yasi states he would like his opinion and name to be on the record as opposed. Mr. Yasi expresses additional concerns, including concerns about there being a social club component to the project. Mr. Copelas clarifies that the social club was the previous use, and that Mr. Yasi may be misunderstanding as there are no current plans for a social club. Mr. Yasi asks if the issue is just about expanding beyond height and dimensional requirements. He next states that there should not be exceptions just to allow more people into the facility, suggesting the project is an undue burden on the community. Mr. Yasi also notes that this is in the Collins Cove area, near pickle ball courts and areas where children play.

Mr. Copelas asks if the petitioner has any further comment.

Mr. Truhart suggests the Board should be insulted that plans were not brought before them to make their own determination. Mr. Truhart asks that the Board rescind the permit and take whatever action they feel is needed.

Ms. McClain states that it seems appropriate for the City legal department and planning board to make this judgment in consultation with other departments. Mr. Copelas agrees, noting that the city solicitor and building commissioner had various consultations. Ms. Ordaz agrees.

Mr. Fierro clarifies again that this is not a methadone clinic, which are outpatient facilities. Rather, this is a residential facility where clients are not being treated with methadone unless it is indicated as necessary by a doctor. Regarding the left setback, Mr. Fierro notes the building was designed to accommodate the fire departments request for adequate room for fire fighting needs.

Mr. Yasi states he is behind and trying to get caught up on the matter, and again suggests that this will be a methadone clinic. He reiterates that he would like his statements and opposition on the record.

Charles (no last name provided) of 5 East Collins Street introduces himself as a direct abutter, and states this is a gross misuse of Dover and zoning regulations. Charles states he is a contractor by trade and has dealt with building departments and zoning boards since he was 16 years old. He suggests that putting something like this in the corner of a quiet residential neighborhood is disgusting, and contends the Board should be ashamed of what they are allowing to happen. He states that someone needs to stand up and stop this, and that he would be against this in any neighborhood, not just as a direct abutter. He suggests that the City will come to regret this decision.

Acting Chair Copelas closes the public portion of the meeting.

Motion and Vote: Ms. McClain motions to approve the petition of SCOTT TRUHART at 4 EAST COLLINS STREET (Map 36, Lot 277) (R1 Zoning District) to appeal the issuance of a building permit at 1-3 EAST COLLINS STREET (Map 36, Lot 425).

Ms. Ordaz seconds the motion. **The vote is none (0) in favor and five (5) opposed (Peter Copelas, Rosa Ordaz, Nina Vyedin, Rosa Ordaz and Steven Smalley). The motion is denied.**

Location: **15 Fairfield Street (Map 34, Lot 35) (R2 Zoning District)**

Applicant: **Sheila Connelly and Ping Yip**

Project: A public hearing for all persons interested in the petition of SHEILA CONNELLY and PING YIP at 15 FAIRFIELD STREET (Map 34, Lot 35) (R2 Zoning District) for a Special Permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance to demolish an existing unheated porch and to construct a fourteen foot by eleven foot (14 X 11) heated porch. Petitioner also wishes to construct a second-floor addition above the proposed new porch.

Documents and Exhibitions

- Application date-stamped October 20, 2022 and supporting documentation

Acting Chair Copelas introduces the petition.

Sheila Connelly introduces herself and presents a map and overhead view of her home in South Salem. The home was purchased in 2013, and she states the plan is to live in Salem long term. Ms. Connelly explains that the proposal is to replace the existing first floor porch and add a second floor above the replaced porch. She presents slides detailing the proposal, and states that the existing porch was built in the 1950's and currently has no electricity, a leaking roof, and crumbling rotten wood. Therefore the porch will be demolished and replaced. Ms. Connelly next presents elevations showing current and proposed conditions. The replacement addition will be enclosed and function as a mudroom with a staircase leading to the garden. She notes the back wall will be flush with the rest of the house. On the second floor, Ms. Connelly explains the addition will house a master bathroom connected to the existing bedroom. Ms. Connelly also provides a statement of grounds, and notes the addition will add 300 square feet.

Mr. Copelas notes the proposal is characterized in a curious way a porch with a second floor addition, while the actual project is to tear down the porch and replace it with a two story addition. He also notes that the footprint is technically changing, albeit minimally. He asks about the current project status. Ms. Connelly indicates the old porch was demolished, and they are looking for approval to continue.

Ms. Vyedín asks if trees will be impacted by any construction, and the petitioners indicate they will not.

Acting Chair Copelas opens the floor to public comment, but there is none. Mr. Copelas indicates the Board received a letter from Ward 5 Councilor Jeff Cohen in support of the application.

Motion and Vote: Ms. Vyedín motions to approve the petition of SHEILA CONNELLY and PING YIP at 15 FAIRFIELD STREET (Map 34, Lot 35) (R2 Zoning District) for a Special Permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance to demolish an existing unheated porch and to construct a fourteen foot by eleven foot (14 X 11) heated

porch, and to construct a second-floor addition above the proposed new porch, subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Inspection is to be obtained.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
9. All construction shall be done per the plans and dimension submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.
10. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

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

Location: **99 Broadway (Map 32, Lot 125) (R2 Zoning District)**

Applicant: **99 Broadway LLC**

Project: A public hearing for all persons interested in the petition of BROADWAY LLC at 99 BROADWAY (Map 32, Lot 125) (R2 Zoning District) for a Special Permit per Section 3.3.3 Nonconforming Structures and 3.3.7 Reconstruction After Catastrophe of the Salem Zoning Ordinance to reconstruct, alter and enlarge the previous structure by adding two (2) third floor dormers and rear porches to each floor. By adding the dormers, the building will be three (3) stories, where two and a half (2 ½) are allowed.

Documents and Exhibitions

- Application date-stamped October 25, 2022 and supporting documentation

Acting Chair Copelas introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the petitioner, and states the proposal is based on an interesting provision of zoning bylaws that allows the rebuilding of a structure that was destroyed or after a catastrophe, as long as it is completed within two years. Mr. Quinn describes the pre-existing building at 99 Broadway as 2.5 stories and 38 foot tall, built in the 1800's. The property contained three condo units, and a year and a half ago a dramatic fire on the third floor damaged the property. He discusses the extent of the fire damage, and how the building has since been vacant. The third floor was ordered to be demolished and the remaining units were deemed non-occupiable. Mr. Quinn indicates the three condo owners had to go to court to get instructions as to how to dispose of the building and divide any sale proceeds in the process. Mr. Quinn states his client was not involved, but that the land court decision ordered the property to be sold, and his client purchased it with the intent of restoring its three-family use. The proposal is to build at the same height or slightly less, with one unit on each of the three floors. There is no proposed expansion of the footprint aside from a rear porch added to each unit. Mr. Quinn explains his client is seeking a special permit to add dormers on each side of the third floor so that the space can be more livable and the project more economically viable. He presents pictures of the existing structure prior to the fire, pointing out the legal nonconforming use. Section 3.3.7 allows for the reconstruction of a building damaged in catastrophe, with any proposed changes such as dormers requiring a special permit, which is what is being sought. Mr. Quinn explains that the parking for three units is preexisting and grandfathered, with space for five cars with some parked tandem, and a garage that accommodates one car. No relief is needed or being sought for parking.

Sanir Lutfija of Seger Architects introduces himself and presents site plans showing the existing and proposed conditions. He also shows floor plans and photos of the current state of the property. Mr. Lutfija also presents elevations to the Board, and explains that the porch in front is being reduced to add landscaping. He also notes the gambrel roof with dormers, windows and skylights. Mr. Lutfija provides renderings of the proposal.

Mr. Copelas asks about the egresses and fire safety. Mr. Lutfija indicates the building will be fully sprinklered, and so there is one main means of egress with interior stairs.

Mr. Copelas says indicates there is a letter from Ward 5 Councilor Jeff Cohen in support of the proposal, noting the building was damaged that rebuilding it will provide a benefit to the City.

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

Motion and Vote: Ms. McClain motions to approve the petition of BROADWAY LLC at 99 BROADWAY (Map 32, Lot 125) (R2 Zoning District) for a Special Permit per Section 3.3.3 Nonconforming Structures and 3.3.7 Reconstruction After Catastrophe of the Salem Zoning Ordinance to reconstruct, alter and enlarge the previous structure by adding two (2) third floor dormers and rear porches to each floor, subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.

7. A Certificate of Inspection is to be obtained
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
10. All construction shall be done per the plans and dimension submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.
11. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

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

Location: **47 Leavitt Street (Map 34, Lot 163) (R3 Zoning District)**

Applicant: **Jessica D. Martinez, North Shore Community Development Coalition**

Project: A public hearing for all persons interested in the petition of JESSICA MARTINEZ at 47 LEAVITT STREET (Map 34, Lot 163) (R3 Zoning District) to amend the decision of a comprehensive permit. The amendment is to remove the automated parking arm at the garage entrance on Naumkeag Street as required by condition 4c in the comprehensive permit. The audiovisual alarm system would remain.

Documents and Exhibitions

- Application date-stamped October 24, 2022 and supporting documentation

Acting Chair Copelas introduces the petition.

Ms. Martinez introduces herself as project manager of the North Shore CDC, a nonprofit housing developer in the Point neighborhood. Ms. Martinez describes the lighthouses project as two separate buildings being build together at 47 Leavitt Street. She presents maps and photos of the property. Ms. Martinez notes that as part of Section 40B, they are required to install a project mitigation plan and parking arm in front of the garage, and shows elevations. She explains that in her organizations experience, the parking arms are redundant, and since this project is more residential, they are asking that the requirement be removed. Ms. Martinez presents photos of the street and parking entrance. She notes that a similar development in Gloucester had the parking arm broken several times and had to be removed. There will still be an audio visual system in place, and

Ms. Martinez states they are also open to other traffic calming mitigation measures if the Board determines the audio visual and alarm system is insufficient.

Jonathan Lavash of 4 Daniel Street Court introduces himself as one of the owner's representatives. He states there is no security reason to have the parking arms, and that they are much more about mitigating danger to pedestrians. Mr. Lavash suggests the audio visual alarm coupled with a speed bump should be adequate and present less of a maintenance nuisance.

Mr. Copelas asks how many entrances and exits there are for the parking area. Ms. Martinez states there are two entrances. Ms. Martinez describes the alarm and flashing lights and how they are ADA compliant. She also notes the potential for adding mirrors or a speed table. Ms. Martinez also indicates the area is not pedestrian-intense.

Ms. Ordaz asks if the units will be primarily studio and one bedroom, and Ms. Martinez states that is correct. Ms. Ordaz asks if there is room in the budget for traffic calming measures if they are deemed necessary, and Ms. Martinez states there is.

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

Motion and Vote: Ms. Ordaz motions to approve the petition of JESSICA MARTINEZ at 47 LEAVITT STREET (Map 34, Lot 163) (R3 Zoning District) to amend the decision of a comprehensive permit to remove the automated parking arm at the garage entrance on Naumkeag Street as required by condition 4c in the comprehensive permit where the audiovisual alarm system would remain, subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
3. A Certificate of Inspection is to be obtained
4. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

And the following special conditions:

1. A speed bump and mirror are to replace the parking arm.
2. Audio visual alarm systems are to remain.
3. All original conditions other than 4C will remain in place.

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

Location: **57 Memorial Drive (Map 42, Lot 12) (R1 Zoning District)**

Applicant: **Justin Mattera**

Project: A public hearing for all persons interested in the petition of JUSTIN MATTERA at 57 MEMORIAL DRIVE (Map 42, Lot 12) (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 expand the existing second floor and to construct an addition to one side. In addition, the front porch will be enclosed. A new porch, deck and pool will be constructed. The building does not conform to the thirty (30) foot rear setback.

Documents and Exhibitions

- Application date-stamped October 26, 2022 and supporting documentation

Chair Copelas introduces the petition.

Attorney Scott Grover introduces himself on behalf of the petitioner, and explains the proposal is to enlarge the existing home as the petitioner lives there with his children. The building is a small structure, and the proposed design is meant to accommodate the needs of the petitioner's growing family. Mr. Grover indicates the plan is to expand the second story of the building and construct a new addition on one side. The front porch will be enclosed and a new porch is to be created, with a deck and a pool. The current setback of 18 feet will be reduced to five feet, and Mr. Grover indicates this is the only increase in nonconformity. Mr. Grover argues that the proposed enlargement is not substantially more detrimental to the neighborhood than the existing reasons, and will allow the family to continue to reside in Salem. He describes a similar addition at 59 Memorial Drive approved by the Board, and states the proposal is consistent with the neighborhood characteristics. Mr. Grover explains that the petitioner spoke to neighbors, who mostly had positive feedback and provided some letters in support.

Project architect Stephen Livermore introduces himself and presents designs for the improvements and enlargement. He also presents a side plan, showing existing and proposed conditions. Mr. Livermore next presents floor plans and elevations.

Mr. Copelas asks if there are presently curb cuts for the garage entrance from Memorial Drive. Mr. Grover indicates there are not currently, but there will be, somewhere around 20 feet. Mr. Copelas asks if there is relief required for the curb cut. Mr. St. Pierre indicates that a 20 foot curb cut is allowed by right, but that the other existing curb cut will need to be closed of. Mr. Grover confirms.

Mr. Copelas notes the house is certainly small by modern standards, and states the request is understandable and seems reasonable. He notes there are three letters in support of the proposal.

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

Motion and Vote: Ms. Ordaz motions to approve the petition of JUSTIN MATTERA at 57 MEMORIAL DRIVE (Map 42, Lot 12) (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 expand the existing second floor and to construct an addition to one side, enclose the front porch, and construct a new porch, deck and pool, subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.

2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
7. All construction shall be done per the plans and dimension submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.
8. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

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

MEETING MINUTES

August 17, 2022

Acting Chair Copelas states he reviewed and did not have any edits.

Motion and Vote: Ms. McClain motions to approve the minutes from the August 17, 2022 meeting of the Zoning Board of Appeals as drafted. Ms. Ordaz seconds the motion. **The vote is five (5) in favor and none (0) opposed. The motion passes.**

September 14, 2022

Acting Chair Copelas notes most of the meeting was spend discussing the comprehensive permit.

Motion and Vote: Mr. McClain motions to approve the minutes from the September 14, 2022 meeting of the Zoning Board of Appeals as drafted. Ms. Ordaz seconds the motion. **The vote is five (5) in favor and none (0) opposed. The motion passes.**

September 21, 2022

Chair Copelas notes this was for a second meeting in September. There were no proposed edits.

Motion and Vote: Mr. Smalley motions to approve the minutes from the September 21, 2022 meeting of the Zoning Board of Appeals as drafted. Mr. Copelas seconds the motion. **The vote is five (5) in favor and none (0) opposed. The motion passes.**

October 19, 2022

Approval tabled to next meeting.

October 24, 2022

Approval tabled to next meeting.

OLD/NEW BUSINESS

9 Franklin Street Extension Request

Acting Chair Copelas presents the petition.

Attorney Scott Grover introduces himself on behalf of the petitioner and explains that the Board granted variances for this petition in May 2021. Following the granting of relief, the planning board and others took a year to get to their final decisions, and so Mr. Grover explains that the architectural and building plans have only recently started but are underway. The current request is for a six month extension to May, 2023.

Motion and Vote: Ms. Ordaz motions to approve the request for a six (6) month extension for 9 Franklin Street. Ms. McClain seconds the motion. **The vote is five (5) in favor and none (0) opposed. The motion passes.**

16, 18, 20R Franklin Street Extension Request

Acting Chair Copelas introduces the petition.

Attorney Joe Correnti introduces himself on behalf of the petitioner, Juniper Point. Mr. Correnti explains that the project is ongoing and continuing through the state permitting process. As this is a waterfront property, he indicates they are working with DEP, MEPA, and others, as well as a Chapter 91 license group. Mr. Correnti maintains that the requested six month extension is needed to keep years of work intact. The extension would be to June 3, 2023.

Motion and Vote: Ms. Ordaz motions to approve the request for a six (6) month extension for 16, 18, 20R Franklin Street as requested. Ms. McClain seconds the motion. **The vote is five (5) in favor and none (0) opposed. The motion passes.**

Board Discussion of Election and Function of Officers

Acting Chair Copelas explains that Chair Duffy departed, and the Board must move forward in finding a new Chair. He states that he is happy to support the role and take on as acting chair in the interim, but that he is reluctant to take on the role fully. The Board discusses the matter, and other members indicate they think Mr. Copelas is more than qualified to be Chair. The Board continues to discuss, and agrees to not act yet, but to table the discussion to the next meeting in December.

ADJOURNMENT

Motion and Vote: Ms. McClain motions to adjourn the meeting. Ms. Vyedin seconds the motion. **The vote is all in favor. The motion passes.**

The meeting ends at 9:46 PM on November 16, 2022.

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-2022>

Respectfully submitted,
Daniel Laroe, Staff Planner