

City of Salem Board of Appeals

Meeting Minutes

Wednesday, June 15, 2016

A meeting of the Salem Board of Appeals ("Salem BOA") was held on Wednesday, June 15, 2016 in the third floor conference room at 120 Washington Street, Salem, Massachusetts at 6:30 p.m.

Ms. Curran (Chair) calls the meeting to order at 6:30 pm.

ROLL CALL

Those present were: Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, Jimmy Tsitsinos, Jim Hacker (alternate), and Paul Viccica (alternate). Also in attendance Tom St. Pierre - Building Commissioner, Erin Schaeffer - Staff Planner, and Colleen Anderson – Recorder.

REGULAR AGENDA

Project	A continuation of a public hearing for a petition seeking a Special Permit per Sec. 3.3.5 <i>Nonconforming Single and Two-Family Residential Structures</i> to allow the petitioner to expand the existing nonconforming structure.
Applicant	NORMAN & MARGARET ROBERTS
Location	2 ROSEDALE AVE (Map 31 Lot 264)(R1 Zoning District)

Documents and Exhibitions

- Application dated April 26, 2016 and supporting documentation

Attorney Scott Grover, representing Norman & Margaret Roberts, property owners - present the petition. Heather Deschenes, architect, was also present. Attorney Grover stated that the plans show the garage on the left and a sunroom on the right. The original proposal was for a two story addition over the garage and an enlargement of the sunroom. The abutter on the garage side expressed concerns regarding the scale of the addition and its proximity to the property line, and that was the cause of the continuation. The abutters concerns have been addressed in the revised the plans. The two (2) story addition at the garage is now a one (1) story addition, further away from the property line. The original addition was within five (5) feet of the property line and the revised plans have the addition an additional three (3) feet away. The sunroom enlargement remains the same. The applicant seeks a special permit because the existing structure doesn't conform to zoning setback requirements, of ten (10) feet and the existing sunroom structure is at 9.7 feet. The existing garage is 11.6 feet from the property line and the addition would be 8 feet. A relief is requested for both additions. Mr. & Mrs. Roberts have circulated a petition in the neighborhood and their neighbors are in support of the project.

Ms. Curran - asked if the garage was being eliminated. Attorney Grover – replied yes. In place of the garage will be a one story addition with a basement. The purpose of the addition is to provide additional living space.

Mr. Curran - asked how many square feet were being added at the garage. Attorney Grover replied that the site coverage is going from 16% to 18%, well within the 30% coverage limit.

Mr. Copelas - asked if the existing garage was on a slab and if the new addition would have a full basement. Attorney Grover and Deschenes replied yes.

Mr. Copelas - asked if the deck shown on the plans was existing or new. Deschenes replied yes.

Ms. Deschenes – stated that the existing garage is 245 square feet will now be a 403 square foot addition. The sunroom is currently 171 square feet and will increase to 254 square feet.

Chair Curran opens public comment.

William Panzini, 3 Riverway Road. Abutting neighbor on garage side, is in favor of the revised plans that will no longer block their view of the street. Wants to make sure that this will not and will never be a two family home.

Chair Curran - asked if this structure will remain a single family home and if another kitchen was being added. Attorney Grover replied no.

Chair Curran closes public comment.

Chair Curran – stated that the non-conformities are not more detrimental to the neighborhood given the existing non-conformities, applauds the efforts to include address the reservations of the neighbor, and is in favor of the project.

Mr Watkins – Echoes the Chairs comments, appreciates the applicant reaching out to the neighborhood and including the feedback of the direct abutter, and is in favor of the project.

Chair Curran – asked if the driveway was being increased now that the garage was being eliminated. Attorney Grover replied that the driveway is staying the same and currently allow two cars to park both side by side and tandem, and the existing garage has never been used for parking.

Mr. St. Pierre – suggests addition the condition that the building remains a single family.

Motion and Vote: Mr. Duffy makes a motion to approve the petition seeking a Special Permit per Sec. 3.3.5 *Nonconforming Single and Two-Family Residential Structures* to allow the petitioner to expand the existing nonconforming structure. All Standard Conditions apply, in addition to Condition 1 – That the home is and will remain a single family. The motion is seconded by Mr. Watkins. The vote was unanimous with

five (5) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, and Jimmy Tsitsinos in favor and none (0) opposed.

Project	A public hearing for a petition seeking a Variance per Sec. 5.1.5 <i>Off-Street Parking Design</i> of the Salem Zoning Ordinance to allow a 10' wide curb cut.
Applicant	CHRISTOPHER INGERSOLL
Location	76 ENDICOTT STREET (Map 25 Lot 453)(R2 Zoning District)

Documents and Exhibitions

- Application dated April 26, 2016 and supporting documentation

Christopher Ingersoll of 76 Endicott Street – stated that he lives at the condominium at 76-78 Endicott Street. The property has an existing 14 foot curb cut for 76 Endicott Street and the Variance request is for a curb cut for 78 Endicott Street.

Chair Curran – stated that in September the Building Commissioner denied the application, which the applicant appealed, and the Board upheld the BC's ruling because a Variance was needed by the ZBA. The two family is unique because its on a corner lot and the applicant constructed the parking spot on the property without seeking ZBA approval. The parking spot has been placed close to the intersection and to a tree.

Chair Curran asked if the parking spot could have been placed on the Hathorne Street. Ingersoll replied that the curb cut is adjacent to the tree but further away from the intersection so it wouldn't need to be removed. Chair Curran replied that driveways typically should be 20 feet from intersections for safety concerns. Ingersoll replied that it could have been placed there but it would have been just as close to the intersection.

Schaeffer stated that the Planning Board reached out to the police department to ensure that it was safe to do a curb cut on this part of the property. Lt. Prosniewski replied that the driveway would be considered safe as long as no one parks on the public sidewalk within 20 feet of the corner of the public street. It would be okay to pass over the sidewalk from the street to the driveway.

Chair Curran – stated that the state law requires that you cannot park within 20 feet of an intersection and this case falls within that, and the police department does not have an issue with it. Schaeffer replied correct.

Schaeffer stated that Ron Malioneck, of Public Works, made a statement regarding the tree by e-mail. A substantial portion of the roots of the tree have been damaged by the pavers the applicant installed. It is anticipated that the tree will need to be removed and that requires a public hearing of the Tree Commission. The Tree Commission could require the replacement of that tree or the planting of multiple trees.

Mr. Ingersoll – stated that he has spoken to Ron Malionek and has offered to plant 3 or 4 trees in that area depending on the decision of the Tree Commission.

Mr. Watkins – asked if the curb cut could be 6 feet wide. Mr. St. Pierre replied that 6' is too narrow for a car.

Chair Curran opens public comment.

Mr. Steve Lovely, 14 Storey Street and Ward 3 Councilor. He was involved with this issue last fall, there are several quirks in the zoning by-laws that he hopes to change to make the by-laws clearer as they relate to modern times. He is in favor of the petition.

Maggie Brobeck, 76 Endicott Street, Unit 1. In favor of this petition. In regard to the curb cut being located on the side of the house, Hawthorne Street would be the more dangerous option because despite the two stop signs vehicles do not stop, whereas vehicles coming down Endicott Street must stop because they are approaching a T intersection. The safer location is a driveway on the Endicott Street. The applicant has also been a long time resident and tax payer, and parking in the area has become an issue over time due to Airbnb rentals which result in residents being displaced.

Chair Curran closes public comment.

Chair Curran – stated that the Police find it safe, it is a unique situation because it is a 2 family, the lot is too narrow for shared resident parking, the special conditions and circumstance that effect the land and building generally do not affect other lands, buildings, and structures in the district applies in this situation. Hardship hasn't been completely articulated but the police say it will not create a traffic safety problem. It is not within 20 feet of the intersection and it does not eliminate a parking space which would be detrimental to the neighborhood. The Tree Commission will make the determination on the existing tree.

Mr. Duffy – stated that he is not in favor of this request or the procedural history of this project. The applicant appealed the decision, was denied, but went forward with the project and is now asking to for forgiveness rather than permission. This request has merit but should have been brought to the ZBA first to request a Variance. Chair Curran replied that the applicant is requesting approval for the continued existence of this parking spot. The manner in which this was done is not respectful of the process.

Chair Curran – asked if the applicant consider installing a fence. Mr. Ingersoll replied that there are zoning requirements for fence as well.

Motion and Vote: Mr. Duffy makes a motion to approve the petition seeking a Variance per Sec. 5.1.5 Off-Street Parking Design of the Salem Zoning Ordinance to allow a 10' wide curb cut. All Standard Conditions apply, in addition to Condition 1 – Approval from all Board under the jurisdiction, Condition 2 - the curb cut shall be 10 feet wide, and Condition 3 – The applicant comply with the decision of the Tree Warden and his Board. The motion is seconded by Mr. Watkins. The vote was

unanimous with five (5) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, and Jimmy Tsitsinos,) in favor and none (0) opposed.

Project	A public hearing for a petition seeking a Special Permit per Sec. 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance, to allow a change from one non-conforming use to another non-conforming use.
Applicant	RICHARD JAGOLTA
Location	107 FEDERAL STREET (Map 26 Lot 531)(R2 Zoning District)

Richard Jagolta, 107 Federal Street, was present to discuss the project. The structure is a 3 unit building at the intersection of Federal and Beckford Streets, both built and presently a mixed-use building. In 1880 it was a grocery store owned by John Chandler and there were 2 residential units on the two floors above. In the last 20 years this location has proven unsuccessful for numerous businesses. The previous own hadn't paid condo fees and the unit has fallen into a state of disrepair – rot, window damage, openings covered over by plywood, etc. The historic door had been replaced by an aluminum storefront door with an A/C unit above it and a jalousie window was added to the side of the building. The proposal is to convert the first floor unit into a residential condominium, rent it, and move from his Chestnut Street residence and into this unit in a few years. The aluminum entry and A/C unit will be replaced by a historically appropriate entry, a French style window with a panel below will be added to the Beckford façade, and will match the existing entry to the second and third floor units. Three parking spaces are deeded to this unit – two tandem spaces to the right of the building and one space on Beckford Street. When zoning went into effect in 1965 the structure was already a 3 family. At the time of purchase Jagolta paid the back condo association fees to begin the building maintenance process. Neighbors, abutters, and the above unit owners, are in favor of this project.

Dan Ricciarelli of Seger Architects stated that the Historic Commission unanimously approved the proposed project. The existing space is wide open with a bathroom and kitchenette. The proposal is to add two bedrooms, a faux door on Beckford Street that will actually be windows with a panel below to mimic the original door, and adding a window in the back alley. Replacing jalousie windows with double hung and adding a couple new windows on the Beckford Street façade. No additions are proposed for this property.

Mr. Viccica – asked that the 3 deeded parking spaces be identified on the plan. Mr. Jagolta replied that to there is a three car wide driveway to the right of the building on Federal Street, with tandem spaces for each unit and a third single space on the Beckford Street side for the first floor unit.

Chair Curran – Noted letter submitted from the Historic Commission, Rick & Cynthia Johnson of 13 River Street, Christopher Sala 22 Beckford Street, Mary Hartfelder, Betsy Burns, Dan Ricciarelli, Crystal Johnson, Caroline Cox, Bob Ouelette, Peggy & Tim Dodger, Lee Hanola, Alexis Ogno, Bob Kendall, Richard Groganarino, Michelle Laroche, Louis Johnson, Ann Knight of 11 River Street, Stan Schwartz, Josh Washburn of 13 River Street, Paul Bunker of 20 Beckford Street, Ian & Caroline Cox of 2 River Street, and Christine

Sullivan, a direct abutter, in support of this project. Daro Ledibisi wrote a letter of opposition and specifically lists the two year term of a special permit. Chair Curran responded that typically if a unit's use had been discontinued for more than two years it loses its non-conforming status but the City of Salem states that a space being vacant does not cause it to lose its non-conforming status. Meg Twohey of 122 Federal Street wrote a letter in opposition.

Chair Curran opens public comment.

Attorney John Carr, 7 River Street. This relief is sought based on 3.2.2 of the zoning ordinances which states that the new non-conforming use is not more detrimental. He represented a number of abutters on an appeal regarding the last special permit granted on this property and one of the issues was that the building's commercial space had extinguished its grandfathered use by it being discontinued for more than 2 years. In March 2016 the City and his clients entered into an agreement, in favor of the plaintiffs, including the determination that the building is an R2. The appeal period ran and the previously grandfathered use has been adjudicated. The special permit granted to Rodney Sinclair had substantial conditions with regards to hours of operation, etc. He is unaware that he has as many parking spaces that have been cited, he is aware of only one to the right of the building. The Essex Superior Court now considers this structure a two family. An existing owner needs to buy the first floor and possibly consolidate the units or a Variance needs to be sought. The proposed plan is inappropriate based on the judgement entered into by the City and his clients.

Jane Arlander, 92 Federal Street. She is one of the appellants on the previously mentioned appeal, she respects the owner and neighbors for not wanting to look at a vacant unit but she is opposed to the ZBA granting a special permit and reverting this building back to a 3 family residence. Communities have successful historic districts because those zoning laws have been upheld. This area needs to remain an R2 zone.

Carol Carr, 7 River Street. Is opposed to this project and potential for this unit being used as an Airbnb type residence, when his actual residence on Chestnut Street is listed on a similar website.

Peter Schozie, 15 1/2 River Street. Is in favor of the project and asked what the real difference was between having a business and two family above versus a three unit building, if there are already 3 spaces. What does it matter if the third space is a business or residence?

Chair Curran closes public comment.

Chair Curran - requested the applicant review the parking spaces again. Mr. Jagolta provided the plot plan that shows the space closest to the building at approximately 11 feet wide and 30 feet deep on Federal Street and behind the building on the Beckford Street side, is an additional space that a neighbor has been using with permission from the unit owners. Chair Curran noted that the tandem parking is pre-existing non-conforming.

Chair Curran - asked Mr. St. Pierre his opinion on the non-conforming status in regards to the City stating that vacancy doesn't negate usage. Mr. St. Pierre replied that this project

should be continued so the opinion of City Solicitor Beth Renard can be obtained. Mr. Sinclair did not show up for the appeal so he believes a decision on the abandonment was not reached at Attorney Carr indicated.

Chair Curran – asked if the applicant would have an issue with a continuance to the July 20th meeting so that the issued could be clarified. Mr. Jagolta replied no.

Mr. Viccica – asked that they provide a scaled site plan indicating the associated curb cuts so the Board can determine how that affects the streetscape.

Mr. Jagolta noted that because this is a commercial unit the spaces in front of the building are 15 minute parking only, and there would no longer be a need for limitation on parking, and those spaces could be opened up to general resident parking.

Motion and Vote: Mr. Duffy makes a motion to continue the vote and discussion until the July 20, 2016 meeting. The motion is seconded by Mr. Copelas. The vote was unanimous in favor and none (0) opposed.

Project	A public hearing for a petition seeking a Special Permit per <i>Sec. 3.3.3 Nonconforming Structures</i> of the Salem Zoning Ordinance to structurally change the existing nonconforming structure.
Applicant	LARRISA LUCAS
Location	15 RIVER STREET (Map 26 Lot 606)(R2 Zoning District)

Larissa Lucas, 15 River Street, was present to discuss the project. She has lived in the home for 8 years and is seeking to expand the non-conforming home, 4 feet x 5 feet, to extend the kitchen. There is a storage shed in the location that will be torn down and the extension will go in its place. It has been approved by the Historic Commission and in May they were granted a building permit and a couple weeks later it was determined that the building did not conform setbacks.

Chair Curran – asked if the lattice shed is what would be torn down and ask if it had a roof. Ms. Lucas replied yes to both. The extension is the same footprint and it is 3.17 feet from the rear property line and 9 feet from the side abutter at 13 River Street, which is within the 10 foot setback requirements.

Chair Curran – asked for a height of the proposed extension. Ms. Lucas replied 8 feet / 1 story. It will square off the existing L shaped kitchen and it is not visible from River because it will be at the back of the house or from Andover Street because of an existing high fence in the backyard, unless you are looking down from a second story.

Chair Curran – noted letter in support of this project. Alexis of 180A Federal Street, Dan Madigan 14 River Street, Caroline Cox of 2 River Street, Keri Roark 6 Andover Street, and Rick & Cindy Johns, direct abutters of 13 River Street.

Chair Curran opens public comment.

Peter Schozie, 15 ½ River Street. Direct abutter, is in favor of this project.

Attorney John Carr - 7 River Street. Noted the free standing shed will no longer be in use and asked if this was a new shed or a kitchen expansion. Chair Curran replied that it is an addition on the house that will be in the area where the shed was. Attorney Carr stated that he is in favor.

Justin Whittier, 10 River Street. Lives diagonally across from applicant, is in favor of the project, they have a need for it, and it will not be less detrimental to the neighborhood.

Jane Arlander, 92 Federal Street. In favor of the project.

Carol Carr, 7 River Street. In favor of the project.

Chair Curran closes public comment.

Motion and Vote: Mr. Duffy makes a motion to approve the petition seeking a Special Permit per Sec. 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance to structurally change the existing nonconforming structure. All Standard Conditions apply. The motion is seconded by Mr. Watkins. The vote was unanimous with five (5) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, and Jimmy Tsitsinos in favor and none (0) opposed.

Project	A public hearing for a petition seeking a Special Permit per 3.1 Principal Uses of the Salem Zoning Ordinance to allow a dwelling unit in a historic carriage house.
Applicant	THOMAS PELLETIER
Location	138 NORTH STREET (Map 27 Lot 272)(R2 Zoning District)

Mr. Copelas announces a potential conflict of interest and recuses himself from participating on this agenda item.

Thomas Pelletier, 128 North Street, was present to discuss the proposed project. Mr. Pelletier stated that 10 years ago the ZBA approved the renovation of the carriage house and he is seeking the same approval.

Chair Curran – asked if the previous Special Permit expired, if the work did not take place, and if there were any changes to the plan. Mr. Pelletier replied yes, and there were no changed.

Chair Curran – stated that there were 5 existing parking spaces and no new ones were added.

Mr. Pelletier stated that the property is a 3 family and he has converted the main house to a 2 family and the carriage house will be a single family, to maintain the 3 family status.

Mr. Watkins – asked if there will be two buildings on the same parcel and what is the second building currently used for. Mr. Pelletier replied yes, storage. Mr. Watkins asked how many bedrooms it will house. Mr. Pelletier replied 2.

Chair Curran opens public comment.

Dean Gantz, 136 North Street. Is a direct abutter, is not opposed to the project was questioned whether the owner will need to go onto his property to access the building. Mr. Pelletier replied that the carriage house lines up with their property line. When the time comes he will ask to access their site and provide blocking to raise the building, but that will only be for a short period of time while the foundation is poured, and any disturbance to your property will be repaired. The fence between the two properties will also be replaced.

Chair Curran – asked if the carriage house is being rebuilt or renovated. Mr. Pelletier replied renovated. The floors will be replaced but the walls will remain, and the footprint will stay the same.

Chair Curran closes public comment.

Mr. St. Pierre – noted that the definition of a historic carriage house is an accessory or out building originally built to house carriages, horses, for use as a barn that has been in existence since 1900. The applicant should commit to the board that this is the case. Mr. Pelletier replied the carriage house has been in place since 1856 and still has horse stalls.

Motion and Vote: Mr. Watkins makes a motion to approve the petition seeking a Special Permit per 3.1 Principal Uses of the Salem Zoning Ordinance to allow a dwelling unit in a historic carriage house. All Standard Conditions apply, in addition to Condition 1 – Exterior finishes shall be in harmony with the existing historic structure, Condition 2 – street numbering from the City of Salem Assessor's Office if needed. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with five (5) (Rebecca Curran (Chair), Tom Watkins, Mike Duffy, Jimmy Tsitsinos, and Paul Viccica in favor and none (0) opposed.

Project	A public hearing for a petition seeking a Variance requesting relief from Sec. 4.1 Table of Dimensional Requirements of the Salem Zoning Ordinance to for minimum depth of front yard and side yard setbacks to allow two (2) 12' side additions and an enclosed front entry.
Applicant	ANNETTE POPP
Location	9 LOCUST STREET (Map 28 Lot 14) (R1 Zoning District)

Annette Popp, 9 Locust Street, Owner and Architect, was present to discuss the project. Ms. Popp stated that she has owned the property since 2003 and would like to construct two 12 long additions on each side and an enclosed front entry. The front setback is at the front of the property and the front addition will be 5 feet into that setback. The house is skewed on the property therefor creating an angled setback on each side of the existing house. The house is within the rear setbacks. The provided elevations and perspective views show the proposed addition. The left addition will accommodate a garage on the left and bedroom above, and on the right living space on the first floor and a workshop and dining area above.

Chair Curran – asked what currently happens at the front façade and if it currently encroaches the setbacks. Ms. Popp replied that there are a landing and steps within the setback but they don't count. Enclosing the landing puts it over the front setback. Mr. Viccica asked if the steps would also be pushed out. Ms. Popp replied yes, to create a new landing.

Mr. Viccica - asked if the right side addition requires a variance. Ms. Popp replies yes, because the site plan shows it at plus or minus 9 feet.

Mr. Viccica - asked if the deck was being enlarged. Mr. Popp replies yes, but it is within the rear setback.

Chair Curran – stated that the additions extend 12 feet out on either side and the survey indicated that the additions were over both setbacks. Ms. Popp replies yes.

Mr. Copelas – noted that there is no statement of hardship for the front enclosed entry addition. Ms. Popp replies that the building could be moved away from the front setback and the vestibule is a desired convenience. Chair Curran stated that a roof could be added to cover the area but it wouldn't create a vestibule.

Mr. Viccica – asked if neighboring houses had similar additions. Mr. Popp replied there is a mixture of varying sizes and some with enclosed entrances.

Chair Curran opens public comment.

Jerry Ryan, 11 Locust Street, right side abutter. Recently purchased the neighboring home, their lots are sister lot. He has concerns with the proposed workshop which would be next to his bedroom, and that the addition would not be a right fit for the neighborhood. He heard about this project through a neighbor and the applicant made no mention of it to him. Ms. Popp replied that the workshop will not be a business it will be for hobbies.

Chair Curran – asked if there is a business ran from the home. Ms. Popp replied no.

Maryanne Zielinski, 20 Bay View Circle. The proposed additions will not fit in with the neighborhood and is not in favor of the proposed workshop.

John Seceddy, 12 Salt Wall Lane, rear abutter. He was unaware of this project, he is not in favor of it, it will be larger than all other homes in the neighborhood, the existing deck is large enough, and the workshop concerns him.

Rich, 7 Locust Street, the left abutter. He was unaware of this project and is opposed to this project, his home is 5 feet away from his property line and her left addition would be approximately 13 feet away from his home which will block light and the view and creates privacy concerns. He found out about this project from her surveyor but Ms. Popp did not fully explain the extend of the proposed addition. He is also concerned with the use of her proposed workshop – possible use of chemicals, traffic, deliveries, etc. and what will that mean for the neighborhood.

Chair Curran closes public comment.

Chair Curran – asked Mr. St. Pierre if reducing the size of the additions by 1 foot on each side and eliminating the front addition, could be done as a matter of right. Mr. St. Pierre replied yes.

Mr. Viccica – asked if the additions are within the lot coverage limits. Ms. Popp replied yes.

Mr. Copelas – stated that the Variance requests are a matter of convenience not hardship. The addition sizes could be reduced by 1 foot and the front addition eliminated. Chair Curran agrees and states that the front addition is cosmetic only and suggests the applicant reconfigure the proposed additions. Mr. Viccica agrees.

Chair Curran – states that 4 Board members need to be in favor of this project in order for it to be approved but she also has the option to withdraw without prejudice and resubmitted. Mr. Viccica noted that if the applicant chooses to move forward with the vote and is denied there is a 2 year bar on applying for a Variance, unless is it is substantially different, or is a continuation. Mr. St. Pierre noted that each addition was advertised so a Board decision on just the front addition could take place at the applicant's request. Mr. Duffy and Mr. Watkins note that no Board member seems to be in favor of the front addition because there is no real case for hardship.

Ms. Popp requests to withdrawal the petition.

Motion and Vote: Mr. Duffy makes a motion to allow the applicant to withdrawal without prejudice. The motion is seconded by Mr. Watkins. The vote was unanimous in favor and none (0) opposed.

Project A public hearing for a petition seeking an Appeal of the Decision of the Building Inspector to contest the interpretation of fence and fence height.

Applicant **JAMES W. LEWIS**

Location **3 LILLIAN ROAD (Map 30 Lot 30)(R1 Zoning District)**

Attorney Stephen Zolotas, with an office at 133 Washington Street, was present to represent James Lewis, 3 Lillian Road. In 2007 the Kelleher's of 19 Chandler Road installed an in-ground pool and raised the grade at their rear property 4 feet, a property line that abuts both 1 & 3 Lillian Road. Plans on file with the City show a 4' high retaining wall with a 6 foot high fence on top of it, creating a 10' high boarder wall on the Chandler Street property and a 15-16 foot high boarder wall at the 3 Lillian Road property. The existing condition was a 6 foot high retaining wall also with a fence on top. The Building Inspector sent a letter in March of 2016 stating that there was no drainage permit pulled for the 4 feet of fill and the City engineer was not notified about the additional fill, which is required if more than 2 feet of fill is being added. The 4 foot high retaining wall was placed to keep the fill from spilling over onto other properties and a Variance would be required for a 10' high fence. Mr. Lewis would like 1) the zoning provisions enforced to reduce the height of the fence and 2) necessary permits to be pulled for the fill to support the pool deck or the retaining wall. In March of 2016 Mr. Lewis had a plot plan done of his property which determined that the wall was 1 foot onto this property. The placement of the wall and fence would have been correctly determined if a Variance had been sought prior to the completion of the work. The Lewis' are open to speaking to the Kelleher's to come to a resolution. This appeal is within the 10 year statute of limitations since no permits were pulled.

Chair Curran – asked if the fence and wall need a Variance. Mr. St. Pierre replied that the work was permitted and this appeal is beyond the 6 year appeal period for permitted work. The City Engineer stated that there was no drainage complaint as part of this appeal he would not require a drainage information.

Mr. Duffy – asked if the possible request for a continuance was to come to resolution with the neighbors without the Boards ruling. Mr. Zolotas replied yes.

Motion and Vote: Mr. Duffy makes a motion to approve the continuation until the July 20, 2016 meeting. The motion is seconded by Mr. Watkins. The vote was unanimous in favor and none (0) opposed.

Sean Kelleher, 19 Chandler Road. The land at 19 Chandler Road is at a higher elevation than 3 Lillian Road, with an 8 foot long retaining wall there the properties meet. There were some voids below an existing fence that caused the land to fall onto the neighboring property, so approximately 2 feet of fill was added to fill in those voids and level off the grade in their backyard at 19 Chandler Road. A 6 foot high fence was added for safety and all neighbors, including the Lewis', were in favor of this fence prior to its construction. After 10 years, the neighbors' concerns with the fence is surprising. A new retaining wall was not constructed. Several rail road ties were added to secure it, as it is holding their land in place.

A retaining wall and fence were already in place when they moved into the home, because of the existing grade changes.

Danielle Kelleher, 19 Chandler Road. This began with a survey done without their knowledge and another neighbor has now installed their own fence with blocks their view of the road when existing their driveway. The original 4 foot high fence was replaced, at their own expense, at Mr. Lewis' request, and a higher fence was installed.

Attorney Zolotas provide a rendering on file with the Building Department shows the fill, a raised grade, 4 foot retaining wall with a 6 foot high fence on top. The existing retaining wall and fence were in compliance with zoning at the time, but the new plan shows a request for drainage plans, a 4 foot high retaining wall, and a substantial area to be filled around the pool that is at least the width of the pool, which is the portion that butts up to Mr. Lewis' property.

Mr. Viccica – stated that they are being asked to either uphold or deny the Inspectional Service Report. The Board needs to be told why they should uphold or deny the report, otherwise request a continuance.

Attorney Zolotas stated that he has one letter from Harry Wagg, dated March 21, 2016, addressed to the Kelleher's stating that if the fill added is greater than 2 feet the City Engineer needs to be notified and a drainage permit needs to be obtained. The project cannot proceed unless a draining permit has been issued. This work required building permits and no permits were pulled. He has another letter dated 35 days later from Mr. St. Pierre stating that there is no issue. There must have been an issue to warrant the first letter from Mr. Wagg and questioned why are there two conflicting letters from the same department. The 6 year statute of limitations for work complete with a permit extends to 10 years if a permit was not pulled, and a permit was not pulled for the retaining wall work.

Mr. St. Pierre spoke with the City Solicitor before writing his letter. Mr. St. Pierre stated the decision they came to was that the fence and wall were part of the pool project, the drainage alteration was missed and not filed which they acknowledged, and therefore the 6 year statute of limitations has run out.

Jim Lewis, 3 Lillian Road. Mr. Lewis asked if the pool project was inspected and wouldn't any structure in association with the pool need to comply with zoning bylaws. Mr. St. Pierre replied yes, by someone in his department, and the City of Salem does not define a ground level patio as not structure requiring inspection. This is a dispute that should be able to be resolved with the neighbors.

Mr. Copelas – asked if the Board was in agreement that boundary dispute is not within their purview and the only item the Board needs to make a ruling on is whether the April 29th letter from the Building Inspector should be upheld. Ms. Schaeffer replied yes.

Mr. Duffy – stated that upholding the letter will not resolve the conflicts between the neighbors and the neighbors should try to resolve all of the disputes amongst themselves. The Board needs to decide if they are acting on the continuance or the appeal? Mr. Duffy and Mr. Copelas agree.

Attorney Zolotas requests a continuance until the September 21st meeting, when the neighbors have returned from vacation.

Motion and Vote: Mr. Duffy makes a motion to amend the approval and extend the continuation until the September 21, 2016 meeting. The motion is seconded by Mr. Watkins. The vote was unanimous in favor and none (0) opposed.

Project	A public hearing for a petition seeking a Special Permit per <i>Sec. 3.3.3 Nonconforming Structures</i> of the Salem Zoning Ordinance to reconstruct a garage.
Applicant	MATTHEW KEANE
Location	414 LAFAYETTE STREET (Map 32 Lot 169) (R1 Zoning District)

Attorney John Keilty, 40 Lowell Street, Peabody, was present to represent Matthew Keane, 414 Lafayette Street. The foreclosure property was purchased in 2013 and Mr. Keane has begun renovations to the property and would like to begin reconstructing the existing garage. Two car garages existing at the neighboring buildings and Mr. Keane would like to construct a 24 foot x 24 foot, 2 car garage, one foot from the rear property line, like the existing garage to not impede the right of way. Both existing and proposed plans were submitted and the proposed will not exceed the height limit of 18 – ½ feet. The rear abutter, and several other neighbors, have been contacted and have no opposition to placing the new garage in the same location.

Chair Curran – stated that the proposed garage should be placed 2 feet away from the property line for maintenance purposes. Attorney Keilty replied that the garage could be reduced in size to 24 feet x 23 feet.

Mr. Copelas – stated that the new roof would be peaked and asked what roof existed previously. Attorney Keilty replied yes, a flat roof that is presently tarped and is in a state of disrepair.

Chair Curran – asked if there will be storage above. Attorney Keilty replied yes and they have no issue accepting a condition stating that there will be no residence in the upper level.

Chair Curran opens public comment.

Fabio Bardini, 416 Lafayette Street. Mr. aordini stated that he spoke to the neighbor and was under the impression that the garage would be fixed, not enlarged and made taller. This is an

R1 zone and questions why the property is a 2 family. This project seems to be encroaching on the lifestyle of the neighborhood. Mr. St. Pierre replied that the applicants 2 family is a pre-existing condition.

Kristin Bardini, 416 Lafayette Street. Ms. Bardini stated that they are the left abutter and the garage is 1 foot from their property line. Ms. Bardini commented on the abundance of noise coming from the property and inquired if it was being turned into a 3 family. Chair Curran replied that the building is and will remain a 2 family. Attorney Keilty stated that the 2nd & 3rd floors are being combined. Mr. Keane replied that there are existing bedrooms on the 3rd floor and no new bedrooms are being added. Chair Curran noted that the garage will not rented out.

Ms. Bardini stated that the original owner was never given permission to change it into a 2 family and asked if R-2's were required to be owner occupied. Chair Curran replied no, owner occupancy is not required. R-2's in an R-1 zoning are either grandfathered or illegal. Attorney Keilty replied that he does not know if a permit was granted for the conversion of a 1 family into a 2 family but it may have preceded zoning.

Fabio Bardini, 416 Lafayette Street. The proposed garage is 2-3 feet from his fence and appears to be a 2 story structure. He is in favor of rebuilding the garage to match is existing but is not in favor of a 2 story garage.

Mr. St. Pierre stated that the drawings indicate a 21' height which is problematic because the ordinance is 18 or 18 – ½ feet on accessory structures.

Chair Curran – asked if the applicant has considered constructing a steeper pitched roof 2 car garage with storage above. Mr. Keane replied that the height was the reason for the Special Permit. The 4/12 pitch created a height of 21.7 feet and a steeper pitch would make it even taller. Attorney Keilty noted that relief can't be sought for the height without a Variance so the roof pitch would need to be lowered to meet the 18 foot height requirement. Mr. Keane replied that constructing a 1 story structure with storage above is acceptable.

Ms. Bardini asked if the construction of a 2 story garage encroaches on the neighbors right of way and if it make the driveway a one way drive. Chair Curran replied no, the structure will not encroach on the right of way.

Sue Moloney, 414 ½ Lafayette Street, direct abutter. Ms. Moloney stated that she shares a driveway with Mr. Keane and wanted to make sure that the right of way would remain unaffected. Mr. St. Pierre replied that you can encroach upon a right of way but not over it.

Attorney John Keilty requested a continuance to the next meeting to redesign and submit revised plans.

Motion and Vote: Mr. Duffy makes a motion continue this discussion at the July 20, 2016 meeting. The motion is seconded by Mr. Watkins. The vote was unanimous in favor and none (0) opposed.

OLD/NEW BUSINESS

NONE

APPROVAL OF MEETING MINUTES

May 18, 2016 meeting minutes were approved as written.

Motion and Vote: Mr. Duffy makes a motion to approve the minutes as written, seconded by Mr. Viccica. The vote was unanimous in favor and none (0) opposed.

OLD/NEW BUSINESS

N/A

ADJOURNMENT

Mr. Viccica motions for adjournment of the June 15, 2016 regular meeting of the Salem Board of Appeals.

Motion and Vote: Mr. Viccica made a motion to adjourn the April 20, 2016 regular meeting of the Salem Board of Appeals, seconded by Mr. Duffy, and the vote is unanimous in favor and none (0) opposed.

The meeting ends at 9:00 PM.

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/

Respectfully submitted,
Erin Schaeffer, Staff Planner