

## City of Salem Board of Appeals

### Meeting Minutes

Wednesday, July 20, 2016

A meeting of the Salem Board of Appeals (“Salem BOA”) was held on Wednesday, April 20, 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, Jimmy Tsitsinos, and Paul Viccica (alternate). Those not present were: Tom Watkins, Mike Duffy, and Jim Hacker. Also in attendance Tom St. Pierre - Building Commissioner, Erin Schaeffer - Staff Planner, and Colleen Anderson – Recorder.

#### **REGULAR AGENDA**

Project                      Continuation of a public hearing for a petition seeking a Special Permit per Sec. 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to reconstruct a garage.

Applicant                **MATTHEW KEANE**

Location                **414 LAFAYETTE STREET (Map 32 Lot 169)(R1 Zoning District)**

#### Documents and Exhibitions

- Letter from the Applicant dated May 24, 2016

Chair Curran – stated that a letter from the Applicant has been received by the Board requesting that the Special Permit application be withdrawn without prejudice.

**Motion and Vote: Mr. Copelas makes a motion to accept the request to withdrawal their petition without prejudice. The motion is seconded by Mr. Viccica. The vote was unanimous with four (4) (Rebecca Curran (Chair), Peter A. Copelas, Jimmy Tsitsinos, and Paul Viccica in favor and none (0) opposed.**

Project                      Continuation of a public hearing for a petition seeking a Special Permit per Sec. 9.4.2 and condition No. 7 of the previously issued decision of the Board of Appeals.

Applicant                **RICHARD JAGOLTA**

Location                **107 FEDERAL STREET (Map 26 Lot 531)(R2 Zoning District)**

## Documents and Exhibitions

- Application dated May 20, 2016 and supporting documentation

Chair Curran – stated that the project was continued from the June 15, 2016 meeting to allow the Board to request a legal opinion from the City Solicitor on whether the non-conforming use had lapsed. The Board also requested additional information from the petitioner to delineate on-site parking.

Richard Jagolta, 107 Federal Street, was present to discuss the project. Mr. Jagolta presented a photograph of the parking spaces for each of the three (3) units showing three (3) existing tandem parking spaces. There is a single space behind the building on the Beckford Street side.

Chair Curran – read the ruling from the City Solicitor regarding the issue of the special permit lapsing as a result of the discontinuance of the business for more than 2 years. The conclusion was no, it did not lapse. The reason for this is that the business was not a pre-existing non-conforming use because it was allowed by special permit. The suggestion was that a new special permit under Sec. 9.4 could be issued and in accordance with one of the conditions of the 2006 Special Permit that stated that any change in use would need to be granted by the ZBA. The Applicant has asked for modification of the application siting the requested relief under Sec. 9.4 of the Salem Zoning Ordinance provided that the new proposed use is less detrimental than the existing use.

Mr. Jagolta – stated that the structure is a three (3) unit building, both built and presently a mixed-use building, since zoning laws went into effect in 1965. One commercial unit is on the first floor and two residential units are on the second and third floors above. The commercial use has not been successful and has met with opposition from the neighbors and resulted in a lawsuit. There are no other commercial units in the Federal Street neighborhood and converting the first floor unit to a residential use is the most sensible. The building has fallen into a state of disrepair because of the lack of a use. The proposed renovation would eliminate the commercial aspects of the unit and restore it to its historical appropriateness.

Mr. Copelas – asked about the special permit and the ruling stating that there is only one (1) parking space for this unit. Chair Curran replied that because the spaces are tandem it is only being considered as one legal space. Mr. St. Pierre confirms this finding – two (2) off street spaces can be provided but only one (1) legal space. Chair Curran noted that it legally has less than the required parking, but that is not changing.

*Chair Curran opens public comment.*

Jane Arlander, 93 Federal Street. Concerned that there was no legal advertisement when the Special Permit was changed. Further, Ms. Arlander asked whether the residential use is approved can the applicant use the space as an Airbnb. Ms. Arlander stated that she still does not support an R3 use in the building. Mr. Jagolta reiterated that this building was R3 before the zoning laws went into effect and has every legal right to stay that way.

Chair Curran replied that the Attorney noted that because it is still a special permit and was advertised as much, it could be done by a modification only. Ms. Schaeffer noted that the Special Permit requested had a higher threshold for the request and under Sec. 9.4 and the modified request is lower than what Sec. 9.3.3 was originally advertised and didn't need to be re-advertised. Chair Curran replied that the ZBA's only concern is the use of the building and not the length of tenancy.

Meg Twohey, 122 Federal Street. Restated her opposition to this project wants to keep the neighborhood R2.

Joyce Wallace, 172 Federal Street. Would like the neighborhood to remain R2 and parking is rare in this area.

Robert Kendall, 95 Federal Street. In support of this project.

Connie Arlander, 91 Federal Street. In opposition of this project and questioned whether the Beckford Street parking space was sold with this unit. Mr. Jagolta replied yes. Ms. Arlander also questions the location of a buffer zone to place snow in the winter to keep the tandem parking.

Rob Leani, 96 Bridge Street. In support of this project. Keeping an empty commercial space would be foolish.

No one else in the public assembly wishes to speak.

*Chair Curran closes public comment.*

Chair Curran – stated that there are three existing units in this building and a resident above cannot be compelled to purchase the lower unit. The Boards concern is the use of that first floor space. Snow removal, etc. is typically discussed with a new development not an existing building. The façade improvements are desirable and the character of the building will be retained.

Mr. Viccica – stated that in terms of traffic flow and safety, residential use will less detrimental than a commercial use, and a residential use will be much more stable use to for the neighborhood. The character will not be changed, there will be some historic restoration to the facade, and no additional square footage will be added. The current vacancy may not be contributing fiscally to the City. Mr. Tsitsinos agrees.

**Motion and Vote: Mr. Viccica makes a motion to grant the petition for a Special Permit per Sec. 9.4.2, alter condition No. 7 of the previously issued decision of the Board of Appeals, and any change in future use shall be require a new Special Permit per Sec. 9.4.2. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with four (4) (Rebecca Curran (Chair), Peter A. Copelas, Jimmy Tsitsinos, and Paul Viccica in favor and none (0) opposed.**

Project	A public hearing for a petition seeking Variances per <i>Sec. 4.1.1 Table of Dimensional Requirements</i> for minimum lot area per dwelling unit; <i>Sec. 8.4.13 Transitional Overlay District</i> of the NRCC to allow less than the required fifty (50') buffer; <i>Sec. 8.2.3.1 Entrance Corridor Overlay District</i> to allow a curb cut that exceeds the maximum curb cut width. A Special Permit per <i>Sec. 5.1.7 Share Parking</i> to permit shared parking where parking usage would not occur simultaneously as directed by the Board.
Applicant	<b>HIGH ROCK BRIDGE STREET LLC.</b>
Location	<b>401 BRIDGE STREET &amp; 44 BOSTON STREET (Map 25 Lot 74; Map 15 Lot 205)(NRCC)</b>

#### Documents and Exhibitions

- Application dated June 28, 2016 and supporting documentation

Attorney Joseph Correnti, 63 Federal Street, representing High Rock Bridge Street LLC. Atty. Correnti introduced David Sweetser, principal of High Rock Development, LLC. Attorney Correnti stated that this project started in 2009 and first came before the ZBA in 2010. In 2010, the petitioner proposed a single building with a first floor condominium unit to serve as the Community Life Center (CLC).

The proposal is now for two (2) buildings on the site. The first building on the corner of Boston and Bridge Street is a mixed use residential building with first floor commercial space and residential units above. The second building along Bridge Street is a separate stand-alone building for the CLC.

The petitioner has had the plan reviewed by the Planning Board for about a year. This plan has been to the Planning Board and Design Review Board. This lot is located within the NRCC district and within a Transitional Overlay District. The plan before the Zoning Board of Appeals has received unanimous votes by the Planning Board and Design Review Board. Two curb cuts are on site, one on Boston Street and one on Bridge Street, both are as far away from the Boston and Bridge Street intersections as possible. The project has been before the Conservation Commission twice, most recently to approve an amended the previously approved plan, which was approved unanimously. This project has also been peer reviewed by the City for Civil Engineering, drainage, and traffic. Three variances and one special permit are currently being requested;

1. Variance for curb cut at Boston Street – The petitioner is proposing two (2) curb cuts on the site, including one on Boston Street and one on Bridge Street. These curb cuts are similar locations of the previously approved project. The locations of the curb cuts are as far away from each other as possible. The ordinance states that for a residential use, which is the primary use of the first building on the corner of Boston and Bridge Street, one curb cut cannot to exceed twenty-four (24') feet. Twenty-four (24') feet is not big enough for this site. The City's peer reviewer requested that the petitioner create a right-in and right-out only entrance along Boston Street via a central island to direct traffic flow in this way.

Further, the expanded curb cut on Boston Street was requested by the Fire Department for easy access into and out of the site. For these reasons, the petitioner is requesting a curb cut of approximately 49 feet along Boston Street.

2. Variance for Buffer Zone – The Transitional Overlay District of the NRCC requires a 50' foot buffer zone to transition from a residential neighborhood to the core of the NRCC. The property abuts the Federal Street properties. The applicant demonstrates where the 50' buffer line is located. All of the landscaping, proposed pedestrian pathway and 83 parking spaces would be lost if the Board literally enforced the 50' foot buffer zone. The topography on the site is such that there is an existing 14' foot wall that separates this site from a portion of Federal Street by the church. Because of the way that this site is shaped and because the NRCC ordinance also requires buildings to be placed on the street edges with parking at the rear of the buildings, this is the only practical layouts that can actually work. To lose 83 parking spaces would be prohibitive to developing this site.
3. Variance for minimum lot area per dwelling unit– The NRCC ordinance requires 3,500 SF of land area per dwelling unit. This site has 117 dwelling units in this four (4) story building. According to zoning requirements only 64 units would be allowed by right. The Planning Board and NRCC approved a special permit to allow a density bonus of twelve units (12), making 76 units as of right allowed for this site.
4. Special Permit: Shared Parking – The Salem Zoning ordinance allows shared parking by special permit from the Zoning Board of Appeals if the Board determines that usage of parking would not occur simultaneously. In the NRCC, the parking requirements are two (2) parking spaces per dwelling unit much to the dismay of the Planning Board. The petitioner has reduced the number of parking spaces from 375 (approved in 2010) to 275 parking spaces and more greenspace. One of the concerns of the Planning Board was to make the site more accessible to pedestrians. In response, a walkway was added through the landscaped area to allow people to walk into the site from Boston Street.

USE	WEEKDAY			WEEKEND	
	Night	Day	Evening	Day	Evening
	Midnight to 7:00 a.m.	7:00 a.m. to 5:00 p.m.	5:00 p.m. to Midnight	6:00 a.m. to 6:00 p.m.	6:00 p.m. to Midnight
Residential	100%	60%	90%	80%	90%
Office/industrial	5%	100%	10%	10%	5%
Commerical retail	5%	80%	90%	100%	70%
Hotel	70%	70%	100%	70%	100%
Restaurant	10%	50%	100%	50%	100%
Restaurant associated with hotel	10%	50%	60%	50%	60%
Entertainment/recreation (theaters, bowling alleys, cocktail lounge and similar)	10%	40%	100%	80%	100%
Day-care facilities	5%	100%	10%	20%	5%
All other	100%	100%	100%	100%	100%

<sup>1</sup> Metropolitan Area Planning Council, Shared Parking, Last Updated February 8, 2010, <http://www.mapc.org/resources/parking-toolkit/strategies-topic/shared-parking/examples-offstreetparking#waltham-sharedparking>

## Parking Demands:

### Residential

	<u>Hours</u>	<u>Spaces Required</u>
Overnight peak	11PM to 7AM	2 for each dwelling unit = <b>234</b>
Off-peak	7AM to 5PM	60% of peak total = <b>140</b>
Evening peak	5PM to 11PM	

### Commercial/Retail

Overnight off-peak	11PM to 7AM	5% = <b>3</b>
Daytime Peak	7AM to 5PM	100% = <b>27</b>

### CLC Building

(No category for municipal buildings therefore it is counted as "other" and 100% of the spaces are required for "other".) The ordinance states 1 space for every 2 employees is required (14 spaces) plus whatever the ZBA determines. The Council on Aging requested 16 spaces plus 12 spaces for seasonal workers.

Overnight off-peak	11PM to 7AM	100% = <b>28</b>
Daytime Peak	7AM to 5PM	100% = <b>75</b>

### Overnight shared parking space totals:

**234** (residences)  
**3** (4,000 SF of commercial/retail space)  
**+ 28** (CLC employees)

265 (required overnight parking)

275 (total spaces provided)

**Daytime shared parking space totals:**

140 (residences)

27 (commercial/retail space)

+ 28 (CLC employees)

195 (spaces occupied ~ 80 remaining spaces for CLC visitors)

Ms. Schaeffer noted that a memo charting the CLC parking requirements and standard shared parking schedule accepted by MAPC and the Commonwealth has been provided to the Board members.

Attorney Correnti demonstrates that the usage of parking for each use on this site would not occur simultaneously.

Chair Curran – asked about the enforcement of the shared parking and if the units were rentals or condominiums. Attorney Correnti replied that parking spaces will not be assigned. The residential units will be for sale as condominiums. Approval of the shared parking special permit will allow a guarantee of one (1) parking space per dwelling unit.

Chair Curran – asked about the number of bedrooms per unit.

Chris Semmelink of TAT, replied there is a mixture of 1, 2, & 3 bedroom units.

Attorney Correnti noted that twelve (12) units will be affordable housing.

Chair Curran – stated that at their last presentation they stated that the increase in the cost was due to the remediation, asked if a Ch. 91 was needed, and asked if certain construction standards needed to be met because of the underlying site.

Attorney Correnti -After 7 years most of that remediation has been completed to allow residential use on the site. The soils and fill tides lands require specialized building techniques. The remediation of the site and building techniques required to build on this filled tideland site are extremely expensive.

Mr. Copelas – asked about two of the Variance requests regarding the minimum lot area and the buffer zone. This zone is driven by the required parking spaces, which is driven by the number of units, and the minimum lot area is also driven by the number of units.

The proposal states that the site would be unfeasible to develop given the brownfield costs, and development costs related to the specialized construction required for this property.

Mr. Copelas- Petitioners in the past have sometimes been asked to provide the justification, in the form of a pro forma to prove financial hardship and in this case to prove the need for 117 units to make this an economically feasible site. Why would that not be required in this case?

Ms. Schaeffer noted that there is no standard for reviewing a pro forma and determining how much of a revenue margin is appropriate. When a pro forma is reviewed it is considered in relation to other aspects of the project.

Chair Curran confirmed and noted that when reviewing a pro forma it's usually the purchase price that drives the project. In this case it is the increased cost per square foot due to the brownfield remediation costs.

Attorney Correnti – stated that he understands the concerns regarding how to judge this project. The density and if it fits when compared to the costs. The CLC used to be a condominium on the first floor and it is now a free standing building being constructed for the same price. Costs are increasing and when looking at the land value and all that is required; buffer zone, Ch. 91, historic tidelands. The structure that could be built without relief makes this project a non-starter. Pro formas are not run on buildings that will not be built. A memo from the former Planner, Lynn Duncan, is in the packet that talks about the proposed density and her thoughts on how it fits.

Ms. Schaeffer – Requested information on how specific and unique conditions of the land require construction that is more expensive when compared to other sites.

Ms. Schaeffer – reads a letter from Lynn Duncan, Salem's former Planning and Community Development Director, dated June 29, 2016.

Ms. Duncan letter stated that she is in support of the petitioner's requests for variances and a special permit for shared parking. Ms. Duncan stated that at approx. 23 units per acre this project would be considered a medium density development and is comparable to other projects in the NRCC that have been approved by the ZBA; 28 Goodhue Street – the ZBA granted 24 units per acre, Riverview Place – the ZBA granted 31 units per acre, & the Grove Street Apartments – the ZBA granted 18 units per acre.

In addition, the Planning Board and NRCC granted a 12 unit affordable unit bonus to this site, which is a goal of the NRCC neighborhood plan. This reduced the extent of the Variance requests to provide 10% affordable units. The Planning Board reviewed and is satisfied with the proposed plans.

*Chair Curran opens public comment.*

Amy Rabish, 176 Federal Street. If the buffer zone is not 50' what is the buffer distance? William Bergeron stated that the buffer zone is 29.9' at its widest and 13.5' at its narrowest. Parking for the previous Sylvania site was on the lot line. Chair Curran asked will happen at the retaining wall. Mr. Bergeron replied that there is a 12'-14' elevation change between the rear of the Federal Street properties and this site. Larger vegetation or trees and their roots will affect the stability of the wall so only grass will be placed on top of it. Mr. Semmelink noted that at the bottom of the wall there will be some plantings and some drainage.

Chair Curran asked if a fence will be placed there.



Mr. Bergeron replied that a 6' high solid fence along the rear of the entire property could be constructed.

Ken Wallace, 172 Federal Street. The neighborhood requested an 8' high fence.

Attorney Correnti replied that in the NRCC Transitional Overlay District a fence over 6' high requires Planning Board approval, not ZBA. A single fence will be installed that complies with the Planning Board decision.

Ms. Schaeffer noted that the Planning Board considered the fence to be a special permit and the fence height may be increased to 10' with their approval.

Jane Arlander, 93 Federal Street. If parking is going to be shared why can't it be reduced and additional buffer space be added? Will snow be stored along that rear wall?

Attorney Correnti replied that snow storage areas will be on site and some of the parking spaces will be used during light snow. Heavy snows will be trucked off site. Parking has already been reduced by almost 90 spaces with greenspace added and a layout driven by Planning Board and neighborhood comments.

Mr. Viccica – stated that the Overlay District requires 2 parking spots for residents and elsewhere in Salem in held to 1 ½ spots. ZBA is being asked to determine the shared parking amount for the CLC. Atty. Correnti reviewed the parking requirements again and reiterated that the ZBA determines the CLC shared parking requirements. A Variance is not being requested for zoning because they wouldn't know which use to ask for relief on. The Board could determine that there are not enough spaces or that a Special Permit for shared parking will work as shown.

Meg Twohey, 122 Federal Street. The neighborhood was favor of the two prior plans for the project, density is a great concern, questions why an elevation of the large residential building has not been shown to give the Board a sense of the buildings scale. The density is two times what is allowed by the ordinance, it was lowered from 5 stories to 4 but the number of units remains the same, how many 1, 2, & 3 bedroom units are there? Supports Mr. Copelas' question regarding the number of units and Jane Arlanders' comments regarding more landscaping and a larger buffer zone.

Ms. Birdie, 3 Lyons Lane. In favor of this project and the CLC building is needed and can't come soon enough.

Allison Thibodaux, 64 Broad Street. Salem has changed in the 40 years she has lived here, they have worked hard to accommodate everyone requests. The free standing building is nice, it is time for this project to move forward.

Emily Udy, 8 Buffum Street. Ms. Udy is speaking on behalf of Historic Salem. Historic Salem has been a part of the North River Corridor process and has often been discouraged by the increased density project that have been proposed and allowed in the Corridor. Requests that the Board investigate the Pro Forma for hardship rather than taking the applicants word.

No one else in the assembly wishes to speak.

*Chair Curran closes public comment.*

Mr. Viccica – asked about the hours of operation for the CLC. Meredith McDonald, Director at Salem Council on Aging, replies that their hours of operation will continue. Peak hours are between 8AM and 5PM, once a month there may be an evening event from 4PM to 7PM, and seniors are on their way home by 6:15PM. Spaces will be freeing up as residents return home, with a potential overlap. If anything, daytime activities will be maximized.

Mr. Viccica – asked about the possibility for renting out the spaces within the building for after-hours use or weekends. Ms. McDonald replied that that does not occur with their present building and the same rules by which they operate carry over to this new building. If applicants request to rent space, who they are and the size of their group is reviewed, and many are well established group within the city, and use a small classroom size space for 6-10 people and they are out of the building by 7PM.

Mr. Viccica – asked if there was a large dining room available for rent. Ms. McDonald replied that they have a main dining room in their current space used for pizza parties and dances, and that programming would continue.

Architect Harry Gundersen of 20 Central Street, noted that the Great Room in the new building is approximately 3,000 SF.

Attorney Correnti noted that that possibility was well vetted by the Planning Board and City has plans to do occasional evening and weekend events. The traffic engineer and peer reviewer determined that it is not appropriate to lay out sites based on special events, but rather to plan for the normal use of the property.

Mr. Viccica asked if they rent primarily to seniors and senior events, or if they would rent the space for a wedding reception. Ms. McDonald replied that the spaces are rented for a Board or small neighborhood meeting where the dining room is not being used. They've never had a request for a wedding reception.

Attorney Correnti noted that something like that is planned the City will need to make arrangements with other facilities, to use the neighboring church parking lot, shuttle people to the building, etc.

Mr. Copelas - noted that the Community Life Center (CLC) was envisioned to be of use to more than just seniors, have programs been developed to attract people of all ages?

Ms. McDonald replied that additional programs have not been created but they have always shared their space and programs are organized for when various groups are available; seniors – morning and afternoon, families – late afternoon to evening, when children are home from school and parents are home work. There has never been a problem with overlap.

Mr. Copelas noted that peak hours are around 5PM.

Attorney Correnti replied that demand exceeds the available parking that could lead to people to not rent the spaces.

Ms. Schaeffer noted that this being a municipal building there is flexibility in the programming and rental hours. This is mostly about the daily use of the building and the City will need to experiment with the scheduling.

Mr. Viccica added that the City will be responsible to the neighborhood for what they allow to happen in this building.

Attorney Correnti stated that Salem hired Elaine Bellow, a Senior Center Consultant who is in the top the field of designing Senior Centers. The plan before the Board reflects years of consideration of impacts and needs of programming the Community Life Center.

Chair Curran – 1) Speaks in support of the shared parking special permit. The literal enforcement of two (2) parking spaces per dwelling unit would result in a sea of asphalt and be too much for this site. If there were less parking, which is advantageous generally, there would not be enough parking. Shared parking and will work well for this site. This is also a special permit request therefore no hardship is required with the request for shared parking. 2) As for the Variance request for a curb cut, signage is sometimes not enough to direct traffic in and out by a right turns only. The proposed geometry will force traffic to flow on and off of the site by right turns only. In order to provide this geometry, the curb cut needs to physically be larger than twenty-four (24') feet.

Attorney Correnti- wants to make sure the Boards questions regarding hardship have been answered. Bill Bergeron, Site Engineer of Hayes Engineering, is present to discuss the issues with the site and soils. Mr. Burgeron stated that the soils on site are not conducive and geo piles will be required under the structures. One of the consequences between then and now is that the flood plains have been re-evaluated and risen, and the building code has increased the sea level has elevated the entire site 2 to 2 ½ feet. That additional material needs to be placed on site which increases construction cost significantly. Planning Board and resident meetings determined that the parking lot grades also needed to be raised to eliminate parked car being flooded. Linking the CLC to the higher ground on Boston Street was also necessary to get people to safety at times of flooding and eliminate higher waters from flooding adjacent properties. During a severe storm event the site has been designed to keep all of the flooding to the corridor and not on the site and Boston Street will be the way in and out of the site. The CLC building is completely within the Ch. 91 area so the geo piles at that building will be significantly longer. The heightened site elevation and geo piles will significantly increase the project cost and justify the number of dwelling units.

Chair Curran – asked how close the building at its closest point to the nearest residence and the height of the building. Mr. Burgeron replied 103.6 feet. Mr. Semmelink replied that the four (4) story building is under 50 foot zoning height requirements.

Chair Curran states -Residents have been concerned with the proposed height, but at this distance it won't seem as high, and a building similar to the height of Walgreens across the

street would be more detrimental as the height, massing and location does not add to the streetscape.

Chair Curran asked for the CLC building height. Mr. Gundersen replied that the 2 story portion is less than 30 feet and the 1 story portion is 18 feet.

Mr. Copelas – Understands that the Planning Board has gone through lots of effort to review the project, but the Zoning Board looks at other aspects of the project. Mr. Copelas appreciates Lynn Duncan's letter where she talks about past variances that were approved by the Board for increased density in the NRCC. However, Mr. Copelas states that he was not on the ZBA when those projects were approved and does not know what was required to allow those density amounts. The fact that the previous design was five (5) story structure reduced to a four (4) story structure is not relevant. To approve a Variance for minimum lot area per dwelling unit requires the Board to see a need for 117 dwelling units. The petitioner is presenting an economic hardship. Mr. Copelas states that the petitioner is presenting an economic hardship without substantial evidence and the Board is taking their word. How does the Board deal with weighing an economic hardship in the future?

Mr. Viccica – states that his understanding of the kinds of remediation that is required to develop the site in any manor is a pretty egregious amount of dollars to build here. On a case by case basis, for the City and urban planning being developed, Mr. Viccica expresses support and understanding for the increase density requested. Mr. Viccica states that the Boards decisions should be based on a case by case basis. Mr. Copelas understands that the Board is accepting an economic argument because of the specific problems with the land and the amount of money being spent.

Mr. Copelas- I am no denying that this investment is not an expensive project. There is no question. This is part of the reason why we are willing to accept the financial hardship argument for the minimum lot area per dwelling unit request. There are specific and unique circumstances with the land that requires a significant level of investment. But again, I don't know if this is a \$5 million dollar project, \$20 million dollar project... I know that it is not our job to evaluate the finances of the project. But if the ZBA is asked to approve 117 dwelling units on this property because that is required to make the numbers work... I am having a difficult time.

Ms. Schaeffer –To Mr. Copelas. Are you comparing this project to the case of the Ward 2 Social Club?

Mr. Copelas- Yes.

Ms. Schaeffer- In that case, the Board requested a pro forma because the density requested was directly related to a claim of financial hardship incurred by the applicant in relation to the time required to go through the Chapter 91 process, but not related to soil, topography or other special conditions of the site. There were also other issues of the proposed scale of the buildings in relation to fitting with the neighborhood character as well. In this case there is a significant amount of investment needed that is directly to the topography and soil conditions.

Attorney Correnti replied that the economic argument is part of the overall argument for hardship, what drives the higher costs is the NRCC's unique requirements and respectfully suggests that this project be compared to something similar and not to a project across town in a different zone, although variances are the same throughout the City.

Attorney Correnti states that this site is unique to this district and the only site in the NRCC, TOD, Overlay District, and Ch. 91. Ms. Duncan's letter mentioned several similar projects of similar densities, that have been approved although only one has been built. Does it fit should be the argument and that's the case they are trying to make. If it fits should be based on if it has parking, drive aisles, landscaping, pedestrian access, etc. The number of units is what fits within this layout and was not a pre-selected number, originally there were more units. The inclusion of the CLC is not a given and the cost of this project is rising every day, regulations are changing, sea levels are rising, new FEMA maps are being implemented, and each one of those has an impact on this site.

Chair Curran – understands the hardship requests and the Board benefited from knowing that the Site Plan Review went first because the ZBA now knows what has been approved and lessens the neighborhood impact. A story taken off of the structure to reduce the number of units would not make this proposal a better project.

Mr. Copelas replied that the comprehensive issues stated by their Council gave him a better understanding of their hardship concerns.

Mr. Viccica – stated that the curb cut is logical and makes the most sense, as safety is a concern. The buffer zone is fine although there he has an issue with the house on Federal Street that's closest to the site, hopefully the proposed buffer zone will be sufficient for them. 10 feet is high for a fence behind the Federal Street residents but if it's what they want he is OK with it. Parking is good, as is the layout. The less parking the better, but does not want to circumvent the possibility that some residents may need two (2) parking spaces, but there was sufficient information to determine that demand for each use will not occur simultaneously and that there is sufficient parking to where there will not be a clashing of need. Understands that there is a hardship related to the density and is in support of the request.

**Motion and Vote: Mr. Viccica makes a motion to grant the petition of High Rock Bridge Street, LLC seeking Variances per Sec. 4.1.1 Table of Dimensional Requirements for minimum lot area per dwelling unit; Sec. 8.4.13 Transitional Overlay District of the NRCC to allow less than the required fifty (50') buffer; Sec. 8.2.3.1 Entrance Corridor Overlay District to allow a curb cut that exceeds the maximum curb cut width. A Special Permit per Sec. 5.1.7 Share Parking to permit shared parking where parking usage would not occur simultaneously as directed by the Board. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with four (4) (Rebecca Curran (Chair), Peter A. Copelas, Jimmy Tsitsinos, and Paul Viccica in favor and none (0) opposed.**

Project	A public hearing for a petition seeking Variances requesting relief from Sec. 4.1.1 <i>Table of Dimensional Requirements</i> from minimum side yard setback and rear yard setback to allow the installation of a 6'x6' outdoor refrigerator.
Applicant	<b>ROBERT LIANI, JR (COFFEE TIME BAKE SHOP INC.)</b>
Location	<b>96 BRIDGE STREET (Map 36 Lot 117)(R2 Zoning District)</b>

### Documents and Exhibitions

- Application dated June 15, 2016 and supporting documentation

Attorney William Quinn of Tinti Quinn Grover & Frey, representing the Owner. This is a legal non-conforming use in an R2 District that pre-existed zoning in Salem. Maintaining his successful business and additional storage is needed. The lot is on the corner of Bridge and Pearl Streets, and has 2 fronts. Gail Smith of North Shore Survey consulted with Mr. St. Pierre on that issue the Applicant has followed Mr. St. Pierre's recommendation in terms of rear and side setbacks. Two rear setbacks are present where the employees and deliveries take place at the side door next to the proposed refrigerator unit. Their existing freezer is on the plan and a proposed refrigerator will be placed next to it, near the service door. The dimension to the proposed refrigerator is 7.4 feet and 12' to the other corner of the rear lot line. The original rear setback was 29 feet from the outside corner of the existing freezer to the rear lot line. The structure will be subject to all health codes and regulations. A literal enforcement of the rear lot lines due to two corners, the rear lot lines, the shape of the lot, the size of the building, and the location of the building on the site, all create a hardship for keeping their products refrigerated. There is no other place to put it and the remainder of the site is parking or access to the parking.

Chair Curran – asked if there is a door to access the refrigerator from the building and if this is an addition. Atty. Quinn replied that it is free standing and access is from the outside only, but it is considered a structure because it is an enclosed space.

Chair Curran asked if it makes noise. Atty. Quinn replied that it does have a compressor that is small in comparison to the larger ones already on the roof of the building and some decibels will be added to the site. Mr. Viccica asked if this refrigerator will be pre-constructed and if sound dampening to reduce the decibels because an increase in decibels will increase the noise levels bouncing off of the building. Mr. Liani, Jr. replied that he is unaware if it does, it should make less noise than the others, but if it does not have a sound package he is willing to erect screening around it. Mr. Tsitsinos noted that he has experience with these units and they make hardly any noise at all. Mr. St. Pierre noted that the Health Department has a standard for a certain number of decibels above a specific ambient noise level, which is already significant on Bridge Street. The Department will take a reading during a reasonable time with the new unit running and if it exceeds their pre-determined limit then the Owner will need to address it.

*Chair Curran opens public comment.*

No one in the assembly wishes to speak.

*Chair Curran closes public comment.*

**Motion and Vote: Mr. Viccica makes a motion to approve the Variances requesting relief from Sec. 4.1.1 *Table of Dimensional Requirements* from minimum side yard setback and rear yard setback to allow the installation of a 6'x6' outdoor refrigerator. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with four (4) (Rebecca Curran (Chair), Peter A. Copelas, Jimmy Tsitsinos, and Paul Viccica in favor and none (0) opposed.**

Project	A public hearing for a petition seeking a Special Permits per Sec. 3.3.3 and 3.3.4 <i>Nonconforming Structures</i> of the Salem Zoning Ordinance to extend an exterior wall along the same non-conforming distances within a required yard and extend a non-conforming structure to allow an addition to Vesuvius restaurant.
Applicant	<b>2 PARADISE ROAD LLC</b>
Location	<b>2 PARADISE ROAD &amp; 539 LORING AVE (Map 21 Lot 231; Map 21 Lot 232) (B2 Zoning District &amp; Entrance Corridor Overlay)</b>

#### Documents and Exhibitions

- Application dated June 28, 2016 and supporting documentation

Attorney Joseph Correnti, 63 Federal Street, representing 2 Paradise Road LLC. Mr. Bart Freddo is one of the proprietors of Vesuvius, and Bob Griffin the Civil Site Engineer. Atty. Correnti states that this is the former KFC building at the intersection of Loring Ave. and Paradise Road when headed towards Vinnin Square. The owners are seeking Special Permits to construct a building expansion to locate a complimentary food service business on the first floor and office space on the second floor of the addition.

Mr. Griffin stated that the existing lot at 2 Paradise Road is nonconforming with 10,000 SF of lot area, where 12,000 SF of lot area is required. Merging the two sites creates an approximate 18,000 SF area lot. The neighboring single family house will be torn down and the addition will be added next to the existing Vesuvius restaurant and the front line will be extended South-West along Paradise Road, to construct approximately 4,000 SF of floor space in a two story building. An entrance with a stair to the second floor will be placed

within the addition. This project has not been before the Planning Board has not conducted Site Plan Review, but the rear lawn area can potentially be used for outdoor seating. In terms of parking, 31 parking spaces will be provided where approximately 22 is required.

Atty. Correnti stated that the combination of 2 lots will merge and become a single ownership. An existing single story dwelling exists on the rear lot has been declared uninhabitable by the Board of Health. Mr. Freddo has cleaning out the home but the plan is to demolish the home, which has existed for decades but is zoned business B2. The first floor restaurant will serve breakfast and desserts, not a full service breakfast. For the rest of the day it will be an ice cream shop with smoothies and candy.

Chair Curran – stated that there will be no new nonconformities and asked why the proposed structure was not being pushed back away from the street. Mr. Griffin replied keeping the same line makes the property more efficient and will provide space for outdoor seating in the rear. It will also allow the structure to extend to the new building.

Mr. Copelas – noted that there is no connection between the two buildings and traffic will not flow between them. Mr. Copelas asked if they will be two separate businesses. Atty. Correnti replied yes, they will have the same owner but will be run separately. The rear of Vesuvius is the kitchen so customers will not be able to walk through the building to the neighboring building. The extension of the front line at the same distance off of Loring Avenue, a Special Permit is required, to extend a nonconforming wall. Pushing the new wall further away from the street would require a Variance.

Mr. St. Pierre noted that he spoke with Councilor Sargent regarding this project who had no problem with the project.

Mr. Viccica – asked if there would be any rooftop equipment. Mr. Freddo replied that muffins will be baked so a small vent will be necessary and compressors to keep the ice cream cold, but the specifics haven't been determined.

Chair Curran – asked if this project would be going before the Planning Board and Design Review. Atty. Correnti replied yes for the Planning Board but not DRB. Windows are not being added to the existing building, you are just adding on to the existing building. Atty. Correnti replies yes.

*Chair Curran opens public comment.*

No one in the assembly wishes to speak.

*Chair Curran closes public comment.*

Ms. Schaeffer noted that Councilor Dibble stated that he wanted to see more landscaping, particularly along Paradise Road and the Planning Board will landscaping – trees, planting beds, etc. as part of their Site Plan Review and because the site is in the Overlay District.



**Motion and Vote:** Mr. Copelas makes a motion to approve the petition for the Special Permits per Sec. 3.3.3 and 3.3.4 *Nonconforming Structures* of the Salem Zoning Ordinance to extend an exterior wall along the same non-conforming distances within a required yard and extend a non-conforming structure to allow an addition to Vesuvius restaurant in a B2 and Entrance Corridor Overlay District, as well as the demolition of an existing structure and the demolition required to add on the existing building. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with four (4) (Rebecca Curran (Chair), Peter A. Copelas, Jimmy Tsitsinos, and Paul Viccica in favor and none (0) opposed.



Project	A public hearing for a petition seeking Variances requesting relief from Sec. 4.1.1 <i>Table of Dimensional Requirements</i> from minimum lot area per dwelling unit, number of stories, and a Special Permit per Sec. 3.3.5 Nonconforming Structures to a rear egress.
Applicant	<b>RICARDO and ROSE HELEN GARCIA</b>
Location	<b>24 LEMON STREET (Map 36 Lot 44) (R2 Zoning District)</b>

#### Documents and Exhibitions

- Application dated June 27, 2016 and supporting documentation

Attorney Louis Izzi of Bell and Izzi, presented on behalf of the owner. Atty. Izzi withdrew their previously proposed plan and has presented a new more comprehensive plan. The single family residence will be rehabilitated and constructed as a two family as a matter of right. The lot is uniquely shaped as shown on the Plot Plan provided and proposal is to create a second means of egress off the rear of the house and install two dormers at the front of the second story. A relief to for the minimum lot area required per dwelling unit is being requested as is a relief for the dormers because they are considered a ½ story addition although they are not adding to the overall height of the building. The second means of egress will end at an existing rear deck but because it is an existing non-conforming structure a Special Permit is required with respect to the alteration. 3 parking spaces are being provided on pervious material so that no drainage issues will be created. The rehabilitation of this building and addition of a second unit is in keeping with the character of the neighborhood and will not be a detriment.

Chair Curran – stated if this was an existing single family house that is not going outside the existing footprint, and parking is not as issue, but asked if the deck was being expanded. Atty. Izzi replied no, there is not deck expansion, but there is a proposal for a second means of egress.

Chair Curran – noted that at their previous presentation the Board requested clarification on the hardship and curb cut wasn't clear on the Plot Plan. Atty. Izzi replied that the curb cut permit is in the package submitted.

Chair Curran – asked if the attic was habitable. Mr. Garcia replied barely but it will be converted to living space.

Mr. Copelas – stated that the petition states that the Special Permit is for the construction of the stairway and the dormers. The memo sent to the Board implies that the dormers trigger a Variance, can this be clarified. Mr. St. Pierre replied that the Variance is required for the number of stories. Mr. Copelas noted that there is no hardship requiring dormers. Atty. Izzi noted that in order to convert the third floor additional head height for a comfortable living space is needed. Mr. Copelas noted that the first floor is one unit and the second and third floors are for the second unit. The second unit can utilize the second floor without needing more headroom.

Mr. St. Pierre noted that Sec. 3.3.5 makes an exception for 1 & 2 families. Atty. Izzi requests that the dormer request be a Special Permit rather than a Variance because there is an exception in the ordinance for existing non-conforming structures. Mr. St. Pierre noted that the applicant advertised for more than what they need so they are covered in that respect.

Chair Curran – introduced a letter from Jennifer Merger of 27 Lemon Street, in opposition of the project, because of the impact on parking, owner may need to encroach on neighboring City property to provide their proposed parking, that zoning law states that Variances must be used sparingly, an argument can be made that the best use of this structure is a single family.

Chair Curran – introduced a letter from Flora Tonthat, the Board granting a Variance request will set a precedent for splitting 1 & 2 families, single family will encourage families to move and discourage absentee landlords and developers.

Chair Curran – stated that the project meets the parking requirements and number, and there is no encroachment on City land and 2 families are an allowed use.

**Motion and Vote: Mr. Copelas makes a motion to approve the Variances requesting relief from Sec. 4.1.1 *Table of Dimensional Requirements* from minimum lot area per dwelling unit and a Special Permit per Sec. 3.3.5 Nonconforming Structures to a rear egress, and a Special Permit per Sec. 3.3.5 for the number of stories. The motion is seconded by Mr. Viccica. The vote was unanimous with four (4) (Rebecca Curran (Chair), Peter A. Copelas, Jimmy Tsitsinos, and Paul Viccica in favor and none (0) opposed.**

NONE

#### **APPROVAL OF MEETING MINUTES**

June 15, 2016 meeting minutes were approved as written, with one notation by Chair Curran to add either “No one / no one else in the assembly wishes to speak.” prior to the closing of the public comment portion of each petition.

**Motion and Vote: Mr. Copelas makes a motion to approve the minutes amended per Chair Currans’ request. Seconded by Mr. Tsitsinos. The vote was unanimous in favor and none (0) opposed.**

#### **OLD/NEW BUSINESS**

N/A

#### **ADJOURNMENT**

Mr. Copelas motions for adjournment of the July 20, 2016 regular meeting of the Salem Board of Appeals.

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

**The meeting ends at 9:30 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/](http://saalem.com/Pages/SalemMA_ZoningAppealsMin/)

Respectfully submitted,  
Erin Schaeffer, Staff Planner