

City of Salem Board of Appeals Meeting Minutes

Wednesday, March 16, 2016

A meeting of the Salem Board of Appeals (“Salem BOA”) was held on Wednesday, March 16, 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 6:35 pm.

ROLL CALL

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

REGULAR AGENDA

Project	A public hearing for a petition seeking a Special Permit per Sec. 3.3.3. Nonconforming Structures of the Salem Zoning Ordinance to alter an existing nonconforming structure.
Applicant	MELISSA VACON
Location	59 MEMORIAL DRIVE (Map 42 Lot 13)(R1 Zoning District)

Documents and Exhibitions

- Application dated February 23, 2016 and supporting documentation

Attorney Scott Grover - Presents the petition on behalf of the applicant, Owner - Melissa Vacon. The property is on the left hand side of Memorial Drive, when heading towards The Willows, and is before Camp Naumkeag. It is a two story single family cape style home, with living areas on the first floor and bedrooms on the second floor. The proposal is to construct a rear dormer addition to expand the second floor bedroom, creating a master bedroom suite and to expand the first floor living space. No changes will be visible from the street. All improvement will be seen from the rear and side elevations. The project is being presented to the Board of Appeals because the existing building is nonconforming with respect to the side setbacks. The left side setback is 5.7 feet and does not conform to the required 10 foot setback. The proposed changes will not increase the nonconformity, but because it is a nonconforming structure, any alteration of the structure per Sec. 3.3.3 - Nonconforming Structures, require a Special Permit from the Board of Appeals. The proposed changes are not more detrimental than the existing use to the neighborhood, there is no impact on the abutters, and this will increase the value of the home and will have a positive impact on the City tax revenue.

Ms. Curran – questions if any new nonconformities were being created other than the proposed addition, which will be within 7 feet from the property line, which is less than what

is existing nonconformity and if this is the only area where they are building outside of the buildable area.

Attorney Grover – responds that there were not and added that the footprint of the building would not be changing, and that the closest the proposed addition comes to the side setback is 7 feet.

Ms. Curran – questions whether the shed on the property was being relocated.

Ms. Vacon – No.

Attorney Grover – states that it complies with the side setback and that includes the addition and the landing to the rear entry.

Ms. Curran – questions whether the ridge line – the height of the building – stays the same.

Attorney Grover – Yes. It will not get any higher than 20.5 feet.

Ms. Curran – opens public comment.

Mr. Thomas Cody – 55 Memorial Drive – states that he has seen approvals of some rather large additions to neighboring houses/buildings over the years. Almost every house on the street is already dormered and he is not opposite to the proposed addition.

Ms. Curran – states that this is a minimal expansion and she has no problem with the project.

Motion and Vote: Mr. Watkins makes a motion to approve the petition seeking a Special Permit per Sec. 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance to alter an existing nonconforming structure. The motion is seconded by Mr. Tsitsinos. 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 continuation of a public hearing for a petition of seeking a Special Permit from the provisions of <i>Sec. 3.3.2 Nonconforming Uses</i> of the Salem Zoning Ordinance to allow the change from one nonconforming use of a candy factory to another nonconforming use of residential dwelling units.
Applicant	SCHIAVUZZO REALTY LLC
Location	93-95 CANAL STREET (Map 33 Lots 164, 165)(B4 Zoning District)

Documents and Exhibitions

- Application dated January 26, 2016 and supporting documentation

Ms. Curran – states that this is a continued public hearing, that she has familiarized herself with as she was not at the original meeting. One item that the Board has requested was an opinion from the City Solicitor regarding whether the Board could impose a condition requiring that the building be Owner occupied and not rented. The City Solicitor finds that the Board cannot impose that condition.

Mr. Leo Schiavuzzo – potential Owner - Presents the petition.

Ms. Curran – states that the building is going from one nonconforming use to another nonconforming use and the Board needs to determine whether or not the new use is more detrimental than the existing use. The record did not describe the existing use. It was a candy factory - what were the hours of operation, how many cars went in and out, etc. They need that information to make a determination.

Mr. Raymond Forkham – 93 Canal Street – It was a manufacturing plant for approximately 80 years. The hours of operation were 6am – 4 or 5 pm. The number of employees ranged from 6 – 30 over the years. There is on-site parking for 6. In the past there were 2 shifts but currently there is 1 shift. The machinery inside the plant did not produce noise outside the building. There could have been the odor of candy coming from the building. Deliveries were once made at a shipping dock but in recent years deliveries were made at the street using a forklift to make it more convenient. Deliveries are made two a day by both 18 wheelers and box trucks.

Ms. Curran – questions whether Mr. Schiavuzzo brought any plans to present.

Mr. Schiavuzzo – states that the plans his attorney presented at the last meeting had not changed.

Ms. Curran – questions if the reason for the continuation was solely about whether the Owner was required to occupy the building.

Mr. Schiavuzzo – Yes.

Ms. Curran – questions if the public hearing was still open. Ms. Schaeffer responded that it was closed at the last meeting.

Ms. Curran – states that they are not doing the third floor expansion as originally proposed. They have the required parking spaces. A Special Permit is required because they are going from one non-conforming use to another.

Mr. Viccica – states that he was not at the previous meeting and questioned whether the Board had enough members to vote. Ms. Schaeffer responded that there were enough members to vote.

Ms. Curran – states that people were concerned that the units would be rented specifically to students. The records stated that there will be a condo association that will address rental in the homeowners association.

Mr. Schiavuzzo – Yes. His lawyer would word the homeowners association in that manner.

Mr. Watkins – states that the prior concerns were from the neighbors, despite the units being condos, on whether the units would be rented out to families or to college students, especially to college students. He will take the potential condo owner at his word that there will be a condo association. The building will be Owner occupied and usually with Owner occupancy, those buildings tend to have better upkeep in general, which will attract families. The opinion of the City Solicitor, stated that the Board does not have the right to impose Owner occupancy restrictions, he is in favor of the application.

Mr. Duffy – states that there was some discussion at the last meeting regarding the easement for the shared driveway.

Mr. Schiavuzzo – states that he spoke with the neighbor and the easement is in the works with the help of his attorney and there are no issues with that. Ms. Schaffer added that that was a suggested special condition from the Board.

Ms. Curran – The easement is a condition that has to be recorded. Ms. Schaffer added that it needed to be recorded with the deed.

Ms. Curran – questions the use of the building that will share the easement.

Mr. Schiavuzzo – It is a commercial space - a home design & upholstery store.


Ms. Curran – states that sometimes conflicts are created, when a residential building is next to a commercial building, by the commercial building after the residents have moved in. That is something to consider.

Mr. Watkins – questions whether there were 6 or 8 condos going into the building.

Mr. Schiavuzzo – states that there were 8.

Ms. Curran – adds that originally there were 12, but there are now 8.

Motion and Vote: Mr. Watkins makes a motion to approve the petition seeking a Special Permit from the provisions of Sec. 3.3.2 Nonconforming Uses to allow the change from one (1) nonconforming use of a candy factory to another nonconforming use of residential dwelling units. The motion is seconded by Mr. Viccica. 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 for relief from the provisions of Sec. 3.3.4 and a Special Permit from Sec. 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance to increase an existing non-conformity and alter a nonconforming structure for a substantially different purpose.
Applicant	114 DERBY STREET NOMINEE TRUST
Location	114 DERBY STREET (Map 41 Lot 14) (B1 Zoning District)

Documents and Exhibitions

- Application dated February 23, 2016 and supporting documentation

***Board member Paul Viccica announces a potential conflict of interest and recuses himself from participation on this agenda item.**

Attorney Scott Grover presents the petition on behalf of the developers – Larry Frej and Joe Skomurski. The developers have an agreement to purchase the property. Dan Ricciarelli of Seger Architects will present the proposed plans. The building is known as the Gable Settlement House and is both across the street from and owned by the House of Seven Gables. The building is used as an alternative high school. The City’s lease of the school is expiring, the school is moving to East India Mall, and the House of Seven Gables is ready to sell the property to Mr. Frej and Mr. Skomurski.

The property consists of two distinct structures that are attached to one another and used as a single building. The original Federal style building was constructed in 1806 and faces Derby Street. In the 1980’s a contemporary addition that faces Turner Street, was added to the rear of the existing building. Attorney Grover presented photographs of the existing building. The building has fallen into a state of disrepair.

The proposal is to convert the entire building into 6 condominium units – 5 flats and 1 townhouse. A parking lot will be off of Turner Street – the 6 units will have 9 spaces. The relief required is minimal because the property is located in the B1 zoning district –and multi-family use is allowed by right. Relief is required for several reasons. The building is an existing nonconforming structure as to the lot coverage and setback requirements. The lot coverage requirement in a B1 zoning district is 40%. The petitioner proposes to increase the lot coverage from the existing 42% to 43%. The existing addition facing Turners Street is at the lot line, creating a nonconformity in regards to the current setback requirements.

The footprint is not changing significantly and the construction will mainly be at the interior. A proposed covered porch will provide outside space for one First Floor and one Second Floor unit, adds approximately 1% to the coverage – increasing the building coverage from 42% to 43%. Because of this increase, and the fact that the building is not an existing single or two family, it does not qualify for Special Permit, and requires a Variance under Sec. 3.3.4. A Special Permit per Sec. 3.3.3 Nonconforming Structures is also required to alter an existing

non-conforming structure for a substantially different purpose. It is presently used as an alternative high school and it is being changed to a multi-family residential – which is an alteration to provide for a substantially different purpose.

In regards to the grounds – this project is not substantially detrimental to the neighborhood and will be a significant benefit. A couple neighborhood meetings were held and the support for the project has been unanimous. Written material from neighbors supporting the project has been submitted to the Board. This is an opportunity to take a building that is no longer productive under its current commercial use and provide a vehicle, through residential use to restore the building.

There will be a substantial improvement to the grounds/landscape and lighting. There will be no burden of on street parking because a parking lot will be provided due to the zoning ordinance. The two proposed porches will provide usable outdoor space. Without those porches a significant hardship would be created because no outside space would be provided to the residential users – which is a hardship for the developers from a marketability standpoint as well as for the users of the space that would have no outside space if the zoning ordinance were strictly enforced.

Mr. Ricciarelli of Seger Architects – stated that proposed 6 units would range from 1,100 to 1,800 SF. – 5 flats and 1 townhouse. Most of the unit will have their own dedicated entrance and one or two units will share an entrance. The large Basement will become dedicated storage for each unit and some units will have their own entrance or shared stairs to access the Basement, and possibly a media room. The existing circulation of the two existing stairs will remain.

The elevation drawings show the proposed façade restoration work, including new windows and doors, repointing the facades, restoring the portico, and the newer roof will remain. The siding on the 1982 back addition is deteriorating and will be replaced along with the windows. New openings that will work with the proposed layouts will be created. Additional colors will be introduced to give the building more definition, as opposed to the existing monochromatic red tones. The covered porch will provide a view and access to the garden. The existing garden off of Derby Street will remain and a new path will be created along with additional trees and shrubbery. The parking will be buffered from the neighbors as best they can. The niche off of Turner Street is dark and congested and removing the bell, door, and handicapped ramp will be cleaned up the elevation/area, and create a welcoming courtyard for the three unit in that area. The rendering show the view that will be seen when traveling down Derby Street. The gable end on Turner Street will be modified to create the proposed townhouse and additional windows will be introduced.

Ms. Curran – questions whether the porch requiring a Variance is an egress/main entrance to one of the units and asked for the dimension of the porch.

Mr. Ricciarelli – Yes. 6 feet out from the building.

Ms. Joyce Kenney, 285 Lafayette Street – questions whether the Wheelchair Accessibility Act has been addressed. Ms. Curran questioned whether any of the units were accessible.

Mr. Ricciarelli – No. Mr. St. Pierre added that not enough units are being built. A percentage of the units must be accessible when 12 or more units are being constructed. This project doesn't trigger that at 6.

Mr. Bob Berkinshaw, 119 Autrin Avenue, North Andover – Owns the abutting property – 118 Derby Street. – Questioned whether the garden was stay as is and the porches will enter into it.

Mr. Ricciarelli – The space will remain but will be reconfigured, with a new path and landscaping in accordance with the submitted plan.

Ms. Kenney – questions whether the existing trees would remain. Ms. Curran questions whether the exiting vegetation was being removed.

Mr. Ricciarelli – One tree has fallen and will be removed, one tree will remain and be pruned, and new trees and buffer will be added.

Ms. Curran – All submitted letters from 125 Derby Street, 115 Derby Street – House of Seven Gables, 23 #5 Turner Street, 97 Derby Street, 6 Palfrey Court, 58 Derby Street, 94 Derby Street #9, Mary Lee O'Connor of Lynnfield, 4 Cousins Street, 6 Daniels St. are recognized for the record in support of the project.

Ms. Curran – applauds the project for not increasing the footprint. It is not a burden and it is providing parking. The existing curb cut on Turners Street is being reduced. There is a minimal increase in the coverage which is requiring them to seek a Variance. She has no problem with the project but struggles with the hardship argument, other than it being an egress. Although it is not the minimum egress width it does provide exterior living small on a small lot with a pre-existing building that isn't expanding.

Ms. Curran – questions how trash would be handled. A developer stated that a trash enclosure will be created along the West property line.

Attorney Grover – states that because there are 6 units the project is subject to Site Plan Review with the Planning Board, so there will be a lot of scrutiny on trash location, lighting, fencing, landscaping materials, etc.

Mr. Copelas – requests that the egress and pathways for the individual units be described. There seem to be no building entrance near the parking and long distances need to be traveling to enter the units.

Mr. Ricciarelli – replies that the majority of the tenants will be coming down Turners Street. There is a rear entrance for one First Floor unit. The rear addition tenants will be entering through the niche. Tenants facing Derby Street will need to follow the path around the building to enter their units. Two tenants have multiple access points.

Ms. Curran – requests that Attorney Grover review the hardship concerns again.

Attorney Grover – The large commercial building trips over the 40% coverage requirement. Their goal is to convert it back to residential and there is a need to provide outside space and that is the hardship. The absence of the opportunity to create that from a use standpoint for potential residents, from the marketability of the property would be a significant hardship.

Ms. Curran – Questions whether desirable relief may be granted without substantial detriment to the public good.

Attorney Grover – The same hardship arguments for the Special Permit apply. Is it less detrimental but substantially beneficial.

Mr. Duffy – This is an old building that is unusually large on the lot and both the building and the lot have unique features. It has been used as a commercial use and is being returned to a residential use. The needs of residential use calls for some aspect of outdoor access that cannot be allotted for in a meaningful way other than this 1% increase which creates a dimensional issue. Given those factors and this minimal departure from what is strictly required under the Zoning ordinances, this is the type of relief the Board can grant. Mr. Curran agrees.

Mr. Waktins – questions whether parking spot #9 could be cut in half and turned perpendicularly to create two spaces.

Mr. Ricciarelli – It cannot be done because of the required parking lot drive aisle width. It works well because it also the dedicated spot for the townhouse. Various configurations were attempted and this configuration worked best.

Motion and Vote: Mr. Watkins makes a motion to approve the petition seeking a Variance for relief from the provisions of Sec. 3.3.4 and a Special Permit from Sec. 3.3.3 Nonconforming Structures to increase an existing non-conformity and alter a nonconforming structure for a substantially different purpose. The motion is seconded by Mr. Viccica. The vote was with five (5) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, and Jimmy Tsitsinos,) in favor and none (0) opposed.



Project	A continuation of a public hearing for a petition requesting a Special Permit per Sec. 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to change and existing nonconforming use of a social club to another nonconforming use of eighteen (18) residential units. The petitioner is also requesting Variances for relief from Sec. 4.1.1 Table of Dimensional Requirements for minimum lot area per dwelling unit, minimum lot frontage, minimum lot coverage, front and side yard setbacks, minimum distance between buildings, and number of stories.
Applicant	MICHAEL MEYER
Location	1-3 EAST COLLINS STREET (Map 36 Lot 277)(R1 Zoning District)

Documents and Exhibitions

- Application dated September 25, 2015 and supporting documentation

Ms. Curran - states that this project has been before the Board several times, the last time was two months ago. The plans have been revised since the last meeting.

Attorney Scott Grover presents the petition on behalf of Michael Meyer, the owner of 1-3 East Collins Street, formerly the Ward 2 Social Club. Dan Ricciarelli of Seger Architects will present the proposed plans. When they last presented to the Board in January, despite concerted efforts to address the concerns of the neighbors about the project, there was significant opposition to the project. They asked for the Board for a continuance, to continue to address the concerns of the neighborhood and the Board, particularly the density of the project and public access to the property.

Attorney Grover distributes a revised Site Plan to the Board for their review. The revised plan reduces the number of units from 14 to 11. (When the project was first presented in the fall of 2015 there were 18 units, when the project was last presented to the Board there were 14 units. The present plan shows 11 units – 3 buildings with 3 units each and 1 building with 2 units.) The recent reduction in units was accomplished by eliminating 3 units from the East Collins end, because that's where most of the concern was from the Board and the neighborhood.

The new plan shows the outline of the plan that was last as what it has been reduced to. There has been a substantial reduction in the size of that building to lessen the impact on the residential neighborhood, and this area is where most of the neighboring homes are located. Along the Planters Street side of the property, the last house across the street end closer to East Collins Street and abuts open space owned by National Grid. The proposed homes further down Planters Street are across from densely packed trees.

Another concern from the last meeting was whether Mr. Meyer had considered constructing single family homes. Mr. Meyer said that he had but that it wasn't feasible. To provide a more thorough answer that question, Attorney Grover distributed a Pro Forma comparing the cost of building four single family homes vs. 11 condominium units – both would also require significant relief from the Board. The second page demonstrates the cost of building each house would be \$445,000 the projected sale price would be approximately \$450,000, creating a potential profit of \$18,000. The cost of building 11 condominiums would be \$600,000 and the potential profit would be \$58,000.

Ms. Curran – states that she is aware that the site is encumbered by a few things that require them to place the buildings so close to the streets – the gas easement and the Chapter 91 jurisdiction line. Ms. Curran stated that she does not understand why there is a building located within the Chapter 91 jurisdiction line.

Attorney Grover – The plan is to construct the project in two phases. Build the three buildings outside of Chapter 91 jurisdiction initially and then apply for a Chapter 91 license from the state to construct the last building. The Chapter 91 process is extremely lengthy process, at least 1 year. There are other constraints with the site that would require Variances. Ms. Curran – added the flood zone, coastal dune, etc.

Ms. Curran – The height is out of character, but one of the reasons for that is to keep the base flood elevation above the flood line to conform with FEMA.

Attorney Grover – The parking is beneath the building because it is allowed within the elevation with living areas above. There is very little impervious areas beyond what is under the buildings, allowing for more open space.

Ms. Curran – states that they project is going from a pre-existing non-conforming use to another pre-existing non-conforming use, and the approve project needs to be less detrimental. Visually the structures are very high. Were dormers every considered to reduce the height?

Attorney Grover – The buildings are within the height limit. The reason for the height Variance is the number of stories, we tripped at 2 ½ stories.

Ms. Curran – We need to look at the project from a detrimental standpoint. There is no view easement, but it is higher than the neighboring buildings. Mr. Ricciarelli has looked into neighboring ridgelines and can address that.

Mr. Ricciarelli – states that dormers are something they can look into if the height is concern. Lowering the eave line will increase the cost of construction, and will make it a more interesting building.

Ms. Curran – replies that it would make it a more interesting building and would be more in keeping with the scale of the neighboring buildings.

Mr. Ricciarelli – Because a portion of the road is higher, we have been able to lower some of the living spaces and bring them closer to the street, and created a triplex. Parking for the building is in the form of 4 private garages, accessed from a driveway on East Collins Street. People can then enter the residences that will only be 2 or 3 feet above grade.

Mr. Copelas – Requests that they revisit/explain the public access portion of the project.

Attorney Grover – The previously submitted plan shows a public walkway, but that has been removed.

Mr. Copelas – questions whether public access had to be created.

Attorney Grover – Chapter 91 will require public access to the site. A concern of the neighbors was that they didn't want the public access abutting the residences off of East Collins Street. They wanted the access more towards the center of the property. It is not being proposed now. They will wait for the input of DEP.

Ms. Curran – Access to what? You do not own the beach property past the trees.

Attorney Grover – Yes, we do not own that property. Is a bit of an anomaly that the jurisdiction of Chapter 91 backs up to a couple of land owners.

Mr. Viccica – If you are anticipating public access being a mandate, why aren't you committing to it now?

Attorney Grover – We don't know where Chapter 91 will suggest that it be. Maybe because of the reasons that the Chair indicates, that it is not directly to the waterfront, they won't require public access. We would prefer not to provide it, to maintain the privacy of the units.

Mr. Viccica – If public access is required will you exclude the pathway at edge of the property that abuts the residences off of East Collins Street?

Attorney Grover – That area will not be used, it would have to come through the center of the site. The other possibility is the extension of Planters street, which looks like an actual street but is privately owned by National Grid, although any one can access the water front from that way.

Ms. Curran – National Grid owns the feed to that road?

Attorney Grover – They do. Plater Street public way ends in front of the last house on Planters Street. The beach on the other side of our lot line is also owned by National Grid.

Attorney Grover – states that in terms of the view and the height of the buildings, the public process and neighborhood meetings conducted have really improved the view corridors through the site and 3 view corridors have been created. The buildings are no longer walling off the waterfront.

Mr. Viccica – states that he appreciates the Pro Forma, but believes that the calculations are incorrect.

Attorney Grover – replied that the math can be clarified but the main point of the Pro Forma was to show that single family alternative wasn't a viable option.

Rebecca Curran – opens public comment and reads letters received by the Board into the record.

Mary & Charles Knight – 5 East Collins Street, are opposed to the petition. They are not happy with the reduction in size, feel the new plan is almost identical to the previous plan, found the time and day for neighborhood meetings inconvenient for the majority of neighbors to attend, question whether it should be built at all since it is in a flood plan, a gas line is running through it, and there are documented issues relating to storm and sewer drainage.

Paul and Linda McClevin – 7 East Collins Street, are opposed to the petition. It does not fit the neighborhood, resembles a strip mall, it is over-utilizing the lot, it's an appreciable reduction but is still not appropriate.

Catherine Schrader – 10 East Collins Street, is opposed to the petition. She is concerned about the building, there are too many variances for someone who doesn't live in the neighborhood, heard about a kayak ramp and beach access being offered that she doesn't think should be considered, she has met with the neighbors but neither she or her husband were invited.

Mary Knight – 5 East Collins Street, speaks in opposition to the petition and read her letter out loud.

Phil Bedard – 21 East Collins Street, thanks the Board for the work they have done in the area, but speaks in opposition to the petition.

Adam Craig – 29 Planters Street, speaks in opposition to the petition and read his letter out loud.

Katie Schrader – 10 East Collins Street, speaks in opposition to the petition.

Tim Connell – 6 East Collins Street, speaks in opposition to the petition.

Suzie Yates – 53 Osgood Street, speaks in opposition to the petition.

Barbara & George Leone - 9 ½ East Collins Street, speaks in opposition to the petition.

Kristin Hart – 32 Osgood Street, speaks in opposition to the petition.

Scott Truheart – 4 East Collins Street, speaks in opposition to the petition.

Jason Lang – 43 Osgood Street, speaks in opposition to the petition.

Tim Jenkins – 18 Broad Street, speaks in opposition to the petition.

Trisha Truhart – 4 East Collins Street, speaks in opposition to the petition.

Scott Hiltunen – 18 East Collins Street, speaks in opposition to the petition.

Ms. Curran – states that when you have a non-conforming use and you are switching to another non-conforming use this Board can find that is not more detrimental to the neighborhood. If this was a vacant piece of land it would need to adhere to the zoning and a Board meeting would not be necessary. As far as the Variances go you have to show that there are hardships, not being able to build where the gas line is for example. If zoning dictated that something needed to be over the gas line, zoning would dictate that it would need to be in a different position, because the gas line is an existing problem. One of the reasons the Board is being asked to give a variance is because the Chapter 91 jurisdictional line. Given that, it makes sense to place the buildings where they are shown, and that is why they are not requiring the front and side yard setbacks. If that is the reason for a hardship, then proposing a building – Building B- within that area does not make sense, when the setback relief for the hardship is that line.

Mr. Viccica – adds that in regards to that building in particular, if you are arguing a hardship to get a Variance for 2 ½ stories, Building B is 3 stories, the highest out of all the buildings on the lot. The 3 units causes the 3 stories, but I do not believe the same argument can be applies to Building B. One less unit can be put into Building B and it will comply with the zoning ordinance of 2 ½ stories or less.

Ms. Curran – states that although they are within the height they seem tall. If they did not have parking underneath they would be more in scale, but breaking up the mass of the building and putting dormers within the roof line would bring down the height and make the scale more in keeping with the neighborhood.

Ms. Curran – States that at the last meeting duplexes were discussed. She would prefer 4 duplexes rather than 3 unit buildings. That is not in keeping with the neighborhood.

Attorney Grover – States that he thought that was directed at Building B only, and that is the building whose size has been reduced. Mr. Grover added that he did not understand that that was in regards to all of the triplexes. They felt that the plan was coming a significant way to where the Board wanted.

Mr. Viccica – If flood levels are the reason for raising the other buildings up and providing parking below, then adding a lower level to Building B doesn't make sense. If the buildings were lower and the occupiedspace on that floor were the ½ a story, it would decrease the square footage, and may affect the Pro Forma, but it seems that the Variances requested are to maximize the number of units on the site for a financial benefit. Mr. Viccica states that he does not understand the ability to grant all the Variances, that could be modified in some case, and then see where things end up on the profit side.

Attorney Grover – This project is financially driven because they are trying to make a financially viable project, while trying to accommodate all of the concerns.

Mr. Viccica – states that more importantly, whether that is a detriment to the neighborhood. With the number of units, things are out of balance.

Attorney Grover – Analysis of the density of the surrounding neighborhood has been submitted to the Board a couple of times. The density of the 3 acres surrounding the neighborhood was calculated, and the average density of the lots is approximately 2,600 SF per acre.

Mr. Viccica – How many of those were 3 units houses? Many of 1 or 2 units and adding a third is not in character with the neighborhood.

Attorney Grover – states that 3 families are not predominant, but they are not out of character with the neighborhood. With the reduction of the units down to 11, we calculate 3,800 SF per unit, which is almost 1,000 SF more than what is typical in the neighborhood.

Ms. Curran – Adds that they are so limited with what they can use on the site, you don't get a sense of the additional space, because the structures are concentrated at one area.

Katie Schrader – 10 East Collins Street, questioned if the density and the lot includes the areas of sand.

Attorney Grover – Yes. That is how coverage is calculated.

Ms. Curran – Yes. The areas of sand are included.

Mr. Tsitsinos – Questioned why cars cannot park on Planters Street.

Attorney Grover – Is it not a street. It is owned by National Grid.

Ms. Curran – Do you have the right to access it?

Attorney Grover – No.

Mr. Tsitsinos – How do the cars access the garages? Are they on Planters Street?

Attorney Grover – Garage access is at the middle of the site - East Collins Street. To access the garages you have to drive underneath the buildings.

Heather Lang – 43 Osgood Street, speaks in opposition to the petition, and mentioned the logistics of the additional people on the street, East Collins Street having on-street parking as well as, parking at Halloween, visitors in general, and the challenges of snow removal.

Ms. Curran – Does the parking comply with zoning?

Attorney Grover – Yes.

Mr. Copelas – States that he struggles with the fact that the Petitioner is willing to ask for a Chapter 91 license for Building B, but the Board is being asked to make a lot of design compromises with the other buildings. Is it an unattractive design to squeeze them into the buildable area. Mr. Copelas does not like the compromises that the Board is being asked to make to accommodate the timing of the construction.

Mr. Watkins – Is not in favor of the project based on the Special Permit alone. The traffic flow and safety aspects of adding 11 units to the particular parcel, is a lot. People in the summer months use this area as a cut through from the Willows to by-pass the lights, so it is a busy area.

Mr. Duffy – Some effort to reduce the size has been made but not to the level that the neighborhood is looking for. A lot of relief is being requested for this project, for a Special Permit and Variances, and there is a lot of opposition to that. This project may be over-reaching in their requests.

Mr. Tsitsinos – States that with a better understanding of the parking he does not like that cars must travel under the buildings to get to the garages.

Councilor-At-Large Sargent – How would the lot be handled if it were to burn down?

Ms. Curran – If it were to burn down today, you would have two years that it would still be considered a non-conforming use. Two years from now and someone decided to purchase the site, it would be R1 Zoning. They could get a variance based on a hardship for where the building was located.

Councilor Sargent - On the corner of Lynn & Bridge Street a multi-unit building that burnt down years ago. They could only use the current zoning when they rebuilt it, and it is a one family now. They did not go to the zoning board. Councilor Sargent added that in the past, when you had a non-conforming building that you wanted to renovate, you couldn't level it. A renovation was done in sections.

Ms. Curran – states that a burning is an accidental use. If they took the building down that would be different.

Councilor Sargent – States that you are allowing them to take the Ward 2 Social Club down, but this is voluntary.

Ms. Curran – added that that would only be after permits.

Councilor Sargent – Argues that a non-conforming use is how you use something that is already there. We are getting away from Section 3.3.2 and 3.3.3, and not just with this project.

Ms. Curran – It is in 40A. It is not unique to Salem.

Councilor Sargent – The definition of 3.3.2 is a non-conforming use to change the use.

Ms. Curran – That is not particular to Salem, that is in the state zoning.

Councilor Sargent – The Ward 2 Club is used as a club/bar. If someone wanted to change the use that would be fine. 3.3.3 is to alter a non-conforming structure, not to tear down and rebuild a non-conforming structure. What they want to do does not fit into the City or State statutes.

Ms. Curran – They are going from one non-conforming use to another non-conforming use, and the other non-conforming use is a multi-family. A non-conforming use is also a use that is not allowed in that district.

Chuck Walsh – 2 Planters Street, speaks in opposition to the petition.

Attorney Grover – States that they have not addresses the concerns of the Board or the neighbors and requests to withdraw the petition without prejudice.

Motion and Vote: Mr. Duffy makes a motion to allow the applicant to withdrawal the application without prejudice from the Board. The motion is seconded by Mr. Watkins. The vote was with five (5) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, and Paul Viccica,) in favor and none (0) opposed.



Project	A request for a six (6) month extension to exercise the rights granted by the September 28, 2009 Board Decision that approved Variances from minimum lot area per dwelling unit, and Special Permits to change one nonconforming use to another and to increase existing side yard setback nonconformity to accommodate conversion of an office building to eight (8) residential units.
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Applicant	DANIEL BOTWINIK
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Location	162 FEDERAL STREET (Map 26 Lot 96)
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Documents and Exhibitions

- Application dated March 14, 2016 and supporting documentation

Attorney Scott Grover presents the petition on behalf of, the potential owner of 162 Federal Street, Mr. Daniel Botwinik.

Ms. Curran – Questions Attorney Grover is Special Permits can be granted an extension as many times as the Board wants but are you limited to a six month extension for Variances?

Attorney Grover – Only if there is good cause.

Attorney Grover – stated that this building is the convent that is next to the Federal Street School, formerly the St. Joesph's School. The Board granted a series of Variances in 2009, which were appealed to the court and eventually settled. What prevented the project from going forward was an environmental condition of the property. There was an oil tank leak in the Basement of the convent. The leak has been clean up but the oil migrated to the neighboring school building, so DEP cannot close the case because they are still monitoring the school next door.

There have been several buys for this building, but because of the lack of sign off by the DEP, they could not get the project financed. The potential buyer, Mr. Botwinik, is proceeding with the purchase of the building regardless of the environmental conditions. A closing date is scheduled for March 28th. 6 months ago they have asked for a 6 month extension, but are in need of another extension. The cause for the extension is because of the environmental conditions.

Mr. Viccica – Questioned if this extension process could continue for years. Is there any limitation on the extension?

Mt. St.Pierre – It could continue but only with good cause.

Motion and Vote: Mr. Duffy makes a motion to approve the request for a request for a six (6) month extension to exercise the rights granted by the September 28, 2009 Board Decision that approved Variances from minimum lot area per dwelling unit, and Special Permits to change one nonconforming use to another and to increase existing side yard setback nonconformity to accommodate conversion of an office building to eight (8) residential units. The motion is seconded by Mr. Tsitsinos. The vote was with five (5) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, and Jimmy Tsitsinos,) in favor and none (0) opposed.

OLD/NEW BUSINESS

NONE

APPROVAL OF MEETING MINUTES

January 20, 2016 meeting minutes were approved as written.

Motion and Vote: Mr. Watkins makes a motion to approve the minutes as written, seconded by Mr. Viccica. The vote was in favor (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, and Jimmy Tsitsinos,) and none (0) opposed.

February 17, 2016 meeting minutes were approved as written.

Motion and Vote: Mr. Watkins makes a motion to approve the minutes as written, seconded by Mr. Viccica. The vote was in favor (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, and Jimmy Tsitsinos,) and none (0) opposed.

OLD/NEW BUSINESS

N/A

ADJOURNMENT

Mr. Watkins motioned for adjournment of the March 16, 2016 regular meeting of the Salem Board of Appeals at 9:00 PM.

Motion and Vote: Mr. Watkins made a motion to adjourn the March 16, 2016 regular meeting of the Salem Board of Appeals, seconded by Mr. Viccica, and the vote is unanimous with five (5) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, and Jimmy Tsitsinos,) 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