City of Salem Board of Appeals
Meeting Minutes
Wednesday, December 21, 2016

A meeting of the Salem Board of Appeals ("Salem BOA") was held on Wednesday, December 21, 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 (Vice-Chair), Tom Watkins, Jimmy Tsitsinos, Mike Duffy, Jim Hacker (alternate), and Paul Viccica (alternate). Also in attendance Tom St. Pierre - Building Commissioner, Erin Schaeffer - Staff Planner, and Colleen Anderson – Recorder.

REGULAR AGENDA

Project	Continuation of a public hearing for a petition seeking a Special Permit per Sec. *3.3.5 Nonconforming Single- and Two-Family Residential Structures* to expand the nonconforming structure and a Variance per Sec. *4.1.1 Table of Dimensional Requirements* of the Salem Zoning Ordinance for minimum lot area per dwelling unit.
Applicant	**ARSEN SHERAJ**
Location	**2 BRADFORD STREET (Map 17, Lot 50)(R-2 Zoning District)**

Documents and Exhibitions

- Application dated September 27, 2016 and supporting documentation

Ms. Curran- Stated that the Board of Appeals heard a public hearing at the October 19, 2016 meeting where the Board discussed a lack of hardship for the Variance requested. The applicant requested a continuation of the public hearing to the next regularly schedule on November 16, 2016 with additional information from outside council. The attorney had a different interpretation of the Zoning Ordinance that the applicant's request could be facilitated by a special permit and did not require a Variance. At the November 16, 2016 meeting, the Board requested a legal opinion from the City Solicitor on whether the request could be granted by special permit. The Board continued the public hearing to the next regularly scheduled meeting on December 21, 2016. The City Solicitor concurred that the request could be granted by special permit. The Building Commissioner also concurred with the opinion. All Board members received the City Solicitor's opinion.

Ms. Curran- states that there was not a hardship for a variance request to allow less than the required lot area. By special permit, the threshold of the criteria is less stringent. The public hearing is still open.

Attorney Bill Quinn- Submits a petition of support from five (5) abutters for the record. He also states that the petitioner is proposing a two-family dwelling unit in a two-family residential district. The lot area per dwelling unit will be similar or greater than most in the neighborhood. The proposed expansion of the two-family non-conforming structure will not be substantially more detrimental than the existing structure to the neighborhood.

No one else in the assembly wishes to speak.

Motion and Vote: Mr. Duffy makes a motion to approve a Special Permit per Sec. *3.3.3 Nonconforming Structures and Sec. 3.3.5 Nonconforming Single- and Two-Family Residential Structures* to expand the nonconforming structure. The motion is seconded by Mr. Watkins. The vote was unanimous with five (5) Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), 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 and Variances per Sec. 4.1.1 Dimensional Requirements for the following minimum lot area per dwelling unit, minimum lot frontage, minimum distance between buildings, and maximum number of stories to construct eight (8) residential units.
Applicant	**MICHAEL MEYER, TRUSTEE**
Location	**1-3 EAST COLLINS STREET (Map 36 Lot 277) (R-1 Zoning District)**

Documents and Exhibitions

- Application dated September 27, 2017 and supporting documentation

Ms. Curran- States that at the last public hearing the issue was raised of whether or not the Ward 2 Social Club had lost its grandfathered use status. The reason that this is important is because the use of the Ward 2 Social Club was a non-conforming use. Under the Salem Zoning Ordinance and M.G.L. Ch40A, the change from one non-conforming use to another non-conforming use can be done by special permit if the use has not been discontinued for more than two (2) years. The issue was raised that it had been discontinued for more than two (2) years. The Board requested a legal opinion that answered several questions:

1. Is the use of the Property (the "use") by the Ward II Social Club Salem, Inc. entitled to protected status as a legally existing nonconforming use under M.G.L. Ch. 40A Section 6 and under Section 6 of the Ordinance?
    - The use of the property is entitled to protected status as a legally non-conforming use under M.G.L. Ch. 40A Section 6.

2. Did the Club abandon its Use of the Property in January 2014 when it closed the Building to the Public?
    - The club did not abandon its use of the property in January 2014, when it closed the building to the public.
3. Did the sale of the Property to Michael Meyer, Trustee of 1-3 East Collins Street Realty constitute a termination of the Use?
    - The sale of the property to the petitioner does not constitute a termination of the use of the property.
4. Is it within the authority of the Board of Appeals for the City of Salem to issue a special permit to the Owner allowing a change in the use of the Property form one non-conforming use to another "less" nonconforming use?
    - It is within the authority of the City of Salem Board of Appeals to issue a special permit to allow a non-conforming use of the Property to continue, provided that the Board issues a finding that the proposed new use of the Property, is less detrimental than the existing nonconforming use.

Attorney Scott Grover- Presents the petition on behalf of the petitioner. Attorney Grover states that at the last public hearing, the petitioner presented the long history of this project. The project consists of eight (8) units across five (5) buildings that are divided into single and two-family structures. The relief that is requested has substantially diminished from when the petitioner was proposing eighteen (18) residential units last year. At the last public hearing, the petitioner stated the relief that was requested and the grounds for that relief.

Ms. Curran- Confirms with the petitioner that the proposal consists of two (2) single family homes and three (3) duplex structures for a total of eight (8) units.

Attorney Grover- At the last meeting there were three (3) major concerns raised. The first was the question of abandonment and non-use and whether the property still qualified for a special permit to go from one nonconforming use to another 2) payment of taxes; at the last hearing the property owner had delinquent property taxes that would have prevented the Board from the ability to grant a special permit. These taxes have been paid. 3) A concern from the public that the public access is not shown on the plans. The owner of the property is committed to providing public access through the site, but the location and nature of that access has yet to be defined. It is anticipated that this public access will be designed and developed during a site plan review process through the Planning Board and further revised through the Chapter 91 DEP licensing process. Attorney Grover suggests a special condition of the Zoning Board of Appeal decision, on providing public access, of which the location and nature would be determined by the Planning Board and Massachusetts DEP.

Chair Curran- Opens the public comment period.

Tim Connell, 6 East Collins Street- speaks in opposition to the proposal due to the proposed density and argues that the proposed buildings are big and do not fit with the character of

the neighborhood. The public had access to the beach, views of the ocean, and plenty of street parking. In general, the proposed project will take away views and be very dense. From a neighborhood perspective, this is a significant development that is taking away a lot and is dense with too many units. The neighborhood is not opposed to this development, but the size of this development is more detrimental.

Mary and Charles Knight 5 East Collins Street- Speaks in opposition to the proposal and reads a letter aloud for the record. Ms. Knight argues that affidavit provided by Lorraine Cody, manager of the Ward II Social Club, is false and the proposed project is too large for the property and does not fit with the character of the neighborhood.

Scott Truhart- Speaks in opposition to the proposal and reads his letter aloud for the record. Mr. Truhart states that the current proposal is detrimental and significantly alters the existing neighborhood. The existing neighborhood has a "high density, but low density feeling neighborhood." The neighborhood is a dense area, but the proposal will add to this density and therefore negatively impact the neighborhood's low density feel. Mr. Truhart requests that the Board consider a low impact development and would like to see a few single family homes on the property.

Kim Surles, 27 Planters Street- Speaks in opposition to the proposal and is concerned about the impacts of the proposal of flooding and drainage in the neighborhood and availability of parking.

Scott Truhart- Continues to speak in opposition to the proposal due to density concerns and parking. In particular, Mr. Truhart presented copies of the proposal that was considered in 2015 and compared these plans to the current proposal to make the case that the proposed density of project and there is no different in the footprint of the buildings from the originally proposed eighteen (18) units to the current proposal of eight (8) residential units.

Ms. Curran- Asks the petitioner to clarify the size of the building footprints.

Attorney Grover- requests to address several public concerns and introduces Scott Cameron, CE; Morin-Cameron Group to present the information.

Mr. Cameron- We presented this at the last meeting. Let's talk about the overall density. We did an analysis of the whole neighborhood. There are a combination of single, two and three family structures with an average density of one unit per 2,613 square feet. There is a four family dwelling unit in the neighborhood that was not considered as part of this calculation.

The petitioner is proposing 5,229 square feet per dwelling unit. With consideration that a substantial portion of the property is wetland area, the lot area per dwelling unit, with the omission of the wetland area is one unit per 3,155 square feet. Mr. Cameron makes the case that the proposed project density is less dense than the surrounding neighborhood, even when the wetland of the subject property is not considered as part of the overall lot area per dwelling unit.

The petitioner did not just look at the overall number of units. The petitioner also looked at the separation between the buildings in the neighborhood. In particular, the existing homes in the neighborhood have relatively large footprints that are spaced approximately 10 to 20 feet apart. This is relatively narrow spacing between existing buildings. Then there is a small gap and the face of the existing concrete block structure on the 1-3 East Collins Street property, which is one story high. There is no view line (of the ocean) until out past Planters Street. In breaking up the project from eighteen (18) units over two (2) buildings, which was massive, the petitioner reduced the number of units to eleven (11) across four (4) buildings. Now the petitioner is proposing eight (8) units over five (5) separate buildings.

Through that process, the petitioner has reduced the proposed footprint areas from 30% lot coverage, 19% lot coverage, and presently the proposed lot coverage is 13.3%. This is significant because the existing building covers 12.5%. Mr. Cameron states that the petitioner is proposing the same footprint area as the existing building.

The other thing that Dan Riccarelli, project architect presented, was when you look at the original plan that was submitted (with the proposed eighteen (18) units), there were two (2) large buildings that were proposed with close separation. The current proposal, the five (5) buildings are placed in such a way as to stagger the buildings and provide view corridors between the buildings. Mr. Cameron presents elevation plans showing the view corridors.

The proposed buildings are not larger than the size and scale of the existing homes in the neighborhood. Mr. Cameron presents aerial images of the neighborhood and proposed plan. The proposed buildings are the same general size and footprint area as the existing properties in the neighborhood. The proposed single family and two-family homes relative to the proposed single and two family homes are the same.

Regarding the public access, Mr. Cameron restates that the petitioner would accept a condition from the Board to provide public access.

The property is uniquely large and compared to the neighborhood, even more density may be appropriate. If you look at the street line and existing rows of houses, it would make sense to continue that to match the neighborhood. The proposed development is slightly less dense than that for good measure to help with the concerns of sight lines and visibility.

Regarding the heights of the buildings, the petitioner is in compliance with the maximum building height of 35'.

The Zoning Ordinance requires that the petitioner provide twelve (12) parking spaces. The petitioner will be providing fourteen (14) parking spaces. Through the Planning Board site design process, the petitioner is considering providing more parking spaces. Already, the petitioner is exceeding the zoning requirement for the project. This project would not burden the public street. The homes do not generate a significant amount of traffic.

Impacts of sewer and water infrastructure are barely measurable because there are only eight (8) units proposed. We look at hundred (100) unit projects and those are not of concern for waste water flow.

Single and two-family uses are typically a very low burden on emergency services and schools. The proposed dwelling units are planned to be two (2) bedrooms mainly. A lot of thought has been put into this project and understands the concerns of the neighborhood.

This project is a change to the neighborhood and a change to the use of the property that has been there for a long time. In a neighborhood like this and the introduction of a new project like the one proposed there will be a higher land value and have people living there rather than people coming to socialize. The proposed development will be an anchor to the neighborhood and inspire other future developments, renovations and developments to existing homes to the neighborhood. As a planning tool, this is an ideal use and very reasonable density.

Ms. Curran- one member of the public had a comment about stormwater.

Mr. Cameron- The property is located in a flood zone. The lower levels including the first floor area are above the flood zone, which is a requirement of coastal construction regulations. So there are no mechanical systems or living areas that will be impacted by the construction of these homes.

As for stormwater management, the petitioner is proposing to reduce the impervious surface on the property. Currently, the pavement and paved areas encompass 30% of the property and the buildings encompass 13% of the property. The proposed buildings will encompass 13% of the property and the associated pavement will be reduced to 15%, half of the amount of pavement that currently exists on the property. There will be a significant reduction in impervious surface of the property. The rate of runoff from the property is not considered as the ocean is viewed as infinite. The proposal will not impact flooding in the ocean. The petitioner will consider the treatment of the runoff, which will be in full compliance with the stormwater management regulations that are enforced by DPW and the conservation commission through the Wetlands Protection Act.

Mr. Scott Truhart- On the pavement, we a number 30% or some percentage. I would like a ruling on the paved area, this hammerhead driveway is not allowed to count toward the square footage, the density. That is a road. I want to just quickly…cause I am glad that the drawing is back. Maybe it was difficult to understand my letter when I was reading it and talking about the shading (of the renderings). This is all building and multi-tiered roof and the center building for some reason are not shaded. The proposal has small view corridors compared to what is there now. It is exceptionally more detrimental to the open air space, light, air flow and unprecedented view of the cove.

Ms. Curran- That is a driveway. In order to create a road, the petitioner would have to go through the Subdivision control process administered by the Planning Board. The petitioner is proposing an access driveway, not a road.

Mr. Truhart- Okay, I still would suggest that the paved area in this case as well as the curbcut that we are losing. I would like a ruling on that.

Ms. Curran- Confirms with the petitioner that the curbcut complies with the Zoning Ordinance and is twenty (20') feet.

Mr. Cameron- Yes, the curbcut dimensions comply with the requirements of the zoning ordinance and is also designed with a slight angle to not have car headlights pointing away from the dwelling units directly across the street. The proposed driveway is not a road and pavement is not used in the overall density calculation. *The density calculation is lot area/dwelling unit [inserted clarification]*. Further the appropriate of driveway area per dwelling unit is not different from the amount of driveway appropriate for each dwelling unit in the neighborhood.

Mr. Viccica- Asks Attorney Grover to review the requested Variances and associated hardship.

Mr. Truhart- There are more people with comments.

Ms. Curran- Yes. We know.

Attorney Grover- The most significant of the relief requested is the minimum lot area per dwelling unit. The minimum lot area per dwelling unit is 15,000 square feet per dwelling unit in the R-1 Zoning District. We are providing considerably less than that at 5,200 square feet per dwelling unit. But the proposed density is still significantly greater that the existing density in the surrounding neighborhood. 2) The second Variance requested is for the maximum number of stories. As mentioned by Scott Cameron, the petitioner is not requesting a Variance for the overall height of the buildings as they meet the maximum 35' feet requirement. The building in the number of stories measures three-stories rather than the maximum of 2.5 stories. 3) The third Variance requested is to have less than the required minimum distance between buildings. The requirement is to provide 40' feet of distance between buildings. The petitioner is proposing a range of 25-30 feet. 4) The fourth variance is for less than the required frontage.

The hardship is that if you were to literally enforce the zoning ordinance, the maximum number of dwelling units that could be constructed is two (2)-units with a Variance for minimum lot frontage. Due to the physical constraints of the site, it is impossible to develop the site. Two (2) dwelling units are the most that could be constructed with a variance for frontage. With the literal enforcement of the zoning ordinance and no variance for frontage, a single family home would be the most that this site could be developed.

Ms. Curran- Confirms with the petitioner that there are also other constraints of the property including a gas line easement.

Attorney Grover- States that there are all sorts of other unique features of the property and constraints including the gas line easement, wetland buffer, and coastal dune. The property subject to Chapter 91 Licensing.

Mr. Viccica- so why is the site not developable if it is not more than two (2) units.

Attorney Grover- The unique construction standards and features of the property make this site very expensive to develop and is not economically viable. And two units would not be

allowed with the literal enforcement of the ordinance, because a variance would be needed for less than the required lot frontage.

Ms. Curran- But the use is allowed by special permit. I am wondering, do you need a variance for lot area per dwelling unit?

Attorney Grover- Yes. The use is by special permit and a dimensional variance is needed for minimum lot size per dwelling unit.

Ms. Curran- What is the footprint of the two (2) single family homes?

Attorney Grover- We can provide that. I also want to address the suggestion that the lot coverage that was originally proposed with eighteen (18) dwelling units to eight (8) units has not changed. I would suggest that the lot coverage has dramatically changed from the original proposal to the current proposal. Mr. Cameron stated that the original lot coverage was 30% coverage to about 13% coverage. There has been a significant reduction in lot coverage proposed. As for the percent coverage of the existing building, it is 12% lot coverage and the proposed lot coverage of the proposed buildings is 13%, only marginally more coverage than the existing structure.

Mr. Cameron- States that the footprint area for the single family homes is 840 square feet with dimensions of 22' x 38'.

Ms. Curran- Takes additional public comment.

Charles Knight 5 East Collins Street - Speaks in opposition to the petition citing flooding concerns. The three back properties that are towards the berm, on any given storm surge, there 10-15 inches of water. That whole side is grass and is permeable. I have pictures of that area two- feet deep. The storm surge comes right in here and I have seen cars floating in that parking lot half a dozen times. If I dig three inches below by basement floor the ground water is high. At one point, the club put a stormdrain through the berm and the EPA came by and shut it down. Unless there are elevational changes, those properties are going to have floating cars when there are storm surges. I want to know where that water will go because if it is going to come on my property, I am going to have other issues with this. There is detriment to the parking because of the 20' curbcut proposed because it will take away on-street parking for two cars right in the front. With the Planters Street project, which looks good and fits, we are already feeling the effect of the lack of parking in the neighborhood and affects all of us.

Ms. Curran- Confirms that the proposed buildings will not have basements and will all be elevated above the flood elevation. He is concerned that there will be increased water on his property. Can you address that?

Ms. Cameron- There will be not changes to the topography of the site. If there is coastal flooding of the site, the other houses along the coastline will also be flooded and there is nothing we can do about that. No water will be directed anywhere else. The berm will not be modified because it is a protected natural resource. Everything will be elevated above the flood elevation.

Ms. Cameron- What is the flood elevation?

Mr. Cameron- 10' feet.

Ms. Curran- So I am looking at the aerial view of the existing Ward II Social Club and there are a bunch of parking spaces in front. So when that club was active, was this one big curbcut here.

Mr. Cameron- Yes, you would pull. There was nothing defining the curb and the parking spaces are perpendicular to the building and street, so you could not park on the street without blocking someone in.

Ms. Curran- Okay, but now that it is proposed to be defined and closed, there will be on-street parallel parking.

Mr. Cameron- Describes the plan. By defining a curbcut, the petitioner will be providing at least four (4) on-street parking spaces.

Mr. Truhart- Interrupts the Board.

Mr. Cameron- There is a curbline that exists here, but anyone parking on the site will be blocked by cars parked on the street.

Ms. Curran- Confirms that the pavement that appears to be an extension of Planters Street is owned by National Grid.

Mr. Cameron- Confirms. Some of the misperception of how open this is and how big this street is, Planters Street ends right here.

Ms. Curran- Takes additional public comment. The chair requests that any new comments be shared rather than repeating the same concerns. Mr. Truhart interrupts the chair and speaks.

Mr. Truhart- The striped parking lot in front of the club used to be sidewalk that the club striped and no one seemed to mind. The majority of those spaces are what the neighbors used for parking especially for people who do not have off-street parking. What occurred there typically was that neighbors parked there on that property particularly during snow emergencies, but there would generally be several parking spaces on the street blocking cars parked on the property and the property owner allowed it.

Mary Knight, 5 East Collins Street- Disturbed that the Board is okay with the petitioner proposing the construction of three new buildings in a flood zone. This is not sound and responsible. This is crazy to me.

Polly Wilbert, 7 Cedar Street- Just to refresh the Boards memory, by City Ordinance you can't park 20' feet from a corner and four (4) feet from a driveway.

Mr. Hiltunen- 18 East Collins Street- Speaks in opposition to the project due to concerns about the lack of neighborhood parking. Fourteen (14) parking spaces are not enough.

Ms. Curran- States that the petitioner is providing adequate parking that exceeds the zoning ordinance requirements.

Mr. Hiltunen- 18 East Collins Street- It's not enough.

Ms. Curran- Any comments or questions?

Attorney Grover- Reminds the Board that the project, if approved, would be subject to site plan review by the Planning Board and Conservation Commission. A lot of the drainage issues and stormwater management will be further engineered and developed through that review. The City will review this project continuously on those issues.

Patricia Perry- 23 Planters Street- Speaks in opposition to the proposal due to parking concerns.

Arthur Sargent- Councillor-At-Large- Speaks in opposition to the proposal due to concerns about the preservation of views of the cove. If someone proposed a project that could be done by right and blocked views, I would say sorry, there is nothing I can do about it, but this project requires variances and special permits. The proposal to exceed the density is piling on a reverse hardship. One person's hardship can't be fixed without causing a hardship to the people who are losing property value. Councillor Sargent states that the petitioner might as well pay the neighbors thousand dollars a piece because that is what is going to come up in their home appraisals. In some cases we can't help some without hurting somebody else and how fair is that? If we were to have twice the density that would be one thing, but not this much…Mr. Sargent goes on extensively about a story of his neighbor and how he was a good person and the neighborhood supported his project that increased the density of his property and how those buildings are in keeping with the neighborhood.

Attorney Grover- Clarifies that the proposed density of this property is 5,200 square feet. The Skomurski project that was referred to by the neighbors is about 2,300 as a good project example has half of the density as the proposed development.

Tim Jenkins-18 Broad Street- Mr. Jenkins speaks in opposition to the proposal. Just a few things. Just starting with the "substantially not more detrimental" issue. Just as one example, this curbcut, which I believe is 20' feet, will take away two (2) on-street parking spaces, which would be allowed right now even though the property has been fully cutoff from the access. Once upon a time when it was a social club all of the people of the neighborhood could join the club and personally used the parking at the social club, which they did, particularly during snow storms. All of this parking, which was used by the neighborhood, and this is supposed to not be substantially more detrimental to the neighborhood, is all of this is going to be lost now. As a private developer/owner can rightfully develop it, but this is an existing benefit of the property. In particular at least two (2) parking spaces will be lost that are in existence now. When people bring this up, yes, you are allowed to building two by right, because you can include portions of this property that can be never be developed on.

You would also lose the benefit of this, which is already owned. You can walk here and a member of the public can access the beach. So this new private ownership, which may also impact, we have already heard that there are fourteen (14) spaces, that at one point the proposal was for eighteen (18) units, which would have require 24 parking spaces. Where you would put them I don't know. But they would have added more burden, apparently at the time that was thought to be a reasonable application and probably would have not succeeded. This is smaller but still substantially larger, and by the way, when you already have a tight neighborhood, how can you add more tightness, and improve the situation? It can only make it worse as far as I can see. But let's go back to the law, and what we have in our ordinance that are based on the state statute M.G.L. 40A. One of the things is that you "may" issue special permits, you don't *have to* if they meet all of the criterion. Or even if they don't… But one of things it says here is, in the structures, back to Arty's point, there is nothing in or existing ordinance that says you can build a new building, knock down an old building and bring a new one. We are only talking uses so far. This is a new structure. Where is it in our ordinance, "may award a special permit to reconstruct" that means to rebuild something on site, extend, that means to presumably add to a building, alter, to change the building in some way shape or form., or change, which change may be the only possible way you can issue a special permit here. This is a radical change. It is taking down and old building and putting up new buildings. I don't think this is permitted. I don't think you have the authority as far as I can tell to do that, nevermind uses where you seem to have more discretion with this business of not substantially more detrimental, which is a qualitative decision you have to make based on all the information being provided. But I want to just get into if I can…

Ms. Curran- Yes, but you don't have to get into what the Board can and cannot do. It is getting late.

Mr. Jenkins- interrupts the Board chair and states, "I do not understand how this can be done under our ordinance." Maybe you can explain it to me. Then going to an opinion. We have an opinion that this building has not been abandoned. The law and everything that I have read is a disjuctive. It is an "or" not and "either or".

Ms. Curran- Okay stop. I do not want to debate that. We asked for an opinion and we have one. We are going to adhere to the opinion provided.

Mr. Jenkins-As far as I can tell the opinion only is directed at the club and subsequent owners. The property was sold.

Ms. Curran- Yes that was a question and it was answered. I do not want to spend time debating this.

Mr. Jenkins- Well…

Ms. Curran- I want to hear about your information that you have if you live in the neighborhood and interested in stormwater or anything that can help us to make a…

Mr. Jenkins- Then all I will do is re-phrase and say is, is there an intent to abandoned when the new owner is not a non-profit and cannot recreate what we have here. And the new

owner was not just the current owner. It was also the bank. The bank had partial ownership. This is not even dealt with in the legal opinion. But I'll just leave it there. And case law, they refer to case law, but Dobbs is not referred to. Neither is Lakeville. These decisions all deal with this and are clear with this. And I would like to hand out if I could a copy of Dobbs. It deals with this particular issue. And you may want to look at this. The opinion does not refer to this case at all. Just tried to check all of the case law that were not referred to in the opinion. I think you are asking me to not go into it, so I won't go into it any more on that.

Ms. Curran- Okay thank you. Is there anyone else who wants to speak on this proposal?

Mr. Jenkins- Read what is does say in our ordinance about abandonment and that is non-conforming use or structure that has been not use and abandoned for more than two years loses its nonconforming status. Mr. Jenkins cites the zoning ordinance and goes on to explain his interpretation of the ordinance that the loss of a nonconforming status is instantaneous and argues that this has happened twice including the submittal of an application to the Board.

Ms. Curran- There seems to be some confusion and there is not in my mind. Forget the building. The use of the property runs with the land and a change of one non-conforming use to another non-conforming use can be done with a special permit as long as the Board finds that the proposed use is less detrimental. The building has nothing to do with it. It's the use of the property. The building can come down and a new building can go up. It happens a lot. Its very clear to me, but I can understand how this can be confusing. The Board requested an opinion for a determination on whether or not the two years had lapsed and we got an opinion from the City Solicitor. Do we have a motion to close the public hearing?

Motion and Vote: Mr. Duffy makes a motion to approve the closure of the public comment portion to allow the Board to continue their deliberation. Mr. Watkins seconds the motion. The Board unanimously voted to close the public comment portion of the public hearing.

Ms. Curran- Let's talk about the use. The petitioner originally proposed two (2) big buildings that were grossly out of character with the neighborhood and the Board requested that the massing of the buildings be altered to better fit with the neighborhood character. The petitioner came back with a reduction in the number of units and changes to the massing of the buildings, but it just was not enough. The question here is, is this enough? So there are a number of single and two family homes in the neighborhood and footprints of the proposed buildings appear to be in keeping with the existing footprints of the existing structures in the neighborhood. The density of this project also is in keeping with the neighborhood. Up the street, the Board granted variances for the Skomurski project mainly because the lot was very narrow for single family homes and is a higher density than what this project is proposing. A view of the cove is not owned, unless you have a view easement. But, I do understand what the Councillor was saying is that by asking for a special permit, you are asking for something special. The Board requested that the petitioner maximize the views and that is why the buildings are situated as they are proposed. As to public access, that is an important issue here, but the location and design of the access will be largely dictated by the Chapter 91 Licensing process. The proposal has a driveway and parking. The building code allows construction in a flood zone. The current proposal is much better than what was proposed

earlier. The fact that the units are two bedrooms does dictate the size of family that will live there.

Chair Curran opens further discussion to the Board members.

Mr. Viccica- Speaks against the lot area per dwelling unit variance request. There is no evidence before the Board that speaks to whether more or fewer units will be more or less desirable to develop from a developers point of view. To me this is connected monetarily, but if the developer paid too much for the property it is not the Boards problem and is not a hardship. On the basis of this, I would not support this petition.

Ms. Curran- Variances for parking and minimum lot area per dwelling unit are always difficult.

Mr. Viccica- the architecture is fine and the planning is as good as it gets, but the hardship is not there.

Attorney Grover- Asks the Board if he could address the hardship again.

Mr. Truhart- Isn't the public comment period closed?

Chair Curran- Yes, public comment period is closed, but this portion of the meeting is for the Board to deliberate. If the Board has questions, the applicant can respond.

Attorney Grover- anything other than a single family home is going to require a variance. I think the cost of the land is almost irrelevant given the cost and physical constraints of developing this site. The petitioner would need a variance for anything other than a single family home because of the frontage. If the petitioner didn't pay anything for the land, a single family home could not be constructed on this site. The cost to construct would be significantly more than what the petitioner could sell it for. Without a variance, the Board would render the site undevelopable.

Mr. Viccica- So what is a fair profit?

Attorney Grover- That is not really up to the Board. Attorney Grover a literal enforcement of the zoning ordinance would allow a single family home and would render the land not developable. That is the hardship.

Mr. Viccica- States that his opinion is that the density of the proposal is still too much and is a detriment to the neighborhood it is too dense. The parking under the building that is mandated by elevating the buildings, if it is in fact it is in the floodplain, the parking will not be used very much. The cars will be forced out onto the street. No one wants to park their car in a foot and a half of water one time a year. I get the idea about elevation and the need, but do not think that the parking is legitimate parking for someone who does not want to park in the water.

Mr. Copelas- I do see the special conditions of the land as rendering the property undevelopable without a variance. Moving onto the special permit, it is a qualitative

discussion about whether the proposed changed is substantially detrimental. That is where we have heard considerable evidence and opinions from the public that the proposal is substantially detrimental. That is a qualitative issue. In some ways, I am a little more hung up on the special permit finding.

Mr. Duffy- I tend to agree with Peter on his opinion with the Variance. There is a nonconforming use in place. The petitioner is not asking to start from scratch and build a non-conforming use. There is already a non-conforming use of the property and the petitioner is asking for another non-conforming use, which is multi-family residential use. It just so happens that the petitioner also needs dimensional variances, which trips us to consider lots that are suitable for a single family home. Do we examine the variance and hardship with scrutiny of a blank lot that is suitable for a single family home? Or do we look at through the lens that this is a request to change from one nonconforming use to another nonconforming use, which is allowed under the zoning with a special permit? When I look at the work that the engineer has done to analyze the relative size of the buildings compared to the existing buildings in the neighborhood, I think this is persuasive. The proposal development is appropriate and makes additional concessions for sightlines, providing public access, and the project size and massing has been significantly reduced. The developer has shown a genuine good faith effort to listen to the concerns of the neighborhood. The neighbors and developer are not getting 100% of what they are asking for. I do think that we are down to that issue. Is this qualitatively not substantially more detrimental?

Ms. Curran- The analysis of the neighborhood is compelling that the proposal fits with the neighborhood character. As for the parking in a flood zone, this might create problems, but this would have caused problems with the Ward II Social Club as well. I understand that the neighborhood had a benefit to parking at this site. But this property is now privately owned.

Mr. Cameron- As mentioned, the petitioner has not been through a full site design to the level required by the Planning Board and Conservation Commission. Mr. Cameron sites a similar project with similar concerns in Gloucester. Mr. Cameron expects that there would be an accommodation made in the full development of the site design and analysis to ensure that the parked cars will not be flooded on a regular basis. The berm can be raised, by law the petitioner cannot impact adjacent properties. This is something can be engineered. Even from a sale perspective, potential buyers of this property would not want to buy a place with parking that floods.

Mr. Watkins- To be clear, the petitioner can legally raise the berm?

Mr. Cameron- Yes. Because this is a coastal area, the petitioner is not required to provide compensatory storage. If an area floods, the water will go into the ocean. With the development of this project, we need to make sure that we are not changing existing drainage patterns that would negatively impact another property and that can be controlled with catch basins and sight grading.

Mr. Viccica- What is the height of the berm?

Mr. Cameron- The berm crests at elevation 9' ft. and is a foot below the flood elevation.

Mr. Viccica- Expresses further concern about residents of this development parking in the neighborhood due to flooding. The engineering will help during the storm event, but not during 100 year storm.

Mr. Cameron- If this property is experiencing flooding then every property is experiencing flooding in the area. We do not want to create a condition that will create problems. This is not a storm surge zone, this is a velocity zone that experiences tidal based flooding.

Ms. Curran- The site engineering work will also continue to be developed and reviewed by the Planning Board and Conservation Commission.

Motion and Vote: Mr. Copelas makes a motion to approve a Special Permit per Sec. 3.3.2 Nonconforming Uses and Variances per Sec. 4.1.1 Dimensional Requirements for the following minimum lot area per dwelling unit, minimum lot frontage, minimum distance between buildings, and maximum number of stories to construct eight (8) residential units. The motion is seconded by Mr. Watkins. The vote was unanimous with five (5) Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Tom Watkins, Mike Duffy and Jimmy Tsitsinos) in favor and none (0) opposed.

Project	A public hearing for all persons interested in the petition of, requesting a Special Permit per Sec. *3.2.2 Home Occupation* to allow a professional office to be located in an existing dwelling.
Applicant	**TRYAD COUNSELING AND HEALING CENTER LLC**
Location	**22 HANCOCK STREET (Map 33 Lot 192)(R-2 Zoning District)**

Sandrine Aegerter- 22 Hancock Street- Petitioner is proposing a home occupation to allow a professional office to be located in an existing dwelling unit.

Ms. Curran- I have read the petition and the statement of grounds. Ms. Curran confirms the following information with the petitioner: The petitioner is the sole practitioners of the business; there are two (2) off-street parking spaces allocated to the petitioner;

Ms. Aegerter- Yes, I am the sole practitioner and there are two (2) parking spaces. One parking space is occupied, but there will always be one (1) off-street parking space available to clients.

Ms. Curran- Do you see one (1) client at a time?

Ms. Aegerter- I see individuals and couples who travel together in one car.

Ms. Curran- The petitioner has adequate parking. Do you have exterior signage related to this?

Ms. Aegerter- Shows a sample sign that is approximately 2.5 inches x 12 inches and will be located on her front door. Ms. Aegerter also presents a picture of her front door to the Board.

Mr. Copelas- Is this unit a condo? Do you own your unit?

Ms. Aegerter- Yes. I own my unit.

Mr. Watkins- There is one parking space in the back. Is that where your clients will park? Where do you currently park?

Ms. Aegerter- There are two (2) parking spaces associated with this unit. Clients will park in the rear parking space. I have one (1) car and park in the second space.

Ms. Curran- opens the public comment portion of the public hearing.

Polly Wilburt- 7 Cedar Street- President of the South Salem Neighborhood Association- States that this block is severely under allocated with any parking. Ms. Wilburt requests that the Board have a special condition to protect the neighborhood from expansion of the business as it relates to parking.

Ms. Curran- Will you direct your clients to park in your parking area?

Ms. Aegerter- Yes. I have also said that in my proposal.

Ms. Curran- The petitioner will see one client at a time or one couple at a time.

Ms. Aegerter- Yes. Sessions are about 45 minutes long with 15 minutes scheduled in between to allow time for clients to not overlap.

Ms. Curran- How many clients do you see and what are your hours of operation?

Ms. Aegerter- In my petition I have indicated a maximum number of hours. I will never see more than 25-30 clients per week. I am building up my private practice and am starting with 3-4 clients per week.

Mr. Copelas- What are the provisions that the Board can impose so that the business remains with the sole proprietor so it cannot expand to have multiple providers?

Mr. Duffy- The zoning ordinance indicates that this kind of business is self-limiting. Right, Tom?

Mr. St. Pierre- Reads the zoning ordinance section to the Board and concludes that the business may have one additional employee beyond the proprietor.

Mr. Copelas- We do not put a condition on this, she could potentially have one additional employee.

Ms. Curran- We should probably limit this to the sole proprietor given that parking is so limited and then if the practice expands it can move to another location.

Mr. Copelas- Concurs.

Mr. Duffy- Are we talking about allowing one practitioner and no employee or would we allow one practitioner and an employee, like a part-time bookkeeper?

Ms. Curran- To limit to one practitioner so that there is not multiple practitioners and not multiple office visits at the same time.

Ms. Aegerter- Can the business be limited to one practitioner at a time? For example, could I have one (1) additional employee that could see clients when I am not seeing clients? Would this be agreeable to the Board? My partner, who also lives at the residence and shares a car with me, is a Reiki practitioner. I do not know if he would want to do that, but would like to have the option in the future. Clients would not been seen at the same time.

Mr. Duffy- Does the accomplish objective that the volume of clients would not be increased in such a way as to aggravate the parking issue?

Mr. Viccica- Suggests a special condition that one (1) of the two (2) parking spaces be reserved for clients.

Ms. Curran-When clients are on the premises there shall be an open parking space for clients. I don't have a problem with two (2) practitioners who are both residents of the unit and share a car. You are just speaking hypothetically now?

Ms. Aegerter- Yes, but it is expensive to apply to the Board and I am on a limited budget as I am starting my private practice. I understand the Board's concerns. I was just thinking if at one time only one client could be seen, by me or my partner, who is also living in the unit, we are not increasing the traffic flow or parking need.

Mr. Duffy- What if it is conditioned such that a client can only be seen by one practitioner at a time. The practitioner must be a resident on the premises.

Motion and Vote: Mr. Duffy makes a motion to grant a Special Permit per Sec. *3.2.2 Home Occupation* to allow a professional office to be located in an existing dwelling. The motion is seconded by Mr. Watkins. The vote was unanimous with five (5) Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Tom Watkins, Mike Duffy, Jimmy Tsitsinos) favor and none (0) opposed.

Project	A public hearing requesting Variances per Sec. 4.1.1 Table of Dimensional Requirements for minimum lot frontage and minimum lot width to create a second residential lot.
Applicant	**ANTHONY M. JERMYN, TRUSTEE OF JULIA TRUST**
Location	**50 RAVENNA AVE (Map 8 Lot 7) (R-1 Zoning District)**

Documents and Exhibitions

- Application dated November 23, 2016 and supporting documentation

Attorney Correnti-63 Federal Street- Presents the petition along with Bob Griffin, Griffin Engineering Group. The petitioner is proposing to construct a single family house in an R-1 Zone. There is one (1) existing large lot that is approximately 1.25 acres located at the end of Ravenna Ave. Salem Woods is located behind this lot owned by the City of Salem and on the other side at the rear is the Osborne Realty Trust development. The Jermyn family has owned this property for several decades now. The current house was constructed in 1985-86 and the land was part of an earlier Barcelona Ave and Ravenna Ave. subdivision that was laid out back in 1928. These properties were always two (2) separate lots that were merged due to the same ownership. Interesting these lots had frontage of 99.22 feet and 71 feet, for a total of 172 feet of frontage.

The petitioner is proposing to subdivide a piece of this land off to create a 16,000 square foot lot for a single family home with approximately 72 feet of frontage. The petitioner is requesting a variance for less than the required frontage and also for less than the required lot width. The lot width is drawn to work with the existing topography of the land. The plan is to build a single family home within a small building footprint. The first lot, which has an existing single family home, is conforming in every way. The petitioner is creating a conforming Lot #1. The second lot conforms to the lot area requirements, but does not meet the lot frontage or lot width requirements. Attorney Correnti introduces Bob Griffin, Griffin Engineering to explain why the proposed lot line is where it is.

Bob Griffin- Griffin Engineering- This supplemental plot plan shows the wetland line on the far west side. Behind the existing house, there is a 10' foot drop followed by a wetland and stream. There is also a ten (10') foot grade change in the front yard from the road to the existing home and lot. There is a significant grade change from the road to the two (2) lots and also a grade change along the existing stone wall. The petitioner is proposing an access easement to allow access over an existing driveway. There is a stone wall, pool, pool house, gardens, wetlands, and grade changes on the property. There are existing utilities for water and sewer for this proposed house. The house is proposed to be about 1,800 – 2,3000 square feet of living space.

Attorney Correnti- Lot #2 and proposed building envelope meets all of the zoning dimensional requirements. The petitioner is requesting relief to have less than the minimum

lot width and less than the required frontage. This is an R-1 Zoning District and the proposal to place a single family home on this lot meets the intent of the district. A letter in support from abutter resident Benjamin Hernando speaks in support of the petition.

Chair Curran- Confirms that the two existing lots merged under zoning. As a result of the merged lot scenario, there is one lot that is three times the size of what is required with 171 feet of frontage. On the lot width, why not expand it? Is there some existing feature that the applicant is trying to avoid?

Bob Griffin- States that the lot line location is intended to follow along an existing retaining wall and vegetation. Lot width is measured 15' feet off of the front yard lot line. If the lot line is moved to make Lot #2 conforming, it will make Lot #1 non-conforming as to the lot width.

Chair Curran- this makes sense along the existing feature. Chair Curran confirms that the curbcut will be shared.

Attorney Correnti- Yes. The petitioner is proposing to use the existing driveway and easements will be granted from Lot #2 to Lot #1 to share the driveway.

Motion and Vote: Mr. Watkins makes a motion to approve Variances per Sec. 4.1.1 Table of Dimensional Requirements for minimum lot frontage and minimum lot width to create a second residential lot. The motion is seconded by Mr. Duffy. The vote was unanimous with five (5) in favor (Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Tom Watkins, Mike Duffy, Jimmy Tsitsinos) favor and none (0) opposed.

Project	A public hearing for all persons interested in the petition of requesting a Special Permit per Sec. 3.3.3 Non-Conforming Structures and a Variance per *Sec. 4.1.1 Table of Dimensional Requirements* for minimum side yard setbacks construct a new dormer and exterior decks on the rear of the building.
Applicant	**CAROL and SCOTT PERRY**
Location	**7 ORANGE STREET (Map 35 Lot 366) (R-2 Zoning District)**

Documents and Exhibitions

- Application dated November 28, 2016 and supporting documentation

Attorney Scott Grover-27 Congress Street- presents the petition. 7 Orange Street is directly behind the Customs House off of Derby Street. Carol and Scott Perry, bought the property earlier this year with the intent of renovating the property and providing a residence for Scott when he was discharged from the military in the spring.

The building needs quite a bit of renovation and the petitioner is proposing to create a dormer at the rear of the structure to create more useable living space on the third floor and add two (2) additional bedrooms. Attorney Grover shows the existing and proposed elevation plans. In addition to the proposed dormer on the third floor, the petitioner is also proposing to construct rear decks accessing the second and third floor.

Mr. Watkins- Are there currently decks?

Attorney Grover- No. There are currently no rear decks.

Ms. Curran- Is there living space proposed on the first floor under the deck area?

Clarifying discussion of the elevation plans.

The property is located in an R-2 Zoning District and the structure is non-conforming. The relief that is required is two-fold. The petitioner is proposing a special permit for the expansion of the existing non-conforming structure. The structure is non-conforming as to side yard setbacks. The petitioner is also requesting a variance for the exterior decks on the rear of the building as they are proposed to increase the non-conformity as to the rear yard setbacks. The new non-conformity is an increase in lot coverage from 37% to 42%. Because of the new non-conformities that are created and because this building is a four-family structure, variances are requested.

A unique quality to this property is that there is a tremendous amount of open space. Adding the decks does not create any privacy issues and no real detriment to the neighborhood by creating more quality space. Any expansion of the property at all would increase the lot coverage. Any improvements to the exterior of the building would trigger this variance because of the large size of the non-conforming building and size of the lot. This establishes the grounds in this case.

Ms. Curran- Has no problem with the proposed dormer and associated special permit request. No sure that there is a hardship for the decks.

Attorney Grover- States that the literal enforcement of the zoning ordinance would not allow for any improvements to the exterior of the building because of the large size of the existing building and small lot.

Ms. Curran- you can do repairs to the existing exterior, but would need a variance for the expansion of the structure.

Attorney Grover- states that there is currently no quality exterior space.

Scott Carol- Petitioner state that the intent is to draw more rent as a result of the upgrades to the building. The renovations will make the apartments more sought after. Mr. Carol shows images of neighboring properties.

Attorney Grover- States that the standard for a hardship dimensional variance is de minimus.

Mr. Copelas- Acknowledges that applicants typically request variances for rear decks when there is no outdoor space. In this case there is a large backyard space. There is a lot of useable outdoor space associated with this building. Could you explain why the variance is required?

Attorney Grover- States that the non-conforming setback requires a variance because the applicant is proposing a new non-conformity.

Mr. Copelas- It does not diminish the amount of side setback that is already there.

Attorney Grover- Correct. The house encroaches even further into the side yard setbacks as it exists now. The proposed decks are not increasing the side yard setback non-conformity. [the decks are proposed to encroach on the side yard setbacks, but not more than the existing structure]

Mr. Duffy- States that the requested Variance is de minimus as the rear decks are not proposed to extend beyond the existing structure or the existing rear staircase. The decks will simply square off the existing rear features. While there is the hardship challenge, where it is a minimal dimensional variance, the hardship needs to be met, but not do not have to look at it with the same weight [as a use variance].

Attorney Grover- States that the petitioner is trying to upgrade this property and improve the property and fit with the changing neighborhood and have renters that will pay market rate. The other thing that is an option is that the decks could be cut back so they do not encroach on the side yard setbacks, but it doesn't fit the coverage problem. Any expansion will increase the lot coverage. The idea is to give exclusive outdoor space to each unit.

Ms. Curran- There is no question that these will be nice units.

Mr. Copelas- You are going to increase the living area by addition bedrooms or units? Is that correct?

Scott Carol- States that the living space will be expanded. The added dormer will allow two (2) additional bedrooms.

Mr. Copelas- As the building is now, there are a total of four (4) units with two units on the first floor and two units on the second floor and no living space on the third floor.

Scott Carol- Confirms.

Mr. Copelas- And the dormer will add to the living space of each of those two second story units.

Scott Carol- yes.

Attorney Grover- Restates that the property is unique because there is a large building on a small lot.

Ms. Curran- Is there a way to construct a patio and second story decks without a variance request.

Mr. St. Pierre- No. This is a small variance request. If you want to hold that little standard on everyone, we are not going to have any variances in the City of Salem.

Ms. Curran- might not be bad.

Councillor Arthur Sargent- Speaks in support of the project and request that for a person who has served our country, it is a de minimus thing to ask? This building is dwarfed by the Custom House, which we are happy to have including the open gardens back there. What a beautiful area for residents to look at the gardens. To keep good people in our City and to have these apartments, we are allowing good people to stay with decent quality housing. Nothing against Section 8 Housing, but it is good to get people with a strong community factor into these buildings and historic neighborhoods. I am strongly in favor.

Mr. Duffy- States that this is a four (4) unit building that is a unique configuration for this lot and such a de minimus dimensional variance request for this structure. There are some special conditions that affect this structure and potentially also the land. It is difficult to provide a common type of amenity for a residential unit to have some type of outdoor exclusive space. The decks are staying within the existing setbacks of the building and relief request is very minor. The variance could be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent of the district or the purpose of the ordinance.

Motion and Vote: Mr. Duffy makes a motion to approve a Special Permit per Sec. 3.3.3 Non-Conforming Structures and a Variance per *Sec. 4.1.1 Table of Dimensional Requirements* for minimum side yard setbacks construct a new dormer and exterior decks on the rear of the building. The motion is seconded by Mr. Watkins. The vote was four in favor (4) (Peter A. Copelas (Vice-Chair), Tom Watkins, Mike Duffy, Jimmy Tsitsinos) and one (1) opposed (Rebecca Curran- Chair).

APPROVAL OF MEETING MINUTES

Motion and Vote: Mr. Copelas makes a motion to approve the November 16, 2016 minutes as amended. Seconded by Mr. Watkins. The vote was unanimous in favor and none (0) opposed.

OLD/NEW BUSINESS

None

ADJOURNMENT

Mr. Watkins motions for adjournment of the December 21, 2016 regular meeting of the Salem Board of Appeals.

Motion and Vote: Mr. Watkins made a motion to adjourn the December 21, 2016 regular meeting of the Salem Board of Appeals, seconded by Mr. Duffy, and the vote is unanimous in favor and none (0) opposed.

The meeting ends at 9:15 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://salem.com/Pages/SalemMA_ZoningAppealsMin/

Respectfully submitted,
Erin Schaeffer, Staff Planner