

City of Salem Zoning Board of Appeals
Meeting Minutes
January 19, 2022

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, January 19, 2022 at 6:30 pm via remote participation in accordance with Chapter 20 of the Acts of 2021.

Chair Mike Duffy calls the meeting to order at 6:30 pm.

Chair Mike Duffy explains how individuals can participate in the meeting remotely via Zoom, and that instructions to participate remotely can also be found on the Salem website. Chair Duffy also explains the rules regarding public comment.

ROLL CALL

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

CONTINUATIONS

Location: **10 Lynn Street (Map 26, Lot 206) (R2 Zoning District)**

Applicant: **Timothy Doggett**

Project: A continuation of a public hearing for all persons interested in the petition of TIMOTHY DOGGETT to appeal a decision of the Building Inspector per M.G.L ch.40A sections 8 and 15. The petitioner is appealing the Building Inspector’s decision to grant a Building Permit for a two-family residential dwelling at 10 LYNN STREET (Map 26, Lot 206) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped July 7, 2021 and supporting documentation

Chair Duffy introduces the petition.

Attorney John Carr introduces himself as representing Timothy Doggett and other abutting neighbors in the matter. He explains that the applicant is appealing the building inspector’s decision to grant a permit for a two-family home at 10 Lynn Street. Mr. Carr argues that materials have been submitted to show that the two-family home had been abandoned pursuant to Section 3.3.6 of the Salem zoning ordinance, and that he is representing a number of neighbors in a similar appeal regarding 23 River Street. Mr. Carr contends that the instant case is an even stronger one, and states he hopes the Board has read the complaint filed with the Essex Superior Court and that they have learned something from it. Mr. Carr indicates that most homes on Lynn Street are single family despite being in an R2 zone. Further, he suggests the property was previously owned by a brother and sister for over ten years and operated as a single-family home. Mr. Carr avers the burden of proof rests with the property owners to show that they comply with, and can prove, that there has not been in abandonment. Mr. Carr states he has high respect for the property owner’s attorney, Mr. Quinn, but that they have a disagreement about the case and suggests he will continue to pursue this matter as parking is a crucial element of this neighborhood.

Attorney Bill Quinn introduces himself and explains that he has been working with Mr. Carr to try to resolve the issue for months. He notes all parties have become friendly and that everyone has made a legitimate effort to attempt to resolve the matter. Mr. Quinn notes that the property is in an R2 zone, and that the building inspector, Mr. St. Pierre, had city assessors to rely on in support of his decision. Moreover, Mr. Quinn suggests that a physical inspection makes it obvious the building is an old two-family home, as it has an enclosed private stairway to the second floor on both ends of the building, in addition to the other egresses. The egresses are proof that the building was constructed as a two-family since day one. Mr. Quinn states he does not know how prior owners used the property, but that there are kitchens and bathrooms on both floors, and that realtors inspected the property as a two-family. Mr. Quinn maintains that the relationship between prior owners is not dispositive, but the important thing to note is that the configuration of the building as a two-family has never changed. Mr. Quinn explains that his client has completed some renovations, and notes that the permit is not to establish a new apartment, but to renovate two existing apartments. There will be no addition of egress or stairways, and according to Mr. Quinn the home was marketed as, physically was, and physically remains, a two-family house that conforms with the R2 zoning. Therefore, Mr. Quinn concludes that Mr. St. Pierre was appropriate in issuing the building permit.

Mr. St. Pierre indicates Mr. Quinn summed up the facts accurately, and that it was treated like any other property in a similar condition and circumstance. Mr. St. Pierre states case law referring to abandonment relies on the concept of intent, and the building was not changed to avoid taxes, and nor were there building permits sought to reduce it to a single family, so for the last 23 years there have been no changes.

Mr. Carr suggests that intent has nothing to do with the issue, pursuant to statute amendments that occurred in the 1970's and 1980's, and that he had thought Mr. St. Pierre or the Board would have realized that. Mr. Carr argues the prior non-conforming use terminated for two years, irrespective of intent, and that is the law in Massachusetts. Mr. Carr suggests the Board and Mr. St. Pierre refer to the City Solicitor. Mr. Carr insists the issue is use rather than intent, and claims there has been no two-family use there for well over 10 years. Mr. Carr states the law is clear that they who contend that there has been a prior non-conforming use uninterrupted has the burden of proof in the matter. Mr. Carr explains he has submitted in opposition that the use has been interrupted for over 10 years, and that that should satisfy the requirements of Chapter 40A and the Salem zoning ordinance. Mr. Carr states that in the appeal of the 23 River Street decision he spelt out the relevant laws and supporting case law, and that he assumes the Board received a copy of the complaint and have educated themselves on the matter and understand the truth of what he is representing as a practicing attorney for 48 years.

Ms. McClain states she has read some of the cases, and that it seems the issue hinges on Mr. Carr's definition of abandonment versus the city's definition. Mr. Carr states that if you look at the actual use, there has been no continuation of two-family use for over ten years, and that that should settle the matter completely under section 3.3.6.

Ms. McClain asks Mr. Quinn if his position is that the property taxes were paid and property was never condemned or fell out of code. Mr. Quinn clarifies that this is not the property on River Street, and that the legal documentation regarding that property has nothing to do with the matter

before the Board tonight. Mr. Quinn states they are allegations and complaints which to date are unfounded, about another property. Mr. Quinn reiterates that this is an R2 zone and that abandonment does not apply to legal use. He further clarifies that his position is that the property was built as a two-family, used as a two-family, and the fact that related parties lived in the building is not dispositive of how it was used, as family members can certainly maintain separate apartments in a building. Mr. Quinn again notes that each unit has a secure entrance, kitchen, and bathroom, and as such has likely been used as a two-family since its construction. Mr. Quinn suggests the Board ignore Mr. Carr's statements regarding River Street, as they are complaints in a case, and that while Mr. Carr may be confident in them, they are not relevant to this case and to date remain unproven.

Mr. Viccica notes that the photo evidence demonstrates there are two kitchens and two boilers in the basement, along with other duplications that would indicate the building houses two separate apartments or living areas. Mr. Viccica states he does not understand how one could come to any other conclusion regarding the use given the configuration.

Mr. Carr claims that all zoning is either structure or use. Mr. Carr argues that when originally built it was a single-family home, and that the important question is how the property was used in the last however many years. Mr. Carr again states that the law is clear that the property owner bears the burden of proof, and further suggest the burden has not been met. Mr. Carr acknowledges that the matter of 23 River Street has nothing to do with this in a sense, but that there are similar facts. Mr. Carr reiterates that the issue here is use, and abandonment of a non-conformity.

Mr. Quinn clarifies that it is a conforming use in a conforming zone, and that if anyone would like to suggest the building has been used in any other way, they should have the burden to prove such claims. Mr. Quinn states there has never been a non-conforming use, as it is a two-family home in a two-family zone. Mr. Quinn explains that the concept of abandonment refers to abandonment of a non-conforming use.

Ms. Ordaz asks if the property was taxed as a single or two-family home. Mr. Quinn states he does not have that info currently. Mr. St. Pierre confirms it was taxed as a two-family home, but that he does not know the exact amount. He states the assessors have the house listed as a two-family and it was taxed as such.

Mr. Carr contends that the issue of nonconformity has to do with the lack of parking, and that that is why he is here. Mr. Carr refers to the R2 district parking requirements and prohibition of tandem parking.

Chair Duffy opens the floor to public comment

Fred Biebesheimer of 17 1/2 River Street introduces himself and notes that his wife wrote a statement, which he would like to read. As an initial matter, Mr. Biebesheimer clarifies that while earlier it was stated a brother and sister lived at the property for 10 years, it was actually a husband and wife that lived there for 10 years. He next reads the statement from his wife, Lisa Spence. The statement notes she has lived here since 1995, and that the back yards share a fence with that of 10 Lynn Street. Ms. Spence claims that she visited the home once, and remembered the couple was occupying the entire building, and subsequently rented it as a single family for many years. Mr. Biebesheimer states that when he purchased his own home it was also a two-family, which allowed

him to afford the home purchase in his twenties by renting out the downstairs unit. Once he got married and had children, Mr. Biebesheimer indicates he transitioned the home away from a two-family. Mr. Biebesheimer claims during the transition he had two kitchens for several years, and therefore contends that having two kitchens is not indicative of use as a two-family. He states he had two egresses and two kitchens for some time after his tenants left in 1997 or 1998, and that over time he renovated the home and at some point, petitioned the City to have it as a single-family in order to save on taxes. Mr. Biebesheimer states he met with the applicant and that he is a nice guy who has done a good job with the renovations, and states he has no ill will toward him. He asserts that his objection to this being a two-family home is strictly based on parking. He claims the home has been used as a single family for more than ten years, and that zoning ordinances are in place to regulate density. Mr. Biebesheimer contends the neighborhood is very dense and notes that half of the houses do not have off-street parking, including his own. Mr. Biebesheimer suggests that if the applicant is allowed to have a two-family home, the Board would be breaking the rules that he and his neighbors have lived under for 30 years to benefit someone who does not live here, has not lived here, and is just looking to make a profit. Mr. Biebesheimer asks that each Board member put themselves on the record explaining how it is fair to give away something that he has come to rely upon, namely street parking, to someone who does not even live here.

Justin Whittier of 10 River Street introduces himself and reiterates the concerns raised by Mr. Biebesheimer. Mr. Whittier also states it is not enough that it is located in an R2 zone, as there are other dimensional requirements for a two-family that are not met. Mr. Whittier states these are old buildings that predate zoning, so they may have nonconforming uses, but if they change then they must conform. Mr. Whittier suggests that when people discuss the issue of abandonment or discontinuance they imagine an empty building, but that the issue here is different. He states this is about the discontinuance of a nonconforming use, in this case being a two-family in an R2 zone. Mr. Whittier indicates he has an older home that was a two-family and was changed and occupied as a single family, and that he cannot go back to the prior use.

Chair Duffy notes there has been some conflicting information regarding the relation of the prior owners. He asks Mr. Quinn to clarify, Mr. Quinn states he believes they were husband and wife, but again notes that the home was built and setup as a two-family. Mr. Quinn also clarifies that there is no nonconformity in either case, as R1 and R2 zones both allow for two-family homes. Mr. Quinn contends he cannot speak to how the husband and wife lived there but there could be many possibilities, including two people living separate lives even if married. Mr. Quinn suggests the issue of nonconformity here is a red herring, as the building has been setup and used as two separate apartments.

Mr. Copelas asks Mr. Carr, given his statement regarding past use, as well as Mr. St. Pierre's inspection of the property and subsequent granting of a permit, what he believes an inspector's obligation is in terms of research. Mr. Copelas asks Mr. Carr what kind of due diligence he would expect an inspector to do if a vacant building applied for a permit as a two-family in an R2 zone and the building appears to be built and maintained as a two-family. Mr. Carr states this is not a criticism of Mr. St. Pierre, and that he merely disagrees with his decision and believes Mr. St. Pierre made a good faith mistake. Mr. Carr contends the system has worked as it should until tonight. He states a building permit was issued for a two-family, the neighbors reacted and appealed, and now it is finally before the Board, which he maintains is charged under Chapter 40A with dealing with the appeal as a final exhaustion of administrative appeal before he is free to file suit. Mr. Carr acknowledges he made a mistake referring to the prior owners as siblings, as it turns out they were husband and wife,

but he argues this is an even more compelling case that it should not be a two-family. Mr. Carr asserts the burden is on Mr. St. Pierre to prove that a husband and wife used and lived in two different apartments.

Mr. Copelas states he struggles to understand the argument that there is a non-conformity when it is in an R2 zone and a two-family house. He notes that Mr. Biebesheimer mentioned having no off street parking and asks Mr. Carr if he is to suggest that no one would be able to move into the home if Mr. Biebesheimer were to move and it was not occupied for two years since there is no parking. Mr. Carr suggests it might possibly require a special permit. Mr. Copelas indicates he has never understood the zoning ordinance to be interpreted in such a way. Mr. Copelas also notes that two- and three-family homes have been used by single families historically, and that it is a typical immigrant story that goes back many years. Mr. Copelas states he is unsure as to why it would have lost its ability to be used as a two-family home if it is in a two-family zone and has never been permitted as a single family.

Mr. Carr states he hopes the Board is open minded and not here simply to defend an existing decision, and suggests if they were to simply read the case they would understand. He argues that all zoning is use or structure, and that in this case it is use. Mr. Carr maintains that because the legislature changed from a concept of abandonment to a simple two-year test, there is no further consideration needed and that intent has nothing to do with the matter.

Chair Duffy states that a gating question in the matter is whether this is a non-conforming use or not, and it would appear that it is not, as it is a two-family in an R2 zone. Mr. Duffy notes that as he reads it, the provision of the bylaw refers to a non-conforming use which has been abandoned for two years. Chair Duffy states there was no nonconforming use to have been abandoned, and that he believes that resolves the matter. Mr. Carr states that he pointed out the nonconformity relates to parking.

Motion and Vote: Mr. Viccica motions to approve the petition of 'TIMOTHY DOGGETT' to appeal a decision of the Building Inspector per M.G.L ch.40A sections 8 and 15 granting a Building Permit for a two-family residential dwelling at 10 LYNN STREET (Map 26, Lot 206) (R2 Zoning District).

Mr. Copelas seconds the motion. **The vote is none (0) in favor and five (5) opposed (Mike Duffy (Chair), Peter Copelas, Rosa Ordaz, Carly McClain, and Paul Viccica). The motion passes.**

Location: **0 Story Street (Map 23, Lot 12) (RC Zoning District)**
Applicant: **Castle Hill Realty Group, LLC**
Project: A continuation of a public hearing for all persons interested in the petition of CASTLE HILL REALTY GROUP, LLC to appeal a decision of the Building Inspector per M.G.L ch.40A sections 8 and 15 to construct two foundations for two single-family dwellings at 0 STORY STREET (Map 23, Lot 12) (RC Zoning District).

Documents and Exhibitions

- Application date-stamped June 7, 2021 and supporting documentation

Chair Duffy introduces the petition, and notes the petitioner has requested to continue to the next regularly scheduled meeting. Mr. St. Pierre explains that the applicant is in the process of obtaining building permits.

Motion and Vote: Mr. Viccica motions to continue the petition of CASTLE HILL REALTY GROUP, LLC to appeal a decision of the Building Inspector per M.G.L. ch.40A sections 8 and 15 to construct two foundations for two single-family dwellings at 0 STORY STREET (Map 23, Lot 12) (RC Zoning District) to the next regularly scheduled meeting on February 16, 2022.

Ms. Ordaz seconds the motion. **The vote is five (5) in favor (Mike Duffy (Chair), Peter Copelas, Rosa Ordaz, Paul Viccica, and Carly McClain) and none (0) opposed. The motion passes.**

Location: **143 Derby Street (Map 41, Lot 319) (B1 Zoning District)**

Applicant: **Lisa and John Bartlett**

Project: A continuation of a public hearing for all persons interested in the petition of LISA & JOHN BARTLETT for a variance per Section 4.1 *Dimensional Requirements* of the Salem Zoning Ordinance for side yard setback, front yard setback, and minimum lot area per dwelling at 143-145 Derby Street to construct a new 90' x 42' +/- mixed-use building to include two commercial units and five residential units. The front and side yard setbacks would be reduced to 0 feet. The B1 requirements are 3,500 square feet per dwelling. The proposal is 1,600 square feet to allow for the five units at 143 DERBY STREET (Map 41, Lot 319) (B1 Zoning District).

Documents and Exhibitions

- Application date-stamped October 1, 2021 and supporting documentation

Chair Duffy introduces the petition.

Mr. Viccica explains the he was not present at the original presentation, but that he has listened to the recording and is up to speed on the matter.

Chair Duffy recalls the Board requested further information regarding the proposed plan, and to more thoroughly discuss the hardship to support the variance request.

Architect Andrew Crocker introduces himself on behalf of the applicants. Mr. Crocker explains he is in the process of redesigning the project to meet zoning ordinances and codes, and states he is here asking for a continuance and to get feedback on the direction he is attempting to go. He notes the property is a dirt lot used for parking owned by the purveyors of Captain Dusty's, who are seeking to develop the lot and improve the neighborhood, while providing for their retirement. Mr. Crocker states they would like to stay engaged in the neighborhood as much as possible and add to the quality of the neighborhood. Mr. Crocker explains the issue regarding parking was that there was not enough available for the commercial use being proposed, so the simple solution was to eliminate all but 375 square feet of commercial space. The hope is to keep the ice cream shop in the space, keep the historic building as is, and add an addition that would house the new residential

units.

Mr. Viccica asks if Mr. Crocker intends to continue or present. Mr. Crocker responds that he wishes to continue as he assumes the Board will want to see more drawings, and the project is not fully designed. He adds that he is looking for feedback to come back before the Board with a project that would be easily approved.

Mr. Viccica notes that the Board is not in any position to advise an applicant of what to do to pass or get an approval from the Zoning Board. Chair Duffy agrees, and states that while there could be some upside to such an iterative process, advising on project design is not something the Board has done in the past. Rather, Chair Duffy explains, the Board reviews applications to determine whether or not to grant relief requested. Chair Duffy suggests reviewing materials provided by the City Solicitor regarding the standards for variance requests, as well as engaging with abutters and the neighborhood, if possible, to resolve issues before coming to the Board. Chair Duffy states the Board is not in a position to comment on a plan that they have not been able to see properly submitted.

Mr. Copelas suggests it might not make sense to continue to the February meeting, as this is a big project that sounds like a lot of work. He states it may be prudent to consider continuing to the March meeting. Mr. Crocker agrees. Chair Duffy explains that the applicant may choose to continue or withdraw without prejudice and resubmit, but that doing so would trigger additional notice requirements. Mr. Crocker indicates the applicant would prefer to continue.

Motion and Vote: Ms. Ordaz motions to continue the petition of LISA & JOHN BARTLETT for a variance per Section 4.1 *Dimensional Requirements* of the Salem Zoning Ordinance for side yard setback, front yard setback, and minimum lot area per dwelling to construct a new 90' x 42' +/- mixed-use building to include two commercial units and five residential units at 143 DERBY STREET (Map 41, Lot 319) (B1 Zoning District) to the March 16, 2022 meeting of the Zoning Board of Appeals:

Mr. Copelas seconds the motion. **The vote is five (5) in favor (Mike Duffy (Chair), Rosa Ordaz, Carly McClain, Paul Viccica, and Peter Copelas) and none (0) opposed. The motion passes.**

Location: **20 Wisteria Street (Map 32, Lot 196) (R2 Zoning District)**

Applicant: **Rafael Campusano**

Project: A continuation of a public hearing for all persons interested in the petition of RAFAEL CAMPUSANO for a variance per Section 4.1 of the Salem Zoning Ordinance *Dimensional Requirements* to add a dormer of +/- 37 feet by 12 feet on the rear & left side of the existing building. This dormer will increase the existing non-conformity of the building by encroaching onto the side and rear setbacks within the existing building footprint at 20 WISTERIA STREET (Map 32, Lot 196) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped October 6, 2021 and supporting documentation

Chair Duffy introduces the petition,

Rafael Campusano introduces himself, and explains he is proposing to add space by adding a dormer to the second floor. Mr. Campusano states he would like to add living space to accommodate his large family and describes the purpose of the additional space. He indicates the plans are to stay within the structure and footprint of the existing home.

Chair Duffy explains his understanding of the petition, and notes it appears to be to accommodate a mother-in-law. Chair Duffy also states it was issued as a variance as opposed to a special permit. Mr. St. Pierre asks if the home is a two or three-family home, and Mr. Campusano states it is a two-family.

Mr. Copelas states he struggled reading the grounds for hardship, which is hard to understand, and notes there were public comments from neighbors in opposition. He also notes there may be confusion as to whether it should be a special permit or a variance request.

Mr. St. Pierre explains that if it is a two-family, then the expansion should be covered under a special permit, but looking at the plans it appears to be a third unit being proposed. He further explains that a special permit is required for a one or two-family to allow for expansion into the third floor.

Mr. Copelas suggests that complicates matters further because some relief was not mentioned in the advertisement, and so it is not simply asking for less than what was advertised, but a different relief itself.

Mr. St. Pierre references the front elevations, and states the applicant could perhaps ask for a special permit in lieu of a variance, but that the applicant may not be asking for the correct relief to begin with.

The Board members discuss the floor plans. Mr. Viccica notes that despite calling them dormers, the proposal essentially adds a third floor to the building. Mr. St. Pierre indicates it looks like it could be another unit, which would be a code and zoning issue. Mr. Viccica also suggests it looks like it could be close to becoming a third unit on the third floor. After further discussion, Mr. St. Pierre suggests a continuance may be appropriate, as the advertisement and noticing was not correct.

Chair Duffy asks Mr. Campusano if he would like to continue to the next regularly scheduled meeting, and he agrees.

Motion and Vote: Mr. Copelas motions to continue the petition of RAFAEL CAMPUSANO for a variance per Section 4.1 of the Salem Zoning Ordinance *Dimensional Requirements* to add a dormer of +/- 37 feet by 12 feet on the rear & left side of the existing building at 20 WISTERIA STREET (Map 32, Lot 196) (R2 Zoning District) to the next regularly scheduled meeting of the Zoning Board of Appeals on February 16, 2022.

Ms. McClain seconds the motion. **The vote is five (5) in favor (Carly McClain, Rosa Ordaz, Mike Duffy (Chair), Paul Viccica, and Peter Copelas) and none (0) opposed. The motion passes.**

Location: **10 Pleasant Street (Map 36, Lot 442) (R2 Zoning District)**

Applicant: **Ryan McShera**

Project: A continuation of a public hearing for all persons interested in the petition of RYAN M. McSHERA for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to demolish a non-conforming single-story structure and construct and nonconforming 2.5 story structure at 10 PLEASANT STREET (Map 36, Lot 442) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped October 27, 2021 and supporting documentation

Chair Duffy introduces the petition.

Ryan McShera of Red Barn Architecture introduces himself, and explains he is representing the Boehlers, who seek to expand a nonconforming structure on a nonconforming lot. Mr. McShera discusses the relief requested with respect to lot area, frontage, and right and front yard setback requirements. Mr. McShera presents a site plan demonstrating the proposed addition and existing portions being demolished. He explains that a single story structure which is 0.1 feet away from the lot line will be torn down and replaced with an addition in line with the building massing and keeping with the dimensional footprint from front to back.

Chair Duffy notes the proposed addition will take the side yard setback and bring it in line with the existing remainder of the building as opposed to the lot line.

Mr. Copelas indicates the documentation references an addition and removal of the shed, but that it appears the proposal also adds dormers to the existing structure. Mr. Copelas asks if that was including in the request for relief. Mr. McShera explains that three doghouse dormers facing the driveway currently exist and will remain, and that there is just one additional one being added toward the rear of the building. He states his understanding is that a doghouse dormer like this does not constitute a third floor.

Mr. Copelas states there are two proposed dormers, one in the new addition, but also one additional fourth dormer in the existing structure. Mr. McShera agrees, but states he does not believe it changes the relief being requested. Mr. St. Pierre states that it would be the same as any other dormer on a third story, and would require relief as it would constitute another story.

The Board and Mr. St. Pierre discuss the issue of the relief not being properly requested. Mr. McShera states he would be willing to forgo both dormers on the rear portion if it would please the Board, and that he could provide revised documents as part of the process. Mr. Viccica states he would be fine with that adjustment, and Chair Duffy confirms it could be conditioned with approval.

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

Chair Duffy notes it appears to be a fairly minimal change to an existing property that does not dimensionally increase the existing nonconformities. By backing the structure off the side yard setback, the proposal seems to be an improvement. Mr. Duffy states the Board could make a

finding for a special permit in this case, and that the statement of grounds provided adequately addresses the special permit criteria.

Mr. Copelas adds there will be a special condition of no rear dormers.

Motion and Vote: Mr. Copelas motions to approve the petition of RYAN M. McSHERA for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to demolish a non-conforming single-story structure and construct and nonconforming 2.5 story structure at 10 PLEASANT STREET (Map 36, Lot 442) (R2 Zoning District) subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. All construction shall be done per the plans and dimension submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

And the following special condition:

1. Per the left side elevation design, it will be modified to remove the two rear most dormers from the plan.

Mr. Viccica seconds the motion. **The vote is five (5) in favor (Paul Viccica, Mike Duffy (Chair), Rosa Ordaz, Carly McClain, and Peter Copelas) and none (0) opposed. The motion passes.**

REGULAR AGENDA

Location: **410 Loring Avenue (Map 30, Lot 60) (R1 Zoning District)**

Applicant: **Aguimar Desouza**

Project: A public hearing for all persons interested in the petition AGUIMAR DESOUZA at 410 LORING AVENUE (Map 30, Lot 60)(R1 Zoning District) for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to add two (2) dormers to increase the ceiling height and construct two (2) bedrooms and a bathroom. The petitioner also seeks to add a new gutter system.

Documents and Exhibitions

- Application date-stamped May 20, 2021 and supporting documentation

Chair Duffy introduces the petition.

Marcos Sarina, project architect introduces himself on behalf of the property owner and applicant. Mr. Sarena explains the applicant would like to finish their basement as they have three sons, one of which is handicapped, and they need more space. The proposal is to add two bedrooms by expanding into the unutilized attic space of the two-family home, and Mr. Sarina states the aesthetic will keep with the neighborhood character.

Maribel Nunez introduces herself as the property owner and applicant.

Aguimar Desouza introduces himself as the project contractor and explains this project has been going on for more than six months now with lots of back and forth with Mr. St. Pierre, who he says has been very helpful. Mr. Desouza maintains he made all changes requested by Mr. St. Pierre, and that each unit has its own separate entrance.

Ms. Nunez explains she has three children and only three bedrooms, with one of her twins sharing a room with her other son with special needs. She is looking for more space, as her kids will need their own space and bedrooms as they get older.

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

Mr. Viccica notes there were no plot plans submitted, and Mr. Copelas confirms. Mr. Viccica states he would like to remind all applicants to provide plot plans, even when doing work that is all interior with no exterior changes.

Motion and Vote: Mr. Viccica motions to approve the petition of AGUIMAR DESOUZA at 410 LORING AVENUE (Map 30, Lot 60) (R1 Zoning District) for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to add two (2) dormers to increase the ceiling height and construct two (2) bedrooms and a bathroom subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. All construction shall be done per the plans and dimension submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

Mr. Copelas seconds the motion. **The vote is five (5) in favor (Carly McClain, Peter Copelas, Rosa Ordaz, Paul Viccica, and Mike Duffy (Chair)) and none (0) opposed. The motion passes.**

Location: **57 Buffum Street (Map 27, Lot 28) (R2 Zoning District)**

Applicant: **LH Capital Development, LLC**

Project: A public hearing for all persons interested in the petition of LH CAPITAL DEVELOPMENT, LLC, at 57 BUFFUM STREET (Map 27, Lot 28) (R2 Zoning District) for a special permit per Section 3.3.2 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to alter and enlarge an existing non-conforming three (3) family use to another non-conforming six (6) family use. Also, the petitioner seeks a variance for 4.1 *Dimensional Requirements* Lot Area per dwelling unit: 7,500 SF per unit required, 1,182 SF proposed; maximum lot coverage 35% required; 57.6% proposed, rear yard setback 30' required; 5.1' proposed. Height 2.5 stories required; three (3) stories proposed. And nine (9) parking spaces required and six (6) proposed.

Documents and Exhibitions

- Application date-stamped November 22, 2021 and supporting documentation

Chair Duffy introduces the petition.

Mr. Copelas explains he used to own this property several owners ago, and that while this is not a conflict of interest, nor is he recusing himself, he does have long-term experience and understanding of the property through his prior ownership.

Attorney Bill Quinn introduces himself on behalf of the petitioner, and notes that project architect Dan Ricciarelli is present as well. Mr. Quinn explains the property is located at the Pickering School end of Buffum Street, otherwise referred to as upper Buffum. The area is mixed use, and the street is primarily residential with singles, doubles, a larger six-unit building behind the property, and a three-unit building next to that. Mr. Quinn states the property was purchased as a non-conforming existing three-family home. Mr. Quinn states the lot size and shape are unusual, as it is three times deeper than it is wide, and only 35 feet wide at one end. He notes it is also on two public ways (Bryant and Buffum), and therefore has two front setbacks. He also contends that the narrow lot creates problems with respect to creating additional housing that conforms with dimensional and parking requirements. Mr. Quinn indicates the proposal favored parking over dimensional requirements in order to make the proposed addition work. He adds that there are two abutters in favor, and several negative comments submitted. Mr. Quinn explains that the applicants are trying to upgrade this end of the neighborhood while creating six much needed units in the community. He opines that not all new housing in Salem can be in a high rise, and that not everyone in Salem wants that either. Moreover, Mr. Quinn states the proposal attempts to fit within the context of the neighborhood. Mr. Quinn discusses the dimensions and requested relief, such as lot area per dwelling unit, and for parking as there are six indoor parking spaces for six units. He suggests that traffic will not likely be affected, and that a special permit is required to convert a nonconforming three-unit dwelling into a six-unit dwelling.

Dan Ricciarelli introduces himself, and describes the existing three story, three-family building in more detail. The proposal will not change the exterior other than to restore it, and the addition is off to the west according to Mr. Ricciarelli. He presents the existing conditions. He explains how the proposal would extrude and take out the rear of the building for the new addition. The existing

three-family building would become two townhomes. Mr. Ricciarelli presents and discusses the floor plans and elevations.

Mr. Viccia notes a statement of hardship has not been provided or addressed. Mr. Quinn states the shape of the lot is unusual as it is very narrow and fronts on two public ways. He contends the shape of the lot and location of the house are the hardship.

Mr. Copelas and Mr. Ricciarelli discuss the parking plans in the proposal and clarify that there are four existing spaces currently. Mr. Copelas notes that the existing conditions seem to show two units in the existing building and asks if it has already been converted from three units to two. Mr. Ricciarelli states it has not been converted yet, it is still a three-family home with tenants. Mr. Ricciarelli indicates it is an inconsistency in the documents.

Mr. Copelas reveals that this property sold in 2019 for \$570,000, and then 18 months later was purchased for \$610,000. He indicates these prices are consistent with the market for three-family homes, and that it seems like the owners purchased the property at a market rate. Mr. Copelas goes on to state that going from approximately 30 percent lot coverage to over 50 percent coverage, and more substantial massing on the property, whether attractively designed or not, is a major change. Mr. Copelas asks where there exists a hardship for a new buyer that paid a market rate for a three-family dwelling, now wanting to add three additional units and reduce parking. He suggests the property has stood on its own and was purchased by the current owners knowing the property condition.

Mr. Viccica agrees with Mr. Copelas, and states that the long and narrow lot does not prohibit the applicant from having a four-unit building with the correct amount of parking, rather than a six-unit that requires a variance because it can only accommodate six cars.

Ms. McClain asks if the units will be condos or rentals. Mr. Ricciarelli says he believes the intent is to rent the units. Mr. Copelas suggests that the mode of ownership has never been an issue, and that the Board cannot make a special condition that these remain rental units. He states he is often reluctant to discuss rentals versus condos because the Board cannot do anything about. Ms. McClain explains that she asked because the statement of grounds references economic justice needs, and she notes that a loss of rental units could be detrimental in that regard. Ms. McClain clarifies that while it is not the main focus, she believes it is certainly part of the criteria which she can consider.

Len Karan introduces himself as the property owner and assures the Board that his plan is to make them rentals managed by Lighthouse Realty. Mr. Karan states he is here for the long haul, as he owns and manages other buildings in Salem.

Mr. Viccica again references the issue of density and lack of parking, as well as other potential detriments to neighbors such as the blocking of sun and shade impacts. Further, he suggests this particular configuration does not seem appropriate for the neighborhood. Mr. Copelas adds that most of the buildings are two and three-family dwellings on Buffum Street. Mr. Viccica asks the applicant again why a four-unit building that has the required parking would not be a viable alternative.

Mr. Quinn states that they have not yet considered or looked into a four-unit option to see if the proposal could be done without the need for variances. Mr. Quinn insists the shape of the lot is relevant, and that the size, zoning restrictions, and lack of viable development that can comply with zoning all create a situation where more density is going to be required to make projects viable. Mr. Quinn also suggests financial considerations could also be a hardship. Mr. Quinn acknowledges that it is not a strong case for a variance, but suggests the basic requirements have been met, and that the proposal will be an improvement to the neighborhood.

Chair Duffy opens the floor to public comment.

Thomas McDonald of 11-13 Bryant Street introduces himself. Mr. McDonald expresses his opposition, noting that the proposed addition would cover more than 56 percent of the lot. Mr. McDonald also expresses concerns regarding increased traffic, density, and lack of parking. Mr. McDonald discusses the proximity of the existing property to the lot lines as well. Mr. McDonald also notes that the current tenants will be getting pushed out after 25 years in order for the renovations to go forward and states he would like to see the building remain a three-family dwelling.

Jamie Mitchell introduces himself as the previous owner of 57 Buffum Street, and explains he purchased it in 2019 as a set with 55 Buffum Street. He moved into 55 with the expectation of renovating it and having 57 Buffum as a sister property to rent and collect extra income. Mr. Mitchell indicates it quickly became apparent that his plans were not sustainable because the property required a lot of rehabilitation and work, and he was not equipped to take on both properties. After a year and a half he reached out to his realtor and 57 Buffum was sold off market as a property that needed rehabilitation. Mr. Mitchell states he is in favor of the proposal because the property needs a lot of work from plumbing to the sub floors, walls, etc., and he estimates it could cost six figures per unit. Mr. Mitchell states such an undertaking would require a decent return on investment, and so he understands the density request. He states he would like to see the property renovated and not be an eyesore anymore.

John MacDonald (no address provided) states he is opposed to the proposal. Mr. MacDonald indicates the property was previously a two-family, and that he lived there back then. Mr. MacDonald expresses concerns regarding limited parking and existing traffic density. He states there are many close calls with respect to traffic accidents in the area. He suggests the proposal will only make the issue worse. Regarding the density, Mr. MacDonald also notes there will be six families living there potentially with no outdoor space or land for children or pets. Further, he notes concerns regarding drainage. Mr. MacDonald opines that Mr. Mitchell is only in favor of the proposal because he sold it to the current owner.

Chair Duffy notes Mr. MacDonald also submitted a letter with comments.

Bruce Bornstein of 54 Buffum introduces himself and explains that the area is already very congested on Buffum and Bryant. Mr. Bornstein contends the neighborhood is well maintained and that residents take pride in living here, and that this proposal appears to be a stretch. Mr. Bornstein suggests there is no justification for doubling the size of the building. He acknowledges there is a need for more housing but argues it should be balanced with traffic and safety concerns.

Chair Duffy indicates Eileen Bornstein submitted written comment as well.

Jess Roy Mitchell, introduces herself as Jamie Mitchell's wife. Ms. Mitchell shares similar sentiments to her husband, and expresses concern regarding traffic. She notes that Buffum Street sees a lot of cut-through traffic from Route 114.

Dan Finn (no address provided) introduces himself and indicates he also submitted a letter to the Board. Mr. Finn claims there are plan inconsistencies, particularly regarding floor plans. Mr. Ricciarelli notes that was a mistake and that corrected plans have been submitted. Mr. Finn also asks about the need for a side yard setback variance. He adds that he manages a six-unit building at 19 Bryant Street, but that the lot size is more than double of this site, and it has nine parking spaces. Mr. Finn indicates even with nine parking spaces it can be a challenge for parking, particularly in winter. Mr. Finn states he is not convinced by the applicant's hardship argument, and that the proposal does not belong in the neighborhood.

Eileen Bornstein (no address provided) introduces herself and states she also submitted a letter to the Board in opposition. Ms. Bornstein argues the proposed footprint is enormous and would dominate the neighborhood. She also suggests there is historic value to the property that would be destroyed. Ms. Bornstein opines that the proposed addition looks more like a fortress, with no signs of landscaping or any positive impact for the neighborhood. She also questions whether emergency vehicles will have proper access in the narrow streets.

Chair Duffy notes the Board received a letter from Bridgette and Steve, 51 Buffum Street, in support, stating it seems like an improvement to the neighborhood. Chair Duffy states there is also a letter from AJ Mirabito expressing opposition.

Regarding the property line, Mr. Ricciarelli indicates that there is a sidewalk on both sides of Bryant Street, but that it is not shown on the property plan.

Mr. Karan indicates the units being proposed will be small, two-bedroom units under 1,000 square feet in area. He adds that the area is walkable and close to public transit, and that therefore the units lend themselves to single-car families, couples, and single people. Mr. Karan states these would not be large units for families. Mr. Karan maintains that the property is quirky and difficult to work with due to idiosyncrasies. Mr. Karan contends the proposal is tasteful and functional in a city desperate for housing. Mr. Karan suggest there is no way to prevent additional cars or people in Salem and that it is inevitable. He states that each unit would have a covered parking spot, which he opines is more than adequate for most people these days. Mr. Karan insists his intent is to restore the historical quality of the building and create a good product.

Mr. Quinn states the applicant and architect tried to design a project that will be a good place to live and an attractive addition to an unattractive portion of the neighborhood. Mr. Quinn again states that while the argument for a variance here is not overwhelming, he believes it is adequate. Mr. Quinn offers to conduct a traffic or shadow study if it would alleviate concerns.

Mr. Viccica clarifies those are not the biggest concerns. Mr. Viccica also notes that the west elevation appears to show the proposal might exceed the maximum building height. Mr. Ricciarelli and Mr. Viccica discuss the calculation of building height and mean height, and Mr. Ricciarelli assures that the intent is not to exceed the maximum height.

Mr. Copelas expresses additional concerns about the project scale and whether a hardship has been adequately demonstrated.

Chair Duffy indicates he shares other Board member and public commenter concerns about scale and the extent of relief requested.

Mr. Quinn suggests he would like to regroup and request to withdraw without prejudice in order to come back before the Board with the right use of the property.

Motion and Vote: Ms. McClain motions to approve the request to withdraw without prejudice the petition of LH CAPITAL DEVELOPMENT, LLC, at 57 BUFFUM STREET (Map 27, Lot 28) (R2 Zoning District) for a special permit per Section 3.3.2 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to alter and enlarge an existing non-conforming three (3) family use to another non-conforming six (6) family use, and a variance for 4.1 *Dimensional Requirements* Lot Area per dwelling unit.

Mr. Viccica seconds the motion. **The vote is five (5) in favor (Rosa Ordaz, Mike Duffy (Chair), Paul Viccica, Carly McClain, and Peter Copelas) and none (0) opposed . The motion passes.**

Location: **11 Orne Square (Map 25, Lot 452) (R2 Zoning District)**

Applicant: **Pam Coffin**

Project: A public hearing for all persons interested in the petition of PAM COFFIN for a special permit from provisions of Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to construct a 14' x 10' one story addition at 11 ORNE SQUARE. (Map 25, Lot 452)(R2 Zoning District). The relief required is for the rear setback where 30' is required and is currently 9.7'. The proposal would be to 2.1'.

Documents and Exhibitions

- Application date-stamped December 10, 2021 and supporting documentation

Chair Duffy introduces the petition.

Mr. Viccica recuses himself from the matter due to a conflict.

Helen Sides introduces herself on behalf of the applicant and property owner Pam Coffin. Ms. Sides contends that Orne Square is unique, and that the structures were built in 1914 after the Salem fire to provide housing for people who lost their homes. The units were rentals up until about 20 years ago, and they are now a condo association. Ms. Sides describes the building as concrete with a stucco finish. Ms. Sides explains they are double houses that sit close to all their property lines on the street front, and that the proposal is to provide a better way to come in and out of the house from the back, and for to add needed first story space. Ms. Sides currently indicates the only bathrooms in the structures are those from the initial construction on the second floor, and that while some people have squeezed in half baths, others have not. Ms. Sides demonstrates that the proposed addition puts a larger rear entrance off Ms. Coffin's driveway, providing a mudroom and

needed storage. She notes there would be a potential for other units to duplicate, as it would be a straight forward addition.

Chair Duffy indicates the Board received three letters either in support, or not opposed to the proposal. The letters are from Christine Thompson of Unit 19, Penelope Bickmore of 9 Orne Square, and Wendy Samuels of 11 Orne Square. One of the letters indicates the proposal has support from the condo association.

Chair Duffy opens the floor to public comment.

Jean Harrison of 1 Orne Square introduces herself and states she is opposed to the proposal. Ms. Harrison contends this would be against the rules and regulations of the condo association, as the buildings are supposed to be untouched on the exterior. The buildings were made to be fireproof, which is why they are stucco, and Ms. Harrison questions whether the additions would be fire proof. Ms. Harrison also notes that the condo association is responsible for taking care of the exterior of the buildings, and that this addition will add to the associations burden.

Ms. Sides assures that regarding fire safety the addition would meet all building codes and be no more vulnerable than existing buildings.

Chair Duffy suggests the request is for minimal relief. Mr. Copelas notes there was a letter indicating the condo association was in favor of the proposal.

Motion and Vote: Mr. Copelas motions to approve the petition of PAM COFFIN for a special permit from provisions of Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to construct a 14' x 10' one story addition at 11 ORNE SQUARE. (Map 25, Lot 452)(R2 Zoning District) subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. All construction shall be done per the plans and dimension submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

Ms. Ordaz seconds the motion. **The vote is four (4) in favor (Mike Duffy (Chair), Rosa Ordaz, Carly McClain, and Peter Copelas) and none (0) opposed. The motion passes.**

November 17, 2021

Chair Duffy notes edits/updates made to the November minutes. Mr. Copelas confirms he has reviewed the updated version and that they are correct.

Motion and Vote: Mr. Copelas motions to approve the November 17, 2021 Zoning Board of Appeal meeting minutes as drafted with corrections. Mr. Viccica seconds the motion. **The vote is five (5) in favor, and none (0) opposed. The motion passes.**

December 15, 2021

Chair Duffy indicates he went through and mentioned edits for a few minor typos, but nothing of substance. No other Board members had suggested edits.

Motion and Vote: Mr. Copelas motions to approve the December 15, 2021 Zoning Board of Appeal meeting minutes subject to the minor typographical changes. Ms. McClain seconds the motion. **The vote is five (5) in favor, and none (0) opposed. The motion passes.**

OLD/NEW BUSINESS

Location: **46 Washington Square South**
Applicant: **Three Corners Realty**
Description: Extension of Variance

Chair Duffy introduces the petition.

Attorney Bill Quinn introduces himself on behalf of his client Mike Harrington, who received a variance in 2021 to convert the property to three residential condos based on plans submitted by Peter Pitman Architects. Mr. Quinn reminds the Board of the project details, and indicates he came before the Board once prior for an extension a little over six months ago, citing pandemic and business delays. Mr. Quinn states that things are up and running again but with limited staff, and that a commitment letter for funding was received from the North Shore Bank. The funding, however, contains three pages of conditions, submissions, and other requirements that Mr. Quinn states they have been trying to accomplish with slow response times for various reasons. The extension would have run out on January 2nd, but Mr. Quinn assures the Board that they are still committed to the project, and they are looking to close at some point in the Spring. Mr. Quinn states they are seeking an extension until May 2nd, 2022.

Chair Duffy says the request and situation seems understandable, and that he is glad to see this project moving along.

Motion and Vote: Mr. Copelas motions to approve the request for a four (4) month extension to May 2, 2022 for the previously approved variance and special permit for 46 WASHINGTON SQUARE SOUTH.

Mr. Viccica seconds the motion. **The vote is five (5) in favor (Rosa Ordaz, Carly McClain, Mike Duffy (Chair), Peter Copelas, and Paul Viccica) and none (0) opposed. The motion passes.**

ADJOURNMENT

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

The meeting ends at 10:01 PM on January 19, 2022.

For actions where the decisions have not been fully written into these minutes, copies of the Decisions have been posted separately by address or project at:

<https://www.salem.com/zoning-board-appeals/pages/zoning-board-appeals-decisions-2022>

Respectfully submitted,
Daniel Laroe, Staff Planner