

City of Salem Zoning Board of Appeals
Meeting Minutes
January 15, 2020

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, January 15, 2020 in the first floor conference room at 98 Washington Street, Salem, Massachusetts at 6:30 pm.

Chair Mike Duffy calls the meeting to order at 6:29 pm.

ROLL CALL

Those present were: Mike Duffy (Chair), Peter Copelas, Carly McClain, Rosa Ordaz, Jimmy Tsitsinos, and Paul Viccica. Also in attendance were Brennan Corrison – Staff Planner, Tom St. Pierre – Building Commissioner, and Jonathan Pinto – Recording Clerk. No Board members were absent.

REGULAR AGENDA

Location: **6 White Street (Map 41, Lot 285) (B1 Zoning District)**

Applicant: **Sandy J. Martin**

Project: **Note: The petitioner has rescinded the request to withdraw this petition without prejudice. The petitioner previously requested to withdraw this petition without prejudice. The petitioner is now moving forward with the variance request. The Board will be considering the application on its merits in the its next regularly scheduled meeting.** A continuation of a public hearing for all persons interested in the petition of SANDY J. MARTIN for a variance per Section 3.2.4 *Accessory Buildings and Structures* to allow an accessory structure (an enclosure for trash and recycling bins) within the required front yard setback at 6 WHITE STREET (Map 41, Lot 285) (B1 Zoning District).

Documents and Exhibitions

- Application date-stamped October 16, 2019 and supporting documentation

Chair Duffy introduces the petition.

Ms. Martin notes she came before the Board at the previous meeting due to having an enclosure that is inadvertently over the property line onto city property. Ms. Martin indicates the condo association is willing to bring the enclosure back, but states the property is on the edge of an industrial zoning area and that there has been no protest to date from neighbors regarding the structure. She states there is no other location on the property to place the trash bins. Ms. Martin notes that a man spoke against the enclosure at the last ZBA meeting, but she contends he is not a neighbor and that she has never seen him before.

Ms. Martin explains that she spoke with Mr. St. Pierre about turning the structure around but states it is not tenable due to limited space and inability to access the bins.

Chair Duffy says it sounds like solutions were explored that might not require a variance and asks for Mr. Corriston to comment on the situation.

Mr. Corriston indicates the understanding was that there might be a solution that would not require a variance, and Ms. Martin submitted a request to withdraw her petition without prejudice. The proposal was noticed as a request to withdraw without prejudice. Pursuant to discussions with Mr. St. Pierre and Ms. Martin, it became evident that though moving the structure back would address the lot line issue, the proposal would still constitute an accessory structure within a required front-yard setback. Mr. Corriston notes that as such, a variance is required. Upon this realization, Ms. Martin submitted a request to rescind the previous request to withdraw, but it was not received early enough in order for action to be taken at the current meeting or to hear discussion on the merits. Mr. Corriston notes this is just a chance to discuss the reason for this shift and continue to next month.

Chair Duffy explains that in order to have a properly noticed meeting, an agenda has to go out by a certain time, so in this instance a notice went out indicating Ms. Martin's petition was withdrawn. That position changed, but the agenda did not go out with enough time so to allow for any substantive action on the issue tonight. By continuing the petition to the next meeting, there will be sufficient legal notice for any potential abutters to comment.

Mr. Corriston notes that in the meantime there can be continued discussions with Mr. St. Pierre to see if there still exists a solution that would not require a variance.

Mr. St. Pierre states that neighbors should be re-notified because of the confusion. Ms. Martin asks if it would be helpful to bring her neighbors to the meeting, and Mr. St. Pierre states she is welcome to bring a petition, neighbors, letters, or anything that supports her case.

Mr. Copelas reminds Ms. Martin that it is not a popularity contest, and that the concern presented at the prior meeting was about a city-wide ordinance violation, which would not be negated merely by a petition. He adds that whether the man who spoke at the previous meeting is a neighbor or not is irrelevant to his legitimate concern.

Mr. Viccica asks about the how to go forward procedurally, and there is brief discussion with Mr. Corriston and Mr. St. Pierre. The petition will be on re-notified and on the agenda for the following meeting.

Motion and Vote: Mr. Viccica moves to continue the petition of Sandy J. Martin for a variance per Section 3.2.4 *Accessory Buildings and Structures* at the property 6 White Street in the B1 Zoning District until the next scheduled meeting of the Zoning Board on February 19, 2020. Mr. Copelas seconds the motion. **The vote is five (5) in favor (Peter Copelas, Mike Duffy (Chair), Rosa Ordaz, Jimmy Tsitsinos, and Paul Viccica) and none (0) opposed. The motion passes.**

Location: **9 Boston Street (Map 25, Lot 39) (B1 and ECOD Zoning Districts)**
Applicant: **Kevin McCafferty**

Project: **Note: The petitioner has requested a continuance to the regularly scheduled meeting on February 19, 2020.** A continuation public hearing for all persons interested in the petition of KEVIN MCCAFFERTY for variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from maximum height of buildings (stories), minimum lot area, minimum lot area per dwelling unit, minimum depth of front yard, and minimum width of side yard and a variance from Section 5.1 *Off-Street Parking* to provide less than the required amount of parking to construct a three-story, three-family dwelling with four parking spots on the vacant lot at 9 BOSTON STREET (Map 25, Lot 39) (B1 and ECOD Zoning Districts).

Documents and Exhibitions

- Application date-stamped September 25, 2019 and supporting documentation

Chair Duffy introduces the petition. He and Mr. Corrison note a written request for a continuance was received, so the petition will be discussed next month.

Motion and Vote: Mr. Copelas moves to continue the petition for residential development at 9 BOSTON STREET to the next regularly scheduled meeting on February 19, 2020. Mr. Tsitsinos seconds the motion. **The vote is five (5) in favor (Paul Viccica, Jimmy Tsitsinos, Rosa Ordaz, Mike Duffy (Chair), and Peter Copelas) and none (0) opposed. The motion passes.**

Location: **7 Curtis Street (Map 35, Lot 339) (R2 Zoning District)**

Applicant: **LH Capital Development, LLC**

Project: A public hearing for all persons interested in the petition of LH CAPITAL DEVELOPMENT, LLC for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance for maximum height of buildings (stories) and minimum front and side yard setbacks to expand an existing nonconforming two-family home by raising the existing attic, changing the roof from gambrel to gable, and adding two dormers; by adding a story above the existing two-story rear addition; and adding egress steps and landings within required front and rear yard setbacks at 7 CURTIS STREET (Map 35, Lot 339) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped November 22, 2019 and supporting documentation

Chair Duffy introduces the petition.

Andrew Falkenstein introduces himself as the petitioner and says he will be asking for a continuance because it has come to his attention that the Historic Commission has some questions about precedent being set. He indicates he is happy to talk to them and work with them to find a solution. Mr. Falkenstein states he would like to hear if the Board or any members of the public have any comments or concerns before asking for a continuance.

Chair Duffy asks for a brief introduction or summary of the petitioner's intent. Mr. Falkenstein explains the proposed renovation of an existing nonconforming two-family structure. He contends the intent is to keep the footprint but raise the roof approximately three feet, add dormers, and add

two new entrances (with stoops). Mr. Falkenstein claims he would be looking to eventually sell the property as condominium housing with two separate units (a three bedroom and a two bedroom).

Chair Duffy opens the floor to comments and questions from the Board.

Mr. Corrison notes there was a small issue with the legal notice, specifically the legal advertisement referred to front and side setbacks in one part and front and rear setback in another part. Mr. Corrison clarifies both parts should have included all three setbacks – front, rear, and side. He adds that the City Solicitor indicated it was okay to move forward nonetheless and the petitioner has agreed to move forward.

Mr. Viccica indicates he has no opinion currently, and that he would need to see the results from any meetings or see revisions with proper explanations of hardship before providing any feedback. Mr. Viccica states it would be fruitless to make suggestions to plans that might change. Chair Duffy agrees.

Chair Duffy also notes the Board received a letter from the Historical Commission dated January 14, 2020. Chair Duffy explains the letter includes concerns about the renovations, stating the house was constructed c. 1855 and has been documented in the historic inventory. The letter claims the renovations would change the scale and design of the property, increase its size, reorient the façade, change fenestration pattern, among other things. The letter states a modern building would be out of character with the surrounding streetscape. The letter requests to allow for time to consult with the petitioner. Chair Duffy mentions a second letter from Historic Salem Inc. dated January 15, 2020 that raises many of the same issues and concerns asserted in the Historic Commission's letter, urging for consultation before moving forward.

Chair Duffy opens to public comment.

Barbara Cleary, Chair of the Historic Salem Inc. Preservation Committee, states she works with the Historic Commission on many design reviews and is looking forward to working together with them and the petitioner.

Mira Riggan from 2 Curtis Street states she agrees with the contents of the letters and is glad that the developer is willing to work together as she is interested in preserving the green space and historic neighborhood character.

Maureen Buck from 11 Curtis Street states she also agrees with the comments from Historic Salem Inc.

Mr. Viccica asks about the new requirements for submissions to include elevation diagrams, and Mr. Corrison notes that the petition was filed before the effective date of the new requirements, but that the Board may request that they be included. Mr. Viccica states it would be helpful. Tim Jenkins from Historic Salem Inc. asks a clarifying question about showing neighborhood context on “both streets.”

Shelley Alpern from 6 Curtis Street expresses her concerns regarding the loss of green space due to the proposed design which includes a parking space. Ms. Alpern speaks to the neighborhood

dedication to the green space and indicates that while she thinks the house is in need of reconstruction, the loss of green space would be bad and could potentially have a negative effect on property values.

Jack Kabral from 8 Curtis Street explains that his main complaint is also the loss of the green space. Mr. Kabral indicates the neighborhood has many dogs and the green space is important. He states he does not want to see a driveway across the street and expresses concern regarding additional cars coming down the street, noting that he currently feels things are bad enough with the Brookhouse Home. Mr. Kabral adds that he has seen the blueprints of the house and he does not think changing to a gabled roof makes the house look better and does not like the proposed aesthetics.

Mr. Copelas explains to the last three commenters who joined the meeting late that the petitioner has agreed to meet with Historic Salem Inc. and the Historic Commission, so the Board will not be commenting as they anticipate there will be changes. He notes the comments are well taken, but that the plan is to continue and postpone.

Chair Duffy clarifies that the petitioner did seek feedback that could be helpful for the discussions with the interested parties.

Mr. Falkenstein states he will work with Historic Salem Inc. and the Historic Commission on the aesthetics but states, however, that the economics of selling two condos requires him to offer two parking spots. Mr. Falkenstein states he will offer a landscape plan that will preserve some of the green space, and that he is willing to sign documentation indicating the driveway will not be paved, but rather stone or cobblestone.

Mr. Viccica suggests the discussion not continue as it is not productive to do a public design review in this forum. Chair Duffy agrees.

Motion and Vote: Mr. Copelas moves to continue the petition of 7 Curtis Street until the next regularly scheduled meeting on February 19, 2020. Mr. Tsitsinos seconds the motion. **The vote is five (5) in favor (Rosa Ordaz, Mike Duffy (Chair), Peter Copelas, Paul Viccica, and Jimmy Tsitsinos) and none (0) opposed. The motion passes.**

Location: **54 Forrester Street (Map 41, Lot 223) (R2 Zoning District)**
Applicant: **Barry Kernfeld & Sally McMurry**
Project: A public hearing for all persons interested in the petition of BARRY KERNFELD & SALLY MCMURRY for a special permit per Section 3.3.4 *Variance Required* of the Salem Zoning Ordinance to extend an exterior wall along the same nonconforming distance by expanding an existing deck along an existing nonconforming side yard setback at the multi-family residential building at 54 FORRESTER STREET (Map 41, Lot 223) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped December 16, 2019 and supporting documentation

Chair Duffy introduces the petition.

Mr. Corriston notes a legal noticing issue similar to last petition regarding the listed setback. The advertisements were listed as a side yard setback, but the setback in question is actually the rear yard setback. The city solicitor said the petition could still move forward.

Barry Kernfeld and his wife Sally McMurry introduce themselves. Mr. Kernfeld explains that 54 Forrester is a classic 1910 New England triple-decker that was converted to condos in 1986 with three rear stacked porches. He describes the second and third floor balconies as private, but notes that the first floor balcony is effectively a walk through with no personal space for the petitioners to enjoy good weather. Mr. Kernfeld introduces his consultant, who he says provided a variety of ideas to come up with a plan that would be least intrusive.

Mr. Kernfeld describes the existing layout of the first-floor porch and stairs, and walks through the proposal to move the stairs and extend one side to provide for a small nine foot by five foot space that would be private.

Mr. Viccica asks for drawing references rather than an oral description and requests that Mr. Kernfeld show the existing conditions and proposed conditions. Mr. Kernfeld agrees and continues to explain his proposal with visuals.

Chair Duffy asks if the proposal will bring the rear of the building closer to the setback. Mr. Kernfeld confirms it will not. Mr. Kernfeld goes on to state that the existing nonconforming dimensions will not change.

Mr. Corriston clarifies that the dimensional requirements are 30 feet for the rear yard setback and 10 feet for the side, but that the relief required is the same.

Chair Duffy opens the floor to comments from the Board.

Mr. Copelas points out this is a request for a special permit even though the ordinance is 3.3.4 *Variance Required*.

Chair Duffy opens the floor to public comment.

Jeff Beauregard from 8 Essex Street introduces himself and states he does not have an issue with the proposal but was initially worried because he has a lien on an abutting property. Mr. Beauregard's initial concerns were that the petitioner might be building into the lien but he reports that is not the case.

Chair Duffy reviews the special permit criteria and notes that they are met by the petitioner. Chair Duffy adds that the request is minor and that all changes will be made in back of the property.

Motion and Vote: Mr. Copelas moves to approve the petition of BARRY KERNFELD & SALLY MCMURRY for a special permit per Section 3.3.4 *Variance Required* of the Salem Zoning Ordinance to extend an exterior wall along the same nonconforming distance by expanding an existing deck along an existing nonconforming rear yard setback at the multi-family residential building at 54 FORRESTER STREET 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 Inspection is to be obtained.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. All construction shall be done per the plans and dimensions submitted to and approved by this Board. No changes, extensions, material corrections, additions, substitutions, alterations, and/or modification to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

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

MEETING MINUTES

- July 17, 2019
- September 18, 2019
- October 16, 2019
- December 18, 2019

Chair Duffy states there are no minutes to review at this meeting. Mr. Corrison notes they will be reviewed at the February meeting.

OLD/NEW BUSINESS

Discussion of and Vote on 2020 ZBA Meeting Schedule

Chair Duffy states the Board will continue to meet the third Wednesday of the month.

Ms. McClain notes the February meeting will be during the week that schools are on break, and that any individuals with children who go away will be unable to attend.

Mr. Copelas notes the Board has already moved certain items and taken action to continue petitions to the February meeting, which means it is not possible to move the February meeting date as it has been noticed. Chair Duffy agrees.

Mr. St. Pierre asks if anyone on the Board will be unable to attend, and Ms. McClain states she will not be present.

Chair Duffy notes the Board will be short one but will still have a quorum present.

Motion and Vote: Mr. Copelas moves to approve the 2020 ZBA Meeting Schedule as printed and Mr. Tsitsinos seconds the motion. **The vote is all in favor. The motion passes.**

Discussion of and Vote on Revised ZBA Fee Schedule (to reflect change in registry of deeds recording fee)

Mr. Corrison explains the change in the fee for recording Board decisions from \$75 to \$105, effective December 31, 2019. He notes this is to formalize the change and update the application package to reflect the change.

Mr. St. Pierre notes this is the first time in the 22 years he has been here that the price has increased.

Motion and Vote: Mr. Copelas moves to approve the updated schedule of fees and Mr. Tsitsinos seconds the motion. **The vote is all in favor. The motion passes.**

Request for Comments on Draft Inclusionary Zoning Ordinance

Mr. Corrison notes the request is just for comments from the Chair and Mr. St. Pierre and that he wanted to see if anyone had questions.

Chair Duffy, Mr. Copelas, and Mr. Viccica briefly discuss special permit approval going to the Planning Board.

ADJOURNMENT

Motion and Vote: Mr. Copelas moves to adjourn the meeting and Mr. Tsitsinos seconds the motion. **The vote is five (5) in favor and none (0) opposed. The motion passes.**

The meeting ends at 7:11 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:

<https://www.salem.com/zoning-board-appeals/pages/zoning-board-appeals-decisions-2020>

Respectfully submitted,
Brennan Corrison, Staff Planner