

City of Salem Zoning Board of Appeals
Meeting Minutes
January 20, 2021

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

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

Chair Duffy explains that pursuant to Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor’s March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, the Zoning Board of Appeals meeting scheduled for Wednesday, January 20th at 6:30 pm is being held remotely via Zoom. Chair Duffy explains that instructions to participate remotely can 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, Rosa Ordaz, Steven Smalley, Peter Copelas and Paul Viccica. Also in attendance were Elizabeth Rennard – City Solicitor, Lev McCarthy – Staff Planner, Tom St. Pierre – Building Inspector, and Jonathan Pinto – Recording Clerk. Those absent were: Jimmy Tsitsinos.

EXECUTIVE SESSION

Chair Duffy explains that there will be an executive session with Elizabeth Rennard, City Solicitor, for the purpose of discussing litigation relating to properties at 9-11 Dodge Street, 217-219 Washington Street, and 231-251 Washington Street.

Motion and Vote: Mr. Copelas motions to enter an executive session with the City Solicitor to discuss the properties at 9-11 Dodge Street, 217-219 Washington Street, and 231-251 Washington Street.

Ms. Ordaz seconds the motion. **The vote is six (6) in favor (Steven Smalley, Carly McClain, Peter Copelas, Mike Duffy (Chair), Paul Viccica, and Rosa Ordaz) and none (0) opposed. The motion passes.**

The Board, Building Inspector, and the City Solicitor engage in discussions via executive session.

During the executive session Mr. Copelas indicates he will be unable to rejoin for the regular agenda.

Motion and Vote: Mr. Viccica motions to end the executive session and return to the regular Zoning Board of Appeals Agenda.

Ms. Ordaz seconds the motion. **The vote is six (6) in favor (Peter Copelas, Mike Duffy (Chair), Carly McClain, Rosa Ordaz, Steven Smalley, and Paul Viccica) and none (0) opposed. The motion passes.**

The executive session ends at 7:15PM, and the regular agenda continues.

REGULAR AGENDA

- Location: **140 Highland Avenue (Map 14, Lot 264) (R1 and ECOD Zoning Districts)**
- Applicant: **Johnny Polanco**
- Project: A continuation of a public hearing for all persons interested in the petition of JOHNNY POLANCO for a special permit per Section 8.2.4 *Entrance Corridor Overlay District: Fences* to allow a six-foot tall decorative concrete wall at the single-family house at 140 HIGHLAND AVENUE (Map 14, Lot 264) (R1 and ECOD Zoning Districts).

Documents and Exhibitions

- Application date-stamped November 4, 2020 and supporting documentation

Chair Duffy introduces the petition.

Attorney Vincent Phelan introduces himself on behalf of the applicant. Mr. Phelan states Mr. Polanco is an active member of the community, both as a resident and business owner, and speaks to his integrity. Mr. Phelan explains that Mr. Polanco purchased his home and immediately realized it was dangerous to him and his family, and therefore constructed a wall. Mr. Phelan reminds the Board of the reasoning for the wall, namely the concern regarding debris flying into the yard and toward the house from the street.

Mr. Phelan contends that Mr. Polanco approached his neighbor (who currently has concerns regarding the wall) and discussed needing to build the wall, and that there was a handshake agreement that took place. Mr. Phelan explains that while Mr. Polanco is a citizen, English is his second language and therefore relied on the handshake agreement rather than seeking legal representation at the time. Mr. Phelan maintains that as part of the wall construction, Mr. Polanco agreed to fix part of the neighbor's wall, and to set the portion of the wall on the property line a foot back. Mr. Phelan stresses that this is both an issue of safety and fairness. While the neighbor has complained about visibility leaving her driveway due to the wall, Mr. Phelan suggests he has never seen the neighbor back out onto the street, and that the wall does not obstruct her view. Instead, Mr. Phelan claims a city tree up the road provides a bigger issue with respect to visibility. Mr. Phelan next presents photos of the wall which demonstrate the distance to the street, and notes that the wall is 17 feet away from oncoming traffic. Mr. Phelan states that many neighbors are thankful that the wall prevents a prior issue where people were using the property as a turn around. According to Mr. Phelan, Mr. Polanco paid \$50,000 for the wall based on a handshake, but the neighbor is now expressing concerns. He adds that concessions such as wall repair and movement of the location would not have been made were there not some form of agreement, and notes that Councilor Dominguez is in support of whatever is good for the neighborhood.

Mr. Polanco introduces himself, and states that his intent in building the wall was not to hurt anyone, but to keep his family safe.

Mr. Phelan asks Mr. Polanco he has tried to negotiate with his neighbor, and Mr. Polanco states that he tried, but that his neighbor denies the negotiations occurred. Mr. Polanco notes that the wall was built closer onto his property, and that he built 15 feet of wall in the back for the neighbor to keep her happy.

Chair Duffy references a petition that was signed by 27 individuals and submitted to the Board in support of the wall. Mr. Phelan comments on the process of getting signatures during a pandemic, and states that Mr. Polanco would never have built the wall if he thought it would have been a safety issue for his neighbor.

Chair Duffy also notes there is a letter from Anthony Whitten, dated Thursday November 12, 2020, stating that the wall obstructs the view for anyone coming out of the neighboring driveway, and suggests the wall be lowered to the proper height for safety reasons.

Chair Duffy states there is a letter from Councilor Dominguez as well, stating Mr. Polanco is an accomplished karate instructor, and urges the Board to approve the special permit so that the Polanco family can live safely. Councilor Dominguez's letter references instances of projectiles coming onto the property, and notes that prior to Mr. Polanco purchasing the property there was an accident where an MBTA bus crashed into the home. Councilor Dominguez's letter casts doubt on the aggrieved neighbor's concerns, and suggests there is an issue of fairness with respect to a negotiated agreement that is now not being honored.

Next, Chair Duffy introduces an email from Barbara Peckham of 144 Highland Avenue, dated January 20, 2021. In the email Ms. Peckham raises questions regarding the permitting process, and states that the neighbors who are in favor of the wall are not aware of her obstructed view. Ms. Peckham contends she has been in her home for 20 years and has never feared projectiles coming from Highland Avenue, and suggests Mr. Polanco's concerns are exaggerated. Ms. Peckham's email expresses concern for her own safety, as well as the safety of anyone walking on the sidewalk, as she is unable to see any pedestrians until she has fully pulled onto the sidewalk now with the wall. She asks that the front portion be moved back and lowered in height. Mr. Duffy notes a prior letter from Ms. Peckham dated December 16, 2020, which opposes the petition and expresses concern regarding potential injuries or accidents from the obstructed view. Ms. Peckham suggests Mr. Polanco can keep his family safe but asks that he not put others at risk in the process.

There is additional discussion regarding the photos of debris, and Ms. McClain asks how recent the photos are. Mr. Polanco states that some of the photos are recent, such as the photo of the license plate.

Mr. Phelan explains the slope of the land, and how it required that the wall be higher than allowed. Mr. Phelan reiterates his assertion that the tree down the street is a bigger visual obstruction than the wall is, although he says he hates to say it because we want trees in our neighborhoods.

Ms. McClain reminds Mr. Phelan that the ZBA does not make decisions about City trees, but that she is interested in the discussion of competing safety issues. Ms. McClain states that from the photos the issue appears to be that the neighbor's vision is obstructed by the wall when coming out of the driveway, not by a distant tree. Mr. Phelan says he agrees, and offers that oncoming traffic is almost two car lengths away. Mr. Phelan goes on to say that this property is "unique" and safe because of the way the traffic lane widens nearby.

Mr. Viccica asks Mr. Polanco if he has ever walked in Ms. Peckham's driveway to see how much her view is obstructed, and Mr. Polanco claims he knows what it looks like because he used to take her trash out for her. He states that he would not have built the wall if he thought it would be unsafe. Mr. Viccica clarifies that no one is accusing Mr. Polanco of creating an unsafe condition out of spite, and asks if he has attempted to look out of the neighbor's driveway with the wall to mimic pulling out with a car. Mr. Polanco says he does not go onto Ms. Peckham's property currently. Mr. Viccica asks if a car would have to pull onto the sidewalk before pedestrians on the sidewalk or traffic would be visible. Mr. Polanco states people should take precautions when leaving their driveways. Mr. Viccica asks his question again, and Mr. Polanco indicates he believes the tree previously mentioned by Mr. Phelan is no different than the wall.

Chair Duffy asks Mr. McCarthy to bring up photographs from across the street of the property.

Mr. Viccica asks Mr. Polanco when he was made aware that he was not in compliance with the zoning ordinance. Mr. Polanco contends he had permission, and that he kept everything as close to requirements as he could. Mr. Phelan interrupts to ask Mr. Polanco when he found out he was not in compliance. Mr. Polanco indicates it was when his neighbor complained. Mr. Viccica asks if a permit was obtained, and Mr. Polanco says it was, and that he posted it in the window. Mr. Viccica next asks if drawings were submitted to obtain the permit. Mr. Polanco responds that he had computer sketch, and continues to explain the slope of the street. Mr. Phelan maintains that Mr. Polanco got a permit, and that the builders kept telling him he had to keep the wall level. Mr. Phelan argues there was no intention to sneakily make the wall higher than allowed, and that it was all done with good intentions. Mr. Phelan states the workers started at the required height, but that the slope of the street caused the current situation.

Mr. Viccica asks if Mr. Phelan and Mr. Polanco are representing that the construction crew did not abide by the drawings presented and built a wall that was not in compliance. Mr. Polanco indicates he built the wall with friends, and that it was not designed by an architect.

Mr. Phelan and Mr. Polanco reiterate the noncompliance stems from the slope in the street and wanting to keep the wall level, and Mr. Phelan again notes that Mr. Polanco spent fifty thousand dollars building the wall. Mr. Phelan adds that had he been involved since the beginning, this predicament would not exist.

Chair Duffy references the photo from across the street, and notes that the front section of the wall would likely help prevent incoming debris, but questions whether the section of wall closest to the neighbor is necessary. Mr. Duffy asks if it could have been a fence or even made lower in that particular spot. Mr. Phelan asks for clarification, and Chair Duffy explains how projectiles would likely come toward the property from the street. Mr. Phelan states that some objects fall off of cars, and then get hit by subsequent cars and so the trajectory is not always certain. Mr. Polanco adds that people used to walk through his property, and recalls once instance where a man who appeared to be under the influence was on his steps.

Chair Duffy opens the floor to public comment.

Barbara Peckham of Highland Avenue introduces herself and thanks the Board members for their patience. Ms. Peckham indicates she submitted photos, and invites any of the Board members to come and try to exit her driveway. She insists that when exiting, the nose of the vehicle is across the whole sidewalk before pedestrians and oncoming traffic are visible. Ms. Peckham recounts a recent situation where she was pulling out and found a young man was immediately at her car door to both their surprise, which has prompted her to start getting out of her car and walking onto the sidewalk to check for people. Ms. Peckham stresses she does not want anyone to be injured accidentally. In reference to Mr. Polanco's earlier statement, Ms. Peckham notes she brings her own trash barrels out. She notes there are many joggers, children, and bikers on the street, and questions how her neighbor can be so focused on his own safety and neglect that of others. Ms. Peckham also contends there was no handshake agreement, and that she became aware of the wall when she heard a back hoe outside and saw cement coming down the fence. With respect to the portion of wall that was built in the back of her property, Ms. Peckham states she did not request the wall, but rather Mr. Polanco suggested it because he did not like the look of her stockade fence, and wanted continuity with his. Next, Ms. Peckham clarifies that the incident referenced by the applicant regarding an MBTA bus hitting the property occurred 30 years prior, and that no such incident has happened since. Ms. Peckham states the wall is dangerous and begs the Board to not allow this variance.

Chair Duffy asks Ms. Peckham if the discussion of the stockade fence and suggestion of continuing the wall occurred prior to construction or during. Ms. Peckham states only holes had been dug at that point. She also

notes that as soon as she realized there was a visibility issue she mentioned it to Mr. Polanco, and his suggestion was to put up mirrors.

Jana Gothier introduces herself and states she is a neighbor on Valley Street, and that she uses Crowdis Street quite a bit. Ms. Gothier indicates she walks her dog along Highland Avenue and is familiar with the wall. She states as a walker, she was excited when the wall was built because the lights on top of the wall illuminate the area and make it feel safer at night. Ms. Gothier contends she has a daughter similar in age to Mr. Polanco's daughter, and that without the wall she would not let her daughter play in that yard. Ms. Gothier states it is unfortunate if there are safety concerns for the neighboring driveway, but admits she has not looked at it specifically. She suggests that when the Board is weighing the pros and cons of the wall with respect to safety, the illumination should be considered.

Keith Portrait introduces himself as a neighbor on Crowdis Street, and states he is in favor of the wall's illumination as well, noting that is a safety feature for drivers and walkers at night. Mr. Portrait indicates the traffic on Highland Avenue is horrible, and that the lights on the wall provide some assistance for turning from the side streets. Mr. Portrait suggests the wall has also helped with previous issues of flooding at the bottom of the hill. He says he feels bad for the neighbor who is having difficulty, but asserts the wall has some pros as well as cons. Mr. Portrait sympathizes with Mr. Polanco as he has children as well, and says he would not want his own children to get hurt playing in the yard.

Margaret Busted introduces herself and suggests the project is misconstrued. Ms. Busted acknowledges that some people on neighboring streets may enjoy the wall, and notes that visually it is not offensive. She notes, however, that if the abutting neighbor cannot see when exiting the driveway then it is an issue. Ms. Busted suggests modifying the portion of the wall in question, perhaps cutting it at a diagonal. Ms. Busted contends she attempted to exit the driveway herself and confirms it is dangerous.

Jose Meniah of Hawthorn Street introduces himself, noting he is not a neighbor but lives close by. Mr. Meniah indicates he has witnessed many accidents on Highland Avenue, and suggests it may be due to lack of lighting. He suggests the lighting on the wall is helpful, and that he feels safer walking in the area with his family because of the illumination.

Ward 4 Councilor Timothy Flynn introduces himself and says he has met with the neighbor and went out to look at the wall from both sides. Councilor Flynn indicates he also went there with Councilors Dibble and Dominguez. Mr. Flynn acknowledges the issue regarding debris and damage and states he also understands the neighbor's concerns. Councilor Flynn states he wanted to meet with both to see if they could negotiate an agreement, and that he would still be willing to do so.

Mike Becker of 19 Parley Street introduces himself. Mr. Becker indicates his property backs up to Crowdis Street. Mr. Becker asks what dimensions are allowed, and Chair Duffy responds four feet in height. Mr. Becker asks what the height is at Ms. Peckham's driveway, and Ms. Peckham indicates it is six feet. Mr. Becker asks additional questions about the wall dimensions. Mr. St. Pierre explains the dimensional requirements a bit more. Mr. Becker opines that the wall looks great, but acknowledges that the neighbor is having a safety issue and hopes that a compromise is possible.

Chair Duffy asks Mr. Phelan if any conversations were had regarding potential compromise. Mr. Phelan says it has been difficult, particularly with a pandemic, and that Mr. Polanco has represented that the neighbor's requests have only been to take the wall down. Chair Duffy asks if there have been any discussions or offers

made to reduce the height of the wall at the corner, and Mr. Phelan says no because the situation has been cantankerous.

Ms. Ordaz expresses disappointment, as this proposal was first before the Board in November and Mr. Polanco was directed to speak to his neighbor to seek a compromise. Ms. Ordaz acknowledges there are challenges relating to the slope and Highland Avenue specifically, but reminds the applicant it is now January and no compromise has been attempted.

Mr. Phelan states he would love to arrive at a compromise but argues there is no communication from the neighbor. Mr. Phelan references the alleged handshake agreement again, and reiterates that Mr. Polanco made certain concessions at the beginning. Mr. Viccica asks if there is any kind of agreement in writing, and Mr. Phelan says there is not. Ms. Ordaz reminds Mr. Phelan that the Board does not make rulings based on handshake agreements

Mr. Polanco explains the concessions again, and states he would like his neighbor to be happy, but that she wants the wall down.

Chair Duffy states there appears to be conflicting testimony, specifically with regard to the handshake agreement and potential negotiations. Mr. Duffy notes that regardless, negotiations between neighbors are irrelevant if a project does not comply with zoning bylaws. Mr. Phelan says he understands, and that is why a variance is being sought. Mr. Phelan indicates the issue is fairness, and mentions the cost of the wall again.

Chair Duffy closes the floor to public comment.

Mr. Viccica notes that some neighbors and Councilors have recommended some form of negotiation, and suggests it would be a wise approach. Mr. Viccica discusses the wall dimensions and notes there are two sections of the wall, the part in the front that ends at the driveway, and the wall that extends to the neighbor's house where the wall is over six feet tall with a light fixture. Mr. Viccica refers to the criteria for approval of a special permit, noting that one is related to traffic flow and safety. Mr. Viccica contends that the part of the wall abutting the neighbor's driveway does not seem safe for people on the sidewalk, the neighbor pulling out, and drivers on Highland Avenue. Mr. Viccica suggests that if a contractor is responsible for making the wall higher perhaps they could be liable for any costs, and states if there are to be no negotiations to lower that portion of the wall, then he would not be in favor of voting for the special permit.

Mr. Phelan suggests he would like to continue the petition. Mr. Viccica indicates he would like to hear from the rest of the Board and is not necessarily suggesting a continuance. Mr. Phelan says he would like to give it one last shot.

Ms. Ordaz explains that in November the Board advised Mr. Polanco to continue the matter in order to talk to his neighbor and consider lowering just that one portion of the wall. Ms. Ordaz notes that Mr. Phelan was hired in December to represent Mr. Polanco, but Mr. Phelan was not prepared and requested a continuance again. She states it is unfortunate that it is now January and it does not sound like it will be a possibility. Ms. Ordaz questions what continuing would accomplish at this point. Mr. Phelan suggests he will give it another shot. Mr. Phelan contends he has not yet had a chance to speak to the neighbor, and that he was basing his assumptions about the neighbor's refusal to negotiate on what his client had told him. Mr. Phelan again asks to have one more chance before the Board, and states there is a lot of money at stake for his client. Mr. Viccica suggests Mr. Phelan listen to the Board without continually interrupting.

Ms. McClain notes that at the last meeting she expressed not wanting to continue the petition too many times because of the safety issues raised, and states she is still concerned. Ms. McClain echoes Ms. Ordaz's comments, and points out that Mr. Phelan had a month to make progress. However, Ms. McClain acknowledges the difficulties associated with the pandemic and suggest she could entertain giving the applicant a little more time to negotiate, perhaps working with Councilor Flynn, who has agreed to help. As is, Ms. McClain cannot support the petition because the safety issue has not gone away.

Chair Duffy acknowledges that a conversation requires two parties, but that it is not apparent that no negotiations or resolution can be reached.

Mr. Polanco indicates he is willing to talk to the neighbor and see how the issue can be addressed. Mr. Polanco contends Councilor Flynn spoke to his neighbor, but she did not want to discuss the issue. Chair Duffy says he has heard that anecdote from Mr. Polanco, but not from anyone else tonight. Mr. Polanco says he can give it another try. Mr. Phelan suggests it may be helpful for the Councilor to mediate, but also notes that this is a difficult time. Mr. Phelan also states that the wall is already built, and suggests he is not in favor of tearing down the wall. Mr. Viccica claims that does not sound promising or optimistic for a negotiation starting point, and that perhaps continuing is not the right way to go.

Chair Duffy indicates the Board can either vote on a motion for a continuance, and if that motion fails the Board can vote on the application.

Councilor Flynn states he does not want Ms. Peckham to feel forced into mediation if she does not want to participate, but that he is more than willing to help through zoom. Mr. Viccica asks Mr. Flynn if Ms. Peckham specifically said she did not want to negotiate. Councilor Flynn asserts he reached out to suggest the three of them meet in December and that she did not express an interest. Councilor Flynn suggests her position may have changed since then.

Chair Duffy notes the applicant requested to continue to take another opportunity at negotiating, and while he is unsure if it will be productive, the Board must act on the request.

Motion and Vote: Mr. Viccica motions to continue the petition of JOHNNY POLANCO for a special permit per Section 8.2.4 *Entrance Corridor Overlay District: Fences* to allow a six-foot tall decorative concrete wall at the single-family house at 140 HIGHLAND AVENUE (Map 14, Lot 264) (R1 and ECOD Zoning Districts) to the next regularly scheduled meeting to be held on February 17, 2021.

Ms. McClain seconds the motion. **The vote is four (4) in favor (Paul Viccica, Mike Duffy, Carly McClain, Steven Smalley) and one (1) opposed (Rosa Ordaz). The motion passes.**

Location: **11 Hersey Street (Map 33, Lot 30) (R2 Zoning District)**
Applicant: **James Flynn and Sam Allen**
Project: A public hearing for all persons interested in the petition of JAMES FLYNN and SAM ALLEN to remove an owner occupancy requirement for the three-family dwelling at 11 HERSEY STREET (Map 33, Lot 30) (R2 Zoning District).

- Application date-stamped December 3, 2020 and supporting documentation

Chair Duffy introduces the petition.

Sam Allen introduces himself and explains that he is seeking to remove the owner occupancy requirement for the property. Chair Duffy asks about the current status of the property, and why Mr. Allen is seeking the removal. Mr. Allen indicates his partner owned the property and subsequently sold half to him. Mr. Allen states they lived at the property, and now no longer do, hence the request for removal. Chair Duffy asks if they still own the property, and Mr. Allen indicates they do.

Mr. Viccica asks why the condition was placed in an 1985 zoning decision. Chair Duffy explains that a special permit was granted to allow continued use of a three-family dwelling. Chair Duffy says he is unaware of what led to the condition. Mr. McCarthy clarifies that a previous condition existed prior to 1985, which required a special permit be sought if the property was sold and wanted to be continued to use as a three-family dwelling.

Ms. Ordaz confirms that the property is a three-family home, the owners no longer live there, and are seeking to remove the previous condition that it must be owner occupied. Ms. Ordaz asks if the intent is to rent out the property. Mr. Allen explains that they no longer live there and have been renting it. Mr. Viccica also confirms that they are not currently abiding by the condition and would like to be in compliance, and Mr. Allen agrees.

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

Mr. Viccica notes that although it is an R2 Zoning District there appear to be many non-R2 residences in the neighborhood. Mr. Allen confirms there are many multi-family residences but that he is unaware how many are owner occupied.

Ms. Ordaz asks if the current rental is short-term or long-term. Mr. Allen indicates the tenants have been there a while, and that it is not an Airbnb or short term rental.

Chair Duffy notes there are now members of the public seeking to comment.

Pam McKey introduces herself as a friend of the applicant. Ms. McKey explains that a property at 80 Ocean Avenue had a similar restriction that the Board removed in 2018. Ms. McKey notes the decision was based on the opinion of the City Solicitor, who found that limitation to ownership related to owner-occupancy is not permissible by the City.

Chair Duffy notes that this is not a special permit, but rather an amendment to a special condition. Nonetheless, Chair Duffy considers the criteria for a special permit and explains how it is met. Chair Duffy references the need for housing in the City, and states that there does not appear to be any detrimental effect from granting the removal.

Motion and Vote: Mr. Viccica motions to approve the petition of JAMES FLYNN and SAM ALLEN to remove an owner occupancy requirement for the three-family dwelling at 11 HERSEY STREET (Map 33, Lot 30) (R2 Zoning District) subject to the following standard condition:

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

Location: **10 Barton Street (Map 36, Lot 409) (R2 Zoning District)**
Applicant: **Beth Tobin**
Project: A public hearing for all persons interested in the petition of BETH TOBIN for a special permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance from maximum height of buildings (stories) to expand a nonconforming two-family home by adding a dormer at 10 BARTON STREET (Map 36, Lot 409) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped December 11, 2021 and supporting documentation

Chair Duffy introduces the petition.

Beth Tobin introduces herself and explains she has resided in Salem her entire life. Ms. Tobin indicates she would like to add a dormer to her third floor attic to enlarge bedrooms. Ms. Tobin states her neighbors are in support of her proposal. Ms. Tobin also notes there are many homes in the neighborhood of similar style with dormers. There is no change in footprint proposed. Ms. Tobin presents drawings of the proposed dormer with dimensions.

Mr. Viccica notes the application is incomplete as it does not contain an elevation or the dormer length. Mr. Viccica explains it is a shed dormer on the side of the roof, but that he cannot discern which side.

Ms. Tobin states her letter identifies the southeast side and at a length of 26 feet. Mr. Viccica maintains that while words are helpful, an elevation is required. Mr. Viccica opines that the request is likely reasonable, but that the Board should not be seeing incomplete applications, although he is hesitant to make an example of the applicant.

Chair Duffy asks if other Board members would want or need to see elevations in order to be able to act on the petition. Ms. McClain indicates she would, mainly for consistency. Ms. McClain contends the Board has sent other incomplete applicants back, and suggests that requiring the elevations would not only be helpful, but equitable.

Chair Duffy asks the applicant if she is familiar with elevations, and she indicates she is not. Chair Duffy advises her to contact the Planning Department and they will walk her through the application requirements. Chair Duffy also notes that providing elevations will help enforce any relief granted.

Mr. Viccica explains that an elevation is a two-dimensional drawing that shows the side of the building where the dormer will be showing the entire façade, length of dormer, windows, materials, etc., all to scale. Mr. Viccica states that a contractor can complete one, and that it does not need to be done by an architect.

Mr. St. Pierre tells Ms. Tobin he can provide examples of elevations as well. Ms. Tobin asks about the next steps, and Chair Duffy explains she would continue to the next month, and in the meantime obtain an elevation. Mr. Viccica and Mr. St. Pierre explain continuances further, and that no advertisement is required.

Motion and Vote: Mr. Viccica motions to continue the petition of BETH TOBIN for a special permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance from maximum height of buildings (stories) to expand a nonconforming two-family home by adding a dormer at 10 BARTON STREET (Map 36, Lot 409) (R2 Zoning District) to the next regularly scheduled meeting on February 17, 2021.

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

Location: **5 Harbor Street (Map 34, Lot 411) (B5 Zoning District)**
Applicant: **Leoncio Vizcaino**
Project: A public hearing for all persons interested in the petition of LEONCIO VIZCAINO for a special permit per Section 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to construct a five-story extension to an existing one-story structure, and a variance from Section 5.1.9 Central Development (B5) District to provide the required off-street parking by use of parking facilities more than 1,000 feet away from the property at 5 HARBOR STREET (Map 34, Lot 411).

Documents and Exhibitions

- Application date-stamped December 22, 2020 and supporting documentation

Chair Duffy introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the applicant, and states that the proposal before the Board is to build much needed housing in Salem. Mr. Quinn explains the applicant filed a plan for a five-story vertical addition to the building, but that some neighbors have raised concerns. The applicant would like to change the proposal to four stories and address parking issues, and therefore seeks to continue to the next regularly scheduled meeting after filing revised plans.

Motion and Vote: Ms. Ordaz motions to continue the petition of LEONCIO VIZCAINO for a special permit per Section 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to construct a five-story extension to an existing one-story structure, and a variance from Section 5.1.9 Central Development (B5) District to provide the required off-street parking by use of parking facilities more than 1,000 feet away from the property at 5 HARBOR STREET (Map 34, Lot 411) to the next regularly scheduled meeting on February 17, 2021

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

Location: 2 Howard Street (Map 35, Lot 153) (R2 Zoning District)
Applicant: Ocelot Operations, LLC
Project: A public hearing for all persons interested in the petition of OCELOT OPERATIONS, LLC for a special permit per Section 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance from maximum height of buildings (stories) to expand an existing, nonconforming multifamily dwelling at 2 HOWARD STREET (Map 35, Lot 153) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped December 22, 2020 and supporting documentation

Chair Duffy introduces the petition.

Mike Becker introduces himself as representing the ownership group, as does Sanir Lutfija of Segar Architects.

Mr. Lutfija explains the proposal is an addition to and existing addition from around 1900 with a flat roof. Mr. Lutfija indicates the current building requires some repairs, including issues with the membrane roofing. Photos of the existing conditions are presented. Mr. Lutfija states the proposed addition would expand existing units and would not go over the existing footprint or height. Mr. Lutfija explains the building houses low-rent apartments and provides valuable housing in the downtown area. The proposed addition would also assist with building safety according to Mr. Lutfija. Floor plans are presented, and Mr. Lutfija explains the current building and prior addition are separated by a fire wall. The proposed dormer would increase the space to make bathrooms more accessible, and the proposal would create a corridor to access the stairs from both sides of the wall. He explains how the existing condition is less safe. Mr. Lutfija also notes that the proposed dormer and gabled roof would keep the architecture consistent with the neighborhood character. An existing fire escape at the end of the building will be removed.

Mr. Becker explains the proposal in more detail and presents additional photos of existing conditions. Mr. Becker reiterates the safety concerns that would be remedied by the proposal, noting that the fire separation between the building and addition would be improved.

Mr. Viccica asks what will go into the space created by the new gable, and Mr. Lutfija contends it will enlarge two existing units. The floor plans for the proposal are shown again. Mr. Becker explains that the bathrooms do not have adequate ceiling heights, and that this will be remedied by the proposal.

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

Chair Duffy notes the petition is for a special permit due to the fact that the dormers change the number of stories technically, but that the footprint will remain unchanged. Mr. Duffy notes the existing setbacks will also remain unchanged. Chair Duffy discusses how the petition meets the special permit criteria.

Motion and Vote: Mr. Viccica motions to approve the petition of OCELOT OPERATIONS, LLC for a special permit per Section 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance from maximum height of buildings (stories) to expand an existing, nonconforming multifamily dwelling at 2 HOWARD STREET (Map 35, Lot 153) (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. 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 dimension submitted to and approved by this Board. No change, extension, material corrections, additions, substitutions, alterations, and/or modifications 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.

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

Location:	157 Boston Street (Map 16, Lot 66) (B2 and ECOD Zoning Districts)
Applicant:	Josh Chmara
Project:	A public hearing for all persons interested in the petition of JOSH CHMARA for a special permit per Section 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to change from one non-conforming use (single-family dwelling) to another (two-family dwelling), and a variance from Section 5.1.8 Table of Required Parking Spaces to construct two parking spaces instead of the required three spaces at 157 BOSTON STREET (Map 16, Lot 66) (B2 and ECOD Zoning Districts).

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Mr. Chmara introduces himself as the owner occupant and explains that he purchased the property last month after it had been vacant for over a year. Mr. Chmara indicates the property requires a top-to-bottom rehabilitation, and this proposal is to return it to its former glory. In order to defray some of the costs of restoring the property, Mr. Chmara seeks to create a second unit. To do so requires a special permit to change from one non-conforming use to another. No change in the footprint or exterior structure is proposed. Mr. Chmara notes there is currently no off street parking, but that his proposal will add two spaces. He is seeking a variance to allow for two spaces rather than the required three. Mr. Chmara contends his proposal will add much needed new housing in Salem, provide incremental tax revenue, and fit in with the neighborhood character. Mr.

Chmara also highlights that the property was foreclosed and neglected, and he will be bringing back its curb appeal.

Chair Duffy indicates he does not see a plot plan. Mr. Chmara explains he has a mortgage plot plan currently, and that he is working on obtaining a certified plot plan. He apologizes for not getting one in time for the meeting. Chair Duffy notes that a large part of the relief sought relates to parking, and that he would like to see a certified plot plan to reference.

Mr. Viccica agrees and asks about the submitted drawings and measurements. Mr. Chmara indicates he took his own measurements, and notes the certified plot plan should arrive in two to three weeks.

Mr. Viccica asks if the parking will be tandem or a different setup, and goes on to explain why a plot plan would be helpful. Mr. Viccica suggests a retaining wall might be required, in which case that additional information would be needed. Mr. Chmara agrees that due to the grade, some excavation and a retaining wall will be required.

Chair Duffy asks if it makes sense to consider the application in more detail absent a plot plan or if it makes sense to continue to the next meeting. Ms. McClain indicates she would like to see the plot plan and would like to better understand the parking.

Mr. Viccica asks if there is a statement of hardship for the variance request related to parking. Mr. Chmara indicates a gas line goes across the property. He adds that he would like to do three spaces, but the gas line location restricts the feasibility to two.

Mr. Viccica states the Board would like to see a plot plan, and given the discussion with the earlier incomplete application, a continuance would make sense. Ms. Ordaz indicates she would also like to see the certified plot plan.

Chair Duffy opens the floor to public comment.

Jamie Garmendia of 6 Wallon Street introduces himself. Mr. Garmendia states he does not know the applicant, but was informed of the proposal via a postcard. Mr. Garmendia voices support for the proposal, and suggests that two parking spots should be adequate for a two family in this neighborhood despite what the zoning calls for. He contends the request overall is appropriate for the space and neighborhood character.

Mr. Becker asks Mr. St. Pierre about the parking requirements if the existing property has no parking. Mr. St. Pierre clarifies that the parking requirement only applies to the additional unit. Mr. Becker asks if that means the variance is not required. Mr. St. Pierre states he would need 1.5 spaces, and therefore a variance wouldn't be needed. Chair Duffy states if the certified plot plan can show two legal spaces the variance would not be necessary.

Chair Duffy asks the petitioner if he would like to continue, and he indicates he would.

Motion and Vote: Ms. Ordaz motions to continue the petition of JOSH CHMARA for a special permit per Section 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to change from one non-conforming use (single-family dwelling) to another (two-family dwelling), and a variance from Section 5.1.8 Table of Required Parking Spaces to construct two parking spaces instead of the required three spaces at 157

BOSTON STREET (Map 16, Lot 66) (B2 and ECOD Zoning Districts) until the next regularly scheduled meeting on February 17, 2021.

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

MEETING MINUTES

December 16, 2020

Chair Duffy states he has reviewed the minutes and has one suggested edit. For 57 Warring Avenue on page 7, Chair Duffy suggests adding the title of attorney to Joseph Correnti.

Motion and Vote: Ms. Ordaz motions to approve the minutes for the December 16, 2020 ZBA meeting as amended. Ms. McClain seconds the motion. **The vote is five (5) in favor, and none (0) opposed. The motion passes.**

OLD/NEW BUSINESS

None

ADJOURNMENT

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

The meeting ends at 9:42 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-2021>

Respectfully submitted,
Lev McCarthy, Staff Planner