

City of Salem Zoning Board of Appeals
Meeting Minutes
May 20, 2020

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, May 20, 2020 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, April 15th 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.

ROLL CALL

Those present were: Mike Duffy (Chair), Peter Copelas, Rosa Ordaz, Carly McClain, Paul Viccica, and Steven Smalley. Also in attendance were Brennan Corriston – Building Commissioner, Tom St. Pierre – Building Inspector, and Jonathan Pinto – Recording Clerk. Those absent were: Jimmy Tsitsinos.

REGULAR AGENDA

Location: 9-11 Dodge Street, 217-219 Washington Street, and 231-251 Washington Street (Map 34, Lots 404, 405, 406) (B5 Zoning District)
Applicant: Dodge Area LLC
Project: **NOTE: The applicant has requested a continuation to the regularly scheduled meeting on June 17, 2020.** A continuation of a public hearing for all persons interested in the petition of DODGE AREA LLC for a variance from Section 4-51 *On-premises signs in nonresidential districts* of the Salem Zoning Ordinance to allow a 2’4” wide by 16” tall blade sign at the Hampton Inn Hotel at 9-11 DODGE STREET, 217-219 WASHINGTON STREET, and 231-251 WASHINGTON STREET (Map34, Lots 404, 405, 406) (B5 Zoning District).

Documents and Exhibitions

- Application date-stamped March 10, 2020 and supporting documentation

Chair Duffy introduces the petition and explains the applicant has requested a continuance.

Motion and Vote: Mr. Copelas moves to continue he petition of DODGE AREA LLC for a variance from Section 4-51 *On-premises signs in nonresidential districts* of the Salem Zoning Ordinance to allow a 2’4” wide by 16” tall blade sign at the Hampton Inn Hotel at 9-11 DODGE STREET, 217-219 WASHINGTON STREET, and 231-251 WASHINGTON STREET to the next regularly scheduled meeting on June 17, 2020.

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

Location: 53-59 Mason Street (Map 26, Lot 90) and 38 Commercial Street (Map 26, Lot 47) (NRCC Zoning Districts)
Applicant: The Long Game LLC
Project: A continuation of a public hearing for all persons interested in the petition of THE LONG GAME LLC for a variance per Section 4.1.1 *Table of Dimensional Requirements* from minimum lot area per dwelling unit and a variance per Section 8.4.13 *Transitional Overlay* District to allow minor construction within the no-construction buffer zone to construct 92 residential units above the existing commercial space at 53-59 MASON STREET (Map 26, Lot 90) and 38 COMMERCIAL STREET (Map 26, Lot 47) (NRCC Zoning District).

Documents and Exhibitions

- Application date-stamped January 29, 2020 and supporting documentation

Chair Duffy introduces the petition.

Attorney Miranda Gooding introduces herself as representing the applicant with a business address of 8 Washington Street in Beverly. Attorney Gooding introduces the principals, project civil engineer, project architect, landscape architect, and traffic engineer, and notes that this is a continuation from the last presentation. Attorney Gooding states the team will address changes made pursuant to the Board's preliminary comments at last month's presentation, as well as questions from both the Board and members of the public, and the legal grounds for demonstrating a hardship for relief.

Architect Thad Siemasko of SV Design in Beverly introduces himself and discusses changes to the site and landscape plan shown. Mr. Siemasko notes there is an increase in landscaping within parking areas, greener medians, and that more parking has been moved to be inside the building on the first floor.

Mr. Siemasko discusses the various building entrances and identifies the location of residential areas, residential common areas and commercial spaces. Mr. Siemasko demonstrates detailed plans of the first, second, third, and fourth floors and compares renderings from the original plan to the updated proposal. Mr. Siemasko explains that on the first floor more parking was moved inside the building, and that the larger tenant space was reduced in size to 6,200 square feet. While there were no major changes to the second floor, some third-floor units were removed to reduce the impact of the visual mass of the building along Mason Street. Mr. Siemasko states that one unit was removed on a corner on the fourth floor to reduce the visual impact.

Mr. Siemasko presents photographs of existing conditions on Mason Street, and shows renderings comparing the initial and revised proposals. Mr. Siemasko next reviews diagrams demonstrating building elevations and discusses the proposed exterior brick treatment and other façade elements. Mr. Siemasko briefly explains the building's history, noting the garage is one of the area's oldest remaining transportation facilities relating to historic streetcars.

Robert Michaud with MDM Transportation Consultants introduces himself as the project traffic consultant. Mr. Michaud discusses the likely traffic impact of the project, noting that current traffic conditions and volumes at various nearby intersections were studied starting in January 2020. Mr. Michaud discusses the various commercial activities in the area, the traffic pattern, and traffic projections if the site were to be reused fully for commercial activity as opposed to the mixed-use proposal. Mr. Michaud states that combined trip activity for the proposed development and commercial space is likely to be on par or lower than what is currently generated, and lower than what we be generated if the building were fully commercial. Mr. Michaud maintains the proposed development is transit oriented with its close proximity to rail and bus service, and as such will only generate modest amounts of traffic from residential use, which is the largest portion of the development.

Mr. Michaud presents statistics regarding train use, as well as traffic diagrams during various peak times including weekday morning and afternoon commutes and weekends. Mr. Michaud states the relative impact of the project is approximately one (1) vehicle between every ten and fifteen minutes.

Ms. Ordaz asks if the petitioners can address some of the questions from the prior meeting that have not yet been answered, such as how the number of units was determined (initially 92, now 89 units). Attorney Gooding states the density was determined by examining the site, current trends in residential development, and the density of similar projects. Attorney Gooding adds that the developers grew up in Salem, know the city well, and are investing in Salem. Attorney Gooding notes that this is a challenging site due to location, past industrial use, contamination, and Chapter 91 implications.

Attorney Gooding offers examples of other projects that received variances with respect to density from 2011 through 2018 and notes that this petition falls in the middle of the range. She also states the project is similar to the one abutting the sit, Riverview Place. Attorney Gooding indicates this project is in line with the NRCC district master plan goals and would also improve and maintain neighborhood views to the canal.

Attorney Gooding next states that the building has historic significance and that it provides an iconic entrance to the neighborhood down Tremont Street. Attorney Gooding maintains that a hardship exists because preservation is costly and complications can arise during redevelopment. As such, not every developer would want to undertake such a project while also preserving the historic parts of the building. Attorney Gooding argues the density is the natural number that is needed to support the infrastructure, and that it is similar to other variance relief given by the Board in this district.

Ms. Ordaz acknowledges that other variances may have been similar and states she is in support of creating more housing but notes that the variance grants the ability to double the number of units. Ms. Ordaz notes that the petitioner's application indicates a desire to offer some affordable units and utilize bonuses for affordability as well as historic preservation. Ms. Ordaz asks what percentage of units will be affordable, and states it is still unclear how the number of units was determined.

Attorney Gooding clarifies that they are not seeking to avail themselves of the density bonuses under the zoning rules for either affordability or historic preservation. Attorney Gooding states the initial application noted that the petitioner could increase the density if both were taken into account to sixty (60) units, but that it still would not make the project financeable. Attorney Gooding indicates the developers are committed to offering some affordable housing, but that it would be worked out

as part of the special permit process with the Planning Board, likely somewhere around ten (10) percent. Attorney Gooding explains that the project has not been put out to bid yet, so there are no concrete numbers to compare the costs of saving the building as part of the project with the costs of a project of right without the building, but suggests there would be a significant difference on the magnitude of seven (7) figures. She adds that redeveloping industrial sites to residential can be very costly.

Mr. Viccica provides comment, and notes that the 1970's addition on the building is not considered historic. Mr. Viccica suggests considering removing the 1970's addition if the financing and historic credits are only contingent on saving the remaining historic elements of the building. Mr. Viccica also suggests presenting less parking on site and more within the building, as it seems the density was determined based on how many cars could fit. Mr. Viccica indicates that is not how he would like to consider a variance for additional units and suggests there could be other ways to contain costs.

Scott Cameron introduces himself as the project civil engineer. Mr. Cameron explains that the land acquisition cost is a fixed cost, and that the current landowners have done their homework regarding the land potential. Mr. Cameron states the baseline costs associate with the land, permitting, and site improvements do not change regardless of the number of units. Mr. Cameron also notes that the costs associated with the large park and connection in the Canal Street corridor are also fixed and borne by the applicant regardless of density. Mr. Cameron states that banks will look at pro forma calculations and that there is a threshold where it is not economic or viable. He notes that the Board's prior comments were considered in this new design and states there is a genuine desire to complete a good project with local developers who want to see the neighborhood be the best it can be.

Mr. Viccica states he is not critiquing the design or genuine aspirations of the developers as Salemites, but that the issue is he has yet to see a calculation that clearly compares what could be built as of right, would could be built with applicable bonuses, and what the additional amount is that is being requested. Mr. Viccica indicates he would like to see some actual analysis, so if there are numbers to please present them, otherwise he would prefer a continuance.

Peter Lutts introduces himself and states that the affordability and historic density bonuses would bring the project to sixty-three (63) units, and that they are requesting a variance for eighty-eight (88) units.

Ms. Ordaz asks why the project needs to have eighty-eight (88) units rather than the sixty-three (63). Mr. Lutts states that it comes down to economics and making the project financeable given the fixed costs.

Mr. Viccica asks what is of right on the side without the historic and affordable unit bonuses, and why those bonuses are not being utilized. Mr. Lutts indicates the bonuses would be permitted through the Planning Board and not through a variance. Mr. Viccica asks for clarification as to whether they will be sought or not. Attorney Gooding states that there is no intention of applying for those bonuses because even with them, the project would not be financially viable. Attorney Gooding states that after last month's meeting, the team took a hard look at the project to see if there was a way to not need a variance. After a thorough examination, Attorney Gooding states that the team determined the project does not work without the variance. Attorney Gooding claims a variance would be needed regardless of whether the bonuses were utilized.

Mr. Copelas states he takes issue with some of the rationale given, primarily with respect to acquisition costs. Mr. Copelas notes the property was placed for sale for \$3.8 million and purchased by the current owners for \$3.5 million, for the purposes of the existing commercial use. Mr. Copelas therefore does not think it is correct to use that number as an excuse as to why the unit count needs to be as high as it is. He adds that the current owners purchased the building very recently at a market price, with the assumption they could use the building for its existing purpose.

Ms. Ordaz echoes Mr. Copelas' concerns, and states that a financial hardship has not been shown in her opinion.

Chair Duffy suggests the Board will need to dive into calculations and justifications further, and that the Board should be mindful of time.

Mr. Viccica asks Mr. Michaud if the traffic comparisons take into account the nearby Riverview Development. Mr. Michaud indicates they were accounted for, and that the data that was obtained in January was seasonally adjusted as well.

Ms. McClain notes that while four (4) units were removed in the updated proposal, other units were enlarged from one to two bedrooms, and questions whether there was actually any real change in actual density. Mr. Siemasko states he does not know the total bedroom count, but that the removal of units was primarily an effort to make a difference in the views from Mason Street. He adds that the building did not get any larger with the revision.

Chair Duffy opens the floor to public comment.

Mr. Corrison reads an email comment submitted from Steve W. Haley of SWH Realty LLC, 43-45 Mason Street. The comments express opposition to the project as currently proposed, with specific reference to the addition of three floors of residential units above an existing industrial building. The comments note the building and neighboring buildings are close to the boundary lines. The letter also notes that residents would be as close as ten (10) feet away from industrial and manufacturing buildings, and that it would not be prudent to place ninety (90) new families at this site.

Emily Udy of 8 Buffum Street introduces herself on behalf of Historic Salem. Ms. Udy says she appreciates the Board's line of questioning regarding the proposed density.

Steven Sass who owns 92 Federal Street but lives in Newton introduces himself. Mr. Sass indicates there seems to be a disconnect between the low traffic impact and the large number of cars/parking at the location, and he asks how that can be possible.

Jane Okey of 4 Dunlap Street introduces herself, and states she is not in favor of the project due to the large 130-unit building being built next door. Ms. Okey notes the area already has issues with traffic, and questions the traffic study only being conducted in January.

Mr. Lutts asks Mr. Siemasko to discuss the proximity to the abutting property. Mr. Siemasko shows the abutting building height and indicates it is just over three (3) feet from the property line. Mr. Siemasko explains how the building would comply with building codes with respect to windows and materials.

Mr. Michaud acknowledges the comments regarding the traffic study, and states that although the data was collected in January, it was adjusted to reflect average seasonal conditions. He indicates there was also historic information available from other studies. Mr. Michaud explains the proposal is oriented to residential use, so the increase would be in a different type of activity, rather than industrial traffic.

Mr. Viccica asks about the proposed gross square footage of the project, and Mr. Siemasko says he does not have the number available.

Chair Duffy states the Board members would like more details regarding the requested number of units and the merits of the variance request. Given the time limitations, he asks if the petitioners would like to continue to the next scheduled meeting. Mr. Cameron indicates he would like to continue and that he will get more information for the Board.

Motion and Vote: Mr. Viccica moves to continue the petition of THE LONG GAME LLC for a variance per Section 4.1.1 *Table of Dimensional Requirements* from minimum lot area per dwelling unit and a variance per Section 8.4.13 *Transitional Overlay* District to allow minor construction within the no-construction buffer zone to construct 92 residential units above the existing commercial space at 53-59 MASON STREET to the next regularly scheduled meeting on June 17, 2020.

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

Location: **91-91B Orne Street (Map 28, Lot 16) (R1 Zoning District)**
Applicant: **Cabot Farm Trust**
Project: A public hearing for all persons interested in the petition of CABOT FARM TRUST for a variance per Section 3.2.4 *Accessory Buildings and Structures* of the Salem Zoning Ordinance from height of accessory structures to allow a twenty-five (25) foot tall freestanding garage at 91-91B ORNE STREET (Map 28, Lot 16) (R1 Zoning District).

Documents and Exhibitions

- Application date-stamped March 12, 2020 and supporting documentation

Chair Duffy introduces the petition.

Scott Grover introduces himself as an attorney representing Rob and Rachel Lutts, trustees of the Cabot Farm Trust (owner of the property subject to the petition). Attorney Grover explains that Cabot Farm is a 26-acre farm in North Salem with several houses on the property (some new, some centuries old) occupied by members of the Lutts family.

Attorney Grover indicates the petitioner plans to construct a large four (4) bay garage to store a collection of classic automobiles and to store actively used farm equipment, and he shows a limited site view of where the proposed garage will be. While the proposal is for a garage, Attorney Grover states it is designed more like a barn to keep with the pastoral nature of the property. Attorney

Grover presents a front elevation rendering and notes that it will be approximately 25 feet high, which exceeds the 18-foot height limit for garages in the zoning ordinance. Attorney Grover states the structure will be 70 feet from the lot line.

Attorney Grover argues that literal enforcement of the ordinance would cause the building to be out of scale with the whole property, which is large. He notes that relief could be granted without nullifying the intent of the ordinance due to the large separation between buildings.

Rob Lutts introduces himself and discusses the design of the building and intended use. Mr. Lutts explains the design is consistent with the farm and mirrors the existing setting and farm buildings.

Chair Duffy asks if the Board has any questions.

Ms. Ordaz asks if the hardship being claimed is primarily cosmetic in nature. Mr. Lutts states that if the garage were required to be only 18 feet in height, it would not look like a barn and would seem out of place without a large roof.

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

Mr. Viccica weighs in to discuss variances and what constitutes a hardship, noting that there is no aesthetic issue embedded within the variance process. Mr. Viccica states that building to the 18-foot requirement would be a detriment to Cabot Farm and the historic context of the property within a historic city. Mr. Viccica adds that the proposed building would not have an effect on neighboring buildings and states he does not take issue with the requested proposal.

Mr. Copelas states that the requirements for a variance are difficult for a reason, and that they should not be given out casually. Mr. Copelas notes that this would fall under the category of special conditions and circumstances, as the property itself is unique and special, and states that desirable relief can be granted without detriment. Mr. Copelas opines that the design is enhanced by allowing the variance, and that no precedent would be set as there is no other property in Salem like Cabot Farm.

Chair Duffy agrees with Mr. Copelas and Mr. Viccica and acknowledges that the farm is a unique property. He also notes there is no detriment or derogation that would result from granting the requested relief.

Mr. St. Pierre speaks to the intent of the ordinance, clarifying that the ordinance was changed in reaction to people building two-story garages in dense areas downtown.

Motion and Vote: Mr. Viccica moves to approve the petition of CABOT FARM TRUST for a variance per Section 3.2.4 *Accessory Buildings and Structures* of the Salem Zoning Ordinance from height of accessory structures to allow a twenty-five (25) foot tall freestanding garage at 91-91B ORNE 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 structures.
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.

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

Location: **7 Riverway Road (Map 31 Lot 244) (RC Zoning District)**
Applicant: **Jared Rollins**
Project: A public hearing for all persons interested in the petition of JARED ROLLINS for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming single-family home by expanding the second story at 7 RIVERWAY ROAD (Map 31, Lot 244) (RC Zoning District).

Documents and Exhibitions

- Application date-stamped April 29, 2020 and supporting documentation

Chair Duffy introduces the petition.

Jared Rollins introduces himself and explains he is seeking a special permit to change an existing two-story cape. Mr. Rollins notes he is not asking to encroach on any nonconforming setbacks, but merely to increase the second floor to a colonial style. Mr. Rollins explains the project a bit more and presents diagrams of existing and proposed conditions. There are no proposed changes to the first floor and the building footprint will remain the same. A bedroom will be moved to the second floor and a bath will be added. Mr. Rollins states that neighbors are in favor of the proposal, and notes that several homes in the neighborhood are of similar height.

Chair Duffy states the request is straightforward, and that the only change will be to increase the height within the allowed limits.

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

Chair Duffy explains how the proposal meets the criteria for the special permit

Mr. Copelas notes that the petitioner's documentation was excellent and well presented.

Motion and Vote: Mr. Copelas moves to approve the petition of JARED ROLLINS for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning

Ordinance to expand a nonconforming single-family home by expanding the second story at 7 RIVERWAY ROAD 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. 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.

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

Location: **57 Marlborough Road (Map 9, Lot 1) (RC Zoning District)**

Applicant: **Osborne Hills Realty Trust**

Project: A public hearing for all persons interested in the petition of OSBORNE HILLS REALTY TRUST for variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum front, rear, and side yard setbacks and minimum lot width for each lot to be created on the parcel of land at 57 MARLBOROUGH ROAD (Map 9, Lot 1) (RC Zoning District), not exceeding forty-four (44) lots.

Documents and Exhibitions

- Application date-stamped March 23, 2020 and supporting documentation

Chair Duffy introduces the petition.

Brian McGrail introduces himself as an attorney representing Osborne Hills Realty Trust. Attorney McGrail introduces Paul DiBiase, Ugo DiBiase, Chris Mello from Eastern Land Survey, Rebecca Curran (development consultant), and Bill Luster.

Attorney McGrail explains the variance request, seeking dimension relief for each lot to be created pursuant to an anticipated action by the City of Salem Planning Board. The applicant is seeking this variance in concert with a process that has already commenced with the Planning Board and the City to modify the approved Strongwater Crossing Cluster subdivision, resulting in changes to the existing 44 lots that are part of Phases 6 through 10 of this subdivision, in the residential

conservation zoning district. Attorney McGrail notes the applicant is not seeking a variance for additional lots within the subdivision.

Attorney McGrail describes the subdivision (approved by the Planning Board in 2006) as consisting of 100 to 130 single family lots with single family homes. Phases 1 through 5 of the subdivision consist of 86 lots with homes that are either completed or well on their way, all situated in the R1 Zoning District. Attorney McGrail explains that the subdivision provides for 96 acres of open space for public use. Attorney McGrail states the modifications to the subdivision will result in a superior final product for the City. The modifications will allow for the 44 lots in the Residential Conservation district to be smaller so as to be proportionate with the 86 lots in the R1 Zoning District. Attorney McGrail asserts that the change will result in a smaller environmental impact and will add the benefit of additional open space.

Attorney McGrail next explains that the petitioner has already appeared before the Planning Board and obtained a preliminary subdivision modification approval to reduce the size of the 44 lots. If the petitioner is successful in obtaining the variances sought before the Board, the petitioner will apply for a definitive subdivision and special permit modification with the Planning Board. The petitioner anticipates such approvals by the Planning Board would be a condition of receiving the requested variance, and therefore has drafted a special condition. Attorney McGrail adds that the petitioner has met with other entities, such as the Salem Planning Department and Conservation Commission, and that all were in favor of the proposed changes.

Attorney McGrail reads a finding by the Planning Board from their preliminary subdivision approval: "The preferred layout for the subdivision of this parcel shall meet the requirements of the Cluster Residential Development Special Permit, because such a layout will promote more efficient use of land in harmony with its natural features and will protect and promote the health, safety, convenience and general welfare of the inhabitants of the city." He references language in Section 7.2.1 of the Zoning Ordinance in the cluster subdivision bylaw which allows the petitioner in this situation to apply to the Planning Board to except the plan from lot area and frontage requirements of Section 4.0. This section does not allow the Planning Board to vary other dimensional requirements, which is why the petitioner is now before the Board. The petitioner is seeking relief from the required front, side, and rear yard setbacks to be consistent with those in the R1 district.

Attorney McGrail describes the justification for the requested variance. He explains the property is unique due to its size, topography, amount of wetlands, and the presence of National Grid transmission lines (transmission lines are not owned by the applicant, and present a challenge in development). Attorney McGrail argues that literal enforcement of the ordinance would create a hardship, and that the desired relief may be granted without substantial detriment or nullifying the intent of the district. He adds that by granting relief there will be significant benefits to the community, including an increase in the conservation space from 96 acres to 122 acres that will be open to the public and residents of Salem.

Chris Mello introduces himself and presents graphics showing of Phases 1 through 5 of the project. Mr. Mello also demonstrates the proposed changes to the 44 lots, as well as changes in the roadways and crossings. Mr. Mello explains that some lots on Diandra Drive will be eliminated entirely as part of the changes, and a new entry is proposed to be created in Phase 6 through 10 at the end of Osborne Hill Drive.

Mr. Copelas asks where/how the public can access the open space. Attorney McGrail says there are multiple access points all throughout the subdivision, and that the Planning Board special permit requires the petitioner maintain the trails and maintain the open space as passive recreational space for the public.

Mr. Copelas next asks for clarification regarding the elimination of lots on Diandra Drive. Mr. Mello explains it is a function of putting the smaller 80-foot-frontage lots on Strongwater Drive. There is enough frontage to get the 44 lots, so they no longer need to build on Diandra Drive if the variance is approved. Mr. Copelas asks if there is something that prevents building on Diandra Drive, and Mr. Mello states that it is merely no longer needed if the lots are allowed to be modified. The result would be more open space that is connected, whereas it was previously bisected. Mr. Copelas asks if there could be a special condition that prohibits the development of anything previously designated as Diandra Drive, and the petitioner is in agreement.

Attorney McGrail references the previously mentioned special condition, which specifically limits the development portion in question to 44 lots.

Chair Duffy opens the floor to public comment.

Chet Cusick of 27 Osborne Hill Drive introduces himself and asks how the proposed Strongwater Drive ties into Osborne Hill Drive. He also asks if Osborne Hill Drive will be the main egress and ingress for the subdivision. Mr. Mello states that Osborne Hill Drive is currently paved to the end of Phase 4 and creates a cul-de-sac. Mr. Mello explains that Strongwater Drive will go to the right of the cul-de-sac and out during Phase 6 through 10. Mr. Mello also states the intent is to keep Osborne Hill Drive as the main egress/ingress, but that it is still uncertain as the Planning Board process is not yet complete.

Philip Picariello of 26 Osborne Hill Drive introduces himself and asks for more information regarding the open space and trail maintenance, as currently the state of trails is deplorable and underutilized because it is overgrown and small. Attorney McGrail states that maintenance of the open space will be addressed during the Planning Board process and a condition of the special permit. Attorney McGrail asserts the trails have not been maintained as they did not want the area open to activity while construction was still underway, but as sales continue and the project moves to the next phases there will be significant improvements to the open area.

Mr. Cusick asks about the timetable for new home construction and build out. Paul DiBiase responds that it will be market driven, but that the anticipation is completion of 44 homes in three years.

Mr. Picariello asks about the process of turning roads over to the town. Mr. DiBiase states the as-built plan is currently being finalized, and that it should be completed soon and forwarded to the Engineering Department. He adds that the roads will be turned over as quickly as they accept it.

Mr. Copelas asks about ownership with respect to the open space. Attorney McGrail explains that the open space is owned by the lots within the subdivision and describes the Planning Board 2006 decision in more detail.

Attorney McGrail presents the aforementioned drafted special condition limiting the number of lots and receives feedback from Mr. Copelas and Chair Duffy. Mr. St. Pierre notes that the City Solicitor has seen the plans and is aware of some of the changes that might occur. There is a brief discussion regarding the Planning Board process and the working out the final language of the special condition, including language specifying that no need for additional zoning relief is triggered.

Chair Duffy addresses the statement of hardship and notes how the proposal meets the variance criteria.

Motion and Vote: Mr. Copelas moves to approve the petition of OSBORNE HILLS REALTY TRUST for variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum front, rear, and side yard setbacks and minimum lot width for each lot to be created on the parcel of land at 57 MARLBOROUGH ROAD (Map 9, Lot 1) (RC Zoning District), not exceeding forty-four (44) lots. 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/other structures.
6. A Certificate of Occupancy is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. Petitioner shall obtain street numbering from the City of Salem Assessor's Office and display such numbers as to be visible from the street.
9. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
10. 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.

And two (2) special conditions, to be specified by the Planning Department: One related to the parcels identified as Diandra Drive, and the second limiting the number of lots and regarding further zoning relief.

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

Location: **121 North Street (Map 26, Lot 359) (B1 and ECOD Zoning Districts)**

Applicant: **Lindsay A. Fair**

Project: A public hearing for all persons interested in the petition of LINDSAY A. FAIR for a special permit per sections 3.3.3 *Nonconforming Structures*, 3.3.4 *Variance Required*, and 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to change the use of this commercial building to a single-family home and expand the structure

by adding a second story at 121 NORTH STREET (Map 26, Lot 359) (B1 and ECOD Zoning Districts).

Documents and Exhibitions

- Application date-stamped April 23, 2020 supporting documentation

Chair Duffy introduces the petition.

Bill Quinn introduces himself as the attorney representing the Fair sisters, who purchased the property last year with the intent of creating a small single-family house for one of them to reside. Attorney Quinn describes the property and its historic use as a small commercial space, most recently a sewing shop. Attorney Quinn argues the lot is small, but not small for the neighborhood. The existing building is a one-story, two-room building not suitable as is for a renovation to a single-family home.

Attorney Quinn presents site plans and explains the proposal would build on the existing foundation and footprint, adding a second story to develop a small colonial-style wood-framed home. Attorney Quinn explains the relief being sought and discusses the site plan provided by North Shore Survey. He next discusses the parking proposal, noting that it has been designed to fit two spaces on the property, one of which meets all regulations, and a second that is one foot less in width.

Attorney Quinn presents the elevation plans and plot plans and explains that most homes in the neighborhood have little to no setback.

Steve Livermore, project architect, introduces himself. Mr. Livermore explains he was hired to design a home with a steep roof pitch to look “witchy” and discusses the proposed removal of an open shed area from the footprint. Mr. Livermore discusses the floor plans, showing a first floor with an open plan kitchen and living area with a small bathroom and laundry area. The second floor will have two bedrooms and a large bathroom and sitting room. Mr. Livermore states the home will be 1,750 square feet in total and that it will be modest with traditional detailing.

Mr. Viccica notes that the elevation plans are quite nice. Mr. Viccica asks for clarification regarding the parking, confirming that one is compliant and one is not, but fairly close.

Chair Duffy opens the floor to public comment.

Mike Becker of 2 School Street Court introduces himself and states he owns one of the direct abutting properties. Mr. Becker says he is familiar with the property and confirms many buildings in the area have zero setback. Mr. Becker states he would be delighted if someone would do something to make the property better, and that the proposal certainly sounds like an improvement.

Chair Duffy notes that a statement of grounds has been submitted and explains how the special criteria has been met.

Motion and Vote: Mr. Viccica moves to approve the petition of LINDSAY A. FAIR for a special permit per sections 3.3.3 *Nonconforming Structures*, 3.3.4 *Variance Required*, and 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to change the use of this

commercial building to a single-family home and expand the structure by adding a second story at 121 NORTH 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 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.

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

Location: 419 Lafayette Street (Map 32, Lot 387) (R1 and ECOD Zoning Districts)

Applicant: Sean Patrick Brennan

Project: A public hearing for all persons interested in the petition of SEAN PATRICK BRENNAN for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to alter and expand a nonconforming single-family home by constructing a third-story dormer and making facade renovations on the rear side of 419 LAFAYETTE STREET (Map 32, Lot 387) (R1 and ECOD Zoning Districts).

Documents and Exhibitions

- Application date-stamped April 24, 2020 and supporting documentation

Chair Duffy introduces the petition.

Attorney Bill Quinn introduces himself and describes the property as a 2.5 story gray colonial facing the Salem Basin right before entering Marblehead. Attorney Quinn states the property is already nonconforming as it has a third story dormer on the front of the building which is visible to the public. The proposal is to add a similar dormer on the back side of the home (which faces the water). Attorney Quinn explains the proposed dormer will mirror the front and provide for better headroom, and that no additional units are being added.

Dan Ricciarelli introduces himself as the project architect and describes the proposal in more detail. Mr. Ricciarelli shows the existing elevation and dormers, as well as the proposed changes. He explains that the existing deck is in need of repair and will be completely rebuilt, and that a second story smaller deck, approximately one third of the size of the deck below, will be built. The deck renovation will not increase the footprint and will be built in kind.

Mr. Ricciarelli presents floor plans that demonstrate existing and proposed conditions. He notes improvements on the first floor, and the addition of a master suite and laundry on the second floor. The increased headroom on the third floor will allow for a bathroom.

Mr. St. Pierre asks about the second-floor deck, noting the petitioner may need special permit relief as a second story deck is considered a structure, requiring a 30-foot setback. Mr. Ricciarelli indicates he was not aware it was needed, as the footprint was not increasing, and that a survey was not conducted to measure the setback in question. He asks if the Board can vote on approval of just the dormer for now.

Chair Duffy and Mr. St. Pierre agree with voting on the dormer and leaving the issue of the porch as a special condition, where if the setback requirement is not met, the petitioner will return to seek special permit relief.

Chair Duffy reads statement of grounds and opens the floor to public comment but there is none.

Motion and Vote: Mr. Copelas moves to approve the petition of SEAN PATRICK BRENNAN for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to alter and expand a nonconforming single-family home by constructing a third-story dormer and making facade renovations on the rear side of 419 LAFAYETTE 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 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. 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.

And the following special condition:

1. The second floor deck must have more than 30 feet of clearance from the adjacent property line, to be confirmed and approved by the Building Commissioner.

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

Location: 15 Osgood Street (Map 36, Lot 260) (R2 Zoning District)
Applicant: Brittany Hockman
Project: A public hearing for all persons interested in the petition of BRITTANY HOCKMAN for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming two-family home by constructing a 24' by 14', 2.5-story addition and a 20' by 10' deck at 15 OSGOOD STREET (Map 36, Lot 260) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped April 27, 2020 and supporting documentation

Chair Duffy introduces the petition.

Brittany Hockman introduces herself as the owner of 15 Osgood Street, and explains the property is an existing nonconforming structure. Ms. Hockman presents a site plan and demonstrates the existing and proposed conditions. Ms. Hockman explains all other zoning requirements are met, and that relief is only being sought on the side of the property bordering 17 Osgood Street. She notes that the property owner of 17 Osgood Street sent in a letter showing support for the proposal.

Ms. Hockman shows the existing floor plans, and states the reason behind the project is that they would like their aging parents to come live with them at some point, and the proposal would allow a bit more space in the first floor apartment to allow for the family to grow. She discusses the two units in more detail, and an existing stair way that is strange and will be renovated to be safer and to code. Ms. Hockman explains the interior renovations planned.

Ms. Hockman next presents elevation plans, and notes that there are homes of similar size nearby. She continues to present a statement of grounds.

Chair Duffy notes the letter from Susan Tuvell at 17 Osgood Street [next to 15 Osgood Street] expressing support for the proposal, as well as a letter from Kelley Rice and Tom Philbin at 6 Planter Street expressing their support [direct abutters to the rear of 15 Osgood Street].

Chair Duffy opens floor to public comment but there is none. Chair Duffy states the statement of grounds fully addressed the special permit criteria.

Motion and Vote: Mr. Viccica moves to approve the petition of BRITTANY HOCKMAN for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming two-family home by constructing a 24' by 14', 2.5-story addition and a 20' by 10' deck at 15 OSGOOD 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 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.

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

Location: 90 Federal Street (Map 26, Lot 627, Block 801) (R2 Zoning District)
Applicant: Helen F. Sides
Project: A public hearing for all persons interested in the petition of HELEN F. SIDES for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming two-family home by adding a 4' by 7' balcony within the required side yard setback at 90 FEDERAL STREET (Map 26, Lot 627, Block 801) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped April 28, 2020 and supporting documentation

Chair Duffy introduces the petition.

Mr. Viccica recuses himself.

Helen Sides introduces herself as the architect representing Carrie Francis Cabot for this project. Ms. Sides describes the property as a tall Victorian home renovated two years ago with a new owner. Ms. Sides shows a plot plan and explains the proposal is to create a small, fire escape-like balcony space off of the main floor the owner can step out onto. Ms. Sides explains it would be built of steel grating and bracketed against the house so as not to touch the ground. She discusses the property line and how the proposed structure would come close to it and explains how you can walk under the platform without it affecting your head.

Ms. Sides next presents floor plans and photos to show existing and proposed conditions, identifying where the balcony and door would go in relation to the property line and building. She notes that the Historical Commission has approved of the design. Ms. Sides also states that the simple structure would be built by Colonial Iron Works in Peabody. Next, Ms. Sides presents a photo of a similar fire escape she designed on Chestnut Street.

Chair Duffy opens the floor to public comment.

Steven Sass introduces himself as the owner of 92 Federal Street. Mr. Sass raises concerns about the property line between the two buildings, noting close proximity has caused friction in the past between his tenants and Ms. Cabot, and that there have been instances of contractors parking in his

driveway. Mr. Sass states the balcony seems to be yet another intrusion by encroaching on the property line. He also says he is unsure why the Historic Commission approved the design, as he believes it is not in character with the neighborhood. Ms. Sides and Mr. Sass discuss the setback and property line. Mr. Sass also indicates he was not notified about the proposal by the Historic Commission or the Board but heard of it from another neighbor who was not excited about the proposal. Mr. Corrison clarifies that all abutters were sent notices in the mail, and that notices are put in the Salem News and on the Salem website.

Ms. Cabot indicates she gets along well with the abutters/tenants at 92 Federal Street, and that she has only met Mr. Sass once before. She says she has never had an issue with the neighbors and has never had anyone park long term in the driveway. Mr. Sass as he was not aware of the proposal earlier, he did not have time to discuss it with the current tenants.

Jane Arlander of 93 Federal Street introduces herself. Dr. Arlander says she is not in favor of looking at a fire escape-like deck from her home across the street. She notes which home is hers in one of the photos presented previously. Dr. Arlander asserts the deck would set new precedent for the neighborhood and that she does not believe the end result will satisfy the petitioners desire for an enjoyable outdoor space. Dr. Arlander opines that since the balcony would be very small, it would not be worth the effort to put it on an otherwise beautiful Victorian home. Dr. Arlander also questions whether the proposal is even eligible for a special permit, rather than requiring a variance, as the deck will now be the closest part of the building to the property line, thereby increasing the building's nonconformity. Dr. Arlander also states she agrees with the points made by Mr. Sass, and that this is a privacy issue.

Ms. Sides explains that the proposed balcony will not be visible from Federal Street, and notes that the closest abutting property has extensive decks on all floors.

Mr. Corrison and Mr. St. Pierre clarify that because this is a two-family home, it is empowered to seek the relief of a special permit through Section 3.3.5.

Mr. Sass says he is sympathetic to the petitioner wanting fresh air but states the proximity to the property line is concerning.

Ms. Cabot clarifies that reason for this is proposal is to have a cup of coffee in the morning and grow some herbs outside her kitchen, and that it is not meant for socializing as it is clearly not large enough.

Mr. Copelas asks about property line distances, and Ms. Sides indicates she did not have the property surveyed as she did not think it was necessary. Ms. Sides adds that the material and color choices were to make the balcony disappear visually unless someone is using it and to minimize the amount of drip edge.

Motion and Vote: Mr. Copelas moves to approve the petition of HELEN F. SIDES for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming two-family home by adding a 4' by 7' balcony within the required side yard setback at 90 FEDERAL 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. A Certificate of Occupancy is to be obtained.
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 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 (Steven Smalley, Carly McClain, Rosa Ordaz, Mike Duffy (Chair), and Peter Copelas) and none (0) opposed. The motion passes.**

Location: **39R Clark Street (Map 7, Lot 34) and 41 Clark Street (Map 7, Lot 36) (R1 Zoning District)**
Applicant: **Diane T. Reddy**
Project: A public hearing for all persons interested in the petition of DIANE T. REDDY for variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot frontage and minimum lot width to construct a two-story, single-family home at 39R CLARK STREET (Map 7, Lot 34) and 41 CLARK STREET (Map 7, Lot 36) (R1 Zoning District).

Documents and Exhibitions

- Application date-stamped April 29, 2020 and supporting documentation

Chair Duffy introduces the petition.

Scott Grover introduces himself as an attorney representing the petitioner, Diane T. Reddy. Attorney Grover also introduces Dave Potter, a local homebuilder who has agreed to purchase this property from Ms. Reddy contingent upon relief being granted this evening.

Attorney Grover presents the plot and elevation plans, as well as the easement plan. Attorney Grover describes the history of the property and the unusual layout of three lots, two of which are the subject of the instant petition. The property was initially subdivided in 1936, consisting of 39 and 41 Clark Street, each with 50 feet of frontage. In 1950, the property identified as 39 Clark Street was subdivided into two lots, 39 Clark Street with 40 feet of frontage and 39R Clark Street with just 10 feet of frontage, expanding back to the rear of the lot. Up until 1953, the two lots had separate ownership. In 1953, Frank and Lois Nobili jointly purchased what was 39R Clark Street, and purchased 41 Clark Street in Ms. Nobili's name only. After Frank passed away leaving the jointly held property in Lois' name, the merger of the two lots occurred from a zoning standpoint.

Attorney Grover explains that the current owner, Ms. Reddy, purchased the two lots from Ms. Nobili in 2006, understanding the idea that lots held in common ownership could merge. Ms. Reddy purchased 39R Clarke Street in her own name, and 41 Clark Street in the name of a realty trust, Clark Street Realty Trust, not knowing that the lots had already merged. Attorney Grover also notes that in 2006, the City of Salem had separately assessed 41 Clark Street as a separate buildable lot, and Ms. Reddy has paid taxes on the lot at the assessed value. Attorney Grover states the relief being sought is to restore the lots to their legal status, specifically relief from frontage and lot width, which are both required to be 100 feet in the R1 Zoning District.

Attorney Grover explains that Mr. Potter intends to purchase the property and construct a home on the 41 Clark Street lot. He states the proposed home would comply with all setback requirements and would not require any additional relief other than what is being sought tonight.

Attorney Grover discusses the grounds for relief, noting the two lots meet the minimum lot size of 15,000 square feet, and simply lack the frontage and width to comply with the zoning ordinance. He explains the financial hardship that exists, as a literal enforcement would render 41 Clark Street an unusable vacant lot with no value. Attorney Grover explains that the owner of 39 Clark Street had concerns as they currently use the 10 foot driveway under limited circumstances, and notes the purchaser of the property would be willing to grant an easement if relief was granted, and that it could be agreed to as a condition of approval. Another neighbor across the street expressed concerns regarding drainage and runoff if the property were developed, and Attorney Grover offers a condition that drainage systems will be installed to not increase any runoff.

Mr. St. Pierre and Attorney Grover discuss the merger and subdivision of the lots, Attorney Grover states that they were merged from a zoning standpoint but titled separately.

Mr. Copelas says he is concerned the Board is being asked to override the law and principle of merger. Mr. Copelas states his understanding is that the two lots were made into three before zoning. Mr. Copelas states the purpose of the merger provision is, if you have two nonconforming lots that are in common ownership they merge because they are both nonconforming. He asserts that to override that consideration seems contrary, and that it is not clear the project would not result in detriment or derogation.

Attorney Grover suggests there were circumstances and actions taken to prevent the lots from merging, such as keeping them in separate names. He states the point of merger was at Mr. Nobili's passing.

Chair Duffy asks about the legal efficacy of granting a variance on the zoning code and having a question as to whether a lot is actually two lots or not.

Mr. St. Pierre says he would like to confer with the City Solicitor and suggests continuing the petition to the next meeting. Chair Duffy agrees, and states it could be to the benefit of the applicant.

Mr. Copelas indicates that if the legal question is resolved, he is still uncomfortable with blatantly approving a "porkchop lot" with a ten-foot driveway. There is brief further discussion between Attorney Grover and Mr. Copelas regarding the lots.

Chair Duffy indicates the Board will continue the petition, but first opens the floor to public comment

Angela & Philip Owens of 45 Clark Street introduce themselves and indicate they are not in support of the variance. They note that in this day and age of social distancing, the lot is not wide enough to feel comfortable, and that the proposed home would be very close to theirs.

Dennis Colbert of 37 Clark Street introduces himself. Mr. Colbert indicates his main concern is runoff from the driveway. Mr. Colbert says he is speaking on behalf of his neighbor across the street who is 83 years old and concerned about the fact that there is no drainage on the streets. His driveway is very steep.

Frank LoConte of 39 Clark Street introduces himself. Mr. LoConte states he was initially fine with everything as long as an easement was granted so he can have access to the back lot. He notes he was not aware of the runoff issue, and as such he is now on the fence.

Motion and Vote: Mr. Viccica moves to continue the petition of DIANE T. REDDY for variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot frontage and minimum lot width to construct a two-story, single-family home at 39R CLARK STREET and 41 CLARK STREET until the next regularly scheduled meeting on June 17, 2020

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

MEETING MINUTES

December 18, 2019
January 15, 2020
February 19, 2020
March 18, 2020
April 1, 2020
April 15, 2020

Chair Duffy notes he reviewed December and March and had no edits. Mr. Copelas asked if December's minutes were where Mr. Corrison had made the edit already. Mr. Corrison confirms.

Motion and Vote: Mr. Copelas moves to approve the December 18, 2019 minutes as amended. Mr. Viccica seconds the motion. **The vote is all in favor and none opposed. The Motion passes.**

Motion and Vote: Mr. Copelas moves to approve the March 18, 2020 minutes. Mr. Viccica seconds the motion. **The vote is all in favor and none opposed. The Motion passes.**

OLD/NEW BUSINESS

None

ADJOURNMENT

Motion and Vote: Mr. Copelas moves to adjourn the meeting Mr. Viccica seconds the motion. **The vote is five (5) in favor (Mike Duffy (Chair), Peter Copelas, Rosa Ordaz, Paul Viccica, and Steven Smalley) and none (0) opposed. The Motion passes.**

The meeting ends at 10:33 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