

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

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, July 15, 2020 at 6:30 pm via remote participation.

Chair Mike Duffy calls the meeting to order at 6:31 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, July 15 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 explains the rules regarding public comment.

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: **78 Bay View Avenue (Map 44, Lot 136) (R1 Zoning District)**
Applicant: **Stephan O’Sullivan and Patrick O’Sullivan (Property Owner: Philip Kelly)**
Project: **Note: The applicant has requested to continue to the regularly scheduled meeting on August 19, 2020.** A public hearing for all persons interested in the petition of STEPHAN O’SULLIVAN AND PATRICK O’SULLIVAN and property owner PHILIP KELLY 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) and minimum width of side yard to alter and expand a nonconforming single-family home by extending the first floor and porch; renovating the rear facade and adding second and third story balconies; and adding a third-story rear dormer at 78 BAY VIEW AVENUE (Map 44, Lot 136) (R1 Zoning District)

Documents and Exhibitions

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

Chair Duffy introduces the petition, and notes that the applicant has requested to continue to the next regularly scheduled meeting on August 19, 2020. Mr. Corriston confirms that a request to continue was received in writing.

Motion and Vote: Mr. Copelas moves to continue the petition of Stephan and Patrick O’Sullivan 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) and minimum width of side yard to alter and expand a nonconforming single-family home by extending the first floor and porch;

renovating the rear facade and adding second and third story balconies; and adding a third-story rear dormer at 78 BAY VIEW AVENUE until the next regularly scheduled meeting on August 19, 2020.

Ms. Ordaz seconds the motion. **The vote is five (5) in favor (Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, Rosa Ordaz, 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 District)**
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, and notes that the Board received a request from the applicant to withdraw without prejudice.

Mr. Corrison explains that to withdraw without prejudice means that an applicant can return before the Board within two (2) years with a similar proposal.

Motion and Vote: Mr. Copelas moves to withdraw without prejudice 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).

Mr. Viccica seconds the motion. **The vote is five (5) in favor (Steven Smalley, Paul Viccica, 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 continuation of 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.

Attorney Scott Grover introduces himself as an attorney in Salem representing Diane Reddy. Attorney Grover indicates Ms. Reddy and Michael Becker (who has an agreement to buy the property from Ms. Reddy) are in attendance.

Attorney Grover provides an overview of the circumstances leading to the petition, which were presented at the prior month's Zoning Board of Appeals meeting. Attorney Grover presents a plot plan and explains that the two adjacent lots in discussion have merged for zoning purposes. He also reminds the Board that 39R Clark Street has an existing home and that 41 Clark Street is vacant. Attorney Grover highlights that the hardship to be considered is financial hardship, as if relief is not granted 41 Clark Street is a worthless piece of property.

Attorney Grover explains that at the last meeting the Board and applicant agreed to continue the matter pending an opinion from the City Solicitor, Beth Rennard, as to whether further action by the Planning Board would be required to re-subdivide the merged lots, should the Board grant the relief sought. Attorney Grover indicates an email from Ms. Rennard confirms that no further subdivision would be required, as the plots already exist on recorded plans of record. Attorney Grover states the relief, if granted, would render 41 Clark Street a buildable lot. The lots in question, Attorney Grover notes, merged accidentally pursuant to the death of a joint owner.

Attorney Grover acknowledges that at the last meeting Mr. Copelas raised concerns about granting relief that was violative of the doctrine of merger. To attempt to address those concerns, Attorney Grover discusses the origins of merger and its role in eliminating and reducing zoning nonconformities where possible. Attorney Grover explains that the state statute from which the doctrine of merger grew, was the grandfathering provision in 40A Section 6, which was intended as a provision to protect legal lots from changes in ownership, provided they were not held in common ownership. This language regarding common ownership, Attorney Grover contends, is the basis for the doctrine of merger.

Attorney Grover contends that the grandfathering clause is rooted in fairness to landowners, with the intent of preventing them from losing what were once buildable lots. Attorney Grover argues that is the case here, where the lots in question were buildable when originally subdivided in the 1950s, but the current result to Ms. Reddy is unfair as both she and the previous lot owners took all actions available to prevent the lots from merging. Attorney Grover states Ms. Reddy took the title to the property (each lot titled to a separate entity in an attempt to prevent merger) believing the lots had not merged, and that now due to the merger, one of the lots has been rendered unbuildable. Attorney Grover also maintains that the City has been treating the lots as separate buildable lots since 2016, as 41 Clark Street was assessed as a buildable lot and Ms. Reddy has since paid taxes on the lot as if it were buildable.

Attorney Grover states that if the Board were inclined to grant the relief sought, there have been agreements made between the applicant and property abutters regarding easements and drainage assurances that the applicant would be happy to take as special conditions.

Ms. Reddy introduces herself and explains that she purchased the lots with her late husband over 15 years ago. She indicates that her husband worked for the City and was told that 41 Clark Street would remain buildable as long as it was kept in separate ownership. Ms. Reddy explains that although the merger may have occurred for zoning purposes, she has paid taxes on the lot as if it were buildable. She states she is merely attempting to preserve what her husband left for her and her four children and asks the Board to do the right thing.

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

Mr. Viccica asks if the variance would be for one lot or for both, as it appears it would be for both. Attorney Grover states that his understanding is that both lots need to be addressed, as 39R Clark Street would be losing land that had merged into it. By separating 41 Clark Street from 39R Clark Street, both need to be addressed.

Chair Duffy asks if the applicant would need to come before the Board if there is ever a desire to build more on 39R Clark Street, and Attorney Grover indicates that as long as what is being constructed meets all other zoning requirements, he does not think it would not need to come back [if the present variances are granted]/

Mr. Viccica asks if reversing the merger would be better done in court as opposed to here by the Board. Attorney Grover explains that in court, the only argument could be that the merger did not occur. Here the applicant acknowledges that it did but is asking for the situation to be fixed. Attorney Grover contends that the lots are compliant with all zoning requirements aside from lot frontage and width and suggests that perhaps referring to this as a reversal of merger is a misnomer, as what is really being sought is a variance from lot frontage and lot width. Chair Duffy offers that proceeding through the courts might be problematic.

Mr. Copelas states he is sympathetic to the applicant's personal concerns and appreciates Attorney Grover's research. Mr. Copelas says his concern is that although he also does not necessarily want to say we would be reversing the merger, effectively the Board is being asked to override it. Mr. Copelas contends there is a good public policy reason that merger exists, and he is personally unconvinced that there is a reason to override it. Mr. Copelas also notes that, going back 50 or 60 years, the lots were originally designed to have two homes on them, which is currently the case (although he acknowledges the plots are now configured differently than originally intended post-merger). Mr. Copelas states that now the Board is being asked to approve having three homes in an area originally approved to have two. He reiterates that he has not heard a good reason to override the public policy and reasoning behind the concept of merger.

Attorney Grover states that the lot at 39 Clark Street was similar in size to 41 Clark Street prior to being subdivided into 39 and 39R. Once subdivided, a home was built on each 39 and 39R Clark Street, and this all occurred prior to Ms. Reddy or the previous owners owning the land. Attorney Grover notes that in 1950, 39R and 41 Clark Street were both legal buildable lots, and that although the area in question was originally designated as two lots, the subdivision resulted in three legal buildable lots. Attorney Grover explains again that 39R and 41 Clark Street merged due to the passing of an owner and argues that the purpose of the statute is to ultimately to protect buildable lots, which is what is being sought here.

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

Chair Duffy suggests it is a valid point that at one point in time there were three subdivided lots that were considered buildable. As this occurred after the original two lots were initially subdivided, Chair Duffy questions how much fealty should be paid to what happened in the original subdivision. Chair Duffy also expresses sympathy to the applicant, recognizing they believed they had a legal status that protected their ability to build on both lots, but the legal status was altered not by an intentional transaction, but instead due to an untimely death of a family member. Chair Duffy states this case is challenging because when the Board normally considers a variance request, they examine conditions of the land, lot, or building that present hardships to determine whether relief is granted. Here, Chair Duffy notes that the lots were intentionally created to be odd shapes, so these owners came to that condition, but when they did so, they did not have the problem of the zoning effect of merger that exists now. He states that he sees this as a different type of case and notes that he believes there exists a valid hardship in the general sense.

Mr. Viccica asks if there would be another avenue for the applicant were the Board to deny the relief being sought, or if the Zoning Board is the only avenue to rectify the situation. Attorney Grover states the only other option would be to contest the merger that occurred in the first place through legal action, but that the facts required to do so are not present. Attorney Grover indicates the letter from the City Solicitor confirms this.

Mr. Viccica asks Attorney Grover to repeat his earlier discussion regarding the Grandfathering clause. Next, Mr. Viccica asks if the lot could instead be subdivided, rather than having the merger reversed. Attorney Grover responds that the issue of lot frontage would still exist, so the applicant would still require the same two variances from the Board. Mr. Corriston confirms that is the case.

Mr. Corriston acknowledges the hesitancy of setting improper precedent but suggests that in this case the history of the properties is so specific and unique that it would minimize the risk of setting bad precedent.

Mr. Viccica says he understands the issue regarding lot frontage but asks if there would exist a more compelling argument of hardship if the applicant were to return before the Board with a subdivision plan and request the variances, rather than requesting variances for what is a merged lot. Mr. Viccica indicates he would like to make sure whatever action the Board takes is correct, and that any changes are made in the most appropriate avenue, perhaps somewhere other than the ZBA.

Attorney Grover suggests he may have done a disservice by referring to the request as a reversal of merger, as it was more part of an explanation of how these lots came to be non-compliant. He notes that regardless of the route taken, the variances would be still be required.

Ms. Ordaz acknowledges this is a difficult case and decision and offers her sympathy to Ms. Reddy.

Michael Becker introduces himself as the potential purchase of 41 Clark Street, and states he believes there is precedent supporting this proposal. Mr. Becker indicates he owns 27-29 and 30-31 Cedar Street, which are properties that had merged but subsequently were granted variances in 1994 under similar circumstances.

Motion and Vote: Mr. Viccica moves to approve 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) 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 shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to be visible from the street.
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 conditions:

1. The owner of 39 Clark Street shall have access and easement to access the rear of the property
2. Any construction on 41 Clark will be done in such a way that does not create drainage issues.

Ms. Ordaz seconds the motion. **The vote is two (2) in favor (Carly McClain and Mike Duffy (Chair)) and three (3) opposed (Paul Viccica, Peter Copelas, and Rosa Ordaz). The motion fails.**

Location:	8 Irving Street (Map 16, Lot 284) (R2 Zoning District)
Applicant:	Carlos Delgado
Project:	A public hearing for all persons interested in the petition of CARLOS DELGADO for a special permit per Section 3.3.5 <i>Nonconforming Single- and Two-Family Residential Structures</i> of the Salem Zoning Ordinance from maximum height of buildings (stories) to expand the single-family home from 2.5 to 3 stories and from lot area per dwelling unit to change the single-family home to a two-family home; and a special permit per Section 3.2.4 <i>Accessory Buildings and Structures</i> to allow a second accessory structure, a two-car garage at 8 IRVING STREET (Map 16, Lot 284) (R2 Zoning District).

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Carlos Delgado introduces himself as the property owner at 8 Irving Street. Mr. Delgado presents a plot plan and explains his proposal to return the property to a two-family home with two separate

entrances, which was its original state. Mr. Delgado indicates the previous owner changed the property to a single-family home to accommodate a large family. In addition to reverting the home back to a two-family, Mr. Delgado also proposes to build a garage addition for storage as the home does not have a basement.

Mr. Delgado presents renderings of the proposed final construction from front and rear views. Mr. Delgado notes that the structure will not affect any of the neighboring properties, and that the footprint of the primary structure is not changing. Mr. Delgado next presents floor plans of the first and second story.

Mr. Viccica asks about the height of the accessory structure, and Mr. Delgado confirms it will be 35 feet. Chair Duffy asks if the existing structure will be remodeled, and Mr. Delgado confirms it will. Photos of the existing conditions are shown.

Chair Duffy confirms that one garage currently exists, and that a second will be built so that the two units would ultimately mirror one another. Mr. Delgado says that is correct.

Mr. Corriston reminds the Board that the applicant was before the Board at the last meeting, but that the petition had to be re-advertised due to an error. He confirms that the corrected language regarding the conversion from one to two units has been advertised in mail to abutters and in the Salem News.

Mr. Delgado notes that prior to the previous owner's conversion of the property to one unit, it had always been multifamily. Mr. Copelas asks if any further confirmation is needed that this property has been a two-family home in the past. Mr. St. Pierre states that before the last owner, it was being used as a two-family, and it was originally built as an office building—it was not always a residence—but the most recent history is two-family, then single-family. Mr. St. Pierre states that as this is an R2 District, the only relief required is from lot area per dwelling.

Chair Duffy opens the floor to public comment.

Robert Webber introduces himself as an abutting property owner and asks if there will be any changes to the fences at the property edge. Mr. Delgado confirms that the fences will be redone on two sides so that it will all be consistent. Mr. Webber asks if the property will have two separate addresses or if they will be long-term rentals. Mr. Delgado says the addresses would be whatever they were when it was previously a multi-unit dwelling.

Chair Duffy discusses the statement of grounds and how the criteria for the special permit has been met.

Mr. St. Pierre asks about the proposed finish of the dormers (as the existing building is brick). Mr. Delgado answers that the dormers will be clad in clapboard and the existing brick will remain natural. There was some confusion due to the architect's renderings, which showed a gray and white home. Mr. Delgado confirms with Mr. Viccica that the red brick will remain.

Mr. Copelas asks about including special conditions regarding the fence and the finish of the third-floor dormers. Mr. St. Pierre notes that he would like to see them as conditions if he is being asked to ensure those elements are included. Mr. Delgado confirmed that those conditions are acceptable.

Motion and Vote: Mr. Copelas moves to approve the petition of CARLOS DELGADO 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 the single-family home from 2.5 to 3 stories and from lot area per dwelling unit to change the single-family home to a two-family home; and a special permit per Section 3.2.4 *Accessory Buildings and Structures* to allow a second accessory structure, a two-car garage at 8 IRVING STREET (Map 16, Lot 284) (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/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 shall display said number so 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 the following special conditions:

1. Petitioner will replace the fence on two sides of the property as discussed
2. Petitioner will clad the third-floor dormers in a hardy plank style finish.

Ms. Ordaz 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: **24 Loring Avenue (Map 32, Lot 85) (R2 and ECOD Zoning Districts)**

Applicant: **Susanna Harutunian**

Project: A public hearing for all persons interested in the petition of SUSANNA HARUTUNIAN for a special permit per Section 3.2.2 *Home Occupations* to allow a clothing alterations business in the existing freestanding garage or alternatively within the primary dwelling, the single-family home at 24 LORING AVENUE (Map 32, Lot 85) (R2 and ECOD Zoning Districts).

Documents and Exhibitions

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

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

Chair Duffy introduces the petition.

Susanna Harutunian introduces herself, as does her son-in-law Bobby Woofter who indicates he will be speaking on her behalf. Mr. Woofter explains that Ms. Harutunian had an alteration shop in downtown Salem on Essex Street, but that she lost the space due to hardships related to the current COVID-19 pandemic. He explains that the request is to convert a free-standing garage into a by-appointment only alteration shop so that she may continue working.

Mr. Copelas suggests that the zoning ordinance that speaks to home occupations is clear that this proposal is not something the Board is authorized to approve. Mr. Copelas refers to language referencing occupations that handle goods and wears.

Mr. St. Pierre confirms Mr. Copelas' understanding, and indicates he informed the applicant but that they wanted to come before the Board anyway. Mr. St. Pierre acknowledges that he and Mr. Copelas could be incorrect in their interpretation, but suspects that is not the case.

Mr. Woofter suggests the Board approved a similar request for a similar type of business at 150 Highland Avenue. Mr. Corriston indicates he was unable to find the decision regarding that property.

Ms. Ordaz asks where the applicant should have gone if not before the Zoning Board of Appeals for such an approval. Mr. St. Pierre clarifies that the applicant is correctly in front of the Board, as the applicant did not agree with his reading of the ordinance, suggesting the type of business is not consistent with the ordinance language. Mr. St. Pierre indicates this is the only place to approve a business in a residential zone.

Mr. Copelas reiterates that the ordinance is clear that occupations where goods, wares, or merchandise are created or handled, are not allowed in a residence through special permit. Mr. St. Pierre adds that the issue is with respect to precedent setting, as someone wanting to fix AC units or tune up cars on his property could rely on such precedent to become a nuisance in a residential area. The intent of the ordinance is primarily to allow for doctors or accountants to keep a small practice going out of their home, not necessarily to set up a backyard business.

Mr. Woofter contends that at 150 Highland Avenue, which is an R1 Zoning district, there is/was a trailer on the property where a similar type of business was allowed to operate.

Mr. Viccica asks if there are any alternatives Mr. St. Pierre might suggest. Mr. St. Pierre indicates the Planning Department has an economic development wing, and that the Enterprise Center at Salem State has space available that can be adjusted price-wise for small businesses. Mr. St. Pierre sympathizes with the desire to continue working and acknowledges that this business would likely not create a problem, but the issue relates to precedent being set.

Mr. Copelas notes that several public comments were submitted in opposition to the proposal, most of which expressed not wanting commercial activity in this residential neighborhood. Mr. Woofter responds by stating that from the front door he can see a pizza restaurant and convenience store. Mr. Viccica states that while that may be true, those businesses are not being run out of a residence. Mr. St. Pierre also notes that some businesses have been grandfathered in.

Ms. Ordaz acknowledges that the decision could not be found for 150 Highland Avenue, but notes after a quick search she was able to confirm that there is a sewing and alterations business that appears to be running out of a home. She asks if it would be of any benefit to continue the petition and provide an opportunity for more research and for the petitioner to examine some of the alternatives offered by Mr. St. Pierre.

Chair Duffy and Mr. St. Pierre agree that more information would be better, and Mr. St. Pierre offers to research what occurred in the case of 150 Highland Avenue.

Chair Duffy opens the floor to public comment.

Mr. Corrison references, and Chair Duffy reads an email from Colleen and Paul Durand from 20 Loring Avenue and a letter from Christopher Mooney of 20 Loring Avenue Unit 1. Both express concerns and indicate they are not in favor of the proposal. Both commenters express concerns regarding foot and car traffic as well, particularly with a school nearby.

Don Reynolds of 22 Loring Avenue introduces himself and notes he has no objection to the proposal. Mr. Reynolds states that as long as the business is by appointment only, he does not see how it would have an adverse impact.

Deborah Morency of Burnside Street in Salem states there used to be a tailor shop operating two doors down from her out of a basement for around 50 years. She notes that you would never know there was a business, as the impact on the neighborhood was minimal. She states she has no objection to the proposal.

Colleen Durand asks what the applicant's business on Essex Street was, and wonders if this will be a continuance of all those prior customers coming to the applicant's home. Mr. Woofter responds that the business has always been just Ms. Harutunian and that the shop was approximately 800 square feet. He adds that this proposal would be about a third of the size, and that she is looking to slow down her business to part time as she approaches retirement. The intent is not to expand the business, but to retain and continue to service a hand full of loyal clients from prior years.

Chair Duffy asks if the applicant would like to continue until the next meeting in order to obtain more information regarding the circumstances surrounding 150 Highland Avenue.

Ms. Harutunian indicates she has some work that remains unfinished due to the COVID pandemic. She notes that she asked her customers to take the work elsewhere to be completed, but they refuse to find a new business. With respect to traffic and parking concerns, Ms. Harutunian maintains that she has space for five (5) cars in her driveway. Ms. Harutunian states that she loves what she does, and that she is just a few years away from retirement; as such she hopes to continue on a smaller scale.

Mr. Corrison suggests that if the applicant knows the owners of 150 Highland Avenue they inquire about the circumstances. Mr. Copelas suggests that the petitioner continue to research other alternatives as well.

Motion and Vote: Mr. Copelas moves to continue the petition of SUSANNA HARUTUNIAN for a special permit per Section 3.2.2 *Home Occupations* to allow a clothing alterations business in the existing

freestanding garage or alternatively within the primary dwelling, the single-family home at 24 LORING AVENUE (Map 32, Lot 85) (R2 and ECOD Zoning Districts) to the next regularly scheduled meeting on August 19, 2020.

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

Location: **27 Boardman Street (Map 35, Lot 492) (R2 Zoning District)**
Applicant: **Greg & Kathryn Burns**
Project: A public hearing for all persons interested in the petition of GREG & KATHRYN BURNS for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from minimum width of side yard to expand a nonconforming single-family home by adding a 23' by 14' sunroom to the rear of the existing home at 27 BOARDMAN STREET (Map 35, Lot 492) (R2 Zoning District).

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Greg and Kathryn Burns introduce themselves and note they are being represented by Todd Halsted.

Mr. Halsted explains the proposal is to extend off of a pre-existing mud room an additional 10 feet. Mr. Halsted notes that the existing outside wall goes up to the property line, which is why relief is being sought.

Mr. Corrison notes the Board has not received a formal plot plan for this petition and that the applicant had difficulty finding one. Mr. Halsted explains that there is an outdated plot plan showing two parcels in 1911, which are now one parcel. This plot plan shows there is ample setback between the building and the garage.

Mr. Halsted presents the proposed additions along with images of the existing conditions.

Mr. Viccica asks if a site survey was completed, and Mr. Halsted indicates there was not. Mr. Corrison states that the Board may need a formal plot plan or survey in order to rule as there may be concerns regarding setbacks.

Chair Duffy asks for clarification regarding the proposal, and Mr. Halsted confirms that the extension will be consistent with the existing setback which is effectively zero.

Mr. Viccica asks if there will be any overhang at the property line, and Mr. Halsted says there will be no overhang. Mr. Viccica indicates he would like to take Mr. Halsted's word for it, but that a proper application requires a site survey and plot plan, and that there is not enough information to continue the discussion.

Chair Duffy agrees that a site survey is instrumental to making these decisions regarding setback issues and encourages the petitioner to obtain one. He notes the Board is familiar with addressing this sort of relief where an existing nonconformity is continued but not increased, but that accurate dimensions are required to render a decision.

Mr. Halsted says he could get that in a manner of days. Mr. Burns notes the support of the immediate abutter to this lot line and the neighbors across the street.

Mr. St. Pierre adds that the reason for the survey is that the existing addition could be over onto the neighbor's property. He notes that the survey must be done by a licensed land surveyor in Massachusetts. He states that the Board does not want to grant relief for something that might be on another property.

Chair Duffy opens the floor to public comment.

Mr. Corriston notes the Board received letters from abutters. Chair Duffy reads from two written comments in support of the proposal: one from Richard Stafford and Perla Peguero of 30 Boardman Street, and one from David R. Selden and Andrea Zeren at 29 Boardman Street. There is no further public comment.

Motion and Vote: Mr. Copelas moves to continue the petition of GREG & KATHRYN BURNS for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from minimum width of side yard to expand a nonconforming single-family home by adding a 23' by 14' sunroom to the rear of the existing home at 27 BOARDMAN STREET (Map 35, Lot 492) (R2 Zoning District) to the next regularly scheduled meeting on August 19, 2020.

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

MEETING MINUTES

February 19, 2020

April 1, 2020

April 15, 2020

May 20, 2020

June 17, 2020

Motion and Vote: Mr. Copelas moves to approve the February 19, 2020 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 April 1, 2020 minutes as amended. Ms. Ordaz seconds the motion. **The vote is all in favor and none opposed. The Motion passes.**

OLD/NEW BUSINESS

Location: **38 Jefferson Avenue (Map 25, Lot 388) (B4 & R1 Zoning Districts)**
Applicant: **Witch City Gardens**

Description: Request for a six (6) month extension of special condition #3 in the August 1, 2018 Board Decision granting a special permit per Sections 6.10.4 and 6.10.9 to operate a licensed retail marijuana establishment and marijuana cultivation facility at 38 Jefferson Avenue. Special Condition #3 required that the applicant be issued a state license within six (6) months of the issuance of this special permit. This special condition stated that “A six (6) month extension can be granted by the Board of Appeals if good cause is shown.” Special Condition #3 was previously extended to August 1, 2019; February 1, 2020; and August 1, 2020 by the Board of Appeals.

Chair Duffy introduces the request.

Tim Haigh introduces himself and explains his request for a six-month extension. Mr. Haigh notes that he received a provisional license at the June CCC meeting. The project is currently undergoing an independent architectural review, and Mr. Haigh anticipates it will take less than 12 weeks to complete, with the hopes of having the retail store open by the end of the year.

Chair Duffy explains the Board’s authority to grant extensions with a finding that good cause is shown. He notes that the Board has received a number of these requests and they often have to do with hang-ups or delays or the natural process of moving through the CCC. In the instant case, Chair Duffy states he thinks the Board can make a finding of good cause based on the letters they have and Mr. Haigh’s representation.

After Mr. Copelas makes the below motion, Mr. Corriston notes that this would move the deadline to February 1, 2021.

Motion and Vote: Mr. Copelas moves to grant request of WITCH CITY GARDENS for a six (6) month extension of special condition #3 in the August 1, 2018 Board Decision granting a special permit per Sections 6.10.4 and 6.10.9 to operate a licensed retail marijuana establishment and marijuana cultivation facility at 38 Jefferson Avenue.

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

ADJOURNMENT

Motion and Vote: Ms. Ordaz 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 8:28 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>

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

Respectfully submitted,
Brennan Corrison, Staff Planner