

City of Salem Zoning Board of Appeals
Meeting Minutes
September 29, 2020

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Tuesday, September 29, 2020 at 6:30 pm via remote participation.

Chair 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, September 29th at 6:30 pm is being held remotely via Zoom. Chair Duffy explains that instructions to participate remotely can be found on the Salem website. Chair Duffy also explains the rules regarding public comment.

ROLL CALL

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

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: A continuation of 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 third-story front and rear dormers at 78 BAY VIEW AVENUE (Map 44, Lot 136) (R1 Zoning District)

Documents and Exhibitions

- Application date-stamped June 24, 2020 and supporting documentation
- Letter from applicant - Stephan and Patrick O’Sullivan
- Public comment - letter from Judith White attached to petition signed by 118 individuals

Chair Duffy introduces the petition.

Attorney William Quinn introduces himself as representing the applicants and notes the petition was initially filed in June, and immediately caused an uproar in the neighborhood. Many comments were received in response to the initial proposal, which has since been altered. Attorney Quinn states the project was updated in an attempt to address neighborhood concerns and ensure the renovations fit in with the neighborhood needs and characteristics. Attorney Quinn indicates that from June until

now the petitioner has attempted to make all reasonable adjustments to the proposal but acknowledges there are still some residents in the Willows who find it objectionable.

Attorney Quinn explains the applicants worked with architect Dan Ricciarelli to downsize the project without compromising modernization and the ability to occupy the building as a residence. He states the plans before the Board currently are less expansive than those originally filed, and that the building is still under the legal 35-foot limit for the neighborhood. No nonconformities will be extended or expanded with the renovations, and if approved the work would be under the purview of the building inspector.

Attorney Quinn states there will not be any blasting, just some excavation to create a basement. He also indicates the applicants and architect met with the Historical Commission to discuss the project design, and that they are happy to continue meeting with them if the project is approved.

Dan Ricciarelli from Seger Architects introduces himself and describes the project in more detail. The residence is a single-family home in Juniper Cove where buildings are very close together and tight. Mr. Ricciarelli indicates the existing home is very small, likely an old cottage, and has been in the applicant's family for many years. He states the owners are looking to move into the home to retire. Mr. Ricciarelli states the ceilings are very low and not to code at just over six feet in height.

Mr. Ricciarelli explains that the initial proposal attempted to create higher ceilings that were up to code, but that the new plans do not. Additionally, the updated proposal has reduced some of the square footage and that the first floor has been removed and will be recessed a bit into the basement. Mr. Ricciarelli notes there will be some excavation, but if there is ledge it may not be economically feasible. He indicates the proposal would include a small office space in the basement.

Mr. Ricciarelli notes the proposed building will have a smaller footprint than the existing home, and that parts of the front and back will be pulled in, and that the existing porch on the east side of the property will be moved two feet to provide additional room. Mr. Ricciarelli shows the existing floor plans and elevations and discusses additional changes that are being proposed. Next, Mr. Ricciarelli walks through the proposed floor plans and elevations. Mr. Ricciarelli states the ridge height under the new proposal only increases by ten inches, compared to the originally proposed increase of six feet. Mr. Ricciarelli presents photos of existing conditions, and continues to discuss the proposal, noting that the new build will not encroach any more than what currently exists with respect to eaves and walls. He adds that the existing chimney will be removed. Finally, Mr. Ricciarelli discusses the proposed materials, including cedar shake, cladding, with the intent of keeping a traditional cottage appearance. He states the applicant will also continue to work with the Historic Commission as the project moves forward.

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

Mr. Copelas expresses concern that the Board received much of this information only eight hours prior to the meeting and that there was voluminous public comment. Mr. Copelas notes that while a large percentage of neighborhood concerns may have been addressed, he would need more time to process and analyze how the proposed updates relate to all the concerns. Mr. Corriston apologizes for the late distribution of materials, and notes that the architect supplied most of the revisions a week prior, but that there were delays in distributing them to Board members.

Mr. Viccica seeks clarification regarding the drawings showing the proposed and existing conditions, and specifically asks if the entire building is being razed, or if some of it will be preserved. Mr. Viccica indicates it is unclear where the increases in elevations and volume are coming from. Mr. Ricciarelli explains that the initial proposal preserved the first-floor elevation, but that now with the update it is actually being lowered by almost two feet in order to make up what could not be achieved with ridge height, and spreading the gained height between the three floors to achieve habitable floor space. Mr. Viccica asks again if any part of the existing building will be preserved, and Mr. Ricciarelli responds that it is fair to assume the building will be torn down. Mr. Ricciarelli notes the plan is to attempt to use the existing foundation, with a bump out in the rear for office space. Mr. Viccica next asks if the existing foundation will need to be underpinned or removed in its entirety. Mr. Ricciarelli claims a bulkhead will be built around the footing and the slab will be lowered to protect the footing, but that other options will be considered if it is economically infeasible due to the presence of ledge.

Mr. Viccica notes that on the site plan, it appears the two adjacent buildings are very close, with one practically touching the existing building. He expresses concerns regarding constructability and how it could be done without impacting the nearby structures, and notes that the applicant would essentially like to build a brand-new home on a site that is nonconforming. Mr. Viccica indicates that while a variance would address the nonconformity, there would likely be significant impacts on the abutting properties. Mr. Ricciarelli acknowledges the concern, and states density and proximity is a common problem in the Willows neighborhood.

Attorney Quinn states that the project will rely on experts, namely architects and builders, and that the building inspector will provide guidance as to what is safe and appropriate. He adds that the applicant will not be breaking new ground but will try to use preservation techniques as much as possible. Attorney Quinn adds that nothing would proceed without all details being reviewed by the building inspector and other department heads.

Mr. Viccica states that the request before the Board is essentially predicated on the ability to construct the proposed home, and that if it is not feasible there will likely be dramatic changes to the proposal. Attorney Quinn and Mr. Corrison clarify that a special permit is being requested and not a variance. Mr. Viccica reiterates his concerns regarding impact on the natural environment, neighborhood character, and abutters.

Attorney Quinn states that as long as the existing home is not torn down until final plans are approved, that any changes would need to come back before the Board. He adds that the applicant will vet what they are doing prior to any major demolition. Mr. Viccica explains that many of the issues would only be revealed once most of the home is demolished, and that his concerns surround the possibility of the home being torn down, and then coming back before the Board because the plans did not work out accordingly. Mr. Viccica states his preference would be an alternative approach where as much of the building is preserved as possible to not require wholesale demolition. Mr. Ricciarelli maintains that was the initial intention, but that they are unable to preserve a home that does not have habitable ceiling heights and space. Mr. Ricciarelli says there is a possibility of saving the left and right side walls and only modifying openings, and that the intention going forward is to not remove everything if it can be avoided. He states the first floor could potentially be framed with the walls still intact, but that it will need to be explored once demolition begins. Attorney Quinn suggests making a special condition that the applicant procure a professional engineering study regarding the feasibility of what is being proposed.

Mr. Copelas states that although the applicant's counsel has suggested the vast majority of public concerns have been addressed, it appears that many of the concerns, including those raised by the Historic Commission and Historic Salem Inc., were with respect to the elimination of the front porch and the importance of porches in the Willows neighborhood. While this is only one specific design feature, Mr. Copelas notes it was a large concern for many. Chair Duffy agrees.

Attorney Quinn explains that there was a tradeoff between adding a parking space and maintaining the porch. While the applicant is not wedded to either approach, he indicates their preference was to add the parking and remove an additional car off the street. Attorney Quinn suggests they would be open to modifications if the historical value of the porch is more important than eliminating an additional car from the street.

Ms. McClain acknowledges the competing interests of preserving the porch and adding parking, and asks if there are any plans for parking other than where the current front porch is. Mr. Ricciarelli indicates one parking spot currently exists, and Attorney Quinn states it is on the left-hand side of the porch between buildings, and that that spot has been grandfathered. Attorney Quinn states that parking concerns are significant, and so the applicant is trying to fit as much parking on the site as possible, but that they will discuss the historic concerns with the Historic Commission.

Chair Duffy asks when the applicants met with the neighborhood to discuss their concerns and suggest changes. Attorney Quinn indicates it was a month ago, and explains that plans were circulated in the neighborhood, and that the architect tried to accommodate concerns.

Chair Duffy next asks when the applicants anticipate engaging with the Historic Commission, and additionally asks if that should occur prior to the Board making a decision on the matter. Mr. Ricciarelli states they are trying to schedule something with the Commission, but that the applicant wanted to make sure they have a viable project before beginning the dialogue. Attorney Quinn adds the order/timing is a toss-up, but that they would be open to meeting with the Historic Commission prior to a final decision by the Board. Chair Duffy notes that if the discussion with the Historic Commission results in significant changes, the applicant will have to come before the Board again and suggests it may be better for the Board to review something more final that has been appropriately vetted. Mr. Corriston and Mr. Ricciarelli briefly discuss the timing of the next Historic Commission meeting and the next Zoning Board of Appeals meeting.

Mr. Copelas suggests it would make more sense to continue the matter, given the likelihood of significant changes to the proposal. He adds that while the Board is loath to continue a matter if it can be disposed of, there are many stakeholders with significant concerns and that it seems prudent to hold off on any Board decisions.

Mr. Viccica asks Chair Duffy if it makes sense to proceed with public comments prior to a motion to continue. Mr. Duffy indicates the Board and applicant could benefit from getting feedback now.

Duffy opens the floor to public comment.

Robert Chadwick of 80 Bay View Avenue introduces himself. Mr. Chadwick asks for clarification regarding the determination of a demolition versus a rehabilitation, noting that this project sounds like a demolition. Attorney Quinn states that after speaking to the building inspector, he learned that

anything that removes more than fifty percent of the interior square footage is considered a demolition, and that this project is likely going that route.

Chair Duffy notes that Robert and Beverly Chadwick also provided a letter with comments that are part of the public record

Mr. Corrison adds that the applicants also provided a letter to the Board, and asks if counsel would like to speak to it. Attorney Quinn asks that the letter be read into the record, noting that the owners are not outsiders, but family of the former owners.

Mr. Corrison reads the letter into the record from O'Sullivan's. The letter indicates the intent to replace the existing building with a more modern and structurally updated dwelling. The existing building was built in 1870 and has been owned by a member of the family since 1972. The letter includes anecdotes of the applicant's history with the home, and indicates they plan to retire into the home in January 2021 and one day pass it on to their children. The letter also discusses the design of the proposal.

David Fellows of 72 Bay View Avenue introduces himself. Mr. Fellows expresses concern regarding the three-story design, as well as the difficulty associated with getting construction equipment onto Bayview Avenue for demolition purposes. Mr. Fellows suggests the impact of the construction will be massive and hopes the applicant will consider alternatively renovating the interior, potentially adding space to the attic as necessary, rather than the extensive plans proposed.

Chair Duffy notes that David Fellows and Jan Fellows also provided a letter with comments that are part of the public record. Mr. Corrison reminds the audience that these letters are accessible on the public SharePoint website, which can be accessed via www.salem.com/zoning-board-appeals.

Elizabeth Wolfe of 95 Bay View Avenue introduces herself. Ms. Wolfe explains she has lived in her home for over forty years and has seen many changes in the neighborhood over that time. She notes that she sent an email along with photos to Mr. Corrison regarding the project. Ms. Wolf expresses concern regarding the ridgeline height, noting that the original plans stated an existing ridgeline height of 25 revised to 27.5 feet, and then revised again to increase by ten inches. She suggests the Board look carefully at the ridgeline height. Regarding the discussion of ceiling height and headroom, Ms. Wolf states you cannot fit six pounds of stuff into a five pound bag and suggests that keeping the ridgeline at 25 feet keeps the building as it was originally designed, a Victorian cottage. Ms. Wolf also expresses dismay reflecting on other homes in the neighborhood that have been renovated to have heights of 35 feet, describing them as shameful.

Julia Mooradian from Seger Architects addresses the ridgeline height, explaining the calculation of mean grade to mean rafter. Ms. Mooradian clarifies that the proposal is to increase the existing ridgeline height by 10 inches. She adds that the proposal is not going anywhere near the limit of 35 feet.

Susan St. Pierre and Richie Thibodeau introduce themselves as direct abutters to the proposed renovation. Ms. St. Pierre states this is the first time she has been made aware that the building would be demolished. She asks if the Board is able to issue a special permit to demolish and reconstruct a home on a totally nonconforming lot and Building Inspector Tom St. Pierre indicates that they can. Ms. St. Pierre indicates she has reviewed the proposal over many hours and still does

not understand certain aspects, and states she received new plans from Attorney Quinn the prior day. She expresses concerns regarding revisions to the proposal, including ridgeline height, and re-grading, and suggests the Board look at the proposal closely. Ms. St. Pierre states that many homes in the area have been renovated without increasing the height of ceilings, and notes that her own first floor ceilings are only about seven feet in height. Ms. St. Pierre acknowledges that the designs have been modified pursuant to neighborhood concerns, but indicates she still has several objections. Ms. St. Pierre also notes that there are minimal side setbacks between the homes, and that any changes will have a large impact. She also expresses concerns regarding fire safety. Ms. St. Pierre suggests that the nonconforming building should remain 2.5 stories with no additional protrusions beyond the existing footprint.

Chair Duffy notes that Susan St. Pierre and Richie Thibodeau also provided a letter with their comments which are part of the public record.

Ms. Mooradian attempts to address some of the questions raised regarding building height and existing grade. She notes that some of the confusion regarding the proposal has to do with the fact that the first floor is being lowered and explains that volume will remain mostly the same.

Diego Fellows of 72 Bay View Avenue introduces himself. Mr. Fellows echoes the statements and concerns from other commenters. Mr. Fellows also indicates that per Section 3.3.5, section E states that design should be consistent with and complementary to the existing structure and those in the neighborhood. Mr. Fellows states that the neighborhood has been besieged by larger and larger buildings and renovations that do not complement the existing character, and asks that the architect explore the possibility of maintaining the existing façade so that it is more fitting with the neighborhood. He notes that he submitted photos of the neighborhood to Mr. Corrison.

Chair Duffy notes Diego Fellows submitted a letter with his comments that is also part of the public record.

Linda St. Pierre of 83 Bay View Avenue introduces herself and asks that the photographs submitted by Mr. Fellows be shown to better portray the concerns of the neighborhood. Ms. St. Pierre expresses concern with this particular proposal, as well as the general trends regarding renovations in the neighborhood. Mr. Fellows and Ms. St. Pierre discuss the photos, and note that one of the homes that was renovated and enlarged such that it can be seen from every porch in the neighborhood is now being sold.

Chair Duffy notes that Linda St. Pierre also submitted a letter with comments that is part of the public record.

Mr. Ricciarelli responds noting that the proposal is not going to make the building much larger than it currently is, and that they are trying to stay within the existing envelope as much as possible. He adds they are trying to make the building more livable for those inside, but acknowledges the concerns raised thus far.

Mr. Corrison indicates the Board received comments from the following individuals: David and Jan Fellows of 72 Bay View Avenue; Robert and Beverly Chadwick of 80 Bay View Avenue; Ann Shaw of 81 Bay View Avenue; Ethan Bresnahan of 2 Cheval Avenue; Ed and Elizabeth Wolf of 95 Bay View Avenue; Linda St. Pierre of 83 Bay View Avenue; Daniel and Nicole Lang of 82 Bay View

Avenue; Susan St. Pierre and Richie Thibodeau (no address given); Judith White of 3 Cheval Avenue; Diego Fellows of 72 Bay View Avenue; and Historic Salem Inc. Mr. Corrison also states there is a petition with 118 signatures expressing general concerns with the proposal, including but not limited to, potential detriment to neighborhood character, shading and shadows, and impacts to abutting properties. Mr. Corrison reads the petition into the record.

Chair Duffy states the Board must consider whether to continue the petition until after the applicant can consult with the Historical Commission. He asks if the petitioner is willing to accept a continuance. Attorney Quinn states they would like to continue.

Mr. Ricciarelli clarifies that the petition and concerns therein were based on the initial design, not the current proposal.

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 third-story front and rear dormers at 78 BAY VIEW AVENUE to the November 18, 2020 meeting of the ZBA.

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

Location: **5 Orchard Street (Map 27, Lot 432) (R2 Zoning District)**
Applicant: **Samantha Stone**
Project: A public hearing for all persons interested in the petition of SAMANTHA STONE 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), maximum lot coverage, minimum depth of front yard, and minimum width of side yard to alter and expand a nonconforming single-family home by adding a 26’ by 25’, 3-story rear addition as well as a covered porch at 5 ORCHARD STREET (Map 27, Lot 432) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped July 23, 2020 and supporting documentation
- Letter in support from Sullivans of 1 Orchard Street

Chair Duffy introduces the petition.

Samantha Stone introduces herself and explains that she presented her proposal at the prior Board meeting but that additional materials were requested by neighbors, including photos of the property before it was purchased, and a shadow study. Ms. Stone presents photos of the currently existing conditions (which include some repairs, landscaping, etc.), as well as the property prior to being purchased and improved. Ms. Stone states her improvements to date have had a positive impact on the neighborhood, and that her proposal will continue to do so. Ms. Stone next presents the shadow study, demonstrating solstices and equinoxes to show the range of impacts.

Chair Duffy opens the floor to the Board for comments or questions but there are none.

Chair Duffy next opens the floor to public comment.

Mr. Corriston notes the Board received a letter from Mr. and Ms. Sullivan of 1 Orchard Street just before the September 16 meeting. He reads the letter into the record; the letter is in support of the proposal.

Councilor Megan Riccardi introduces herself and also expresses support for the proposal. Ms. Riccardi states that Ms. Stone is an excellent neighbor and that her improvements to the property to date, as well as those currently proposed, make sense for the applicant as well as the neighborhood overall.

Chair Duffy discusses the statement of grounds, and notes how the proposal meets the special permit criteria.

Mr. Copelas asks if the home will be considered 2.5 stories or three stories. Mr. St. Pierre indicates it will be three stories, and that the issue has been addressed by the applicant previously.

Ms. McClain expresses appreciation that the applicant completed the shade study, as it was not a requirement, but a thoughtful way to address neighbors' concerns.

Motion and Vote: Mr. Viccica moves to approve the petition of SAMANTHA STONE 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), maximum lot coverage, minimum depth of front yard, and minimum width of side yard to alter and expand a nonconforming single-family home by adding a 26' by 25', 3-story rear addition as well as a covered porch at 5 ORCHARD STREET (Map 27, Lot 432) (R2 Zoning District) subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. All construction shall be done per the plans and dimension submitted to and approved by this Board. No change, extension, material corrections, additions, substitutions, alterations, and/or modifications to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

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

Location: **23 Andrew Street (Map 35, Lot 558) (R2 Zoning District)**

Applicant: **Barbara Flaherty**

Project: A public hearing for all persons interested in the petition of BARBARA FLAHERTY for a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from maximum height of buildings (stories) and a special permit per Section 3.3.3 *Nonconforming Structures* to expand a nonconforming three-family home by adding a three-level deck with roof and exterior staircase at 23 ANDREW STREET (Map 35, Lot 558) (R2 Zoning District).

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Barbara Flaherty introduces herself and discusses her proposal to build a three-level deck with a roof and exterior staircase, noting that the property has undergone extensive renovations, and that the proposal would help complete the look/feel/flow of the property, as well as create proper egress for all three units. Ms. Flaherty explains that the home was built around 1890, and that the interior staircases do not conform to current standards, noting the rear staircase in poor condition and less than 30 inches. The proposed deck would provide improved access. Ms. Flaherty states that while the home is considered non-conforming, the improvements proposed are all within current zoning requirements. Ms. Flaherty discusses the setbacks and existing egresses.

Chair Duffy opens the floor to the Board for comment and question.

Mr. Tsitsinos asks to see a plot plan, which is then presented.

Mr. Viccica asks if a variance is being requested, and if there a statement of hardship. Chair Duffy indicates it is a variance request and that a statement of hardship has been submitted. Mr. Corrison explains that both a variance and special permit are being requested. He adds that a variance is required as it is not a one or two-family home, and the decks are in violation of the height requirement.

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

Chair Duffy discusses the statement of hardship provided, which states that the home was built in such a manner that the means of egress are not sufficiently large to be compliant and safe for each unit. By granting relief, the three-story deck would afford the opportunity to have code compliant, safe, reasonable egress out of the rear of the building for each of the three units.

Mr. Copelas acknowledges the desire to become more code compliant, but expresses concern regarding the legal requirement for a variance. Mr. Copelas explains that a true hardship must be presented to approve a variance, not just a good idea. Chair Duffy agrees, but acknowledges that there appear to be egress conditions that are not compliant and may affect safety.

Ms. McClain also expresses concern regarding the hardship presented, as she does not see how literal enforcement of the ordinance would create difficulty.

Mr. Viccica asks if there are two stairwells in the building, regardless of whether they are compliant with respect to width, and Ms. Flaherty states there are. Mr. Viccica asks if the stairs can be modified internally to become compliant, but Ms. Flaherty says they cannot, and notes the stairs are also rather steep.

Ms. McClain asks if the petitioner considered other means of egress, and Mr. Flaherty says this was the option that seemed most appropriate.

Chair Duffy asks if the internal rear stairway would remain or be removed if the proposal were approved, and Mr. Flaherty indicates it would be removed to add space to existing kitchen and bathrooms.

Mr. Viccica asks to see floor plans, and asks clarifying questions regarding the proposed deck and existing staircase. He notes that this is not just about egress, but also modifying the building and providing the amenity of a deck.

Ms. McClain acknowledges the positive aspects of the proposal, including property value improvement and safety, but reiterates her difficulty understanding the substantial hardship that would exist if relief was not granted, as other alternatives were not examined.

Mr. Copelas adds that it has not been made clear that the issues affecting this structure are unique and do not affect others in the district, noting that this is fairly common for structures of this age.

Ms. Flaherty notes that a neighboring home has a spiral staircase off of the home, and states that the current deck does not protrude much from the building.

Chair Duffy explains there would be less concern if the applicant were just seeking a special permit, but that the legal standard for a variance is much higher, providing less discretion by the Board to exercise on those types of requests. Chair Duffy echoes the concern that there has not been a demonstration that a substantial hardship exists and that there are conditions unique to the structure, rather than ones that prevail through the district. Chair Duffy suggests the applicant conduct more research and examine the potential to reconfigure the proposal so that a variance does not need to be requested. Ms. Flaherty asks for clarification regarding the need for a variance, as the home is currently three stories and the new staircase would not be any higher than the existing home. Chair Duffy indicates the variance is required because a new structure is being added, and that the pre-existing three-story home is non-conforming and a three-family home. If the home were a single family or two-family, a section of the code would allow the proposal with only a special permit. Mr. Corriston notes that if the proposal met the height requirement of 2.5 stories then only a special permit would be required, and Mr. St. Pierre confirms. Mr. Copelas adds that the addition of an egress from the third floor is what triggers the need for a variance. Mr. Viccica suggests one alternative could exist if there is a way to get between the second and third floor internally.

Chair Duffy suggests examining potential alternatives, and that if there is no other way to create appropriate egresses, perhaps that could be demonstrated as a hardship. Mr. Viccica adds that such a showing would require visuals such as floor plans and modified floor plans.

Ms. Flaherty mentions part of the proposal was to have the third floor second egress be off of the living room rather than a bedroom or bathroom. Mr. Viccica states that may be true, but that the burden is on the applicant to adequately demonstrate that such circumstances exist and present a hardship. Mr. Tsitsinos asks about the existing rear egress from the third to second floor, and Ms. Flaherty indicates it is very steep and narrow, with a width of only 26 inches. Mr. Tsitsinos asks if the stairs lead to a bedroom, and Mr. Flaherty states it leads to an attic. Mr. Viccica reiterates that describing the situation is not adequate, and that floor plans are required.

Chair Duffy suggests taking another look at the proposal to see if there is a way to accomplish the desired goals while adhering to the 2.5 story limit, and to come back with floor plans for each floor so that the Board can understand the elements affecting the proposed change. He asks if the applicants are willing to continue to either the October or November Board meeting, and Ms. Flaherty indicates they would like to continue to the November meeting.

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

Motion and Vote: Mr. Copelas moves to continue the petition of BARBARA FLAHERTY for a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from maximum height of buildings (stories) and a special permit per Section 3.3.3 *Nonconforming Structures* to expand a nonconforming three-family home by adding a three-level deck with roof and exterior staircase at 23 ANDREW STREET (Map 35, Lot 558) (R2 Zoning District) to the regularly scheduled ZBA meeting on November 18, 2020.

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

Location: **25 Cushing Street (Map 17, Lot 119) (R1 Zoning District)**
Applicant: **Suzanne Biscaia**
Project: A public hearing for all persons interested in the petition of SUZANNE BISCAIA for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to modify and expand a nonconforming single-family home by adding a second story (bringing height to 2.5 stories), removing the existing side deck, and building a rear deck at 25 CUSHING STREET (Map 17, Lot 119) (R1 Zoning District).

Documents and Exhibitions

- Application date-stamped August 26, 2020 and supporting documentation

Chair Duffy introduces the petition.

Mr. and Ms. Biscaia introduce themselves. Mr. Biscaia presents photos of the exterior of the home and explains it is a two bedroom 1950's cape. Mr. Biscaia notes that they live next door at 21 Cushing Street, but that the property has been owned by the family for many years. The home was occupied by a tenant for 30 years, who has recently moved out. Mr. Biscaia adds that they have two daughters and that Ms. Biscaia's father, the previous owner of 25 Cushing Street, has life tenancy on the property. Mr. Biscaia noted that Ms. Biscaia's father may need to live closer to them as he gets older. Mr. Biscaia indicates they would like to update the property, make the first floor updated with

a walk-in shower; and make the property what it should be, which is a more reasonably sized residence. Mr. Biscaia notes that 21 Cushing looked very similar to 25 Cushing, and that they renovated and expanded it. The proposal would raise the roof to make the house look more like a colonial than a cape, and bump out the rear by 2 feet. Mr. Biscaia indicates the rear would appear more like a gambrel. He presents a plot plan, and explains there is currently a side entrance with a deck that sits in the driveway impeding a second car from parking, so the proposal would also remove that entrance and put a second one in the rear off of the kitchen with a new deck. Mr. Biscaia next presents drawings of the proposal, and states it fits in well with the neighborhood. He presents photos of existing conditions at 21 Cushing, and notes that the proposed changes will look similar, but be slightly smaller. Mr. Biscaia adds that they have two daughters, and the hope is one day they will be able to live there as well to care for them as they themselves age. He notes that he spoke with immediate abutters and that they are fine with the proposal.

Mr. Copelas states that the Board is being asked to imagine too many things. He adds that it would be beneficial to actually have neighbors approval in writing or verbal comments. Mr. Copelas also notes that while the proposal has been explained verbally, and the Board generally tries to not require fancy architectural drawings for minor renovations, this proposal is in fact a major renovation that could benefit from more accurate drawings. Mr. Copelas acknowledges the effort put into the proposal, but indicates the proposal is a bit thin for a renovation of this magnitude. Mr. Tsitsinos agrees.

Chair Duffy agrees with the concerns raised, and asks if Mr. Copelas would consider the proposal subject to receiving more accurate drawings. Mr. Copelas indicates he is hesitant to ask the applicant to go through the added cost, but that currently he is not comfortable approving the proposal without more information and drawings.

Chair Duffy opens the floor to public comment.

Councilor Riccardi explains that she met with the petitioners and is familiar with the street itself, which she classifies as eclectic. Ms. Riccardi states that 25 Cushing Street is the smallest home in the neighborhood at 800 square feet and seems out of character compared to the rest of the neighborhood. She states the proposal makes sense to allow for the family to be close and fit comfortably. Councilor Riccardi acknowledges that architectural drawings would not be a small cost to incur, but also recognizes the difficulty in envisioning the proposal. She asks if there are any additional concerns that would need to be addressed before coming back before the Board.

Chair Duffy asks what, if anything else, Mr. Copelas would require to consider the proposal. Mr. Copelas states he suspects the proposal is straight forward and could receive approval. He notes that perhaps the other four Board members feel that way and there would be no need to do anything further, but that for him the application is too thin for him to feel comfortable. Mr. Copelas asks other Board members to weigh in and opine.

Mr. Tsitsinos says he is also struggling with being able to fully envision the proposal and understand what is being requested. Mr. Viccica indicates he thinks he understands the proposal, but understands the other Board members' concerns as the application is a bit scant. Mr. Viccica suggests demonstrating the height of the building articulated in feet and inches, and to demonstrate that the proposal will fall within height requirements. He states, not causing the need for applicants to have a professional architect draw for them, there may be a way to take photographs of the eaves, corner boards, and window types from 21 Cushing Street as he thinks the builder would replicate that. He states this would help in determining whether the

neighborhood character is being preserved. He states these elements would help the Board determine whether neighborhood character is met without having to spend money on architectural drawings from an architect. Mr. Viccica notes hiring a professional is beneficial to the owner in designing what they want and adding value to the house.

Mr. Copelas agrees, and states that architectural drawings would also provide Mr. St. Pierre with the tools he needs to do his job properly as the Building Inspector. Mr. Viccica adds that in order to pull permits for the project more detailed drawings and information would also be required. Mr. St. Pierre concurs, and adds that additional framing details would be helpful. Mr. Viccica suggests providing additional information regarding height of eave, median, building, relative to grade.

There is a brief additional discussion of the benefits of having architectural drawings, including holding builders accountable. Chair Duffy asks if a builder has already been engaged, and Mr. Biscaia indicates he reached out to a few, including one who renovated three other homes in the neighborhood in addition to their own. Mr. Biscaia notes that given the current circumstances lumber and builders are difficult to obtain.

Chair Duffy summarizes the discussion thus far, and suggests the applicants provide the additional information for the Board to better understand the proposal and final product.

Mr. Tsitsinos expresses confusion as one sheet references 31 feet for height, while another shows 30 feet. Mr. Biscaia indicates the land is not level, so each side is different. Mr. Viccica suggests the applicant look at the definition of building height so that they know where to properly measure the grade and average elevation, which would take care of the difference.

Chair Duffy suggests the petitioners continue to a future meeting in order to gather more information for the Board. There is a brief discussion noting that the building will fall below the 35 foot height limit, but that certain Board members would still require additional information to make an informed decision.

Chair Duffy asks if the petitioners would prefer to continue to the October or November meeting, and they indicate they would like to continue to the October meeting.

Motion and Vote: Mr. Copelas moves to continue the petition of SUZANNE BISCAIA for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to modify and expand a nonconforming single-family home by adding a second story (bringing height to 2.5 stories), removing the existing side deck, and building a rear deck at 25 CUSHING STREET (Map 17, Lot 119) (R1 Zoning District) to the next regularly scheduled ZBA meeting on October 21, 2020.

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

Location: **146 Federal Street (Map 26, Lot 552) (R2 Zoning District)**
Applicant: **Robert Ouellette and Michaeline LaRoche**
Project: A public hearing for all persons interested in the petition of ROBERT OUELLETTE AND MICHAELINE LAROCHE for variances per Sections 3.2.4 *Accessory Buildings and Structures* and 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from

height and front and side setback requirements for accessory structures and from maximum lot coverage to reconstruct a carriage house on existing stone foundation on the lot of the condominium at 146 FEDERAL STREET (Map 26, Lot 552) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped August 26, 2020 and supporting documentation

Chair Duffy introduces the petition.

Attorney Scott Grover himself on behalf of the petitioners, who own one of the two condo units at 146 Federal Street. Attorney Grover presents a plot plan and explains the property is a Federal period home located on the corner of Federal and Flint Street that has been restored recently. The property was recently converted to two condo units, and the petitioners reside in one unit as their primary residence. Attorney Grover indicates the last element of property restoration is the proposed reconstruction of a carriage house that once existed in the back of the property. The original foundation for the carriage house remains. Attorney Grover states that architect Dan Ricciarelli designed a historically appropriate building to recreate the original carriage house. Attorney Grover explains the zoning relief required, specifically relating to dimensional rules for accessory buildings in Section 3.2.4. With respect to setback requirements, Attorney Grover indicates they are considering Flint Street as the front yard as the carriage house would face Flint, and that relief would be necessary as there would be only a six foot setback, compared to the required 15 feet. The side yard setback requirement is five feet for accessory structures, and the existing foundation of the original carriage house is on the lot line. In addition to the two setback related variances, Attorney Grover explains the petitioner is also seeking relief from height limitations for accessory structures, noting that the limitations were designed to apply to more traditional garages and sheds. Attorney Grover states that to build a proper carriage house on the lot, it would need to be 24 feet and two stories, which exceed the 18 foot and 1.5 story limits. Finally, a variance is required related to lot coverage, as construction of the carriage house causes lot coverage to exceed the limit of 35 percent by a third of a percent (35.3 percent).

Regarding grounds for relief, Attorney Grover maintains that the existence of the original carriage house foundation would classify as a special condition only affecting the property in question. He adds that the dimensional requirements of the ordinance would prevent the petitioner from rebuilding the carriage house in the appropriate location. Attorney Grover argues that great care has been taken to restore the property, and that substantial hardship would exist if the petitioners were forced to build in a location that was not historically appropriate. He adds that relief can be granted without any detriment to the neighborhood, and that if anything not granting it would be detrimental as it would affect the integrity of the property as an historic home.

Dan Ricciarelli of Segar Architects presents and discusses photos of the existing home. Mr. Ricciarelli explains the details of the carriage house will match those of the existing home, and that the Historic Commission unanimously approved of the proposed designs. Mr. Ricciarelli indicates the carriage house would be used to provide space for a work truck, as well as storage and a workshop above. Mr. Ricciarelli indicates the proposal is to scale with historic photos of the original carriage house, and presents floor plans associated with the proposal. He next presents elevations and discusses the proposal in more detail, including the proposed materials. Finally he presents renderings of the proposed carriage house from Flint Street.

Chair Duffy read a letter sent to the Board from Ronald Cimon of 52-54 Flint Street. He noted that he received a letter from Frances Clifford of 142 Federal Street, both in support of the proposal.

Chair Duffy opens the floor to public comment.

Dan Skolski of 144 Federal Street introduces himself. Mr. Skolski indicates he is a local architect, and states he is in support of the proposal. He states that the design is fantastic, and knows that the materials will be good and improve the neighborhood.

Mr. Ricciarelli discusses the historic photos a bit more showing the old carriage house, and says he tried to stay consistent with the historic photos.

Mr. Viccica asks what happened to the original carriage house. Mr. Ouellette explains that it came down in the 1970's due to disrepair. He explains the previous property owners did not keep up with maintenance, and that it was taken down in two sections.

Mr. Copelas states his only concern is that he would like to make sure there is no intent to make it residential, and asks if there are protections that prevent it from being a residential unit in the future. Mr. St. Pierre indicates there are, noting that special permit for a carriage house residential unit would require proof that the carriage house existed prior to 1900, and since this would essentially be a new building aside from the foundation, it would not meet the criteria. Mr. Ouellette confirms there is no intention of creating a living unit, but notes the building will have water. Mr. St. Pierre adds that the Board could require a special condition as well if it would make them more comfortable.

There is a brief discussion regarding the grounds for variance. Mr. Viccica states the request is not too dissimilar from the request from Cabot Farms, noting that similar circumstances exist regarding the height and proportions, as well as potential added value to the city. Ms. McClain indicates she is also reminded of the Cabot Farms petition. Attorney Grover indicates the proposals are based on the same theory but that the present proposal is merely in an urban setting.

Chair Duffy acknowledges that Attorney Grover adequately addressed the criteria, and discusses how the existing foundation creates unique circumstances with respect to honoring the historic features of the property.

Motion and Vote: Mr. Viccica moves to approve the petition of ROBERT OUELLETTE AND MICHAELINE LAROCHE for variances per Sections 3.2.4 *Accessory Buildings and Structures* and 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from height and front and side setback requirements for accessory structures and from maximum lot coverage to reconstruct a carriage house on existing stone foundation on the lot of the condominium at 146 FEDERAL STREET (Map 26, Lot 552) (R2 Zoning District) subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.

6. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
7. 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. There will be no dwelling in the proposed structure.

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

MEETING MINUTES

June 17, 2020

July 15, 2020

August 19, 2020

Mr. Viccica identifies an error in the June 17th minutes relating to the Hampton Inn project, noting the minutes should reflect that the vote was four opposed and one in favor. Mr. Viccica also asks that the recording of the meeting be reviewed to update and clarify the portion of the minutes discussing the issue of precedent, explaining that the discussion was more nuanced than reflected. Mr. Corrison states he will update the language to better reflect the audio recording.

Chair Duffy suggests tabling the June 17th minutes approval pending further revisions, and that the Board vote on other two.

Motion and Vote: Mr. Copelas moves to approve the July 15, 2020 minutes as printed. Mr. Tsitsinos seconds the motion. **The vote is five (5) in favor (Mike Duffy (Chair), Peter Copelas, Paul Viccica, Carly McClain, and Jimmy Tsitsinos) and none (0) opposed, the motion passes.**

Motion and Vote: Mr. Copelas moves to approve the August 19, 2020 minutes as printed. Mr. Viccica seconds the motion. **The vote is five (5) in favor (Mike Duffy (Chair), Peter Copelas, Paul Viccica, Carly McClain, and Jimmy Tsitsinos) and none (0) opposed, the motion passes.**

OLD/NEW BUSINESS

None

ADJOURNMENT

Motion and Vote: Mr. Viccica moves to adjourn the meeting Ms. McClain seconds the motion. The vote is five (5) in favor (Mike Duffy (Chair), Peter Copelas, Paul Viccica, Carly McClain, and Jimmy Tsitsinos) and none (0) opposed. The Motion passes.

The meeting ends at 9:49 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