

City of Salem Board of Appeals
Approved Meeting Minutes
Wednesday, September 16, 2015

A meeting of the Salem Board of Appeals (“Salem BOA”) was held on Wednesday, September 16, 2015 in the third floor conference room at 120 Washington Street, Salem, Massachusetts at 6:30 p.m.

Ms. Curran calls the meeting to order at 6:30 p.m.

ROLL CALL

Those present were: Rebecca Curran (Chair), Peter A. Copelas, James Tsitsinos, Tom Watkins, Paul Viccica (alternate), Jim Hacker (alternate). Also in attendance –Thomas St. Pierre, Building Commissioner, and Erin Schaeffer, Staff Planner

REGULAR AGENDA

Project	Request for a six (6) month extension for exercise of rights granted by the September 28, 2009 Board Decision that approved Variances from minimum lot area per dwelling unit, and Special Permits to change one nonconforming use to another and to increase existing side yard setback nonconformity, to accommodate conversion of an office building to eight (8) residential units.
Applicant	WILLIAM WHARFF
Location	162 FEDERAL STREET (Map 25 Lot 112)(R2 Zoning District)

Documents and Exhibitions

- Application dated March 24, 2015 and supporting documentation

Attorney Grover presents the petition. The Board of Appeals approved Variances from minimum lot area per dwelling unit and Special Permits to change one nonconforming use to another and to increase existing side yard setback nonconformity to accommodate the conversion of an office building to eight (8) residential units. The petitioner is requesting a six (6) month extension to exercise the rights granted by the September 28, 2009 Board Decision and has asked for two (2) previous extensions and hopes this is the last time to request an extension for this property. Since 2008 no one has been able to move on the project as there was an oil tank leak at 162 Federal Street that migrated onto the adjacent school property owned by the Archdiocese of Boston. The property at 162 Federal Street was cleaned-up, but oil migrated to the adjacent school property and DEP is in the process of reviewing the site to sign off and approve the clean-up. Until then, DEP will not release 162 Federal Street as this property was the source of the contamination. The agreements with the original developer and owner expired and then Salem Renewal LLC stepped in for a few years to try to develop the site and wait for DEP and decided not to proceed with the development. Now the owner of the property is working to enter into an agreement with Daniel Botwinick to try to develop the parcel. Confident that this property is close to being

developed and hope that this is the last time to ask for another extension and there is a closing date on the PNS on November 16, 2015.

Ms. Curran- states that the good cause shown for the six (6) month extension is ongoing issues with DEP. Ms. Curran clarifies with Attorney Grover that the decision was issued in 2009 and was extended to 2012 under the Permit Extension Act.

Mr. Copelas- What is the likelihood that the DEP issues will be resolved?

Attorney Grover- We will know better in 30 days. The Archdiocese of Boston is holding back until a decision from DEP has been made. The property at 162 Federal Street is clean and the owner is waiting for a determination from DEP that the adjacent parcel with the school building is also clean from the oil spill. Everyone's expectation is that this is the last six (6) month extension request.

Motion and Vote: Mr. Watkins makes a motion to approve a six (6) month extension for exercise of rights granted by the September 28, 2009 Board Decision that approved Variances from minimum lot area per dwelling unit, and Special Permits to change one nonconforming use to another and to increase existing side yard setback nonconformity, to accommodate conversion of an office building to eight (8) residential units. The motion is seconded by Mr. Copelas. The vote was unanimous with five (5) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Paul Viccica, Jim Hacker.



Project	A continuation of a public hearing for a petition seeking Variances per Sec. 3.3.2 Nonconforming Use of the Salem Zoning Ordinance to extend the current non-conforming use of an existing two-family dwelling unit to allow a three-family dwelling unit.
Applicant	ANTONIO BARLETTA JR
Location	12 MEADOW STREET (Map 33 Lot 88) (B4 Zoning District)

The petitioner Antonio Barletta Jr. submitted a letter to the Board with a request to continue to the next regularly scheduled meeting on October 21, 2015.

Motion and Vote: Mr. Copelas makes a motion to approve the request to continue the public hearing to the next regularly scheduled meeting on October 21, 2015. The motion is seconded by Mr. Viccica. The vote was unanimous with five (5) (Rebecca Curran (Chair), Peter A. Copelas, Paul Viccica, Tom Watkins, Jim Hacker.

Project	A public hearing for a petition requesting a Special Permit seeking relief from <i>Sec. 3.3.2 Nonconforming Uses</i> of the Salem Zoning Ordinance to change from one nonconforming use to another, less detrimental, nonconforming use to allow a change from a rooming house to a multifamily residential dwelling unit.
Applicant	HARBORLIGHT COMMUNITY PARTNERS
Location	43 BOSTON STREET (Map 15 Lot 302) (B2 Zoning District)

*In consultation with the City Solicitor there is the appearance of a conflict of interest and Mr. Copelas will recuse himself for the petition of 179 Boston Street and 43 Boston Street.

Ms. Curran states to the petitioner that there are four (4) eligible members of the Board and the applicant needs a super-majority with all four (4) Board members to vote in the affirmative for the petition to pass. Ms. Curran asks the petitioner if they would like to be heard.

Mr. Tom St. Pierre asks the Board to hear both petitions of Harborlight Community Partners together and conduct a vote for each of the two (2) proposed projects separately.

Andrew Defranza, Executive Director of Harborlight Community Partners affirms to be heard by the Board and presents the petition. States that Harborlight Community Partners is a non-profit affordable housing organization based in Beverly, MA and is affiliated with the First Baptist Church of Beverly. The organization does not have any projects in Salem, MA. Examples of projects in Beverly include Turtle Creek and Turtle Woods and Harbor Lighthouse.

There are two existing rooming houses located at 179 Boston Street (hill Top Manor) and 43 Boston Street. The building at 43 Boston Street has twenty (20) rooms and 179 Boston Street has seventeen (17) rooms. Both buildings have small rooms and the buildings are in bad shape. Harborlight Community Partners is an affordable housing developer with three (3) goals for both buildings: 1) to reduce density by reducing the number of rooms from thirty- seven (37) to about twenty- eight (28) rooms when considering both locations; 2) dramatically improve the structure of the buildings and invest approximately 1.5 to 2 million dollars; 3) Improve services and management of the buildings to serve the existing population of formerly homeless individuals. The petitioner proposes to have management offices and have management offices at each location. There would also be a property manager that will visit every day and a case worker that will work on-site between the two properties.

43 Boston Street:

Most of the proposed reduction of density is proposed at 43 Boston Street. Harborlight proposes to reduce the number of rooms from twenty (20) existing rooms to twelve (12) small studios, with accessible units on the first floor and also provide a common space. The petitioner will update windows, improve the front façade and exterior of the building for a complete restoration and add a ramp for accessibility.

179 Boston Street:

There are currently seventeen (17) rooms that will be converted in to sixteen (16) small apartments. The petitioner also proposes to dramatically improve the building by constructing apartment units instead of keeping the existing rooms with shared bathrooms. The petitioner will also update windows, repair roof, improve exterior siding, and restore the building.

Harborlight Community Partners Headquarters are out of Beverly and has a strong management commitment to building management and providing social services.

43 Boston Street:

At this property the petitioner proposes to change the interior of the building and convert the individual rooms and shared bathrooms into efficiency apartments. The building envelope will not change, although there will be significant improvements made to the building to restore it and upgrade the front façade. A handicap ramp will be added, new windows will be installed and bricks may need to be repointed. The petitioner held a neighborhood meeting and the neighbors are particularly interested in the billboard. The question is who owns the billboard? The neighbors expressed interest in the removal of the billboard and the petitioner and the application would be willing to work with someone to remove the billboard.

Ms. Curran-Is the billboard leased? Who owns it?

Mr. Defranza- The billboard is leased, but it is not on the deed of the property. The owner of 43 Boston Street does not control the billboard. It may be tied to the auto dealer next door. Behind the billboard is a frequent location for tagging and needs to be better managed.

Ms. Curran- Is the billboard physically attached to the building? Are there windows behind the billboard?

Mr. Defranza- The billboard is not physically attached to the building and is free standing. There are windows behind the billboard. There is a site survey being done and it seems that the entire building occupies the lot. There is no parking on the lot nor is there a place to put any parking on the property. The population that will be served, formerly homeless individuals do not have cars.

179 Boston:

The petitioner proposes to completely restore the building including façade improvements, new windows, roof and front steps. A handicap ramp is proposed for the rear. There is no greenspace or outside space. There are seven (7) parking spaces located on this property.

Ms. Curran: States to the public that the petitioner is requesting a special permit to change the property at both 43 Boston Street and 179 Boston Street from one nonconforming use to another nonconforming use and demonstrating that the proposed use is less detrimental to the neighborhood. The petitioner is showing that the social, economic and community needs served by this proposal is that the same population will be served. The density,

number of people, will be reduced from twenty (20) rooms to 12 studio apartment units located at 43 Boston Street and a reduction from seventeen (17) rooms to sixteen (16) studio apartment units at 179 Boston Street. Traffic, loading and parking will not change at either location. There are no changes to the utilities or other public services. There are no changes to the natural environmental including drainage. Ms. Curran states that it would be a positive improvement to work with the owner of the billboard to remove it. The potential fiscal impact is positive as the non-profit organization pays taxes on projects.

Mr. Defranza- states that the taxes could be a tax credit transaction that is required to be held in a for profit subsidiary. For simplification and commitment, the organization pays taxes regardless of if they are held in a for-profit status or not. The assessor usually mitigates the value based on the income stream and restricts taxes based on income caps. In this case, the taxes are probably better. Yes, the organization pays taxes.

Mr. Defranza- The population that these properties may serve will be individuals that are 50% below median income and 30% below median income, which is very similar to the population that is currently served. The population that will be served is very low income.

Ms. Curran- opens questions and comments to the Board.

Mr. Viccica- asks the petitioner to clarify that there are no parking spaces at 43 Boston Street and seven (7) spaces at 179 Boston Street. States that the petitioner is asking to change the use of both properties from one nonconforming use to another nonconforming use for a particular group of people. If we approve a Variance and the property is sold, what happens?

St. Pierre and Ms. Curran- state that the petitioner is seeking a special permit and that the Board can condition a special permit to the property.

Mr. Viccica- does the population served by this proposal typically not drive?

Mr. Defranza- It is frequent that the individuals served by this kind of housing do not have cars. One of the benefits of 43 Boston Street and 179 Boston Street is that there are bus stops in front of both properties.

Ms. Curran- asks the petitioner whether the organization could prohibit individuals from having cars.

Mr. Defranza- probably not. Possession of a vehicle may not be able to be controlled through a lease agreement for an apartment.

Mr. Watkins- where would residents who have vehicles park their cars?

Mr. Defranza- In the unlikely scenario that a resident would have a car, there are public parking spaces on the street.

Mr. St. Pierre- states that there are no cars currently parked at this location on street and it is anticipated that residents will most likely not have a car.

Mr. Watkins- asks about parking for the property manager.

Mr. Defranza- states that the property manager and on-call case worker will likely use on-street parking in front of the building. In the unlikely case that a resident may have a car, the petitioner may be able to park overnight at 179 Boston Street or prefer to live where there are on-site parking spaces.

Mr. St. Pierre- In the SRO's in the rooming houses there are often two to three beds in a single room. How will this be managed? Are these studios for single occupants?

Mr. Defranza- Residents seem to be single occupants and the proposed studio apartments are small. However, the current rooms are even smaller than what is proposed. Harborlight Community Partners controls the leases with individuals and also provides on-site property management and staff. If an individual is not on a lease, a person is not allowed to live in the space. There are two (2) scenarios, an individual on a lease could have a visitor, but there is a term period of time that a visitor can stay before it is a violation of the lease and can be enforced. A couple could potentially live together in one of the larger studio apartments. Odds are that these studios will be occupied by individuals.

Mr. St. Pierre- states that in the rooming houses, one person rents a room and that person rents to several more people.

Mr. Defranza- that scenario will not happen with on-site management and enforcement by the petitioner.

Mr. Watkins- 43 Boston- rooming houses legally can house one person per room. How many people could potentially live in this proposed multi-family dwelling unit as proposed?

Mr. Defranza- As proposed, only one person can be in each unit because of the square footage. It is a requirement to have 150 square feet per person. At 43 Boston Street all of the apartments are proposed to house only one person per apartment. At 179 Boston Street there are a few apartments that are 300 square feet or slightly larger that would potentially house a couple.

Mr. St. Pierre- Currently, rooming houses are difficult to manage and enforce occupancy limits. With on-site management and active monitoring someone on site there is someone able to monitor.

Mr. Viccica- For management if someone is bringing additional people into the apartments?

Mr. Defranza- 1) Demonstrate that another person is living in the apartment to make an accusation and move to evict the tenant 2) Management will let the resident know that it is known that an additional person has been present who is not on the lease and management will warn the tenant and let them know the potential consequences of having additional people in the unit is eviction.

Ms. Curran- Asks the petitioner to show the proposed elevations of 179 Boston Street.

Mr. Defranza- states that there will not be any major architectural changes to the exterior of 179 Boston Street. The exterior material is a synthetic clapboard materials.

Ms. Viccia- asks the applicant to confirm that he is working with an architect to show improvements to the façade.

Mr. Defranza- states that improvements to the façade include new hardy plank siding, windows, roof, shutters and clapboards and soffits. The trim on the windows will be replaced and matched in kind.

Mr. St. Pierre- Will there be a handicapped ramp at 179 Boston Street?

Mr. Defranza- Yes, on the left rear side of the building to access handicapped units on the first floor of each building.

Mr. Watkins- Asks the petitioner about the proposed HVAC system?

Mr. Defranza- states that the heating systems in both 43 Boston Street and 179 Boston Street are in good condition. However, they are both not a forced air system. The petitioner is still looking at the possibility of installing a forced air system.

Ms. Curran- Opens public comment.

Kurt Mertsch, 177 Boston Street- Strongly opposes the proposed conversion of a rooming house to a multi-family apartment building. Specifically, Mr. Mertsch opposes the proposed outdoor seating area and fears that the operation of the apartments will be a group home. The building is not always full and there are constantly people going in and out of the building and hanging around.

Ms. Curran- asks the applicant to describe the proposed outdoor seating area.

Mr. Defranza- states that the proposed outdoor seating area is not on the plan. It was assumed that there would be some outdoor seating, but does not need to be there if there is opposition.

Mr. St. Pierre- asks the petitioner to talk about the proposed programming and operational use of the building. Assume that people who are living here are looking for jobs, getting jobs and working.

Mr. Defranza- Residents who would live here varies from individuals with disabilities to people who are working. The proposals are not a group homes. This is a multi-family apartment building with the opportunity to live independently. The reason for the support systems of a building manager and case worker is to provide resources for residents to be successful and provide access to healthcare and income through disability income or employment. Mr. Defranza states that the proposals for the conversion of the existing rooming houses to apartments will be more successful.

Ms. Curran- Now there is some vacancy. What is the vacancy rate? Is it similar to other apartments where sometimes where the apartments are at capacity and sometimes they are not?

Mr. Defranza- States that vacancy rates are generally not very high as there is a need for this kind of housing. Currently, there is one (1) vacancy at each location, but there is some fluctuation in vacancy.

Mr. Mertsch – asks the petition whether Harborlight Community Partners has purchased the properties or whether the sale is contingent upon the Zoning Board of Appeal approval process. Someone was working on the roof at 179 Boston Street last week.

Mr. Defranza- States that Harborlight Community Partners does not own the properties, but has them under agreement. Mr. Defranza stated that the buildings could have been bought the way they are, but chose to not do so because the condition of the buildings are not good enough. Mr. Defranza states that the buildings could have been purchased, kept as rooming houses and incorporate Harborlight Community Partner's management model. However, the buildings are not in good condition and the operation as they are.

Ms. Curran- states that the criteria for a special permit request to change from one nonconforming use to another nonconforming use is whether the proposed use is less detrimental to the neighborhood than the existing use. 43 Boston Street-The proposed density is a reduction of twenty (20) single occupancy rooms to twelve (12) single occupancy apartments and is less detrimental to the neighborhood based on the reduction of density, proposed façade improvements and the population serves is the same with the addition of on-site building management and programming.

Mr. Watkins- concurs with Ms. Curran that the proposed change of use will be less detrimental to the neighborhood than the existing use. The fiscal impacts will be positive to the tenants and to the City. This is a good opportunity to rehab a building and provide good services to the residences at 43 Boston Street.

Mr. Watkins- requests to restate any special conditions.

Mr. Curran- states that if the population were to change to moderate income the Board would like to ensure that the management and services will remain.

Mr. St. Pierre- suggests a condition that the applicant, successors or assigns shall use the property as presented to the Board including providing management offices, a manager that will visit the property daily and a case worker that will be available to residents on an on-call basis. If there is a change to the use and/or management the applicant, its successors or assigns shall return to the Zoning Board of Appeals.

Mr. Watkins- asks whether there is another special condition suggested regarding the billboard.

Ms. Curran- states that the petitioner shall make an effort to work with the owner of the billboard to remove it.

Mr. Defranza- states that the neighborhood group was particularly interested in seeing the removal of the billboard. It may not be possible as someone else owns the billboard and the rights.

Mr. Viccica- asks for clarification on whether the billboard is attached to 43 Boston Street.

Mr. St. Pierre- states that the billboard is freestanding and may be on the neighbor's property.

Mr. Copelas- states that when this property was marketed for sale, it was represented that the revenue from the sign went along with the building. At a previous time when it was marketed.

Mr. Defranza- states this is not the case, but would be positive if it were the case.

Mr. St. Pierre- suggests the Assessor's Office would have information regarding ownership of the billboard.

Mr. St. Pierre – asks the Board to take two (2) separate votes; one for each petition proposed.

*Further discussion is denoted below regarding 179 Boston Street.

Motion and Vote: Mr. Watkins makes a motion to approve requesting a Special Permit seeking relief from *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use to another, less detrimental, nonconforming use to allow a change from a rooming house to a multifamily residential dwelling unit at the property located at 43 Boston Street. The motion is seconded by Mr. Viccica. The vote was unanimous with four (4) (Rebecca Curran (Chair), Tom Watkins, Jimmy Tsitsinos, Paul Viccica). The petition is approved.

Project	A public hearing for a petition requesting a Special Permit seeking relief from <i>Sec. 3.3.2 Nonconforming Uses</i> of the Salem Zoning Ordinance to change from one nonconforming use to another, less detrimental, nonconforming use to allow a change from a rooming house to a multifamily residential dwelling unit.
Applicant	HARBORLIGHT COMMUNITY PARTNERS
Location	179 BOSTON STREET (Map 16 Lot 52) (B2 Zoning District)

Ms. Curran- Continued discussion on 179 Boston Street. Ms. Curran confirms that the applicant proposes to reduce the number of units from seventeen (17) rooms to 16 studio apartments. As originally proposed in the petition form, the applicant proposed a reduction of rooms from seventeen (17) rooms to 10-12 small studio apartments. Is this a change?

Mr. Defranza- states that the intent was to have 10-12 studio apartments, but had trouble financing the project. Therefore, the petitioner is proposing a reduction of units from seventeen (17) rooms to sixteen (16) studio apartments.

Ms. Curran- states that the density reduction is not much of a change and this location is in more of a residential neighborhood with concerns from a neighbor. The apartments will serve the same or similar population as the rooming house serves now. The outdoor space might be detrimental to the neighborhood. Eliminating the outdoor space may be a good idea.

Mr. Tsitsinos- asks the petitioner whether it would be beneficial for the neighborhood to have a fence installed along the property line.

Mr. Defranza- states that there is a shared driveway and the property is already fenced.

Mr. Viccica- This is a different property. The proposed change in density is not significant and there are only seven (7) parking spaces there would be much more of a problem here based on the existing character of the neighborhood. Mr. Viccica recommends that the density of units be reduced to 10-12 units.

Ms. Curran- asks the petitioner to come back with additional information to show the feasibility of a reduction in the number of units proposed from 16 to 10 or 12 units.

Mr. Viccica- states that the problem with reducing the number of units from the existing seventeen (17) rooms to 10-12 units is that the apartments could be much larger square footage and accommodate more people and possibility.

Mr. Defranza- states that the organization will not be able to finance one project without the other.

Mr. Defranza- requests a continuation to be heard at the next regularly scheduled meeting on October 21, 2015 and provide information regarding the possible reduction of units to reduce the overall number of residents at this location.

Motion and Vote: Mr. Watkins makes a motion to approve the request to continue the public hearing to the next regularly scheduled meeting on October 21, 2015. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with four (4) (Rebecca Curran (Chair), Tom Watkins, Jimmy Tsitsinos, Paul Viccica).

Project	A public hearing for a petition requesting Variances seeking relief from Sec. 4.1.1 <i>Table of Dimensional Requirements</i> for minimum lot area and minimum lot area per dwelling unit and Sec. 5.1 <i>Off-Street Parking Requirements</i> of the Salem Zoning Ordinance to allow the conversion of a single-family dwelling unit to a two-family dwelling unit and associated parking.
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Applicant **BLUE WATERS VERO, LLC**
Location **11 HERBERT STREET (Map 35 Lot 320)(R2 Zoning District)**

Attorney McGloin presents the petition. The property was originally a two (2) family dwelling unit, but was converted into a single family home, at the request of the landowners, due to tax purposes. The new owner is now seeking to divide the house into a two (2) family dwelling unit. Although the home is a single family, the house is metered as a two (2) family and states that it would be costly for the current owner to improve the current single family home as the house is separately metered for two (2) units and internally is laid out as a two (2) family house. Attorney McGloin also states that the footprint of the building is not proposed to change.

Ms. Curran- confirms with the petitioner that the request is for variances and states that the property is located in an R2 Zoning District. In this district, a two (2) family dwelling unit is allowed by right. However, the lot is dimensionally nonconforming as the lot size is 2,657 square feet and the zoning ordinance requires a minimum lot size of 15,000 square feet and a minimum lot area per dwelling unit of 7,500 square feet. What's going on with the proposed parking?

Attorney McGloin, the petitioner is proposing two (2) different parking plans and prefers to have the plan with two (2) tandem parking spaces for a total of four (4) parking spaces. There is also a plan with three (3) parking spaces with a tandem parking space. There is also on-street residential parking.

Ms. Curran- states that the petitioner is a variance for relief from the parking requirements and lot area per dwelling unit. Ms. Curran asks the applicant to explain the hardship.

Attorney McGloin states that the hardship is financial because the house was originally a two (2) family home and it will be a financial hardship for the owner to renovate the newly purchased house as the house is divided and has two (2) electric meters and water hook-ups.

Ms. Curran- asks the petitioner whether the property has changed hands recently.

Attorney McGloin- the petitioner recently bought the home through an estate sale and bought it as a single-family home.

Ms. Curran- asks Tom St. Pierre, Zoning Enforcement Officer, the home was once a legal two (2) family home and for tax purposes, the owner asked for the home to be converted into a single- family home. Did the conversion from a two (2) family home to a single-family home create a situation where the property lost its grandfathered status as a dimensionally nonconforming two (2) family dwelling unit?

Mr. St. Pierre- Yes.

Ms. Curran- opens comment for the Board.

Mr. Viccica- as a two (2) family the three car scenario appears to work. Does this scenario require a variance because of the proposed tandem parking?

Mr. St. Pierre- The parking requirement in an R2 Zoning District is one and a half (1.5) parking spaces per dwelling unit and tandem parking does not count as a legal space.

Mr. Viccica- what is the hardship for the requested parking variance?

Ms. Curran- as a single family use, there is adequate on-site parking. As a proposed two (2) family dwelling unit, the number of parking spaces is in adequate and requires a variance. The financial hardship stated by the petitioner that it is uneconomic to rehabilitate the existing single-family home is not a legitimate hardship and suggests that the petitioner may have over paid for the home.

Attorney McGloin- states that no matter who buys this property and how it is used, in order to live in it, there are significant repairs that need to be made to convert it into a single family home. The interior layout of the home is as a two (2) family house and utilities are metered separately. Anyone who owns this house has a significant financial burden to structurally convert this house into a single family home. The previous grandfathered use is how the home was previously designed. As for the requested relief for parking, if the petitioner used the home as a single-family, the owner could potentially use the space for four (4) or five (5) cars.

Mr. Copelas- the current owner bought the property as a single family home with the knowledge that the property needed to be renovated. The definition of a hardship for a variance is not a personal hardship. The hardship must be related to special conditions and circumstances that especially affect the land, building, or structure involved, generally not affecting other lands, buildings and structures in the same district. There is not anything that is unique with the property.

Attorney McGloin- states that the property is unique in that every other property in the neighborhood is a multi-family dwelling unit. Owning a single-family home of this size is an abnormality in the district.

Mr. Copelas- the petition does not meet the standard for a hardship. The petitioner purchased the property as a single family home.

Ms. Curran- opens public comment.

Nancy Corral, 27 Derby Street- the streets in the historic districts are small streets and have been neglected. This is a dangerous situation and would like to not see any SUV's parked on the sidewalk. There are existing parking issues on this street. Garbage trucks cannot easily get by and there is not anymore on-street parking. The person who bought this place knew what he was going to do.

Ms. Curran- closes public hearing and Board discussion.

Mr. Curran- states that the petitioner is requesting Variances for parking and relief from the lot area requirements.

Attorney McGloin- proposes a reduction in the number of parking spaces requested and asks the Board to consider allowing one (1) parking space per dwelling unit. Attorney McGloin states that a single family home could easily accommodate six (6) people and several cars with more impact on the neighborhood that a two (2) family home. The building is approximately 2,500 square feet.

Ms. Curran: States that there is no legitimate hardship for variances requested. There is an understanding that the property was once used as a two (2) family home, however, the grandfathered status of the property that could have allowed a dimensionally nonconforming

two (2) family structure has been lost as the previous owners requested a conversion of the two (2) family to a single family home for tax purposes. The requested conversion of the property to a two (2) family home cannot occur without the requested dimensional variance and parking variance. There are serious concerns regarding existing parking and traffic circulation on this street that may be compounded by an increase in density. There is no hardship. For variances, the petitioner must demonstrate that there are special conditions and circumstances that especially affect the land, building, or structure involved, generally not affecting other lands, buildings and structures in the same district; literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant; and desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the district or the purpose of the ordinance.

Motion and Vote: Mr. Copelas makes a motion to approve Variances seeking relief from Sec. 4.1.1 *Table of Dimensional Requirements* for minimum lot area and minimum lot area per dwelling unit and Sec. 5.1 *Off- Street Parking Requirements* of the Salem Zoning Ordinance to allow the conversion of a single-family dwelling unit to a two-family dwelling unit and associated parking. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with one (1) in favor (Jimmy Tsitsinos) and four (4) (Rebecca Curran (Chair), Tom Watkins, Peter Copelas, Paul Viccica). The petition is not granted.

Project A public hearing for a petition requesting an Appeal of the Decision of the Building Inspector to allow the use of a two-family dwelling unit as a three-family dwelling unit.

Applicant **CAROL and KEVIN CROOM**

Location **1 MILK STREET (Map 35 Lot 553) (R2 Zoning District)**

Attorney Daniel Seligson- 185 Devenshire Street, Boston, MA presents the petition.

Attorney Seligson- states that the property owners Carol and Kevin Croom were issued a notice of violation from the Building Inspector dated July 22, 2015 in which the property owners were deemed to be operating an illegal three (3) family dwelling unit. The petitioners are requesting an Appeal of the Decision of the Building Inspector. Since 1984 the property owners have owned this building and have had 3 (three) dwelling units. The petitioners seek to keep the property as a three (3) family dwelling unit. The property is located in an R-2 Zoning District.

Ms. Curran- Is this a grandfathered unit?

Mr. St. Pierre- States that the Board packet on this case has numerous documents from the Building Department showing that the previous owners of the property and the Croom family have had been notified on multiple occasions that the property was being used with

an illegal third dwelling unit. The illegal pre-dates the Crooms. The property came before the Zoning Board of Appeals to allow a third family dwelling unit and was denied. In 1983, City records show that a petitioner withdrew the request for a Special Permit to allow a third family dwelling unit. This unit has been identified as an illegal unit and has continue to be used this way beginning with a previous owner and continuing to be used by the Crooms. The Crooms attempted to come before the Zoning Board of Appeals and withdrew the application and the previous owners came before the Zoning Board of Appeals and were denied their request.

Mr. Copelas- In 1986, the Assistant Building Inspector issued a notice of violation of the Zoning Ordinance to Mr. Croom for operating an illegal three (3) family dwelling unit. In 1992, Mr. Croom filed a petition with the Zoning Board of Appeals to allow a three (3) family dwelling unit, but withdrew the request. In 1998, Mr. Croom wrote a handwritten letter to the Building Department stating that the home is being used only as a two (2) family dwelling unit in response to a notice of violation of the Zoning Ordinance. There is a long history of documentation between the City and current property owners of violating the Zoning Ordinance.

Ms. Curran- Looking at the City documentation this property does not appear to have a grandfathered three (3) family dwelling unit use. It is clear that the request for a third unit has been denied by the Zoning Board of Appeals and the City's records show that the property was historically a two (2) family use and the current property owners are aware, as described in the 1998 letter from Mr. Croom to the Building Department, that the property is a two (2) family dwelling unit.

Mr. St. Pierre- In the opinion of the Zoning Enforcement Officer that is being appealed, the property is a two (2) family dwelling unit with an illegal third dwelling unit. The use of a three (3) family dwelling unit is not a grandfathered use.

Ms. Curran- The petitioner is requesting an Appeal of the Zoning Enforcement Officer. Is there a mechanism to ask for relief from the Zoning Ordinance?

Mr. St. Pierre- There is no mechanism for the petitioner to ask for relief from the Zoning Ordinance to allow a three (3) family dwelling unit as the City of Salem does not allow use Variances.

Attorney Seligson- Confirms that the petitioner is requesting an Appeal of the Decision of the Zoning Enforcement Officer. Should the Board uphold the Decision, is there a mechanism to allow the owners to continue to operate a three (3) family dwelling unit? The notice of violation states that the owner needs to secure permits for the removal of the third dwelling unit. The Attorney proposes to make one of the two (2) units larger than present size.

Mr. St. Pierre- It is often the fix to allow the space of the illegal third unit to be allocated to one of the existing dwelling units to allow for there to be one larger and one smaller dwelling unit. However, this has been done before at this property and the owners converted the space back into a third unit. The conversion to a two (2) family dwelling unit can be done as a matter of right with a building permit. Building permits must be secured to remove the

third kitchen and reconfigure the building into a two (2) family dwelling unit. This was the solution offered to the property owner, but the petitioner chose to go before the Zoning Board of Appeals for an Appeal of the Zoning Enforcement Officer's Decision.

Mrs. Kroom- States that the property is a two (2) family dwelling unit with extended family living on the third floor for sixteen (16) years. When the Krooms were told that the property could not be used as a three family dwelling, a dwelling unit was removed and a door was installed so that the second and third floor units were merged into one unit with multiple people living in the single apartment. Kevin has been paying taxes on the property as a two (2) family dwelling unit and it was listed as a two (2) family property when the Kroom's bought the property. There are currently three kitchens and operates as a three (3) family dwelling unit. Does one family only have one kitchen?

Mr. St. Pierre- Ernest Boch vs. Zoning Board of Appeals of the Town of Edgartown is a case that allows three kitchens in a single family home. However, if you have everything you need to live in a unit, including a sleeping area, kitchen, bathroom and separation from other living space it is a dwelling unit. Mr. St. Pierre requests that the petitioner request a building permit and have plans that address the violation and show a townhouse unit or something that cannot be easily converted back into a three family dwelling unit. The City has a long history with these property owners showing a series of Zoning Violations and remediation only to see that the property owners continue to convert the property back and operate an illegal dwelling unit.

Mr. Copelas- Currently, the related parties are living on the first and third floor and the unrelated party is on the second floor.

Ms. Croom- asks the Board whether current tenants need to move out.

Mr. St. Pierre- asks the petitioner to submit a plan that is acceptable to the Zoning Enforcement Officer/ Building Commissioner that addresses the violation and corrects the issue adequately. The plan needs to show two (2) residential units and can combine either the first and second floor in one unit or combine the second and third floor in one unit. The layout does not matter as long as the plan shows two (2) separated units rather than three (3) units. If the intent is to move forward and correct the issue, the City has no interest in fining the property owner. Continuing to operate an illegal third unit is not sufficient.

Ms. Curran- Opens public comment.

Wilma Degregorio- 18 1/2 Pickman Street- Supports the Decision of the Building Inspector and states that the Kroom's have not been honest or been good neighbors and have also trespassed on property. Ms. Degregorio urged the City to take action and pursue the option to fine the owners. The City has not done anything for years to pursue this issue.

Ms. Curran- Letter from 18 Pickman Street read into the record in support of the Decision of the Building Inspector.

Mr. and Ms. Turn, 16 Pickman Street- in support of the Decision of the Building Inspector. A letter received was read into the record.

21 Andrews Street- in support of the Decision of the Building Inspector. A letter received was read into the record.

22 Andrews Street- in support of the Decision of the Building Inspector. A letter received was read into the record.

Ms. Curran- states that the Board is considering whether the building inspector was correct in his decision that this is a two family and the third unit is illegal. This is clearly the case based on the record.

Kevin Kroom 12 Washington Street, Marblehead- Tried to rectify the situation, but due to other circumstances family members live. Apologizes to neighbor for trespassing and states willingness to work with the building inspector to fix the situation.

Motion and Vote: Mr. Viccica makes a motion to uphold the Decision of the Building Inspector that the existing building is a two (2) family dwelling unit. The motion is seconded by Mr. Copelas. The vote was unanimous with five (5) in favor (Rebecca Curran (Chair), Tom Watkins, Peter Copelas, Paul Viccica, Jimmy Tsitsinos) and none (0) opposed. The Decision of the Building Inspector is upheld.

APPROVAL OF MEETING MINUTES

July 15, 2015 meeting minutes were approved.

Motion and Vote: Mr. Viccica makes a motion to approve the minutes as printed, seconded by Mr. Duffy. The vote was with four (4) (Peter A. Copelas (Vice-Chair), Jimmy Tsitsinos, Tom Watkins, James Hacker) in favor and none (0) opposed.

OLD/NEW BUSINESS

None

ADJOURNMENT

Ms. Curran motioned for adjournment of the September 16, 2015 regular meeting of the Salem Board of Appeals at 8:45pm.

Motion and Vote: Ms. Curran made a motion to adjourn the September 16, 2015 regular meeting of the Salem Board of Appeals, seconded by Mr. Watkins, and the vote is unanimous with five (5) in favor (Rebecca Curran, Peter A. Copelas (Vice-Chair), Jimmy Tsitsinos, Tom Watkins, James Hacker) and none (0) opposed.

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:

http://salem.com/Pages/SalemMA_ZoningAppealsMin/

Respectfully submitted,
Erin Schaeffer, Staff Planner

