

**City of Salem Zoning Board of Appeals**  
**Meeting Minutes**  
November 18, 2020

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, November 18, 2020 at 6:30 pm via remote participation.

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

Chair Duffy explains that pursuant to Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor’s March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, the Zoning Board of Appeals meeting scheduled for Wednesday, November 18<sup>th</sup> 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), Jimmy Tsitsinos, Peter Copelas, Carly McClain, Rosa Ordaz, and Paul Viccica. Also in attendance were Brennan Corrison – Exiting Staff Planner, Lev McCarthy – Staff Planner, and Jonathan Pinto – Recording Clerk. Those absent were: Steven Smalley (arrived later).

**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 Kelley)**  
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

Chair Duffy introduces the petition.

Chair Duffy and Mr. Corrison explain that the Board received a written request to continue to the December meeting.

**Motion and Vote:** Mr. Viccica motions to continue 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) to the next regularly scheduled meeting on Wednesday December 16, 2020 at 6:30PM.

Ms. McClain 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.**

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Location: **23 Andrew Street (Map 35, Lot 558) (R2 Zoning District)**  
Applicant: **Barbara Flaherty**  
Project: A continuation of 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.

Mr. Corriston notes that testimony was initially heard at the September 29<sup>th</sup> meeting, and asks that Rosa Ordaz and Steven Smalley not participate as they did not receive materials regarding the application.

Barbara Flaherty introduces herself and summarizes her proposal. Ms. Flaherty explains she was asked to provide additional information and provide clarity regarding her statement of hardship. Ms. Flaherty indicates the existing stairway opening is very steep and narrow at 24.5 inches, and narrows further to 18.5 inches around each corner. She states there is no way to make the stairway to code, and that is the basis for her proposal. Without the relief requested, Ms. Flaherty states the stairwell and home cannot accommodate people of all shapes and sizes, and would be problematic for first responders with any gear. The proposed decks and stairways are designed to enhance the building and provide safe means of egress. Ms. Flaherty presents photographs and measurements of the existing stairway, as well as architectural plans for the proposed deck and staircase, demonstrating setback compliance. Floor plans of the third floor are shown, along with photos of the outside existing conditions where the staircase is proposed to be built. Ms. Flaherty shows photos of other home upgrades already completed and contends the neighbors are supportive of the work done to date.

Chair Duffy notes the Board was trying to figure out issues with respect to the question of hardship, and asks if the Board members have additional questions.

Mr. Viccica asks if the deck and stairs are already built, or if the variance is being sought pre-construction. Ms. Flaherty says nothing has been built yet. Mr. Viccica if there will be a roof on top of the stairs creating a covered porch on the upper floor, and Ms. Flaherty indicates there will. Mr. Viccica asks why the stairs are not being enclosed so that they are inside the house, and Ms. Flaherty

indicates there is not enough footprint to do so, as the house is narrow. Mr. Viccica clarifies that he is asking why they have not proposed to enclose the stairs outside the house, so that it becomes enclosed within the house. Ms. Flaherty states it was not considered as an option.

Mr. Tsitsinos offers that he has seen the job site and that the stairs are not safe as is and difficult to go down. He adds that if there was an emergency there would be a problem. Mr. Tsitsinos also notes that the existing bathroom is very small and requires you to crouch to shower, and that he would be fine with moving forward with the request as he can see a need for it.

Ms. McClain states she appreciates the additional information and photos, noting that it was difficult to understand the hardship at the prior meeting. At first the proposal seemed more cosmetic, but it is apparent now it is a safety issue as well.

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

Chair Duffy discusses how the applicant meets criteria and findings for a variance and special permit.

Mr. Copelas asks for clarification regarding what causes the need for the variance, and Chair Duffy explains that the three level deck causes it to exceed 2.5 stories. Mr. Corrison confirms. Mr. Viccica notes that the variance is caused by the third floor deck itself, not the roof.

**Motion and Vote:** Mr. Viccica motions to approve 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) 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.

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

Location: **2 Dundee Street (Map 10, Lot 50) (R1 Zoning District)**  
Applicant: **Frank Lanzillo**  
Project: A continuation of a public hearing for all persons interested in the petition of FRANK LANZILLO for a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot area to construct a 2.5-story, single-family home on the vacant lot at 2 DUNDEE STREET (Map 10, Lot 50) (R1 Zoning District).

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Mr. Corrison notes that Ms. McClain and Ms. Ordaz are ineligible to participate in this matter due to not receiving prior materials.

Attorney Sam Vitali introduces himself and explains the Board previously requested an opinion from the Salem legal department regarding whether lot in question could be built upon; since then he has spoken to the Assistant City Solicitor and provided her with documentation, including two chains of title, deeds related to the lots in question, and two plans of record (1907 and 1963 subdivision plans showing separate lots). Mr. Vitali contends the Assistant City Solicitor indicated she needed to look at two other cases and speak to the Building Inspector, and that perhaps an A&R plan would be required. Mr. Vitali states that presently Mr. Lanzillo is under agreement to obtain the portion of land that is located in Salem, and that he is not sure if the City Solicitor spoke to the Board.

Chair Duffy indicates that Assistant City Solicitor Victoria Caldwell submitted a memorandum that speaks to the issue. Mr. Copelas explains he read the memorandum and that it appears Ms. Caldwell's opinion is that the project is not eligible for a variance, and he suggests the Board is not in a position to be having a legal discussion.

Mr. Corrison presents the memorandum, dated November 18, 2020 and reads it into the record:

"I am writing in response to your inquiry regarding the petition for zoning relief which seeks a special permit or a variance to build a 2.5 story single-family home at 2 Dundee Street. The petitioner asserts that 2 Dundee Street is an undersized vacant parcel consisting of lots 116 and 117 as shown on a 1907 subdivision plan of 'Sutton Villa, Peabody, MA' with 4,980 square feet combined. I have reviewed the materials provided with the petition along with records from a title search and other documents provided to the Legal Department by the petitioner's attorney on November 17, 2020. I have also spoken with the petitioner's attorney.

Common Ownership. An examination of the records on file at the Registry of Deeds indicates that from approximately 1951 up until 2020, three lots on the 1907 plan – 116 and 117 in Salem and 118 in Peabody and Salem (house at 50 Sutton Street, Peabody and rear portion in Salem and assessed by the City as part of 2 Dundee), were held in common ownership. The two parcels came into common ownership in 1951 via separate deeds. They have been conveyed together since 2006. The deeds recorded in the Registry show conveyances since 2006 with the two parcels/3 lots conveyed together over a series of

transactions until they were separated in 2020 – Parcel 1 consisting of the Peabody and Salem lot (118) and Parcel 2 of the two Salem lots (116 and 117).

In July 2020, the owners of all three parcels, Javier Perez and Natalie Jobe-Perez, recorded a quitclaim deed transferring Parcel 2 (lots 116 and 117) to themselves for \$1. In September 2020, a deed was recorded for the sale of Parcel 1 (lot 118) which has a back portion of land in Salem and a house with frontage in Peabody at 50 Sutton Street from Perez and Jobe-Perez to Roberto Velasquez and Sulma Amador for \$430,000.

The petitioner has an option to purchase Parcel 2 and seeks zoning relief to establish the property as a buildable lot.

Chapter 40A, Section 6. Section 6 provides protection for preexisting, undersized lots provided they have at least 5,000 square feet: Any increase in area, frontage, width, yard, or depth requirements of a zoning ordinance or by-law shall not apply to a lot for single and two-family residential use which at the time of recording or endorsement, whichever occurs sooner was not held in common ownership with any adjoining land, conformed to then existing requirements and had less than the proposed requirement but at least five thousand square feet of area and fifty feet of frontage.

In addition to being less than 5,000 square feet, the parcel in question was made less conforming by the separation of it by deed from Lot 118 (50 Sutton Street) which resulted in not only less square footage but of the reduction in the size of the parcel below the statutory minimum.

The 2020 splitting of the parcels appears to be an attempt to reverse a merger of the lots. In Wells v. Zoning Board of Appeals of Billerica, 68 Mass. App. Ct. 726, 735 (2007), the Appeals Court held that adjacent lots in common ownership will normally be treated as a single lot for zoning purposes so as to minimize nonconformities with the zoning ordinance and landowners cannot separate them with an expectation that a building could be constructed. As such, the undersized parcel (lots 116 and 117) was made less conforming by the current owners and should not be eligible for a variance under this analysis.”

The memorandum notes that the petitioner asserts 2 Dundee Street is an undersized vacant parcel consisting of lots 116 and 117, as shown on a 1907 subdivision plan of Sutton Villa in Peabody, MA, with 4,980 square feet combined. Ms. Caldwell reviewed the materials and found from approximately 1951 to 2020, three lots on the 1907 plan (116 and 117 in Salem, and 118 in Peabody and Salem) were held in common ownership.

Chair Duffy states the lots appear to have been merged for zoning purposes pursuant to being conveyed and in common ownership for an extended period of time, up until this year.

Mr. Vitali contends that the lot not meeting the 5,000 square foot requirement is due to the angle of the lot. Mr. Vitali states the lots are not under same ownership now. Mr. Vitali claims his understanding of 40A Section 6 is that it provides protection from increases in dimensional requirements that occur after the formation of the lots. Here, Mr. Vitali argues, the lots have not changed in dimension at all. Mr. Vitali adds the request is for a variance for an undersized lot. Mr. Vitali maintains the lot is assessed for \$153,000 as a buildable lot, and that he is not aware of other

uses for it. He also notes there are two adjoining properties, and that this lot is unique because of the jurisdiction division, shape, and history of the lots.

Mr. Viccica states this has been a long explanation that is in refute of a legal opinion attorney Vitali has not yet read properly. For the sake of moving things along, Mr. Viccica suggests continuing the petition to the next meeting so the applicant can better understand the Assistant City Solicitor's opinion and discuss with City Council whether the matter should even come before the Board.

Ms. McClain agrees and states it would be fair to give Mr. Vitali time to review the case and the memo, and allow the Board to consider the issue more as well. Chair Duffy agrees, and suggests a continuance.

Mr. Copelas informs the petitioner that without receiving additional information from the City Solicitor, his opinion is that the current owners should not be eligible for a variance under the analysis provided. He suggests there should be an opportunity for further discussion with the Solicitor and that he is not opposed to a continuance, but that if nothing changes with respect to the legal analysis there is no way he could act on the petition.

Chair Duffy asks Mr. Vitali if the petitioner would like to continue, and Mr. Vitali states they would.

**Motion and Vote:** Mr. Viccica motions to continue the petition of FRANK LANZILLO for a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot area to construct a 2.5-story, single-family home on the vacant lot at 2 DUNDEE STREET (Map 10, Lot 50) (R1 Zoning District) to the next regularly scheduled meeting on Wednesday, December 16, 2020 at 630PM.

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

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Location:	<b>53 Canal Street (Map 34, Lot 87) (B4 and ECOD Zoning Districts)</b>
Applicant:	<b>Kreshnik Rami</b>
Project:	A continuation of a public hearing for all persons interested in the petition of KRESHNIK RAMI for a variance per Section 4.1.1 <i>Table of Dimensional Requirements</i> of the Salem Zoning Ordinance from minimum depth of rear yard to build a 20' by 40' storage garage within the required rear yard setback at 53 CANAL STREET (Map 34, Lot 87) (B4 and ECOD Zoning Districts).

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Mr. Corrison informs the Board that Mr. Rami has communicated with the Building Department and found way to build the proposed garage without violating any zoning or requiring any relief.

Kreshnik Rami introduces himself and explains that he spoke with Building Inspector Tom St. Pierre, and agreed to continue with a 15 foot setback.

Chair Duffy asks Mr. Rami if he wishes to withdraw his petition without prejudice, and Mr. Rami indicates he would.

**Motion and Vote:** Mr. Copelas motions to accept the request to withdraw without prejudice the petition of KRESHNIK RAMI for a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum depth of rear yard to build a 20' by 40' storage garage within the required rear yard setback at 53 CANAL STREET (Map 34, Lot 87) (B4 and ECOD Zoning Districts).

Mr. Tsitsinos seconds the motion. **The vote is five (5) in favor (Paul Viccica, Steven Smalley, Peter Copelas, Jimmy Tsitsinos, and Mike Duffy (Chair)) and none (0) opposed. The motion passes and the application is withdrawn without prejudice.**



Location: **1 Amanda Way (Map 9, Lot 308) (R1 Zoning District)**  
Applicant: **Danny Cerqueira (Property Owner: Elizabeth Sullivan)**  
Project: A public hearing for all persons interested in the petition of DANNY CERQUEIRA and property owner ELIZABETH SULLIVAN for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* from maximum height of buildings (stories) to expand a nonconforming single-family home by adding a third-floor dormer at 1 AMANDA WAY (Map 9, Lot 308) (R1 Zoning District).

#### Documents and Exhibitions

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

Chair Duffy introduces the petition.

Daniel Sullivan introduces himself as the property owner and explains the proposal is to construct a 10 foot by 10 foot dormer on the rear of the house to finish the attic and install a bathroom. Mr. Sullivan states the peak of the dormer will not exceed the peak of the existing roof line, and that the proposed dormer will not extend past the rear setback of the house. Mr. Sullivan presents floor plans for the attic renovation as well as elevations of the proposed dormer. Photos of the existing conditions are shown as well.

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

Mr. Viccica asks for clarification regarding the stories, and Mr. Corrison explains that the proposal brings the property from 2.5 stories to three, which is why relief is required.

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

Chair Duffy discusses how the proposal meets the special permit criteria.

**Motion and Vote:** Mr. Viccica motions to approve the petition of DANNY CERQUEIRA and property owner ELIZABETH SULLIVAN for a special permit per Section 3.3.5 *Nonconforming*

*Single- and Two-Family Residential Structures* from maximum height of buildings (stories) to expand a nonconforming single-family home by adding a third-floor dormer at 1 AMANDA WAY (Map 9, Lot 308) (R1 Zoning District) subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. 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.

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

Location:	<b>14 Cambridge Street (Map 25, Lot 439) (R2 Zoning District)</b>
Applicant:	<b>Alan November</b>
Project:	A public hearing for all persons interested in the petition of ALAN NOVEMBER for a special permit per Section 3.3.5 <i>Nonconforming Single- and Two-Family Residential Structures</i> to alter and enlarge an existing two-family home by adding a second-story shed dormer to the rear of the existing carriage house and constructing a one-story breezeway connecting the carriage house and main dwelling at 14 CAMBRIDGE STREET (Map 25, Lot 439) (R2 Zoning District).

#### Documents and Exhibitions

- Application date-stamped October 20, 2020 and supporting documentation

Chair Duffy introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the petitioner. Mr. Quinn explains that Mr. November purchased the property two years ago and has performed amazing historically appropriate renovations to the exterior of the main house, which contains two units. Mr. Quinn indicates the proposal is not to add any additional units, but to allow for the small apartment at the rear of the house to be connected to an existing carriage house. The proposal is to expand the space in the existing buildings and connecting them through a breezeway. Mr. Quinn contends the proposal has been vetted by the Historical Commission, but they declined jurisdiction as none of the work or renovations will be visible from any public way. Mr. Quinn presents architectural plans and introduces project architect Dan Ricciarelli from Segar Architects.



Mr. Ricciarelli introduces himself and explains the home is an 1806 McEntire Federal building, and that the existing rear carriage house is not original, but circa 1890. Mr. Ricciarelli states the applicant has a small rear townhome, and that the proposal is to connect it to the carriage house to create a more decent sized unit. Elevations and floor plans are shown, and Mr. Ricciarelli explains the kitchen will be removed and placed in the carriage house portion. The second floor of the carriage house would contain a small bedroom, and due to low headroom a rear shed dormer is also being proposed. Additionally, the breezeway connection between the main house and carriage house will contain a bathroom. Mr. Ricciarelli notes the existing house has already been restored, and suggests restoring the carriage house will have a positive impact on the neighborhood.

Ms. McClain asks if the dormer addition will have an impact on neighbors since the carriage house is along the property line. Mr. Ricciarelli states the dormer is being brought back so that it will be beyond three feet from the property line to allow for windows, and that the carriage house backs up to the rear yard of the abutting property.

Chair Duffy references sheet A1 and asks if there will be three kitchens on the first floor. Mr. Ricciarelli clarifies that the front unit has a kitchen, as does the rear unit, but that the rear unit kitchen will be removed and moved into the carriage house. Mr. Ricciarelli apologizes for the confusion.

Ms. McClain asks if the neighbor on Broad Street has spoken to the property owner, and Mr. Ricciarelli contends Mr. November has spoken to them about the proposal.

Alan November introduces himself and states the Shiller's own the property on Broad Street behind the carriage house. Mr. November states they discussed the windows on the proposed dormer, as well as whether the proposal would create a third unit or just be an extension of the rear unit via email exchange. The Shiller's asked Mr. November if he could put the windows on the street side of the carriage house, and he indicated he could not due to the historic nature. Mr. November contends he has not heard from the neighbors since the email exchange so he is unaware of any further concerns, but notes he tried to minimize the windows that face the abutting property.

Chair Duffy opens the floor to public comment.

Jeremy Shiller, abutting property owner, introduces himself. Mr. Shiller indicates the email exchange with Mr. November was helpful and that while he would like Mr. November to be able to do what he wants, Mr. Shiller has concerns regarding the impact on privacy. Mr. Shiller asks about the window height within the barn itself. Mr. Ricciarelli explains there is a short roof, so the windows would be at head or eye level. Mr. Shiller acknowledges that things can be tight in the McEntire district, but questions whether this is unusual or not.

David Driscoll of 16 Cambridge Street introduces himself, and states his property next door has benefited from the refurbishing and restoration done to date. Mr. Driscoll states he reviewed the materials filed with the Board as well as the plans, suggests the connection between home and carriage house is being generously described as a breezeway. Mr. Driscoll argues the structure seems more like an addition, particularly since it includes a bathroom, and suggests it is a significant departure from the neighborhood character. Mr. Driscoll also expresses concerns regarding parking, noting that the area already has parking issues, and that he worries creating a larger home could add more density and exacerbate parking difficulties.

Karen Cady of 18 Cambridge Street introduces herself. Ms. Cady expresses concern regarding the impact on her own property, as she would lose a significant amount of privacy from her backyard. Ms. Cady notes she has lived in her home for over thirty years and that the lights in the carriage house have never been on. She suggests having a residence in the carriage house with a kitchen would be detrimental to her as well as other neighbors. Ms. Cady also echoes concerns raised regarding parking. She also contends neighbors were not adequately informed of the proposal.

Mr. Quinn states that while he appreciates the comments and concerns, there are no additional units being added so the concerns regarding parking are misplaced. He adds that the home also currently has off-street parking. Mr. Quinn indicates that while carriage houses are being altered and renovated all over Salem with homeowners seeking to leverage local ordinances to gain additional units, that is not the case with this proposal. He contends the additions are benign in size and design, and that the Historical Commission did not raise any concerns. Mr. Quinn says Mr. November has been very responsive and responsible, and that he would likely respond to any major concerns.

Chair Duffy asks about the elevation that overlooks the neighboring property, and Mr. Ricciarelli explains that 16 Cambridge is in front and aligns with the main house, and that 18 Cambridge is two doors down with an extended "L" shaped yard around the back of 16 Cambridge. Mr. Ricciarelli explains the position of the windows and notes the first floor window will not be illuminated and that the second floor window will be over a stair, so it is unlikely anyone will be looking out. There is additional discussion regarding the windows, and Mr. Ricciarelli also notes there is significant growth around the property. He also suggests Mr. November is happy to discuss and work with neighbors.

Jennifer Kiefer of 13 Chestnut Street introduces herself, and states she has benefited from the renovations to date as her property has a great view of it. Ms. Kiefer echoes concerns regarding density and parking, and asks to see the floor plans again. Ms. Kiefer asks about how the breezeway connects the two spaces, and questions whether it could be informally made into two units and used in the future as an Airbnb.

Mr. Quinn responds that ordinances regarding short-term rentals require no new additional units other than those legally occupied can be used, and that any such rental has to be of a whole unit, so a two-family cannot be formally or informally turned into three or four-unit for rental purposes. Mr. Quinn maintains the property is a two-family and will remain a two-family. Mr. Quinn asks Mr. Ricciarelli to confirm the dimensions of the breezeway, and Mr. Ricciarelli states it will be 13 foot.4 inches by 7 foot 3 inches.

Mr. Corriston offers that Mr. Quinn is correct and that this could not be used as a non-owner occupied short term rental, although there may be options available if it were an owner occupied short term rental, and those are laid out in City of Salem Zoning Ordinances. Mr. Corriston also notes that if a third unit were attempted to ever be added it would require Zoning Board relief.

Mr. Viccica suggests adding a special condition that the existing kitchen be demolished since the drawings submitted show three kitchens. Mr. Viccica states that he hopes there will be continued discussions and negotiations with neighbors regarding privacy issues, but that he otherwise has no issue with connecting the two buildings as long as it remains a two-family residence.

Chair Duffy explains how the criteria for a special permit is met by the petition, and notes it is a relatively minor change.

**Motion and Vote:** Mr. Viccica motions to approve the petition of ALAN NOVEMBER for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* to alter and enlarge an existing two-family home by adding a second-story shed dormer to the rear of the existing carriage house and constructing a one-story breezeway connecting the carriage house and main dwelling at 14 CAMBRIDGE STREET (Map 25, Lot 439) (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. The existing kitchen in the existing unit shall be demolished, so that there are only two kitchens in the entire building.

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

Location: **140 Highland Avenue (Map 14, Lot 264) (R1 and ECOD Zoning Districts)**

Applicant: **Johnny Polanco**

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

#### Documents and Exhibitions

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

Chair Duffy introduces the petition.

Johnny Polanco introduces himself and presents a plot plan. Mr. Polanco explains his intention was to construct a four foot wall based on the permit he received, but that due to unlevel ground, in order to maintain a good visual the wall had to be higher in some parts. Mr. Polanco indicates the wall was built for safety as he was noticing debris flying into his yard and house, some of which have damaged windows and nearly hit his children. Mr. Polanco also maintains he has had issues with people trespassing his property. Mr. Polanco suggests the wall adds value to the neighborhood, and presents photos of the home and wall.

Mr. Viccica asks for clarification where the wall exceeds four feet and where it is six feet in height. Mr. Polanco explains where in the photo the height exceeds four feet. Mr. Viccica asks for further clarification and dimensions. Mr. Polanco reiterates that he attempted to keep the height at four feet but that it looked bad due to the uneven ground, explaining that he added additional rows of blocks until the wall was more even and uniform. Mr. Viccica states the larger issue is that he did not seek relief or advice prior to building, and asks how much work would be required to remove layers. Mr. Polanco indicates it would be difficult due to electrical wiring, and suggests it would not look good. Mr. Polanco reiterates his goal of safety for his family.

Mr. Tsitsinos asks where the wall is four feet in height, and Mr. Polanco indicates the post at the corner is around four feet. Mr. Tsitsinos asks about the remainder of the wall, and Mr. Polanco says it varies.

Mr. Corriston clarifies the height has to be measured from the curb level, or average grade elevation of the land where the fence/wall is to be located. Mr. Polanco states the curb is not level, and therefore he measured from the inside of the property, but that it is close to four feet.

Chair Duffy asks if it would be difficult to obtain elevations of the wall so the Board could know the actual dimensions.

Mr. Viccica acknowledges the difficulties associated with the unlevel ground and Mr. Polanco's concerns regarding safety, and asks Chair Duffy if it would be worth continuing to allow the for accurate elevations and dimensions to be measured.

Ms. McClain asks if it has been safer since erecting the fence/wall, and Mr. Polanco says it has.

Chair Duffy opens the floor to public comment.

Salem City Councilor Domingo Dominguez introduces himself. Councilor Dominguez says he knows Mr. Polanco and that he has seen the site. Mr. Dominguez states the intent behind the wall was safety, and that Mr. Polanco's concerns are legitimate. He states he is in favor of granting relief.

Barbara Peckham of 144 Highland Avenue introduces herself as the abutting property owner. Ms. Peckham indicates she has lived in her home for 26 years and has never had the types of problems Mr. Polanco has regarding trespassing and debris. Ms. Peckham contends the wall runs along her driveway and is six feet or more the entire length of the driveway. Ms. Peckham states the wall creates visibility issues for her exiting her driveway onto Highland Avenue as she can no longer see if there are pedestrians or oncoming traffic. Ms. Peckham explains that she mentioned her concerns to Mr. Polanco, who said he would install mirrors, but the mirrors are ineffective and she still fears injuring someone. Ms. Peckham also notes that in the past Mr. Polanco has indicated wanting to

put up a fence to install a swimming pool at a later date. Ms. Peckham next asks if the police have been notified regarding the problems Mr. Polanco has experienced on his property, as she lives alone and has never felt unsafe. Ms. Peckham states her greatest concern and complaint is that she can no longer see when pulling out of her driveway.

Mr. Corriston notes the Board received written comments from Anthony Whitten of 146 Highland Avenue. The written comments express concerns regarding obstructed views for any driver leaving 144 Highland Avenue, causing potential danger to drivers and pedestrians. Mr. Whitten suggests the wall be lowered to the proper height according to building code.

Mr. Polanco contends he has been a good neighbor, and that he did not create the wall with a height of six feet to try and hurt Ms. Peckham. Mr. Polanco also maintains he installed drainage so that her property would not be impacted. He suggests the height limitations between neighbors for property division is six feet, and insists he has a right to keep his family safe on his property.

Mr. Corriston clarifies on the height of divisions between properties, and notes no fence along front or side lot lines shall be more than four feet in height as measured from the curb level.

Ms. Ordaz provides further clarification regarding height requirements. Ms. Ordaz indicates she drove by and thinks the wall looks nice. She acknowledges how busy Highland Avenue can be and Mr. Polanco's desire to keep his family safe. Ms. Ordaz next asks if a variance is needed for the six foot wall. Ms. Ordaz also asks if it would be possible to lower the side wall to make it more safe for his neighbor, while keeping the front height the same to offer protection from Highland Avenue. Mr. Polanco suggests says there is no danger if Ms. Peckham is driving properly, and that lowering to four feet would not allow any better visibility.

Mr. Viccica states that based on a quick survey of the area on Goggle Maps it appears that almost all the walls and fences in the area comply with code and are uniform. Mr. Viccica notes that this wall clearly stands out in the neighborhood compared to others, suggesting there may be neighborhood character issues in addition to safety. Mr. Viccica also suggests it may be more appropriate to seek a variance as well.

Mr. Corriston clarifies with respect to whether this should be a special permit or variance, noting that Tom St. Pierre suggested it could be special permit because it is a nonconforming single family property. Mr. St. Pierre is not at the meeting to provide comment. Mr. Viccica opines it should be a request for variance as the nonconforming structure is new.

Mr. Corriston explains the petitions was advertised as a special permit, and that if there are procedural questions, as well as a desire for measurements, it may be useful to seek a continuance for clarification.

Mr. Tsitsinos says the Board would benefit from seeing plans as well. Mr. Viccica and Mr. Duffy agree.

Chair Duffy states that if the Board acts on wrong basis it would not help the applicant, and that it would make sense to have measurements to understand the dimensions. Chair Duffy also indicates it is difficult to ask the Board to create a safety condition that creates danger for someone else, and

that if the wall were four feet the matter would not need to be before the Board. Mr. Polanco reiterates that lowering the wall to four feet would not help with visibility.

Ms. Ordaz asks for clarification regarding the photo from across the street, and Mr. Polanco identifies the wall that he built. Mr. Viccica suggests he had similar questions, and that is why plans and elevations would be helpful as currently it is difficult to understand.

Chair Duffy also notes that dimensions would be helpful for determining compliance even if relief were to be granted. Mr. Viccica agrees, and states that dimensions and elevations are asked of all applicants.

Ms. McClain suggests additional pictures might be helpful, particularly with respect to visibility issues stemming from the wall height. Ms. McClain states that the safety of all residents needs to be appropriately weighed in this case, and that if the neighbor can no longer see leaving her drive, that is a problem.

Chair Duffy agrees, and suggests to Mr. Polanco that he continue his application so that he can speak to the planning department to figure out what drawings and dimensions can be provided. Chair Duffy also suggests providing more pictures of the visual conditions trying to see out of the neighbor's driveway. Mr. Polanco agrees to continue the petition. Ms. Peckham says she will provide pictures as well.

**Motion and Vote:** Ms. Ordaz motions to continue the petition of JOHNNY POLANCO for a special permit per Section 8.2.4 *Entrance Corridor Overlay District: Fences* to allow a six-foot tall decorative concrete wall at the single-family house at 140 HIGHLAND AVENUE (Map 14, Lot 264) (R1 and ECOD Zoning Districts) to the next regularly scheduled meeting to be held on December 16, 2020 at 6:30PM.

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

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## MEETING MINUTES

September 29, 2020

October 21, 2020

Chair Duffy notes he did not have a chance to review the October minutes, and that he has no comment on the September minutes. Mr. Viccica also says he has no comment on the minutes.

**Motion and Vote:** Mr. Viccica motions to approve the minutes for the September 29, 2020 ZBA meeting. Mr. Tstitsinos seconds the motion. **The vote is four (4) in favor and none (0) opposed and one (1) abstaining (Rosa Ordaz). The motion passes.**

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## OLD/NEW BUSINESS

Location: **34 Peabody Street, 47 Leavitt Street, and 38 Palmer Street (Map 34, Lots 384, 136, & 155) (R3 Zoning District)**  
Applicant: **North Shore Community Development Corp.**  
Description: Request for an eighteen (18) month extension of the November 29, 2017 Comprehensive Permit issued by the Board of Appeals to North Shore Community Development Corp. to construct multifamily housing at 34 Peabody Street, 47 Leavitt Street, and 38 Palmer Street (Map 34, Lots 384, 136, & 155) (R3 Zoning District). The Comprehensive Permit will lapse if construction is not commenced within three (3) years after it comes final.

Chair Duffy introduces the applicant.

Attorney Scott Grover introduces himself and explains the Board issued the applicant Salem's first Chapter 40B Comprehensive Permit in 2017, with a public hearing that lasted six months. The permit allowed the construction of 46 affordable housing units in two locations in the Point neighborhood. Mr. Grover states the permit is fast approaching the three-year expiration under state regulation. Mr. Grover contends the extension request is due to the nature of the public financing required for this type of project which is 100 percent affordable. Due to large demand and limited funds for these types of projects, there is a long queue. Mr. Grover indicates the CDC is close to getting funding for this project, and that it is expected to occur this coming round of review or the following, with construction starting either in May of 2021 or May of 2022. Accordingly, Mr. Grover asks the Board to consider an extension of the comprehensive permit.

Chair Duffy asks if the Board has any questions or comments, but there are none. Chair Duffy remarks the petition seems straight forward.

**Motion and Vote:** Mr. Copelas moves to accept the request for a eighteen (18) month extension of the November 29, 2017 Comprehensive Permit issued by the Board of Appeals to North Shore Community Development Corp. to construct multifamily housing at 34 Peabody Street, 47 Leavitt Street, and 38 Palmer Street (Map 34, Lots 384, 136, & 155) (R3 Zoning District)..

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

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Location: **0 Story Street (Map 23, Lot 2) (RC Zoning District)**  
Applicant: **Castle Hill Partners, LLC**  
Description: Request for a twelve (12) month extension of the October 30, 2019 decision of the Board of Appeals granting variances from minimum lot width for each of three proposed lots on a 5.8-acre parcel of land at 0 Story Street.

Chair Duffy introduces the applicant.

Steve Lovely introduces himself on behalf of the applicant who is requesting an extension as they are still working with the Planning Board. Mr. Lovely notes there have been some delays, including the birth of a grandchild, and that he hopes to start in the upcoming Spring.

Chair Duffy asks for more information regarding the Planning Board Process, and Mr. Lovely states he will be meeting with them the next day for a variance on frontage.

Mr. Viccica questions whether the applicant will need to return to the Board for approval if significant changes are made in the Planning Board decision, and Mr. Lovely confirms that would be the case, as does Chair Duffy.

Chair Duffy clarifies the applicant is seeking two extensions, one for the variance from minimum lot width and another from minimum lot frontage.

**Motion and Vote:** Mr. Viccica moves to approve the request for a twelve (12) month extension of the October 30, 2019 decision of the Board of Appeals granting variances from minimum lot width for each of three proposed lots on a 5.8-acre parcel of land at 0 Story Street.

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

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Location: **0 Story Street, 47 Leavitt Street, and 38 Palmer Street (Map 34, Lots 384, 136, & 155) (R3 Zoning District)**  
Applicant: **North Shore Community Development Corp.**  
Description: Request for a twelve (12) month extension of the December 31, 2019 decision of the Board of Appeals granting variances from minimum lot frontage for each of three proposed lots on a 5.8-acre parcel of land at 0 Story Street.

**Motion and Vote:** Mr. Viccica moves to approve the request for a twelve (12) month extension of the October 30, 2019 decision of the Board of Appeals granting variances from minimum lot frontage for each of three proposed lots on a 5.8-acre parcel of land at 0 Story Street.

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

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## ADJOURNMENT

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

**The meeting ends at 8:57 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-2019>



City of Salem Zoning Board of Appeals  
November 18, 2020 DRAFT Meeting Minutes

Respectfully submitted,  
Lev McCarthy, Staff Planner