

City of Salem Board of Appeals
Meeting Minutes
Wednesday, November 18, 2015

A meeting of the Salem Board of Appeals (“Salem BOA”) was held on Wednesday, November 18, 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, Mike Duffy, Paul Viccica (alternate), Jim Hacker (alternate). Also in attendance – Thomas St. Pierre, Building Commissioner, and Erin Schaeffer, Staff Planner

REGULAR AGENDA

***Heard out of order at the request of the petitioner.**

Project	Petition seeking a Special Permit from the provisions of <i>Sec. 3.3.2 Nonconforming Uses</i> of the Salem Zoning Ordinance to allow the change from one nonconforming use of a candy factory to another nonconforming use to construct twelve (12) residential units and a Variance requesting relief from <i>Sec. 5.0 Table of Parking Requirements</i> to allow fifteen (15) of the required eighteen (18) off-street parking spaces.
Applicant	SCHIAVUZZO REALTY LLC
Location	93-95 CANAL STREET (Map 33 Lots 164, 165)(B-4 Zoning District)

Documents and Exhibitions

- Application dated September 22, 2015 and supporting documentation

Attorney Atkins requests for the petition to be withdrawn without prejudice. To bring this back to the Board, the petitioner needs time to clarify a few things on the plans.

No comments from Board members.

Motion and Vote: Mr. Duffy makes a motion to accept the request to withdraw the petition without prejudice. The motion is seconded by Mr. Watkins. The vote was unanimous with five (5) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, Jimmy Tsitsinos.

Project A continuation of a petition requesting a Special Permit per *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to change an existing nonconforming use of a multifamily residential units to another nonconforming use of mixed use commercial office/retail. The petitioner is also requesting Variances for relief from *Sec. 4.1.1 Table of Dimensional Requirements* to exceed the maximum height, front yard setbacks and relief from *Sec. 5.0 Table of Parking Requirements* and *5.1.5 Parking Design*.

Applicant **ROBERT BURR**

Location **331-335 LAFAYETTE ST and 5-7 WEST AVE (Map 32 Lots 231, 232, 233)(B1, R1, R2)**

Attorney Grover requested a continuation of the public hearing to be heard at the next regularly scheduled meeting on December 16, 2015.

Motion and Vote: Mr. Duffy makes a motion to approve the request to continue the to the next regularly scheduled meeting on December 16, 2015. The motion is seconded by Mr. Copelas. The vote was unanimous with five (5) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, Jimmy Tsitsinos).

Project Petition seeking Variances requesting relief from *Sec. 5.1.5 Parking Design* of the Salem Zoning Ordinance to allow at 30' curb cut and to modify a previous Zoning Board of Appeal decision to reflect the new parking plan.

Applicant **JOSEPH SKOMURSKI**

Location **43 BRIDGE STREET (Map 36 Lot 238) (R2 Zoning District)**

Petitioner Joseph Skomurski presents the petition. Mr. Skomurski states that the original approved plan shows three (3) parking spaces located in the back of the property. The proposed changes to the approved plan include moving the three (3) parking spaces to the Planters Street side of the property to allow greenspace in the backyard rather than paving a parking lot in the backyard of the duplex on the corner of Planters Street and Bridge Street.

Ms. Curran- Clarifies with the petitioner that there will still be three (3) parking spaces total. Mr. Skomurski is proposing to reconfigure the parking spaces and the proposed reconfiguration is causing the need a curb cut that is six (6) feet larger than the required width. The allowable curb cut width is 24' feet. Before this project, what was the size of the curb cut?

Mr. Skomurski- There was no curb cut along Planters Street and the previously approved plans did not have sidewalks. A sidewalk plan was later approved by the Engineering Department. Mr. Skomurski presents the sidewalk plan and requests to change the parking plan.

Ms. Curran- Confirms that the curb cut opening is the same location as the previously approved plans. Ms. Curran confirms that the building on this lot is a duplex rather than a single family home as the site plan may be mislabeled.

Mr. Skomurski- Confirms that the building at 43 Bridge Street is a duplex.

Ms. Curran- confirms that the intention of shifting the parking spaces to this new location is to create greenspace in the backyard for the duplex.

Mr. Skomurski- yes.

No comments from the Board.

Ms. Curran- opens public hearing

Councillor Famico, Ward 2- Requests that the curb cut maintain the same material and look of an extended sidewalk. As per Complete Streets practices, curb cuts should maintain the look of an extended sidewalk and to make sure that the driveway will be concrete instead of asphalt.

Mr. Skomurski- The sidewalk and driveways will be asphalt and goes on to describe the sidewalk plan.

Councillor Famico- Requests that the Board requires all sidewalks and driveways be concrete to maintain the pedestrian look on the streets.

Katie Schrader 10 East Collins- Expressed concern about whether the duplex will block the view to make a right hand turn around the corner.

Mr. Skomurski- Yes, there will be a clear view. There will be no change to the location of the curb on the corner of Planters Street and Bridge Street and the duplex will not block the view for people turning onto Bridge Street. The position of the building is not change.

Randy Green 50 Bridge Street - Clarification that the proposed curb cut is on Planters Street and not on Bridge Street.

Flora Tonthat 30 Northey Street- What was the parking configuration before? Were there only two (2) parking spaces?

Mr. Skomurski- Originally there was three (3) parking spaces in the backyard. The new proposal is to move the three (3) parking spaces to be perpendicular to Planters Street rather than have them in the backyard of the duplex.

Ms. Curran- no additional public comments.

Ms. Curran- The reconfiguration is adding some greenspace and the proposal is basically the same as what was approved. The opening of the curb cut is also not moving any closer to the corner.

No additional Board comment.

Motion and Vote: Mr. Watkins makes a motion to approve the petition requesting Variances requesting relief from Sec. 5.1.5 Parking Design of the Salem Zoning Ordinance to allow at 30' curb cut and to modify a previous Zoning Board of Appeal decision to reflect the new parking plan at the property located at 43 Bridge Street. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with five (5) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, Jimmy Tsitsinos). The petition is approved.

Project	A public hearing for all persons interested in the petition seeking a Variance requesting relief from Sec. 4.1.1 <i>Table of Dimensional Requirements</i> of the Salem Zoning Ordinance from minimum side yard setback to allow the construction of a 3' x 4' square foot stairway and landing within the required 10' foot setback.
Applicant	ANN HARRISON
Location	26 GREENWAY ROAD (Map 14 Lot 179) (R1 Zoning District)

Ann Harrison-26 Greenway Road – Petitioner presents the petition.

Ms. Curran- asks Building Inspector, Tom St. Pierre, to confirm that the building only has one means of egress.

Mr. St. Pierre- Yes, there is only one means of egress.

Ms. Curran- States that the petitioner is proposing to have a second means of egress to comply with the building code and plans to construct a 3' x 4' square foot stairway and landing. There is no addition and no deck, only the required landing and length of the stairs.

Mr. Viccica- Asks if there is a light proposed for the side door and asks whether the neighbor is close to the property line as well.

Ms. Harrison- There was no light proposed for the side door. The neighbor is close and a letter of support is provided from her in the petition form packet.

Ms. Curran- Reads letter from residents of 28 Greenway Road in support of the petition.

No other public comment.

Ms. Curran- States that the existing house is already located within the 10' foot setback requirement. The proposed egress with a stairway and landing is proposed to meet building code requirements and will not be creating new living space or a deck. The stairway and landing are simply for a second means of egress.

Mr. Watkins- Ask for clarification on the hardship.

Mr. St. Pierre- States that the hardship is that the existing structure has only one means of egress and it is a building requirement that the structure needs two (2) means of egress.

Ms. Curran- States that the hardship as it relates to the existing structure is that the home is already built within the setback and the petitioner does not proposed to take down the house and rebuild it. The physical layout of the structure itself poses a hardship.

Mr. Duffy- In addition, the home is out of compliance with one (1) means of egress and poses a life-safety issue.

Motion and Vote: Mr. Watkins makes a motion to approve the petition seeking a Variance requesting relief from Sec. 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum side yard setback to allow the construction of a 3' x 4' square foot stairway and landing within the required 10' foot setback. The motion is seconded by Mr. Copelas. The vote was unanimous with five (5) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Mike Duffy, Jimmy Tsitsinos).



Project	A public hearing for all persons interested in the petition seeking a Variance requesting relief from <i>Sec. 5.1.5 Parking Design</i> to allow a 40' wide curb cut at the property located at 24 WINTER STREET (Map 35 Lot 83)(R2 Zoning District).
Applicant	PETER LUTTS
Location	24 WINTER STREET (Map 35 Lot 83)(R2 Zoning District)

Peter Lutts, petitioner, presents the petition. Mr. Lutts is the owner and resident of the property and is seeking relief from the parking design for an additional curb cut to allow a 40' foot curb cut on Oliver Street. The house is a two (2) family with frontage on Winter Street and Oliver Street. There is on-street parking on Winter Street and no on street parking on the north side of the street.

Ms. Curran- Clarifies with the petitioner and Tom St. Pierre that the existing garage and curb cut are 20' feet and count toward the total maximum allowable curb cut requirements. Ms. Curran confirms with the petitioner that the proposed 40' foot curb cut would not be a continuous curb cut.

Mr. Lutts- confirms that the existing garage curb cut is 20' feet and counts toward the total allowable curb cut requirements. The proposed expanded curb cut would not be continuous.

Ms. Curran- states that the petitioner is not proposing to eliminate any on-street parking spaces as there is no parking allowed on that side of Oliver Street. Ms. Curran also confirms that the petitioner proposes a total of three (3) parking spaces.

Mr. Lutts- States that he met with the neighbors and originally proposed four (4) tandem parking spaces, but in response to neighbor opposition, the total number of parking spaces proposed has been reduced to three (3) parking spaces, one in the existing garage and two

(2) side-by-side parking spaces along Oliver Street. Mr. Lutts presents architectural renderings to the Board and public to show the proposed parking layout, driveway materials, landscaping, greenspace and curb cut. Mr. Lutts also presents three (3) letters of support from neighbors at 6, 7 and 8 Oliver Street. The home is a two (2) family house with one off-street parking space.

Ms. Curran opens comment to Board members.

Mr. Copelas- Would the telephone pole interfere with the proposed curb cut?

Mr. Lutts- No. There is a proposed break in the curb cut to accommodate the telephone pole.

Ms. Curran- Asks about the proposed material for the driveway.

Mr. Lutts- states that the proposed material from the driveway is brick in keeping with the style of the neighborhood and house. Mr. Lutts references the architectural renderings.

Ms. Curran- Reads letters of public comment into the record received in opposition from the following residents: 41 Washington Square, 24 ½ Winter Street. Read letters of public comment in support from the following: 6 Oliver Street, 7 Oliver Street, and 8 Oliver Street.

18 Oliver Street- James Metsch- States that the proposal is in harmony with the existing neighborhood and requests that if the Board approves the proposal, that the name and date of the plan be included as reference in the Decision.

Mr. Lutts- States that the parking on the property is existing non-conforming. With this proposal, the proposed three (3) parking spaces are in conformance with the zoning requirements.

Ms. Curran- The petitioner is asking for a Variance to exceed the maximum curb cut allowance and the reason for this is to not have large expanses of curb cuts. The proposal is making the property more conforming by adding on-site parking spaces because the lot currently does not have the number of required parking.

Mr. Lutts- Looking at Oliver Street, one could argue that this side is all one big curb cut. Mr. Lutts presents pictures of the street.

Ms. Curran- Right, I think the bylaw was trying to avoid this outcome. The purpose of the dimensional requirements for a curb cut is likely intended to avoid one expansive curb cut. Ms. Curran does not recall having a proposal for a curb cut before. I can see the benefit of this proposal and how it can be detrimental. How do you apply the standard for a Variance to a curb cut?

Mr. Watkins- Didn't we just approve a curb cut?

Ms. Curran- The petition for Mr. Ingersoll was a request to appeal the Decision of the Building Inspector and was upheld.

Ms. Curran- As long as it is not creating a huge expanse, a lot of times the Board does not approve things when there is not enough parking, but in this case the petition proposes to conform to the parking requirements without eliminating on-street parking.

Mr. Lutts- Not taking anything away from the neighborhood, just taking a small piece of yard to turn it into parking.

Mr. Copelas- Clarifies with the petitioner, that the existing curb cut to a garage is 19 feet and an additional 21 feet is proposed for a total curb cut of 40' feet along Oliver Street.

Kate Leavy-18 Oliver Street- While the design is nice the one negative thing is that Oliver Street has become one giant curb cut. It is less aesthetically pleasing and may affect property values if Oliver Street continues to become the back alleyway for Winter Street. All of the parking for Winter Street residents seems to get pushed to Oliver Street in the form of curb cuts. Ms. Leavy requests that special attention to the aesthetics of a curb cut is considered. Originally, we wanted to see more of a garage with a window to look like a residence. Most of the trees on this street have been removed. Oliver Street continues to be losing more and more of the streetscape and continues to be chopped up. Ms. Leavy does not want this street to become a service alley for a street with a grant corridor entrance.

Councillor Famico- Ward 2- Requests that parking spaces be used for all residents at 24 Winter Street and not only one person with multiple cars.

Mr. Lutts- States that the proposed parking spaces will be used by all three (3) residents and not only one person.

Councillor Famico- Clarifies the address of the second unit.

Mr. Lutts- 24R Winter Street.

Mr. Metch, 18 Oliver Street- Having trouble understanding what the hardship may be and expresses concern about having too much curb cut along Oliver Street, but also expresses support for the design as it fits with the aesthetic of the neighborhood.

Mr. Lutts- States that the hardship is difficulty with one parking space. When the house was purchased, Mr. Lutts anticipated constructing two (2) additional parking spaces. Not trying to develop the house or change the use.

Mr. Copelas- States a concern about allowing the argument that because the curb cut will reduce a non-conformity, then the Board will allow a Variance. This concept could be considerably expanded when considering any other Variance anyone else asks for if by asking for it, the Variance reduces a non-conformity not sure that the Board should then grant the Variance. Struggling with the hardship argument. How is this a hardship? Not to say that the proposal is not an improvement, but the legal requirement is to prove a hardship.

Mr. Lutts- Parking in the garage during snow storms and walking to the house... Is that a hardship?

Mr. Curran and Mr. Copelas- A personal hardship to the applicant is not a legal hardship.

Mr. Watkins- Agrees with Mr. Copelas. Mr. Watkins likes the proposal and may be better for the neighborhood, however, the hardship is lacking. How many cars fit in the garage? Has the applicant considered widening the garage to fit another car?

Mr. Lutts- Only one car fits in the garage and the current proposal is the easiest solution.

Mr. Curran- This is a good proposal and it is well thought out. It is difficult to grant a Variance. It would be easier to grant a special permit if this were permissible. In terms of the streetscape, a fence could even be installed that could close and diminish the view of parked cars.

Mr. Lutts- Asks the Board to confirm that the maximum curb cut is 20 feet and then proposes an alternative. Theoretically, if the curb in front of the garage was replaced and no longer a curb cut, could there be a 20' ft curb cut next to the current curb cut?

Ms. Curran- Yes, the maximum allowable limit is a 20'ft curb cut and it may be possible to replace the curb where the current curb cut is located and make a new curb cut next to the current one. Can you access your garage from the side to be able to have cars turn into the garage?

Mr. Lutts- No.

Mr. Tsitsinos- Sees the proposal as taking two (2) cars off the street

Ms. Curran- I agree, but it's the hardship that is missing.

Mr. Copelas- There are many properties in Salem where there is frontage and people could make to ask for curb cuts to have off-street parking. This does not satisfy the Variance requirements of a hardship.

Mr. St. Pierre- There is a prohibition of parking in the front yard setback.

Ms. Curran- To not do this, what is the hardship incurred by the literal enforcement of the bylaw? Less parking.

Mr. Tsitsinos- Less parking and adding two (2) cars on the street. This proposal frees up two (2) on-street parking spaces on the public way.

Ms. Curran- Yes, the public good argument can be made, although there are concerns regarding aesthetics from the neighbors.

Mr. Watkins and Mr. Copelas- not having parking on-site is not a legal hardship.

Ms. Curran- This is a nice project and wish the Board could approve it. With fencing the Board this project may be even better to conceal the cars and not change the aesthetic of what is there now.

Mr. Lutts- Asks the Board whether he can replace the curb where there is an existing curb cut and then create a new 20' ft curb cut as proposed and theoretically park four (4) cars tandem.

Ms. Curran and Mr. St. Pierre- Yes.

Mr. Lutts- I don't want to do this, but I don't want to have one (1) parking space for this house either.

Ms. Curran- Yes, this alternative does not become a negotiating point with the Board.

Mr. Lutts- No intention to negotiate with the Board, just brainstorming an alternative option.

Mr. Viccica- Tandem parking is allowed?

Mr. St. Pierre- There is nothing that prohibits tandem parking. However, tandem parking does not count as a legal space.

Ms. Curran- States that the petitioner can opt to continue to work on the hardship clause or request to withdraw, or vote.

Mr. Lutts- Clarifies the conditions that if the Board denies the petition, the petitioner cannot come back to the Board for another two (2) years.

Ms. Curran- Confirms this requirement.

Mr. Duffy- This is just a thought, but the request is really a dimensional variance. There is some precedence that suggests that the standard is a little less for a dimensional variance. A well articulated argument for how there may be a hardship may be enough to support the petition.

Motion and Vote: Mr. Watkins makes a motion to continue to the next regularly scheduled meeting on December 16, 2015. The motion is seconded by Mr. Copelas. The vote was unanimous with five (5) in favor (Rebecca Curran, Peter A. Copelas, Tom Watkins, Jimmy Tsitsinos, Mike Duffy).



Project	A public hearing for the petition requesting a Special Permit from Sec. 3.1.2 of the Salem Zoning Ordinance to allow a change of a motor vehicle service use to a motor vehicle general and body repair use at the property.
Applicant	HIPPOLITO MADERA
Location	35 BRIDGE STREET (Map 36 Lot 235) (B-4 Zoning District)

Attorney Scott Grover presents the petition. The petitioner, Hippolito Madera, plans to relocate his business, J & G Transmission, from 4 Florence Street to this currently unoccupied building on 35 Bridge Street located at the end of Ferry Street. This summer, Mr. Madera was before the Zoning Board of Appeals, with a similar request and install a paint booth to operate a general motor vehicle repair business. That petition was denied by the Board over residential neighbor concerns that the spray booth could have had detrimental effects on the adjacent residential neighborhood. The currently proposed location is a much more suitable location for this kind of business. The property is located in a B-4 Wholesale Automotive Zoning District. The property is surrounded by commercial uses.

The petitioner proposes to install a paint booth and operate a general motor vehicle repair business. Historically the property at 35 Bridge Street was used for an automotive vehicle repair business named Witch City Autobody. That company operated for decades and operated a much more intense use operation than what Mr. Madera proposes. Mr. Madera proposes to spray paint bumpers, but not a full auto body operation.

In a B-4 Zoning District, requires a special permit for auto body repair. The parcel is located in a commercial area, surrounded by commercial uses. The will not have a net negative impacts on the environment, there are no issues regarding traffic or parking, the fiscal impact will be positive and allow an existing Salem business and its employees to remain in Salem. George Fallon, of Tache Real Estate, spoke with the Health Department and Fire Department to check if there were any concerns about the operation of a spray paint booth.

George Fallon, Tache Real Estate- Yes, the Health Department and Fire Department felt good about the product and the applicant needs to follow installation requirements and be in compliance with the Board of Health and Fire Department. The existing building sits at the rear of the site, because it was part of the original frame building that extended all the way out to the Bridge Street sidewalk. The rear building, where the applicant proposes to have a spray booth, was previously used as a spray booth for 30-40 years. Overtime the site has been cleaned up and the frame building was considered unsafe and taken down. Now this site is a car lot. The use of this site has been used as automotive since the early 1900's.

Ms. Curran- How long has the building been vacant?

Mr. Fallon- About 6-8 months. The property was continuously used as an automotive repair shop. The previous person who moved in to operate an automotive repair did not pay rent and subsequently moved out.

Mr. Tsitsinos- Concern about where cars are going to be stored.

Mr. Fallon- States that the petitioner will have an agreement with the used car lot owner to use the space to the right of the building to park 8-10 cars in tandem, two (2) cars wide along the depth of the lot. The garage also has the capacity to store 3-4 cars in tandem inside.

Mr. Copelas- What is going on with the lot behind or to the side of the building at 35 Bridge Street? Mr. Copelas states that there appears to be a lot behind this building with 15-20 junk cars.

Mr. Fallon- States that this area is the end of a paper street. A chainlink fence was also installed a while ago to keep people out of the area and now that area is used to put cars in there.

Attorney Grover – This is all part of 35 Bridge Street and Ferry Street.

Mr. Fallon- The egresses of the building are not dependent on that particular lot.

Ms. Curran- Confirms that the proposed use of the building has been an existing use on the property in the past and the use of a automotive repair shop was within the last two (2) years.

Mr. Fallon- Yes.

Ms. Curran- Why is this not an existing non-conforming use?

Attorney Grover- That is one way to approach this project, but either request would be for a special permit.

Mr. St. Pierre- The most recent use of the property was a motor vehicle repair shop, which is allowed by right in a B-4 Zoning District whereas an autobody shop is only allowed by special permit.

Ms. Curran- What is the difference between auto repair and what is being proposed?

Attorney Grover- States that auto repairs are mechanical repairs rather than an autobody shop where cars can be repaired and painted.

Ms. Curran- There is a distinction in the by-law?

Mr. St. Pierre- Yes.

Attorney Grover- States that an autobody repair shop is distinctly only allowed by special permit from the ZBA.

Ms. Curran- Understands the distinction.

Mr. Copelas- Autorepair would have been allowed by right.

Ms. Curran- Does the petitioner propose to make any improvements to the façade of the building?

Mr. Fallon- Yes, the building is currently painted two (2) different colors and it will be painted one (1) color.

Mr. Tsitsinos- The building has been improved with a new heating system, new roof and new siding recently. This site has been cleaned up recently. The only concern is that there

should be no cars on the street or anything blocking the property by the current concrete barriers.

Mr. Fallon- States that this site is a place where people dump garbage and stuff. There is no one with eyes on the property, but anticipates that with this new business, there will be less dumping. It gets better when there is a presence on the property.

Ms. Curran- Opens public comment.

Trisha Truhart- 4 East Collins Street- Wants to ensure that the proper air filters and air handling mechanisms are in place to limit odor in the neighborhood.


Attorney Grover- States that the installation of a spray paint booth is subject to Fire Department and Board of Health installation requirements and regulations. It is a standard condition of the Zoning Board of Appeals to also require the applicant to be in compliance of Fire Department and Board of Health requirements. All state and local requirements must be met by the applicant.

Mr. St. Pierre- In addition to meeting local regulations, the petitioner also needs to comply with state DEP requirements and monitoring. DEP is a regulator on air quality in relation to spray paint booths.

Mr. Fallon- States that Larry Ramdin, from the Health Department spoke to the factory representative and felt comfortable with performance of the equipment filter for the spray paint booths.

Mr. Duffy- This is a pretty good location for this type of use and was in the neighborhood before. This seems like a good site in terms of the surrounding uses. This is serving a community need to keep a Salem business in the city. It looks like there is plenty of access concerning traffic flow and safety and that compliance and oversight by DEP, the Fire Department and the Board of Health is adequate to address concerns regarding air quality related to the use of a spray booth. Utilities and public services are adequate. There is a positive potential fiscal impact from having a business operate in this location. The adverse effects of this proposed use will not outweigh the public benefits.

Motion and Vote: Mr. Duffy makes a motion to approve the petition requesting a Special Permit from Sec. 3.1.2 of the Salem Zoning Ordinance to allow a change of a motor vehicle service use to a motor vehicle general and body repair use subject to eight (8) standard conditions and one (1) special condition that no vehicles or dumpsters may be located on the property along the entire length of Ferry Street. The motion is seconded by Jimmy Tsitsinos. The vote was unanimous with five (5) in favor (Rebecca Curran (Chair), Tom Watkins, Peter Copelas, Mike Duffy, Jimmy Tsitsinos) and none (0) opposed.



Project A public hearing for the petition of requesting a Special Permit per *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to change and existing nonconforming use of a social club to another nonconforming use of eighteen (18) residential units. The petitioner is also requesting Variances for relief from *Sec. 4.1.1 Table of Dimensional Requirements* for minimum lot area per dwelling unit, minimum lot frontage, minimum lot coverage, front and side yard setbacks, minimum distance between buildings, and number of stories.

Applicant MICHAEL MEYER

Location 1-3 EAST COLLINS STREET (Map 36 Lot 277)(R1 Zoning District).

*Board member Jimmy Tsitsinos recuses himself due to a possible conflict of interest.

Attorney Grover presents the petition. The property is located at the Planters Street and East Collins Street. It is the site of the old Ward 2 Social Club. Attorney Grover presents the existing conditions of the property. The site is an eyesore in the neighborhood and is not in very good condition. The site itself has a lot of attractive natural features including wetlands, beach, a coastal dune and waterfront views along Collins Cove.

When Mr. Meyers purchased the property this summer, he wanted to convert the property from a commercial use to a residential use. He began the process by developing a plan for the site. The original site plan proposal was for twenty- four (24) residential units divided into two (2) buildings and were about four (4) stories high. The proposal also had less than the required parking spaces. The plan was presented at a neighborhood meeting and was not well received.

The neighborhood had serious concerns about the density of the project, massing of the building, height and parking. As a result, the plan was revised to reduce the number of dwelling units to eighteen (18) residential units, lower the building height, reduce the mass, provide enough parking to comply with the zoning requirements and provide a public walkway with access to the beach. The building was redesigned to be broken up to maintain view corridors to the neighborhood. This is the petition that was filed with the Board in September.

Attorney Grover presents another revised plan to the Board. The petitioner proposes to further reduce the number of units from eighteen (18) to fourteen (14). There are eight (8) units proposed for the linear building that runs along Planters Street, Building "A" and six (6) residential units along East Collins Street, Building "B". The petitioner proposes to build the project in two (2) phases with the building along Planters Street to be constructed first because this portion of the property is outside of the jurisdiction of state Chapter 91 licensing. The second would be built after the Chapter 91 process.

The petitioner has had a series of three (3) neighborhood meetings before coming to the Board. One of the major concerns from the neighborhood was the potential for this project to have overflow parking negatively impact the neighborhood. In response, the revised plan includes two (2) parking spaces per dwelling unit, which exceeds the Zoning Ordinance

requirements of 1.5 parking spaces per dwelling unit. One of the nice things about the plan is that parking is proposed to be located under the buildings and the current parking pavement will be replaced by landscape materials and plantings. The living areas are raised with parking proposed underneath by necessity because the entire site is located within the flood zone. The reduction of the number of dwelling units has also allowed the applicant to further reduce the building massing and height to be about thirty-two (32) feet and this is within what the zoning ordinance requires.

There are a number of areas of relief being requested. The first is a special permit from one nonconforming use to another less detrimental nonconforming use. The petitioner is also requesting a series of dimensional Variances including relief from lot area per dwelling unit, side yard setback, front yard setback along East Collins Street, frontage and number of stories as the building is technically three (3) stories. The property is in an R-1 Zoning District.

On the grounds for a special permit, the Board needs to find that the proposed use is less detrimental than the existing nonconforming use. There are several reasons why this project satisfies this requirement: 1) the petitioner is proposing to change the use from a commercial use to residential, which is closer to the underlying allowable use of the neighborhood 2) the petitioner is providing public access from East Collins Street to the beach, which is a public benefit 3) the proposal has more parking than required and is not more detrimental than what currently exists 4) fiscal impacts will be positive.

Grounds for Variances: Special conditions that pertain to this land are that it is subject to Chapter 91 and very little of the site can be developed due to wetlands, coastal dunes, and a major easement for the high powered gas line. Excluding the property that is subject to Chapter 91 review and given other environmental factors of the site, only 11,000 square feet is buildable land. The petitioner is requesting Variances from front and side setback requirements to build within the buildable land envelope outside the jurisdiction of Chapter 91 review and a variance for the number of stories to meet design requirements for building in a floodplain.

Attorney Grover presents a map with a rudimentary density study to show residential density within a 3 acre area just outside of the subject property. The density shows there are twenty-two (22) dwelling units per acre with an average lot area of 2,613 square feet. The petitioner is proposing 14 dwelling units per acre and is considerably less density. The Board recently approved a project on 43 Bridge Street where six (6) units were approved on a parcel of 14,000 square feet. The petition of 1-3 East Collins Street regarding density is consistent with the district and the intent of the ordinance.

Dan Ricciarelli-Seger Architects

Presents proposed elevation plans and describes how the proposed architectural design is consistent with the architecture, massing, and density of the existing neighborhood. An architectural study was done to see how the buildings would be perceived from East Collins Street and along Planters Street. From East Collins Street, building "A" is perceived as a two-story townhome. The building massing is broken up by gables and a greater amount of space between Building "A" and Building "B" to keep neighborhood views of Collins Cove. The architectural plans also integrate Low Impact Development best practices with

landscaping and rain gardens. This development will also remove a significant amount of pavement from the site. Mr. Ricciarelli shows architectural drawings to the Board and the public.

Mr. Meyer, Petitioner- States that he and his team have had three (3) neighborhood meetings and has significantly reduced the number of units proposed and accommodated neighborhood concerns. Mr. Meyer states that the development of this property will increase the value of neighboring properties tremendously. On Planters Street no one sees the frontage across from the National Grid property. Mr. Meyer states that the residential units will be two (2) bedrooms and very high quality. The number of units has decreased from twenty-four (24) to fourteen (14) and cannot go any lower to make a profit. Mr. Meyer states that he is donating a unit to Bridgewell.

Ms. Curran- For the special permit, the Board needs to find that the proposal is less detrimental than the existing use. What was the old use of this property and how did it function? The building was a single story brick building.

Attorney Grover- Ward 2 Social Club was a place for members to gather with a bar and community space. The Club has been in the neighborhood for decades. The space is currently vacant and has no productive use for the City.

Mr. Viccica- Where are you in the regulatory process? What modifications to the plan may occur after the Zoning Board makes a decision?

Attorney Grover- Before the petitioner can apply to the state for a Chapter 91 license all local approvals have to be received first. The project also has to go through the Massachusetts Environmental Policy Act review before Chapter 91. Both MEPA and Chapter 91 can be a very long process. There are projects that were approved at the local level years ago that are still not built because the projects are hung up in the Chapter 91 process. One of the reasons this project is designed the way it is, is to have the opportunity to develop eight (8) units with local approvals that are required by the Zoning Board of Appeals, Planning Board, and Conservation Commission. Phase II to construct building "B" requires MEPA and Chapter 91 review and expect to take a year and a half for state approvals.

Mr. Viccica- What modifications to the plan may occur after the Zoning Board makes a decision?

Attorney Grover- Building "A" is unlikely to change, but Building "B" is likely to change through the MEPA and Chapter 91 process and may need to come back to the Planning Board or Zoning Board and ask for an amendment to a decision if needed.

Mr. Copelas- What was the status of the social club? Did they pay tax or were they tax exempt?

Attorney Grover- The club paid taxes.

Mr. Hacker- What is the proposed size of the units and the number of rooms? What is the anticipated selling price?

Mr. Ricciarelli- Units will be about 1,300 square feet with two (2) bedrooms.

Mr. Meyer- States that the selling price will be low to mid \$300,000 range.

Ms. Curran- There are many written comments to be read into the record. The Board is doing two (2) things here. The property is Zoned R-1 and a single residence can be constructed in this zone as a matter of right, but because this is an existing nonconforming use, the State law that the Zoning Board of Appeals follows, can allow one nonconforming use to another nonconforming use as long as the applicant can show that the new use is less detrimental to the neighborhood than the existing nonconforming use. The Zoning Board of Appeals is also looking at hardship in relation to uniqueness of the property and the literal enforcement of the zoning ordinance. If this were not a nonconforming use, this proposal for multi-family residential units could not be done in this zoning district.

Ms. Curran- Reads the following letters into the record:

Spectra Energy Partners and Algonquin Gas Transmission, LLC- On October 19, 2015 the Board received a letter to inform the Board that the plan submitted contained an error. The plan showed a building to be constructed on the Algonquin Gas right-of-way and was a violation of the easement conditions. On November 16, 2015, Algonquin Gas Transmission LLC submitted a letter to the Board with a statement that a revised plan that eliminates the construction of a building over the easement meets the easement conditions.

Jennifer Firth, President of Historic Salem Inc. – Strongly opposes the project over concerns about the proposed density and that the architecture of the proposed structure does not complement the character of the surrounding neighborhood. A newly constructed project on 43 Bridge and Planters Street is referenced as an appropriate housing type that fits with the character of the neighborhood.

Courtney Heath, 17 Barton Street- Strongly opposes the project over concerns about the proposed density and strongly opposes the architecture/design of the proposed structure as it does not fit the existing neighborhood aesthetic from the street and on the water.

Paul and Linda McIlvene- 7 East Collins Street- Strongly opposes the petition over concerns about parking, traffic generation, building massing, privacy, architectural aesthetic, environmental concerns and safety concerns about construction over the proposed natural gas line.

Mary and Charles Knight- 5 East Collins Street-Strongly opposes the petition over concerns about the size, obstruction of ocean views, traffic, loss of parking the parking lot that has been used by the neighborhood for off-street winter parking, environmental impacts to the coastal dune, opposition to the proposed public walkway along the length of 5 East Collins Street.

Kim Surlis- 27 Planters Street- Strongly opposes the petition due to concerns about density, drainage, utility capacity, building size and architectural aesthetic in relation to the existing neighborhood character.

Tim Connell, 6 East Collins Street- Strongly opposes the petition due to concerns about density and size. This proposal does not fit with the existing character of the neighborhood and the adverse effects of the proposal outweigh the beneficial impacts to the public.

Scott and Trisha Truhart- 4 East Collins Street- Ms. Truhart requested read the letter dated November 17, 2015 into the record in strong opposition to the proposal due to concerns about impacts on water views, density, flooding, and neighborhood character.

Ms. Curran- Opens comment to the public.

Katie Schrader- 10 East Collins Street- Opposes the project due to concerns about density and impacts to the existing neighborhood including traffic and environmental impacts. Ms. Schrader also expresses concern about the series of petition revisions and is unsure of what is being proposed.

Ms. Curran- Clarifies with the petitioner that the most current proposal is for fourteen (14) units.

Attorney Grover- States that the petitioner has reduced the number of units from twenty-eight (28) to fourteen (14) in response to the neighborhood concerns.

Ms. Schrader- restates her opposition.

Ms. Knight- 5 East Collins Street- reads her own letter into the record.

Councillor Famico- Ward 2 City Councillor- This property has been a problem property over the last year due to noise complaints, licensing board incidences, and problems at the attention of the Building Department. Councillor Famico expresses support for the plans as they are a significant improvement to the original petition and is pleased to see that the proposal is for high end housing that will help property values in the neighborhood and that there are two (2) parking spaces per dwelling unit above the zoning requirements. Councillor Famico supports a multi-family residential housing type in the neighborhood. Expresses concerns about traffic impacts to the neighborhood and asks the Board to consider a reduction in the density to better fit with the neighborhood.

Eric Shanabrook- 10 East Collins Street- Opposes the project due to concerns regarding density and a lack of off-street parking during the winter for residents.

Flora Tonthat- 30 Northey Street- Appreciates that the developer has been working with the neighborhood to continue to decrease the proposed density. Supports for Salem Alliance for the Environment and Salem Sound Coast Watch and expresses concern about building so close to the flood zone and environmentally sensitive area. Ms. Tonthat suggests pulling the building back from the beach and further reducing the density. Expresses concern over the architectural design of the buildings particularly with the aesthetics of the parking area

screening and suggests a hedge or something to soften the façade while screening the parking.

Mike Albert- 13 Beacon Street- Advocates for the project and expresses support for the redevelopment of the site and supports the design aesthetics of the already existing Collins Cove townhouses. The parking lot looks like a ghetto and would like to see the site developed.

Trisha Truhart- 4 East Collins Street- Takes offense to Mr. Albert's reference to property looking like a ghetto. The neighborhood is turning around and having condominiums is not an acceptable way to turn this neighborhood around. Keep the R1 Zoning District.

Ms. Curran- In terms of the Variances, there are actually constraints of the existing property that would allow the Board to grant the Variances because there is a very limited building envelope as a result of unique circumstances of the land. However, Ms. Curran struggles with the finding that this project is less detrimental than the currently existing use. Even though there were some issues with the club, but the visual impact of the club is less than what is being proposed as the club is a single story, the traffic in the neighborhood was probably less, and is concerned with the proposed density of the project. The petitioner is proposing another nonconforming use and can go to another nonconforming use. Did the petitioner consider duplexes or single family homes? Maybe duplexes or single family homes would be a better fit with the neighborhood and may have less of an impact than what was there.

Attorney Grover- States that fundamentally, changing from a commercial use to a residential use is less detrimental to the residential neighborhood. The existing building is a single story, but the site itself is completely paved over. The proposed project is a much more attractive use of the property than was there before. There was a lot of discussion about the parking, but the petitioner has provided two (2) parking spaces per dwelling unit, which is more than the required amount of parking per the zoning ordinance and most of the traffic will be during peak times in the morning and evening when residents leave for work and come home. The proposed density of fourteen (14) units is not as a lot given the overall density in the area. The other issue to address is concerns about construction over the gas pipeline. The gas pipeline will be sixty (60) feet underground and the easement is specific about not building over it. The gas company has taken precaution there. The property is subject to Conservation Commission jurisdiction on the local level and on the state level, the project is subject to MEPA and Chapter 91 review. The redevelopment of the site is required to formalize meaningful access through a Chapter 91 requirement to provide public access and use of the waterfront. All of these things are positive and make this development less detrimental use of the site.

Ms. Curran- Will this happen with whatever goes there?

Attorney Grover- Redevelopment of this site of any kind will be subject to Chapter 91 jurisdiction. Redevelopment of this site will be a substantial public benefit than the existing use.

Mr. Copelas- Agrees with the Chair that it is ironic that the Board is struggling to see the less detrimental nature of the proposal. Housing in general is less detrimental than an existing commercial space, however, the Board needs to look at this specific project. Given testimony from the neighbors, this is not black and white that the proposal is less detrimental. There have been many comments from the neighbors over concerns that this project does not fit in with the existing neighborhood character.

Mr. Viccica- Is there a chance that "Building B" could not be constructed due to the possibility of denial through the Chapter 91 process?

Attorney Grover- Yes.

Mr. Viccica- Your proforma is based on not fourteen (14) units, but based on eight (8) units because there is a potential that the other six (6) units in Building "B" may not be constructed or not constructed within 3-4 years. Given the limitations of the site, DEP may theoretically not allow the construction of the second building.

Attorney Grover- States that the proforma is based on fourteen (14) units and if Mr. Meyer is not allowed to building the second building he is going to be in trouble.

Mr. Meyer- Heard the opposition from the neighbors and presents ways, which the project has been modified to make this property buildable including needing to elevate residential spaces out of the floodplain and separating the buildings as to not block neighborhood views of the waterfront. There will also be a public walkway as a requirement for Chapter 91. Mr. Meyer also strongly supports the architecture of the building and how it does fit with the surrounding architecture of the neighborhood. From East Collins Street, the neighborhood will be seeing the narrow width of the building with a gabled roof line that is similar to the existing single family homes in the neighborhood. From Planters Street there are no houses on the other side of the street. There will be some ocean views blocked by the proposed buildings, but the original design was significantly changed to allow views from the neighborhood through the property. Upset that the neighborhood continues to use the private property for uses including parking, loitering, and changing oil in the existing parking lot.

Ms. Curran- Since multi-family is not allowed by right, in order to fit better with the neighborhood character would you consider doing something in duplexes or single- family homes.

Mr. Meyer-As far a views, if there are four (4) single family homes on the property, the views of the ocean will be blocked.

Ms. Curran- Did you look or would you look at the possibility of duplexes or single family homes on this parcel?

Mr. Meyer- Yes, the first architect tried doing single family homes and it looked ridiculous.

Ms. Curran- Would duplexes work?

Mr. Meyer- Duplexes would certainly look better than single family homes.

Attorney Grover- Not everything has to be the same housing type in the neighborhood. There are two examples of multi-family residential buildings that fit with the character of the neighborhood including the Settler's Way condominiums and the multi-family housing behind the Salvation Army in North Salem near the Bentley School. Salem is not a City where everything is the same. To have a diversity of housing options is not a detriment to the neighborhood. What is difficult about a single family and duplex model, the property does not lend itself to developing a cul-de-sac and a series of single family homes would need to be approved at the local level and then approved at the state level and will take up to two (2) years for the state approval process.

Ms. Curran- I do not want to design this project for you, but it may be helpful to have breaks in the buildings and would do a lot to break up the scale of the building and make it fit better with the neighborhood character and the parking could be screened in such a way that it could look like part of the building rather than a parking garage. This building on Planters Street looks massive compared to the other buildings in the neighborhood.

Attorney Grover- States that it may be possible to create a break in the buildings where the gas easement is located so that there is not a bridge connecting building "A".

Mr. Viccica- Could you look at or would you look at having each single unit with a separate entry rather than have a single entry rather than the connection? Then the bridge over the easement would not have to exist and in the end the petitioner would get some floor area back into each unit.

Mr. Ricciarelli- The entrances would have to be on the courtyard side and within Chapter 91 jurisdiction and the building is pushed right to the property line. This would be great.

Ms. Curran- Then the lobby area could also be eliminated.

Attorney Grover- That design may happen with Building "B".

Mr. Viccica- This is why I am having a hard time with this project. If you design for single units each with an entry it can be done, but the limit is on time through the MEPA and Chapter 91 process this is not necessarily a reason to grant variances or special permits. Some things just have to take time and regulated for the right answer rather than the most expedient way just because the petitioner is constrained by the property itself. Is there a way to find out what the capacity of the regulation will be?

Attorney Grover- There is not. DEP will not even look at projects until all local approvals have been obtained.

Mr. Viccica- States that there is no problem with the typology, but rather a problem with the way that this building has been forced and articulated to go around the regulatory process.

Mr. Copelas- There seems to be a lot of design compromises that were made strictly because of regulatory requirements and timing of development. Again, those regulations are there for a reason and should not force the Board of Appeals to accept a less than optimal design to fit into these regulatory and time constraints that the developer is under.

Attorney Grover- Will take a look at the some of the design elements that the Board has suggested.

Ms. Curran- Can you come back in December?

Attorney Grover- If we can come up with a plan that still keeps the development schedule with a better design this may be helpful and understands the Board concerns.

Attorney Grover- Requests a continuation to the next regularly scheduled meeting on Wednesday, December 16, 2015.

Motion and Vote: Mr. Duffy makes a motion to approve the request for a continuation of the public hearing to the next regularly scheduled meeting on Wednesday, December 17, 2015. Seconded by Mr. Copelas. The vote was with five (5) (Rebecca Curran (Chair), Peter A. Copelas, Jimmy Tsitsinos, Tom Watkins, Mike Duffy) in favor and none (0) opposed.



Project	Request for a six (6) month extension to exercise rights granted by the June 2, 2010 Board Decision, as previously extended by request of the applicant as well as the Permit Extension Acts of 2010 and 2012, that approved Variances from building height (feet), buffer zone width, and number of parking spaces to allow the construction of a 2-4 story professional office building with retail and municipal space.
Applicant	HIGH ROCK BRIDGE, LLC
Location	44 BOSTON STREET and 401 BRIDGE STREET (Map 15 Lot 305)(NRCC Zoning District)

Ms. Curran- states that the Board has received a letter with a request for a six (6) month extension to exercise rights granted by June 2, 2010 Board Decision, as previously extended by request of the applicant as well as the Permit Extension Acts of 2010 and 2012, that approved Variances from building height (feet), buffer zone width, and number of parking spaces to allow the construction of a 2-4 story professional office building with retail and municipal space. The extension request is due to prevent the relief from lapsing while an alternative project is being permitted by the Planning Board.

Motion and Vote: Mr. Duffy makes a motion to approve the request for a six (6) month extension to exercise rights granted by the June 2, 2010 Board Decision, as previously extended by request of the applicant as well as the Permit Extension Acts of 2010 and 2012, that approved Variances from building height (feet), buffer zone width, and number of parking spaces to allow the construction of a 2-4 story professional office building with retail and municipal space. Seconded by Mr. Tsitsinos. The vote was with

five (5) (Rebecca Curran (Chair), Peter A. Copelas, Jimmy Tsitsinos, Tom Watkins, Mike Duffy) in favor and none (0) opposed.

APPROVAL OF MEETING MINUTES

October 21, 2015 meeting minutes.

Motion and Vote: Mr. Watkins makes a motion to approve the minutes as printed. Seconded by Mr. Tsitsinos. The vote was with five (5) (Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Jimmy Tsitsinos, Tom Watkins, James Hacker) in favor and none (0) opposed.

OLD/NEW BUSINESS

2016 Meeting Schedule- Approval

Motion and Vote: Mr. Watkins makes a motion to approve the 2016 meeting schedule as printed. The Board will continue to meet every third Wednesday of each month. Seconded by Mr. Tsitsinos. The vote was with five (5) (Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Jimmy Tsitsinos, Tom Watkins, James Hacker) in favor and none (0) opposed.

ADJOURNMENT

Ms. Curran motioned for adjournment of the November 18, 2015 regular meeting of the Salem Board of Appeals at 9:30pm.

Motion and Vote: Ms. Curran made a motion to adjourn the November 18, 2015 regular meeting of the Salem Board of Appeals, seconded by Mr. Tsitsinos, 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://saalem.com/Pages/SalemMA_ZoningAppealsMin/

Respectfully submitted,
Erin Schaeffer, Staff Planner