

City of Salem Zoning Board of Appeals
Meeting Minutes
December 16, 2020

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, December 16, 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, December 16th 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), Carly McClain, Rosa Ordaz, Steven Smalley, and Paul Viccica. Also in attendance were Lev McCarthy – Staff Planner, Tom St. Pierre – Building Inspector, and Jonathan Pinto – Recording Clerk. Those absent were: Peter Copelas and Jimmy Tsitsinos.

REGULAR AGENDA

Location: **78 Bay View Avenue (Map 44, Lot 136) (R1 Zoning District)**
Applicant: **Stephan O’Sullivan and Patrick O’Sullivan (Property Owner: Philip Kelley)**
Project: *The applicant has requested to withdraw without prejudice.* 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. McCarthy explain that the Board received a written request from the applicant to withdraw without prejudice.

Attorney Bill Quinn introduces himself on behalf of the applicant. Mr. Quinn indicates several neighbors objected to the plans and that the applicant has been attempting to address as many concerns as possible. The applicant has also gone before the Historic Commission and received feedback as well, and updated plans were produced.

Mr. Quinn explains that the applicant ultimately decided to cease their application as some neighbors are still displeased with the updated proposals. As such, the applicant seeks to withdraw their petition without prejudice.

Chair Duffy notes that an abutter submitted materials into the public record and raised an issue with the proposed withdrawal without prejudice. Mr. McCarthy confirms, and notes the abutting resident asked if conditions could be applied to a withdrawal without prejudice.

Mr. McCarthy reads the email from Susan St. Pierre, dated December 15th, 2020. The email states that many neighbors spent countless hours reviewing multiple iterations of the proposal, and that they would not like to have to again in the future. Ms. St. Pierre suggests that if the applicant refiles, their design should reflect the public concerns to date.

Chair Duffy asks fellow Board members if it is appropriate to propose any type of condition on a petition withdrawal. Mr. Viccica indicates he is not aware of any instance where a withdrawal without prejudice was conditioned. Mr. Viccica contends that neighborhood participation is part of this type of process, and that any future proposal will have the opportunity to be reviewed in the same manner. Mr. Viccica acknowledges the hard work the neighbors have done to negotiate some mutual agreements to date, but explains that whatever may come before the Board in the future will be a new project, and should be given the same opportunity to be presented without prejudice.

Ms. McClain agrees, and suggests that if any neighbors do not wish to sit down and review future plans they need not. Ms. McClain states it is great that the neighbors have been vocal and active in the process, but any future plans will likely bring forth new conversations, and carrying forward old remarks from prior plans would not make sense.

Chair Duffy acknowledges there were robust interactions and discussions amongst the neighbors with respect to this project, and notes that the applicants desire to withdraw and regroup prior to submitting any new plans is a testament to their voices being heard.

Motion and Vote: Mr. Viccica motions to approve the request to withdraw without prejudice 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).

Ms. Ordaz seconds the motion. **The vote is five (5) in favor (Carly McClain, Paul Viccica, Rosa Ordaz, Mike Duffy (Chair), and Steven Smalley) 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.

Chair Duffy and Mr. McCarthy explain the Board received a letter from Attorney Vitali requesting to withdraw without prejudice. Chair Duffy reads the letter into the record.

Motion and Vote: Mr. Viccica motions to approve the request to withdraw without prejudice 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).

Ms. Ordaz seconds the motion. **The vote is five (5) in favor (Carly McClain, Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, and Steven Smalley) 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 continuation of 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.

Chair Duffy explains that the Board had requested additional materials from the applicant, and Mr. McCarthy confirms that the Board primarily received additional photographs.

Johnny Polanco introduces himself, as does his attorney Vincent Phelin. Mr. Phelin indicates he knows Mr. Polanco and has represented him in many matters. Mr. Phelin states he was only recently informed of the issue, and due to difficulties in availability and associated with the pandemic he has not been able to adequately review the materials. Mr. Phelin requests to continue the application.

Ms. McClain notes that there were safety concerns regarding this application, and suggests that the matter not be continued beyond January. Mr. Phelin agrees, and Chair Duffy suggests Mr. Phelin make contact with the neighbor regarding the safety issue.

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 January 20, 2021.

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

Location: 9 Winter Island Road (Map 44, Lot 20) (R1 Zoning District)
Applicant: Joel and Cathy Votto
Project: A public hearing for all persons interested in the petition of JOEL AND CATHY VOTTO for a special permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance from minimum depth of front yard to expand an existing single-family home by constructing an attached two-car garage within the front yard setback at 9 WINTER ISLAND ROAD (Map 44, Lot 20) (R1 Zoning District).

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Joel Votto introduces himself as the owner of 9 Winter Island Road. Mr. Votto explains he would like to construct a two-car garage on the left hand side of his residence, that conforms to the restraints imposed by a Chapter 91 line crossing his property.

Susan St. Pierre introduces herself on behalf of the applicant and demonstrates the location of the Chapter 91 line. Ms. St. Pierre explains that within the designated line it is prohibited to place any non-water dependent structures or facilities of private tenancy. As such, the proposed garage is set at a strange angle and requires a location closer to the street to obtain adequate depth. The applicant is seeking a special permit for the 3.5 foot setback. Ms. St. Pierre presents the plot plan and photographs of the proposal. Mr. Votto and Ms. St. Pierre indicate the proposal is similar to other homes in the area.

Chair Duffy discusses the statement of hardship, noting that the Chapter 91 line appears to present a constraint. Ms. St. Pierre explains the difficulties the applicant ran into when attempting to design the garage with the proper setbacks, including not being able to achieve an appropriate depth.

Mr. Viccica asks if the existing garage will be modified, and Mr. Votto explains that there is no existing garage, just a driveway.

Ms. St. Pierre notes that in this neighborhood many garages and homes are just a few feet from the street, and that Mr. Votto's home is set back a bit further than his abutters.

Mr. Viccica asks the Chair to read the statement of hardship into the record and he does (primarily relating to the existence of the Chapter 91 line).

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

Chair Duffy states the criteria for a special permit can be satisfied by the proposal.

Motion and Vote: Mr. Viccica motions to approve the petition JOEL AND CATHY VOTTO for a special permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance from minimum depth of front yard to expand an existing single-family home by constructing an attached two-car garage within the front yard setback at 9 WINTER ISLAND ROAD (Map 44, Lot 20) (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 (Rosa Ordaz, Carly McClain, Steven Smalley, Mike Duffy (Chair), and Paul Viccica) and none (0) opposed. The motion passes.**

Location:	34 St. Peter Street
Applicant:	Agron Gjerasi
Project:	A public hearing for all persons interested in the petition of AGRON GJERASI for a special permit per Section 3.1.2 Special Permit: Zoning Board of Appeals of the Salem Zoning Ordinance to construct an Adult Day Care center within the first-floor space at 34 ST. PETER STREET (Map 35, Lot 180) (R3 Zoning District).

Documents and Exhibitions

- Application date-stamped November 25, 2020 and supporting documentation

Chair Duffy introduces the petition.

Attorney Scott Grover introduces himself on behalf of the applicant and presents a site plan. Mr. Grover explains that the property, 34 St. Peter Street, is the campus of the St. John the Baptist church, more colloquially known as “the Polish Church”. Mr. Grover indicates the campus is an assembly of a variety of parcels with three buildings. One building is an administrative building related to the church, one is the church itself, and the third is a former parochial school that is no

longer used as a school and has been underutilized for many years. The former parochial school is the subject of this petition.

Mr. Grover explains that Mr. Gierasi would like to open an adult day care center at the property, and notes that he currently runs a successful one in Braintree since 2018. Mr. Grover contends the interior of the building will be renovated to create a new kitchen, lounge, activity rooms, restrooms, an administrative area, etc. There will be no changes to the exterior other than to add a concrete ramp in front for accessibility. Mr. Grover presents floor plans, and states the facility will accommodate approximately 70 to 100 clients daily, and that they will be dropped off at the center or picked up in vans operated by the center in the mornings and return to their homes later in the day. The center will operate five or six vans with a 15-passenger capacity and three additional mini-vans. Mr. Grover indicates they will employ six drivers and have ten to twelve staffers in the building. He also explains that the property is being leased by the arch diocese to Mr. Gierasi, and includes 20 parking spaces specifically for the day care center.

Mr. Grover states the property is in an R3 zone, and as such the use of the property as an adult day care can be allowed through a special permit by the Zoning Board of Appeals. The special permit can be granted if the Board finds that the adverse effects, if any, will not outweigh the beneficial impact to the City and neighborhood. Mr. Grover maintains that in this case, an adult day care center is much needed and that the community would be well served given the large senior housing facility across the street and the church next door. Mr. Grover stresses there is adequate parking for the facility, and that the proposal would repurpose an underused building while generating tax revenue and creating new jobs.

Mr. Viccica asks to see the site plan again and asks if the 20 parking spaces will be primarily used by workers. Mr. Grover says that is correct, for the workers and vans. Mr. Viccica asks for confirmation on the number of clients per day, and both Mr. Grover and Mr. Gierasi indicate that it would be 70 to 100 if operating at full capacity. Mr. Gierasi also confirms there will be five 15 passenger vans and three minivans that can accommodate seven or eight people.

Mr. Viccica expresses concerns regarding the potential for too many cars arriving at once and there not being enough linear footage of drop off space. Mr. Grover indicates that the building is set back in such a way with lengthy aisles between parking that such a scenario is unlikely to occur. He also notes that the vans will be carrying a good portion of the daily clients as well. Mr. Gierasi explains the parking situation a bit more and how the parking and drop off generally work at the Braintree center, noting he has not had a problem thus far.

Ms. Ordaz asks about the amount of outdoor space, and if there is ample area for 70 to 100 people to enjoy outdoor activities, and Mr. Grover states there is.

Chair Duffy asks Mr. Grover if there are other permits or approvals the applicant needs, and Mr. Grover indicates he only requires the zoning special permit. Mr. Giersi confirms.

Ms. McClain asks if the center will be run as non-profit or for-profit business, and Mr. Giersi states it will be for-profit.

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

Motion and Vote: Mr. Viccica motions to approve the petition of AGRON GJERASI for a special permit per Section 3.1.2 Special Permit: Zoning Board of Appeals of the Salem Zoning Ordinance to construct an Adult Day Care center withing the first-floor space at 34 ST. PETER STREET (Map 35, Lot 180) (R3 Zoning District) subject to the following standard conditions:

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

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

Location: 57 Loring Avenue (Map 25, Lot 439) (R2 Zoning District)

Applicant: Jaho Industries, LLC (Property Owner: Loring Avenue Realty Trust)

Project: A public hearing for all persons interested in the petition of JAHO INDUSTRIES, LLC for a special permit per Section 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to change from one non-conforming use (storefront) to another (coffee shop) at 57 LORING AVENUE (Map 32, Lot 146) (R1 Zoning District).

Documents and Exhibitions

- Application date-stamped November 25, 2020 and supporting documentation

Chair Duffy introduces the petition.

Attorney Joe Correnti introduces himself on behalf of the applicant, Anil Mezini, who is the proprietor of Jaho Café. Mr. Correnti states most should be familiar with the applicant's Salem operation on Derby Street, which has been successful and has a strong following. Mr. Correnti indicates that Mr. Mezini would like to open a second location at 57 Loring Avenue. Mr. Correnti presents photographs of the proposed location, and explains that it is across from the fire station and next to the central campus of Salem State University. Mr. Correnti notes that while the area has always been zoned R1, in the 1980's the Board granted the property relief to build a commercial building. The building has been well kept and is owned by a Salem family. Mr. Correnti states the original use was for a Broadway Auto Mart, and that various businesses occupied the space over the years, such as a video store, a pet store, the White Hen Pantry, and the White Dove Market. Mr.

Correnti maintains the location has been successful for businesses, and suggest it would be for the proposed use, particularly with the nearby university students. Mr. Correnti contends the applicant is seeking a special permit to go from an existing non-conforming use to a new non-conforming use (the café) which will fit the location well. Mr. Correnti indicates there will be a positive fiscal impact to the City, and that Jaho will be looking to add 18 to 20 employees, some full time and some part time.

Anil Mezini introduces himself and explains that he grew up in Salem, and opened the first Jaho fifteen years ago. Mr. Mezini characterizes his business as the local neighborhood coffee shop, and expresses gratitude toward the regulars that keep them going year round. Mr. Mezini explains that he attended Salem State and came up with his original business plan for Jaho as a student there, so when the space became available it seemed fitting. He explains that his business has grown to three locations in Boston, but that this proposal will be very similar to the Derby Street location. Mr. Correnti clarifies that the Derby Street location has a liquor license, but this location will not.

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

Chair Duffy indicates the request appears to be straight forward, with positive social and economic community benefits. Chair Duffy explains how the criteria for a special permit is met by the applicant.

Ms. McClain asks if baking will be done at facility, and Mr. Mezini states that most baking will be done at the Derby Street location.

Motion and Vote: Mr. Viccica motions to approve the petition JAHO INDUSTRIES, LLC for a special permit per Section 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to change from one non-conforming use (storefront) to another (coffee shop) at 57 LORING AVENUE (Map 32, Lot 146) (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. A Certificate of Occupancy is to be obtained.
6. A Certificate of Inspection is to be obtained.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. All construction shall be done per the plans and dimension submitted to and approved by this Board. No change, extension, material corrections, additions, substitutions, alterations, and/or modifications to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

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

MEETING MINUTES

October 21, 2020

November 18, 2020

Chair Duffy notes he found a typographical error in the first paragraph of the October 21st minutes, as it references September 16th but should reference October 21st. He also notes that on page 16 some letters were transposed in the word “Chair”. Chair Duffy states he has no edits to the November minutes.

Motion and Vote: Mr. Viccica motions to approve the minutes for the October 21, 2020 ZBA meeting as amended. Mr. Smalley seconds the motion. **The vote is four (4) in favor, one abstaining (1) and none (0) opposed. The motion passes.**

Motion and Vote: Mr. Viccica motions to approve the minutes for the November 18, 2020 ZBA meeting. Ms. Ordaz seconds the motion. **The vote is five (5) in favor and none (0) opposed. The motion passes.**

OLD/NEW BUSINESS

Discussion of and Vote on 2021 Meeting Schedule and Submittal Deadlines

Chair Duffy presents the suggested schedule, which is consistent with the past. Meetings would be held on the third Wednesday of each month, except for in September, where it will be held on the fourth Wednesday of the month (September 22, 2021) as Yom Kippur is the week prior.

Chair Duffy asks if any Board members have any issues with the proposed schedule.

Mr. Viccica states he has no issue, but asks if public school Spring vacation might be an issue, as in the past there have been instances where there were not enough Board members available.

Ms. McClain notes the February meeting is during school break as well.

Chair Duffy asks if Board members would like to suggest different dates, or take the schedule as proposed and deal with any issues as they arise, suggesting special meetings if there is a back log that needs to be worked through.

Mr. Viccica suggests that with the pandemic this year people are unlikely to be traveling, so it may not be an issue this year.

The Board discusses the schedule a bit more, and concludes that they are comfortable approving the schedule as drafted.

Motion and Vote: Ms. McClain moves to approve the 2021 meeting schedule and submittal deadlines. Mr. Smalley seconds. **The vote is five (5) in favor and none (0) opposed. The motion passes.**

ADJOURNMENT

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

The meeting ends at 8:01 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>

Respectfully submitted,
Lev McCarthy, Staff Planner