

City of Salem Board of Appeals
Meeting Minutes
November 19, 2018

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Monday, November 19, 2018 in the first floor conference room at 98 Washington Street, Salem, Massachusetts at 6:30 pm.

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

ROLL CALL

Those present were: Mike Duffy (Chair), Peter A. Copelas, James Hacker, Paul Viccica and Patrick Shea.

Also in attendance were Brennan Corriston - Staff Planner, Tom St. Pierre - Building Commissioner, and Lorelee Stewart - Recording Clerk.

REGULAR AGENDA

Location	16, 18 & 20R Franklin Street (Map 26, Lots 402, 401 & 400) (NRCC and RC Zoning Districts)
Applicant	Juniper Point Investment Co LLC
Project	A public hearing for all persons interested in the petition requesting a special permit per Section 3.3.2 of the Salem Zoning Ordinance to change from one nonconforming use (junkyard and auto service) to another nonconforming use (multifamily residential) and variances for relief from Section 4.1.1 Table of Dimensional Requirements for the minimum required lot area per dwelling unit and maximum number of stories to construct 42 residential units within five buildings.

Documents and Exhibitions

- Application date-stamped October 29, 2018 and supporting documentation

Joseph Correnti of 63 Federal Street, attorney for the petitioner, presents the petition on behalf of Juniper Point Investment Co LLC regarding 16, 18 and 20 Franklin Street, known as the “Ferris Junkyard site. Mr. Correnti states that the permitting path started in Summer 2017, meeting with neighborhood groups through Councillor Gerard at the Salvation Army, showing concepts, taking input, then modifying the plan. Mr. Correnti states that petitioner first filed with the Planning Board in August 2017 to begin the site plan review process. With the input of the Planning Board, the petitioner made major modifications to the original plans. Mr. Correnti describes this process as comprehensive, as this site hits just about every board and just about every permit, both local and state, that one can imagine.

Mr. Correnti provides some historical context for the junkyard use of the site and historic desire to move the junkyard. This site is a salvage site on outskirts of downtown on the river. The site is highly visible, especially given the MBTA station and apartments and development in the downtown.

Mr. Correnti states that this site is in the North River Canal Corridor, where a lot of development and permitting has occurred near the Boston Street area. He describes contaminated, former industrial sites in the district being renovated and rebuilt into modern housing and other things, and others in permitting. Mr. Correnti states that this is the first site on this side of North Street. Mr. Correnti describes the site as a transitional site, moving from downtown, heavy commercial, former HMA Car Care, marine dredging, and industrial buildings, to the junkyard, to the playground and ballfield at Furlong Park and a residential neighborhood. Mr. Correnti states that there are many uses around the site, which have been part of the challenge of designing something that fits. He adds that the Planning Board gave much feedback.

Mr. Correnti states that the junkyard will be removed and the lot remediated. There will be 42 riverfront condominiums and the site will feature amenities including walking trails and green space, including public access to the riverfront. In over a year with the Planning Board, petitioners made multiple revisions and ultimately received unanimous site plan approval from that Board.

Mr. Correnti states that there are three requests for relief: one special permit and two variances. The first is a special permit to go from one nonconforming use (a junkyard) to another, less detrimental nonconforming use (multi-family residential). Mr. Correnti submits that this is a less detrimental use to the neighborhood than the existing use.

Mr. Correnti states that the petitioners are asking for 2 variances. One variance is for the number of stories on a building. NRCC zoning states that there can be 4 stories to a building at 50 feet in height; petitioners have 5 stories that do not exceed 50 feet in height; as such, petitioners do not need building height (feet) variance, but do need building height (stories) variance. Mr. Correnti states that the reason for this variance is that, though there are four stories of living space, petitioners are putting parking beneath the first floor of residential; this parking is considered a story. Petitioners do not need relief for parking – the site meets all parking requirements.

Mr. Correnti states that petitioners are seeking variance for minimum lot area per dwelling unit, or “the density variances.” The NRCC requires 3,500 square feet of lot area per dwelling unit and petitioners are requesting about 2,300 square feet lot area per dwelling unit. Mr. Correnti states that the Zoning Board has granted this variance to every NRCC project that has been permitted. Mr. Correnti states that the land area at this site compares favorably to NRCC sites that were granted this variance. He presents a chart demonstrating that other NRCC projects have been permitted with less lot area per dwelling unit than the proposal for the site; the Franklin Street site is the least dense of all the permitted NRCC projects.

Bob Griffin of Griffin Engineering, the civil engineer for the project, discusses the site plan. Mr. Griffin presents the Existing Conditions plan and notes that there are restrictions on the site due to the waterfront location, Chapter 91 restrictions, and Conservation Commission jurisdiction (within 200 feet of mean high water line). Mr. Griffin adds that petitioner plans to go before the Conservation Commission, and that he believes they have designed a site that complies with all applicable conservation rules. Mr. Griffin states that 10% of site is not filled tidelands; 90% is filled

tidelands. Given marine deposits and soft soils in the filled tidelands area, the midrise buildings will probably need to be built on piles to provide a firm foundation.

Mr. Griffin states that some city utilities run through the site, including a 15-inch clay pipe drain line. Due to some concerns about the capacity of this clay pipe, petitioner will build a drainage system that is essentially completely independent from the city's system. The project will not discharge any water into the city's drainage system; there will be two independent outfalls into the North River which may need to be built on piles as well. As part of foundation improvements, they will get rid of concrete retaining walls that have been covered by fill. Mr. Griffin states that the property owner has hired an LSP [licensed site professional] to investigate the site; the LSP determined that there will likely be an activity and use limitation: there is so much contamination on the site that it is not practical to remove it as part of the redevelopment process. The LSP has also identified two large areas where the soils will need to be removed from the site, brought to a special landfill under Massachusetts [Chapter] 21E rules and regulations, and replaced with clean fill.

Mr. Griffin states that the site is in a flood zone; the portion near Franklin Street varies in elevation from approximately 7' to 9'; the flood zone is elevation 10'. When the area floods, portions will be under water; to deal with that, we will bring in fill to raise our buildings above flood elevation. Garage elevations start at about 11.2', at least one foot above flood elevation. In the midrise buildings, the first living story will be one story above the garage elevation, at about elevation 22'. All the habitation on the site will be well above the flood zone, so there is no danger of people getting water in their living spaces.

Mr. Griffin states that concrete and asphalt has been dumped along the shoreline on the site. As part of cleaning up the site, in addition to the environmental contamination from the junkyard use, we will have to remove the concrete and asphalt and stabilize the shoreline, which will then look like the shoreline in the Furlong Park area.

Mr. Griffin, presenting the proposed site plan, states that plan is to build 3 mid-rise buildings with 34 total units and 2 townhouse buildings with 4 units of housing each. There is a required 100' setback from the river. There are roughly 42,500 square feet of conservation land, and the required public access per Chapter 91 will be provided, including a walkway, benches, and landscaping. They may make a connection to Furlong Park, making a continuous walkway along the river. There will be extensive landscaping with about 50 trees and over 200 shrubs

Mr. Griffin states that the open space area will be within the 10' 100-year flood elevation, but the areas around the buildings will be elevation 10' or higher and the slabs of the buildings will be at elevation 11'; in the mid-rise buildings, the first living area will be above the first-story parking.

Mr. Griffin states that most parking is below grade. There will be 65 parking spaces total, 45 of which will be below the buildings; 20 will be outside the buildings. Mr. Griffin states that providing parking in this way means most parking is out of the way visually, and there is an open view area from Franklin Street to the River through the outdoor parking space.

Mr. Griffin states that the site has many challenges including soil contamination, wetland and environmental restrictions, debris clean up and flood plain issues.

Mr. Correnti returns and states that a zoning line runs through the property, dividing the property into NRCC and RC zoning districts. The petitioner was already granted the needed special permit for the NRCC district by the Planning Board; the petitioner is requesting a special permit for the RC district from the Zoning Board of Appeals to allow a change from one nonconforming use to another nonconforming use.

Mr. Correnti states that this is a unique property in the NRCC. The site is 2 acres, and about 1 acre is not used for buildings due to Chapter 91 regulations and will be publicly accessible. Mr. Correnti also points out view corridors to the river from the street. Mr. Correnti explains that, based on suggestion from a Planning Board member, the buildings are taller nearer to the river, and shorter nearer to the street – this allows for a transition from the downtown area across the river to the residential neighborhood nearby. Mr. Correnti states that all new sidewalks will be put in along the site (where there are currently no sidewalks) for this transit-oriented development. Mr. Correnti states that the project is a quarter-mile from the train station and is considered a transit-oriented development.

The Board and Mr. St. Pierre ask questions about the plan. Mr. St. Pierre asks whether the driveway near the parking lot is two-way. Mr. Griffin states that they have reviewed plans with the Fire Department and that a firetruck can enter the site, make a three-point turn, and exit. Mr. Correnti states that the Fire Department did sign off on this project as part of the Planning Board process.

Mr. Copelas asks about the elevation of the site and the buildings relative to the flood plain, including the townhome style buildings. He asks if the townhome-style buildings are, at ground level, at elevation 11'. Mr. Griffin states that the garage elevations in the two townhouse buildings are around elevation 11', and explains that there is a transition from above-10' to below-10' near the street in order to get vehicles to the street-level elevation of 7' or 8'.

Mr. Copelas asks about the height of the townhome buildings. Mr. Correnti states that he believes the height is about 38'.

Mr. Viccica asks for a review of the hardship. Mr. Correnti replies that the site is totally unique in its formation. He states that because of Chapter 91, petitioner has a 2 acre site but can only build on 1 acre. There is also the acquisition price and cost of remediation. Petitioner has to remediate the whole site, not just where the buildings are. Although the site is not a toxic site, it does require remediation – there are oils and stained soils from oils and fluid spills. Mr. Correnti restates that the issues are the inability to develop on half the site, the remediation of the entire site, the fact that 90% of the site is filled tidelands, so all construction must take into account the tidelands: the buildings may be on piles or piers as they need to be stabilized. The flood plain leads to extra costs for utilities and development. The flood plain requires petitioner to increase first-floor elevations by bringing in fill. The parking beneath the first living story helps protect the residents and their homes, though it brings about the variance requirement. Mr. Correnti states that the uniqueness of the land, the soils, the filled tidelands, the flood plain, the environmental remediation needed, the requirements leading petitioner to not be able to build on half the site, bringing in public amenities, and raising the buildings are financial hardships that require petitioners to build a minimum number of units to make the project viable.

Mr. Duffy opens meeting for public comment.

Louis Johnson of 12 Pope St works for Juniper Point and speaks highly of the quality of work they provide. He and members of his family are in favor of the proposal. He states that he does not want to bring his family to the park because of the junkyard.

Anne Sterling of 29 Orchard St mentions the traffic situation—as of 5 years ago, drivers can no longer make a left into downtown Salem from Franklin Street, and the city cannot install a traffic light on Franklin Street. Ms. Sterling states that this will require drivers to drive through the neighborhood instead. She asks the Board to take this into consideration. She also mentions that the Design Review Board did not give the project a positive recommendation.

Kevin McCafferty of 116 Bridge Street speaks in favor, stating that the only way to pay the extensive costs to remediate and build on the site is to build the amount of units proposed.

Brian Dawson of 30 Dearborn Street speaks in favor of the effort to beautify but expresses concern about downtown moving toward North Salem. He says with this development, I feel like the city is coming to me. Mr. Dawson brings up Transitional Overlay District and states that the transition ought to be considered.

Victoria Ricardello of 5 Foster Street states that the City owns some of the property and expresses her concern about the petitioner buying property that they do not have rights to. Ms. Ricardello hands a letter from the City Solicitor to Mr. Duffy. Ms. Ricardello asks isn't there a way to help the developer as a City through grants or otherwise with cleanup. Ms. Ricardello asks that when the Ferris property was put up for sale a few years ago, it was put up for sale for a different dimensional size than is currently being specified.

Mr. Correnti addresses some of the comments/questions. Mr. Correnti states that the Transitional Overlay District (TOD) does not apply to this site because the line of the district as measured from the nearest residents hits just a corner of the site; none of the buildings are within the TOD. Mr. Correnti states that Mr. Dawson accurately described the TOD, but that the TOD does not apply to the site.

Mr. Correnti addresses the concerns of Ms. Ricardello and states that it is not accurate to say that the land in dispute belongs to the City of Salem. He states that land in dispute (on the junkyard side of the fence) has been continuously used by the junkyard since 1952. He adds that the letter from the City Solicitor is about a year old and was submitted to the Planning Department. Mr. Correnti adds that the property line issue is a title issue, not a zoning issue, and states that if we're wrong and can't use what we are showing tonight, we have to come back to the Zoning Board with a modified plan.

Mr. Viccica adds that the ZBA would have to condition the approval on the basis of a favorable outcome regarding the land in dispute. Mr. Correnti states that if the Board approves the plan, it approves the plan as submitted to the Board, so if the plan changes, petitioners no longer have an approval and have to come back to the Board.

The Board asks Mr. Correnti to address traffic. Mr. Correnti states that the traffic was studied by traffic engineers at Vanasse & Associates who did a traffic impact analysis based on 48 residential units; the current proposal is 42. The City has the developer pay for a peer-review consultant, who reviewed the impact analysis; the conclusion of both was that impacts are minimal. The Planning

Board was satisfied with the analysis. The developer is making a contribution to the traffic impact fund.

Brain Dowson brings a document to Chair Duffy showing Transitional Overlay District (TOD) line on the property. Mr. Correnti presents a plan illustrating the TOD 100-foot buffer clipping the sidewalk of the site plan, but not any of the buildings. Mr. Correnti states that the TOD doesn't apply.

Tyler Terry of 22 School Street asks, doesn't the TOD also extend from residentially zoned uses, not just residentially used? Mr. Correnti states that petitioner's position is that they are confident in the TOD line shown on their plan and that the TOD does not apply to the site.

George O'Brien (address unclear) states he is not in favor of the project, citing concerns about number of dwelling units, traffic, the building finish, rent control, clay pipes, bringing downtown into North Salem, and rising tides.

Tyler Terry of 22 School Street states that in Salem's 2015 Open Space and Recreation Plan, all 5.5 acres of 20 Franklin Street, including Furlong Park and disputed area, are listed as having Article 97 protection. Mr. Terry adds that soil conditions are systemic to the NRCC and asks why they are not accounted for in the sales price of the land instead of the petitioner asking for variances (in other words, asking why the developer could not get a reduced price because of bad site conditions instead of asking for variances). Mr. Terry adds that a few people wanted to be here who could not make this meeting, and asks the Board not to close the public hearing because he knows other people wanted to speak about this.

Mr. Duffy reads letters from members of the public into record.

- Judy French of Foster Street wrote in opposition to the proposal, stating among other concerns that she doesn't believe it would be sensible and that this project would set a precedent.
- Justin Woods of 3 Linden Street wrote in support of the project, describing the area as an eyesore and saying that he would like to see the area in better condition.
- Megan Riccardi of 23 Orchard Street wrote in support of the project, saying that it would be a positive to the neighborhood and bring ownership and pride to a currently blighted section and that the removal of cars would improve the environmental impact.

Mr. Duffy closes the public hearing.

Mr. Viccica asks Mr. Correnti if this is a private sale; Mr. Correnti says that it is.

Mr. Copelas states that the special permit is not terribly difficult; that the nonconforming use of residential is clearly less detrimental than the existing nonconforming use of the junkyard.

Mr. Copelas discusses the variances for stories and density. Mr. Copelas states that the height (feet) and height (stories) requirements are essentially saying the same thing. Mr. Copelas states that the fact that the buildings do not exceed the 50 foot height requirement seems to mitigate the stories variance.

Mr. Copelas states that the next issue is lot coverage. He states that the Board has seen in many other cases that it is very difficult to do anything reasonable without triggering the lot coverage variance requirement. Mr. Copelas states that given the special conditions affecting the site including Chapter 91 requirements, soil conditions, and what he sees as special circumstances of the lot, he could see his way to granting that variance.

Mr. Viccica asks Mr. Correnti if he has a sense of what the remediation and fill costs would be. Mr. Correnti states that the costs combined are likely a seven figure number, if the remediation goes as petitioner hopes it goes – that is the best case.

Mr. Viccica states that the amount of investment required to develop the site per the NRCC would be burdensome; he notes that it is not a topographic issue, but that the circumstances are specific to the site. Mr. Viccica agrees with Mr. Copelas that he could see a way to granting the variance, and they agree that the height (feet) and height (stories) are essentially saying the same thing.

Mr. Viccica states that he would like to condition approval on the developer having a successful outcome regarding the disputed land, as he doesn't see how he can approve a project that has an outstanding issue where parking is located. Mr. Viccica asks Mr. Correnti if that's a problem. Mr. Correnti says that it is not a problem, that it may be "belt and suspenders" because the Board approves or does not approve the plan that is submitted to the Board; without the disputed land, the petitioner's plan is a different plan (and would not have adequate parking), and petitioner would not be able to get a building permit for that (and would have to come back to the Board of Appeals). Mr. Viccica states that he likes "belt and suspenders" (i.e., the special condition), and Mr. Correnti says it is not a problem for the petitioner (to include it).

Mr. Viccica reviews criteria for the special permit:

1. The social, economic, and community needs are served by the proposal with respect to the change from one nonconforming use to another, less detrimental nonconforming use.
2. The project meets the parking requirements of the zoning ordinance. Proximity to the train station may allow residents to cross over railroad tracks to get to the train station.
3. There are adequate utilities and public services in the area.
4. The proposed project's impacts on the natural environment, including drainage, would be uniformly better than the impacts of the current use, especially regarding runoff into the canal and the adjacent parkland.
5. The fact that this is a residential development helps this project fit into the neighborhood character. Issues of building aesthetics were approved by the Planning Board.
6. The residential tax base would have a positive fiscal impact, and the project would have a positive impact on short-term employment for construction and long-term employment for on-site maintenance.

Motion and Vote: Mr. Viccica makes a motion to grant the requested special permit per Section 3.3.2 of the Salem Zoning Ordinance to change from one nonconforming use (junkyard and auto service) to another nonconforming use (multifamily residential) and the requested variances for relief from Section 4.1.1 Table of Dimensional Requirements for the minimum required lot area per dwelling unit and maximum number of stories to construct 42 residential units within five buildings at 16, 18 & 20R Franklin Street. The motion is seconded by Mr. Copelas. The vote is unanimous with five (5) (Mr. Duffy, Mr. Shea, Mr. Copelas, Mr. Hacker, and Mr. Viccica) in favor and none (0) opposed to the petition.

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. Petitioner shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to be visible from the street
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. A favorable outcome regarding the disputed land – approximately 25,000 square feet of the property – in the developer's favor must be included in the project as presented.

Location	84 Washington Square East (Map 35, Lot 516) (R2 Zoning District)
Applicant	Matthew Cornell and Others
Project	A continuation of a public hearing for all persons interested in a petition to appeal the issuance of a building permit.

Documents and Exhibitions

- Application date-stamped September 17, 2018 and supporting documentation

Attorney Roy Gelineau of 29 Federal Street, representing the petitioners, speaks on behalf of a group of approximately 20 neighbors in regard to 84 Washington Square East, the site of the former Full-Spychalski funeral home. Attorney Gelineau states that they are appealing the building permit issued by the City of Salem because the neighbors feel that rather than a building permit, the project should have required a special permit because there has been a substantial change in use by the funeral home with their renovations. He adds that a funeral home always needs a special permit.

Attorney Gelineau states that, in looking for the existing permit for this site, they obtained a permit from the City dating back to 1953, when a funeral home began operating at that site. He states the permit they received is unclear-- it could be a special permit or a building permit; there are no other records for the property from the time. Attorney Gelineau explains that (recently) the new owner of the property (O'Donnell Funeral Home) sought a building permit, which Mr. St. Pierre issued. The new owners want to add 1600 square feet of building to funeral home, increase parking from 51 spaces to 87 parking spaces, and increase the number of lights from 1 to 42. Attorney Gelineau states that the law is pretty clear that when you expand a pre-existing, nonconforming use, you need the City to make findings that the expanded use is no more detrimental to the neighborhood than the existing use. He states that petitioners are appealing the issuance of the building permit issued because the neighbors think that the building expansions on this site constitute a substantial change in use and want a chance to go through the process of a special permit hearing in order to have input in the process. The expansion will increase activity at the site impacting traffic and will be

more detrimental to the neighborhood. Attorney Gelineau states that petitioners want the ZBA to revoke the building permit (issued by Mr. St. Pierre) so the ZBA has the opportunity to evaluate if this project is or is not more detrimental to the neighborhood than the existing use, considering the number of lights and cars, noise, and hours of operation. Attorney Gelineau states that the special permit process should have been used and was not, so the petitioners are asking the Board to revoke the building permit.

Mr. St. Pierre explains that he went over the plans with the project architect. Mr. St. Pierre states that the new plan didn't change much with regards to square footage and in his opinion was a renovation of the main building rather than a total replacement.

Mr. Viccica asks the architect, Paul Durand, why they are increasing the amount of lighting and parking. Mr. Durand explains that this is a change from one big, pole-mounted light to residential, 6-foot-tall lanterns that will only be on when a service is being held or there is some operation going on. He states that the existing lighting is inadequate and inappropriate; that the new lighting is safe and appropriate, and that a 6-foot high fence around the property will shield the neighborhood from headlights. Mr. Durand adds that the handicap-accessible ramp is changing to bring the building to code. They are adding an elevator to access the second story and basement, where no services occur.

Mr. St. Pierre cites a line on the 7/13/1953 special permit that states "Board of Appeals." Mr. Viccica states that the Board granted the conversion from dwelling to funeral home, whether that was a special permit or not. Attorney Gelineau wants to know what restrictions there were on the old permit and Mr. Viccica states that there may not have been any restrictions. Mr. Gelineau states that no one has made Section 6 findings in Salem for this site and he doesn't think the building inspector can allow them the expanded use without neighbors having input through a hearing and a special permit process.

Mr. Copelas states that the Board would be hard-pressed to act on a modification of a special permit – if the 7/13/1953 document is a special permit – without more information (i.e., if the permit from 1953 is the only document). Mr. Copelas adds that the "addition" and "renovation" (as described in the building permit), and the increase in parking, certainly seem to be an extension or increase in the use, and that it does not seem unreasonable that a special permit be required.

Attorney Bill Quinn, representing the property owners, speaks. He adds that neighbors always want a say in construction work that affects them, but the question is, when does that question come to this board. He states that you can't have every project come to this board; projects come to this board because they are required to do so. Attorney Quinn states that the plans for this project are totally conforming structurally; there is no legal, structural nonconformity that would indicate the extension of a nonconformity. Attorney Quinn states that there is no need for a question of whether there is a detrimental extension of the structure. Attorney Quinn states that the question is whether this is a substantial expansion of *use*.

Attorney Quinn states that the Full-Spychalski Funeral Home had four rooms and could have four services at a time. The new plans consolidate those four rooms into two spaces. They will be conducting fewer funerals per day than the existing building was built to accommodate. Attorney Quinn adds that the amount of people attending a funeral home does not depend on parking; people go to a funeral home because they knew the deceased. This site will accommodate those people. Attorney Quinn says that to him, the added parking is not the use question. Attorney Quinn

states that it is likely that fewer people will come to two funerals than would come to up to four. Based on that, Attorney Quinn says that there is no substantial extension of use and there are no dimensional non-conformities. He feels the building inspector made a sound decision.

The Board wants to know why there is an increase in parking; Mr. Viccica asks what is changing in the funeral home that is requiring or making it desirable to indicate the parking. Mr. Viccica states that he thinks the increase in parking is a substantial change. Attorney Quinn states that the increase in parking is to accommodate the maximum amount of people they think would be at two services and to get them off the street (where overflow parking currently occurs – in coned-off areas near the Salem Common).

Mr. Viccica asks if they currently use all four chapels at once. Attorney Quinn states when they put the partitions in so they could use up to four chapels, he can only assume they did so for a reason.

Attorney Quinn states that Salem's modern zoning came into place in 1965. He adds that the only changes to the building since 1965 have been to repair a roof and to install a handicap ramp. Attorney Quinn states that the property is grandfathered.

Mr. St. Pierre adds that an increase in parking doesn't necessarily mean an increase in use. He states that his discussion with the project architect made it clear that the addition of parking to the site is to relieve some of the parking pressure on the Salem Common. Mr. St. Pierre states that the current practice for this site has been to put cones out in the street at the Salem Common for patrons of the funeral home; this parking change is a way to get the parking off the street near the Common.

The Board discusses whether this constitutes a substantial extension of the use. Mr. Viccica asks if nothing changed, why there is more parking; he states that if it is a substantial extension of the use, there should be a special permit process.

Attorney Quinn responds that the use of the site has been as a funeral home and will be used as a funeral home after renovations. He states that the increase in parking, he feels, reflects the maximum parking they might expect for a particular event / for a particular person's funeral; this does not mean they will be much busier day-to-day or on average. He adds that you can't know who will come to a funeral, but that someone does not pick a funeral home based on the amount of parking available. He adds that increased parking doesn't mean increased use.

Mr. Duffy asks whether there will be structural changes in this renovation such as bearing walls, supporting members, etc.

Mr. Durand states that they are removing an addition and replacing it, that it is pretty much in kind. He adds that the changes include making the entrance of the building towards the back, where the parking is, instead of towards the front (the street-facing side). The project architect states that a lot of the design work is creating the entry in the back, accommodating accessibility, making it more aesthetically pleasing. He adds that they are adding graveled parking because they have space and can use it for parking for large funerals or for cars to queue before going to a burial. The project architect states that the advantage is that we're pulling cars off the Common and are better able to accommodate cars. He adds that we're not really expanding the use or changing the physical capacity of the building. He adds that the use of the building is similar to what it was before.

Attorney Gelineau states that the ongoing conversation is why they need a hearing to lay all of this out: the developer would have to set these things out. Attorney Gelineau says that it is obvious to him that there is an increase in use. Attorney Gelineau adds that the funeral home business is changing – instead of having people go to churches for funerals, the services are being held in the funeral homes; this, Attorney Gelineau says, is why they need more car spaces. Attorney Gelineau says that he is asking for the normal course of business; he asks the Board to revoke the building permit and require a special permit process to have these questions answered in a meaningful way. Attorney Gelineau and Attorney Quinn agree that it takes four out of five (4 out of 5) Board votes to revoke a building permit.

Chair Duffy opens the meeting for public comment.

Matt Cornell of 18 Bridge Street speaks in opposition to the project. He believes that the changes to the funeral home are substantial and detrimental.

Greg Burns of 27 Boardman Street expresses his concern about parking spaces. Mr. Burns states that the gravel parking area is in addition to the expanded paved parking from 51 to 86 spaces.

Anthony O'Donnell, a co-owner of 84 Washington Square East, clarifies that the 83 total spaces includes the gravel portion of the property. Robert Griffin, project engineer, states that there are 27 spaces on the gravel.

Beth Anne Cornell of 18 Bridge Street states that the neighbors tried to take care of many issues with the O'Donnells before coming to the ZBA. Ms. Cornell states that they (the petitioners) understand the purview of the ZBA and that they believe that this is a detrimental expansion of use, and that any claim that it is not is disingenuous.

John Windsor of 21 Boardman Street states that he pulled into his driveway and saw that five trees had been cut down. He states that this is not what he expected to see in a residential neighborhood, that it is a change of use, and that we could at least have a hearing.

Chris Peters of 7 Boardman Street asks the ZBA to examine the parking specifications, as they do not seem to match the plans neighbors saw earlier; Mr. Peters adds that the change in layout will increase the use and impact. Mr. Peters states that he has lived at his house for five years and has seen probably no more than 10 funerals. He states that looking at the other nearby O'Donnell home, they have services there all the time. He states that the change in parking, too, reflects an increase in capacity. Mr. Peters states that all the petitioners are asking for is due process.

Caroline Barres of 9 Boardman Street expresses her concern that the O'Donnells (the new owners) will use the parking lot for other things (i.e., non-funeral uses). She asks why the new lights are needed as most funerals are during the day. Ms. Barres also expresses concern about noise.

Mr. St. Pierre states that he has produced a letter to the owners stating that parking must be used for funeral uses only; it cannot be used for other purposes.

Beth Anne Cornell states that the letter Mr. St. Pierre wrote stated that the parking could not be leased or rented to another business. Ms. Cornell asks if the owners could allow another business, such as the Hawthorne Hotel, to use it without a rental agreement.

Mr. St. Pierre replies that in his opinion, whether they pay for it or not, that would still be a use not ancillary to the funeral home use (and thus would not be allowed).

Thomas O'Donnell, one of the co-owners of the funeral home, addresses recent questions. Mr. O'Donnell states that when the funeral home was built with four chapels, it was a neighborhood funeral home that people could walk to; he states that today, families have more cars. He adds that they have no intention to rent the lot to anyone. Mr. O'Donnell speaks about cleaning up the lot and adds that the tree removal cleaned up the lot which was unkempt. Mr. O'Donnell states that they don't own the street, and that though the City has allowed them to cone off parking on the street, he does not know if they always will. He adds that he does not know how many spaces will be needed, so he decided to hard-top the current amount of spaces and gravel the rest. He notes that the gravel has helped with a rodent problem on the lot. Mr. O'Donnell feels they did everything correctly including meeting with neighbors.

Anthony O'Donnell states that they were told they didn't need a special permit. He states that they are trying to better the neighborhood.

Corrina Corrigan of 6 Briggs Street expresses concerns about lighting and the 6 feet high plastic fence. She states that the lights closest to her property will be obscured, but the lights across the way (on the other side of the property) will not be obscured. She also expresses concern about the fence, and states that they have not had the ability to be in dialogue with the O'Donnells about that.

Thomas O'Donnell states that the fence can be eliminated, but that it is helpful for blocking lighting.

Mr. Durand, project architect, adds that they had an open house and reviewed lighting, fencing, and landscaping. He states that all neighbors who attended were satisfied with the presentation.

Matt Cornell states that the petitioners filed the appeal on September 17, and the open house was held on October 10. He adds that they have been trying to establish a dialogue with the O'Donnells since before the trees were cut down.

Chris Peters states that this (ongoing discussion) is why they needed a special permit in the first place: to have the proper channels and proper dialogue, and so everything is documented. He states that they tried to go the other way by having an agreement with the O'Donnells, but that the O'Donnells did not agree.

Mr. St. Pierre speaks about Section 6 findings (mentioned earlier by Attorney Gelineau). Mr. St. Pierre states that for every permit application before him, he has to make a determination as to whether the proposal conforms to the zoning or whether it comes to the Zoning Board. He states that this plan went through 2 previous renditions which he rejected as needing to come before the Zoning Board; this plan is the third version.

Mr. Viccica states that the Board needs to understand what substantial extension of the current use is. He states that what matters to him is that he believes that there have been changes to the interior of the building that have some pressure to increase and substantially extend the use. Mr. Viccica expresses that something is changing – in changing from four chapels to two chapels – and he is

looking at the project as uniformly applied across the city, he is still not convinced that this is not a substantial extension of the use that requires more parking in the back.

Mr. Copelas states that the combination of a substantial increase in parking and the change in traffic pattern seems to trigger the need for a special permit. He states that the last thing he wants to do is bring more work to this Board, but that in this particular case, he believes there should be an application for a special permit.

Chair Duffy states that he does not see a change to a nonconforming structure or a nonconforming use: it is a funeral home that is remaining a funeral home. Chair Duffy states that he does not see a substantial extension of the existing use, as the use remains a funeral home.

Mr. Hacker states that going from four chapels to two seems a reduction, not an extension.

Chris Peters states that if you take a room like a school gymnasium that is partitioned into four rooms and instead partition it into two, the capacity goes way up. Mr. Peters states that removing the walls that partitioned the space increases the capacity.

Project architect Paul Durand states that it is the same volume; they have removed the foldable walls that were used to partition one space into three. He states that they took another wall out. He states that it is more efficient, but it is not a lot more people. He states that it is about how you conduct the ceremony with more people engaged.

Motion and Vote: Mr. Viccica makes a motion to grant the appeal of the issuance of a building permit for 84 Washington Square East (i.e., to revoke the building permit). The motion is seconded by Mr. Copelas. The vote is three (3) in favor (Mr. Shea, Mr. Copelas, and Mr. Viccica) and two (2) opposed (Mr. Hacker and Mr. Duffy). Failing to receive four (4) votes in favor, the appeal is denied, and the decision of the Building Commissioner to issue Building Permit #B-18-771 stands.

Location	462 Highland Avenue (Map 3, Lot 2) (B2 and ECOD Zoning Districts)
Applicant	I.N.S.A., Inc.
Project	A continuation of a public hearing for all persons interested in a petition seeking a special permit per Sec. 6.10.4 of the Salem Zoning Ordinance to operate a licensed retail marijuana establishment.

Documents and Exhibitions

- Application date-stamped September 6, 2018 and supporting documentation

Mr. Copelas announces that despite missing the first part of the hearing last month, he listened to the audio for that meeting and will sign a Mullin affidavit to participate tonight.

Attorney John R. Keilty, representing I.N.S.A., states that last meeting, they presented their security plan and operations plan. Since then, they got rid of one door at the rear of the building about which the Board had expressed security concerns. Another door at the rear of the building has remained, but is card-access only. He explains that the public in general will not have access to the rear of the building. Attorney Keilty states that they will review the traffic study tonight. He introduces Giles Hamm of Vanasse & Associates who reviews the traffic study results. Mr. Hamm states that this is a replacement project, replacing Meineke retail (auto service shop) with marijuana retail. Mr. Hamm states that Highland Ave sees about 25,000 cars a day (weekday and Saturday very similar) and about 1,900 or 2,000 cars during peak hours. Mr. Hamm states that their business will generate about 800 daily trips and between 70 and 112 peak hour trips. Mr. Hamm explains that 112 peak hour trips would be about 56 in, 56 out during a Saturday midday peak hour. Mr. Hamm discusses vehicle access. He states that a lot of traffic will be southbound traffic right-in, right-out (right turn in, right turn out to continue southbound), and not a lot of U turns. Mr. Hamm states that there may be some U turns from people going northbound and returning southbound, and that there are a couple of options. Some people go through the Wal-Mart driveway today. Some use Clark Street to Barnes Road. He states that turning from southbound to go back north is less convenient: you could go southbound to Stanwood Street to Maple Street, and U-turn from there. Mr. Hamm states that they recommend signage: a One Way sign, a No Left Turn sign, and a Stop sign, all typical of MassDOT signage. Mr. Hamm states that overall, the project will add traffic to the area, but it won't be significant, and it will be safe.

Chair Duffy asks how wide the curb cut is. Mr. Hamm states that it is probably about 30 feet, and that it is governed by MassDOT guidelines. Chair Duffy asks if there is a sidewalk or pedestrian traffic along that curb cut and Mr. Keilty states that it is part of the state layout; Mr. Hamm adds that there is no sidewalk. Chair Duffy notes that there is a median in the middle of the road so you wouldn't have anyone traveling across the road.

The Board asks questions about pedestrian traffic, sidewalks, and bus stops. There is a question about whether people will use the adjacent Walmart parking lot to enter the site. The representative states that there is a fence between the two sites (where there is also a grade separation), but I.N.S.A. will allow walking to the site. Mr. Viccica states that until Highland Avenue is reconstructed, they should expect that people traveling northbound will make the left turn into the Wal-Mart parking lot and make their way over to 462 Highland Avenue. Mr. Keilty states that those coming from Lynn (northbound) generally do turn into Wal-Mart. Mr. Viccica states that on Christmas, it's dangerous, but it's dangerous whether it's Meineke or INSA.

Mr. Viccica states that he assumes that northbound trucks delivering to 462 Highland Ave will enter legally by making the U-turn elsewhere (i.e., not by turning left into the Wal-Mart parking lot). Mr. Keilty states that delivery truck drivers will be directed to enter properly and legally.

Chair Duffy opens the matter for public comment. Chair Duffy reads an email from Lorelee Stewart and Ann DeIulis, abutters and chairs of the Barnes Clark Wyman Area Neighborhood Association, expressing support for I.N.S.A., Inc. to receive the requested special permit, noting that I.N.S.A. representatives addressed their safety and traffic concerns. No other members of the public speak in favor or opposed.

Mr. Copelas notes that the Purchase and Sale agreement (as included with the application) has expired, and asks if it has been extended; Attorney Keilty states that the Purchase and Sale agreement has been extended.

Mr. Viccica reviews criteria for general special permits and retail marijuana establishment-specific special permit.

Standard special permit findings:

1. The City of Salem's citizens have voted to approve marijuana dispensaries, and social, economic and community needs are served by this proposal.
2. Traffic flow and safety, including parking and loading – requirements have been met. Deliveries will be instructed to enter the property in a legal manner and not go through the Wal-Mart parking lot.
3. Utilities and other public services are adequate, as the property has operated as a business and will continue to operate as a business requiring the same kind of utilities.
4. There will be no negative impacts to the natural environment, including drainage. The parking lot is not being expanded significantly.
5. The project has a reasonably low impact on the surrounding neighborhood – there are few residences near the location.
6. The potential fiscal impact, including impact on City tax base and employment, is positive.

Retail marijuana special permit findings:

1. The applicant demonstrates that the marijuana establishment will meet all of the permitting requirements of all applicable agencies within the Commonwealth of Massachusetts and will be in compliance with all applicable state laws and regulations including, but not limited to M.G.L c.94G, Section 12 General Marijuana Establishment Operations.
2. The applicant has satisfied all of the conditions and requirements of this section and other applicable sections of the Zoning Ordinance and any applicable city ordinances.
3. Through review of security measures, the Board has determined that the facility will provide adequate security measures to ensure that there are not direct threats to the health or safety of employees, staff, or members of the public.

Motion and Vote: Mr. Viccica makes a motion to approve a special permit per Sec. 6.10.4 of the Salem Zoning Ordinance to operate a licensed retail marijuana establishment at 462 Highland Avenue, subject to the following conditions. The motion is seconded by Mr. Copelas. The vote is unanimous with five (5) (Mr. Copelas, Mr. Duffy, Mr. Hacker, Mr. Shea and Mr. Viccica) in favor and none (0) opposed to the petition.

Standard Conditions:

1. The 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 new construction shall be in harmony with the existing structure.
6. A Certificate of Inspection shall be obtained.
7. A Certificate of Occupancy shall be obtained.
8. Petitioner shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to be visible from the street.
9. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Special Conditions:

1. The applicant shall not operate until the issuance and submission of a copy of the issued state license by the Commonwealth and all other state and local requirements are met.
2. A community host agreement shall be executed with the City within six (6) months of issuance of this special permit. A six (6) month extension can be granted by the Board of Appeals if good cause is shown.
3. The applicant shall be issued a state license within six (6) months of the issuance of this special permit. A six (6) month extension can be granted by the Board of Appeals if good cause is shown.
4. No on-site consumption will be allowed on the premises.

Location	6 Lemon Street (Map 36, Lot 66) (R2 and BPD Zoning Districts)
Applicant	Charles & Grace Abongnelah
Project	A public hearing for all persons interested in the petition to appeal a decision of the Building Commissioner.

Documents and Exhibitions

- Application date-stamped October 30, 2018 and supporting documentation
- Letter dated November 16, 2018 from Steven Cummings, Building Inspector, discussing his findings for 6 Lemon Street

Mr. Abongnelah, owner of 6 Lemon Street, states that he and his wife, Grace Luk, are appealing a decision made by a City inspector. The inspector decided that 6 Lemon St is not a 2 family house. The owners say that every document obtained prior to purchase said the building is a 2 family. He presents voting records that show that the family has been used as a 2 family since 1966. He states that the appraisal they obtained prior to purchasing showed that this was a 2 family house. He adds that the building is in an appropriate area for two-family [the R2 zoning district] and has appropriate parking for a 2 family and he wants the ZBA to grandfather his building in as a 2 family residence. Mr. Abongnelah explains that it was only after they purchased the property and moved in, having operated the house as a two-family, that the inspector determined that the building is a one-family house. Mr. Abongnelah stated that they are there to ask the Board to grant the permit that the house is a two-family house.

Mr. Duffy reads a letter from Building Inspector Steven Cummings dated November 16, 2018 which states his findings for 6 Lemon Street:

“There is no separation from the first floor to the second floor any persons are able to walk freely through out house as it is set up as a single family three story home without going through a common hall.”

“Electricity, heat, hot water, and gas are all metered with one meter as in any single Home.”

“All bedrooms on the second and third floor are individually locked with a key lock.”

“The owner told me the previous owner went to the ZBA and turned the use into a two family but could not produce any documentation.”

“In my opinion the house is not set up as a two family or being used as one, and bedrooms are being rented individually more in kind of a rooming house.”

Chair Duffy asks the petitioners if they are living in the premises; Mr. Abongnelah answers that yes, they are living on the first floor. Mr. Abongnelah adds that the building inspector’s assertion that the property is used as a rooming house is incorrect because they purchased the property as a residential home and they occupy the first floor. He adds that it was sold to them as a two family, so they rented the second floor out, but upon hearing from the building inspector, they stopped this use. Mr. Abongnelah adds that they would like a permit to make sure that the listing is corrected. Mr. Abongnelah states that he will address the door and the utilities, but that they have not done so yet.

Mr. Copelas asks if there are 2 kitchens. Mr. Abongnelah states that they have two kitchens, three bathrooms, and four parking spaces. He states that all the records he had showed that it is a two-family, and that they bought the property as a two-family, and suggests that if the City’s records do not show that the property is a two-family house, it may be an error on the part of the City.

The Board discusses the procedural issue in front of them. Mr. Copelas states that the request is to appeal the decision of the building inspector, not to get a special permit to use the property as a two-family home. Mr. Copelas states that the petitioners might have options to make it a proper two-family, but that question is not before the Board tonight. Mr. Viccica asks if there is a second family living in the home; Mr. Abongnelah states that there had been, but that they moved out because the building inspector ruled that it is a one-family home. Mr. Viccica agrees with Mr. Copelas that there is a procedural/process issue.

Mr. St. Pierre says that procedurally, the owners should have asked for a special permit for whatever they needed (such as lot area per dwelling unit). He adds that two-family residential is an allowed use in the R2 zoning district. Mr. St. Pierre states that the Board cannot legally grant a special permit for this petition because they didn’t advertise for a hearing on a special permit to make it a two family – the petition is an appeal of the building inspector’s decision [not a request for a special permit]. Mr. St. Pierre explains that as such, a vote on a special permit for 6 Lemon Street cannot happen at tonight’s meeting. Mr. St. Pierre states that they can come back a month from now for the appropriate relief.

Mr. St. Pierre adds that if the realtor sold the building as a two family, then the realtor may have liability, which the petitioners may be able to go back after. Mr. St. Pierre adds that despite Mr. Abongnelah’s assessor’s records, this does not determine the legal use of the building. Mr. St. Pierre

adds that Salem has had a building code since the 1914 fire; the City has required two means of egress from that time forward. The fact that there are not two independent means of egress means that the building was never permitted, constructed, or modified to be a two-family home.

Mr. Abongnelah states that he discussed this with Mr. Corrison. Mr. Corrison explains that they were not able to accommodate a special permit application in time for this meeting due to public notice laws, but he recommends that they submit an application for the December meeting which will meet standards for public notice.

Chair Duffy opens the public hearing. Chair Duffy states that there was a letter from a neighbor at 3 Lemon Street, Michael Falchek, stating that the appeal should not be granted.

Mr. Hacker notes that the petitioner is not familiar with the procedure, and suggests that the Board give the petitioner the opportunity to withdraw the petition without prejudice. Mr. St. Pierre explains this to Mr. Abongnelah, noting that he can come back next month with the proper petition. Mr. Copelas adds that the petitioner has the right to ask us to vote, and the Board will, or the petitioner can withdraw the petition. Mr. Viccica that withdrawing would only mean withdrawing (without prejudice) the appeal; Mr. St. Pierre states that either way (whether they withdraw or not), they can come back next month with a different petition. Chair Duffy states that, to achieve the result the petitioners want, the petitioner will be required to submit an application for a special permit. Mr. St. Pierre adds that a vote on a special permit cannot happen tonight due to a legal point.

Mr. Abongnelah states that he wishes to withdraw.

Motion and Vote: Mr. Viccica makes a motion to withdraw without prejudice the petition of Charles and Grace Abongnelah. The motion is seconded by Mr. Copelas. The vote is unanimous with five (5) (Mr. Copelas, Mr. Duffy, Mr. Hacker, Mr. Shea and Mr. Viccica) in favor and none (0) opposed to the petition.

Location	15 Becket Street (Map 41, Lot 129) (R2 Zoning District)
Applicant	Harry's House LLC
Project	A public hearing for all persons interested in the petition for a special permit per Sections 3.3.3 and 3.3.4 of the Salem Zoning Ordinance to extend reconstruct or change an existing non-conforming structure. Petitioner proposes to remove portions of the existing structure in order to create a driveway allowing access to the backyard for parking 3 vehicles and replace the existing covered porches at the rear of the building. Petitioner also requests a variance per Section 4.1.1 Table of Dimensional Requirements for relief from the maximum number of stories to allow the addition of 3rd floor dormers. In addition, petitioner proposes to reduce the total dwelling units in the structure from 4 to 3.

Documents and Exhibitions

- Application date-stamped October 30, 2018 and supporting documentation

Mr. Copelas notes that the original petition only references a special permit, but that the agenda references an application for a special permit and a variance. Attorney Scott Grover, representing Joy Barton owner of 15 Becket Street, states that Mr. St. Pierre noted that the proposed reconstruction required a variance; at the request of Mr. Devine, they filed a Statement of Hardship and caught it in time to advertise as a request for a special permit and a request for a variance.

Attorney Grover shows photos of the site and the surrounding area. Attorney Grover notes that the site is in a significant state of disrepair. All four units are presently vacant. The roof is compromised and water is leaking in. The rear porches are falling off the building. Attorney Grover notes that this is a legal four-family and has been used as a four-family home historically. He states that Ms. Barton is seeking to reduce the number of units from 4 to 3. He notes that the other significant change is to create parking where none exists. Attorney Grover notes that the plan is for some of the appendages to be removed to open up the driveway and allow for three parking spaces in the back of the property. He adds that there will also be a gut rehab of the property to take it from its kind of shameful state and return it to its former glory.

Attorney Grover shows the proposed site plan. He states that in order to recover the square footage that is lost by removing the two side porches on the driveway side, the proposal is to add a small addition in the same place where porches are (so there is no change in the footprint).

Attorney Grover notes that a variance is required (in addition to a special permit) because the proposal is to reconstruct or change a nonconforming structure that is not a one- or two-family home (this is a four-family home). Attorney Grover explains that most of the changes are covered by the special permit because they do not extend or create any nonconformities. Attorney Grover notes that the variance would cover one new nonconformity: the height of the addition (including the dormer) in the back of the property would bring the height of the building overall from 2.5 stories up to 3. The height of the building is still 7 feet below the 35' height requirement in the district at 28 feet.

Attorney Grover discusses the criteria for a special permit, noting the standard that the change will not be substantially more detrimental than what is there now. Attorney Grover states that the project will reduce density by going from 4 to 3 units; will provide off-street parking where it is desperately needed (Becket Street has no parking for half of the street); and restores a significant historic building from the state it is in now. He states that the facts are there to support a finding by this Board that this is not substantially more detrimental to the neighborhood than what is there now.

Attorney Grover discusses the criteria for a variance. He states that the special conditions that affect this property that do not affect all properties in the district are the very narrow shape of the lot – only 31 feet wide – and the location of the building in such a way that it prevents access to the back of the property for parking. Attorney Grover states that the hardship is the removal of portions of the existing structure; if they are not able to re-gain that space by building at a higher height in the same location and adding a dormer, it removes the option of creating driveway access to the rear of the property. Attorney Grover states that, for the same reasons mentioned for the special permit, this is a substantial benefit to the neighborhood and not a detriment, and given the fact that the overall height of the building (in feet) is lower than the allowed maximum, this does not undermine the intent of the zoning ordinance. He notes that adjacent structures are considerably higher, so this change is not out of character with the neighborhood.

Dan Ricciarelli of Seger Architects reviews the floor plans and diagrams for the Board. Mr. Ricciarelli states that they will go from 4 units to 3 condominium units with parking. He describes the removal of a section of the first floor while keeping a section of the second floor so residents will be able to drive underneath to get to the three parking spaces in back. They are planning for each unit to have one means of egress, and the building will be fully sprinkled. Mr. Ricciarelli notes that the entrance will be moved to the front of the building (facing the street) to serve a front townhouse, and that a second entrance will be added to serve the two residential units in the back: a town flat on the ground floor, and a townhouse above which incorporates the second and third levels.

Mr. Copelas wants clarification about why reducing from 4 to 3 residential units requires additional square feet. Mr. Ricciarelli states that they needed to recover the lost space from the porch to make the unit viable. He adds that they can make a unit viable with a combination of an extension and a dormer. Mr. Ricciarelli states that adding the dormer normalizes the building with neighborhood character, and notes that the change in building layout will make the building more functional for three units and make the property more valuable.

Chair Duffy asks for comments from the public.

Christiana Kroondyk of 20 English Street is concerned about flooding, drainage and ventilation, as her house (directly behind the 15 Becket Street property) is very close to the property line. She asked questions about where the parking lot and paving will be. Ms. Kroondyk also asked if there would be some sort of barrier between the parking area and her house.

Mr. Ricciarelli replies that there will be a stockade fence about six feet (6') high. He states that the fence will be about two or three feet from the property line, and that there will be a strip for drainage. He said that he knows there is grass there currently and they will work to make the driveway drain properly to Becket Street. Attorney Grover adds that they will provide a two-foot (2') buffer of pervious surface around the parking area as per the requirements of the ordinance. Mr. St. Pierre states that the ordinance is designed so the water from one person's property won't run onto another person's property.

Ms. Kroondyk stated that she does not have any other concerns, and as long as she knows there will be a buffer, that is helpful.

Steven Zwink of 16 Becket Street speaks in favor of the petition. He states that he is very excited that renovations are happening: the property has been an eyesore and he supports this plan.

Tom Hayden of 17 Becket Street speaks in favor of the petition. He states that the porches are falling off of the current house, and that seeing this plan makes him smile.

Jeff Mold of 21 Becket Street speaks in favor of the petition.

Chair Duffy feels that they meet the criteria for a special permit; he states that he doesn't have any problems with the findings presented by Attorney Grover for the special permit. He reviews all of the special permit criteria:

1. Social, economic and community needs are served by this proposal: the project will take a dilapidated building and make it a nice, reworked, remodeled building.
2. Regarding traffic flow and safety, including parking and loading, the project will improve the parking situation by providing off-street parking (3 spaces) in a neighborhood with very little.
3. The property will have all the utilities and public services that it needs; as this is a remodel and a reduction from four units to three, it appears that utilities and public services are all in place.
4. Regarding impact on the natural environment and drainage, although the driveway and parking spaces will reduce the permeable surface area, the two-foot-wide buffer around paved areas will provide for drainage. As Building Commissioner Tom St. Pierre noted during discussion, “the ordinance is designed so water from one driveway won’t run onto another person’s property.”
5. Neighborhood character: The design fits nicely with the neighborhood and brings a historic building “back to its former glory.”
6. Potential fiscal impact is positive, as this project will take a neglected building and make it better used.

Chair Duffy notes that the proposed changes are the result of unique circumstances of the lot and the building. He reviews the variance criteria:

1. Special conditions and circumstances affect the site, including the narrow width of the lot – 31’ wide –and the proposed changes are in response to these special conditions. The building and parcel are both unique.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant. Off-street parking could not be provided without changes to the building (which trigger the need for a variance).
3. The changes, as necessitated by the special conditions of the lot and building, will be accommodated with minimal impact on the zoning ordinance.

Motion and Vote: Mr. Copelas makes a motion to approve a special permit per Sections 3.3.3 and 3.3.4 of the Salem Zoning Ordinance to extend, reconstruct, or change an existing non-conforming structure, and to approve a request for a variance per Section 4.1.1 Table of Dimensional Requirements for relief from the maximum number of stories to allow the addition of 3rd floor dormers, at 15 Becket Street; in addition, petitioner proposes to reduce the total dwelling units in the structure from 4 to 3. The approval is subject to the following conditions. The motion is seconded by Mr. Viccica. The vote is unanimous with five (5) (Mr. Duffy, Mr. Shea, Mr. Copelas, Mr. Hacker, and Mr. Viccica) in favor and none (0) opposed to the petition.

Standard Conditions:

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

7. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Location	12 Alameda Street (Map 14, Lot 197) (R1 Zoning District)
Applicant	Donald Harlow-Powell
Project	A public hearing for all persons interested in the petition requesting a special permit per Section 3.3.5 of the Salem Zoning Ordinance to increase the nonconformity of a single-family house lot by transferring 360 square feet to an adjacent parcel to accommodate an encroachment.

Documents and Exhibitions

- Application date-stamped October 23, 2018 and supporting documentation

Petitioner Donald Harlow-Powell states that a neighbor built a retaining wall (with vinyl fence on top) that encroaches onto his property. Mr. Harlow-Powell states that this was discovered only after his property was surveyed before building a pool. Mr. Harlow-Powell states that they do not want to make any physical changes to the properties; he would just like to sell the encroaching 360 square feet to his neighbor to correct the issue. Mr. Harlow-Powell’s lawyer and his neighbor’s lawyer have agreed that the sale can be made, and Mr. Harlow-Powell and his neighbor have agreed on a price. They need ZBA permission to make the transaction because Mr. Harlow-Powell’s lot is currently nonconforming as to minimum lot area and transferring 360 square feet to his neighbor will increase this nonconformity by 360 square feet (because his lot will become 360 square feet smaller).

Chair Duffy states that this is pretty straightforward. Mr. Copelas states that his only question is whether there are any setback issues regarding the location of the pool and the new property line. Mr. Harlow-Powell states that they planned the pool’s location with the plan to transfer this property, so the pool is in the proper place [and there are no setback issues].

Chair Duffy opens the hearing for public comment; no members of the public speak in favor or in opposition.

There is no further discussion. Chair Duffy states that the changes are so minimal and they only affect the land such that no further findings are required.

Motion and Vote: Mr. Viccica makes a motion to approve a special permit per Section 3.3.5 of the Salem Zoning Ordinance to increase the nonconformity of a single-family house lot by transferring 360 square feet to an adjacent parcel to accommodate an encroachment at 12 Alameda Street, subject to the following conditions. The motion is seconded by Mr. Copelas.

The vote is unanimous with five (5) (Mr. Copelas, Mr. Duffy, Mr. Hacker, Mr. Shea, and Mr. Viccica) in favor and none (0) opposed to the petition.

1. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
2. Petitioner will submit the new plot plans to the City of Salem Building Department.

Location	21 Becket Street (Map 41, Lot 132) (R2 Zoning District)
Applicant	Jeffrey Mold
Project	A public hearing for all persons interested in the petition for a special permit per Section 3.3.3 of the Salem Zoning Ordinance to expand a nonconforming structure to allow a height of three stories on the existing two-family house.

Documents and Exhibitions

- Application date-stamped October 30, 2018 and supporting documentation

Petitioner Jeff Mold speaks about improving the property at 21 Becket Street. The property is a two-family house in the R2 zoning district. Mr. Mold states that the third floor currently has two legal bedrooms (based on what his insurance representative told him). Mr. Mold proposes to raise the roof by 4 or 5 feet to allow more space in those rooms and to actually use those rooms as bedrooms. Mr. Mold states that he is also improving the property by doing a lot of work: he is gutting the property and will bring the staircase, the wiring, and the plumbing up to code.

Chair Duffy asks what height the building will come to. Mr. Mold states that it is under 35 feet, but exceeds the 2.5 stories allowed by zoning [the proposed height is 3 stories]. Chair Duffy, reviewing the plans, notes that it is 34 feet 3 inches. Mr. Mold adds that the architect noted that the roof needs to be strengthened, so 2x10s will be added.

Mr. St. Pierre asks if it is a two-family, and Mr. Mold responds that it is.

Mr. Corriston mentions that this may fall under Section 3.3.5 of the Zoning Ordinance. Mr. St. Pierre reviews and says it would fall under either Section 3.3.5 or 3.3.3; Chair Duffy agrees. Chair Duffy opens the meeting to public comment.

Steven Zwink of 16 Becket Street speaks in favor of the petition.

Tom Hayden of 17 Becket Street speaks in favor of the petition.

Chair Duffy reviews the criteria for a special permit:

1. Social, economic and community needs are served by this proposal.
2. There is no impact on traffic flow or safety, including parking and loading.

3. The utilities and public services are certainly adequate.
4. There does not appear to be any impact on the natural environment, including drainage.
5. The project fits in with neighborhood character, considering discussion of neighborhood character and the proposed project at 15 Becket Street that took place earlier in this meeting.
6. Potential fiscal impact, including impact on City tax base and employment would seem to be positive.

Motion and Vote: Mr. Copelas makes a motion to approve a special permit per Section 3.3.3 of the Salem Zoning Ordinance to expand a nonconforming structure to allow a height of three stories on the existing two-family house at 21 Becket Street, subject to the following conditions. The motion is seconded by Mr. Viccica. The vote is unanimous with five (5) (Mr. Copelas, Mr. Duffy, Mr. Hacker, Mr. Shea and Mr. Viccica) in favor and none (0) opposed to the petition.

Standard Conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

Location	30 Nursery Street (Map 27, Lot 192) (R2 Zoning District)
Applicant	Jordan Ryan
Project	A public hearing for all persons interested in the petition requesting a special permit per Section 3.3.5 of the Salem Zoning Ordinance to expand a nonconforming structure by constructing a porch addition.

Documents and Exhibitions

- Application date-stamped October 25, 2018 and supporting documentation

Mr. Copelas discloses that he sold this building to the petitioner about nine months ago and that he has no ongoing financial commitments or connections to the site, so he will participate in the hearing unless anyone objects. There are no objections.

Attorney George Atkins of 65 Congress Street, representing the petitioner Jordan Ryan, states that they are applying under Section 3.3.5 to alter a nonconforming structure. Attorney Atkins explains that the proposal is to reconstruct the existing porch and make an addition along the existing setback. The porch will be extended 3'6" to the side (still 5 feet from the front lot line, as is the existing porch). Attorney Atkins states that currently, in order to reach the first unit, you have to enter through the second unit; this change will create a private entrance for each unit. Attorney Atkins explains that the building is currently being rehabilitated and stairs are being rehabilitated as well. Attorney Atkins states that all the criteria for a special permit are met, most importantly that this does not result in a substantial detriment to the neighborhood and is, rather, an improvement.

Chair Duffy opens the petition for public comment. No members of the public speak in favor or in opposition.

Mr. Viccica asks if the porch is enclosed or open, and asks if the existing balustrades will be rebuilt similarly to existing. Mr. Ryan states that everything will be the same except moved over 3'6". Mr. Viccica asks if the overhang will stay; Mr. Ryan states that the overhang will be gone, and it will just be a one-level porch with the same footings on the ground except over 3'6" to the side. Mr. Viccica asks if everything is coming down; Mr. Ryan answers yes, and that it will be rebuilt in the exact same way, moved over 3'6", and only one level (i.e., no roof over it). Mr. Viccica discusses the proposed changes with Attorney Atkins.

Mr. Shea states that he is also confused about the proposed changes; he asks if the porch is getting widened, and Attorney Atkins answers yes. Mr. Viccica asks if the stairs are being expanded; they will be reconstructed and rebuilt in the same place.

Mr. Viccica states that he would like to see an elevation. He explains his understanding of the change. Mr. Copelas notes that the existing roof over the porch and the door (on the second story) leading out to that roof seem to be changing. Mr. Copelas states that the structure and the use of that roof over the porch are changing considerably – that portion will be removed. Mr. Copelas states that the nature of the changes is such that it is difficult to see what it will look like when only looking at the plot plan and without designs. Attorney Atkins states that this is a change to a nonconforming structure that does not increase the nonconformity except for the width of it; this is the question that allows for special permit under the ordinance (3.3.5). Mr. Viccica states that they also have to judge whether it fits neighborhood character; without a picture, they do not know what it will look like, particularly because there are several proposed changes.

Mr. Viccica states that he would encourage a continuation so that the Board can see what it will look like, or come back and say there are not any adjustments other than extending the porch laterally 3'6". Attorney Atkins states that he would suggest they leave everything the way it is and just extend and create the second entrance.

Mr. St. Pierre asks if this (structure) is still existing; Mr. Ryan answers that it was rotted out so he took it down, and he put a window where the second-story door (accessing the roof of the porch) was. Mr. Viccica states that there needs to be an elevation or a perspective showing what the new condition is, so the Board can determine whether it fits with the character of the neighborhood.

Attorney Atkins asks for a motion to continue the hearing to the next regular meeting of the Board and states that they will submit the requested information.

Motion and Vote: Mr. Viccica makes a motion to continue the hearing to the next regular meeting of the Board on December 19, 2018. The motion is seconded by Mr. Shea. The vote is unanimous with five (5) (Mr. Copelas, Mr. Duffy, Mr. Hacker, Mr. Shea and Mr. Viccica) in favor and none (0) opposed.

Location	7 Riverbank Road (Map 31, Lot 238) (R1 Zoning District)
Applicant	Alexander R. Brown
Project	A public hearing for all persons interested in the petition requesting a special permit per Section 3.3.5 of the Salem Zoning Ordinance to expand a nonconforming structure to add a garage and front dormer to an existing single-family home.

Documents and Exhibitions

- Application date-stamped October 23, 2018 and supporting documentation

Attorney Bill Quinn, representing petitioner Alexander Brown, presents the petition. Attorney Quinn explains that it is a small, two-story, 1951 wood structure with no garage – it is the only house on the block without a garage. He explains that it is a small lot of about 6,000 square feet; this was existing prior to the zoning and is grandfathered. Attorney Quinn explains that the proposal is to build a garage on one side of the house with parking in front, replacing an existing mudroom. This will create a new nonconformity where the side setback will be 6.2 feet. Attorney Quinn states that the petitioner has reached out to his neighbors and none are opposed. Attorney Quinn had stated that it was a two-car garage, but the petitioner clarifies that it is an oversized one-car garage.

Attorney Quinn shows photos and plans and explains that the proposal is a garage with a loft above and a mudroom addition connecting the garage to the house. There is no increase in height; the only new nonconformity will be the aforementioned 6.2 foot side setback where a 10 foot setback is required.

Attorney Quinn notes that the petition is for a special permit under Section 3.3.5, and reviews how the proposal meets the criteria for a special permit:

1. Social, economic and community needs are served by this proposal, including improved family housing.
2. There will be no additional traffic as there are no new bedrooms.
3. Utilities and other public services are existing; there is no impact.
4. Natural environment, including drainage, is likely to be unaffected as the building is occurring within the property owner's lot.
5. The proposed addition to the existing building is designed to fit with neighborhood character.
6. The project will increase the value of the property and thus have a positive fiscal impact on the community.

Mr. Copelas notes that the loft space has two closets, a full bathroom, a full balcony, and lots of light; it sounds like a bedroom. Mr. Brown (the petitioner) states that it will be his home office.

Motion and vote: Mr. Copelas makes a motion to approve a special permit per Section 3.3.5 of the Salem Zoning Ordinance to expand a nonconforming structure to add a garage and front dormer to an existing single-family home at 7 Riverbank Road, subject to the following conditions. The motion is seconded by Mr. Viccica. The vote is unanimous with five (5) (Mr. Copelas, Mr. Duffy, Mr. Hacker, Mr. Shea and Mr. Viccica) in favor and none (0) opposed to the petition.

Standard Conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

MEETING MINUTES

There are no proposed edits to the draft minutes.

Motion and Vote: Mr. Viccica makes a motion to approve the August 15, 2018 meeting minutes and the September 19, 2018 meeting minutes. The motion is seconded by Mr. Copelas. The vote is unanimous with five (5) (Mr. Copelas, Mr. Duffy, Mr. Shea, Mr. Hacker, and Mr. Viccica) in favor and none (0) opposed.

OLD and NEW BUSINESS

The Board discusses adding a condition to the standard conditions to the effect of “per the plans submitted to the Zoning Board of Appeals.” Mr. St. Pierre states that, if the design that is submitted is significant to the relief, the Board might want to add a condition that the construction shall be done “per the plans submitted to the Zoning Board.” The Board asks if this should be a standard condition and Mr. St. Pierre states that it could be a special condition, in addition to the condition that the construction be done per the plans submitted to and approved by the Building

Commissioner, and used when the plans submitted are important to the ZBA members and relevant to their decision-making. Mr. Copelas asks if this is not a standard condition; Chair Duffy states that making it standard would erase a certain level of discretion that Mr. St. Pierre can exercise. Mr. St. Pierre states that it would be its own (special) condition; the message to other boards would be that the ZBA approved this petition based on these plans and if the petitioner changes these plans, they will have to come back to ZBA – this is as opposed to Mr. St. Pierre making a judgment call based on plans if changed by another board. All agreed to add this as a special condition that they can choose to check off or not.

ADJOURNMENT

Motion and Vote: Mr. Viccica makes a motion to adjourn. The motion is seconded by Mr. Copelas. The vote was unanimous with five (5) (Mr. Copelas, Mr. Duffy, Mr. Hacker, Mr. Shea, and Mr. Viccica) in favor and none (0) opposed.

The meeting ends at 10:30 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-appeal-decisions-2018>

Respectfully submitted,
Brennan Corrison, Staff Planner