

City of Salem Zoning Board of Appeals
Meeting Minutes
December 19, 2018

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

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

ROLL CALL

Board members present were: Mike Duffy (Chair), Patrick Shea, Jimmi Heiserman, Peter A. Copelas, and Jimmy Tsitsinos.

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

REGULAR AGENDA

Location: **80 Margin Street (Map 25, Lot 632) (R2 Zoning District)**

Applicant: **John Femino**

Project: **The applicant requested a continuance to the regularly scheduled meeting on Wednesday, January 16, 2019** of a public hearing for all persons interested in the petition of JOHN FEMINO to appeal two decisions of the Building Commissioner regarding 80 MARGIN STREET.

The Petitioner had requested a continuance prior to the meeting. Chair Duffy asks if any members of the public wish to speak on the request for continuance; no one speaks.

Motion and Vote: Mr. Copelas motions to continue the petition to the next regularly scheduled meeting on January 16, 2019. The motion is seconded by Mr. Tsitsinos. The vote is unanimous with five (5) (Mr. Copelas, Mr. Shea, Mr. Duffy, Mr. Heiserman, and Mr. Tsitsinos) in favor and none (0) opposed.

Location: **6 Lemon Street (Map 36, Lot 66) (R2 and BPD Zoning Districts)**

Applicant: **Charles and Grace Abongnelah**

Project: A public hearing for all persons interested in the petition of CHARLES AND GRACE ABONGNELAH for a special permit per Section 3.3.5 of the Salem Zoning Ordinance for minimum lot area and minimum lot area per dwelling unit to allow the use of the existing second floor as a second unit in the existing single-family home at 6 LEMON STREET.

Documents and Exhibitions

- Application date-stamped November 27, 2018 and supporting documentation.

Petitioner Charles Abongnelah presents the petition. Mr. Abongnelah notes that he had appeared before the Board the month prior, but was advised by the Board to withdraw [as the petition, an appeal of the decision of the Building Commissioner, would not lead to his desired result]; Mr. Abongnelah withdrew and refiled. Mr. Abongnelah wants to convert his property to be officially considered a two-family house. It is set up as a two-family but is being used as a single-family. Mr. Abongnelah states that he is asking the Board to convert it to a two-family. He notes that the property has been used as a two-family since 1932, but it was never actually converted in terms of utilities to conform to the zoning requirements.

Mr. Copelas asks about the proposed changes. Mr. Abongnelah states that he will add a door and making an existing staircase independent of the first floor; he will also convert the utilities so they are separate for the first and second floor [the two units].

Chair Duffy notes that the Petitioner has not proposed any structural changes. Mr. Abongnelah states that he was advised to come before the Board first, then try to get a [building] permit for the changes. He adds that the structural changes are pretty mild. He adds that the dwelling is located in the two-family zone, has abundant parking spaces, meets the requirements for two-family, and has been used as a two-family home since 1932. Mr. Abongnelah adds that he is just asking the Board for permission to bring this to a conforming two-family use.

Chair Duffy opens the meeting to public comment and there is none.

Mr. Copelas reviews the criteria for special permit.

1. Social, economic, and community needs are served by the proposal.
2. Traffic flow and safety, including parking and loading are not expected to change.
3. The adequacy of utilities and other public services, now and in the future, will be addressed.
4. Impacts on the natural environment, including drainage, will not change.
5. The property fits into the neighborhood character.
6. This is fiscally advantageous to the City.

Motion and Vote: Mr. Copelas makes a motion to approve the petition for a special permit per Section 3.3.5 of the Salem Zoning Ordinance for minimum lot area and minimum lot area per dwelling unit to allow the use of the existing second floor as a second unit in the existing single-family home at 6 Lemon Street, subject to the following terms, conditions, and safeguards. The motion is seconded by Mr. Shea. The vote is unanimous with five (5) (Mr. Tsitsinos, Mr. Heiserman, Mr. Duffy, Mr. Shea, and Mr. Copelas) 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. If there is any change to the exterior, 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. If there is not already street numbering, 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.

Location: 30 Nursery Street (Map 27, Lot 192) (R2 Zoning District)

Applicant: Jordan Ryan

Project: A continuation of a public hearing for all persons interested in the petition of JORDAN RYAN requesting a special permit per Section 3.3.5 of the Salem Zoning Ordinance to expand a nonconforming structure by constructing a porch addition at 30 NURSERY STREET.

Documents and Exhibitions

- Application dated-stamped October 25, 2018 and supporting documentation.

Attorney George Atkins of 65 Congress Street thanks the Board for providing the opportunity to come back with more information. Attorney Atkins supplies additional information, including what the building looked like before, as well as the appearance of other buildings in the neighborhood. Attorney Atkins discusses architectural plans from Architect Richard Griffin.

Attorney Atkins explains that they want to create a separate entrance for the second unit – right now, one has to pass through one unit to access the other. He states that they want to create a doorway which will have roofing and they will recreate the columns that were previously on the front porch. Attorney Atkins states that this is a 3'6" extension of the nonconformity in the front. This change will not go further into the setback area; it will maintain the same 5' setback. This requires the special permit. Attorney Atkins states that in the renderings, the previously existing second-floor porch has been removed and a window has replaced the door at that location. Attorney Atkins stated that this change is similar in appearance to other buildings in the neighborhood, so it is not a substantial detriment to the neighborhood.

Attorney Atkins speaks to other special permit criteria. There is existing parking. This meets the intent of the R2 district, as this is a two-family dwelling. The building is being rehabilitated, so it will probably be re-assessed at a higher rate, for an economic improvement. It fits in with the neighborhood – some other buildings in the neighborhood have similar porches in the front.

Chair Duffy asks if any members of the public wish to speak on the petition; there are none.

Chair Duffy states that the additional information answers some questions from the last hearing. One of the most significant questions was what this would look like and how it would fit in the neighborhood.

Chair Duffy notes that this is a relatively minor extension of the front porch along the line of the currently existing five-foot setback, and not a very significant change. He adds that this proposal will fit in with neighborhood character.

Mr. Copelas states that he thinks Mr. Atkins was accurate in speaking to the special permit criteria, and that the criteria are clearly met.

Motion and Vote: Mr. Copelas makes a motion to grant a special permit per Section 3.3.5 of the Salem Zoning Ordinance to expand a nonconforming structure by constructing a porch addition at 30 Nursery Street, subject to the following terms, conditions, and safeguards. The motion is seconded by Mr. Tsistinos. The vote is unanimous with five (5) (Mr. Shea, Mr. Duffy, Mr. Heiserman, Mr. Copelas, and Mr. Tsistinos) 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: **331-333 Bridge Street (Map 26, Lot 583) (R2 Zoning District)**

Applicant: **Castle Hill Group, LLP**

Project: A public hearing for all persons interested in the petition of CASTLE HILL GROUP, LLP requesting a special permit per Section 3.3.2 Nonconforming Use of the Salem Zoning Ordinance to change from one nonconforming use (commercial) to another nonconforming use (multifamily residential) and variances per Section 4.1.1 Table of Dimensional Requirements for relief from minimum required lot area, lot area per dwelling unit, front yard setback, rear yard setback, and minimum distance between buildings to construct 4 dwelling units at 331-333 BRIDGE STREET.

Documents and Exhibitions

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

Attorney Stephen Lovely is representing Petitioner Castle Hill Group, LLP.

Mr. Copelas objects to going forward with this application tonight because he feels that the Board was not given a complete application; to be given important aspects of the application right before

the Board sits down does not meet the requirements for being on the agenda, and he is not sure why it is on the agenda. Staff Planner Brennan Corrison states that he wants to take some of the responsibility for that – as he was putting together the agenda, he should have realized that this was not complete and informed Attorney Lovely earlier on.

Attorney Lovely states that when he had put the application in initially, he bumped it back [asked that it be saved for a later meeting] and explained that he wanted to meet with the neighbors and bring the drawings in later, and was told at that time that it was not a problem. Attorney Lovely states he had met with the neighbors, finalized the drawings, spent quite a bit of money, and hired an LSP and would like to go forward, and if there are questions and the Board needs more information, he would be happy to provide that. Mr. Copelas states that he did not feel the Board had adequate time to evaluate the complete petition. Attorney Lovely states that since many of the neighbors are at the meeting, he would like to go forward and hear their concerns if it is acceptable to Mr. Copelas. Attorney Lovely states that if he had known it would be a problem, he would have submitted something [drawings] subject to change after meeting with the neighbors. Attorney Lovely presents the petition.

Attorney Lovely refers to the plans for the proposal. He has sought the guidance of the Historic Commission and wants to rezone the property into the abutting McIntire Historic District.

Attorney Lovely explains that the site is currently used as an auto repair garage and was previously a service station. Attorney Lovely stated that he has hired an LSP to review the site for contaminants, including coal dust, which will be a considerable expense. Attorney Lovely wants to discontinue the old use and use the site for 2 buildings of residential. He states that his proposal fits within this residential neighborhood.

Attorney Lovely discusses the special permit request. He states that the property is currently a nonconforming commercial use in a nonconforming building, and he hopes to allow the continuation of the nonconforming use to allow two separate structures to be built, each with two units (for a total of four units), with a six foot buffer in between.

Attorney Lovely discusses the plans. He notes that the building will be situated close to the street in kind with other nearby buildings, as requested by neighbors. They will add a sidewalk and curb cuts where currently there are none. There is a fifteen foot (15') right of way for the property at 128 Federal Street on the side of the property; that will be maintained. Attorney Lovely adds that he has requested a variance from the setback for the rear line; the building is 30 feet from the rear lot line, but the second-floor porch extends from the building; Attorney Lovely thinks they are acceptable in terms of distance and will defer to the Building Inspector.

Attorney Lovely discusses the special permit criteria:

- Social, economic and community needs served by the proposal: The proposal will add housing to the community.
- Regarding traffic flow and safety, including parking and loading: Traffic flow and pedestrian safety will be enhanced by the proposal.
- Existing utilities are adequate and public services will not be negatively affected.
- There will be no impact on the natural environment, including drainage. The petition will appear before the Conservation Commission because it is within the 100' buffer of a flood zone.

- Neighborhood character: The proposal fits with the character of the neighborhood.
- Potential fiscal impact, including impact on City tax base and employment: The proposed project will generate 4 times the amount of taxes to the City compared to the existing automotive use.

Attorney Lovely discusses the variance criteria:

- There are special conditions and circumstances affecting the building and the lot that are not affecting other lands, buildings, and structures in the district. There are odd dimensions to the lot.
- Literal enforcement of the provisions of the Zoning Ordinance would involve hardship to the applicant. Limiting the development of the site to the dimensions in the zoning code would make redevelopment of the site impractical. Someone could continue the commercial aspect, which I do not think the neighbors are in favor of.
- Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent of the district or the purpose of the zoning bylaw.

The Board asks if he is required to provide parking. Attorney Lovely states there will be parking (4 garage spaces and additional parking) but it is not delineated on the plans.

The Board wants to see more detail on the plans, including the parking, the distance between the two buildings, the driveway with curb cuts, trash removal and snow removal. Attorney Lovely states he will add those details into the plans.

The Board asks about testing done by the LSP. Attorney Lovely states that the testing is not complete but coal dust was found, and will need to be removed at a premium. The Board discusses that a potential cleanup is not a hardship. Mr. Copelas states that, because the potential cleanup is part of the basis for the hardship, the nature of the cleanup will have to be more clearly delineated. Mr. Copelas states that he does not think the shape of the lot is all that irregular, and that he is having trouble getting to the hardship on that, and if there is not site cleanup, he's having trouble. Attorney Lovely asks if he would like to see something from the LSP stating that the coal dust will need to be cleaned. Mr. Copelas states he would like to see a determination whether there is a cleanup that would rise to the level of contributing to the hardship; simply testing does not rise to the level of contributing to the hardship. Chair Mike Duffy adds that a lot of relief is being requested, driven by the fact that there will be four units. Chair Duffy states that they presume the need for four units is related to the financial ability to do the project; the Board has been reluctant to request pro formas, but the Board needs to see some sense of that economic driver.

Mr. Duffy opens the meeting for public comment.

Scott Marchand Davis of 126 ½ Federal Street states that he is one of the users of the 15 foot right of way in question, and he states that he thinks parking is a significant concern – he is concerned that there is not enough parking. He adds that maintenance of the right of way during construction is important, to maintain access to Bridge Street from the 128 Federal Street property where they have an easement for 126 ½ Federal Street.

Attorney Lovely states that he has spoken with the owner [of 128 Federal Street] and he is in full support; Attorney Lovely told him he would put a fence at the rear of the property. The right of way will remain and the section on the Bridge Street property will be improved by new pavement.

Lara Fury of 126 Federal Street has concerns about the impact of the project on the limited parking on Federal Street. She also states that flooding in the area which creates traffic flow problems, as people cannot drive on portions of Bridge Street; that cut-through is important for neighbors. She states that there have been many rodents in the area following construction further down on Bridge Street.

Attorney Lovely states that there will be no basements and the buildings will be built on slabs. Easement is on the owner's property. He is not sure if the easement is overburdened. Chair Duffy adds that the easement is not part of ZBA purview.

Justin Whittier of 10 River Street supports the plan.
Jane Arlander of 93 Federal Street speaks in favor.
Tim Doggett of 9 Lynn Street speaks in favor.
Fred Biebeshermer of 17 ½ River Street speaks in favor.
Eric Duhaine of 15 Symonds Street speaks in favor.
Lou Sirianni of 6 Botts Court speaks in favor.

Lara Fury wants to know the height of the buildings. Attorney Lovely states that the height is 30 feet.

John Carr of 7 River Street speaks in favor.
Carol Carr of 7 River Street in favor
Jennifer Firth of 3 Carpenter Street speaks in favor.
Steve Whittier of 10 River Street speaks in favor.
Barbara McLaughlin of 13 Lynn Street speaks in favor.
Josiah Fisk of 358 Essex Street speaks in favor.

The Board wants to see some things on the plan before going forward. The items include parking, curb cuts, cost of cleanup, and a depiction of the distance between the two buildings.

Mr. St. Pierre explains that people who come before the ZBA are here because he denied them a building permit. He adds that the Board needs the full plan.

Motion and Vote: Mr. Copelas motions to continue the petition requesting a special permit per Section 3.3.2 Nonconforming Use of the Salem Zoning Ordinance to change from one nonconforming use (commercial) to another nonconforming use (multifamily residential) and variances per Section 4.1.1 Table of Dimensional Requirements for relief from minimum required lot area, lot area per dwelling unit, front yard setback, rear yard setback, and minimum distance between buildings to construct 4 dwelling units to the January meeting. The motion is seconded by Mr. Shea. The vote is unanimous with five (5) (Mr. Tsitsinos, Mr. Heiserman, Mr. Copelas, Mr. Shea, and Mr. Duffy) in favor and none (0) opposed.

Location: 14 Butler Street (Map 15, Lot 204) (R2 Zoning District)
Applicant: Anthony Fortes
Project: A public hearing for all persons interested in the petition of ANTHONY FORTES for variances from Section 4.1.1 of the Salem Zoning Ordinance for minimum lot area and minimum lot width to build a single-family home at 14 BUTLER STREET.

Documents and Exhibitions

- Application date-stamped November 27, 2018 and supporting documentation.

Scott Masse, attorney for the applicants, the Fortes family, reviews the history of property and a decision made by ZBA in 2007. He then reviews plans and criteria for variances.

Attorney Masse states that, if allowed, the home would be consistent with the neighborhood and would have four parking spaces, more than meeting the requirement. With regard to the criteria for granting a variance, Attorney Masse states that there is extreme hardship because without the variance, the property is not buildable. Attorney Masse states that there would be no detriment to the public good because off-street parking would be provided for the house and because it will be consistent with the neighborhood character.

Chair Duffy opens the hearing for public comment.

Charlie Pelletier of 12 Butler Street speaks against the proposal. He states that the neighborhood is very congested. He notes that he had appealed the 2007 decision of the Zoning Board. He expresses concerns about the limited available parking on the street. People currently park on the vacant lot.

An abutter (name not stated) who lives on the other side of property is against the proposal because he states that the site is too small, the site is contaminated, and is all ledge.

Annette Chapman of 17 Butler Street is against the proposal because of parking. It was her understanding that it was parking for the apartment building beside it. If this property is taken away, she does not know where people will park in the winter.

Michael Brown of 10 Butler Street speaks against the proposal. He states that he thinks the lot is too small, there is a lot of exposed ledge, and the parking is atrocious.

Mr. Pelletier asks the Board if they would like to see documentation of his appeal. Chair Duffy asks Attorney Masse to speak to the issue. Attorney Masse notes that the appeal was brought following the petition of Joseph Reither; Joseph Reither decided not to go forward at that point in time, so there was no decision [from the court].

Mr. Copelas states that the fact that the Zoning Board previously granted variances does not speak to the Board's current decision. Mr. Copelas states that he is concerned about the third criterion for granting a variance: that desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent of the district or the purpose

of the ordinance. He states that the City is filled with undersized lots, and that's the reason we have zoning. Mr. Copelas says it seems to him that it is derogating from the intent of the ordinance to allow someone to build on a clearly undersized lot, and that doing so would open a Pandora's box for other potential applicants.

Mr. Copelas adds that he is struggling to find a hardship if the variances are not granted. Attorney Masse responds that without the variances, the lot is not buildable. Mr. Copelas states that when the petitioners purchased the property, zoning was already in place, and they understood that they were purchasing a substantially undersized lot.

Mr. Copelas motions to close the public hearing. Mr. Tsitsinos seconds the motion. The Board votes unanimously to close the public hearing and move to discussion.

Mr. Copelas restates that there are many undersized lots in Salem, and that zoning exists so that people cannot put up a house on every 7,000 or 8,000 square foot lot. Mr. Shea asks if the issue is less about the parking and more about the size of the lot and the effect on zoning; Mr. Copelas answers yes. Chair Duffy adds that there is a significant question of coming to the hardship. Mr. Copelas adds that the property was bought with the understanding of what the zoning was. Mr. Copelas states that there are not many special circumstances about the lot – it's the same size as many other nearby lots – but those homes were built prior to zoning, so they are allowed to stay. Mr. Tsitsinos states that he is hung up on the idea that petitioner bought it with the understanding that the plans were approved by the Zoning Board, and the understanding that he could build on that lot. Mr. Copelas says that he allowed it to lapse. The Board discusses the dimensions of the lot compared to the zoning. Minimum lot size is 15,000 square feet. Chair Duffy states that the approach is to have a motion framed in the positive, and members vote to approve the requested variance or not.

Motion and Vote: Mr. Tsitsinos makes a motion to approve variances from Section 4.1.1 of the Salem Zoning Ordinance for minimum lot area and minimum lot width to build a single-family home at 14 Butler Street. The motion is seconded by Mr. Shea. The vote is one (1) in favor (Mr. Tsitsinos), three (3) opposed (Mr. Shea, Mr. Copelas and Mr. Duffy), and one (1) abstaining (Mr. Heiserman). The motion fails.

Location: **40-42 Dow Street (Map 34, Lot 220) (R3 Zoning District)**
Applicant: **Alex Pedan on behalf of PAIR Capital LLC**
Project: A public hearing for all persons interested in the petition of ALEXANDER PEDAN ON BEHALF OF PAIR CAPITAL LLC for a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of non-owner occupied short-term rentals at 40-42 DOW STREET.

Documents and Exhibitions

- Application date-stamped November 26, 2018 and supporting documentation.

Petitioner Alex Pedan and his son are here to present the petition.

Mr. Corriston reviews the reason that the applicant is here requesting a special permit. He explains that the City adopted amendments to the Code of Ordinances and the Zoning Ordinance regarding non-owner occupied short-term rentals and other short-term residential rentals. This is sometimes referred to as the "Airbnb amendment." He explains that the process for pre-existing, non-owner occupied short-term rentals, there is a 60 day period following the passage of the amendment to the Code of Ordinances, during which time a previously operating operator can apply for a special permit from the Zoning Board to continue operating their short term rental. He adds that it is his understanding that coming before the Board gives the public a chance to give input and to give the Board a chance to consider the typical Statement of Grounds impacts on the neighborhood.

Mr. Copelas states that when he heard about the Ordinance, he was worried that he was worried that the Board would be inundated with applications, but this appears to be the only one so far. He states that this application looks straightforward and it looks like it meets the requirements. Mr. Copelas asks the applicant to elaborate on the special permit criteria.

Mr. Pedan states the following for the special permit criteria:

- Social, economic and community needs: the use of this building as non-owner occupied short-term rental units adds taxes to the City and allows the homeowners to invest in and improve the property in what could be considered a blighted area.
- Traffic flow and safety, including parking and loading: the use of this building as non-owner occupied short-term rental units requires less parking than a traditional long-term rental use would require, because not everyone who stays at the property requires a vehicle and because there are days in the year when the property is not occupied.
- Utilities and other public services: no change is required. Because of less-than-100% occupancy, this use likely requires less utility usage than a longer-term rental use.
- Impacts on the natural environment, including drainage: as the use would continue, there are no different impacts. Lower occupancy may mean a lower impact on the natural environment.
- Neighborhood character: as mentioned, the neighborhood can be considered a blighted area with elevated crime. Investing in the property helps bring money to the area where the city needs it.
- Potential fiscal impact, including impact on City tax base and employment: occupancy tax will generate a \$10,000 increase in taxes to the City, as a direct benefit to the City; indirectly, investment in the property.

Chair Duffy asks how long the property has been used for this purpose. The petitioner's son explains that the property has operated as non-owner occupied short-term rentals since August 2016.

Chair Duffy opens the hearing for public comment.

Polly Wilbert of 7 Cedar Street speaks in opposition to the special permit. She states that it does not look like they have invested significantly and the exterior needs work; they are using tandem parking which is prohibited. She expresses that she prefers longer-term leases rather than having people coming and going. She states that she is not clear on how many units are involved. She states that the building does not look enticing to her as a building for someone who would visit Historic Salem.

Mr. Pedan addresses concerns, stating that a before and after comparison of the property would show improvements to the exterior. Mr. Pedan says they added front and back porches and invested \$75,000 into the property. He discusses the benefits of short term rental, stating that the people who stay at the property invest in Salem through the restaurants, the theatre, and ongoing events, and have helped vitalize the neighborhood.

The Board asks more questions. Chair Mike Duffy asks how many units are available for rental, and petitioner answered that there are two units available for rental. Mr. Copelas asks how many units are in the building; petitioner answered that there are two units - it is a two-family house. Chair Duffy asks if there are rules or requirements for guests who stay there; the petitioner's son answered that there are quiet hours, no smoking, no parties allowed; those rules are stated before people rent and people are notified of these rules again once they rent. Chair Duffy asks if there is a way for people to contact the operators if they are concerned; the petitioner's son answers that there is. Mr. Tsitsinos asks if there had been any problems with the police, and the petitioner's son answered that there were not.

Motion and Vote: Mr. Copelas makes a motion to grant a special permit per Section 15-6 (d) of the Salem Code of Ordinances to allow the continued operation of non-owner occupied short-term rentals at 40-42 Dow Street, subject to the following terms, conditions, and safeguards. The motion is seconded by Mr. Shea. The vote is unanimous with five (5) (Mr. Copelas, Mr. Duffy, Mr. Tsitsinos, Mr. Shea, and Mr. Heiserman) 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.

Location: **16 Lathrop Street (Map 36, Lot 333) (R2 Zoning District)**

Applicant: **Kastriot Qirici**

Project: A public hearing for all persons interested in the petition of KASTRIOT QIRICI for a special permit per Section 3.3.5 of the Salem Zoning Ordinance to expand a nonconforming structure by reconstructing the existing roof and adding a partial third story gambrel to the existing two-family home at 16 LATHROP STREET.

Documents and Exhibitions

- Application date-stamped November 27, 2018 and supporting documentation.

Petitioner Kastriot Qirici presents the petition. Mr. Qirici explains that he bought the property recently, and that he found that he could not insulate a portion of the roof in its current condition, so he decided that he should take it down and rebuild it. Mr. Qirici further explains that the gambrel roof will be used to create headroom for the existing stairs. He shows pictures to board.

Building Commissioner Tom St. Pierre states that the gambrel roof constitutes a third-floor dormer, even though it is partial. Mr. Copelas asks whether this is changing the height of the house, and Mr. St. Pierre states that it is not.

Mr. Copelas asks Mr. Qirici about the second floor windows on the house, stating that they do not appear in person the way they are drawn in the plans. Mr. Qirici states that they are frame windows to let light in. He says that if there is something that we have to address, we certainly will.

The Board states it is a third floor but the height is ok. The Board questions the second floor windows. Mr. Qirici states that they wanted to let in more light with picture frame windows. The windows are six inches from floor and are double pane windows.

Chair Duffy opens the hearing for public comment.

Larry Bornstein of 18 Lathrop Street asks whether the roof has already been built; Mr. Qirici responds that he already had approval for the A-frame roof, which has been rebuilt, but that the gambrel had not yet been approved and has not yet been built. Mr. St. Pierre states that Mr. Qirici has rebuilt the previously existing part of the roof, but that the gambrel has not yet been built. Mr. Bornstein says looks a lot better than it was.

Chair Duffy states that the petition appears pretty straightforward, and that the building does not exceed maximum height in feet (the maximum height of the building would not change).

Motion and Vote: Mr. Copelas makes a motion to grant a special permit per Section 3.3.5 of the Salem Zoning Ordinance to expand a nonconforming structure by reconstructing the existing roof and adding a partial third story gambrel to the existing two-family home at 16 Lathrop Street, subject to the following terms, conditions, and safeguards. The motion is seconded by Mr. Tsitsinos. The vote is unanimous with five (5) (Mr. Copelas, Mr. Duffy, Mr. Tsitsinos, Mr. Shea, and Mr. Heiserman) 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: **116 Highland Avenue (Map 14, Lot 105) (R1 Zoning District)**

Applicant: **Yancaro Flipping Co., LLC**

Project: A public hearing for all persons interested in the petition of YANCARO FLIPPING CO., LLC requesting a special permit per Section 3.3.2 of the Salem Zoning Ordinance to change from one nonconforming use (professional offices) to another nonconforming use (mixed use: office and residential multifamily) and a

variance per Section 4.1.1 Table of Dimensional Requirements for relief from minimum lot area per dwelling unit to convert the existing medical office to a mixed use (office and three residential apartments) at 116 HIGHLAND AVENUE.

Documents and Exhibitions

- Application date-stamped November 27, 2018 and supporting documentation.
- Email from Councillor Dominguez in support of petition.

Attorney Scott Grover, representing Petitioner Yancaro Flipping Co., LLC, presents the petition.

Attorney Grover describes the building; the former Pediatric Associates of Greater Salem (PAGS) site has 2000 square feet per floor with 2 floors. The site is a 16,000 square feet lot. The owner is a real estate professional, Cynthia Nina Soto of Yancaro Flipping Co., LLC, who will put her office on first floor with 3 residential units above, one of the units will be an affordable unit.

Attorney Grover states that Cynthia Nina Soto of Yancaro Flipping Co., LLC wants to use the first floor as offices for her real estate business, and use the second floor as three residential units, including one unit designated affordable per the City's definitions. Attorney Grover states that there will be no changes to the footprint of the building, but that the plan is to re-paint the exterior of the building to a gray color instead of the existing white.

Attorney Grover discusses the criteria for special permit per Section 3.3.2 of the Zoning Ordinance to change from one nonconforming use to another nonconforming use; he mentions the standard that the proposed use is not substantially more detrimental to the neighborhood than the existing use. To that point, Attorney Grover reads a letter into the record from Mark McKenna, Chief Financial Officer of Pediatric Associates, discussing the intensity of the prior use of the property. Per that letter, regarding traffic in 2016 – the final year of “full operation” at 116 Highland Avenue – Mr. McKenna’s “best estimate would be over 110 cars daily entering and leaving that site Monday - Friday.” Attorney Grover states that the proposed use would have substantially less traffic and would be a less intense use. He adds that the mixed use of office and residential would move the use closer to the underlying zoning, which is Residential Single-Family.

Attorney Grover discusses the criteria for variance per Section 4.1.1 of the Zoning Ordinance. Attorney Grover states that if the ordinance were literally enforced, only a single residential unit would be allowed in the over 2,000 square feet in the upper floors of the building. Attorney Grover states that the special conditions affecting the lot are the existing building; providing only one residential unit in the existing building would make it unviable. Attorney Grover notes that the building stayed on the market for over a year; the existing medical uses are not especially viable, either. Attorney Grover states that a former Dr. Von Weiss medical building (107 Highland Avenue) nearby was converted into eight residential units several years ago and that a nearby service station (111 Highland Avenue) was converted into two residential units. He states that both have significantly less lot area per dwelling unit than proposed for 116 Highland Avenue off 5,400 square feet per dwelling unit. 107 Highland Avenue provided only 2,117 square feet per dwelling unit; 111 Highland Avenue provided about 4,000 square feet per dwelling unit. For this reason, Attorney Grover suggests that this proposal would not be detrimental to the public good and would not derogate from the intent of the zoning ordinance. Attorney Grover states that this is a good opportunity for a productive reuse of a building that is not suitable for single-family residential use.

Attorney Grover calls up Cynthia Nina Soto to discuss her proposed office use for the project. Mrs. Soto states that including her, there are six total agents in her real estate firm, and that most of the work is done remotely, meeting with employees online and meeting with clients in their homes or in the properties they are showing. Mrs. Soto states that she wants to move the office into this location is to add more formality to the business, so she can meet with clients in office space. Mrs. Soto states that she does not have very much walk-in traffic; there would be minimal traffic at the property for the office use. Mrs. Soto states that she wants to change the color of the building and add cosmetic changes. Mrs. Soto states that the second floor will include three two-bedroom residential units with space for coin-operated laundry, and that one of the three units will be affordable.

Mr. Copelas asks Mrs. Soto about the large size of the first floor for the office. Mrs. Soto states that there is no basement, and that she is required to store files for seven years; the first floor would allow ample space to meet with clients and store files. Mr. Copelas mentions that there is more than enough parking, almost like there is too much parking; he asked Mrs. Soto if she has any idea how to use it. He states that he understands that the Zoning Board has no jurisdiction over this, but he asked about the parking. Attorney Grover notes that per the zoning, only 11 parking spaces would be required; there are 27 parking spaces there. Mrs. Soto states that the idea of green space has come up, but that she does not want to approach it until the units are set up. Mrs. Soto notes that she sent letters out to neighbors but did not get any responses from neighbors; she did get a response from City Councillor Domingo Dominguez in support of the project. Mrs. Soto read Councillor Dominguez's letter into the record, which includes in part, "I strongly support this plan and recommend that the proper reliefs be awarded so that this property becomes a place for some to call home."

Chair Duffy opens the hearing for public comment.

Tim Flynn, Ward 4 Councillor, speaks in favor of the petition. He states that there is and will be lots of traffic going back and forth at the property for access to the nearby medical offices. He states that he could never picture the building as a single-family home. He states that there are not many other uses for the property than a mixed use with business and residential. He states that this proposal fits well into the neighborhood.

The Board reviews the criteria for the special permit and the variance.

Special Permit:

The Board finds that the proposed nonconforming use is not substantially more detrimental than the existing nonconforming use to the neighborhood.

1. Social, economic and community needs served by the proposal are clearly met by the additional housing, including affordable housing, and the lack of interest in the commercial use at this property.
2. Regarding traffic flow and safety, including parking and loading: the proposed use will generate substantially less traffic than the previous use.
3. The use of utilities and other public services will be substantially less than for the previous use; as such, utilities and other public services are adequate.
4. There will be no change in impacts on the natural environment, including drainage, as the use will not change.

5. Neighborhood character: The three residential units bring the property closer to the underlying residential zoning than the previously existing use.
6. Potential fiscal impact, including impact on City tax base and employment: there will be a positive fiscal impact for the City through taxes generated because the building will become occupied, including three residential units.

Variance:

1. Special conditions and circumstances especially affect the land, building, or structure involved, generally not affecting other lands, buildings, and structures in the same district: The existing building itself presents special circumstances, because literal enforcement would allow only a single residential unit in the building. As noted in the Statement of Hardship, office building of this size is not suitable for any use allowed by right in the Residential One-Family zoning district.
2. Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant: if the Ordinance were literally enforced, only one residential unit would be allowed; this is not economically viable. In addition, the previous medical office use (also nonconforming) does not appear to be particularly viable given that the property was on the market for over a year.
3. Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent of the district or the purpose of the ordinance: the proposal brings the property closer to the underlying residential zoning and meets needs of the community. In addition, the previously approved adapted uses at 107 and 111 Highland Avenue demonstrate that such projects do not constitute a substantial detriment to the public good.

Motion and Vote: Mr. Copelas makes a motion to approve a special permit per Section 3.3.2 of the Salem Zoning Ordinance to change from one nonconforming use (professional offices) to another nonconforming use (mixed use: office and residential multifamily) and a variance per Section 4.1.1 Table of Dimensional Requirements for relief from minimum lot area per dwelling unit to convert the existing medical office to a mixed use (office and three residential apartments) at 116 Highland Avenue, subject to the following terms, conditions, and safeguards. The motion is seconded by Mr. Tsitsinos. The vote is unanimous with five (5) (Mr. Duffy, Mr. Copelas, Mr. Heiserman, Mr. Shea, and Mr. Tsitsinos) 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 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. One of the three residential units will be reserved as affordable as per the definition of affordability in the City of Salem.

MEETING MINUTES

Motion and Vote: Mr. Tsitsinos makes a motion to approve the October 2018 meeting minutes, removing a duplication. The motion is seconded by Mr. Shea. The vote is unanimous with five (5) (Mr. Copelas, Mr. Duffy, Mr. Tsitsinos, and Mr. Heiserman) in favor and none (0) opposed to the petition.

OLD/NEW BUSINESS

Motion and Vote: Mr. Copelas makes a motion to approve the draft schedule of meetings for the coming year. The motion is seconded by Mr. Tsitsinos. The vote is unanimous with five (5) (Mr. Copelas, Mr. Duffy, Mr. Tsitsinos, Mr. Shea and Mr. Heiserman) in favor and none (0) opposed to the petition.

ADJOURNMENT

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

The meeting ends at 8:45 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-2018>

Respectfully submitted,
Brennan Corriston, Staff Planner