

**City of Salem Zoning Board of Appeals**  
**Revised DRAFT Meeting Minutes**

June 17, 2020

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, June 17, 2020 at 6:30 pm via remote participation.

**Chair Mike Duffy calls the meeting to order at 6:34 pm.**

Chair Duffy explains that pursuant to Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor’s March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, the Zoning Board of Appeals meeting scheduled for Wednesday, June 17 at 6:30 pm is being held remotely via Zoom. Chair Duffy explains that instructions to participate remotely can be found on the Salem website. Chair Duffy explains the rules regarding public comment.

**ROLL CALL**

Those present were: Mike Duffy (Chair), Peter Copelas, Rosa Ordaz, Carly McClain, Paul Viccica, and Steven Smalley. Also in attendance were Brennan Corriston – Building Commissioner, Tom St. Pierre – Building Inspector, and Jonathan Pinto – Recording Clerk. Those absent were: Jimmy Tsitsinos

**REGULAR AGENDA**

Location: **53-59 Mason Street (Map 26, Lot 90) and 38 Commercial Street (Map26, Lot 47) (NRCC Zoning Districts)**  
Applicant: **The Long Game LLC**  
Project: A continuation of a public hearing for all persons interested in the petition of THE LONG GAME LLC for a variance per Section 4.1.1 *Table of Dimensional Requirements* from minimum lot area per dwelling unit and a variance per Section 8.4.13 *Transitional Overlay* District to allow minor construction within the no-construction buffer zone to construct 92 residential units above the existing commercial space at 53-59 MASON STREET (Map 26, Lot 90) and 38 COMMERCIAL STREET (Map 26, Lot 47) (NRCC Zoning District).

Documents and Exhibitions

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

Chair Duffy introduces the petition, and notes that the applicant is requesting to continue to the next regularly scheduled meeting. Mr. Corriston indicates a written request to continue was received, and that no one will be appearing tonight, but the Board can act on the written request.

**Motion and Vote:** Mr. Copelas moves to continue the petition of THE LONG GAME LLC for a variance per Section 4.1.1 *Table of Dimensional Requirements* from minimum lot area per dwelling unit and a variance per Section 8.4.13 *Transitional Overlay* District to allow minor construction within the no-construction buffer zone to construct 92 residential units above the existing commercial space at 53-59 MASON STREET until the next regularly scheduled meeting on July 15, 2020.

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

**Location: 9-11 Dodge Street, 217-219 Washington Street, and 231-251 Washington Street (Map 34, Lots 404, 405, 406) (B5 Zoning District)**  
**Applicant: Dodge Area LLC**  
**Project:** A continuation of a public hearing for all persons interested in the petition of DODGE AREA LLC for a variance from Section 4-51 *On-premises signs in nonresidential districts* of the Salem Zoning Ordinance to allow a 2'4" wide by 16' tall blade sign at the Hampton Inn Hotel at 9-11 DODGE STREET, 217-219 WASHINGTON STREET, and 231-251 WASHINGTON STREET (Map34, Lots 404, 405, 406) (B5 Zoning District).

#### Documents and Exhibitions

- Application date-stamped March 10, 2020 and supporting documentation

Chair Duffy introduces the petition.

Attorney Thomas Alexander introduces himself and indicates he came before the Board on April 1<sup>st</sup>, and that the Board had many questions and concerns regarding the petition. Attorney Alexander states the team has conducted research and is before the Board again tonight to address those questions.

Attorney Alexander provides the project background for the Hampton Inn Hotel and Residencies, noting it has been in process for over ten years and occupies 1.54 acres in downtown Salem. Attorney Alexander states there will be 68 units of housing, 113 hotel rooms, a 211-car parking garage, and 11,000 square feet of retail.

Attorney Alexander states the size of the project and building is one of the reasons motivating the variance request. He notes that the designs for the proposed blade sign have been extensively reviewed by the Design Review Board ("DRB"), Salem Redevelopment Authority ("SRA"), and Planning Department, who have all approved. Attorney Alexander opines that the resulting sign is worthwhile.

Attorney Alexander next discusses the standard for sign variances, noting that the standard differs from the usual zoning hardships provided for under the Zoning Ordinance, requiring the Board to find that enforcement would result in practical difficulty or hardship. He stresses that one or the other must be shown, but that both are not required, and that in this case the practical difficulty is with respect to visibility and safety. In comparison, the usual variance standard requires special circumstances where literal enforcement would cause substantial hardship only. Attorney Alexander states the project is in the final stretch, and that this is one of the last outstanding elements.

Ken McClure introduces himself as a representative of the applicant and registered landscape architect. Mr. McClure discusses the project in more detail and discusses the multiple iterations of sign design, including the review process involving the DRB and SRA. Mr. McClure explains how the final more modern looking halo-lit sign was conceived, and presents photographs and renderings. Mr. McClure explains that a temporary sign was installed recently reflecting the most

current proposal as renderings did not feel adequate, with the hope that Board members could see it and better determine how they felt.

Mr. McClure provides some statistics regarding hotel occupancy, visitation, and indicates that many visitors will be visiting Salem for the first time, and 75 percent of those visitors will likely be coming from points South. Mr. McClure discusses the route that GPS recommends for visitors coming from points South, and notes that the intersection with the Hampton Inn is likely to be complicated for first-time visitors. Mr. McClure presents photographs demonstrating the intersection and traffic conditions to illustrate visibility issues, which he maintains are the reason for the proposed variance. He notes that trees that may reach 40 feet in height and 20 feet in width will be installed on the street as well, which will also cause visibility issues. Mr. McClure acknowledges that a larger and higher sign does not solve all visibility issues, but contends it would be beneficial, reiterating safety concerns.

Mr. McClure next presents elevation plans and renderings demonstrating how the sign would appear and where it would be located if all guidelines were followed to support the claim that it would be difficult to see. Mr. McClure discusses the elevations a bit more and the need for visibility

Mr. McClure presents photos of the Hampton Inn located in Savannah, Georgia as it was discussed at the last meeting, along with photos of Hampton Inns in Portland, Oregon, and Portland, Maine for comparison purposes. Mr. McClure discusses the topography, traffic conditions, visibility, and sign details of each location. He contends these other locations have fewer visibility issues, and discusses how the more modern script and proposed height for the sign were determined (DRB and SRA indicated preference for a more modern sign, similar to the Portland, Oregon location). He also notes that a building mounted sign was considered, but ultimately rejected in the review process. Mr. McClure adds that Hampton Inn was not happy about the more modern signage and script, but conceded due to the preference by the DRB and SRA.

To address the Board's prior concern regarding blade signs (nothing that other hotels in Salem do not have blade signs), Mr. McClure next presents photos of other hotel signs in Salem. Mr. McClure notes that these other signs, while not blade signs, are all quite large in size. Mr. McClure compares these photos to a rendering of the proposed sign, stating that the letters will be halo lit. Mr. McClure maintains the proposed sign will fit the building well.

Attorney Alexander reiterates his earlier remarks regarding the standard that must be met, mentions the sight line and topography as obstacles causing practical difficulty, and asks the Board to consider how involved the process would be to change the sign again.

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

Mr. Copelas asks about the various iterations of the sign proposed to the SRA and whether the dimensions were the same. Mr. McClure confirms they were, and notes that the location changed by lowering the sign one story.

Mr. Copelas touches on the traffic and visibility issues raised and suggests that the trees to be planted will eventually block the proposed sign. Mr. McClure agrees, and claims the goal has always been to get a larger sign higher up on the building, but in the review process with the DRB and SRA the current proposal was the largest and highest that garnered approval. Mr. McClure also states

there are hopes that the trees will not grow as tall as expected, and that there will be a sight line or cut between the trees that can help.

Ms. Ordaz expresses concerns and notes that if visibility and traffic is an issue, it seems strange for the sign to not be located farther to the South on the building. Mr. McClure indicates that portion of the building will be residential and not hotel space, and that the sign must be on the part of the building that is used as a hotel.

Ms. Ordaz next asks about the timing of the temporary signage and whether City officials were notified prior to installation. Mr. Corrison confirms that he was made aware of the temporary sign. Mr. McClure adds that the actual sign would be more professional in appearance and halo lit, noting that the temporary sign is merely wood with cut out letters.

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

Mr. Corrison indicates he received a memorandum from Tom Daniel, executive director of the Salem Redevelopment Authority, which spoke to some of the issues Mr. McClure raised, as well as the extent of the review process, including by the SRA and DRB. The memo encourages the Board to approve the petition.

Mr. Viccica states he has attempted to come around to the proposal, but that he has had difficulty, despite walking around and observing the temporary sign. Mr. Viccica argues that when looking from the corner of Mill Street and Canal Street toward the train station, there are few signs that are very visible, and that with the exception of signs that have been grandfathered, all comply with the signage ordinance requirements. Mr. Viccica also expresses concerns regarding the trees, noting that while they will be installed at a height of around 18 feet, at maturity they will be 40 feet or taller, with a canopy that will definitely obscure the sign for a minimum of six months of the year. Mr. Viccica indicates he has attempted to understand the need for the proposal but is currently unmoved and would not vote in favor at this time.

Ms. Ordaz indicates she feels similarly to Mr. Viccica, and also expresses concerns that the temporary sign was installed in a sneaky way. Mr. Corrison reiterates that he was made aware of the signage and asks that the Board focus on the variance standard rather than procedural challenges.

Mr. Viccica claims he is not convinced of the practical difficulty assertion, particularly because he did not see a rendering demonstrating what the sign would look like if the ordinance requirements were met for comparison. Mr. Viccica states that presenting the worst-case scenario does not resonate with him and contends there was no attempt to make the sign work with the ordinance first. He also expresses concerns with respect to setting precedent, adding that there are two other large developments on Washington Street that could look to this decision to obtain whatever type of sign they want.

Mr. McClure again mentions that the project will be bringing many unique and new visitors to Salem, and that visibility will be important. He also notes that the two projects mentioned will not be hotels, so the concerns regarding precedent is misplaced. Mr. Viccica says he appreciates the comprehensive presentation, but that he is unmoved.

Attorney Alexander again asks the Board to refocus on the ordinance itself, noting that City Council went out of their way to create a less strict standard for signs by including the option of showing a practical difficulty. Attorney Alexander adds that with respect to the concerns regarding the trees, they will take time to get to 40 feet, if at all, and that for many years in the beginning the sign will be visible. Regarding the concerns of setting precedent, he opines that the Board operates on a case by case situation and that prior cases do not set precedent for current determinations. Attorney Alexander says the circumstances of every project are different, and in this instance, it is a hotel which needs visibility. He also mentions the size of the building again, noting it occupies 1.54 acres in a central part of the City, and that comparable signs are all on buildings that are smaller. He asks the Board to focus on the practical difficulty, stating he thinks they have met that standard and expressing his hope that the Board can find a way to vote that way.

Mr. McClure adds that the trees can be modified to be a smaller variety as well, as they have not yet been purchased and/or planted. He notes that the currently planned trees are going to get to 40 feet and that they were originally proposing a sign that was significantly higher on the building when they started the process. He states that it is easy for them to change the tree in a way that creates more visibility for the sign.

Mr. Viccica clarifies that the precedent issue relates to process precedent. He notes that every project has to go through various boards in the city. He notes that the sign was not the cause of the long, drawn-out process for this building. He notes that the causes were a myriad of other things the SRA and Planning Board had an issue with; it was not just the sign. He states that he is talking about a precedent of process where people's valuable time gets used when there apparently is a way to get away from the practical difficulty by pretty much doing what the signage ordinance says. Mr. Viccica states that he is still unmoved.

Chair Duffy states to Mr. Viccica that he thinks he hears what Mr. Viccica is saying, which is in part, that Mr. Viccica does not think that we could grant this relief without taking away from the intent and the purpose of the zoning bylaw. Mr. Viccica says he thinks that there are signs on every other business that comply, pretty much, except those that are grandfathered. He does not see any reason that this sign could not have been done the way the sign ordinance said. Mr. Viccica states that he is not convinced that the difficulties he is hearing are practical or could not be overcome by simply doing what the signage ordinance says. He notes that there is criticism about the ordinance from applicants, but this is the ordinance that we have. He notes that the signage ordinance levels the playing field for all businesses, whether they are hotels or restaurants, retail or banks. He states that along this particular street, there is an equality of signage that he thinks was the intent of the ordinance. Mr. Viccica notes that if this was on 107, he could see the impracticality of putting a sign that meets the ordinance precisely for some of the things that he has heard, but the reasons given just do not seem to be an undue burden to do what the sign ordinance requires in this particular case.

**Motion and Vote:** Mr. Viccica moves to approve the petition of DODGE AREA LLC for a variance from Section 4-51 *On-premises signs in nonresidential districts* of the Salem Zoning Ordinance to allow a 2'4" wide by 16' tall blade sign at the Hampton Inn Hotel at 9-11 DODGE STREET, 217-219 WASHINGTON STREET, and 231-251 WASHINGTON STREET subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.

3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
6. All construction shall be done per the plans and dimension submitted to and approved by this Board. No change, extension, material corrections, additions, substitutions, alterations, and/or modifications to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

Mr. Copelas seconds the motion. **The vote is one (1) in favor (Peter Copelas) and four (4) opposed (Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, and Steven Smalley). The motion fails.**

Location: **39R Clark Street (Map 7, Lot 34) and 41 Clark Street (Map 7, Lot 36) (R1 Zoning District)**  
Applicant: **Diane T. Reddy**  
Project: A continuation of a public hearing for all persons interested in the petition of DIANE T. REDDY for variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot frontage and minimum lot width to construct a two-story, single-family home at 39R CLARK STREET (Map 7, Lot 34) and 41 CLARK STREET (Map 7, Lot 36) (R1 Zoning District).

#### Documents and Exhibitions

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

Chair Duffy introduces the petition.

Scott Grover introduces himself as an attorney in Salem representing Diane Reddy. Attorney Grover indicates Ms. Reddy and Mike Becker (who has an agreement to buy the property from Ms. Reddy) are in attendance as well.

Attorney Grover indicates the applicant was before the Board last month and that Mr. St. Pierre, the Board, and neighbors expressed concerns regarding the proposal. Attorney Grover notes that Ms. Reddy met with the neighbors at length to address their concerns, and states there is a letter from neighbors indicating support with certain conditions.

Attorney Grover presents a plot plan and easement plan to the Board and discusses the issue regarding the merger of the two lots, which was explained at the prior meeting. Attorney Grover explains that the issue revolves around the merger of the lots, and that there is no question that the lots have merged. The relief being sought is to reverse that merger so that the vacant lot at 41 Clark Street can be built on. He continues to describe the lots and associated frontage.

Attorney Grover discusses the history of the lots a bit more, noting that 39 Clark Street was subdivided in 1950 to create a small lot in front and a “pork chop lot” with small frontage. The back portion was purchased in 1952 by the Nobilis, who built a house on 39 Clark Street. Ms. Nobili purchased the lot at 41 Clark Street, so there was an awareness at that point in time that merger could be an issue. Attorney Grover explains that the merger occurred when Mr. Nobili passed away, causing the lot to go into Ms. Nobili’s name.

Attorney Grover goes on to explain that Ms. Reddy purchased the lots in 2006 unaware that they had merged, but aware of the potential for merger of lots in common ownership, and therefore attempted to prevent a merger by titling one lot in a trust and one in her name (the merger, however, had already occurred). Attorney Grover maintains the relief being sought is to unmerge the lots in question. The minimum lot size requirement and setbacks would all be met, and the only relief required is with respect to lot frontage and width.

Attorney Grover indicates the hardship in this case is one of fairness, as Ms. Reddy purchased both lots believing they were separate, and has paid taxes on 41 Clark Street as if it were a developable lot, assessed by the City of Salem. Attorney Grover contends that if the variances are not granted, the lot at 41 Clark Street would become worthless.

Attorney Grover next discusses the issues raised by neighbors. The owner of 39 Clark Street would require access to enter the back of their property via the driveway for 41 Clark Street. The owner of the home across the street had concerns about drainage, and the applicant agreed that structures will be put in place to prevent any water flow from any new property built. A neighbor abutting on the right requires assurance that the setback will be enough to have a front yard, and that there will be no parking on the right-hand side of the lot. Attorney Grover states the applicant is prepared to agree to all conditions. Attorney Grover notes that with respect to Mr. St. Pierre’s concern that Planning Board approval would be needed to subdivide the property, he is unsure that is the case but that he has spoken to the City Solicitor and that she is speaking with outside counsel. Her suggestion is in the meantime, if the Board is inclined to grant the variance, approval could be subject to the condition that if the subdivision requires Planning Board approval it will be appropriately obtained.

Ms. Reddy introduces herself and explains her history with the properties in question, noting that the plan was to build on 41 Clark, and that the properties would be for her four children who were in college. Ms. Reddy notes that her husband passed away and she would not like to sell the property. She adds she has been paying taxes for almost twenty years on a lot she thought was buildable, but now is not. Ms. Reddy asks that the Board consider her hardship to unmerge the lots so it can be buildable again.

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

Mr. Copelas states that nothing appears to have changed from the prior meeting. Mr. Copelas acknowledges that abutter concerns were taken into consideration but argues that this case is about the legal concept of merger, and that the Board is being asked to void that concept, which is something he is uncomfortable with.

Mr. Copelas indicates that the concept of merger has strong underpinnings of logic and reason, and that the original parcels of land were intended to hold two homes, and that is what is currently in

existence. He states that now the Board is being asked to build a third home on what was originally two lots. Mr. Copelas acknowledges that there was some awareness of the issue of merger in 2006, and that the current owners made an attempt to forestall it but maintains that the merger had already occurred. He states he is unmoved by the arguments presented, and that nothing thus far indicates the concept of merger should be voided.

Ms. McClain adds that the lot in question might not be valueless just because it cannot be used to build a home. Ms. McClain states she does not see a hardship in that the lot could still be sold.

Chair Duffy opens the floor to public comment.

Dennis Colbert introduces himself as a neighbor, and he notes that Ms. Reddy approached neighbors with a list of concessions. Mr. Colbert states Ms. Reddy addressed all the issues he was aware of.

Attorney Grover attempts to address Mr. Copelas' concerns by stating that the lots do not comply with current zoning because of the doctrine of merger, and that the Board addresses circumstances that do not comply regularly. Attorney Grover insists the reason it arose should not matter as much as the justification for the variance being sought. The real question, Attorney Grover contends, is whether there is a legitimate hardship. Attorney Grover adds that the lots are already large, and so to say that the lot could be a useful addition to 39R Clark Street to add value, does not make sense. Attorney Grover argues that without the variance the lot is largely worthless, overgrown, and undeveloped.

Chair Duffy seeks to confirm that the benefit of the proposed relief is primarily for 41 Clark Street as 39R Clark Street already contains a house; Attorney Grover confirms. Chair Duffy next asks if 41 Clark would still be too narrow in the absence of a merger with 50 feet of frontage, and Attorney Grover says that would be the case, but believes the property would have been grandfathered if it had not merged as it predated the Zoning Ordinance.

Mr. Becker addresses the value concerns by noting that 39R Clark Street is over 15,000 square feet, and 41 Clark Street is 20,000 square feet. Mr. Becker contends that an extra 20,000 square feet on a lot already that large is not of large consequence in terms of resale value, compared to value if the lot is buildable.

Mr. Viccica asks if any attorneys on the Board are aware of an alternative avenue for breaking apart the lots if the Board does not approve the proposal tonight. Chair Duffy notes he is not sure how the applicant would get around needing relief and notes they would be barred from coming back before the Board for a period of time if the proposal is denied. Attorney Grover says he is unaware of an alternative way to create a buildable lot on 41 Clark Street without the variance being granted for frontage and lot width.

Mr. St. Pierre states it appears the Board is fighting the proposal while there is currently outside legal counsel being sought, and notes that it may be difficult for the Board to make a proper decision without all the facts presented. Mr. St. Pierre acknowledges there is a sale pending but suggests if there is no urgency to continue the petition until there are more facts before the Board.



Chair Duffy agrees that the legal issue seems to be stumbling block for the Board. Mr. Copelas indicates he has no objection to postponing, and that he is open to listening to different interpretations if the City Solicitor can provide them. Attorney Grover notes that he did not think the Solicitor would weigh in on that issue, as he has acknowledged they have merged; the question is whether Planning Board would need to re-subdivide the property if the variances were granted. He notes that the next step if the variances are granted is an important piece of information.

After a brief discussion, Attorney Grover indicates the applicant is fine with continuing until the next regularly scheduled meeting.

**Motion and Vote:** Mr. Copelas moves to continue the petition of DIANE T. REDDY for variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot frontage and minimum lot width to construct a two-story, single-family home at 39R CLARK STREET (Map 7, Lot 34) and 41 CLARK STREET (Map 7, Lot 36) (R1 Zoning District) to the next regularly scheduled meeting on July 15, 2020.

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

Location: **8 Irving Street (Map 16, Lot 284) (R2 Zoning District)**

Applicant: **Carlos Delgado**

Project: A public hearing for all persons interested in the petition of CARLOS DELGADO for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to alter and expand a nonconforming two-family home by adding a third story and a special permit per Section 3.2.4 *Accessory Buildings and Structures* to allow a second accessory structure, a two-car garage at 8 IRVING STREET (Map 16, Lot 284) (R2 Zoning District).

#### Documents and Exhibitions

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

Chair Duffy introduces the petition.

Carlos Delgado introduces himself as the property owner at 8 Irving Street. Mr. Delgado presents a plot plan and explains his proposal to set up the property as a two-family home, which was its original state. Mr. Delgado indicates the previous owner changed the property to a single-family home to accommodate his family. In addition to reverting the home back to a two-family, Mr. Delgado also proposes to build a garage addition for storage as the home does not have a basement. He notes that the plot plan shows plenty of space to accommodate a garage without interfering with any abutting property lines.

Chair Duffy asks for clarification regarding the conversion of the property. Mr. St. Pierre adds that he spoke to the applicant and advised him that in order to turn the property back into a two-family home he would need relief from lot area per dwelling unit, and that other staff members spoke to the applicant regarding the addition of dormers and a garage.

Mr. Corrison notes that the application did not include any reference to lot area per dwelling unit and that such relief was not advertised. He states the relief would still fall under the same statutory reference. Mr. Copelas contends that although the same section would be referenced (3.3.5), the relief has not been properly advertised. Chair Duffy agrees, and explains the concerns regarding the public not having full notice of the relief being sought.

After a brief discussion, Mr. Corrison, Mr. St. Pierre, and the Board suggest a continuance to the next regularly scheduled meeting in order to re-advertise the petition with the correction. Mr. Delgado agrees to continue to the following meeting.

**Motion and Vote:** Mr. Copelas moves to continue the petition of CARLOS DELGADO for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to alter and expand a nonconforming two-family home by adding a third story and a special permit per Section 3.2.4 *Accessory Buildings and Structures* to allow a second accessory structure, a two-car garage at 8 IRVING STREET (Map 16, Lot 284) (R2 Zoning District) until the next regularly scheduled meeting on July 15, 2020.

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

Location: **13 Cambridge Street (Map 25, Lot 566) (R2 Zoning District)**

Applicant: **Helen Sides (Property Owner: Michael Sherriff)**

Project: A public hearing for all persons interested in the petition of HELEN SIDES and property owner MICHAEL SHERRIFF for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming single-family home by adding a shed dormer at 13 CAMBRIDGE STREET (Map 25, Lot 566) (R2 Zoning District).

#### Documents and Exhibitions

- Application date-stamped May 26, 2020 and supporting documentation

Chair Duffy introduces the petition.

Mr. Viccica recuses himself.

Helen Sides introduces herself as representing property owner Michael Sherriff. Ms. Sides notes the project has been before the Board previously, when permission was obtained to create a rear addition. Ms. Sides says in the process of gutting the whole house, an opportunity arose to make the second floor more usable, as previously to get to the main bedroom one had to walk through a bathroom. Ms. Sides contends that the addition of a dormer allows for access to the room without having to pass through the bathroom. The proposed dormer will have no windows, just skylights.

Ms. Sides presents a plot plan and roof plan. She also provides views of the home, noting the proximity to abutters. Ms. Sides next presents additional diagrams of the proposal and indicates the abutting neighbor has been notified and is fine with the proposal.

Chair Duffy asks if the abutting property has windows in close proximity to the proposed dormer that would allow the neighbor to see into the skylights. Ms. Sides indicates there is currently a skylight in the bathroom that can be seen from the third floor. The intent is to replace that with a skylight that includes a shade.

Chair Duffy asks about fire safety and if there are any concerns. Ms. Sides indicates she spoke with Mr. St. Pierre who had no concerns.

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

Mr. Copelas asks if the Historic Commission has reviewed the proposal, and Ms. Sides state they have and approved of the plans.

Chair Duffy discusses how the criteria for the special permit are met by the proposal.

**Motion and Vote:** Mr. Copelas moves to approve the petition of HELEN SIDES and property owner MICHAEL SHERRIFF for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming single-family home by adding a shed dormer at 13 CAMBRIDGE STREET (Map 25, Lot 566) (R2 Zoning District) subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. 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.
9. All construction shall be done per the plans and dimension submitted to and approved by this Board. No change, extension, material corrections, additions, substitutions, alterations, and/or modifications to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

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

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Location:       **208 Jefferson Avenue (Map 24, Lot 77) (R3 Zoning District)**  
Applicant:      **Alan and Kendra LeFleur**  
Project:         A public hearing for all persons interested in the petition of ALAN AND KENDRA LEFLEUR for a special permit per Section 3.2.8 *Accessory Living Areas* and Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to

expand a nonconforming single-family home by adding an accessory living area to the rear of the existing structure at 208 JEFFERSON AVENUE (Map 24, Lot 77) (R3 Zoning District).

#### Documents and Exhibitions

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

Chair Duffy introduces the petition.

Scott Grover introduces himself as representing property owners Alan and Kendra LeFleur and indicates Dan Ricciarelli (project architect) is also in attendance.

Attorney Grover presents plans and describes the property as a single family, and states the owners have three teenage children. He notes the proposed addition in the back of property is to allow Ms. LeFleur's mother to move into the property for financial and companionship reasons.

Attorney Grover notes the application is under the existing accessory living unit provisions of the zoning ordinance, which is not used very frequently as it is stricter than the new ordinance currently under consideration. Under the existing provision, if the family member that moved in leaves, the addition must be terminated with kitchens removed. Attorney Grover indicates all the conditions required under Section 3.2.8 are satisfied with respect to size, access, etc., but that a special permit is required with respect to one of the setbacks which is currently nonconforming. The expansion requires a special permit to modify the existing nonconforming structure.

Attorney Grover indicates the new addition will not increase any nonconformities, and that the addition will not be any more detrimental to the neighborhood than the existing residence on the property. He discusses how the proposal meets all of the relevant criteria, and notes that the character of the home will be unaffected.

Architect Dan Ricciarelli introduces himself and discusses the design of the addition and how it complies with the requirements of the ordinance. Mr. Ricciarelli presents photographs of the property to demonstrate existing conditions and explain how the proposed addition in more detail. Mr. Ricciarelli provides floor plans of existing and proposed conditions, noting the addition will contain a small kitchen, full bathroom, single bedroom, and mudroom entry. Mr. Ricciarelli next presents elevations from the rear and sides and explains that the windows and clapboards will match the existing structure.

Mr. St. Pierre asks Mr. Ricciarelli about the sliding door in back and asks if a second egress can be made with a set of stairs to comply with the building code. Mr. Ricciarelli confirms that can be done.

Mr. Copelas asks whether the rear setback is getting larger with the proposal. Attorney Grover says the removal of the existing garage as part of the proposal may increase the setback. Mr. St. Pierre provides clarification, noting that setback would not be measured from the garage for the home as it is an accessory structure.

Mr. Copelas asks about the status of the proposal if it is approved and the new Accessory Dwelling Unit Ordinance is approved. Attorney Grover states that if permitted under the current ordinance, the petitioner could not avail themselves of the new ordinance without some kind of modification.

He adds that the property owners do not wish to wait for the new ordinance, and that if Ms. LeFleur's mother moves out they would incorporate the addition into their home. Mr. St. Pierre notes that another family member could also move in if the mother were to move out, or at worst case, a special permit could be requested to go from the old ordinance to the updated one. There is a brief additional discussion regarding whether the new ordinance would replace the old ordinance, and the consensus is that it would, but there are questions about what would be referenced in enforcement.

Chair Duffy opens to public comment but there is none.

Chair Duffy references the statement of grounds and notes how the criteria is met by the application.

Mr. Corriston notes the advertisement inadvertently misspelled the applicants name as LaFleur, rather than LeFleur.

**Motion and Vote:** Mr. Viccica moves to approve the petition of ALAN AND KENDRA LEFLEUR for a special permit per Section 3.2.8 *Accessory Living Areas* and Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming single-family home by adding an accessory living area to the rear of the existing structure at 208 JEFFERSON AVENUE (Map 24, Lot 77) (R3 Zoning District) subject to the following standard conditions:

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

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

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## MEETING MINUTES

January 15, 2020  
February 19, 2020  
April 1, 2020  
April 15, 2020

**May 20, 2020**

Chair Duffy states the minutes under review are from January, and that his only edit is on page 6 where a reference to a “tripled decker,” should be corrected to triple decker.

**Motion and Vote:** Mr. Copelas moves to approve the January 15, 2020 minutes as amended. Mr. Viccica seconds the motion. **The vote is all in favor and none opposed. The Motion passes.**

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## **OLD/NEW BUSINESS**

None

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## **ADJOURNMENT**

**Motion and Vote:** Mr. Copelas moves to adjourn the meeting. Mr. Viccica seconds the motion. **The vote is five (5) in favor (Mike Duffy (Chair), Peter Copelas, Rosa Ordaz, Paul Viccica, and Steven Smalley) and none (0) opposed. The Motion passes.**

**The meeting ends at 8:53 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-2020>

Respectfully submitted,  
Brennan Corrison, Staff Planner