

City of Salem Zoning Board of Appeals
Meeting Minutes
April 21, 2021

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, April 21, 2021 at 6:30 pm via remote participation.

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

Chair Duffy explains that pursuant to Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor’s March 15, 2020 Order imposing strict limitations on the number of people that may gather in one place, the Zoning Board of Appeals meeting scheduled for Wednesday, April 21st at 6:30 pm is being held remotely via Zoom. Chair Duffy explains that instructions to participate remotely can be found on the Salem website. Chair Duffy also explains the rules regarding public comment.

ROLL CALL

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

REGULAR AGENDA

Location: **73 Lafayette Street (Map 34, Lot 430) (B5 and ECOD Zoning Districts)**
Applicant: **North Shore Community Development Coalition**
Project: A continuation of a public hearing for all persons interested in the petition of NORTH SHORE COMMUNITY DEVELOPMENT COALITION, INC. for a special permit per Section 3.1.2 Special Permit: Zoning Board of Appeals of the Salem Zoning Ordinance to operate a Medical Clinic at 73 LAFAYETTE STREET.

Documents and Exhibitions

- Application date-stamped February 24, 2021 and supporting documentation

Chair Duffy introduces the petition.

Attorney Scott Grover introduces himself on behalf of the applicant. Mr. Grover explains the applicant is seeking to continue to a future meeting. He states the applicant has been in a community engagement process, and based on input received regarding traffic volumes and parking demands, would like to make some changes to the project scale and volume. Mr. Grover asks if the Board would allow the applicant to continue for two months until the June meeting because the changes are significant, and the design elements need to be worked through.

Chair Duffy notes some individuals are raising their hands and want to comment. Chair Duffy indicates the Board does not normally allow comments on a continuance, but will make an exception here and limit the comments to the issue of a two month continuance.

Chair Duffy opens the floor to public comment.

Jone Sienkiewicz of 51 Lafayette Street introduces herself. Ms. Sienkiewicz expresses concern that the proposal keeps being delayed and continued. She notes that the public has not had a chance to comment on the proposal outside of SRA meetings, and asks that the Board hear public comments as opposed to pushing it out to June.

Jeff Cohen of 12 Hancock Street introduces himself and offers a response to the previous comment. Mr. Cohen offers that it makes sense to continue if an applicant has reacted or responded to community concerns and seeks to address them.

Randy Barron (no address given) introduces himself. Mr. Barron states that if the applicant is continuing to June, he would appreciate and hope to be involved as much as possible and notified of the plan so that he provide comment as necessary.

Lois Sargent (no address given) introduces herself and expresses objection to the continuance, stating that the project should be reviewed and have some conclusion.

Chair Duffy asks if the Board has any further comment, but there is none. Chair Duffy states it makes sense to continue under the circumstances, and notes the Board has been lenient about granting continuances as they can often ultimately eliminate the need for a request for relief, or result in positive project modifications. Mr. Duffy suggests two months is a sufficient amount of time.

Motion and Vote: Mr. Viccica motions to continue the petition of NORTH SHORE COMMUNITY DEVELOPMENT COALITION, INC. for a special permit per Section 3.1.2 Special Permit: Zoning Board of Appeals of the Salem Zoning Ordinance to operate a Medical Clinic at 73 LAFAYETTE STREET to the regularly scheduled meeting of the Zoning Board of Appeals on June 16, 2021.

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

Location: **1 Florence Street (Map 34, Lot 273) (R3 Zoning District)**

Applicant: **Anthony J. Picariello, Jr.**

Project: A continuation of a public hearing for all persons interested in the petition of ANTHONY J. PICARIELLO, JR. for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to allow the operation of a firearms retail business at 1 FLORENCE STREET (Map 34, Lot 273) (R3 Zoning District).

Documents and Exhibitions

- Application date-stamped January 26, 2021 and supporting documentation

Chair Duffy introduces the petition.

Attorney Philip Moran introduces himself on behalf of the applicant. Mr. Moran states the standard for approval is that the adverse effects of the proposal will not outweigh the beneficial impact. Mr. Moran discusses the criteria for a special permit and focuses on the topic of community needs. Regarding community needs, Mr. Moran contends there are several thousand licensed gun owners in Salem and surrounding areas who have a need for ammunition. Mr. Moran also suggests that more people may need to purchase guns with “the way things are going”. Mr. Moran indicates there will be no issue with respect to traffic on Florence Street, and that there are ten parking spaces available at the building. Mr. Moran states that the neighborhood is industrial and there are no residents on Florence Street. He states there will be no impact on utilities or the environment, and states the only view nearby is of the back of a car wash and the Salem police.

Mr. Moran explains that the Picarillo family pays \$18,000 in taxes as the building is industrial in a residential zone. Mr. Moran suggests there are no adverse effects of the proposal, specifically noting that more guns in the community should not be considered an adverse effect since they will only be sold to legally licensed owners for safety and recreational purposes. Mr. Moran also states that the close proximity of the proposed business to schools is irrelevant, and that the focus should be on the thousands of legal gun owners in Salem and the surrounding communities that would benefit from his clients services. Mr. Moran explains that although Mr. Picarillo lives in Nahant he, his father, and grandfather have been successful business owners and tax payers in Salem for the last 16 years. Mr. Moran again states that because the building is zoned as an industrial facility in a residential zone, his client pays upwards of \$18,000 in taxes. He adds that although gun stores might have negative connotations, there is nothing illegal about them, and that the only individuals who could purchase guns will have had to pass a rigorous FBI background check.

Mr. Moran states the proposed sale of firearms and ammunition will take place in one office in the building. There will be no gun racks, weapons, or ammunition in plain view, as they will all be stored in a large safe. Mr. Moran indicates the business will be by appointment only on nights and weekends. Mr. Moran adds that the building is armed, has bars on the windows, along with several cameras and security. Mr. Moran maintains he has read all the public comments submitted, and that while they express serious concerns Mr. Moran suggests they are irrelevant because he does not believe it will have a bad impact on surrounding neighborhoods or nearby schools. Mr. Moran suggests there would not be any more negative impact than the new marijuana dispensary opened nearby. Mr. Moran asks that the Board grant the request with whatever reasonable conditions they may seek to add, and asks they do so based on law and facts rather than emotions.

Chair Duffy opens the floor to the Board for questions.

Mr. Viccica asks if Mr. Moran or the applicant will acknowledge that there is a residential neighborhood that sits behind Florence about 100 feet away from the establishment. Mr. Moran confirms there is a neighborhood behind the building, but states he does not think an appointment-only, nights and weekends business will have a deleterious effect. Mr. Viccica states he is attempting to clarify and respond to Mr. Moran’s earlier claim that the proposed business is not near any residential neighborhoods.

Mr. Viccica next asks Mr. Moran if he could elaborate on his earlier statement that more people might need guns with “the way things are going”. Mr. Moran suggests that more people are buying guns because they do not feel safe. Mr. Viccica asks for specifics with regard to what way things are going. Mr. Moran argues that more people are buying guns because they no longer feel safe with

what is going on in the neighborhood, in the state, and in the country. Mr. Viccica asks if Mr. Moran is aware that city ordinance provides there is to be no illegal discharge within city limits, and Mr. Moran states that most people served by this facility will know that because they will have had to obtain a license. Mr. Viccica asks if you need a license prior to purchasing a gun, or if you can purchase one and seek the license after. Mr. Moran responds that you need a license prior to the purchase of any weapon or ammunition, which requires a thorough background check.

Mr. Copelas asks about the ten parking spaces, noting there are several businesses in the building. Mr. Copelas asks Mr. Moran to elaborate on the other businesses and to speak to how the parking is allocated. Mr. Moran states that Big Screw Machine is a machine shop owned by Mr. Picarillo and that it is his main daily business. The building also houses a retail store, Colonial Engraving, and a doggie daycare center called Healthy Hounds. Mr. Moran states the firearm shop would only use one of the parking spaces.

Mr. Copelas asks if the machine shop is closing and will be replaced by the proposed business, or if a piece of the machine shop space is being carved out for the new business. Mr. Moran states it would be in addition to the machine shop, and that there are two offices, one of which is used for the machine shop business, and one that is not presently occupied. The unoccupied office would be used for the firearm business and contain a safe, a desk, and a chair. Mr. Copelas asks to confirm that there will then be an additional business sharing the parking and square footage. Mr. Moran confirms.

Mr. Viccica asks if there has been a parking analysis, plot plan, and parking plan submitted. Mr. Moran indicates those have not been provided. Mr. Viccica asks Mr. McCarthy if this is a requirement. Mr. McCarthy indicates that the proposal is for a change of use, and that it is not a stringent requirement, but the Board could request it if necessary in making a finding. Mr. Moran says they could be provided, but that most of the businesses do not utilize much parking.

Mr. Viccica asks about the frequency of visits and parking requirements for customers of all the businesses in the building.

Anthony Picarillo Jr. introduces himself and clarifies that he is looking to operate the new business during off hours when other tenants are closed and no one else is in the building. Mr. Picarillo adds that the business would be by appointment only, so parking will not be an issue as it will be one customer at a time occupying one space off hours.

Mr. Viccica asks what the specific hours of business will be. Mr. Picarillo states he will be the only person there on weekends. Mr. Viccica asks again for specific hours of operation. Mr. Picarillo states the hours would be Monday through Friday 6:00 PM to 8:00 PM and weekends from 10:00 AM to 2:00 PM. Mr. Picarillo states he will be doing transfers only.

Ms. Ordaz asks what transfers are in this context. Mr. Picarillo explains a transfer is a personal sale facilitated between two people by a dealer accompanied by a legal background check. Ms. Ordaz responds references the multitude of public comments received expressing concerns, and notes that unlike the other businesses on this street, the difference here is that someone will be walking out of the building with a gun. Ms. Ordaz also acknowledges that the applicant has requested multiple continuances to have an opportunity to meet with concerned residents, and asks for further details as to whether there were constructive conversations with abutters. Mr. Moran indicates the

applicant hosted an open house last Saturday and invited individuals who had expressed concerns as well as City Council. Mr. Moran claims there were four individuals who attended, of which three had positive feedback and one had negative feedback.

Ms. McClain asks about prior statements regarding the needs of thousands of licensed gunowners, noting there are two existing gun shops in the area, and whether a market study was conducted to show that this shop was needed. Mr. Moran states his understanding is that there is no other gun shop presently operating in Salem, as the one on Bridge Street closed and lost its license, and the one on Boston Street still has a license but is not currently doing business. Ms. McClain states she was glad to see that the applicant updated the request, as she was concerned after seeing initial statements referencing problems with a quid pro quo type of agreement with the Salem Police where a special permit might be granted in exchange for a deal on ammunition and weapons. Ms. McClain states such a request would not be legal based on procurement laws, but that she appreciates the resubmission with a statement regarding the need or benefit to the community of gun owners who might want them for self-defense. Ms. McClain indicates that her understanding is that locally most violent crimes have been on the decline while crimes by licensed gun owners have been rising, and therefore is not convinced this would be beneficial. Ms. McClain acknowledges the other points made, and states she understands the benefit of transfers replacing personal sales between individuals. She asks Mr. Moran to speak more to the need for this business.

Mr. Moran also thanks Ms. McClain for raising the issue with the City Solicitor regarding the resubmission, as he was unaware at the time. Mr. Moran maintains this would be the only operating gun store in Salem at this time. Mr. Moran states the need exists because there are so many gun owners in Salem, and adds that most people would be shocked if they realized how many legal gun owners there are. According to Mr. Moran the shop will provide them with the necessary means of obtaining whatever they need whether it is for hunting, self-defense, or recreational shooting.

Ms. McClain asks if there will be training at the gun shop. Mr. Moran says there will not be, as the applicant simply wants to facilitate transfers and sell guns or ammo to licensed gun owners.

Chair Duffy asks for clarification regarding transfers, and asks if a sale is facilitated between two private gun owners through Mr. Picarillo's facility as a licensed dealer. Mr. Picarillo confirms that is correct, and adds that a background check would be conducted. Chair Duffy asks if there will be any wholesale supply of guns that would then be for sale. Mr. Picarillo indicates he would also like to look into selling retail, but would mostly be conducting transfers.

Ms. Ordaz asks what percentage would be sales versus transfers and how that would be regulated. Mr. Picarillo indicates the business would be by appointment only. Ms. Ordaz asks again what percentage would be transfers and what percentage would be retail. Mr. Picarillo states he does not know currently, but that if someone is looking for something specific he would like to help that individual find the right firearm, shotgun, or rifle. Ms. Ordaz asks if there is currently a shortage or issue that gunowners are presently having in obtaining guns and ammo, or if there is a backlog. Mr. Picarillo contends that purchases have gone up and there is a shortage of guns and ammunition currently. Ms. Ordaz asks if Mr. Picarillo has any numbers or support for that statement here on the North Shore, and he says he does not.

Mr. Copelas asks what the shop would be holding as inventory if there are to be retail sales. Mr. Picarillo suggests it would be a very small, part-time business and that he would not be looking to

hold a large inventory. Moreover, he states it will be securely held in a safe and the business will be by appointment only.

Chair Duffy asks if Mr. Picarillo will be hiring any staff, and he responds he will not, as it will be just him. Chair Duffy asks if the machine shop has employees, and Mr. Picarillo indicates he is the only employee.

Mr. Viccica asks if the inventory will include ammunition, and Mr. Picarillo states it will, but that it will also be locked up in the safe. Mr. Viccica next asks about building security, and Mr. Picarillo indicates everything would be locked in a safe and that the building has an alarm, barred windows, and security cameras. Mr. Viccica asks what type of weapons Mr. Picarillo intends to sell, and if there are parameters or limitations surrounding transfers. Mr. Picarillo explains there is a roster of all guns that are legal and approved in Massachusetts, and that he would primarily deal in handguns, shotguns, and other rifles. Mr. Viccica asks if assault rifles would be included under “other rifles”, and Mr. Picarillo states they would not as they are not available in the state.

Mr. McCarthy notes that Sergeant John Doyle of the Salem Police Department would like to speak.

Sergeant Doyle offers to shed some light on the matter as the licensing official to the Chief for gun licensing. Mr. Doyle notes there are two types of licensing: state and federal. Based on paperwork submitted and the zoning, the applicant has been granted a Type 7 FFL from the ATF, which does not include retail sales. Sergeant Doyle explains that Type 7 is for manufacturing of weapons, parts, or gunsmithing of weapons, and does not permit transfers or retail sales. The licensing required for sales or transfer, Type 1 and Type 3, respectively, would not be granted by ATF unless the area were zoned accordingly. Mr. Picarillo suggests that with a special permit the ability to conduct transfers and sales is possible. Sergeant Doyle adds that private transfers are not being eliminated, and that electronic transfers can be facilitated through www.Mass.gov with appropriate security checks and measures. Sergeant Doyle also notes that there is currently one other gun dealer active in the city that has been here for a long time. Regarding demand, Sergeant Doyle acknowledges that gun and ammo sales have been increasing more than historically, but states he wanted the Board to understand the background regarding licensing.

Mr. Copelas ask Sergeant Doyle if the applicant will only be allowed to obtain the licensing that allows transfers if the Board grants the special permit. Sergeant Doyle confirms that is correct, and discusses the Type 1 and Type 3 licenses a bit more, noting that Type 3 allows individuals to conduct private transfers out of their homes. Mr. Viccica asks if a Type 3 would not allow retail sales of inventoried guns and ammunition, and Sergeant Doyle confirms that is correct.

Ms. McClain asks Sergeant Doyle if there is a preference regarding how and where transfers are conducted, and he says there is not, but that he wanted to highlight the availability of options.

Mr. Moran states that the applicant needs the special permit in order to conduct retail sales as the building is zoned R3, and that ultimately that is why they are before the Board.

Chair Duffy opens to the floor to public comment, and notes that the Board received 66 letters in total, of which 63 expressed opposition and three expressed support.

Jeff Cohen of 12 Hancock Street introduces himself and indicates he lives a few blocks away from the proposed shop. Mr. Cohen notes that at the previous two meetings he spoke against granting continuances as he felt the applicant did not meet the requirements. While he is appreciative that Mr. Moran and Mr. Picarillo invited him to the open house, Mr. Cohen states he is still not in favor of the proposal and does not believe the special permit should be granted. Mr. Cohen explains the location is a residential neighborhood, and suggests the proposal does not meet the special permit criteria regarding community needs and maintaining neighborhood quality. Mr. Cohen indicates there are neighborhoods within 100 feet of the building and that there are many multi-families in the area. Mr. Cohen disagrees with Mr. Moran's claim that the proximity to schools should not be relevant, and adds that there is a daycare center a few blocks away as well. Mr. Cohen asks that the ZBA decline the special permit.

Jeff McNally of 48 Gallows Hill Road introduces himself as a former marine. Mr. McNally states he is in favor of the shop opening in the proposed location. Mr. McNally indicates he and his fiancé are both licensed to carry, and that he currently has to travel to Woburn to purchase ammunition or anything firearms related.

Graysen Ocasio of 70 Boston Street introduces himself as a local business owner. Mr. Ocasio states he has lived here many years and that he and his friends and family feel safe in the community. Mr. Ocasio suggest most people in Salem feel safe, and references an online survey which found 93 percent of respondents in opposition to the proposal. Mr. Ocasio questions whether Mr. Moran has any data to support his earlier statements regarding people not feeling safe.

Lucy Corchado of 1 Chase Street introduces herself as the President of the Point Neighborhood Association, and states she agrees with the comments made by Mr. Cohen and Mr. Ocasio. Ms. Corchado states she has seen an uptick in shootings and criminal activity and does not believe a gun shop and better access to firearms is a solution to the problem. Ms. Corchado opines that the question about residents in the City feeling safe or not has value, but that it needs to be supported by data. Ms. Corchado references the densely populated nearby streets, and suggests this business does not seem like a good fit for Salem or the area. She asks the ZBA to not approve the request.

Polly Wilbert of 7 Cedar Street introduces herself and indicates she lives four blocks away. Ms. Wilbert suggests the proposal is more detrimental than the current use, and also notes the nearby dense residential areas with many children. Ms. Wilbert also explains there is a residential facility for disabled adults nearby, and that anyone leaving the proposed business would do so with a gun. Ms. Wilbert references recent gun violence and other crimes and suggests it is mostly caused by people from outside the community. She suggests that the area is rather tight and that it could be chaotic when the business hours coincide with the nearby car wash on weekends. Ms. Wilbert also contends that having the business operate in the darkness of evenings does not seem like a good scenario for safety. Ms. Wilbert notes the area was originally zoned residential and has not yet changed, and accordingly asks the Board to reject the proposal.

Jeff Sky of 18 South Street introduces himself and notes he is familiar with Mr. Picarillo and his family as he used to sell office supplies to them, and that his dealings with the Company have been positive. Mr. Sky states he is not a proponent of guns and has no license himself, but suggests if there is any location that might be appropriate this would be better than downtown Salem. Mr. Sky acknowledges that everyone has a legal right to procure guns, and suggests that this family would at least keep it safe.

Ana Gordon of 12 Comby Street introduces herself and indicates she appreciates the background information regarding the types of licensing and the proposed business. Ms. Gordon suggests the business could have adverse effects due to the close proximity to dense residential neighborhoods. Ms. Gordon states her biggest concern is retail sales, and the possibility of the business pivoting to mostly retail sales. She states if this cannot be regulated then she does not support the proposal.

Councilor Patricia Morsillo introduces herself and states she is 100 percent against the proposal, noting it is a residential neighborhood. Councilor Morsillo suggests the photos shown in the presentation that suggest there are no neighborhoods nearby were disingenuous, and that if the camera were moved slightly to the left you would see a multifamily house and other residences. Ms. Morsillo states the proposal would not bring any benefit to those nearby residences, and urges the ZBA to deny the petition.

Nicole Lashomb of 70 Boston Street introduces herself and thanks the Board for hearing comments. Ms. Lashomb maintains that statistics have shown that more guns on the street creates more violence, and that many cities are experiencing increases in gun violence including Salem. Ms. Lashomb states she fails to see the necessity at this time, and that her family moved to Salem in part because of the relative safety and community. She urges the Board to deny the proposal.

Alice Merkl of 28A Federal Street introduces herself and expresses opposition to the special permit. Ms. Merkl states gun violence is a public health crisis, and that with the residential surroundings this proposal has not public benefit. She references the 63 letters in opposition and only three in support and states it is clear what the community prefers.

Councilor Josh Turiel of 238 Lafayette Street introduces himself and expresses his opposition to the proposal. Councilor Turiel suggests he would not be opposed to the business if it did not require a special permit to operate in a residential neighborhood. Mr. Turiel contends there are no benefits to the neighborhood or Salem as a whole and asks that the Board deny the petition.

Randy Barron of 51 Lafayette Street introduces himself and questions the security of the building. Mr. Barron states he is against the special permit being issued, and asks what kind of power back-up exists for the alarm and camera systems. Mr. Picarillo indicates there is a central dispatch for police and fire alarms, and that the cameras are all tied into the WiFi and recorded/accessible through his phone and tablets. Mr. Picarillo suggests he will update his cameras if he is able to do transfers and sales.

Chair Duffy asks if the proposal would be by right and not require a special permit if in a business district, and Mr. Moran states if it was properly zoned, it could open for retail sales without a special permit. Chair Duffy also notes that the special permit is for a change of use, but that the machine shop is not changing, rather a new business is being added.

Mr. Copelas states it is clear that the proposal is unpopular, but that that in and of itself is not enough to decline a request. Mr. Copelas indicates that gun sales are legal whether we like it or not, but that he wants to focus more on the special permit criteria. Mr. Copelas states of the six criteria, he has issues with three. Mr. Copelas suggests the social and economic needs being served has not been shown in a meaningful way, that the potential fiscal impact is minimal as the real estate taxes would not change, and that the neighborhood character would be affected. While Florence Street is

industrial in feel, the neighborhood is more than just one street and the area is residential in three directions surrounding the building. Mr. Copelas opines that it does not meet the criteria required to grant a special permit.

Mr. Viccica agrees with Mr. Copelas, and states this is merely a convenient way to add an additional business to the applicants existing one. Mr. Viccica notes the dense neighborhoods, and regarding the special permit criteria states that he believes this would be substantially more detrimental. Mr. Viccica suggests the location is not appropriate.

Chair Duffy states an argument could be made regarding serving community needs, but that little evidence has been presented regarding the demand for gun transfers or sales. Chair Duffy also suggests the fiscal impact could be debatable, but notes that the real estate taxes would likely be unchanged. Mr. Duffy states he has difficulty with the issue of neighborhood character, as the area is mostly residential with a mixing of some industrial properties. Most importantly, Chair Duffy states he does not believe the proposal will not be substantially more detrimental than the existing non-conforming use. Chair Duffy also suggests it may not qualify as a change of use since it does not extend or effect the machine shop and just adds an additional non-conforming use. Ms. McClain agrees that it would be a new business and that it may not fit the criteria. Mr. Moran explains that the other businesses in the building also needed special permits to operate.

Mr. Moran suggests that the proposed business is no different than the new marijuana dispensary that opened in Salem. Ms. McClain responds that bullets and marijuana are fundamentally different. Mr. Viccica also notes that the marijuana dispensary had to meet certain requirements and that it is not an apples to apples comparison.

Ms. Ordaz agrees with the comments from other Board members, and notes that the applicant did not provide any data supporting the need for the business, and when asked about the percentage of transfers versus sales a clear response was not provided. She also agrees that the proposal is not consistent with maintaining the neighborhood character.

In support of the community need Mr. Moran refers to the public commenter who mentioned needing to travel to Woburn for guns and ammo. Mr. Moran also suggests that the Board has not heard from any other gun owners, only those who object. Mr. Moran takes issue with comments made by the public, and suggests there is no indication that the increase in crimes are being committed by legal gun holders. Mr. Moran says he is not sure what other data the Board needs, as the only gun owner who spoke suggested there is a need and that that should be enough.

Ms. Ordaz suggests the burden is on applicant to prove their case, and if the community need is to be represented by a single commenter with no supporting data she is not convinced.

Mr. Viccica references Mr. Moran's earlier statement that there are thousands of gun owners in the city. Mr. Viccica suggests they have all somehow procured firearms without this shop existing in a residential neighborhood. Mr. Viccica states he has not heard a clamoring from licensed gun owners that they cannot find a weapon, and therefore does not find the argument persuasive. He suggests it may be inconvenient to have to go to Woburn if one would rather walk a few blocks away, but that ultimately that is not an impediment.

Chair Duffy suggests a community need could be one of convenience, but also states he believes there are closer options than Woburn, such as an ammo shop in Peabody and one in Middleton. Chair Duffy warns against putting too much stock in one personal anecdote.

Mr. Copelas notes the petitioner initially stressed the desire to accommodate transfers of fire arms, and that Sergeant Doyle clarified that there are many avenues and opportunities for transfers, and that Mr. Picarillo could facilitate transfers without the special permit. Mr. Copelas suggests what the applicant is really seeking is the special permit to conduct retail sales. He adds that the petitioner has been clear about what the special permit will allow them to do and why it is different from the various licenses provided by ATF.

Chair Duffy suggests taking up a motion if no further comments.

Motion and Vote: Ms. McClain motions to approve the petition of ANTHONY J. PICARIELLO, JR. for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to allow the operation of a firearms retail business at 1 FLORENCE STREET (Map 34, Lot 273) (R3 Zoning District) subject to the following standard conditions:

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

Location: **9 Franklin Street (Map 26, Lot 375) (B1 and R2 Zoning Districts)**
Applicant: **David Cutler**
Project: A continuation of a public hearing for all persons interested in the petition of DAVID CUTLER for a special permit per Section 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to change from one non-conforming use (industrial) to another (multi-family dwelling), and a variance from Section 4.1.1 Table of Dimensional Requirements from minimum lot frontage and width, minimum depth of rear yard, minimum distance between buildings on lot, minimum width of side yard, and minimum lot area per dwelling unit at 9 FRANKLIN STREET (Map 26, Lot 375) (B1 and R2 Zoning Districts).

Documents and Exhibitions

- Application date-stamped February 24, 2021 and supporting documentation

Chair Duffy introduces the petition.

Attorney Scott Grover introduces himself on behalf of the applicant, who is a Salem resident and homebuilder. Mr. Grover indicates he is also representing the property owner, Patrick Shay, who is also a local resident and business owner. Dan Ricciareli is the architect for the project and Scott Cameron is the civil engineer. Mr. Grover explains the property is across the street from a former car wash and junk yard, and presents aerial views and photographs of the property. He describes it as a large irregular parcel surrounded by a number of residential lots. Mr. Grover contends an unusual feature is that it is located in a split zoning district, with a portion of the property in a B1 district and the majority in an R2. Currently there is a large industrial building on the property which houses a number of commercial tenants, including a roofing company. Mr. Grover explains there was a second commercial building located in the rear that was destroyed by a fire and has since

not been rebuilt. Mr. Grover indicates the former owner of the property received approval from the ZBA and planning to replace the old commercial building with a much larger one, could still be built by pulling the permit. When Mr. Shay purchased the property, he determined that given the close proximity to other residential areas, a residential use would be more appropriate. Mr. Shay entered an agreement with Mr. Cutler to sell back a portion of the land subject to approval by the ZBA of the instant petition. Mr. Grover indicates the plan would be to split the property into a commercial use and residential use, as shown in renderings presented. The property would be subdivided with Mr. Shay still owning the existing commercial building, which would remain unchanged. Mr. Cutler would get the area in the rear for a residential development. The split of the property was designed so the commercial property is conforming to all zoning, but the residential portion is not, which is why the applicant is before the Board.

Mr. Grover describes the proposed development as 12 townhomes across three buildings, and presents renderings of the townhomes. He indicates there will be 30 parking spaces serving the property, well in excess of the 1.5 space requirement per unit. Most of the parking will be located in garages below, along with six spaces for overflow or visitors. Access to the units would be from driveway from Franklin Street with landscaping and a pedestrian sidewalk access to the street. Mr. Grover asserts there have been productive neighborhood meetings facilitated by Councilor Riccardi, and that changes have been made pursuant to concerns expressed. Mr. Grover discusses the specific relief required, which include the change from one non-conforming use to another and dimensional variances. The project will require a flood hazard overlay special permit, and since the number of units exceeds six it will be subject to a site plan review by the Planning Board. Mr. Grover contends it will be well reviewed by multiple boards.

Regarding the special permit request, Mr. Grover offers that the new use is not more detrimental than the existing or by right use, noting that the area is surrounded by residential parcels. As most of the property is zoned residential as well, Mr. Grover argues the new use is more consistent with the zoning. Mr. Grover indicates the project will add needed housing units to the City, and that the traffic associated with residences is less burdensome than traffic associated with commercial use. He adds that the proposed units will have less impact on the environment with respect to noise and pollutants, and that the tax revenue could be significant.

Regarding the variances, Mr. Grover discusses the rear setback of 15 feet compared to the required 30 feet, and the 50 foot frontage compared to the required 100 feet, which allows for the access to the commercial lot to remain. Mr. Grover further explains the variances required for lot width and lot area per dwelling unit. Mr. Grover indicates the lot area per dwelling unit is 3,037 square feet, which while close to the 3,500 required for the B1 district, it is much less than the 7,500 required in the R2 zone. Mr. Grover maintains the Board has consistently approved other projects with less lot area per dwelling unit, and presents a comparison of other projects that were granted relief noting they were all conversion of underused industrial properties into need residential. Mr. Grover argues the parcel is unique as it has split zoning but is surrounded by residential. It is also larger than other lots in the area, and Mr. Grover suggests a financial hardship exists that excludes the parcel from being used for residential purposes as intended by the ordinance.

Mr. Cameron introduces himself and discusses the civil plans, demonstrating the existing conditions and a topographic and boundary survey. Mr. Cameron shows the zoning division and the location of the former commercial building. He also presents a tree survey, discusses the flood plain, and explains that the same curb cuts will be utilized. Mr. Cameron discusses the parking and traffic

circulation, noting there will be space for a turnaround that could accommodate a fire truck. The concrete sidewalk allows for pedestrian access to Franklin Street and will be landscaped. Each dwelling will have two garage spaces and there will be six spaces allocated for guests. Mr. Cameron explains that the existing 50 foot curb cut will be utilized.

Mr. Ricciarelli introduces himself and explains there will be three separate buildings with four units in each in a townhome configuration with garage parking underneath. Mr. Ricciarelli discusses the layout of the units and presents 3D renderings as well as floor plans. Each unit will have two bedrooms, 2.5 bathrooms, and deck space. Mr. Ricciarelli indicates the buildings will mostly be obscured from Franklin Street. Mr. Ricciarelli describes the aesthetic as industrial contemporary, with flat roofs and metal railings. The location will provide access to trains and parks nearby, whiel creating a private feeling little community according to Mr. Ricciarelli.

Mr. St. Pierre asks Mr. Grover and Mr. Ricciarelli if they are seeking relief for the number of stories, as the proposed buildings are clearly three stories and only 2.5 are allowed. Mr. Grover suggests it could be added to the request. There is a brief discussion regarding the zoning split, and how one of the three buildings will be in a different zone than the other two. As such, additional relief for number of stories is needed for two of the three buildings. Mr. Viccica indicates if that variance is required but was not included, then the application was not advertised properly.

Chair Duffy suggests the applicant could proceed but still need to come back to obtain a variance those two buildings. Mr. Grover says it makes sense to get the major relief now and come back if possible.

Ms. McClain asks if the units will be rentals or sold as condos. Mr. Cutler confirms they will be sold as individual condos. Ms. McClain next asks about the adequacy of utilities and public services. Mr. Cameron indicates that through engineering efforts and prior permitting all utility studies have been completed. Moreover, sewers and drainage that had not been taken care of in some time were cleaned and repairs were made regarding wastewater. Mr. Cameron states the residences would generate a bit more wastewater than most commercial uses, but that sufficient capacity exists for sanitary, water use, fire suppression, etc. Mr. Cameron emphasizes that a residential use would be better than an additional commercial one for the area.

Ms. Ordaz references the applicant mentioning they met with the Conservation Commission and that one building is abutting or on top of a flood plain, and asks if there were any findings regarding the impact of two new structures in the area. Mr. Cameron explains that the existing area that floods is in back of the property, and that it is a coastal flood zone. He notes the proposal would shift the area that floods toward the center of the property so as not to shed water elsewhere. He also notes that calculations and further information will be provided to the Conservation Commission. Ms. Ordaz asks if any of the condos will be accessible to people with disabilities? Mr. Ricciarelli indicates they are not.

Chair Duffy asks about the rear setback, specifically if alternative arrangements for the buildings were considered to provide more space as the 15 feet is rather minimal. Mr. Cameron explains the arrangement had to do with the building design and allowing access for parking and emergency vehicles. Various depths and widths were considered for the buildings, Mr. Cameron suggests the footprint for each is very economical. Mr. Cameron adds that the grade in the rear climbs a bit, and that 15 feet provides enough room for a screening fence and some landscaping.

Chair Duffy opens the floor to public comment.

A commenter who did not provide their name, residing at 16 Foster Street expresses various concerns, including the proximity of the proposed buildings to the homes on their street, the fact that the buildings would block their view of downtown, and the additional traffic it would generate. The commenter states the buildings will be very close to her property, the project is too large, and expresses additional concerns regarding flooding.

Anne Sterling (no address given) introduces herself and indicates she attended two of the public meetings regarding the project. Ms. Sterling objects to the application for zoning relief. Ms. Sterling questions whether a letter of consent was sought and presented to the Board, as Mr. Cutler is seeking relief but is not the current property owner, and will only sign a purchase and sale agreement after all approvals are in place. Ms. Sterling notes that the driveway will be long and narrow, particularly once the sidewalk is installed, and she questions whether it would be ADA compliance or be wide enough for two cars to pass. Ms. Sterling also expresses concern regarding snow storage during winter, suggesting the area for snow storage and emergency vehicle access are the same in the plans. Ms. Sterling suggests it would be nicer if the project was smaller in scale, perhaps six units, and also suggests a more colonial design with light colored clapboard or fake brick.

Mr. Grover explains a consent letter from the owner of the property dated February 23 was submitted provides Mr. Shay's consent to the filing with respect to property by Mr. Cutler.

Therese Golbin of 6 Orchard Street introduces herself, and expresses concerns regarding traffic and safety in the area. Ms. Golbin indicates no one is addressing how to manage speeding and safety in the area prior to approving further development.

Richard Rivera of 17 Orchard Street introduces himself and states he is also concerned about traffic. Mr. Rivera suggests adding these units will bring additional cars to the area. Mr. Rivera states he has not seen anything being done to address the traffic and safety issues of the corridor.

Victoria Riccadello of Foster Street expresses several concerns, including the frontage, proximity of the buildings to homes on Foster street. Ms. Riccadello also notes that one of the buildings will abut the existing commercial building. Ms. Riccadello states many of the neighbors on Foster Street are concerned with how close the proposed buildings will be, and that many have begun experiencing flooding in their basements for the first time since the trees were cut down where the proposed condos will go. Ms. Riccadello suggests the design looks like row houses rather than nice condos, and states she would prefer to see something smaller, perhaps four small buildings with two units in each. Ms. Riccadello also suggests the proposal does not fit in with the neighborhood, and that it will block the views and sunlight for those on Foster Street. Ms. Riccadello indicates she is not opposed to something being build there, but objects to this specific proposal.

Jay Goldberg of 7 Franklin introduces himself as a direct abutter, and explains that he owned the entire parcel before selling the portion to Mr. Shay. Mr. Goldberg states he always felt that residential was the best use for the site, and opines that the proposed density is acceptable. Mr. Goldberg contends some neighbors are supportive of the proposal, and suggests it should help increase property values for the neighborhood generally. Regarding traffic, Mr. Goldberg argues it would be safer having traffic associated with residential use rather than commercial or industrial use,

since the latter would be large hazardous trucks. Mr. Goldberg indicates he submitted a letter in support of the proposal and he believes the architect and owner will do a good job. Mr. Goldberg suggests the site is tricky, and that if 12 units are not allowed you would likely not be able to obtain the same quality of build. He adds that the Planning Board can finalize design details to ensure they are adequate, and that he hopes the Board approves the petition so as not to miss an opportunity to have new residences rather than nothing or another commercial building.

Steven Giralmo of 18 Foster Street introduces himself as a direct abutter, and states he supports the project. Mr. Giralmo states he has no concerns regarding the frontage, and that the view would be an improvement over what his property currently overlooks. Mr. Giralmo also indicates his understanding is that the alternative could be a 35 foot industrial building by right, and suggests townhouses would increase property values more than an industrial building. Mr. Giralmo states commercial traffic would be worse than additional residential traffic, and argues an industrial building would be more disruptive and detrimental than new residences, as the area has families, nearby parks, and a sense of community.

Andrew Fett of 0 Felt Street Way introduces himself and expresses opposition to the proposal. Mr. Fett states the style and design do not match anything in the area, and that the discussion of density should not just consider traffic, but also quality of life. Mr. Fett suggests that 12 additional units with balconies could mean more parties and noise, particularly during the summer, and that such disruption would not occur if they were single family homes. Mr. Fett contends the buildings are box-like and designed for density. Mr. Fett expresses additional concerns regarding snow removal and access for emergency vehicles. Mr. Fett suggests that a pedestrian corridor plan for Franklin Street would be more appropriate than new developments.

Steven Kapiantis of 23 Wisteria Street introduces himself and asks the Board about the fact that a variance for stories has not been sought and whether the applicant will need to seek a continuance. Chair Duffy indicates the applicant could receive partial approval, but that they would need the additional variance in order to go forward with the project.

Mr. McCarthy notes a letter was received from Alison Miller of 31 Highland Avenue expressing support for the project.

Mr. Grover responds to the traffic concerns raised, and states the impact cannot be examined in a vacuum. Mr. Grover reminds the Board and public that the property has already been approved for a 12,000 square foot commercial building up to 35 feet high, so the proper context should be a comparison between this option and the proposal, rather than the proposal and an empty lot. Mr. Grover suggests a commercial use with multiple businesses would have a greater impact. He also notes the property will be close to the train, so that may eliminate some traffic concerns as well.

Mr. Cameron says he appreciates the feedback, and notes the project is at a preliminary schematic design stage of the permitting process, and that after receiving ZBA approval there would be a full technical design reviewed by the Planning Board and Conservation Commission. Storm water calculations, storage, and architecture reviews will all be conducted. Regarding flooding, Mr. Cameron indicates the new storm water design will help solve existing issues, and that a new drainage connection to the municipal sewer on Franklin Street will be installed. He also notes that trees and landscaping should help. Mr. Cameron states that the fire department would be consulted

in the next phase, so any issues regarding emergency vehicles can be addressed. He also suggests there will be ample snow storage on the property.

Chair Duffy asks for more information regarding the financial viability and how it pertains to the density request. Mr. Grover explains that to forgo the currently approved commercial use and its potential value, a certain level of density is required otherwise it would not make sense.

Ms. Ordaz suggests residential use would be an appropriate use of the space as two of the three proposed buildings are in the R2 district. Ms. Ordaz asks if the applicant would be open to consider altering the exterior appearance or materials. Mr. Ricciarelli confirms they would be.

Chair Duffy asks if the lot has been subdivided yet, and Mr. Grover indicates it has not yet, and that the lot is large at about an acre and a half but would be subdivided according to the plans presented. Chair Duffy also suggests the hardship argument is a bit novel, and that while he understands the impact of the lot shape and adjacent commercial use, some of the hardship exists because of the desire to switch the use to residential as opposed to proceeding with the allowed commercial use. Mr. Grover indicates the Chair is correct, and that the essence of the hardship is a desire to restore the use to residential, as that is how the parcel is zoned.

Mr. Copelas expresses uncertainty regarding how to proceed since the variance for stories was not requested and that conversation will be postponed. He asks if the issues already discussed would be readdressed when the stories request comes in, or if the next discussion would merely be a rubber stamping of the stories variance. Chair Duffy acknowledges Mr. Copelas' concerns, and suggests that from his perspective the stories variance is the least concerning request, particularly since what is proposed would not be taller than what is allowed in feet for the commercial building. Mr. Duffy states his concerns are more directed at the setback variances as the buildings will be close to abutters. Mr. Copelas suggests it could be possible to make a decision in one direction tonight, but in a differing direction when before the board seeking relief for stories.

Mr. Grover indicates that the buildings could be brought under the 2.5 stories theoretically if necessary, and suggests the major issues would not need to be reexamined if additional relief was sought. Ms. Ordaz agrees with Mr. Grover and Chair Duffy's interpretation.

Motion and Vote: Mr. Viccica motions to approve the petition of DAVID CUTLER for a special permit per Section 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to change from one non-conforming use (industrial) to another (multi-family dwelling) at 9 FRANKLIN STREET (Map 26, Lot 375) (B1 and R2 Zoning Districts) subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. A Certificate of Occupancy is to be obtained.
6. Street numbering????
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. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

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

Motion and Vote: Mr. Viccica motions to approve the petition of DAVID CUTLER for a variance from Section 4.1.1 Table of Dimensional Requirements from minimum lot frontage and width, minimum depth of rear yard, minimum distance between buildings on lot, minimum width of side yard, and minimum lot area per dwelling unit at 9 FRANKLIN STREET (Map 26, Lot 375) (B1 and R2 Zoning Districts) 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. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are 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 five (5) in favor (Rosa Ordaz, Peter Copelas, Mike Duffy (Chair), Paul Viccica, and Steven Smalley) and none (0) opposed. The motion passes.**

Location: **11 Orchard Street (Map 27, Lot 434) (R2 Zoning District)**

Applicant: **Erjola Cani**

Project: A public hearing for all persons interested in the petition of ERJOLA CANI for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use (three-family dwelling) to another (four-family dwelling), and a variance per Section 4.1.1 *Table of Dimensional Requirements* from minimum lot area per dwelling unit to add a third dwelling unit to an existing two-family structure at 11 ORCHARD STREET. (Map 27, Lot 434) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped February 23, 2021 and supporting documentation

Chair Duffy introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the applicant. Mr. Quinn explains the applicant is an adult woman with an elderly parent she would like to help take care of while maintaining separate living quarters. Mr. Quinn indicates the applicant purchased 11 Orchard in December after the property had been held by the same family for approximately 70 years. Mr. Quinn presents the site plan and states the property is interesting as it contains two dwelling structures, which can be seen in a 1932 Salem atlas. The main building is 2.5 stories, and the second structure at the rear of the property is a small single family structure. Both buildings are grandfathered as they existed prior to 1965 according to Mr. Quinn. The majority of the proposed changes are to the main structure, which Mr. Quinn contends was originally built as a three-family home. Since 1960, the building was occupied as a two-family structure with a first floor apartment, and a unit on the second and third floors. The third floor contains a kitchen and a bathroom, and Mr. Quinn notes the building has three meters.

Mr. Quinn states the applicant is seeking to restore the third floor apartment and make the main structure a three-family dwelling. The applicant would live in the front building as an owner occupant, rent out the other two units, and have her father live in the rear structure. Mr. Quinn describes the nature of the relief sought as expanding an existing non-conforming three-family property in a two-family district to a four-family property between the two buildings. Mr. Quinn indicates there would be no new construction or footprint changes, as all the work will be internal to restore the third story apartment subject to codes and requirements. Mr. Quinn presents photographs of the property, and notes it is a large lot with the buildings crowded to the left and a large yard area. The applicant proposes to create six legal parking spaces in the yard area to serve the four units. Mr. Quinn explains that a special permit is needed to change from one non-conforming use to another, as well as a variance for lot area per dwelling unit. Mr. Quinn argues the proposal would not be detrimental to the neighborhood, would increase City tax revenue, and have no negative impact on utilities or traffic. Mr. Quinn posits that the property as configured is not marketable, and as such that presents a hardship. Mr. Quinn notes that some neighbors have filed comments in opposition, which he states is regretful as the applicant has attempted to explain her circumstances and what she is attempting to do. Mr. Quinn stresses the applicant is not trying to jam in an illegal apartment, but rather trying to restore what was originally a three-unit building.

Mr. Copelas focuses on the issue of hardship and requested variance, and questions the characterization of the property as not marketable, noting that the listing for the property when it was purchased in January listed it as a two-unit main building with a separate cottage. Further, Mr. Copelas indicates the owner/applicant paid \$100,000 over the original listing price after the property was on the market for just a few days. Mr. Copelas suggests the owner purchased the property with an understanding of the circumstances, the number of units, and still paid a premium. Mr. Copelas states he has difficulty seeing a real hardship.

Mr. Quinn indicates his client was encouraged by other involved parties to believe that it would not be a heavy lift to restore the third-floor unit as the building was once a three-family. Mr. Quinn states that after purchasing the property, the owner was surprised by how much was involved in the process. Mr. Quinn adds that the owner bid over asking price as the property seemed perfect for what she wanted to do, but also notes he was not involved in that process. Regarding the hardship, Mr. Quinn states he did not mean to suggest the applicant could not afford to operate the property as three units, but rather that having a two-unit building with eight bedrooms when a third unit

could be added is wasteful of space. Mr. Quinn suggests the configuration does not allow the existing units to be easily rented.

Mr. Viccica asks if that is the extent of the applicants statement regarding the variance request. Mr. Quinn explains the building being crowded to one side of the property is an additional difficulty on top of the difficulty to market the unit and the fact that the building was originally a three-family. Mr. Viccica notes the building has not been a three-family dwelling since the 1960's, and that currently it is assessed and taxed as a two-unit building. Mr. Viccica indicates he is having difficulty with the hardship argument.

Mr. Copelas counters the claim that the property is not marketable, and again mentions the price paid above listing. Mr. Quinn indicates lack of marketability is not related to the price paid for the property but the setup of the units and the opportunity to easily accommodate a third floor apartment to use the space better, rather than attempting to rent a building with six bedrooms.

Ms. McClain suggests it could be difficult to find a family that would need and could also afford a rental with six bedrooms. Mr. Copelas notes there is no evidence of the actual number of bedrooms, and claims the property listing mentions six bedrooms for the whole property (including the rear cottage). Mr. Copelas states that according to the listing sheet, the buildings are not quite as big as they may appear. Based on the listing, the third floor has angled ceilings, which Mr. Copelas states is typical in units where the second and third floors are combined. Mr. Copelas suggests the applicant would need to provide better evidence of how uneconomical the second and third floor unit is. Ms. McCain asks if the applicant has any additional information.

Ms. Cani introduces herself and states she is attempting to regain the usage of the main building as a three-family. She indicates each floor has two bedrooms, a kitchen, a bathroom, and a living space. Ms. Cani explains she would like to renovate the entire building internally. Regarding the price paid, Ms. Cani suggests she may have been naïve to believe her proposal would be easy and feasible, but that the main reason she purchased the property was so that she, her parents, and her brother could live on the same property. She adds that the neighborhood is family oriented, and that there is a baby in the family. Ms. Cani contends the representation that the home was previously a legal three-family and could be easily restored as such was made by the realtor. Ms. Cani adds that the main building and cottage have separate utilities, and that the main building has three meters.

Mr. Copelas indicates his understanding is that in a multi-family dwelling there needs to be additional meter for common spaces, so it is common for a two-family home to have three meters, and that the presence of a third meter does not automatically indicate a property is or should be a three-family dwelling. Ms. Cani responds by explaining she receives three separate utility bills, and that there is no utility bill for common space currently. She receives three bills for 11 Orchard Street and one for 11.5 Orchard Street (the rear cottage). Ms. Cani reiterates that she is not making any changes to the exterior, and that she has adequate space to create parking.

Ms. Ordaz discusses one of the attachments from the Salem Library going back to 1960 which lists 11 Orchard as two units and 11.5 Orchard as one unit. Ms. Ordaz asks where the applicant has provided data or evidence that there were once three units in 11 Orchard. Ms. Cani indicates when she was researching the property, she spoke with the previous owner who explained it used to be a three-family dwelling with a porch on the third floor. Ms. Cani states the Salem Library and city hall did not have much information, but she provided what she could find.

Ms. Ordaz acknowledges the desire to keep family members together and live in close proximity, but states she has not seen any evidence that the main building and some point in time had a legal third unit.

Mr. Copelas notes that as drawings of the internal space were not provided, he is relying on the property listing which states six bedrooms total for both buildings on the property. Based on the limited photos of the third floor, it appears it is not as significant in size as the first and second floor.

Mr. Viccica again indicates that the main building is, and has been, a two-unit dwelling and taxed as such. Whether a third unit existed legally or illegally at some point in time, not evidence has been presented to show the building had three units.

Ms. Cani states she is willing to work with anyone from the building department for them to come see how the property is setup. Ms. Cani maintains she is not making false statements regarding the number of bedrooms. Mr. Viccica suggests the number of bedrooms is irrelevant, as the building is a two-unit building regardless.

Chair Duffy opens the floor to public comment.

Richard Rivera and Kelly Rivera of 17 Orchard Street introduce themselves as direct abutters. Mr. Rivera suggests a hardship cannot be self-created, and points to the price paid over the listing price despite the property being described as a two-unit house with a cottage. Mr. Rivera notes that Section 3.3.2 states the proposal cannot be substantially more detrimental, and that zoning is meant to act as protection for property owners. Mr. Rivera suggests the proposed variance and special permit are a threat to zoning, and that the R2 district is zoned for single and two-family dwellings, not multi-family dwellings or developments. Mr. Rivera opines that four units would bring more cars and traffic on a one-way street, and that the additional parking changes the natural environment. Mr. Rivera adds that the plans also do not meet the requirements of Section 4.1.1. Mr. Rivera suggests the proposal will decrease property values in the neighborhood and diminish how neighbors can enjoy their own properties and the R2 zoning. Finally, Mr. Rivera states he is not in favor of a six-car parking lot abutting his property.

Councilor Meghan Riccardi of 23 Orchard Street introduces herself, and states she also has difficulty with the hardship claims presenting, noting that there are many families with children who could rent out a unit with more bedrooms. Councilor Riccardi states there are two-family dwellings of similar size throughout the neighborhood, and that she is not convinced the units would not be marketable. Ms. Riccardi states she wants to welcome the new neighbors and loves the idea of family staying together, and that ultimately what the applicant is seeking could work with the existing setup as there are three legal units, and she is seeking space for her parents, herself, and her brother. Councilor Riccardi adds that many neighbors have spoken out against the proposal.

Anne Sterling of 29 Orchard Street introduces herself and states she believes Ms. Cani is a real estate agent herself. Ms. Sterling argues that if she is a real estate agent, Ms. Cani should have known about the licensing process and that if the property was purchased for these intended purposes without due diligence then it amounts to speculation or a gamble. Ms. Sterling adds that when gambling you do not always win. Moreover, Ms. Sterling suggests the cottage in the rear is somewhat of a gift, and that the parcel should be a two-family based on zoning, but that it currently

accommodates three. Ms. Sterling also acknowledges Mr. Rivera's concerns regarding having a small parking lot abutting his property, and notes that a lawn being replaced by an impervious surface is not ideal.

Therese Golden of 6 Orchard Street introduces herself and states her home is across the street from 11 Orchard. Ms. Golden indicates she has lived here for 15 years and describes the neighborhood as committed, unified, and respectful. Ms. Golden states she cannot imagine living across the street from essentially a paved parking lot. Ms. Golden suggests the proposal would completely change the character of the neighborhood and be a detriment to North Salem. She also raises concerns regarding traffic and safety.

Dave Petto of 7 Orchard Street introduces himself as an abutter on the other side of the property. Mr. Petto echoes the opposition of his neighbors, and notes that the property already has three legal units despite being zoned R2. Mr. Petto also expresses concern regarding the six parking spaces, noting a paved lot where lawn currently exists could cause drainage issues. Mr. Petto also states that the traffic and parking issues could be exacerbated by visitors to the proposed four units, and notes the street is a one-way.

Andrew Fett of 0 Felt Street Way introduces himself and indicates he passes Orchard Street frequently. Mr. Fett states it is interesting that there have been several variance requests related to density in the neighborhood, and suggests there exists pressure on the neighborhood to increase density. Mr. Fett suggests R2 zoning is associated with certain expectations for property owners. By allowing increases in density bit by bit, Mr. Fett argues the neighborhood will change and no longer look like an R2 zone.

Mr. Quinn states that the six parking spaces do not necessarily need to be paved, but could be semi-permeable or permeable, and that the applicant would not object to such a requirement. With respect to the proposed third floor unit, Mr. Quinn states the applicant has every right to request it, and that as a non-conforming property she has every right to seek a change to another non-conforming use. Mr. Quinn argues that aside from the opposition to the paved parking area, nothing indicates an additional unit on the property with off-street parking would create an adverse effect for the neighborhood.

Chair Duffy indicates the difficulty he is having is with the variance request and the ability to demonstrate a hardship. Chair Duffy notes there is no evidence that the main building ever had a legal third unit. While it may be desirable for the applicant to have that third unit, Chair Duffy explains the Board is bound to the variance standard and there does not appear to be a hardship. He adds that the applicant was aware the building had two units at the time of purchase.

Mr. Copelas suggests that if the Chair is seeking a motion that the variance be taken up first. If asking for motion, take up for variance first. Duffy says ok.

Motion and Vote: Mr. Copelas motions to approve the petition of ERJOLA CANI for a variance per Section 4.1.1 *Table of Dimensional Requirements* from minimum lot area per dwelling unit to add a third dwelling unit to an existing two-family structure at 11 ORCHARD STREET. (Map 27, Lot 434) (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. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are 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 none (0) in favor and five (5) opposed (Paul Viccica, Rosa Ordaz, Peter Copelas, Mike Duffy (Chair), and Carly McClain). The motion fails.**

Location: **21 Crescent Drive (Map 15, Lot 563) (R1 Zoning District)**

Applicant: **Janet M. Fellows**

Project: A public hearing for all persons interested in the petition of JANET M FELLOWS for variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot area, minimum lot area per dwelling unit, and minimum lot frontage to decrease the lot area by 296(+/-) sq ft at 21 CRESCENT DRIVE (Map 15, Lot 563) (R1 Zoning District).

Documents and Exhibitions

- Application date-stamped March 30, 2021 and supporting documentation

Chair Duffy introduces the petition.

Ms. Fellows introduces herself and explains that after having her property surveyed last Summer, she was informed her neighbor at 23 Crescent Street was encroaching on her property as the fence dividing the property is at an angle. The amount of property encroached upon is approximately 296 square feet. The surveyor informed Ms. Fellows that her options were selling that portion of land to the neighbor, granting an easement, or digging up the yard and fence to rectify the issue. Ms. Fellows states she spoke with the neighbors, and learned the fence was replaced many years ago without a survey, but rather based on the location of the prior fence, and that when the landscaping was done it was lined up with the driveway. Based on their discussions, Ms. Fellows explains the neighbors would like to purchase the 296 square feet. Ms. Fellows obtained plans and has already gone to the Planning Board, but because the property is already smaller than required and the sale would make it marginally smaller, a variance is required.

Chair Duffy notes the adjacent property will gain the square footage and continue to meet the requirements for the R1 district.

Mr. Copelas notes the issue seems minor, but that it is nonetheless a variance request. He asks if a statement of hardship was submitted as part of the application. Chair Duffy indicates a statement was submitted. Mr. Duffy suggests a unique condition exists between these two properties that does not pervade the district, and if denied both parties would have the hardship and costs associated with rectifying the property line. He adds that the parties prefer to leave things as they are and exchange monies.

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

Motion and Vote: Mr. Viccica motions to approve the petition of JANET M FELLOWS for variances per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot area, minimum lot area per dwelling unit, and minimum lot frontage to decrease the lot area by 296(+/-) sq ft at 21 CRESCENT DRIVE(Map 15, Lot 563) (R1 Zoning District) subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

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

Location: **4-6 Green Ledge Street (Map 8, Lot 140 and 157) (I and B2 Zoning Districts)**
Applicant: **Rony Zacarias**
Project: A public hearing for all persons interested in the petition of RONY ZACARIAS for a special permit per Section 3.1.2 *Special Permit: Zoning Board of Appeals* of the Salem Zoning Ordinance to operate a contractor's yard and landscape business at 4-6 GREEN LEDGE STREET (Map 8, Lot 140 and 157) (I and B2 Zoning Districts).

Documents and Exhibitions

- Application date-stamped March 30, 2021 and supporting documentation

Chair Duffy introduces the petition.

Attorney Samuel Vitalli introduces himself on behalf of the applicant, and notes the property is a large vacant site in Salem, located in an industrial zone and surrounded by commercial operations such as a Serve Pro, a tire store, and others. The property has been vacant for some time, and the applicant is seeking a special permit to use it to operate a contractor and landscaping business. Mr. Vitalli states the proposal would not displace any buildings or persons and that a large area would be fences off. The applicant has six crew members, and the property would be used primarily for storage of materials, pavers, trucks, etc. Mr. Vitalli notes that no customers would come to the property. Chair Duffy acknowledges the statement of grounds was provided in the application and is consistent with what has been presented.

Mr. Viccica asks if the applicant will be storing piles of compost and other materials. Mr. Vitalli contends there will be no compost or mulch piles, as most supplies go from wholesalers directly to the job site.

Mr. Copelas asks if the special permit is required because the property encompasses two zoning districts, and Mr. Vitali confirms that is the case. Chair Duffy clarifies that this use is not allowed by right in any location, and that is why a special permit is required.

Chair Duffy opens the floor to public comment.

The owner of Young World Academy and Anarpet Realty (no name provided) introduces himself, and states he is located adjacent to the Town Fair Tire and that the proposed use for the property in question would be substantially different. He questions the implications of going forward with the request without any restrictions, and states he does not want to see issues later on regarding large trucks, deliveries, or storage of materials. He notes the street is a dead end, and that large trucks have had difficulties turning around. He also notes that parking is not allowed on the street. He also discusses difficulties regarding Green Ledge Street, and expresses concern regarding potential odors from compost and mulch. He does not want odors or excessive noise being an issue with the Young World Academy, as they have playgrounds and run a school. If the special permit is granted, he requests it be done with restrictions regarding what materials can be stored and in what quantity, noise levels and odor, access from Green Ledge Street, parking, etc. He stresses that Green Ledge Street cannot ultimately become an extension of any business.

Mr. Copelas offers to summarize the concerns raised as three special conditions, namely: 1) Deliveries must be made in the lot and not on the street; 2) There is to be no bulk storage of compost or mulch, and 3) there are to be no retail sales on the lot. Mr. Copelas acknowledges that Green Ledge is a tricky street.

St. Pierre notes the special permit goes with the business, and would not continue with the property if the business or owner left.

Chair Duffy and Mr. Vitali discuss the materials that might be stored at the location and the size of the trucks. The applicant explains that in addition to pavers, some mulch might be stored seasonally, but that it would not be much. He states he understands his neighbors' concerns and indicates he will be careful and considerate.

Mr. Copelas references the mountain of mulch on Swampscott road and suggests the quantity is what causes the odor to be an issue. There is a brief discussion regarding what 20 and 30 yards of materials would look like. Mr. St. Pierre indicates a dumpster trailer holds approximately 30 yards. The applicant confirms this would not be anything similar to the situation on Swampscott Road. Chair Duffy asks if a limit of 30 yards could be enforceable, and Mr. Viccica suggests storing materials in bins or covering them in some way. Mr. Vitali indicates the petitioner would be open to that idea. Chair Duffy asks if the pavers, blocks, and stones would be stored on pallets, and Mr. Vitalli confirms. The applicant adds that crushed stones would be stored in bins.

The owner of Young World Academy repeats his concerns, and states he would like the restrictions to not allow excessive odors or noise from the property. He also expresses concerns regarding wind blowing materials into peoples eyes. He expresses additional concerns regarding truck access and mentions nearby guide wires.

Mr. Copelas suggests the additional restriction that all access to the property be on Green Ledge Street to address the commenters additional concerns.

Chair Duffy asks if there are any plans to grind stumps or wooded material, and Mr. Vitali states there are not.

Motion and Vote: Mr. Copelas motions to approve the petition of RONY ZACARIAS for a special permit per Section 3.1.2 *Special Permit: Zoning Board of Appeals* of the Salem Zoning Ordinance to operate a contractor's yard and landscape business at 4-6 GREEN LEDGE STREET (Map 8, Lot 140 and 157) (I and B2 Zoning Districts) subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. A Certificate of Occupancy is to be obtained.
6. A Certificate of Inspection is to be obtained.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. All construction shall be done per the plans and dimension submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals

And the following special conditions:

1. All deliveries to be made inside the locus property.
2. No bulk storage of mulch, compost, or crushed stone in quantities greater than thirty (30) yards, to be stored in bins and covered.
3. All access to the property is to be via Green Ledge Street.
4. There are to be no retail sales on the premises.
5. The special permit attaches to the petitioner, and does not attach to the property.

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

Location: **106 Boston Street (Map 16, Lot 149) (B2 and ECOD Zoning Districts)**
Applicant: **Yoleny Ynoa**
Project: A public hearing for all persons interested in the petition YOLENY YNOA for a special permit per Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to expand a nonconforming mixed-use structure by adding a shed roof dormer at 106 BOSTON STREET (Map 16, Lot 149) (B2 and ECOD Zoning Districts).

Documents and Exhibitions

- Application date-stamped March 31, 2021 and supporting documentation

Chair Duffy introduces the petition.

Yoleny Ynoa introduces himself, and presents floor plans showing the existing attic conditions. Mr. Ynoa explains she would like to create a shed dormer to make the small apartment a bit bigger. Mr. Ynoa shows plans for the proposed windows and shed dormer, as well as elevations.

Chair Duffy asks to confirm if it is an existing apartment that is too small, and Mr. Ynoa states that is correct, and that it is 1.5 bedroom, and the proposal would bring it to four bedrooms.

Mr. Ordaz asks the applicant to speak to the community needs being addressed by the proposal. Mr. Ynoa explains that because the apartment is so small it is difficult to rent, and that it has been empty for two months.

- Talk about community needs?

Ms. Ordaz asks about the 320 square foot proposed dormer, and the existing square footage of the apartment. Mr. Ynoa says he does not have the existing square footage, but presents floor plans and drawings of the existing and proposed conditions.

Mr. Viccica asks Mr. St. Pierre if the current building has five units, and Mr. St. Pierre confirms. Mr. Viccica asks what the requirement or threshold is for fire suppression, and Mr. St. Pierre indicates it is anything three-family or more. Mr. Viccica asks if the renovations will comply with current fire and safety codes, and Mr. St. Pierre affirms that would be the case.

Mr. Copelas states he always thought the property being discussed was two separate buildings. Mr. Ynoa confirms it is one building.

Chair Duffy opens the floor to public comment.

City Councilor Steve Dibble introduces himself and speaks in favor of the proposal. Councilor Dibble states he has been in the building and speaks favorably of Mr. Ynoa as a member of the community. Mr. Dibble suggests Salem could use more family style housing, and that Mr. Ynoa's proposal helps accomplish that goal.

Councilor Domino Dominguez of 18 Raymond Road introduces himself and also speaks highly of Mr. Ynoa, noting that he is an active member of the community and local activist. Councilor Dominguez asks that the Board consider approving the request, as Mr. Ynoa helps the community by renting out affordable units to everyone.

Mr. St. Pierre indicates that the dormers would create an additional 140 square feet of usable space that was previously in the eaves. Mr. St. Pierre explains the drawings a bit more and the usable space that would be gained.

Ms. Ordaz references Councilor Dominguez's comments regarding affordable rentals, and asks Mr. Ynoa what he will plan to list the four bedroom apartment for. Mr. Ynoa indicates he does not yet know what price he would rent it for.

Chair Duffy discusses the special permit criteria and how they are met by the petitioner's proposal.

Motion and Vote: Mr. Viccica motions to approve the petition of YOLENY YNOA for a special permit per Section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to expand a nonconforming mixed-use structure by adding a shed roof dormer at 106 BOSTON STREET (Map 16, Lot 149) (B2 and ECOD Zoning Districts) 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. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals

Mr. Smalley 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.**

MEETING MINUTES

February 17, 2021

March 17, 2021

Chair Duffy indicates he found a minor typo in the March minutes that requires an edit. No other Board members provided comments or edits.

Motion and Vote: Mr. Viccica moves to approve the February 17, 2021 minutes as drafted and the March 17, 2021 minutes as ammended. Mr. Smalley seconds the motion. **The vote is five (5) in favor and none (0) opposed. The Motion passes.**

OLD/NEW BUSINESS

None.

ADJOURNMENT

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

City of Salem Zoning Board of Appeals
April 21, 2021 Meeting Minutes

The meeting ends at 12:02 AM on April 22, 2021.

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-2021>

Respectfully submitted,
Lev McCarthy, Staff Planner