

City of Salem Zoning Board of Appeals
Meeting Minutes
June 16, 2021

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, June 16, 2021 at 6:30 pm via remote participation in accordance with Chapter 20 of the Acts of 2021.

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

Chair Duffy explains that pursuant to Governor Baker’s previously existing 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 16th at 6:30 pm is being held remotely via Zoom. Chair Duffy explains that instructions to participate remotely can be found on the Salem website. Chair Duffy also explains the rules regarding public comment.

ROLL CALL

Those present were: Mike Duffy (Chair), Carly McClain, Peter Copelas, 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, Rosa Ordaz, and Steven Smalley

Chair Duffy explains that as there are only four members in attendance, a vote_____ of all members...applicants can wait for full board to be present and allow to request continuance.???

REGULAR AGENDA

Location: **73 Lafayette Street (Map 34, Lot 430) (B5 and ECOD Zoning Districts)**
Applicant: **North Shore Community Development Coalition, Inc.**
Project: **Note: The applicant has requested to continue to the regularly scheduled meeting on July 21, 2021.** 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 (Map 34, Lot 430) (B5 and ECOD Zoning Districts).

Documents and Exhibitions

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

Chair Duffy introduces the petition and explains the applicant has requested to continue to the next regularly scheduled meeting.

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 (Map 34, Lot 430) (B5 and ECOD Zoning Districts) until the next regularly scheduled meeting of the Zoning Board of Appeals on July 21, 2021.

Mr. Copelas seconds the motion. **The vote is four (4) in favor and none (0) opposed (Peter Copelas, Mike Duffy (Chair), Paul Viccica, and Carly McClain). The motion passes.**

Location: **56 Jefferson Avenue (Map 24, Lot 91) (R1 Zoning District)**
Applicant: **Jodie Fenton**
Project: A continuation of a public hearing for all persons interested in the petition of JODIE FENTON for a special permit per section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to demolish a nonconforming three-story three-family home and detached garage, and reconstruct a nonconforming three-story three-family home at 56 JEFFERSON AVENUE (Map 24, Lot 91) (R1 Zoning District).

Documents and Exhibitions

- Application date-stamped April 28, 2021 and supporting documentation

Chair Duffy introduces the petition.

Scott Ingemi introduces himself on behalf of the applicant. Mr Ingemi explains that the applicant had to meet with the historical society, who determined there was no historical significance to the property and therefore the proposal could go forward pursuant to ZBA approval. Mr. Ingemi notes the applicant was before the Board previously, but that the Board wanted the historic review to occur first.

Chairy Duffy asks if a waiver of demolition was approved, and Mr. Ingemi affirms. Chair Duffy recalls that the existing structure is not in great shape and would need to be substantially rebuilt to retain any structure. Mr. Ingemi confirms there are failures in the foundation and various issues that make rehabilitation infeasible. Mr. Ingemi contends the proposal would beautify the whole lot.

Mr. Copelas asks if the existing detached garage will be demolished and not replaced, and Mr. Ingemi confirms that is correct, and that there will be expanded parking instead.

Chair Duffy discusses the dimensional change of the proposal, noting that the side yard setback will increase a little. Mr. Ingemi explains there will be more clearance after the proposal on the side yard, as it is currently blocked off by a cement stairwell that goes to the property line. He indicates this will be cleared.

Mr. Viccica asks about the roof pitch in the statement of grounds, and Mr. Ingemi clarifies that it is six over twelve. Mr. Ingemi explains that the existing building had been moved, and that it originally had a pitched roof that was eventually replaced with a flat rubber roof. Mr. Ingemi indicates the

intent is to return to the original state with a pitched roof, and adds that it does not intrude on neighboring views.

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

Chair Duffy discusses how the applicant meets the special permit criteria, and notes that the existing building is in a state of disrepair and will benefit from the proposal. The proposal would replace an existing non-confirming three family house with another.

Motion and Vote: Mr. Copelas motions to approve the petition of JODIE FENTON for a special permit per section 3.3.3 *Nonconforming Structures* of the Salem Zoning Ordinance to demolish a nonconforming three-story three-family home and detached garage, and reconstruct a nonconforming three-story three-family home at 56 JEFFERSON AVENUE (Map 24, Lot 91) (R1 Zoning District) subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. A Certificate of Occupancy is to be obtained.
6. A Certificate of Inspection is to be obtained.
7. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. All construction shall be done per the plans and dimension submitted to and approved by this Board. 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. Viccica seconds the motion. **The vote is four (4) in favor (Carly McClain, Paul Viccica, Mike Duffy (Chair), and Peter Copelas) and none (0) opposed. The motion passes.**

Location: **21 Willow Avenue (Map 33, Lot 621) (R1 Zoning District)**
Applicant: **JJC General Contracting, Inc.**
Project: A continuation of a public hearing for all persons interested in the petition of JJC GENERAL CONTRACTING INC. 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 two-family structure by adding two exterior stairways and a second-floor rear deck at 21 WILLOW AVENUE (Map 33, Lot 621) (R1 Zoning District).

Documents and Exhibitions

- Application date-stamped March 29, 2021 and supporting documentation

Chair Duffy introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the applicant. Mr. Quinn indicates the applicant came before the Board previously but did not have exterior elevations showing the profile and dimensions of the second floor deck and stairway. He also explains that revised plans were submitted the day before the last meeting, giving the public limited time for review and so the applicant continued and is before the Board again. Mr. Quinn notes that a member of the public raised concerns regarding whether the original deck was built legally, and presents a permit pulled in 1974 for the first floor deck. Mr. Quinn explains that the applicant's realtor submitted a letter that he would like to be included in the record. The letter expresses that if the applicant can renovate the property as proposed, the realtor suggests it will maximize market value and bring the property to a higher standard. The letter also states it will likely be sold as two condos to owner occupants, who are more likely to be accountable and respectful of neighbors. Mr. Quinn proceeds to review the elevations, photos, and plans, suggesting the deck is small for New England standards and will only be used for part of the year. He adds that it should not interfere with the peace and quiet of the neighborhood.

Ms. McClain notes that the Board received emails from neighbors indicating they still had not been contacted by the property owners since the last meeting, and asks the applicant has reached out and gotten the neighbors on board with the proposal. She adds that the updated proposal still appears rather high and wide, and perhaps could be close to abutters.

Mr. Quinn explains that the elevations were not completed until two days ago, and that they were mailed to four of the neighbors that had questions at the last meeting. Mr. Quinn adds that there is no intention of removing the existing tree, which was a concern raised by one neighbor. Mr. Quinn states a 12 foot by 14 foot deck is not very big.

John Camire, introduces himself as the petitioner and explains that he met with the two side neighbors with the original plans and that they were initially on board as long as their view was not obstructed. Mr. Camire states he was surprised when at the meeting neighbors had changed their opinions. He contends he tried to call one neighbor multiple times but never received a response. Mr. Camire indicates he revised his plan and decreased the second floor deck to be the same size as the first floor deck, as he did not want to intrude on the setbacks more. He also notes that he removed the side staircase after concerns were raised regarding noise, and that he only needs relief for the back setback. Mr. Camire explains the exterior stairs would not be the main egress, as there is a full set of interior stairs for everyday use. He states he would like a safe egress on the exterior and to create a nice outdoor space for people to enjoy. Mr. Camire notes that the current second egress is a tight winding staircase common in old houses, and that the plan is to eliminate those and replace it with the safer exterior egress. Mr. Camire suggests there will not be big parties on the decks, and that will be sold to professionals rather than rented.

Ms. McClain states she appreciates the explanation and work that has gone into the modifications, but notes the plans were finalized Monday and that neighbors may not have gotten them in time to review.

Chair Duffy notes that by moving the stairs from the side to the rear of the deck with the revision, the rear setback would be reduced from 19 feet to 15 feet, and Mr. Camire confirms.

Mr. Camire explains that the plans before the Board currently were submitted at the last meeting, and that the only missing portion was the elevations, so neighbors have seen the most current plans.

Mr. Camire again explains the plan revisions which include shrinking the deck and moving the stairs. Mr. McCarthy pulls up the original plans to compare with the revised version.

Mr. Copelas asks for clarification regarding the entrance and interior stairs. Mr. Camire explains the layout of the street level entrances to both units (separate), as well as the location of the existing interior stairs.

Chair Duffy indicates the Board received many letters regarding this proposal. One letter from Pam McKee, acting as broker/real estate agent in relation to the proposal, is dated June 15, 2021. In her letter, Ms. McKee suggests Mr. Camire is a well-known and respected contractor who is conscientious and detail oriented. Ms. McKee's letter also suggests that the renovated condos will likely be owner occupied with dual income buyers based on current market conditions, and that such individuals are more likely to be accountable and good neighbors.

Chair Duffy also notes seven additional emails/letters submitted, all of which expressed concerns regarding deck size, potential noise issues, and crowding. The letters suggest no hardship has been shown by the applicant, and that the existing interior stairs would be a safer secondary egress than an exterior staircase. Letters were received from Rita McTyre, Tom and Meg McMahon, Lisa Quinn, and James Tierney. There was also an unsigned letter in opposition.

Chair Duffy opens the floor to public comment.

James Tierney of 19 Willow Ave introduces himself. Mr. Tierney acknowledges the permit for the first floor deck, but expresses concern that it was built in 2000 and the name on the permit was not the person living there at the time. Mr. Tierney also acknowledges that Mr. Camire tried to reach out and call him, but that he chose not to take Mr. Camire's call as he had been engaged with a lawyer and did not think it was appropriate. Mr. Tierney states he hired a lawyer because he lost trust in Mr. Camire based on work being done without visible permits. Regarding the revised proposal, Mr. Tierney states he is opposed, as the neighborhood has small lots and the deck is large. He notes that he has enjoyed living here for 20 years because the neighbors all understand that they share a small space. Mr. Tierney expresses concern that the proposal benefits Mr. Camire but not the rest of the neighborhood. Mr. Tierney states he is open to a second floor deck that is consistent with the neighborhood and maintains the existing integrity of the neighborhood.

Meg McMahon (no address provided) introduces herself, and states that Mr. Camire did meet with her and her husband initially informally in the back yard and provided a small diagram of the proposal with no dimensions or additional details. Following the brief meeting, upon having more time to reflect on the matter and what it would involve, Ms. McMahon explains she began to be concerned with the potential impact on the neighborhood. Ms. McMahon indicates she and her husband have lived in, and enjoyed living in their home for a long time and they would like the neighborhood character to remain the same given the small lots and tight surroundings. She also notes that she had not yet received the documents mailed Monday. Ms. McMahon suggests that a hardship has not been shown by the applicant, and reiterates the concerns outlined in her letter to the Board, including those regarding potential for noise and neighborhood disturbance. She suggests that if she were purchasing the property with a deck that large, she would put out furniture and grills and use it as an entertainment space, and expects that whoever moves in would do so, resulting in loss of privacy and peace for abutters. Regarding the second egress, Ms. McMahon opines that safer stairs could be built in the interior rather than exterior.

Rita McAteer of 10 Messervy Street introduces herself and echoes the concerns raised by other neighbors. Ms. McAteer also notes that the air space of the proposed second floor deck would be substantial and come out half way across the yard. Ms. McAteer contends there will be a negative impact on privacy and the ability for abutters to enjoy their views. She also suggests that the potential for noise issues will be exacerbated and amplified by the narrow spaces between homes. Ms. McAteer states that she appreciates Mr. Camire's revisions, but requests that the footprint of the deck be more in line with the rest of the neighborhood.

In response to comments, Mr. Camire argues that he approached his abutting neighbors in the beginning and addressed all their concerns prior to coming before the Board. Mr. Camire states his understanding was that they were all on the same page and that he would be using open rails so as not to block ocean views. Mr. Camire indicates he did not persist with further contact because it seemed like no matter what he proposed his neighbors did not want any second floor deck. Mr. Camire acknowledges their concerns, but states that if the deck were to be smaller it would not allow for a view of the ocean. He acknowledges that he has no right necessarily for an ocean view, but that it would be great if he could get one through the proposed deck. Regarding the issue of hardship, Mr. Camire indicates his understanding is that for a special permit a hardship does not need to be shown. He maintains that he tried to appease his neighbors' concerns, but that ultimately he has a right to enjoy the space as much as they do.

Chair Duffy asks for clarification regarding some of the photos in the proposal, and Mr. Camire provides explains the images show proposed height of the deck.

Mr. Viccica suggests a 12 foot by 14 foot deck is essentially an outdoor room at 168 square feet. At an estimate of 15 square feet per person, Mr. Viccica indicates the deck could hold 11 to 12 people which could be noisy. Mr. Viccica also acknowledges the issue of noise amplification. Mr. Viccica states that he appreciates the revisions regarding the stair location, but asks if the applicant would be open to reducing the square footage of the deck further, perhaps to 14 feet by 8 feet to get back to the original 19 foot setback that exists. Mr. Camire states he would not be opposed, but that the stairs would need to either be put back on the side where originally planned or run them out toward the back yard. Mr. Camire explains that part of the reason for the proposed size of the second floor deck is to be able to keep the existing first floor deck and not need to reframe. Mr. Camire suggests that if redoing both decks and adding the staircase allows his proposal to get Board approval, then he would be willing to comply with the suggested dimensions. Mr. Camire states he would not like to delay further as he has already lost time and would like to not extend out another month. Mr. Viccica indicates he will defer to other Board members as to whether or not they would need to see updated plans. Mr. Viccica and Mr. Camire discuss what would be involved in reducing the deck to eight feet. Mr. Viccica suggests that by reducing the size the proposal would be no worse than what exists today on the first floor with respect to size, just an additional floor. Mr. Viccica also notes that neighbors have decks similar in size. Mr. Camire asks if it would be appropriate to put the stairs back where originally planned so that the first floor deck could be left as is. Mr. Viccica asks about the need for the stairs from the second floor deck to grade, and Mr. Camire indicates he needs a second egress. Mr. St. Pierre confirms a second egress is required if there is no sprinkler system. Mr. Viccica suggests there is potential for compromise depending on whether the Board would agree to modifications by condition or require new plans. Regardless, Mr. Viccica states that the deck as proposed is large enough to create neighborhood disturbance and does not fit in with the neighborhood character.

Mr. Copelas asks the Chair if the Board could condition this appropriately, or if the modifications discussed thus far are too extensive. Chair Duffy suggests it would be up to Mr. St. Pierre as the enforcing officer. Mr. St. Pierre states he would still need plans for a building permit, but suggests tabling this proposal until later in the meeting to allow the petitioner to draw the updated proposal as discussed with dimensions so that he could have something to look back at for enforcement.

Chair Duffy states that is a reasonable request and asks Mr. Camire if he would be amenable. Mr. Camire states he is working on it and can email the drawing to Mr. McCarthy. Chair Duffy agrees to table this discussion and come back to it after the next matter.

After the discussion of 44 Butler Street the Board returned to this matter to review the updated drawing, showing the reduced dimensions of 14 feet by 8 feet, with the stairs from the second floor deck running into the back yard alongside the stairs for the first floor deck. Chair Duffy confirms his understanding of the drawing and Mr. St. Pierre indicates he can work with it for now, but that the applicant will need to submit a cleaned up version to put in the record. Mr. Viccica states he thinks the updated drawing addresses some of the original concerns.

Chair Duffy reopens the floor to public comment on the new dimensions/drawing.

James Tierney of 19 Willow Avenue states the drawing is similar to the first set of plans they he opposed, just with a smaller deck. Mr. Tierney indicates he has an issue with the stair placement, as it would be close to his kitchen window less than ten feet away. Mr. Tierney notes that he sent an email to the Planning Board with a proposed solution. Mr. McCarthy confirms he has the email, and reads it into the record. The email states the need for exterior stairs has not been demonstrated, and argues the demolished interior provides a blank slate for future construction options. The email recommends an interior stairway in the northern corner of the property with an exit to the ground floor.

Rita McAteer of 10 Messervy Street states she appreciates the efforts to reduce the size of the second floor deck, but indicates she still has concerns as the drawing does not provide a sense of dimensions for the stairs. She adds that the stairs will be a structure in the middle of the backyard, which is currently negative space for all the abutting backyards.

Tom McMahon of 23 Willow Street expresses frustration that the scope appears to have changed from the original proposal posted on the City website with adequate time to digest and object, to a situation where we are attempting to make the proposal a bit more palatable so that it can get approved tonight. Mr. McMahon suggests the Board's purpose is to represent and listen to the neighbor's concerns, and that here the neighbors are uniformly against the proposal. Mr. McMahon states he has pushed back as much as he can, but believes the deck will be approved in some form regardless.

Chair Duffy clarifies that the Board's function is not to protect any given class or cluster of residents, but rather to hear evidence, provide a fair hearing, and apply laws and zoning bylaws to that evidence. He adds that the Board certainly hears neighborhood comments and attempts to respond to any concerns raised.

Mr. Camire asks Mr. McCarthy to pull up the originally submitted plans to demonstrate where the new stairway would be as they would land in the same spot under the latest update. The original plans are shown, and Mr. Camire explains that the stairs barely pass the first floor stairs, so the impact would be no more than what currently exists.

Mr. Copelas acknowledges the renegotiating that occurred is not customary, as the Board is not tasked with redesigning projects, however, he notes that Mr. Viccica identified a reasonably elegant compromise that is not outside the bounds of what could be approved by the Board. Regarding the comment about representing the interest of the neighbors, Mr. Copelas clarifies that the Board reviews petitions and applies laws and zoning bylaws, and that the process is not a popularity contest.

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

Motion and Vote: Mr. Viccica motions to approve the petition of JJC GENERAL CONTRACTING INC. 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 two-family structure by adding two exterior stairways and a second-floor rear deck, modified to the size of 8 feet by 14 feet with a four foot wide staircase at 21 WILLOW AVENUE (Map 33, Lot 621) (R1 Zoning District) subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. 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. Copelas seconds the motion. **The vote is four (4) in favor (Peter Copelas, Mike Duffy (Chair), Paul Viccica, and Carly McClain) none (0) opposed. The motion passes.**

Location: **44 Butler Street (Map 16, Lot 117) (R2 Zoning District)**

Applicant: **Elton Cela and Erxhina Tafa**

Project: A public hearing for all persons interested in the petition of ELTON CELA and ERXHINA Tafa for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from minimum lot area per dwelling unit, minimum width of side yard, and minimum depth of front yard to alter and expand a nonconforming single-family home by relocating the building entrance; expanding the existing first-floor deck; adding a second-floor deck over the existing first-floor deck; adding an asphalt driveway to the rear of the structure; and changing the use from single-family to

two-family residential dwelling at 44 BUTLER STREET (Map 16, Lot 117) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped May 25, 2021 and supporting documentation

Chair Duffy introduces the petition.

Attorney David Summer introduces himself on behalf of the applicants. Mr. Summer explains the property is in an R2 district and that the applicants are proposing very minor exterior changes, with the majority of the changes being interior. The existing entrance on the westerly side of the residence will be removed and moved to the front, the first floor deck will be expanded, and a second floor deck will be added. Additionally, Mr. Summer explains that parking would move from the westerly side (typically cars for 44 and 46 Butler would park on the westerly side) and instead three spaces would be located in the rear of the residence. Mr. Summer indicates a narrative was submitted that goes through the six findings highlighting why the proposal is not more detrimental to the neighborhood than the existing residence. Mr. Summer claims the applicants spoke to abutting neighbors at 46 Butler and 40 Butler and that both are in favor of the proposal. Mr. Summer explains that the proposal would have an identical footprint except for the deck, which would be expanded slightly. He suggests the neighborhood character would be maintained, and that the residence would be significantly improved.

Chair Duffy states his understanding was that when materials were initially submitted, access to the rear parking was going to be via the left hand side of the house, but it appears as though there was insufficient width to provide legal access. Chair Duffy asks for an update on discussions regarding a potential driveway easement with the abutting property owner. Mr. Summer explains that the applicant spoke with the owner of 46 Butler, Mr. Gomez, and has submitted the proposed easement that they have both agreed to. Mr. Summer states the intent of the easement is also to improve the side of the residence, and in exchange the applicant will redo the driveway for both houses. The easement has not yet been signed by Mr. Gomez, but Mr. Summer suggests that the easement be one of the conditions if the Board were to grant approval this evening. Mr. Summer further explains that the easement provides a three foot easement on the westerly side and an additional two feet in case of maintenance.

Chair Duffy asks where the proposal leaves the owner of 46 Butler with respect to dimensions and their parking. Mr. Summer states the owner of 46 Butler also would like to begin parking in the back of the residence rather than the side, and so the proposed easement will help both residents achieve that goal. Chair Duffy asks specifically about the dimensions and what space would be left with the easement for currently existing parking. Mr. Summer states it varies because the structure at 46 has a cutout, however, he opines that he could still park there even with the easement. Chair Duffy and Mr. Summer discuss the plot plans and parking conditions further.

Chair Duffy notes the Board received a letter from Irene Saxon Flemming of 46 Scotia Street. The letter expresses opposition to the proposal. Mr. Summer states Scotia Street is over a block away, and contends the only residences affected by the proposal are the two directly abutting neighbors.

Chair Duffy opens the floor to public comment.

Gustavo Gomez of 46 Butler Street introduces himself. Mr. Gomez indicates he spoke with the petitioner and is in favor of the proposed renovations to the home. Mr. Gomez discusses the current condition of the home, and suggests the proposal would be a big improvement. He also states he is excited to see the open/shared backyard redone. Regarding the easement, Mr. Gomez states he and his neighbor were not initially aware it would become such an important component, but that the petitioner came up with a proposal over the weekend that he will review and consider. Mr. Gomez says he would be in favor of a condition requiring an agreement on the easement.

Chair Duffy discusses the special permit criteria and how they are met by the applicant.

Ms. McClain confirms she is familiar with the property and that as it exists is in bad condition, and the proposal would likely benefit the neighborhood.

Motion and Vote: Mr. Copelas motions to approve the petition of ELTON CELA and ERXHINA Tafa for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from minimum lot area per dwelling unit, minimum width of side yard, and minimum depth of front yard to alter and expand a nonconforming single-family home by relocating the building entrance; expanding the existing first-floor deck; adding a second-floor deck over the existing first-floor deck; adding an asphalt driveway to the rear of the structure; and changing the use from single-family to two-family residential dwelling at 44 BUTLER STREET (Map 16, Lot 117) (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.

And the following special condition:

1. An easement will be executed between the petitioner and abutting neighbor, consistent with the dimensions reflected on the easement plan submitted.

Ms. McClain seconds the motion. **The vote is four (4) in favor (Mike Duffy (Chair), Paul Viccica, Carly McClain, and Peter Copelas) and none (0) opposed. The motion passes.**

Location: **9 Franklin Street (Map 26, Lot 375) (B1 and R2 Zoning Districts)**

Applicant: **David Cutler**

Project: A public hearing for all persons interested in the petition of DAVID CUTLER for a variance per Section 4.1.1 *Table of Dimensional Requirements* from maximum height of buildings (stories) to construct new three-story multifamily residential structures at 9 FRANKLIN STREET (Map 26, Lot 375) (B1 and R2 Zoning Districts).

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Attorney Scott Grover introduces himself on behalf of the applicant, David Cutler, and explains that Mr. Cutler has an agreement to purchase a portion of the property from the current owner. Mr. Grover notes that project architect Dan Ricciarelli is also present. Mr. Grover indicates the project was presented to the Board in full detail a couple months ago, and that the property is located diagonally across the street from the old HMA car wash and Ferris junkyard. Most of the property is located in the R2 Zoning district, with a small corner in the back left falling within the B1 Zoning District. Mr. Grover presents a site plan, and reminds the Board that the proposal involves dividing the existing parcel into two lots. The front lot contains an existing commercial building and would be in full compliance with the zoning ordinance, and the rear lot has been permitted for a commercial building, but is being proposed to have twelve residential townhomes instead. Mr. Grover notes the Board granted relief for a special permit for use as well as variances for lot area per dwelling unit, frontage, rear and side yard setbacks, and lot width. Mr. Grover explains that because of the zoning split, two of the proposed buildings fall within the R2 Zoning District, which has a 2.5 story height limit. Therefore, the applicant requires a variance for those two buildings.

Mr. Grover insists it is important to note that all three buildings are only 29 feet high, which is less than the 35 feet allowed in the R2 district, and that the issue is merely the number of stories. Mr. Grover discusses the grounds for relief, and explains how the uniqueness of the property, split zoning, flood plain location, as well as other factors create a hardship regarding the height of the buildings. Mr. Grover states that if the ordinance were strictly enforced, there would only be 1.5 stories above the parking for living space, which he argues would be impractical.

Mr. Ricciarelli further explains why the buildings were designed as three story buildings, noting that the flood plain dictated the first floor be used as garage parking. Mr. Ricciarelli also points out quest parking on the site plan. Mr. Ricciarelli reviews the plans and designs for the buildings.

Mr. Copelas notes that at the end of the long driveway leading to the proposed residential area there is a gate to the left leading to the rear parking behind what used to be Leslie's Retreat. Mr. Copelas asks if the applicant can confirm there would not be any agreement that would allow access out of the parking lot down the driveway. Mr. Grover indicates there are no existing rights to allow passage from the rear building across the property at 9 Franklin. Mr. Grover suggests that would not be the intention, and that if necessary the Board could stipulate a special condition. Mr. Cutler confirms Mr. Grover's remarks, and states there is no access to the neighboring property, nor is there an easement or right of way.

Chair Duffy opens the floor to public comment.

Victoria Ricciardiello of 5 Foster Street introduces herself. Ms. Ricciardiello questions whether special insurance will be required for the condos because they are located in a flood plain. Mr. Grover explains they are not in a flood hazard district requiring insurance, but are in the flood plain. Chair Duffy asks when purchased with financing, if bank approval and appropriate insurances would be required. Mr. Grover confirms, and again explains that there is a difference between a flood plain and a flood hazard district.

Chair Duffy discusses the findings of hardship and basis for relief.

Motion and Vote: Mr. Copelas motions to approve the petition of DAVID CUTLER for a variance per Section 4.1.1 *Table of Dimensional Requirements* from maximum height of buildings (stories) to construct new three-story multifamily residential structures 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. A Certificate of Inspection is to be obtained.
7. Petitioner shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to be visible from the street.
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.

And the following special condition

1. No transit is to be allowed between the property at 6 Foster and the owner regardless of any agreement.

Mr. Viccica seconds the motion. **The vote is four (4) in favor (Mike Duffy (Chair), Paul Viccica, Peter Copelas, and Carly McClain) and none (0) opposed. The motion passes.**

Location: **4 Technology Way (Map 7, Lot 87) (BPD Zoning District)**

Applicant: **Prime Tree LLC**

Project: A public hearing for all persons interested in the petition of PRIME TREE LLC for a special permit per Sections 6.10.4, 6.10.9 *Requirements Specific to Cultivation Facilities*, and 6.10.10 *Requirements Specific to Manufacturing Facilities* of the Salem Zoning Ordinance to operate a licensed marijuana cultivation and manufacturing facility at 4 TECHNOLOGY WAY (Map 7, Lot 87) (BPD Zoning District).

Documents and Exhibitions

- Application date-stamped May 25, 2021 and supporting documentation

Chair Duffy introduces the petition.

Attorney Nicholas Gomes introduces himself on behalf of the applicant, Prime Tree, LLC, which is proposing to operate a marijuana cultivation and manufacturing facility at 4 Technology Way. Mr. Gomes explains the property is close to the industrial park closest to the town of Swampscott and located in the Business Park Development Zone. Mr. Gomes presents an existing site plan of the facility, noting the building is ten years old and currently houses a medical manufacturing biotech company in the front portion. The building totals 86,000 square feet, and the applicant plans to lease the rear portion consisting of 34,000 square feet with two levels. Mr. Gomes indicates the intent is to start up with 10,000 square feet of canopy and cannabis growth, which is considered a Tier 2 level under the Cannabis Control Commission (“CCC”). Over time, Mr. Gomes explains, the plan is to eventually grow to a Tier 4, which would allow a canopy of 20,000 to 30,000 square feet. Mr. Gomes contends the cultivation will be the main priority, with manufacturing being a smaller component. Mr. Gomes introduces his colleagues, Patrick Malloy (operator), Jeffrey Pepe, and Devon Sowanowitz (on site manager).

Mr. Gomes maintains that Prime Tree is a group of experienced professionals with interest in being community partners with the City, focusing on training a loyal and diverse workforce, and allowing individuals to transition into this new industry. Mr. Gomes discusses property selection, noting the proximity to other industrial and technologically advanced businesses. While there are two residential developments nearby, Mr. Gomes indicates they are sufficiently buffered by the natural topography of the property which is surrounded by forest and rock outcroppings. The building is to code, and meets Prime Tree’s requirements. Mr. Gomes notes there will be upgrades to electricity and HVAC, but that the building is solid with space that has been vacant for over ten years. The facility would have its own secure entrance, with 24 hour a day surveillance. All vehicles entering the driveway will be tracked and monitored, and Mr. Gomes explains that only authorized visitors and employees will be coming to the facility. There will be no retail customers, which Mr. Gomes contends should eliminate traffic concerns. Mr. Gomes indicates there would be 10 to 30 employees once fully built out, and that there is existing parking for 39 cars, with the right to expand to 54 (though not currently seeking to expand). All employees will require extensive background checks.

Mr. Gomes discusses more security measures and explains how Massachusetts requires seed to sale tracking via a software called Metric. Every seed planted and clone brought to vegetation is logged, and the lifecycle of each plant is tracked until it is brought in for testing and eventually sold at retail. Mr. Gomes claims none of the industrial abutters submitted public comment when the applicant reached out, but that some residential neighbors raised concerns regarding traffic and odor control. Mr. Gomes assures the Board that traffic will be limited as it will not be a retail business, and that deliveries are not expected to be a burden outside of the initial construction. Monthly and quarterly deliveries would be conducted by cargo van. Regarding odor concerns, Mr. Gomes explains that specific actions will be taken to limit, if not eliminate, the risk of odor. According to Mr. Gomes, the odor is strongest when heat activates compounds called terpenes in the plants. Climate control, filtration systems, positive air rooms, and air circulation are some of the measures that will ensure odor will not reach a level of nuisance, as required by regulations. Mr. Gomes argues the proposal would benefit the community by hiring a locally trained workforce, promoting economic development, and adding to the tax base. Mr. Gomes notes that Salem is entitled to three percent of

growth sales as a community impact fee, and maintains that other towns have benefited greatly from the tax revenues associated with cannabis cultivation. Moreover, Mr. Gomes states the proposal is appropriate for Salem given the existence of cannabis retail facilities in the City. Regarding manufacturing, Mr. Gomes states it would not be to the degree of requiring use of butane, propane, or CO₂, but more hand created products and culinary arts.

Mr. Gomes reiterates the various potential benefits to the City of Salem, as well as the limited impact to traffic and safety. Mr. Gomes notes that the growth operation would not be water intensive, with estimated consumption at 1,500 gallons a day as the proposal is not a hydroponic system. Exterior renovations will be limited, with electrical upgrades and installation of a generator. Water and sewer are already set up with a storm water system in place, and wastewater discharge will not be substantial according to Mr. Gomes. Mr. Gomes suggests the proposal fits in with the neighborhood character of Technology Way, and that overall it would have a positive impact on the community. Mr. Gomes states he would like to address any concerns the Board may have, and reminds them that the proposal will need to go through further vetting including a host community agreement, an arch review process, provisional licensing, and ultimately final licensing at the state level.

Ms. McClain thanks Mr. Gomes for the thorough presentation, and opines that it could certainly be beneficial to the community by providing job opportunities and economic development. She also states she appreciates the upfront work to combat concerns regarding odor.

Mr. Copelas agrees with Ms. McClain. Mr. Copelas notes that there is an existing approved cultivation facility that has not progressed further, and states there may be limits to the number of recreational retail establishments allowed. As such, Mr. Copelas asks how this proposal fits in, and whether the City could end up with both cultivation facilities coming online. Mr. Gomes clarifies there is no cap on the number of cultivation facilities allowed, but that retail facilities are limited to 20 percent of the number of liquor licenses issued in a municipality. As such there is the potential for both cultivation facilities to open, but Mr. Gomes states he has no knowledge of the progress or financial status of the other facility. Mr. Gomes assures the Board that if allowed to proceed, Prime Tree will do so with the highest level of professionalism and navigate the state process efficiently. Mr. Gomes notes that the workforce has already been lined up as well. Mr. Copelas states it seems like the applicant has the resources and skill set to move forward without some of the delays encountered by others.

Mr. Viccica asks if there is a civil engineer on the team, and Mr. Gomes indicates not one present tonight. Mr. Viccica asks about the safety plan, noting that he believes most retail and cultivation applications have had letters from the Salem Police Department acknowledging their review of such a plan. Mr. Gomes indicates the plans were submitted as part of the host community agreement process that is occurring parallel to this process. Mr. Gomes notes Prime Tree has not received confirmation yet from the police department, but would be happy to have it as a condition to the special permit as it is currently being reviewed. Mr. Viccica confirms it would be required as part of the licensure process. Mr. Viccica next asks about utilities and water use. Mr. Gomes confirms the estimate is 1,500 gallons a day, with 1,000 gallons for plant related use and 500 gallons for general usage. Mr. Viccica notes the proposal calls for a 6 inch water line that goes to a fire hydrant and a two inch water line that appears to supply that 1,500 gallon amount which ends at the property line. Mr. Viccica asks if the water lines and distribution system are adequate to provide that volume, or if

the City will need to invest additional money to improve or upgrade any of the lines at Technology Way. Mr. Viccica acknowledges it might be difficult to answer without a civil engineer present. Mr. Viccica also asks about electricity use, and whether the system will be adequate to handle any increased load. Mr. Gomes states they are working with the electric company and once the finalized mechanical engineered plans are available they will know the exact requirements. Mr. Gomes that would be a cost born by Prime Tree and part of any upgrades required on the property. Mr. Gomes adds that he does not see water being an issue for this facility size. Mr. Gomes explains the lights will be LED, and per regulations will be limited to a power density of 36 watts per square foot. With a 10,000 square foot canopy, usage would be approximately 266 kilowatts per day, which falls under the limit.

Mr. Viccica next asks if the applicant will be increasing the insulation value of building, and Mr. Gomes says it will be a requirement, and that in addition to insulation, windows will be encased. He confirms the internal environment will be totally controlled.

Mr. St. Pierre asks what measures will be taken to protect the steel building itself. Mr. Gomes indicates the entire structure will be protected, and that the proposal is to create rooms within rooms to control moisture and internal environment.

Chair Duffy asks if the 1,500 gallon per day water usage quoted includes manufacturing as well. Mr. Gomes states it is a rough estimate, and that 500 gallons would be associated with manufacturing.

Chair Duffy asks if the shipping and receiving will occur through the loading dock depicted on the layout, and Mr. Gomes confirms that will be the case. Chair Duffy asks if the loading dock area will be open or enclosed. Mr. Gomes indicates it is open currently and not secured in the sense that state regulations require for delivery operations, but that it may be deemed satisfactory with certain changes. Mr. Duffy next asks about shipping with respect to manufactured materials and cultivated cannabis, specifically seeking information regarding a plan, vehicles, timing, and frequency. Mr. Gomes explains that deliveries to the testing lab and then to retailers or wholesale purchasers are done by sprinter van, with times randomized as part of security and diversion measures. The number of trips will also be purposely sporadic. Mr. Gomes adds that as there will be several rooms within rooms with growing on different schedules, there will always be product available. He estimates there may be two to three sprinter van trips a week at most. Mr. Viccica asks if the randomized deliveries occur at all hours of day or just during business hours. Mr. Gomes suggests it would be during business hours, and again discusses transportation security measures and the tracking of product from seed to sale.

Chair Duffy asks about other materials needed for manufacturing and their deliveries. Mr. Gomes states the initial focus will be to cultivate the cannabis flower and to sell a high quality product. He adds that other materials from the plant that are not as high quality, such as lower trimmings, sift, and trichomes that come off in the cultivation process, can be used in manufacturing to make pre-rolls and culinary goods. Mr. Gomes contends that manufacturing will not be the focus upfront, but in time the hope is they will grow into it to meet consumer needs. Mr. Gomes states deliveries would be small scale with cargo vans.

Chair Duffy opens the floor to public comment.

Norman LeBlanc representing the Trustees of 14 Cavendish Circle introduces himself. Mr. LeBlanc indicates he attended a meeting with Mr. Gomes which was enlightening and informative, and that he also read the 200 page document and found some inconsistencies. Mr. LeBlanc explains that the main issues neighbors raised were regarding odor, noise, and traffic. Mr. LeBlanc contends neighbors were told that manufacturing would not be taking place, and if so it would only be in the future. Referencing the 200 page document, Mr. LeBlanc argues manufacturing will actually be a substantial part of the proposal, and that there are plans to supplement the grow with outside ingredients including outside cannabis flower because the cultivation operation would not be able to support the manufacturing. Mr. LeBlanc states this inconsistency is important because one of main odor causing processes is the manufacturing side. Mr. LeBlanc asks for a reconciliation between what has been filed and what has been said at this meeting.

Mr. Gomes assures Mr. LeBlanc that his understanding is inaccurate, and that cultivation will be the first priority, with manufacturing being an additional measure to stay competitive in the market. Mr. Gomes suggests that everything included in the plan is in accordance with Massachusetts laws. He adds that the manufacturing will be more hand made goods, which would not produce as much odor as more mechanical processes involving propane, butane, or CO2 extraction. Mr. Gomes again states that the first priority will be cultivation.

Mr. Viccica asks how the special permit would be affected if the market were to change and the manufacturing process required more involved extraction using chemicals or solvents. Mr. Gomes states that the special permit allows for manufacturing, and that the definition at the state level does not differentiate by product type or method. While there would be no change to the special permit required, Mr. Gomes informs that the CCC has an arch review process that examines any menu changes to ensure that the facility can make the product. Mr. Viccica asks if a local review would be necessary for any expansion requiring additional venting, and Mr. Gomes confirms that would be the case.

Chair Duffy indicates his recollection is that the Board has not previously approved special permits for marijuana establishments without first receiving a letter or acknowledgment from the Chief of Police stating that the security plans and other plans submitted for review are acceptable. Mr. Viccica notes he recalls all retailers submitted such acknowledgment/proof. Mr. Copelas asks if there would be a downside to condition the approval on approval of the safety and security plan by the Chief of Police. Chair Duffy suggests the downside would not be significant, but recalls that in other instances comments made by the Chief of Police specifically referenced shipping delivery access and safety. Chair Duffy indicates that if similar comments were received and if the Chief of Police required deliveries to be enclosed, that could require plan alterations. Chair Duffy states he would also appreciate more information regarding number of trips and when manufacturing is estimated to be full scale. While manufacturing special permit uses may change to become more intensive, and while that would trigger reviews at state and other levels, Chair Duffy suggests the Board must consider environmental and neighborhood concerns. Chair Duffy also suggests the applicant provide more information regarding odor control, including specific details.

Ms. McClain asks if it makes sense to continue the petition until more information can be provided. Mr. Viccica suggests the petitioner bring a civil engineer to the next meeting to discuss concerns regarding city services. Mr. Copelas suggests there is no harm in obtaining more details and information.

Mr. Gomes says he understands the interest in getting these details, but that having a civil engineer present will extend the cost, time, and uncertainty at this stage. Mr. Gomes indicates the intent was to get the zoning approved so they can go forward obtaining a host community agreement and other approvals.

Mr. Copelas suggests that given the significance of the proposal and the due diligence required by the Board, it borders on disingenuous to state that returning before the Board with a civil engineer constitutes a hardship. Mr. Copelas states the petitioner has done a good job of checking of most of the boxes, but that he does not find it unreasonable to seek more details.

Mr. Gomes indicates he understands the Boards concerns, and is willing to regroup, digest the feedback, and see how they can satisfy remaining concerns in a timely manner. Mr. Gomes agrees to a continuance.

Motion and Vote: Mr. Copelas motions to continue the petition of PRIME TREE LLC for a special permit per Sections 6.10.4, 6.10.9 *Requirements Specific to Cultivation Facilities*, and 6.10.10 *Requirements Specific to Manufacturing Facilities* of the Salem Zoning Ordinance to operate a licensed marijuana cultivation and manufacturing facility at 4 TECHNOLOGY WAY (Map 7, Lot 87) (BPD Zoning District) to the next regularly scheduled meeting of the Zoning Board of Appeals on July 21, 2021:

Mr. Viccica seconds the motion. **The vote is four (4) in favor (Paul Viccica, Carly McClain, Mike Duffy (Chair), and Peter Copelas) and none (0) opposed. The motion passes.**

MEETING MINUTES

April 21, 2021
May 19, 2021

Mr. Copelas indicates he reviewed the April 21st minutes and found no edits, but that he did not get to the May 19th minutes. Ms. McClain indicates she has also reviewed the April minutes but not the May minutes. Chair Duffy suggests tabling the review of the May 19, 2021 minutes until the next meeting.

Motion and Vote: Mr. Copelas moves to approve the April 21, 2021 minutes as printed. Mr. Viccica seconds the motion. **The vote is four (4) in favor and non (0) opposed. The motion passes.**

OLD/NEW BUSINESS

None

ADJOURNMENT

City of Salem Zoning Board of Appeals
June 16, 2021 Meeting Minutes

Motion and Vote: Mr. Viccica moves to adjourn the meeting. Ms. McClain seconds the motion.
The vote is four (4) in favor and none (0) opposed. The Motion passes.

The meeting ends at 10:09 PM on June 16, 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