

City of Salem Zoning Board of Appeals
Meeting Minutes
October 21, 2020

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, October 21, 2020 at 6:30 pm via remote participation.

Chair Mike Duffy calls the meeting to order at 6:32 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, October 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), Jimmy Tsitsinos, Peter Copelas, Steven Smalley, and Paul Viccica. Also in attendance were Brennan Corrison – Staff Planner, Tom St. Pierre – Building Inspector, and Jonathan Pinto – Recording Clerk. Those absent were: Rosa Ordaz, and Carly McClain.

OLD/NEW BUSINESS

***This item was taken up before the regular agenda. Steven Smalley had not yet arrived when the discussion of this extension request started.**

Location: **16, 18 & 20 Franklin Street (Map 26, Lots 402, 401, & 400) (NRRC and RC Zoning Districts)**
Applicant: **Juniper Point Investment Co, LLC**
Description: Request for a six (6) month extension to exercise rights granted by the December 3, 2018 Board Decision that approved variances from minimum required lot area per dwelling unit and maximum number of stories and special permit to change from one nonconforming use to another nonconforming use to construct 42 residential units within five buildings at 16, 18 & 20R Franklin Street (Map 26, Lots 402, 401 & 400) (NRCC and RC Zoning Districts). The timeline to exercise rights granted by the Decision was previously extended to June 3, 2020 and to December 3, 2020 by the Board of Appeals.

Chair Duffy introduces the applicant.

Attorney Kristin Kolick introduces herself on behalf of the applicant. Attorney Kolick explains the applicant is seeking an extension on previously granted variances and special permits that expire this coming December. Attorney Kolick indicates the applicant expects to still be in the process of state permitting at that time, but that progress has been ongoing with MEPA filings, scoping sessions, and that an EIR will be filed soon, along with an application for a Chapter 91 license.

Attorney Kolick also notes there is some potential for progress/resolution regarding the land in dispute issue, and that the City has begun an RFP process for the land in dispute with bids due in

November. The applicant will participate in the process, and has been working cooperatively with the city to try to resolve a very complicated permitting scheme for the site.

Attorney Kolick states that an appeal of the ConCom permit is also pending, and that a new notice of intent may need to be filed. Attorney Kolick contends that site work cannot commence until permits are in place, and that everything is hinging on the relief that was granted by the Board, and therefore respectfully requests an extension.

Mr. Copelas notes for the record that this will be the third extension sought by the applicant. Mr. Copelas explains that expiration dates on special permits and variances exist for a reason, and while he acknowledges the project is complicated, he states that they cannot be extended ad infinitum. He maintains that at some point it becomes unreasonable to continue, and that while the applicant is not quite there, Mr. Copelas expresses some discomfort continuing to provide an extension every six months. Mr. Copelas asks Attorney Kolick about the timing expectations, and whether this will be an endless series of continuances.

Attorney Kolick explains that the process has gone through the Planning Board and Board of Appeals, and that the applicant will have to go back to the Conservation Commission. She states the expectation and hope is that this will be the last request to extend the permits. While the process has been long and complicated, Attorney Kolick states the applicant is committed and that there is an end in sight.

Mr. Copelas indicates he is not willing to go so far as to say this would be the last extension he would be willing to grant, but that he would like to communicate his growing reservation to continue to extend if the applicant is unable to obtain other necessary approvals.

Attorney Kolick acknowledges Mr. Copelas's concern, and states they are working diligently and hoping for things to continue progressing efficiently.

Motion and Vote: Mr. Moves to accept the request for a six (6) month extension to exercise rights granted by the December 3, 2018 Board Decision that approved variances from minimum required lot area per dwelling unit and maximum number of stories and special permit to change from one nonconforming use to another nonconforming use to construct 42 residential units within five buildings at 16, 18 & 20R Franklin Street (Map 26, Lots 402, 401 & 400) (NRCC and RC Zoning Districts). The timeline to exercise rights granted by the Decision was previously extended to June 3, 2020 and to December 3, 2020 by the Board of Appeals

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

* This item was taken first by the Board, and Steven Smalley had not yet arrived to the meeting. Steven Smalley arrived during the course of the discussion of the extension request, before the public hearing on 25 Cushing Street began.

REGULAR AGENDA

Location: **25 Cushing Street (Map 17, Lot 119) (R1 Zoning District)**

Applicant: **Suzanne Biscaia**

Project: A continuation of a public hearing for all persons interested in the petition of SUZANNE BISCAIA for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to modify and expand a nonconforming single-family home by adding a second story (bringing height to 2.5 stories), removing the existing side deck, and building a rear deck at 25 CUSHING STREET (Map 17, Lot 119) (R1 Zoning District).

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Mr. and Ms. Biscaia introduce themselves and present photos of the property. Mr. Biscaia explains that the project was presented at the previous Board meeting, and that the Board raised concerns about the quality of the drawings. Mr. Biscaia indicates they obtained professional drawings depicting the final project, and presents them, along with a summary of the proposal. He explains the deck in the driveway will be removed, and clarifies that the height of the building was measured properly, noting it will be nowhere near the maximum.

Mr. Viccica asks to see the site plan, and asks for clarification regarding the driveway curb cut on Cushing Street adjacent to the house and the amount of parking available. Mr. Biscaia explains that there will be space for two cars after the stairs and deck are removed. Mr. Viccica asks if the curb cut will be widened, and Mr. Biscaia states it will not.

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

Chair Duffy explains how the proposal satisfies the criteria for a special permit.

Mr. Viccica asks if the home is single family, and Mr. Biscaia indicates it is.

Motion and Vote: Mr. Copelas moves to approve the petition of SUZANNE BISCAIA for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to modify and expand a nonconforming single-family home by adding a second story (bringing height to 2.5 stories), removing the existing side deck, and building a rear deck at 25 CUSHING STREET (Map 17, Lot 119) (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. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

9. All construction shall be done per the plans and dimension submitted to and approved by this Board. No change, extension, material corrections, additions, substitutions, alterations, and/or modifications to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

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

Location: **2 Dundee Street (Map 10, Lot 50) (R1 Zoning District)**

Applicant: **Frank Lanzillo**

Project: A continuation of a public hearing for all persons interested in the petition of FRANK LANZILLO for a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot area to construct a 2.5-story, single-family home on the vacant lot at 2 DUNDEE STREET (Map 10, Lot 50) (R1 Zoning District).

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Attorney Sam Vitali introduces himself on behalf of the applicant. Attorney Vitali notes that the applicant, Frank Lanzillo, has built a number of homes previously with ZBA approval, and that he is familiar with the Board's requirements. Attorney Vitali presents a plot plan and explains the lot was recorded in October of 1907 as part of Sutton Village in Peabody, and that the dimensions have remained unchanged since that date. Attorney Vitali contends the lot is unique because it resulted from a subdivision, and that the line between Salem and Peabody runs through the lot. Attorney Vitali also claims the shape of the lot is unique, stating that it falls 20 feet short of the minimum lot size of 5,000 square feet due to it being a parallelogram, which he maintains is a hardship. Attorney Vitali states the City of Salem taxes the land as developable, and that the proposal would be consistent with others in the subdivision over the years. He explains that other homes in the proximity are single family homes, and that the applicant would like to build one on the lot.

Attorney Vitali reiterates the lot was created in 1907, but remarks that zoning did not come to Salem until the 1930's. He contends the proposed structure satisfies all other dimensional regulations, and that the proposal would help satisfy housing needs in the City. He notes that Mr. Lanzillo is an experienced homebuilder and developer, and lists prior projects the applicant has worked on.

Chair Duffy asks for clarification regarding the lot number and plot plan. Mr. Duffy then opens the floor to questions and comments from the Board.

Mr. Viccica asks why the lot area is 20 square feet off, noting that the area of a parallelogram should just be base multiplied by height, similar to a rectangle or square. Attorney Vitali indicates the deficiency results from the angle of the lot, and that this was explained to him by the surveyor. T

Mr. Copelas offers that the geometry may be such that even though it is technically 50 feet by 100 feet, the way the lines are not parallel might result in the lessened square footage.

Building Inspector Tom St. Pierre explains to the Board that this lot currently contains a house on Sutton Street, and that the lot in question is not a standalone lot, but one that merged with an adjacent lot in Peabody with a home on it. The applicant recently acquired the property and had proposed to sell off this lot, which is not a clean grandfathered lot. Mr. Viccica asks if the two lots are considered all one parcel, and Mr. St. Pierre indicates it is.

Attorney Vitali states the adjoining lot is not in the City of Salem, and that the existing home is also not in Salem, but in Peabody, and that Salem is taxing the portion of the lot in Salem as developable. Attorney Vitali adds that while the assessor's often combine lots, here there is a separate tax bill for each portion. He states that being taxed as developable land by the City constitutes a hardship.

Mr. Viccica indicates it would be helpful to see where the town line and split of the lot is. Mr. St. Pierre explains the split of the lot. Mr. St. Pierre adds that he spoke to the applicant previously and conveyed the fact that it was not a stand-alone lot. Mr. St. Pierre contends his own home is partly in Peabody and partly in Salem, and that he receives two separate tax bills for each portion. He clarifies that this does not render it two separate buildable lots. There is a brief discussion regarding the merger of the lot(s) and the fact that they were owned by the same entity at some point in time. Mr. St. Pierre asks Attorney Vitali if he has brought forward a title search, or any indication of when this lot was created separately from the one in Peabody. Attorney Vitali contends the lot was created separately in 1907. Mr. St. Pierre next asks if the lot belonged to the house in Peabody, and Attorney Vitali indicates it did. Mr. St. Pierre and Attorney Vitali continue to disagree with respect to whether the lot is considered a separate lot.

Attorney Vitali explains that the property was all held by the same entity at the time of creation, when all lots in the area were part of a recorded plan called Sutton Villa in Peabody. Attorney Vitali states the two lots (116 & 117) have existed in the same dimensions from that time to this day.

Mr. Copelas acknowledges the difference of opinion between Mr. St. Pierre and Attorney Vitali, and asks to go deeper into the issue of hardship.

Mr. St. Pierre interjects to say he would like to save time and have the City Solicitor assess the situation to see if they agree with his or Attorney Vitali's interpretation, as there is no point in discussing further if it is not a proper separate lot.

Chair Duffy agrees that this seems to be a gating issue that needs to be understood, and that until there is clarity the matter may need to be continued. Mr. Viccica and Mr. Copelas agree.

Chair Duffy asks if the applicant would accept a continuance, and Attorney Vitali states he has no objection.

Mr. Viccica reminds Attorney Vitali that the City Solicitor will require documentation sufficient to determine the status of the lot, including but not limited to, a title search. Attorney Vitali says they will provide the Solicitor with all the information required.

Mr. Corriston indicates some written comments were received, but Mr. Viccica states he would not recommend opening up further discussion in the event the proposal is invalid. Mr. Corriston explains that the written comments are on the Board of Appeals website for anyone interested.

Motion and Vote: Mr. Copelas moves to continue the petition of FRANK LANZILLO for a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum lot area to construct a 2.5-story, single-family home on the vacant lot at 2 DUNDEE STREET (Map 10, Lot 50) (R1 Zoning District) to the next regularly scheduled meeting on Wednesday, November 18, 2020 at 6:30PM.

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

Location: **24 Loring Avenue (Map 32, Lot 85) (R2 and ECOD Zoning Districts)**
Applicant: **Susanna Harutunian**
Project: A continuation of a public hearing for all persons interested in the petition of SUSANNA HARUTUNIAN for a special permit per Section 3.2.2 *Home Occupations* to allow a clothing alterations business in the existing freestanding garage or alternatively within the primary dwelling, the single-family home at 24 LORING AVENUE (Map 32, Lot 85) (R2 and ECOD Zoning Districts).

Documents and Exhibitions

- Application date-stamped June 24, 2020 and supporting documentation

Chair Duffy introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the applicant. Attorney Quinn describes the property as a traditional, nice residence at the upper end of Loring Avenue, just beyond the Salem State intersection, and that the interior is currently being renovated. Attorney Quinn explains that Ms. Harutunian previously came before the Board, and that she is a seamstress who lost her business in downtown Salem due to the COVID-19 pandemic after operating successfully for fifteen years. Attorney Quinn states Ms. Harutunian is in her sixties and very healthy, and that she would like to continue to work as a seamstress and tailor, but to operate out of her home due to reductions in business and to reduce costs. When previously before the Board, several issues were raised and since then the proposal has been updated. Attorney Quinn explains the plan is now to utilize a relatively small amount of square footage on the ground floor/basement. Attorney Quinn also notes that per the parking requirements for a home business, an additional space would be made for visitors in addition to the existing two-car garage. He adds there will be plenty of room for cars to pull in and turn around, and that there are traffic controls in both directions of the driveway, so despite being a busy street there are plenty of opportunities to turn either direction when leaving.

Attorney Quinn indicates another issue raised by the Board was with respect to the requirement that no goods, wares, or merchandise are created or handled in the business per Section 3.2.2. Attorney Quinn argues these terms are broad, and that he interprets them as referring to commercial goods, and their associated storage and shipping. Attorney Quinn claims there will be no commercial goods in the home, just needles, thread, sewing machines, and any clothing customers

bring in to have altered or fixed. Attorney Quinn compares the business to a tax preparer or CPA operating out of their home, where a client would drop off papers and services would be provided to resolve client issues.

Attorney Quinn notes a revised statement of grounds was submitted, and contends that the applicant would be providing a value service for the City and neighborhood. He notes that all renovations will be interior work.

Jon Segar of Segar Architects introduces himself and presents the floor plans demonstrating the interior renovations. Mr. Segar explains that less than 500 square feet, or approximately 16 percent of the home floor area, are being carved out of an existing walk-out basement to set up two work stations and a dressing room. Mr. Segar discusses the interior improvements and renovations in more detail.

Chair Duffy asks if the parking spot has an impervious surface, and if there will be any impacts on drainage. Mr. Segar states the additional spot will become part of the driveway which sheets out to the street, so the impact should be minimal.

Mr. Copelas states that Attorney Quinn and Mr. Segar have presented a good plan if this were a use that were permitted under Section 3.2.2. Mr. Copelas acknowledges that the proposal meets all requirements with respect to parking and renovations, but that the concern he had previously remains. Mr. Copelas indicates that the language of Section 3.2.2 has not changed and that he does not believe the Board has the authority to grant a special permit in this instance. Mr. Copelas explains Section 3.2.2 allows authorization by special permit if the home occupation does not involve “activities in which goods, wares, or merchandise are commercially created or handled”. Mr. Copelas says he appreciates the comparison provided of the services an accountant provides, but argues that they are fundamentally different. Mr. Copelas opines that perhaps there should not be a difference, and suggests it may be possible the zoning ordinance is too narrow, but the bottom line is that an accountant does not deal with goods, wares, or merchandise. Mr. Copelas contends that a person dropping off clothes to be tailored does fall within that category. Mr. Copelas states it is a shame, and acknowledges that the applicant provides an important service, but does not believe the Board can override Section 3.2.2 just because we would like to have a tailor in the neighborhood. He reiterates his belief that the Board does not have the authority to grant this special permit.

Attorney Quinn argues that goods, wares, and merchandise would be property for sale, items that could be stored and sold, or items created in the location and sold. Here, he contends, nothing is being created and there is no merchandise for sale, merely a service being provided. Attorney Quinn maintains it is not different than a dentist providing their services, a bookkeeper, or any other home occupation. Attorney Quinn states that given the current circumstances, it would be a shame to get very technical about the definition of “goods, wares, and merchandise” such that it is to include tailoring services. He offers a special conditions that the applicant will not store or sell any goods, wares, or merchandise on the property. Finally, Attorney Quinn explains that this is a real person in Salem with a real problem who has previously had a thriving business.

Mr. Viccica suggests steering the conversation back to the issue of the ordinance. Mr. Viccica offers the example of an orthopedist operating out of their home who provides a patient with (and bills for) a boot that was manufactured elsewhere. He contends this would constitute a transfer of a good from a professional to fix a broken foot and that this is allowed. Mr. Viccica states he has wrestled

with this topic, particularly with respect to the concept of fairness and the concept of professionalism, and that he respectfully disagrees with Mr. Copelas. He contends the applicant performs a service and skill that he and many others cannot, that there is a professionalism about her work, and that she is certainly not creating or manufacturing dresses to sell to the public as a retail store. Mr. Viccica further opines that there would be no detrimental effect to the neighborhood, and that perhaps it would be different if the proposal were for something like an auto repair shop that might provide disruption. He indicates he would be in favor of this petition.

Mr. Copelas states he appreciates Mr. Viccica's comments, and that he has wrestled with the issue as well. Mr. Copelas suggests there may be an issue of classism here, and that it is a troubling issue and he has had a difficult time with this proposal. Mr. Copelas maintains that the Board can disagree on the issue, but that for him the language of the ordinance seems clear and does not reference goods being sold or transacted, but rather created or handled. Mr. Copelas opines that this hamstrings the Board. If other members have a broader interpretation, he states that is fair.

Mr. Viccica reiterates his example from earlier, and suggests there is no difference between the services being provided, and that the issue is a class difference or perceived class difference.

Mr. Tsitsinos offers that the applicant is merely repairing clothes and providing a service, rather than selling goods. Mr. Viccica agrees, and states she is selling her professional services much like a therapist, dentist, doctor, or any other home professional would.

Chair Duffy references the ordinance language and suggests that "commercially created" is easy to understand, but asks how Board members are interpreting the term "handled", and whether it might mean third party goods coming in and being handled to be sold again from wholesale to retail. Mr. Viccica agrees with the interpretation, and states she is not creating a piece of merchandise, she is repairing clothing already purchased elsewhere. Moreover, Mr. Viccica suggests that the phrase "goods, wares, and merchandise" are not clearly defined in the ordinance, and that they do not specify clothing. He states he is unsure how expansive the definition of "wares" is, because in his view it would preclude some of the other home occupations that have been allowed.

Mr. Corrison suggests considering the ordinance language as a whole, and that the clause "commercially created or handled" could be read as being commercially created or commercially handled, which would fit in with the earlier discussion of goods being handled as a wholesale to retail resell process. Mr. Copelas suggests such a reading could be a "way out", and apologizes for getting into the weeds with this issue but states he struggled with the ordinance language.

Mr. Viccica states we are in the 21st century, things are different with the current pandemic, and that perhaps this is a part of the ordinance that could benefit from some thoughtful updating, particular with respect to language. He contends the Board is wrestling with 19th century language to a 21st century issue. Mr. Viccica notes he has requested that the Mayor's office attend meetings like this because these issues are important, but that there has been no response. He also notes that no city councilors are present either. Mr. Viccica again states that he is will to apply the ordinance, in his view properly, and still vote to approve the petition.

Chair Duffy offers that receiving goods and making commercial transactions is different than what is being proposed, and offers the hypothetical of receiving denim jeans to embroider or embellish

and resell, and argues that here the applicant is merely providing a service. Chair Duffy agrees with Mr. Viccica's remarks about the need to update antiquated language.

Chair Duffy notes that the Board also received written comments/letters. Mr. Corrison clarifies that there were previously two letters received, and that the Board received an additional two. Mr. Duffy states the first letter dated August 1, 2020 from Lise Deschenes is in support of the proposal. The second letter dated August 3, 2020 from Gina Flynn is also supportive of the proposal.

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

Chair Duffy discusses how the special permit criteria is met by the petition.

Motion and Vote: Mr. Viccica moves to approve the petition of SUSANNA HARUTUNIAN for a special permit per Section 3.2.2 *Home Occupations* to allow a clothing alterations business within in the existing primary dwelling, the single-family home at 24 LORING AVENUE 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 Inspection is to be obtained.
6. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
7. All construction shall be done per the plans and dimension submitted to and approved by this Board. No change, extension, material corrections, additions, substitutions, alterations, and/or modifications to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

And the following special condition:

1. The special permit is only valid for the current homeowner.

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

Location:	321 Jefferson Avenue (Map 23, Lot 174) (I Zoning District)
Applicant:	321 Jefferson Avenue, LLC
Project:	A public hearing for all persons interested in the petition of 321 JEFFERSON PROPERTY LLC for variances per Sections 3.3.4 <i>Variance Required</i> and 4.1.1 <i>Table of Dimensional Requirements</i> of the Salem Zoning Ordinance from minimum width of side yard and a special permit per Section 3.3.2 <i>Nonconforming Uses</i> to change from one nonconforming use to another nonconforming use in order to change an existing nonconforming three-family dwelling to a nonconforming six-family dwelling and construct a three-story addition within the required side yard setback at 321 JEFFERSON AVENUE (Map 23, Lot 174) (I Zoning

District).

Documents and Exhibitions

- Application date-stamped October 1, 2020 and supporting documentation

Chair Duffy introduces the petition.

Attorney Quinn introduces himself on behalf of petitioners, who he describes as two gentleman who have successfully developed various residential projects on the North Shore. Attorney Quinn explains that they purchased the property, which was an existing dilapidated three-story that they transformed into a nice three-family home. Upon hearing that the City of Salem needs housing, the applicants determined that with the extra land on the lot due to its unique shape and size they could change the existing property into a six-family dwelling. Attorney Quinn notes the zoning is unusual, and that the lot is small for an industrial property, and large for residential space. Attorney Quinn adds that the nearby properties are all residential, single family homes, duplexes, and three-family homes.

Attorney Quinn explains the addition and notes that due to the industrial zoning there are not many restrictions such as lot area per dwelling, minimum open space, or maximum height, which would normally require variances. Rather, the relief sought is for the right-hand setback, and the change from one non-conforming use to another. Attorney Quinn adds that the proposal can accommodate nine (9) parking spaces, three of which already serve the building and six that would go in the front and rear of the addition.

Attorney Quinn suggests the questions of appropriateness and density require a balancing of whether the City favors having several new, code compliant, three-bedroom housing units available with the discretion to determine it would be detrimental to the neighborhood or that a variance is not grounded.

Dan Ricciarelli introduces himself as the project architect and describes the existing triple-decker home. Mr. Ricciarelli explains the proposal would add a similar standalone building of three flats stacked that would be connected to the existing triple decker at the rear stairs. Mr. Ricciarelli discusses the floor plans, and notes the units will be 1,100 square feet each, stacked. He also discusses the proposed parking and elevations. Mr. Ricciarelli states the addition will have more contemporary detailing, but that it will stay under the existing cornice and will be clad with similar materials, just in a different color. The addition will be fully sprinklered. Mr. Ricciarelli suggests the proposed additions keeps with the neighborhood character, and that it will be set back a bit from Jefferson Avenue.

Chair Duffy notes a substantial tree in the backyard between the property and the house in the rear on Adams Street. Mr. Ricciarelli indicates the project will attempt to respect the tree as much as possible.

Mr. Copelas ask if all six units will be sprinklered, or just the additional three units. Mr. Ricciarelli says he will need to confirm, but that there will be a firewall between the two buildings. Mr. Copelas indicates there is a big difference between all six and just three being sprinklered. Attorney Quinn confirms that sprinklers will be installed in all six units, as does Marc Galardi, the property owner.

Mr. Copelas asks about the grounds for the requested variance, suggesting that the industrial zoning not allowing residential use is not a sufficient basis for hardship. Mr. Copelas states there is no hardship in just continuing the existing nonconforming use as is, and therefore would need a more convincing argument for the variance than merely wanting to add three units.

Attorney Quinn states the existing residential use is nonconforming, and that the lot is not big enough for any reasonable industrial development. Further, the existing home is crowded in the right front hand corner of the property and situated in such a way that any additional use would need to be what is currently being proposed. Attorney Quinn explains that going from three to six units requires a special permit, and that the variance is required because of the nonconforming side setback. Attorney Quinn adds that pro formas have been presented which indicate that an addition would need to be at least three units to be economically feasible.

Mr. Viccica asks about the existing parking, and takes issue with the use of tandem parking to reach the nine spaces, noting that additional paving in the back of the lot could have provided adequate legal parking. Mr. Viccica also indicates he struggles with what is driving the need for the variance, stating that if the home is left as is there would be no need. The hardship only exists because of the proposal to create an addition equal in size to the existing dwelling.
asks about existing parking...

Attorney Quinn states that the decisions surrounding parking attempted to accommodate the legally required parking without paving the entire lot. Attorney Quinn indicates his understanding is that existing parking for the existing building does not need to be supplemented, but that the 1.5 spaces per unit for the addition applies. Here, Attorney Quinn indicates the proposal provides two spaces per additional unit. Attorney Quinn adds the proposal meets the requirements for the special permit needed to go from a nonconforming three-unit to a nonconforming six-unit dwelling. Attorney Quinn again states the variance request is based on the thirty foot setback.

Mr. Copelas reiterates that the regardless of why a variance is required, it nonetheless triggers the necessary criteria be met, one of which is a demonstrated hardship. Mr. Copelas notes that the applicant purchased and renovated the existing three-family home, clearly because they saw a reasonable return on their investment. Here, there is no justification for a hardship as there is no hardship in continuing the property as is.

Mr. Viccica agrees that the proposal appears to create its own hardship, and that all the pro forma demonstrates is that an addition needs to be a certain size to be profitable. Attorney Quinn disagrees and states he does not believe that proposing a development creates its own hardship. Attorney Quinn states the criteria difficult to meet and that decisions must be made as to whether to stick to the letter of the law or to provide Salem with the benefit of new housing.

Mr. Viccica asks additional questions regarding the pro forma. Attorney Quinn states that grounds for hardship can include a financial hardship, and that the pro forma is meant to show that three units need to be built for the project to be viable, and that there for the finances create part of the

grounds of hardship. Mr. Viccica suggests the existing building must be making adequate income as it is to exist, and that the variance is being requested for a hardship that only exists because of the proposal. Mr. Viccica asks if there are other multifamily homes in the area with more than three units, and Attorney Quinn indicates there are not. Mr. Copelas states it is mostly three-family homes. Mr. Galardi contends there is one five-unit building down the street.

Chair Duffy also indicates he struggles with the hardship, noting that if it were just a special permit the Board has more latitude to come to findings that benefit the community. Here, however, the Board is constrained as certain findings are needed to approve a variance. Chair Duffy states the existing use is fully viable, and that the finding of a hardship is difficult. Attorney Quinn suggests the variance simply relates to a dimensional nonconformity. Chair Duffy echoes that there still must be a finding of hardship, beyond the potential for better financial performance by adding three units.

Mr. Viccica asks about the parking, noting that he only counts seven legal spaces as tandem is not considered legal spaces. Attorney Quinn suggests the existing parking that is nonconforming should be grandfathered, and that the requirement only applies to the additional units.

Mr. Tsitsinos asks if there will be a grade change entering the garage, and Mr. Ricciarelli indicates there will be. Mr. Tsitsinos asks if there will be a retaining wall, and inquires about water runoff, and Mr. Ricciarelli states there will likely be a trench grate going into the street. Mr. Viccica raises concerns regarding the retaining wall and how it will prevent some of the proposed parking. Mr. Viccica reiterates that the plan only shows seven legal parking spots to begin with. Mr. Viccica states there are various concerns regarding the proposal, including the lack of demonstrated hardship.

Chair Duffy opens the floor to public comment.

Ben Anderson of 10 Adams Street introduces himself. Mr. Anderson echoes the Board's concerns. Mr. Anderson notes he has been in the neighborhood for 25 years and that the existing building is already one of the largest in the neighborhood, and that the proposal would double the size. Mr. Anderson acknowledges that when the developer purchased the property the existing building was an eyesore that has since been improved, but is concerned with the size of the proposal. Mr. Anderson also expresses concern regarding parking. Finally, Mr. Anderson touches on the need for housing in Salem, and asks if any of the new units would even be considered low-income or workforce housing.

Larry Noel of 2 Adams Street introduces himself and notes his property is directly behind the applicants. Mr. Noel indicates he is against the proposal, and notes the addition would be close to his property line. Mr. Noel raises concerns about water flow, noting there existing runoff issues from one of his other neighbors, and that he fears it will be exacerbated by this addition. Mr. Noel states he does not understand what the hardship in this instance is, and that it seems the issue is more about capitalizing and maximizing financial gain. Mr. Noel also states he does not believe there are any catch basins on Jefferson Avenue, so any overflow would likely just go onto the street.

Marc Galardi, the current property owner, attempts to address the waterflow concerns and explains that he recently completed a project in East Boston with similar issues. Mr. Galardi contends there would be an engineered plan for waterflow and that drainage might actually be improved.

Mr. Noel mentions the issue of parking again, and states that currently the parking for the building is usually full or overflowing, and that three additional units will exacerbate the congestion. Mr. Galardi suggests that parking issues in the area are not related to the property.

Attorney Quinn summarizes his earlier arguments, and again suggests the variance relief is due to a minimal dimensional issue. Attorney Quinn claims the proposal answers concerns regarding parking and waterflow, and that the hardship is caused by a combination of the industrial zoning (which limits the practical use) and the fact that as built, there is a financial barrier to add any further use.

Mr. Viccica turns to the pro forma analysis, and states it shows that a third unit can be built for just \$25,000 more than a two unit. Mr. Viccica acknowledges there would be some economies of scale, but that the assumptions seem unrealistic. Mr. Viccica maintains the variance request stems from the proposed addition creating its own hardship. Mr. Viccica indicates there are various concerns about the proposal aside from the parking issue.

Mr. Corrison asks Mr. St. Pierre to speak to the issue of parking. Mr. St. Pierre clarifies that the 1.5 spaces per unit only applies for the additional units, and that the existing spaces are grandfathered. Mr. Viccica discusses why tandem spots are not considered legal spaces.

Chair Duffy indicates he still struggles with the finding of hardship, and acknowledges that there may be some questions remaining about parking. Mr. Duffy notes there are general concerns about drainage and the question of neighborhood character. He notes that he himself struggles to find that the proposal would be keeping with the neighborhood character.

Mr. St. Pierre states that the issue of drainage is very real on Jefferson Avenue, as there are not adequate drains and storms can cause problems. Mr. St. Pierre suggests it would be appropriate to get an engineer to weigh in on the issue and feasibility of any solutions.

Motion and Vote: Mr. Viccica moves to approve the petition of 321 JEFFERSON PROPERTY LLC for variances per Sections 3.3.4 *Variance Required* and 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum width of side yard and a special permit per Section 3.3.2 *Nonconforming Uses* to change from one nonconforming use to another nonconforming use in order to change an existing nonconforming three-family dwelling to a nonconforming six-family dwelling and construct a three-story addition within the required side yard setback at 321 JEFFERSON AVENUE (Map 23, Lot 174) (I Zoning District) subject to the following standard conditions:

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

the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

And the following special conditions:

1. A drainage plan must be submitted and approved by a city engineer.
2. The entire building of (all 6 units) must be sprinklered.

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

Location: **53 Canal Street (Map 34, Lot 87) (B4 and ECOD Zoning Districts)**

Applicant: **Kreshnik Rami**

Project: A public hearing for all persons interested in the petition of KRESHNIK RAMI for a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum depth of rear yard to build a 20' by 40' storage garage within the required rear yard setback at 53 CANAL STREET (Map 34, Lot 87) (B4 and ECOD Zoning Districts).

Documents and Exhibitions

- Application date-stamped September 28, 2020 and supporting documentation

Chair Duffy introduces the petition.

Petitioner Kreshnik Rami introduces himself and explains that he purchased the property a year ago. Mr. Rami states he would like to build a storage garage for his business. Mr. Rami suggests the building will be small, but that relief is needed due to setback requirements. Mr. Rami contends the hardship that exists relates to the shape of the property, and notes that to comply with the setback requirements would create a useless space of land behind the garage where neighbors would likely dump refuse and garbage (a current issue with illegal dumping exists already).

Mr. Tsitsinos asks for more clarification on the stated hardship. Mr. Rami states the hardship has to do with not wanting to waste available land and best utilize it for his business, while also preventing illegal dumping in the back of the property. He notes that to meet the requirements, 500 square feet of wasted space would be created and encourage more dumping.

Mr. Viccica asks if the proposed building could be moved an additional 20 feet into the driveway, and Mr. Rami reiterates the issue of illegal dumping in the back, and also notes that the driveway space is needed for parking.

Chair Duffy asks what will be stored in the building. Mr. Rami indicates his business is a tire shop and that he would be storing tires. Chair Duffy suggests having a door in front and back of the building so that the land behind the storage building would not be wasted per se, and that such a change would eliminate the need for a variance.

There is a brief discussion about the required distance between buildings and accessory structures, which Mr. St. Pierre confirms is ten feet. Mr. St. Pierre also offers some insight into the dumping issue, noting that individuals on Florence Street and Cedar Street Court directly behind the property

do in fact use the applicants property as an illegal dumping ground, and that the City has attempted to quell the issue but that it remains. Mr. St. Pierre suggests that if an area behind the garage is created, people will likely continue to take advantage and throw refuse and debris over the fence.

Mr. Corrison discusses the zoning of the property, and notes that a portion is in R2. Mr. St. Pierre and Mr. Corrison discuss the zoning and potential options for spacing and location.

Mr. Copelas notes he drove by the property recently and was struck by the congested nature of the lot. Mr. Copelas suggests that shoehorning a 20 foot by 40 foot building into a small area is difficult to envision.

Mr. St. Pierre and Mr. Brennan confirm that the proposed structure would be located in the R2 zoning portion of the property, and that the advertisement only referenced the B4 and ECOD zoning). They clarify that the rear setback requirement in R2 would be 30 feet, rather than 25 feet in the B4 zone, and that relief would still be required.

Mr. Viccica recognizes that setbacks can be viewed as a positive or negative thing, but notes the Board is not in the business of conjecturing whether someone is going to throw trash over a fence. Mr. Viccica suggests there is an opportunity to get the structure closer to the building, and that the new zoning information is important. Mr. Viccica next asks if the structure is prefabricated, and Mr. Rami states it is.

Mr. St. Pierre suggests the petition be continued so that the applicant can explore all options, including pulling the structure forward to eliminate the need for relief.

Mr. Rami notes that moving the structure forward would require losing some customer parking. Mr. Copelas explains that all alternatives, including those that would not require a variance, need to be examined, even if they are not ideal. Mr. St. Pierre adds that because of the new information regarding the R2 zoning, the proposal should be re-examined to make sure it is appropriately before the Board.

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

Motion and Vote: Mr. Copelas moves to continue the petition of KRESHNIK RAMI for a variance per Section 4.1.1 *Table of Dimensional Requirements* of the Salem Zoning Ordinance from minimum depth of rear yard to build a 20' by 40' storage garage within the required rear yard setback at 53 CANAL STREET (Map 34, Lot 87) (B4 and ECOD Zoning Districts) to the next regularly scheduled meeting of the Zoning Board on November 18, 2020.

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

Location: **7 Hayes Road (Map 22, Lot 172) (R1 Zoning District)**

Applicant: **Timothy Daigle**

Project: A public hearing for all persons interested in the petition of TIMOTHY DAIGLE for a

special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from minimum width of side yard to expand a nonconforming single-family home by adding a second-story rear shed dormer within the required side yard setback to the single-family home at 7 HAYES ROAD (Map 22, Lot 172) (R1 Zoning District).

Documents and Exhibitions

- Application and supporting documentation

Chair Duffy introduces the petition.

Timothy Daigle introduces himself and explains project. Mr. Daigle indicates his home currently has an unfinished attic space, and that to make it more livable he would like to add a shed dormer. Mr. Daigle notes that his home is the last house on the street that has not created livable space on the second floor, and that he believes the proposal would improve the look of his home and the neighborhood overall. Mr. Daigle next presents elevations and renderings of the proposal.

Chair Duffy asks if anything else is changing with the proposal, and if the existing setback is already nonconforming. Mr. Daigle confirms, and notes that the height of the building is not changing.

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

Chair Duffy how the additional space will be used, and Mr. Daigle indicates it will be a master bedroom with bathroom and small office attached.

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

Motion and Vote: Mr. Copelas moves to approve the petition of TIMOTHY DAIGLE for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from minimum width of side yard to expand a nonconforming single-family home by adding a second-story rear shed dormer within the required side yard setback to the single-family home at 7 HAYES ROAD (Map 22, Lot 172) (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. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. All construction shall be done per the plans and dimension submitted to and approved by this Board. No change, extension, material corrections, additions, substitutions, alterations, and/or modifications to an approval by this Board shall be permitted without the approval of this Board, unless such change has been deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.

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

MEETING MINUTES

June 17, 2020
September 16, 2020

Chair Duffy notes the June 17, 2020 minutes were updated to better reflect the nuanced issue of precedent, which was discussed at the last Board meeting. Mr. Corrison confirms, and Mr. Viccica notes there are also recordings of all meetings available.

Motion and Vote: Mr. Copelas moves to approve the minutes for the June 17, 2020 ZBA meeting as amended. Mr. Tsitsinos seconds the motion. **The vote is five (5) in favor and none (0) opposed. The motion passes.**

Regarding the September 16, 2020 minutes, Chair Duffy notes a correction to the date in the second paragraph. Mr. Copelas also suggests a correction regarding the adjourning motion where two Board members are listed who were not in attendance.

Motion and Vote: Mr. Copelas moves to approve the minutes for the September 16, 2020 ZBA meeting as amended. Mr. Viccica seconds the motion. **The vote is five (5) in favor and none (0) opposed. The motion passes.**

OLD/NEW BUSINESS

Location: **16, 18 & 20 Franklin Street (Map 26, Lots 402, 401, & 400) (NRRC and RC Zoning Districts)**
Applicant: **Juniper Point Investment Co, LLC**
Description: Request for a six (6) month extension to exercise rights granted by the December 3, 2018 Board Decision that approved variances from minimum required lot area per dwelling unit and maximum number of stories and special permit to change from one nonconforming use to another nonconforming use to construct 42 residential units within five buildings at 16, 18 & 20R Franklin Street (Map 26, Lots 402, 401 & 400) (NRCC and RC Zoning Districts). The timeline to exercise rights granted by the Decision was previously extended to June 3, 2020 and to December 3, 2020 by the Board of Appeals.

(As noted on page 1, this item was taken up before the regular agenda.)

ADJOURNMENT

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

The meeting ends at 9:18PM.

For actions where the decisions have not been fully written into these minutes, copies of the Decisions have been posted separately by address or project at:

<https://www.salem.com/zoning-board-appeals/pages/zoning-board-appeals-decisions-2020>

Respectfully submitted,
Brennan Corriston, Staff Planner