

City of Salem Zoning Board of Appeals
Meeting Minutes
March 17, 2021

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, March 17, 2021 at 6:30 pm via remote participation.

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

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

ROLL CALL

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

REGULAR AGENDA

Location: **73 Lafayette Street**
Applicant: **North Shore Community Development Coalition**
Project: **Note: The applicant has requested to continue to the next regularly scheduled meeting on April 21, 2021.** A public hearing for all persons interested in the petition of NORTH SHORE COMMUNITY DEVELOPMENT COALITION, INC. for a special permit per Section 3.1.2 Special Permit: Zoning Board of Appeals of the Salem Zoning Ordinance to operate a Medical Clinic at 73 LAFAYETTE STREET.

Documents and Exhibitions

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

Chair Duffy introduces the petition, and notes the applicant has requested to continue to the next regularly scheduled meeting on April 21, 2021.

Attorney Scott Grover introduces himself on behalf of the applicant. Mr. Grover explains the applicant is still working on refining the presentation for the Board, and so is requesting a continuance to the April meeting.

Motion and Vote: Ms. McClain motions to continue the petition of NORTH SHORE COMMUNITY DEVELOPMENT COALITION, INC. for a special permit per Section 3.1.2 Special Permit: Zoning Board of Appeals of the Salem Zoning Ordinance to operate a Medical Clinic at 73 LAFAYETTE STREET to the next regularly scheduled meeting on April 21, 2021.

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

Location: **157 Boston Street (Map 16, Lot 66) (B2 and ECOD Zoning Districts)**
Applicant: **Josh Chmara**
Project: A continuation of a public hearing for all persons interested in the petition of JOSH CHMARA for a special permit per Section 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to change from one non-conforming use (single-family dwelling) to another (two-family dwelling), and a variance from Section 5.1.8 Table of Required Parking Spaces to construct two parking spaces instead of the required three spaces at 157 BOSTON STREET (Map 16, Lot 66) (B2 and ECOD Zoning Districts).

Documents and Exhibitions

- Application date-stamped January 7, 2021 and supporting documentation

Chair Duffy introduces the petition.

Josh Chmara introduces himself as the applicant and homeowner of 157 Boston Street. Mr. Chmara thanks Mr. McCarthy and Mr. St. Pierre for helping him throughout this process. Mr. Chmara explains his special permit request, noting that the property is a non-conforming single family that he would like to convert to a two-family dwelling. The special permit is required because the property is in a B2 Zone. Mr. Chmara explains the community will be well served by the proposal as it will add a new housing unit and that traffic flow and safety will be improved as two off street parking spots will be added. Mr. Chmara states with respect to public utilities the proposal will not be detrimental, and if anything will be beneficial as he intends to have new high efficiency systems and proper insulation. Mr. Chmara maintains this area has several multi-family dwellings and that this would be in line with the neighborhood character. He also notes that the property was previously foreclosed and vacant for quite some time. The goal is to renovate and restore the property. Mr. Chmara contends the economic and fiscal impact will be positive as it will augment the tax base and the renovations should also increase the property value.

Mr. Chmara states that with the new unit he would need 1.5 parking spaces, and that he is proposing two that fit tandem. He explains that the variance is being requested because of the tandem parking, noting that this configuration makes the most sense. Mr. Chmara states that the topography of the land (very steep elevation from street to back yard) and a gas line that passes through the property create hardships requiring the requested variance for tandem parking. Mr. Chmara indicates the two parking spaces would be associated with the added unit so that parking in tandem should not be an issue. He also explains that currently the property only has on street parking.

Mr. Viccica clarifies that the variance is not for tandem parking, but instead to have less than the required parking of three spaces for the two dwellings. Mr. Chmara states that based on the January meeting and discussions with Mr. St. Pierre, his understanding is that the parking requirement is only for the additional unit, not for the existing and new unit. Mr. Viccica states he does not recall, and that that is not his understanding.

Chair Duffy says it is a fair question and that Mr. St. Pierre can clarify if necessary, but that in the past where there was an existing property that did not have parking and there was a change to the use under a special permit like in this instance, the parking requirement has only applied to the unit(s) being added. In this instance, Chair Duffy notes the requirement would be 1.5 spaces, and while the applicant has designed two spaces they need to be tandem.

Mr. St. Pierre further explains that the precedent has been to grandfather the existing unit and only require the 1.5 parking spaces per unit for additional units.

Mr. Viccica indicates he does not see that explicitly in the zoning ordinance and that he does not recall such precedent. Mr. Viccica states he is happy to hear the variance request, but that he would like to be clear on what is being requested. Mr. Viccica also contends that precedent is not an adequate basis by which to allow a variance. Again he states he is willing to hear the petition, but that he would like to get the information correct and vote on the right variance.

Mr. St. Pierre explains that this is not new precedent, and that as inspector he and his predecessor have interpreted the ordinance as such. Mr. St. Pierre acknowledges that not everything is spelled out in the zoning ordinance, and that this is how it has been interpreted and that it can be challenged if anyone disagrees.

Chair Duffy opines that without prior appeal such precedent could be binding. Chair Duffy states his understanding is that the variance request is with respect to allowing tandem parking, consistent with Mr. St. Pierre's interpretations of the bylaws and what is allowed. Chair Duffy asks if the special permit is just to add the additional unit and not related to alteration of the structure. Mr. St. Pierre confirms, and explains the property is unusual because it is in a B2 zone. For a B2 zone the design is conforming with respect to height. Mr. St. Pierre and Mr. McCarthy confirm that the special permit is just for the change in use.

Chair Duffy asks to see the floor plans, and Mr. Chmara presents them. Mr. Chmara explains one unit will be on the first floor and the other will occupy the second and third floors.

Mr. Viccica indicates he is still trying to reconcile the variance request. Mr. Viccica states he understands the hardship presented, but that he is still not clear on the precedent, and wants to make sure the variance request is correctly worded.

Mr. St. Pierre asks if it would be helpful to explain the decision further. He notes it has come up numerous times, and that often this interpretation eliminates the need for relief, and so perhaps that is one reason Mr. Viccica maybe not be familiar with it. Mr. St. Pierre states that in his opinion, an existing condition is always grandfathered, and what you add is what needs to meet the requirement.

Mr. Viccica states if the interpretation or decision has never been appealed or adjudicated and overturned in the past then he is fine with it.

Chair Duffy suggests Mr. Chmara discuss the variance request and hardship a bit more. Mr. Chamara explains the biggest issue with fitting parking was the topography of the land, as it increases significantly from the street to the back yard. Some excavation will be required regardless.

Mr. Chmara also explains there is a gas line that goes across the front of the property which restricts the available area for parking. Mr. Chmara suggests that because the parking spots will both be for the same unit the issue of tandem parking would be alleviated. Mr. Chmara and Chair Duffy discuss and acknowledge the practical difficulties associated with both hardships

Mr. St. Pierre also notes that in this residential district they tend to discourage locating parking in front of the properties, as well as any situation that requires maneuvering on the sidewalk for parking. As such he would not have been comfortable with a proposal with a parking space in front regardless of the gas line.

Mr. Viccica suggests that when a motion is made and standard conditions discussed, to be sure to include a Certificate of Inspection for the construction of the retaining wall.

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

Chair Duffy notes the applicant has adequately addressed the special permit criteria. He also acknowledges the hardships discussed with respect to the variance request. The Board discusses having separate motions for each request.

Motion and Vote: Mr. Viccica motions to approve the petition of JOSH CHMARA for a special permit per Section 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to change from one non-conforming use (single-family dwelling) to another (two-family dwelling) at 157 BOSTON STREET (Map 16, Lot 66) (B2 and ECOD Zoning Districts) subject to the following standard conditions:

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

Motion and Vote: Mr. Viccica motions to approve the petition of JOSH CHMARA for a variance from Section 5.1.8 Table of Required Parking Spaces to construct two tandem parking spaces instead of the required three spaces at 157 BOSTON STREET (Map 16, Lot 66) (B2 and ECOD Zoning Districts) subject to the following standard conditions:

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

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

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

Documents and Exhibitions

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

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

Attorney Phillip Moran introduces himself and indicates that pursuant to learning there would only be four Board members present the applicant would like to continue to the next regularly scheduled meeting. The applicant would like the presentation before the full Board, and so respectfully requests to continue.

Chair Duffy acknowledges that Mr. Cohen in the audience has his hand raised, and allows him to provide comment.

Jeff Cohen of 12 Hancock Street introduces himself and indicates he and others will be attending next month's meeting. Mr. Cohen contends that although Attorney Moran stated at the last meeting

that the applicant would be reaching out to the South Salem and Point Neighborhood Associations to discuss concerns, but that no such contact was made. Mr. Cohen states no attempts have been made to reach out to any of the area residents, and that as a nearby resident he would like to make it clear that the commitment made by Attorney Moran was not fulfilled. Mr. Cohen suggests the Board vote not to continue the application and to rule that it will not receive the special permit sought.

Chair Duffy thanks Mr. Cohen for his comments, and states that to the extent the applicant does not reach out to the residents the Board will hear about it at the next meeting.

Motion and Vote: Mr. Viccica motions to continue the petition of ANTHONY J. PICARIELLO, JR. for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to allow the operation of a firearms retail business at 1 FLORENCE STREET (Map 34, Lot 273) (R3 Zoning District) to the next regularly scheduled meeting on April 21, 2021:

Ms. McClain seconds the motion. **The vote is four (4) in favor (Mike Duffy (Chair), Paul Viccica, Steven Smalley, and Carly McClain) 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 special permit per Section 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to change from one non-conforming use (industrial) to another (multi-family dwelling), and a variance from Section 4.1.1 Table of Dimensional Requirements from minimum lot frontage and width, minimum depth of rear yard, minimum distance between buildings on lot, minimum width of side yard, and minimum lot area per dwelling unit at 9 FRANKLIN STREET (Map 26, Lot 375) (B1 and R2 Zoning Districts).

Documents and Exhibitions

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

Chair Duffy introduces the petition, and notes the applicant has requested to continue to the next regularly scheduled meeting on April 21, 2021.

Attorney Scott Grover introduces himself on behalf of the applicant. Mr. Grover states the applicant seeks to continue in light of only having four Board members present today. Mr. Grover explains there was a neighborhood meeting last night that also provided good feedback, which the applicant would like to use to revise the plan to address concerns.

Motion and Vote: Mr. Viccica motions to continue the petition of DAVID CUTLER for a special permit per Section 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to change from one non-conforming use (industrial) to another (multi-family dwelling), and a variance from Section 4.1.1 Table of Dimensional Requirements from minimum lot frontage and width, minimum depth of rear yard, minimum distance between buildings on lot, minimum width of side yard, and minimum lot area per dwelling unit at 9 FRANKLIN STREET (Map 26, Lot 375) (B1 and R2 Zoning Districts) to the next regularly scheduled meeting on April 21, 2021.

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

MEETING MINUTES

February 17, 2021

Chair Duffy states he did not have a chance to review the minutes before the meeting, and asks if anyone else has gone through and noticed any required changes or edits. Ms. McClain indicates she reviewed it but did not notice any issues. Chair Duffy indicates the Board could also table the approval of minutes until the next meeting if other Board members would like to review. Mr. Viccica suggests that may be best.

OLD/NEW BUSINESS

Review Revised Standard Condition

Mr. McCarthy explains that Mr. Viccica previously asked that one of the particularly verbose standard conditions be rewritten. Mr. McCarthy presents a redlined edit of the standard condition, noting that the City Solicitor and Mr. St. Pierre reviewed the language and had no issue. The Board can adopt it by vote or Mr. McCarthy states he can edit it further if required.

Chair Duffy says he has reviewed the edit and thinks the new language works well. Mr. Viccica states he appreciates the edit and that it is no longer a list of the things that would be deemed a minor field change.

The new proposed language is: All construction shall be done per the plans and dimensions submitted to and approved by this Board. Any modifications 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.

Motion and Vote: On a roll call vote the Board of Appeals votes to adopt the proposed updated standard condition language. The vote is four (4) in favor (Mike Duffy (Chair), Carly McClain, Paul Viccica, and Steven Smally) and none (0) opposed. The motion passes.

Mr. Viccica suggests reissuing the list of conditions with the new language to everyone, and Mr. McCarthy indicates he will. Mr. McCarthy also notes a hand is raised, and asks Chair Duffy if he would like to allow the member of the public to speak. Chair Duffy opens the floor.

Steven Kapantais of 23 Wysteria Street introduces himself and states that the Zoning Board of Appeals website does not have an up to date accurate listing of the Board Members. Chair Duffy thanks Mr. Kapantais for bringing that to the Board's attention.

ADJOURNMENT

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

The meeting ends at 7:20 PM.

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

<https://www.salem.com/zoning-board-appeals/pages/zoning-board-appeals-decisions-2021>

Respectfully submitted,
Lev McCarthy, Staff Planner

Approved by the Board on April 21, 2021