

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

July 19, 2023

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, July 19, 2023 at 6:30 pm via remote participation in accordance with Chapter 2 of the Act of 2023 and a Special Act extending remote participation meetings.

Chair Peter Copelas calls the meeting to order at 6:31 pm.

Chair Copelas explains how individuals can participate in the meeting remotely via Zoom, and that instructions to participate remotely can also be found on the Salem website. Mr. Copelas also explains the rules regarding public comment.

ROLL CALL

Those present were: Peter Copelas (Chair), Rosa Ordaz, Paul Viccica, Carly McClain, Nina Vyedin, and Hannah Osthoff. Also in attendance were Daniel Laroe – Staff Planner, and Jonathan Pinto – Recording Clerk. Those absent were: None

CONTINUANCES

- Location: **11 1/2 Hardy Street (Map 41, Lot 30) (R2 and B1 Zoning Districts)**

- Applicant: **Lori A. Pattison**

- Project: A continuation of a public hearing for all persons interested in the petition of LORI A. PATTISON at 11 ½ HARDY STREET (Map 41, Lot 30) (R2, B1 Zoning Districts) for a special permit per Section 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance to alter and to enlarge the residential use of a nonconforming structure by restoring and using the third (3rd) floor unit. Petitioner is also seeking variances from section 4.1 Dimensional Requirements for lot area per dwelling unit where 1,423 sq. ft is proposed/3,500 sq. ft required. In addition, a variance per section 5.1.1 – 5.1.8 Off-Street Parking.

Documents and Exhibitions

- Application date-stamped January 24, 2023 and supporting documentation

Chair Copelas introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the petitioner and explains the background of the application, noting there have been two public hearings on the matter thus far. The intent of the proposal is to renovate the third floor to rent the unit for income to help with property upkeep. Mr. Quinn explains a special permit is being sought to enlarge the nonconforming structure to expand to a three-family, and there are two variances sought for lot area per dwelling unit and for parking. Mr. Quinn indicates the parking proposal has gone through several iterations, and that ultimately the applicant agreed to remove the storage sheds and submitted a four-car plan.

Chair Copelas asks the current state of the plan. Mr. Quinn states the sheds have been removed, and presents the plan showing four parking spaces.

Mr. Viccica asks Mr. Quinn to review the hardships associated with the variance proposals. Mr. Quinn indicates a statement of hardship was submitted, and explains that the unique lot shape which is deep and narrow with connected townhouses that straddle a zoning line presents difficulties with parking and space. He also notes the location of the buildings on the lot presents limitations, as does the large old tree that the applicant wishes to retain. Mr. Quinn notes there has been no opposition and that some public officials have been in favor of the proposal.

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

Motion and Vote: Mr. Viccica motions to approve the petition of LORI A. PATTISON at 11 ½ HARDY STREET (Map 41, Lot 30) (R2, B1 Zoning Districts) for a special permit per Section 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance to alter and to enlarge the residential use of a nonconforming structure by restoring and using the third (3rd) floor unit, as well as variances from section 4.1 Dimensional Requirements for lot area per dwelling unit where 1,423 sq. ft is proposed but 3,500 sq. ft is required, and a variance per section 5.1.1 – 5.1.8 Off-Street Parking, 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. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
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.
10. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion

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

Location: **31 Cedar Street (Map 34, Lot 52) (R2 Zoning District)**

Applicant: **31 Cedar Street, LLC and Salem Residential Rental Properties, LLC**

Project: A continuation of a public hearing for all persons interested in the petition of 31 CEDAR STREET, LLC and SALEM RESIDENTIAL RENTAL PROPERTIES LLC at 31 CEDAR STREET (Map 34, Lot 52) (R2 Zoning District) for a Variance per Section 4.1.1 Dimensional Requirements of the Salem Zoning Ordinance to subdivide this 1/4 acre parcel into two lots which will be non-conforming as to lot area, frontage, and lot area per dwelling unit, where one lot will be occupied by the existing two-family dwelling and the other lot to be occupied a new two-family dwelling on the vacant portion the lot.

Documents and Exhibitions

- Application date-stamped February 22, 2023 and supporting documentation

Chair Copelas introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the applicant and explains that new plot plans and elevations were submitted today pursuant to consultations with the Historic Commission regarding a historically significant building on upper Washington Street owned by his client that is surrounded by high rises and buildings that otherwise are out of character. Mr. Quinn states that the historic building would fit onto the applicants proposed lot at 29 Cedar, and that the new plans would save the historic home rather than building a new building at the proposed location. Mr. Quinn contends the relief requested is the same based on discussions with an engineer. He also maintains that his client has received directions from the building inspector and that Beth Rennard contacted the former City Solicitor Robin Stein regarding the existence of the two lots and agreed with the characterization of two lots from a real estate point law point of view and a legal opinion on the merger of the lots. He asserts that they opined that his clients proposal could go before the Board. Mr. Quinn asks that the board provide the variances and relief sought, noting that the legally required parking of seven spaces for the two structures would be provided. He acknowledges some neighbors oppose the proposal, and states he understands their concerns but that they are misplaced. He states that the Board should approve the petition on its merits, and let lawyers hash out any disagreements or oppositions after.

Chair Copelas states he has a number of concerns, and that the late nature of the filed items is frustrating. He also notes he has not seen the legal opinions referenced regarding the mergers. Mr. Copelas indicates he did see the letter regarding the possibility of moving the historic home from Washington Street, but questions its relevance to the Board's decision as to whether the variances requested are appropriate. While the Historic Commission may find the proposal to move the home attractive, Chair Copelas states the purview of the Board is to find that the legal requirements of a variance are met, and he is unsure if whether the proposal has a saved historic building versus a brand new building has any impact on the Board's decision. Mr. Quinn states it does not and should

not impact the Board's decision, but contends that his client has vacant space that he is seeking to have considered a buildable lot. Mr. Quinn discusses the moving of the historic home more.

Mr. Viccica suggests the applicant is complicating an already complicated proposal, and that there are more fundamental concerns and questions about the application aside from whether or not the historic structure would move there.

Ms. Vyedyn states that if there is a legal letter describing the property as two separate lots that might be important for the discussion.

Mike Becker, the petitioner, states the City Solicitor submitted a letter a few days ago explaining that there are two lots that exist except for being merged for the purposes of zoning. He contends that an AR subdivision is not required, and that if the variances are approved these are two lots that exist that have merged for the purposes of zoning. Mr. Quinn clarifies the email is from Robin Stein to Beth Rennard dated July 17th. The letter is presented and states:

“As we discussed, it is my understanding that the applicant is seeking dimensional variances to essentially re-establish the lots as two separate buildable lots under the City's Zoning Ordinance. In my opinion, if the necessary dimensional variances are granted, each of the lots may then be used for any lawful purpose in the zoning district. Based on the information available to me, it is my opinion that the application for the variances does not implicate Sections 3.3.3 and Section 3.3.5 of the Zoning Ordinance”.

Mr. Viccica states there appear to be two lots, parcel one and two, but that he is unsure what is meant by the petitioner claiming the lots are merged for zoning purposes but not merged in a normal sense. Mr. Viccica indicates he understands the proposal for parking, but questions why the petitioner would not instead seek a variance to put a structure on parcel two but leave parcel one as-is. He states that the petition is very complex and is being made more so by the way it is being presented and discussed. Chair Copelas states that it appears merger has occurred, but that does not necessarily mean petitioner could not request that the lot be subdivided.

Mr. Quinn maintains there is a difference between property law and zoning law, and that they are not always consistent. Mr. Quinn indicates there are two legal lots, and that the second lot is separate, recorded and could be sold, but nothing could be built on it. Mr. Quinn states it could be sold to an abutter or used as open space, but without relief from the Board of Appeals something cannot be built there.

Chair Copelas asks about the purpose of the concept of merger if the lot could be sold, and asks how the parcels could be sold separately if they have been merged.

Mr. Quinn asserts that property law recognizes two conveyable lots, but that zoning law in this instance is a matter of courts interpreting and trying to fashion circumstances where someone could not take a lot they own, cut it into pieces, and claim variances on each lot because they are separated. Based on this, the doctrine of merger establishes that if you try to expand on vacant land and it is owned by the same entity that owns the adjacent land, you cannot do it and comply with zoning law without a Board of Appeals decision. He states it is a matter of legal existence versus use.

Mr. Viccica states that he is bothered by the fact that Mr. Quinn would prefer the Board weigh in and approve the petition, therefore having the other attorney appeal this decision and bring the matter before the courts under the assumption of prevailing. He questions coming before the Board with something that does not reach the level of approval, rather than going directly to the land courts since a denial by the Board would result in a likely appeal anyway. Mr. Viccica suggests the petitioner is using the ZBA to get to a decision by the courts, and states he disagrees with his approach, and the proposal.

Ms. Vyedin suggests Mr. Viccica may be assigning intent where it cannot be known. She states she thinks the correct action for the petitioner is to go before the ZBA and ask for relief, which is what they are doing.

Mr. Quinn states there is no ill intent and that the petitioner had no idea whether neighbors would accept the proposal or not or if they would get lawyers and threaten appeal, as nothing had happened yet. Mr. Quinn maintains that this was the appropriate body and venue to seek relief. He states there was no intent to use a potential appeal as leverage. Mr. Quinn acknowledges that perhaps the lots could have merged completely and a second structure could be proposed with relief from the Board, but that under current zoning that would be illegal as two principle uses on one lot.

Mr. Viccica states his position is unchanged, and that the Board should not give approval of something in order to have it tested in court. He states he does not know how he can vote to approve this petition.

Mr. Quinn states the letter from today was from the legal department of the City and verifies the approach taken.

Chair Copelas states he is still struggling with the notion and claim that the lots could be sold separately, but at the same time the petitioner is asking to subdivide the existing parcel into two lots.

Mr. Quinn says does not have a good answer for that. He states that perhaps the use of the word subdivision was inappropriate and confuses the matter. Mr. Quinn states the lot is assessed by the City as one lot and that the proposal is an attempt to fashion a self explanatory specific request to get the petitioner where they thought they needed to be.

Ms. Vyedin asks about the Board's scope for the current decision, noting that none of the Board members are fully versed in land use law.

Mr. Quinn asks that the Board exercise their jurisdiction with respect to variances and special permits to determine if the plan should be allowed to build on the vacant portion of lot or not.

Ms. Ordaz asks about the historic structure and what will happen if the lots are not subdivided. Mr. Becker states it would likely be demolished in one year, as this is probably the only viable location for the home. He states it is nearby and an anomaly in its location and will be replaced with a multifamily structure in line with B5 principles. Any additions on the existing historic structure would not work, and Mr. Becker asserts the historic commission asked if he had another lot he could move it, and he thought this made sense as it was only a foot narrower than what was previously proposed.

Chair Copelas opens the floor to public comment.

Patricia MacDonald of 8 Fairfield Street introduces herself as a direct abutter and states she has been at previous meetings. Ms. MacDonald expresses concerns regarding protecting her property and drainage if the variances are granted. She asks that a civil engineer review and approve any drainage installed. Ms. MacDonald also expresses concerns regarding her retaining wall and who would be responsible for fixing it, noting that in a 1987 variance there was a special condition about retaining walls. She also asks what the new building will look like, how close it will be to the property line, and whether the existing garage will be demolished.

Attorney Chris Drucas introduces himself and states he had an opportunity to meet with Messers Becker and Quinn. They had discussions in an attempt to reach mutually agreed upon solutions or accommodations but could not. Mr. Drucas indicates he represents the direct abutters at 21 and 25 Cedar Street and states he submitted a memo and petition from neighbors who are opposed. Mr. Drucas discusses how the lots would be undersized if the proposal is approved and discusses the Chapter 40A Section 6 concept of merger. Mr. Drucas cites various legal cases, and argues that the landowner is not at liberty to separate merged lots in order to build, but notes that the parcel can be conveyed because the deed is in common ownership. Aside from the merger issue, Mr. Drucas states that the petitioner is attempting to create two nonconforming lots from one which is already nonconforming in various ways. Mr. Drucas states there are no special or unique soil conditions, topography, or lot shape that render this lot different than others in neighborhood, which are all rectangles. He argues there are no unique circumstances or hardship other than the self-created hardship. Mr. Drucas contends Mr. Becker purchased the property with an existing two-family home and nice yard, and he does not see how Mr. Becker is being deprived of the use of his property in any way. Mr. Drucas asserts the standard of hardship is not met here, and that it has not been shown that the proposal does not derogate any bylaws.

Polly Wilbert of 7 Cedar Street introduces herself as a resident of Cedar Street for 41 years. She expresses frustration with the petitioner and process, including last minute submissions which disadvantage the Board and public. Ms. Wilbert also expresses frustrations with the Zoom platform and variable technology in homes and offices.

Chair Copelas asks Mr. Quinn if he would like to address the drainage and retaining wall concerns, or the variance finding requirements.

Mr. Becker apologizes for the late submission and states that it all came together quickly, noting that the plans were just recently fully vetted. Mr. Becker contests that the lot is in fact unique as its size is larger than others in the neighborhood, and maintains that it had two multi family homes on it at one time. He states the proposal is to place a historic home from the same neighborhood back where one previously existed. Mr. Becker indicates he spent a lot of time and energy with the City reviewing historic details and information with the Design Review Board including streetscape and reconstruction details. Regarding hardship, Mr. Becker states the proposal was initiated because his neighbor Ms. MacDonald contacted him about doing work to her retaining wall and she asked for his cooperation, as to repair it she would need him to cooperate and excavate some of his property. Without proper drainage, he contends a new wall would continue to have the same issues that exist today. Mr. Becker insists the intent is to cooperate and use drainage and tie backs if necessary. He describes the historic building at 259 Washington Street and its location in a B5 district, and argues the community would benefit from the proposal.

Mr. Quinn states the lot is twice as big as most lots around it, because it used to have two three-family dwellings on them. He states this is clear based on the size and shape of the lot, as well as the fact that the remaining building that survived the fire is crowded into one corner. Mr. Quinn argues that two thirds of the property is unusable and that can create an economic hardship to anyone who owns the lot. Mr. Quinn asserts that a lawyer for the City stated that what they are proposing is legal, and that if the decision is granted it would be consistent with real estate and zoning law. The Board discusses the content of the letter and it is read into the record. Mr. Viccica notes the letter was not written by the City Solicitor Beth Rennard, but by another attorney and was represented as something from being from Ms. Rennard. Mr. Viccica states this was not endorsed but the Salem City Solicitor. Mr. Copelas adds that the opinion also relies on approval of variances and whether the requirements are met. Ms. Vyedin agrees.

The Board discusses special conditions regarding the retaining wall, which the petitioner says are acceptable.

Motion and Vote: Ms. Vyedin motions to approve the petition of 31 CEDAR STREET, LLC and SALEM RESIDENTIAL RENTAL PROPERTIES LLC at 31 CEDAR STREET (Map 34, Lot 52) (R2 Zoning District) for a Variance per Section 4.1.1 Dimensional Requirements of the Salem Zoning Ordinance to subdivide this 1/4 acre parcel into two lots which will be non-conforming as to lot area, frontage, and lot area per dwelling unit, where one lot will be occupied by the existing two-family dwelling and the other lot to be occupied a new two-family dwelling on the vacant portion of the lot, 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. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
10. 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.
11. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

And the following special conditions:

1. All work involving the abutting retaining wall must be approved by the City of Salem Engineering Department
2. Any solution or structural evaluation of the existing retaining wall is commenced before construction.

Ms. McClain seconds the motion. **The vote is one (1) in favor (Nina Vyedín) and four (4) opposed (Peter Copelas, Paul Viccica, Rosa Ordaz, and Carly McClain). The motion is denied.**

Location: **296 Highland Avenue (Map 8, Lot 29) (R1, B2, ECOD Zoning Districts)**

Applicant: **Italo De Souza**

Project: A public hearing for all persons interested in the petition of ITALO DE SOUZA at 296 HIGHLAND AVENUE (Map 8, Lot 29) (R1,B2,ECOD Zoning District) for a Variance, section 4-44 of the Salem Code of Ordinances. Specifically, Section 4-51 On-premises signs in nonresidential districts. Petitioner wishes to have a permanent free standing internally illuminated sign. Internally illuminated signs are not allowed in the Entrance Corridor Overlay District.

Documents and Exhibitions

- Application date-stamped March 15, 2023 and supporting documentation

Chair Copelas introduces the petition.

Andy Layman of SignArt introduces himself as representing Italo De Souza. Mr. Layman states his understanding is that the Board wanted to make sure they could vote on this without overturning the Planning Board decision.

Mr. Copelas indicates the issue was whether the Board had authority to weigh in on the sign committee and whether it was within the Board's jurisdiction. He notes that this was something the Board had not faced before as this was not specifically a decision of the building inspector being appealed, but the sign committee that did not provide approval of the proposed sign. Mr. Copelas states that an opinion was requested from the City Solicitor, and that in a letter she stated that the sign review committee shall review signage for the ECOD, including the size, location, material type, and design of all signs. The sign review committee follows the Salem sign ordinance, except they are allowed to limit the size of signs within the ECOD to one half the allowed size in the underlying zone. Mr. Copelas notes that internally illuminated signs are not recommended, and that in committee the vote was two to one against the proposal. While nothing in the City zoning prohibits the signage, there are recommendations against the proposal, and therefore the sign permit was denied.

Mr. Layman questions how other signs in the area can be internally illuminated if it is against recommendations and practice. Mr. Copelas notes that those other signs were existing prior to the

ECOD amendments to Salem zoning, or are signs that existed and have since been refaced. New signs are required to be evaluated based on the new requirements, according to Mr. Copelas.

Ms. Ordaz notes that if the sign in question were simply refaced the matter would not have gone before the committee. She states she has reviewed the hardship statement it is unclear why a new sign is necessary rather than refacing the existing one. Mr Layman states the old sign is dilapidated and falling apart and does not look nice.

The Board reviews and discusses images of sign proposal.

Mr. Viccica notes there are other ways to illuminate signs, and states he does not understand why the applicant does not consider abiding by the ordinance since two City agencies have not been in favor, and he does not think the Board should overturn the committees decision when there are other options.

Chair Copelas clarifies that the guidelines are recommendations, and that it does not say certain signs are not allowed. The three parties allowed to weigh in on the matter are the building inspector, planning director, and on additional person. Mr. Copelas indicates the building inspector as the only vote in favor. Mr. Viccica states we have ordinances and committee votes for a reason, and that other alternatives should be considered.

The Board reviews photos of existing condition. Mr. Layman contends that other illumination options are not as nice looking.

Ms. Osthoff suggests it could be considered a hardship that his signage is not a visible competitor with others on the street. Mr. Viccica agrees, and states it is time for discussions about sustainable design, lighting, and dark skies, as none of that is in the ordinance. Mr. Copelas states there seem to be a number of alternatives.

Chair Copelas opens the floor to public comment.

Mike Becker of 19 Barley Street introduces himself as owning a directly abutting property at 15 Crosby Street. Mr. Becker suggests that if the applicant wants to replace an illuminated sign with another one it would not be any more detrimental to what exists today.

Motion and Vote: Ms. McClain motions to approve the petition of ITALO DE SOUZA at 296 HIGHLAND AVENUE (Map 8, Lot 29) (R1,B2,ECOD Zoning District) to overturn the decision of the City of Salem to deny the proposed permanent free standing internally illuminated sign.

Ms. Ordaz seconds the motion. **The vote is one (1) in favor (Carly McClain) and four (4) opposed (Peter Copelas, Nina Vyedin, Paul Viccica, Rosa Ordaz). The motion is denied.**

Location: **46 Bridge Street (Map 36, Lot 192) (R2 and BSN Zoning District)**

Applicant: **Derek Thomas**

Project: A continuation of a public hearing for all persons interested in the petition of DEREK THOMAS at 46 BRIDGE STREET (Map 36, Lot 192) (R2, BRIDGE STREET NECK (BSN) Zoning Districts) for a Variance per Section 4.1.1 Dimensional Requirements of the Salem Zoning Ordinance. The petitioner proposes to convert a single-family residence into a two-family residence. The lot is non-conforming at 3375 sqft/ 5000 sqft required. Also, a Variance from 5.1 Off-Street Parking where one and half (1.5) spaces per unit is required and two (2) are proposed.

Documents and Exhibitions

- Application date-stamped May 30, 2023 and supporting documentation

Chair Copelas introduces the petition.

Derek Thomas introduces himself, as does his attorney Anne Reynolds. Ms. Reynolds describes the property and existing structure built in 1880, which has been used as both a single and two family residence over the years. She states her client purchased the property with plans to renovate the interior to use as a two-family, which is an allowed use. Since the last meeting, Ms. Reynolds states it was determined that the variances originally sought are not required, as in this district only two parking spaces are required (one per unit) and two already exist. She indicates she met with the building inspector to confirm the relief required. All renovations will be contained within the building and there will be no change to the footprint or building height. The parking and lot size will also remain the same. Ms. Reynolds states the request is that the Board find that the renovations are not more detrimental.

Mr. Copelas states it is acceptable for applicants to step down the relief being sought without needing to reissue notice. The applicant is now seeking a Special Permit per section 3.3.5 to alter a legally preexisting nonconforming building.

Mr. Vicca confirms that there will be no external work done. Mr. Thomas states the only outside work will be the new windows, siding, and external stairway, which have received permits from the building commissioner.

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

Ms. Reynolds addresses the special permit requirements, noting the community needs served by improving housing, no impact on traffic safety or parking, no change to the environment and drainage, and that the proposal is in line with neighborhood character.

Motion and Vote: Ms. Vyeidin motions to approve the petition of DEREK THOMAS at 46 BRIDGE STREET (Map 36, Lot 192) (R2, BRIDGE STREET NECK (BSN) Zoning Districts) for a Special Permit per Section 3.3.5, Nonconforming Single and Two-family Homes, to alter a pre-existing nonconforming structure, 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. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
10. 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.
11. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

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

Location: **68 Highland Avenue (Map 14, Lot 155) (R3 Zoning District)**

Applicant: **Dennis Vertiyev**

Project: A continuation of a public hearing for all persons interested in the petition of DENNIS VERTIYEV at 68 HIGHLAND AVENUE (Map 14, Lot 155) (R3 Zoning District) for Variances per Section 4.1.1 Dimensional Requirements the Salem Zoning Ordinance to convert a single-family home into a three-family home 2,033 Sqft proposed/3,500 sqft required for lot area per dwelling unit. A variance per Section 5.1.8 On-Site Parking 4 spaces parking are proposed where 5 spaces are required. Also, a Variance per Section 5.1.5(6)(b) Driveway with two-way use 12 feet wide is required and proposed has varying widths from 7.5 feet, 10.3 feet and 14.2 feet.

Documents and Exhibitions

- Application date-stamped May 25, 2023 and supporting documentation

Chair Copelas introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the applicant and explains the property is a 2.5 story house across from the entrance to the Salem Hospital grounds. He describes the property and the numerous traffic controls in the area. Mr. Quinn indicates the petition has been amended to reduce the relief requested to a special permit to convert a nonconforming single family a nonconforming two-family structure. Mr.

Quinn indicates the requested variance per section 5.1.5(6)(b) remains, but that now the petitioner seeks a special permit per section 3.3.5 to convert to a two-family. Mr. Quinn explains that the Board previously had concerns about the viability of parking for a third unit, and so the proposal has been modified and is consistent with the other two families in the area. Mr. Quinn also notes that some abutter were concerned that work was commencing without permits, but he assures them that permits have been received. Mr. Quinn states his client intends to move his family to the property once renovations are completed and an occupancy permit is issued. The parking of five cars has been reduced to three for the two units. He presents the parking plan as well as topography and drainage information. Mr. Quinn also states there were concerns about shrubs and sight line for entering Highland Avenue, but he assures the Board there are four traffic controls within a quarter mile and one is almost across the street, so there are plenty of opportunities to leave in either direction. Mr. Quinn discusses the grounds for a special permit and proceeds to address the requested driveway variance. He states the building is over 100 years old and the driveway has served it throughout that period.

Chair Copelas states he had concerns last month with the request for a three-family, but that much of his concerns have been mitigated.

Ms. Osthoff asks if the dimensions of the driveway are changing at all, and Mr. Quinn states they are not.

Mr. Thomas notes that now that the request is for a two-family, it may not be feasible financially for his family to live there, and so he clarifies that the intent may be to rent both units rather than live in one and rent the other.

Mr. Viccica asks about the existing tree and if it is able to be maintained with the parking, and Mr. Thomas states it will be maintained.

Chair Copelas opens the floor to public comment.

John Field of 66 Highland Avenue introduces himself and suggests the revised proposal is more in line with neighborhood character. He also notes that trimming back the shrubs helps with the line of sight issue.

Mr. Quinn states the grounds for variance, noting the unique size of the lot, building location, and driveway placement. He also discusses the special permit requirements again.

Motion and Vote: Mr. Viccica motions to approve the petition of DENNIS VERTIYEV at 68 HIGHLAND AVENUE (Map 14, Lot 155) (R3 Zoning District) for a Variance per Section 5.1.5(6)(b) Driveway Width, and a Special Permit per Section 3.3.5 to convert a single family home to a two-family home, 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. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
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.
10. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

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

Location: **207 Highland Avenue (Map 14, Lot 155) (B2 Zoning District)**

Applicant: **Rogus Motor Group**

Project: A continuation of a public hearing for all persons interested in the petition of ROGUS MOTOR GROUP, LLC at 207 HIGHLAND AVENUE (Map 13, Lot 2) (B2 Zoning District) for a Special Permits per Section 3.1.4 Principal and Accessory Use Regulations of the Salem Zoning Ordinance to operate an automobile dealership specializing the sale, service general and body repair of motor vehicles. Also, a Special Permit per Section 5.1.7 Shared Parking to share the parking with the other tenant at the site.

Documents and Exhibitions

- Application date-stamped May 26, 2023 and supporting documentation

Chair Copelas introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the petitioner and explains the property was a car dealership for some time, but that it has not had a tenant with that use in a while. Mr. Quinn notes the property has been used for various purposes including religious ones, and as a charitable pantry. One third of the property is occupied by Divita Dialysis. Mr. Quinn presents the parking plan and indicates there is plenty of adequate employee parking. He contends that customer parking is not required under the ordinance, but that some is still being provided. Additional parking is being added for Divita Dialysis as well. Mr. Quinn indicates a special permit is required for operation of a dealership. He discusses the neighboring buildings and properties and states he has not received any opposition or negative input. The hours of operation are proposed to be 8AM to 7PM Monday through Saturday.

Mr. Viccica states the plans look nice. Mr. Viccica asks if the cars are delivered by tractor trailer, and if the petitioner would entertain a condition that no such vehicles go on First Street.

Quinn asks owner to opine

Rodolfo Cunha , the property owner, states he would be amenable to the special condition after noting that the cars would be delivered by transport.

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

Chair Copelas summarizes the petition and states that the Board's concerns have been addressed.

Motion and Vote: Ms. Vyedin motions to approve the petition of ROGUS MOTOR GROUP, LLC at 207 HIGHLAND AVENUE (Map 13, Lot 2) (B2 Zoning District) for a Special Permits per Section 3.1.4 Principal and Accessory Use Regulations of the Salem Zoning Ordinance to operate an automobile dealership specializing the sale, service general and body repair of motor vehicles and a Special Permit per Section 5.1.7 Shared Parking to share the parking with the other tenant at the site, 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. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
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.
10. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

And the following special conditions:

1. Any multi-car carriers delivering cars are not to use First Street for access to the location.

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

MEETING MINUTES

May 17, 2023

Chair Copelas notes that there should be an edit as Hannah Osthoff is a board member rather than the building inspector. Ms. Osthoff notes the discussion of Bertuccio Avenue should be in feet rather than inches.

Motion and Vote: Mr. Vyedin motions to approve the minutes from the May 17, 2023 meeting of the Zoning Board of Appeals as amended. Ms. Ordaz seconds the motion. **The vote is five (5) in favor and none (0) opposed. The motion passes**

OLD/NEW BUSINESS

31 Calumet Street Variance Extension Request

Chair Copelas introduce the petition.

Attorney Bill Quinn introduces himself on behalf of Attorney Scott Grover and the petitioner. He explains an extension is needed because the property is on the Peabody/Salem line and the sewer line comes to this property, so that has caused some slow downs for approvals to continue creating two lots. This should be the last extension request, according to Mr. Quinn. He notes the variance expires June 16, 2023, and they are seeking another 6 month extension to December 16, 2023.

Motion and Vote: Ms. Vyedin motions to approve the six (6) month variance extension requested by 31 Calumet Street, which will expire December 16, 2023. Ms. Ordaz seconds the motion. **The vote is five (5) in favor, and none (0) opposed. The motion passes**

Next Meeting

August 16, 2023

ADJOURNMENT

Motion and Vote: Ms. Viccica motions to adjourn the meeting. No one seconds the motion. **The vote is all in favor. The motion passes.**

The meeting ends at 10:10 PM on July 19, 2023.

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-2023>

Respectfully submitted, Daniel Laroe, Staff Planner

City of Salem Zoning Board of Appeals
July 19, 2023 Meeting Minutes