

**City of Salem Zoning Board of Appeals**  
**Meeting Minutes**  
July 28, 2021

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, July 28, 2021 at 6:30 pm via remote participation in accordance with Chapter 20 of the Acts of 2021.

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

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

**ROLL CALL**

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

**REGULAR AGENDA**

Location: **32 Buffum Street (Map 27, Lot 59) (R2 Zoning District)**  
Applicant: **Lee Dearborn, Jr.**  
Project: A public hearing for all persons interested in the petition of LEE DEARBORN, JR for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming two-family residential structure by constructing an attached 17.9’ by 7.7’ single-story shed in the required side-yard setback at 32 BUFFUM STREET (Map 27, Lot 59) (R2 Zoning District).

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Mr. Dearborn introduces himself as one of the owners at 32 Buffum Street, which he describes as a two townhouse development. The property was redeveloped a few years ago and converted into the two townhouses. Mr. Dearborn explains the property is unique with a good amount of yard and landscaping, and a house tucked in the Northwest corner of the lot. Mr. Dearborn indicates there has been a lot of work to preserve the existing yard and landscaping, but that one thing that is missing on the property is a garden shed. He explains that various areas were explored for placement and that with the front to back orientation of the two side-by-side units, he wanted something that would be shared by both units. Mr. Dearborn states he determined the ideal spot would be on the North side of the building, which is referred to as the side but is technically the back of the home based on the orientation. This side of the house also contains three heat pump units for HVAC as well as the trash, and Mr. Dearborn suggests the proposal is an opportunity to satisfy several needs, including covering up the unsightly pumps and enclosing trash while also providing tool storage. Mr. Dearborn presents plot plans and diagrams of the proposal. He

discusses the materials and lattice panels, indicating the aesthetic will conform with the rest of the fencing. He next shows the side elevations demonstrating a small window and pergola rafters above. Mr. Dearborn goes through the architectural site plan and shows various renderings as well as photos of existing conditions.

Ms. Ordaz asks about parking, and whether the designated two spaces represents a change. Mr. Dearborn states there is no change, and that the property was previously non-conforming with only two spaces, and that will be maintained. Each unit has one parking space, and he indicates they rarely get used except during snow storms.

Mr. Copelas states the side setback is being reduced from 6.7 feet to 4.3 feet, and asks if the pergola rafters are considered part of the structure as it appears to extend much closer than the 4.3 feet. Mr. Dearborn confirms that if the rafters are considered part of the structure, then it would be less than a 4.3 setback. Mr. Copelas indicates that is problematic, and that it appears the applicant is shoehorning a small addition and going within a foot of the side setback when it is currently 6.7 feet. Mr. Copelas notes the lot is rather large, and that while he understands the desire to keep the open space, it is problematic to get so close to the property line if other options are available.

Mr. Dearborn explains that the rafters would extend over what would be a formal walkway, with the intent of aesthetically giving it more character. He states he would be amenable to reducing the size of the overhang to make the setback closer to the 4.3 foot mark. Mr. Dearborn acknowledges there is additional space, but reiterates that the front to back orientation and desire to have the shed accessible to both units makes the proposed location ideal, as he would prefer to not have either unit need to enter the other's private yard to access the shed. He also notes the desire to hide the heat pumps and trash as they are unsightly. Mr. Dearborn maintains that he received an award for preservation from the Salem Historic Commission, and that the only criticism received was that the heat pumps should be covered, and that this seemed to be an elegant solution to address both issues.

Mr. Copelas acknowledges that the property is clearly well maintained and deserving of an award, but that he is struggling with the petition a bit. Mr. Copelas asks if the petitioner reached out to or discussed the proposal with neighbors. Mr. Dearborn indicates he has and that all neighbors seem to be ok with the proposal. Mr. Copelas states it would be good as part of the public record to include such support since the side setback would be reduced down to about a foot. He suggests it would be helpful if the neighbor abutting on that side were on the record being in support.

Mr. St. Pierre asks to bring up the photo of the three heat pumps, and asks about the egress on the left corner. Mr. St. Pierre asks if the egress will be blocked, and Mr. Dearborn confirms. Mr. St. Pierre expresses concern, as the door would no longer be a direct exit to the outside. He asks Mr. Dearborn if he could make a wall between the door and heat pump on the far left to leave the existing egress. He also asks about storing gas and flammable equipment in the storage shed. Mr. Dearborn notes it was a consideration at first, and that the tools he uses are battery and electric so gasoline will not be an issue. Mr. St. Pierre notes that the building code tries not to count on people doing the right thing and account for the human factor, and that the code requires an egress have direct access to the outside.

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

Chair Duffy asks Mr. St. Pierre if the structural elements such as the rafters and posts count as part of the structure and put the setback at closer to one foot. Mr. St. Pierre states the City ordinance is not specific about overhangs, and that it does not normally count on tradition New England overhangs of six to twelve inches, but that California eaves do count. Here he indicates it would be a gray area.

Ms. Ordaz asks if there is a standard measurement for a pass-through, as the petitioner gets into his unit through this area and the setback would go down to one foot. Mr. St. Pierre notes the roof overhang would be within a foot of the property line, but that the walk-way under appears to be closer to three feet. Mr. Dearborn confirms the clear walking path would be four feet and four inches from the fence to the structure.

Mr. Copelas notes that Mr. St. Pierre's recommendation regarding the wall and rear egress reduces the current proposed dimension by about four feet. Mr. Copelas suggests the petitioner is making a lot of compromises only to get a minimal advantage by this space. With all the space available, Mr. Copelas wonders if a better solution is not available. Mr. Dearborn explains that the shortening of the dimensions is not a concern, and that if there is no path of egress in the shed space he can fit more stuff inside. He also notes his lawnmower and snowblower are small, and that the only other items being stored will be bikes and other small items. Mr. Dearborn explains that the units are small, and that both owners appreciate and use the large yard space with their children and families. Mr. Dearborn states he works in design and building, and that ultimately the proposed location seemed most appropriate and was agreed to by both unit owners. Mr. Dearborn again notes that covering the heat pumps was another big factor in the location.

Ms. Ordaz asks about the bump-out on the house near the rear egress, and if the applicant would consider something that would not extend beyond that bump-out. Mr. Dearborn states that it only goes out 3.5 feet, so it would be tough. He demonstrates the size of the bins and heat pumps. Mr. St. Pierre provides additional feedback. Mr. Copelas asks if the suggestions are significant enough that the proposal should be redesigned and reviewed, or if the Board could entertain a motion with special conditions to accommodate the changes. Mr. St. Pierre states he trusts Mr. Dearborn's attention to detail, and would be comfortable approving the footprint.

Chair Duffy suggests it could also be approved subject to a condition that the applicant must maintain the egress from the rear door to the outside.

Chair Duffy touches on nature of the relief requested and discusses the special permit criteria and how it is met by the applicant's proposal.

**Motion and Vote:** Mr. Copelas motions to approve the petition of LEE DEARBORN, JR for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming two-family residential structure by constructing an attached 17.9' by 7.7' single-story shed in the required side-yard setback at 32 BUFFUM STREET (Map 27, Lot 59) (R2 Zoning District) subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.

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

And the following special condition:

1. The rear egress for unit 1 be maintained independent of the garden shed, and the modifications must be approved by the building commissioner.

Ms. Ordaz seconds the motion. **The vote is four (4) in favor (Mike Duffy (Chair), Peter Copelas, Rosa Ordaz, and Steven Smalley) and none (0) opposed. The motion passes.**

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## MEETING MINUTES

None

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## OLD/NEW BUSINESS

None

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## ADJOURNMENT

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

**The meeting ends at 7:13 PM on July 28, 2021.**

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

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

Respectfully submitted,  
Lev McCarthy, Staff Planner