

City of Salem Zoning Board of Appeals
Meeting Minutes
August 18, 2021

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, August 18, 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), Paul Viccica, Carly McClain, 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: Peter Copelas

REGULAR AGENDA

- Location: **9 Moffatt Road (Map 31, Lot 37) (R1 Zoning District)**
- Applicant: **David Corbin**
- Project: ***Note: The applicant has requested to continue to the next regularly scheduled meeting on September 22, 2021.** A public hearing for all persons interested in the petition of DAVID CORBIN for a special permit per Section 3.2.2. *Home Occupations* of the Salem Zoning Ordinance to allow a psychology practice to be located in an existing single-family dwelling at 9 MOFFATT ROAD (Map 31, Lot 37) (R1 Zoning District).

Documents and Exhibitions

- Application date-stamped July 23, 2021 and supporting documentation

Chair Duffy introduces the petition.

David Corbin introduces himself, and explains he is seeking to continue to the next regular Zoning Board of Appeals meeting on September 22, 2021. Mr. Corbin indicates the reason for the continuance to take time to address concerns raised by the neighbors. In light of concerns raised, Mr. Corbin contends the applicant would like to take time to address them, as well as research and prepare for the next hearing. Mr. Corbin suggests that some of the concerns stem from stigmas surrounding mental health issues.

Chair Duffy opens the floor to public comment.

Kristy Swiniarski of 5 Moffatt Road introduces herself and requests that the application for a continuance be denied at this time. Ms. Swiniarski indicates objects to the continuance, stating that the applicants had sufficient time to communicate with neighbors and abutters but have chosen not to. As an example, Ms. Swiniarski notes that her husband was recently doing yard work outside and despite also being outside and within earshot, Mr. Corbin did not discuss the petition at all. She

adds that there has been a general lack of communication. Moreover, Ms. Swiniarski objects to the home occupation proposal for the psychology practice, arguing it is more akin to a medical office or business office, which is not permitted in the R1 Zoning District. Ms. Swiniarski maintains that the definition of a home office is inconsistent with a psychotherapy practice where several patients would be coming and going. Ms. Swiniarski suggests that by allowing the applicant to continue the Board is wasting time and tax payer dollars as the application should be denied.

Kimberly Sullivan (no address given) introduces herself as a direct abutter and echoes Ms. Swiniarski's comments. Ms. Sullivan states the only communication she received from the applicant was a text message accusing her family of being against mental health treatment, which she says is untrue. Based on the rationale for the requested continuance, Ms. Sullivan suggests that the applicant should have already started a dialogue with neighbors, indicating that she only became aware of the proposal when the postcard/notice was mailed. Ms. Sullivan requests that if the continuance is allowed that the whole situation be resolved at the September 22 meeting with no further continuances. Ms. Sullivan contends the current situation with the practice in limbo and what has been going on has been detrimental to her family and others.

Ms. Ordaz asks the applicant whether this practice is currently being run out of the residence, run out of a different location, or a brand new practice altogether.

Dr. Shelby Ortega introduces herself and explains that she has been in practice as a psychologist for over 10 years. Dr. Ortega indicates she had a Cambridge practice for almost a decade, then a Salem practice, and for a year and a half during the pandemic has been providing telehealth. Dr. Ortega states she has been a therapist for 20 years and a psychologist for 12. She adds that she is not seeing any new patients in her practice.

Chair Duffy indicates there are public comments filed as recently as Monday and yesterday, and that there has been some disagreement regarding whether sufficient outreach has occurred. He explains that often applicants will come to understand that there is some neighborhood response to a petition, and proceed to try to connect and address concerns if possible. While it does not always resolve objections or concerns, Chair Duffy indicates he has personally found it to be good practice in general, and that he is in favor of granting a continuance in circumstances where an applicant wishes to attempt to resolve concerns and questions.

Motion and Vote: Mr. Viccica motions to continue the petition of DAVID CORBIN for a special permit per Section 3.2.2. *Home Occupations* of the Salem Zoning Ordinance to allow a psychology practice to be located in an existing single-family dwelling at 9 MOFFATT ROAD (Map 31, Lot 37) (R1 Zoning District) to the next regularly scheduled meeting of the Zoning Board of Appeals on September 22, 2021.

Ms. Ordaz seconds the motion. **The vote is five (5) in favor (Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, Carly McClain, and Steven Smalley) and none (0) opposed. The motion passes.**

Location: **0 Story Street (Map 23, Lot 12) (RC Zoning District)**
Applicant: **Castle Hill Realty Group, LLC**
Project: ***Note: The applicant has requested to continue to the next regularly scheduled meeting on September 22, 2021.** A continuation of a public hearing for all persons

interested in the petition of CASTLE HILL REALTY GROUP, LLC to appeal a decision of the Building Inspector per M.G.L. ch.40A sections 8 and 15 to construct two foundations for two single-family dwellings at 0 STORY STREET (Map 23, Lot 12) (RC Zoning District).

Documents and Exhibitions

- Application date-stamped June 10, 2021 and supporting documentation

Chair Duffy introduces the petition.

Attorney John Keilty introduces himself on behalf of the applicant and indicates the applicant is requesting a continuance.

Chair Duffy asks if there is a reason for the requested continuance. Mr. Keilty indicates there is a matter pending before the Conservation Commission, and that the matter was continued at last night's meeting. Mr. Keilty states that the hope is that ultimately the applicant would be in a position to drop this appeal by the next meeting.

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

Motion and Vote: Mr. Viccica motions to continue the petition of CASTLE HILL REALTY GROUP, LLC to appeal a decision of the Building Inspector per M.G.L. ch.40A sections 8 and 15 to construct two foundations for two single-family dwellings at 0 STORY STREET (Map 23, Lot 12) (RC Zoning District) to the next regularly scheduled meeting of the Zoning Board of Appeals on September 22, 2021

Ms. Ordaz seconds the motion. **The vote is five (5) in favor (Carly McClain, Paul Viccica, Mike Duffy (Chair), Rosa Ordaz, and Steven Smalley) and none (0) opposed. The motion passes.**

Location: **9 Buffum Street (Map 26, Lot 318) (R2 Zoning District)**
Applicant: **Valerina Condor, LLC**
Project: ***Note: The applicant has requested to continue to the next regularly scheduled meeting on September 22, 2021.** A public hearing for all persons interested in the petition of VALERINA CONDOR, LLC 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 home by expanding the third story from a gable to mansard roof at 9 BUFFUM STREET. Additionally, the Petitioner seeks an infill addition to the side porch area.

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Attorney Kristin Kolick introduces herself on behalf of the applicant and states they are requesting to continue to the next regularly scheduled meeting as some issues have arisen recently related to the

property. The applicant would like an opportunity to address the issues before moving forward on the proposal.

Chair Duffy opens the floor to public comment.

Paul Mandeville of 7 Buffum Street introduces himself and asks if he will be able to voice his concerns and provide information and photographs at the next meeting if a continuance is granted. Chair Duffy affirms that would be the case. Mr. Mandeville indicates that the applicant has informed him that a crew is coming to clean things up, but that in the meantime for a month there have been materials 12 feet from his window and that he is unable to open the windows on the West side of his house. He asks what recourse he has regarding the materials. Chair Duffy asks if he has tried calling the Planning Department or Building Office. Mr. Mandeville explains that he went there today to drop of a letter outlining his concerns along with photographs. He further states that operations were shut down yesterday, but that materials and debris are still there. Chair Duffy indicates it sounds like the right steps have been taken, and that it now falls to enforcement. Mr. Mandeville states that he was told someone is supposed to come out the following day.

Stacey Neuss Hernandez of 13 Buffum introduces herself and asks if there is a work stop on the property given the continuance, or if work is allowed to continue. Ms. Hernandez states there has been a lack of respect for the neighborhood and community overall throughout the process, noting problems caused by workers and dangerous conditions. Chair Duffy indicates it would depend on whether there is a work stoppage, but that he is not aware of one. Ms. Hernandez states that workers speed up and down the street, are noisy, and regularly turn without signaling.

Mr. St. Pierre clarifies that work is currently stopped at the site until issues are resolved.

Motion and Vote: Mr. Viccica motions to continue the petition of VALERINA CONDOR, LLC 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 home by expanding the third story from a gable to mansard roof at 9 BUFFUM STREET (Map 26, Lot 318) (R2 Zoning District) to the next regularly scheduled meeting of the Zoning Board of Appeals on September 22, 2021.

Ms. McClain seconds the motion. **The vote is five (5) in favor (Carly McClain, Steven Smalley, Mike Duffy (Chair), Paul Viccica, and Rosa Ordaz) and none (0) opposed. The motion passes.**

Location:	7 Riverway Road (Map 31, Lot 244) (RC Zoning District)
Applicant:	Aisha Strauss
Project:	A public hearing for all persons interested in the petition of AISHA STRAUSS for a special permit per Section 3.3.5 <i>Nonconforming Single- and Two-Family Residential Structures</i> of the Salem Zoning Ordinance to expand an existing single-family home by adding a second story above the existing garage and expanding an existing side porch at 7 RIVERWAY ROAD (Map 31, Lot 244) (RC Zoning District).

Documents and Exhibitions

- Application date-stamped July 19, 2021 and supporting documentation

Chair Duffy introduces the petition.

Project architect Steven Livermore introduces himself on behalf of the applicant and provides a brief description of the proposal along with drawings. The proposal is to add a second story above an existing garage and breezeway to add a master bedroom within the existing footprint. Mr. Livermore also explains that there is a porch on the ride side of the building, and the applicant is seeking to extend the porch out four feet to where the original deck foundations were. Mr. Livermore indicates the previous property owner requested an expansion of a non-conforming structure to add the existing second floor, and the current owner is now seeking to extend the second floor over the garage area. Mr. Livermore goes through the project plans and elevations.

Ms. McClain asks about the porch extension, and Mr. Livermore explains that at some point the porch was cut back when it was covered and new foundations were set, but that the applicant would like to expand the porch out to where it was previously, but that the covering will remain the same. Ms. Straus explains that the Conservation Commission did not object to the proposal as it was returning to the existing foundations.

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

Chair Duffy explains the special permit criteria, and notes that the proposal does not increase any non-conformities. He adds that the modifications proposed will not be substantially more detrimental than the existing conditions. Mr. Duffy presents the statement of grounds submitted by the applicant.

Motion and Vote: Ms. McClain motions to approve the petition of AISHA STRAUSS for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand an existing single-family home by adding a second story above the existing garage and expanding an existing side porch at 7 RIVERWAY ROAD (Map 31, Lot 244) (RC 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. 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 extend 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.

Ms. Ordaz seconds the motion. **The vote is five (5) in favor (Paul Viccica, Mike Duffy (Chair), Rosa Ordaz, Steven Smalley, and Carly McClain) and none (0) opposed. The motion passes.**

Location: **218-222 Highland Avenue (Map 8, Lot 124) (R1, B2, RC Zoning Districts)**

Applicant: **Keith Regan**

Project: A public hearing for all persons interested in the petition of KEITH REGAN for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use (light manufacturing) to another nonconforming use (plumbing supply business) at 218-222 HIGHLAND AVENUE (Map 8, Lot 124) (R1, B2, and RC Zoning Districts).

Documents and Exhibitions

- Application date-stamped June 23, 2021 and supporting documentation

Chair Duffy introduces the petition.

Attorney Scott Grover introduces himself on behalf of the applicant and owner of Regan Mechanical, Keith Regan. Mr. Grover presents the site plan and explains there are no proposed changes to the building, and that the request is about use. He describes the property located on the South bound side of Highland Avenue heading toward Lynn, situated on four acres of land. The property is primarily in the B2 district, with the back undeveloped part located in the RC and R1 zoning districts. For many years the property has been the location of Tropical Products, which is a large distribution facility that formulates, bottles, and distributes liquid products for personal and home care. Tropical Products is expanding its operations and building a new facility on the opposite side of the street a little farther South.

Mr. Grover explains that Mr. Regan owns and operates a plumbing supply business in Salem, and that he has entered into an agreement to purchase the property being discussed to relocate his growing business. Mr. Grover contends that the present use (light manufacturing) is not allowed in the B2 district, and that relief would be required for the applicants proposed use as well. The granting of a special permit would allow one legal non-conforming use to replace another. Mr. Grover explains that the proposal is not more detrimental than the current use, noting that Tropical Products has a more intense process compared to the plumbing supply business. Under the new use, Mr. Grover explains there would only be six employees (currently sixty), fewer deliveries at two to three times a week compared to five to ten times per day, and that the new business would operate fewer hours. Mr. Grover maintains the proposal would keep an active growing business in Salem, while improving traffic safety and parking through lower demands. He explains that the neighborhood character and natural environment would not be impacted, and that there are adequate utilities serving the property.

Mr. Viccica asks about the hours of operation, and Mr. Grover indicates it will be Monday through Friday, 7AM to 3PM, compared to the current business hours of 7AM to 6PM. Mr. Regan confirms.

Mr. Viccica asks if the business will be manufacturing products, selling products to contractors, or selling products to the general public. Mr. Regan explains that he does not run a supply house, but rather a plumbing company, and that this would be a place where he would store tools and materials. As needed at various sites, the materials would be shipped out via truck. Mr. Regan confirms they do not sell to the general public.

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

Chair Duffy discusses the special permit criteria and how it is met by the applicant's proposal, noting that the proposed use will be less intense and potentially provide benefits for traffic and safety. He concludes that there are no negative impacts from the proposal.

Motion and Vote: Ms. McClain motions to approve the petition of KEITH REGAN for a special permit per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use (light manufacturing) to another nonconforming use (plumbing supply business) at 218-222 HIGHLAND AVENUE (Map 8, Lot 124) (R1, B2, and RC 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. 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.

Mr. Smalley seconds the motion. **The vote is five (5) in favor (Rosa Ordaz, Carly McClain, Steven Smalley, Paul Viccica, and Mike Duffy (Chair)) and none (0) opposed. The motion passes.**

Location: 90 Broadway (Map 32, Lot 43) (R2 and ECOD Zoning Districts)
Applicant: Matthew Polumbo
Project: A public hearing for all persons interested in the petition of MATHEW POLUMBO for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from maximum height of buildings (stories) to expand a nonconforming two-family home by adding a dormer at 90 BROADWAY (Map 32, Lot 43) (R2 and ECOD Zoning Districts).

Documents and Exhibitions

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

Chair Duffy introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the applicant. Mr. Quinn describes the property as a two-family, 2.5 story home with a first floor apartment and another on the second and third floor. He also explains that the roof is steeply pitched, which creates headroom issues on the third floor. The applicant seeks to add a dormer on one side, and Mr. Quinn indicates it would not extend as high as the current roof line. However, because of the design, the dormer technically changes the stories from 2.5 to three, with 2.5 being the limit in the R2 district. Mr. Quinn explains the property will continue to operate legally as a two-family in the R2 zone, and that the two adjacent buildings are also longstanding two-family homes. Mr. Quinn states the applicant is experienced in renovating buildings like this and has completed a few in Salem previously. Mr. Quinn next introduces the architect Sanir Lutfija of Segar Associates.

Mr. Lutfija describes in more detail the headspace issues on the third floor living space, and indicates that the layout will not be changing. A shed dormer would be introduced on the South side of the existing building. Mr. Lutfija presents side elevations and notes that the proposed standard dormer would minimize the impact on the building by continuing the eave and fascia board underneath. The plan would be to use matching vinyl siding and to match the double hung windows and composite trims. Mr. Lutfija states that his clients want to make the space more livable.

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

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

Motion and Vote: Ms. Ordaz motions to approve the petition of MATHEW POLUMBO for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance from maximum height of buildings (stories) to expand a nonconforming two-family home by adding a dormer at 90 BROADWAY (Map 32, Lot 43) (R2 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. 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.

Ms. McClain seconds the motion. **The vote is five(5) in favor (Mike Duffy (Chair), Carly McClain, Paul Viccica, Rosa Ordaz, and Steven Smalley) and none (0) opposed. The motion passes.**

Location:	30 Federal Street (Map 35, Lot 190) (B5 Zoning District)
Applicant:	Salem Waterview Developments, LLC
Project:	A public hearing for all persons interested in the petition of SALEM WATERVIEW DEVELOPMENTS, LLC for a variance from parking requirements in Section 5.1.9 <i>Central Development (B5) District</i> to provide one parking space per new dwelling unit rather than the required 1.5 spaces per unit at 30 FEDERAL STREET(Map 35, Lot 190) (B5 Zoning District).

Documents and Exhibitions

- Application date-stamped June 23, 2021 and supporting documentation

Chair Duffy introduces the petition.

Attorney Scott Grover introduces himself on behalf of the applicant and property owner, and notes that he is accompanied by Mike Becker, a principal of Salem Waterview Developments, LLC, as well as Dan Ricciareli of Segar Architects. Mr. Grover presents a rendering of the proposal, and explains that the existing property is a small 3.5 story office building on Washington Street on the same side as the new Brix condominiums. The property is a Federal style building with a chimney located in the B5 zoning district. Mr. Grover indicates the property is also located in the downtown urban renewal district, and therefore within the jurisdiction of the Salem Redevelopment Authority (“SRA”). Mr. Grover explains that the project has some history before the SRA relevant to the current proposal. The owner is proposing to construct a contemporary addition on the back of the

existing building. Mr. Grover maintains that the initial plans submitted to the SRA had the first floor as commercial space and four residential units on the upper three floors, served by four parking spaces mostly located beneath the building in back of the commercial space. Mr. Grover indicates these plans were submitted to the SRA over a year ago and were in full compliance with the dimensional requirements of the B5 district. Because the residential units were proposed in the new portion of the building, however, it was determined that the parking requirement of one parking space per unit in existing buildings for the B5 district would not apply, and instead 1.5 spaces per unit, for a total of six would be required. In an effort to comply, Mr. Grover indicates the owner proposed creating additional parking in the existing courtyard which faces Federal Street. This proposal was rejected by the SRA and neighbors as it would replace open vegetative space with parking. To further attempt compliance, the owner proposed moving two of the residential units into the existing building so that those units would only require one parking space each. Moreover, the requirement could be satisfied with a municipal garage space/pass per the B5 district rules regarding existing buildings. For this new proposal to move forward, the commercial business in the existing building would need to relocate to the new addition. Mr. Grover explains that the SRA approve this updated proposal, and found that it complied with the parking requirements of the zoning ordinance.

Mr. Grover continues to explain that as the owner discussed the plan with the existing commercial tenant, he learned of the tenants resistance to the idea of moving due to business disruption. Therefore, the owner agreed to take another look at the original plan that leaves the existing commercial tenants in the existing building and moves the residential units to the new addition. As there are only four spaces available to serve the units, Mr. Grover indicates a variance is required from the 1.5 space requirement, and that is why the petitioner is before the Board this evening. Mr. Grover contends that a hardship exists relating to the inability of the property owner to use the open courtyard space for parking, suggesting that if that were feasible, the petitioner would not be before the Board. Regarding the requirement that the proposal not be detrimental to the public good nor inconsistent with the intent of the ordinance, Mr. Grover states that the building is very close to public transit and the municipal parking lot, and suggests that one parking space per unit should be sufficient without creating a burden on the City or neighborhood. Mr. Grover notes that the Brix condominiums were allowed a one parking spot per unit ratio, and argues it is becoming accepted as good urban planning in downtown areas. Other than parking, Mr. Grover indicates the proposal complies entirely with the B5 zoning.

Mr. Viccica asks to see the plot plan and further details, noting that the Board has not been privy to the project history. Architect Dan Ricciarelli introduces himself and go through the floor plans. Mr. Ricciarelli also explains the proposed parking locations, with three spaces inside the building and one outside. Mr. Viccica asks about the property lines, and Mr. Ricciarelli identifies them on the plans.

Ms. McClain indicates she has difficulty with the statement of hardship relative to the courtyard, noting that many buildings in the center of town have landscaping and courtyards, and that it is critical to maintain green space as well as adequate parking. In Salem specifically, Ms. McClain notes that parking is a real issue and that the requirements of the ordinance are important.

Mr. Grover states that what had been proposed in the courtyard was two parking spaces, with some open space still remaining, as it is a large courtyard. Mr. Grover reiterates the opinion that good urban planning suggests not providing excessive parking near a train station, and states that even the Salem Planning Department advocates for less than the required parking in the downtown district.

Mr. Viccica asks about the unit sizes and details. Mr. Ricciarelli indicates the four proposed units are two bed and two bathroom units ranging from 800-900 square feet, to a townhouse unit around 1,600 square feet. The commercial space would be small, about 700 square feet. Mr. St. Pierre asks to see the second floor floor plan as well as the rear elevations. Mr. Viccica asks about the commercial space and whether there will be retail parking. Mr. Ricciarelli indicates there would be no retail parking. Mr. Viccica notes that Mr. Grover mentioned municipal parking garages with reference to the B5 district and asks for clarification as this would not be a deeded spot. Mr. Grover indicates that the ordinance provides that for existing buildings in the B5 district, the parking requirement is one space per unit as opposed to 1.5 spaces per unit, and that it is not required to be satisfied on site. Rather, Mr. Grover states, the parking requirement for existing buildings can be satisfied by arranging for some kind of permanent parking via an annual garage pass. Mr. Viccica asks if this is being accommodated, and Mr. Grover states it is not, as what is proposed is residential units all within the new building. The special allowances/treatments regarding parking for existing buildings would not apply in this case.

Ms. Ordaz indicates that in addition to the discussion of the courtyard and parking, the applicant noted that the hardship also had to do with moving the commercial tenants. Ms. Ordaz asks the applicant to expand on why moving the commercial tenants into the new building is no longer an option. Mr. Grover explains that technically it still is an option and that plan has been approved and can be built, however, relocating the commercial tenants ended up leading to difficulties, so the applicant is returning to the original proposal. Ms. Ordaz asks if the hardship relates to the cost of moving, or if the tenants simply do not want to move. Mr. Grover responds that it is both. Ms. Ordaz states that it sounds like the result will be the same regardless of the proposal, with only four parking spaces on site whether the commercial tenants move or not. Mr. Grover confirms that is correct, that whether the Board approves the request or not, there will be four parking spaces on site. Mr. Grover goes on to explain that the applicant determined it would be better to keep the commercial tenants where they are logistically.

Mike Becker of 2 School Street Court introduces himself as one of the property owners and offers to discuss the hardship in more detail. Mr. Becker explains the new addition has not yet been built, so there would be a period during construction where the commercial tenants would need to leave and be displaced for an undetermined period, then move back into the new building once construction is complete. In all likelihood, Mr. Becker states, the tenants would probably just find a new office space. Since the tenants have stuck with them through the pandemic and been responsible good tenants, Mr. Becker indicates he would prefer not to lose them or make them go through any difficulties.

Mr. Viccica asks if the SRA approval is required to create two parking spaces in the courtyard, and Mr. Grover indicates it is and that they would not approve such a proposal due to the desire to preserve the courtyard. SRA approval is required for further development of the property regardless. Mr. Becker adds that the SRA actually wanted more green space on the property.

Mr. Viccica states that the hardship is actually the fact that the SRA approval requires the parking be reduced from the required six spaces to four, and that the City itself is directing the urban planning approach. Mr. Viccica says that regarding this issue, he finds the 1.5 space requirement in an area so close to the train station and public transport might not make sense, but that City Council and other

municipal decision makers have not put such language in the ordinance, which puts the Board in a precarious position of granting relief for a hardship that is being forced by other City agencies.

Mr. Becker states it is noteworthy that nearby planned developments are bigger projects, and so the zoning rules do not apply to them. As an example, he notes that the Brix condominiums only have one space per unit, and that this proposal is even closer to the train than the Brix building.

Chair Duffy asks where parking access exists for the Brix building, and Mr. St. Pierre indicates it is on Federal Street.

Mr. Becker adds that if the Board approves the variance and grants the relief, the units would be smaller than if the residential units were placed in the existing building. While both approaches would yield the same number of parking spaces, Mr. Becker notes that the “by right” approach would result in units with more bedrooms. Mr. Ricciarelli confirms.

Mr. St. Pierre asks to see the rear elevations, and also asks about accessing the parking spaces. Mr. Ricciarelli explains they would be accessed by right of way in the parking lot.

Chair Duffy opens the floor to public comment.

Steve Pelletier of 1 Washington Street introduces himself as an abutter sharing the same parking lot. Mr. Pelletier objects to the proposal, noting that if the units have two bedrooms it is likely that they would have two renters each with their own cars. Mr. Pelletier states that in his building there is no one who uses the train to get to work, and that they all have cars and deeded parking spaces. Mr. Pelletier expresses concerns that people will just cheat and park in the deeded spaces when they need parking. As a business owner, Mr. Pelletier states parking is already difficult with restaurant outdoor seating currently taking up parking spaces, and that it has been difficult for retail clients to find places to park. Mr. Pelletier states that the real hardship is keeping unauthorized people out of their deeded spaces.

Jane Stauffer of 1 Washington Street introduces herself and echoes Mr. Pelletier’s comments. Ms. Stauffer states she is concerned about cars drifting into the deeded parking spaces. Ms. Stauffer suggests the developers knew all along about the parking situation and should have been aware this would be an issue.

Mr. Becker states that Councilor Madore takes the train for work and has stated she is in favor of the proposal.

Chair Duffy notes there are several of public comment letters in the record concerning this matter, and that they all express opposition. Additionally, a petition was signed by a number of residents of 28 Federal Street also in opposition.

Ms. McClain asks if the commercial tenants currently have parking spots, and Mr. Becker states they do not.

Mr. Ricciarelli notes that many of the concerns are not particularly relevant, and contends that the proposal is a pareto improvement for a project that has already been approved. If the Board does not grant relief, the applicant will go forward with what has already been approved, however, Mr.

Ricciarelli states this proposal would be better for the existing tenants, and most likely better for the neighbors as there will be less construction, fewer contractors, and ultimately smaller residential units. Mr. Becker adds that by right, they can construct residential units that are 3 bed 2.5 bath units, rather than what is before the Board tonight, which is units with 2 bedrooms and one or two bathrooms.

Mr. Viccica and Ms. Ordaz discuss the hardship a bit more, and Ms. Ordaz asks if the applicant is suggesting that because the by-right plans would have larger units, the odds of having more than one car per unit would be higher. Mr. Becker confirms that is the case. Ms. Ordaz states she struggles with the fact that regardless of what happens tonight, the building will end up with only four parking spaces. Mr. Viccica states he also struggles with that concept, noting that it is not the Board's purview to re-write zoning ordinances so that they make sense, and that the Board must abide by the ordinance even when it is not necessarily logical. Mr. Grover clarifies that the by-right plans would have four spaces on site, as well as one space in the municipal garage. Mr. Becker notes he would be willing to include off-site parking as a condition of the variance approval. Mr. Viccica asks if those would be deeded spots, and how they could be ensured in perpetuity. Mr. St. Pierre explains that the requirement is to provide parking spaces by buying annual passes, which do not guarantee a specific spot. Regarding enforcement, it would be like any other zoning issue and a tenant would have to complain if the parking pass was not provided.

Chair Duffy indicates the issue is tricky because a variance has certain criteria, including a demonstration of hardship which can often be difficult to meet. Chair Duffy also notes the practical considerations of the proposal, and acknowledges that regardless of whether relief is granted or not, the property will only have four parking spots. Chair Duffy questions whether there is any benefit to not granting relief in that regard, when it would ultimately just force a different configuration inside the building and displace current tenants. In considering such aspects, Chair Duffy notes the associated financial and practical concerns could be interpreted as a hardship. By not granting relief, Chair Duffy notes the Board would be forcing the developer to accomplish the same end results with respect to parking, but by a more circuitous and expensive route.

Mr. Becker speaks to the uniqueness of the property and discusses the courtyard and parking limitations a bit more. Ms. McClain asks if the commercial tenants were spoken to, noting that it is odd that they did not provide a letter on the applicants behalf or provided any public comment. Given that the hardship involves displacing these tenants, Ms. McClain suggests it would have been helpful to have some communications from them. Mr. Becker apologizes, stating that was poor planning on his part. He states he could have gotten a letter from the tenants.

Mr. Viccica states the points made by Chair Duffy have been persuasive, and that he understands the uniqueness of the property and proposal. Mr. Viccica notes, however, that there were multiple mentions of "ideal urban planning" and what that might constitute. Mr. Viccica stresses there is no portion of the ordinance that addresses what good or ideal urban planning is. Mr. Viccica also states he wishes some City Councilors were present at tonight's meeting, as these types of issues come before the Board often, and it would be helpful for them to be aware of potential necessary adjustments to the ordinance.

Chair Duffy states he could see the literal enforcement of the ordinance to present a detriment or hardship, and that he would be comfortable making such a finding.

The Board continues to discuss the petition, and suggests that as a condition for approval, that two additional parking passes in the nearby municipal be provided. Chair Duffy discusses the variance requirements and how they are met by the proposal.

Motion and Vote: Mr. Viccica motions to approve the petition of SALEM WATERVIEW DEVELOPMENTS, LLC for a variance from parking requirements in Section 5.1.9 *Central Development (B5) District* to provide one parking space per new dwelling unit rather than the required 1.5 spaces per unit at 30 FEDERAL STREET (Map 35, Lot 190) (B5 Zoning District) subject to the following standard conditions:

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

And the following special condition:

1. Petitioner shall provide two parking passes in the nearby municipal garage in accordance with rules of the B5 zoning district.

Ms. Ordaz seconds the motion. **The vote is five (5) in favor (Mike Duffy (Chair), Rosa Ordaz, Paul Viccica, Carly McClain, and Steven Smalley) and none (0) opposed. The motion passes.**

MEETING MINUTES

July 21, 2021

July 28, 2021

None of the Board members have any proposed edits or comments regarding the meeting minutes being reviewed.

Motion and Vote: Ms. Ordaz motions to approve the Zoning Board of Appeals July 21, 2021 and July 28, 2021 meeting minutes as drafted. Ms. McClain seconds the motion. **The vote is five (5) in favor and none (0) opposed. The motion passes.**

OLD/NEW BUSINESS

None

ADJOURNMENT

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

The meeting ends at 8:48 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