

**City of Salem Board of Appeals**  
**Draft Meeting Minutes**  
**Wednesday, October 21, 2015**

A meeting of the Salem Board of Appeals (“Salem BOA”) was held on Wednesday, October 21, 2015 in the third floor conference room at 120 Washington Street, Salem, Massachusetts at 6:30 p.m.

**Ms. Curran calls the meeting to order at 6:40 p.m.**

**ROLL CALL**

Those present were: Rebecca Curran (Chair), Peter A. Copelas, James Tsitsinos, Mike Duffy, Paul Viccica (alternate), Jim Hacker (alternate). Also in attendance – Thomas St. Pierre, Building Commissioner, and Erin Schaeffer, Staff Planner

\*The Board takes projects out of order for petitioners that have requested to withdraw without prejudice or continue the public hearing to the next regularly scheduled meeting on Wednesday, November 18, 2015.

**REGULAR AGENDA**

Project	A continuation of a public hearing for a petition seeking Variances per Sec. 3.3.2 Nonconforming Use of the Salem Zoning Ordinance to extend the current non-conforming use of an existing two-family dwelling unit to allow a three-family dwelling unit.
Applicant	<b>ANTONIO BARLETTA JR</b>
Location	<b>12 MEADOW STREET (Map 33 Lot 88) (B4 Zoning District)</b>

The petitioner Antonio Barletta Jr. submitted a letter to the Board with a request to withdraw the petition without prejudice.

**Motion and Vote: Mr. Duffy makes a motion to approve the request of the petitioner to withdraw the petition without prejudice. The motion was seconded by Mr. Copelas. The vote was unanimous with five (5) in favor, (Rebecca Curran (Chair), Peter A. Copelas, James Tsitsinos, Mike Duffy, Paul Viccica (alternate)) and none (0) opposed.**

Project	A public hearing for a petition seeking a Special Permit from the provisions of Sec. 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to allow the change from one nonconforming use of a candy factory to another nonconforming use to construct twelve (12) residential units and a Variance requesting relief from Sec. 5.0 Table of Parking Requirements to allow fifteen (15) of the required eighteen (18) off-street parking spaces.
Applicant	<b>SCHIAVUZZO REALTY LLC</b>
Location	<b>93-95 CANAL STREET (Map 33 Lots 164, 165)(B-4 Zoning District)</b>

Attorney Atkins requests a continuation on behalf of the petitioner to be heard at the next regularly scheduled meeting on November 18, 2015.

**Motion and Vote: Mr. Duffy makes a motion to approve the request to continue the public hearing to the next regularly scheduled meeting on November 18, 2015. The motion was seconded by Mr. Copelas. The vote was unanimous with five (5) in favor, (Rebecca Curran (Chair), Peter A. Copelas, James Tsitsinos, Mike Duffy, Paul Viccica (alternate)) and none (0) opposed.**

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Project            A public hearing for a petition requesting a Special Permit per *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to change and existing nonconforming use of a social club to another nonconforming use of eighteen (18) residential units. The petitioner is also requesting Variances for relief from *Sec. 4.1.1 Table of Dimensional Requirements* for minimum lot area per dwelling unit, minimum lot frontage, minimum lot coverage, front and side yard setbacks, minimum distance between buildings, and number of stories.

Applicant        **MICHAEL MEYER**

Location         **1-3 EAST COLLINS STREET (Map 36 Lot 277)( R1 Zoning District)**

**\*Board member James Tsitsinos discloses a potential conflict of interest and recuses himself for this item.**

Attorney Grover requested a continuation of the public hearing to the next regularly scheduled meeting on November 18, 2015 to allow more time for the petitioner to work with the neighborhood and receive additional input on the project before presenting the project to the Board.

**Motion and Vote: Mr. Duffy makes a motion to approve the request for a continuation to the next regularly scheduled meeting on November 18, 2015. The motion was seconded by Mr. Copelas. The vote was unanimous with five in favor (5) (Rebecca Curran (Chair), Peter A. Copelas, Mike Duffy, Jim Hacker (alternate) and Paul Viccica (alternate)) and none (0) opposed.**

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Project            A public hearing for a petition requesting a Special Permit seeking relief from *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use to another, less detrimental, nonconforming use to allow a change from a rooming house to a multifamily residential dwelling unit.

Applicant        **HARBORLIGHT COMMUNITY PARTNERS**

Location         **179 BOSTON STREET (Map 16 Lot 52) (B2 Zoning District)**

**\*Board member Peter A. Copelas announces a potential conflict of interest and recuses himself from participation on this agenda item.**

Mr. Andrew Defranza, Executive Director of Harborlight Community Partners presents the petition. At the Zoning Board meeting on September 16, 2015, there were two sets of questions including the need for additional clarification on the operations and management of the building in consideration of the abutters Mr. and Ms. Mertch. The Board requested additional information regarding the possibility of a reduction in the total number of units.

There are currently seventeen (17) rooms originally proposed to be converted into sixteen (16) studio apartment style residential units. The petitioner is now proposing to reduce the density further to fourteen (14) studio apartments with a limited square footage to only allow one (1) resident per unit. All units will be less than 249 square feet or less and there will be no bedrooms of 100 square feet or more. Only one (1) person per unit limit could be enforceable through the lease between Harborlight Community Partners and residents or through the health code. There will only be fourteen (14) studio apartments with a maximum capacity of fourteen (14) people compared to the current conditions of seventeen (17) rooms with capacity for many more people. Both the square footage per apartment has been decreased and the maximum number of people has also decreased.

Mr. Defranza- states that in his discussion with abutters Mr. and Ms. Mertch, they asked for a limitation that prohibited the property from being converted into other things in the long-term use. No problem if there is a way to do this.

Ms. Curran asks the petitioner whether there is an issue regarding proposed outdoor space and whether the petitioner plans to eliminate the outdoor space/patio.

Mr. Defranza- states that the proposed outdoor space is not eliminated, but did speak extensively with the neighbors about the location of the space and how to relocate the space. From this discuss, Mr. Defranza proposes to eliminate the existing turn-around and locate the outdoor space in the rear right side of the property. Historically, on this property, there was not a turn-around for traffic circulation on site and the rear right side of the property was used as an outdoor space. In the process of finalizing plans, Mr. Defranza would be happy to work with the neighbors on where and how.

Mr. Curran- States that the petitioner is requesting a special permit for one non-conforming use to another non-conforming use. The standard criteria are that the petitioner has to show that the proposed nonconforming use is less detrimental to the public than the existing nonconforming use. The current and proposed uses are both nonconforming uses and any future change of use from a nonconforming use to another nonconforming use would have to come back before the Zoning Board of Appeal. It is not necessary to have a special condition with this requirement because it is redundant.

Ms. Curran asks the Board for questions or comments.

No Board comments or questions.

Ms. Curran opens public comment.

Mr. Kirt Mertch, 177 Boston Street- speaks in support of the petition.

**Motion and Vote: Mr. Duffy makes a motion to approve a petition requesting a Special Permit seeking relief from *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to change from one nonconforming use to another, less detrimental, nonconforming use to allow a change from a rooming house to a multifamily residential dwelling unit, subject to (8) standard conditions and one (1) special condition that the special permit be limited to Harborlight Community Partners and a change of owner or operator of this use would be required to return to the Zoning Board of Appeals. The motion was seconded by James Tsitsinos. The vote was unanimous with five (5) (Rebecca Curran (Chair), James Tsitsinos, Mike Duffy, Jim Hacker (alternate), (Paul Viccica (alternate)).**

Project	A public hearing for a petition seeking a Variance requesting relief from Sec. 4.1.1 Table of Dimensional Requirements of the Salem Zoning Ordinance from minimum side yard setback to allow the construction of a 6' x 10' one-story addition.
Applicant	<b>GARY and ANN LAVOIE</b>
Location	<b>33 NURSERY STREET (Map 27 Lot 183) (R2 Zoning District)</b>

The petitioners, Gary and Ann Lavoie, present the petition.

Mr. Lavoie – states the request for a Variance requesting relief from the side-yard setback requirements to allow the construction of a 6' x 10' addition.

Ms. Curran- states that there is currently a deck on the side of the house that is located within three (3) feet of the property line and asks the petitioner to clarify the location of the proposed addition.

Mr. Lavoie- states that the proposed addition will be on the deck and will not extend past the existing deck.

Ms. Curran- is this an entryway?

Mr. Lavoie- It is kind of like a breezeway.

Ms. Curran- clarifies with the petitioner that the proposed addition will be located on the currently existing side deck structure.

Mr. Lavoie- yes. The structure was built over twenty years ago.

Ms. Curran- opens comment from the public.

No members of the public spoke in favor or against the petition.  
No Board comments.

Ms. Curran- states that the special conditions and circumstances that generally affect the land, building or structure generally not affecting other lands, buildings or structures in the same district and literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant and desirable relief may be granted without substantial detriment to the public good and without nullifying or substantially derogating from the intent of the district or the purpose of the ordinance. In this case, there is an existing building located in the side-yard setback and there is a deck and the new structure would be on top of the existing structure.

Mr. St. Pierre- Mr. Lavoie has done a lot of work to the home, has maintained it well and has been a good long-term neighbor.

**Motion and Vote: Mr. Copelas makes a motion to approve a petition seeking a Variance requesting relief from Sec. 4.1.1 Table of Dimensional Requirements of the Salem Zoning Ordinance from minimum side yard setback to allow the construction of a 6' x 10' one-story addition. The motion was seconded by Mr. Viccica. The vote was unanimous with five (5) (Rebecca Curran (Chair), Peter A. Copelas, James Tsitsinos, Mike Duffy, Jim Hacker (alternate)).**

Project A public hearing for a petition seeking an appeal of the Decision of the Building Inspector to allow a 10' wide curb cut.

Applicant **CHRISTOPHER INGERSOLL**

Location **76 ENDICOTT STREET (Map 25 Lot 453)(R2 Zoning District)**

**\*Board member Paul Viccica announces a potential conflict of interest and recuses himself from participation on this item.**

Chris Ingersoll, petitioner presents the application. The petitioner is requesting an Appeal of the Decision of the Building Inspector to allow a 10' wide curb cut to allow a driveway on this side of the building. Mr. Ingersoll states that his interpretation of the Zoning Ordinance is that a 10' wide curb cut is allowed by right. There are two-residential units at this property and there is an existing 14' wide curb cut to allow a driveway for one of the condo residence. Mr. Ingersoll presents other examples in the neighborhood where there are curb cuts that are larger than twenty (20) feet. Mr. Ingersoll states that a City tree will need to be removed and a portion of a sidewalk and granite curbing will also need to be removed for the proposed curb cut. Mr. Ingersoll states that two additional trees will be added in another location in exchange for the removal of a tree.

Ms. Curran-States that this petition is for an Appeal of the Decision of the Building Inspector to not allow the 10' wide curb cut. Is there a letter of a decision of the building inspector?

Mr. Tom St. Pierre-The building inspector denied an application with the proposed curb cut.

Ms. Curran- Asks Mr. Tom St. Pierre to clarify what criteria were used to make this determination.

Mr. St. Pierre- States that the criteria use are outlined in Section 5.1.5 Section 6 (c) –The widths of the entrance and exit drives shall be: c. Maximum of twenty (20) feet at the street lot line in residence districts and thirty (30) feet in business and industrial districts. This has always been interpreted as twenty (20) feet per residential property.

Mr. Ingersoll – states that the Ordinance reads “the widths of the entrance and exit drives shall be...” the Ordinance does say that the maximum of twenty (20) linear feet is per property.

Ms. Curran- clarifies with the Building Inspector that the Ordinance has been interpreted as twenty (20) feet per residential property.

Ms. Curran- asks the petitioner to clarify the width of the driveway.

Mr. Ingersoll- states that the proposed driveway is ten (10) feet.

Mr. St. Pierre – states that there is currently an existing fourteen (14') foot driveway and proposed additional ten (10') foot driveway would exceed the maximum allowable linear feet.

Ms. Curran- Asks the petitioner to clarify that the structure is not a two-family, but individual condominiums, therefore the petition has no control over the existing driveway.

Mr. Ingersoll- states that the deed of the condominium restricts use of the existing driveway.

Ms. Curran- the granted authority to allow the 1' wide driveway would be the Zoning Board of Appeals.

Mr. St. Pierre- What curb cut size is allowed is a zoning requirement and in the City there is a process to apply for a curb cut through the Engineering Department and then to the Building Inspector/Zoning Enforcement Officer for review. In the opinion of the Zoning Enforcement Officer, the correct course of action for the petitioner would have been to apply to the Zoning Board of Appeals for a dimensional variance for the curb cut rather than Appeal the Decision of the Building Inspector, but this was the petitioner's choice.

Ms. Curran- States understand to the application that the Building Inspector interprets the Ordinance differently from the petitioner, but there is a process for the petitioner to take to apply for a dimensional Variance for this request. The Board will consider whether or not the Board agrees with Building Inspector's interpretation of the Zoning Ordinance.

Mr. Ingersoll- States that he is not asking for a Variance because the petitioner feels strong difference of opinion on the interpretation of the Zoning Ordinance. Mr. Ingersoll asks the Board to consider that the condominium is an individual residence with the right to construct a 10' wide driveway.

Ms. Curran- Asks the petitioner whether the property is one lot.

Mr. Ingersoll- states that this is one lot. If you look at Orne Square, there are many single lots with curb cuts over twenty (20) linear feet.

Mr. St Pierre- Orne Square dates back 60-70 years ago.

Ms. Curran- states that the curb cuts at Orne Square could have predated the current zoning Ordinance.

Ms. Curran- opens Board discussion

Opens discussion for Board comment.

Mr. Hacker- It is pretty clear that the Building Inspector interpreted the Ordinance correctly. Twenty (20) feet is twenty (20) feet.

Mr. Copelas- Comment directed to Mr. St. Pierre. In the petitioner's Zoning Board of Appeals petition, what seems like a relatively new construction down at the end of Endicott Street behind the pizza place has a curb cut that seems to exceed the twenty (20) foot curb cut limit. What happened at that property to allow that curb cut?

Mr. St. Pierre- We would have to take a look at that development. That development was over ten (10) years ago and would have to look to see if the owner sought relief or if there were existing curb cuts. There have been petitions heard before the Zoning Board of Appeals for curb cuts.

Ms. Curran- States that the petitioner proposes an attractive driveway, but would like to uphold the Building Inspector's decision. Waiving the Building Inspector's decision may have unintentional consequences and the Ordinance has consistently been interpreted this way. People have come before the Board to request a dimensional variance for curb cuts before and this option is available to the petitioner.

Mr. Copelas- to Mr. St. Pierre, is it your interpretation that if the other curb cut is 10' then Mr. Ingersoll could also have a 10' curb cut?

Mr. St. Pierre- Yes. Mr. Ingersoll and Mr. St. Pierre had discussion about this possible alternative.

Mr. Copelas- It is not at the discretion of the Board to suggest alternatives to a petition.

Mr. Ingersoll- states that the other condominium driveway on the parcel is not his property.

Ms. Curran opens public comment.

Maggie Brobeck-76 Endicott, Unit 1- speaks in support of the proposal for a 10' curb cut.

Ms. Curran- reads a letter in opposition to the petition from 74 Endicott Street.

Ms. Curran- states that the Board is listening to an Appeal of the Building Inspectors interpretation of the Zoning Ordinance and is not requesting the ten (10') foot curb cut. However, the petitioner may come before the Board for a variance to allow the curb cut. To the petitioner, the process to request a variance is the same process as the request to Appeal the Building Inspector's Decision.

Mr. Ingersoll- respectfully states that it is costly to reapply and the language of the Zoning Ordinance should be changed to clarify that the maximum curb cut is twenty (20) linear feet of the property.

Ms. Curran- If Mr. Ingersoll applied to the Zoning Board of Appeals for a Variance as opposed to Appealing the Decision of the Building Inspector, there would be a different conversation. As far as upholding the Building Commissioner's Decision, his interpretation is correct and not upholding this decision could be a problem later in other circumstances.

Ms. Curran opens Board discussion again.

Mr. Duffy- The language does not speak to the number of driveways- it speaks to total maximum linear feet. Could it be clearer? Perhaps, but the Board cannot revise the Ordinance and the interpretation of the existing provision. It is the job of City Council to take up this issue to clarify the Zoning Ordinance if needed.

Mr. Hacker- Can the petitioner come back to the Board should the request for an Appeal of the Building Commissioner be denied?

Ms. Curran- yes, the petitioner does not have to wait 2 -years to come before the Board because the petition is an appeal of the Building Commissioner's Decision, not an application. The petitioner can also withdraw the petition for the appeal.

The petitioner declines to withdraw the appeal.

**Motion and Vote: Mr. Duffy makes a motion to approve a petition seeking an appeal of the Decision of the Building Inspector to allow a 10' wide curb cut. The motion was seconded by Mr. Tsitsinos. The vote was unanimous with none (0) in favor and five (5) opposed (Rebecca Curran (Chair), Peter A. Copelas, James Tsitsinos, Mike Duffy, Jim Hacker (alternate)). The Decision of the Building Inspector is upheld.**

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Project           A public hearing for a petition requesting a Special Permit per *Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance to change an existing nonconforming use of a multifamily residential units to another nonconforming use of mixed use commercial office/retail. The petitioner is also requesting Variances for relief from *Sec. 4.1.1 Table of Dimensional Requirements* to exceed the maximum height, front yard setbacks and relief from *Sec. 5.0 Table of Parking Requirements* and *5.1.5 Parking Design*.

Applicant       **ROBERT BURR**

Location       **331-335 LAFAYETTE ST and 5-7 WEST AVE (Map 32 Lots 231, 232, 233)(B1, R1, R2)**

Attorney Grover, presents the petition on behalf of developer Robert Burr. The property is a prominent corner at the intersection of West Avenue and Lafayette. There are three separate parcels each under purchase and sales agreement. On 331-335 Lafayette Street, the property currently houses a Chinese restaurant, convenience store, sandwich shop, Fran and Dianne's Pizza, nail salon and residential units above. At the property 5-7 West Ave. are residential units.

Attorney Grover presents photographs of the existing conditions of the buildings. The buildings are in a very serious state of disrepair. The redevelopment plan is to demolish all buildings on the site and construct a new building, three-story building, with 1<sup>st</sup> floor retail and second story commercial use. The first floor of the building is proposed to be 7,000 square feet of retail space and approximately 33,000 square feet of commercial office space on the second (2<sup>nd</sup>) and third (3<sup>rd</sup>) floors.

A significant portion of the proposed parking spaces are located underneath the building and around the corner on West Avenue. The building façade is extended to screen the parking from being seen from the public way off of West Avenue. Traffic is one-way on the site. Traffic enters into the site from Lafayette Street and out on West Avenue.

The zoning on the site is unusual in that the site has three (3) zoning districts and a portion of the property is also located within an Entrance Corridor Overlay District. Portions of the property are located in a B-1, R-1 and R-2 zoning district. The proposed use of retail and commercial office space are allowable uses by right in the B-1 Zoning District, which is the zoning for the primary portion of the site except a small portion of building and the parking is in the R-1 zoning district, which requires a special permit from one nonconforming use of a multi-family residential in an R-1 zoning district to another nonconforming use of an office in the R-1 zoning district.

The second and main area of relief requested relates to the parking. There are 55 parking spaces which is far less than what the zoning requires. The zoning ordinance parking is based on the estimated number employees which is difficult to determine before knowing who the office space user will be. The petitioner is also requesting relief from parking stall size as a few of the parking spaces are compact spaces.

It is anticipated that the users and traffic to the site will be walking from Salem State or from the neighborhood. From the neighborhood meetings conducted by the petitioner, the neighborhood spoke about using the retail business frequently. With this information, the petitioner expects that people who may frequent a retail space on this site will likely be walking to this location and that the fifty-five (55) parking spaces would be mostly used by the office employees during the weekday.



Attorney Grover states that other variances are dimensional and minor in nature. The requested dimensional variances include front yard setback. Because this property is located on a corner lot, both West Ave and Lafayette Street are considered the front of the property and require a fifteen (15') foot setback. Currently, the buildings are located on the zero (0') foot lot line. This proposed project decreases the dimensional non-conformity by pulling the building back from the lot lines for the integration of a greenspace/seating area and the possible integration of public art.

The petitioner is also requesting a variance for relief from the height requirements. The proposed building at its highest point is thirty-nine (39') feet high. The Zoning requirement for height in a B1 zoning district is thirty (30') feet; R1- thirty-five (35') and R2- thirty-five (35') feet. It is interesting to point out that the height requirement in a B1 Zoning District is less than a residential zone. Currently, the white residential portion of the existing building exceeds the height of the proposed building.

Attorney Grover- states that the grounds for a special permit are that the project is less detrimental than what is there now. The existing conditions of the buildings are in bad shape and it is not unreasonable to suggest that the new proposed building is better than the existing structures. The team traffic consultant found that the number of trips generated by this development is minimal during the week and even less on the weekends because the office space would not be occupied on the weekend. The petitioner feels strongly that the criteria for a special permit have been met.

Attorney Grover- states that that special conditions and circumstances that especially affect the land, building, or structure involved, generally not affecting other lands, buildings, and structures in the same district is that the property is zoned B1 surrounded by residentially zoned areas. The project also spans across three different zoning districts, which makes this property unique.

As for the hardship for the parking variance, if the parking requirements of the zoning ordinance were literally enforced, the retail component would absorb all of the parking that is available on the site. If the parking requirements were enforced, it would result in almost all parking and no building. In the B1 Zoning District, this property could also be developed by right into 35-40 residential units, comply with parking requirements and not need the variances requested. In neighborhood meetings, neighbors did not want residential dwelling units. Avoiding the development of multi-family residential units, at the request of the neighborhood, presents a hardship to the petitioner because the commercial and retail uses require more parking.

Bob Burr, Commercial Real Estate Development, Developer- Mr. Burr speaks about his specialty in redevelopment and briefly speaks about the successful redevelopment of the Sylvania lightbulb manufacturing facility in Danvers in a residential zoning district and redevelopment. The property for the proposed development on Lafayette Street and West Avenue was actively on the market. As a redeveloper, Mr. Burr looked at the condition of the buildings, location, and determination of the highest and best use of the property in today's market place. The buildings have reached the end of their useful lives, well located, economic potential benefit to the community, of a size to do something meaningful. Mr. Burr then creates an economic proforma of the property and hires a project team including an architect, civil engineer, traffic engineer and other consultants to put together a schematic plan for the property. Then the schematic plan was presented to the neighborhood and direct abutters for feedback. There was a South Salem Neighborhood Association meeting to present an initial design. The initial design of the three-story office building was not well received and Mr. Burr immediately engaged Peter Pitmann, to redesign based on specific comments from approximately 80-90 residents who came to the neighborhood meeting. Mr. Burr, then reconvened with the neighborhood association with a modified design more in keeping with the neighborhood. Comments on the initial design included requests for the proposed building to look more residential, a reduction in building mass, use of building materials that were more in keeping

with the abutting residential property. Mr. Burr states that the proposal is commercially attractive and in keeping with the residential aesthetics of the neighborhood. A third neighborhood meeting was conducted and 185 households within 0.1 miles of the site were invited to attend and there were about 25 people who attended with additional feedback on architectural design, which was incorporated into the design before the ZBA. In summary, the goal is to redevelop the site in a positive way to redeploy obsolete real estate. The building is in need of demolition and re-building to turn an old eyesore into an attractive and functional economic benefit to the community.

Peter Pitman- Presented architectural renderings and talked about changes made to the architecture in response to comments from the neighborhood meetings. In particular, neighbors wanted to see the material on the West Avenue side softened and materials were changed from brick to clapboard siding. Neighbors were also concerned about screening mechanical equipment and sound mitigation for HVAC, which resulted in slightly higher building. Neighbors were also concerned that the massing of the building was too large. In response, plans show a roof with gables that are stepped back. A portion of the building on West Avenue is screening for the parking lot. The building façade on Lafayette Street is stepped back to create an outdoor seating area and greenspace.

The project team concludes the presentation.

Ms. Curran- How many square feet are all the existing buildings including West Avenue and the residential units on Lafayette Street?

Mr. Burr- The total current aggregate is approximately 20,000 square feet.

Ms. Curran- How many residential units are there on the properties?

Mr. Burr- 335 Lafayette Street has no residential units, 331 Lafayette Street has four (4) residential units and 5-7 West Ave have six (6) six residential units.

Ms. Curran- What is the current retail square footage? How many parking spaces on 331-335 Lafayette and 5-7 West Ave?

Mr. Burr- Current square footage of only retail is unknown. There are thirty (30) parking spaces and a small driveway at 331-335 Lafayette Street and 5-7 West Ave has a small driveway.

Ms. Curran- There are a couple issues. The petitioner is requesting a special permit to go from one nonconforming use to another nonconforming use. How is doubling the square footage of the space less detrimental to the neighborhood? Please explain how this project is less detrimental than the existing use.

Attorney Grover- part of why the proposed project is less detrimental relates to the current condition of the properties and buildings. The buildings are well beyond their useful life and an eyesore on a very prominent corner and entrance to the City. The new development will vastly improve the site. The project is also eliminating ten (10) residential units, which is positive for the neighborhood and will be replaced with more appropriate uses for a commercial corner. The parking is also being increased by about 25 parking spaces compared to the existing parking. Additionally, the proposed office space will be empty on the weekend and will have less impact on the neighborhood than the current residential use. There are a lot of areas where this project is less detrimental to the neighborhood than the existing use.

Ms. Curran- Confirms with the petitioner that retail users are anticipated to walk to the site or use alternative modes of transportation rather than the users of the office space.

Attorney Grover- Yes. If the petitioner is able to lease the building to Salem State, it may be likely that the customers and office employees could walk or use other modes of transportation to the site.

Ms. Curran- The argument for a hardship that the project also spans across three different zoning districts is a created hardship. Regarding parking, Ms. Curran is interested in hearing back from the traffic consultant, this area has a lot of pedestrians, parking issues and general traffic and the lights at the intersection of West Ave and Lafayette Street are not great. It is not the best location to increase traffic. The proposed building is almost doubling the retail square footage compared to the current development and the parking demand for the proposed office space is unknown. Ms. Curran agrees with the rationale to support that the project is less detrimental than the existing use. However, there is no hardship for the Variances. A hardship is a standard that the applicant needs to meet for a variance request. Expresses concerns regarding the total square footage added. If it is uneconomic to have a smaller building then the price was too high and the neighborhood should not have to pay the price to make this project economically feasible for someone. The additional building height to hide the HVAC system is okay, but the height variance may not be needed if the building has less square footage. Ms. Curran opens further discussion for Board comments.

Attorney Grover- states he would like to address the hardship for variances requested, but would like to hear from the Board and public.

Mr. Viccica- Will this project go to the Planning Board?

Attorney Grover- Yes, this project is subject to site plan review by the Planning Board.

Mr. Viccica- Will the Planning Board make requests for revisions?

Attorney Grover- Yes, the Planning Board may make requests for revisions related to lighting, landscaping, traffic flow within the site, utilities, or other items related to site plan review.

Mr. Viccica- What about the Design Review Board?

Attorney Grover- The project is not subject to the Design Review Board. However, if you have seen the Planning Board lately, the Board is taking an aggressive approach to design review and involved in architectural design, even when a project is subject to design review.

Mr. Viccica- Is there potential for the Planning Board to make a recommendation on the building configuration on the site?

Attorney Grover- Recommending an alternative location of a building on a site is not a typical recommendation of the Planning Board. The Planning Board typically comments on the appearance of the building, but not the configuration and the footprint, which would change the zoning relief that the petitioner is requesting.

Mr. Viccica- Well, there may be some questions with the building configuration as it relates to the site in particular the aesthetics and location of the seating area on Lafayette Street.

Attorney Grover- if the petitioner really did need to make a change in regard to the building as it relates to the site and it affected setback requirements, the petitioner would need to come back to the Zoning Board of Appeals for an amendment to a decision.

Mr. Viccica- Are the proposed fifty-five (55) parking spaces what remains of the site? Is this all that fits on the site and parking is maximized for the remaining space?

Attorney Grover- Yes. Right now the site is entirely paved and there are thirty (30) parking spaces. The petitioner pulled the building back from the lot line on West Avenue to create a landscaped space between the building façade and the sidewalk and between the residential neighbors and parking lot. However, these landscaped areas did not cause the site to lose any parking.

Mr. Viccica- What is the current and proposed impervious surface?

The proposed pervious (greenspace) surface is 15% whereas the current development does not have any. Even if there is parking on the entire site there will not be any room for a building on the site. The petitioner tried to maximize parking space on the site, by creating parking underneath the building.

Ms. Curran opens public comment.

Josh Turiel- Ward 5 City Councillor- Not entirely opposed to a project going into this space in general and acknowledges the architectural work that was done in response to the neighborhood concerns. Councillor Turiel also expresses concern about the building size, aesthetics to blend into the neighborhood, traffic through the Lafayette and West Avenue intersection, and adequate parking on the site. It is a benefit to build a better building that has the highest and best use for the property as it fits with the neighborhood.

Gregory Zawislak, 13 West Ave- In agreement with Councillor Turiel and restates concerns about the building size and massing in relation to the neighborhood, parking, and not enough greenspace between the parking lot and neighborhood to soften the transition.

TC Goggin, 9 Wisteria Street- Strongly opposes the petition with particular concern about the possibility that the building may be leased by Salem State University and impacts of the University on the neighborhood.

Polly Wilburt- 7 Cedar Street- Strongly opposes the petition with concern about the possibility that the building may be leased by Salem State University and impacts of the University on the residential neighborhood. Other concerns include the displacement of neighborhood businesses that are well used on the weekends, building size and massing in relation to the neighborhood, parking, and traffic.

Rich Osterberg, 17 West Avenue- Spoke in strong support of the project and architecture of the building. Mr. Osterberg states that the parking and traffic presently is not related to the current petition and concerns regarding building height are minimal as the petitioner is requesting four (4) extra feet in height. The neighborhood needs to be rehabilitated.

Mary Weissenberger, 53 Summit Ave. – opposes the project over concerns about the building size and asks for the developer to keep and fix the existing buildings due to concerns over the possible historic value of the existing buildings.

Margerum Edward, 17 Plymouth Street- Strongly opposes the project over concerns regarding traffic at the intersection of Lafayette, Loring and West Ave; the size and massing of the proposed building and impacts of construction on the neighborhood.

Steve Kapantais, 23 Wisteria Street- Complements the development team in being open and responsive to the residents of South Salem. Mr. Kapantais speaks in opposition to the proposal with concerns regarding on-site parking availability.

Carson Beote, 20 Clifton Ave. – Speaks in opposition to the proposal over concerns about on-site parking and wanting to keep the existing buildings. Mr. Beote asks the building inspector whether the buildings have been inspected by the City and if there are any issues with unsafe or deteriorating structures to back up the claims of the developer that the buildings are in disrepair and cannot be saved.

Mr. St. Pierre- Yes, there were a few issues particularly with the residential structure on the corner with the apartments blocking egresses.

Mr. Beote- Are there mostly college students who live in that residence?

Mr. St. Pierre- Don't know the answer to that. The problems were regarding building code and additional occupancy in the basement.

Francis Riggieri, 450 Lafayette St. – Strongly opposes the project and presents a petition to the Board with one hundred and thirteen (113) signatures. Mr. Riggieri states concern regarding the current level of traffic particularly in the intersection of Lafayette, West Ave and Loring Ave and on alternative routes through the neighborhood. Mr. Riggieri states that the City should go after the landlords to fix the currently existing buildings.

Lianne Cappuccio, 347 Lafayette- Expresses opposition to the project over concerns about traffic and noise from emergency vehicles from Marblehead to Salem.

Sarah Taistra, 12 Clifton Ave- States opposition to the petition with concerns regarding the back of the building architecture, traffic, noise, building magnitude and supports the preservation of the existing buildings and retail businesses. It is not the college students who use these stores, they are residents.

The project team presents the architectural renderings and the four (4) elevations.

Councillor Legault- Some of the issues that have been brought up from the public are issues that are City issues and Salem State University issues, not Mr. Burr's concerns. The main issue is one of the hardship. Mr. Burr has worked hard with the neighbors, but not sure that the hardship criteria are met.

Mr. Riggieri- Ask the Board Chair to speak to the hardship. What is the hardship?

Ms. Curran- The applicant is seeking both a special permit and a variance. When you have a Variance request there are particular thresholds that you have to meet with Chapter 40A. The criteria that the applicant must meet include: 1) Special conditions or circumstances that especially affect the land, building, or structure involved, generally not affecting other lands, buildings, and structures in the same district; b) Literal enforcement of the provisions of the Ordinance would involve substantial hardship to the applicant; c) Desirable relief may be granted without substantial detriment to the public good, and without nullifying or substantially derogating from the intent of the district or the purpose of the ordinance. One example that is easy to understand is say that you want to build a house into a hillside and you could only build a house that was thirty (30) feet tall, but in order to build the house you had to build a taller house because of the slope. This would be an example of a hardship owing to the topography.

Mr. Riggieri- What is the public good?

Ms. Curran- Well, this is the easiest criteria to meet, this could be clearing up a blighted building or cleaning up a contaminated site to increase the value of a property and tax value as a public benefit.

Aviva Musk, 13 West Circle – Asks a clarifying question through the chair to confirm that the criteria for this special permit is whether the proposal is less detrimental to the public good than the current use, which is completely separate from the consideration for a variance.

Ms. Curran- States in this case, the special permit requested is for a change in one nonconforming use to another nonconforming use provided that the proposed use is less detrimental.

Aviva Musk, 13 West Circle- They have optimized the site for the highest and best use for Salem State and not the highest and best use for the neighborhood. States opposition to the project.

Mr. Riggieri - What weight do petitions hold? What kind of consideration does the Board give to the concerns of the residents and neighborhood?

Ms. Curran- The Board is looking at specific criteria and it's always good to have comments with information from the neighbors. Sometimes comments are not relevant to the purview of the ZBA, but many comments are relevant to the Board for consideration. It is definitely not a popularity contest to see who has more or less signatures on a petition. The Board considers the content of the comments in relation to the criteria that need to be met.

Rich Osterberg, 17 West Ave- Strongly supports the project and states that the project may be helpful to fix the property and kickstart redoing the intersection. If this project does not happen, the traffic will stay the same.

Brian Forbes, 4 Wisteria Street- Brian Forbes Building is nonconforming in the first place? Why were the ordinances written in the first place?

Ms. Curran- When there is a grandfathered nonconforming, it was built before the zoning was in place. There is a provision in the current ordinance and in M.G.L Chapter 40A that allows a petitioner to request a special permit to go from one non-conforming use to another non-conforming use, if the petitioner can show it is less detrimental. That is how this happens. Earlier there was a Variance given for a side deck because the existing house was dimensionally nonconforming to begin with and built in the existing sideline. When taking down the entire building, begs the question of why not adhere to the requirements of the zoning ordinance. The petitioner has to make the case for why the project does not adhere to the requirements of the zoning ordinance. Sometimes there are different reasons for this including site distance.

Mr. Riggieri - One more question..In order to claim hardship is it necessary to be the owner of the property?

Ms. Curran- No. As long as you are the applicant and have the owners' permission. For example the Board often sees petitions with purchase and sales agreements that are dependent upon a decision from the Zoning Board of Appeals.

Mr.Riggieri- Is there a purchase and sale agreement or permission?

Ms. Schaeffer- There is permission granted from the current owner.

Ms. Curran- The owner signed the application.

Councillor Sargent- States opposition to the project because the proposal is more detrimental to the neighborhood than what is currently existing because of the change of use from residential to commercial office space and retail. Going from residential to commercial or business is different. The definition of a hardship is that would be able to achieve what you would normally be able to achieve with the zoning with exception that there may be a wetland or other unique feature to the property that would not allow for the development of the property. In that case there is a hardship to justify the variance, but not in this case. A developer cannot create a hardship and profit at the expense of the public. A building needs to blend in with the neighborhood, not the other way around.

Peter Viselli, 4 West Circle- Opposed to project due to concerns with traffic and short-cuts through neighborhood.

Brian Forbes, 4 Wisteria Street- Restates opposition to the project.

Steve Dibble- 74 Moffatt Road- States opposition to the project with concerns that the use proposed is not a mom and pop type of use, the building is not in keeping with the neighborhood, and traffic.

Ms. Curran- reads letters into the public record in opposition from the following:

Mary Weissenberger, 53 Summit Avenue; Jeff Rougvie, 422 Lafayette Street; Francis Riggieri, 450 Lafayette Street; William Luster, 420 Lafayette Street; and sixty four (64) additional residences with concerns regarding the change of use, scale of the building, traffic through the intersection on Lafayette, Loring and West Ave. and the possibility of a zoning change.

Mr. Curran reads a letter from Victoria Nadel, 20 West Avenue- Expresses support for the proposed development and states that the slight height variance and the reduction of the number of parking spaces will serve the establishment and the neighborhood well.

Attorney Grover- States that the petitioner is not requesting a change in the B1 zoning. The retail use and office space is allowed by right in the B1 Zoning District. In many ways, this project complies with the underlying zoning. The only reason the petitioner requests a variance for the front yard setbacks is to create a streetscape around the building, although the site could be redesigned to move the building back fifteen (15') feet and comply with the setback requirements. The height requirement in the R1 zoning district is thirty-five feet (35') and proposed height of the building is thirty-nine (39') feet. The motivation for the extra four (4) feet is to mitigate some noise that may be generated from the HVAC system. It is a misperception that this building substantially deviates from the Zoning requirements. The most significant variance is the parking variance. The parking variance is needed because the literal enforcement does not make sense in this neighborhood context. A lot of the traffic for this site will be pedestrian traffic, why have 150+ parking spaces? It is a hardship to the applicant to enforce the parking requirement.

Mr. Burr- The proposed development will diminutively increase trip generations to and from the site. The intersection of Lafayette, Loring and West Avenue has a terrible traffic problem and the intent is not to add a project that will make the traffic worse. Mr. Burr lays out his own options for this property including the possibility of him abandoning the project altogether, go back to the drawing board a redesign a building and use that can be built as of right and not require variances, or to listen to the largest neighborhood concern, which is traffic in this already congested intersection and the general sentiment. If the project is residential or the scale of the building is much smaller, the project would not make economic sense. Mr. Burr offers to make a significant financial contribution

recognizing that Salem State has also set aside \$250,000 in a fund to fix the intersection as a part of traffic mitigation from the new Salem State garage.

Ms. Curran- Takes Board comment.

Mr. Viccica- Asks the applicant whether he will go back to the drawing board to continue to work with the neighbors?

Mr. Burr and Attorney Grover- request a continuation from the Board to the next regularly scheduled meeting on December 18 to continue to speak with the neighbors and continue to refine the project.

Ms. Curran- states that it would be helpful also to hear the comments from the Board.

Mr. Viccica- A traffic study is important part of the discussion and concern being heard and important for the Board to consider with this project.

Heather Monticup, Traffic Engineer- A full traffic study was not required for submission to the Zoning Board of Appeal, but it is required for the Planning Board. At this time a traffic assessment and attended neighborhood meetings. At this no full traffic study and impact assessment has been done at this time. We will need to look at a study area, count the site, and count the area. What has been done is to date is to use the information from the parking garage, background development information, ran trip generation numbers, site distance, number of collisions and other access and safety information. The existing site has not been counted, however, the existing site does generate traffic. The change of use changes the traffic counts. Offices typically have a larger impact during the week whereas retail will have a larger traffic impact on the weekends. Looking at the site, there will be an increase of 15 cars in the am peak hours, an increase of 17 cars in the pm peak hours and a decrease in 164 trips during a Saturday. These numbers show that there will be almost the same amount of traffic generated as the existing site during the week, with a larger decrease in trips on a Saturday. In order to keep the amount of parking on the site, the parking design should be limited to one-way traffic flow on the site. As proposed, traffic will enter the site from Lafayette Street and exit onto West Avenue. This information will all be analyzed in a full traffic study.

Mr. Viccica- Requests a full traffic study could greatly inform the Zoning Board of Appeal decision regarding traffic flow and safety that are criteria for the Special Permit request.

Ms. Curran- The overwhelming comments seem to be concerns about traffic, parking, building massing, and noise.

Mr. Duffy- Is this one parcel or three?

Attorney Grover- This project spans across three (3) parcels.

Ms. Curran- states that these are three parcels. This is why there is trouble with the hardship argument. The petitioner seems to be creating a hardship with the argument that there are three lots with different zoning requirements, which makes this property unique. This uniqueness is created by the petitioner.

Attorney Grover- The West Avenue parcel is partially zoned B-1 and R-1. The front parcel is already zoned partially B-1 and R-2. These circumstances were not created, but already existing conditions.

Ms. Curran- Within half a mile of these parcels, there are also parcels in the same district that have the same zoning characteristics where there are single lots with two or more zoning districts.



Ms. Curran- To the petitioner-Are you going to merge these lots?

Attorney Grover- yes.

Ms. Curran- Are all lots current under separate ownership?

Attorney Grover- yes.

Mr. Duffy- Concerned about hardship for the parking variance. A lack of parking on the site is created by the applicant through the proposed use of an office space. The parking table on the plan shows that Zoning requires 84 parking spaces for just the office business. What suggests that 55 spaces will be sufficient? Assumptions that office space may be attractive to Salem State and the assumption that the retail uses will be more attractive to users who will walk to the site. Is this enough to say that the standard is met for the Variance resting on these assumptions? Mr. Duffy requests a parking or traffic analysis to support these assumptions.

Mr. Viccica- Asks for clarification of Variances requested as there seems to be a need for a Variance request for maximum lot coverage. It looks like almost 50% of the lot will be covered.

Attorney Grover- stated that the petitioner is requesting a Variance for relief from maximum height, front yard setbacks, parking requirements and parking design. The petitioner is not requesting a variance for maximum lot coverage. Lot coverage only includes what is in contact with the ground and is determined by the building footprint.

Ms. Curran- Asks the petitioner what the existing square footage is on the site. If you were not increasing the square footage and kept the parking this project may make sense. Did the petitioner look at reconfiguring the existing square footage and keeping the same amount of parking on site? Is this economically feasible?

Mr. Burr- The current buildings are approximately 20,000 square feet. The project team looked at reconstructing 20,000 square feet and it is not economically feasible.

Ms. Curran- Did the petitioner consider stepping the proposed building back?

Peter Pitman, Architect- Yes, the whole third story would be setback.

Ms. Curran- Did you think about placing the building closer to the lot line? Did this free up lot space for more parking?

Peter Pitman- Yes, we thought about placing the building closer to the lot line, but it created more impervious surface, did not provide additional parking, and created a safety problem in regard to sight lines and traffic. By pulling the building back, cars have a much clearer site line turning from West Avenue onto Lafayette Street.

Ms. Curran- This building is too large and the parking Variance is a large Variance. Hard to believe that 33,000 square feet of office space will only generate a few more cars.

Attorney Grover- states that the applicant is assuming that the retail will not generate a significant need for parking as customers are likely to be from the neighborhood and may walk to the site.

Ms. Curran- states that it depends on what retail is there. The building may not be in great shape currently, but the businesses appear to be thriving. I would expect any retail to do well in this space. Opens comment to further Board discussion.

Mr. Duffy- Not usually what the Board of Appeal hears, but thought it was interesting to hear Mr. Burr offer compensation for traffic mitigation at the intersection of West Ave, Loring and Lafayette Street.

Ms. Curran- What is the status of improvements of this intersection?

Heather Monticup, Traffic Engineer- States that the project team is working with the City Engineering Department to learn more about plans for this intersection. Ms. Monticup has been unable to reach David Knowlton, City Engineer for information. There is an understanding that there is already money and plans for intersection improvements. The petitioner is interested in working with the City to further assist in traffic mitigation.

Councillor Legault- The City Engineer, David Knowlton, presented traffic improvement plans for this intersection at Salem State University. Salem State University is contributing \$250,000 toward traffic mitigation at the intersection.

Ms. Curran- struggling with the hardship. Ms. Curran asks the petitioner whether they would like to request to continue to the next regularly scheduled meeting.

Attorney Grover- The developer could potentially build multi-family residential on this site, but no one wants this type of use at this location. This sentiment presents a hardship to the applicant.

Ms. Curran- This does not meet the definition of a hardship. Even if there is a better project than what exists, the request for a Variance needs to meet the hardship. This is not a special permit. Ms. Curran asks the petitioner whether he would like to continue.

Mr. Burr- If parking spaces were increased would this be more acceptable?

Ms. Curran- It may be acceptable to keep the same square footage and number of parking spaces such that the project would not increase the nonconformity.

Attorney Grover- The hardship threshold may not be met. Even if one additional parking space was provided, there still needs to be a hardship.

Mr. Duffy- The Board is bound by the hardship.

Ms. Curran- Suggests that the petitioner can take a month to think about the hardship and the project as a whole.

Attorney Grover- Makes a request to continue to the next regularly scheduled meeting on November 18, 2015.

**Motion and Vote:** Mr. Duffy makes a motion to approve the petitioner's request to continue to the next regularly scheduled meeting on Wednesday, November 18, 2015.

The motion was seconded by Mr. Tsitsinos. The vote was unanimous with five (5) in favor (Rebecca Curran (Chair), Peter A. Copelas, James Tsitsinos, Mike Duffy, Paul Viccica (alternate) and none (0) opposed.

## **ADJOURNMENT**

Mr. Tsitsinos motioned for adjournment of the October 21, 2015 regular meeting of the Salem Board of Appeals at 9:45 pm.

**Motion and Vote:** Mr. Tsitsinos made a motion to adjourn the October 21, 2015 regular meeting of the Salem Board of Appeals, seconded by Mr. Duffy, and the vote is unanimous with five (5) in favor (Rebecca Curran (Chair), Peter A. Copelas, James Tsitsinos, Mike Duffy, James Hacker (alternate) and none (0) opposed.

*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:*

*[http://salem.com/Pages/SalemMA\\_ZoningAppealsMin/](http://salem.com/Pages/SalemMA_ZoningAppealsMin/)*

Respectfully submitted,  
Erin Schaeffer, Staff Planner