

City of Salem Board of Appeals
Meeting Minutes
Wednesday, January 20, 2016

A meeting of the Salem Board of Appeals (“Salem BOA”) was held on Wednesday, January 20, 2016 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 6:30 pm.

ROLL CALL

Those present were: Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, Paul Viccica (alternate). Also in attendance –Michael Lutrzykowski- Assistant Building Inspector, and Erin Schaeffer, Staff Planner

***The Board hears the petitions out of order. The request for a continuation of 11 Herbert Street is heard first followed by 1-3 East Collins Street is heard first.**

REGULAR AGENDA

Applicant	BLUE WATERS VERO, LLC
Location	11 HERBERT STREET (Map 35 Lot 320)(R2 Zoning District)
Project	A public hearing for all persons interested in the reapplication of BLUE WATERS VERO, LLC, seeking Special Permits from Sec. 3.3.3 Nonconforming Structures and 3.3.5 Nonconforming Single and Two-Family Residential Structures and a Variance per Sec. 5.1 Off- Street Parking Requirements of the Salem Zoning Ordinance to allow the conversion of a single-family dwelling unit to a two-family dwelling unit and associated parking.

George Atkins of 59 Federal St. requests to continue this item to the next regularly scheduled meeting on February 17, 2016. It was the opinion of the City Solicitor that the petitioner will need to be heard before the Planning Board first for a reapplication.

Motion and Vote: Mr. Copelas makes a motion to approve the requested continuation of a public hearing to the next regularly scheduled meeting on February 17, 2016. The motion was seconded by Mr. Viccica. The vote was with four (4) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, and Paul Viccica (alternate) in favor and none (0) opposed.

Project	A continuation of a public hearing for an amended petition requesting a Special Permit per <i>Sec. 3.3.2 Nonconforming Uses</i> of the Salem Zoning Ordinance to change an existing nonconforming use of multifamily residential units to another nonconforming use of mixed use commercial office/retail. The petitioner is also requesting Variances for relief from <i>Sec. 4.1.1 Table of Dimensional Requirements</i> to exceed the maximum height, front yard setbacks and relief from <i>Sec. 5.0 Table of Parking Requirements</i> and <i>5.1.5 Parking Design</i> .
Applicant	ROBERT BURR
Location	331-335 LAFAYETTE ST, 5-7 WEST AVE, 11 WEST AVE (Map 32 Lots 231, 232, 233, 234)(B1, R1, R2)

Documents and Exhibitions

- Application dated September 25, 2015 and supporting documentation

Chair Curran- This is the third public hearing with evidence heard. The original building was about 40,000 square feet and was then reduced and some land was added. The Board requested that the building be further reduced.

Attorney Grover - Introduces Robert Burr, the developer of the project, and members of the project team, including civil engineer Scott Cameron of the Morin- Cameron Group, Inc. and Peter Pittman, architect of Pitman and Wardley Architects.

Attorney Grover presents the changes to the original petition. At the last public hearing, the Board had requested that the applicant consider a reduction in the size of the building, in order to provide a meaningful buffer to the adjacent residences. Attorney Grover presents plans to demonstrate the additional building reduction. Along Lafayette Street, the linear feet of the building has been decreased by 26' and decreased by an additional 8' on the West Street. The building was further reduced, for the third time, from 29,000 square feet to 24,000 square feet. More significantly, the footprint has diminished significantly from 11,000 square feet to about 8,000 square feet.

What this reduction has allowed the petitioner to accomplish are: 1) the mass of the building has been substantially reduced particularly along the Lafayette Street side the length of the building has been reduced by about 26' (twenty-six feet) and along West Avenue the building has been reduced by another eight feet (8 feet); 2) Another major change to the proposal is that the building at 11 West Avenue, formerly slated for demolition, will now be restored and maintained as a two-family residential property, to provide a buffer between the subject property and the abutting residential properties; 3) Due to a further decrease in the building square footage, parking demands have been reduced from 84 to 72 spaces; 4) Additionally, the planting strip along parking area has increased in width from 3.5 feet to 5 feet. Two (2)

previous areas of proposed pavement will now be made available for cutouts for greenspace to expand the buffer between the parking and abutting residential properties; 5) The curb cut is also proposed to be moved closer to the commercial building; 6) The proposed building is now also located exclusively in the commercially zoned parcel, whereas previously plans showed a small portion of the building within the R2 zoning district.

The relief required has not changed. There are two (2) minor dimensional variances for height because the height in the B-1 zoning district is 30 feet, but the proposed building is 39 feet. The reason for the added height is to hide the HVAC system and have a varied architectural design of the façade. The Board, at the last meeting recognized that there were some significant neighborhood benefits to the additional requested height. The second Variance requested is for relief from the requirements of front yard setbacks. The petitioner has pulled the proposed building back along Lafayette Street and West Avenue a little, but not enough to comply with the fifteen foot (15') setback requirements. On West Avenue the building is setback thirteen feet (13') and on Lafayette Street the building is setback twelve (12') feet. The existing buildings have no setbacks and the proposal is improving the nonconformities with this development. The applicant is also requesting relief in the form of a special permit to change from one nonconforming use to another commercial/retail uses and accessory parking. Mr. Grover feels that the grounds for relief are now stronger than before as the changes have addressed the concerns of both the neighborhood and Board.

Mr. Scott Cameron outlines the details of the landscape plans and Mr. Peter Pittman will outline elevations.

Mr. Cameron states that more detail will be provided for the Planning Board, but a landscape architect has not provided a plan. Preserving the existing residential building at 11 West Avenue will provide a significant buffer. There are also two (2) landscaped bump outs in the northeast corner and behind 11 West Avenue approximately 24' x 24' to provide further buffers between the parking lot and abutting residences. Another strip has been increased from 3.5' to 5.5', which will accommodate an evergreen planting hedge, rather than just a screening fence. Deciduous or evergreen plantings will also be in the top right corner. Additional green space in top left is being provided, and the dumpster has been moved to a more centralized location, and will be fenced in.

The curb cut (existing) will remain for the house at 11 West Avenue and the curbcut that serves the commercial/retail building will be sixty-five feet (65') away from the abutting residences.

Mr. Pittman describes the elevations of the building, which have not changed, although the building itself will be smaller. The structure has been proportionally reduced – windows, brick, clapboard and storefront all remain the same on the front. There is no parking underneath the building on West Avenue; it is now storefront. There is no overhang as previously proposed in the rear of the building

Chair Curran- opens up further comments from the Board.

Mr. Copelas- Regarding the parking that was previously proposed underneath the building, has the overhang simply been removed or has the rear wall of the building also been moved closer or further from Lafayette Street?

Mr. Burr- The entire footprint of the building has been compressed. By eliminating some square footage there is no need for parking to be located under the building, because there is enough land to conform to the parking needs.

Mr. Copelas- There was previously a square footage on the second and third floor that was larger than the first floor because there was an overhang. Has the petitioner simply reduced the overhang to achieve the reduction in the overall square footage of the building?

Mr Burr- It's not quite that simple. The building went through a complete redesign.

Mr. Cameron- All floors are roughly the same square footage now, rather than the top two having more square footage than the first.

Chair Curran- confirms that all floors are about 8,000 square feet. Originally, Ms. Curran asked about gross floor area of the existing buildings along Lafayette Street. The existing buildings are about 22,000 square feet and the proposed plan is for a building with 24,000 square feet. The petitioner is requesting a minor increase in square footage on the property. Ms. Curran asks whether the building at 11 West Avenue will be on the same lot rather than creating a new lot.

Attorney Grover- Correct. The proposal is to eventually have one (1) lot. The applicant will be improving parking, creating three (3) spaces for the two (2) units that will be there.

Mr. Burr- 11 West Avenue is in poor shape. He outlines the exterior enhancements that will be made.

Mr. Copelas- Have the buffers changed along West Avenue and Lafayette Street.

Mr. Cameron- Slightly. West Avenue is about the same. There are not as many linear feet along West Avenue because the width of the building is shorter now. The setback on West Avenue was previously 2.1', but will now be four feet (4) at the shortest point.

Mr. Copelas- Was there any progress in conversations with the City regarding an easement or turning lane on West Avenue?

Mr. Burr- Not since the last public meeting, but the City is doing internal work for the redesign of the intersection.

Attorney Grover- reiterates that the project can accommodate either option.

Chair Curran takes public comment.

Philip Moran, attorney, of 415 Lafayette Street- opposes the project, and in his opinion if variances were granted there would be a significant legal challenge.

Mr. Burr - rebuts that much legal advice has been sought, and he is confident that a decision to grant the variance would be stable.

Attorney Grover- states that the petitioner is requesting minor dimensional variances, and the court views dimensional variances them differently than use or even parking variances.

Mary Weissenberger of 53 Summit Ave- Speaks in strong support of the project.

Greg Zawislak- 13 West Avenue- Speaks in support of the project particularly with the decision to keep 11 West Avenue and provide an additional landscape buffer.

Victoria Nadel - 20 West Avenue- speaks in support of the petition and states that the zoning code is not progressive enough for modern times particularly that too much parking is required.

Ms. Curran- Reads a letter from Councillor Turiel, Ward 5. Councillor Turiel is in support of the project. He describes how the changes made are positive and again compliments the applicant on their willingness to work with the City and the neighborhood.

Councillor Arthur Sargent, Councilor at Large- asks about the backyard at 11 West Ave. He asks about the distance to a fence and Mr. Cameron outlines again. It is 5.5' with a 24' buffer in another area, plus an additional 20' on another side. Mr. Sargent makes a comparison to the North St. Shell gas station. In that case, trees meant to serve as a buffer to the resident were removed by a new owner, despite the fact that they were listed on the deed. He suggests that any trees planted as buffer should be listed on the encumbrance page of the deed. That way, they cannot be changed. This Board could revise its decisions in the future but deeds may not be altered. The buffer should remain even though properties may change hands over time.

Attorney Grover - suggests the Zoning Board of Appeals decision will be recorded, so if there is a clear decision that the trees may not be removed, it will show up in the chain of title to the property. Removal of trees would be in violation of the variance, undermining the approval of the entire project.

Councillor Sargent points out that that is how it was with the North Street gas station, and having protections in place is what the neighbors deserve, as they are giving something up.

Erin Schaeffer asks for clarification of which trees are referenced.

Councillor Sargent- refers to the whole buffer zone – no greenery should be removed, no trees cut down. Site planning will show that. The buffer will make the project less detrimental. Site planning will be more specific as to plantings, but generally an evergreen hedge and fencing are desired.

Chair Curran agrees that this should be a condition; the buffer should be there, and removing it is a violation; if the trees die they should be replaced by something similar.

Attorney Grover is amenable; the Planning Board will also specify that so this Board's requirement will be redundant, but he is happy to accommodate it.

Joyce Kenney- 285 Lafayette Street- states that there is a nesting pair of red tailed hawks in the horse chestnut tree near 11 West Avenue. The red tailed hawk is a protected species.

Chair Curran – States that the tree will not be disturbed as the property will remain.

Chair Curran- To meet the requirements of the special permit, the project must be less detrimental, but there the issue of the variance remains. None is now being sought for parking, but height and setback still do not meet the ordinance requirements. She asks the applicant to review the reasoning for the hardship. She sees reasons for height; if required to be limited to 30' this would be a different proposal with the HVAC lower, and it would be more detrimental, so this is a benefit. Setback is more difficult to see, as this plan will open it up. She approves of keeping 11 West Ave as a buffer and a residence, and that they are keeping it so will be landlord.

Mr. Viccica states that he understands need for and agrees with the height variance, so is inclined to grant it. HVAC and floor to floor height requirements necessitate it. He would also like more information about the variance for setbacks. Mr. Grover and Mr. Cameron elaborate as it relates to parking.

Mr. Grover reiterates the conditions that lead to the need for the variance: the shape of the lot and how the parcels were assembled. The irregular lot line on the North side also constricted the layout of parking on the site; high demands for parking under zoning ordinance in combination with the shape of that lot line made it impossible to comply with the ordinance without pushing the building into the setback. It is due to statutory circumstances, i.e., one part of the ordinance makes it difficult to comply with another part of the ordinance. Mr. Cameron elaborates the parking setup now. If the setback requirement would be met, there would be no room for parking, the accessibility ramp, sidewalk and buffer. The irregularity of the lot forces the issue. Accessibility would be compromised if the building were moved. Mr. Grover also states that re statutory circumstances, the fact that this is in an entrance corridor district requires planting beds greater than those in other districts, so that further diminishes the area the building can be in and where the parking can be.

Mr. Sargent asks if the buffer zone includes the residence at 11 West; it does and that property will remain part of the buffer zone. It's part of this lot, not its own separate lot, as

Chair Curran elaborates, so is subject to this approval, and can't be bought and changed to commercial zoning usage.

Attorney Philip Moran submits that there is no hardship re shape of lot and that any hardships are created by Mr. Burr; he still believes it is a legal challenge that will be upheld if the variance is granted. He cites the cases he mentioned at the last meeting.

Chair Curran outlines the requirements for a special permit; an office building could go in as a matter of right but she feels that this setup with retail is beneficial to the neighborhood, and so meets the needs of the community. Traffic safety, parking and loading will be improved. There is no change with regards to the adequacy of utilities. There is no increase in runoff and it will be more controlled, so there is no impact on the natural environment. She feels that this project is in keeping with the neighborhood character. It is a change in the look of the building, but since they are keeping 11 West Ave it helps with the character. There is a potential fiscal impact: this is an improvement. For all those reasons, she is inclined to grant the special permit.

Ms. Curran then outlines again the requirements for a variance. The applicant must show a hardship (see requirements); she does feel that some hardships are self imposed, but having said that, this is a lot within three different zones (or the overlay and two zones, it is not square, and the jog is different. A literal enforcement, she feels, would involve hardship to the applicant; if literally enforced, the project could not be made less detrimental to the neighborhood; height and a bit more setback are good things. The public good is definitely being served, and it does meet the intention of the district.

Mr. Watkins concurs, stating that Mr. Burr listened to and addressed the concerns of this Board re setbacks and buffers. He approves of the proposal and project as submitted, particularly the changes as submitted since last month. He is in favor of the project moving forward and agrees with statement of hardship and grounds for special permit.

Chair Curran reiterates that the buffer must be maintained, and if removed or it dies, must be maintained, and this should be referenced on the plans of record.

Seeking a unanimous vote, which is required with only four Board members present for a quorum, Mr. Grover asks how the others feel. Mr. Copelas states that his concerns have been met. Mr. Viccica comments on the 13' setback, asking for clarification as to why the 15' requirement cannot be met. He thinks it deserves the full setback, as it is on a main thoroughfare, and wonders if citing the crook as a hardship makes a difference. A total of 800 square feet are in question, and Mr. Grover opines that since a setback variance is needed anyway, the difference between 13' and 15' is de minimus. It will still be there no matter what. The building's face is in line with the existing building. It is no closer to West St. Existing structures protrude out further than what is proposed in some areas. Mr. Viccica comments that one building in the area is 6" taller than the height of the proposed, so he is in favor of the project.

All standard conditions are outlined. Street numbering may change; it is now 331 and 335, but petitioner shall obtain street numbering from the assessor's office, etc. The Board is also striking the last requirement.

Special conditions:

- The existing two family structure at 11 West Ave. will remain.
- Fence and buffers as proposed are to be maintained going forward; trees and buffer zones are to be recorded in the chain of title of the property.
- A letter from the ZBA will be submitted to the planning Board outlining these issues
- HVAC units shall be located on the roof of the building, sufficiently away from the perimeter so as not to be seen from street level, and will have visual screening.

Motion and Vote: Mr. Watkins makes a motion to approve the petition requesting a Special Permit per Sec. 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to change an existing nonconforming use of 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. The motion is seconded by Mr. Copelas. The vote was unanimous with all present (4) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, and Paul Viccica (alternate)) in favor and none (0) opposed.

Applicant	MICHAEL MEYER
Location	1-3 EAST COLLINS STREET (Map 36 Lot 277)(R1 Zoning District)
Project	A continuation of a public hearing for all persons interested in the petition of MICHAEL MEYER 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 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 at the property located at 1-3 EAST COLLINS STREET (Map 36 Lot 277)(R1 Zoning District).

Documents and Exhibitions

- Application dated September 25, 2015 and supporting documentation

Chair Curran states that the petitioner came before the Board on November 18, 2015 and talked about some of the reasons for the Variance requests and the Board requested that the petitioner make the proposal fit more with the neighborhood character.

Attorney Scott Grover, presents this petition. Attorney Grover states that the applicant is proceeding tonight with only four (4) Board members present, but would like to reserve whether or not they ask the board to vote tonight vs. waiting for five (5) members in case the vote is not unanimous.

Chair Curran agrees to allow the petitioner to request a continuance for Board consideration.

Attorney Grover- Representing Mr. Michael Meyer, owner of the property. Attorney Grover also introduces architect Dan Ricciarelli of Seger Architects. Attorney Grover reviews the project as it has been a few months since the project has been heard.

Originally, the petition was filed on September 25, 2015 to be heard at the October meeting, but the petitioner requested a continuation because the team still needed to do more work through neighborhood meetings. Before the petitioner filed with the Board, the project team had conducted a series of neighborhood meetings to inform the neighbors about the project. The first plan before the neighbors called for twenty-four (24) units, but with feedback from the neighborhood was subsequently reduced to eighteen (18) units at the time of the filing with the Board of Appeals.

When the applicant appeared before the Board at the November meeting, the petitioner agreed to reduce the number of units to fourteen (14) and provide two (2) parking spaces per unit to address neighborhood concerns about the potential overflow of residents parking in the neighborhood.

Attorney Grover presents current photos of the property. At its last meeting, the Board had asked the petitioner to look at ways to break up the two (2) large buildings to fit in with the scale of neighborhood. The neighbors were also concerned with the size and scale of the proposed buildings. The petitioner proposes to keep fourteen (14) units, but the building along Planters Street will be broken up into three (3) different buildings. The petitioner proposes a three (3) unit building, two (2) unit building, and another three (3) unit building along Planters Street. Instead of “walling off” the neighborhood, as some people have described, the petitioner has now opened up two (2) view corridors between the buildings. The building on East Collins Street show the “ends” of the buildings and the majority of the massing extends along the side lot line.

The petitioner is requesting a special permit to allow the petitioner to change the property use from one nonconforming use of a social club to another nonconforming use of multi-family residential dwelling units in the R1 zoning District. The Variances requested are dimensional variances from the front, side, and rear yard setbacks. The buildings comply

with the 35 feet height limitation, but exceed the 2.5 story limitation. The petitioner is also requesting a variance for minimum lot area per dwelling unit. The petitioner is proposed to have 3,000 square feet per unit where the requirement is 15,000 square feet. The subject property is also less than one (1) acre in size.

At the October meeting, the petitioner presented a density study of the acre surrounding this property and found that the average density in the neighborhood was 22.1 units per acre with an average lot area of 2,613 square feet (0.06 acres).

This board recently approved a project on Planters Street and Bridge Street where the density ratio was significantly less. The lot sizes are approximately 2,600 square feet. The petitioner states that the proposed project, as it is revised, fits with the character of the neighborhood and is entirely consistent with the existing density in that neighborhood.

Mr. Copelas- Asks whether the Board has a copy of the density study as part of the packet.

Attorney Grover- Distributes copies to the Board.

Mr. Ricciarelli of Seger Architects- presents the revised plans. Mr. Ricciarelli states that he redesigned the buildings so that there are now three (3) separate buildings along Planters Street. The volume/massing of Building “B” on East Collins Street also decreased. Characteristics of the neighborhood include houses on small lots that are constructed right at the front yard lot line. There are a lot of homes with **Victorian** architectural features and massing that are incorporated into the proposed design. Mr. Ricciarelli presents a ground plane study showing the fronts of the homes down the street to show the rhythm of the architecture. Many of these streets were completed years ago, and the proposal would be completing Planters Street with the same rhythm of houses and architectural features with gables facing Planters Street and East Collins Street. The location of the buildings is also close to the street.

The petitioner proposes twenty-six (26) parking spaces, which is over the number of parking spaces required by the zoning ordinance. The parking is located underneath the buildings with a single driveway. The original petition proposed two (2) curbcuts and driveways, one (1) for each proposed building as a temporary fixture to provide access to parking for the series of buildings along Planters Street during the Chapter 91 review process for Building “B”. The petitioner proposes to ultimately have one driveway to serve both parking areas.

The site is currently mostly paved, with 36 parking spaces. The petitioner is proposing to will open up the site with view corridors and introducing Low-Impact Development design including rain gardens. The dunes will be preserved the applicant will provide a direct path to the beach and will provide kayak racks and bike racks. There will also be native plantings and a landscape plan that will be further developed with a landscape architect and reviewed by the Planning Board through site plan review. The petitioner is also proposing a decrease in pervious area of 5,700 square feet.

Mr. Ricciarelli presents the elevation plans and states that a challenge is that there is a separate egress for each of the proposed buildings and the buildings will be fully sprinkled.

Materials will be natural claddings, shingles, beach front style, contemporary New England vernacular, with clean, simple, open rails and rafters, in keeping with other houses in the neighborhood. All parking will be screened.

Chair Curran- Along Planters Street, restates the changes made to the plan including breaking up the building into three (3) separate buildings. Looking at the building on East Collins Street, states that a duplex would be more appropriate. There are no multi-family houses in the surrounding neighborhood with six (6) units with this massing like this. Ms. Curran asks the petitioner to consider reducing building "B" to be consistent with the neighborhood. Ms. Curran states that there are many encumbrances on the site including the flood zone, gas easement, coastal dune and wetlands and agrees that there is necessity for relief from side yard setbacks, minimum distances and the height variances.

As for the lot area per dwelling unit... In relation to the new development on Planters Street and Bridge Street, that property was long and narrow and the literal enforcement would have created a six (6) foot wide house without a Variance for minimum lot area per dwelling unit. In this case, the proposed buildings, particularly building "B" could fit better with the neighborhood character.

Attorney Grover- States that what one sees along East Collins Street is the width of the building and not the long massing. The building does not present as a large mass.

Mr. Ricciarelli- Asks for clarification on the design suggestion. Is the suggestion to break up building "B" into two (2) separate buildings?

Ms. Curran- No. Just to have a smaller building right at the frontage without the units in the back. That is something that is new and may be excessive in the request for lot area per dwelling unit.

Mr. Watkins- Agrees with Ms. Curran and states that from East Collins St. the proposed looks like it fits, but on the long side it looks out of character.

Mr. Viccica- What is the reason why Building "B" is contiguous?

Mr. Ricciarelli- There are wetlands on the site that limited the location of this building. To keep the number of units and not increase the height of the building, the design is a long building.

Mr. Viccica- The work done on the elevations along Planters Street fits better with the neighborhood. However, the six (6) unit condo building on East Collins Street is out of character. Mr. Viccica states that losing a unit or two (2) in building "B" so there are gaps in the building would be acceptable. Mr. Viccica states concern about the neighbors having

one large obstruction of contiguous building. There is nothing like this anywhere else in the neighborhood.

Mr. Meyers asks about adding a unit in front and taking one from the back.

Mr. Viccica- suggests removing the middle unit to create two (2) separate buildings and reduce the number of units by one or two (2).

Mr. Copelas- confirms that the petitioner cannot place the building any further back toward the water because there are wetlands.

Attorney Grover- Yes.

Mr. Viccica- Confirms with the petitioner that building "B" may or may not be built depending on Chapter 91 Review.

Attorney Grover- Confirms that the state has Chapter 91 jurisdiction of a large portion of the property and expects to get through a lengthy process to ultimately be able to build. Under Chapter 91 jurisdiction the state tends to be more concerned about public access to the water than with the number of units or design of building.

Mr. Viccica- Is there a current public way that is adjacent to the proposed location show on the plan?

Attorney Grover- Currently there is no public way as it is entirely private property, so access has been proposed along the property line on the right side in anticipation of Ch. 91 licensing. There may be an alternative required or multiple public access points through this property for Chapter 91 licensing.

Mr. Viccica- states that there was some objection from the public about the location of this pathway. Why not let the public access be through the development rather than along the property line that would negatively impact the abutting property?

Attorney Grover- This could be an outcome of the Chapter 91 Licensing process to relocate the public access through the site.

Mr. Viccica- Why not propose that now?

Attorney Grover-states that originally the thinking was that it would provide more privacy to condo owners by placing it at the side of the lot rather than through the site.

Mr. Viccica- But perhaps at the detriment of the next door neighbors. Mr. Viccica states that the petitioner is protecting the privacy of the future residents at the expense of the abutters. If it were only for the use of the condominiums that would be different, but this pathway is inviting the general public.

Attorney Grover- States that the petitioner can remove the public pathway from the plan and apply for Chapter 91 Licensing to see how and where the state may require public access.

Mr. Viccica- This is a great amenity to have public access.

Attorney Grover- It is a requirement for the public to have access to the water through this site.

Mr. Viccica- Hopes that the state will require a pathway through the center of the property and not along the property line that may be a detriment to the abutters.

Ms. Curran- Asks whether Mr. Viccica's suggestion is to have public access along the gas easement.

Mr. Viccica- It could, but was thinking that it could be located between the two sets of buildings through the center of the property. The open space on the property is a great amenity to the future residents and should be a great amenity to the neighborhood. This does not have anything to do with the hardship requirement as this proposal for public access would not be moving the buildings. A lot of the revised plan is already less detrimental to the neighborhood.

Chair Curran opens to the public.

Ms. Mary Knight of 5 East Collins Street- submitted a letter and reads it into the record in opposition to the revised proposal and requests single family homes.

Mr. Glenn and Kara Maynard of 51 Osgood Street- speak in opposition to the petition and is concerned that people will trespass on his private property to try to access the beach.

Attorney Grover- states that the public would not have access to private property and restates that the Chapter 91 license will ensure public access to the water through Mr. Meyer's property only.

Mr. Viccica- If the applicant is going to be required to provide public access, it needs to be done in a way that impinge upon the neighbors. When the applicant gets to the Chapter 91 process, the applicant needs to propose a public pathway that can actually work.

Attorney Grover – This is a concern of the neighbors and the Board. Attorney Grover states that the petitioner can remove the proposed pathway.

Mr. Viccica-If it is a requirement to have a pathway to provide public access and may be through the site, why not show a design for this.

Attorney Grover- That is a great suggestion that has evolved through this process of being reviewed by the Board.

Ms. Copelas- By providing access down the middle of 1-3 East Collins Street still does not solve the problem that it would encourage people to access private coastal property owned by the power company.

Kara Maynard of 51 Osgood Street- How is the petitioner going to keep people off of the privately owned portion of the beach? This is not public beach property.

Jay Canti of Collins Cove- states that people can walk on any part of the beach and not be on anyone's property.

Attorney Grover- clarifies that there is public access along the tidelands between low and high tide and this area is considered public property.

Mr. Scott Truhart – 4 East Collins Street- Spoke highly of the Planters Street and Bridge Street development, but strongly opposes the proposed project at 1-3 East Collins Street. In particular Mr. Truhart opposes the density of the project, elevated design of the homes, and potential loss of public parking along East Collins Street.

Mr. Adam Craig - 29 Planter Street- reads a letter in opposition to the project.

Eric Shanabrook- 10 East Collins Street – speaks in opposition to the project.

Tim Connell, 6 East Collins Street – Speaks in opposition to the project.

Tim Surles, 27 Planters Street- Speaks in opposition to the project.

Linda McIlvene, 7 East Collins- Speaks in opposition to the project and has also submitted a letter.

Patricia Parady, 23 Planter Street – Speaks in opposition to the project.

Flora Tonthat- 30 Northey Street- Speaks in opposition to the project due to concerns about the aesthetic of the parking and concern about building in the flood zone.

Ms. Curran- What is the base flood elevation? Is this why the buildings are designed with parking underneath?

Attorney Grover- Yes, and to eliminate a lot of the existing impervious area because the development is in such a sensitive area.

Ms. Curran- Is there a stormwater management plan?

Attorney Grover- There is not a stormwater management plan designed yet, but the petitioner will have one should the project be heard before the Planning Board.

Mr. Meyer- There is a partial drain that exists, that Ward 2 incorrectly installed and it does not work.

Attorney Grover- Confident that drainage and flooding will be improved compared to what is there now with the redevelopment of the site.

Chair Curran- states that the large building is out of character and a smaller building located at the frontage would be more appropriate similar to the way that the rest of the neighborhood is developed. The additional units that elongate the building are not appropriate as other buildings in the area are one (1) and two (2) family homes. The proposed density for building "B" is not appropriate and would be an overdevelopment. It appears that there are other duplexes in the neighborhood, but three (3) family homes would be out of character.

Ms. Curran- asks the petitioner looked at the possibility of constructing single family homes along the existing frontage.

Attorney Grover- Yes. The problem with this is that the only frontage for the site is ninety-five feet (95 feet) along East Collins Street, which does not allow for even a single conforming lot.

Mr. Meyer- The neighbors also expressed that they wanted a water view.

Chair Curran-suggests that the applicant consider duplexes hugging the property boundaries. In this case, there are limitations to the site such as its location in the flood zone and an existing gas easement among other things that create reasons to not conforming to the zoning requirements.

Chair Curran- restates that the petitioner is requesting a special permit to go from one nonconforming use to another, but this is an overdevelopment of the site and may not be less detrimental. Ms. Curran urges the petitioner to look at alternative development scenarios.

Mr. Copelas- asks for clarification on size and location of the proposed curb cut. How many on street parking spaces would be lost from the proposed curb cut?

Ms. Curran- What is the existing curb cut?

Attorney Grover- There is no existing curb cut on East Collins Street. It is an open curb on Planter Street over the National Grid property.

Dan Ricciarelli- Proposes a 20' foot curb cut to allow for two-way traffic, but can do a 12' foot curb cut. The petitioner was proposing two (2) curb cuts, but is now proposing one (1) curb cut with the possible elimination of two (2) on-street parking spaces.

Attorney Grover- The petitioner is proposing parking in excess of the required number of spaces. In terms of the density, the proposal is not inconsistent with the density of the neighborhood.

Chair Curran -states that number of units proposed is considerably over what is allowed by zoning and large building is inconsistent with other aspects of neighborhood character, not just density.

Mary Knight- 5 East Collins Street- speaks again in opposition to the project and requests that the petitioner consider single family homes.

Mr. Truhart- 4 East Collins Street- requests that the petitioner consider four (4) to five (5) single family homes and speaks in opposition to the proposal.

Jim Carney- Cambridge Street- Speaks in opposition to the project due to concerns about a demand for more on-street parking, density, construction in close proximity to the gas line, and possible trespassing on private property along the water.

Mr. Meyer- States that the location of the gas line is 60-80 feet below the surface.

Mr. Truhart- 4 East Collins Street- Why is the parking under the units?

Attorney Grover- States that the units are elevated due to requirements to building in a floodplain.

Mr. Truhart- 4 East Collins Street- Speaks in opposition to the proposal due to concerns about flooding and does not think it would be responsible to build anything there.

Arthur Sargent- Councilor at Large- How much buildable land is there on this site? How much land is actually buildable if you exclude the wetlands? Councilor Sargent states that the actual buildable land should be used in the calculations for lot area per dwelling unit (density). The development is detrimental to the neighborhood due to parking alone. The neighbors, who were members of the social club and owners, could park on this property and this is not going to be the case because the neighborhood will not have ownership rights to the parking. Councilor Sargent suggests that the Social Club is not a nonconforming use as it was an exempt educational use through the Dover amendment. There really is no nonconformity here. The social club is an exempt use that could be built by right.

Ms. Curran- disagrees with the interpretation that the social club was an exempt use.

Attorney Grover- On the density question, the petitioner is not suggesting that 100% of the site is buildable, but the entire parcel square footage counts toward the overall land area. If there is a 15,000 square foot lot with 7,500 square feet of wetland, it does not mean that the lot is not 15,000 square feet. Attorney Grover disagrees with the analysis of Councilor Sargent that one would only count buildable land area when calculating density and not count the total square footage of the entire lot. Attorney Grover presents the density analysis conducted and states that the average lot size in the area within a mile of this site is 2,613 square feet and the average lot of the new development on Planters Street and Bridge Street is less than this.

Attorney Grover- States that the social club does not have any educational features that would allow it to be an exempt use under the Dover Amendment. Attorney Grover states that the use is a preexisting nonconforming use as it is not an R1 residential use. Exempt uses under case law are considered nonconforming status for zoning purposes. Even if it was accepted that the property had an exempt use under the Dover Amendment, exempt uses are nonconforming.

Ms. Curran- asks for additional comments from the Board.

Mr. Viccica- Asks Attorney Grover to summarize the hardships related to the Variances requested:

Attorney Grover-

1. Special conditions: Land subject to Ch. 91 jurisdiction, including coastal dune and wetlands. There is also a gas line easement running through property. There are all kinds of special conditions of this property that generally do not affect other land in the same district and because of these special conditions, there is a limited part of the site available for development. In order to be able to building on these limited areas of the site, the petitioner needs variances from the zoning ordinance to exceed the height and setback requirements because there is such a narrow building envelope.
2. These same special conditions also make it a very expensive site to develop, requiring a certain level of density to make development economical feasible.
3. Granting relief without detriment to public good: The current site is in deplorable condition. There have been over sixty (60) police calls over the last three (3) years to this site and is a serious detriment to the neighborhood. The suggestion from the neighborhood that taking away the parking lot would be detrimental to the neighborhood does not seem to be genuine as this is private property. To suggest that losing the right to park on private property is detrimental just does not seem reasonable. The site is an environmentally sensitive area, currently covered by pavement. Opening the site by cleaning it up, providing landscaping, and providing public access will improve the site. Attorney Grover states understanding about

concerns about the proposed public access location and is open to change the public access away from the corner of the property.

Mr. Watkins- Why does single family homes not work on this site?

Attorney Grover- From a zoning perspective, even a single lot would not conform to the dimensional requirements. The petitioner would be before the Board requesting zoning relief for any project including a single family home. To actually create individual lots from this parcel would be a subdivision and the lots could not comply with the zoning requirement because there is no sufficient frontage for one (1) lot, let alone two (2), three (3) or four (4) lots.

Mr. Meyer- The cost of construction is cost prohibitive.

Mr. Truhart 4 East Collins Street- Is that not a self-imposed hardship?

Ms. Curran- states that the financial burden to develop is not a hardship.

Resident of Forrester Street- Speaks in opposition to the project and states that Mr. Meyer bought a bad piece of land.

Mr. Truhart 4 East Collins Street- Continues to speak in opposition to the project.

Chair Curran- requests that the applicant meet with the neighborhood.

Attorney Grover- The conditions that we talked about would affect any owner of this property and not just Mr. Meyer.

Chair Curran- The flood zones and wetlands limits where the developer can build, but what are the limits of Chapter 91? Ms. Curran thinks of this as another permit that needs to be obtained, but does not share the opinion that Chapter 91 Licensing is a hardship.

Attorney Grover- states that under Chapter 91 licensing, there are some areas that can be developed with the license and may expand development opportunities, but there are various jurisdictional lines that may be limited to only water dependent usage.

Chair Curran- The applicant must show that the proposal is not more detrimental. It is not clear here that this petition is less detrimental and encourages the petitioner to meet with the neighbors and revise plans that better fit with the neighborhood character.

Attorney Grover- States that the petitioner will continue to meet with the neighborhood, but has had three (3) neighborhood meetings already.

Councillor Sargent- it seems that having a nonconforming use is a license for no zoning on the property.

Chair Curran- states that there are some legitimate reasons for the Variances requested and a special permit to change from one nonconforming use to another nonconforming use, such that the Board finds that the proposal is not more detrimental than the existing nonconforming use is allowed under Chapter 40A.

Councillor Sargent- reiterates his previous comments about density and buildable land. To have five (5) times what the zoning would allow seems like a huge bonus. The definition of a hardship is something that changes the conditions of something you have. Not looking at a property and knowing what is there. Councillor Sargent states that a hardship is when there are ten (10) conforming lots and then there is a hurricane that knocks off ten (10) feet from the lots making them dimensionally nonconforming. That is a hardship. Nothing changed the conditions of the land that they own.

Chair Curran- offers to have an offline discussion about hardships.

Councillor Sargent- Variances are meant to allow the developer to achieve what could normally be achieved by right. For example if there is a house in the middle of a property, that cannot be built, the variances are not supposed to give a developer a density bonus to make the project more profitable. Councillor Sargent speaks in favor of Mr. Skomurski's development on Planters Street and Bridge Street as an example of a development that matches the neighborhood.

Chair Curran- States that the project received variances because the lot was narrow.

Ms. Maynard – Why can people live next to 1-3 East Collins Street with a single family home with unit on the ground not ten (10) feet off the ground?

Chair Curran- states that there is a base flood elevation plan and it also has to do with insurance. If there is new construction, they could not replicate that. FEMA does not want anecdotal information on flooding, but goes by the FEMA flood maps.

Ms. Maynard- States that the developer knew that this piece of property had wetlands and is located in a floodplain.

Ms. Curran- Asks the petitioner how they would like to proceed.

Attorney Grover- requests a continuance to the next regularly scheduled meeting on February 17, 2016.

Chair Curran- The petitioner has requested a continuance to go back to the drawing board.

Mr. Truhart- Requests that the Board make a decision tonight. How many times can a hearing be continued? How does this work?

Chair Curran- The petitioner has taken some input from the neighbors and the Board and they will go back to the drawing Board. Sometimes this process of input happens a few times, but at some point, if this kept happening, the Board would not allow a continuance and the petitioner would withdraw without prejudice to allow the petitioner to re-apply and return at a future date. The Board will not let this project go on indefinitely. For it to come back to address the needs of the Board and neighborhood is part of the process.

Mr. Truhart- Hopes the next attempt is significantly different. Mr. Truhart requests that the Board vote now and deny the project in entirety and ask the petitioner to come back with a completely new project.

There is a request to continue to the next regularly scheduled meeting on February 17, 2016.

Motion and Vote: Mr. Viccica makes a motion to allow the petitioner to continue to next regularly scheduled meeting on February 17, 2016. The motion is seconded by Mr. Copelas. The vote was unanimous with four (4) (Rebecca Curran (Chair), Peter A. Copelas, Tom Watkins, and Paul Viccica (alternate) in favor and none (0) opposed.

APPROVAL OF MEETING MINUTES

No vote will be taken on the August minutes as not all Board members were present.

Ms. Schaeffer comments that the first project descriptions were copied from a previous one, and she will correct it on the final version of the minutes.

Motion and Vote: Mr. Copelas makes a motion to approve the December 18, 2015 minutes as written, seconded by Mr. Watkins. The vote was four (4) (Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Tom Watkins, and Paul Viccica in favor and none (0) opposed.

OLD/NEW BUSINESS

N/A

ADJOURNMENT

Motion and Vote: Mr. Watkins made a motion to adjourn the January 20, 2016 regular meeting of the Salem Board of Appeals, seconded by Mr. Viccica, and the vote is unanimous with four (4) (Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Tom Watkins, and Paul Viccica in favor and none (0) opposed.

The meeting ends at 9:17PM.

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://saalem.com/Pages/SalemMA_ZoningAppealsMin/

Respectfully submitted,
Erin Schaeffer, Staff Planner