

City of Salem Board of Appeals

Meeting Minutes

Wednesday, May 18, 2016

A meeting of the Salem Board of Appeals (“Salem BOA”) was held on Wednesday, May 18, 2016 in the third floor conference room at 120 Washington Street, Salem, Massachusetts at 6:30 p.m.

Mr. Copelas (Vice-Chair) calls the meeting to order at 6:30 pm.

ROLL CALL

Those present were: Peter A. Copelas (Vice-Chair), Tom Watkins, Mike Duffy, Jimmy Tsitsinos, Jim Hacker (alternate), and Paul Viccica (alternate). Also in attendance Tom St. Pierre - Building Commissioner and Erin Schaeffer - Staff Planner.

REGULAR AGENDA

Project	A public hearing for a petition seeking a Variance from the provisions of <i>Sec. 4.1.1 Table of Dimensional Requirements</i> of the Salem Zoning Ordinance, for minimum lot area per dwelling unit.
Applicant	RICARDO GARCIA and ROSE HELEN GARCIA
Location	24 Lemon Street (Map 36 Lot 44)(R2 Zoning District)

Documents and Exhibitions

- Application dated March 14, 2016 and supporting documentation

The Board received a letter from the petitioners to withdraw the application without prejudice to allow the petitioner to withdraw, reapply and come back to another public hearing process at a later date.

Motion and Vote: Mr. Watkins makes a motion to approve the request to withdraw without prejudice. The motion is seconded by Mr. Duffy. The vote was unanimous with five (5) (Peter A. Copelas (Vice- Chair), Tom Watkins, Mike Duffy, and Jimmy Tsitsinos and James Hacker (Alternate) in favor and none (0) opposed.

Project	A public hearing for a petition seeking a Special Permit per Sec. 3.3.5 <i>Nonconforming Single and Two-Family Residential Structures</i> to allow the petitioner to expand the existing nonconforming structure.
Applicant	NORMAN & MARGARET ROBERTS
Location	2 ROSEDALE AVE (Map 31 Lot 264)(R1 Zoning District)

Documents and Exhibitions

- Application dated April 26 , 2016 and supporting documentation

Attorney Grover submitted a letter to the Board to request to continue the matter to the next regularly scheduled meeting on June 15, 2016. No testimony was given at this hearing.

Motion and Vote: Mr. Duffy makes a motion to continue the public hearing this petition to the next regularly scheduled meeting on Wednesday, June 15, 2016. The motion is seconded by Mr. Watkins. The vote was unanimous with five (5) (Peter A. Copelas (Vice- Chair), Tom Watkins, Mike Duffy, Jimmy Tsitsinos and Paul Viccica) in favor and none (0) opposed.

Project	A public hearing for all persons interested in the petition of, seeking a Special Permit per Sec. 3.3.2 <i>Nonconforming Uses</i> of the Salem Zoning Ordinance, to allow the petitioner to change the nonconforming two (2) family structure to a three (3) family structure.
Applicant	JACK and PATRICIA BURNS
Location	21 OCEAN AVE (Map 33 Lot 689)(R-1 Zoning District)

Documents and Exhibitions

- Application dated April 26 , 2016 and supporting documentation

*Mr. Copelas recuses himself from this item. Mr. Duffy chairs this project's public hearing.

Attorney Atkins- 59 Federal Street- Presents the petition. The petitioners are before the Board to seek a Special Permit to allow the petitioner to change the nonconforming two (2) family structure to a three (3) family structure. Jack and Patricia Burns purchased this property as a three (3) family back in 1999 when they had a larger family. Looking at the plans, the three (3) units and the first and second floors were used by the petitioners for their family while the third unit was rented. There is no longer a need for the second floor space to serve the Burns as their children have moved out. Mr. and Mrs. Burns would like to return the house to the original use as a three (3) family structure.

Attorney Atkins presents the following grounds for a special permit:

- 1) Social, Economic and Community needs served by the proposal: The neighborhood is a mix of two, three, and four unit homes and always has been. Attorney Atkins states that the petitioners intend to continue to stay and live in this home. There is a lot of tension about who rents particularly in this neighborhood. These are small

units that will not result in a large number of people and having the owners reside in the building makes a big difference as well.

- 2) Traffic flow and Safety including parking and loading: There are five (5) existing parking spaces with an existing curbcut along Cliff Street, which meet the parking requirements.
- 3) Adequacy of utilities and other public services: There are no changes to the existing utilities or public services
- 4) Impacts on the natural environment, including drainage: There are no changes to the landscape. The petitioners have planted grass where there was once asphalt and improved the environmental conditions at the site.
- 5) Neighborhood Character: The property was already a three family and there are many multi-family dwelling units in the neighborhood.
- 6) Potential fiscal impact, including impact on City tax base and employment: The potential fiscal impact to the City tax base is positive.

Attorney Atkins states that Chapter 40A requires that a change of non-conforming use not be more substantially detrimental than the currently existing non-conforming use. This is a change that is in keeping with the neighborhood and has associated parking.

Mr. Viccica- How will the parking spaces be directly accessed? Is the petitioner installing a curbcut?

Attorney Atkins- States that there are five (5) spaces already existing with a curbcut along Cliff Ave. In the past, there have been five cars parked at the property when guests visit.

Chris and Diane Heppner- 3 Ocean Terrace- A letter is presented to the Board by Attorney Atkins on behalf of the residents of 3 Ocean Terrace. The letter is in support of the project.

Mr. Watkins- What is the on-street parking situation? Is it resident only parking?

Attorney Atkins- yes.

Mr. Watkins- In the event that the on-site parking is occupied, where would family or friends park?

David Seibert- 10 Cliff Ave- States that as a resident, there are parking permits plus one (1) or two (2) guest permits to allow parking in residential permit zones.

Attorney Atkins- States that the intent of the resident parking only restriction was to limit Salem State students from parking in the neighborhood.

Mr. Duffy- Looking at the plans, it seems that the majority of the work will be in connection with the second floor plan to remove a bedroom and install a kitchen for a unit and re-configure the interior such that the two (2) existing internal stairways can be used for egress.

Mr. Duffy- Opens comment to the public.

Dave Seibert- 10 Cliff Avenue- Speaks highly of the quality of the neighborhood. The petitioners have an eye for doing really nice work and are looking at the long-range rather than turning over the property. Mr. Seibert speaks in strong support of the petition.

John Lyness- 22 Ocean Avenue- Submits a letter to the Board and speaks in strong support of the petition.

Mr. Duffy- Opens further comment from the Board.

Mr. Watkins- States that the petitioner meets the standard requirements for the request for a special permit.

- 1) Social, Economic and Community needs served by the proposal: No detriment to the neighborhood.
- 2) Traffic flow and safety including parking and loading: The five (5) parking spaces meet the parking requirements of this zoning district.
- 3) Adequacy of utilities and other public services: There are no changes to the existing utilities or public services
- 4) Impacts on the natural environment, including drainage: There are no changes to the landscape.
- 5) Neighborhood Character: The property was already a three family and there are many multi-family dwelling units in the neighborhood.
- 6) Potential fiscal impact, including impact on City tax base and employment: The potential fiscal impact to the City tax base is positive.

Mr. Duffy- States in agreement with Mr. Watkins. Based on the discussion had, the change can be made and would not be substantially more detrimental than the existing use to the neighborhood.

Motion and Vote: Mr. Watkins makes a motion to grant a *Special Permit per Sec. 3.3.2 Nonconforming Uses* of the Salem Zoning Ordinance, to allow the petitioner to change the nonconforming two (2) family structure to a three (3) family structure, subject to eight (8) standard conditions. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with five (5) (Tom Watkins, Mike Duffy, Jimmy Tsitsinos, Paul Viccica (alternate) and James Hacker (Alternate)) in favor and none (0) opposed.

Project	A public hearing for all persons interested in the petition seeking a Variance per Sec. 4-5.1 On-Premises Signs in Nonresidential Districts of the Salem Code of Ordinances, in order to allow signage at the property.
Applicant	NOTCH TAP ROOM, LLC
Location	283 Rear Derby Street (Map 34 Lot 439) (B-5)

Documents and Exhibitions

- Application dated April 26 , 2016 and supporting documentation

Chris Loring- 283R Derby Street- Presents the petition. The petitioner is requesting a Variance per Sec. 4-5.1 On-Premises Signs in Nonresidential Districts of the Salem Code of Ordinances, to allow signage at the property. The interpretation of the City Ordinance is that existing allowable signage based on the frontage of the structure along Derby Street is completely occupied by Brothers Taverna. Mr. Loring requested that the Board consider the associated frontage with the business to be along Congress Street as the business faces Congress Street. The hardship is that vendors will not be able to deliver goods without knowing where the business is located, wholesalers need to know where the location is to pick up finished goods and for consumers to know the location of the facility.

Mr. Loring also requests that some signage face the South River. There was signage from the property that was removed from the property when Notch took over. Signs included one from Murphy's Refinishing, Lance Woodwork and St. Pierre Salon.

Mr. Watkins- Are you using hand painted signs?

Mr. Loring- Yes, the signage will be hand painted directly onto the side of the building. There has been a resurgence of this hand painted application. All of the signage proposed will be painted on the brick.

Mr. Watkins- Asks Tom St. Pierre- Looking at the sign ordinance language, it seems to imply that the threshold for a sign variance is lower than the typical bar of a variance. "The Board of Appeals may vary the sections of this article in specific cases which appear to it not to have been contemplated by this article and when its enforcement would involve practical difficulties or unnecessary hardship if, in each instance, desirable relief may be granted without substantially derogating from the intent and purpose of this article, but not otherwise..." The three prong test for Variances are not referenced in the sign ordinance language. Is it implied that there is a lower bar, or does the Board need to weigh this Variance request as strictly as other types of variances.

Mr. St. Pierre- The reason why a Variance is referenced in the Sign Ordinance is because nobody knows how to vary the sign rules. Technically, a variance should be related to the

land, structure or topography of the land. Not, sure if this is totally the right vehicle to vary the Sign Ordinance, but it is the only vehicle we have to be able to vary the Sign Ordinance at this time. You don't have to meet the hardship of shape, contour of the land... There should be some hardship. The petitioner has mentioned that the hardship is the way that the building is laid out in relation to the location of the business at the back of the building, but not really relating to the land.

Mr. Viccica- Did the petitioner go to the Planning Board? Mr. Viccica requests that the LED lights...

Mr. Loring- The petition has been reviewed by the SRA/DRB and the LED light fixture has been updated and will be replaced with what DRB suggested. It will be a wall mounted fixture with light directed down and not up.

Mr. Viccica- Is it a cut off fixture?

Mr. Loring- I don't know the terminology...

Mr. Viccica- It's not within the Zoning Board purview.

Mr. Loring- The petitioner will be going back to SRA/DRB for further project review.

Mr. Viccica- Speaks in support of the proposed signage stating that the hardship is that you have a business here and the ordinance is not really applicable. There are multiple businesses in this building that face the parking lot with existing signage. The little view corridor through Congress Street is pretty much the only way to see this proposed signage. Mr. Viccica clarifies with the petitioner whether the request is also a Variance for signage along the North River.

Mr. Loring- In the spirit of the Variance, there is no hardship for the proposed signage along the North River, but would like to have the signage wrap around to make signage look good. If Congress Street, is considered as frontage, then the amount of signage requested would be allowed in accordance with the dimensional requirements of the Sign Ordinance.

Mr. Copelas- The total amount of square footage of signage proposed including the river side and Congress side could be accommodated with this liberal understanding of frontage.

Ms. Schaeffer- Confirms.

Mr. Copelas- Opens the public hearing.

Mr. Gideon Coltof- (Bit Bar- 50 St. Peter Street) Speaks in support of the petition.

No other public comments were made.

Motion and Vote: Mr. Duffy makes a motion to approve a Variance per Sec. 4-5.1 On-Premises Signs in Nonresidential Districts of the Salem Code of Ordinances, in order to allow signage as proposed at the property. Seconded by Mr. Watkins. The vote was in favor (Peter A. Copelas, Tom Watkins, Mike Duffy, and Jimmy Tsitsinos, Paul Viccica (alternate)) and none (0) opposed.

*Mr. St Pierre- The reason why it was decided long ago that these sign petitions need to come to the Zoning Board of Appeals is because signs need a building permit. These sign petitions are really at the Zoning Board by default.

Project	Petition seeking a Variance per Sec. 4-5.1 On-Premises Signs in Nonresidential Districts of the Salem Code of Ordinances, to allow the petitioner to install signs that are above the top of the sills of the first level of windows above the first story.
Applicant	GIDEON COLTOF (BIT BAR)
Location	50 ST. PETER STREET (Map 35 Lot 179)(B-5 Zoning District).

Documents and Exhibitions

- Application dated April 26 , 2016 and supporting documentation

Steven Hall and Gideon Coltof, petitioners present the petition. The petitioners are proposing to install signage above the maximum height allowed. Specifically, the Sign Ordinance of Sec 4-5.1 a.4 and d.2 state that the signs may not be higher than the top of the sills of the first level of windows above the first story. The proposed signage calls for the highest point of the tallest sign to align with bottom sills of the second story.

The petitioner testifies that the restaurant location, building scale, and mass of the Old Jail are significantly greater than other buildings in the area that contain retailers. Further the building is physically set back about 150 feet from fast moving traffic on Bridge Street and Church Street. All of these conditions are why the petitioner is requesting to raise the height of the signage beyond the maximum allowed height.

If the literal enforcement of the sign ordinance were applied, it would only allow the petitioner to have signs that are two (2) feet tall because of the large size of the existing windows. Additionally, the previous two (2) tenants had signs that were significantly taller than the proposed signage. The signage has also been reviewed and approved by the Design Review Board and Salem Redevelopment Authority.

Mr. Viccica- Will the signs be lit?

Mr. Coltof- Yes. The signs will be a copper background with metal letters with back light reflected off... like a cutout.

Mr. Watkins- How many signs are proposed?

Mr. Coltof- Three (3) signs.

Mr. Watkins- Are there two (2) signs that hang off of the building and one (1) that is flush with the building.

Mr. Coltof- Yes.

Mr. Copelas- Is the square footage of the signage appropriate for the frontage?

Ms. Schaeffer- The amount of signage requested is appropriate for the frontage. The petitioner is before the Board requesting a Variance only related to the location of the signage in relation to the window sills.

Mr. Copelas- Remembers the signage associated with the previous businesses in this location. Is there any definitive understanding of whether that signage was approved or not? Clearly, this proposal is similar to what previously existed.

Mr. Coltof- The Great Escape sign was actually taller than the proposed Bit Bar signage. There were two (2) tall blade signs associated with the Great Escape. Mr. Coltof suspects that the signs were approved, but no paperwork could be found.

Ms. Schaeffer- states that it is unclear.

Mr. Watkins- Were either of the Great Escape or A and B Burger signs lit?

Mr. St. Pierre- Yes, from below.

Mr. Watkins- And how will yours be lit?

Mr. Coltof- There will be a board and then cutout letters.

Mr. Watkins- Okay, light will not be shining up from below.

Mr. Coltof- No.

Mr. Watkins- Stated that he was concerned that light shining up would disturb residents who live in apartments.

Mr. Coltof- It appears that upward lighting is not allowed in the Ordinance.

Mr. Viccica- There is no light leakage from the sides of the blades?

Mr. Coltof- No. The lights would light the inside. There will be LEDs with cutoff letters.

Mr. Copelas- opens public comment. There are no members of the public that spoke either for or against the petition.

Mr. Copelas- The property distance from the roadway and the literal enforcement of the Sign Ordinance that would allow a two (2) foot sign would be difficult, the proposal was approved by the Salem Redevelopment Authority and the Design Review Board, this petition seems like a reasonable request.

The Board concurs.

Motion and Vote: Mr. Waktins makes a motion to approve a Variance per Sec. 4-5.1 On-Premises Signs in Nonresidential Districts of the Salem Code of Ordinances, to allow the petitioner to install signs that are above the top of the sills of the first level of windows above the first story. Seconded by Mr. Copelas. The vote was in favor (Peter A. Copelas (Vice-Chair), Tom Watkins, Mike Duffy, and Jimmy Tsitsinos, Paul Viccica (alternate)) and none (0) opposed.

OLD/NEW BUSINESS

29 Chestnut Street- The Board was presented revised plans that were approved by the Historic Commission regarding a rear deck that the Zoning Board of Appeals approved. The revised plan does not change the non-conformity that was approved via Special Permit. This is just an FYI that plans seen by the Board have been insignificantly modified. No action is needed from the Board.

APPROVAL OF MEETING MINUTES

May 18, 2016 meeting minutes were approved as written.

Motion and Vote: Mr. Copelas makes a motion to approve the minutes as written, seconded by Mr. Watkins. The vote was in favor (Peter A. Copelas (Vice-Chair), Tom Watkins, Mike Duffy, Jimmy Tsitsinos and Jim Hacker (alternate) and none (0) opposed.

ADJOURNMENT

Mr. Watkins-motions for adjournment of the May 18, 2016 regular meeting of the Salem Board of Appeals at 7:25 PM.

Motion and Vote: Mr. Copelas made a motion to adjourn the April 20, 2016 regular meeting of the Salem Board of Appeals, seconded by Mr. Watkins, and the vote is unanimous with five (5) (Peter A. Copelas (Vice- Chair), Tom Watkins, Mike Duffy, and Jimmy Tsitsinos, Jim Hacker (alternate) in favor and none (0) opposed.

The meeting ends at 7:25 PM.

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