

**City of Salem Board of Appeals**  
**Meeting Minutes**  
**Wednesday, October 19, 2016**

A meeting of the Salem Board of Appeals (“Salem BOA”) was held on Wednesday, October 19, 2016 in the third floor conference room at 120 Washington Street, Salem, Massachusetts at 6:30 p.m.

**Ms. Curran (Chair) calls the meeting to order at 6:30 pm.**

**ROLL CALL**

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

**REGULAR AGENDA**

Project            A continuation of a public hearing for a petition seeking a Variance per *Sec. 3.2.4 Accessory Buildings and Structures* and a Special Permit per *Sec. 3.3.3 Nonconforming Structures* of the Salem Zoning Ordinance to allow the construction of a two-story garage.

Applicant        **MATTHEW KEANE**  
Location        **414 LAFAYETTE STREET (Map 32 Lot 169) (R1 Zoning District)**

Chair Curran - stated that a letter has been received by the Board by the petitioner requesting that the Variance request application be withdrawn without prejudice.

**Motion and Vote: Mr. Copelas makes a motion to accept the Applicants request to withdrawal their petition without prejudice. The motion is seconded by Mr. Watkins. The vote was unanimous in favor and none (0) opposed.**

Project            A public hearing for a petition seeking a Special Permit per *Sec. 3.0 Uses* to allow the conversion of a historic carriage house to a dwelling unit.

Applicant        **JAY FAMICO**  
Location        **380 ESSEX STREET (Map 25, Lot 206)( R-2 Zoning District)**

Chair Curran – stated that the petitioner has asked for a continuance to the next regularly scheduled meeting on November 16, 2016. No evidence was taken.

**Motion and Vote: Mr. Duffy makes a motion to continue this discussion at the November 16, 2016 meeting with no evidence taken. The motion is seconded by Mr. Viccica. The vote was unanimous in favor and none (0) opposed.**

Project A public hearing for a petition requesting Variances from Sec. 5.1.5 Parking Design and Sec. 5.1.8 Table of Required Parking Spaces to allow the construction of a 24' wide curb cut and associated parking area within five (5) feet of the street line.

Applicant **JASON & CHRISTINA ROBINS**

Location **77 PROCTOR STREET (Map 25, Lot 5) (R-2 Zoning District)**

### Documents and Exhibitions

- Application dated September 12, 2016 and supporting documentation

Jason and Christina Robins, 77 Proctor Street, were present to discuss the project.

Jason Robins stated that this is a multi-family structure with a four (4) foot high wall at the front of the property up against the sidewalk. They propose to cut into this wall and install a two (2) car driveway, 24 feet wide and 5 feet in from the street line, to alleviate street parking give them and their tenant's easy access to their cars during snow emergency parking bans. The proposal is 24' wide and five (5) feet in from the street line.

Chair Curran – What is allowed is 20' foot wide curb cut. Ms. Curran asks the petitioners why they are proposing a 24' wide curb cut?

Mr. Robins- replied to fit two cars and stated that the existing stone would be reused at the new rear retaining wall.

Ms. Curran- It looks like you are proposing to use the existing stone from the current retaining wall for the proposed retaining wall?

Mr. Robins- yes.

Mr. Copelas – Confirms with the petitioner that there is on-street parking in front of the property.

Mr. Robbins- Yes.

Mr. Copelas- So the construction of the proposed curb cut would eliminate two (2) or three (3) public parking spaces?

Mr. Robins- Yes, replied that those spots are used primarily by him, his wife, and his tenants.

Chair Curran – asked if this project has been reviewed by the City for adequate site distances for backing onto the street. Robins replied that their contactor has been working on this plan with the City Engineering.

Mr. Copelas – asked for the distance from the side end of the proposed curb cut to the existing fire hydrant. Robins replied 7 to 10 feet.

Mr. Watkins – asked if that distance needs to be verified.

St. Pierre replied that a vehicle must park 10 feet away from hydrants and asked if the 18 foot depth of the proposed driveway was so that the cars wouldn't extend over the sidewalk.

Robins replied yes, the driveway will start 2 feet away from the front porch as to not interfere with the footings and the neighbor who shares that front stone wall is in favor of this project.

Mr. Copelas – noted that 20 feet is an allowable curb cut distance, standard parking spaces are 9 feet by 18 feet, reducing the curb cut request to 20 feet would not require a special permit. Can a 20 foot curb cut be installed while leaving the front steps in place?

Robins replied that 20 feet would still require them to cut into the step making them very narrow. The previous owner created a new front porch entry and there is no longer a need for those steps. The 24 foot curb cut would allow them to utilize the right retaining wall for the steps. The proposed retaining wall at the back of the driveway would be 7 feet high.

Mr. Copelas – stated this project will result in a loss of public parking and the 24 foot wide request is also a concern, when 20 foot is what is allowed. Two cars can park in a 20 foot wide driveway, the construction being within 5 feet of the street is legitimate since there really is no side yard for them to place a driveway, but there is no clear hardship to request a 24 foot wide curb cut.

Chair Curran and Mr. Viccica – agreed that the right side retaining wall of the existing steps could be used and the 20 foot curb cut heading left could start from that point, which would also put them further away from the hydrant.

*Chair Curran opens public comment.*

No one in the assembly wishes to speak.

Chair Curran – asked why parking 5 feet from the street line is listed in the Variance request when all driveways are 5 feet from the street.

St. Pierre replied that Sec. 5.1.8 states that a driveway may be considered a parking space provided all vehicles have direct access to the street or public way notwithstanding any restriction to this section, no area within 5 feet of the street line including the driveway shall be considered as parking spaces in RC, R1 & R2 Districts. Meaning the full dimension plus the 5 feet is needed.

Chair Curran – stated that the width is not a hardship.

Robins noted that their hardship is parking during snow emergencies.

Chair Curran – noted that not having on-site parking does not meet the requirements of a hardship.

St. Pierre noted that in the photos provided there is not enough room for a legal space between the hydrants and the left of the proposed driveway if the driveway was 20 feet or 24 feet wide.

Mr. Viccica – suggested that the curb cut could be 20 feet and the driveway could be widened to 24 feet on their property and give them enough space to open their vehicle doors next to the retaining wall.

Mr. Watkins – stated that the petitioner should return to the next meeting with a clearer statement of hardship, a revised proposal.

Chair Curran – added that site distances from the Engineer and the presence of the Engineer would be helpful. The curb cut should be kept at 20 feet wide and the public comments will remain open. St. Pierre added that a dimension to the hydrant should also be included in the site distances.

**Motion and Vote: Mr. Watkins makes a motion to this discussion at the November 16, 2016 meeting. The motion is seconded by Mr. Duffy. The vote was unanimous in favor and none (0) opposed to continue the public hearing to the next regularly scheduled meeting on November 16, 2016.**



Project	A public hearing for a petition requesting a Special Permit per Sec. 3.3.5 Nonconforming Single and Two- Family Residential Structures of the Salem Zoning Ordinance to construct an 8' x 8' dormer.
Applicant	<b>STEPHEN CUMMINGS</b>
Location	<b>241 NORTH STREET (Map 17 Lot 159)(R-1 Zoning District)</b>

#### Documents and Exhibitions

- Application dated September 27, 2016 and supporting documentation

Stephen Cummings, 241 North Street, was present to discuss the project.

Cummings stated that they would like to add a bathroom to the second floor of the home. An 8 foot dormer is proposed to provide the proper headroom clearance for a new bathroom.

St. Pierre noted that the house is non-conforming on that side of the house due to the side yard setback.

Mr. Viccica – noted that the letter in the packet stated that the dormer will not have windows due to the building code, and asked what section of the Building Code relates to windows in a dormer. Cummings replied because the dormer will be less than 5 feet from the property line and windows would impact the privacy of the neighbors.

*Chair Curran opens public comment.*

No one in the assembly wishes to speak.

*Chair Curran closes public comment.*

**Motion and Vote: Mr. Duffy makes a motion to approve the application for a Special Permit per Sec. 3.3.5 Nonconforming Single and Two- Family Residential Structures of the Salem Zoning Ordinance to construct an 8' x 8' dormer. The motion is seconded by Mr. Watkins. The vote was unanimous with five (5) Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Tom Watkins, Mike Duffy, and Jimmy Tsitsinos, 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 expand the nonconforming structure and a Variance per Sec. 4.1.1 <i>Table of Dimensional Requirements</i> of the Salem Zoning Ordinance for minimum lot area per dwelling unit.
Applicant	<b>ARSEN SHERAJ</b>
Location	<b>2 BRADFORD STREET (Map 17, Lot 50)(R-2 Zoning District)</b>

#### Documents and Exhibitions

- Application dated September 27, 2016 and supporting documentation

Nicole Magno, wife of Arsen Sheraj, 2 Bradford Street, was present to discuss the project. Magno stated that their current home has 2 bedrooms and the proposed project is to construct a duplex addition to the house.

Chair Curran – stated that R2 is an allowed use in the district.

St. Pierre noted that both the existing house and the new addition would have a non-conforming rear setback.

Ms. Magno noted that the existing home is 2.3 feet away from the rear lot line.

Mr. Viccica – asked if the 6 foot area next to their house was their side yard.

Ms. Magno replied that it was the backyard of their neighbors on Balcomb Street and the existing garage that is 2 feet away from the fence would be demolished.

Chair Curran – asked about existing and proposed parking.

Ms. Magno replied that there is currently a narrow driveway that can fit 3 cars, in front of the existing garage. The proposal is to move the parking further away from the fence and park the cars next to one another on a 45 degree angle. The existing curb cut is 9 feet wide and 10 feet is proposed.

*Chair Curran opens public comment.*

Monique & Richard Osgood, 9 Balcomb Street, (direct abutters on the side of the 6 foot clearance). The Osgood's are in favor of the project. Questions who would be responsible to remove the tree that falls in the middle of the fence between their properties. Ms. Magno – replied that they would cover the cost to clear the tree if that is what the neighbors would prefer.

Chair Curran – reads a letter from Mary St. Pierre, 6 Lovett Street, stated that she is in favor of this project and believes it will be an enhancement to the neighborhood.

No one in the assembly wishes to speak.

Chair Curran – stated that the Variance is for less than the required lot coverage area. Mr. Copelas – noted that the statement of hardship doesn't meet the criteria for a hardship. Their preferences to design a residential duplex because the lot is undersized and their family circumstances do not constitute a hardship.

St. Pierre noted that the required side setback is 10 feet and 30 feet at the rear.

Mr. Viccica – noted that the side setback required is 10 feet and they are seeking 6.

St. Pierre – added that at the rear 13 feet 4 inches is being requested where 30 feet is required.

Mr. Viccica – stated that returning to the Board with a site plan showing the parking layout and the house plans showing the hardship of keeping at 10 side yard setback, would require a Special Permit and not a Variance which eliminates the need for a hardship.

Schaeffer – noted that lot area per dwelling unit is the reason for a Variance request, because they are adding another unit to the lot.

Chair Curran – stated that if this project was done as an addition and not a separate unit, it would only require a Special Permit. Eliminating as many non-conformities as possible would also be beneficial.

**Motion and Vote: Mr. Duffy makes a motion to continuance this discussion at the November 16, 2016 meeting. The motion is seconded by Mr. Copelas. The vote was unanimous in favor and none (0) opposed to continue the public hearing to the next regularly scheduled meeting on November 16, 2016.**



Project            A public hearing for a petition requesting Variances from the provisions of the Salem Zoning Ordinance *Sec. 8.4.5* to allow the distance between adjacent residential lots to be less than the required 100' ft.; *Sec.8.4.9 Parking Requirements* to allow less than the required on-site parking; *Sec. 8.4.13 Transitional Overlay District* to allow less than the required 50' buffer area, and *Sec. 4.1.1 Table of Dimensional Requirements* for minimum lot area per dwelling unit to construct a new residential development.

Applicant        **139 GROVE STREET REALTY TRUST**  
Location        **70-92 ½ BOSTON STREET (Map 15, Lot 299 & Map 16, Lot 139)  
(NRCC, R-2, B-2)**

Attorney Joseph Correnti, 63 Federal Street, represents the applicant

Other presenters include:

- Chris Sparages, P.E.; Project & Civil Engineer; Williams & Sparages, 189 North Main Street, Suite 101, Middleton, MA 01949

Others present include:

- Anthony Roberto, representing the ownership group (Owner of 28 Goodhue Street building perpendicular to this site)

#### Documents and Exhibitions

- Application dated September 27, 2016 and supporting documentation

Atty. Correnti stated that this project has been presented to, reviewed, and approved by the Planning Board, DRB, NRCC, and the Conservation Commission. The presentation includes the end result of their input. The Conservation Commission review was because the lower sidewalk, along Goodhue Street, is within the new flood zone. The Mack Park Neighborhood Association and the Ward 4 Gallows Hill Neighborhood Association both endorsed this project and made their support be known to the Planning Board. This is a unique site with multiple districts occurring at site; B2 zone, R2 zone, NRCC, Transitional Overlay District of the NRCC, and the Entrance Corridor Overlay District along Boston

Street. This site is also unlike any other in the City of Salem; geographically, topographically, and location wise. The site has undergone a civil peer review by VHB for the site layout and proposed drainage system, and traffic peer review by Stantec for traffic flow and on-site circulation.

Chris Sparages, of Williams & Sparages, stated that the site has two frontages, approximately 470 feet at the high side (Boston Street) and approximately 400 feet at the low side (Goodhue Street). The intersection of Beaver, Grove, & Goodhue Streets has been reconfigured to include a City parking area. Three buildings on site have been demolished as well as various retaining walls and concrete pads that once made up the Flynn Tannery site. The approximate 1.7 acre site is an odd shape with drastic grade changes, the south-east corner (Goodhue Street) has an elevation of 10 feet and the south-west corner along Boston Street has an elevation of 38 feet. The elevation of 10 puts the site in the wetland resource/flood plain district because it is within 100 feet of wetlands and therefore a permit must also be filed with the Conservation Commission. Lieutenant Peter Schaeublin, of the Salem Fire Department, has reviewed the plans and a fire apparatus plan was submitted to prove that the City's largest apparatus truck traverse through the site. Many of the comments/suggestions by the peer reviewers have been incorporated into the plans.

Sparages noted the various challengers for the owner across the site:

1. Significant grade change and the needs for extensive retaining walls
2. Cost of months of demolition (some of the concrete and brick will be recycled and possibly re-used on site)
3. Unusual number of utilities that needed to be cut and capped (sewer, water, gas, etc.)
4. Significant sidewalk reconstruction on both Boston and Goodhue Streets.

Sparages noted the proposed conditions for the site:

Building 1:

1. Mixed use with a 738 SF retail storefront component along Goodhue Street
2. Pedestrian access along Goodhue Street
3. 24 foot wide (two-way) entrance driveway along Beaver Street for vehicles to access the underground parking
4. 41 (standard: 9 feet x 18 feet) parking spaces under the building and several ADA parking spaces
5. The 4 story building will house 44 apartment units
6. The main entrance will be on Boston Street and will be one story higher than the Goodhue Street entrance
7. Paver block of alternating colors will highlight the new central turnaround

Building 2:

1. 3 story townhouse style structure at the south-west end of the site
2. All residents will have direct access to Boston Street from their first floors
3. To make use of the grade difference on site parking will be at the rear (lower level)
4. Each unit has 1 parking garage with additional surface parking spaces behind the units and elsewhere on the site

Sparages stated that the total number of parking spaces proposed is 96. Zoning requires 105 parking spaces but in working with the Planning Board in an effort to provide more greenspace on both levels and to include a small dog park along the south-east corner of Goodhue Street, the number of spaces was reduced to 96. A second site access point will be along Boston Street near the south-east corner of the site. Six curb cuts existing along Boston Street and all of them will be closed and one new 24 foot wide (two-way) curb cut will be added. Boston Street will be the entrance to the main parking lot. Pedestrian/ADA access for pedestrians will occur next to the Boston Street entrance off of the existing sidewalk. To continue with the City's HC access efforts at the City owned lot at the corner of Beaver and Goodhue Streets, the Planning Board has asked if they would continue the sidewalks down to Witch City Cycle.

Atty. Correnti noted that there are four reliefs being requested

1. Relief Request 1: On the western side of the site there is a 50 foot buffer zone in the transitional overlay district of the North River Canal Corridor buffer zone, which is measured from the nearest residentially used parcel and there is to be no construction or de-construction of land within that buffer zone. Use of that buffer zone must be landscaping. A portion of this buffer zone is needed for parking and a portion of the townhouse structure.
2. Relief Request 2: A dimensional relief is being sought for a TOD and NRCC required 100 foot setback for a structure adjacent to an existing residential structure. The townhouse structure is 89 feet away. The requirement states that any structure built within 100 feet must have separate first floor entrances – townhouse style units. Sparages noted that shifting the townhouse structure 11 feet to sit outside of the 100 foot setback would impact an apparatus's ability to turnaround on the site and 5 feet was needed for handicapped access at the Boston Street entrance.
3. Relief Request 3: Land area per dwelling unit. NRCC requires 3,500 SF each which would only allow 20 units which is not financially feasible. The Planning Board awarded them a 5 unit bonus to become affordable housing = 50 units total.
4. Relief Request 4: 50 units in the NRCC require 100 spaces, commercial space required 5 spaces equally 105 total and 96 spaces have been provided in the proposed plan. (2 spaces per unit is not needed. This site is owned by same owners of 20 Goodhue Street, which is also in the NRCC district, is fully occupied has 45 units and required 90 spaces, and only 42-46 vehicles park there at the most.

Chair Curran – stated that the plan was well done and understand the difficulties with the site. Chair Curran – noted that she has no concern with the 2-D issues; change in topography, jogs on the site, layout, size, and shape. She understands that less parking would be better but a Variance cannot be based solely on the desire to provide more open space, hardship must be proven.

Atty. Correnti noted that the plans with 105 spaces did not work once comments were received from the various boards and reviewers. The most recent placement of the curb cut resulted in the loss of 5-6 spaces due to a lack of sufficient space and the safety of vehicles entering the site encountering vehicles maneuvering at the driveway entrance. Sparages noted that the existing curb cut on Goodhue Street that was too narrow and too close to the City parking area entrance. Narrowing the access driveway to provide additional parking

would not be a “preferable scenario” for the maneuvering of trash truck, moving vans, and a fire apparatuses.

Atty. Correnti stated that 105 spaces would not be possible with the current plan that the other Boards have approved. Due to site safety concerns, configuration of the lot, topography, and the placement of the building, no additional spaces can be placed on the site. Schaeffer noted that site safety is a big concern.

Chair Curran – replied that a building could be smaller therefore the parking hardship isn’t clear.

Mr. Copelas – noted that retail parking hasn’t been provided.

Atty. Correnti replied that six (6) parking spots are available at the city lot and on-street parking is available across the street near the 28 Goodhue building, making this area of Goodhue Street pedestrian friendly. The commercial space was originally on the Boston Street side of the building but Planning suggested that it move to the Goodhue side to activate the space.

Mr. Viccica – asked how many parking spaces for retail the NRCC required.

Atty. Correnti – Five (5).

Mr. Watkins – noted that those on-street and City lot will provide relief to the number of spaces needed.

Mr. Watkins - asked if the handicapped access could be made closer from Boston Street to the circle as opposed to next to the driveway or additional parking spaces. Atty. Correnti replied that due to the substantial grade differences (4-5 feet) stairs could be introduced but there is not sufficient room to include a switch-back ramp.

Mr. Watkins – asked if parking spaces could be added instead of the dog park.

Atty. Correnti replied that the dog park will be an amenity for residents, would require a curb cut, and would be a challenge to include.

*Chair Curran opens public comment.*

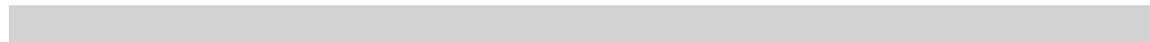
No one in the assembly wishes to speak.

*Chair Curran closes public comment.*

Mr. Viccica – requested a different hardship case for not meeting the required parking other than the Planning Board would not allow it.

Atty. Correnti replied that Planning didn't force the decision; multiple points of input were needed to make the site work, from the location of the curb cut, the city curb cut is not on their property and was deemed unusable, there are no additional locations for parking due to the size, shape, & topography of the lot (a 28 foot drop in grade from Boston to Goodhue Street, and it is those constraints that have led them to request a variance for parking. A project like this would only benefit the City since Mayor Driscoll has labeled this site the biggest eye sore in the City especially on an entrance corridor, and this project will be a great benefit to the City.

**Motion and Vote: Mr. Duffy makes a motion to approve the application requesting variances for; *Sec. 8.4.5* to allow the distance between adjacent residential lots to be less than the required 100' ft.; *Sec.8.4.9 Parking Requirements* to allow less than the required on-site parking; *Sec. 8.4.13Transitional Overlay District* to allow less than the required 50' buffer area, and *Sec. 4.1.1 Table of Dimensional Requirements* for minimum lot area per dwelling unit to construct a new residential development. The motion is seconded by Mr. Tsitsinos. The vote was unanimous with five (5) Rebecca Curran (Chair), Peter A. Copelas (Vice-Chair), Tom Watkins, and Jimmy Tsitsinos in favor and none (0) opposed.**



Project            A public hearing for a petition requesting a Special Permit per Sec. 3.3.2 Nonconforming Uses and Variances per Sec. 4.1.1 Dimensional Requirements for the following minimum lot area per dwelling unit, minimum lot frontage, minimum distance between buildings, and maximum number of stories to construct eight (8) residential units.

Applicant        **MICHAEL MEYER, TRUSTEE**  
Location        **1-3 EAST COLLINS STREET (Map 36 Lot 277 ) (R-1 Zoning District)**

Attorney Scott Grover, of Tinti, Quinn, Grover & Frey, 27 Congress Street, Suite 414, Salem, MA 01970, represents the applicant

Other presenters include:

- Dan Ricciarelli of Seger Architects, 10 Derby Square, 3N, Salem, MA 01970
- Scott Cameron, CE; Morin-Cameron Group, 66 Elm Street, Danvers, MA 01923

Documents and Exhibitions

- Application dated September 27, 2016 and supporting documentation

Atty. Grover stated that several iterations of this project were presented to the Board over the course of the last year. The petitioner before the Board this evening, to present another plan for residential development, that are significantly different from the plans that were previously presented.

Attorney Grover briefly presents the multiple iterations of plans that were previously submitted to the Board as part of a seven month long review process. The first plan, consisted of eighteen (18) residential units that were located in two (2) residential buildings. The first building had a density of twelve (12) units and the second building had a density of six (6) units. The reason why there were two (2) buildings proposed was to keep a portion of the proposed development outside of Ch. 91 license jurisdiction. There was a general consensus from the neighborhood and the Board that the requested density and massing of the buildings were too great and after much opposition the plans were modified. The second iteration consisted of fourteen (14) units in two (2) residential buildings. This proposal included eight (8) units in one building and six (6) in the second building. This proposal was once again was met with much opposition from both the grounds that it was designed to keep a portion of the proposed development outside of Ch. 91 license jurisdiction and the density and massing was too great. The third iteration consisted of eleven (11) units divided into four (4) residential buildings that were again met with the same opposition. In March 2015, the applicant withdrew the application without prejudice. The petitioner is now before the Board with significantly revised. Mr. Meyer is still convinced that a residential use on this property is the highest and best use. The petitioner is back before the Board one more time for residential use of the property before the petitioner considers a non-residential alternative.

Attorney Grover- After the series of public hearings conducted and the extensive series of neighborhood meetings held, what the petitioner hear was that the neighbors really wanted single and two-family residences that they felt were more fitting with the neighborhood character. The plan that we have before you this evening calls for eight (8) units and the design and layout is radically changed from what has been previously proposed. The current plan calls for five (5) buildings, which include three (3) duplexes and two (2) single family homes, which requires considerably less zoning relief than what was previously requested.

Atty. Grover noted that relief required.

1. Relief Request 1: A Special Permit is required to go from one non-conforming use to another non-conforming use. This property is in an R1 zoning district even though the property is surrounded by an R2 (residential two family) zoning district. The only use allowed in an R1 is single family residential use. However, because the social club is an existing non-conforming use, the zoning ordinance allows a change from one non-conforming use to another non-conforming use by special permit, as long as the Board finds that the new use as multiple dwellings, is less detrimental to the neighborhood than the existing use, the social club.

In this case, it can easily be said that there is more than ample evidence to support a finding that the proposed residential use is less detrimental to the neighborhood than a bar room on that site. The petitioner is proposing a change from a commercial use

to a residential use, which is what the underlying zoning supports on the property; the environmental impact will be very positive, the tax benefits to the City will be much greater to have multiple residential units to increase the tax base. All of the standard criteria for a special permit are met by this project.

Beyond the special permit request, there are three (3) variances that are being requested:

2. Relief Request 2: Variance #1: Lot size per dwelling unit. The R1 Zoning District requires 15,000 square feet per dwelling unit. The petitioner is proposing eight (8) units on a 42,000 square foot lot. The petitioner is proposing a density of approximately 5,200 square feet per dwelling unit.
3. Relief Request 3: Variance #2: Minimum distance between buildings. The zoning ordinance requires that multiple buildings on a lot need to have at least 40' feet between each building. The proposed distance between some of the buildings are 25' feet apart.
4. Relief Request 3: Variance #3: Height of the building in terms of stories. The buildings comply with the 35 foot maximum height requirement, but the buildings are 3½ stories high to comply with the floodplain requirements where 2½ stories is allowed.

Atty. Grover stated that the Board must make several findings to approve the requested Special Permit and 3 Variance requests.

1. Required Finding 1: Special conditions exist that affect this parcel, that don't affect other parcels in the zoning district. The special conditions are as follows; an obsolete commercial building that needs to be demolished, wetlands on site, Ch. 91 limitations, location in the coastal flood plain with an existing dune – environmental factors, easement for natural gas on the site that can't be built upon, and the parcel is 20 times bigger than any other parcel in the area. All of these factors complicate the site in terms of future construction.
2. Required Finding 2: Literal enforcement would cause a hardship. A literal enforcement of the zoning ordinance would permit the construction of two (2) single family dwellings maximum with the granting of a special permit. The cost to construct those two (2) dwellings would exceed the market value for this area.
3. Required Finding 3: Variance can be granted without substantial detriment to the public good and without derogating from the intent of the public zoning ordinance. The same aspects of the special permit would apply in this case and the density that would be provided will be far less than the surrounding residences in the neighborhood.

Scott Cameron, of Morin-Cameron Group, stated that the common driveway between the dwellings has been designed to allow for a fire apparatus to maneuver around the property without needing to back out onto the street. The beginning of the driveway would be paved and the remainder a porous, surface material - possibly gravel or paving stones, as a method of storm water management. The existing pavement surface on the property is

approximately 12,000 SF and that will be reduced to approximately 5,500 SF. The building area will remain similar, the existing building is 5,200 SF and the proposed structures would cover 6,400 SF, and there would be no basements to comply with coastal construction standards, however; they will be open below. The open space on the property, lawn and upland, is approximately 7,000 SF and 13,000 SF is proposed to improve storm water management. The paving at the end of Planters Street belongs to National Grid and no work is proposed in that area. Their frontage is limited to the 94 feet on E. Collins Street. An analysis of the neighborhood showed that their site will provide the required front setbacks unlike other single and two-family dwellings in the neighborhood. The average density is 2,600 SF and 5,200 SF is proposed, making it 30% less dense than the neighboring dwellings. In terms of building separation, neighboring buildings average 10-20 feet apart and the proposed will be either 25 feet or 40 feet apart.

Dan Ricciarelli, of Seger Architects, stated that a study of the size, style, and height of the houses on the street, as well as cladding, materials, and massing, etc. The neighboring design and rhythm of the houses has been incorporated into the proposed dwellings. The ridge height is under the allowed zoning height and the fronts are slender with massing towards the rear, as well as simple cladding, bay windows, details, and elevated building at the rear to allow for parking below. The space between the buildings has increased to approximately 90 feet.

Chair Curran – asked if the duplex at the front could be switched with the singles in the rear. Scott replied that that was done because the duplexes provide enough length for a fire apparatus to maneuver onto the site. It was public safety issue. There are neighboring two and three families so a two family at the front of the site will match the neighborhood and it is also turned sideways so from the front it will look like a single family dwelling.

Chair Curran – asked if there was living space on the first floor and the flood elevation. Ricciarelli replied – no living space on the first floor due to the floor plain and the flood elevation is 10 feet.

Mr. Copelas – asked why public access has disappeared from the proposed plans. Atty. Grover replied that it was removed at the neighbor's request, however; Chapter 91 will require public access, so it will be addressed. Cameron added that the Ch. 91 relates to access to the waterways so the public access component could be access to the property along the coastal side and not necessarily through the site. Chair Curran – asked if they needed to present at the Conservation Commission, Ch. 91 licensing, and site plan review. Atty. Grover replied yes.

Mr. Copelas – asked if the plan was to building the dwellings in stages depending on when they get their Ch. 91 license. Atty. Grover replied yes. There are two buildings that are outside of the Ch. 91 jurisdiction because of how the site was laid out.

Cameron noted that Ch. 91 will take at least a year to get through with the State and the team will continue development the plans needed for local review by the Planning Board and

Conservation Commission. The Chapter 91 Application will also be filed concurrently with the applications for local site plan review.

Ms. Curran- When you do your stormwater calculations, Chair Curran suggests doing the stormwater calculations based on the entire driveways being impervious.

Mr. Viccica- Asks if the petitioner would be using pervious paving on the driveway?

Mr. Cameron- Yes, the team is considering pavers and a sub-drainage system to collect water off of the site, allow the water to trickle into the system and be treated rather than creating conditions for water to sheet flow off of the site.

*Chair Curran opens public comment.*

Scott Truhart, 4 East Collins Street- speaks in opposition to the project and read his petition letter into the record dated October 19, 2016. The petition has twenty (20) signatures of individuals in opposition to the project. Mr. Truhart argues that the previous non-conforming use of a social club has been discontinued for more than 24 months and contests the ability for the Board to grant a special permit.

Chair Curran – asks the petitioner if the club has been discontinued for more than two years.

Atty. Grover- not certain about how long the operation of the club has no longer been in existence. But this is not really a measure of what abandonment is. There is pretty clear case law that not using the property does not constitute abandonment of a use because two years has lapsed. The liquor license has been maintained and filing permits for residential use also doesn't qualify as abandonment. It is not an abandoned use.

Chair Curran- not positive that is true. Tom?

St. Pierre- it is an over simplification of our ordinance. There is a lot of case law regarding abandonment and it has to do with intent. If you go into the Clerk's Office or Assessor's Office, and one asked to reduce the property to reduce it to an R1 lot, that would show intent to abandon the use. John Carr likes to look at the zoning bylaw and say that it is two-years and then done, but it is not that simple and not the way that the case law reads. It is an over simplification.

Chair Curran- to Tom St. Pierre- So that is not how you interpret it?

Mr. St. Pierre- No.

Attorney Grover- There is not a clock ticking, simply applying for these permits for a residential use does not indicate abandonment. The applicant has not abandoned the use. The petitioner has kept the associated liquor license with the property.

Mr. St. Pierre- The fact that the petitioner is trying to permit this is not abandonment.

Mary Knight, 5 E. Collins Street. Stated that she witness the property being emptied and stripped, down to the copper piping. Knight also stated that a legal notice was published in the October 19, 2016 newspaper stating that Mr. Meyer is delinquent in the payment of his taxes and the City is threatening to take possession of the property on November 2, 2016, until the \$8, 470+/- tax payment is made, and asked if a petitioner can make a request to a Board with a lien on their property.

Chair Curran – replied that permits are not issued to someone in arrears of taxes, although the lien hasn't been issued yet, and stated that she would like the opinion from the City Solicitor on both matters. St. Pierre noted that a City ordinance states that no permits can be issued if money is owed, until the payments have been made.

Tim Connell, 60 E. Collins Street. In in opposition of the project, believes the site is being over-developed, the various buildings will completely block out the water view, and waterfront access is still desired by the neighborhood if it's done appropriately. Parking is limited and tight in the area especially when it snows, duplexes show three cars but each unit could require 2, based on parking there are too many units. Chair Curran replied that 12 spaces are required and 14 are proposed. Cameron noted that 2 spots are exposed and the remaining 12 spaces under the units.

Adam Craig, 29 Planters Street. States that in terms of abandonment - the building hasn't been maintained since it closed and fenced off, the parking lot provided parking relief during snow bans, asked if the proposed parking meets the requirements, fire apparatuses have trouble getting down Planters Street and that should be addressed. Two single family homes would be a better fit for the site and neighborhood and the desire for 8 units seems to a push for profit.

Erin Shall, 10 E. Collins Street. Questions the definition of a hardship and asks if the hardship request only protects the owner. Chair Curran – replied that the hardship was dimension and related to the site. The use does not require a variance because they are going from one non-conforming use to another non-conforming use. The standard they have to meet is that the proposed is less detrimental than the prior use. Cameron noted that the site was just under an acre, the single families cannot be moved any further in towards the water due to a required 5 foot buffer at the coastal area. Only supports a single family home on the property.

Chair Curran – asked for the footprint and square footage of the buildings. Cameron replied that the total footprint area of the six buildings is 6,400 SF averaging 1,500 SF per unit. The singles are slightly less and the doubles are slightly more.

Tom Philbin, 6 Planter Street. Compliments them on the reduction of units, the design blends with the neighborhood, beach access is critical, the structure will wall off the beach

from the neighborhood, is in favor of the paving reduction because it will reduce flooding to the neighborhood. This project could increase the property values and quality of life in the neighborhood.

Cameron added that not a single property in the neighborhood meets the density requirements or the 40 foot required separation, this property will be the least dense with the greatest building separation. The curb cut at the driveway will be angled away from the neighboring houses. Public access off the access road at the end of Planters Street is owned by the utility company and is not their property, however; public access on the site will be addressed with a high level of scrutiny through Ch. 91, with an option to travel through the property. Atty. Grover that Site Plan Review will look at the site in much greater detail to provide proper public access through the site.

No one else in the assembly wishes to speak.

**Motion and Vote: Mr. Duffy makes a motion to continue this discussion at the November 16, 2016 meeting. The motion is seconded by Mr. Tsitsinos. The vote was unanimous in favor and none (0) opposed.**

#### **APPROVAL OF MEETING MINUTES**

August 17, 2016 meeting minutes were approve as written.

September 21, 2016 meeting minutes were approved as written.

Mr. Copelas requested to amend the September 21, 2016 meeting minutes to reflect that he motioned for the adjournment of the *September 21, 2016* meeting and not the August 17, 2016 meeting.

**Motion and Vote: Mr. Watkins makes a motion to approve the August 17, 2016 minutes and the September 21, 2016 minutes amended per Vice-Chair Copelas' request. Seconded by Mr. Tsitsinos. The vote was unanimous in favor and none (0) opposed.**

#### **OLD/NEW BUSINESS**

Schaeffer stated that the CPC is requesting a formal written statement of board comments on any CPC related matters by the October 28, 2016 deadline. The board agrees to provide Schaeffer with their individual/informal comments before the deadline.

#### **ADJOURNMENT**

Mr. Watkins motions for adjournment of the October 19, 2016 regular meeting of the Salem Board of Appeals.

**Motion and Vote:** Mr. Watkins made a motion to adjourn the October 19, 2016 regular meeting of the Salem Board of Appeals, seconded by Mr. Duffy, and the vote is unanimous in favor and none (0) opposed.

The meeting ends at 9:30 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/](http://saalem.com/Pages/SalemMA_ZoningAppealsMin/)

Respectfully submitted,  
Erin Schaeffer, Staff Planner