

# City of Salem Zoning Board of Appeals

## Meeting Minutes

March 15, 2023

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, March 15, 2023 at 6:30 pm via remote participation in accordance with Chapter 107 of the Act of 2022 and a Special Act extending remote participation meetings until March 31, 2023.

### **Chair Peter Copelas calls the meeting to order at 6:34 pm.**

Chair Copelas explains how individuals can participate in the meeting remotely via Zoom, and that instructions to participate remotely can also be found on the Salem website. Mr. Copelas also explains the rules regarding public comment.

### **ROLL CALL**

Those present were: Peter Copelas (Chair), Nina Vyedin, Rosa Ordaz, Paul Viccica, and Steven Smalley. Also in attendance were Daniel Laroe – Staff Planner, and Jonathan Pinto – Recording Clerk. Those absent were: Carly McClain

### **CONTINUANCES**

Location: **1 Purchase Street (Map 15, Lot 139) (R1 Zoning District)**

Applicant: **Ezekiel Holt**

Project: A continuation of a public hearing for all persons interested in the petition of EZEKIEL HOLT at 1 PURCHASE STREET (Map 15, Lot 139) (R1 Zoning District), for a Special Permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance to build a new, second egress with a porch for the first-floor unit. The proposed change will permit petitioner to restrict access to the basement from the first-floor unit and to specifically make it a part of the second unit.

### Documents and Exhibitions

- Application date-stamped 11/9/22 and supporting documentation

Chair Copelas introduces the petition.

Ezekiel Holt introduces himself and begins a powerpoint presentation. Mr. Holt provides background information on the property, noting it was purchased in 2021 by himself, Sara Moore, Deb Duncan, and Courtney Timberlake, and subsequently transferred to Cold Bay LLC to protect all four co-owners. The layout of the building has a unit on the first floor occupied by a tenant, with a second unit on the second and third floor where Mr. Holt lives with his wife. Mr. Holt indicates the basement is two-thirds finished and one-third utility and storage. At the time of purchase, Mr. Holt explains the basement had a kitchenette consisting of a sink, some cabinetry, and a gasoline line. He states the gasoline line has been removed. The basement space is currently accessible to both units by a common staircase. Mr. Holt indicates after consulting with the City of Salem and an architect, the best course of action was concluded to be making the basement a part of the second unit by restricting first floor access. The proposal creates a second egress for the unit one occupant. Mr. Holt presents floor plans of the building and staircase showing access to the basement. He describes the planned demolition and special permit request, as well as the proposed porch which would facilitate the new second egress.

Chair Copelas states he has a better understanding of the project after tonight’s presentation.

Mr. Viccica asks what the basement level is used for and how it is outfitted. Mr. Holt describes the basement again, noting the sink and cabinetry. Mr. Holt indicates the intended use is to be a space for friends and guests. Mr. Holt states they moved here from the mid-Atlantic and that their parents and family are still there. The basement space will facilitate longer visits and be more tolerable. Mr. Holt also explains that the home was purchased with his and his wife’s friends who are closer to retiring age and hope to retire overseas, but wanted a home base to stay occasionally in the U.S.

Ms. Vyedin asks about the kitchen space, and Mr. Holt states the only thing in the basement is a small sink with cabinets above and below. He states he intends to add nothing more than a microwave and a tea kettle. Mr. Holt confirms it is not intended to be a third unit, and that he is happy to have a special condition restricting such use.

Chair Copelas states the Board's concerns have been addressed.

Chair Copelas opens the floor to public comment.

Jon Peters of 3 Purchase Street introduces himself as a neighbor, and states that the applicants have been great neighbors and discusses improvements made to the property. Mr. Peters peaks in favor of the proposal.

Andrea Wawrzyn of 8 Ober Street introduces himself and states he lives next door. He echos Mr. Peters' comments and speaks in favor of the proposal.

**Motion and Vote:** Mr. Viccica motions to approve the petition of EZEKIEL HOLT at 1 PURCHASE STREET (Map 15, Lot 139) (R1 Zoning District), for a Special Permit per Section 3.3.5 Nonconforming Single- and Two-Family Residential Structures of the Salem Zoning Ordinance to build a new, second egress with a porch for the first-floor unit, restricting access to the basement from the first-floor unit, subject to the following standard conditions:

1. Petitioner shall comply with all city and state statutes, ordinances, codes, and regulations.
2. All construction shall be done as per the plans and dimensions submitted to and approved by the Building Commissioner.
3. All requirements of the Salem Fire Department relative to smoke and fire safety shall be strictly adhered to.
4. Petitioner shall obtain a building permit prior to beginning any construction.
5. Exterior finishes of the new construction shall be in harmony with the existing structure.
6. A Certificate of Occupancy is to be obtained.
7. A Certificate of Inspection is to be obtained.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. Unless this Decision expressly provides otherwise, any zoning relief granted does not empower or authorize the Petitioner to demolish or reconstruct the structure(s) located on the subject property to an extent of more than fifty percent (50%) of its floor area or more than fifty percent (50%) of its replacement cost at the time of destruction. If the structure is demolished by any means to an extent of more than fifty percent (50%) of its replacement cost or more than fifty percent (50%) of its floor area at the time of destruction, it shall not be reconstructed except in conformity with the provisions of the Ordinance.
10. All construction shall be done per the plans and dimension submitted to and approved by this Board. Any modification to the plans and dimensions must be approved by the Board of Appeals unless such changes are deemed a minor field change by the Building Commissioner in consultation with the Chair of the Board of Appeals.
11. Petitioner shall schedule Assessing Department inspections of the property, at least annually, to project completion and a final inspection upon project completion.

And the following special condition:

1. The lower level basement guest suite will not be used as a third unit within the building.

Ms. Vyedin seconds the motion. **The vote is five (5) in favor (Peter Copelas, Steven Smalley, Nina Vyedin, Paul Viccica, and Rosa Ordaz) and none (0) opposed . The motion passes.**

Location:        **11 1/2 Hardy Street (Map 41, Lot 30) (R2 and B1 Zoning Districts)**

Applicant:       **Lori A. Pattison**

**Project:** A continuation of a public hearing for all persons interested in the petition of LORI A. PATTISON at 11 ½ HARDY STREET (Map 41, Lot 30) (R2, B1 Zoning Districts) for a special permit per Section 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance to alter and to enlarge the residential use of a nonconforming structure by restoring and using the third (3rd) floor unit. Petitioner is also seeking variances from section 4.1 Dimensional Requirements for lot area per dwelling unit where 1,423 sq. ft is proposed/3,500 sq. ft required. In addition, a variance per section 5.1.1 – 5.1.8 Off-Street Parking.

### Documents and Exhibitions

- Application date-stamped 1/24/23 and supporting documentation

Chair Copelas introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the applicant and explains that a long description of the property, its condition, and his clients intentions were given at the prior meeting. Mr. Quinn states the proposal is supported by all abutters. Mr. Quinn notes there are two alternative parking plans, one accommodating four cars and one accommodating five. Mr. Quinn states the situation is unusual, as the property is made up of two connected large townhouses separated by a demising wall down the middle, which the property line follows. Mr. Quinn indicates the Salem zoning division line also falls along the wall, with the neighbor at 11 Hardy being characterized as a two-family in the R2 zone while this property is in the B1 zone, which allows for multi-family housing as an allowed use. He presents the plot plan.

Chair Copelas states that since the last meeting the water appears to have been muddled more than clarified. Mr. Copelas also states he is aware that the applicant is in possession of a letter discovered in the Building Department's files from 2001. He asks Mr. Quinn if he would like to address the letter.

Mr. Quinn states that at the last presentation there was a discussion about the fact that the building looks and feels like a three-family, with two enclosed stairways serving all three units, with the same layout on each floor and separate utilities, although only those on the first and second floor are active. Mr. Quinn indicates the third floor has been unoccupied since 2001. He explains that after searching, the only written record on the property was a letter issued by Peter Strout, zoning enforcement office at the time. Mr. Quinn states that his client had no opinion in seeking this letter, and purchased the property two months after the date of the letter. The property was listed and marketed to his client as a three-family dwelling. Mr. Quinn explains the letter states the property is a legally grandfathered, non-conforming one-family residence. After discussing with Mr. St. Pierre, Mr. Quinn states it was determined that zoning relief would be required to renovate the third floor, and that he could not simply get a building permit issued. Mr. Quinn maintains that a three-family dwelling is a legal use in this neighborhood and zone, and that the first and second floor have always been occupied utilizing separate egresses, but the third floor has been vacant since his client purchased the property. He explains that she and her husband had plans to disassemble the improvements and renovate the unit into a more modern apartment, but they never progressed past disassembling they got divorced. Mr. Quinn indicates in 2005 his client was conveyed all interests in the property and has lived there with her daughter since. Mr. Quinn contends the property cries out for improvement and renovation, and states relief is required for lot area per dwelling unit, as the lot is only 4,200 square feet. Regarding parking, Mr. Quinn suggests four cars can be readily accommodated, while preserving a large cedar tree in the lot. Mr. Quinn argues that a fifth space could be accommodated, but that it would require removal of the tree, which would be detrimental to the neighborhood and natural environment. Mr. Quinn states plans for both options are offered for discussion.

Mr. Copelas asked if there were ever discussions with his client about going to the inspector and asking for a permit to renovate the third floor unit. Mr. Quinn states that he is unsure, but that it seemed clear that enlarging the use of a nonconforming structure would require at least a special permit, along with further relief for parking and lot area per dwelling unit.

Chair Copelas states that nothing in the current presentation provides further clarification, suggesting that if the legal status of the home is a three-family, the need for a variance is questionable. He states he is having trouble with the grounds for the variance, and asks Mr. St. Pierre for input. Mr. St. Pierre states that his feeling was that relief may be needed to re-establish

use of the third unit. Mr. Copelas asks about the current status of the property. Mr. St. Pierre indicates he has not researched the property, but that he could look at voting records. He states he would normally conduct such research to render an opinion if the status of a property were challenged or questioned.

Ms. Vyedin suggests it seems like the current legal status is unknown, and so it is unclear whether it is a three-family, two-family, or single-family dwelling. She states the lack of clarity makes the Board's role unclear.

Mr. St. Pierre states his guess is that records would show it to be a two-family, which would then petition to go to a three-family. Mr. Copelas asks if you can go from a two to a three family in this zoning district, and Mr. St. Pierre states you can. Mr. Quinn confirms.

Ms. Vyedin asks if that research must be done to validate the status in order for Board to move forward.

Mr. Viccica suggests that if multi-units are allowed in the B1 zone, then putting in the third unit is allowable, and the the only issues are the variance for lot area per dwelling and for parking. He maintains these are the issues the Board is required to hear and rule on. Mr. Viccica contends the wording in the petition seems confusing, and that it would does not matter if the property is going from a two-family, or even single-family to a three-family dwelling, as this is allowed in the B1 one. The variance issues are what need to be addressed, according to Mr. Viccica. Mr. Copelas clarifies that he was trying to see if there was a way to get around the need for variances, and that he is not opposed to going from a two- to a three-family. Mr. Viccica states he is not sure if the Board has to rule on the special permit, but that it does have to rule on the variances. Mr. Viccica notes the characteristics of the site include a substantial piece of landscaping, notably the tree, and could understand a variance for parking as long as there is a discussion of where other cars might go and whether this area of Salem is able to accept off street parking during snow emergencies in nearby lots.

Chair Copelas asks Mr. St. Pierre for clarification on the relief being requested. Mr. St. Pierre states the property can go to a three-family by way of special permit, and that the variances for lot area per dwelling and parking are appropriately being sought.

Mr. Quinn presents the two alternative parking plans that accommodate four and five cars, respectively, and explains where the current two units park (first two parking spaces toward the street). Two additional spaces for the third floor will need to be provided, as the 1.5 requirement rounds to two spaces, according to Mr. Quinn. He contends the existing to spaces are deemed grandfathered and adequate. Mr. Quinn maintains there is enough space, and that while they look like tandem spaces, the cars can get out without moving other cars. A picture of the tree is shown, and Mr. Quinn states that if a fifth spaces is required the tree would need to be removed.

Mr. Viccica discusses the proposed plans and states that in both plans both sheds on the property are preserved. He suggests the viability of the parking spaces is tenuous, and that to preserve both sheds with the proposed plans and request variances for hardship of the lot seems to be a reach. Mr. Viccica suggests adequate parking could be provided without removing the tree if one of the sheds is removed, or at a minimum provide adequate space for cars to turn around.

Mr. Quinn states he believes his client would be willing to get rid of one shed to help accommodate a proper space and potentially a fifth space. Mr. Quinn asks if the Board might approve the proposal subject to submitting plans that remove one or more sheds. Mr. Viccica states he would prefer to see a plan prior to approval, and Ms. Ordaz agrees. Mr. Quinn states he will provide another plan.

Chair Copelas asks if the Board has any other concerns currently.

Mr. Viccica suggests obtaining documents and/or evidence of the property status and clarity on whether a special permit is required.

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

**Motion and Vote:** Mr. Viccica motions to continue the petition of LORI A. PATTISON at 11 ½ HARDY STREET (Map 41, Lot 30) (R2, B1 Zoning Districts) for a special permit per Section 3.3.3 Nonconforming Structures of the Salem Zoning Ordinance to alter

and to enlarge the residential use of a nonconforming structure by restoring and using the third (3rd) floor unit, as well as variances from section 4.1 Dimensional Requirements for lot area per dwelling unit where 1,423 sq. ft is proposed but 3,500 sq. ft is required, and a variance per section 5.1.1 – 5.1.8 Off-Street Parking to the next regularly scheduled meeting of the Zoning Board of Appeals on April 12, 2023.

Ms. Ordaz seconds the motion. **The vote is five (5) in favor (Peter Copelas, Paul Viccica, Steven Smalley, Nina Vyedin, and Rosa Ordaz) and none (0) opposed. The motion passes.**

Location: **31 Bertuccio Avenue (Map 24, Lot 104) (R1 Zoning District)**

Applicant: **Dean Boucher**

Project: A public hearing for all persons interested in the petition of DEAN BOUCHER at 31 BERTUCCIO AVENUE (Map 24, Lot 104) (R1 Zoning District) for a variance per Section 4.1.1 Dimensional Requirements of the Salem Zoning Ordinance to build a sixteen by forty sq. foot (16"x40") two story single family residence .The relief will be from minimum lot area. Petitioner is seeking to construct on a lot size of two thousand nine hundred thirteen (2,913) sq. feet/Where fifteen thousand sq. feet (15,000) is required. In addition, relief requested is to build into the left side setback at four (4) feet and into the right-side setback at nine (9) feet/ Where ten (10) feet is required. The rear yard setback would be five (5) feet/ Where thirty (30) feet is required.

#### Documents and Exhibitions

- Application date-stamped 1/26/23 and supporting documentation

Chair Copelas introduces the petition.

Dean Boucher introduces himself and explains that his taxes are due and that he must pay them before he can continue with his petition.

Chair Copelas states his understanding is that Mr. Boucher is requesting a continuance, and Mr. Boucher states that is correct. Mr. Copelas indicates that at the last meeting the Board universally held that they were having difficulty finding a way forward for the petition based on how it was presented and designed. Mr. Copelas notes that since then, no additional information has been provided, but people have nonetheless signed petitions, showed up to meetings, and made time to come provide comment. Given that nothing has changed, Mr. Copelas suggests another option would be to withdraw the petition without prejudice and go back to the drawing board. Mr. Copelas contends the Board does not have to approve a request for continuance, and that since no additional information or plans have been provided he is personally reluctant to do so.

Mr. Boucher states he understands, and indicates he does have an alternative plan and position for the proposed house, and that he thought it would be okay to continue while he sorted out his tax issue and got his tax payments up to date. Mr. Boucher maintains he has also been attempting to talk to neighbors but that they are not willing to listen.

Chair Copelas states the petitioner's tax situation has no bearing on the status of petitions before the Board. Mr. Copelas suggests new information could have been put forth while the tax situation was being handled. He states he is trying to be respectful to members of the public who have shown up for a second time but have no progress or new information to see. Chair Copelas explains that if a request for continuance is denied, a petitioner cannot bring forth a similar petition for a period of 18 months or two years. Mr. St. Pierre provides a correction, noting that City ordinances do not allow permits to be issued when properties are in arrears, and therefore if the petition went forward and were approved it would be in violation of City ordinance. He suggests the only options are to continue the petition or withdraw without prejudice.

Mr. Viccica suggests anyone can request a continuance and that he is not aware of a request ever being turned down. He notes, however, that there are many things about the petition he finds problematic. As an example, Mr. Viccica notes the rendering provided is incorrect in scale and position, and that the position with respect to abutters must be shown, and shown accurately. Mr. Viccica states he has no problem granting a continuance, but next time there must be enough information for the Board to render a decision because the applicant is trying to shoehorn a house onto a small lot, which will affect many neighbors.

Mr. Boucher confirms he would like to request a continuance.

**Motion and Vote:** Ms. Vyedin motions to continue the petition of DEAN BOUCHER at 31 BERTUCCIO AVENUE (Map 24, Lot 104) (R1 Zoning District) for a variance per Section 4.1.1 Dimensional Requirements of the Salem Zoning Ordinance to build a sixteen by forty sq. foot (16'x40') two story single family residence with relief from minimum lot area, on a two thousand nine hundred thirteen (2,913) sq. feet lot where fifteen thousand sq. feet (15,000) is required, as well as relief to build into the left side setback at four (4) feet and into the right-side setback at nine (9) feet where ten (10) feet is required, and a rear yard setback that would be five (5) feet where thirty (30) feet is require, to the next regularly scheduled meeting of the Zoning Board of Appeals on April 12, 2023.

Mr. Viccica seconds the motion. **The vote is five (5) in favor (Peter Copelas, Nina Vyedin, Paul Viccica, Steven Smalley, and Rosa Ordaz) and none (0) opposed. The motion passes.**

## MEETING MINUTES

February 15, 2023

Chair Copelas notes that in the Hardy Street petition, Attorney Quinn's name changes to Grover once or twice. That is his only edit.

**Motion and Vote:** Ms. Vyedin motions to approve the minutes from the February 15, 2023 meeting of the Zoning Board of Appeals as amended. Mr. Viccica seconds the motion. **The vote is five (5) in favor, and none (0) opposed. The motion passes**

## OLD/NEW BUSINESS

None.

## ADJOURNMENT

**Motion and Vote:** Mr. Viccica motions to adjourn the meeting. No one seconds the motion. **The vote is all in favor. The motion passes.**

The meeting ends at 7:56 PM on March 15, 2023.

*For actions where the decisions have not been fully written into these minutes, copies of the Decisions have been posted separately by address or project at:*

<https://www.salem.com/zoning-board-appeals/pages/zoning-board-appeals-decisions-2023>

Respectfully submitted,  
Daniel Laroe, Staff Planner

