

City of Salem Zoning Board of Appeals

Meeting Minutes

November 17, 2021

A meeting of the Salem Zoning Board of Appeals (“Salem ZBA”) was held on Wednesday, November 17, 2021 at 6:30 pm via remote participation in accordance with Chapter 20 of the Acts of 2021.

Acting Chair Peter Copelas calls the meeting to order.

Acting Chair Peter 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. Peter Copelas also explains the rules regarding public comment.

ROLL CALL

Those present were: Peter Copelas (acting Chair), Paul Viccica, Carly McClain, Rosa Ordaz, and Steven Smalley. Also in attendance were Daniel Laroe – Staff Planner, Tom St. Pierre – Building Inspector, and Jonathan Pinto – Recording Clerk. Those absent were: Mike Duffy (Chair)

CONTINUATIONS

Location: **10 Lynn Street (Map 26, Lot 206) (R2 Zoning District)**

Applicant: **Timothy Doggett**

Project: A continuation of a public hearing for all persons interested in the petition of TIMOTHY DOGGETT to appeal a decision of the Building Inspector per M.G.L ch.40A sections 8 and 15. The petitioner is appealing the Building Inspector’s decision to grant a Building Permit for a two-family residential dwelling at 10 LYNN STREET (Map 26, Lot 206) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped August 5, 2021 and supporting documentation

Mr. Copelas introduces the petition.

Attorney Bill Quinn introduces himself on behalf of the property owner, and explains the project background. Mr. Quinn indicates he has met with his client and Mr. Carr, and that he toured the property in question several weeks ago. At this time, Mr. Quinn notes the applicant is seeking a continuance. Mr. Quinn notes that Mr. Doggett was recently hospitalized and did not have a chance to view the property, and he further explains that there is an attempt to get the appeal dropped. Mr. Carr is currently out of state, but according to Mr. Quinn has also agreed to an additional continuance, with the hope of removing this item from before the Board for good. Mr. Quinn maintains that if the application is back next month, he will proceed without further continuances.

Acting Chair Copelas states it can be difficult for the Board of Appeals and the Department of Planning to manage an agenda when there are items that get repeatedly continued. Mr. Viccica asks if the applicant could simply reapply when they are ready if they were to withdraw without prejudice instead. Mr. Copelas indicates that would be possible, but without the applicant present and making

the request, as well as the fact that all parties have agreed to a continuance, Mr. Quinn may not be in a position to do so. Mr. Quinn confirms that is the case. Mr. St. Pierre suggests it is appropriate to continue, as the matter is potentially heading to litigation but could also be resolved and removed from the agenda if necessary in the future.

Motion and Vote: Ms. Ordaz motions to continue the petition of TIMOTHY DOGGETT to appeal a decision of the Building Inspector per M.G.L ch.40A sections 8 and 15. The petitioner is appealing the Building Inspector's decision to grant a Building Permit for a two-family residential dwelling at 10 LYNN STREET (Map 26, Lot 206) (R2 Zoning District) to the next regularly scheduled meeting of the Zoning Board of Appeals on December 17, 2021.

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

Location:	0 Story Street (Map 23, Lot 12) (RC Zoning District)
Applicant:	Castle Hill Realty Group, LLC
Project:	A continuation of a public hearing for all persons interested in the petition of CASTLE HILL REALTY GROUP, LLC to appeal a decision of the Building Inspector per M.G.L ch.40A sections 8 and 15 to construct two foundations for two single-family dwellings at 0 STORY STREET (Map 23, Lot 12) (RC Zoning District).

Documents and Exhibitions

- Application date-stamped July 10, 2021 and supporting documentation

Acting Chair Copelas introduces the petition.

Attorney John Kelty introduces himself on behalf of applicant, and explains that he is seeking a continuance. Mr. Kelty acknowledges that the December agenda is fairly crowded, and as such asks to move the matter to the January meeting if the Board finds it appropriate. Mr. Kelty indicates the petition is an appeal of the building inspector's decision to grant a building permit. Mr. Kelty also notes that there is an opportunity for resolution and withdrawal from consideration in the future, and if so, he would have the issue removed from the January agenda.

Mr. Copelas asks Mr. Kelty if he is confident that if the matter is before the Board in January that he will be prepared to move forward, and Mr. Kelty indicates he is.

Motion and Vote: Mr. Viccica to continue the petition of CASTLE HILL REALTY GROUP, LLC to appeal a decision of the Building Inspector per M.G.L ch.40A sections 8 and 15 to construct two foundations for two single-family dwellings at 0 STORY STREET (Map 23, Lot 12) (RC Zoning District) to the next regularly scheduled meeting on January 19, 2022.

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

Location: **9 Buffum Street (Map 26, Lot 318) (R2 Zoning District)**
Applicant: **Valerina Condor, LLC**
Project: A continuation of a public hearing for all persons interested in the petition of VALERINA CONDOR, LLC for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming two-family home by expanding the third story from a gable to mansard roof at 9 BUFFUM STREET. Additionally, the Petitioner seeks an infill addition to the side porch area.

Documents and Exhibitions

- Application date-stamped July 28, 2021 and supporting documentation

Acting Chair Copelas introduces the petition.

Attorney Kristin Kolick introduces herself on behalf of the applicant, and explains that the petition is to expand an existing nonconforming structure. Ms. Kolick presents plans and explains the property is a two family home in the R2 district that is being renovated, but will remain a two-family home. While below the maximum height of 35 feet with a height of just over 29 feet, the structure is nonconforming in number of stories as 2.5 are allowed, but the proposed changes to the roofline and addition of dormers triggers the need for relief by making the building a three story structure. Ms. Kolick also explains a proposed infill addition, which does not require a special permit, but she indicates she would like the Board to be aware as it is a change to the structure. Based on feedback from neighbors, Ms. Kolick contends the proposal was scaled back a bit. The initial proposal was for a mansard roof, but the updated plans decreased the massing and retained the simple gable style roof in front, while adding dormers on the side. Ms. Kolick presents elevations, and discusses how the proposal meets the special permit criteria. The proposal is a renovation and investment in the property according to Ms. Kolick, and traffic flow and safety will not be negatively affected as there will be four parking spaces where three are required. There will be no change in utilities, and Ms. Kolick contends the plans are in line with neighborhood character.

Mr. Copelas asks if on the side of the building with the infill, if the new entrances will take the place of the front entrance. Ryan McShera, project architect, introduces himself, and explains that the two entry doors are meant to be the second means of egress for the property, and that the front door will be maintained so it will present the same to the street. He further explains the two means of egress for both units.

Mr. Copelas notes there are no floor plans, and asks if the property is a back and front three-story town house design. Ms. Kolick states that is correct. Mr. Copelas indicates the roof line changes and elimination of the mansard style roof addresses many of the publicly submitted comments and concerns. He notes there are some concerns still regarding the current state of affairs of the construction site, including some asbestos issues. Mr. Copelas asks if there are currently any violations being addressed. Ms. Kolick contends there was some demolition work done pursuant to receiving a permit, and in the course of working asbestos was uncovered. Since then, according to Ms. Kolick the petitioner has taken action to remediate the issue. She adds that he is working with the DEP and cooperating in all efforts. Mr. St. Pierre confirms that the DEP required a plan be submitted, which the petitioner has done. He adds that he has not heard of any further violations from DEP.

Mr. Copelas asks if the design changes impact the relief being sought, and Ms. Kolick responds that the relief remains the same. Ms. McClain asks if the property is just the two townhouses, and Ms. Kolick confirms.

Mr. St. Pierre notes there have been accusations that the property was being made into four units by one neighbor, but that such claims are baseless as there is no evidence the property is or ever was being made into four units.

Mr. Copelas opens the floor to public comment.

Paul Mandeville introduces himself (no address given). Mr. Mandeville raises concerns regarding the side entrance, indicating he does not want light pollution in his bathroom windows. He also indicates his kitchen only has a half foundation, so if the proposed parking requires the pine tree to be removed there will be a risk of damage to his house. Mr. Mandeville also states that hazardous waste located in the backyard became un-tarped, and that while the petitioner came back to cover it, it was never secured and became uncovered again. Mr. Mandeville contends the applicant has never spoken to him, only the neighbors at 11 Buffum Street. Mr. Mandeville expresses additional concerns regarding the parking in the rear, noting that neighbors have children in their backyard playing. He acknowledges there are fences between the yards, but suggests that if someone were to come home “looped” one night and hit the gas instead of the break that it could be an issue. Mr. Mandeville also suggests he had heard there were four units being built and that was why he raised it as a concern previously.

Brendan Kelley of 11 Buffum introduces himself, and notes he moved here a few years ago. Mr. Kelley echoes the concerns from his letter, and states he is still opposed to the developer’s request. Mr. Kelley maintains the applicant is seeking to make an already non-conforming structure even more nonconforming. Mr. Kelley acknowledges that the roof needs to be repaired, but suggests that the original plan, as well as the current plans, cast a large shadow against his property. Mr. Kelley states the entire dormer down the right side will be opposite his bedroom and block out his view of the sky, and therefore have a negative impact on his home. Mr. Kelley also suggests the change in the roofline is out of character with the neighborhood, and notes the problems regarding asbestos and demolition to date. He argues the developer is in a rush to extract as much out of the property as possible without consulting the neighborhood. Mr. Kelley submits that the square footage is sufficient to improve the structure with the roof as it is now to preserve the look of the neighborhood. He states the proposal is substantially more detrimental, and that it is a change to a historic home. Mr. Kelley avers there is no positive impact, but rather just increasing nonconformity and essentially creating a triple decker.

Mr. Copelas notes there were some written comments submitted. A letter from David and Nancy Gavenda at 17 Buffum Street suggests a lack of concern for the neighbors, disregard for city ordinances, and a focus on profit. The Gavenda’s letter asks that the iconic Greek revival exterior be preserved, and asks that a mansard roof or any other expanding roof be rejected. A letter from Historic Salem also raises concerns regarding the Mansard roof proposal, stating that it demolishes the historic character of the property.

Mr. Viccica states that it seems the letters are in response to the original plans rather than the current ones before the Board. Mr. Copelas acknowledges that to be the case, but notes that the

Historic Salem letter mentions opposition to any change in the roof line, and that it seemed worth reading into the record.

Mr. Viccica states it is interesting that the applicant has not discussed more of the reasons why they changed the design from the formerly proposed aggressive intervention to something that is actually in keeping with the streetscape and Greek revival character. He states that it could be argued there are some roof interventions, but that he believes if no one has seen these plans until today, including Historic Salem, then a lot of what was being read mainly pertains to the previous designs.

Mr. Copelas notes the dormers, while still a change to roofline, are more in line with the neighborhood character. Responding to the commenters from 11 Buffum Street, Mr. Copelas states that in spite of the fact that they may believe this is changing to a three-story building, it is technically already three stories, and the addition of dormers provides additional headspace without changing the overall height.

Ms. Ordaz states there is a memo from Patti Kelleher, Salem Preservation Planner, as well. The memo references a demolition delay ordinance that went into effect two weeks after the petition was filed, and Ms. Ordaz asks Ms. Kolick if there were any additional discussions with Historic Salem or Planning after the change in design, as it would show good faith.

Ms. Kolick maintains the change in design was meant to be responsive to the public comments received. While it was not the preferred design, the applicant understands that many neighbors were concerned. Ms. Kolick states that the plans and elevations were filed with the Board of Appeals last week in anticipation of tonight's meeting, and that to her knowledge there was no discussion with Historic Salem Inc. or Planning. She notes the request for relief is the same. Ms. Kolick suggests that Mr. McShera speak to the lessening of impacts and new roof line. He notes that the roof was scaled back from the original mansard roof proposal. Mr. McShera and the property owner explain that the change in design was in response to overwhelming negative feedback, and that they worked to do minimal invasive work as part of the renovations. They indicate the goal is to improve the property with little to no impact on neighbors.

Ms. Kolick requests the Board share any serious reservations about this project, as she would like to know and have an opportunity to address any concerns or reservations before going to a vote.

Ms. McClain suggests her reservation is not something that can be addressed tonight, but that it seems like the petitioner has not been a great neighbor. Based on letters and public comment, Ms. McClain notes that neighbors had to call the EPA because debris that ended up being asbestos was everywhere. She adds that neighbors' concerns regarding lights, trees, and parking all had to come to the Board before a real conversation was had regarding changes. Ms. McClain asks if the neighbor's concerns regarding lights from the driveway have been adequately addressed. She indicates the neighbors do not seem to be much happier, and that asbestos is a major concern and health issue.

Ms. Kolick notes that regarding the neighbor and light concerns, screening has been proposed, and that the property is currently fenced. There is still a question as to what type of fencing and plantings will go in, but she believes it will be addressed.

Property owner Marc Tranos of Juniper Point Investments states there was a rumor that the building was being made into four units, and that he tried to squash that down as best as he could but that it was already out there. Mr. Tranos contends he spoke to the neighbors at 11 Buffum to get feedback, but that by then the well had been poisoned. He maintains he tried to scale back to make neighbors happy, but that at this point he does not think anything will make them happy. He adds that he sent three screening options to abutters and suggested they pick any they wanted, and that the backyard layout was changed to put the parking all the way in the back. Mr. Tranos states he has not received any response. Ms. Kolick states that the applicant and neighbors got off on the wrong foot, but that some concessions have been made and the plans have been tailored to address concerns. She states the petitioner does a lot of work in the community and wants to be a good neighbor. Ms. Kolick suggests the petitioner has a firm commitment to continue reaching out and working with neighbors to move the project forward.

Mr. Viccica indicates he was interested in this proposal and its design changes as an architect. Mr. Viccica states he wishes the Board could use bad manners as a criteria to approve or disapprove proposals, but that it cannot. He states the Board must look at the petition at face value and examine how it complies with the ordinance. Mr. Viccica suggests there are other avenues neighbors can explore to address them not being “good neighbors”. Mr. Viccica acknowledges that the project started off in a very bad place with big proposed interventions that did not fit, but that many accommodations have been made to maintain the Greek revival character. Mr. Viccica states most homes on Buffum Street have some kind of addition, and that while he understands the complaints and bad start, given where the project has ended up he indicates he does not have a problem with the application. Mr. Viccica stresses that no one is guaranteed a view, and that the Board has previously approved Greek revivals with dormers in the past. He suggest the project is infinitely better than where it started, and that is it too bad it took a less than great route to get there.

Mr. Copelas asks Ms. Kolick to address the special permit criteria again, and she does.

Mr. Kelley states that with the back and forth, what he is hearing is that the applicant was originally proposing a 300 pound gorilla on top, but is now proposing a 100 pound gorilla instead, and so some members of the Board are fine with it. Mr. Kelly suggests the proposal substantially changes what this house is, and that the impacts are more adverse to the neighborhood, to abutters than otherwise. Mr. Kelley argues it is ultimately a benefit of more square footage given to a developer, and that the change requested is not necessary to increase the value of the property, which will already benefit from the other renovations and updating. He stresses the property can be redeveloped as is without any changes to the roof line.

Mr. Mandeville states that Mr. Tranos and Ms. Condor have never spoken to him other than to call him an expletive and stupid, and that they have parked in his handicap parking space. Mr. Mandeville says the pine tree will be taken down, and he asks that the developer guarantee he will not crack the half foundation under his kitchen. Mr. Mandeville also suggests that the Board come see the asbestos out back which has not been sealed

Copelas closes the public hearing portion and asks for a motion.

Motion and Vote: Mr. Viccica motions to approve the petition of VALERINA CONDOR, LLC for a special permit per Section 3.3.5 *Nonconforming Single- and Two-Family Residential Structures* of the Salem Zoning Ordinance to expand a nonconforming two-family home by expanding the third story from a gable to

mansard roof at 9 BUFFUM STREET (Map 26, Lot 318) (R2 Zoning District) 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. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
8. 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.
9. 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.

Mr. Smalley seconds the motion. **The vote is three (3) in favor (Paul Viccica, Stevem Smalley, Peter Copelas) and two (2) opposed (Rosa Ordaz and Carly McClain) . The motion fails.**

Location:	31 Calumet Street (Map 10, Lot 57) (R1 Zoning District)
Applicant:	Roberta Reddy
Project:	A continuation of a public hearing for all persons interested in the petition of ROBERTA REDDY, for variances from provisions of Section 4.1.1. <i>Dimensional Requirements</i> of the Salem Zoning Ordinance for minimum lot area, minimum lot area per dwelling unit, and minimum lot frontage to create four lots at 31 CALUMET STREET (Map 10, Lot 57) (R1 Zoning District).

Documents and Exhibitions

- Application date-stamped July 28, 2021 and supporting documentation

Acting Chair Copelas introduces the petition.

Attorney Scott Grover introduces himself on behalf of the applicant. Mr. Grover indicates that property owners Roberta and Phil Reddy are also present. He explains that the petitioner came before the board in September, and describes the property as an unusually large lot for the neighborhood at over 35,000 square feet, where minimum lot sizes are 15,000 square feet. Mr. Grover further explains that the property is located on the Salem/Peabody line at the end of

Calumet Street where it dead ends. There is one existing single family home on the property. Mr. Grover notes that Ms. Reddy's family has owned the property for generations. Mr. Grover reminds the Board that the original application sought to divide the property into four non-conforming lots, including one with the existing home. The Board had expressed significant concerns that an existing conforming lot was being made nonconforming, and so Mr. Grover submits that the new plan eliminates one of the lots. As a result, the lot with the existing home will be conforming at 15,000 square feet and with 100 feet of frontage. The updated plans also limit the need for frontage and lot-width variances on the newly created lots. Mr. Grover goes on to explain that the only variance required now for the two new lots is lot area per dwelling, as they are just slightly under 10,000 square feet. Mr. Grover contends the grounds for granting the variances is based on the significant site development costs, which include ledge removal and extending water and sewer lines over a distance of over 200 feet. By allowing the subdivision, Mr. Grover argues there will be an economic benefit associated with the two new lots. He contends there is no intention to connect Calumet Street, but rather just to extend it enough to provide access to the two proposed lots. Mr. Grover adds that if the ordinance were strictly enforced only one additional lot could be created, which would not support the costs noted above. Mr. Grover also points to an assessors map which shows that the majority of the lots in the neighborhood are much smaller in size than the proposed lots. He therefore maintains the proposal is an appropriate use of land in the neighborhood.

Mr. Copelas thanks Mr. Grover, and states it appears that the number of variances being requested has been pared down to the bare minimum based on prior Board concerns. Mr. Copelas indicates it is easier to make an argument for a hardship when everything in a petitioner's power has been done to reduce the relief being sought.

Mr. Viccica asks if the water and sewer line would still need to be brought down and extended if only a single lot were created. Mr. Grover explains that the closes point of connection is 200 feet away, so it would need to be extended that distance regardless of whether it was to serve one lot or two. Mr. Grover states the only savings would be the last distance, which would be a small reduction in costs and not enough to support the ledge removal and other costs.

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

Mr. Viccica notes that written comments submitted reference previous plans, and asks if the petitioner has contacted the neighbors originally expressing concerns. Mr. Grover indicates he has not spoken to them himself, but that Mr. Reddy has talked to a number of neighbors and that the overall impression is that they are satisfied with his efforts and updated plans.

Mr. Copelas acknowledges the written comments submitted in response to the original plan for four lots, and notes that some of the concerns raised may still be relevant, such as those regarding blasting and drilling, drainage, and the extension of Calumet street. Mr. Copelas notes there are letters expressing opposition from Kirsten Austin of 4 Aberdeen Street and Elizabeth Thompson of 2 Aberdeen Street. There is a letter in support of the proposal from Richard Flaherty at 34 Calumet Street.

Mr. Grover confirms that the letters were from when the prior plans were submitted, and suggests that most of the concerns have been addressed by reducing the proposal to two additional lots. He adds that Calumet street will not be extended for a full connection, as that would expand costs even higher, but instead will be extended just enough to provide access to the lots. Regarding drainage,

Mr. Grover indicates there is a lot of ledge, which creates the drainage issues. By removing some of it and installing drainage systems with the new construction, Mr. Grover argues there is potential to improve the situation. With respect to blasting, Mr. Grover states the City has become sensitive to the impacts in recent years, and that the applicant will be complying with all regulations, requirements of notice, surveys, and obtaining adequate insurance.

Mr. Copelas asks Mr. St. Pierre to discuss the issues of runoff and the extension of Calumet Street. Mr. St. Pierre indicates he spoke with Dave Knowlton, and that the intent would not be to push the street through, as there would be nothing for the City to gain from a full extension. Regarding drainage, Mr. St. Pierre states it is a big issue in the Engineering Department and requires plans and drawings to be submitted to demonstrate drainage controls. He adds that this is not just in Salem, but that Commonwealth regulations exist preventing additional runoff with new developments.

Mr. Copelas opines he is reasonably confident that the situation with runoff will not be made worse, and perhaps could be lessened to some extent.

Mr. Laroe informs the Board a member of the public has raised their hand to provide comment.

Kirsten Austin introduces herself and states that her questions about drainage have been addressed, and asks additional questions regarding the need for retaining walls. Ms. Austin suggests the updated plan is more reasonable than the original, and that her remaining concern is just her property sits right between the two proposed new houses, so she will be gaining two additional abutters. As such, she asks that any problems that could arise be appropriately addressed.

Mr. Copelas assures Ms. Austin that if the project moves forward, Engineering Department review will be extensive and all available as public record.

Mr. Copelas closes the public portion of the hearing. He notes that the updated proposal seems more reasonable. Ms. McClain states she is comfortable with it as the runoff and soil conditions, as well as neighbor's concerns have been mostly addressed. Ms. Ordaz agrees.

Motion and Vote: Ms. Ordaz motions to approve the petition of ROBERTA REDDY, for variances from provisions of Section 4.1.1. *Dimensional Requirements* of the Salem Zoning Ordinance for minimum lot area and minimum lot area per dwelling unit to create three lots at 31 CALUMET STREET (Map 10, Lot 57) (R1 Zoning District) 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 shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to be visible from the street.
9. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.

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.

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

REGULAR AGENDA

Location: **6 Lathrop Street (Map 26, Lot 337) (B4 Zoning District)**
Applicant: **Michael Bunfiglio**
Project: A public hearing for all persons interested in the petition of MICHAEL BUONFIGLIO for a special permit per Section 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to change from one nonconforming use (two-family dwelling) to another nonconforming use (three-family dwelling) at 6 LATHROP STREET (Map 26, Lot 337) (B4 Zoning District).

Documents and Exhibitions

- Application date-stamped September 29, 2021 and supporting documentation

Acting Chair Copelas introduces the petition.

Attorney Kolick introduces herself on behalf of the applicant. Ms. Kolick explains the request is to expand an existing nonconforming use to add a third dwelling unit at the 6 Lathrop Street. Ms. Kolick notes the existing building is a two-family located in the B4 zone, and that residential use is not permitted in the B4 Zone, hence why the property is currently nonconforming. She adds that the residential use of the property predates zoning. Ms. Kolick next presents plot plans, and indicates there is a driveway to the right of the building, which can accommodate five parking spaces on site for the three units. The existing dwelling needs substantial work and repairs according to Ms. Kolick, and there are problems with the foundation. Photos of the existing conditions are shown, and Ms. Kolick points out a series of additions made to the building over the years resulting in a strangely configured rear portion. Ms. Kolick explains that the proposal eliminates the odd shape of the building and works within the footprint to make some changes that are in conformance with zoning requirements. Renderings and elevations are shown, and Ms. Kolick states the units will be flat style, with one per floor. Ms. Kolick contends the proposed structure is more in line with the neighborhood character, and that although the use is nonconforming, there are residential abutters to the left and right, as well as a multifamily down the street. Ms. Kolick argues that by allowing the additional unit, the owner can make needed substantial property repairs, as the building is currently not structurally sound. She notes that there will be little to no impact on traffic, adequate parking will be available, and that one additional unit should not have a substantial impact on utilities. Ms. Kolick also notes potential for positive impact on the natural environment and view, as well as a positive economic impact for the City.

Mr. Copelas acknowledges the existing building is odd, and that comparatively the renderings of the new proposal are quite handsome. Mr. Copelas states he is struggling with the backyard and parking proposal, as it looks to be a big section of asphalt with barely any green space. He acknowledges there may not be many alternatives, but states it was something that jumped out from the proposal. Ms. Kolick explains that many alternative parking arrangements were examined, and provides

further detail regarding how the proposal was determined. She also notes that a bump-out of the building will be removed, which will be a spot for additional landscaping. Mr. Copelas asks if only including four spaces would have triggered a need for an additional variance or special permit, and Ms. Kolick states it would have triggered the need for a variance.

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

Mr. Laroe notes the Board received letters in support, as well as a signed petition. The letters are read into the record by Mr. Copelas. Ms. Kolick addresses the grounds for a special permit, and explains that the proposal is not substantially more detrimental than the existing nonconforming use.

Motion and Vote: Ms. McClain motions to approve the petition of MICHAEL BUONFIGLIO for a special permit per Section 3.3.2 Nonconforming Uses of the Salem Zoning Ordinance to change from one nonconforming use (two-family dwelling) to another nonconforming use (three-family dwelling) at 6 LATHROP STREET (Map 26, Lot 337) (B4 Zoning District) 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 shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to be visible from the street.
9. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
10. 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.
11. 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.

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

Location: **9 Appleton Street (Map 27, Lot 221) (R2 Zoning District)**

Applicant: **Wright Family Irrevocable Trust**

Project: A public hearing for all persons interested in the petition of WRIGHT FAMILY IRREVOCABLE TRUST, for a special permit from provisions of Section 3.2.8 Affordable Accessory Dwelling Units of the Salem Zoning Ordinance for an existing detached accessory building as defined in subsection 8 of Section 3.2.8 that is not in compliance with the setbacks of the principal dwelling unit at 9 APPPLETON STREET (Map 27, Lot 221) (R2 Zoning District).

Documents and Exhibitions

- Application date-stamped September 21, 2021 and supporting documentation

Mr. Copelas introduces the petition.

Attorney Joe Correnti introduces himself on behalf of the petitioner, and states this may be one of the first petitions for an ADU under the long awaited ordinance. Mr. Correnti contends the property is an appropriate dwelling that fits the ordinance, with an existing detached structure. The secondary structure is the proposed ADU, which was a former garage/carriage house located in the rear. Mr. Correnti explains it was built on the property line, and that it has been in place and existing, with recent updates a couple years ago. Mr. Correnti indicates relief is required because the existing detached accessory building is not in compliance with setback requirements of the principle dwelling. He describes the existing structures in more detail. Mr. Correnti notes the petitioners previously came in under a different section of the ordinance (the historic carriage house ordinance), but learned they did not renovate the carriage house to exact historic standards, and that required modifications are more costly than the applicant can afford. Mr. Correnti states the ADU will be used by family to start, and gives the family an opportunity in the future to supplement their income if needed by renting the unit affordably in accordance with the ordinance.

Joanne Wright, property owner, introduces herself and explains she has been in Salem for 47 years, and at this property for 44 years. Ms. Wright indicates she raised her family here and has been a part of the North Salem community for a long time. Ms. Wright further explains that she is getting older and that her son lives with her currently. She now has grandchildren, and needs the additional room to keep the family together.

Mr. Correnti again explains the relief required regarding side and rear setbacks. He also notes that while off-street parking is not required when creating an ADU, the proposal does offer off-street parking. The unit will be 750 square feet with one bedroom and a lofted interior.

Mr. Copelas states the ADU proposals are certainly new but that this is not the first one. He notes there were no floor plans or further information in the application. Mr. Copelas asks Mr. St. Pierre if he would be responsible for code enforcement pursuant to any Board approval. Mr. St. Pierre confirms that would be the case, and explains the process in more detail, noting that the affordability of the unit is memorialized in the permit.

Ms. Ordaz clarifies for the record that if the property is located a half mile or less from an MBTA station, then parking is not required, but if the property is farther that it does require parking.

Mr. Viccica references a letter from Patti Kelleher, and suggests that when the carriage house renovations were approved, it appeared to have been renovated in a way that was outside of what was shown and approved by this Board, which was prior to the ADU ordinance. Mr. Viccica states he does not have an issue with the ADU portion, but that he has questions about compliance with the original Zoning Board decision, which was brought to his attention in the letter.

Mr. Correnti clarifies that there was no original ZBA decision, as the petition was withdrawn without prejudice. Mr. Correnti recalls that the Board recommended the applicant speak with the Historical Commission, but ultimately determined that the family was not in a position to make the required renovations. The application at the time was for a special permit under the historic carriage house section of the ordinance, but Mr. Correnti states it was withdrawn. The property sat vacant for a year, and ultimately after the ADU ordinance was passed the property owner saw it as an opportunity to use the carriage house which had been restored. Mr. Correnti says the petition is not applying for anything under the historic carriage house ordinance currently.

Mr. Viccica suggests it is fuzzy to apply to one part of an ordinance and not the other, as this is a renovation of a carriage house. Mr. Correnti again explains the petition was brought before the Board after the carriage house had been rebuilt without knowledge of the historic carriage house ordinance, but was eventually withdrawn and the property/structure remained unused.

Ms. Wright confirms that she has lived there 43 years and since the day she bought the house there has always been a barn or garage structure, and that it was never really a carriage house. Moreover, Ms. Wright states she could never afford to keep it up as a carriage house even if it were. She explains that several years ago the roof was caving in, and she replaced it to great expense. The characterization of a carriage house only came into play because the ADU ordinance did not yet exist, and they were seeking extra room for the family.

Mr. Viccica states he begs to differ, and that the structure is a carriage house that predates the part of the ordinance that requires a different kind of arrangement.

Mr. Copelas asks, in this case, if a property owner has a choice as to which path to take if they have two different paths to an outcome. Mr. Copelas states that Mr. Viccica seems to be implying that because of the structure's age, they must follow requirements of the historic carriage house ordinance. Mr. Copelas opines that if there is a different legal path to a satisfactory outcome, the petitioner has the right to do that.

Mr. Viccica states he is unsure, and that is why he is wondering why one part of the ordinance usurps another. Mr. Viccica suggests preservation is an important aspect, otherwise the carriage houses would just be taken down.

Mr. Copelas acknowledges that the effect of the ADU ordinance will be to in some sense water down how many people take advantage of the historic carriage house ordinance, which could be an unintended consequence, but states he still struggles to see how the age of the building should require one path versus another to the same outcome.

Mr. St. Pierre provides further clarification, explaining that when the renovations were done, the building was not in a historic district, which would have had guidelines and requirements. In this case, Mr. St. Pierre indicates the applicants wanted to apply for an extra unit, and at the time the

only way to do so was through the carriage house ordinance. Once the applicants saw the challenges before them, they withdrew the application and at no point did anything that was out of line. Since then, Mr. St. Pierre indicates they have been sitting on this unusable property. In the interim, the City passed the ADU ordinance, which does not allow for the construction of new structures for an ADU. Mr. St. Pierre states the ordinance is very much for these types of existing buildings to be converted, and suggests the applicant is well within their right to take this legal path. Mr. St. Pierre states they are different paths, but that one ordinance does not usurp the other.

Mr. Viccica states the information and clarification are helpful, but insists that the ordinance is being usurped by the easier pathway of the ADU proposal. Mr. Viccica suggests perhaps council was not aware this could be a result of the ordinance change.

Mr. St. Pierre explains that this was reviewed by the whole Planning Department as well, and so they were likely aware of the consequences. Mr. Viccica notes that Ms. Kelleher wrote a letter, and Mr. St. Pierre acknowledges that she seems to still have some reservations. Mr. Viccica states there are mechanics to preserve carriage houses, and that while he understands the issue here, for those interested in preservation it would be helpful to look at this issue and how buildings are being utilized in accordance with the ADU ordinance.

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

Mr. Copelas notes there were a number of public comments submitted in writing. Ward 6 Councilor Meg Reccardi expresses support for the special permit application, as do Patricia Bates, Tom Fury, Rodney Maurice, and Michael Tierney.

Mr. Viccica asks if the Board needs documents for minimum requirements, floor area, criteria, etc. Mr. Copelas indicates that was what he was referencing earlier, but that according to Mr. St. Pierre those requirements will be a function of the building permit. Mr. St. Pierre confirms. Mr. St. Pierre states that legally, it is up to the permit issuers to make sure the criteria are met, but that going forward there would not be any harm in asking petitioners for simple floor plans. He adds that most of these will be done by right, and therefore the Board is not likely to see many petitions.

Mr. Correnti discusses the special permit criteria as it relates to the proposal.

Mr. Viccica clarifies that he is not opposed to the petition, but that he does not want to use this as a vehicle to establish criteria for future special permits when it comes to this section of the ordinance. He expresses disagreement that the Board should not be given the criteria and plans in writing with dimensions, and he does not understand why the Board would not receive that information going forward.

Mr. Copelas acknowledges Mr. Viccica's concerns, but states this seems to be a special carve out where any other special permit requires this information and would not be approved without it. He agrees with Mr. Viccica conceptually, but states it would be unfair to impose such a restriction or requirement on this petitioner. Mr. Copelas suggests continuing the conversation about how to best accomplish this going forward. Mr. Viccica agrees.

Motion and Vote: Ms. Ordaz motions to approve the petition of WRIGHT FAMILY IRREVOCABLE TRUST from provisions of Section 3.2.8 Affordable Accessory Dwelling Units of the Salem Zoning

Ordinance for an existing detached accessory building as defined in subsection 8 of Section 3.2.8 that is not in compliance with the setbacks of the principal dwelling unit at 9 APPLETON STREET (Map 27, Lot 221) (R2 Zoning District) 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. A Certificate of Occupancy is to be obtained.
6. A Certificate of Inspection is to be obtained.
7. Petitioner shall obtain street numbering from the City of Salem Assessor's Office and shall display said number so as to be visible from the street.
8. Petitioner is to obtain approval from any City Board or Commission having jurisdiction including, but not limited to, the Planning Board.
9. 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.

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

MEETING MINUTES

October 20, 2021

After a brief discussion regarding difficulties accessing the October minutes via sharepoint, the Board determines it is best to postpone the review and approval of the October minutes to the next meeting.

OLD/NEW BUSINESS

The Board discusses the meeting schedule for next year. Mr. Viccica notes that historically there are a few third Wednesday's of the month that fall on public or private spring vacation times, where there is rarely a quorum present. Ms. McClain confirms that for 2022 it is the week of April 18th.

Mr. Laroe presents the proposed meeting dates. Ms. McClain proposes changing the April 20th meeting to the 27th or the 13th. The Board discusses, and collectively decide on the 27th of April.

Mr. Viccica notes that December 21, 2022 is Hanukah, and Mr. Copelas suggests moving that meeting to December 14th, a week earlier. The other Board members agree. Mr. Copelas suggests that Mr. Laroe update the calendar with the proposed changes for approval at the next meeting.

Mr. Laroe next discusses the opening policy, noting that the option for January first is to go hybrid, stay remote, or go in person. On April 1 the meetings will need to be in person. Mr. Copelas states

that the disadvantages of remote are so minimal, and that the advantages are significant, particularly with respect to making the meetings accessible to the public. As such, Mr. Copelas states his opinion is that it would be best to remain virtual. Ms. Ordaz agrees.

ADJOURNMENT

Motion and Vote: Mr. Viccica moves to adjourn the meeting. No other member seconded the motion and no vote was taken.